

1056

4.

On 2015.02.10 I visited the Vault and after moving chairs, as the Vault is full of boxes, chairs and all type of documents ect, I found the blue metal box and looking throw the vent hole of the blue metal box / safe, I could see there are an Fax machine inside the blue metal box / safe. However I could not open the metal box / safe as it is locked and I never received the key to the blue metal box / safe. I phoned Col. Van Eeden and informed him that I found the Fax machine which he is looking for, but I do not have access to the blue metal box / safe and Col. Van Eeden said that it is not a problem and that he will bring tools to pick the lock. I cannot remember which date COL. Van Eeden said he will come and collect the Fax machine.

5.

I immediately went to Mrs. Pomuser as she also informed me via cell phone that Col. Van Eeden was looking for the Encrypted Fax machine and I asked her to phone Gen. Sibiya, as to inform Gen. Sibiya that Col. Van Eeden wants to remove equipment from his Walk in Vault. Mrs. Pomuser then phoned Gen. Sibiya and Gen. Sibiya spoke to Mrs. Pomuser and myself. Gen. Sibiya instructed me that only the Minister's office will remove any equipment from his safe. After the telephone conversation I asked Mrs. Pomuser to phone Col. Van Eeden and to inform Col. Van Eeden of Gen. Sibiya's instruction and I left the office of Gen. Sibiya.

6.

On 2015.02.11 Mrs. Pomuser phoned me and informed me that the Minister's office were on their way to come and collect the Encrypted Data 6 Fax Machine

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LIEUTENANT
B.C. BOTHA

1057

and I must come to Gen. Sibiya's office, as to open the Walk in Vault, on the arrival of the Minister's personnel. I was already in the Parktown office with other business and waited for the arrival of the Minister's personnel. Mrs. Pomuser phoned me and I went to her office reception area, where I was introduced to Mr. McBride of IPID and his two (2) technicians. Mr. McBride served a Notice on me, as to hand over the Encrypted Data 6 Fax Machine, however Mr. McBride thought that Mrs. Pomuser had the Vault key and there for the Notice was issued on her name. Mr. McBride apologized for the misunderstanding and asked me if I have any problem with the wrong name on the Notice, as his office can prepare a new notice, with my name on it and Mrs. Pomuser and myself agreed that it will not be necessary. The Notice was in terms of Section 29(2) of the IPID Act and should I have failed to comply with the said Notice, it will amount to a Criminal Offence in terms of Section 33 of the IPID Act.

7.

I opened the Walk in Vault and Mr. McBride, as well as his technicians looked at the blue metal box / safe, I informed them that I don't have the key, Mr. McBride left the Vault and his technicians inspected the blue metal box / safe and then removed the hard drive of the Encrypted Data 6 Fax Machine throw the one (1) vent hole of the said blue metal box / safe.

8.

All three (3) of us left the Walk in Vault, I locked it again and we met with Mr. McBride where he was sitting in Mrs. Pomuser office. Mrs. Pomuser then prepared a receipt of acknowledgement document and Mr. McBride signed for the hard drive taken from the Encrypted Data 6 Fax Machine and left.

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LIEUTENANT
B.C. BOTHA

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1058

9.

All the original documents in this regard are filed with Mrs. Pomuser.

10.

I know and understand the contents of the above mentioned statement.

I have no objection by taking the prescribe oath.

I consider the prescribe oath to be binding on my conscience.

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LIEUTENANT
B.C. BOTHA

SOUTH AFRICAN POLICE SERVICE
ORGANISED CRIME
2015 -03- 03
NORTH - EAST RANG
SOUTH AFRICAN POLICE SERVICE

Remuneration of 3/03/2015 14 34
Clear Hugo
165 Meyer otu
Remuneration
updater

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1069

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

CASE NO: 6588/15

In the matter between:

ROBERT MCBRIDE

Applicant

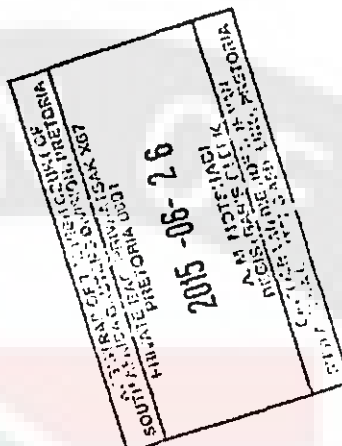
and

MINISTER OF POLICE

First Respondent

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

Second Respondent



AFFIDAVIT OF TAKALANI NEMUSIMBORI

I, the undersigned


TAKALANI NEMUSIMBORI

do hereby make oath and state as follows:

1. I am an adult male person. I am employed as Director: Information Technology ("IT"), in the employ of the Independent Police Investigative Directorate ("IPID"), situated at 114 Madiba Street, City Forum Building, Pretoria.

1060

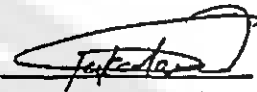
2. The facts set out in this affidavit are true and correct, and are within my personal knowledge unless the context indicates otherwise. Where I make legal submissions, I do so on the advice of my legal representatives.
3. I am competent to depose to this affidavit.
4. The applicant is currently suspended from the position of the Executive Director of IPID. As the Executive Director of IPID the applicant was the head of department and the accounting officer.
5. On the 11 February 2015, my colleagues and I accompanied the applicant to the offices of the Gauteng Department of Priority Crimes Investigation (*"the DPCI"*), also known as the HAWKS upon his request. The applicant informed me that he had received a complaint about a Data line (device) at the office of the suspended Gauteng Provincial Office of the HAWKS, Major General Sibiya that was to be removed unlawfully. Further, the applicant advised me that the visit to the offices of the HAWKS in Gauteng Province was in terms of section 29(1) of the IPID Act No. 1 of 2011.
6. On arrival at the HAWKS Gauteng Offices referred to above, the applicant explained the purpose of our visit and produced a letter that explained that he is removing the device in terms of section 29 of the IPID Act.
7. The data line was removed by my colleague and handed over to me. The applicant signed for the removal of the data line at the offices of the HAWKS. The device was in my possession from the HAWKS


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1031

offices until we arrived at the IPID offices where it was stored in the IT safe until it was handed over to the SSA to conduct investigation.

DATED AND SIGNED AT PRETORIA ON THIS THE 18 JUNE 2015.



DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at PRETORIA on this 18 day of June 2015, the regulations contained in the Government Notice No.; 1258 of 21 July 1972, as amended by Government Notice No: 1648 of 17 August 1977, as amended having been complied with.

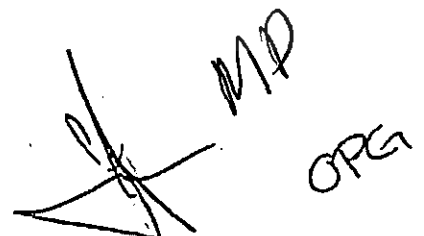
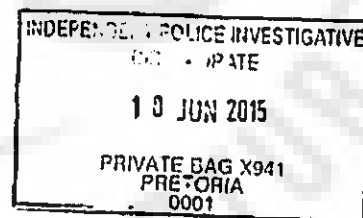

Commissioner of Oaths

NAME: Pule Viceroy Hillary Maza

CAPACITY: DIRECTOR: LITIGATION

ADDRESS: 114 LYNDAWAY STREET

PRETORIA



1062



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICAPrivate Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel: (012) 399 0000 Fax: (012) 326 0408Ref: ED 2015/03/04
Enq: Executive SupportMR. V DLODLO
STATE SECURITY AGENCY (SSA)
PRETORIA
0001

By Hand

Dear Mr. Dlodlo

SSA TECHNICAL EXPERTISE

The Executive Director: IPID, Mr RJ McBride hereby requests technical expertise from the SSA to download information of the device e.g. Log files etc.

The device has been legally obtained during an investigation into systemic corruption within SAPS. We suspect that the information is extremely sensitive and therefore we cannot make use of a Private Sector service provider.

Your favourable consideration of the above request will be highly appreciated.

Thanking you in advance.


MR. R.J. MCBRIDE
EXECUTIVE DIRECTOR

DATE: 04/03/2015



RJM 27.2

1063



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

MESSENGER SERVICES AND HAND DELIVERY FORM

GENERAL INFORMATION

NAME	EXT. NO	DATE
TAKALANI NEMUSIMBAZI	0014	05/03/2015

DOCUMENT TO BE:

TO BE DELIVERED



TO BE COLLECTED AT



TIME



MARK APPLICABLE WITH X

NAME	PHONE NUMBER	TYPE OF DOCUMENT	DATE
Mr. V. Dlodlo	0126738084	GM	

SHORT DESCRIPTION OF DOCUMENT(S) TO BE DELIVERED OR COLLECTED

Fax encryption box

HAS AN APPOINTMENT BEEN MADE: YES/NO TIME OF APPOINTMENT

Tatolani
DELIVERED BY

05/03/2015
DATE

RECEIVED BY / COLLECTED FROM

DOCUMENT RECEIVED/ COLLECTED BY: NAME:

SIGNATURE:

DATE:

T. Tsini
[Signature]
05/03/2015

FOR ED'S OFFICE USE ONLY

RETURNED BY:

NAME: _____

DATE: _____

[Signature] MP [Signature] OPG

**Fw: AVAILABILITY ON INVESTIGATION PROCESSES**

Innocent Khuba to Maureen Smit

2015/03/10 10:59 AM

From: Innocent Khuba/Limpopo/IPID
To: Maureen Smit/HeadOffice/IPID@IPID

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

— Forwarded by Innocent Khuba/Limpopo/IPID on 2015-03-10 10:59 AM —

From: Monaheng Amelia <MonahengAmelia@saps.gov.za>
To: "ikhuba@ipid.gov.za" <ikhuba@ipid.gov.za>
Cc: "msesoko@ipi.gov.za" <msesoko@ipi.gov.za>, "angelo.worship@gmail.com" <angelo.worship@gmail.com>
Date: 2015-03-09 02:15 PM
Subject: AVAILABILITY ON INVESTIGATION PROCESSES

Good day Sir

The Minister requests your availability whenever your requested in terms of follow up on investigations

Which might require your co-operation and assistance in terms of finalizing processes.

Kind regards

Amelia Monaheng
Jr to the Minister of Police
Tel: (012) 393-2810
(021) 467-7077
Fax: (012) 393-2812
(021) 467-7033
Cell: 076 040 6406
Email: monahengamelia@saps.gov.za

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RJM 29

1065

23

5 July/IPID
23.04.15

INNOCENT KHUBA

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

MR JULY:

Yes, somewhere in August.

MR KHUBA:

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

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[Handwritten signatures and initials]
MP D OPG

1036

S July/IP10
23.04.15

INNOCENT KHUBA

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

MP J OPG

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S July/IPID
13.04.15

INNOCENT KHUBA

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

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

MR KHUBA: Of ...?

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

MR KHUBA: The docket? 20

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

MR KHUBA: Yes.

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

MP JH GPC




RJM 30
1068**TRANSCRIPT OF MEETING HELD BY MINISTER NHLEKO AT IPID'S OFFICE ON 31 MARCH 2015.****Introduction of persons present**

Minister of Police: Thank you very much ladies and gentlemen; I wanted to ask to meet like this last week Tuesday if I'm not mistaken. I was then informed that all of you weren't here you were in provinces in different parts of the country. So, therefore and according to the reason why I wanted to do so was because the approach I wanted to take was to inform all of you in one room about the decision that I had taken to put your Executive Director on suspension and what the next process was to be.

So I then felt ok, I still owe this particular visit nevertheless regardless because all of you were then informed through different channels of the decision that was taken. Now, but I still do think that it is just simply something to do to be able to communicate with yourselves at least at a direct sort of level in this kind of thing.

The nature of it arises out of a matter that was handled; I think some few years back long before my arrival here. A matter that itself produced various contradictions in the sense that in January there was a report that was generated which made specific recommendations to the National Prosecuting Authority.

Now...But we are now told by themselves that that report is called a "progress report" now this by way of all give you an example, when you amputate a leg that thing is called an amputation it is not called "progress" because you are not going to be able to reverse, you are not going to be able to re-attach that particular leg to the body. So when you say that someone must be prosecuted you are not providing progress-you are providing a particular conclusion to which you think you yourself is prosecutable. You do not have power to prosecute, that power now lies with the Prosecuting Authority. You are then saying that authority amongst the things that it could consider is that there are these particular matters on a *prima facie* basis of course that

   OPG

1069

they could then consider a good question of prosecuting- still the prerogative is theirs. But recently that's what we had that is called a "progress report," progress in the sense that in March, sometime around the 28th of March a second report emerged which in a sense contradicts the first. So both from quarters of the IPID and quarters of the politicians, the DA in particular, they have been telling us repeatedly that those are progress reports and that this institution of IPID can report and account to the National Prosecuting Authority. I mean I was really getting educated these days. Now but that is expected from politicians. Politicians have a tendency that some of them think, and some of them don't think. Some of them they just say things, that the problem with the political set up in this country in the sense that there is less emphasis on facts and science and material facts and so on and that the problem. Now that problem can't become your problem.

You are an institution. And this institution has got firstly to be independent. Not by name, it must also demonstrate that it is an independent one. Thirdly, it is that it must also (inaudible...) at all material times so that what it does, it must win the confidence of the South African public. It can't be an institution that contradicts itself as and when it wants to. And it can't be an institution that in a sense, when it's convenient to say something it must say that because it has got to serve some particular ends. And I think it is symptomatic of generally some of the problems that have or maybe having. You may not be aware. I mean they are symptomatic of some of the major problems that are beginning to emerge in South Africa. In South Africa today, for an example, it's easy to have a Prosecuting Authority that has a forked-tongue if it wants to- and it is called a "Prosecuting Authority" and that's an institution that must be independent at all material times, it must be driven by sanity and law at all times. But it also happens that you have even some elements in the judiciary, for an example- they are quite interesting. They meet with characters to produce certain judgements. You know this thing is becoming a common feature of our judiciary, and so forth.

Now all of these things they impact on the character of (inaudible...) those of you who at least have a bit of a background of South Africa.



1070

we had deliberately coined certain slogans "there can be justice for all" because that was a (inaudible...) crime in the society that we are creating we needed to make sure that it would remain a fair and just society at all times. A society that (inaudible...) doesn't look at the size of your nose, the size of your ears, doesn't look at your (inaudible...) and so forth and then decide that it does not feel in a particular way. Because that society is a subjective society. So that's the one part that brought this (inaudible...) but at a specific level yourselves as senior level of IPID need to be (inaudible...) regardless of all the other problems that may occur or not occur for that matter. You need to be an institution that ordinary members of the public have confidence in. A woman in Thaba Nchu must know that if he if she sorry, is raped by the conduct of the Police, she must have this kind of an attitude that says "look, I know that I have- I can phone IPID and IPID can do something about it" and then the same thing is someone in Nongoma must also say the same thing and so on and so forth. You must also conclusively align yourself and your position. And that is what we need to end ourselves, it is not something that can just happen on its own.

You would also know associated with the question of these 2 reports there were further developments to it. I see that some newspapers were also trying to write this thing out a complex story. Now related to the same, now things is happening somewhere else that I'm not gonna delve into now, I'm just going to say that there are further developments.

The second point that also led to the suspension of the Executive Director is the fact that the Minister commissioned an inquiry in terms of why do we have 2 reports. So people involved, investigators constructing the investigating team were then duly instructed not to cooperate with that investigation. Now, those of you have been in administration for at least some few years or months you'll know what that thing represents, what it means in law. So that what it is.

The third one is that there is also quite a serious allegation of an encryption device that was removed from Gen. Sibiya's office. Now Gen. Sibiya is also under suspension being investigated and he's also

MP OPG


1071

attending a disciplinary hearing (...inaudible). But then the encryption device is removed. That encryption device is governed by the National Strategic Intelligence Act. That's law, once you say "Act". That encryption device is also governed by the South African Communication Policy. That encryption device is also governed by Protocols within the South African Police Services. You can only removed by an express instruction from the Minister and the National Commissioner to actually remove it.

So we have such allegations and of course these are allegations and they still have for to be tested in one form or another. The only thing that is sitting where I am as the Minister according to, there is no way that I am going to keep quiet about these things so because (...inaudible). Now given that a decision was taken that Mr. McBride was on suspension (inaudible...) Mr. Kgamanyane from the Free State has been appointed to act in the interim whilst of course the process unfolds in terms of what eventually will happen about some of these allegations and how they need to be processed which is itself a matter for another day in terms of how they will be processed (...inaudible). Now he is acting as the Executive Director.

There are two things that I am calling for. The one is that he is acting and he is duly acting so the institution has got to function as normal. It has got to continue to do and deliver the services that it has got to do regardless it has got to (inaudible...). I did say that one of the challenges from a strategic point of view is the whole question of, you know, how does, how do we make IPID a peoples institution. An institution of the agreed and everything needs to be known. This is one of things that he will continue engaging and interrogating that point.

The second thing is that the ongoing work that we have been doing will continue and this will include the fact that we have come to the end of the, we are coming to the end of the financial year. So those of you that are responsible for financial management for an example (...all those irons must be ironed and what you call it and so on. Let me also just talk about while we are talking about financial issues, I had a meeting with the Auditor General this morning, one of the concerns

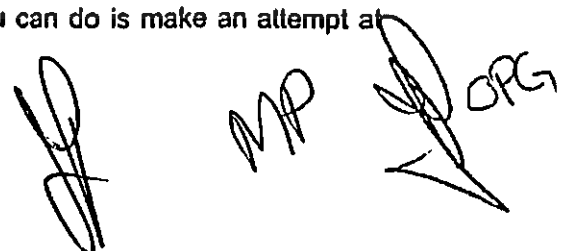


1032

just basically only one is the factor of capacity relating to the vacancy rate in IPID which means that it is something that they are concerned about in terms of whether or not IPID will be able to deliver. factors/factions separating in IPID whether or not IPID will be able to deliver which is a common (inaudible...). But also do note that in the core section of what IPID is about we have 3 sort of critical vacancies: ..services,...services,...services and so on...investigations as well. I think it's something that we will need to pay some urgent attention to in reaction to the issue that the Auditor General has raised. So that's one set of issues. The question of the annual performance plans and annual reports and so on we need to (inaudible...) in preparation of the subsequent preparations before the Portfolio Committee. .. So those are some of the things that have got to me (inaudible...)

The rest of the issues which is basically the third, is that my appeal is that you don't have to polluted because if you get polluted you, I don't know who is going to sanitize you after pollution and quarantine you from I do not know because is in a situation such as this which is happening firstly for a long time, secondly, completely necessitated for different political ends and so on we are going to get dirty, you know. And that's what I expect from what I sense on my side because these days of political competition, so if mud is thrown in my direction, its fine- I deal with it. But, can you imagine yourself if being a professional for an example, a lawyer whatever and so on if this things are thrown in your direction because you are a professional. So , whose gonna now cleanse this sort of dirt and grime from... so you have to find a way of insulating yourself and just make sure that focus on your work and do your work to the best of your ability and so on.

Lastly, our work is governed by policy and law at all material times. Not by what we like, not by what others will say. It is governed by policy and law. These days if you do not, if there is something that you don't like even at a political level there's one thing that if you will take a photo of me and I do not like it I can tell you that's unconstitutional, that's all I say. You can take it to the constitutional court. This thing has become so common that if you don't like the hand that's dealt to you it's "unconstitutional," that what we claim we (inaudible...) that why I say to people that the best thing you can do is make an attempt at

Three handwritten signatures are visible at the bottom right of the page. The first signature is a stylized 'J' or 'L' shape. The second is a more complex, cursive signature. The third is a signature that includes the letters 'ORG'.

thinking and processing issues as opposed to negating what the real facts are on one hand and therefore find something else because the country has developed, it has these particular stages that are actually quite interesting, they are very very very interesting. In South Africa, if you do something wrong, and when you are being taken to task about a grounds – then there are political reasons you look behind the reasons why the conduct (?) ...I was reading a newspaper this morning about the Cosatu department for an example and I'm thinking but "why why why is it that things are in this commotion?" But then at that point, because people not also want to deal with the actual issues. Instead what do they find? There must be some political motive. In my case my political motive is about Nkandla. So that's what I've been told. When you say that is it that this thing is done this way. No you are asking that question. We are asking that question because there is place somewhere in godforsaken part called Nkandla, that's the extent pollution, so my appeal is that do yourself a favour and stay out of the pollution. We are not gonna, we are not gonna be able to you are not gonna be able to cope. So that's my best advice to you.

So I wanted to leave things at that. You will be advised that of further developments. I always tell people that when it comes to such cases, no one is going to ... the Executive Director is not going to vanish ...there's no decision that has been taken about his suspension when it comes to that you will be advised. But also the opposite is also true, in case there isn't wrong, there isn't anything wrong that he has done, so there will be nothing wrong that he has done, you will also be advised about such things. So your conduct should just be in such a manner that you don't reach foregone conclusions about the fate of some people...suspension means taking precautions in such a manner that if an investigation is being conducted it is shouldn't be polluted, trying to insulate processes. So that's what suspension is all about. It is never political. We tend to think that it is a punitive manner but in this instance it is just a precautionary measure.

So I wanted to this thing last week...but I am also aware that there are provincial heads but I'm also happy that there are provincial heads amongst us so , I don't know whether it happens that IPID- In most institutions you'll find people from provinces complaining that the head



1074

does everything like this and we at provinces.. I hope nobody complains about it, people complain quite a lot. I'm happy and thanks.

Mr. Kgamanyane: Ok, thanks Minister.

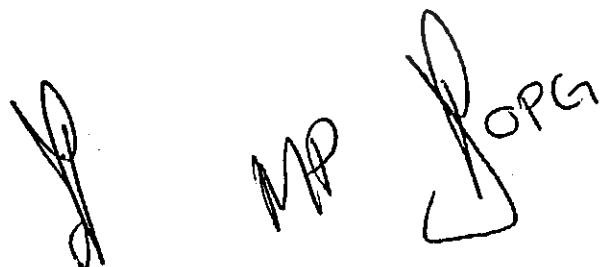
I wanted to say something about (inaudible...) thanks Minister for the confidence that you have shown in me by appointing myself as Acting Executive Director of this particular department.

I normally say to colleagues that you still have Executive Director, he still fills that post. I am just there to fill that particular gap as and when he is not here. So as and when I met with the Minister and the (inaudible...) last week the Minister said something the Minister said something with regards to the issue of roles. And he said that there are only 3 roles that each and every person should be loyal to. The first issue he was saying the person must be loyal to his work, his job. Then the second is the institution, organisation or department and lastly the government not to the new ED. And he was even saying that in order to have an optimal performance level in the organisation you must have your institutional structure in place.

So those are some of the things that I will really appreciate my colleagues to support me in order to make sure that we work as a team. And team efforts is very much important even where it comes to issues of performance because where is ill-discipline there is no performance. That was my motto while I was still in the Free State and that's the reason why Free State even when it comes to final reports still comes up tops.

So, so thanks Minister. I know that the Minister doesn't have time, we just have to excuse him. He won't be joining us for refreshments. Thanks colleagues, those who are travelling back- travel safely and those who are flying must fly safely. Thanks very much.

-end-



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

FELICIA AZANDE NTSHANGASE

do hereby make oath and say:-

1.

- 1.1. I am an adult female employed in the position of Provincial Head for Gauteng and acting in the position of Program Manager: Investigations

[Handwritten signatures]

and Information Management at the Independent Police 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.

FELICIA A. NTSANGASE

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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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

In the matter between:

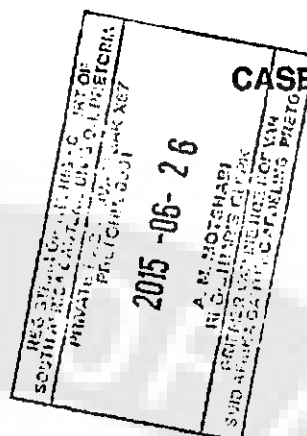
ROBERT MCBRIDE

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

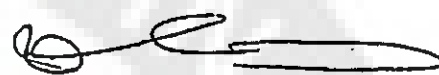




Investigative Directorate ("IPID") situated at City Forum Building, 114 Vermeulen St, Pretoria.

- 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 ^{19th} 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

Olive P.G. Motsomi
Commissioner of Oaths
Practising Attorney
Gildenhuys Malatji Inc.
GMI House, Harlequins Office Park
164 Totius Street, Groenkloof, Pretoria



1079

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

CASE NO: 6588/15

In the matter between:

ROBERT MCBRIDE

Applicant

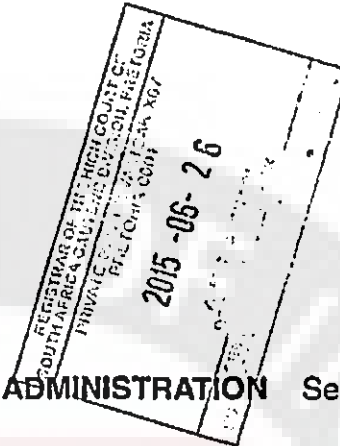
and

MINISTER OF POLICE

First Respondent

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

Second Respondent



CONFIRMATORY AFFIDAVIT

I, the undersigned

MATTHEWS SESOKO

do hereby make oath and state as follows:

- 1 I am an adult male, currently suspended from my position as Program Manager for Investigations and Information Management for the Independent Police Investigative Directorate (IPID).
- 2 The facts set out in this affidavit are true and correct, and are within my personal knowledge unless the context indicates otherwise.
- 3 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.

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- 4 I have also read the supporting affidavit of Mr Innocent Khuba, and confirm the correctness of its contents insofar as what is stated there concerns me.



MATTHEWS SESOKO

THIS 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

CAPACITY

AREA

Olive P.G. Motsomi
Commissioner of Oaths
Practising Attorney

Gildenhuys Malatji Inc.
GMI House, Harlequins Office Park
164 Totius Street, Groenkloof, Pretoria



1081

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

FELICIA AZANDE NTSHANGASE

do hereby make oath and say:-

1.

- 1.1. I am an adult female employed in the position of Provincial Head for Gauteng and acting in the position of Program Manager: Investigations

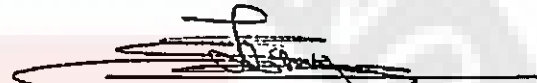
O.P.G.

and Information Management at the Independent Police 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.

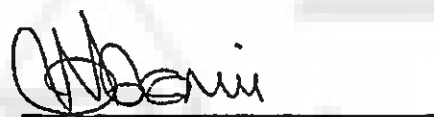
2.

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.



FELICIA A. NTSHANGASE

Thus signed and sworn to, before me, at PRETORIA on this the 19th 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

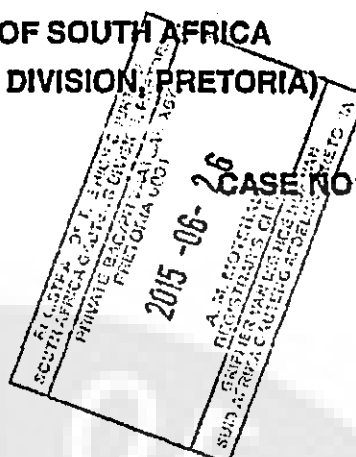
Olive P.G. Motsomi
Commissioner of Oaths
Practising Attorney
Gildenhuys Malatji Inc.

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



1083

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



CASE NO: 6588/15

In the matter between:

ROBERT MCBRIDE

Applicant

and

MINISTER OF POLICE

First Respondent

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

Second Respondent

SUPPORTING AFFIDAVIT

I, the undersigned

INNOCENT KHUBA

do hereby make oath and state as follows:

- 1 I am an adult male, currently suspended from my position as Provincial Head of the Independent Police Investigative Directorate (IPID), Limpopo.
- 2 The facts set out in this affidavit are true and correct, and are within my personal knowledge unless the context indicates otherwise.

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

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

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

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

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

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

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



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- 6.1 During and about October 2011, allegations about the SAPS involvement in the illegal rendition of Zimbabwean nationals were first reported in the *Sunday Times*. The media reports prompted a Parliamentary question from a COPE Member of Parliament to the Civilian Police Secretariat ("the Police Secretariat") on 28 October 2011, about the alleged SAPS involvement in the illegal rendition of Zimbabwean nationals.
- 6.2 Shortly thereafter, the then Executive Director of IPID, Mr Francois Beukman ("Beukman") instructed Matthews Sesoko, the then Acting Chief Director of Investigations at IPID ("Sesoko") to initiate an investigation into the matter. Beukman advised Sesoko that the head of the Police Secretariat, Ms Jenny Irish-Qhobosheane ("Irish-Qhobosheane") had requested an investigation into the allegations raised by COPE. This meeting is confirmed by Sesoko, whose affidavit accompanies this affidavit.
- 6.3 Sesoko appointed me to head the investigation. However, not long thereafter, Beukman, Sesoko and I were called to a meeting with Irish-Qhobosheane. We were instructed to hold-off the investigation apparently on the instruction of the then Minister of Police, Mr Nathi Mthethwa.
- 6.4 About a year later – during or about early October 2012 – Colonel Moukangwe ("Moukangwe") of the SAPS Crime Intelligence Gathering division ("CIG") came to Sesoko's office at IPID. Moukangwe handed over the docket that CIG had opened into the



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

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

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

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



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

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

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

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

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



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

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

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

8 On 4 March 2014, at the very first meeting that I had with the McBride, I conveyed my concerns about the manner in which the rendition matter was brought to IPID and assigned to me for investigation. I told McBride that I felt uncomfortable and suspicious of the involvement of CIG in the investigation, and the instruction that I was not to discuss the investigation with Sesoko but to report directly to Mbeki.

9 I had, however followed Mbeki's instructions in the investigation of the matter. I had conducted the investigation subject to the oversight and

¹ Transcript of Mosing interview with Werksmans' Attorneys, 7.04.2015, pp. 7, lines 2-6 and 12, lines 1-5.



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involvement of Moukangwe of CIG, and I did not discuss the investigation with Sesoko.

- 10 I also worked under the guidance of Advocates Mosing and Moeletsi of the NPA (Special Projects Division in the office of the NDPP), who were involved in CIG's investigation before IPID became involved. Mosing told me that, before the matter was referred to IPID, Colonel Moukangwe had approached the NPA to prosecute General Sibiya on the strength of the CIG's investigation, but the NPA had declined to do so.

THE SUBMISSION OF THE JANUARY 2014 REPORT

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

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investigation. I always intended to supplement the docket with the outstanding evidence and to send an updated report when my investigation was properly completed.


14 At the time that I signed the January 2014 report and sent it to Mosing, the following material evidence was still outstanding:

14.1 Sibiya had not yet provided me with his warning statement, and I had not yet incorporated Dramat's warning statements (received in October and November 2013). These statements were important because the recommendation at that stage was to prosecute charges against Sibiya and Dramat.

14.2 A warning statement from Lieutenant-Colonel Leonie Verster, the Section Head of TOMS and Captain Maluleke's immediate superior at SAPS, was still outstanding.

14.3 A statement from Irish-Qhobosheane confirming the basis for the Police Secretariat's referral of the complaint to IPID.

14.4 An expert analysis of the cell phone data, which mapped the location of calls and SMSes sent and received at the relevant times. While an initial expert report analysing the cell phone data had been received by that stage, that report did not map the location of the cell phone data. This information was critical for confirming the allegations (made in certain of the statements of CIG officials and Zimbabwean nationals that were obtained by

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

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

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

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

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should be included in the ongoing investigation as his statement "proved to be deceptive".

15 After I sent the January 2014 report to Mosing, I continued to gather and analyse the evidence. On 27 February 2014, I sent Mosing the expert report on General Sibiya's cellular phone data. Mosing replied on 28 February 2014 and advised me to deal directly with the DPP of South Gauteng and to send any additional evidence directly to the DPP. Mosing's email is attached as annexure IK4.


16 I wish to point out that the Werksmans' report incorrectly states that *"According to Khuba, all the individuals mentioned above [Dramat, Sibiya, Maluleke and Verster] had refused to provide warning statements"*² and that, therefore, *"according to Khuba, the First Report was submitted as a "final report"*.³

16.1 I deny that I made any such statement. The transcript of my interview at the Werksmans' inquiry confirms the misrepresentation. I explained at the interview (excerpt attached marked IK5) that when I submitted the January 2014 report,

"I was still waiting. I was still waiting for the cellphone records analysis, if I'm not mistaken, and I was still waiting for the statement from Sibiya, the statement of Dramat was not part of the report, the statement of the

² Werksmans' report at para 3.1.19. See also para 3.1.33.

³ Werksmans' report para 3.1.20.

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

16.2 Dramat had not refused to give warning statements. He gave two warning statements on 23 October 2013 and 23 November 2013 (attached as IK6 and IK7), but these statements had not yet been incorporated into the January 2014 report.

16.3 Sibiya had advised that he would respond to formal questions,⁵ and did indeed furnish a warning statement on 21 February 2014. A copy of that statement is attached as IK8.

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

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

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

⁴ Interview 27 March 2015, Transcript, p. 41.

⁵ Werksmans' report para 3.1.25.1.2.

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to get her authorisation and signature. When I tried to contact her telephonically, I was told by Mbeki's PA, Tshiamo Mahibila, that Mbeki was only signing off financial documents and not investigation related requests.

18.2 Obtaining another signature on the report was also problematic. I had been instructed by Mbeki to keep Moukangwe's involvement in the investigation secret, so he could not sign the report. I had also been given specific instructions not to involve Sesoko in the investigation, so I could not approach him to review and sign the report.

19 While I conveyed these concerns to Mosing, he told me that I must, nevertheless, sign the January 2014 report and send it to him, as the investigation had been going on for too long.

FINALISING THE RENDITIONS INVESTIGATION REPORT

20 I firmly deny that there was any improper motive – on my part, Sesoko or McBride – in the changes that were made to the renditions investigation report in March 2014. There was no attempt on our part to exclude any material evidence from the report. The changes were made to reflect what we considered to be the credible evidence that would withstand scrutiny in court.

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21 After Sesoko and I were tasked by McBride with finalising the report, I would visit the Pretoria office from Limpopo whenever I could. I would sit at Sesoko's computer to make changes to the draft as we discussed them. Sesoko and I re-evaluated all the evidence and debated what findings could reliably and sustainably be made on the evidence. I would then effect the changes to the report on Sesoko's computer.

22 Sesoko's input was important because he has a prosecutorial background, so has a good understanding of what findings a prosecutor will accept as sustainable. He also brought a more objective perspective to bear on the evidence, because he had not been involved in the investigation.

23 In finalising the report and presenting the final report to McBride for authorisation, we sought to conduct a thorough, critical and objective review of the totality of the evidence and to present only recommendations that were supported by credible evidence.

24 I have traversed each of the differences between the January 2014 report and the March 2014 report highlighted by the Minister in his answering affidavit. The Minister has relied on the comparison of the two reports contained in the Werksmans' report.⁶

⁶ The differences are summarised in the Minister's answering affidavit at para 44 (with subparagraphs incorrectly numbered as para 42), and are tabulated in the Werksmans' report at pp. 34 to 45 of the report.



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

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

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

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

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



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

29 The fact that the call was made and received by Dramat was not suppressed, as this was reflected in Dramat's cell phone records contained in the docket. Also, the fact that Madilonga was instructed to call Dramat by his superior, Brigadier Makusha is recorded at p. 10 of the report. The full statement of Madilonga was also contained in the docket.

30 Second, the contents of the success report of 4 February 2011 (annexure NM3 to the Minister's answering affidavit) were changed in the March 2014 because the credibility of this report was doubtful.

31 What was removed was the following: *"Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI office about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals."*

32 As is recorded in both the January and March 2014 reports (at para 5.3), this success report was generated on Maluleke's laptop, which was seized by IPID. The provenance of this report made it inherently unreliable.

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33 While Verster had signed the report, she did not attend the alleged meeting, and thus could not attest to the accuracy of the report's contents. No other person could attest to the fact of the alleged meeting, or to what is recorded in the success report as having been stated at the meeting.

34 The only other evidence that suggests that Dramat met with Zimbabwean police officials is the statement of Mr McIntosh Polela, the former spokesperson of DPCI (attached to the Minister's answering affidavit as NM7). But Polela only joined the DPCI in December 2010 – that is, after the alleged meeting of 5 November 2010 and so his evidence could not be relied upon to prove the alleged meeting.

35 There was also no evidence that Dramat in fact received the success report.

36 The unreliability of the success report is highlighted in the conclusions in the March 2014 report, where the following is stated (at the sixth bullet):
"The success report that claim[s] that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on this basis that a prima facie case cannot be premised on speculation, but need[s] corroborated facts."

37 The entire success report was, in any event, contained in the docket.



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38 Third, the reference to an email allegedly sent by Maluleke to Dramat's personal assistant (with more than 20 photographs of the suspects who were arrested and the SAPS members involved in the operation) was removed from the March 2014 report because the fact of its receipt – by either Dramat or his personal assistant – could not be confirmed.

39 Maluleke's email records show that the email was sent only to Dramat's personal assistant, Phumla, and not to Dramat. The email was not marked for Dramat's attention.

40 The only response to Maluleke's email, which was found on Maluleke's computer, was an email from Phumla to Maluleke stating that she could not open the email because she was not at the office. No further response or activity appears in the email chain. Also, while the email identified photographs, the attached photographs could not be opened.

41 I point out that the comparison drawn in the Werksmans' report between the relevant passages in the January 2014 report and the March 2014 report is misleading. The Werksman's report (in the first row on p. 37) conflates the description in the reports of two separate emails sent by Maluleke, to suggest incorrectly that the March 2014 report sought to exclude only the reference to Dramat as a recipient of the email with photograph attachments.

42 Fourth, the details in the letter to stakeholders dated 20 August 2012, which described Dramat and Sibuya's visit to Zimbabwe in August 2010

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

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

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

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



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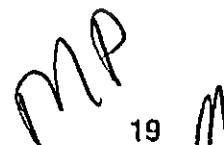
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- 46 The import of the expert analysis is discussed at various points in the evaluation of evidence in the March 2014 report (including at pages 31 and 33), and is summarised in the findings as follows:

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

- 47 The reference to the fact that more than 30 SMSes were sent from Sibiya to Dramat (and other SAPS officials) was removed from the March 2014 report because it had no evidentiary value. Given the working relationship between Dramat and Sibiya, nothing could be deduced from the fact that Sibiya sent automated SMSes to Dramat. The content of Sibiya's SMSes could also not be ascertained, since I could not retrieve either Sibiya or Dramat's cell phones from the time. At the time of my investigation, I was told that these phones had been returned to DPCI Supply Chain, but the department no longer had them. It was thus impossible to establish, from an examination of the handsets, the content of the SMSes.

- 48 Also, since Dramat never responded to the SMSes sent by Sibiya it is not known and could not be verified whether these were even received.



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- 49 In respect of the cell phone analysis of Maluleke, the reference to the single SMS Maluleke sent to Dramat was removed because there was no evidence that this was received by Dramat. The reference to the interaction between Sibiya and Maluleke in the form of received and outgoing calls was also removed because the fact of the interaction of colleagues had no evidentiary value. The content of these calls was not known and impossible to determine.
- 50 Likewise, the reference to the cell phone interaction between Colonel Neethling and Sibiya was removed from the March 2014 report because the mere fact of this interaction between colleagues (Neethling reported directly to Sibiya) had no evidentiary value. However the statement by Neethling that *"he believed that he reported the operation to Sibiya"* was still recorded in the March 2014 report (at page 10).
- 51 Seventh, that the complaint was received from the Civilian Police Secretariat and the background to the investigation is detailed in the March 2014 report, at para 1.1 and 5.7. The fact of the deportation of the Zimbabwean nationals as 'illegal immigrants' is recorded in the March 2014 report, as well as Dramat's statement that *"all Zimbabwean nationals were deported through Home Affairs for being illegal immigrants"* (at p. 27). There were no material omissions in this regard.
- 52 Eighth, the allegations in the January 2014 report that the officers who were part of the operation in which Dube and Nyoni were arrested (on 11 January 2011) were personally congratulated by Dramat and were

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warned not to tell anyone about the operation is reassessed in the March 2014 report.

52.1 It is not correct (as the Minister suggests) that *"the March 2014 report is silent on this finding issue"*.⁶ The March 2014 report states the following in this regard:

"After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However, Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe [gave] are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat."

52.2 The alleged 'congratulations incident' was doubtful. Even if it did occur, the context of the alleged incident rendered the meaning of any congratulatory statement by Dramat unclear. Gordon Dube, the other suspect arrested by CIG and the TRT unit on the same day, was wanted in South Africa on several charges of murder and robbery. This means that if Dramat did congratulate the SAPS members for the arrests that day (which was not corroborated), it may have been that he did so for the apprehension of a wanted suspect by the SAPS for the commission of violent crimes in South Africa.

⁶ Answering Affidavit para 42.9.

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53 Ninth, the reference to the letter sent by Zimbabwean authorities to Colonel Ntteni (which listed the names of two of the suspects wanted in Zimbabwe, and certain of the SAPS officers in the arrest of the Zimbabwean nationals) was removed from the March 2014 report because it had little evidential value. The letter was nevertheless in the docket.

54 There was no evidence that this letter was sent to Dramat – it was only sent to Colonel Ntteni of CIG. A copy of the letter, which is addressed only to Ntteni is attached marked IK9. Subsequent related correspondence was also circulated, but only among certain officers at CIG. This correspondence is attached marked IK10.

55 There is also no evidence to suggest that Dramat lied to Parliament, and did not genuinely believe that the named Zimbabweans had been deported as illegal immigrants (as he had been advised by Maluleke). In this regard, the March 2014 report stated (at p. 33) that:

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

1105

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

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



INNOCENT KHUBA

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

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


 COMMISSIONER OF OATHS

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

AREA



MP
 23

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Annexure "IK 1"

7

5 July/IPID
12 00 16

ANTHONY MOSING

Intelligence guys who had made statements. But I think in the light of the allegation then that there was a fight between Crime Intelligence units and the HAWKS, and maybe there was some sort of personal vendetta or some sort of thing, we had to view the evidence with caution. That's why we insisted that the police must investigate the matter and try to get other people who were involved in these things. I think it was generally difficult. I must say MR KHUBA from IPID was involved in investigating right from the start, with MOUKANGWE, but then he would report or discuss developments in the investigation with myself and BILLY MOELETSI. I think we met on several occasions, but I cannot say exactly how many times. I think we also saw the report that the HAWKS' Integrity Unit had conducted into the allegations of the involvement of their members, which basically exonerated them. I think the breakthrough in the investigation really started when MR KHUBA obtained a statement from a certain MADILONGA. I'm not sure what his rank is now, but he was the head of the Border ...

MP

Mdanduleni Richard MADILONGA states under oath in English:

1. I am a police officer in the South African Police Service, holding a rank of Lieutenant Colonel with personal number 0481932-2, stationed at Thohoyandou SAPS as a Commander of Crime Prevention, contact number 015 960 1049, or mobile 071 355 0548.

2. Before I got transferred to Thohoyandou SAPS I used to work at Beit Bridge Police Station as a Commander.

3. My duties was patrolling or commanding the crime prevention duties, also to liaise with Immigration officials and Police officials from other stations or unit.

4. During the ^{8th} November month 2010, at I was approached police officials from Pretoria Head office; they were arresting suspects.

5. One of the police officers explained the situation as the alleged that the suspects are arrested for being illegal in the country; but the initial story was that they received an information that these suspects are involved in serious crime around Geenteng but after arresting them, they could not linked them with any case. They then suggested that they escort them to the border.

11/11/2010
M. Madilonga

#1 MP H

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D.F.S. 0102

P. 21 (81/143168)

Mdanduleni Richard MADLONGA states further under oath in English:

I immediately consulted South African Immigration office in Beit Bridge to stamp the immigration documents for deportation and gave the copies to Police Officers from Pretoria. I told the police officers from Pretoria that we will escort them over the border.

We then escorted them to Zimbabwe border and handed the suspects to immigration officials.

We then came back to our border and proceeded back to our duty area and proceeded with our duties.

I did not know further than this statement about the suspects. I do not even remember the names of the police officers from Pretoria or Zimbabwe Immigration officials who received the suspects.

I know and understand the contents of the statement.

I have no objection in taking the statement under oath.

I consider the statement to be binding on my conscience.

LT. COL
N.R. MADLONGA

MP
H/

1109


SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

SAP

- I know and understand the contents of this declaration
- I have no objection taking the prescribed oath
- I consider the prescribed oath to be binding on my conscience

HT Col

 SIGNATURE OF DEPOSENT
 N.K. MADILWA

I certify the deponent knows and understands the content of this declaration which was sworn or affirmed before me and the deponent's signature was placed thereon in my presence

SAP _____ ON _____ (DATE)

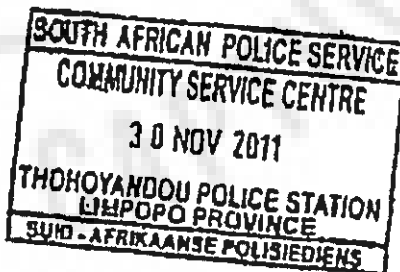
COMMISSIONER OF OATH

FULL NAMES _____

FULL ADDRESS _____

NUMBER _____

NAME _____



[Handwritten signatures and initials]
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A57

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 Beitbridge 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 Radziani 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.

27/11/10
NR Madilonga

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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 Nancefield.

(10)

While I was on the front passenger seat heading to the border gate, he told me that the Zimbabwean police whom I assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and 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

MP
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10/11/2012

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

(14)

I know and understand the content of this statement

I have no objection in taking the prescribed oath

I consider the prescribed oath to be binding on my conscience

Deponent's signature:

[Signature] C.T. 21

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 sworn or affirmed before me and the deponent's signature was placed thereon in my presence at Thohoyandou on the 2013-04-08 at 14:50.

Commissioner of oath:

INNOCENT HUMBUKUN KHUSA

Signature:

[Signature]

Rank:

A. PROVINCIAL HEAD.

Business Address:

22 LIMBEY BUILDING, IPID

Area:

THOHoyANDOU

MP
H
H1

113

A91



IPID

Department: Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

CASE NUMBER: _____

FULL FIRST NAMES AND SURNAME: Ndanduleni Richard Madibonga.STATE UNDER OATH IN: EnglishIDENTITY NUMBER: 6504235113086GENDER: MaleOCCUPATION: Police Officer Lt Colonel.RESIDENTIAL ADDRESS: House no 94 Subasa.BUSINESS ADDRESS: Burgersfort Police StationTEL (H): 013 2310200 TEL (W): 013 2310200 CELL: 0766906426.

①

This is additional statement to the one I have already made to the official of the Independent Police Investigative Directorate Mr Khubisa.

②

I confirm that the number 0153346300 which appears on the telephonic statement or cellphone record of Lt General Dramat showed to me by Mr Khubisa belongs to Bed Foridge where I used to work in 2010. I also confirm that the call received by Lt General Dramat on 04/11/2010 at 20h56 was made by me requesting permission whether to allow Zimbabwean police to enter the country in order to see him.

③

I also confirm that the two people circled on the photo shown to me by Mr Khubisa were part of the group of Zimbabwean police who came wanting to see Lt General Dramat.

SIGNATURE OF DEPONENT: _____

X N.R. Madibonga
N.R. MADIBONGA

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MP
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One of the police who appears on the left hand side of the photo with Spectada was the leader of the group and he is known to me as Superintendent Ncube of Harare Homicide Unit.

(3)

The Zimbabwean police came in on the 04th of November 2010 and I contacted Lt General Dramat for permission. In my initial statement I indicated that the Zimbabwean Police left the country a week or two after they came in the country. The Zimbabwean police came on the 4th of November 2010 and the call I made to Lt General Dramat confirms that.

X (AK) [unclear] 11/11/2010/1000000

SIGNATURE OF DEPONENT

[Signature]

MP
H/

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: NR Mudiye

PRINT SURNAME AND INITIALS: NR MUDIYE

DATE: 26/10/2013

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: 26/10/2013

COMMISSIONER OF OATH: INNOCENT KHUBA

TIME: 1400

NAME AND SURNAME: INNOCENT HUMBUANI KHUBA

PLACE: SABA-SA

RANK: DIRECTOR- INVESTIGATIONS.

IPID

[Handwritten signatures and initials]
MP
#1

Annexure "IK 3"



Fw: Statement Analysis on Statement Diapsloot cas
Innocent Khuba to Louisa Temo

2015/05/20 10:14 AM

— Forwarded by Innocent Khuba/Limpopo/IPID on 2015/05/20 10:14 AM —

From: annemari@prefor.co.za
To: Innocent Khuba <khuba@ipid.gov.za>
Date: 2013/10/04 07:12 AM
Subject: Statement Analysis on Statement Diapsloot cas

Mr Khuba,

Attached is the statement of Madilonga. I did a Statement Analysis (SCAN) on it and this statement is not a truthful reflection of what happened. We can discuss it later today when I phone you.

Regards
Anne-mari



SCAN ZIMBABWE.pdf



Handwritten signatures and initials: "JH" and "MP #1".

117



Fw: Statement Analysis of LtCol. Madlonya
Innocent Khuba to Louisa Terno

2015/05/20 10:13 AM

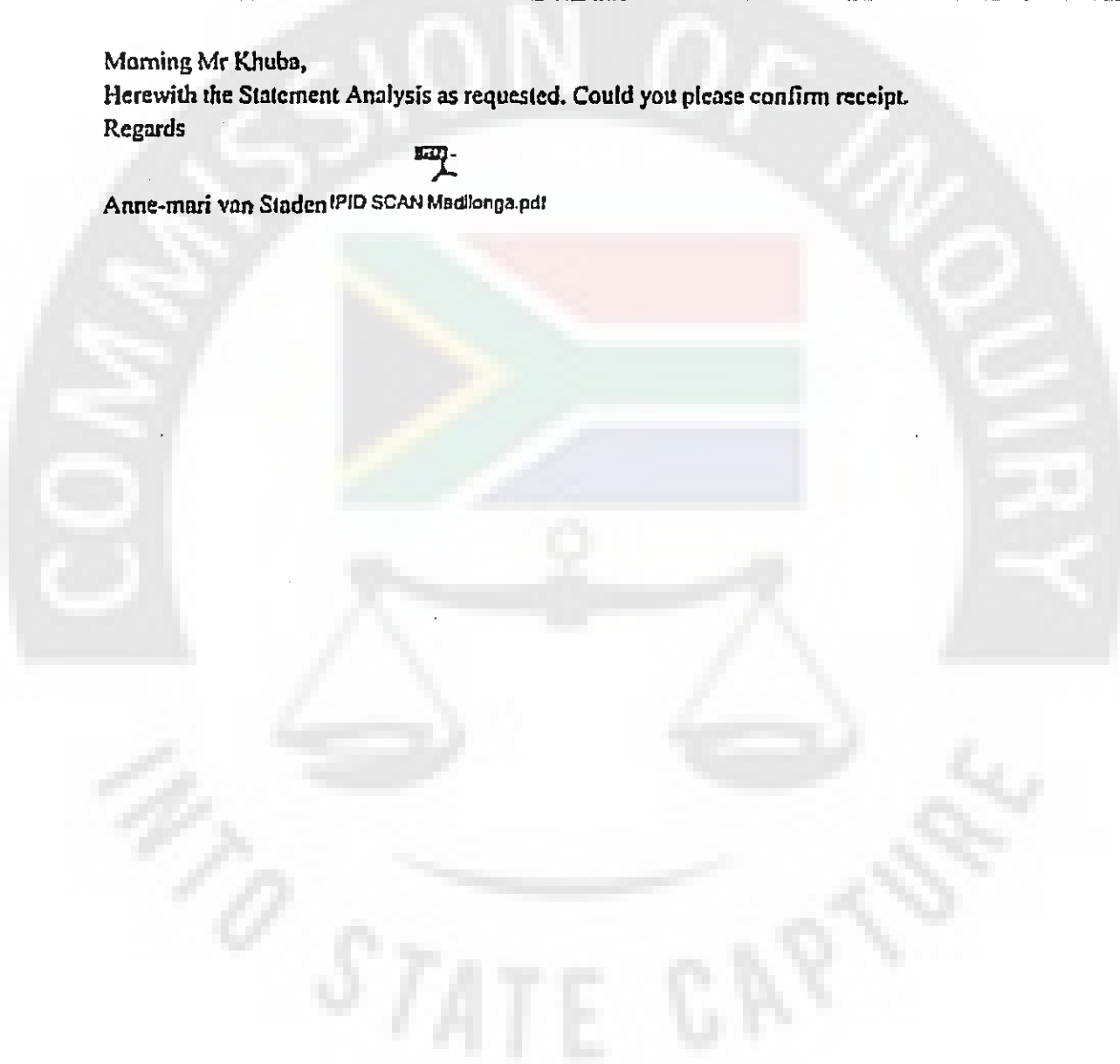
— Forwarded by Innocent Khuba/Limpopo/IPID on 2015/05/20 10:13 AM —

From: Anna-mari van Staden <precisionforensics@gmail.com>
To: Innocent Khuba <IKhuba@ipid.gov.za>
Date: 2014/03/17 09:16 PM
Subject: Statement Analysis of LtCol. Madlonya

Morning Mr Khuba,
Herewith the Statement Analysis as requested. Could you please confirm receipt.
Regards



Anne-mari van Staden IPID SCAN Madlonya.pdf



MP
H/



Your digital forensics specialists

Our Ref: PRE101_1015

Your Ref: _____

17 March 2014

Mr Innocent H Khuba
ACTING PROVINCIAL HEAD
Independent Police Investigative Directorate
Limpopo

Dear Mr. Khuba

RE: Statement Content Analysis of the Statement of LtCol. Ndanduleni Richard Madilonga

I take pleasure in submitting our final report on LtCol. Madilonga's statement for Diepsloot Cas 390/07/2012.

I confirm that I, Anne-mari van Staden (ID no. 760502 0243 080) analysed the attached statement and conclude my finding that LtCol. Madilonga should be included in your ongoing investigation as his statement proved to be deceptive.

As per my footnotes, it is clear that emphasis should be placed on the fact that LtCol. Madilonga states that they "did not discuss anything about the operation they had in Gauleng with General Dramat" (footnote 39). LtCol. Madilonga was deceptive in this matter.

Further to my analysis of LtCol. Madilonga's statement it should be noted that when he entered the vehicle that was being driven by Captain Maluleke, he occupied the front seat while the original occupant moved to the back. This indicates that LtCol. Madilonga had authority above the original person who was seated in front. It is my professional opinion that LtCol. Madilonga knew that Captain Maluleke was using him to obtain unlawful entry into Zimbabwe and he did not object to it. See footnote number 70.

Yours sincerely

A van Staden
Managing Director
PRECISION FORENSICS (PTY) LTD

Company registration number: 2013/050507/07

Members: Anton van Staden - Anne-mari van Staden

A handwritten signature in black ink, appearing to be 'A van Staden'.

A handwritten signature in black ink, appearing to be 'A van Staden' with a large 'M' and 'D'.



Your digital forensic specialist

I, Neandubeni Richard Macelloni states under oath in English that:

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

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

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

In 2010 which was two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. I started to be suspicious and I approached them. The convoy was approaching the Immigration offices and it was the same type of vehicles which are Mitsubishi Triton double cabs.¹ It was late in the afternoon² of which I cannot remember the exact time. The people were dressed in suits and were approximately 10 to 12 in number.

When I approached them, one of them introduced himself to me as the leader of the group and he said to me he is a Superintendent Ncube from the Homicide Unit in Harare³. 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 discussion⁴. We then went to my office together with his colleague. Superintendent Ncube told me that he is going to Pretoria to meet General Dramat⁵. He said to me maybe I knew about the trial⁶.

¹ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

² The person does not address what he wants to clarify. This indicates missing information.

³ Interesting he uses the word "started" rather than was. This indicates his suspicions were resolved.

⁴ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁵ Unimportant information is very important. It is either the strategy of a deceptive person trying to delay the area of the statement where they will lie, or what appears unimportant to the reader is very important to the writer.

⁶ Unimportant information is very important. It is either the strategy of a deceptive person trying to delay the area of the statement where they will lie, or what appears unimportant to the reader is very important to the writer.

⁷ Missing information.

⁸ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁹ Uses pronoun "they" instead of "we," possibly to psychologically distance himself from the act.

¹⁰ Fails to tell what is to be discussed – deceptive people would rather lie by omission than commission.

¹¹ Missing time/information.

¹² Fails to tell what is to be discussed – deceptive people would rather lie by omission than commission.

¹³ Missing time/information.

¹⁴ Repetition of phrases indicates mental conflict or anxiety often present with deception.

¹⁵ Changes of language (said to told) without changes in reality are indicative of deception.

¹⁶ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

¹⁷ Changes of language (told to said) without changes in reality are indicative of deception.

[Handwritten signatures and initials: A stylized signature, 'MP', 'H', and 'R']



Your digital forensics specialists

Superintendent who had been murdered. He said that the suspects are in Gauteng and he had organized with General Drama to assist them in tracing the suspects.

I told Superintendent Ncube that I am¹⁸ going to verify with my seniors about the arrangements. He then gave me the number of General Drama but¹⁹ I told him that protocol does not allow us to call the General straight. I called Colonel Radzian to verify the information²⁰ but²¹ she requested that I must call Brigadier Makushu who was a Provincial Head Protection and Security Services. I called him on his cell phone and explained to him that there are²² police from Zimbabwe who are intending to have a meeting with General Drama. Brigadier Makushu told me that he was not aware of the visit but²³ if the people are saying that they are going to meet the General I should call General Drama directly.

I phoned General Drama on his cell phone and he responded by saying that he is²⁴ aware of the Zimbabwean police and I must²⁵ let them come. I used my landline if I did not use my official cell phone²⁶. I took the Zimbabwean police passports and taken²⁷ them to the immigration office to be stamped²⁸. The registrations of their vehicles were also documented. I handed their stamped passport and gate pass and they cross²⁹ the entry gate into South Africa.

For the period of two weeks, I never heard anything from Superintendent Ncube and his group³⁰. After two weeks I received a call from Superintendent Ncube who told³¹ me that he was in town and he

¹⁸ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

¹⁹ "But" cancels part of a sentence, usually what comes before it. In this case it seems to verify that the writer will not use the phone number to call the General.

²⁰ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

²¹ "But" cancels part of a sentence, usually what comes before it. In this case it seems to verify that the Colonel will not verify the information.

²² When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

²³ "But" cancels part of a sentence, usually what comes before it.

²⁴ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

²⁵ Changes of language (people to police) without changes in reality are indicative of deception.

²⁶ "Must" indicates a very strong statement.

²⁷ This appears unimportant AND also an explanation. Where these occur together it generally indicates very sensitive material.

²⁸ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

²⁹ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

³⁰ Missing pronoun (them). Missing pronouns indicate a lack of commitment to what is being said.

³¹ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

³² Every statement is edited. Truthful people edit to take out unimportant information. Deceptive to omit important information. We ask a person to tell us what happened – not what did not. Therefore this appears to be unnecessary information.

³³ Changes of language (said to told) without changes in reality are indicative of deception. Told is a much stronger word than said, and seems unusual for this statement.

Handwritten signatures and initials:
 A large stylized signature, possibly "JP".
 To the right, the letters "MP" are written in a large, bold, handwritten font.
 Below "MP", there are some smaller, less legible handwritten marks.



Your digital forensics specialists

wanted to say goodbye. I went to town and met with³⁴ them in front of Tops bottle store.³⁶ They bought liquor and they left to the border.³⁷ I did not escort them;³⁸ they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with BRAND Pratt.

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 who is cowboy and he said that he is "Captain Maluleke" and was with me at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke³⁹ 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 coming⁴⁰ 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 think⁴¹ is a BMW.⁴² He was with a male person⁴³ who was sited on the front passenger seat⁴⁴. The person moved to the back seat and I occupied the front passenger seat⁴⁵. I left my car next to a tree which is at the turn to Nancefield.⁴⁶

While I was on the front passenger seat⁴⁷ heading to the border gate, he⁴⁸ told me that the Zimbabwean police whom I assisted some weeks back were looking for suspect in connection with the

³⁴ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

³⁵ This appears out of sequence. Out of sequence information often indicates something has been taken out of the statement.

³⁶ This appears unimportant AND also an explanation. Where these occur together it generally indicates very sensitive material.

³⁷ This appears unimportant AND also an explanation. Where these occur together it generally indicates very sensitive material.

³⁸ Every statement is edited. Truthful people edit to take out unimportant information. Deceptive to omit important information. We ask a person to tell us what happened – not what did not.

³⁹ Every statement is edited. Truthful people edit to take out unimportant information. Deceptive to omit important information. We ask a person to tell us what happened – not what did not.

⁴⁰ Missing pronoun (their). Missing pronouns indicate a lack of commitment to what is being said.

⁴¹ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

⁴² Repetition of phrases indicates mental conflict or anxiety often present with deception.

⁴³ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

⁴⁴ Changes of language (said to told) without changes in reality are indicative of deception.

⁴⁵ Hedge words indicate a lack of commitment to what is written.

⁴⁶ Truthful people edit to take out unimportant information.

⁴⁷ Truthful people want us to understand what they write and usually tell us who a person is they have introduced into their statement. This is the only person the writer has failed to properly introduce so far.

⁴⁸ Too exact information (seated position) generally indicates something has been omitted. This also appears to be unimportant information.

⁴⁹ Too exact information (seated position) generally indicates something has been omitted. This also appears to be unimportant information.

⁵⁰ Every statement is edited. Truthful people edit to take out unimportant information.

⁵¹ Too exact information (seated position) generally indicates something has been omitted. This also appears to be unimportant information.

⁵² Repetition of phrases indicates mental conflict or anxiety often present with deception. The more repetitions – the more stress/anxiety.

⁵³ Changes of language (name to he) without changes in reality are indicative of deception.



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death of police chief in Zimbabwe⁵⁴ and know they have found them. He told me that he was sent by his big bosses⁵⁵ to assist in deporting them because we do not have extradition agreement with Zimbabwe⁵⁶. He said that since the Zimbabwean police entered the country there had been busy trying to trace the suspect⁵⁷.

Captain Maluleke⁵⁸ showed me the Home Affairs documents and said that they are⁵⁹ already stamped. He said that the documents were stamped as a result of arrangement of National Home Affairs and his bosses⁶⁰. 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 the suspects⁶¹ are in the rear vehicle. He said that there are two suspects⁶² and the third is still not yet found. He said they will search for him until they find him⁶³. As the commander, the officials at the border gate opened the gate without asking any question or stopping⁶⁴. On the way after they saw me in Captain Maluleke's vehicle⁶⁵ we never stopped anywhere at the border and no documents were stamped for the purpose of deportation⁶⁶.

When we arrived at the Zimbabwe side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspect⁶⁷ from the back seat of the vehicle behind us. We could not even hand the documents that Captain Maluleke gave me to the immigration⁶⁸.

⁵⁴ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁵⁵ No social introduction - does not tell us who.

⁵⁶ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁵⁷ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁵⁸ Changes of language (told to said) without changes in reality are indicative of deception.

⁵⁹ Missing pronoun (they). Missing pronouns indicate a lack of commitment to what is being said.

⁶⁰ Changes of language (suspects to suspect) without changes in reality are indicative of deception.

⁶¹ Changes of language (using name) without changes in reality are indicative of deception.

⁶² When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

⁶³ No social introduction - does not tell us who.

⁶⁴ Changes of language (said - told) without changes in reality are indicative of deception.

⁶⁵ Changes of language without changes in reality are indicative of deception.

⁶⁶ Changes of language without changes in reality are indicative of deception.

⁶⁷ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁶⁸ Missing pronoun (us). Missing pronouns indicate a lack of commitment to what is being said.

⁶⁹ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁷⁰ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

Truthful people edit to take out unimportant information so they should not tell us what did not happen. When unimportant information appears with sensitive information it means that it is very sensitive information.

⁷¹ Truthful people edit to take out unimportant information so they should not tell us what did not happen.

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Officers of Zimbabwe because of the commotion.⁷² I knew that they were police officers because I had been working at the border for a long time and I knew them.⁷³ I even saw the vehicles that crossed two weeks ago when Superintendent Mubvumba 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.⁷⁴ 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. Then a person came to Thohoyandou and he had draft statement. He told me that there is a problem with the operation which was once done by the Hawks and they would like my statement to be in a particular format. He told me that the statement is for covering up and the parliament has some issues about the operation. I read the statement and realize that it was to close the gaps and not a true reflection of what happened.

⁷² When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person. When unimportant information appears with sensitive information it means that it is very sensitive information.

⁷³ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁷⁴ Changes of language (said to told) without changes in reality are indicative of deception.

⁷⁵ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁷⁶ No social introduction.

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Annexure "IK 4"



**Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR
GENERAL SHADRACK SIBIYA**
Innocent Khuba to Louisa Temo

2015/05/20 09:58 AM

— Forwarded by Innocent Khuba/Limpopo/IPID on 2015/05/20 09:58 AM —

From: "Anthony Mosing (A)" <amosing@npa.gov.za>
To: "IKhuba@ipid.gov.za" <IKhuba@ipid.gov.za>
Cc: "Billy BT. Moeletsi" <bmoletsi@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 09:51 AM —

From:	Matthews Sesoko/NorthWest/IPID
To:	Innocent Khuba/Limpopo/IPID@IPID
Date:	2014/02/27 12:56 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 0186
Fax2email: 0866301019

Cell: 0836328749



— Forwarded by Matthews Sesoko/NorthWest/IPID on 2014/02/27 12:58 PM —

From:	Tshiamo Mahibila/HeadOffice/IPID
To:	Matthews Sesoko/NorthWest/IPID@IPID
Cc:	Nomkhosi Natslanda/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 Tshiamo Mahibila/HeadOffice/IPID on 2014/02/27 12:44 PM —

From:	"GP.DPC DPCI Secretary" <gpdpcisec@saops.gov.za>
To:	<TMahibila@hld.gov.za>
Date:	2014/02/25 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
 :

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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@ipid.gov.za> Message from —

gdpdcisec@saps.gov.za	To: "GP:DPC DPCI Secretary"
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

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The National Prosecuting Authority of South Africa

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Annexure "IK 5"

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INNOCENT KUDWA

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

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

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IN RE: IPID INVESTIGATION

STATEMENT OF ANWA DRAMAT

I, the undersigned,

Anwa Dramat

hereby state as follows:

1. I am an adult male Lt. General and Head of the DPCI. I have elected to depose to the following statement. It is not my intention to be overly prolix in this statement insofar as I fully reserve my rights to deal with and comment on any aspect that may emerge at a later stage. I have however decided that it is of the utmost importance that I be transparent in this matter and that I set out my position comprehensively right from the outset.
2. On or about the 12th of September 2013 I was advised that I was being investigated in a matter surrounding a so-called "Zimbabwe rendition", whatever that may mean. I was advised by one Mr Khuba who I believe to be the Limpopo Acting Head of IPID that he was busy investigating the matter and that I was a suspect and that I had one week to obtain the necessary legal assistance.



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3. Pursuant to that end without burdening this statement with the content thereof I addressed correspondence to the Honourable National Commissioner of SAPS requesting legal assistance in the matter. Pursuant to this letter certain events took place and a legal representative from the State Attorney was appointed to represent me. This being one Mr Peter Sefoka.
4. I have subsequently however engaged the services of Mr John Riley (my attorney) of Riley Incorporated of 212 Rosmead Avenue, Wynberg, Western Cape. I have also requested my attorney to instruct two counsel of my choice to represent me in this matter.
5. The teleological purpose of my current statement is to provide IPID with certain background information and to, right from the outset, set out where I intend to go with this matter and how I intend to deal with it.

MY PERSONAL BACKGROUND

6. I was born on the 16th of July 1968. Both my parents are alive. I have two brothers and one sister. I grew up in an area known as Bonteheuwel in the Western Cape.
7. From a very early age I became acutely aware of the injustices brought about by apartheid in South Africa. I saw many things that were wrong with the country, among other things, the severe impact of racial discrimination and the gross inequality that "non white" and black people were subjected to. I



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was further severely effected by police brutality, torture and detention without trial.

8. I completed my schooling at Spes Bona in Athlone. My intention as a young person was to enrol at the Technikon as I intended to pursue a career in engineering.
9. However I could not stand by passively and watch the injustices unfold in front of me. I became politically condentlised at an early age. As a result I had to take certain decisions at a very young age and became accustomed to the idea that whatever decisions I took would ultimately lead to my death or long term incarceration in my quest to achieve a free and democratic South Africa. At an early age I became politically involved and joined the ANC in the armed struggle against the oppression that was pervasive in this country prior to 1994.
10. I was arrested in 1987, shortly after completing school. I was one of youngest detainees at the time and kept in custody awaiting trial under the Old "Terrorism Act". I was brought before the High Court in the Western Cape and was charged and convicted of, *inter alia*, sabotage. As a result of my beliefs and what I stood for I was sentenced to 22 years imprisonment. I was only required to serve twelve years imprisonment.
11. I was thereafter taken to Robben Island where I was imprisoned. I had made the decision to become involved in the ANC and the armed struggle because I

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wanted a better country where we had a Constitution where people would be treated equally and fairly, where everyone had the same opportunities and that the illegal apartheid system that was in place would cease to exist.

12. At a young age, and based on strong Islamic principles of fairness and equality of treatment, I made a decision that I would stand by my principles even at great cost to myself and my family who clearly suffered tremendously as a result of my incarceration.
13. I pause to mention that even those police officers who had previously investigated me, I had forgiven and I totally reconciled myself with the concept of a new South Africa, a new democracy and a better life for everyone. I was released from prison sometime after the release of President Nelson Mandela. After my release from prison I worked as a volunteer for the African National Congress at Bonteheuwel in the period leading up to the democratic elections of 1994. It was at that time that I was integrated into the South African Police services as a trainee constable.
14. My vision for the South African Police at that stage was that I would do everything I could to ensure that our country transformed into an equal and just society where everyone was treated fairly before the law.
15. My exposure in the police has involved working in crime intelligence, working in situations where there was existing and continued tensions between organised crime syndicates and underworld figures. In general I applied



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myself to learn as much as I could in order to be a respected as the principled police officer which I believe I still am at present.

16. I have two minor children aged 18 and 11 respectively and I am married. I have throughout my life attempted to instill in them the values that I have always stood for and that I have sacrificed my freedom for, and that I hoped to achieve. I verily believe that my integrity and my commitment to a better South Africa has been displayed through various independent acts by myself and in the manner in which I have performed my extremely difficult task as a police man and in particular the present position that I hold.

AD MY APPROACH

17. At first glance having heard the wild allegations I thought that it would be proper to immediately attend on meeting with IPID and explain my situation. However, it soon became apparent to me that the newspapers knew more about the investigation against me than I did myself. It concerned me that an investigation of this nature would be out in the public domain before I was appraised of all the relevant facts, presented with cogent evidence or offered a proper opportunity to exercise my right of *audi alteram partem*.

18. I was accordingly shocked and dismayed when I was contacted by a journalist and advised by the journalist that the journalist knew about a meeting that had been scheduled between myself and IPID. At that stage I had not yet been appraised of the date, time or place of the meeting but the journalist had already been advised of this fact. It concerned me and it was self-evident that



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the only source where a journalist could have obtained this information must have been IPID itself.

19. A further issue which has caused me grave concern is that I have reliably learnt that the investigators from IPID, more specifically one Mr Khuba has advised a witness that he would not take an affidavit from this witness if this witness did not furnish him with a version that incriminated myself. If this is proved to be correct, the conduct of Mr Khuba, would in my respectful view amount to an attempt to defeat the ends of justice and further show that IPID has set upon a course of investigating this matter in a selective manner with the object of implicating me in the commission of the alleged offences irrespective of whether there are witnesses and or evidence which exculpates me from blame.

20. Good and sound police practice teaches that it is not for an investigator to tailor his investigation or dismiss exculpatory evidence when such evidence is presented. I intend to reserve my right to deal with this specific issue in the appropriate forum.

The least that I expect at this stage is that IPID conducts whatever investigation they are conducting in an objective manner as is required by the law.

AD INTEGRITY OF THE DPCI



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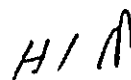
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21. It is self-evident that my unit is tasked and seized with investigating various sensitive and high profile matters. I have no intention whatsoever to ventilate these investigations on paper but I can assure IPID and the National Director of Public Prosecutions that in the execution of my duties I have at all relevant times acted without fear or favour and transparently as I believe that I am required to. It is for this very reason that it is in the interests of justice that this matter be dealt with in terms of the trite rules of evidence and with the due deference and respect to the principles and values enshrined in our Constitution.

22. If it transpires that this investigation is merely a "smear campaign" to derail any investigations I have conducted or which I am in the process of conducting I will have no hesitation in ensuring that those that are behind it are brought to book and that they face the full might of the law.

23. Similarly I do not expect any special treatment whatsoever. I have no hesitation in averring that I will wish for this entire matter, if it needs to be proceeded with, to be dealt with expeditiously, in a court of law and subject to public scrutiny.

24. As an ordinary citizen and as Head of the DPCI I have a responsibility not only to my unit but also to the rule of law to ensure that nothing is done to compromise any of the investigations that my unit is currently busy with.




25. I also specifically rely on the NDPP to appoint a senior advocate who has no vested interest in the outcome of the decision that is to be made as to whether sufficient grounds exists for charges to be brought against me or not. I am embarrassed to have to point this out, but I feel it necessary to emphasize this point strongly at this stage so that there can be no confusion later should an adverse decision be made on a case against me where there is no merit. I would certainly want to deal with this issue in the appropriate forum.

26. I therefore respectfully request that the NDPP himself and/or a duly delegated senior advocate who has not been involved in any of the matters which my Unit has or is dealing with and, which have been rather controversial in recent times, be involved in the decision-making process as to whether there is merit in pursuing a prosecution against me.

AD RIGHT TO AUDI ALTERAM PARTEM

27. I have taken some time to reflect on how I wish to deal with this particular aspect. My *prima facie* view is that I will do everything necessary to co-operate with a *bona fide* investigation if such an investigation exists. I will however under no circumstances legitimize any attempt, by any person(s), to discredit me through a "smear campaign" or by running a campaign through the print or other media, or leaking disinformation about the case to the media.

28. My position is therefore that if IPID is prepared to present me with a list of questions, together with a proper and transparent summary, of the merits and


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demerits against me, I will most certainly apply myself diligently and provide a comprehensive response to the matters that require my comment.

29. However, if the position is that I am to be cross-examined by ambush, my approach is that the matter be expedited as soon as possible. I can make myself available at any time should the intention be to arrest me, and I will respectfully request that if such an arrest is contemplated that the investigation be finalised and that the matter be enrolled in a court of law as a matter of urgency so that I can confront my accusers and subject myself to judicial scrutiny. In any event it is my respectful view that there is no reason why I should be arrested as there is no reason why I cannot be brought before court by way of a summons.

30. I would not want a situation where there is an expedited arrest and thereafter the State indicates that they need several months, if not years, to investigate the matter. Such a move will only serve to taint and or derail any current investigations, frustrate the rights of various complainants who have legitimate complaints that are being investigated by my unit and serve to sideline me from the work I have to complete.

31. I can respectfully point out that I am ready to go to trial today on any issue and accusation that will be levelled against me subject to me being provided with all the witness statements and evidentiary material whether of an incriminatory and / or exculpatory nature.



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AD RULES OF ENGAGEMENT

32. I wish to emphasize that I would expect IPID to respect the rule of law, the policies of transparency and to operate within the framework of the law. If it emerges that my communications have been interfered with, that my legal privilege has been breached in any way, or that witnesses have been threatened or tampered with, or disinformation leaked, I reserve all my rights and remedies against those responsible for such action.

33. Similarly I undertake, from my side, to respect the process and co-operate to the fullest extent.

CONCLUDING REMARKS

34. It is self-evident that there is no likelihood that I will not stand my trial. It is further self-evident that there is no likelihood that I will interfere with witnesses or tamper with evidence or undermine the proper functioning of the criminal justice system.

35. From the very limited and vague allegations that have been made, more specifically from the information that I have gleaned from the newspapers, I have no hesitation that I will be acquitted in any court of law, if prosecuted.

36. I wish, however, to emphasize that if the matter goes to court and the evidence emerges that this has been a stratagem to undermine legitimate investigations and to run "smear campaigns" against persons in my position

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who have immense responsibilities towards the citizens of this country, it will be a turning point for our democracy. I will most certainly not rest until those who have attempted to malign me and run smear campaigns against me, are brought before the proper forums and dealt with appropriately in terms of the laws of the Republic.

37. I make this statement freely and voluntarily and respectfully request that it be treated confidentially and that, as a matter of urgency, IPID and/or the NDPP liaise with my instructing attorney.

DATED AT CAPE TOWN THIS 23 DAY OF OCTOBER 2013.


ANWA DRAMAT

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Annexure "IK 7"

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STATEMENT OF ANWA DRAMAT

I, the undersigned

ANWA DRAMAT

hereby state as follows.

1. I am an adult male Lieutenant-General and the National Head of the DPCI. By virtue of my post I am also a Deputy National Commissioner of the South African Police Service.
2. I have been requested by IPID to make a statement with regards to certain very serious, in my view, vexatious "allegations" that have been made against me by IPID
3. I wish to make certain preliminary remarks. Following an application to the State Attorney for legal representation, and after not having received a definite answer, my attorney, Mr Riley, has entered into correspondence with

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the SAPS Legal Services, Pretoria and the State Attorney in order to request that the legal representatives of my choice be appointed.

4. Despite the urgency created by IPID to provide them with a statement, it appears that no decision had been taken by the State Attorney or SAPS on legal representation. It appears now that I would have to launch review proceedings in the High Court in order to obtain the necessary relief. I have instructed my legal representatives to proceed with this application immediately. I believe that I am entitled to legal representation insofar as there is clear precedent for this and it appears to be late law. Therefore insofar as I may have to make a further statement, or amplify or have further dealings with IPID I would respectfully request that the proceedings be held in abeyance until such time as there has been an outcome of the application.
5. I further respectfully point out that if IPID were to approach any Presiding Officer, Magistrate or Judge in order to apply for any warrant of arrest I will necessarily request that all the correspondence to date, including my previous statement, be annexed to any such application. I have made it abundantly clear as to where I reside, where my details are and that I will, at any time when called upon to do so, voluntarily come in and surrender myself if there are sufficient grounds in law to justify an arrest.
6. I have to emphatically point out that I believe that this entire investigation against me is one that has an ulterior purpose. Quite clearly, as I have said before, I am involved in very sensitive investigations and I respectfully point out that, in the appropriate forum, I will have no hesitation in dealing with any

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person who uses his office for an ulterior purpose and who acts irregularly, illegally or unlawfully in fabricating or attempting to create spurious charges against myself as the Head of the DPCI.

7. Conversely I would in the ordinary course and scope of events have no difficulty in answering simple questions. Unfortunately, as can be seen from the questions addressed to me by IPID, these questions are not simple. They are vague, ambiguous and, given the fact that I am precluded by certain pieces of legislation from disclosing classified information, I necessarily need to guard vigilantly as to what I am permitted in law to answer and not. I will need proper legal advice on these issues.
8. Therefore the correct approach to this entire matter is to look at the elements of the alleged offences, unpack them and deal with them *serially*. That can only be done upon receipt of statements substantiating the allegations levelled against me.
9. Insofar as it relates to reports that have been drafted, IPID would necessarily have to approach the National Commissioner of Police to get permission to obtain certain reports and/or the Minister himself, where applicable. The aforementioned parties would have to seek independent legal advice as to whether they may disclose certain information. I can only deal with the factual matrix insofar as it is relevant to, what I label, "a *spurious allegation* against me".



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10. It appears from the correspondence that the investigators from IPID are attempting to "vicariously" link me to alleged offences of kidnapping, assault, defeating the ends of justice, fraud and theft. I am advised that this is an acute misunderstanding of the true principles of criminal law.
11. With regards to the allegation of kidnapping I unequivocally point out that at no stage during my current role as National Head of the DPCI did I ever personally authorize the unlawful and intentional depriving of a person of liberty, or movement, and/or his custodians of control on any basis whatsoever.
12. It must be borne in mind that the DPCI is entitled, and in fact has a positive duty, in terms of the Criminal Procedure Act and the SAPS Act to investigate and, at certain times, detain individuals. That is totally within the framework of the law.
13. This matter relates to certain individuals who have been named by IPID. I can point out that I never authorised or sanctioned the kidnapping of any of these individuals. If evidence exists to demonstrate differently, I would like the opportunity to look at this evidence, consider it, test the veracity on the probabilities of such evidence and reserve my right to respond.
14. I have never met these individuals or been present with them at any given stage. I never accompanied any of those individuals anywhere or transported



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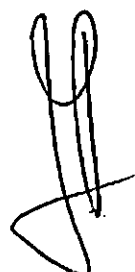
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them anywhere. Similarly, I never assaulted them or instructed anyone to assault them.

15 With regards to the alleged offence of defeating the ends of justice, the necessary elements are unlawfully, *mens rea*, an act which defeats or obstructs the due administration of justice. Here too I can unequivocally point out that I know of no action whatsoever that I took, authorised or participated in which was aimed to defeat the due administration of justice. If presented with some tangible evidence and not speculative allegations or averments, I could perhaps deal with it in more detail but unfortunately there is just nothing that I can say in order to disprove something that does not exist in law, or, at the very least, on facts that form a *prima facie* basis.

16 With regards to the charge of fraud and theft, they are equally vague and spurious and I cannot disprove something that does not factually exist. Dealing specifically with the request for a warning statement and the allegations which were set out by IPID in its correspondence I wish to state the following.

17 I am particularly concerned that IPID only reacts to reports that emanate in the Sunday Times and not based on actual factual complaints that are laid by witnesses. Our criminal justice system, with respect, should rely a lot more on evidence and its probative value, rather than to rely on the veracity of newspaper articles. Be that as it may, I can point out that pursuant to this matter, I launched an investigation re the matter. The outcome of the

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investigation was furnished to the National Commissioner of Police. It would be up to the National Commissioner of Police to take independent legal advice and decide whether or not such a report may be handed over and whether or not there is anything in law that prevents the National Commissioner of Police from handing such information over to any individual or whether such information may come into the public domain. That is a discretion that the Honourable National Commissioner must exercise.

18. With regards to the allegation that:

"During the investigation we uncovered that Lieutenant-General [Dramat] sanctioned the operation that led to the arrest and deportation of Zimbabwean nationals."

I specifically request that IPID reveal on exactly what basis this allegation is made. At the very least I would expect there to be a first-hand statement from a witness and that such witness be credible.

19. Under the heading "Allegation" it is stated that certain members acted:

"through the direction of Major General Siboyi and Lieutenant-General A Dramat conducted operations in Soweto and Diepsloot to trace the following Zimbabwean nationals...."

In this regard I specifically call on IPID to furnish myself with evidence of this "allegation", as I believe that it is no more than a spurious allegation and an invitation for me to add further "spin and atmosphere" to such a bald

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statement. I specifically demand that I be furnished with an affidavit that corroborates this allegation. Then I can deal with facts and not speculative allegations.

20 Turning to the specific questions:

AD PARAGRAPH 2.1

21. The answer is "no".

AD PARAGRAPH 2.2

22. I am purportedly a suspect in a kidnapping charge and if I was privy to a kidnapping I would be able to answer this question. It is for IPID to investigate who they believe are responsible for offences but not to ask me to attempt to find mischief in something that was apparently not an offence.

AD PARAGRAPH 2.3

23. The answer to this again is the same as 2.1 insofar as I was not requested by the Zimbabwean police to assist in tracing and arresting the Zimbabwean nationals mentioned in 2.1.1 to 2.1.7

AD PARAGRAPH 2.4

24. A report was drawn up and sent to the National Commissioner of Police. It would be up to the National Commissioner of Police to decide whether or not she is entitled to release the report.

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AD PARAGRAPH 2.5

25. I have had meetings with Zimbabwean police officials. Certain of the meetings may perhaps be classified and I would have to take proper legal advice on it. I can unequivocally however, point out that I have never attended a meeting with Zimbabwean police where I was asked to authorise the kidnapping of any individuals.

AD PARAGRAPH 2.6

26. Kindly refer to my answer in 2.1.

AD PARAGRAPH 2.7

27. The report to Parliament is not something that I can comment on as that now rests with another entity.

AD PARAGRAPH 2.8

28. The crisp answer is that the visit to Zimbabwe between 04/08/2010 and 06/05/2010 did not involve a meeting where I was requested by the Zimbabwean authorities to kidnap the individuals. As to the teleological purpose of that meeting it is irrelevant for the purposes of the alleged offence against me and I do not know whether I am in law permitted to disclose the facts. In this regard I would have to take further legal advice once the review application has been dealt with.

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29. What has alarmed me in this investigation is that it has already come to my attention that certain witnesses have been told that unless they incriminate me, they are of no value to the investigator. I reserve my rights fully in this regard. Secondly, my Unit (DPCI) is in the middle of many very sensitive investigations and the timing of this investigation against me and the progress in my investigations seem far too coincidental to be merely by chance.
30. If I am provided with affidavits that present facts from honest, reliable witnesses, or self-confessed rogues where there is independent corroboration for their say so, I may be able to deal with the issues paragraph by paragraph.
31. I respectfully conclude from the broad nature of the questions that the "allegations" that are being made against me are nothing more than slanderous, malicious conjecture that have, by design, been made in order to derail or in order to attempt to discredit my name and/or to derail the sensitive investigations that I am in charge of.
32. IPID is therefore respectfully requested, as a matter of urgency, to furnish myself with all the relevant affidavits that contain facts, and not spurious allegations. I further request that IPID bring this document to the attention of any Presiding Officer, if any relief is sought against me. I further request that IPID afford me the opportunity to bring the relevant review application insofar as I have adequate legal representation. I intend to ensure that this matter is expedited and that those who are behind a smear campaign against me are

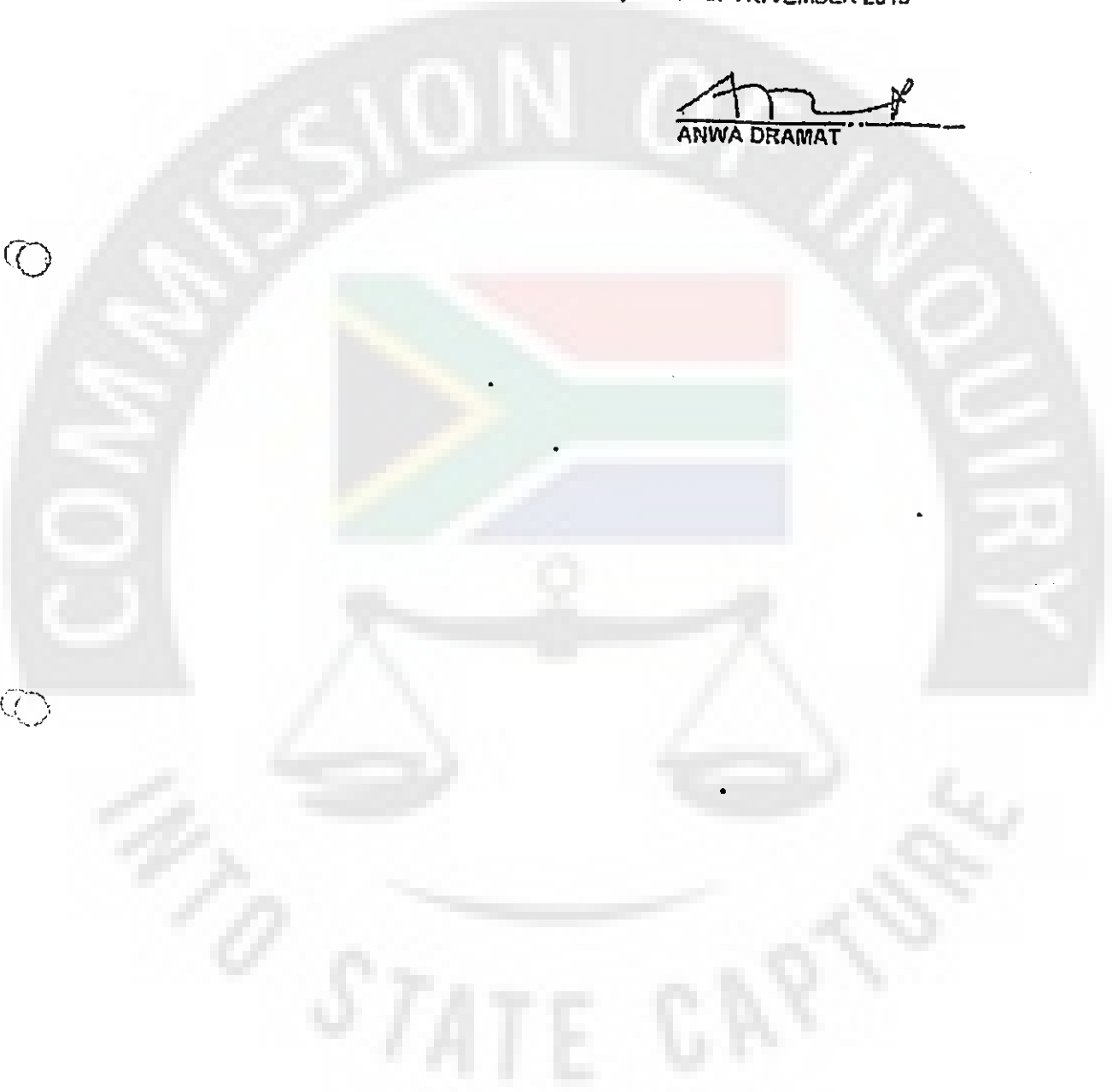
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brought before the appropriate forum and dealt with in accordance with the laws of the Republic of South Africa.

DATED THIS DAY AT CAPE TOWN THIS 27 DAY OF NOVEMBER 2013


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CONCLUSION

1. In conclusion, I wish to re-iterate and record my dissatisfaction with the actions and decisions made by Mr H.I Khuba in this matter. On several occasions, Mr Khuba had attempted to influence my subordinates to make false statements against me. Mr Khuba has also refused to take statements from certain potential witnesses who could have corroborated my version of events in this regard.
2. I am the Provincial Head of DPCI in Gauteng and I am responsible for the management and administration of my office. Decisions in my office are made at both ends of the spectrum. This means I, at the top, could make decisions and members on the ground or at street level can also make their own decisions. At street level, my subordinates work on their own and report to me after they have exercised their own police discretionary powers. I can't be expected to directly supervise the decisions they make on the ground because I am not always present in their operations.
3. I don't direct or supervise their decisions on the ground because I am not there.
4. 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. Regarding the subordinates actions on the ground, I am merely briefed by them after the operations. I need to add that on numerous occasions the same IPID had requested the same services of the same police team to assist them in their own IPID operations. My office indulged their requests for assistance without fail.
6. This team that operates on the ground use their own skills, expertise and knowledge. Besides these credentials there are other legal considerations



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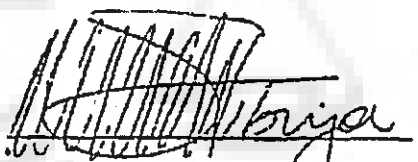
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Page 2 of 2

that they take into account during the operations. The team members are instructed to always act in a lawful manner.

7. The allegations of criminal conduct against me are truly and simply far-fetched and extremely outrageous.
8. I am concerned that Mr Khuba is waging a personal vendetta against me because he is well aware that the DPCI Integrity Investigation had exonerated me of any criminal malfeasance in the matter. The DPCI Integrity investigation findings was also accepted by the Parliamentary Committee on police matters.
9. The actions of the Mr Khuba re-inforce my opinion that what he is doing is abuse of power and the status of his office.

Signed at Johannesburg on 28 February 2014.



MAJOR GENERAL S.M. SIBIYA

[Handwritten initials and marks]
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ANNEXURE "A"(1)

Annexure "IK 9"

ZIMBABWE REPUBLIC POLICE



Official Communications
Should not be addressed
To individuals

C.I.D PROVINCIAL HEADQUARTERS
P.O. BOX 583
BULAWAYO
ZIMBABWE

Telegrams 'CO-ORDINATOR
C.I.D BYO, MAT NORTH AND
SOUTH PROVINCES'

Telephone BULAWAYO 62070 or 72515 Ext 2169

Fax (2631-09)-62070

14TH March, 2011

Commander Criminal Investigations Unit
South Africa Police Service
PRETORIA

Attention: *Colonel Ntengeri*

Dear Sir

**Re: LETTER OF APPRECIATION OF GOOD WORK PERFORMED BY
YOUR INTELLIGENCE OFFICERS:**

- 1) **CONSTABLE P.F MGWENYA NUMBER 7110232-9**
- 2) **CONSTABLE P.R MOKGOBU NUMBER 2117679-5**
- 3) **CONSTABLE M RIKHOTSO NUMBER 7109683-3**
- 4) **CONSTABLE E.D MKASIBE NUMBER 0537881-8**

I wish to express my profound gratitude in the exemplary, professionalism, brevity and dedication to duty that was exhibited by your above mentioned operatives.

Our Criminal Investigation Department Bulawayo was investigating a case of Murder involving a senior police officer of the Zimbabwe Republic Police, the late Chief Superintendent **CHATIKOBO** who was killed in Bulawayo on the 18th September, 2010 by the accused **GORDON DUBE, JOHANNES NYONI** and three others. Soon after committing the offence, the two mentioned accused persons fled Zimbabwe and sought refuge in Diepsloot squatter camp, Johannesburg in the Republic of South Africa.

We passed on information to the above mentioned officers regarding the two accused persons who reacted swiftly, managed to arrest the two fugitives and recovered a CZ pistol that was taken from the deceased Police Officer in Zimbabwe.

MP
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ANNEXURE "A" (2)

During the period 21st February to 1st March 2011, the same team assisted me and my team when I was conducting some investigations in the Republic of South Africa. I really enjoyed the manner and fashion the above mentioned officers aligned themselves to police work despite being junior officers.

May your respected office convey my appreciation to all of them.

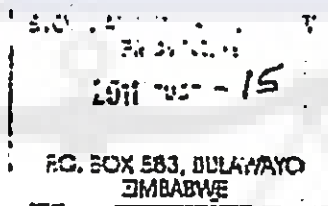
I also wish to thank you and Captain Busang for the support rendered to me and my team during the visit.

Best Regards



[E. MAKODZA] Assistant Commissioner
CID Coordinator

BULAWAYO, MATABELELAND NORTH & SOUTH PROVINCES



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Annexure "IK 10"

ANNEXURE "B"

SAP 21

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SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Private Bag X20, Johannesburg, 2000

Verwysing Reference	12/23/154	THE PROVINCIAL HEAD CRIME INTELLIGENCE GAUTENG 2011-03-24 28 MAR 2011
Navrae Enquiries	Brig. Britz	
Telefoon Telephone	(011) 373-3384	
Faksnommer Fax number	(011) 373-3450	

The Provincial Commissioner
SA Police Service
GAUTENG

COMMENDATION FOR GOOD WORK PERFORMED BY MEMBERS OF CRIME INTELLIGENCE

1. Attached herewith a minute dated 2011-03-14 from CID Provincial Head Quarters, Bulawayo, Zimbabwe for your information.
2. The members involved are stationed at Pretoria Central Crime Intelligence Station.
3. It would be appreciated if the members can be called to your office to congratulate them for the good work that was done.

RA TOMA

MAJOR GENERAL
PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG

Received
Jhrl S. M. M. T. M.
2011-04-06

Naam,
As ofen Ale

Maibou CMT
2011-04-06

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

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SAP 21

ANNEXURE "C"

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
Postbus / Post Office Box

Verwysing Reference	7109683-3/EA
Navraag Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
GAUTENG

31 May 2011

AFRICAN POLICE SERVICE
SOUTH AFRICAN POLICE SERVICE
ADMINISTRATION

2011-07-15

CRIME INTELLIGENCE
GAUTENG

SUID-AFRIKAANSE POLISIEDIENS

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

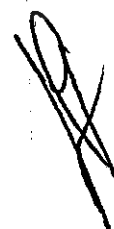
LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG

APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
ZIMBABWEAN POLICE CHIEF.

- A1. Your 12/23/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- ▶ 7109683-3 Constable M Rikhotso
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
 3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
 4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,


LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS




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ANNEXURE "D"
SAP 21

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SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
Posbus / Post Office Box

Vervysing Reference	7110232-2/5A
Navres Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
GAUTENG

31 May 2011

AFRICAN POLICE SERVICE
STATION COMMANDER
ADMINISTRATIVE

2011-07-15

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG

APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
ZIMBABWEAN POLICE CHIEF.

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- 7110232-9 Constable PF Mwenya
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS

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ANNEXURE "E"
SAP 21

SU. 3-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
Postbus/Post Office Box

Verwysing Reference	2117679-5/SA
Navrae Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
GAUTENG

31 May 2011

AFRICAN POLICE SERVICE
SECTION COMMANDER
ADMINISTRATION

2011-07-15

CHIEF OF POLICE, L

J.P.C.

F. POLICE

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG

APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
ZIMBABWEAN POLICE CHIEF.

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- 2117679-5 Constable FR Mokgobu
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS

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ANNEXURE "F"
SAP 21

SU -AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

 Private Bag X67
 Postnet Post Office Box

Verwysing Reference	0537881-8/EA
Navas Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

 OFFICE OF THE PROVINCIAL COMMISSIONER
 SOUTH AFRICAN POLICE SERVICE
 GAUTENG

31 May 2011

 AFRICAN POLICE SERVICE
 SECTION COMMANDER
 ADMINISTRATION

2011-07-15

 CRIME INTELLIGENCE
 GAUTENG

SUIN-AFRIKAANSE POLISIEDIENS

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG

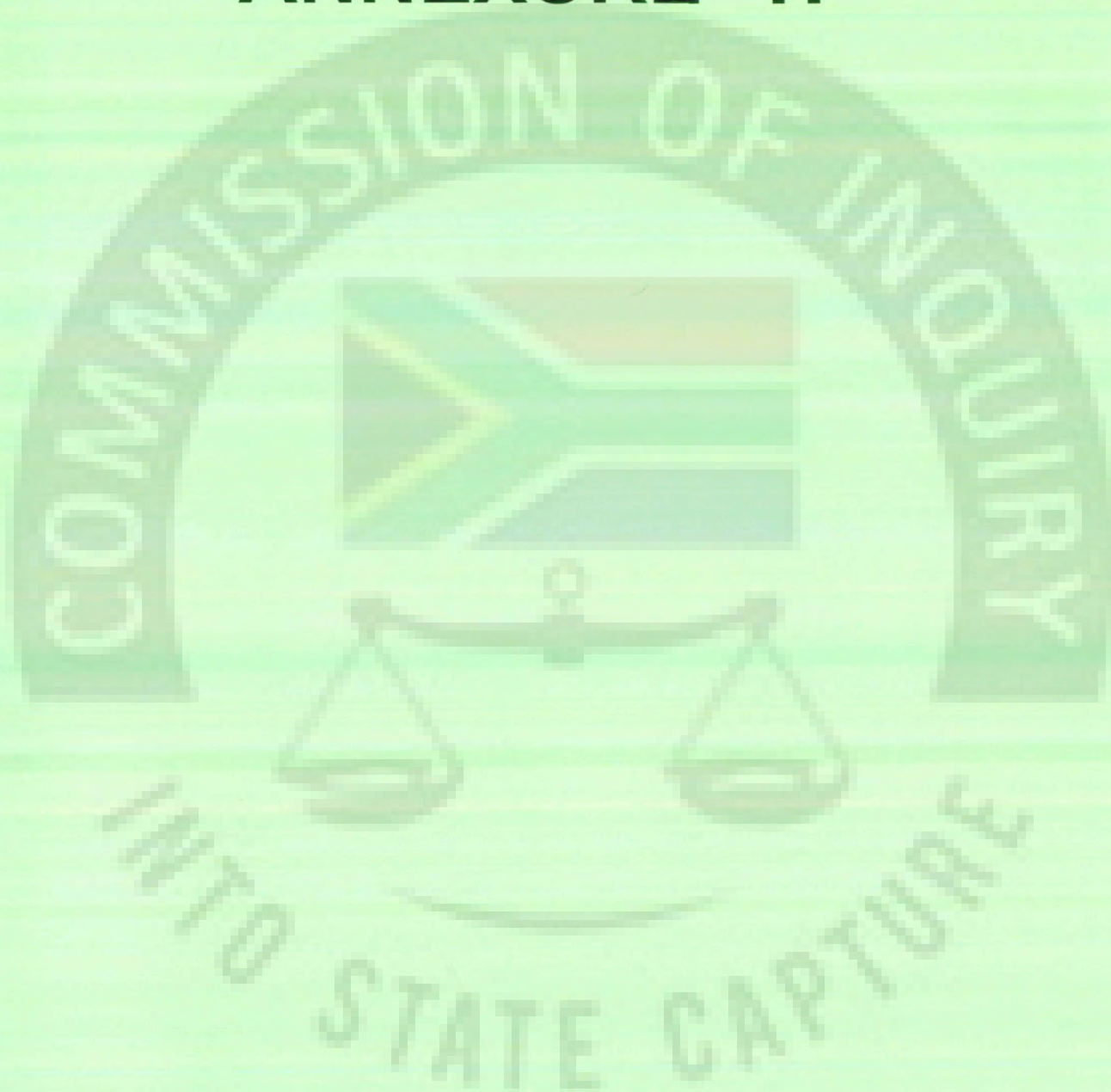
 APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
 ZIMBABWEAN POLICE CHIEF.

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- 0537881-8 Constable ED Mkasibe
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
 3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
 4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,

 LIEUTENANT GENERAL
 PROVINCIAL COMMISSIONER: GAUTENG
 M PETROS

ANNEXURE “H”





CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 255/15

In the matter between:

ROBERT McBRIDE

Applicant

and

MINISTER OF POLICE

First Respondent

**MINISTER FOR PUBLIC SERVICE AND
ADMINISTRATION**

Second Respondent

and

HELEN SUZMAN FOUNDATION

Amicus Curiae

Neutral citation: *McBride v Minister of Police and Another* [2016] ZACC 30

Coram: Mogoeng CJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J.

Judgments: Bosielo AJ (unanimous)

Heard on: 17 May 2016

Decided on: 6 September 2016

Summary: Confirmation proceedings — independence of police complaints body — section 206(6) of the Constitution — decision by Minister to suspend and institute disciplinary proceedings against Executive Director of the Independent Police Investigative Directorate invalid and set aside

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MP

Declaration of invalidity — section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 — sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 — regulation 13 of the IPID Regulations

ORDER

On application for confirmation of the order of the High Court of South Africa, Gauteng Division, Pretoria:

1. It is declared that the following provisions are invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate—
 - 1.1. section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;
 - 1.2. sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994;
 - 1.3. regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).
2. Parliament is directed to cure the defects in the legislation within 24 months from the date of this order.
3. Pending the correction of the defect(s):
 - 3.1. Section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 is to be read as providing as follows:

[Signature] *MP*

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

- 3.2. Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 and regulation 13 of the IPID Regulations are declared inconsistent with section 206(6) of the Constitution and shall not apply to the Executive Director of the Independent Police Investigative Directorate.
4. It is declared that the decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the Independent Police Investigative Directorate is invalid and is set aside.
5. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
6. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride, which was to commence on 21 May 2015, is invalid and is set aside.
7. The Minister of Police is directed to pay the costs of Mr Robert McBride, including the costs of two counsel.

JUDGMENT

BOSIELO AJ (Mogoeng CJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J concurring):



MP

BOSIELO AJ

Introduction

[1] On 4 December 2015, acting in terms of section 172(1)(a) of the Constitution,¹ the High Court of South Africa, Gauteng Division, Pretoria (High Court) declared several sections of the Independent Police Investigative Directorate Act (IPID Act)² inconsistent with the Constitution and invalid. These were section 6(3)(a) and 6(6) of the IPID Act; sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act;³ and regulation 13 of the IPID Regulations for the Operation of the Independent Investigative Directorate (IPID Regulations),⁴ which were found to be inconsistent with section 206(6) of the Constitution and thus invalid, to the extent that they purport to authorise the Minister of Police to suspend, take disciplinary steps pursuant to the suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate (IPID).⁵

[2] For this declaration of invalidity to have legal force, it must be confirmed by this Court in terms of section 172(2)(a) of the Constitution.⁶ Hence the application to this Court.

[3] The applicant is Mr Robert McBride, the Executive Director of IPID since 3 March 2014. He has been on precautionary suspension since 24 March 2015 –

¹ Section 172(1), in relevant part, provides:

“When deciding a constitutional matter within its power, a court—

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency.”

² 1 of 2011.

³ Proclamation 103 of 1994.

⁴ Independent Police Investigative Directorate Act, 2011 Regulations for the Operation of the Independent Police Investigative Directorate, GN 98, GG 35018, 10 February 2012.

⁵ *McBride v Minister of Police and Another* [2015] ZAGPPHC 830; [2016] 1 All SA 811 (GP); 2016 (4) BCLR 539 (GP) (High Court judgment).

⁶ Section 172(2)(a) reads:

“The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.”



BOSIELO AJ

pending a disciplinary inquiry to be initiated against him by the Minister of Police. The first and second respondents are the Minister of Police and the Minister of Public Service and Administration respectively. Only the Minister of Police (Minister) participated in the proceedings before us. The Helen Suzman Foundation (HSF), a non-governmental organisation whose main objective is to defend the values that underpin our constitutional democracy and to promote respect for human rights and the rule of law, was admitted as amicus curiae (friend of the court) and presented oral submissions before us.

[4] Section 206(6) of the Constitution provides for the establishment of an independent police complaints body by national legislation.⁷ Pursuant to this section, Parliament established IPID. Its primary duty is to investigate any alleged misconduct or offence committed by a member of the police service. IPID's independence is further bolstered by section 4 of the IPID Act which provides that the Directorate functions independently from the South African Police Service (SAPS).⁸

[5] However, this must be contrasted with section 206(1) of the Constitution, which provides for a member of the Cabinet to be responsible for policing and the determination of national policing policy.⁹ Allied to this is section 6(3)¹⁰ of the IPID

⁷ Section 206(6) of the Constitution reads:

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

⁸ Section 4 of the IPID Act reads:

(1) The Directorate functions independently from the South African Police Service.
(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively."

⁹ Section 206(1) of the Constitution provides:

"A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial government and taking into account the policing needs and priorities of the provinces as determined by the provincial executives."

¹⁰ Section 6(3) provides:

"In the event of an appointment being confirmed—



MP

BOSIELO AJ

Act which makes IPID's Executive Director subject to the laws governing the public service as well as section 6(6)¹¹ which authorises the Minister to remove the Executive Director from office on specified grounds. But this section is silent on oversight of the Minister's action by Parliament.

[6] Mr McBride's primary submission is that the cumulative effect of these pieces of legislation is that IPID does not have sufficient safeguards to ensure that its Executive Director and IPID, as an institution, are able to act with sufficient independence. The gravamen of this submission is that these provisions are inimical to any notion of the independence of the Executive Director as demanded by both the Constitution and the IPID Act.

[7] Although the Minister opposed the application in the High Court, before us he made qualified, albeit far-reaching, concessions. The Minister accepted that the impugned provisions do not provide adequate protection of the independence of IPID. As a result, he supported the confirmation of invalidity as per paragraph 1 of the order of the High Court. But he opposed confirmation of paragraphs 3, 4, 5 and 6 of the High Court's order. These, in part, sought to read section 17DA(3) to 17DA(7) of the South African Police Service Act¹² (SAPS Act) into section 6(6) of the IPID Act –

-
- (a) the successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and
 - (b) such appointment is for a term of five years, which is renewable for one additional term only."

¹¹ Section 6(6) reads:

"The Minister may, remove the Executive Director from office on account of—

- (a) misconduct;
- (b) ill health; or
- (c) inability to perform the duties of that office effectively."

¹² 68 of 1995. Section 17DA reads, in relevant part:

"(3)

- (a) The National Head of the Directorate may be removed from office on the ground of misconduct, incapacity or incompetence on a finding to that effect by a Committee of the National Assembly.

MP

BOSIELO AJ

pending the expiry of 12 months or correction of the defect(s) by the Legislature, whichever should occur first. The other part of the opposed order has the effect of insulating the Executive Director from the application of sections 16A(1),¹³ 16B,¹⁴

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- (b) The adoption by the National Assembly of a resolution calling for that person's removal from office.
 - (4) A resolution of the National Assembly concerning the removal from office of the National Head of the Directorate shall be adopted with a supporting vote of at least two-thirds of the members of the National Assembly.
 - (5) The Minister—
 - (a) may suspend the National Head of the Directorate from office at any time after the start of the proceedings of a Committee of the National Assembly for the removal of that person; and
 - (b) shall remove the National Head of the Directorate from office upon adoption by the National Assembly of the resolution calling for the National Head of the Directorate's removal.
 - (6) The Minister may allow the National Head of the Directorate, at his or her request, to vacate his or her office—
 - (a) on account of continued ill-health; or
 - (b) for any other reason which the Minister deems sufficient.
 - (7) The request in terms of subsection (6) shall be addressed to the Minister at least six calendar months prior to the date on which the National Head of the Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case."

¹³ Section 16A(1) reads:

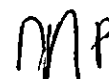
"An executive authority shall—

- (a) immediately take appropriate disciplinary steps against a head of department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder;
- (b) immediately report to the Minister the particulars of such non-compliance; and
- (c) as soon as possible report to the Minister the particulars of the disciplinary steps taken."

¹⁴ Section 16B reads:

"Discipline

- (1) Subject to subsection (2), when a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee found guilty of misconduct, the following persons shall give effect to the sanction:
 - (a) In the case of a head of department, the relevant executive authority; and
 - (b) in the case of any other employee, the relevant head of department.
- (2) Where an employee may lodge an internal appeal provided for in a collective agreement or in a determination in terms of section 3(5), a sanction referred to in subsection (1) may only be given effect to—
 - (a) if an internal appeal is lodged, after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing; or
 - (b) if no internal appeal is lodged, after the expiry of the period within which the appeal must have been lodged.

BOSIELO AJ

17(1)¹⁵ and 17(2)¹⁶ of the Public Service Act. The Minister also opposed the setting aside of the decision to suspend Mr McBride from his position as Executive Director of IPID, and institute disciplinary proceedings against him. It is to be noted that the High Court suspended the effect of these two orders, pending parliamentary intervention.

(3) The Minister shall by regulation make provision for—

(a) a power for chairpersons of disciplinary hearings to summon employees and other persons as witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and other objects; and

(b) travel, subsistence and other costs and other fees for witnesses at disciplinary hearings.

(4) If an employee of a department (in this subsection referred to as 'the new department'), is alleged to have committed misconduct in a department by whom he or she was employed previously (in paragraph (b) referred to as 'the former department'), the head of the new department—

(a) may institute or continue disciplinary steps against that employee; and

(b) shall institute or continue such steps if so requested—

(i) by the former executive authority if the relevant employee is a head of department; or

(ii) by the head of the former department, in the case of any other employee.

(5) In order to give effect to subsection (4), the two relevant departments shall co-operate, which may include exchanging documents and furnishing such written and oral evidence as may be necessary.

(6) If notice of a disciplinary hearing was given to an employee, the relevant executive authority shall not agree to a period of notice of resignation which is shorter than the prescribed period of notice of resignation applicable to that employee."

¹⁵ Section 17(1) reads:

"(a) Subject to paragraph (b), the power to dismiss an employee shall vest in the relevant executive authority and shall be exercised in accordance with the Labour Relations Act.

(b) The power to dismiss an employee on account of misconduct in terms of subsection (2)(d) shall be exercised as provided for in section 16B(1)."

¹⁶ Section 17(2) reads:

"An employee of a department, other than a member of the services, an educator or a member of the Intelligence Services, may be dismissed on account of—

(a) incapacity due to ill health or injury;

(b) operational requirements of the department as provided for in the Labour Relations Act;

(c) incapacity due to poor work performance; or

(d) misconduct."

MP

BOSIELO AJ

[8] Central to this application is the crisp question: whether, in the light of the applicable statutory framework, IPID enjoys adequate structural and operational independence, as envisaged by section 206(6) of the Constitution, to ensure that it is effectively insulated from undue political interference.

Background

[9] At the time when Mr McBride took office on 3 March 2014, there was a political storm brewing over the alleged unlawful rendition of four Zimbabwean nationals in November 2010 and January 2011. Lieutenant-General Anwa Dramat (General Dramat), then the head of the Directorate for Priority Crime Investigation (DPCI) and Major General Sibiya (General Sibiya), then the provincial head of, Gauteng, were allegedly implicated in these unlawful renditions.

[10] IPID initiated an investigation into this matter overseen by Advocate Mosing (Mr Mosing), of the National Prosecuting Authority (NPA), assisted by Mr Innocent Khuba (Mr Khuba), the Provincial Head: IPID, Limpopo. On 22 January 2014, IPID issued its first report (January report) which concluded that General Dramat and General Sibiya were involved in the illegal renditions of the Zimbabweans. It recommended that criminal charges be brought against them.

[11] Mr Khuba explained in his affidavit that because he regarded the January report as provisional, he continued with his investigations. His investigations gave birth to a second report, dated 18 March 2014 (March report), which was signed by Mr Khuba; Mr Matthews Sesoko, Chief Director: IPID Investigation and Information Management (Mr Sesoko); and Mr McBride. Contrary to the first report, the second report concluded that there was no evidence implicating General Dramat and General Sibiya in the illegal renditions of the Zimbabweans. As a result it recommended that no criminal charges be brought against them. This report was submitted to the National Director of Public Prosecutions (NDPP) for a decision on possible prosecution on 13 April 2015.

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BOSIELO AJ

[12] Faced with the glaring discrepancies in the two reports, the Minister suspected serious tampering. As a result, he commissioned Werksmans Attorneys (Werksmans) to investigate the two reports. Relying on the January report and the investigation by Werksmans, the Minister invoked his powers in terms of section 6(6) of the IPID Act, the Public Service Act and Chapter 7 of the Senior Management Services Handbook (SMS Handbook), and placed Mr McBride on precautionary suspension on 24 March 2015. Acting on the strength of section 6(6)(a) of the IPID Act read with the provisions governing disciplinary proceedings under the Public Service Act and the IPID Regulations, the Minister served Mr McBride with a notice to attend a disciplinary enquiry.

In the High Court

[13] The Minister's actions stung Mr McBride into a defensive mode. Mr McBride instituted an urgent application before the High Court, firstly for an interim interdict to restrain the Minister from suspending him, and secondly, for an order declaring section 6(3)(a) and 6(6) of the IPID Act, regulation 13 of the IPID Regulations, sections 16A(1), 16B, 17(1) and (2) of the Public Service Act (only insofar as they apply to the Executive Director of IPID), paragraphs 2.5, 2.6, 2.7(1) – (5) of Chapter 7 and paragraphs 18-19 of Chapter 8 of the SMS Handbook (impugned provisions) constitutionally invalid and setting them aside. In addition, Mr McBride sought an order to review and set aside the decision by the Minister to suspend him as the Executive Director of IPID and to institute disciplinary proceedings against him.

[14] Relying on section 206(1) of the Constitution, the Minister opposed this application. He asserted that this section gives him the power to oversee the police as the Cabinet member responsible for policing. The disciplinary proceedings he had instituted against Mr McBride were therefore lawful as they are authorised by section 206(1). He contended further that sections 6(3)(a) and 6(6) of the IPID Act authorised him to invoke the laws governing the public service to remove the Executive Director of IPID from office. He also relied on sections 16A(1), 16B, 17(1)

MP

BOSIELO AJ

and 17(2) of the Public Service Act, which authorise him to take appropriate disciplinary proceedings against Mr McBride as head of IPID.

[15] The High Court found that the independence of IPID is expressly guaranteed and protected under section 206(6) of the Constitution, which is “significant and decisive”.¹⁷ Furthermore, the High Court reasoned that, given that IPID performs overlapping anti-corruption functions with the DPCI, it must be afforded at least the equivalent protections that the Constitution requires for the DPCI.¹⁸ In *Glenister II*,¹⁹ this Court found that the independence of the DPCI was an implicit constitutional requirement, flowing from section 7(2) of the Constitution and the threat to South Africa posed by endemic corruption. The High Court found that inasmuch as the DPCI is independent despite there being no express constitutional entrenchment of its independence, by parity of reasoning “the effect of the constitutional entrenchment of the independence of IPID is that the *operational and structural independence of IPID must be at least as strongly protected as that of the DPCI*”.²⁰

[16] The High Court went further to hold that IPID’s constitutionally guaranteed independence requires more stringent protection. This is because, unlike the DPCI which is situated within SAPS, IPID is institutionally and functionally independent from SAPS.²¹ Another reason presented by the High Court as to why the principles pronounced in *Glenister II* extend to IPID is that, having found that the DPCI requires adequate independence from Executive interference in that case, it would be subversive of IPID not to afford it the same level of independence as the DPCI. As IPID has oversight and accountability responsibilities over the DPCI, affording the DPCI adequate independence without doing the same for IPID appears to be self-

¹⁷ High Court judgment above n 5 at paras 15-6.

¹⁸ Id at para 20.

¹⁹ *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (*Glenister II*).

²⁰ High Court judgment above n 5 at para 17.

²¹ Id at para 21.



BOSIELO AJ

defeating. In this regard, the High Court held that IPID's oversight role over the DPCI would be compromised and might create room for political interference to seep through and render the DPCI's independence nugatory.²²

[17] Crucially, the High Court held that section 6(3)(a) and 6(6) of the IPID Act, sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act and regulation 13 of the IPID Regulations are inconsistent with section 206(6) of the Constitution. This was based on the fact that the impugned sections do not provide for parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director and that they afford the Minister unilateral powers and the sole discretion to terminate the Executive Director's tenure. Furthermore, the Minister is entitled to discipline the Executive Director on the same basis as any head of department in the public service, without any special oversight or protection. The High Court found that this amounts to inadequate security of tenure for a national head of an independent body investigating police misconduct, including corruption.²³ Hence it declared the impugned sections inconsistent with section 206(6) of the Constitution and invalid. However the declaration of invalidity was suspended for 12 months to allow Parliament to remedy the defects.

[18] As an interim measure, the High Court read section 17DA of the SAPS Act into section 6(6) of the IPID Act, with the other impugned provisions being read as having no application to the Executive Director of IPID. The decisions to suspend and institute a disciplinary inquiry against Mr McBride were set aside – with the order setting aside the Minister's decision to suspend Mr McBride being itself suspended for 30 days to allow the National Assembly and the Minister to exercise their powers in terms of section 17DA (as it was read into section 6(6) of the IPID Act), should they so choose. All of these orders were referred to this Court for confirmation.²⁴

²² Id at para 24.

²³ Id at para 46.

²⁴ The full order of the High Court was as follows:

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BOSIELO AJ

The issues

[19] The issues are as follows:

-
1. It is declared that the following provisions are unconstitutional and unlawful to the extent that they purport to authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or to remove from office the Executive Director of the Independent Police Investigative Directorate:
 - 1.1 Sections 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011;
 - 1.2 Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, 1994; and
 - 1.3 Regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GNR 98 of Government Gazette 35018 of 10 February 2012) ("IPID Regulations").
 2. The declaration of invalidity in paragraph 1 is suspended for a period of 12 months from the date of the order to enable Parliament to correct the constitutional defect(s).
 3. Pending the correction of the defect(s), or the expiry of the 12-month period, whichever occurs first:
 - 3.1 Section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 is to be read as providing as follows:

"Sub-sections 17DA(3) to 17DA(7) of the SAPS Act apply to the suspension and removal of the Executive Director of IPID, with such changes as may be required by the context"; and
 - 3.2 Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, 1994 and regulation 13 of the IPID Regulations, shall be read as having no application to the Executive Director of the Independent Police Investigative Directorate.
 4. It is declared that the decision of the Minister of Police to suspend the Applicant from his position as Executive Director of the Independent Police Investigative Directorate is unlawful and invalid and the decision is set aside.
 5. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against the Applicant, which was to commence on 21 May 2015, is unlawful and invalid and the decision is set aside.
 6. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
 7. All of the above orders are referred to the Constitutional Court for confirmation and shall have no force unless and until confirmed by the Constitutional Court.
 8. The First Respondent is directed to pay the costs of the Applicant, including the costs of two counsel.
 9. The First Respondent is ordered to pay the costs of the Helen Suzman Foundation, including the costs of two counsel.
 10. The First Respondent is ordered to pay the costs of the Council for the Advancement of the South African Constitution.



MP

BOSIELO AJ

- a) Should the declaration of constitutional invalidity of the impugned sections be confirmed?
- b) Should the decision by the Minister to suspend Mr McBride and institute the disciplinary proceedings, taken in terms of the laws governing the Public Service, be allowed to stand and continue?
- c) Is the order granted by the High Court a just and equitable remedy as contemplated by section 172(1)(b) of the Constitution?
- d) Costs.

Should invalidity be confirmed?

[20] I pause to observe that a day before the hearing, the Minister filed a draft order with the Registrar of this Court. This draft order was foreshadowed in his written submissions. It reads thus:

- “1. The orders of constitutional invalidity granted by the High Court of South Africa (Gauteng Division, Pretoria) in respect of sections 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 (‘IPID Act’), and Regulation 13 of the Regulations for the Operation of the Independent Police Investigative Directorate GN R 98 GG No 35018 (10 February 2012) (‘IPID Regulations’) are confirmed;
2. The orders of invalidity in paragraph 1 above are suspended for a period of 18 months to enable Parliament to cure the constitutional defect;
3. Pending the enactment of legislation by Parliament, or the expiry of the 18 month period in paragraph 2 above:
 - 3.1 Section 6(6) of the IPID Act is to be read as providing as follows:
‘Sub-sections 17DA(3) to 17DA(7) of the South African Police Service Act 68 of 1995 to apply to the suspension and removal of the Executive Director of the Independent Police Investigative Directorate, with such changes as may be required by the context’; and



MP


BOSIELO AJ

3.2 regulation 13 of the IPID Regulations, shall be read as having no application to the Executive Director of the Independent Police Investigative Directorate;

4. It is declared that the decisions to suspend, and institute disciplinary proceedings against the Applicant are invalid;
5. The decisions in paragraph 4 above are not set aside;
6. It is declared that, in terms of paragraph 3.1. above, and section 17DA(3) of the SAPS Act as applied to the Executive Director of IPID, the relevant Portfolio Committee of the National Assembly is deemed to be seized with the disciplinary proceedings already instituted against the Applicant;
7. The First Respondent is directed to pay the costs of the Applicant in the High Court, including those occasioned by the employment of two counsel; and
8. There is no order as to the costs of the confirmation proceedings before this Court."

[21] It is clear from the draft order that the Minister made a qualified concession. But he supports the confirmation of the declaration of invalidity in respect of the orders in paragraphs 1 to 4 only. However, he resists the setting aside of his decision to suspend Mr McBride from his position as the Executive Director of IPID as well as to institute disciplinary proceedings against him. Despite conceding their invalidity, he nonetheless urged us to endorse the disciplinary proceedings already underway and for them to be deemed to be undertaken by the relevant Portfolio Committee of the National Assembly.

[22] As appears from the Minister's draft order, the Minister supports confirmation by this Court of the declaration of invalidity in respect of section 6(3)(a) and 6(6) of the IPID Act and regulation 13 of the IPID Regulations. Although the Minister supports the declaration of invalidity in respect of his decision to suspend and institute disciplinary proceedings against Mr McBride, he requests that the decision not be set aside but that the relevant Portfolio Committee of the National Assembly be deemed

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BOSIELO AJ

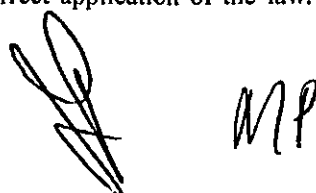
to be seized with the disciplinary proceedings already underway. But the Minister requests that the disciplinary proceedings against Mr McBride be allowed to proceed to finality – thus validating the proceedings the Minister concedes are invalid.

[23] As already stated, section 172(1)(a) of the Constitution provides that when a court decides a constitutional issue within its powers, it must declare any law or conduct inconsistent with the Constitution invalid to the extent of such inconsistency. This section is couched in peremptory terms. It is therefore a constitutional imperative. This Court has a duty to satisfy itself that the declaration of invalidity of the various impugned sections was properly made.²⁵ It also has to satisfy itself whether the impugned sections are inimical to the independence of IPID. This requires this Court to examine each of the impugned provisions to determine whether they are congruent with, or subversive of, IPID's independence as demanded by section 206(6) of the Constitution.

[24] IPID is an independent police complaints body established in terms of section 206(6) of the Constitution. Section 4(1) of the IPID Act requires it to function independently of SAPS. This is to ensure that IPID is able to investigate cases or complaints against the police without any fear, favour or prejudice or undue external influence. Section 4(2) of the IPID Act requires that each organ of state assist the Directorate to maintain its impartiality and to perform its functions effectively. Importantly, section 2 of the IPID Act requires IPID to play an oversight role over SAPS and Municipal Police Services. Given the nature, scope and importance of the role played by police in preventing, combating and investigating crime, IPID's oversight role is of cardinal importance. This is aimed at ensuring accountability and

²⁵ *Matatiele Municipality and Others v President of the RSA and Others* [2006] ZACC 2; 2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC) at paras 66-7. Notably, in *CUSA v Tao Ying Metal Industries and Others* [2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC) at para 68, this Court held:

"Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu*, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality."



BOSIELO AJ

transparency by SAPS and Municipal Police Services in accordance with the principles of the Constitution.²⁶

[25] IPID is headed by an Executive Director who is nominated by the Minister in terms of section 6(1) of the IPID Act. This nomination must be either confirmed or rejected by the Parliamentary Committee within a period of 30 parliamentary working days.

[26] The Executive Director's responsibilities are set out in section 7 of the IPID Act. They include: providing strategic leadership to the Directorate;²⁷ appointing provincial heads of each province;²⁸ appointing such staff as may be necessary to enable the Directorate to perform its functions in terms of the Act;²⁹ giving guidelines concerning the investigation and management of cases by officials within the respective provincial offices, the administration of national and provincial offices and, the training of staff at national and provincial levels;³⁰ referring criminal cases revealed as a result of an investigation to the NPA for criminal prosecution and notifying the Minister of such referral;³¹ ensuring that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the Provincial Commissioner;³² once a month submitting a summary of disciplinary matters to the Minister and providing the Secretary with a copy thereof;³³ and keeping proper records of all financial transactions, assets and liabilities of the Directorate,

²⁶ One of the objects of the IPID Act is set out in section 2(g) as follows:

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

²⁷ Section 7(11).

²⁸ Section 7(2).

²⁹ Section 7(3)(a).

³⁰ Section 7(3)(e)(i)-(iii).

³¹ Section 7(4). In terms of section 7(5), the NPA must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy to the Secretary.

³² Section 7(6).

³³ Section 7(7).



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BOSIELO AJ

ensuring that the Directorate's financial affairs comply with the Public Finance Management Act³⁴ and, preparing an annual report in the manner contemplated in section 32.³⁵ The Executive Director is also the accounting officer of the Directorate. Evidently, his duties are extensive and wide.

[27] This must be seen against section 7(7) of the IPID Act which requires the Executive Director to submit a summary of disciplinary matters to the Minister. In addition, section 32 requires the Executive Director to prepare and submit an annual report in the form prescribed by the Minister within five months of the end of the financial year to the Minister. Evidently, this is intended to ensure that the Executive Director accounts to the Minister about the activities within IPID. This is probably because the Minister, as the political head of the police, bears political responsibility for the police.

[28] But does this on its own undermine IPID's independence to a point where it offends section 206(6) of the Constitution? No. The fact that IPID is required by both the Constitution and the IPID Act to be independent does not mean that it cannot be held accountable. Like all other organs of state, IPID must be accountable for its actions. To be insulated from undue political interference or control does not mean that IPID should be insulated from political accountability. Accountability is one of the important values enshrined in our Constitution – a basic tenet for good governance. Hence the requirement that it must submit reports about its activities to the Minister who in turn will place them before Parliament. This Court explained this apparent conundrum in *Glenister II* as follows:

“The second general point we make is that adequate independence does not require insulation from political accountability. In the modern polis, that would be impossible. And it would be averse to our uniquely South African constitutional structure. What is required is not insulation from political accountability, but only

³⁴ 1 of 1999.

³⁵ Section 7(1)(a)-(c).



BOSIELO AJ

insulation from a degree of management by political actors that threatens imminently to stifle the independent functioning and operations of the unit.”³⁶

[29] Section 6(3)(a) of the IPID Act makes the Executive Director subject to the laws governing the public service. In terms of the Public Service Act, section 16A(1)(a) authorises the executive authority to take appropriate disciplinary steps against the head of the department and to report such non-compliance to the Minister. Section 16B in turn authorises the institution of disciplinary proceedings against such a head, whilst section 17(1) vests the power to dismiss in the relevant executive authority. Is this statutory regime compatible with the independence of IPID and its Executive Director as envisaged by section 206(6) of the Constitution? I think not.

[30] It is axiomatic that public servants are government employees. They are beholden to government. They operate under government instructions and control. The authority to discipline and dismiss them vests in the relevant executive authority. This does not require parliamentary oversight. To subject the Executive Director of IPID to the same regime is to undermine or subvert his independence. It is not congruent with the Constitution.

[31] What then does the independence of IPID mean? Does it mean complete or sufficient independence? Admittedly, it is difficult to attempt to define the precise contours of a concept as elastic as this. It requires a careful examination of a wide range of facts to determine this question. Amongst these are the method of appointment, the method of reporting, disciplinary proceedings and method of removal of the Executive Director from office, and security of tenure. However, this Court has had occasion to deal with the independence of a similar institution in *Helen Suzman Foundation*³⁷ and *Glenister II*. Although the two cases deal with the

³⁶ *Glenister II* above n 19 at para 216.

³⁷ *Helen Suzman Foundation v President of the Republic of South Africa and Others* [2014] ZACC 32; 2015 (2) SA 1 (CC); 2015 (1) BCLR 1 (CC) (*Helen Suzman Foundation*).



MP

BOSIELO AJ

independence of the DPCI, whose mandate is different to that of IPID, they offer useful guidelines in giving substance to IPID's constitutionally guaranteed independence – they offer bright lights for us as we traverse this new area.

[32] Grappling with the principle of the independence of the DPCI as a corruption-fighting body, Ngcobo CJ observed as follows in *Glenister II*, with the agreement of the majority:

“The question, therefore, is not whether the DPCI is fully independent, but whether it enjoys an adequate level of structural and operational autonomy that is secured through institutional and legal mechanisms designed to ensure that it ‘discharges its responsibilities effectively’, as required by the Constitution.”³⁸

[33] The Chief Justice also states:

“Ultimately therefore, the question is whether the anti-corruption agency enjoys sufficient structural and operational autonomy so as to shield it from undue political influence.”³⁹

[34] To address this vexed issue, the High Court sought guidance from a number of international instruments.⁴⁰ These included: the United Nations Convention against Corruption;⁴¹ the Council of Europe's Commissioner for Human Rights' Opinion on the Independent and Effective Determination of Complaints Against the Police;⁴² and

³⁸ *Glenister II* above n 19 at para 125.

³⁹ Id at para 121. See also High Court judgment above n 5 at para 28.

⁴⁰ High Court judgment above n 5 at para 36.

⁴¹ It calls for independent bodies or persons (specialised in combating corruption through law enforcement) that can “carry out their functions effectively and without any undue influence” (article 36). For this, the independent body should have complete discretion in the performance or exercise of its functions and not be subject to the direction or control of a minister or any other party. In principle, it should give an account after its work has been performed when it reports to parliament (rather than the executive).

⁴² The Council of Europe's Commissioner for Human Rights' *Opinion on the Independent and Effective Determination of Complaints Against the Police* (2009), similarly found that:

“An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against

BOSIELO AJ

the AU Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa.⁴³

[35] That Court had recourse to a report by the Organisation for Economic Co-operation and Development titled: *Specialised Anti-corruption Institutions: Review of Models*,⁴⁴ which was cited with approval by this Court in *Glenister II*.⁴⁵ The report proffers the following definition of independence:

“Independence primarily means that the anti-corruption bodies should be shielded from undue political interference. To this end, genuine political will to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive anti-corruption strategy. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the structural and operational autonomy that is important, along with a clear legal basis and mandate for a special body, department or unit. This is particularly important for law enforcement bodies. Transparent procedures for appointment and removal of the director together with proper human resources management and internal controls are important elements to prevent undue interference.”⁴⁶

[36] *Glenister II* expressly stated that this definition was not part of international law, but accepted that it serves as a useful interpretive tool against which IPID’s independence may be measured. I have found the criteria adumbrated in this definition to be both useful and illuminating in trying to define and delineate the contours of independence as it pertains to the independence of IPID.

ill-treatment and misconduct. An independent police complaints body . . . should form a pivotal part of such a system.”

⁴³ The AU Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa, 2006, calls upon State Parties “to establish independent civilian policing oversight mechanism[s]”. In relevant part, the AU Resolution reads:

“[A]ccountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing the rule of law and assisting in restoring public confidence in police.”

⁴⁴ Available at: <http://www.oecd.org/dataoecd/7/4/39971975.pdf>, accessed on 6 June 2016.

⁴⁵ *Glenister II* above n 19 at para 187.

⁴⁶ *Id* at paras 119 and 188.

BOSIELO AJ

[37] In *Glenister II*, the majority held that a corruption-fighting entity will have the requisite independence if it can be established that the “reasonably informed and reasonable member of the public will have confidence in an entity’s autonomy-protecting features”.⁴⁷ Factors that might be considered in assessing the independence of an institution include security of tenure and remuneration, and the mechanisms in place for accountability and oversight.⁴⁸ Since IPID is entrusted with wide-reaching police oversight powers, the same considerations, at the very least, should be factored in when assessing its independence. In contradistinction to the DPCI, the threshold for satisfying independence in respect of IPID is arguably more stringent given that the Constitution expressly demands its independence.

[38] On the other hand, section 6 of the IPID Act gives the Minister enormous political powers and control over the Executive Director of IPID. It gives the Minister the power to remove the Executive Director of IPID from his office without parliamentary oversight. This is antithetical to the entrenched independence of IPID envisaged by the Constitution as it is tantamount to impermissible political management of IPID by the Minister. To my mind, this state of affairs creates room for the Minister to invoke partisan political influence to appoint someone who is likely to pander to his whims or who is sympathetic to the Minister’s political orientation. This might lead to IPID becoming politicised and being manipulated. Is this compatible with IPID’s independence as demanded by the Constitution and the IPID Act? Certainly not.

[39] To subject the Executive Director of IPID, which the Constitution demands to be independent, to the laws governing the public service – to the extent that they empower the Minister to unilaterally interfere with the Executive Director’s tenure –

⁴⁷ *Glenister II* above n 19 at para 207.

⁴⁸ *Id* at para 210.



BOSIELO AJ

is subversive of IPID's institutional and functional independence, as it turns the Executive Director into a public servant subject to the political control of the Minister.

[40] Without adequate independence, it would be easy for the Minister to usurp the power of the Executive Director under the guise of exercising political accountability or oversight over IPID in terms of section 206(1) of the Constitution. In this case, acting unilaterally, the Minister invoked the provisions of section 16A(1) of the Public Service Act, placed Mr McBride on suspension and instituted disciplinary proceedings against him. Undoubtedly, such conduct has the potential to expose IPID to constitutionally impermissible executive or political control. That action is not consonant with the notion of the operational autonomy of IPID as an institution. Put plainly it is inconsistent with section 206(6) of the Constitution. It follows that it is invalid and must be set aside.

[41] All this should be seen against the extensive powers IPID has to investigate the police. Section 28 of the IPID Act authorises the Directorate to investigate a whole variety of matters involving the police and complaints of assault, torture, rape, discharge of firearms, death while in police custody and as a result of police action. Section 28(1)(g) authorises the Directorate to investigate corruption within the police, whilst section 28(2) empowers the Directorate to investigate systemic corruption within the police force. There have in recent years been alleged instances of police brutality and killings perpetrated against civilians. Undoubtedly, these are very serious matters which affect the public. Naturally, the public has a direct interest in seeing these matters being vigorously pursued and properly investigated. IPID is given this responsibility. It is cast in the role of a watchdog over the police. It is therefore necessary to its credibility and the public confidence that it be not only independent but that it must also be seen to be independent to undertake this daunting task without any interference, actual or perceived, by the Minister.

[42] A question might be asked whether the statutory framework created by the impugned sections conduce to engendering public confidence in the independence of



MP

BOSIELO AJ

IPID. This Court dealt with this issue of public confidence in *Glenister II*,⁴⁹ and reiterated it in *Helen Suzman Foundation*, where it stated:

“This Court has indicated that ‘the appearance or perception of independence plays an important role’ in evaluating whether independence in fact exists. . . . By applying this criterion we do not mean to impose on Parliament the obligation to create an agency with a measure of independence appropriate to the judiciary. We say merely that public confidence in mechanisms that are designed to secure independence is indispensable. Whether a reasonably informed and reasonable member of the public will have confidence in an entity’s autonomy-protecting features is important to determining whether it has the requisite degree of independence.”⁵⁰

[43] To my mind, the cumulative effect of the impugned sections has the potential to diminish the confidence the public should have in IPID. As the amicus curiae emphasised in its submissions, both the independence and the *appearance* of an independent IPID are central to this matter. The manner in which the Minister dealt with Mr McBride demonstrates, without doubt, how invasive the Minister’s powers are. What exacerbates the situation is that he acted unilaterally. This destroys the very confidence which the public should have that IPID will be able, without undue political interference, to investigate complaints against the police fearlessly and without favour or bias. IPID must therefore not only be independent, but must be seen to be so. Without enjoying the confidence of the public, IPID will not be able to function efficiently as the public might be disinclined or reluctant to report their cases to it.

[44] Based on the above exposition, I conclude that the impugned sections do not pass constitutional muster. It follows that the order of constitutional invalidity by the High Court must be confirmed.

⁴⁹ *Glenister II* above n 19 at para 207.

⁵⁰ *Helen Suzman Foundation* above n 37 at para 31.



BOSIELO AJ

What is a just and equitable remedy?

[45] As I indicated earlier, the Minister conceded that the decisions to suspend and institute disciplinary proceedings against Mr McBride are invalid. However, he pleaded that they should not be set aside but rather be allowed to continue to finality as if they were undertaken by the relevant Portfolio Committee of the National Assembly. The main submission is that the Minister took this decision in good faith as, when he took it, he considered it to be constitutional as the relevant section had not been declared unconstitutional. Furthermore, it was submitted that to set it aside would be disruptive. It would thus not be a just and equitable remedy as the disciplinary proceedings against Mr McBride had already commenced and were partly heard before an independent chairperson. The Minister submitted that setting aside these proceedings would permit Mr McBride to continue working as the Executive Director notwithstanding the fact that there is a prima facie case of gross misconduct against him.

[46] On the contrary, Mr McBride argued that the decisions by the Minister must be set aside. In the main, he contended that it would infringe the rule of law for this Court to preserve the Minister's actions which have been proved to be unconstitutional. In other words it would be untenable, if not invidious, for this Court to countenance an act which has been declared unconstitutional. In essence, he submits that no court can make an unlawful act lawful.

[47] As a counter, the Minister argued that this Court has in the past endorsed the principle that administrative decisions taken under a valid law that is subsequently declared unconstitutional are not automatically invalid but rather "[t]he rule of law requires their preservation". Three decisions of this Court were cited in support of this claim: *Van Rooyen*,⁵¹ *Democratic Alliance*⁵² and *Kruger*.⁵³

⁵¹ *Van Rooyen and Others v the State and Others (General Council of the Bar of South Africa Intervening)* [2002] ZACC 8; 2002 (5) SA 246 (CC); 2002 (8) BCLR 810 (CC) (*Van Rooyen*).

⁵² *Democratic Alliance v President of the Republic of South Africa and Others* [2012] ZACC 24; 2013 (1) SA 248 (CC); 2012 (12) BCLR 1297 (CC) (*Democratic Alliance*).



BOSIELO AJ

[48] I will briefly deal with the three cases to demonstrate that the reliance on them was misguided.

[49] In *Cross-Border Road Transport Agency*, this Court held that the legal consequence which ordinarily flows from a declaration of constitutional invalidity is that the impugned law is invalid from the date of its promulgation.⁵⁴ This is the so-called default position. In other words, the order of invalidity will have immediate retrospective effect unless the order is varied by an order of court. This can be done for a variety of reasons provided it is just and equitable.

[50] In *Van Rooyen*, it is true that, although several provisions of the Magistrates' Courts Act were declared to be invalid, the decisions taken under them were preserved.⁵⁵ This is because the interests of justice demanded this, as it would have caused chaos if all previous magistrates' courts' decisions were overturned. No comparable interests of justice considerations exist in the present case.

[51] Similarly, in *Democratic Alliance*, the invalid decisions by Mr Simelane were preserved as it would have brought about confusion and disorder if all the decisions taken by Mr Simelane were set aside as nullities. Yacoob ADCJ therefore rightly preserved these decisions.⁵⁶

[52] The Minister incorrectly contends that *Kruger* supports the proposition that "an act done pursuant to invalid statutory provisions must nonetheless remain valid in the interests of certainty and to avoid disruption". But the case supports no such general

⁵³ *Kruger v President of Republic of South Africa and Others* [2008] ZACC 17; 2009 (1) SA 417 (CC); 2009 (3) BCLR 268 (CC) (*Kruger*).

⁵⁴ *Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd and Another* [2015] ZACC 12; 2015 (5) SA 370 (CC); 2015 (7) BCLR 761 (CC) at para 20.

⁵⁵ *Van Rooyen* above n 51 at para 260.

⁵⁶ *Democratic Alliance* above n 52 at para 93.



BOSIELO AJ

proposition. In *Kruger*, the Court preserved the conduct of the Road Accident Fund that had relied on invalid proclamations. This was to avoid disruption and disorder. There must be an interests of justice consideration that overrides the presumption of objective constitutional invalidity.⁵⁷

[53] It is worth noting that Mr McBride is not opposed to his suspension followed by disciplinary proceedings. Furthermore, he has declared his willingness to participate in any process provided it is constitutionally compliant.

[54] In an attempt to obviate the disruption which the Minister feared might ensue if his decisions to suspend and discipline Mr McBride are set aside, the High Court made an order that the declaration of invalidity of the Minister's decision to suspend and institute disciplinary proceedings against Mr McBride be suspended for 30 days in order for the National Assembly and the Minister, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 of its order. Mr McBride is amenable to this. I find this to be just and equitable for both parties. It affords the Minister the opportunity, if he so wishes, to restart the process but on a proper basis. At the same time it ensures that Mr McBride's suspension is reasonable as he is still protected by the constitutionally protected presumption of innocence in his favour.

[55] I thus confirm the High Court's reading-in of the relevant provisions of the SAPS Act to operate on an interim basis. Furthermore, I regard a notional severance of the relevant provisions of the Public Service Act and the IPID regulations to be fair and equitable. This is intended to secure the independence of the IPID on an interim basis, until Parliament remedies the defects identified. During this time, the impugned provisions of the IPID Act, the Public Service Act and the IPID Regulations – to the extent that they allow the Minister to suspend, remove or institute disciplinary proceedings against the Executive Director – will remain inoperative.

⁵⁷ *Kruger* above n 53 at paras 69-70.



BOSIELO AJ

[56] The High Court gave adequate consideration to what a just and equitable remedy should be as required by section 172 of the Constitution. Its conclusion was well-reasoned and fully supported by the facts of the case. Accordingly, I confirm the orders of the High Court.

Costs

[57] The general principle is that costs must follow the result. In other words a successful party must be awarded costs. At the hearing, the Minister submitted that, because he made some legal concessions, no costs order should be made in this Court. But he still opposed the matter until late in the proceedings. The Minister's draft order was served and filed at the proverbial eleventh hour, after the parties had already finalised their preparation and incurred high costs. I am therefore of the view that there is no reason to depart from the general rule, costs must follow the result.

[58] In the result, the following order is made:

1. It is declared that the following provisions are invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate—
 - 1.1. section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;
 - 1.2. sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994;
 - 1.3. regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).



BOSIELO AJ

2. Parliament is directed to cure the defects in the legislation within 24 months from the date of this order.
3. Pending the correction of the defect(s):
 - 3.1. Section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 is to be read as providing as follows:

“Subsections 17DA(3) to 17DA(7) of the South African Police Service Act 68 of 1995 apply to the suspension and removal of the Executive Director of IPID, with changes as may be required by the context.”
 - 3.2. Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 and regulation 13 of the IPID Regulations are declared inconsistent with section 206(6) of the Constitution and shall not apply to the Executive Director of the Independent Police Investigative Directorate.
4. It is declared that the decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the Independent Police Investigative Directorate is invalid and is set aside.
5. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
6. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride, which was to commence on 21 May 2015, is invalid and is set aside.
7. The Minister of Police is directed to pay the costs of Mr Robert McBride, including the costs of two counsel.



MP

For the Applicant:

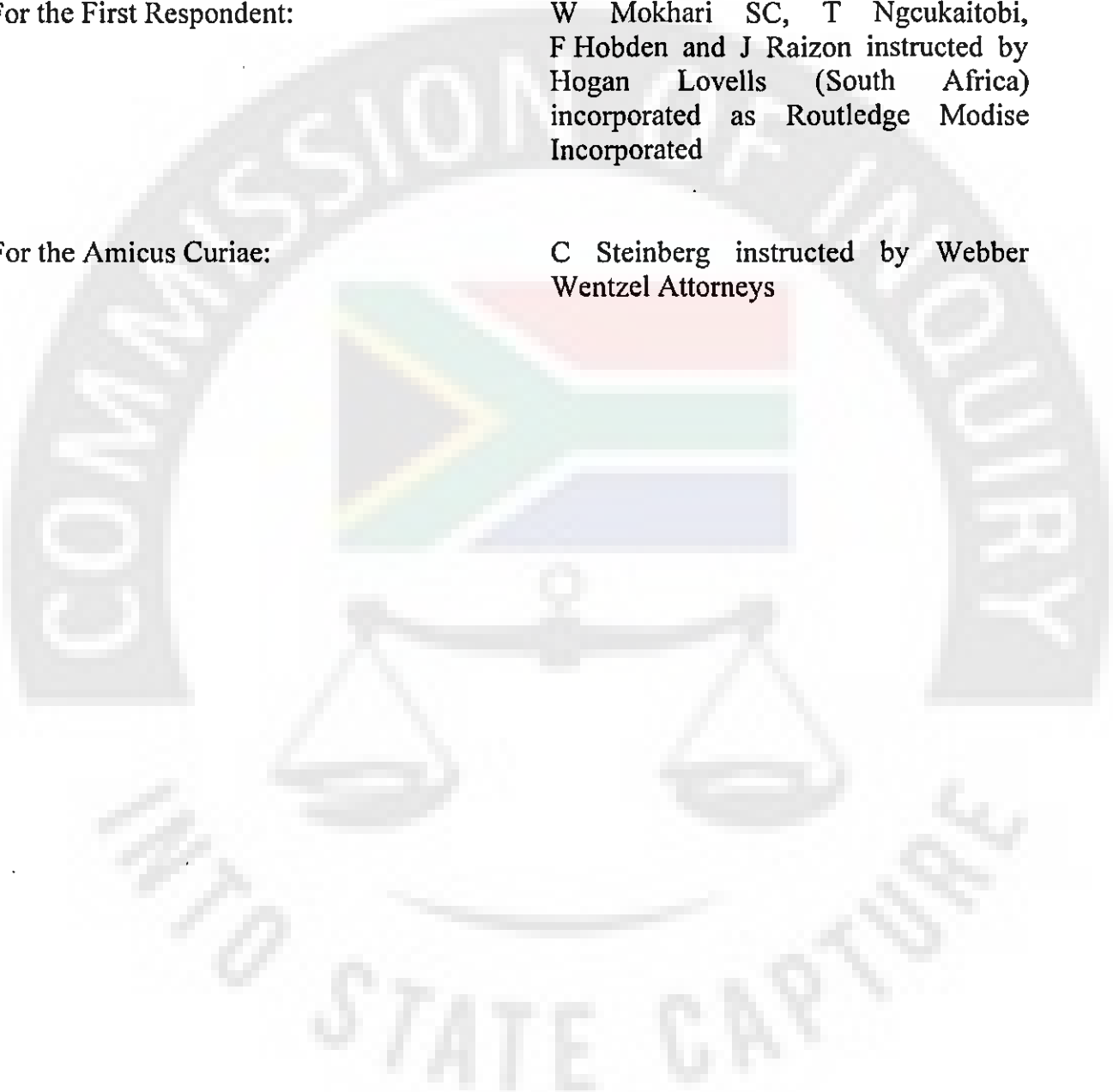
S Budlender and J Bleazard instructed
by Adams & Adams Attorneys

For the First Respondent:

W Mokhari SC, T Ngcukaitobi,
F Hobden and J Raizon instructed by
Hogan Lovells (South Africa)
incorporated as Routledge Modise
Incorporated

For the Amicus Curiae:

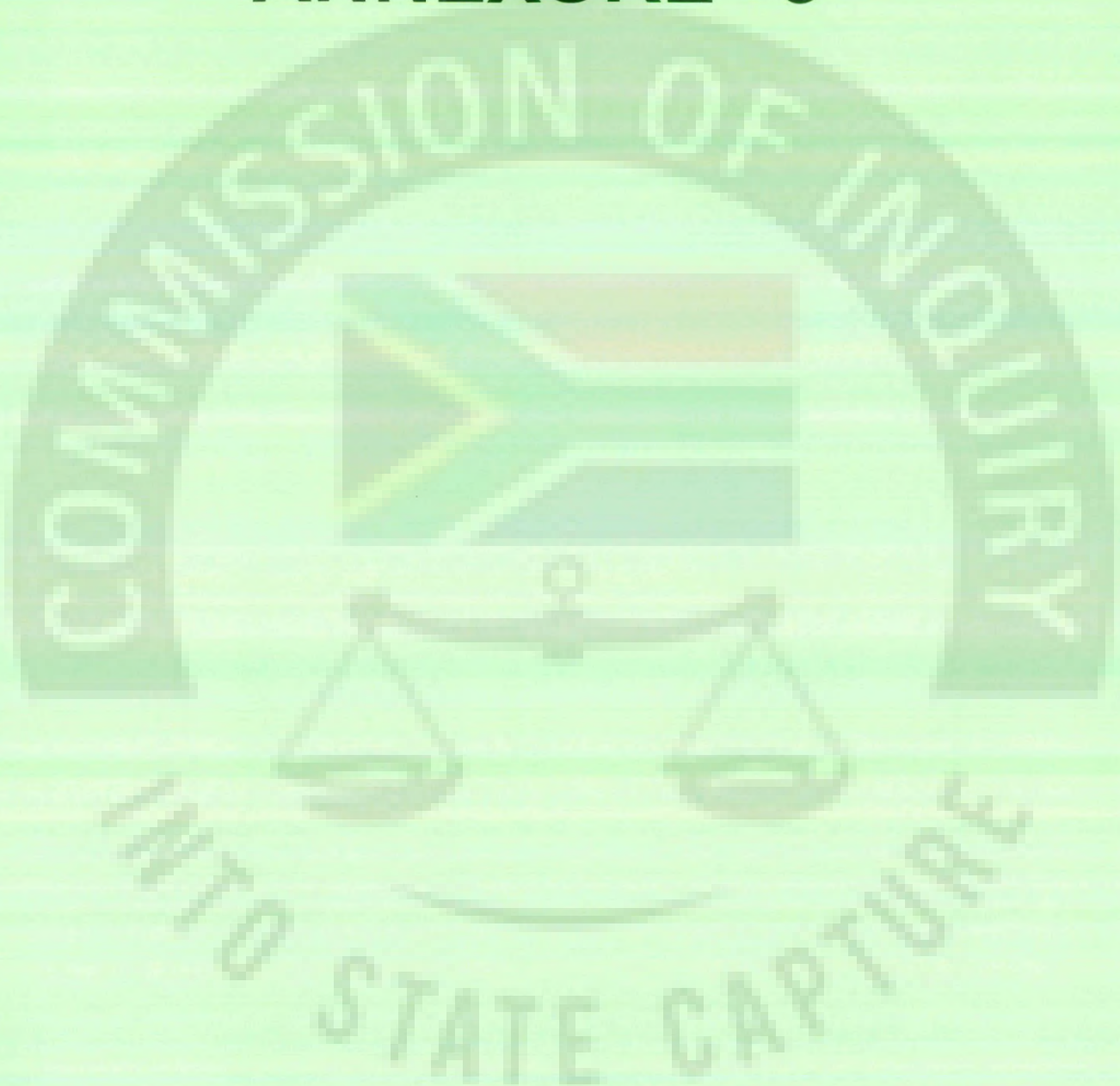
C Steinberg instructed by Webber
Wentzel Attorneys



[Handwritten signature]

MP

ANNEXURE “J”



RMB. J

RJM-1332

PRESENTATION TO THE
PORTFOLIO COMMITTEE ON
POLICE

Mr Nikosinathi Phiwanyinkosi Thamsanqa Nhleko

Minister Of Police

29 January 2015

PC POLICE
29.01.15

MP

Background

- Upon assuming duty I was inundated with files of alleged misconduct, corruption and atrocities within the South African Police Service.
- As the Minister of Police, and with my oversight role over the South African Police Service and the DPCI derived from the Constitution, I felt duty bound that I could not ignore the allegations.
- In October 2014, I established a Reference Group to look into these allegations and to provide me with a report that will enable me to act from an informed base. The Reference Group provided me with their first draft report in December 2014.

Background continued

- Amongst the issues brought before me were allegations of the renditions or illegal arrest and unlawful deportation of Zimbabwean nationals, which had occurred in November 2010.
- Two Zimbabwean nationals who were unlawfully handed- over were subsequently murdered allegedly by the Zimbabwean police.
- It worried me that if it were true that the members of the DPCI were involved in “smuggling out” from the Republic, human beings, whether South Africans or not, in order for them to be tortured and killed outside the Republic, then our constitutional democracy is in danger and the rule of law subverted.

Background continued

- I was reminded of the apartheid era cross border raids in which freedom fighters were abducted, kidnapped and killed without a trace. (Lupara Bianca).
- Allegations made in witness statements in the IPID report as well as other documents, which cannot at this stage be disclosed, place members of the DPCI and its Head at the centre of this alleged illegal rendition.
- A return to that vile past would sadly be doomsday for our constitutional democracy and the rule of law, especially if perpetrated by members of an agency such as the DPCI, which is established by statute specifically to uphold the Constitution and protect our freedom.

Suspension

- In order to further assess the merits of the allegations, particularly against the Head of the DPCI, I needed to conduct preliminary enquiries to consider whether the allegations were substantive enough to bring the matter before Parliament, whose powers should only be invoked if the intention is to remove.
- Such enquiries needed to be conducted given the IPID report that had been referred to the NDPP for further investigation.

Suspension continued

- Clarity also needed to be attained as to why the DPCI did not deem it necessary to place such a priority crime at the top of their investigation list, taking into account that the South African government's standing and obligations, and role in terms of SADC protocol were at stake.
- Article 5(j) of the SADC protocol provides that extradition may be refused if the offence for which the extradition is requested carries a death penalty.
- Whereas there is no extradition treaty between Zimbabwe and South Africa, an application could have been made in accordance with the statutory law of Zimbabwe, but it was not done, hence it was illegal.

Suspension continued

- South Africa is party to the following international instruments:
 - 1947 Geneva Convention.
 - 1951 Convention and Protection Relating to the Status of Refugees.
 - 1969 Organisation of African Unity, Convention Governing the Specific Aspects of Refugees problems in Africa.
 - 1984 Convention against Torture and other Cruel, inhuman, degrading treatment and punishment, which incorporates the principle of “Extradite or Prosecute”. This principle requires signatories to this convention to either extradite or prosecute.



Suspension continued

- I regard accountability as the hallmark of a constitutional democracy, especially from a high office such as the DPCI.
- Similarly, I regard myself as accountable within the parameters of my statutory powers, and I am therefore compelled to act against such heinous crimes.
- To me it does not matter whether the victims are of Zimbabwean origin or South African. Life is life and must be valued equally irrespective of one's social status, origin, colour, sex or creed.


MP

Suspension continued

- For these reasons, I deemed it important that the allegations be examined further and I proceeded to suspend Lieutenant General Anwar Dramat with full pay and benefits on 23 December 2014. (Expansion).
- In terms of section 3 of the Public Service Act I am the employer in the Public Service within the Department to which I am the executive authority. Lt General Dramat is a senior management employee and the SMS handbook is applicable unless excluded by legislation.



Suspension continued

- The Labour Relations Act does not exclude him from its application. As an employee he is subject to the ordinary discipline that an employer is entitled to mete-out on an employee, subject to the safeguards the Constitutional Court has already alluded to in its judgement of the 27th November 2014.
- I contend that I have acted within my powers and the law when I placed the Head of the DPCI on precautionary suspension with full pay.
- My right to suspend was challenged by the Helen Suzman Foundation on 9 January 2015, and this matter is currently before court.
- The South African public expects the unit to combat priority crimes; and yet it is it and its members who are implicated in commission of such crimes. I acted within the law. I followed a fair process to suspend the Head of the DPCI.

Human Rights, Institutional Arrangements and Political Partisanship

- Since this issue arose, a lot has been said
 - One angle suggested, is that political partisanship were the real motivation behind the steps being taken.
 - Another is that the Minister is in contempt of court. How can I could have been in contempt of court when I did not use the deleted section in the SAPS Act?
- Let me assure Honourable Members that neither of the above are true.




Human Rights, Institutional Arrangements and Political Partisanship

- The Charter of the United Nations adopted on 26 June 1945 in San Francisco binds humanity to promote and reaffirm its faith in:
 - Fundamental human rights and freedoms for all without distinction as to race, sex, language or religion.
 - The dignity and worth of the human person.
 - The equal rights of men and women.



Dehumanisation of Blacks in general and Africans in particular

- Further it obliges humanity to:
 - Establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
 - Promote social progress and better standards of life.
- The 1910 Act of the Union established the principle of racism as the founding basis for South African law.



Dehumanisation of Blacks in general and Africans in particular

- Three years later this was accompanied by the Native Land Act of 1913, placing the seal of state and law on the military conquest and dispossession of our people.
- Over 200 years of wars of conquest destroyed African societies, building in their place, a thriving capitalist system based on mining, commercial farming and secondary industry, controlled and dominated by a class drawn from the white minority.



Dehumanisation of Blacks in general and Africans in particular

- The state institutions of the time, laws and apartheid practices were simply devices developed to ensure capital accumulation through the exploitation of the black majority as a source of cheap labour.
- Through this process, Africans lost their freedom, land, means of livelihood, much of their skills and their dignity. They became wanderers and beggars in their land. In the eyes of some among the coloniser, the African became so less human, that they would shoot her, and state that they saw a baboon. That is how deep the scorn of hatred and prejudice against the African can be.



Dehumanisation of Blacks in general and Africans in particular continued

- Having taken into consideration our history, I am convinced that because the lives at stake are those of Black people, and therefore, all what the erstwhile colonial forces can do is prop-up the debate about the institutional arrangements of the Hawks. Had the lives involved been those of white people, the debate and headlines would have been about human rights.
- This is the sad reality we must fight and defeat, for our immediate aim as a country remains the creation in practice, of a truly just and democratic society, that is able to sweep away the centuries-old legacy of colonial conquest and white domination. We must ensure that apartheid ideas and practices are not permitted to reappear in new or old forms.



In defence of human rights

“I stand for simple justice, equal opportunity and human rights. The indispensable elements in a democratic society – and well worth fighting for” - Helen Suzman

- Helen Suzman would have spoken on the side of the victims and I believe she would have upheld the observance of fundamental human rights regardless of the victim's skin colour.
- It is no accident that when the issue is about fundamental human rights, neo-colonialist apologists and some of their media sympathisers elect to frame the matter as if it is about institutional arrangements and political partisanship.



In defence of human rights continued

- They have no history of real commitment to human rights. Their racial prejudices and partisanship blinds them from comprehending and appreciating the essence of processes, leaving them to see only the appearance of phenomena.
- They benefitted from crimes against humanity, and for that they are not going to apologise. They are not ashamed of having been beneficiaries of a deeply shameful past. Their lack of participation in real efforts aimed at eradicating the legacy of oppression and exploitation, coupled with their half-hearted commitment to building a better future for all, deforms their perspective.



In defence of human rights continued

- In 1989 the African National Congress produced a document titled, Constitutional Guidelines for a Democratic South Africa. The document states among others that, “the Constitution must give firm protection to the fundamental human rights of all citizens.”
- Despite all the political and legal obstacles that are being placed on our path, we shall discover the truth. We shall certainly dig deep.
- I am certain that none among us, is fooled by the wolf in sheep's skin. And fortunately for us, the majority of our people knows the truth, and we are on the march to realise, in lived reality, the noble aspirations embodied in our Bill of Rights.



Conclusion

- It is important that as South Africans we should begin to confront many of our ills in society, among which are the following:
 - The method of grading functions in order of importance is fraught with contradictions, unscientific, sectarian driven and short termist.
 - It is based on unscientific assumptions and based on beliefs in beings that have super natural powers; and negates the historically proven fact that the people are their own liberators.
 - It makes a mockery of the principle of accountability, and reduces the concept and practice of democracy to state institutions. It, completely, kills the sovereignty of the people, under the pretext of the so-called best practices.

Conclusion

- As society, we are confronted by a bastion, well resourced and well educated in colonial culture and values. A culture deeply rooted in exclusivism, clothed in the so-called protection of minority interests. A bastion hell bent to undermine the will of the people to protect its ill gotten immense wealth.
- As Ernest Barker puts it; **"We shall accordingly hold that if law is to have value as well as validity- value all round, and not some single 'broken arc' of value called by the name of solidarity or by some such other name- it must satisfy, in the last resort, the demands of the general moral conscience, issuing and expressed in a general all- round notion of what is just and right in the conduct of human relations"**.
- This land, South Africa, is the land of our forefathers; therefore, we all have an obligation to rise-up and fight an incursion of wild-life morality into our society. **Certainly, not in our name.**



Minister of Police on DPCI/Hawks leadership suspension; SAPS progress report on Committee 2014 recommendations

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Police

29 January 2015

Chairperson: Mr F Beukman (ANC)

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Meeting Summary

The Committee engaged in a robust discussion with the Minister of Police, Mr Nkosinathi Nhleko, on the recent suspension of the head of the Directorate for Priority Crimes (DPCI/Hawks), Lt Gen Anwa Dramat. The Minister first provided a briefing on the matter and noted how in October 2014 he formed a reference group to look at alleged misconduct, corruption and atrocities within the South African Police Force. He described the illegal arrest and deportation of two Zimbabwean nationals by DPCI and who were subsequently murdered allegedly by the Zimbabwean police. He was reminded of the brutal apartheid cross border raids. Thereafter he spoke about the grounds for suspension of the DPCI head on 23 December 2014 as laid out by the Public Service Act and the labour relations framework which encompassed employer-employee relations. This was challenged in court by the Helen Suzman Foundation. The Minister then defended the suspension, stating that this was not an instance of political partisanship but the defence of human rights and the obligation to prevent dehumanisation of blacks and Africans in particular. He sketched SA's painful colonial racial background and asserted that there would have been more of an outcry if the victims had been white. Human rights could not be trumped by institutional arrangements and political partisanship forwarded by neo-colonial apologists and their media sympathisers.

The Committee engaged the Minister on concerns about leadership stability to ensure good governance and management and the possible negative effect the developments carried. Members asked if cases would be moved or planned to be moved from the DPCI and if the institution's mandate was to be interrupted at all. Some Members were disappointed that race was brought into the debate and questioned the legal advice the Minister had received which would ultimately cost the taxpayer due to lost cases. Consensus was reached that further and full engagement was needed with the Minister for Members to be informed of what information the Minister was using as his basis for action. Some Members stated that they were shocked the country had come to a standstill because of Zimbabwean nationals who were often complicit in crime in SA. Other Members commented that smoke and mirrors were at play. It was suggested that the Minister was creating a false dichotomy between human rights and issues of institutional leadership – the issues were part of a continuum and

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not exclusive of each other. Strong, independent institutions were needed to counter abuse of power and strengthen accountability in defence of human rights. The Minister faced many questions. These included whether the President was involved, if he had had talks with the President's lawyer, if the Minister had pressured Lt Gen Dramat to step aside, if he was aware of death threats against Lt Gen Dramat and his family, if the Minister needed the Committee's protection against executive pressure, who gave the acting head of the Hawks the power to make sweeping changes if he was just a 60-day gate keeper, as well as querying the protection of key witnesses in the case.

The Committee decided to give its Members time to consult before it decided on the request by the Minister for the Committee to institute processes in the suspension of Lt Gen Dramat, as contained in a letter to the Chairperson.

The Committee was then briefed by the SA Police Service (SAPS) National Commissioner, Ms Riah Phiyega, on progress in the implementation of Committee recommendations as contained in the Committee's 2014 Budgetary Review & Recommendations Report (BRRR). The Department was the first to begin this process within government of reporting back to its parliamentary committee. The National Commissioner outlined which recommendations were still in progress across the programmes of Administration, Detective Services, Crime Intelligence and Visible Policing.

Members engaged on how discipline of police members would be addressed. This was linked to discussion on the demilitarisation and professionalization of the service as outlined in the National Development Plan (NDP). This was seen as key as many within SAPS had a defence force mentality where the public was seen as the enemy. Eradicating apartheid era ranks was critical to this process. Members were concerned about the ownership of illegal firearms by foreign nationals in SA, defective police vehicles and their abuse; and if the financial status of SAPS members could be considered as part of employee health and wellness given the escalating corruption in the service. Other talking points included the introduction of policing in the school curriculum, results in the training of cluster commanders and detectives and the performance of SAPS in high profile cases. Attention needed to be paid to filling the CFO vacancy, consultation with DPCI, sexual offence convictions, and advancing SMS notifications beyond when cases were opened at stations but to actually communicating progress in these cases.

Meeting report

Chairperson's Introductory Remarks

The Chairperson outlined the Committee's programme for the next ten days, starting that day with the departmental response to the Committee's Budgetary Review and Recommendations Report (BRRR), including its entities, the Independent Police Investigative Directorate (IPID) and the Civilian Secretariat for Police (CSP). Tomorrow, the Committee would look at a combined presentation on disciplinary recommendations. Committee oversight would take place from 31 January to 6 February, focusing on border management, public order policing and the Directorate for Priority Crime Investigation (DPCI) team involved with rhino poaching.

The Chairperson highlighted two issues which came to the fore recently, including the Constitutional Court judgement which had been distributed to Members. The parliamentary

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legal advisors could discuss this with Members in a few weeks' time. There were also the recent attacks in townships and the ensuing allegations against SAPS. The Committee called on SAPS management to take strong steps against any members involved and the Committee welcomed the arrest of errant SAPS members in the Northern Cape. A number of members were also killed during the holiday season and the Committee sympathised with their families. He complimented the police on work carried out during the festive season. The opening of Parliament was also an important matter and the Committee was hoping for an update from the National Commissioner in the next few days on this.

The Chairperson noted that during December 2014, the head of the DPCI (also known as the Hawks) was suspended by the Minister after which the Committee sought interaction with the Minister on the matter. The Chairperson then wrote to the Minister inviting him to brief the Committee on these matters. Since the start of the fifth term of Parliament, there had been a range of interactions with the DPCI with meetings on 17 September and 15 October 2014 as well as the interaction with the Inspecting Judge. The Committee adopted four resolutions with regard to the Hawks covering independence, budget allocation etc. No one could disagree that an effective organised crime fighting entity was crucial along with leadership stability. It was the role of the Committee to ascertain the matter and decide on the steps moving forward to ensure stability and that priority crimes receive the necessary attention. The Chairperson received a letter from the Minister last night which would be made available to Members for discussion.

Minister of Police on recent developments in Directorate for Priority Crimes (DPCI) leadership

Minister Nkosinathi Nhleko, explained his presentation would cover three broad areas: what happened (processes; legal issues), what to make of this development and circumstance and what needed to be done. Upon assuming duty, the Minister was inundated with files of alleged misconduct, corruption and atrocities within SAPS. As the Minister of Police, and with his oversight role over SAPS and the DPCI derived from the Constitution, he felt duty bound to not ignore the allegations. In October 2014, he established the reference group to look into these allegations and to provide him with a report that would enable him to act from an informed base. The reference group provided him with a first draft report in December 2014. Amongst the issues brought before him were the allegations of the renditions or illegal arrest and unlawful deportation of Zimbabwean nationals which had occurred in November 2010. Two Zimbabwean nationals who were unlawfully handed over were subsequently murdered allegedly by the Zimbabwean police. He was worried if the allegations were true, members of the DPCI were involved in "smuggling out" from RSA, human beings, whether South Africans or not, in order for them to be tortured and killed outside SA, with the country's constitution democracy was in danger and the rule of law subverted. He was reminded of the apartheid era cross border raids in which freedom fighters were abducted, kidnapped and killed without a trace. Allegations made in witness statements in the IPID report as well as other documents, which cannot at this stage be disclosed, place members of the DPCI and its head at the centre of this alleged illegal rendition. A return of the vile past would sadly be doomsday for our constitutional democracy and the rule of law, especially if perpetrated by members of an agency such as the DPCI which was established by statute, specifically to uphold the Constitution and protect our freedom.

In order to further assess the merits of the allegations, particularly against the head of the DPCI, the Minister needed to conduct preliminary enquiries to consider whether the allegations were substantive enough to bring the matter before Parliament whose powers

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should only be invoked if the intention was to remove. Such enquiries needed to be conducted given the IPID report that had been referred to the National Director of Public Prosecutions (NDPP). Such enquiries needed to be conducted given the IPID report that had been referred to the NDPP for further investigation. Clarity also needed to be attained as to why the DPCI did not deem it necessary to place such a priority crime at the top of its investigation list taking into account the SA government's standing and obligation and role of the SADC protocol. Whereas there was no extradition treaty between Zimbabwe and SA, an application could have been made in accordance with the statutory law of Zimbabwe. This was not done hence it was illegal. Additionally SA was party to a number of international instruments.

The Minister regarded accountability as a hallmark of a constitutional democracy especially from a high office such as the DPCI. He was further compelled, in terms of accountability within the parameters of his statutory powers, to act against such heinous crimes. It did not matter that the victims were Zimbabwean. Life was life and must be valued equally irrespective of social status, origin, colour, sex or creed. For these reasons, he deemed it important that the allegations be examined further and he proceeded to suspend Lt Gen Anwa Dramat with full pay and benefits on 23 December 2014. In terms of section 3 of the Public Service Act (PSA), the Minister was the employer in the Public Servant within the Department and executive authority. Lt Gen Dramat was a senior management employee and the SMS handbook was applicable unless excluded by legislation. The Labour Relations Act did not exclude Lt Gen Dramat from its application. As an ordinary employee, he was subjected to the ordinary discipline that an employer was entitled to mete-out on an employee subject to the safeguards the Constitutional Court had already alluded to in its judgement of 27 November 2014. The Ministers right to suspend Lt Gen Dramat was challenged by the Helen Suzman Foundation (HSF) on 9 January 2015 and the matter was currently before court.

The Minister outlined that a certain angle had developed on this story where political partisanship were the real motivation behind the steps taken. Another angle was that the Minister was in contempt of court. He assured the Members this was not true. He raised the point that there was a dehumanisation of blacks in general and Africans in general. The 1910 Act of the Union established the principle of racism as the founding basis of SA law. Three years later this was accompanied by the Native Land Act of 1913 placing the seal of the state and law on the military conquest and dispossession of our people. Over 200 years of wars of conquest destroyed African societies, building in their place, a thriving capitalist system based on mining, commercial farming and secondary industry, controlled and dominated by a class drawn from white minority. The state institutions at the time, laws and apartheid practices were simply devices developed to ensure capital accumulation through the exploitation of the black majority as a source of cheap labour. Through this process, Africans lost their freedom, land, means of livelihood, skills and dignity. In the eyes of some among the coloniser, the African became so less human, they would shoot and state they saw a baboon. That was how deep the scorn of the hatred and prejudice against the African can be. Given this history, the Minister was convinced that because the lives of black people were at stake, all the erstwhile colonial forces could do was prop-up the debate about institutional arrangements of the Hawks. Had the lives of white people be involved, the debate and headlines would have been about human rights. The Minister believed Helen Suzman herself would have spoken on the side of the victims and upheld the observance of fundamental human rights regardless of the victim's skin colour. It was no accident that when the issue of fundamental human rights was raised, neo-colonialist apologists and some of

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their media sympathisers elect to frame the matter as if it was about institutional arrangements and political partisanship. They had no history of real commitment to human rights. Their racial prejudices and partisanship blinded them from comprehending and appreciating the essence of the processes, leaving them only to see the appearance of phenomena. They benefitted from crimes against humanity and for that they would not apologise. They were not ashamed of having been beneficiaries of a deeply shameful past. Their lack of participation in real efforts aimed at eradicating the legacy of oppression and exploitation, coupled with their half-hearted commitment to building a better future for all, deformed their perspective.

In 1989, the ANC produced a document "Constitutional Guidelines for a Democratic SA" stating that the "Constitution must give firm protection to the fundamental human rights of all citizens". Despite all the political and legal obstacles, the truth shall be uncovered. He was certain that none were fooled by the wolf in sheep's clothing.

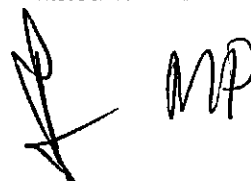
The Minister concluded it was important that as South Africans we should begin to confront many of our ills in society. Society was confronted by a bastion, well resourced and well educated in colonial cultures and values. A culture deeply rooted in exclusivism, clothed in the so-called protection of minority interests. A bastion hell bent to undermine the will of the people to protect its ill gotten immense wealth. He noted there were certain disturbing developments that had occurred including that some of the critical witnesses that had filed sworn statements in regard to this incident had since died under questionable circumstances. The question then was how many people had to die before he took action? For this reason the Minister requested the Committee to initiate proceedings for the removal of the head of the DPCI as contemplated in section 17DA (3) (4) read with section 17DA (5) of the SAPS Act (1995) as amended.

Discussion

The Chairperson noted copies of the letter by the Minister would be made available for Members to study and for a decision to be made on the way forward. He thought stability of leadership, especially in the Justice Crime Prevention and Security (JCPS) cluster was important and wanted to know if Lt Gen Dramat was in an acting position before his suspension. Was the process underway to fill this vacancy? Could the Minister assure the Committee that there was appropriate financial and managerial control with the acting head of the DPCI to ensure good governance in the institution.

Minister Nhleko responded he had a duty to resuscitate the process of filling the vacancy. What had not been said, was that the current acting Hawks head, Maj. Gen. Berning Ntlemeza, had many years of experience and was quite a seasoned police official. He was also not new to the DPCI environment. Before the Minister appointed him as acting Hawks head, Maj. Gen. Ntlemeza was the Deputy Provincial Commissioner in Limpopo. Maj. Gen. Ntlemeza was well exposed to management issues given that he came from the management core in Limpopo so this should not be a problem.

Ms A Molebatsi (ANC) thanked the Minister for shedding some light and wanted to know if



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there were any treaties flouted in this process. She commented on the apparent change of heart as the HSF was one of the organisations challenging the establishment of the DPCI including the election of its head – was there an agenda bringing about this change of heart?

Minister Nhleko said the SA 1967 Extradition Act was flouted along with the Southern African Development Community (SADC) protocols on extradition. The 1964 United Nations (UN) Convention against Torture was also flouted – a number of legal instruments and regional and international protocols were flouted in this regard. It was difficult for him to comment on the change of heart of the HSF because he did not know the organisation and had only heard about it a year or two ago. He would not know if there was ever a heart or if there was, if it had been changed. He pointed out that the impression created was that Lt Gen Dramat was part of the HSF action against SAPS and this was not true. Lt Gen Dramat did not file any supporting affidavit of the HSF and had not stated his support of the HSF pursuing a case in his name and on his behalf. The Foundation also made it clear it was not advancing a case for Lt Gen Dramat but this had subsequently changed because this was the person the Foundation was representing yet Lt Gen Dramat had himself not said that he consented to this or instructed this representation. This was a strange matter in itself.

Mr J Maake (ANC) found it very interesting listening to the Minister and thought he was hoodwinked by not thinking about the people illegally deported and subsequently killed. He only thought about what the newspapers were reporting on the illegal removal of the head of the DPCI. No one talked about the Zimbabweans who died including the HSF – he found this very interesting. He now saw things in a different perspective and more attention needed to be paid to this including in the media. The fact that a person was removed from his position was a technical matter while the core of the matter was human rights.

Minister Nhleko agreed the issue was about human rights and their violations conducted in the name of SAPS and the state. The reasoning that placed the processes of institutions above that of life was devoid of compassion. The children of Witness Ndeya and others deserved justice. Shepard Tshuma and Gordon Dube were real human beings deserving justice and to be spoken about, not institutional arrangements. People should be concerning themselves with if this matter occurred and if it did, were all instruments and protocols properly followed. Furthermore, were the people involved treated properly and adequately as human beings? All South Africans should be highly concerned about this matter.

Ms M Mmola (ANC) thanked the Minister for providing the Committee with good information. She asked if the head of the DPCI submitted any affidavit before the court to clarify his position. Was the DPCI affected negatively by the removal of Lt Gen Dramat – if yes, in what way? What measures had been put in place to ensure the DPCI continued with its mandate uninterrupted? Had any cases migrated from DPCI to detective services – if so, why? If not, were there any plans for this in the future?

The Chairperson reminded Members of the briefing they received 17 September 2014 which pertained to the last question the Member asked.

Minister Nhleko noted DPCI was an institution and was not one person therefore it continued to work on investigations on a day to day basis. In this week, public announcements had been made on the progress the Directorate was making on a number of cases. There was a tendency to associate a person, as a human individual, with an institution and this in itself bedevilled governance in a way, for example, SAPS would continue with or without the

Minister.

Mr L Ramatlakane (ANC) noted the conduct of the police in conducting crime was mentioned in the presentation where it was found the members themselves were found to be the culprits. This was a serious issue no one could disagree with and such conduct could not be condoned or supported. Corrective actions must be supported. He did not quite understand what the statement of IPID in relation to this matter suggested because the media also reported conflicted accounts. For clarity, it would be appropriate the Minister explained this to the Committee.

Minister Nhleko noted the Member had not seen what the Minister had seen with the statements and serious allegations implicating a number of operatives as contained in the IPID report. The report had been sent to the National Director of Public Prosecutions and had been sitting there for some time. Whether prosecution would ensue or not was a different matter all together. Reports of institutions such as IPID were not to make judgements or findings because due process first needed to take place. Such reports made recommendations. The issue would become clearer once the Committee adopted a resolution and a process was started which would compel the Minister to release reports to the jurisdiction of the Committee. Members could then make their own conclusions on the IPID report. Everyone should be concerned with police conduct and spoke to the need to confront the core issue of the extent to which the culture and manner of doing things within policing had been transformed. Transformation was not an event but a process. When the Minister was looking into this occurrence, it transpired that this was probably not the first time it had happened. He would also follow up on another situation which had transpired of a man that was just plucked out of Zimbabwe, made to stand trial was serving a sentence in SA. The allegation was that the same sort of modus operandi had been used and the necessary procedures were not followed with regard to deportation. There would be a problem if this issue kept repeating itself.

Ms L Mabija (ANC) thanked the Minister for a cogent presentation.

Mr P Groenewald (FF+) was quite frank and told the Minister it was quite clear his advisers and civil servants worked hard in creating smoke and mirrors. The argument of the Minister was that (1) he did not use deleted sections of the SAPS Act but that he used the Public Service Act and (2) there was an obligation on the Minister to ensure there was no violation of human rights. He found it disappointing that the Minister brought race into the matter by saying that if white people had been killed there would be an outcry. He thought SA should move on as it was 2015. He supported the Minister to ensure no human rights were violated in SA as was the Minister's duty to act accordingly but he was astounded that the Minister was legally advised to use the PSA. SA was a constitutional democracy and there was a clear finding by the Constitutional Court that the head of the DPCI could not be suspended or removed without the following of the procedures spelled out in the finding involving the Committee. A first year law student would say the Con. Court finding was applicable to all legislation in SA. The Minister, following his legal advice, was wasting tax payer's money and all his legal advisers should be fired. How did the Minister's legal advisers justify using the PSA in light of the Con. Court finding? Why did the Minister not follow the correct procedure of coming to the Committee outlining the problem? Such a meeting could even be a closed one if needs be. He asked the Minister to stop further action because he would lose and waste taxpayer's money. If the Minister lost, would he personally pay for the legal costs?




Minister Nhleko noted the Con. Court judgement developed a lacuna on the need for a trigger or something which informed particular action. Members would have no way of knowing what was contained in various reports like the IPID one without the Minister. The matter had now gone to a different court because he believed a different court was likely to arrive at a different conclusion. He did not know why the police and the DPCI was not viewed as part of the SA civil service where the PSA was applicable as if the only law that existed was the SAPS Act – this was absolutely not true. There were very few pieces of legislation in SA which had specific exclusions.

On the issue of race, the Minister did not elect to bring it into the issue but it was a factual matter that the narrative would have been fundamentally different if the people involved indeed were white where human rights would be central issue. The Minister would then be questioned about what was being done about these violations. It was easy to turn a blind eye precisely because the people involved were not white but black and particularly, African. Not a single word was said in contempt of these allegations – this was a very strange coincidence. There were many proponents of democracy and constitutionalism yet human rights were fundamental to this but not one word was said about it – why? The Minister quoted what was said by Ms Kohler Barnard on 30 May 2008: “we do not have a border. The rest of Africa strolls in and out as they like. They use our hospitals, schools, settle here, eat our food and then we wonder about our budgets”. Was this not a matter of race? A matter of attitude? In light of this, he did not expect the Member to be up in arms about human rights given this kind of attitude. If these prejudices were not addressed amongst ourselves, this country would not be built in the manner it should. A blind eye could not afford to be turned. Race was fact in this matter along with the differentiated attitudes in society. It would also be completely wrong and inhumane to say that that which defined human life was black and African. Why did an NGO not take SAPS to court on allegations of illegal renditions? One should begin to think of the circumstances around this. A debate to confront such particular matters could not be avoided.

Mr L Twala (EFF) found the Ministers story to be primary underpinned by the issue of human rights and the need to act on these rights being violated. Members sat on the Committee and interfaced with the police in relation to issues of crime and how the Zimbabwean community was complicit in crime in SA – this was an issue beyond debate. He was shocked the country could almost come to a standstill because of police action taken against Zimbabweans. He appreciated and found the history and background behind human rights plausible but he was not convinced the Minister was acting because of human rights. It was imperative that Members interacted with the Minister through Committee where information could be divulged. He would love to see the IPID report which Members could interact with as he presumed the Minister acted in the manner in which he did based on this report. He did not think renditions were not a new thing in SA and no one got fired – why this time? Juxtaposing SAs history on these matters and the speed and zeal with which Lt Gen Dramat was handled, one began to wonder if the situation was as it was really presented. He urged the Minister to wait in implementing a decision which needed the Committee's blessing. With renditions, there was always a story within a story and against this background, he proposed the Minister defer this matter until he engaged with Members in confidence and certain things could be divulged because Members knew things too. He requested the Minister and his team allowed for this space for engagement.

Minister Nhleko responded that the factual or statistical involvement of Zimbabweans in



crime did not give the SAPS the right to act illegally. The law allowed for certain issues to be addressed through lawful processes. He could not turn a blind eye to Zimbabweans being handled in any kind of manner justified by the fact they were complicit in some crimes – this could not even be suggested for one second. Because some people were viewed negatively did not mean they had no rights and could be handled by state institutions in a way that negated the fact they were human beings. He appreciated what brought the Member to this view because everyone saw a conspiracy theory somewhere or scapegoat of sorts. This could not be done with issues of governance and constitutionality. Once the Committee moved forward with the process as the Minister requested, Members could become apprised with the reports and information the Minister was privy to. This could also help in erasing some of the doubts Members had.

Mr Z Mbhele (DA) warned against the false dichotomy emerging during this session which Members should not be hoodwinked by. The Minister spoke about the importance of protecting human rights but this was exactly why strong, independent institutions were needed to strengthen accountability and counter power abuse. There was no false dichotomy between one or the other – the protection of human rights was not mutually exclusive from raising questions about organisational management and legal compliance in order to protect the independence of state institutions in order to counter power abuse. One key element of this architecture was the Hawks which had the power to investigate misconduct by those who were in power themselves. The best defence of human rights were strong independent institutions. These issues were part of the same continuum and not separate from each other. What was the purpose of the Minister requesting a Committee resolution if he believed the suspension he affected was fully lawful in and of itself based on the Labour Relations Act and the PSA – what would now be achieved by consulting Parliament and the Committee taking a resolution? Did the Minister believe the IPID findings in the report carried no weight and had no legal input? He wanted to gain clarity on how the Minister viewed IPID reports and recommendations.

Minister Nhleko found an interesting balance in the argument of the Member but noted the Member would find the debate in SA up until now, was not about human rights violations. He did not want to get into an analysis of the court judgements because the matter was in a way sub-judice but there would be an opportunity at a later stage to come back to these matters and a very wonderful debate could be had with the Member.

Ms D Kohler Barnard (DA) was in Pretoria to hear the Ministers decision was invalid, unlawful and should be set aside as widely reported in the media. Despite having provided no evidence against Lt Gen Dramat at all at this stage, within hours there was a leave to appeal filed by the Minister. This matter was not about human rights or what may or may not have happened in terms of the Zimbabweans, the history of SA or Lt Gen Dramat. The issue was about what seemed to be the gross flouting of the Con. Court and legislation by a member of the executive. This was exactly why the DA and many others fought against the closure of the Scorpions to prevent this sort of political interference by a politician. This was why many entities were fighting to get the Hawks some semblance of independence out of the thumb of politicians. To her knowledge, the IPID report cleared Lt Gen Dramat and exonerated him totally. It was refreshing that a member of the executive admitted the Zimbabwean police did murder people at will and it was indeed a police state with no rule of law as we knew it. The decision taken by the Minister to suspend Lt Gen Dramat might well leave the Committee with a Police Minister who committed two legal acts. She asked the Minister if he would tender his resignation if this was the case because she could not see how a Minister of Police

could conduct two illegal acts yet continued to fight for the right to do so. She was sure the Minister knew his actions were illegal because of the Con. Court judgement of 27 November 2014. Did the Minister inform the President's lawyer, Mr Hulley, that this could not be done? Did Mr Hulley come back and instruct the Minister to do it anyway? What legal advice did the Minister take and from who? This was quite the most extraordinary legal advice anyone could have received. Was the President involved in any way? Was someone leaning on the Minister? Did the Minister need the protection of the Committee? Why did the, in her opinion, illegally appointed, acting head of the Hawks, Maj. Gen. Ntlemeza, feel he had the right to make permanent and fundamental changes to the Hawks if he was only a gate-keeper for 60 days? Who gave the permission for this close friend of Richard Mdluli to demand the provinces hand over various case files and sensitive dockets? Had the Minister at any stage pressure Lt Gen Dramat to step aside and leave the Hawks to a man who was illegally appointed as a care taker? Did the Minister know of any death threats to Lt Gen Dramat's life or that of his family? Had the Minister ever asked to meet with Lt Gen Dramat without his lawyer?

Minister Nhleko could tell by the manner the Member framed her questions that she had a journalistic background. When he assumed office as Minister he was confronted by many investigative reports on this matter and needed to decide on how to move forward. It was an anomaly that IPID reports cleared people. He certainly did not ask Lt Gen Dramat to step down. He had absolutely no preoccupation with someone who had to leave – his preoccupation was with how and what happened and everyone should be concerned about this. From there, it should be decided what needed to be fixed or loopholes closed. He agreed that the issue was not about Lt Gen Dramat but about the allegations and the issue of the violation of human rights.

Mr A Shaik Emam (NFP) was concerned that many witnesses in this matter had died – why were they not put in the witness protection programme? Were the remaining witnesses under witness protection? It was important for the Committee to access the reports the Minister was privy to and informed some of the decisions he took as this would provide a clearer picture. One must be cognisant that processes must be followed otherwise it affected the case as a whole. Given the serious nature of the allegations against Lt Gen Dramat, when could a speedy conclusion to the matter be expected to ensure that SA's relations with the other SADC countries and public opinion could be reinstated because right now it was at a low as people believed there was political interference?

Minister Nhleko noted the suspension letter itself to Lt Gen Dramat, in terms of the PSA and SMS handbook, spoke to a 60-day period. He also clarified that not many witnesses had died – he was aware of two witnesses thus far.

Mr M Booï (ANC) proceeded to pose his question.

Ms Kohler Barnard interrupted the Member as she noted he was not part of the Committee and so could not participate.

Mr Maake said the rules of Parliament stated Members could participate in all meetings except closed Committees. He urged that Members spoke through the Chairperson.

Mr Booï thought the Minister was on course and doing a tremendous job. He had due respect for the Con. Court but noted it was not without questioning. He thought the acting head of the

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Hawks was doing a very good job and the battle against crime was on course. Everyone was still waiting for Lt Gen Dramat to come forward and present his case. Suddenly Members were investigators – if Ms Kohler Barnard was an expert on Maj. Gen. Ntlemenza, what was she doing as a Member of Parliament? This should be a matter of concern. The ANC was convinced there was a case here as the Minister was a member of the party and the Minister had an obligation to ensure that all lives were being protected.

Minister Nhleko thanked the Member for his reflections on the matter. Some people knew the pain of having a relative simply disappear or killed without any explanation but they had accepted this and lived with the pain. It was because of knowing this kind of pain that it was vowed such action shall never occur again. Insensitivity continued to be shown regardless of this painful past.

Mr Maake understood the request of the Minister for an investigation into these allegations. He did not think anyone was guilty as of now but these were serious allegations. No one was saying Lt Gen Dramat was guilty but that the allegations should be investigated and no one could be against this. Lt Gen Dramat needed to clear himself and he thought the outcome of the process would be recommendation that the issue went to court. He did not see any reason why the Committee should not do what the Minister was asking as serious allegations were involved. The Committee was obligated to do so. He did not think it was the intention of the Committee to remove anyone but to investigate although he was not a legal person.

Mr Shaik Emam sought clarity from the Minister to ensure the safety of remaining witnesses in order not to weaken the case.



The Minister noted he had not yet made an assessment on the issue of safety so he could not satisfactorily answer the Member's question. A process of assessment and evaluation of witness safety needed to be conducted.

Mr Groenewald asked if the Con. Court found the extradition/rendition of the Zimbabweans unconstitutional.

Ms Kohler Barnard knew Lt Gen Dramat had not been arrested, charged, appeared in court or found guilty of anything to do with the Zimbabwean issue yet the Minister, in his letter, asked the Committee to kick Lt Gen Dramat out on grounds of misconduct and not being fit and proper to hold office. The Minister was predetermining an issue which had never come before the courts. The Minister was essentially asking the Committee to fire Lt Gen Dramat after he had illegally suspended him when there was not a shred of evidence. The Committee was not a court of law to determine whether Lt Gen Dramat was guilty or innocent – a judge needed to make such a decision. She found the letter of the Minister extremely offensive.

Minister Nhleko noted that this was how the matter was framed by the Con. Court on the basis of the judgement delivered 27 November 2014. The judgement created a lacuna in a sense. Removal was not a predetermination on the side of the Minister – his main focus was on establishing what actually happened. He urged the Member to read the Con. Court judgement as it framed his letter to the Committee.

The Chairperson thanked the Minister for his attendance and Members for their interaction. Engagement on the matter was critical as the Committee carried out oversight over the police. Section 42 (3) of the Constitution mandated this oversight. The allegations involved were

quite serious and he thought it appropriate Members be given until lunch to study the Minister's letter. The legislative amendments affected by the Con. Court would also be copied for Members. He thought it appropriate that any action to be taken by the Committee be conducted in the public domain. He noted many proposals by the Members for the Committee to formally consider the issue. The decision would be taken after lunch. Surety about the leadership of the Hawks was important.

SAPS, IPID and Civilian Secretariat for Police on BRRR resolutions and recommendations

The Chairperson noted the Committee was the first one attending the responses to the BRRRs adopted in November 2014. He was pleased with and it showed commitment from the Departments.

SAPS Progress Report on the 2014 BRRR

Ms Riah Phiyega, SAPS National Commissioner, noted the presentation was also colour coordinated – yellow for the recommendations in progress and green for the recommendations which were implemented. The presentation would focus on the recommendations in progress. 24 recommendations were finalised and 19 were a work in progress. Turning to programme one: administration, the Nat. Comm. Noted that the Committee recommended that SAPS proceed with the demilitarisation process and timelines for the demilitarisation of SAPS. As this was a nebulous concept, part o SAPS's implementation plan included holding conversations too ensure common comprehension of "demilitarisation". In this regard, the first SAPS research colloquium in attendance with academics and subject matter experts, was held in Pretoria on 20-21 November 2014 to address the theme of demilitarisation and policing in a violent society. A follow up session with the SAPS tertiary forum will be held in March 2015. Other facets of demilitarisation as highlighted in the National Development Plan (NDP) were encapsulated in the SAPS strategic and annual performance plans. With the disciplinary code recommendation, the matter would be auctioned subsequently to the approval of the code by the Minister during the first quarter of 2015/16. In terms of the prioritisation of specialised units, in particular organised crimes and anti-corruption units, SAPS would provide updates on this progress through quarterly reports at the end of March 2015. The post of CFO was under consideration for filling and the outstanding reports from the Special Investigating Unit (SIU) into various contracts was still under investigation and the Committee would be notified of its finalisation. Another Committee recommendation under administration was for the crime stats to be incorporated into the SAPS annual report and tabled as a separate annexure. The stats should also be briefed to the Committee separately. The Nat. Comm. Ensured this would be done. A progress report on the IT governance framework would be submitted to the Committee in March 2015 with implementation of the matters raised by the Auditor-General. The criminality audit would be finalised in May 2015 and then made available to the Committee.

Nat. Comm. Phiyega turned to programme two: visible policing noting the Committee recommended that SAPS implemented the recommendations of the AG with respect to leadership at station and cluster level when it came to managing performance information on reaction times. The role of clusters was to ensure performance and compliance oversight on the stations was being enhanced through the implementation of the revised and refined cluster concept. The Committee recommended all recommendations made by the police inspectorate were compulsory and implemented by all SAPS members without delay. There should be no discretion on any of the recommendations of the inspectorate and the Committee was of the opinion that the Department must issue a national instruction in this regard before the end of

the financial year. The Nat. Comm. Ensured the inspectorate and internal audit recommendations formed part of the combined assurance redial action plan implementation process. Additionally, the inspectorate reports had been presented in management platforms and were prioritised for implementation. The Committee would also be provided with a full report which covered measures at border posts to ensure effectiveness for the 2014/15 financial year and updated stats would be provided to the Committee during April 2015. Government, through the Department of Home Affairs, was establishing the border management agency as an integrated model through an integrated interdepartmental working team.

Programme three: detective services, a work session had been requested with the Minister and all other role players on the need or SAPS to clarify the migration function and mandates of the organised crime and the commercial crime units from the DPCI. The Department would report on how it intended to maximise intra-organisational cooperation by end November 2014. SAPS was also recommended to look at outstanding feedback to be delivered on cases through SMS technology without delay. The inclusive technological capability had been scheduled for completion during the 2015/16 financial year with user requirement specifications finalised end of 2014/15.

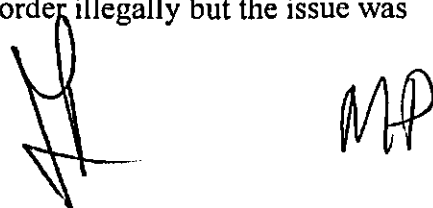
In terms of programme four: crime intelligence, feedback would be provided to the Committee on all outstanding leadership vacancies and the vetting process. With the protection and security service, the inclusive recruitment strategy was being addressed for the policy of rotating VIP protection officers at national key points for health and wellness to be prioritised. This also applied to the retention strategy for VIP protection unit members. This also applied to clear career-pathing for members of the VIP protection unit which dealt with static security.

Discussion

The Chairperson noted the occurrences in Soweto and other townships and the actions of some ill-disciplined police members. He welcomed the action taken so far but this dealt with discipline – what was being done to address this to ensure the protection of all people and SA. What was being done when this was not adhered to? What also came to the fore in the recent events was the ownership of illegal firearms by foreign nationals. It was quite important for there to be a national operation to look at the proliferation of firearms in this sector. The Chairperson, in January, visited the Paarl East police station in his constituency. Here, 12 out of the 19 visible policing vehicles were defective. This issue needed to be tackled if visible policing were to be successful. The issue was a big one and not just limited to this station. Perhaps the Committee could be briefed on this but action was needed.

Nat. Comm. Phiyega noted SAPS employed close to 200 000 members and in this environment one would find those errant members. She was truly appreciative of the community reports received. Policing was a highly regulated environment. Over the past financial year, 700 members were arrested for misconduct and ill-discipline. This was how seriously the matter was dealt with. The public was encouraged to come forward as it assisted with evidence against the errant member. It was a journey but she was committed to dealing with it.

She was bothered by the issue of illegal firearms with the issue coming from different angles including from within the country and those crossing the border illegally but the issue was flagged in the JCPS cluster.



Mr Shaik Emam asked, in light of the high unemployment rate, if policing could be introduced into the school curriculum for those pupils which had an interest from grade 10. This would ensure people went into an employment field of choice instead of just because employment was needed. He also wanted to know if financial status could be considered as part of health and wellness given the escalating corruption in the service. He echoed the sentiments of the Chairperson with the problem of road-worthy vehicles. Added to this was the abuse of state vehicles for private use. Perhaps there should be an awareness campaign for the community to counter this. He thought the SMS system for opening of cases worked very well but this was where the communication tended to stop. He had personal experience of this where officers did not communicate progress on cases.

Nat. Comm. Phiyega indicated the issue of vehicles was top of the agenda. This included restructured maintenance as the achievement of goals depended on this. Garages had been centralised as part of the turnaround strategy. A fleet of more than 50 000 cars was being managed through a mixed model – cars were now purchased with service contracts. Treasury had assisted with a tender in this regard. Artisans had also been trained in the garages along with garage commander training because at some stage, members not wanted were dumped in the garages. Vehicles were crucial in policing. A model and formulae had also been developed for the distribution of new vehicles where replacement occurred first – this was a crucial part of maintenance before new, pressing needs were looked at. There was also a focus on the responsible use of vehicles looking at the nature of accidents occurring, who was involved and recouping where there was negligence. Currently, around R10 million had been recouped from about 400 employees. This ensured responsible use of vehicles. The public was urged to be the eyes and ears if they witnessed cars being abused through tracking the registration number.

It was important to look at how the heart and love of policing could be introduced to students. There was a memorandum of agreement with the Department of Basic Education through school safety programmes. Schools, through the programme, were linked to stations with members adopting at least four schools to address safety issues. Part of this was addressing how to become a SAPS member and the other positions involved in SAPS. There were also open days to discuss careers in policing. There was a need to balance the aging side of the establishment and the incoming side. Graduates dealing with criminology and the related sciences were also be targeted to explore whether they could be recruited after some training.

Nat. Comm. Phiyega indicated financial wellbeing was crucial as many members were indebted as were other public servants, but more could be done. Institutions were provided assistance where it was needed.

With the SMSs, the platform was already there so it needed to be built on. The Committee could be briefed on this.

Ms Kohler Barnard thought the team was addressing the NDP point on the need to professionalise SAPS through extensive training and education – this was a very good start. However, the presentation did not make reference to the apartheid era ranks. Bheki Cele drove the process of the militarisation of SAPS and still insists on being called General. She believed the professionalization of the police was being addressed through education but the public perception of police also needed to be changed for it to be seen as a service to the community. Every single day, cops felt superior to civilians and she had spoken with the




police who had seen civilians as the enemy – this was defence force speak and she was concerned there was no determination to change the ranks to deal with inspectors and commissioners.

Nat. Comm. Phiyega indicated civilians could never be seen as the enemy – this was a dreaded problem and could not be afforded. Citizens needed to be seen as the consumers of the service. Some positive responses was being seen through community engagement and awareness.

Mr Mbhele asked the Nat. Comm. to clarify what the presentation was referring to when it said “revision of the SAPS Training Curriculum to enhance local flavour and relevance towards producing the type of police South Africa wanted.

Mr Twala noted his passion with policing had always been with the capability of detectives. Would the Nat. Comm. say value for money was received for the funding allocated to training and requiring the detectives with skills with the aim of providing a better quality service? What was the experience coming from such courses in relation to outputs? Would there be a similar item in the next budget?

Nat. Comm. Phiyega noted the detective training remained on course. Some semblance of returns was seen in the fact that 1.7 million were arrested and the jails were full owing to investigation and prosecution. Detectives would continually be trained looking at new dynamics like cyber crime through refresher training.

Mr Groenewald sought a list of the outside academic institutions and research units which SAPS worked with on the tertiary forum. Were there any follow ups on how many times the revised community based recruitment strategies were published in newspapers? Would the criminality audit of the SAPS be publicised or made available to the public? He thought its finalisation should be speeded up for there to be a debate on criminality in SAPS.

Nat. Comm. Phiyega stated police criminality was a reportable matter where there were arrests. This was reported and collated on a weekly basis so that there would not be a backlog and for it to be worked into disciplinary matters. The numbers of the audit would be shared but the rights of the employees must be respected. Some of the information was already shared with the public.

Ms Mabija asked why the Cape Town metro did not attend the leadership training.

Nat. Comm. Phiyega noted the training was around equipping the metro who were often first on the scene and for the standardisation of skills. She did not know why the Cape metro did not join even though they were part of the association. They would be encouraged with the next round of training as everyone stood to benefit.

Mr Ramatlakane noted the demilitarisation of the police was important and the training was good but in dealing with 200 000 people, it was a tinkering in the mindset of transforming the police. Communication at senior management and leadership needed to lead the process and would be part of a complimentary plan. This would help in ensuring the process was not just a mechanical one.

Nat. Comm. Phiyega agreed with coupling training with change management. Leadership

was a game changer and could drive and inspire the masses. Communication was crucial and resources had been allocated in this regard.

Ms Molebatsi listened to the SAPS spokesperson in December speaking on police members who committed crime being between the ages of 20 and 25 – did SAPS have a way of addressing and reducing this as it was very worrying. The country had recently had the high profile cases of Oscar Pistorius and Shrien Dewani. One of the shortcomings mentioned was the way witnesses were prepared- was there a way to address this? She asked if the implementation of the training of cluster commanders was being followed up. The DNA legislation came into being at the end of the month. According to the legislation, a board had to be established a month before the Act commenced but this had not yet occurred.

Nat. Comm. replied that she thought SAPS did well in the Pistorius case especially the performance of one of the majors. The DPCI handled the Dewani case and there were many lessons to be learnt in this regard. She was sure the DPCI was looking into these issues for engagement in the JCPS. There were many cases where SAPS performed well and she received letters of appreciation for the handling of cases. The performance was a mixed bag and complacency should not be settled for.

The training of cluster commanders was important for localised management and could yield many gains especially at a station level. Resources were allocated to this area for the pushing of parameters in terms of responses.

The Board for the DNA legislation was appointed by the Secretariat and the Minister. She hoped they were on course with this as the implementation plan of SAPS had already been finalised. She would check on the progress with the Secretariat on the appointment of the board.

Mr Maake thought the demilitarisation was more than the changing of ranks, although it was part of the process. He was not interested in what a police member was called – his main concern was dealing with crime. According to him, if a criminal had a gun he should be shot – there was no negotiation. How was the concept of demilitarisation being approached? Although demilitarisation was mentioned in the NDP, it was not unpacked except for changing the ranks.

Nat. Comm. Phiyega said the issue of demilitarisation was a wide one depending on what one believed. Other police agencies in the world had ranks in one way or another because it described the journey travelled in the service and what had been achieved. It also spoke to conduct and professionalization but it was important for a balance to be found. It was a fact that policing was occurring in a violent society and SAPS could only act after the fact apart from awareness and education which could occur pre-crimes. More needed to be done to deal with the violent nature of society and how it contributed to crime. Research into this would inform policing in such a violent society

Mr Ramatlakane saw reports this morning about a go-slow in the Northern Cape from what he understood, because of conflict between management and lower ranking officials between white and black. The report stated the grievances were taken to a provincial and national level but nothing had happened which resulted in a go-slow. Serious attention needed to be paid to this as it communicated a bad message and was distasteful. It also formed part of the transformation debate.




Nat. Comm. Phiyega explained SAPS was an essential service and there was no striking allowed. She would deal with this matter because discipline was critical in policing. There would be no negotiation on this.

Mr Shaik Emam thought that in terms of the Sexual Offences Act, it would appear there was a very low conviction rate. Were there any measures in place to try to address this serious challenge?

Nat. Comm. Phiyega said SAPS did very well in the area of sexual offences convictions last year. Last year alone there were 645 convictions with 1832 life sentences so a lot of work was going into this space.

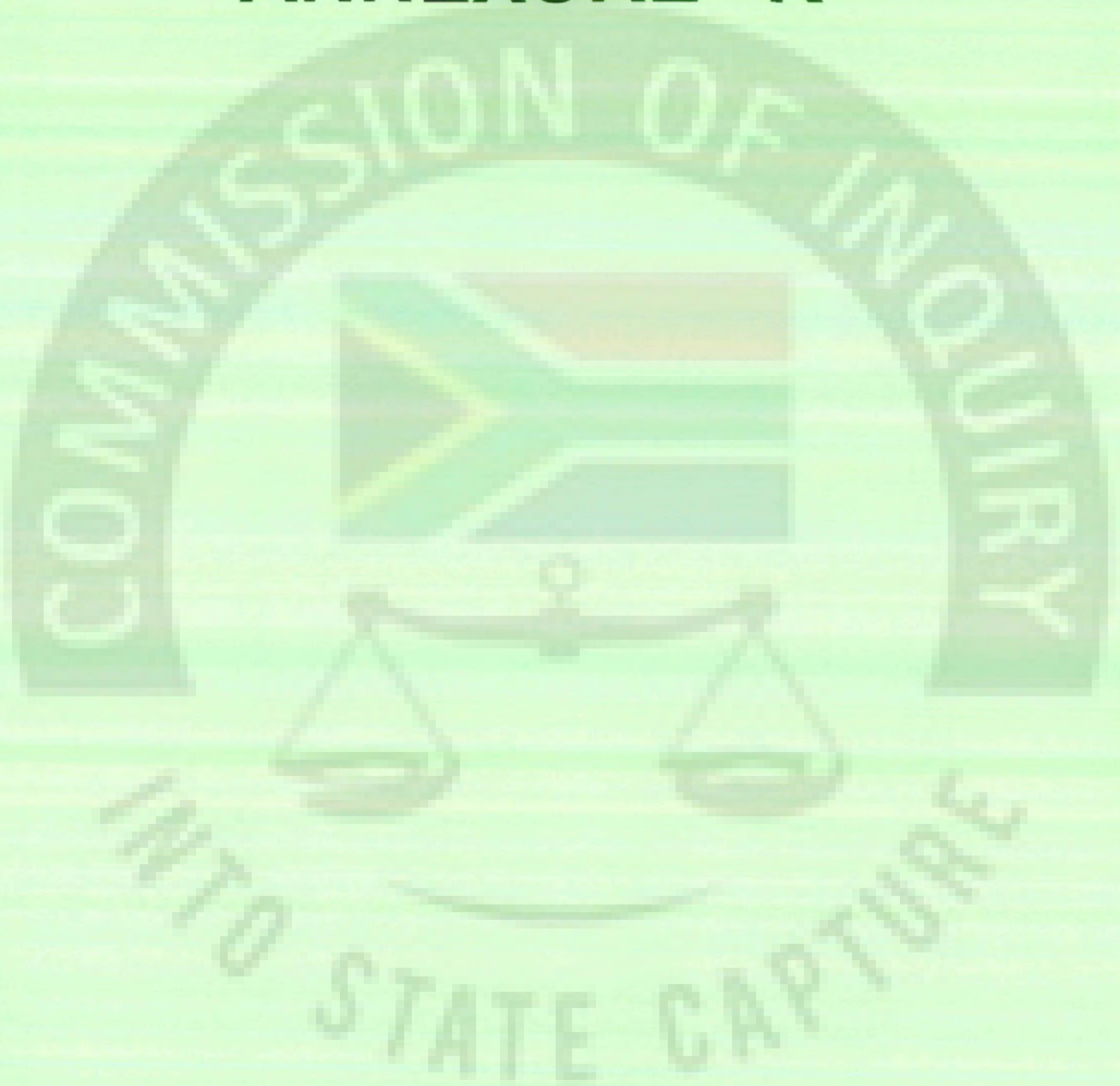
The Chairperson urged that attention needed to be paid to the appointment of the CFO with clear time commitments. Consultation with the DPCI also needed to occur. All outstanding issues would be dealt with at the end of March.

Apologies

The Chairperson noted the apologies of Ms D Mathebe (ANC) and Mr M Tshishonga (AGANG)



ANNEXURE “K”



"RMB.K"

RJM-1371



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



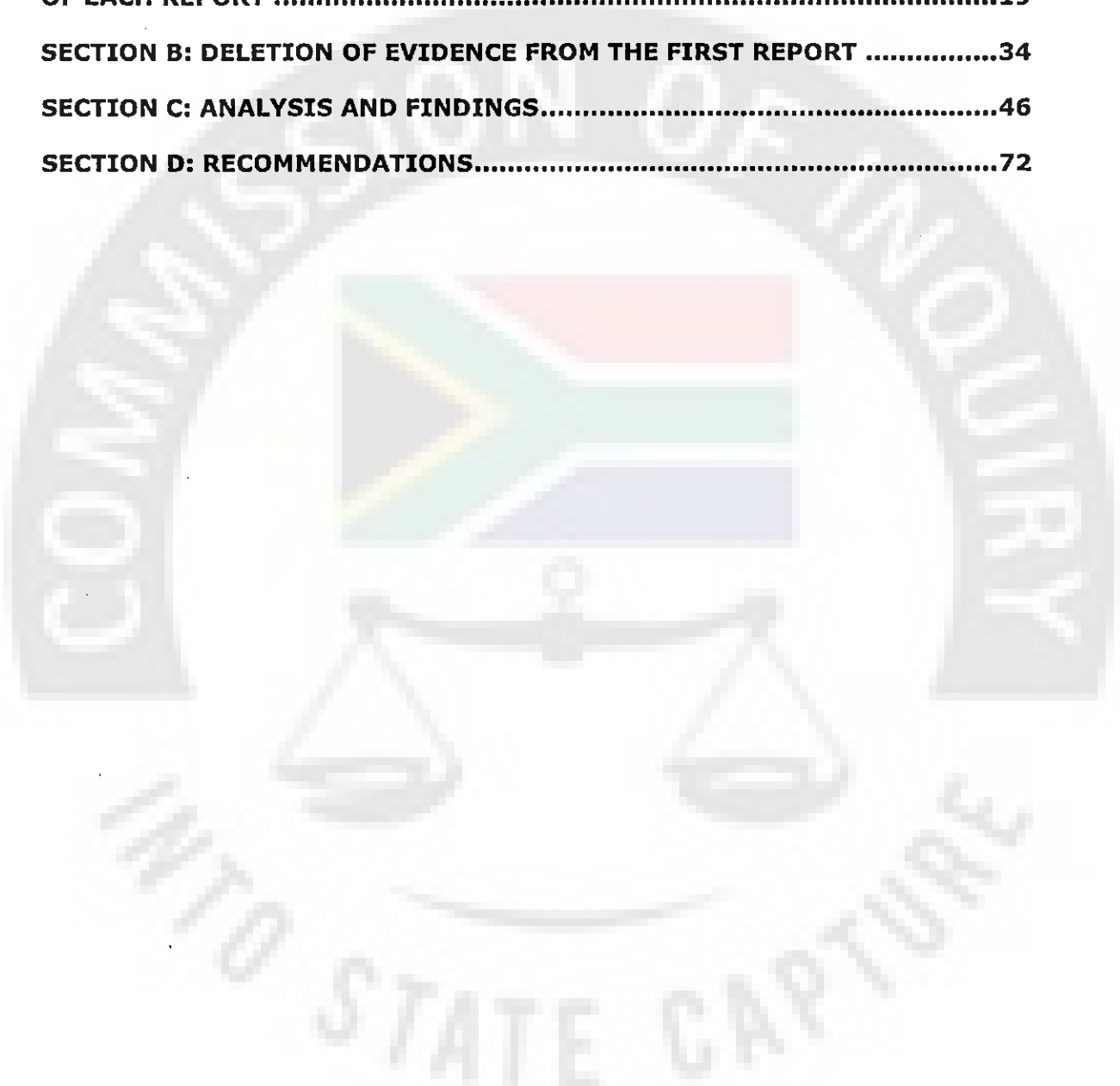
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TABLE OF CONTENTS

1	GLOSSARY OF TERMS	3
2	INTRODUCTION	5
3	SECTION A: CIRCUMSTANCES SURROUNDING THE COMPILING OF EACH REPORT	19
4	SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT	34
5	SECTION C: ANALYSIS AND FINDINGS.....	46
6	SECTION D: RECOMMENDATIONS.....	72



MP



1 GLOSSARY OF TERMS

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



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



2 INTRODUCTION

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

2.1 Terms of reference for the investigation

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

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

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

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

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

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

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

2.2 Factual background of the rendition

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

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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 Beitbridge border post. Two of the Zimbabwean nationals were released and the remaining two were transported to Beitbridge border post and handed over to a contingent of Zimbabwean police.

2.2.5.1.3

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

2.2.5.1.4

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

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2.2.5.2 Second operation

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

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

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

2.2.5.3 Third operation

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

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



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



2.3 Relevant legislation

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

2.3.1.1 Immigration Act

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

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

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

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



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

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

2.3.1.1.5 The Immigration Act defines 'Immigration officer' to mean -

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



2.3.1.1.6

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

2.3.1.1.7

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


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

...

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

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

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

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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



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

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

2.3.1.5.4 Forgery and Uttering:

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

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

2.3.1.5.5 Fraud:

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

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

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

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

⁴ Ibid at p733

⁵ Ibid at p721

⁶ Ibid 832



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

2.4 Methodology in conducting the investigation

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

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

2.4.1.2 interviewed the following people:

2.4.1.2.1 Khuba;

2.4.1.2.2 Moukangwe;

2.4.1.2.3 Angus;

2.4.1.2.4 Sesoko;

2.4.1.2.5 Mosing;

2.4.1.2.6 Mzinyathi;

2.4.1.2.7 Baloyi;

2.4.1.2.8 Chauke;

2.4.1.2.9 McBride;

2.4.1.2.10 Jiba,

and



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

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

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

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

2.4.2.3 Section C: Analysis and findings; and

2.4.2.4 Section D: Recommendations.



[Handwritten signature] *[Handwritten initials MP]*



3 SECTION A: CIRCUMSTANCES SURROUNDING THE COMPILING OF EACH REPORT

3.1 Section A1: First Report

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

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

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

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

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

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



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


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the Rendition. In addition, Khuba spoke to Leonie Verster who was Maluleke's supervisor. Leonie Verster indicated that Maluleke did not respect the chain of command and would communicate directly with Sibiya. Leonie Verster also drew Khuba's attention to the success reports directed to Dramat, Lebeya, 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 Sibiya. Although Khuba was in possession of cell phone records in relation to Sibiya, such cell phone records had to be interpreted by an expert.

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

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

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



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

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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.



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 Sibiya and in conjunction with his discussions with Sesoko, it was decided that it would not be possible to prove that Sibiya was guilty of assault beyond a reasonable doubt.

3.2.1.17

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

3.2.1.18

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

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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, Sibiya, Maluleke, Radebe, Nkosi and Makoe be charged criminally for their participation in the Rendition, the Second Report recommends that only Maluleke be charged criminally for his participation in the Rendition;.

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

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

3.2.1.24.2

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

3.2.1.25

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

3.2.2

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

3.2.2.1

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

3.2.2.2

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



- 3.2.2.3 In December 2014, after the suspension of Dramat, according to Chauke he received a call from the NDPP enquiring about the Rendition matter and was informed that Dramat had been suspended. The NDPP requested Chauke to proceed with dealing with the matter. Chauke advised the NDPP that he had since closed his file on the matter and was not dealing with it anymore.
- 3.2.2.4 Subsequently, on or about January 2015, the NDPP contacted Mzinyathi and advised Mzinyathi that the NDPP had received the docket from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot, wherein the arrests of the Zimbabwean nationals took place, fell under the jurisdiction of the North Gauteng DPP. According to McBride, it was IPID (and not Chauke) that took the docket to the NDPP after McBride had signed the Second Report on 9 April 2014.
- 3.2.2.5 Shortly after his return from leave on 13 January 2015, Mzinyathi was furnished with the docket by the NDPP. At the time, Diepsloot did not fall under the jurisdiction of Mzinyathi which the NDPP was aware of. As such, this referring of the docket by the NDPP to Mzinyathi amounted to a transfer of jurisdiction, in terms of section 22(3) of the National Prosecuting Authority Act, from one DPP to another DPP.
- 3.2.2.6 Mzinyathi, together with Baloyi, perused the docket and engaged in discussions amongst themselves. In addition, Baloyi engaged in discussions with Khuba. Mzinyathi and Baloyi issued their recommendation in respect of this matter on 13 March 2015. In light of the transfer of jurisdiction mentioned at 3.2.2.5, the 'recommendation' made by Mzinyathi was a decision.
- 3.2.2.7 A decision as to whether or not to prosecute taken by a DPP is subject to review only by the NDPP, in terms of section 22(2)(c) of the National Prosecuting Authority Act. There is no authority in the National Prosecuting Authority Act which allows a DPP to review a decision taken by another DPP.



3.2.2.8

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



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4 SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT

IPID REPORT 1	IPID REPORT 2
<p data-bbox="140 555 815 645">Page 9 The statement of Ndanduleni Richard Madilonga</p> <p data-bbox="140 801 815 891">The statement of Madilonga states as follows in the relevant paragraphs :</p> <p data-bbox="140 947 815 1272">"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".</p> <p data-bbox="140 1384 815 2087">"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</p>	<p data-bbox="842 555 1501 645">Page 9: statement of Richard Ndanduleni Madilonga</p> <p data-bbox="842 656 1501 745">The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p data-bbox="842 801 1501 1126">""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".</p> <p data-bbox="842 1137 1501 1227">(The paragraph that follows the above preceding paragraph has been deleted)</p> <p data-bbox="842 1238 1501 1653">"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"</p> <p data-bbox="842 1720 1501 1854">The paragraph that begins with "He will state.." from the first report is deleted in the second report.</p> <div data-bbox="1053 1899 1316 2110"> </div>



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



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**Page 21:para 5.2 reads****Success report dated 04/02/2011:****This report is addressed to Dramat, Hlatshwayo and Toka**

The relevant paragraph of the Success report reads as follows :

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

In page 20 para 5.2

In this report, this is what is deleted:

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



Page 21 para 5.3 Emails by Captain Maluleke:

The quoted email states the following :

"He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence".

Page 21 para 5.3

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

He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. He sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..."

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

The said letter states thus:

"Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating that in August 2010 General Sibiya and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibiya was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.

Page 21: Letter to stakeholders

In this report, the names of the people involved in the cooperation with Zimbabwean Police are no longer mentioned; The letter reads thus in this report :

"Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes."

MP


Page 22: Documents Regarding Moyo's case.

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

"In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police".

Page 21: Documents Regarding Moyo's case.

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

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

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

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

"Cell phone record of Major General Sibiya (0725953168): Upon perusal of the cell phone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent more than 20 SMS to Major General Dramat (0825515311). However Major General Dramat never responded to the SMS. The same automated SMS were sent to Lt General Lebeya at 0825751899. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs."



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

The analysis of Sibiya's cellular phone records now only analyses Sibiya's presence at the crime scene, not communicating with the officers involved., the analysis is as follows in this report:


"Findings

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



<p>Dramat's cellular phone records are not scrutinised nor mentioned in this report</p>	<p>According to this report Dramat's entire cellular phone record does not show any interaction between him and the Zimbabwean police. The findings are formulated thus :</p> <p>"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</p>
<p>Cell phone Records of Maluleke are analysed in the following manner :</p> <p>"Cell phone records of Captain "Cowboy" Maluleke (08277295181 The interaction between Major General Sibiya and Captain Maluleke was also found in a form of</p> <p>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.</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>"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</p>	<p>There is no mention of this information and statement by Neethling in this report.</p> <p style="text-align: right;">   </p>



to Major General Sibiya".	
<p>Telephone call made by Madilonga to Dramat. :</p> <p><u>"Cell Phone records of Lt Col Madilonga:</u> He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. <u>He contacted Lt General Dramat when he welcome the Zimbabwean police the first time.</u> His cell phone records his interaction with Captain Maluleke in line with his statement.</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>" 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</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>Khuba's findings on Dramat</p>
<p>Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:</p> <p>"Evaluation of the above findings: In the entire cell phone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appears once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.</p>	<p>Nothing is said about this issue</p>
<p>Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation. Khuba finds the following in this respect :</p> <p>"Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting</p>	<p>Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation</p> <p>Khuba states the following in respect of this allegation in this report:</p> <p>"The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts".</p>

MP



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

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warned them not to tell anyone about it".	
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p>	
<p>"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.</p>	<p>Nothing is said about this issue</p>
<p>He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals.</p> <p>"The cell phone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress".</p>	
<p>Report to parliament in response to the allegation:</p> <p>"A copy of the letter sent by Zimbabwean authority to Col Ntteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was</p>	

MP



<p>joined operation between South African Police and Zimbabwean police to trace and arrest the suspects."</p>	
<p>Innocent Khuba's findings on Sibiya page 32</p>	
<p>¶ The meeting held between IPID and Dramat on 2013/03/07</p> <p>"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.</p>	
<p>¶ Sibiya's presence at the scene</p> <p>"Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma"</p>	
<p>Cell phone Records Analysis</p> <p>"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"</p>	
<p>¶ The meeting with Zimbabwean Police for Cross-Border Crimes</p>	



<p>"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 "</p>	
<p>Recommendations</p>	<p>Recommendations</p>
<p>Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for;</p> <ul style="list-style-type: none"> • Kidnapping • Defeating the ends of justice, • Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi) 	<p>"Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice".</p>

[Handwritten signature]
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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 Sibiya's cell phone analysis and a few outstanding statements; and

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

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

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

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

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



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

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

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

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

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





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

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

5.1.2 Discrepancies between the two reports

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

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

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

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

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

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



5.1.3 Explanation for the discrepancies

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

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

5.1.3.2.1 **Khuba**

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

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

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

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

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



5.1.3.2.1.6

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

5.1.3.2.1.7

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

5.1.3.2.1.8

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

5.1.3.2.2

Sesoko

5.1.3.2.2.1

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

5.1.3.2.2.2

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





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

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

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

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

5.1.3.2.3 **McBride**

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

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

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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 -



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 Sibiya. The alteration of the recommendation seems to be a non sequitur in light of the fact that the so-called additional information added to the Second Report does not appear to be capable of justifying an altered conclusion.

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

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

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

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



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

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


5.3.1 Lieutenant-General Anwa Dramat

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

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

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

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

 MP



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

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

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

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

MP



Dramat contradicting any statement of fact within the success report.

5.3.1.5.1.3

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

5.3.1.5.2

Dramat received communications during and after the commissioning of the Rendition

5.3.1.5.2.1

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

5.3.1.5.2.2

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

5.3.1.5.3

Dramat congratulated members of crime intelligence after completion of the operation

5.3.1.5.3.1

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

MP



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.

MP



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.

MP



5.3.2.6

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

5.3.2.7

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

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

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

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

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

5.3.2.8

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



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

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

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

5.3.2.9

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

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

5.3.2.10

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

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



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

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

5.3.2.11

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

5.3.2.12

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

5.3.2.13

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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



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

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

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

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

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

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

Handwritten signature and initials, possibly 'MP'.



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

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

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

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

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

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

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



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

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

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

6 SECTION D: RECOMMENDATIONS

6.1 Maluleke

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

6.2 Dramat

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

6.3 Sibiya

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



6.4 Others

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

7 **Benefit of report**

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



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

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

8 Limitation of liability

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

This report was signed on 24 April 2015 at Sandton

Sandile July
Werksmans Attorneys

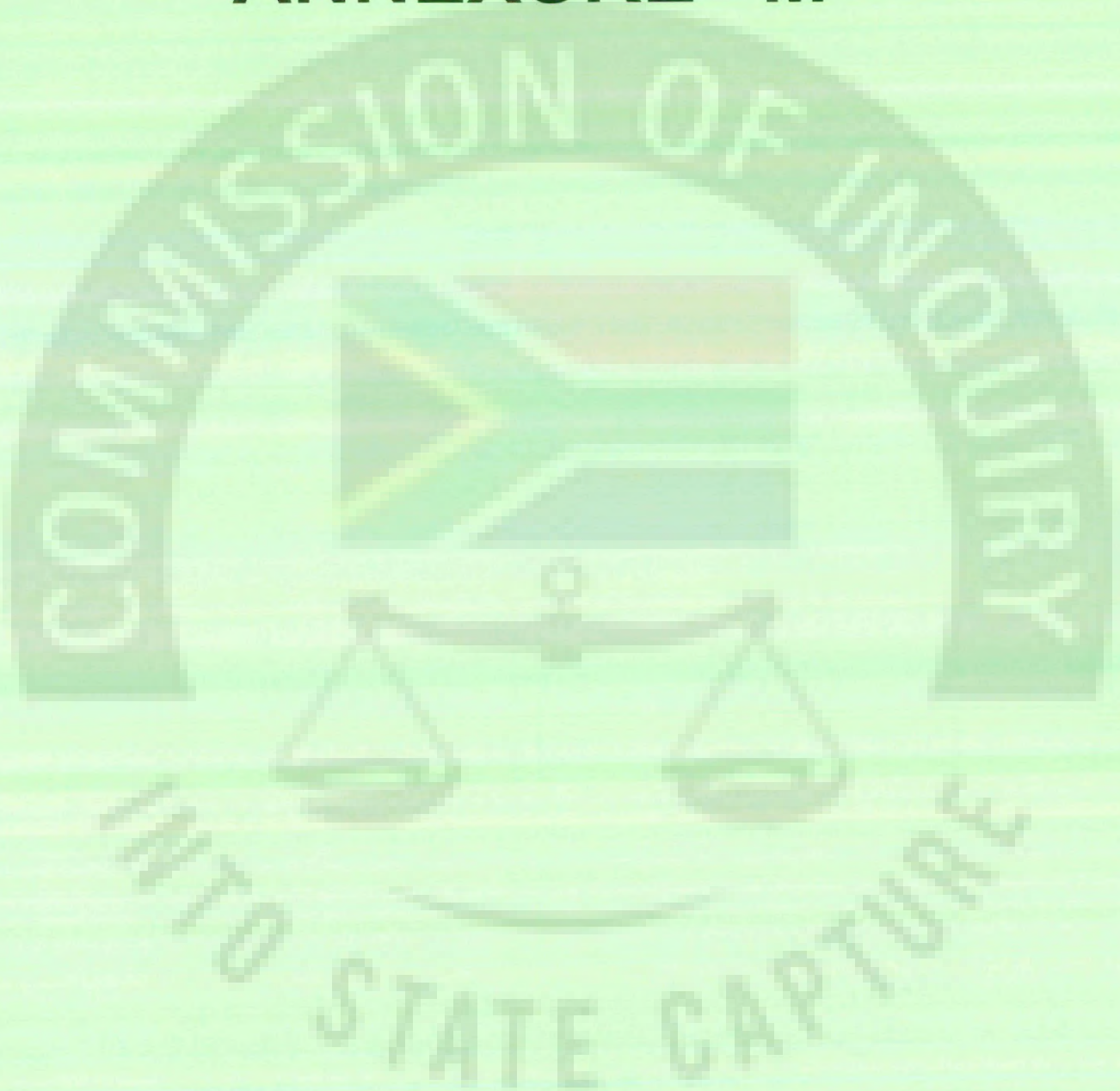
ANNEXURE “L”



Annexure "L"
(pages RJM-1446 to RJM-1455)
of Exhibit Y not cleared for publication
at this stage

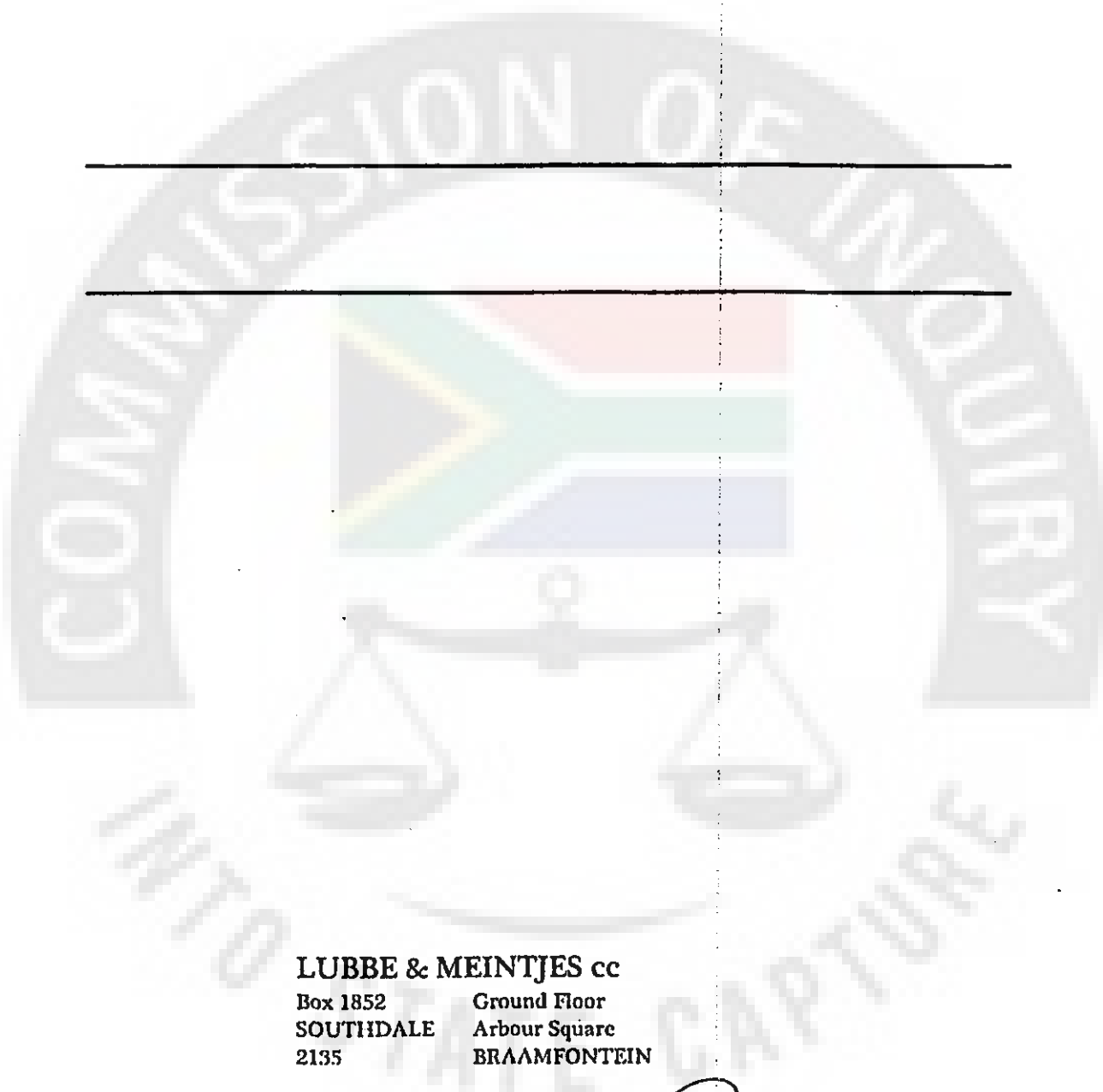


ANNEXURE “M”



TELEPHONE RECORDING

COL MAHLANGU
AND
HUMBULANI INNOCENT KHUBA



LUBBE & MEINTJES cc

Box 1852 Ground Floor
SOUTHDALE Arbour Square
2135 BRAAMFONTEIN

Tel: (011) 339-8073
Fax: (011) 339-6766

A large, stylized handwritten signature is enclosed within a hand-drawn oval. The signature appears to be a combination of letters, possibly "R" and "M", written in a cursive style.

A small, handwritten signature or mark, possibly initials, located in the bottom right corner of the page.

TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

1

BEGINING OF CD TRACK call_15 10 03 +27827782835

HUMBULANI INNOCENT KHUBA: Hello Mr Poko.

COL MAHLANGU: Yes, are you sleeping?

HUMBULANI INNOCENT KHUBA: No, I am not sleeping.

5 COL MAHLANGU: I am sure you are sleeping.

HUMBULANI INNOCENT KHUBA: No, who am I speaking to?

COL MAHLANGU: It is alright.

HUMBULANI INNOCENT KHUBA: Who am I speaking to, who am I speaking to, is it Mr Poko?

10 COL MAHLANGU: No, did you not save my phone numbers man?

HUMBULANI INNOCENT KHUBA: Who is it? I saved them, who am I speaking to?

COL MAHLANGU: If you had stored it you would have seen my name on your phone.

15 HUMBULANI INNOCENT KHUBA: Brigadier how are you?

COL MAHLANGU: I am okay man.

HUMBULANI INNOCENT KHUBA: I thought it was Mr Poko man.

COL MAHLANGU: Yes it is me; I wanted to check if you stayed well?

HUMBULANI INNOCENT KHUBA: No I am okay, how was the trip?

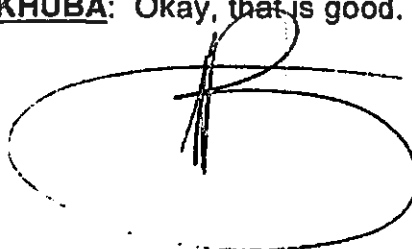
20 COL MAHLANGU: No I am not home yet but I am at the elder's house.

HUMBULANI INNOCENT KHUBA: Where, okay, okay.

COL MAHLANGU: In the rural areas here, I am home, no one stays here so I decided to come and open the windows so that some air can come in.

HUMBULANI INNOCENT KHUBA: Okay, that is good.

25 COL MAHLANGU: Yes.



TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

2

HUMBULANI INNOCENT KHUBA: No man, thanks, I will talk to Brigadier maybe tomorrow to finalise the appointment on Monday.

COL MAHLANGU: Yes, yes I forgot to show you something.

HUMBULANI INNOCENT KHUBA: Okay.

5 COL MAHLANGU: Yes, I forgot to show you something, just so that you know that everything you do for good for yourself.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: General, General, remember General is your friend.

HUMBULANI INNOCENT KHUBA: Yes.

10 COL MAHLANGU: Remember General Nhlemeza is your friend.

HUMBULANI INNOCENT KHUBA: Yes, no he is my friend.

COL MAHLANGU: You must understand that whatever you do well for yourself.

HUMBULANI INNOCENT KHUBA: Yes.

15 COL MAHLANGU: Not to support your enemies.

HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: We will make him, we will make him and we will empower him to ensure that you restore your job, that is what you must do.

HUMBULANI INNOCENT KHUBA: Okay.

20 COL MAHLANGU: That you must know, whatever, everything of good you do for yourself.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: And you are not in line with your enemy.

HUMBULANI INNOCENT KHUBA: Yes, yes, yes.

TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

3

COL MAHLANGU: As soon as everything is finalised General is the one who will do good for you.

HUMBULANI INNOCENT KHUBA: Okay, okay.

COL MAHLANGU: As a friend, as a person you know.

5 HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: I do not think he will dump you, I do not think he will throw you, he will throw you in the mud, the only thing you must do is be honest to yourself, fix everything, do not take wrong ideas and advices, and then we will tell General, NPA will deal with whoever they deal with, but we
10 will inform General that since this guy has pushed for us to reach where we are.

HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: As the witness.

HUMBULANI INNOCENT KHUBA: Yes, yes.

15 COL MAHLANGU: Then he is acquitted.

HUMBULANI INNOCENT KHUBA: Okay.

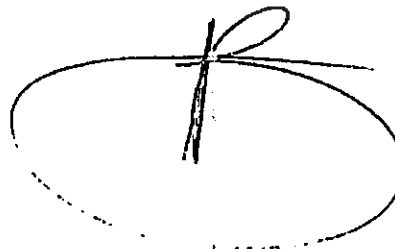
COL MAHLANGU: And something has to be done, he has to be restored next to his position or to his (indistinct).

HUMBULANI INNOCENT KHUBA: Okay.

20 COL MAHLANGU: Yes, please you must underline it, you must put NB behind it and underline it, do not do it.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: Do not highlight it with a highlighter, you must write it with a red pen underneath, it is the best statement to you, you must
25 empower yourself.



TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

4

HUMBULANI INNOCENT KHUBA: Okay.

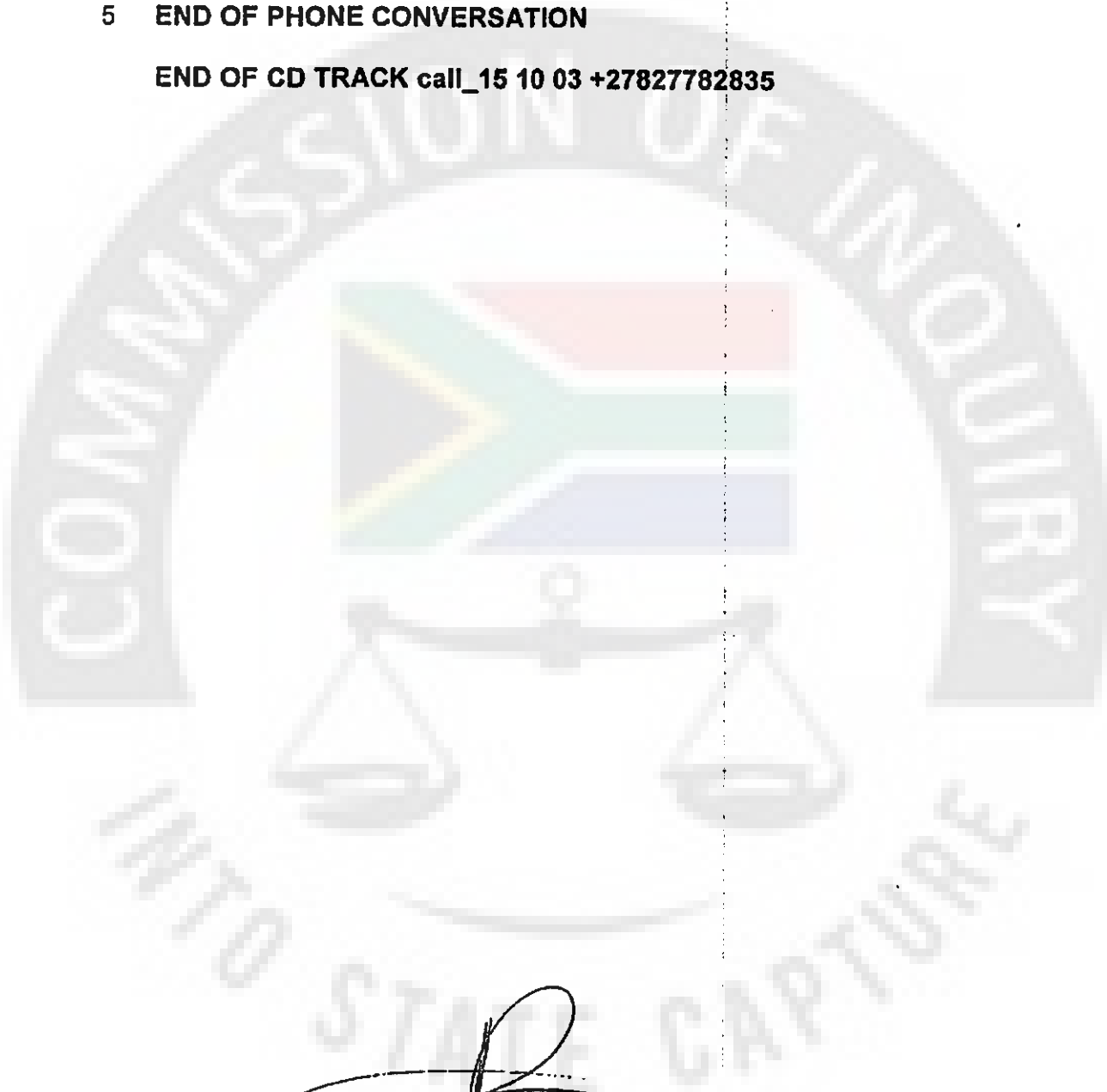
COL MAHLANGU: Yes, okay cool then.

HUMBULANI INNOCENT KHUBA: No problem, thanks.

COL MAHLANGU: Okay cool.

5 END OF PHONE CONVERSATION

END OF CD TRACK call_15 10 03 +27827782835



A handwritten signature, possibly 'R', is enclosed within a hand-drawn oval.

A small, handwritten signature or mark in the bottom right corner of the page.

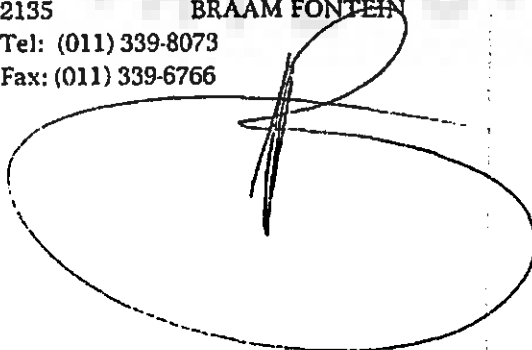
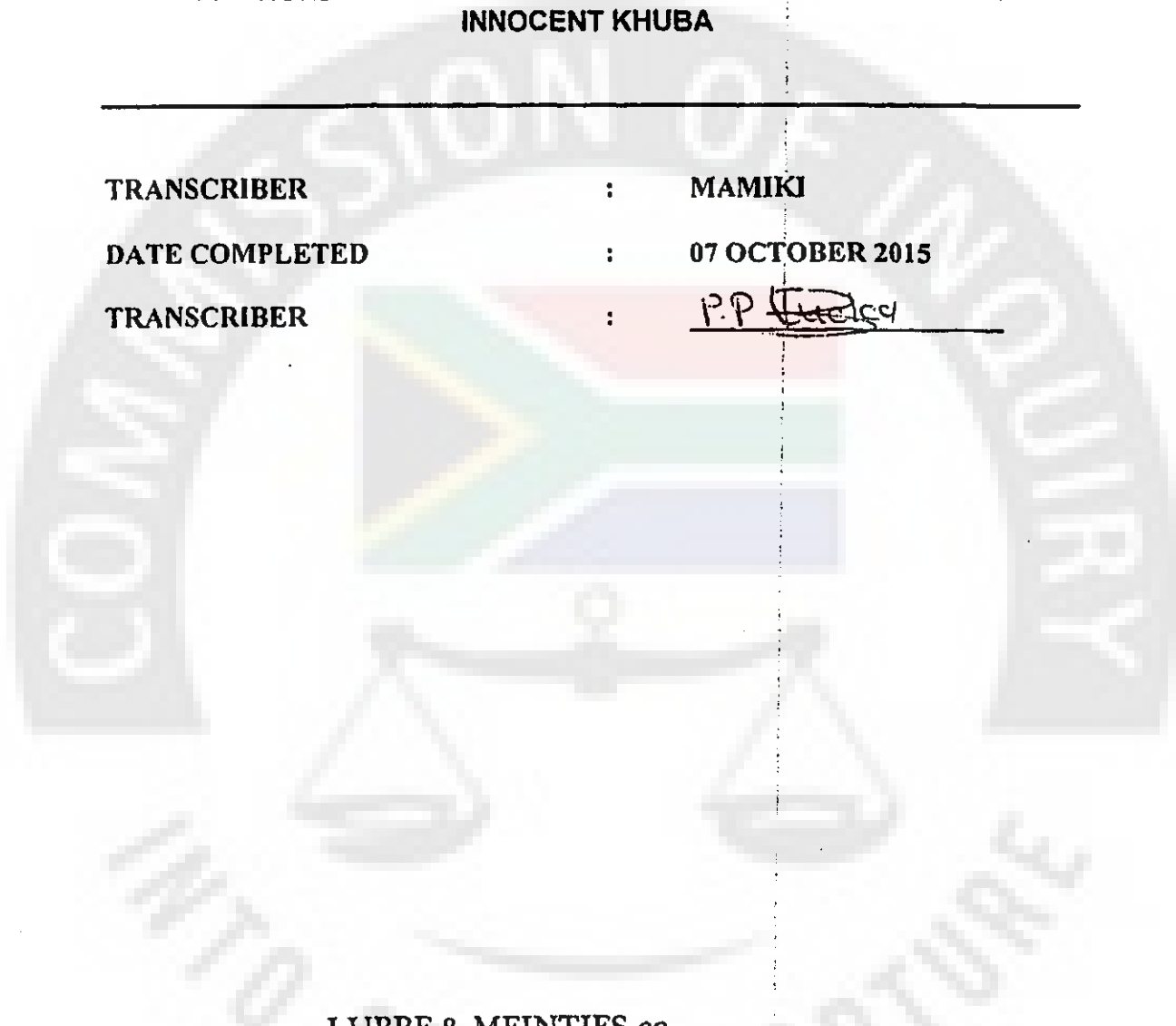
CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that so far as it is audible to us, the foregoing is true and correct transcript of the proceedings recorded by means of a mechanical recorder in the matter of:

**TELEPHONE RECORDING: COL MAHLANGU AND HUMBULANI
INNOCENT KHUBA**

TRANSCRIBER : MAMIKI
DATE COMPLETED : 07 OCTOBER 2015
TRANSCRIBER : P.P. [Signature]

LUBBE & MEINTJES cc
Box 1852 Ground Floor
SOUTHDALE Arbour Square
2135 BRAAM FONTEIN
Tel: (011) 339-8073
Fax: (011) 339-6766



ANNEXURE “N”





Auditing to build public confidence

AUDITOR-GENERAL
SOUTH AFRICA

FINAL MANAGEMENT REPORT INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

31 MARCH 2016

Communicated to management on: 22 July 2016





AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

MANAGEMENT REPORT

Independent Police Investigative Directorate

31 March 2016

Discussed with management on: 22 July 2016

CONTENT

Introduction	3
Section 1: Interactions with stakeholders responsible for oversight and governance	4
Section 2: Matters relating to the auditor's report	5
2.1 Misstatements in the financial statements	5
2.2 Conclusions on reported information relating to the performance of the department against predetermined objectives	6
2.3 Findings on compliance with legislation	8
2.4 Internal control	8
2.5 Assessment of assurance providers	13
Section 3: Specific focus areas	16
3.1 Financial viability	16
3.2 Procurement and contract management	18
3.3 Fraud and consequence management	19
Section 4: Emerging risks	20
Section 5: Ratings of detailed audit findings	22
Section 6: Conclusion	22
Section 7: Summary of detailed audit findings	23
Detailed audit findings contained in annexures A to C	27

MANAGEMENT REPORT TO THE ACCOUNTING OFFICER ON THE AUDIT OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID) FOR THE YEAR ENDED 31 MARCH 2016

INTRODUCTION

1. Our responsibility is to:

- express an opinion on the financial statements
- express a conclusion in the management report on the usefulness and reliability of the reported performance information for selected programmes, and report the material findings in the auditor's report
- report on material findings relating to compliance with specific requirements in key applicable legislation, as set out in the general notice issued in terms of the Public Audit Act, 2004 (Act No. 25 of 2004) (PAA).

Our engagement letter sets out our responsibilities and those of the accounting officer in detail.

2. This management report includes audit findings arising from the audit of the financial statements, reporting on predetermined objectives and compliance with legislation for the year ended 31 March 2016. These findings were communicated to management and the report details management's response to these findings. The report includes information on the internal control deficiencies that we identified as the root causes of the matters reported. Addressing these deficiencies will help to improve the audit outcome.
3. This management report consists of an executive summary and annexures containing the detailed audit findings.
4. The purpose of the management report is to communicate audit findings to the accounting officer and does not constitute public information. The auditor's report is finalised only after the management report has been communicated. All matters included in this report that relate to the auditor's report remains in draft form until the final auditor's report is signed. In adherence to section 50 of the PAA, we do not disclose any information obtained during the audit and contained in this management report.



EXECUTIVE SUMMARY**SECTION 1: Interactions with stakeholders responsible for oversight and governance**

1. During the audit cycle, we met with the following key stakeholders responsible for oversight and governance to communicate matters relating to the audit outcome of the Independent Police Investigative Directorate (IPID):

Stakeholder	Number of interactions
Portfolio committee on Police	5
Minister of Police	0
Acting Executive Director	6
Audit committee	4

2. At these interactions, we shared and discussed the engagement letter, audit strategy and plan, dashboard reports and auditors findings. All of the stakeholders made commitments to implement initiatives that can improve the audit outcome. . The commitments given and the progress of previous commitments are included in section 2.6, which deals with the assessment of assurance providers.

SECTION 2: Matters relating to the auditor's report**2.1 MISSTATEMENTS IN THE FINANCIAL STATEMENTS**

3. We commend the Independent Police Investigative Directorate for submitting financial statements that were free from material misstatements.

Material misstatement			Impact	Impact
Financial statement item	Finding (Include a brief description of the misstatement as per the findings and the auditor's report. Include the reasons for the auditee not correcting the misstatement when applicable.)	Occurred in prior year (Insert Yes/No)	R current year	R prior year
Material misstatements not corrected				
None				
Material misstatements corrected				
None				




2.2 MATTERS TO BE BROUGHT TO THE ATTENTION OF THE USERS

Additional matter paragraph

4. The following additional matter paragraph will be included in our auditor's report to draw the users' attention to matter regarding the audit, the auditor's responsibilities and the auditor's report:
5. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Unaudited supplementary schedules

6. The supplementary information set out on pages x to x; x to x does not form part of the financial statements and is presented as additional information. I have not audited these schedules and, accordingly, I do not express an opinion thereon.

2.3 REPORT ON PREDETERMINED OBJECTIVES

Introduction

7. As required by sections 4 and 20 of the PAA, read with the general notice issued in terms thereof, we have audited the reported performance information of the following selected programmes presented in the annual performance report of the Independent Police Investigative Directorate for the year ended 31 March 2016:
 - a. Programme 2: Investigation and Information Management on pages x to x
 - b. Programme 4: Compliance Monitoring and Stakeholder Management on pages x to x

Summary of audit conclusions

8. The following is a summary of our conclusions on the usefulness and reliability of the reported performance information:

Selected programme	Usefulness	Reliability
Programme 2: Investigation and Information Management	<i>Unqualified</i>	<i>Adverse</i>
Programme 4: Compliance Monitoring and Stakeholder Management	<i>Unqualified</i>	<i>Unqualified</i>

Programme 2: Investigation and Information Management

Conclusion on usefulness

9. In our opinion, the reported performance information of Programme 2: Investigations and Information Management is useful, in all material respects, in accordance with the identified performance management and reporting framework.

Basis for adverse conclusion on reliability




Basis – Reliability of reported performance information

10. The FMPPI requires auditee's to have appropriate systems to collect, collate, verify and store performance information to ensure reliable reporting of actual achievements against planned objectives, indicators and targets. The reported performance information was not reliable when compared to the source information provided. The auditee's total number of decision ready cases was materially overstated by the cases that were finalised as special closure of which are not decision ready.

Adverse conclusion on reliability

11. In our opinion, because of the significance of the matter described in the basis for adverse conclusion paragraphs, the reported performance information of Programme 2: Investigation and Information Management presented in the annual performance report is not reliable in accordance with the identified performance management and reporting framework.

Programme 4: Compliance Monitoring and Stakeholder Management**Unqualified Conclusion on usefulness and reliability**

12. In our opinion, the reported performance information of Programme 4: Compliance Monitoring and Stakeholder Management is useful and reliable, in all material respects, in accordance with the identified performance management and reporting framework.

Additional matters

13. We draw attention to the following matters. Our conclusion is not modified in respect of these matters:

Achievement of planned targets

16. Refer to the annual performance report on page(s) x to x; x to for information on the achievement of planned targets for the year. This information should be considered in the context of the qualified conclusions expressed on the usefulness and reliability of the reported performance information in paragraph(s) x; x; x of this report.

Unaudited supplementary information

17. The supplementary information set out on pages x to x does not form part of the annual performance report and is presented as additional information. We have not audited these schedules and, accordingly, we do not express a conclusion on them.

Audit findings in the auditors' report

18. We will report all the audit findings included under the basis for conclusion and additional matter sections of this report in the auditor's report.



MP

2.3 FINDINGS ON COMPLIANCE WITH LEGISLATION

19. Included below are material findings on compliance with selected specific requirements of applicable legislation, as set out in the general notice issued in terms of the PAA.

Strategic planning and performance management

20. Effective, efficient and transparent systems of risk management and internal control with respect to performance information and management was not in maintained as required by section 38(1)(a)(i) of the PFMA.

Expenditure management

21. Contractual obligations and money owed by the department were not settled within 30 days, as required by section 38(1)(f) of the Public Finance Management Act and Treasury Regulation 8.2.3.

Consequence management

22. Disciplinary steps were not taken against officials who made and/or permitted irregular expenditure and fruitless and wasteful, as required by section 38(1)(h)(iii) of the Public Finance Management Act and Treasury Regulation 9.1.3.

2.4 INTERNAL CONTROL

23. Below is our assessment of implementing the drivers of internal control based on significant deficiencies identified during our audit of the financial statements, the annual performance report and compliance with legislation. Significant deficiencies occur when internal controls do not exist, are not appropriately designed to address the risk, or are not implemented. These either had caused, or could cause, the financial statements or the annual performance report to be materially misstated, and material instances of non-compliance with legislation to occur.

24. The internal controls were assessed as follows:

😊	The required preventative or detective controls were in place.
😐	Progress was made on implementing preventative or detective controls, but improvement is still required, or actions taken were not or have not been sustainable.
😞	Internal controls were either not in place, were not properly designed, were not implemented or were not operating effectively. Intervention is required to design and/or implement appropriate controls.

25. The movement in the status of the drivers from the previous year-end to the current year-end is indicated collectively for each of the three audit dimensions under the three fundamentals of internal control. The movement is assessed as follows:

↑	Improved
↔	Unchanged





Regressed

	Financial statements		Performance reporting		Compliance with legislation	
	Current year	Prior year	Current year	Prior year	Current year	Prior year
Leadership						
Overall movement from previous assessment	↑		↑		↑	
• Provide effective leadership based on a culture of honesty, ethical business practices and good governance, and protecting and enhancing the best interests of the entity						
• Exercise oversight responsibility regarding financial and performance reporting and compliance as well as related internal controls						
• Implement effective human resource management to ensure that adequate and sufficiently skilled resources are in place and that performance is monitored						
• Establish and communicate policies and procedures to enable and support the understanding and execution of internal control objectives, processes and responsibilities						
• Develop and monitor the implementation of action plans to address internal control deficiencies						
• Establish an information technology governance framework that supports and enables the business, delivers value and improves performance						
Financial and performance management						
Overall movement from previous assessment	↑		↑		↑	
• Implement proper record keeping in a timely manner to ensure that complete, relevant and accurate information is accessible and available to support financial and performance reporting						
• Implement controls over daily and monthly processing and reconciling transactions						
• Prepare regular, accurate and complete financial and performance reports that are supported and evidenced by reliable information						







Management report of Independent Police Investigative Directorate

	Financial statements		Performance reporting		Compliance with legislation	
	Current year	Prior year	Current year	Prior year	Current year	Prior year
• Review and monitor compliance with applicable legislation						
• Design and implement formal controls over information technology systems to ensure the reliability of the systems and the availability, accuracy and protection of information					N/A	N/A
Governance						
Overall movement from previous assessment	↑		↑		↑	
• Implement appropriate risk management activities to ensure that regular risk assessments, including the consideration of information technology risks and fraud prevention, are conducted and that a risk strategy to address the risks is developed and monitored						
• Ensure that there is an adequately resourced and functioning internal audit unit that identifies internal control deficiencies and recommends corrective action effectively						
• Ensure that the audit committee promotes accountability and service delivery through evaluating and monitoring responses to risks and overseeing the effectiveness of the internal control environment, including financial and performance reporting and compliance with legislation						




Management report of Independent Police Investigative Directorate

26. The table below provides the overall status of the drivers of key controls and is followed by details of the significant deficiencies identified.

Status of the drivers of internal controls					
Leadership		Financial and performance management		Governance	
Effective leadership culture	↓	Proper record keeping	↑	Risk management	↔
Oversight responsibility	↑	Processing and reconciling controls	↔	Internal audit	↑
HR management	↔	Regular reporting	↓	Audit committee	↔
Policies and procedures	↔	Compliance monitoring	↑		
Audit action plans	↔	IT system controls	↑		
IT governance	↓				
<div>  Improved  Unchanged  Regressed </div>					
<div>  Improved  Unchanged  Regressed </div>					
<div> <div>Good</div> <div>Concerning</div> <div>Intervention required</div> </div>					

Leadership

Effective leadership culture

Management report of Independent Police Investigative Directorate

27. Four officials in top management positions have also been suspended or transferred, which has compounded leadership effectiveness problems. Ethical issues in the dealings within the department have also been identified, which forms the part of the ongoing leadership instability

Human resource management

28. The senior management vacancy rate at year end remained at 9% in the previous year to current year.
29. There are four senior management positions where the encumbered officials are on suspension and there are acting officials on these positions.

Action plans to address internal control deficiencies

30. Not all action plans developed based on the recommendations of internal and external audit findings were addressed and implemented.

Financial and performance management**Proper record keeping**

31. The department did not ensure that proper record keeping is retrieved in a timely manner to ensure that complete, relevant and accurate information is available to support financial and performance reporting specifically at decentralised locations.

Compliance monitoring

32. Although the department has a compliance monitoring unit, there is still lack of adequate review and oversight over compliance with relevant laws and regulations based on issues raised in this report.

Information technology systems

33. The reviewed user account procedure document for Basic Accounting System (BAS) is not yet approved due to the lengthy approval process and consultations within the department.
34. Logistical Information System (LOGIS) user accounts policy was found to be inadequate due to the fact that formally set out treasury guidelines were not followed or used when the directorate created the user account procedure document.
35. Review of users and system administrator's activities and access rights not performed on Flow Centric System (Performance Management System) due to the fact that management had not formally assigned the role of reviewing the appropriateness of user's access rights on the system.

Summary

36. The matters above, as they relate to the basis for the qualified opinion, findings on the annual performance report and findings on compliance with legislation, will be summarised in the auditor's report as follows:

Leadership

37. The leadership did not exercise oversight responsibility to ensure that consequence management is actively implemented in the department on all allegations as required by the Treasury regulations.



38. The leadership of the department did not design and implement proper internal controls to ensure that reporting of the cases on the system are accurate.

Financial and performance management

39. The end-user did not ensure, through regular monitoring, that the invoices received from the supplier are sent to the finance department on a timely basis to enable finance to review, approve and make payment within the 30 day period
40. Management of the regional level did not ensure that proper procedures per Standard Operation Procedures for decision ready case files are followed.

2.5 ASSURANCE PROVIDERS AND STATUS OF IMPLEMENTATION OF COMMITMENTS AND RECOMMENDATIONS

41. The annual report is used to report on the financial position of auditees, their performance against predetermined objectives and overall governance. One of the important oversight functions of Parliament is to consider auditees' annual reports. To perform this oversight function, they need assurance that the information in the annual report is credible. To this end, the annual report includes our auditor's report, which provides assurance on the credibility of the financial statements and the annual performance report, as well as on the auditee's compliance with legislation.
42. Our reporting and the oversight processes reflect on past events, as it takes place after the end of the financial year. However, management, the leadership and those charged with governance contribute throughout the year to the credibility of financial and performance information and compliance with legislation by ensuring that adequate internal controls are implemented.

We assess the level of assurance provided by these assurance providers based on the status of internal controls (as reported in section 2.5) and the impact of the different role players on these controls. We provide our assessment for this audit cycle below.

Management report of Independent Police Investigative Directorate

Assurance levels	
Senior management	<i>Provides some assurance</i>
Executive Director	<i>Provides some assurance</i>
Minister	<i>Provides limited/ no assurance</i>
Internal audit	<i>Provides assurance</i>
Audit committee	<i>Provides assurance</i>

Senior management

43. Senior management prepare and ensure the accuracy and reliability of the financial and performance information.

Executive Director

44. The accounting officer reviews and approves all the performance and financial reports before submitting to the auditors and published.
45. The accounting officer provides assurance only in strategic documents that a mandatory in terms of the law.

Minister

46. The minister provides is not involved in the running of the business of IPID and received information in a form of reports.

Internal audit

47. Legislation in South Africa requires the establishment and roles and responsibilities of internal audit units. Internal audit units form part of the internal control and governance structures of the department and play an important role in its monitoring activities. Internal audit provides an independent assessment of the department's governance, risk management and internal control processes.
48. The internal audit unit of a department must prepare a risk-based audit plan and internal audit programme for each financial year. It must advise the accounting officer and report to the audit committee on implementing the internal audit plan and matters relating to internal audit; internal controls; accounting procedures and practices; risk and risk management; performance management; loss control and compliance with the PFMA. The internal audit unit must also perform such other duties as may be assigned by the accounting officer.




Audit committee

49. The audit committee is an independent advisory body to the department and the management and staff of the department on matters relating to internal financial control and internal audits; risk management; accounting policies; the adequacy, reliability and accuracy of financial reporting and information; performance management; effective governance; the DoRA, PFMA, Treasury Regulations and any other applicable legislation; performance evaluation; and any other issues.

Status of implementing commitments and recommendations

50. Below is our assessment of the progress in implementing the commitments made by the department to address the prior year's audit findings.

No.	Commitment	Made by	Date	Status
1	Leave capturing late of the system	IPID	31 March 2106	Implemented
2	Improvement on the of disclosures on the AFS	IPID	31 March 2106	Implemented
3	Consequence management for financial misconduct	IPID	31 March 2106	In progress
4	Payment not may within 30 days	IPID	31 March 2106	In progress
5	Improve compliance with applicable laws and regulations of SCM	IPID	31 March 2106	In progress
6	Information with in physical investigation file different to flowcentric system	IPID	31 March 2106	In progress
7	Recommendations not forwarded within 30 days	IPID	31 March 2106	In progress

51. 31 audit recommendations accepted by management in the prior year on matters included in the auditor's report and other important matters were implemented, or alternative actions were taken to resolve the finding.
52. 5 recommendations are still being implemented and 5 have not been addressed, or very limited progress has been made.
53. Details on the status of implementing the previous year(s) recommendations are provided in section 8, which summarises the detailed audit findings.




SECTION 3: Specific focus areas

3.1 FINANCIAL VIABILITY

54. Our audit included a high-level overview of the department's financial viability as at year-end. The financial viability assessment provides useful information for accountability and decision-making purposes and complements the financial statements by providing insights and perspectives thereon. The financial viability assessment is expected to enhance timely remedial decision-making and policy reforms where financial viability may be at risk. It will also highlight to management those issues that may require corrective action and the urgency and magnitude of the reforms and decisions necessary to maintain operations. The information should be used to complement, rather than substitute, management's own financial assessment.

55. It should be noted that the financial viability assessment below is based on the department's financial statement amounts adjusted to reflect certain accrual accounting concepts.

Financial Viability assessment			
(Limitation = unable to obtain sufficient appropriate information to assess the indicator)		As at 31 March 2016	As at 31 March 2015
Expenditure management			
1.1	Creditor payment period	28.5 Days	17.1 Days
1.2	30+ day accruals as a percentage of total accruals	29.8%	3.2%
	• Amount of 30+ day accruals	R2 046 000	R172 000
	• Amount of total accruals	R6 858 000	R5 342 000
Revenue management			
2.1	Debtor collection period (after impairment)	0 Days	0 Days
2.2	Debtors impairment provision as a percentage of accrued departmental revenue	0%	0%
	• Amount of debtors impairment provision	R0	R0
	• Amount of accrued departmental revenue	R0	R0
Asset and liability management			
3.1	An accrual-adjusted deficit for the year was realised (total expenditure exceeded total revenue)	Yes	No
	• Amount of accrual-adjusted surplus/(deficit) for the year	(R11 860 000)	R4 213 000
3.2	An accrual-adjusted net current liability position was realised (total current liabilities exceeded total current assets)	No	No
	• Amount of accrual-adjusted net current assets/(liability) position	(R 26 249 000)	R22 790 000

Management report of Independent Police Investigative Directorate

Financial viability assessment			
(Limitation = unable to obtain sufficient appropriate information to assess the indicator)		As at 31 March 2016	As at 31 March 2015
3.3	An accrual-adjusted net liability position was realised (total liabilities exceeded total assets)	No	No
	• Amount of accrual-adjusted net asset/(liability) position	R 30 044 000	R19 946 000
3.4	Liquid assets as a percentage of total current liabilities (acid test percentage)	0.2%	0.4%
	• Amount of accrual-adjusted liquid assets (total current assets less inventory less prepayments)	R 47 000	R 82 000
	• Amount of accrual-adjusted total current liabilities	R 26 096 000	R 22 851 000
Cash management			
4.1	The year-end bank balance was in overdraft	Yes	Yes
	• Amount of year-end bank balance (cash and cash equivalents)/(bank overdraft)	(R251 000)	R1 285 000
4.2	Cash shortfall as a percentage of next year's total appropriation (budget) **	0.83%	0.47%
	• Amount of cash surplus/(shortfall)	R 2 046 000	R1 096 000
	• Amount of appropriation (budget) for the next year	R246 100 000	R234 800 000
4.3	Cash shortfall as a percentage of next year's appropriation (budget), excluding compensation of employees **	3%	1.6%
	• Amount of cash surplus/(shortfall)	R 2 046 000	R1 096 000
	• Amount of next year's appropriation (budget), excluding compensation of employees	R 676 000 000	R66 900 000
Overall assessment			
Overall the financial viability is assessed as		Yellow (Concerning)	Yellow (Concerning)
** This indicator assumes that the unauthorised expenditure of R 891 000, per note 11 will not be approved with funding.			

56. Although the creditor payment period has been calculated as 28.1 days above, there have still been a sizable number of creditors that were paid after the 30 days period. This is due to that the financial indicator assessment is done "as at year-end" and therefore only reflects year-end results. From the evidence collected during the audit, it is clear that there were problems with settlement of debts within the 30 days period. Various reasons were given for this, including cash flow issues.

3.2 PROCUREMENT AND CONTRACT MANAGEMENT

57. The audit included an assessment of procurement processes, contract management and the related controls in place. To ensure a fair, equitable, transparent, competitive and cost-effective supply chain management (SCM) system, the processes and controls need to comply with legislation and minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

58. A summary of the findings from the audit are as follows:

Irregular expenditure

R 2 069 000 (100%) of irregular expenditure incurred in the current financial year was as a result of the contravention of SCM legislation. No irregular expenditure incurred in previous years, was also identified in the current year. 0% in the current year (29% in the prior year) of this irregular expenditure was identified during the audit process and not detected by the department's monitoring processes.

Procurement processes

59. The table below is a summary of findings identified on procurement processes:

	Total		Quotations		Contracts	
	Number	Value	Number	Value	Number	Value
Awards selected for testing	58	85 372 129	57	83 972 129	1	1 400 00
Expenditure incurred on selected awards - current year		83 972 129		83 972 129		0
Limitations - awards selected but could not be tested	0	0	0	0	0	0
Awards on which non-compliance was identified	0	0	0	0	0	0
Irregular expenditure identified	0	0	0	0	0	0
Instances of irregular expenditure where goods/ services were not received	0	0	0	0	0	0

3.3 FRAUD AND CONSEQUENCE MANAGEMENT

60. The primary responsibility for preventing and detecting fraud rests with management and those charged with governance. We are responsible for obtaining reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error, and to issue an auditor's report that includes our opinion. Due to the inherent limitations of an audit, there is a risk that some material misstatements, including fraud, may not be detected.

61. The PFMA and its regulations clearly stipulate that matters such as incurring unauthorised, irregular as well as fruitless and wasteful expenditure; the possible abuse of the SCM system (including fraud and improper conduct); and allegations of financial misconduct should be

Management report of Independent Police Investigative Directorate

investigated. Disciplinary steps should be taken based on the results of the investigations. Our audits included an assessment of the department's management of consequences. The significant findings are provided below :

62. The following measures were not implemented to ensure that the environment is conducive to effective consequence management:

- There is no code of conduct that addresses ethical behaviour by officials.
- There is lack of proper record keeping ensuring that complete, relevant and accurate information is accessible and available to support the processes followed for financial misconduct/ transgressions committed by officials and suppliers of the auditee.

The statistics in the table below indicate the effectiveness of the department's measures for responding to allegations of financial misconduct, fraud and other improper conduct in SCM.

	Allegations reported in the prior year	Allegations reported in the current year
Number of cases of fraud/corruption reported through the auditee's internal mechanism	0	2
Number of cases investigated (in relation to number of cases reported)	0	2
Number of cases not yet investigated (in relation to number of cases reported.)	0	0
Number of investigations finalised i.e. report issued	0	0
Number of cases that resulted in disciplinary actions, civil recoveries or criminal charges being laid	0	0
Number of cases that have been referred to the law enforcement/investigation agencies <i>e.g. the SAPS, the Public Protector, the Competition Commission, or the SIU</i>	0	0

Failure to implement consequences

63. The table below provides a summary of transgressions from the previous year that were either not investigated or proper disciplinary steps were not taken after investigation.

Irregular and fruitless and wasteful expenditure

Finding	Value
Effective and appropriate disciplinary steps were not taken against officials who permitted irregular expenditure	236 956
Effective and appropriate disciplinary steps were not taken against officials who permitted fruitless and wasteful expenditure	314 000

Transgressions identified in the current year

64. Irregular, fruitless and wasteful expenditure disclosed in note 23 and note 24 to the financial statements must be investigated to determine whether any official is liable for losses incurred as a result of the irregular, fruitless and wasteful expenditure. Disciplinary steps must be taken

Management report of Independent Police Investigative Directorate

against officials who caused or permitted the irregular, fruitless and wasteful expenditure and losses incurred as a result must be recovered from the person liable.

65. This report includes other audit findings that are indicative of transgressions by officials or other role players. Summarised in the table below are allegations of transgressions that must be investigated and disciplinary steps taken based on the results of the investigations:

Finding	Number of instances	Value
Possible performance of additional remunerative work without approval	1	0



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SECTION 4: Emerging risks

Accounting, performance management/reporting and compliance matters

New pronouncements

Modified cash standard

66. Componentisation of assets:

- Departments are encouraged to componentise assets in their asset registers as it will become a requirement in future. The effective date to componentise assets has not been determined yet.

67. Inventory

- Departments are only required to include inventory in the disclosure notes to the financial statements from 1 April 2017; consequently, we have not included any findings in the auditor's report in this regard.

New legislation

Treasury Regulations

68. The Treasury Regulations are currently being revised, which may introduce a number of new requirements once effective.

Supply Chain management

14. The National Treasury, through the Office of the Chief Procurement Officer, is accelerating measures that will make it easy for business and government to transact; and ensure that government purchase what it needs at the right time, the right price, in the correct quantities and delivered to right location. Central to this objective is the following pertinent themes:

- Optimising procurement strategies;
- Supplier relationship management;
- eProcurement and digitalisation of procurement;
- Performance optimisation.

In this regard, the department must take note of the reforms from the Office of the Chief Procurement Officer. Policies, procedures and systems of the department must be amended to ensure compliance with these measures/ reforms. Below are some of the reforms:

1. **eTender portal:** With effect from 01 July 2016, all departments, constitutional institutions and public entities are required to publish all invitations to tender through the eTender portal.
2. **Central Suppliers Database:** With effect from 01 July 2016, all departments, constitutional institutions and public entities are required to utilise the National Treasury' Central Suppliers database for all procurement through quotations.
3. **Procurement plans (Treasury Instruction 02 of 2016/17):** New requirements have been introduced for submission of quarterly reports on the implementation of procurement plans effective from 01 May 2016.

4. Preventing and combating the abuse of the SCM system: Treasury Instruction 03 of 2016/17 has implemented new measures to deal with the abuse of the SCM system. The Instruction introduces new rules for management of deviations from procurement processes, expansions/ variations of contracts, management of complain, amongst others.
5. Optimising procurement strategies and approaches: The National Treasury has identified commodities (industries) that need a centralised approach for procurement. These include travel and accommodation and Fixed line, mobile and data communication:
 - National Travel Policy (Treasury Instruction 01 of 2016/17): The National Treasury has developed a National Travel policy to provide direction to departments, constitutional institutions and schedule 3A&3C public entities with regard to management of air travel, car hire, transfer services and accommodation for public servants. Institutions are expected to fully implement the National Travel Policy with effect from 01 July 2016.
 - The department must consider circulars 02 of 2016 and 06 of 2016 which provides guidance on NT's measures relating to Fixed line, mobile and data communication.


MP

SECTION 5: Ratings of detailed audit findings

69. For the purposes of this report, the detailed audit findings included in annexures A to C have been classified as follows:

- Matters to be included in the auditor's report: These matters should be addressed as a matter of urgency.
- Other important matters: These matters should be addressed to prevent them from leading to material misstatements of the financial statements or material findings on the performance report and compliance with legislation in future.

SECTION 6: Conclusion

70. The matters communicated throughout this report relate to the three fundamentals of internal control that should be addressed to achieve sustained clean administration. Our staff remains committed to assisting in identifying and communicating good practices to improve governance and accountability and to build public confidence in government's ability to account for public resources in a transparent manner.

Yours faithfully

Nelisiwe Mhlongo
Senior Manager: National D

Enquiries: Matome Kenneth Laka
Telephone: 012 399 0202
Email: MatomeL@agsa.co.za

Distribution:
Accounting Officer
Chief Financial Officer
Audit committee
Head of internal audit unit

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Management report of Independent Investigative Directorate

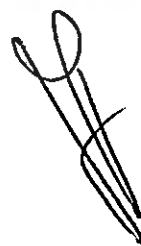
SECTION 8: Summary of detailed audit findings

Page no.	Finding	Classification							Rating	Number of times reported in previous three years	Status of implementation of previous year(s) recommendation
		Misstatements in financial statements	Misstatements in annual performance report	Non-compliance with legislation	Internal control deficiency	Service delivery	Matters affecting the auditor's report	Other important matters			
ANNEXURE A: MATTERS AFFECTING THE AUDITOR'S REPORT											
Audit of Predetermined Objectives											
1	Understatement of recorded recommendations to SAPS		✓				✓			1	In progress
2	Recommendations not forwarded within 30 days		✓				✓			1	In progress
3	Recommendation not reviewed and signed off by a delegated official		✓				✓			0	In progress
4	Misclassification of investigation cases reported between different indicators		✓				✓			0	In progress
5	Completed investigations reported in an incorrect period		✓				✓			0	In progress
6	Proper procedures not followed for completing cases		✓				✓			0	In progress
7	Incorrect classification of case file		✓				✓			0	In progress
8	Decision ready cases completed in contravention of the standard operating procedure.		✓				✓			0	In progress
9	Duplication of completed investigations reported on torture		✓				✓			0	In progress
10	No proper internal controls put in place to ensure proper recording of case written notifications.		✓				✓			0	In progress
11	Performance Indicators not well defined		✓				✓			0	In progress
12	Media statements and media responses incorrectly reported in the annual performance plan.		✓				✓			0	In progress
13	Difference between the denominator reported and the recalculated for backlog cases at the		✓				✓			0	In progress


 MP

Management report of Independent Investigative Directorate

Page no.	Finding	Classification							Rating	Number of times reported in previous three years	Status of Implementation of previous year(s) recommendation
		Misstatements in financial statements	Misstatements in annual performance report	Non-compliance with legislation	Internal control deficiency	Service delivery	Matters affecting the auditor's report	Other important matters			
	beginning of the financial year										
No compliance											
14	Payments not made within 30 days from receipt of invoices in contravention Treasury Regulations.			✓				✓		2	In progress
15	No consequence management for official who incurred irregular expenditure and fruitless and wasteful expenditure			✓				✓		1	In progress
ANNEXURE B: OTHER IMPORTANT MATTERS											
Non compliance											
16	Officials performed additional remunerative work without prior approval or declaration thereof			✓				✓		2	In progress
17	Fruitless and wasteful expenditure incurred by advertising of a position which is not on the approved structure.			✓				✓		0	In progress
Human Resource Management – Employee costs											
18	No leave register kept at Provincial office				✓			✓		1	In progress
19	The SMS members Performance Agreement Quality Assurance methodology not properly implemented			✓				✓		0	In progress
20	No systematic remedial or developmental support to assist unsatisfactory performing employees			✓				✓		0	In progress
21	Performance Agreement Not Signed by 31 May			✓				✓		1	In progress
Assets Management											
22	Assets register not updated			✓				✓		0	In progress
23	Assets not verified for existence and	✓						✓		2	In progress




Management report of Independent Investigative Directorate

Page no.	Finding	Classification							Rating	Number of times reported in previous three years	Status of implementation of previous year(s) recommendation
		Misstatements in financial statements	Misstatements in annual performance report	Non-compliance with legislation	Internal control deficiency	Service delivery	Matters affecting the auditor's report	Other important matters			
	Completeness of the assets register										
Disclosures											
24	Understatement of lease commitment	✓						✓		0	In progress
25	Overstatement of Key Management personnel	✓						✓		2	In progress
Information Technology											
26	The user account procedure document for Basic Accounting System (BAS) is inadequately designed				✓			✓		3	In progress
27	Monitoring of system controller activities on the Logistical Information System (LOGIS) was found to be inadequate				✓			✓		3	In progress
28	Review of users and system administrators activities and access rights not performed on Flow Centric System				✓			✓		0	In progress



MP

Detailed audit findings

ANNEXURE A: MATTERS AFFECTING THE AUDITOR'S REPORT

PREDETERMINED OBJECTIVES

1. Understatement of recorded recommendations to SAPS

Audit Finding

PFMA section 40(1) (a), states that the accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards

Programme 2: Investigation and Information Management

Performance indicator: Percentage of disciplinary/criminal recommendation reports referred to the South African Police Service/or Municipal Police Services within 30 days of recommendation report being signed off.

Method of Calculation: Based on the (total number of criminal/disciplinary recommendation reports referred to NPA/SAPS within 30 days of sign off (+) the total number of criminal recommendation reports being signed off) X 100.

The following recommendation to SAPS was not recorded in the master register

Kwa-Zulu Natal

No	CCN	Nature	Date of Signed Off
1	2013040173	Negative	2015/09/03

Performance information disclosed in the quarterly reports and annual performance report might not be complete.

Internal control deficiency

Performance and Financial Management: Management of the region did not update the recommendation register to ensure that all the recommendations are recorded in the recommendations master register

Recommendation

The management should update the recommendation master register and continuously review master register to confirm that all valid recommendation letters are recorded in the recommendation master register.

Management response

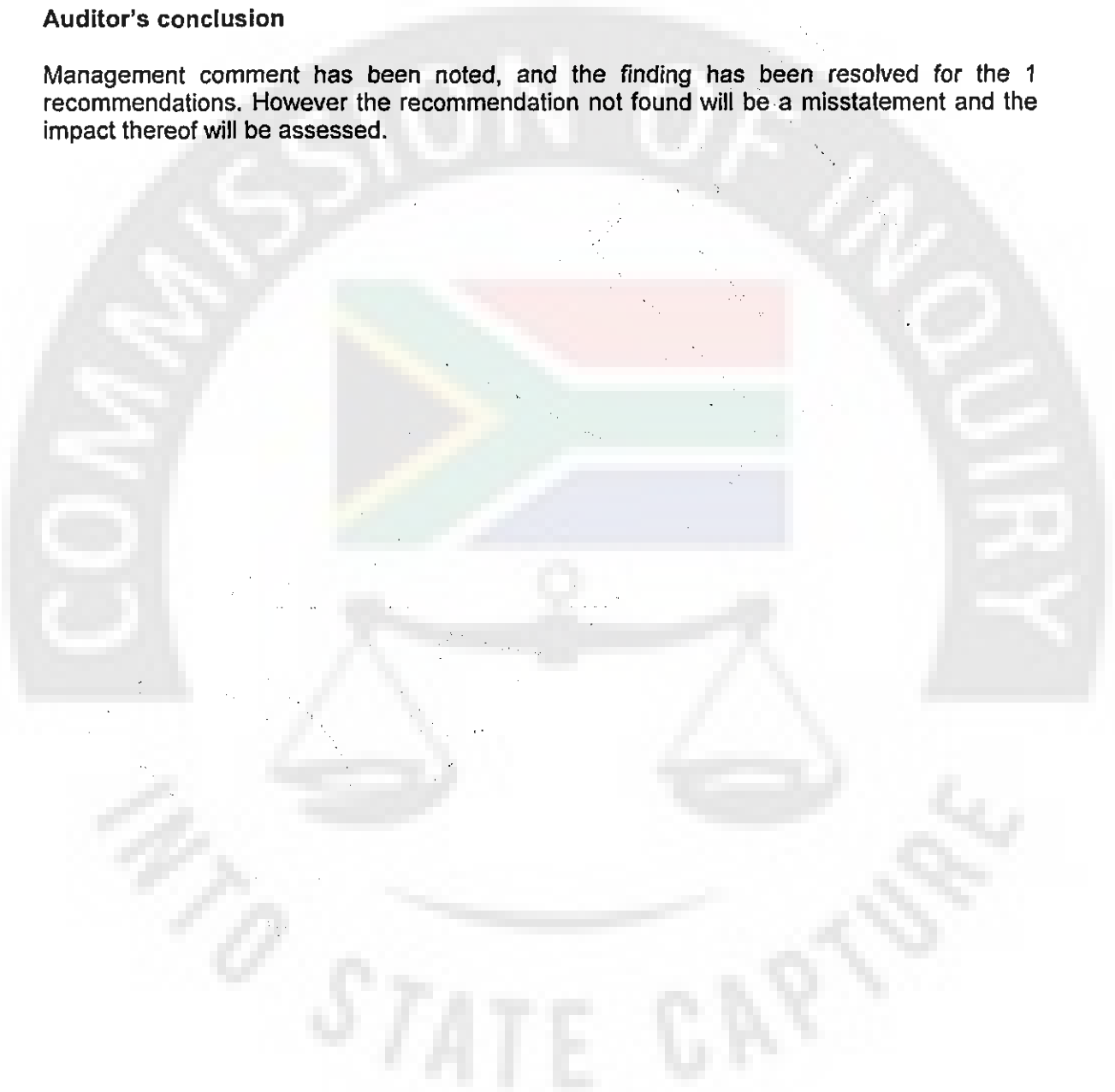
However the office agrees with AG finding that CNN 2013040173 KwaZulu Natal does not appear on the master register. CCN 2013040173 does not appear due to lack of documentary evidence of existence.

As a corrective measure, management has a recommendation verification session as a measure in place to ensure that discrepancies do not occur. Due to the various problems in relations to the statistics presented by the SAPS and IPID, the provincial co-ordinators are now required to come to head office on a monthly basis to rectify the reports and the statistics.

Name: Mr. MR Mamabolo
Position: Acting DD: Compliance Monitoring
Date: 11/07/2016

Auditor's conclusion

Management comment has been noted, and the finding has been resolved for the 1 recommendations. However the recommendation not found will be a misstatement and the impact thereof will be assessed.



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2. Recommendations not forwarded within 30 days

Audit Finding

IPIDs Annual Performance plan indicates that the disciplinary and criminal recommendation reports referred to the South African Police Service or Municipal Police Services and National Prosecuting Authority within 30 days of recommendation report being signed off.

Programme 2: Investigation and Information Management

Performance Indicator: Percentage of criminal recommendation reports referred to the National Prosecuting Authority within 30 days of recommendation report being signed off.

Method of Calculation: Based on the (total number of criminal recommendation reports referred to NPA within 30 days of sign off (+) the total number of criminal recommendation reports being signed off) X 100.

A. It was then noted from the selected sample that the following disciplinary recommendations were not forwarded to the South African Police Service and/or Municipal Police Services within 30 days after the recommendation letter was signed off.

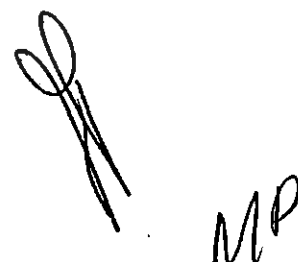
Kwa-Zulu Natal

Information per recommendations register					Information per file and recommendation letter		
No	CCN	Section	Date Recommendation was signed off	Date Recommendation was received by SAPS	Date Recommendation was signed off	Date Recommendation was received by SAPS	No. of days
1	2013030582	28(1)(f)	31-Mar-15	23-Apr-15	18-Mar-15	23-Apr-15	36
2	2013010434	28(1)(b)	23-Apr-15	23-Apr-15	31-Jan-13	23-Apr-15	812
3	2014020398	28(1)(f)	23-Oct-15	23-Oct-15	09-Sep-15	23-Oct-15	44

North West

Information per recommendations register					Information per file and recommendation letter		
No	CCN	Section	Date Recommendation was signed off	Date Recommendation was received by SAPS/ MPS	Date Recommendation was signed off	Date Recommendation was received by SAPS/ MPS	No. of days
1	2014120541	28(1)(f)	17-Nov-15	17-Nov-15	2015/02/28	2015/06/19	111
2	2015040340	28(1)(f)	07-Jul-05	07-Jul-05	2015/04/30	2015/06/17	48

Gauteng



Information per recommendations register					Information per file and recommendation letter		
No	CCN	Section	Date Recommendation was signed off	Date Recommendation was received by SAPS/ MPS	Date Recommendation was signed off	Date Recommendation was received by SAPS/ MPS	No. of days
1	2015010105	28(1)(a)	2015/04/17	2015/04/17	2015/01/29	2015/04/17	78

B. The following criminal recommendations were not forwarded to the NPA within 30 days of recommendation reports being signed off, however they were reported as being submitted within 30 days.

Free State Region

Information per recommendations register					Information per file and recommendation letter			
No.	CCN	Section	Date Recommendation was received by NPA	No of days	Date Recommendation was signed off	Date Recommendation was received by NPA	No of days	Sign off Name
1	2015040169	28(1)(c)	06-Aug-15	28	06-Jul-15	06-Aug-15	31	KI Kgamanyane
2	2015050033	28(1)(b)	17-Nov-15	0	23-Jun-15	17-Nov-15	147	KI Kgamanyane

Kwa-Zulu Natal

Information per recommendations register					Information per file and recommendation letter			
No	CCN	Section	Date Recommendation was received by NPA	No of days	Date Recommendation was signed off	Date Recommendation was received by NPA	No of days	Sign off Name
1	2012080406	28(1)(b)	10-Jul-15	0	11-Jan-13	20-Jul-15	920	A. Angus

North West

Information per recommendations register					Information per file and recommendation letter			
No.	CCN	Section	Date Recommendation was received by NPA	No of days	Date Recommendation was signed off	Date Recommendation was received by NPA	No of days	Sign off Name
1	2014080442	28(1)(c)	02-Dec-15	2	30-Oct-15	02-Dec-15	33	B Motlhale

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- C. It is noted that the recommendation letter to SAPS was not stamped by the SAPS as confirmation of receipt therefore; we cannot reliably confirm whether the recommendation letter was signed off and forwarded to the SAPS within 30 days.

Mpumalanga

Information per recommendations register					Information per file and recommendation letter			
No.	CCN	Section	Date Recommendation was signed off	Date Recommendation was received by SAPS	Date Recommendation was signed off	Date Recommendation was received by SAPS	No of days	Sign off Name
1	2012090193	28(1)(f)	21-Apr-15	29-Apr-15	21-Apr-15	29-Apr-15	8	G. Angus

Kwa-Zulu Natal

Information per recommendations register					Information per file and recommendation letter			
No	CCN	Section	Date Recommendation was signed off	Date Recommendation was received by SAPS	Date Recommendation was signed off	Date Recommendation was received by SAPS	No of days	Sign off Name
1	2012080256	28(1)(h)	29-Jul-15	20-Aug-15	26-Jul-15	20-Aug-15	25	LB John
2	2013110540	28(1)(f)	23-Jul-15	23-Jul-15	30-Jun-15	23-Jul-15	23	M Morema
3	2015030090	28(1)(f)	19-Nov-15	19-Nov-15	17-Oct-15	19-Nov-15	33	C v.d Sandt

- D. It is noted that the recommendation letter to NPA was not stamped by the NPA as confirmation of receipt therefore; we cannot confirm whether the recommendation letter was signed off and forwarded to the NPA within 30 days.

Kwa-Zulu Natal

Information per recommendations register					Information per file and recommendation letter		
No.	CCN	Section	Date Recommendation was signed off	Date Recommendation was received by NPA	Date Recommendation was signed off	Date Recommendation was received by NPA	Sign off Name
1	2011100373	28(1)(h)	26-Aug-15	26-Aug-15	26-Aug-15	Not indicated	LB John

North West

Information per recommendations register					Information per file and recommendation letter		
------------------------------------------	--	--	--	--	------------------------------------------------	--	--



N o.	CCN	Section	Date Recommendation was received by NPA	Date Recommendation was received by NPA	Date Recommendation was signed off	Date Recommendation was received by NPA	Sign off Name
1	2013010463	28(1)(b)	23-Dec-15	23-Dec-15	11-Dec-15	Not indicated	B Mothale

Performance information disclosed in the quarterly reports and annual performance report might be inaccurate.

Internal control deficiency

Financial and performance management: Management of the region does not have a monitoring process in place to validate the statistical information which is being reported as achieved on a monthly/quarterly basis.

Recommendation

Management should put measures in place to ensure that the information reported monthly/quarterly is monitored accordingly and recorded accurately. The identified misstatement should be adjusted in the quarterly report and the APR.

Management response

Free-State

I am not in agreement with the finding:

Both Criminal Recommendations as per your report and calculations above is in compliance with 30 days.

CCN 2015040169 was signed off on the 09/07/2015 and submitted to NPA on the 12/08/2015 which in calculation is 24 working days and is also in compliance with 30 days (See Annexure A)

CCN 2015050033 was signed off on the 30/06/2015 and submitted to NPA on the 20/07/2015 which in calculation is 14 working days and is also in compliance with 30 days (See Annexure B)

Name: Mr G.T. Mmusi
Position: Acting Provincial Head Free State
Date: 04/05/2016

Kwa-Zulu Natal

This office agrees to the findings and proper monitoring tools are put into place to monitor the non-compliance. These reports have not been included in the quarterly or annual reports as the reports have not been sent to either the SAPS or the NPA. Recommendations are only captured if the acknowledgement letters are signed off by the SAPS and the NPA.

In relations to the stamp not being affixed on the report there were some problems with the SAPS recommendations as the Recommendation Committee between SAPS / IPID and

Community Safety and Liaison are held at different venues and SAPS don't always carry their official stamp. After discussions with the co-ordinators of SAPS this has improved. The SAPS now carry their stamp to the venue.

In terms of the NPA, the IPID has no control because at times the NPA makes a decision immediately in the present of IPID members and therefore the NPA don't sign for the docket or the even the Recommendation Report. The NPA is not reliant on the Recommendation Report made by an IPID investigator.

Name: Ms P Maharaj
Position: Provincial Head
Date: 27/05/2016

Mpumalanga

I am not in agreement with the finding and the internal control deficiency for the following reasons:

The mentioned SAPS recommendation in CCN 2012090193 was found correctly updated in the Recommendations Registers and the IPID case file as required with a copy of the SAPS receipt (signature and date affixed) although not a date stamp by the SAPS. There is no requirement that it must be a date stamp, what is important is the date and the signature of the Recipient from SAPS.

This however, does not detract from the fact that evidence of the receipt by SAPS is contained and was availed.

In light of this, this finding is incorrectly directed at the Provincial Office Mpumalanga.

Name: Ms BP Tukela
Position: Provincial Head - Mpumalanga
Date: 20/05/2016

North West

I am not in agreement with the finding and the internal control deficiency for the following reasons: The mentioned SAPS and NPA recommendation files were found correctly updated in the Recommendations Registers and the IPID case file as required with a copy of the SAPS receipt (signature and date affixed) as this file are acknowledged by date received and signature only and not stamped.

Name: Ms B Motlhale
Position: Acting PH
Date: 23/05/2016

Gauteng

I am in agreement with the finding and the internal control deficiency.

As a control measure, regular meetings are held with the SAPS to ensure that information is updated. Going forward, frequent monitoring will be done on a weekly basis verifying if all recommendations were indeed submitted as required.

Name: Mr MD Morema




Position: Acting Provincial Head: Gauteng

Date: 05/02/2016

Auditor's conclusion

Free-State

The supporting documents provided by management are not relevant to the finding, as they are recommendations submitted to SAPS instate of NPA, The finding is on the recommendations submitted to the NPA therefore the finding still stand and will be evaluated for consideration in the Audit report.

Kwa-Zulu Natal

Management Comments noted, and the finding will be evaluated for consideration in the audit report.

Mpumalanga

Management Comments noted, and the finding will be evaluated for consideration in the audit report.

North West

No supporting information was provided with the management comments, therefore the finding still stands and will be evaluated for impact in the audit report.

Gauteng

Management comment noted, however corrective measures have not been implemented and finding remains valid.



3. Recommendation not reviewed and signed off by a delegated official

Audit Finding

In terms of SOP 2015/2016 6.5 Procedure for the investigation of a case i.t.o. Section 28(1)(d)-(g) of Act read with Regulation 5 and 8

Par .20. Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should never contain the merits or demerits of the case;

Par .21 Refer to the Supervisor for review and recommendation of case being decision ready or closure;

Programme 2: Investigation and Information Management

Performance indicator: Percentage of disciplinary recommendation reports referred to the South African Police Service and/or Municipal Police Services within 30 days of recommendation report being signed

Method of Calculation: Based on the (total number of criminal recommendation reports referred to SAPS/MPS within 30 days of sign off (+) the total number of criminal recommendation reports being signed off) X 100.

The following recommendation was send to SAPS without review by a supervisor and sign off by the provincial head.

Free State Region

No.	Month	Case Control NUMBER	Section	Date Recommendation was received by SAPS/ MPS
1	April	2014120498	28(1)(g)	15-Apr-15

This is not compliance with approved standard operation procedure.

Internal control deficiency

Financial and performance management: Management of the region did not ensure that the standard operation procedures are adhering before recommendations are sent out to SAPS through the review.

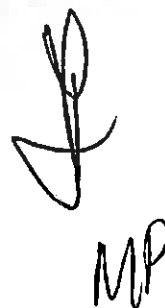
Recommendation

Management should put measures in place to ensure standard operation procedures are adhered through the review of the all recommendation.

Management response

Free-State

I am in agreement with the finding for the following reasons :



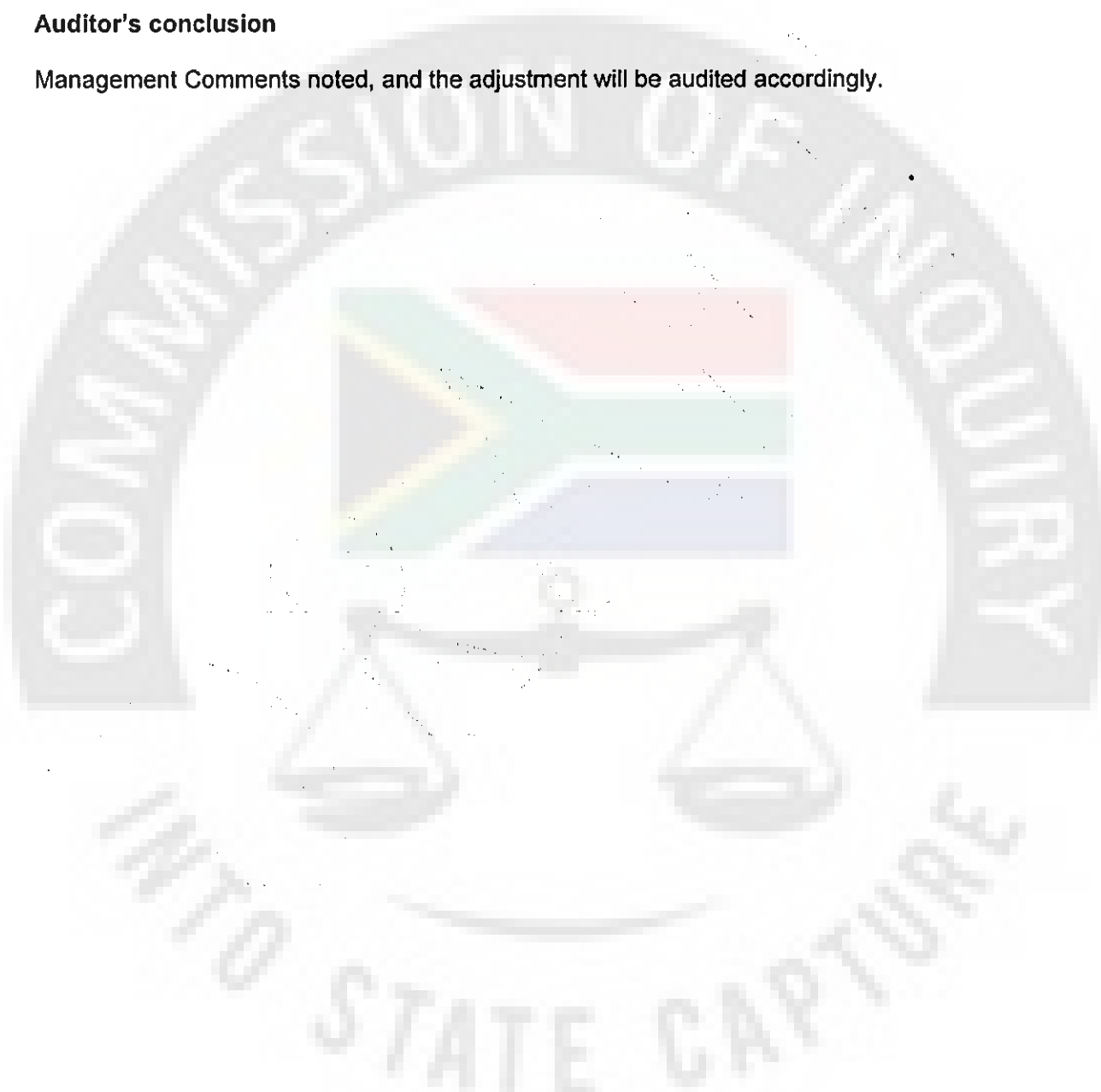
It was an oversight and moving forward the Approving Authority will ensure compliance in this regard as in all other recommendations submitted.

We will adjust the performance information accordingly.

Name: Mr G.T. Mmusi
Position: Acting Provincial Head Free State
Date:04/05/2016

Auditor's conclusion

Management Comments noted, and the adjustment will be audited accordingly.



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4. Misclassification of investigation cases reported between different indicators

Audit Finding

PFMA section 40(1) (a); states that the accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards.

In terms of IPID Standard Operating Procedure (IPID SOP) the following terms are defined;

- **Case Classification** – refers to the manner in which cases are classified in in terms of Section 28 (1) of IPID Act.
- **Backlog** – means cases carried over from previous financial year older than 12 months
- **Annual Brought Forward** – means a case carried over from previous financial year not older than 12 months

Programme 2: Investigation and Information Management

Performance indicator: Percentage reduction of backlog cases (Excluding cases of systemic corruption).

Method of Calculation: Simple count of cases older than 12 months as at the beginning of the new financial year.

In terms of the APP indicator 2.2.13 measures the Percentage reductions of backlog cases.

A. The following completed cases have been classified as backlog and reported under indicator 2.2.13 of the APP, however these case are not backlog as defined by the IPID SOP.

Free State Region

No.	Case Control Number	Section	Incident Code	Date Registered	Date completed
1	2014100459	28.1 f - Torture or assault	Assault	10/24/2014 2:11:00 PM	5/30/2015 11:37:00 AM
2	2014120416	28.1 f - Torture or assault	Assault	12/19/2014 10:08:00 AM	7/24/2015 2:02:00 PM
3	2014120306	28.1 f - Torture or assault	Assault	12/15/2014 10:09:00 AM	9/28/2015 6:14:00 PM
4	2014100598	28.1 f - Torture or assault	Assault	10/31/2014 1:04:00 PM	4/30/2015 7:16:00 PM

Mpumalanga

No.	Case Control Number	Section	Incident Code	Date Registered	Date completed
1	2014070367	28.1 f - Torture or assault	Torture	7/22/2014 10:01:00 AM	9/30/2015 11:07:00 PM
2	2014080150	33.3 – Failure to comply with section 29	33.3 – Failure to comply with section 29	8/7/2014 3:56:00 PM	9/30/2015 2:57:00 PM
3	2014080241	28.1 h - Any other referred matter	Misconduct matters	8/13/2014 3:26:00 PM	9/30/2015 9:17:00 PM
4	2014100236	28.1 f - Torture or	Assault	10/13/2014	10/21/2015

		assault		2:44:00 PM	11:42:00 PM
5	2014100415	28.1 f - Torture or assault	Assault	10/22/2014 3:46:00 PM	6/30/2015 3:29:00 PM

North West

No.	Case Control Number	Section	Incident Code	Date Registered	Date completed
1	2014040054	28.1 b - Death as a result of police action	Vehicle collision while in Police operated vehicle	4/9/2014 9:38:00 AM	6/30/2015 2:56:00 PM
2	2014080539	28.1 f - Torture or assault	Assault	8/29/2014 8:37:00 AM	11/6/2015 11:43:00 AM
3	2014100333	28.1 f - Torture or assault	Assault	10/17/2014 2:44:00 PM	5/8/2015 4:17:00 PM
4	2014100400	28.1 f - Torture or assault	Assault	10/22/2014 11:05:00 AM	6/26/2015 9:03:00 AM
5	2014110670	28.1 f - Torture or assault	Assault	11/25/2014 3:33:00 PM	6/30/2015 3:04:00 PM
6	2014120272	28.1 f - Torture or assault	Assault	12/12/2014 10:33:00 AM	6/19/2015 4:07:00 PM
7	2014120326	28.1 f - Torture or assault	Assault	12/16/2014 9:48:00 AM	6/14/2015 6:24:00 PM
8	2014120337	28.1 f - Torture or assault	Assault	12/17/2014 9:40:00 AM	8/28/2015 3:30:00 PM
9	2014100117	28.1 d - Rape by a police officer	Rape	10/7/2014 8:44:00 AM	8/31/2015 5:43:00 PM
10	2014090500	28.1 h - Any other referred matter	Attempted murder	9/30/2014 11:47:00 AM	9/25/2015 3:40:00 PM

B. The following completed case have been classified under the Section 28 (1), however these cases were older than 12 months at the beginning of the financial year and should be classified as backlog and reported under the 2.2.13 indicator.

North West

No.	Case Control Number	Section	Description	Date Registered	Date completed
1	2011110189	28.1 h - Any other referred matter	Theft	15/11/2011	6/14/2015 12:01:00 PM

Performance information disclosed in the quarterly reports and annual performance report is not accurate.

Internal control deficiency

Financial and performance management: Lack of management review to ensure that classification of the cases is consistent with the IPID SOP

Recommendation

Management must review the completed cases to ensure that cases are classified correctly and all case incorrectly classified are adjusted accordingly per the IPID SOP.

Management responseNational Office



I am not in agreement with the finding and the internal control deficiency for the following reasons

In terms of IPID SOP's 2015/16 the term "Backlog" refers to active cases carried over from previous financial year older than 12 months. The active file means that the investigation is still in the process and the investigation is not finalised or completed, as soon as the file is finalised the term "Backlog" is no longer applicable.

I am in agreement with the finding "completed case have been classified under the Section 28 (1)" and the internal control deficiency. The misclassification happened during the migration from the old system to the new one.

Name: Mr. T Kgomo
Position: Acting Programme 2 Manager
Date: 08/07/2016

Auditor's conclusion

- A. Management comments noted, however In terms of the method of calculation of the APP's TID (technical indicator description) the a backlog is "Simple count of cases older than 12 months as at the beginning of the new financial year" and the management comments does not refer to the 12 months at the beginning of the year.

This is still considered as a misstatement and will be evaluated for the impact of the audit opinion of the programme.

- B. Management comment noted, the misstatement will be assessed for consideration in the audit report.



5. Completed investigations reported in an incorrect period

Audit Finding

PFMA section 40(1) (a), states that, "The accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards

Programme 2: Investigation and Information Management

Performance indicator: Percentage reduction of backlog cases (Excluding cases of systemic corruption).

Method of Calculation: Simple count of cases older than 12 months as at the beginning of the new financial year.

The following backlog completed files were completed in previous financial years (2011/12) however they have been recorded and reported in the period under audit 2015/16.

Free State Region

No.	CCN	Section	Date Registered	Date completed per Flowcentric	Date completed per file	Sign off Name
1	2011040294	28.1 h - Any other referred matter	26-Apr-11	28-Aug-15	11-May-11	Thabo Mmusi
2	2011050165	28.1 g - Corruption matters within the police	09-May-11	18-Aug-15	31-Aug-11	KM Matlakeng

Gauteng

No.	CCN	Section	Incident Code	Date completed per Flowcentric	Date completed per file	Sign off Name
1	2010040305	28.1 a – Death in police custody	Suicide (Shooting)	18-Sep-15	07-Jul-11	L Madubanya

Performance information disclosed in the quarterly reports and annual performance report might not be valid and accurate

Internal control deficiency

Financial and performance management: Management does not have a monitoring process in place to validate the statistical information which is being reported as achieved on a monthly/quarterly basis.

Recommendation

Management should put measures in place to ensure that the information reported monthly/quarterly is monitored accordingly and recorded accurately. The identified misstatement should be adjusted in the quarterly report and the APR.

Management response




Management disagrees with the finding. When the migration from Go Pro to Flowcentric took place, the files were migrated as active cases. Completion and closure processes had to be done on Flowcentric to ensure that they are reported upon.

Name: Mr T Kgomo
Position: Acting Programme 2 Manager
Date: 12 June 2016

Auditor's conclusion

Management comments noted , however the case file to be reported as decision ready in the current financial year it must have been concluded and signed off in the current financial year on the physical case file and not necessarily on the system. Therefore that finding still stands and will be evaluated for consideration in the audit report.



 MP

6. Proper procedures not followed for completing cases**Audit Finding**

In terms of standard operating procedures for IPID 2015/2016 par 6.10 Procedure for completion and closing of files and dockets:

Obtaining the status of "Decision ready" for cases

1. The investigator initiate completion of a file through the supervisor after completing a case investigation report;
2. The supervisor reviews and quality assures directives and reports and recommend decision ready to DI;
3. The DI approve/disapprove;
4. No investigator acting as DI will approve the completion of a file investigated by himself/herself;
5. All section 28(1)(a)-(g) cases must be referred for decision to the SPP/DPP, before closure;

Closing of files

1. The investigator initiate closure of a file through the supervisor after completing a closure report, which will include the outcome of criminal case/DC process within 30 days after the last of the two outcomes have been received;
2. The supervisor reviews and quality assures directives and reports and recommends decision ready to the DI;
3. The DI approves/disapproves closure;
4. No investigator acting as DI will approve the closure of a file investigated by him/her;
5. Where a file is closed as withdrawn by victim(s), the victims(s) withdrawal statement(s) must be filed, or an affidavit by the investigator in the event that the victim(s) withdrawal statement(s) could not be obtained.

Programme 2: Investigation and Information Management

Performance indicator: Percentage investigations of other criminal and misconduct matters referred to in section 28(1)(h) and 35(1)(b) of the IPID act that are decision ready(Finalised)

The following investigation case files were not signed off by the Provincial Head/Director Investigations (PH/DI) as decision ready; however they were recorded as decision ready in the Flow centric system.

Free State Region

No	Case Control Number	Section	Incident Code	Date registered	Investigator Name
1	2015090525	28.1 h - Any other referred matter	Intimidation	28-Sep-15	N Mokhethi
2	2014050004	28.1 f - Torture or assault	Assault	02-May-14	NK Ngamini

[Handwritten signature] MP

Gauteng

No	Case Control Number	Section	Incident Code	Date completed	Case worker
1	2015060449	28.1 e- Rape while in police custody	Sexual penetration	03-Aug-15	Takalani Ngcobo
2	2015090401	28.1 c- Discharge of an official firearm	Discharge of an official firearm	30-Sep-15	Takalani Maphosho

Internal control deficiency

Performance Management did not properly follow the procedure for completing the investigation case files and did not properly review the information recorded to ensure that only valid information it's reported.

Recommendation

Performance management should update the case file to ensure that all decision ready cases are signed off by relevant official and investigation report or withdrawal statement or affidavit signed by investigator; should follow procedure as outlined in the Standard of operating procedure and properly review the information recorded to sure that only valid information it's reported

Management responseFree-State

I am in agreement with the finding for the following reasons:

It was an oversight and moving forward the Approving Authority will ensure compliance in this regard as in all other cases.

We will adjust the performance information accordingly.

Name: Mr G.T. Mmusi

Position: Acting Provincial Head Free State

Date:04/05/2016

Gauteng

I am in agreement with the finding and the internal control deficiency for the following: The files were retrieved and signed off and further measures were put in place that all the files will be signed off by the Provincial Head/Director Investigations (PH/DI) before being updated on FlowCentric.

Name: Mr MD Morema

Position: Acting Provincial Head: Gauteng

Date: 25 May 2016

MP

We will adjust the performance information accordingly.

Auditor's conclusion

Management comments noted and the adjustments will be tested accordingly.



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MP

7. Incorrect classification of case file

Audit Finding

The Standard Operating Procedures defines **torture** "as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or confession, punishing him or her for an act that he, she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, whether such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent or incidental to lawful sanctions."

Programme 2: Investigation and Information Management

Performance indicator: Percentage investigations of torture cases that are decision ready (finalised)

Method of Calculation: (Number of decision ready investigations finalised (except where reasons are given in line with IPID Regulations) / total workload) x 100

The following case file was incorrectly classified as Torture on flow centric and on the cover of the case file instate of Assault, however based on the content of the case file the incident is Assault as defined.

Free State Region

No	Case Control Number	Section	Incident Code as per Flow centric	Date Registered	Date Completed	Case Worker
1	2015040114	28.1 f - Torture or assault	Torture	2015/04/09 10:42:00 AM	2015/04/28 01:09:00 PM	Nomonde Bahlekazi

Performance information reported on investigations case files that are decision ready might be overstated for torture cases and understated for assault cases.

Internal control deficiency

Performance and Financial Management: Management of the region did not properly review the case file to ensure that it is correctly classified as per the annual performance plan.

Recommendation

Management should reclassify the case file disclosed in the quarterly report and annual performance report, and should also revisit all the case files classified as torture or assault to ensure that the case files have been correctly classified.

Management response

Free State Region

I am in agreement with the finding

It was an oversight more especially from the CIC however continuous workshop and mentoring to still continue for all members

We will adjust the performance information accordingly.

Name: Mr G.T. Mmusi

Position: Acting Provincial Head Free State

Date: 04/05/2016

Auditor's conclusion

Free-State

Management comments noted and the adjustments will be tested accordingly.



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8. Decision ready cases completed in contravention of the standard operating procedure.

Audit Finding

The Standard Operating Procedures paragraph 6.10, describes the procedure for obtaining the status of "decision ready" for cases as:

1. *The investigator initiates completion of a file through the Supervisor after the completing a case investigation report;*
2. *The Supervisor reviews and quality assures directives and reports and recommends decision ready to the DI;*
3. *The DI approves/ disapproves;*
4. *No Investigator acting as DI will approve the completion of a file investigated by himself/herself;*
5. *All section 28(1)(a)-(g) cases must be referred for decision to the SPP/DPP, before closure.*

The Standard Operating Procedures paragraph 6.10, describes recommendations as:

1. *Negative - Recommendation is made that disciplinary/criminal prosecution should be instituted*
2. *Positive - Recommendation is made that no disciplinary/criminal prosecution should be instituted including inquest.*
3. *Decision ready - refers to investigation where an investigator has conducted quality investigations and obtained all necessary evidence to enable the NPS to make a decision whether to prosecute or not.*

Programme 2: Investigation and Information Management

Performance Indicator: Percentage of investigations of deaths as a result of police action that are decision ready

Method of Calculation: (Number of active cases that are decision ready (except where reasons are given in line with IPID Regulations) / total number of cases received in the year under review) x 100

The following case files have been completed through special closure process, however the evidence on file indicates that an investigation should have been conducted and a positive/negative recommendation issued. Therefore the completions of these case files did not follow the Standard Operating Procedures:

Free State Region

No	Case Control Number	Section	Incident Code	Date Completed	Case Worker
1	2015070302	28.1 b – Death as a result of police action	Shot with service firearm	7/31/2015 10:04:00 AM	Mantilane Ntlangeni
2	2015090411	28.1 b – Death as a result of police action	Shot with service firearm	9/30/2015 12:08:00 PM	Mantilane Ntlangeni



This might result in an overstatement of decision ready (finalised) case files.

Internal control deficiency

Performance and Financial Management: Management of the region did not ensure that proper procedures per Standard Operation Procedures for decision ready case files are followed.

Recommendation

Management should revisit all case files marked as "special case closure" and ensure that the Standard Operating Procedures has been adhered to and the approval for "special case closure" case files should be centralised and approved by the Chief Director: Investigations.

Management response

Free State

I am not in agreement with the finding:

The above cases were closed in accordance with the below IPID Regulation

Regulation 4.3: An Investigator designated in terms of sub-regulation (2) must, as soon as is practicable, but within 24 hours of designation.

Attend the scene where the death occurred, ensure that the scene is secured in terms of regulation 8, oversee the scene and conduct a preliminary investigation.

Furthermore, please note that preliminary investigations were conducted on both these matters by IPID and it was then concluded that both the shootings were justifiable as SAPS members were acting in defence in both matters which did not warrant any further investigations by IPID hence both matters were referred back to SAPS and subsequently closed as "Special Closure." (See Annexure E)

Preliminary investigation refers to an enquiry to determine whether the actions of the SAPS members were lawful and could be justified with the available evidence. If this finding is made then the matter is referred to the SAPS for finalization of investigations and this is covered fully by the above Regulation.

Name: Mr G.T. Mmusi
Position: Acting Provincial Head Free State
Date: 04/05/2016

Auditor's conclusion

Free-State

In terms of regulation No R.98 (Regulations for the Operation of the Independent Police) dated 10 February 2012 par 4(3):

"An Investigator designated in terms of sub-regulation (2) must, as soon as is practicable, but within 24 hours of designation:

- (a) Attend the scene where the death occurred, ensure that the scene is secured in terms of regulation, oversee the scene and conduct a preliminary investigation;

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- (b) Record the details of the deceased, including his or her name and surname, age and gender;
- (c) Identify and record particulars of all potential witnesses for purposes of interviewing them, and in the case of a death in police custody, record the particulars of the persons who had been on duty in the facility at the time when the death occurred;
- (d) Authorize the removal of the corpse, in consultation with a pathologist if a pathologist is available;
- (e) Collect, or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory and ensure the proper registration, handling, transportation and disposal of exhibits;
- (f) Visit the deceased's next-of-kin to inform them of the death and to obtain statements that may assist in the investigation;
- (g) Visit all identified witnesses for purposes of obtaining statements that may assist in the investigation;
- (h) Attend the post mortem and advise the person conducting the post mortem of observations made at the scene of death as well as areas that should be concentrated on; and
- (i) After collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the death containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member, to the Executive Director or relevant provincial head, as the case may be."

Considering the above quoted regulation it appears that the only sub-paragraph (a) was performed and the rest of the remaining steps were not followed ((b) to (i)) in order to conclude the case and report it as decision ready. **The case was not investigated therefore the case cannot be classified as decision ready and it should not have not been reported as decision ready.**

The finding will be followed up and evaluated for consideration in the audit report.



9. Duplication of completed investigations reported on torture

Audit Finding

PFMA section 40(1) (a), states that the accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards

Programme 2: Investigation and Information Management

Performance indicator: Percentage of investigations of assault cases that are decision ready.

Method of Calculation: (Number of active cases that are decision ready (except where reasons are given in line with IPID Regulations) / total number of cases received in the year under review) x 100

The following investigations cases has been reported as a completed file under the indicator of 'Percentage of investigations of assault that are decision ready', on the Flowcentric system however the cases relate to the same incident and should be reported as a single case.

North West

No.	Case Control Number	Date Completed	Section	Description	Duplicate CCN
1	2015080268	28.1 f - Torture or assault	Torture	9/30/2015 10:51:00 AM	2015080079

Performance information disclosed in the quarterly reports and annual performance report might not be valid.

Internal control deficiency

Financial and performance management: Management of the region did not review the Flowcentric system to ensure that there are no duplicated recording of investigation cases.

Recommendation

Management reviews the Flowcentric system to ensure that there are no duplicated recording of investigation cases and removed all the duplication indicated per the finding.

Management response

North West

I am not in agreement with the finding and the internal control deficiency for the following reasons

The above case is a duplicate and was therefore completed as special closure. The system counts special closures as well as decision ready. This is a system problem which needs Head Office intervention with system enhancement or changing.

Name: Ms B Motlhale
Position: Acting PH
Date: 23/05/2016




Auditor's conclusion

Management comments noted, however the special closure does not qualify to be classified as decision ready, therefore the misstatement will be evaluated with special closure for impact in the audit report.



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10. No proper internal controls put in place to ensure proper recording of case written notifications.

Audit Finding

PFMA section 38(1)(a)(i) , states that, "The accounting officer for a department, trading entity or constitutional institution must ensure that department, trading entity or constitutional institution has and maintains, effective, efficient and transparent systems of financial and risk management and internal control"

Programme 2: Investigation and Information Management

Performance Indicator: Percentage of cases registered and allocated within 72 hours of receipt of written notification.

Method of Calculation: (The number of cases registered and allocated within 72 hours / the total number of cases received) x 100

The method of calculation of the above indicator requires the department to have written notification receipt date to calculate the 72 hours.

On review of the controls and processes relating to the indicator, we identified that the department does not have adequate and sufficient audit trail to show the actual receipt date of the notification before capturing on flow centric. The current calculation used by the department only includes dates recorded on the flow centric system and this is not consistent with what the department planned for the indicator.

The above will lead to the reported target to be misstated. The work of auditors is therefore limited because we cannot verify actual receipt date.

There is also a risk that cases could be reported to the department and were never captured and allocated for investigation.

Control Deficiency

Leadership: The leadership of the department did not design and implement proper internal controls to ensure completeness of the cases reported to the department.

Recommendation

The leadership should design proper controls relating to the entry point of the case notifications that enables proper, sufficient and accurate recording of cases reported to the department and further enables management to identify and track cases that have been reported but not yet registered or allocated for investigation.

Management response

I am not in agreement with the finding and the internal control deficiency for the following reasons:

Consultations registers are in place in provinces, which are used as a means to record any form of contact that takes place with stakeholders (walk –ins, telephonic, email etc). What is acknowledged is the need for further enhancements to the registers to ensure that there is clear linkage / referencing to the information registered in the system.

Name: Mr T Kgomo




Position: Acting Programme 2 Manager
Date: 11 July 2016

Auditor's conclusion

Management comments are noted, and we agree that the consultations registers are available; however they do not serve the purpose of ensuring the completeness of case notifications we were unable to link any of the cases or consultations on the register to flowcentric as there is no unique identifier or a reference number.



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Handwritten initials 'MP' in black ink.

11. Performance Indicators not well defined

Audit Finding

The Framework for Managing programme performance information par 3.2 requires the performance indicators to be well-defined.

It further defines the term Well-defined as *"the indicator needs to have a clear, unambiguous definition so that data will be collected consistently, and be easy to understand and use"*

Programme 2: Investigation and Information Management

A. Performance indicator: Percentage of cases registered and allocated within 72 hours of receipt of written notification.

Method of Calculation: (The number of cases registered and allocated within 72 hours / the total number of cases received) x 100

The technical indicator description of the above indicator is not specific in the method of calculation whether to use the working hours and not when calculating the hours taken to register and allocate cases from receipt of written notifications.

B. Performance indicator: Percentage of disciplinary/criminal recommendation reports referred to the South African Police Service/Municipal Police Services /or NPA within 30 days of recommendation report being signed off.

Method of Calculation: Based on the (total number of criminal/disciplinary recommendation reports referred to NPA/SAPS/NPA within 30 days of sign off (+) the total number of criminal recommendation reports being signed off) X 100.

The technical indicator description of the above indicator is not specific in the method of calculation whether to use the working days and not when calculating the number of days taken to submit the recommendations to SAPS/MPS/NPA from date of being signed.

This could result in the days and hours reported being inconsistently calculated leading to material misstatement in the annual performance report.

Control Deficiency

Performance and Financial management: Management during preparation of the APP did not properly review the technical indicator description to ensure that they are clear, specific and unambiguous.

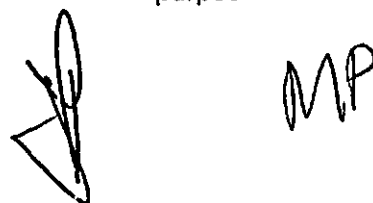
Recommendation

Management should amend the technical indicator description of the above indicators to make them clear, specific and unambiguous. Management should also ensure that when preparing the APP all indicators are properly reviewed against the requirements of the National Treasury's Framework for Managing programme performance information.

Management response

I am in agreement with the finding and the internal control deficiency for the following reasons :

The indicators have been redefined in the TID table for 2016/2017 APP purposes.



Name: Ms L Nonjaduka
Position: Director: Strategy and Performance Monitoring
Date: 07/07/2016

Conclusion

Management comments noted the finding will be assessed for consideration in the audit report.



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12. Media statements and media responses incorrectly reported in the annual performance plan

Audit Finding

PFMA section 38(1)(a)(i) , states that, *"The accounting officer for a department, trading entity or constitutional institution must ensure that department, trading entity or constitutional institution has and maintains, effective, efficient and transparent systems of financial and risk management and internal control"*

Programme 4: Compliance Monitoring and Stakeholder Management

Performance Indicator: Number of responses to media enquiries released annually

Method of Calculation: Simple count of formal media responses released to media enquiries.

The following media enquiry responds and statements were counted more than once for reporting purposes:

Table A: Media Statements

No	Date of Media Statement	Enquiry From	Title/Subject	Number of Times Reported
1	2015/05/13	Cape Town	Former SAPS warrant officer sentenced to 22 years imprisonment for raping young boys over a 20 year period.	3

Table B: Media Enquiry Response

No	Date Responded	Enquiry From	Title/Subject	Number of Times Reported
1	18-May-15	Godfrey Sigwela (godfrey.sigwela15@gmail.com) - Daily Sun	Media inquiry: Bedford Shooting	2
2	20-May-15	Chris Ndaliso (Chris.Ndaliso@inl.co.za)	Mary de haas	2
3	13-May-15	Ntombikayisa Ngcobo (Ntombikayise.Ngcobo@dailysun.co.za)	Bullied by the Cops	2

This is overstatement of the number of media responses reported.

Control Deficiency

Leadership: On review of the controls and processes relating to the indicator, we identified that the department does not have adequate and sufficient registers to record all the media statements and enquiry responses to ensure valid, accurate and complete information is reported in the annual report.

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

The above will lead to the reported target to be misstated. The work of auditors is therefore limited because we cannot verify the completeness of the reported number of the media statements and enquiry responses.

Financial and performance management: management did not properly review the media responses submitted for reporting purposes to prevent duplication and further there is no register kept to ensure completeness and accuracy of reporting.

Recommendation

Management should remove the duplicate responses and further prepare a register for all media statements and inquiry responses, to ensure more accurate and complete reporting. Registers to record the media statement and media inquiries responses should be used to ensure valid, accurate and complete reporting.

Management response

I am in agreement with the **finding and the internal control deficiency** for the following reasons: There is no register for media enquiries, future reports will be thoroughly scrutinized to avoid repetition. A register will also be created to ensure compliance.

Name: Ms Mariaan Geedrts

Position: Director : Communication and Marketing

Date: 15 July 2016

Auditor's conclusion

Management comments noted, and the finding will be evaluated for consideration in the audit report.



13. Difference between the denominator reported and the recalculated for backlog cases at the beginning of the financial year

Audit Finding

PFMA section 40(1) (a), states that, "The accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards"

Programme 2: Investigation and Information Management

Performance Indicator: Percentage reduction of backlog cases (Excluding cases of systemic corruption).

Method of Calculation: Simple count of cases older than 12 months as at the beginning of the new financial year.

The following differences were noted between the denominators used to calculate the percentage reduction of backlog cases and the recalculated number.

Item	Reported	Recalculated	Difference
Denominator	2853	2909	-56
Nominator	1926	1983	-57

The parentage reduction of backlog cases is misstated.

Internal control deficiency

Financial and performance management: Management did not properly review the total number reported in the annual performance report as it appears that the denominator used is the same as the denominator used in the previous financial year.

Recommendation

Management should put measures in place to ensure that the information reported is monitored accordingly and recorded accurately. The identified misstatement should be adjusted in the annual performance report.

Management response

I am in agreement with the finding and the internal control deficiency for the following reasons [and supply the following/attached information in support of this]: Before the implementation of Executive Director Directive number 13 on reregistration of cases, it was general practice for the province to reclaim cases that were not on their provinces so as a result there were fluctuation on the numbers and most cases were backlog cases.

Name: T Kgomo

Position: Acting Program 2 Manager

Date: 13 July 2016

Auditor's conclusion




Management comments noted, the misstatement will be evaluated for inclusion in the audit report.



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NON COMPLIANCE – EXPENDITURE MANAGEMENT

14. Payments not made within 30 days from receipt of invoices in contravention Treasury Regulations

Audit finding

Paragraph 8.2 3 of Treasury Regulation states that, "Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgment".

The tables below illustrate examples of payments which were not made within 30 days from receipt of suppliers' invoices

No	Supplier Name	Payment no	Received Date	Payment Date	Difference	Amount (R)
1	Denton Office Solution	1321271	31-Mar-15	10-Jun-15	75	28 215
2	Sebtech Techonologies	1326451	12-Oct-15	21-Dec-15	70	1 557
3	Bytes document solutions	1323204	10-Jul-15	20-Aug-15	41	2 550
4	Property Management Trading Entity	1323632	17-Apr-15	02-Sep-15	138	90 000
5	Property Management Trading Entity	1323634	01-Jul-15	02-Sep-15	63	90 000
6	Minolta (PTY)LTD	1322261	12-Jun-15	14-Jul-15	32	1 410
7	Department of roads & transport:G-Fleet Management	1323945	31-Jul-15	10-Sep-15	41	4 223
8	Department of roads & transport:G-Fleet Management	1323945	31-Jul-15	10-Sep-15	41	18 046
9	Department of roads & transport:G-Fleet Management	1323945	31-Jul-15	10-Sep-15	41	20 289
10	Department of roads & transport:G-Fleet Management	1325441	30-Sep-15	03-Nov-15	34	4 589
11	Department of roads & transport:G-Fleet Management	1326524	31-Oct-15	21-Dec-15	51	38 485
12	Konica Minolta	1322914	12-Jun-15	06-Aug-15	55	3 297
13	Konica Minolta	1322914	12-Jun-15	06-Aug-15	55	367
14	Wetes Empire General Trading	1322515	05-Jun-15	24-Jul-15	49	21 205
15	Pandacom Distribution	1320692	13-May-15	31-Mar-15	43	432 653
16	Denton Office Solutions (pty) LTD	1321271	05-Jun-15	31-Mar-15	66	28 215
17	Lesedi Corporate Technology	1320356	24-Apr-15	18-Mar-15	37	330 924
18	Ubuntu Technology (Pty) Ltd	1321269	05-Jun-15	31-Mar-15	66	148 919
19	Innovative in Furniture Creations	1320637	11-May-15	31-Mar-15	41	9 800
20	Denton Office Solutions (pty) LTD	1320749	14-May-15	18-Mar-15	57	28 215
21	Rikhotso Business Enterprise	1320624	13-May-15	25-Mar-15	49	29 000
22	Kag-Entle Projects	1320750	14-May-15	30-Mar-15	45	25 698
23	Vodacom service provider	1323765	03-Sep-15	23-Jul-15	42	130 470
24	Amese's building construction and Enterprise cc	1322100	08-Jul-15	07-May-15	62	11 609
25	JSK security and cleaning services	1322314	20-Jul-15	02-Jun-15	48	21 296
26	Denton Office Solution	1321271	31-Mar-15	10-Jun-15	75	28 215
27	Sebtech Techonologies	1326451	12-Oct-15	21-Dec-15	70	1 557

No	Supplier Name	Payment no	Received Date	Payment Date	Difference	Amount (R)
28	Bytes document solutions	1323204	10-Jul-15	20-Aug-15	41	2 550
29	Property Management Trading Entity	1323632	17-Apr-15	02-Sep-15	138	90 000
30	Property Management Trading Entity	1323634	01-Jul-15	02-Sep-15	63	90 000
31	Minolta (PTY)LTD	1322261	12-Jun-15	14-Jul-15	32	1 410
32	Department of roads & transport:G-Fleet Management	1323945	31-Jul-15	10-Sep-15	41	4 223
33	Department of roads & transport:G-Fleet Management	1323945	31-Jul-15	10-Sep-15	41	18 046
34	Department of roads & transport:G-Fleet Management	1323945	31-Jul-15	10-Sep-15	41	20 289
35	Department of roads & transport:G-Fleet Management	1325441	30-Sep-15	03-Nov-15	34	4 589
36	Department of roads & transport:G-Fleet Management	1326524	31-Oct-15	21-Dec-15	51	38 485
37	Konica Minolta	1322914	12-Jun-15	06-Aug-15	55	3 297
38	Konica Minolta	1322914	12-Jun-15	06-Aug-15	55	367
39	Wetes Empire General Trading	1322515	05-Jun-15	24-Jul-15	49	21 205
40	Pandacom Distribution	1320692	13-May-15	31-Mar-15	43	432 653
41	Denton Office Solutions (pty) LTD	1321271	05-Jun-15	31-Mar-15	66	28 215
42	Lesedi Corporate Technology	1320356	24-Apr-15	18-Mar-15	37	330 924
43	Ubuntu Technology (Pty) Ltd	1321269	05-Jun-15	31-Mar-15	66	148 919
44	Innovative in Furniture Creations	1320637	11-May-15	31-Mar-15	41	9 800
45	Denton Office Solutions (pty) LTD	1320749	14-May-15	18-Mar-15	57	28 215
46	Rikhotso Business Enterprise	1320624	13-May-15	25-Mar-15	49	29 000
47	Kag-Entle Projects	1320750	14-May-15	30-Mar-15	45	25 698
48	Vodacom service provider	1323765	03-Sep-15	23-Jul-15	42	130 470
49	Amese's building construction and Enterprise cc	1322100	08-Jul-15	07-May-15	62	11 609
50	JSK security and cleaning services	1322314	20-Jul-15	02-Jun-15	48	21 296
Total						3 042 064

This is non-compliance with the requirements of the Treasury Regulations and the above transactions will also lead to interest being charged to IPD which will lead to Fruitless and wasteful expenditure. Fruitless and wasteful expenditure may be understated in the disclosure notes.

Internal control deficiency

Financial and performance management: The end-user did not ensure, through regular monitoring, that the invoices received from the supplier are sent to the finance department on a timely basis to enable finance to review, approve and make payment within the 30 day period.

Recommendation

The end-user should ensure that the invoice received from the supplier is sent to the finance department on a timely basis to enable finance to review, approve and make payment within the 30 day period.

Payments must be done within 30 days to prevent the department from incurring fruitless and wasteful expenditure.

Management response

I am in agreement with the **finding and the internal control deficiency** for the following reasons:

1. The below payments were amongst the bulk procurement that happened in March 2015 but could not go through due to the year-end system cut-off date. The internal shifting of funds was implemented in the current financial year in order to accommodate the referred invoices however the delay occurred during the identification of funds for payments.
2. Control measure will be put in place that Invoicing Unit will be established at Finance Unit to ensure that invoices received are processed within 30 days as required.

No	Supplier Name	Payment no	Received Date	Payment Date	Difference	Amount (R)
1	Denton Office Solution	1321271	2015/03/31	2015/06/10	75	28 214.97
15	Pandacom Distribution	1320692	2015/05/13	2015/03/31	43	432 652.80
17	Lesedi Corporate Technology	1320356	2015/04/24	2015/03/18	37	330 923.76
18	Ubuntu Technology (Pty) Ltd	1321269	2015/06/05	2015/03/31	66	148 919.11
22	Kag-Entle Projects	1320750	2015/05/14	2015/03/30	45	25 698.00

3. The payment of invoice to the below Service Provider was captured on time by could not go through due to the incorrect Supplier's banking details that were later corrected by the Service Provider for payment process to continue. In this case the delay was more from the Supplier due to the inactive banking details that could not be verified hence changed.

12	Konica Minolta	1322914	2015/06/12	2015/08/06	55	3 297.40
13	Konica Minolta	1322914	2015/06/12	2015/08/06	55	367.07

4. The below reflected invoices were delayed for payment due to the delays in finalising of the service level agreement by both parties after the delivery of the photocopier machines takes place.

2	Sebtech Techonologies	1326451	2015/10/12	2015/12/21	70	1 556.86
3	Bytes document solutions	1323204	2015/07/10	2015/08/20	41	2 550.04

5. The below mentioned invoices were received and captured on time however due to insufficient funds in the responsible components, the internal shifting of funds has to be implemented before the payments could be affected which in some cases delays the entire payment process because of funds identification within the limited budget allocation.

4	Property Management Trading Entity	1323632	2015/04/17	2015/09/02	138	90 000.00
5	Property Management Trading Entity	1323634	2015/07/01	2015/09/02	63	90 000.00
6	Minolta (PTY)LTD	1322261	2015/06/12	2015/07/14	32	1 409.83
7	Department of roads & transport:G-Fleet Management	1323945	2015/07/31	2015/09/10	41	4 223.48

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8	Department of roads & transport:G-Fleet Management	1323945	2015/07/31	2015/09/10	41	18 045.53
9	Department of roads & transport:G-Fleet Management	1323945	2015/07/31	2015/09/10	41	20 288.91
10	Department of roads & transport:G-Fleet Management	1325441	2015/09/30	2015/11/03	34	4 589.36
11	Department of roads & transport:G-Fleet Management	1326524	2015/10/31	2015/12/21	51	38 484.70
14	Wetes Empire General Trading	1322515	2015/06/05	2015/07/24	49	21 205.00
19	Innovative in Furniture Creations	1320637	2015/05/11	2015/03/31	41	9 800.00
20	Denton Office Solutions (pty) LTD	1320749	2015/05/14	2015/03/18	57	28 214.97
21	Rikhotso Business Enterprise	1320624	2015/05/13	2015/03/25	49	29 000.00
23	Vodacom service provider	1323765	2015/09/03	2015/07/23	42	130 469.77
24	Amese's building construction and Enterprise cc	1322100	2015/07/08	2015/05/07	62	11 609.30

6. The invoice to the below Service provider was received by the Department on the 30/06/2015 and paid by Finance on the 15/07/2015 which is within the prescribed 30 days' timeframe. Find the attached copy of payment supporting document with the action dates. **Annexure C**

25	JSK security and cleaning services	1322314	2015/07/20	2015/06/02	48	21 296.06
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Name: P M Setshedi
Position: Director Finance
Date: 08 March 2016

Auditor's conclusion

Management comment noted, the impact of the findings on the audit report will be assessed.

MP

15. No consequence management for official who incurred irregular expenditure and fruitless and wasteful expenditure

Audit Finding

PFMA 38(1)(h) state that, "An accounting officer for a department must take effective and appropriate disciplinary steps against any employee of the department who:

- (i) Contravenes or fails to comply with a provision of this Act;*
- (ii) Commits an act which undermines the financial management and internal control system of the public entity; or*
- (iii) Makes or permits an irregular expenditure or a fruitless and wasteful expenditure;*

Irregular expenditure

No	Incident - <u>Prior year</u>	Amount (R)
1	Used prohibited Supplier without checking on the National Treasury Website	4 293
2	Appointment and payment of Services providers without SBD4 Forms	274 269
3	Attendance of workshop by KZN Investigators prior the approval	11 000
4	Acting allowance paid to two former Employees who acted for period more than six months	184 000
5	Contravention Note 1 of 2013/14 on Cost Containment - Condoned	1 662
6	Exceeding Financial Delegation - Condoned	672 000
Total		1 147 225
No	Incident - <u>Current year</u>	
1	Financial commitment without approval	9 000

Fruitless and Wasteful expenditure

No	Incidents – Prior year	Amount (R)
1	Procurement of Team Mate Audit system	314 000.00
2	Overpayment on invoice due to the Supplier miscalculation of VAT	4 000.00
3	Interest on maintenance of GG vehicles by Standard Bank: various invoices	2 836.53
Total		320 836.53

Non-compliance with PFMA could result in the matter been reported and included in the audit report

Internal control deficiency

Leadership: The ED as delegated by the Minister did not ensure that disciplinary steps are taken as required by PFMA against employees who did not follow proper SCM processes when procuring goods/services.

Recommendation

The ED should ensure that there are proper corrective actions taken against employees who do not follow proper SCM processes in procuring goods/services.

The accounting authority should monitor and exercise their oversight responsibility that the ED is implementing disciplinary steps as required by PFMA.

Management response

I am not in agreement with the finding and the internal control deficiency for the following reasons:

The Department has considered the relevant financial prescripts including the guidelines in treatment of the irregular and Fruitless & Wasteful expenditures.

Irregular Expenditure:

With the above mentioned irregular expenditure cases, preliminary investigation was conducted and it was found that the majority of the transactions are old and the affected officials have since left the department except in few cases where the officials were requested to provide reasons why actions cannot be taken against them and their reasons were valid and considered. No losses or damages suffered by the department in all above mentioned cases.

Therefore the acting Executive Director was only able to de-recognise the expenditures referred after he was satisfied that:

- reasonable steps have been taken to confirm that such irregular expenditure did not result in any loss or damages to the state and that the state did obtain value from such a transaction, condition or event;
- the non-compliance that lead to the irregular expenditure is being addressed; and
- transactions, conditions or events of a similar nature were regularly reviewed to ensure that there are no possible future non-compliance cases reported.
- The acting Executive Director was able to "write-off" of the recommended expenditures after confirmation of the controls that were put in place by the department

Fruitless & Wasteful expenditure:

In the case of Fruitless & Wasteful expenditure, also all transactions were investigated and it was found that the official/manager who was implicated in the first transaction (Procurement of Team Mate Audit system) has since left the department hence the matter was referred to the financial misconduct.

The case regarding overpayment on invoice due to the Supplier miscalculation of VAT was investigated and recovered from the affected service provider. With regard to the interest on maintenance of GG vehicles by Standard Bank, the responsible official was requested to provide a reasons and after been evaluated and found that they outside the official controls, the recommendation was made for the acting Executive Director approval to write off.

Name: P M Setshedi
Position: Director Finance
Date: 30 June 2016

Auditor's conclusion

Management comment has been noted; however the finding is still valid for the following reasons;

- It is unclear from the evidence provided by management who was the official that was identified to have incurred the these expenditure.\
- It is also unclear what were the disciplinary actions taken by the management against the identified official.



ANNEXURE B: OTHER IMPORTANT MATTERS

Non compliance

16. Officials performed additional remunerative work without prior approval or declaration thereof.

Audit finding

In terms of section 30(b) of the Public Service Act, "no officer or employee shall perform or engage him or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorised by the said authority."

The following employees have interest in the suppliers which are contracted by the Departments/ regional offices and did not have the approval to perform additional remunerative work:

Persal Number	Position	Section/component	Name of supplier	State institution where supplier is doing business
MC MOETI	SECRETARY	DIRECTOR: COMMUNICATION	BEST HARMONY TRADING ENTERPRISE CC	Road Accident Fund

This is non-compliance with section 30(b) of the Public Service Act on enhancing compliance monitoring and improving transparency and accountability

Internal control deficiency

Financial and performance management: The Director HR and Deputy Director SCM did not ensure that all employees adhere to PSA.

Recommendations

The Deputy Director and Director HR must put controls in place to ensure that all employees who are performing additional remunerative work do so with approval. This should be communicated to all employees and measures must be put in place to hold employees who do not have approval accountable.

Management response

I am in agreement with the **finding and the internal control deficiency**. Ms M Moeti did not Disclose on the Conflict of Interest Declaration form she submitted, that she belongs to any company. The official has confirmed that she is registered as a member of "Best Harmony Trading Enterprise CC" however she is not fully participating in the business but sometimes assists. The Corporate Governance will coordinate the process of requesting approval for Ms Moeti to perform additional remunerative work if she still continues to be part of the company.

1. The Corporate Governance will coordinate the process of requesting approval for Ms Moeti to perform additional remunerative work if she still continues to be part of the company.
2. Policy relating to Conflict of Interest will be developed to address the challenge.

Name: Ms MM Mothoagae

Position: Director Corporate Governance

Date: 09 March 2016

3. Going forth, the National Treasury's Central Supplier Database is currently a mechanism used by other departments to verify whether suppliers are employed by the state or not (during quotation stages). IPID is anticipated to be live on the system by end of May 2016, which will also assist in ensuring that IPID does not do business with suppliers employed by the State

Name: Ms Z Cele

Position: Deputy Director: SCM

Date: 05 May 2016

Auditor's conclusion

Management comment noted, the impact of the findings on the audit report will be assessed.



17. Fruitless and wasteful expenditure incurred by advertising of a position which is not on the approved structure.

Audit Finding

PFMA Section 38(1)(c)(i), "states that the accounting officer for a trading entity, must take effective and appropriate steps to prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct".

The department incurred fruitless and wasteful expenditure by advertising a post which is not on the department's structure and no candidate was interviewed for this post. This position was also advertised on the Department of Public Service and Administration Circular published on 11 January 2016 (with reference Q9/2016/02)

No	Supplier	Description	Payment No	Amount (R)
1	Basadzi Advert	Advertising a post – Director SCM	1329506	13 726

This result in non-compliance with PFMA S38(1)(c)(i) and the payments made being fruitless and wasteful expenditure.

Internal control deficiency

Financial and performance management: Management did not implement controls to ensure that all positions advertised are on the approved structure of the department.

Recommendation

Management should disclose the expenditure incurred as fruitless and wasteful expenditure and must ensure that proper controls are implemented to prevent advertisement of posts which are not on the approved organizational structure

Management response

We noted that the payment number 1329506 relates to cleaning service and the finding as raised. However will respond as follows:

Management is not in agreement with the finding and the internal control deficiency for the following reasons:

The post of Director: Supply Chain Management was advertised with the intention of filling the post by the 1st of April 2016. The approval was subsequently obtained from the Acting Executive Director and the Honourable Minister while anticipating concurrence from the Department of Public Service Administration.

The intention of the advertisement of the post was to ensure that it is filled by the beginning of the financial year to avoid under expenditure. As a result, the expenditure was not fruitless and wasteful.

Name: M Matsomela
Position: Programme Manager: Administration
Date: 15 July 2016

Name: Ms L Ngcongco

Position: CFO
Date: 15 July 2016

Auditor's conclusion

Management's comments are noted, however, the finding still stands as management decided to go ahead by advertising the post prior to the proposed structure being approved by the Minister of Public Service and Administration. The evidence provided is an internal communication requesting the Minister of Public Service and Administration to approve the proposed structure however that approval was not obtained. As a result of advertising a post that is not on the approved structure there was no benefit that the department received from this expenditure, therefore this expenditure qualifies as fruitless and wasteful expenditure.



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HUMAN RESOURCE MANAGEMENT – EMPLOYEE COST**18. No leave register kept at Provincial office****Audit Finding**

PFMA section 40(1) (a), states that the accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards

Paragraph 16.2 of the departmental leave policy requires that administrative officer shall be responsible for entering all leave applications into a register

On request of the leave register, we have established that the IPID Gauteng provincial office does not keep the leave register as required by the departmental policy.

This noncompliance with departmental policy and leave capturing and may not be complete.

Internal control deficiency

Financial and performance management: Lack of monitoring and supervision by Head of the Human resource Unit to ensure that the leave register is created and updated

Recommendation

Management should ensure compliance to Department Policy by ensuring that the leave register is created and updated.

Management response

I am in agreement with the finding and the internal control deficiency for the following reasons: The register was in existence, but not updated and currently the register is fully updated as and when the officials are granted leave.

Name: Mr D Morema
Position: Acting Provincial Head - Gauteng
Date: 25/02/2016

Auditor's conclusion

Management comment noted, this will be reported as internal control deficiency



19. The SMS members Performance Agreement Quality Assurance methodology not properly implemented.

Audit Finding

DPSA circular 14/4/1/P guidance dated_04/06/2014, Par 4.4 states the following:

- (i) *All SMS members must conduct quality checks on their PAs by using the Quality Control Checklist."*
- (ii) *Both the Supervisor and the SMS member must sign the PA and the Quality Control Checklist.*
- (iii) *Before filing the PA, the human resource practitioner must conduct Quality Assurance (QA) on the document. If deviation has been identified, the PAs must immediately be returned to the supervisor for amendments, in consultation with the employee*

PFMA section 38(1)(a)(i), states that "The accounting officer for a department must ensure that that department has and maintains effective, efficient and transparent systems of financial and risk management and internal control."

- a. The quality assessment checklist issued by DPSA is not attached to the Performance Agreements of the following SMS members as proof that the quality assessment on the performance agreements was performed.

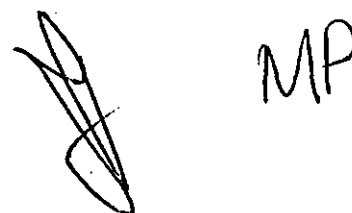
No	Persal No	Position	Salary Level	Date of Performance Agreement
1	06006914	Provincial Head: Investigations	14	01-Apr-15
2	15566293	Deputy Director: Investigations	13	01-Apr-15
3	18623913	Director: Investigations	13	30-Apr-15
4	18845771	Director: Investigations	13	01-Apr-15
5	19114729	Director: Investigations	13	30-Apr-15
6	19286333	Chief Director: Legal Services	14	30-Jun-15
7	21584494	Director: Legal Services	13	30-Jun-15
8	22824391	Director: Internal Audit	13	21-Apr-15

- b. The Human Resource Management officials did not sign the quality assessment checklist issued by DPSA attached to the following SMS members' performance agreement as proof that the performance agreements were checked for quality by HRM.

No	Persal No	Position	Salary Level	Date of Performance Agreement
1	04140265	Director: Investigations	13	30-Apr-15
2	13574540	Chief Director: Investigation And Information Management	14	28-Apr-15
3	18350186	Provincial Head: Investigations	14	02-Apr-15
4	19028318	Director: Human Resource Management & Develop Services	13	05-May-15

This is non-compliance with DPSA circular 14/4/1/P dated_04/06/2014 and PFMA

Internal control deficiency



Performance and Financial Management: The Director: HRM did not enforce the proper implementation of the methodology for the quality assurance of performance agreement of members of the SMS as imposed by DPSA to all departments.

Recommendation

The Director: HRM must enforce the proper implementation of the DPSA circulars within the HRM unit.

Management response

I am in agreement with the finding 6.a for the following reasons:

In terms of finding 6.a. corrective measures have been implemented to correct the non-submission of the Quality Assurance Forms. HRM has identified an official to handle SMS performance agreement to ensure that compliance is achieved. This has also been communicated to all SMS members via a circular (06 of 2016)

I am in agreement with the finding 6.b. In terms of finding 6.b., the forms were attached in the file and quality assessment forms were attached in the performance agreements of the listed officials, see attached forms for your reference.

Name: Ms S Phalatsi
Position: Director: Human Resource Management
Date: 09 March 2016

Auditor's conclusion

Management comment noted, the finding will be reported as internal control deficiency.



20. No systematic remedial or developmental support to assist unsatisfactory performing employees

Audit finding

In terms of PSR 1(VIII)E (a) and (b) , *"In case of unsatisfactory performance, an executing authority shall:*

- Provide systematic remedial or developmental support to assist the employee to improve her or his performance;*
- If the performance it's as unsatisfactory as to be poor and desired improvement cannot be effected, consider steps to discharge the individual for unfitness or incapacity to carry out her or his duties."*

In terms of the IPID's Performance management development policy par 7.1, *"The human resource management unit is responsible for the overall coordination, support and monitoring of the implementation of performance management by line managers"*

During the audit it was discovered that the following employees' performance was rated as unsatisfactory for the performance cycle 2014/15 and we could not find any evidence that systematic remedial or developmental support were taken in order to assist the employees to improve their performance as required by PSR 1(VIII)E(a) and (b).

No	Persal No	Performance score obtained
1	22182977	81
2	6293433	81
3	15456901	95
4	5337895	81
5	22793607	81
6	23593547	95
7	53059352	77

This is noncompliance with PSR 1(VIII)E (a) and (b) and performance management policy

Control Deficiency

Financial and performance management: Management did not ensure full and adequate implementation of PSR and performance management and development policy

Recommendation

Management should ensure that the above employees are provided with support to assist them to improve their performance. Management must ensure that the PSR and the performance & development policy are implemented adequately.

Management response

Management not in agreement with the finding and the internal control deficiency for the following reasons on the following employees:

No	Persal No	Performance score obtained	Comments
1	22182977	81	The employee left the service of employment on 02 October 2015 hence not developmental support was

No	Persal No	Performance score obtained	Comments
			implemented
3	15456901	95	The employee lodged an appeal on the outcome of the annual assessments hence not developmental support was implemented
6	23593547	95	The employee left the service of employment on 15 January 2016 hence not developmental support was implemented
7	53059352	77	The employee was booked off-sick from 31 March 2015 to 30 April 2015 and 01 May 2015 to 30 September 2015. Basically, she was off-sick for a period of 6 months and could not be placed on Incapacity Programme in absentia. The employee came back on 01 October 2015 and her performance was closely monitored by the Supervisor to assist in addressing the reported poor performance.

Management is in agreement with the finding and the internal control deficiency for the following reasons.

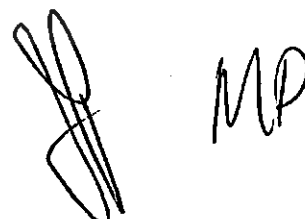
The employees were provided with the necessary support but not documented in the performance improvement plans.

No	Persal No	Performance score obtained	Comments
2	6293433	81	The employees received in service training allowing them to understand and work on the system.
4	5337895	81	The employees received in service training allowing them to understand and work on the system.
5	22793607	81	The employees received in service training allowing them to understand and work on the system.

Name: Ms S Phalatsi
Position: Director: HRM and DS
Date: 30 June 2016

Auditor's conclusion

Management comments noted, however no supporting documents were provided to support the comments. Therefore the finding still stands.



21. Performance Agreement Not Signed by 31 May**Audit finding**

In terms of DPSA Circular 15/4/9 (Par 3.1): *"Amendments regarding signing of performance agreements and filling of posts for members of senior management, with effect from 1 April 2009, all members of SMS must conclude and sign their performance agreements within first two months of the financial year, i.e. by 31 May of each year"*

During the audit it was discovered that the following employee did not sign the performance agreement by 31 May 2015

Persal No	Date Performance Agreement was Signed	Date appointed into the current level
5136598	01-Jun-15	01-Oct-14

This is non-compliance with DPSA Circular 15/4/9

Control Deficiency

Financial and performance management: Management did not ensure full and adequate implementation of DPSA regulation

Recommendation

Disciplinary actions must be taken against the above employee for not complying with the requirements of the DPSA Circular 15/4/9. Management should enforce compliance with all regulations applicable to the department.

Management response

Management in agreement with the finding for the following reasons .The performance agreement was done and forwarded to the office of Programme 2 Manager on 29 May 2015, so that both supervisor and supervisee can engage and sign the Performance Agreement but not signed on time. Measures have since been put in place to monitor the signing of PA's and to ensure compliance with time-frames. See attached circular

Name: M.J MOSIMANEGAPE
Position: ACTING PH: MPUMALANGA OFFICE
Date: 30 JUNE 2016

Auditor's conclusion

Management comments noted, the finding will be reported as control deficiency.



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ASSETS MANAGEMENT

22. Assets register not updated**Audit Finding**

In terms of PFMA 38(1)(d), "The accounting officer for a department, trading entity or constitutional institution is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution."

In terms of TR 10.1.1(a), "The accounting officer of an institution must take full responsibility and ensure that proper control systems exist for assets and that preventative mechanisms are in place to eliminate theft, losses, wastage and misuse."

In terms of IPID's Assets management policy paragraph 10.2.3, "The assets register must be updated immediately when new assets are received/bought or moved. It must also be updated when assets are being disposed"

- A. The following assets were moved from the KZN regional office to the IPID national head office and the assets register was not updated with the location of the asset.

Kwa-Zulu Natal

No	Date Purchase d	Date Moved	Bar Code/ Serial No	Assets Description	Asset Physical Location	Location as per Assets Register
1	14-Dec-11	21-Mar-14	BDB984	Pistol Vector 9mm Parabellum	National Office	KZN Regional Office
2	14-Dec-11	21-Mar-14	BDB950	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
3	14-Dec-11	21-Mar-14	BDB937	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
4	14-Dec-11	21-Mar-14	BDB948	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
5	14-Dec-11	21-Mar-14	BDB939	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
6	14-Dec-11	21-Mar-14	BDB982	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
7	14-Dec-11	21-Mar-14	BDB993	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
8	14-Dec-11	21-Mar-14	BDB947	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
9	14-Dec-11	21-Mar-14	BDB944	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office
10	14-Dec-11	21-Mar-14	BDB936	Pistol Vector 9Mm Parabellum	National Office	KZN Regional Office

- B. The following assets were moved from the KZN regional office to the IPID national head office for disposal and the assets register was not updated with the location and condition of the assets.

Kwa-Zulu Natal

No	Date Purchase d	Date Moved	Bar Code/ Serial No	Assets Description	Asset Physical Location	Location as per Assets Register
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2	26-Oct-09	11-Jul-13	03606	Notebook Dell E6400	National Office	KZN - Admin Store
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Non-compliance with PFMA 38(1)(d) and Treasury Regulations paragraph 10.1.1(a)

Internal control deficiency

Performance and Financial Management: The assets register is not updated as and when assets are moved from one location to another.

Recommendation

Management should update the assets register immediately when the assets locations changes. Assets verification should be performed as per the assets management policy and assets register updated after every assets verification.

Management response

Kwa-Zulu Natal

I am in agreement with the finding and the internal control deficiency for the following reasons:

Assets were physically transferred to Head Office to KwaZulu-Natal Office and other from KwaZulu-Natal Office to Head Office as per the Asset Movement Forms. The transfer on the system was to be done by Head Office as at a Provincial Level the extra-ordinary function to transfer assets from the Provincial Office Store to the Head Office Store is not available.

The matter was escalated to Head Office immediately after the Auditor's findings and the extra-ordinary transfer was done. Therefore all KZN Office Assets are now in good order.

Name: Nompumelelo Phakathi
Position: Deputy Director: Corporate Services
Date: 2016-04-28

The asset register is now updated and items are now captured on the correct location

Name: Zuziwe Cele
Position: Deputy Director: SCM & AM
Date: 8 July 2016

Auditor's conclusion

Kwa-Zulu Natal

Management Comments noted, and the finding will be followed up at final and evaluated for consideration in the audit report.

23. Assets not verified for existence.**Audit Finding**

In terms IPID's Assets management policy paragraph 10.2.3, *"The assets register must be updated immediately when new assets are received/bought or removed. It must also be updated when assets are being disposed"*

Paragraph 10.3 further state that, *"To ensure the completeness and the correctness of the assets on the assets register all assets must be physically verified at least quarterly basis under the authourity of the Cost Center Manager"*

A. The following assets could not be physically verified for existence.

N o	Bar Code	Serial No	Assets Description	Location of The Asset	Cost
1	N/A	IS1143002454	Power Supply Uninterrupted Power Supply 4X8 Kva	Sever Room	55 476.20
2	N/A	CH5DP4J	Notebook Dell E6400	Tshabalala	15 827.00
3	8336	9R2RWW1	Notebook Laptop Dell	Mr Raymond Mabasa	16 636.06
Total					200 029.38

This result in overstatement of assets recorded in the assets register.

Internal control deficiency

Performance & Financial Management: Proper and regular assets count not performed to ensure that the assets register is updated and accurate

Recommendation

Management should perform regular assets count to ensure that all assets recorded in the assets register exist and are complete.

Management response

I am not in agreement with the finding and the internal control deficiency for the following:

The following assets could not be physically verified for existence.

N o	Bar Code	Serial No	Assets Description	Cost	Comments
1	N/A	IS1143002454	Power Supply Uninterrupted Power Supply 4X8 Kva	55 476.20	Agree: An incorrect serial number was used and during the fourth quarter asset verification it was since corrected, the correct serial number is ZS1118047561. Attached is the copy of updated report of the serial number.
2	N/A	CH5DP4J	Notebook Dell E6400	15 827.00	Disagree. The identified asset was reported as a loss and attached is the copy of the loss report. The asset can only be updated as a loss in the asset register and is still going to reflect in the register pending the final outcome of the case. The asset can only be removed from the asset register after the approval has been granted by the Accounting Officer.

3	8336	9R2RWW1	Notebook Laptop Dell	16 636.06	Disagree. The identified asset was reported as a loss and attached is the copy of the loss report. The asset can only be updated as a loss in the asset register and is still going to reflect in the register pending the final outcome of the case. The asset can only be removed from the asset register after the approval has been granted by the Accounting Officer.
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Name: Mr MD Morema
Position: Acting Provincial Head: Gauteng
Date: 05/02/2016

Auditor's conclusion

A.

N o	Bar Cod e	Serial No	Assets Description	Cost	Comments
1	N/A	IS1143002454	Power Supply Uninterrupted Power Supply 4X8 Kva	55 476.20	Management comments noted, the finding will be reported as a control deficiency.
2	N/A	CH5DP4J	Notebook Dell E6400	15 827.00	The asset is still recorded as such in the assets register, which is overstating the assets value. The impact of the lost assets will be assessed.
3	8336	9R2RWW1	Notebook Laptop Dell	16 636.06	The asset is still recorded as such in the assets register, which is overstating the assets value. The impact of the lost assets will be assessed.

[Handwritten signature] *MP*

DISCLOSURES

24. Understatement of lease commitment**Audit Finding**

PFMA section 40(1) (a), states that, "The accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards"

In terms of Modified cash standard chapter 17 (leases) par. 22 "a lessee department shall make the following disclosure for lease commitments:

(a) The total of future minimum lease payments at the reporting date,

- I. Not later than one year;
- II. Later than one year and not later than five years; and
- III. Later than five years."

The following lease commitment have been incorrectly calculated

As per lease commitment schedule					Audited Information			
Office / Component	Start date of the Contract	Expiry date of the Contract	Monthly Amount (R)	Remaining Months of the Contract	Lease Commitment Disclosed in the AFS	Remaining Months of the Contract	Recalculated Commitment (R)	Difference (R)
Gauteng Satellite: Safika	01-Oct-13	30-Sep-16	2 365.65	7	16 559.55	6	14 193.90	-2 365.65
Mpumalanga Nashua kopano	22-May-14	21-May-17	968.78	11	10 656.58	14	13 562.50	-2 905.92
Free State: Moyahobo	04-Nov-14	03-Nov-17	2 550.04	17	43 350.68	19	48 450.76	-5 100.08
Total								10 371.65

The total amount of lease commitments disclosed in the AFS is understated.

Control Deficiency

Financial and performance management: Management did not properly review the accuracy of the total amount of lease commitments before disclosing in the AFS.

Recommendation

Management should recalculate and adjust the amount of lease commitment disclosed in the AFS for 2015/2016 financial year. Management must ensure that proper review is performed on all financial information before including in the AFS.

Management response

I am partially in agreement with the finding and the internal control deficiency for the following reasons:



With respect to the contracts for Gauteng, Mpumalanga and Free State the dates reflected on the original SLA were utilised instead of the dates reflected on the addendum to the SLA. The lease commitment schedule has since been updated and the Annual Financial Statements will be adjusted accordingly.

With respect to the contract for Umtata: Sebtech, IPID is not in agreement with the finding as the addendum was not entered into by both parties and as such the calculation was based on the original SLA.

Name: Mr P Setshedi
Position: Director Finance
Date: 21 June 2016

Auditor's conclusion

Management comments noted, the finding will be evaluated for impact in the auditors' report.



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25. Overstatement of Key Management personnel

Audit Finding

PFMA section 40(1) (a), states that, "The accounting officer for a department, trading entity or constitutional institution must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards

Modified Cash standard chapter 15 par .21 states that, "A department shall disclose the following with regard to key management personnel:

- a) Full compensation paid to key management personnel per category
- b) A department shall also disclose the total payments made to close family members of key management personnel.
- c) For each category of key management personnel the department shall also disclose the number of individuals in the category"

During the audit it was discovered that the total amount paid to the following employee was incorrectly calculated.

Employee	Position	Amount reported	Amount recalculated	Difference
70945403	DD: Investigation FS	617 586	562 430	(55 157)

The amount of compensation for key management personnel disclosed in the AFS is overstated

Control Deficiency

Financial and performance management: Management did not properly review the accuracy of the total key management personnel disclosed before disclosing in the AFS.

Recommendation

Management should recalculate and adjust the compensation of the key management personnel disclosed in the AFS for 2015/2016 financial year by R64 130.71. Management must ensure that proper review is performed on all financial information before including in the AFS.

Management response

Management is partially in agreement with the finding for the following reasons:

Management had a meeting with Auditor General on 07 July 2016 to sought clarity on their calculations especially what informed the difference of amount in the table above. It was agreed with Auditor General that based on the evidence that reflects the compensation of employee of the above official, the amount to be adjusted in the compensation of employee is R 21 438.15 and not R 55 157.

Name: Ms S Phalatsi
Position: Director: HRM and DS
Date: 05 July 2016

Auditor's conclusion

We agree with the management's response and conclude that the key management personnel be adjusted with R21 438.15, the amount is reduced by resettlement allowance received by employee which we didn't account for it on our recalculated amount. The finding still stands and will remain in the management latter as the amount disclosed is still misstated with an adjusted amount.



[Handwritten signature] *MP*

INFORMATION TECHNOLOGY

USER ACCESS CONTROL

User access management is the systematic process of managing access of users to an application. The process includes the creation, review, disabling and removal of user accounts.

26. The user account procedure document for Basic Accounting System (BAS) is not yet approved

Audit finding

The reviewed User Access Management policy for BAS was documented however it was not approved to provide guidance on the administration of users on the BAS application system.

Without adequately documented and approved user account management procedures, user account management activities might not be dealt with in a consistent manner which could lead to unauthorised access being gained to the system.

Internal control deficiency

Financial and Performance Management: Information technology systems

Although the document has been formally documented, it has not yet been approved due to the lengthy approval process in the department.

Recommendation

Management should expedite the process of approving the BAS User Accounts Management Procedure for implementation purposes. The updated user account management procedures should be approved timeously.

Management response:	<p>Whilst the Department acknowledge that the reviewed policy which includes the above mentioned activities is currently in the process of approval by the Acting Executive Director, the followings must be considered:</p> <ul style="list-style-type: none"> • The system Controller activities report is reflected in the User Profile and Activity report that has been drawn on monthly basis, checked and filed accordingly. • Monitoring of User logon is recorded on the User profile and Activity report analysis has also been done on monthly basis. Reset and creation of forms have been completed by Users and approved for access in
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	accordance with the responsibilities. The proof of activities was submitted during the audit and is also attached here for reference.
Name, Surname and position of responsible official:	Patrick Setshedi Director: Finance
Target date for implementation:	
Auditor's conclusion	Management responses have been noted. The finding is still valid since the updated policy is not yet approved.

27. Logistical Information System (LOGIS) user accounts policy was found to be inadequate.

Audit finding

As previously reported, the department had separately documented and approved user account procedure documents to provide guidance on the administration of users on the LOGIS application systems. However, the following aspects and/or management activity was not adequately addressed by the procedure:

- Monitoring of access and logon violations

Without adequately documented and approved user account management procedures, user account management activities might not be dealt with in a consistent manner which could lead to multiple attempts and security violations being bypassed by unauthorised users to sensitive data which could result in data integrity being compromised. Successful brute force attacks might not be timely detected.

Internal control deficiency

Financial and performance management: Formal control over IT systems

Formally set out treasury guidelines were not followed or used when the directorate created the user account procedure document. This guideline outlines all the minimum procedures that should be conducted in the maintenance of user accounts on the transversal systems.

Recommendation

Management should ensure that the user accounts management procedures are updated to include all the minimum procedures including monitoring of access and logon violations. Management should ensure that proper controls are put in place to ensure proper adherence to the policy.

Management response:	I am not in agreement with the finding Scm is
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	<p>drawing audit trail report RR007 on a quarterly basis. The activities of the system controller are being monitored. (supporting documents are hereby attached)</p> <p>The user account policy will be updated to include monitoring of access login violations</p>
Name, surname and position of responsible official:	<p>Zuziwe Cele</p> <p>Deputy Director: SCM & AM</p>
Target date for implementation:	<p>August 2016</p>
Auditor's conclusion	<p>Management responses have been noted. Subsequent to reporting evidence was provided to auditors for review purposes and to ascertain assurance of the controls in place. The finding raised was modified and the resolved finding was removed. The current finding is in respect to the inadequacy of the LOGIS user accounts management procedure lacking the inclusion of monitoring of access and logon violation process.</p>

28. Review of users and system administrators activities and access rights not performed on Flow Centric System

Audit finding

During the period under review, review of system administrator's activities and access rights were not performed and evidence was not provided to ascertain whether user's access rights were reviewed for appropriateness.

If reviews are not undertaken, employees might be granted access rights not related to their responsibilities and user ID maintenance might not be supported by approved requests and if exploited unauthorised system activities might go undetected

Internal control deficiency

Financial and Performance management: IT systems

Management had not formally assigned the role of reviewing the appropriateness of user's access rights on the system.

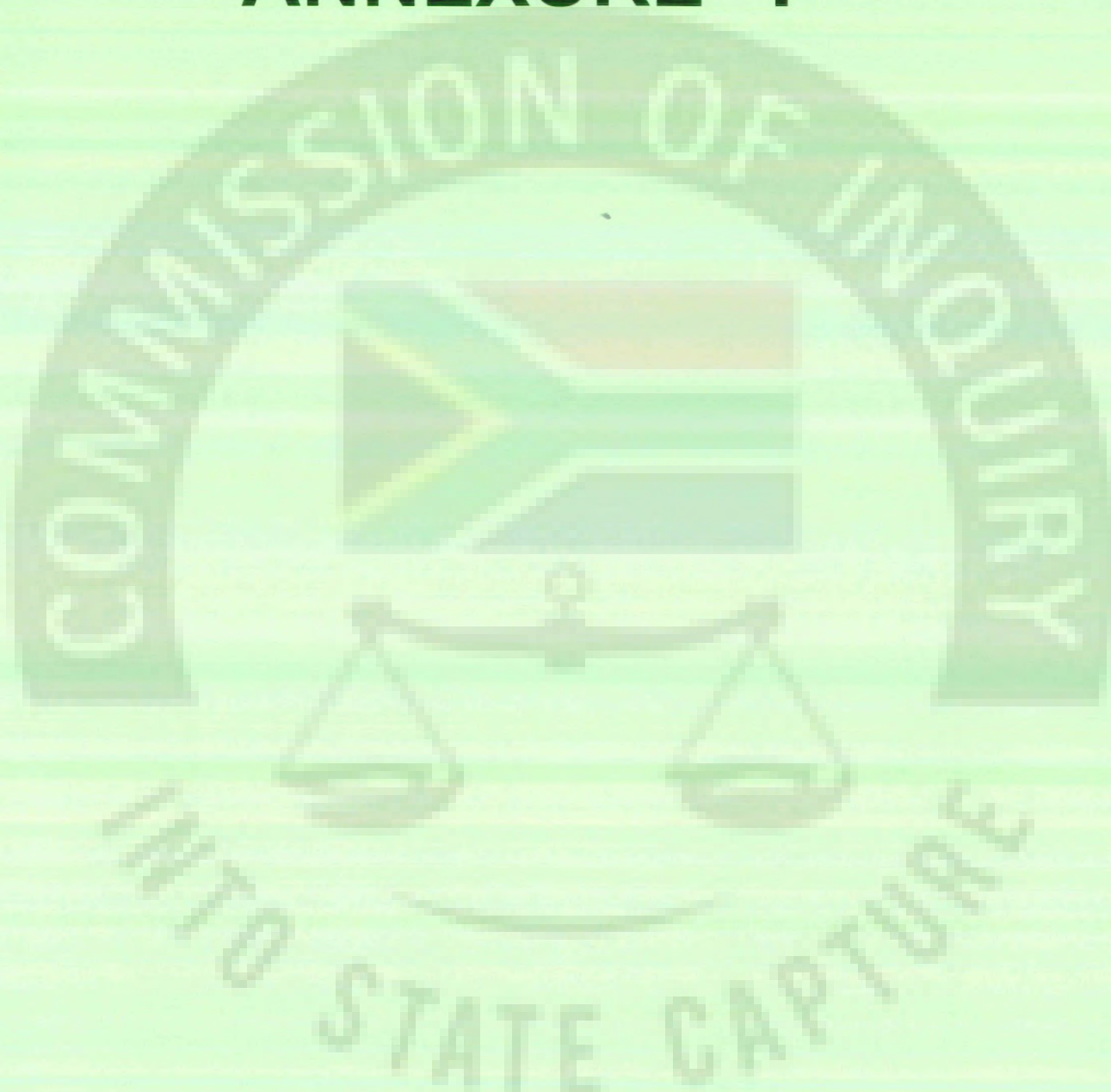
Recommendation

Management should assigned the role of reviewing the appropriateness of user accounts on the Flow Centric system to ensure that activities and access rights of users and system administrators are reviewed and evidence is kept.

[Handwritten signature] *MP*

Management response:	<p>Management agree with the finding.</p> <p>For the period under review, the system was administered by a service provider through a Service Level Agreement. The administrator's activities were managed through an Investigation Management Unit email group wherein all user's accounts requests (move, add, change, delete, etc) were sent and logged. The department has since taken charge of system maintenance after the employment of the Programmer and a process is being put in place to conduct quarterly review of user's access rights and activities.</p>
Name, surname and position of responsible official:	Takalani Nemusimbori Director: ICT
Target date for implementation:	31 August 2016
Auditor's conclusion	Management comments are noted, however corrective actions agreed upon by management will be followed up on the next audit cycle.

ANNEXURE “P”



**ipid**

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel: (012) 399 0026 Fax: (012) 426 0408

Mr. KI Kgamanyane
15 CNR Andrew & Westburger Street
Ground Floor, Standard Bank Building
BLOEMFONTEIN

By Hand

Dear Mr Kgamanyane,

HAND OVER REPORT TO THE EXECUTIVE DIRECTOR

As you are aware, I have returned to the office. I was surprised that you were not around to give me an update on the status of the department and the usual/normal handover report. However, in your absence I have had a meeting with the Executive Committee. In the interest of good governance, it was decided by the EXCO that you need to provide a hand over report to myself by the 27th of October 2016 and to present to the EXCO members (PowerPoint presentation) on the 28th of October 2016 at 10h00 National Office Pretoria.

The EXCO has directed that the following aspects should be covered in your presentation:

Programme 1:

- Financial implications in terms of the transfers and department in general;
- Feedback on all International Trips undertaken;
- Status on payment to the Civilian Secretariat of Police on legal fees;
- Status report on the City Forum Building matter;
- Rationale in procuring/sourcing the GG vehicle for the Executive Director;
- Report on the Double appointments and Costing of travelling expenses for the following officials: and
 - i. Mr. Mocwaledi
 - ii. Mr. Leholo
 - iii. Mr. Raburabu

HAND OVER REPORT TO THE EXECUTIVE DIRECTOR

- Outcome of the Public Service Commission reports on investigations undertaken by them since March 2015

Programme 2:

- Report on the revision of SOP's;
- Report on all systemic corruption cases; and
- Status on Firearms procurement and handing over of firearms to certain personnel

Programme 3:

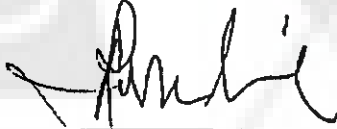
- Report on the abolishment of Legal Services and the implications thereof; and
- The appointment of counsel in all Labour related matters.

Programme 4:

- Implications and context of the "restructuring" process

Please acknowledge receipt of the email.

Yours sincerely



MR. RJ MC BRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 20/10/2016



MP

**ipid**

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X20708, Bloemfontein, 9300, No. 15 St Andrew & West Burger Street, Standard Bank Building, Ground Floor, Bloemfontein

Tel.: (051) 406 6800 Fax: (051) 430 8852

RE: HANDING OVER REPORT TO THE EXECUTIVE DIRECTOR

Your letter dated 20 October 2016 refers

Kindly inform EXCO that both of you are aware that I never received any verbal or written handing over from yourself and Programme Managers subsequent to my appointment as Acting ED and never expected that you will need the same because you were supposed to lead by example. We met after a week and the only thing that I received from you was the Office keys. Fortunately for you I have requested the Acting Director Support to prepare a report of the outstanding ongoing projects and pressing issues, same goes to the Acting Programme Managers which I hope was complied with.

Please note and respect the fact that I am on legally approved leave and if you have a problem with that you are more than welcome to take it up with the Approving authority. As you are aware that I am coming back on the 01 of November 2016 and if there are outstanding matters or issues needing clarity, I will definitely attend to them.

All the activities, local and international trips were undertaken with my Supervisor's blessings or approval at the time and he was consistently given feedback and monthly reports. We got invitations for international trips thereafter prepared info notes to the Minister for approval with reasons. After approval we prepared presentations and discussion documents (available at the OED) which were presented to the conferences and feedback given to MANCO and Management at our November last year Lekgotla and obviously recorded in the minutes for future references

The CSPS matter which both the CFO and Director Finance has knowledge of, the position of the departmental management has and is still the same in the sense that CSPS went out to contracted the services of legal firm on behalf of the department and in our last PCP appearance we reiterated the reasons of why we are not prepared to pay the invoice and was recorded as such in their PMG report

Lastly please note that as AED at the time, I was entrusted with the responsibilities and powers of the post itself which were discharged as such, without any limitations and you are more than welcome to make reference to my appointment letter, which does not have any clause that I will be expected to account to you when you come back iro those decisions that I have taken.

MP

For the record I accounted to whoever who appointed me to act for that particular period and any issue matter and uncertainty that you are having, you are more than welcome to take it up with him as He is the one who suspended you and thereafter appointed me.

Hoping that you will find this in order

SIGNED

KI KGAMANYANE

PROVINCIAL HEAD FREE STATE

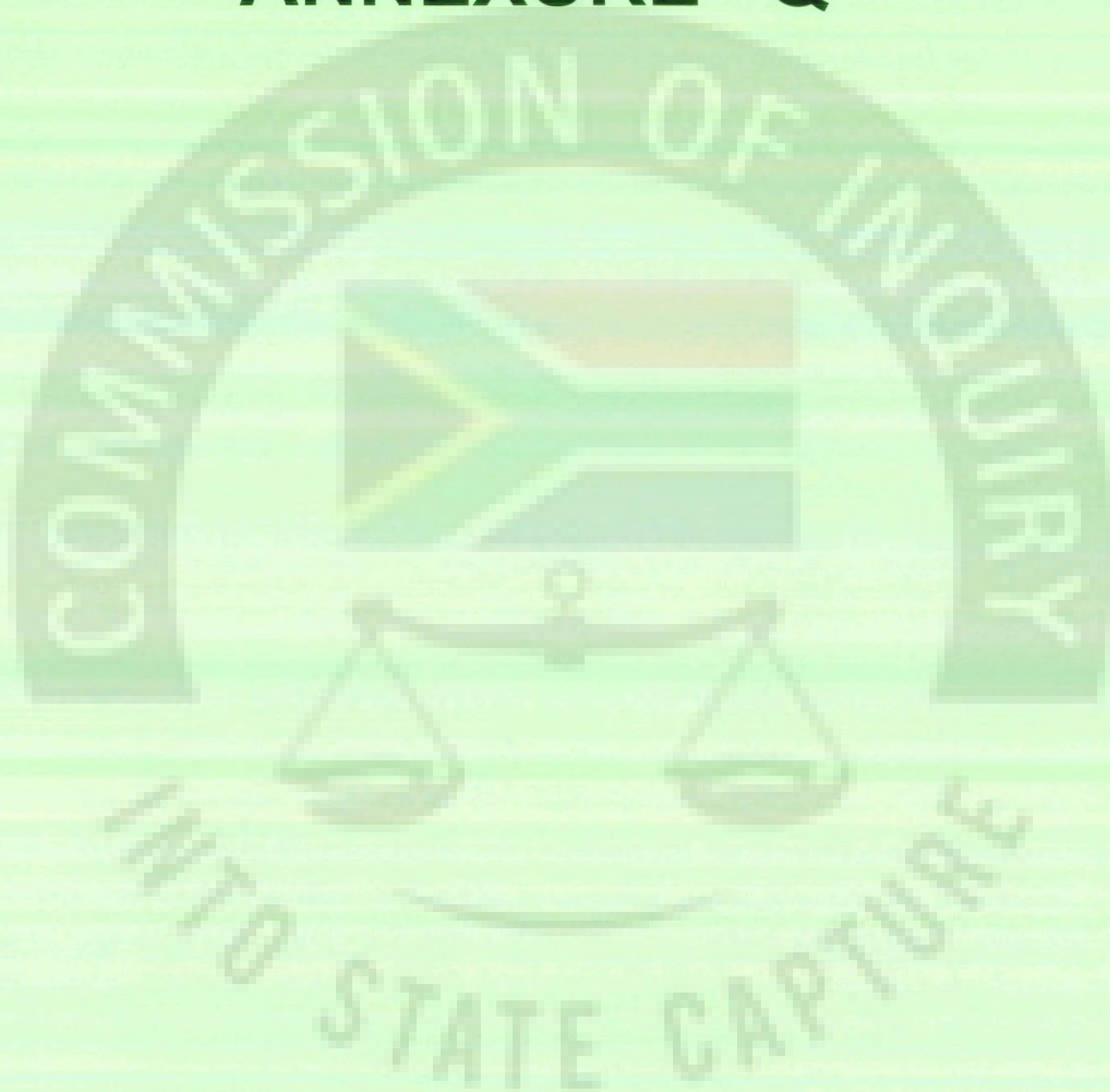
27 OCTOBER 2016



A handwritten signature in black ink, appearing to be 'K. Kgamanyane', is written over the bottom right portion of the watermark seal.

MP

ANNEXURE “Q”



" RMB.Q "

ANNEXURE

RIM-1557

P1

AUDIO 20180621-WA0023

Phone rings

MALE: Hello warrant!

Hello warrant!

MALE 1: Hello! Ke network, hey, e a swenya.

Hello! It is the network. It is bad.

MALE: Network, neh!

Yes, you mean the network!

MALE 1: Ee, aker o a bona ke founa ka ye nngwe, ke yela ke e chargileng. Ke Vodacom, okare e kaonenyana. O a tseba ke be ke reng? Go nyakega ke tle ke dule le wena fase, maybe Sunday late if o tla be o le gona!

Yes it is the network but, I'm calling with another one, which one is on charger. The Vodacom one seems better. You know what, we need to sit down for a chat, how about Sunday, if you are available?

MALE: Sunday late?

MALE 1: Yah, Sunday late. Ko tloga gae ka bo10 soo.

Yes Sunday late, I will come to you around 10.

MALE: Okay, okay! But in terms of the General, ne a batla gore ke ye which unit?

Okay, okay but in terms of the General, which unit does he want me to go to?

MALE 1: No, no yena ga a re fe directive yeo anker!

No, he isn't the one giving us that directive!

MALE: Okay.

MALE 1: Yeah, yena he can't give that the directives. Go tswa mo go rena...like ke nna ke tswa gaPiet, like ke tlogile fela ka re ke nyaka go ya ...[not audible]. O a kgetha, ke kgethile gore ke ya kae nna.

[Type here]

[Handwritten signature] *MP*

Yes, he can't give us the directive. It is up to us. Like I'm from the Piet. I just left ...[not audible]...you just choose. I chose as well, where I want to go.

MALE: So now I will have to choose myself.

MALE 1: Ee, aker, ne o mpotsa gore o nyaka crime intelligence aker?

Yes. You said to me you want crime intelligence. right?

MALE: No nna ke rile...whatever ye ba n-offerang yona. I can't choose.

Whatever they offer me. I cannot choose.

MALE 1: No, ye o tla bago happy ka yona, mostly. E ka se be CI, ko CI?

Take one which you'd be happy about. What about CI?

MALE: CI is also good.

CI is also good.

MALE 1: O nyaka le eng gape? O nyaka detective senate or something.

What else? Perhaps a detective senate?

MALE: Yeah maybe detectives.

Yeah, maybe detectives.

MALE 1: But nna for you, my preference will be CI.

But now for you my difference will be CI.

MALE: Okay

MALE 1: For you

MALE: Oh okay

MALE 1: Aker ke nyaka o be close to me! Ke go nurture, ke go tsamaisa tsela e monate. I want you close to me. Not necessarily reporting to me directly, aker tla be o reporter ko go someone else! But batho ba teng ba reporter mo go na, so just to feel at home sat la ba re wo motho ke wa ko kae, aker nna ke a go tseba

I want you to be close to me. I want to nurture you, make you feel home. I want you close to me. You won't be directly reporting to me, but to someone else. Though

[Type here]

MP

those people will be reporting to me; I just want you to feel at home. I don't want them to mistreat you, so I won't because I know you.

MALE: Oh yeah

MALE 1: Yeah, e tlo ba easy that way, very-very easy.

Yes, it's going to be easy that way, very easy.

MALE 1: So detective...ai, ke nonsense ya mmereko.

Detective isn't proper job.

MALE: So detective, you don't prefer it? It is nonsense?

MALE: Yeah, yeah ,

MALE 1: Ah, anker bjale o no swana le mmereko o re o etsang hona bjanong, wa go swana le ho salana moraho le ditsotsi. Aker ko CI, ga re bereke di-docket. [not audible]...di-docket ke tsa mafokisi. [not audible]...ke gore re bereka ka...aker gantshi ke di project...ge e el project e ira ke...mo teng go na le mafokisi, re na le mafokisi mo teng.

Well, it is like this everyday job: running after criminals. But with CI, we don't work with dockets. [Not audible]...dockets are for detectives...[not audible]...we work with...like in most cases we work with the project, when the project is been run by the...[not audible]...then detectives are there.

MALE: Is it the detectives?

MALE: But then the problem will be, for example, I am just giving you an example. If General says no I am giving you Brigadier post it means I wont work with you.

MALE 1: Ge a go file..ge a sa go fa Brigadier post, o ya ko...go na le section head aker! Anywhere.

If only they offered you. If not, you will go to...there is a section head. So you can go there, or anywhere.

MALE: Okay

[Type here]

MP 

MALE 1: if o nyaka bo-crime intelligence, o tla tla bo-crime intelligence. Aker go na le mo ba nyakang bo section head, anker Brigadier ke section head. Ba go fa section wa e runner.

If you want crime intelligence, you will go to crime intelligence. Mind you there is where they need section head, like brigadier. They will give you a section to run.

MALE: But I do not have experience. That is the problem. So it means...

MALE 1: Eeh, bjanong ke mo e lego gore o tla mmotsa gore nkampe o mphe bocolonel.

Yes, that's when you'd suggest they give you the colonel position.

MALE: Colonel?

MALE 1: Ee, ke bo-section commander.

Yes, it is like section commander.

MALE: Oh you will prefer that I become a colonel than a brigadier.

MALE 1: Yes than a brigadier, ka gore brigadier is like suicide, if ga o tsebe nix, then ba go bea ko godimo kua, o krea e le gore o...[not audible]

Yes, than brigadier, because that one is like committing suicide; if you don't have experience then they give you that position, you may end up...[not audible]

MALE: Oh it is like committing suicide.

MALE 1: Yeah, so ge e le colonel, anker you are a team leader!

Yes but the one for the colonel, isn't it you are a team leader?

MALE 1: Yes


MALE: As sort of assistant director, of some sort. Mola aker o ba team leader again, but at level 12. Assistant director of some sort.

As in assistant director. You become a team leader as well, but at level 12.

MALE 1: Level 12.

MALE 1: O bereka le di-left-handing colonels, and other junior members.

[Type here]

MP 

You work with the left-handing colonels, and other junior members.

MALE: but then, maybe...eish, ba ka se e viewe as like favours or corruprion? They won't view it like that?

But then are they not going to view it as favouritism or some sort of corruption or something? They will not view it like that?

MALE 1: Bo mang?

Who?

MALE: IPID. Aker IPID will investigate where am I going!

IPID. Isn't it that IPID will investigate where I am going.

MALE 1: No man, that's not corruption...[not audible]...nothing to do with corruption. Aker ko...o resiggnne ko IPID? Aker o a resigner ko IPID? O bereka ko o ratang.

No man, that's not corruption...[not audible]...nothing to do with corruption. You will...you resign at IPID. You resign first at IPID, not so? Then you work anywhere you like.

MALE: Yes, I resign.

Yes I resign.

MALE 1: No warra, o se ke wa tšhoša ke IPID, batho ba le ga ba na selo...ga ba na meno, ba no rata go bereka dilo bošaedi manh. If they were to follow things properly, they will fail dismally in most of the things.

Don't be afraid of the IPID. They mean nothing, they mean no harm. They just like misusing things. If they were to follow things properly, they will fail dismally in most of the things.

MALE: Alright

MALE 1: and aker, remember, anker remember now! You are with us now, moo e lego gore re bole ka dilo tše...mo e lego gore your service fellow is going down...[not audible]...

Remember here! You are with us now right? And we discuss the things that...well where your service fellow is going down...[not audible]

[Type here]

MP

MALE: Oh, he is going down?

MALE 1: There will be no one who is going to do the dirty job again. There will be no one.

There will be no one who is going to do this dirty job again. There will be no one.

MALE: Why would [indistinct] be going down? Because of?

MALE 1: sorry, o re...? aker he is under investigation. Aker o bone...[not audible]...aker ke suspect moo!

Sorry, you are saying...? He is under investigation, right! Remember you saw...[not audible]...and he is a suspect there!

MALE: Oh yeah

MALE 1: aker ..[not audible]...to testify mo casing ya bona aker.

Those people...[not audible]... to testify in their case. Isn't it?

MALE: Okay

MALE 1: You were not there at section 4

MALE: But like for example, all those questions that I received, I know nothing about them you see. I am going to be a useless 204.

MALE 1: No, those questions whether we know them or we don't know them, di irrelevant because ke...ke reng mara! Like for instance, oa tseba e re ke eme coz e tlo tima ge nka tsamaya ka yona...e re ke emenyana gannyane mo, ke mo gare ga sebakabaka, ga ke tshepe go ka ba le...

No, which questions? Whether you know them or you don't know them, it is irrelevant because, what...what can I say! Like for instance, let me simply stop by, because the car might just stop, I will just stop a little while, im in the middle of nowhere...

MALE: Hey, o se ke wa ema, o tla be wa...wa...bat la be ba go hijacker!

No do not stop. They will hijack you. Do not stop.

[Type here]

MP

MALE 1: Ke tsamaya gannyane ka mo yellow-lane. Ke tsamaya very slow ka mo yellow lane.

I'm driving slowly, besides the yellow-line. Very slow!

MALE: Okay

MALE 1: Ke re, aker warra, mola ne ke go botsa ke re ...[not audible]...o tlile as...[not audible]...

What I'm saying is, remember when I told you that...[not audible]...he came as...

MALE: Le IPID, IT became as the integral part ya IPID, that is the truth. It became too big, and ya ba ya, kore nkare member ya IPID or some sort, you understand? It is through that ED, ke yena a mo tlisitseng moo aker! Di...dintho tsela, o na le... like 10 or 11? ed 10 charges or 11?

And IPID as well, it became IPID integral part, that is the truth. It was big. It even, I don't know...like became member of the IPID, you get it? It is through that ED, he brought him here. They were like, 10 or 11.

MALE 1: Yes

MALE: [all engage]...[indistinct] number 1 then ED number 2? Okay.

MALE 1: yah, o nale 18 or 19 cases...aker ke yena a bego a...[not audible]...then go tla bo[not audible]...then yourself, ga ke tsebe gore o number 4 or bjang in terms of di-numbers tsa di-case.

Yes he has 18 or 19 cases... remember he is the one who...[not audible]...then there comes people like...[not audible]...then yourself, I'm not sure if you are number 4 on what, in terms of case numbers.

MALE: I was accused number 3.

For case number 3?

MALE 1: Number 3.

MALE: I was accused number 3. But then you guys are going to...add more of the accused...[silence]...hello!

I was accused number 3. But then you guys are going to add more. [silence] Hello.

[Type here]

MP

MALE 1: Ba iseven aker?

They are seven. Isn't it?

MALE 1: Seven? O a nkutlwa warra?

Seven? Can you hear me bro?

MALE: So it will be accused number 1 to 7. Yeah I can here you.

MALE 1: Ee, di iseven now di-accused. Di iseven.

Yes, the accused is seven.

MALE: Okay

MALE 1: now you are seven, eh.

You are now seven.

MALE: what about...but I hear you guys. Yesterday you said you are going to include Mr Tsotsobe is he there as well? And...Khuwa... [indistinct]...

MALE 1: Ehe, is not there...[not audible]...o kwele a re o gona mo team yela ya lena, mara bjanong yena nka se mmolele too much, kore ga a ne dintho tse a di rometseng ...[not audible]...mara le yena ke member ya security...[not audible]...

Yes, he isn't there, [not audible]...I heard you saying he is with that team of yours, but then I cannot say anything about him, because there is nothing sent...[not audible]...but he is the member of security...[not audible]...

MALE: Okay

MALE 1: maar there is nothing wrong a e irileng thus far. Mara ge nka krea tsela be re bofela ka tsona maloba, re re re kree laptop yela kae kae, re ka krea case tse e lego gore o di irile aker...

But there isn't anything wrong he did thus far. But if we can find a way like we discussed that day, like finding that laptop, we could find the case that he committed...

MALE: Alright

MALE 1: Mara, as of now, ga a teng. Ga se suspect. [not audible]...

[Type here]

MP 

But as for now, he isn't there. He isn't a suspect.. [not audible] .

MALE: Oh okay. Oh yeah, the others it means it is me, the ED, Paul, [indistinct], Nkabinde, Binang, Prince?

MALE 1: yeh!

MALE: Okay. So the new ones you do don't put them?

MALE 1: Ke bomang?

Like who?

MALE: Like Khuwa

MALE 1: Ehe, ga a teng. Aker ba re di baser moo go what they have!

No, he isn't there. They are based on what they have.

MALE: Oh okay.

MALE: I hear you.

MALE 1: So it will be wrong go no tsena player mo...mara ge wena o ...[not audible]...ge o ka thoma wa re eeeh, lena ga le ntsebe manh, le mang-mang ne a a swanetse a dire 1-2-3...then ba mo lokela aker!

So it might be wrong just to put in a player who...[not audible]...then if you can say the demands, that this and that were supposed to do this and that, then you are in!

MALE: Okay.

MALE 1: Ee, aker ge o ka ya go motho wa ka mo gare wa fihla re ...[not audible]...o a kwešiša mara ntho eo...

Yes, like if you can go to someone of inside, and ...[not audible]...do you get that..

MALE: ke a kwešiša warra...

I understand bro!

MALE 2: So ga ke tsebe gore nah, if go na le ntho ye o e swerego ka ba ba babedi ba o bolelago ka bona ba ba bagolo ba, net to come up with it wa re ke swere ntho ye ya mang-mang, le yena ne a ira ntho ye so le ye so. Ka date ye so we had a

[Type here]

MP

meeting, ne a re botsa gore re ireng re ireng, tse e lego gore le nna personally ke tsebile gore neh...[silence]... [phone cut]...

Okay, I don't know, but if you have something on those seniors, you can present it along, then you'd explain what they were up to. We had a meeting on that date, they briefed us on what to do, which I personally knew that...[silence].. [not audible]...

MALE 1: Hello! Hello!

MALE: Hello! [phone cut again]...yes sir! Eh, aker go na le se wena o se swerego se e lego gore...[silence]...o bolela ka sona.

Hello! [phone cut]...yes sir! Like if you have something that can...[silence]...then we can talk.

MALE: Okay.

Okay!

MALE 1: O a nkutlwa warra?

Can you hear me bro?

MALE: Eh, ke a go utlwa warra! Okay then its fine then warrant.

Yes I hear you bro. Okay it is fine then warrant.

MALE 1: [not audible]...

MALE: No I will go through those questions and see...and if I know something and come back to you. Hello! Hello! Hello! [phone cut]...

MALE 1: [not audible]..ka le disturber...

[not audible]...to disturb...

MALE: Oh, ke network? Ke network?

Is it a network problem?

MALE 1: Ke nagana bjalo yah! E re ke [not audible]...ke tsamaya staraga...

I think so. Let me...[not audible]...I'm driving slowly...

MALE: No it is fine. We will talk some other time then.

[Type here]

JP MP

No, it's fine. We will talk some other time then!

MALE 1: Re tla bolela, eh wa re Sontaga o eme bjang?

We'll talk, how about Sunday?

MALE: Yeah Sunday I might have time.

Yes, Sunday I might have time.

MALE 1: Ka di afternoon neh?

In the afternoons, right?

MALE: yah.

Yes!

MALE 1: okay so re tla bona ka nako ya gona aker?

Okay, we'll see by the time comes, right?

MALE: Okay, no problem

No problem.

MALE 1: O tla hlalosa ge o le free anker?

Then you will tell when you got time, right?

MALE: Okay no problem

MALE 1: No, agona bothata aker!

No problem then!

MALE: Dankie warra!

Thanks bro!

MALE 1: Neh, gabotse, dankie! Bye!

Keep well, thanks! Bye!

THE RECORD ENDS

[Type here]



ANNEXURE “R”



"LMB.R"

RJM-1569

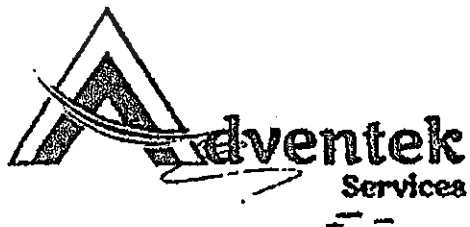
RECORDING

DATE: Unknown

VENUE:

Unknown

IPID



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CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that in as far as it is audible the foregoing is a true and correct transcript of the recording provided by you in the matter:

IPID

TRANSCRIBER : H Joubert
Sworn Transcriber

DATE HELD : Unknown

DATE COMPLETED : 2017-04-03

NUMBER OF PAGES : 123

SIGNATURE : *H Joubert*
Sworn Transcriber

Notes:

1. *Digital recording equipment not utilised to its full potential, lot of background noise and/or parties far away from recording equipment;*
2. *Parties intervening each other, may result in indistinct words and or phrases.*
3. *No stenographer's annotations provided.*
4. *Where no clear annotations are furnished, names are transcribed phonetically.*
5. *Some of the parties spoke unclear.*
7. *The quality of the transcript is only as good / bad as the audio provided.*



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IPID

1

GENERAL BOOYSENS: By die Wimpy. Howzit?

SPEAKER 1: Alright.

GENERAL BOOYSENS: How are you man? Did you drive through the night?

SPEAKER 1: Howzit.

GENERAL BOOYSENS: What is your name?

SPEAKER 1: Blackie.

GENERAL BOOYSENS: I am Whitey.

SPEAKER 1: [Laughing]

10 GENERAL BOOYSENS: You know what we can do is, I have got a contact here by the casino, who can give us a private place to talk, if you want to go there.

SPEAKER 1: Okay.

SPEAKER 2: No, problem that is fine. We can go. So I can follow your car?

GENERAL BOOYSENS: We can go with my car, or we can, where is your car?

SPEAKER 1: Up there.

GENERAL BOOYSENS: Where? Is your car here?

20 SPEAKER 1: [Inaudible answer]

GENERAL BOOYSENS: So what time did you leave last night?

SPEAKER 1: We left this morning, about 03:00.

GENERAL BOOYSENS: What time?

SPEAKER 2: 03:00, three o'clock in Jo'burg. We

IPID

2

arrived here about something to 9.

GENERAL BOOYSENS: Sorry, what time did you leave?

SPEAKER 1: In Jo'burg?

GENERAL BOOYSENS: Ja.

SPEAKER 2: We left three o'clock this morning.

GENERAL BOOYSENS: Oh. Road wasn't busy?

SPEAKER 1: No. No. [Indistinct]

GENERAL BOOYSENS: Is it. Let's jump in my car, then we drive there, it's just around corner here.

10 SPEAKER 1: Okay.

GENERAL BOOYSENS: Okay.

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Just put on that safety belt, otherwise it makes noise, you can push that seat back if you want to. So how is Jo'burg?

SPEAKER 1: Ah, it is all right.

GENERAL BOOYSENS: Is it. You, you are based in Jo'burg self?

SPEAKER 1: In Joburg, yes, in Bronberg.

GENERAL BOOYSENS: Oh so, General Sibiya is he okay?

20 SPEAKER 1: Ah, he is alright.

GENERAL BOOYSENS: Is it?

SPEAKER 1: He is alright.

GENERAL BOOYSENS: I have spoken to him three weeks ago, but he did not want to talk on the phone.

IPID

3

SPEAKER 1: On the phone.

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Huh?

SPEAKER 1: On the phone, he did not talk anything.

GENERAL BOOYSENS: Ja-ja. But [intervene]

SPEAKER 1: Are you in Amanzimtoti?

GENERAL BOOYSENS: Sorry?

SPEAKER 1: Are you in Amazimtoti?

GENERAL BOOYSENS: Ja-ja. Let me phone this guy and tell
10 him. He must open the gate for us. Let me just get his phone
number? [phone ringing].

SPEAKER 3: Hello?

GENERAL BOOYSENS: Wimpie, laat hulle vir my die boom gate
oop maak, ek is oor 3 minute daar, van die dinges af, as ek hulle,
gaan jy my onder kry?

SPEAKER 3: Ja.

GENERAL BOOYSENS: Okay.

SPEAKER 3: Laat hulle daar by meter 5 gaan.

GENERAL BOOYSENS: Okay right, ek sal jou daar kry.

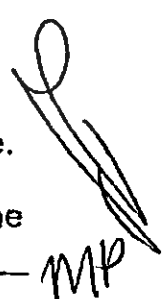
20 SPEAKER 3: Okay, Johan.

GENERAL BOOYSENS: Bye.

SPEAKER 3: Cheers, bye.

GENERAL BOOYSENS: You see, he organises us a private place.

SPEAKER 2: No problem, it is alright. The casino is right around the

Handwritten signature and initials, possibly 'MP'.

IPID

4

corner, it seems.

GENERAL BOOYSENS: So you know the casino? The Sun Coast.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Sorry?

SPEAKER 2: [Indistinct] the same one.

GENERAL BOOYSENS: Ja, ja the same one. What is happening at Pretoria. What are they saying, who is going to get that post?

SPEAKER 1: The... which one of the Deputy or...

10 GENERAL BOOYSENS: No, no for a, ja for that Ramat's post?

SPEAKER 1: Eyh, I don't know, it is quiet. I did not hear anything.

GENERAL BOOYSENS: And the other one, the, the deputy?

SPEAKER 1: Still a problem.

GENERAL BOOYSENS: They fighting?

SPEAKER 1: We don't know, they might [indistinct]
[Laughing]

GENERAL BOOYSENS: Uhhhhhh.

SPEAKER 1: It is a competition, anyway.

20 SPEAKER 2: You will not believe, Petros want that post as well.

GENERAL BOOYSENS: Is it?

SPEAKER 2: I think he is on that list.

GENERAL BOOYSENS: Oh. But someone told me he wants to

IPID

5

leave the police?

SPEAKER 2: He want to left, leave?

GENERAL BOOYSENS: Ja, someone told me that he wants to leave.

SPEAKER 2: Okay [intervene]

GENERAL BOOYSENS: From pri.., I do not know, private business that he want to start.

SPEAKER 1: Ja maybe he is unadvised.

GENERAL BOOYSENS: No that is, no that is a rumour, I do not
10 know if it is true or not. Because nowadays there is so plenty rumours.

SPEAKER 2: Hi, they system in the police is not right, nowadays.

GENERAL BOOYSENS: Hmm?

SPEAKER 2: The system in the police, eyh, eyh, eyh.
I, I don't know.

GENERAL BOOYSENS: No one is worried about crime.

SPEAKER 1: No one is worrying.

GENERAL BOOYSENS: No, they don't worry about crime, it is
20 sorry but...

SPEAKER 2: No one is worrying about the crime.

GENERAL BOOYSENS: How is the crime in Jo'burg?

SPEAKER 2: Eyh, it's too much.

GENERAL BOOYSENS: Now who is this man you send here to

IPID

6

us?

SPEAKER 2: Which man?

GENERAL BOOYSENS: A brigadier? Mobolo.

SPEAKER 2: Oh Motho. [Laughing]

GENERAL BOOYSENS: Motho, [indistinct]

SPEAKER 2: How is he here, he is alright? [Laughing]

SPEAKER 1: [Laughing]

GENERAL BOOYSENS: I don't know people are complaining.

[Laughing]

10 SPEAKER 2: [Laughing]. That guy eh, eh.

GENERAL BOOYSENS: Eyh, the people are complaining too much.

SPEAKER 1: They are complaining about him?

GENERAL BOOYSENS: Ja.

SPEAKER 2: He is like that.

GENERAL BOOYSENS: Okay.

SPEAKER 1: In Jo'burg, they were complaining about him.

GENERAL BOOYSENS: Is it?

20 SPEAKER 2: It was a relief actually, when he left in Jo'burg. [Laughing]

GENERAL BOOYSENS: So you caught, you caught the people here.

SPEAKER 2: [Laughing]

MP

IPID

7

GENERAL BOOYSENS: When I asked Sinbiyi how's that man, he said no he is okay. I think he just wanted to let him come.
[laughing]

SPEAKER 2: [Laughing]. Eyh, that man, eh.

SPEAKER 4: How are you doing sir?

GENERAL BOOYSENS: I am coming to see Mr Vermaak.

SPEAKER 4: Sorry?

GENERAL BOOYSENS: Mr Vermaak.

SPEAKER 4: Mr Vermaak?

10 GENERAL BOOYSENS: Wimpie.

SPEAKER 4: You want to see him?

GENERAL BOOYSENS: Ja, he knows I am coming.

SPEAKER 4: Okay.

GENERAL BOOYSENS: Thank you. [Gates opening].

SPEAKER 2: The problem of Brigadier Mboto] né? He wants to prove a point and now he is in charge. That is his problem.

GENERAL BOOYSENS: Hmm.

SPEAKER 2: He want to prove the point, but no one, but we are charge now.

20 GENERAL BOOYSENS: Ja. No he, people say he is fighting with everybody.

SPEAKER 2: Oh.

SPEAKER 1: Everybody?

GENERAL BOOYSENS: Everybody.

MP

IPID

8

SPEAKER 2: Ha.

GENERAL BOOYSENS: But that is his problem.

SPEAKER 2: He, he wants your position, this man.

GENERAL BOOYSENS: I think so.

SPEAKER 2: Hmmm, he wants your position.

[Laughing]

GENERAL BOOYSENS: [Laughing]. He said in the News Café, I am just thinking which where our News Café is. Let we walk this way. Where is a News Café?

10 SPEAKER 5: I will show you.

GENERAL BOOYSENS: Okay.

SPEAKER 5: Over there you must take the left.

GENERAL BOOYSENS: Left. Okay. Pass the [indistinct] Fish Market?

SPEAKER 5: Ja. [Indistinct] after [indistinct] there is a lift there.

GENERAL BOOYSENS: Okay.

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: [Indistinct]. I think it is new this, this
20 News Café, ja. (Sitting down). Let us [indistinct] this way for a while. Have you guys eaten?

SPEAKER 1: Sorry?

GENERAL BOOYSENS: Have you eaten?

SPEAKER 1: Ah-ah, not yet you know.

A handwritten signature in black ink, appearing to be 'MP' followed by a stylized flourish.

GENERAL BOOYSENS: Okay then we are going just grab something to bite.

SPEAKER 1: [Indistinct]

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Okay, ons is, ons is hier binne, gaan jy 'n draai maak netnou?

SPEAKER 1: Ja, it is fine ja, [indistinct]

GENERAL BOOYSENS: Ons is by die News Café.

SPEAKER 1: [Indistinct]

10 GENERAL BOOYSENS: Ja, okay. Okay, dankie hoor.

SPEAKER 1: [Indistinct]

SPEAKER 6: [Waitress]

GENERAL BOOYSENS: Give us a couple of minutes. I want a, just a filter coffee.

SPEAKER 6: Okay hot milk or cold?

GENERAL BOOYSENS: Cold milk, please. You see what happened last time, after we met last time.

SPEAKER 2: Hmm.

20 GENERAL BOOYSENS: Where you there, or is, I remember him, I can remember you, ja.

SPEAKER 1: Ja.

GENERAL BOOYSENS: After we met last time, I was so busy. Running this side, running that side, so I did not have time to follow up I think.

IPID

10

SPEAKER 1: Okay.

GENERAL BOOYSENS: So about three weeks ago, maybe a month ago, I phoned General Sibiya.

SPEAKER 1: Ja.

SPEAKER 2: Ja.

GENERAL BOOYSENS: I also spoke like in codes. I said, the thing is still on? He says, eyh don't talk on the phone.

SPEAKER 2: Ja.

GENERAL BOOYSENS: So I said, okay when I am coming to
10 Jo'burg next time, I will come and see you.

SPEAKER 2: Ja.

GENERAL BOOYSENS: But I haven't had chance to go to Jo'burg.
Now yesterday he phones me.

SPEAKER 2: Ja.

GENERAL BOOYSENS: He says to me, no IPID approached you
or someone.

SPEAKER 2: No [intervene]

SPEAKER 1: They phoned us. When was it? The
week, the week before last. I don't know, they said we must know
20 the statement regarding to that incident.

GENERAL BOOYSENS: That same incident?

SPEAKER 1: Same incident, ja.

GENERAL BOOYSENS: So [intervene]

SPEAKER 1: I don't know what is going on.

IPID

11

GENERAL BOOYSENS: No, so, that is why then Sibiya said to me, eyh what's going on? I said to him, I never spoke to no one.

SPEAKER 2: Uh-uh.

GENERAL BOOYSENS: No one, no one, no one I had spoke to.

SPEAKER 2: Because I was, we were supposed to submit the statement last week, actually.

GENERAL BOOYSENS: Yes?

SPEAKER 2: So then, I, I said to them no I am going to Cape Town. As soon as I come back from Cape Town....

10 GENERAL BOOYSENS: Ja.

SPEAKER 2: Actually they are waiting for us.

GENERAL BOOYSENS: Is it?

SPEAKER 2: To submit the statement, ja.

GENERAL BOOYSENS: But would you, would you, someone else must have told them about it.

SPEAKER 1: Someone else [intervene]

SPEAKER 2: Someone else, ja, someone else.

GENERAL BOOYSENS: Because I never spoke to no one.

SPEAKER 1: Serious?

20 GENERAL BOOYSENS: No one, no one.

SPEAKER 1: [Indistinct] [intervene]

SPEAKER 2: [Indistinct]

SPEAKER 2: We was wondering what is going on, we thought that maybe ja, General Booyens [intervene]

MP

IPID

12

GENERAL BOOYSENS: No, no, I never go to IPID. I never go to IPID, myself.

SPEAKER 1: But no one [intervene]

GENERAL BOOYSENS: Because you see, if I go to IPID, they will say no I want to put them in trouble because he's investigating the [indistinct]

SPEAKER 1: [Indistinct]

SPEAKER 1: You are right.

GENERAL BOOYSENS: I, I can, I will not be that stupid. I will
10 never be that stupid.

SPEAKER 1: No you know, you know what is better about the SAPS, right now? Many police officers will turn against each other, whilst knowing very well, that you at your own pace as well, you must not go there, you know?

Once you know about the stories, don't be able to go to other places [indistinct] you must not do that.

GENERAL BOOYSENS: Yes.

SPEAKER 1: You know you better shift that responsibility, they are giving you, you say no, give it to somebody
20 else.

GENERAL BOOYSENS: Ja. Let me tell you something and you will see what is going to come out in court, with our matter.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Where I am sitting here today, you know,

IPID

13

you can go and ask the people here from KZN, I did absolutely nothing wrong. Zero. They gave us the dockets, I do not figure anywhere in those dockets. Luthu, abula [Indistinct] and [Indistinct] and he was a coward, he sent the colonel to do it.

SPEAKER 1: Which, which colonel is it?

GENERAL BOOYSENS: Paraza.

SPEAKER 1: Paraza?

GENERAL BOOYSENS: Nxube. I do not know if you know him.

SPEAKER 1: I do not know [Indistinct] [music playing].

10 SPEAKER 2: And from the, do you know who else [Indistinct]?

GENERAL BOOYSENS: Hey Danie, who is making a noise like that?

SPEAKER 7: No we testing this thing.

GENERAL BOOYSENS: Oh. You know, they know they *mbopa* me for *mahala*, they know it and it is going to come out in court.

SPEAKER 1: It is going to come out.

GENERAL BOOYSENS: It will come out in court.

SPEAKER 1: Yes, yes.

20 GENERAL BOOYSENS: This whole thing, I think everybody knows what, what it is about.

SPEAKER 1: Ja.

GENERAL BOOYSENS: No, I am busy with a corruption investigation.

MP

SPEAKER 1: Okay.

GENERAL BOOYSENS: Against this very senior people, in the police and outside the police, you know?

SPEAKER 1: Ja.

GENERAL BOOYSENS: And for two years, they tried to stop me.

SPEAKER 1: Ja.

GENERAL BOOYSENS: They tried to stop me, they instructed me to stop.

SPEAKER 1: Mmm.

10 GENERAL BOOYSENS: I continued. Then they took me to court, they lost and they had to pay our cost. Then they tried to bribe me with 2 million.

SPEAKER 1: Yes.

GENERAL BOOYSENS: [Indistinct]. *Wimpie hoe lyk dit?* These are two of my friends.

SPEAKER 8: Hello, I am Wimpie.

SPEAKER 1: [Indistinct]

SPEAKER 8: Have you guys ordered something to drink?

20 GENERAL BOOYSENS: *Ons het bestel, ja.*

SPEAKER 8: Is it? Hoe gaan dit man?

GENERAL BOOYSENS: Lekker dankie.

SPEAKER 8: Alright, alright.

GENERAL BOOYSENS: So die Sharks huil so bietjie.

MP



IPID

15

SPEAKER 8: Ja.

GENERAL BOOYSENS: Waar is Christo?

SPEAKER 8: Hy is Mosambiek toe.

GENERAL BOOYSENS: Ag, ek bel hom, ek kry hom nie in die hande nie.

SPEAKER 8: Ja, dit is seker maar met die reception daarso.

GENERAL BOOYSENS: Ja.

SPEAKER 8: Ja, hy kom blykbaar vandag op 'n
10 stadium terug.

GENERAL BOOYSENS: Issit? Het die Sharks, hulle sug so bietjie?

SPEAKER 8: Ja, ek was daar gewees.

GENERAL BOOYSENS: Issit?

SPEAKER 8: Ja saam met 'n klomp van my Shark pêle.

WAITRESS: Here is the coffee.

SPEAKER 8: Daai laaste drie [onduidelik]

GENERAL BOOYSENS: Nou of daai drie nou daar was of nie,
20 hulle sou steeds verloor het.

SPEAKER 8: Die laaste een?

GENERAL BOOYSENS: Ja, wat was die telling?

SPEAKER 8: Nee, as hulle aa drie gedruk het, die laaste keer of oorgeskop het, [onduidelik] begin.

MP

IPID

16

GENERAL BOOYSENS: Nee, as hulle, ja as hulle, as die Sharks gedruk het.

SPEAKER 8: Dis so, daai laaste, daai laaste drie. Can I get a glass of water with ice?

GENERAL BOOYSENS: Are you not having anything?

SPEAKER 8: Hulle bring vir my ja.

GENERAL BOOYSENS: [Onduidelik]

SPEAKER 8: [Onduidelik]

GENERAL BOOYSENS: Man, as jy nie gaan omgee nie, ek het
10 [tussenbei]

SPEAKER 8: Ja.

GENERAL BOOYSENS: Ek voel eintlik simpel, ek het my verdomde [onduidelik] in die kar gelos, anderste gaan ek iemand gou stuur om my [onduidelik] in my kar te kry.

SPEAKER 8: [Indistinct]

SPEAKER 1: [Indistinct]

SPEAKER 8: [Indistinct]. [Lots of background noises]

GENERAL BOOYSENS: Nee, ek, ek het nie simpatie met hulle nie.

20 SPEAKER 8: Ja. [Onduidelik]

GENERAL BOOYSENS: Ja, ja [onduidelik]. Thank you very much.

WAITRESS: [Indistinct]

GENERAL BOOYSENS: Get, get yourself some of it too.

SPEAKER 1: [Indistinct]

IPID

17

SPEAKER 2: Thank you, very much.

GENERAL BOOYSENS: Yes, you can have anything, I am not going to have something, because I had a big breakfast this morning.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: It is noisy here, [indistinct]

SPEAKER 8: Is it? Ja it is very noisy here, they are [indistinct]. It [indistinct] quiet if you just sit here.

GENERAL BOOYSENS: I think it is better *ja*. Won't you just grab
10 my l-pad and my cell there for me, sorry man. Thank you very much, just put that in [indistinct].

SPEAKER 8: [Indistinct]

GENERAL BOOYSENS: *Ja*, it is much better, *ja*. Much private here too. Oh sorry. Thank you. I am scared to leave that thing in the car, because they bloody break in your car.

SPEAKER 1: What is this?

GENERAL BOOYSENS: l-pad.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: I have to use my l-pad, because they
20 took all my stuff, my cell phone, my firearm, everything they took.

SPEAKER 1: Thank you.

SPEAKER 8: I do not know what you recommend, because [indistinct] for a while.

WAITRESS: [indistinct]



IPID

18

SPEAKER 8: Not for me thanks, but these gentlemen here.

WAITRESS: Oh.

GENERAL BOOYSENS: What did you order?

SPEAKER 1: Lamb chops.

GENERAL BOOYSENS: Lamb chops. *Jammer*, I am on a diet.

SPEAKER 1: You are on diet?

GENERAL BOOYSENS: Since I was, since I was on suspicion, I am going to gym every day, I eat right, I stay fit.

10 SPEAKER 1: Okay. No you are right.

GENERAL BOOYSENS: I was, [indistinct]

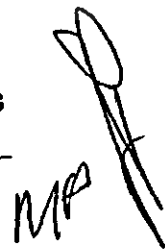
SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: I am sure. I started last year November, I took photos. Wimpie, ek wil eintlik met julle oor iets anderste ook praat man. Ek het, onthou jy daai aand met die Sharks ding hierbo, toe Andre Joubert en daai klomp ouens en dit?

20 Toe het hulle gesê hulle gaan ook so tipe van 'n fondsinsameling storie hou, hulle gaan dit heeltemaal *low-key* hou, hulle gaan niks, dis John Allen, Andre Joubert en 'n paar ander ouens. Hulle wil ook so ding hou, wat hulle, daar gaan twintig tafels wees en dat hulle gaan besighede nou, Andre Joubert gaan sy baaijdie gee en so tipe goed.

SPEAKER 8: Okay.

GENERAL BOOYSENS: Wat dink jy is die kanse dat Mike vir ons



hierdie ding een aand sal gee?

SPEAKER 8: Ek sal met hom praat. Dit hang seker
maar alles afhang van hoe hulle *bookings* en goed lyk.

GENERAL BOOYSENS: Ja hulle kyk na die 30ste Mei.

SPEAKER 8: 30 Mei?

GENERAL BOOYSENS: Ja, ek dink dis 'n Donderdagaand.

SPEAKER 8: Okay, laat ek met hom gesels.

GENERAL BOOYSENS: Dit gaan 'n hele, dit gaan 'n
ongeadverteerde dings wees soos, dis net 'n klomp ouens van die
10 Sharks en 'n paar ander ouens, besigheidsmanne.

SPEAKER 8: 'n Paar tafels?

GENERAL BOOYSENS: Ja, ja. En dan 'n, ek sal, ek sal iemand
anderste kry om die kos en goed uit te sorteer. Dis net dat ons die
venue kan [tussenbei]

SPEAKER 1: [Indistinct] correspondence.

GENERAL BOOYSENS: Huh?

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Laat ek hoor wat sê hy.

SPEAKER 8: Hoeveel tafels, laat ons dit uitwerk.

20 GENERAL BOOYSENS: Sê weer.

SPEAKER 8: Hoeveel mense per tafel?

GENERAL BOOYSENS: So tien mense op 'n tafel, so kyk na so ...
[tussenbei]

SPEAKER 8: Ja, ek wil net [tussebei]

IPID

20

GENERAL BOOYSENS: Goed neem net [tussenbei]

SPEAKER 8: En ek weet nie wat is die [onduidelik],
maar hy behoort soveel te kan vat.

GENERAL BOOYSENS: Ja, dis min of meer wat ons laaskeer
gedoen het, toe die Sharks hierso was.

SPEAKER 8: Ek was nie daar nie.

GENERAL BOOYSENS: Ja ek dink min of meer so iets. Dis net
die tafels en dan, I just wanna show you, I am going to show you.

SPEAKER 1: Please.

10 GENERAL BOOYSENS: Before my batter is going, I want to show
you something quickly. Let me show you this thing quickly. That
was November last year, okay.

SPEAKER 1: Ohhh you were big, heh?

GENERAL BOOYSENS: Manje.

SPEAKER 1: [Indistinct] [Laughing].

GENERAL BOOYSENS: That was November last year. Ja.

SPEAKER 1: That is cutting all the fats now.

GENERAL BOOYSENS: Cutting all the fats, no sugar, no fat, no
[indistinct]. When I get in the ring with the Mabula, I want to KO him
20 in the first round.

SPEAKER 1: [Laughing]

SPEAKER 2: [Laughing]. You want to take him down?

GENERAL BOOYSENS: No, in court. [Laughing]

SPEAKER 8: Is dit nou in die Durban area, as dit nie

beskikbaar is nie, moet dit in die Durban area wees?

GENERAL BOOYSENS: So as dit nie beskikbaar is nie, sal jy dalk aan iets anderste kan dink? As ek nie hier gaan regkom nie, gaan ek vir dinges vra. Wat is daai ou van die Sibya?

SPEAKER 8: Melville.

GENERAL BOOYSENS: Mellville, ja. Ek het hom nou die dag gesien by 'n begrafnis.

SPEAKER 8: Ek weet nie of hulle dubbel fasiliteite het, maar ek weet nie [onduidelik].

10 GENERAL BOOYSENS: Ja.

SPEAKER 8: Ek kan net hoor.

GENERAL BOOYSENS: Maar dit is, daar gaan geen naam by ding gekoppel word, jy weet soos die eenheidsnaam nie, dis maar paar besigheidsmanne wat 'n Fund Raising gehou het vir Crime Prevention.

Jy sê Christo is op verlof?

SPEAKER 8: In Mosambiek.

GENERAL BOOYSENS: Ja ek het gesien hy is tans in Ponta.


SPEAKER 8: Ja hy en daai pel van hom van
20 [Onduidelik] Club.

GENERAL BOOYSENS: Mmm?

SPEAKER 8: Grant. Hy, hy gaan gereeld Mosambiek toe.

GENERAL BOOYSENS: Issit?

MP



IPID

22

SPEAKER 8: Maar somer so vining, [onduidelik]. Ja so dit was maar n kort notice.

GENERAL BOOYSENS: Ja.

SPEAKER 8: En dan, wanneer 'n geleentheid daar is, dan wil ons weer weg wees.

GENERAL BOOYSENS: Issit?

SPEAKER 8: In Junie maand gaan ons na Nelspruit se kant toe.

GENERAL BOOYSENS: Okay.

10 SPEAKER 8: En, ja Grant is seker nou maar sy, [onduidelik] saam met hom gaan probeer visvang.

GENERAL BOOYSENS: Ja.

SPEAKER 8: Vis vang by die see.

GENERAL BOOYSENS: Ook nie my cup of tea nie.

SPEAKER 8: Ek vermy maar Mosambiek.

GENERAL BOOYSENS: Issit?

SPEAKER 8: Ja, ek het, 'n paar van my pelle het [onduidelik] [tussenbei]

GENERAL BOOYSENS: Issit?

20 SPEAKER 8: Groot manne, groot manne, soos [Onduidelik]. Dan kom hulle daar uit [tussenbei]

GENERAL BOOYSENS: Siek?

SPEAKER 8: 'n Paar weke later, dan lyk hulle soos siek, so.

MP

GENERAL BOOYSENS: Maar jy moet maar malaria pille drink voor jy gaan man.

SPEAKER 8: Ja, ek hoor hulle sê so. Ek het maar nog nie gegaan nie, ek is nie 'n ou vir [onduidelik]

GENERAL BOOYSENS: Ja.

SPEAKER 8: Hoor hierso, gaan julle my 'n ruk verskoon?

GENERAL BOOYSENS: Okay, ek sal 'n skreeu gee as ons klaar is.

10 SPEAKER 8: Ja, ek sal nou nou weer 'n draai kom maak.

GENERAL BOOYSENS: Okay.

SPEAKER 8: Om die rekening uitsorteer, ja order maar net wat julle wil hê.

GENERAL BOOYSENS: Okay, nee baie dankie Wimpie.

SPEAKER 8: I hope the lunch is good, I might, I might see you.

GENERAL BOOYSENS: Okay Wimpie.

SPEAKER 1: You have a beautiful [indistinct]

20 SPEAKER 2: Alright.

SPEAKER 8: I need to just go, I have got people from my other casino here.

GENERAL BOOYSENS: Okay, okay Wimpie, dankie hoor. Like I said, you know for me it would be very stupid to even, but I am

MP

IPID

24

thinking by myself, I do not even want to know, want them to know, that we are talking. Because you know [Indistinct] come and say no, I, I planned this whole thing.

SPEAKER 2: Yes, yes.

GENERAL BOOYSENS: That is, they will just say no, no you see this is a thing by boys, who is trying to ... [indistinct]

SPEAKER 2: [Indistinct] investigation and sometime [intervene]

GENERAL BOOYSENS: Ja.

10 SPEAKER 1: I don't know General, why they want our statements. But according to this guy, he said, no they ordered these from the court, so according to the SPP...

GENERAL BOOYSENS: Uh.

SPEAKER 2: Or the DPP's office, they said, we must submit, submit the statement. But what I remember, all the people who were [loud music]

SPEAKER 9: Sorry about that, but we are just having a problem, for the day they are here, they [indistinct]

GENERAL BOOYSENS: Jis, but this [intervene]

20 SPEAKER 9: I will just put the volume off.

GENERAL BOOYSENS: No close the door, we cannot if hear ourselves talk hear. Sorry?

SPEAKER 9: Put it down, we can put it down.

SPEAKER 10: [Indistinct]

IPID

25

GENERAL BOOYSENS: Ja? So what is wrong with that?

SPEAKER 10: No, I will just turn off the volume.

GENERAL BOOYSENS: Okay.

SPEAKER 2: And as far as I remember, after the incident, we, everything was blacked and even the General Mabula was involved. Because he was having the, what you call it? [Indistinct]

GENERAL BOOYSENS: Yes?

SPEAKER 2: All the police officers who were involved,
10 they submitted a statement. No one mentioned the [indistinct].
Nothing, as well as, so I do not know, I am surprised why they said,...

GENERAL BOOYSENS: Ja.

SPEAKER 1: We must submit the statement, I don't know.

GENERAL BOOYSENS: Remember when I met you there by, was it McDonalds?

SPEAKER 2: Ja.

GENERAL BOOYSENS: I was trying to refresh my memory. What
20 is that one woman's name, the brigadier?

SPEAKER 2: Mokoena.

GENERAL BOOYSENS: Mokoena.

SPEAKER 2: She was present.

GENERAL BOOYSENS: Was she also present?

SPEAKER 2: Ja, she was there.

GENERAL BOOYSENS: Because she is also running around here, like a

SPEAKER 2: No she was there. You know that is why General Mabula she was, he was in charge. Sorry, the lady was second in charge by the whole [indistinct]. So when this thing, the whole thing happened, it was like an [indistinct]

GENERAL BOOYSENS: Which station was it?

SPEAKER 2: Makau nê?

10 SPEAKER 1: Makau. That side of Pretoria.

GENERAL BOOYSENS: Makau?

SPEAKER 2: Makau. Ja. Police station.

GENERAL BOOYSENS: What side is that of Pretoria?

SPEAKER 1: Is it Pretoria nê?

SPEAKER 2: Next to Garankuwa.

GENERAL BOOYSENS: Makau?

SPEAKER 2: Ja. Makau.

GENERAL BOOYSENS: I have never hear that name before.

20 SPEAKER 2: Ja, it is not far from Garankuwa, because the deceased was taken to Garankuwa.

GENERAL BOOYSENS: Okay.

SPEAKER 2: Hospital, ja.

GENERAL BOOYSENS: So [intervene]

SPEAKER 2: It is not far from [intervene]

MP

IPID

27

GENERAL BOOYSENS: Who, who arrested the deceased?

SPEAKER 1: All of us, we were as a team.

SPEAKER 2: All of us we arrested, General Mabula was there. Then he went to the office at Makau, so then the victim was interrogated. He was tortured and [indistinct], he was tortured. Very bad.

GENERAL BOOYSENS: Is it? They gave him tube of what?

SPEAKER 1: You know what, I don't know where you heard about this guy? He is also involved in our [indistinct]. Who is
10 this guy?

SPEAKER 2: I do not know if you know [Indistinct]

GENERAL BOOYSENS: What colonel?

SPEAKER 1: The colonel né?

SPEAKER 2: No, I know that colonel.

SPEAKER 1: You know that colonel?

SPEAKER 2: I think he is a warrant officer, he is involved in this [intervene]

GENERAL BOOYSENS: Who is Binang? Coz I see this Binang is also involved. What rank has he got?

20 SPEAKER 1: Warrant officer, I think, he is involved in the [indistinct]

SPEAKER 2: Ja.

GENERAL BOOYSENS: From North West?

SPEAKER 1: And we are talking about him.

IPID

28

SPEAKER 2: He is from North West?

SPEAKER 1: We were talking about him while we were driving here.

SPEAKER 2: Oh.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Let me find out quickly. I will tell you now, if I am in your shoes, what I will do.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Shame, can, is it a black guy? One of
10 the black guys from North West, a warrant officer, who is part of the task team, can you, do you know some of the names there? I know [intervene]

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: No they are man, there is, there was a big, no I am asking you for names. Remember there was the Binang and his name figures all over the show? Is this from IPID or Police?

SPEAKER 1: Huh?

GENERAL BOOYSENS: IPID or Police?

SPEAKER 1: [Indistinct] police?

20 GENERAL BOOYSENS: No, a policeman. What was his name? Thibong, Thibong?

SPEAKER 2: No I do not remember.

GENERAL BOOYSENS: Okay.

SPEAKER 2: But I will [intervene]

MP



IPID

29

GENERAL BOOYSENS: Okay but [intervene]

SPEAKER 2: But I remember the name now.

SPEAKER 1: Oh do you remember now?

SPEAKER 2: Ja.

GENERAL BOOYSENS: What, what is his name? The one who came for the arrest, what was his name? Okay but he, okay think if you can think of a name and then phone me. Okay.

You know there is also a came who at Paraza, you know Paraza Nxube? The guy who came with, his name is Tommy, not
10 that one?

SPEAKER 1: Tommy?

GENERAL BOOYSENS: Tommy is the young one.

SPEAKER 1: He is from?

GENERAL BOOYSENS: I don't know [intervene]

SPEAKER 1: Are you not talking about colonel
[intervene]

GENERAL BOOYSENS: Colonel who?

SPEAKER 1: Goranez. The one in Potch?

GENERAL BOOYSENS: No there is no, no.

20 SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Okay but maybe you will remember now.

SPEAKER 1: I will remember it now.

GENERAL BOOYSENS: How many people were there?

SPEAKER 1: I think more than twelve. I mean,

IPID

30

involved with the [indistinct]

GENERAL BOOYSENS: You, you don't think that maybe someone in that group, went and spoke?

SPEAKER 1: You know, I suspect one police officer. That guy has been arrested.

GENERAL BOOYSENS: Yes, for what?

SPEAKER 1: For his stealing of [indistinct] and what what. I think [intervene]

GENERAL BOOYSENS: For robbery?

10 SPEAKER 1: Ja, I think he is the one.

GENERAL BOOYSENS: On that night when this man was tortured, where was Mabula then? Was he ...

SPEAKER 1: He was next door to the, it was, [indistinct] nê? Mabula was next door.

GENERAL BOOYSENS: But Mabula will just say, he never knew nothing, he didn't see anything.

SPEAKER 1: Ahhh, he can't say that.

GENERAL BOOYSENS: And Mokoena, where was she? Mokoena.

20 SPEAKER 1: She was there. Do you know even, [laughing], even Mabula when he fainted nê? [Laughing]

GENERAL BOOYSENS: Who fainted?

SPEAKER 1: Mabula?

GENERAL BOOYSENS: [Laughing]. He fainted, for what?

IPID

31

SPEAKER 1: I am telling you. When they, you know, okay he was next door *nê*?

GENERAL BOOYSENS: Ja.

SPEAKER 1: And then they told him, they said, hey man the [indistinct and then he fainted. Then and there.

GENERAL BOOYSENS: [Indistinct]

SPEAKER 1: I am telling you.

GENERAL BOOYSENS: You saw it yourself or someone told you?

SPEAKER 1: I am telling you. No, I was there. He
10 fainted and then there is this, she was a captain by then.

GENERAL BOOYSENS: Who?

SPEAKER 1: Colonel Dube. She is working at West Rand Organised Crime. She is a lady.

GENERAL BOOYSENS: Dube?

SPEAKER 1: Ja. She took the, what you call it? She would bring the air for Mabula.

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: For Mabula?

SPEAKER 2: [Laughing]

20 SPEAKER 1: I am telling you and then I think after 10 minutes, she wakes up. She wakes up, he wake up *nê*?

SPEAKER 2: Ja, ja.

SPEAKER 1: And then we start, what you call you now, preview.

MP



IPID

32

GENERAL BOOYSENS: Ja.

SPEAKER 1: Because the guy was lying there in the office and he was [indistinct] and then we start [indistinct], *eyh* what are we going to do now? This thing is a problem.

GENERAL BOOYSENS: Ja.

SPEAKER 1: All of us remained, even those Brigadier Mokoena was there, everyone, everyone was planning.

GENERAL BOOYSENS: Uh.

SPEAKER 1: Okay, the deceased was taken to
10 hospital, by this warrant officer, [indistinct]. So he was driving a Condor.

GENERAL BOOYSENS: Where, where was Mabula then?

SPEAKER 1: She was, he was there. He is the one who suggested that this warrant officer, must take this guy to hospital.

GENERAL BOOYSENS: Yes.

SPEAKER 1: And then he said no, just tell the doctor no, this guy had the heart attack and then he was taken there at Garankuwa. Then the doctor he said, no man, this, this guy he has
20 got two hours, the guy, he is dead already. *Eyh*.

GENERAL BOOYSENS: Uhm.

SPEAKER 1: This warrant officer he came by, he said no, *eyh* there is a problem, the name of the [indistinct]. Then they plan now, they plan. I think they, I do not know, they talk to the

MP

IPID

33

doctor, what was the [indistinct]? Because they said to us, no we talked to the doctor. The post-mortem is alright, don't worry and then [intervene]

SPEAKER 2: Was it Mabula then?

SPEAKER 1: Jaaa, jaaa. .

GENERAL BOOYSENS: Mabula also spoke?

SPEAKER 1: es. No he was the one who was telling us how to, you know how to write our statements.

GENERAL BOOYSENS: Uhm, uhm.

10 SPEAKER 1: He said no, you know other guys *nê*, who were involved for interrogation, they were having this thing, what do you call this? Nightmares. [Loud music starts again.] Nightmares. [Laughing]

GENERAL BOOYSENS: Okay.

SPEAKER 1: Even though we were complaining to Mabula *nê*? They said that man, he was a [indistinct]. He got nightmares, this guy is [intervene]

GENERAL BOOYSENS: So Mabula, Mabula was a colonel then?

SPEAKER 1: Ja. They said, hey man, we have got a
20 problem here, when we are sleeping *nê*? This guy is coming and he is [laughing],

SPEAKER 2: Struggling you.

SPEAKER 1: Struggling us during, during the night. *Eyh* there were problems and Mabula said, no guys don't worry man,

MP

IPID

34

don't worry, we will sort this thing out. He say, until he has [indistinct] the statements.

GENERAL BOOYSENS: Have you, have you made that statements?

SPEAKER 1: Uh uh.

GENERAL BOOYSENS: Nothing? You were not there?

SPEAKER 2: No.

GENERAL BOOYSENS: Okay now, the question is, okay remember the last time then they went to the Danmore or some
10 story? Bruma Lake man, where they had the meeting afterwards.

SPEAKER 1: Oh no, no, we were at Germiston Lake. We were at, I think we went there for three times for the meeting, [indistinct] and then the fourth meeting it was in Boksburg Lake on the dam.

GENERAL BOOYSENS: Oh?

SPEAKER 1: That was the last, our last meeting.

GENERAL BOOYSENS: Mabula was there at the meeting?

SPEAKER 1: He was, he was there, always.

GENERAL BOOYSENS: And Mokoena?

20 SPEAKER 1: She was there.

GENERAL BOOYSENS: And Mokoena, what was her role?

SPEAKER 1: I can say, because you know what, we were planning how to, how are we going to write our statements?

GENERAL BOOYSENS: Mmm.

IPID

35

SPEAKER 1: Because you know what, just not for the [indistinct] for ICD, to see that you know, this guy died during the interrogation. We were preventing that.

GENERAL BOOYSENS: You know what I will do sir and I am serious with you know, I am not going to bullshit you.

SPEAKER 1: Uhh.

GENERAL BOOYSENS: If I am in your shoes, what I will do.

SPEAKER 1: hh?

GENERAL BOOYSENS: I will go to Pretoria, I can, you know you
10 can do it here, but I don't think it is going to be a good thing and we can even arrange it for you an attorney.

We go to an attorney, we let the attorney make, take your full statement. Because the danger that you have now, the danger that you are sitting with here now is, [intervene]

WAITRESS: [Indistinct]

GENERAL BOOYSENS: No thank you. Thank you very much. The danger that you are sitting with is, you said there were about twelve people?

SPEAKER 2: Submitted the statement here?

20 GENERAL BOOYSENS: You know policeman, they are sometimes like this.

SPEAKER 1: Ja?

SPEAKER 2: Uhmm.

GENERAL BOOYSENS: Someone they get scared, like this one

Handwritten signature and initials, possibly 'MP' and a large flourish.

IPID

36

with the blue light, they put pressure on him, no he go make a ...

SPEAKER 2: Statement ja.

GENERAL BOOYSENS: Go make a 204 statement.

SPEAKER 1: Of course, ja.

GENERAL BOOYSENS: Implicating all of you. Next moment, you would see, they do with Cato Manor and I am telling you that some people from Cato Manor, like Olivier. You know, they charge me for a case, when I was in China. There is seven cases there. One I was in China. Other one I was in Europe. Other one I was at my
10 mother's funeral. Other one I was in Pretoria with General Hans Meiring, watching rugby there by the Loftus, Blue Bulls.

SPEAKER 1: Uhm.

SPEAKER 1: They charge you for all those?

GENERAL BOOYSENS: They charge me, I was not even at the Unit. I, once I was in China for 3 weeks, they charge me for the one case, I don't even know that the people were working.

That one for Gwala, they shot a Gwala guy, I was in Loftus Versfeld. Because we have got a Nhlanhla here, you guys must eat hey, that food is going to go cold.

20 There is a Nhlanhla here, Indian, his name is Ayer. I do not know if you have ever heard of that man?

SPEAKER 1: No.

GENERAL BOOYSENS: That man, he also wants my post. We know that he has made a statement, he spoke a whole lot of

IPID

37

nonsense.

SPEAKER 2: About you?

GENERAL BOOYSENS: Yes, he says I am charge of the Hit Squad. But I am waiting for them in court, I am waiting for them. So, the, what you need to think about is, if, if someone like that has done something like that, the next moment this IPID, just to prove a point, because they are under a lot of pressure, because I see parliament again now, the chicken looks good man, they are asking for some chicken. Can you ask, order me one of these please?

10 WAITER: Chicken [indistinct]

GENERAL BOOYSENS: Just like that, ja.

WAITER: With salad?

GENERAL BOOYSENS: Thanks, ja it looks good.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: And then you have got big problems. Because once they come and bopa you, then you cannot say, no but I told Sibiya, I told Booysen.

SPEAKER 1: Mmm.

20 GENERAL BOOYSENS: What I will, honestly what I will do if I am you and we can arrange it for you. You go to an attorney there in Pretoria of Jo'burg. I can arrange it for you, let them take your full statement, a detailed statement.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: And then you must go with, with an

IPID

38

attorney to IPID and say, you want to submit a 204 statement.

SPEAKER 1: Mmm. But then I don't know general, when you bring that case, lot of people hey, they came a lot of people here.

GENERAL BOOYSENS: Mmm.

SPEAKER 1: Specially there was a 44 witness.

GENERAL BOOYSENS: Ja.

SPEAKER 1: Hey, they [indistinct]

GENERAL BOOYSENS: Is it? But don't you, but what about if
10 they put you in witness protection? You see the problem that you are facing, it is and we are all policemen, you know how it works. You are sitting with a bunch of suspects.

SPEAKER 1: Correct.

GENERAL BOOYSENS: And you always tell them, listen you want to become a 204, no they, but the moment someone says no he is a 204, then everyone else wants to be a 204.

So, I am just thinking about, if someone they did not perhaps make a statement, because why would they approach you now?

SPEAKER 1: That is the thing, somebody, somebody
20 [indistinct]

GENERAL BOOYSENS: And I tell you, I never spoke to no one. The only person I spoke to, was to Sibiya about four weeks ago. I asked him if the thing is still on, the offer? And he said, no we must not speak on the phone. I said, okay when I come to Jo'burg, we

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IPID

39

can talk.

Because after I spoke to you guys there at Centurion.

SPEAKER 2: Centurion, yes.

GENERAL BOOYSENS: We were so busy preparing, because I am bringing an application in the High Court, next week, against these people. So I was running to Cape Town, to see the advocates, I am getting all the documents, plus we had to go through all the dockets they gave us. So I never had the opportunity to follow up on that thing, when we spoke last time.

10 GENERAL BOOYSENS: Only now I have got time. That is what I phoned Sibiya about three weeks, you can ask him.

SPEAKER 1: Yes.

GENERAL BOOYSENS: In his face. He does not want to talk on the phone. When he phoned me yesterday, I was surprised.

SPEAKER 1: Was this guys then [indistinct] it was an inquest.

GENERAL BOOYSENS: Ja? You don't think the family is complaining?

SPEAKER 1: I think so.

20 GENERAL BOOYSENS: But the thing is, even if the family complains, does the family know that you were there?

SPEAKER 1: No.

GENERAL BOOYSENS: So how will they know, how to come to you then? And the thing is, it could not have been me, because as

IPID

40

we speak now, I don't even know what your name is. I call you Bob.

SPEAKER 1: Yes.

GENERAL BOOYSENS: So, how will I know who to, which one they must go and see? Did they ask for you specifically?

SPEAKER 2: Yes and you know, this guy has got my phone number.

GENERAL BOOYSENS: And no one else?

SPEAKER 2: Another guy in Daveyton, Manamela.

GENERAL BOOYSENS: Ja?

10 SPEAKER 1: He said he must submit the statement.

GENERAL BOOYSENS: Now okay no, the question I want to ask you was Malamela, what is his name?

SPEAKER 1: Manamela.

GENERAL BOOYSENS: Manamela, was he there by Centurion, that night when you were there?

SPEAKER 1: [Inaudible answer]

GENERAL BOOYSENS: So how will, how, do you understand what I am saying?

SPEAKER 1: Ja, no I understand.

20 GENERAL BOOYSENS: How, how did they know to go to Manamela, if I don't even know, I never met the man in my life before? I don't know who he is.

SPEAKER 1: You know, you are right, when you are saying, it can be somebody who was there, on the day of the

MP

IPID

41

incident.

GENERAL BOOYSENS: Mmm.

SPEAKER 1: Who is [indistinct] it can be somebody who was there.

GENERAL BOOYSENS: And I am telling you [intervene]

SPEAKER 1: Maybe this guy, because there is a guy who was also there, when that thing happened, just arrested him on my case, it is a case of [indistinct] police officer, who was also there. Maybe it can be him, since he know that he is a suspect on the case
10 [indistinct] you know?

GENERAL BOOYSENS: I know how, what the policemen do. I work with it for 37 years and honestly, I do not want to mislead you, go and discuss it with Gera Sibiya, even if I arranged it, because I know a lot of attorneys here, I can get one of their contacts that side. Go and see him and let them take your full statement and let the attorney go with you, we will arrange it for you.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: You go to IPID, you say, okay [intervene]

SPEAKER 1: Here is my statement.

20 GENERAL BOOYSENS: And also the reason and the attorney must be present, say, they wants to put you on witness protection now, immediately and the reason why you have taken so long to make the statement, is because you fear for your life.

Because if you dare to talk, turn against these people, you



MP

IPID

42

know that witnesses have died before.

SPEAKER 2: Yes.

GENERAL BOOYSENS: The alternative is and then it is going to be too late, if someone is making a statement and the next moment, twelve o'clock at night [knocking sound on table], so you must jump the gun. I do not know how you feel about it?

SPEAKER 1: Eyh, I am out to general here and then I will see what.

GENERAL BOOYSENS: Okay. What, okay what other options are
10 there?

SPEAKER 2: No, you know what general, we like, like looking at this thing on the other, on the other eye nè? Because probably what is happening here, you are arrested and [indistinct] or somebody [indistinct]

GENERAL BOOYSENS: Mmm.

SPEAKER 1: And the [indistinct], now the cases that [indistinct], the case whereby he was physically involved, you know? So, something actually needs to be done about it.

GENERAL BOOYSENS: Okay how [intervene]

20 SPEAKER 2: You understand what I am saying?

GENERAL BOOYSENS: But [intervene]

SPEAKER 2: But, from your side it would be difficult, because [indistinct] since now this [indistinct] nè?

GENERAL BOOYSENS: Ja.

IPID

43

SPEAKER 2: So that is why we are approaching this thing, but we need to look.

GENERAL BOOYSENS: So what do you suggest?

SPEAKER 2: What do you think?

SPEAKER 1: The name of, the name of the warrant officer, is Dugumela.

SPEAKER 2: Ja, Dugumela.

GENERAL BOOYSENS: Ja, I can't remember. There is so many of them, I can't remember.

10 SPEAKER 2: Dugumela is involved in this case.

GENERAL BOOYSENS: Uhm.

SPEAKER 2: Ja he is the one, he is the one who was torturing this man.

GENERAL BOOYSENS: And Dube?

SPEAKER 2: [Inaudible answer]

GENERAL BOOYSENS: But she knows what happened?

SPEAKER 2: [Inaudible answer]

GENERAL BOOYSENS: You don't think she, she made a statement?

20 SPEAKER 2: I do not remember.

SPEAKER 1: I don't think so.

GENERAL BOOYSENS: The fuckup is, if one of those people go and make a statement and they say Mabula was there, he was there, there was one was there.

IPID

44

SPEAKER 2: Uhm.

GENERAL BOOYSENS: They are going to *bopha* the whole lot of you.

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Hê?

SPEAKER 2: That is what they want to do.

GENERAL BOOYSENS: This is what is going to happen. That is why, if I now jump the gun, unless there is something else you can suggest.

10 SPEAKER 1: No, I can [indistinct], because ultimately what we are going to do. He will come to our places for the statement, you know, [indistinct], that is why I am going to [indistinct], so I don't know, I don't know what is going to [indistinct]. All we don't like [indistinct]. That is what I am saying [intervene]

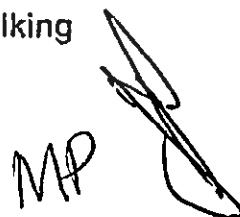
GENERAL BOOYSENS: You, you must realise if you come with your attorney and you say, here is my statement, I want to be a 204, the reason why I am only doing it now, is because we know what these people are capable of.

SPEAKER 2: You know what is happening here? I
20 was not there *nê*? And I am worried [indistinct]

GENERAL BOOYSENS: Ja.

SPEAKER 2: The warrant officer that he is talking about, he is the one who was [indistinct]

GENERAL BOOYSENS: Ja.

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SPEAKER 2: Now we wanted to come up with something that is constructive, that can help this thing. That can assist on the investigation as well, you know?

GENERAL BOOYSENS: I can guarantee you, I know how these people operate. If you come to them with this statement, taking by the attorney, obviously if I am the investigator, I will ask you, why you only come now? That is the first question I will ask, but the obvious, the obvious answer to that is, you know what these people are capable of.

10 SPEAKER 2: Yes.

SPEAKER 1: Ja.

SPEAKER 2: Of course.

GENERAL BOOYSENS: You fear for your life. Look I would much rather go on witness protection, than go *fucking* inside and then get suspended like us now, we are almost 8 months down the road, that we are suspended. [Loud music].

SPEAKER 1: Why do they call it a News Café, when they are going to open the radio [indistinct]?

GENERAL BOOYSENS: *Fuckit* man. It is the Indian there inside
20 that making that noise. I don't know how you feel?

SPEAKER 2: Ja no, we will discuss that, then we will tell you what is the problems.

GENERAL BOOYSENS: Ja. I am just, I know [intervene]

SPEAKER 1: You have got to show me, if somebody.

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IPID

46

somebody, they went to you want you call....

SPEAKER 2: [Indistinct]

SPEAKER 1: Ja and complained about this.

GENERAL BOOYSENS: Because why are they mentioning your name and what is the other man? Manamela.

SPEAKER 2: Manamela, that is the one.

GENERAL BOOYSENS: Why would they mention their names?

SPEAKER 1: Mmm.

SPEAKER 2: And when they [indistinct] the statement?

10 GENERAL BOOYSENS: Exactly.

SPEAKER 1: And they know why these guys never submitted a statement, because they were not there.

GENERAL BOOYSENS: Ja.

SPEAKER 1: All the people that were inside, they submitted their statements, you know?

GENERAL BOOYSENS: Ja. They *fuck*. If I were in your shoes, that is what I would have done. Because believe me, if IPID has already approached you for a statement, within the next month, they are going to come and *bopha* you. I am telling you now. I know how
20 they work.

And then if you want to become 204, then they are going to say, no *fuck* you. You had to, someone else has already a 204. We don't need another one.

SPEAKER 2: As this happened in 2006, it is a long

IPID

47

time and it was all over the news *hê*?

GENERAL BOOYSENS: You said so, last time.

SPEAKER 2: Ah eh eh, it was all over the news.

People were complaining, against this case.

GENERAL BOOYSENS: What was he arrested for?

SPEAKER 2: There was a housebreaking in the police station in Benoni, they took 40 million in the police station.

GENERAL BOOYSENS: Ffff, money?

SPEAKER 2: es.

10 GENERAL BOOYSENS: [Whistling]

SPEAKER 2: 40 million.

GENERAL BOOYSENS: And the suspect, who was he?

SPEAKER 2: Police officers and this guy.

GENERAL BOOYSENS: But the deceased was he also a police man?

SPEAKER 2: No.

GENERAL BOOYSENS: No, honestly, unless there is something else that you want, you can think of, that we can do.

20 SPEAKER 1: We are trying to think now what can be done.

GENERAL BOOYSENS: You see, we can expose this in the newspaper, but then it is just going to become worse for you.

SPEAKER 1: Mmm.

SPEAKER 2: That is the thing.

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GENERAL BOOYSENS: Because if it is in the newspaper then they are going to start to put more pressure on you, now we must make breakthrough, they will just *bopha* left right and centre. Because we can, just to expose Mabula, put it in the paper, but the problem then is, then they are going to start focussing on who was there and you know, those twelve people, they start pulling one this one, one that one. Eventually someone is going to say, whoah, whoah, I am not the one that go to jail for someone's elses shit.

SPEAKER 1: Mmm.

10 GENERAL BOOYSENS: Let me rather make a statement. I wasn't part of that thing.

SPEAKER 1: What would we do?

GENERAL BOOYSENS: You look worried.

SPEAKER 1: No, that is why I am saying, *eyh* I have to listen. I know things about this, because I have been driving my thoughts to go and submit the statement.

SPEAKER 2: The statement.

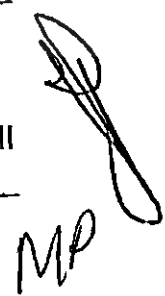
SPEAKER 1: To those guys, you see.

GENERAL BOOYSENS: *Ja*.

20 SPEAKER 2: *Ja*, but if they, before the end of this week, I must submit a statement there.

SPEAKER 1: Sorry, the appointment was today, for a statement to be submitted, you know.

GENERAL BOOYSENS: Go and speak to Sibiya, then we will

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IPID

49

have to communicate with each other again, just to be safe, you must go to a safe place. There in the townships, they got these, a spaza shop. Then we will arrange a certain time for me to speak to Sibiya.

I cannot, I cannot see a different way, you know, I have got the contacts in the media, I can go to the media, but that is just going to make it worse, worse for your case.

SPEAKER 1: Ja.

SPEAKER 2: Mmm.

10 GENERAL BOOYSENS: Because if it goes to the media, *eyh*, they will appoint a team, a whole team of IPID people.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: And then they will say, okay who was the and they just need one, one person in the twelve, was weak, who is scared, so *eh jai jai*, this one was not, that one, that one, put in witness protection, I am going to make a statement.

SPEAKER 2: You know those people there, they are those type of people who submitted the statement, they was just scared.

20 GENERAL BOOYSENS: They were scared?

SPEAKER 1: *Ai* too much. They said no, they were asked to make sure to General Mabula, what to do know? Because this guy, *eyh* during the night while we are sleeping, he is coming there, he is struggling us. They was just scared, scared, scared, I

IPID

50

am telling you. The others, they were crying. During our meeting there, in Germiston Lake.

GENERAL BOOYSENS: Crying, crying?

SPEAKER 1: Jaaaa, they were crying, crying, I am tell you general. They were crying.

GENERAL BOOYSENS: Now you are telling me that now, it just shows you, that the, the people that is there, they are so scared already.

SPEAKER 1: Mmm.

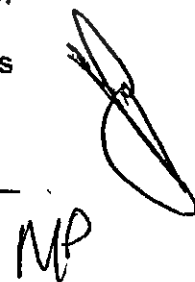
10 GENERAL BOOYSENS: If these people come to their house. Thank you very much. If these people come to their house, they can't say, hey wait a minute and I don't, I mean, you are not a Haasman, so I don't have to bullshit you, you know how it work, [indistinct]

SPEAKER 1: Mmm.

GENERAL BOOYSENS: The moment you have got a good 204, the rest goes inside, so, you don't want to be in a position where, where you had the opportunity, when you are sitting their inside, you may think, I should have made the statement.

20 SPEAKER 1: Hey.

GENERAL BOOYSENS: At least you will now that you are safe there and you don't have to worry any longer. Like you say yourself, you have been dragging your feet, every night in your head, it is eating you.

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And now that they are starting to ask you for your statement, why do they want the statement now?

SPEAKER 1: Hey after so long?

GENERAL BOOYSENS: It has been to court.

SPEAKER 1: After so many years, I don't know.

SPEAKER 2: It has been six years already. Six years or seven years.

GENERAL BOOYSENS: Mark my words, I am telling you now, mark my words. Someone, out of that group of twelve, did
10 something.

SPEAKER 1: Mmm. But now my question is [intervene]

GENERAL BOOYSENS: Either they made a statement or they spoke to someone.

SPEAKER 1: But now the question is, if let us say, you are saying now, it is one of the guys who was in that twelve, now we want to make a statement, he want to make a statement, or make this, or make this thing, to [indistinct] of what happened. What are the reasons for him to do it?

20 GENERAL BOOYSENS: Who?

SPEAKER 1: That particular person, the one who went to the [indistinct] [intervene]

GENERAL BOOYSENS: It is one of two things. Either, it is like this guy from the blue light.

IPID

52

SPEAKER 1: Mmm.

GENERAL BOOYSENS: He is in the shit, he wants to get out of the shit.

SPEAKER 1: [Indistinct] now he was against [intervene]

GENERAL BOOYSENS: Or else, or else, Mabula pissed someone off in the group.

SPEAKER 1: Yes, I think so.

GENERAL BOOYSENS: If this person goes to someone from the newspaper or they go to someone from IPID, or they make an
10 anonymous call to IPID and says, no the people who were there, so and so and so, that is why they want your statement now.

SPEAKER 2: There was another thing, you know what, what can I say, the majority of the police officers, they are against over this case.

GENERAL BOOYSENS: They what?

SPEAKER 2: And I am telling you this one of his [Indistinct], they don't like him.

GENERAL BOOYSENS: Hmmm, everybody.

20 SPEAKER 1: No, I am telling you, [intervene]

SPEAKER 2: Even myself, I don't like him.

GENERAL BOOYSENS: Everybody.

SPEAKER 2: Everybody is saying, no now these people who are investigating team but they are cleaning or what?

SPEAKER 1: Well the problem is, you come to the suspects, you [indistinct]? No ways.

GENERAL BOOYSENS: You see, Mabula, from day one I told, listen here, if you want to interview me, come and interview me, if you want to see me. They never came to see me once.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: Not once. I told them, if you want to arrest me, I will come to court.

SPEAKER 2: And they are the same level as you?

10 GENERAL BOOYSENS: Ja.

SPEAKER 2: They was supposed [indistinct]

GENERAL BOOYSENS: Then he sent a colonel to come with the special task force.

SPEAKER 2: Task Force?

GENERAL BOOYSENS: To put handcuffs by my hands.

SPEAKER 1: Task Force?

GENERAL BOOYSENS: Task Force.

SPEAKER 2: And it is him, who sent those people?

GENERAL BOOYSENS: Ja.

20 SPEAKER 2: Everybody else, it is him?

GENERAL BOOYSENS: Ja.

SPEAKER 2: He is trying to move [indistinct]

GENERAL BOOYSENS: Hmm.

SPEAKER 1: And the [indistinct] yourself?


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GENERAL BOOYSENS: Hmm, *ja*. I want to put my jacket over my face, I said *ai jai jai*, I am not a *skelm*, I am going to walk out with my face open here.

SPEAKER 2: Ja.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: I am not a *skelm*. They want to put a mattress for me in the cells, I said no, no, I will sleep with my men on the floor. I put a newspaper.

SPEAKER 11: [Indistinct]

10 GENERAL BOOYSENS: With what? Listen here, who? *Ja*. When we got to the airway, all the newspapers were there. The TV cameras, but all the journalists here in Durban, they know me. Everyone, the blacks, the whites, Indians. The woman of SABC, black woman, when we left, she hit the window for the car, she says: "*Hamba kahle, Booysen.*" Because the people know that this Mabula man now, doing their own people in, for political gain.

Even that Mokoena, she was swearing at people.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: She was swearing them, she is a police
20 woman, swearing the policeman.

SPEAKER 1: Yes.

GENERAL BOOYSENS: That is why I will [intervene]

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Huh?

MP

SPEAKER 1: She came down?

GENERAL BOOYSENS: Ja, ja, ja. She is a, she and Mabula
[indistinct].

SPEAKER 2: hat is why they are dating each other.

GENERAL BOOYSENS: Ja, who know?

SPEAKER 1: Oh okay.

SPEAKER 2: Long time ago.

GENERAL BOOYSENS: She is going to have big problems too.
Things that we found out during her investigation.

10 SPEAKER 2: Because you know what, if, if something
can happen about this case, né? They will stop them, all of them.
Starting from Mabula, they will say, ah, you are also involved in this
case now and then...

GENERAL BOOYSENS: Ja. When are you going back?

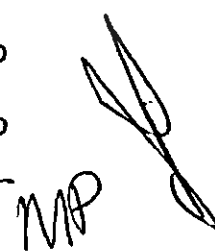
SPEAKER 1: Today, we are going back again, tonight
we are going to see the general today. We are going to discuss over
this thing, then maybe tomorrow we will have the solution.

GENERAL BOOYSENS: If you want to see a lawyer, I will arrange
one of this side. But the thing is, is not going to be good, if they
20 know that we are talking.

SPEAKER 1: Mmm.

SPEAKER 2: Well, they must not know.

GENERAL BOOYSENS: Because then they are going to say, no
you see, Booysen planned this whole thing, he planned this man to

Handwritten signature and initials, possibly 'MP' and a stylized 'S' or 'J'.

IPID

56

come down and talk shit.

SPEAKER 1: Oh no, he must not know. You know even the guys at your office.

GENERAL BOOYSENS: No one knows.

SPEAKER 1: They must [intervene]

GENERAL BOOYSENS: Listen here [intervene]

SPEAKER 1: Know that we came down and we see you.

GENERAL BOOYSENS: Listen here, this people mine.

10 SPEAKER 1: Ja.

GENERAL BOOYSENS: Although they good policemen, but they are *fucking* stupid. I told, my philosophy, always, are [African language], are you Zulu or?

SPEAKER 1: I am Zulu *ja*.

GENERAL BOOYSENS: No I am walking [African language]. That is why, that's why I know, I know Mabula's has got *fuckall*, because I never did nothing wrong. I wall like this, like this. I don't speak to anyone.

SPEAKER 1: Mmm.

20 GENERAL BOOYSENS: Because I know they can fuck up the thing for all of us.

SPEAKER 2: And you know what, Mabula is so proud about this case.

GENERAL BOOYSENS: Is it?

MP

IPID

57

SPEAKER 2: Yeah.

GENERAL BOOYSENS: Ja.

SPEAKER 1: Eyh he is so proud.

GENERAL BOOYSENS: But why don't he [intervene]

SPEAKER 1: And General Gamada, I think he likes him because of this case.

GENERAL BOOYSENS: Mmm.

SPEAKER 2: I am telling you.

GENERAL BOOYSENS: It *sommer* tells me Gramatza is not going
10 to stay there.

SPEAKER 2: Mm, it is going there.

GENERAL BOOYSENS: My information is Dramat is not for this thing.

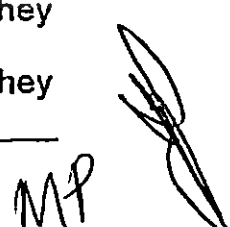
SPEAKER 2: This a, this case?

GENERAL BOOYSENS: Mabula was doing it behind his back.

SPEAKER 1: Mm?

GENERAL BOOYSENS: You see the problem with this is, in my investigation, there are very senior people that is involved and it is, it is over 60 million rand, 60 million rand, that is involved there and
20 there is, there is some more money coming. There is now 20 more million, plus I stopped the payment of 15 million. I have got all the proof.

They tried to put pressure on me, put pressure on me, they took me to court, they are tried to bribe me, I *bopha'd* them. They

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IPID

58

put 1.4 million in my boot.

SPEAKER 1: Ah.

GENERAL BOOYSENS: I *bopha'd* them. Then it came, normal crime scene photos that we all have in the computer. After all the shootings, they take that, they go to the Sunday Times, they say, no my people are hit squad, they kill all these people. Our people admitted they killed them. But they were shot during shootout.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: I get one man, you guys man were
10 looking for the [indistinct] man?

SPEAKER 1: Ja. Ja.

GENERAL BOOYSENS: That man is fucking up the whole country, he is fucking up the casinos, he is fucking up.

SPEAKER 1: Yes, yes.

GENERAL BOOYSENS: Then the guys went up there, there was a shootout, he got shot.

SPEAKER 1: Is it, to kill them?

SPEAKER 2: Hammerman?

GENERAL BOOYSENS: Mmm, mmm.

20 SPEAKER 2: He was a trouble maker, ohhh.

GENERAL BOOYSENS: He shot, you know, in apartheid time, the security police, they used to shoot the people and throws them in the mineshaft or they take them to the beach and blows them up.

SPEAKER 1: Ja mmm.

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GENERAL BOOYSENS: This is different. Here this people have the sword for robbery, murder, their guys goes out, there is a shootout, the guys get shot.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Completely different story.

SPEAKER 1: *Ai jai jai*, I don't know why they are going there.

GENERAL BOOYSENS: Well I know, because they want to get rid of us, because we are busy with the corruption.

10 SPEAKER 1: Mmm.

GENERAL BOOYSENS: It is politics. It is a pity Sibiya did not come with.

SPEAKER 2: Ja, he was supposed to come with.

GENERAL BOOYSENS: Well honestly, [intervene]

SPEAKER 2: But he will come with the solution, soon.

SPEAKER 1: Maybe tomorrow he is going to phone you and tell you what is recommended.

GENERAL BOOYSENS: Okay, let him phone me. Tell him [intervene]

20 SPEAKER 1: But this phone that you are using now, it is the private?

GENERAL BOOYSENS: No, it is a private, but I don't trust it.

SPEAKER 2: Your private phone?

GENERAL BOOYSENS: That other phone that I used, [intervene]

IPID

60

SPEAKER 1: Did you RICA it?

GENERAL BOOYSENS: Ja, this one is RICA'd.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Now you see the other one that I use, I use my domestic servant's phone.

SPEAKER 1: Oh.

GENERAL BOOYSENS: That is the one I used this morning. Because the other number you phoned, that is my ex-wife, she is in Pretoria.

10 SPEAKER 1: That 0837... [Intervene]

GENERAL BOOYSENS: I fuck up it now. 2680.

SPEAKER 1: 2680, ja.

GENERAL BOOYSENS: Now she was here on the weekend that is why I used her phone. We are divorced, she came down for the weekend, but she flew back yesterday. Yesterday evening she flew back.

SPEAKER 1: Oh, she is Pretoria now?

GENERAL BOOYSENS: She is in Pretoria.

SPEAKER 1: I must phone that number if [intervene]?

20 GENERAL BOOYSENS: Ja, then she phoned me, she says Bob is looking for you. But I didn't, then I didn't want to use this phone.

SPEAKER 1: Mmmm, ja.

GENERAL BOOYSENS: So that is why I asked you to phone the other number, that is domestic servant.

IPID

61

SPEAKER 1: Okay.

GENERAL BOOYSENS: She is working for me.

SPEAKER 1: Okay.

GENERAL BOOYSENS: And then when I came to town, I used the landline to phone you.

SPEAKER 1: Oh, landline?

GENERAL BOOYSENS: Ja. I don't want to use this.

SPEAKER 1: No, you right.

GENERAL BOOYSENS: [Indistinct] [intervene]

10 SPEAKER 1: [Intervene]

GENERAL BOOYSENS: 074.

SPEAKER 1: 074, right.

GENERAL BOOYSENS: I don't think, because I have only had it for one month, but you know these people they can do anything.

SPEAKER 1: Ja.

GENERAL BOOYSENS: And Sibiya too, they listen to his phone, I can guarantee you that.

SPEAKER 1: Ja they are listening to his phone, [intervene]

20 GENERAL BOOYSENS: Because I can tell you one thing now, that I know for sure, this Mabula, he does not like Sibiya.

SPEAKER 1: Uh-uh.

GENERAL BOOYSENS: Fokkol.

SPEAKER 1: Nieks, nieks, ja.

IPID

62

SPEAKER 2: He does not like him?

GENERAL BOOYSENS: No, no.

SPEAKER 1: Uh- uh.

GENERAL BOOYSENS: Mabula? He doesn't like Sibiya.

SPEAKER 1: He doesn't like him?

GENERAL BOOYSENS: Let me tell one thing, out of all the nine provinces, I cannot think of one of those guys that has got a good relationship with him.

SPEAKER 1: With Mabula?

10 GENERAL BOOYSENS: Not one of them. I would show my BBM's, from the other provinces, what is that other woman there in the, what is the woman, is it Limpopo or Mpumalanga, who [intervene]

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Ja no, we talk to each other.

SPEAKER 2: a, He is a good man?

GENERAL BOOYSENS: Ja, ja he is my man. Ja that is why I, him Ntsina, Badi, Batekata, there is the one from Map., there is another woman there, what is her name?

20 SPEAKER 1: [Indistinct] the woman?

GENERAL BOOYSENS: Ja, she has got glasses.

SPEAKER 1: Ja.

GENERAL BOOYSENS: They sent me BBM's every month, they are praying for me.

IPID

63

SPEAKER 2: These a [intervene]

GENERAL BOOYSENS: They say they are not happy with this.

SPEAKER 1: No.

SPEAKER 2: Everybody is not.

SPEAKER 1: I am, I am, you know, you know,
[intervene]

SPEAKER 2: All of us actually, we are not happy.

SPEAKER 1: [Indistinct] he is a commander, he is
commander, actually an overall commander of the guys here, you
10 will get arrested and the way they operate [indistinct]

GENERAL BOOYSENS: Not once, not once was I present.
Seven, there is plenty one [indistinct]. Seven of them I was
overseas or I was somewhere else. Seven I was in my office with a
meeting for the PC management, in my office, Province Recorders.

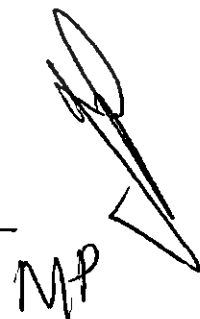
SPEAKER 1: Mmm.

GENERAL BOOYSENS: Other seven times, I was sleeping at
home. They phoned me, the guys phoned me in the morning, sir
last night last we were involved in a shooting. I said, okay, guys are
okay? Ja. Suspect dead? Ja. ICD informed? Yes. Okay thank
20 you, very much. I go to the office, management meeting, the PC ask
me, shooting last night? Ja. The ICD been informed? Yes.

I was not present once. Not once.

SPEAKER 2: And he, he was present at the shootout?

GENERAL BOOYSENS: Ja.

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IPID

64

SPEAKER 2: And then Mabula [indistinct]

GENERAL BOOYSENS: Not once. They are charging me with things, when I was in *fucking* China.

SPEAKER 1: Mmm.

SPEAKER 2: Mmm.

GENERAL BOOYSENS: I was in China and the other time I was in Europe. In China, I was on duty and in Europe I was on leave.

SPEAKER 2: [Indistinct] can you find that, you are not in the country, but they say you [indistinct]. The court, then it must
10 start to doubt, how can you believe that these other charges are correct? You know what I am saying?

GENERAL BOOYSENS: Ja.

SPEAKER 2: Coz you charge this guy with seven counts, but [intervene]

GENERAL BOOYSENS: But you know, they gave us the dockets. We are detectives. You know when you are charge a person, who is given the docket.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Now you, they *bopha* you, you arrest you,
20 they lock you in the cells.

SPEAKER 1: Ja.

SPEAKER 2: Yes.

GENERAL BOOYSENS: They are going to use a docket.

SPEAKER 1: Ja.

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GENERAL BOOYSENS: I sit there for 6 weeks. I take a pen and paper out, I write each statement I have checked, I don't figure there. There is not one single, not one statement against me.

SPEAKER 1: Ah but why they prosecute the [Indistinct] they place you on the court role? I don't know, I don't understand.

GENERAL BOOYSENS: They said [intervene]

SPEAKER 2: Oh, the team of the prosecutors, is coming from Jo'burg and [intervene]

GENERAL BOOYSENS: Ja, you see [intervene]

10 SPEAKER 1: Oh they come from Jo'burg?

SPEAKER 2: Yes.

GENERAL BOOYSENS: You see these prosecutors here, lodge on them, they never wanted to prosecute, they say there is no case.

SPEAKER 1: That is why they appointed that.

GENERAL BOOYSENS: They take Molotja, they take her one side, they put another woman here, Nokwe, I don't know what her name is.

SPEAKER 1: From, from Jo'burg?

GENERAL BOOYSENS: Ja. Then they send a team from
20 Jo'burg, the prosecutors. They bypass all these people here. Six of those cases, six of those cases, they have already gone for inquest. The magistrate had already made his ruling in favour of my guys.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: They just went and took the same



MP

IPID

66

dockets and charge the people.

SPEAKER 1: Uh-uh. Uh-uh.

GENERAL BOOYSENS: Some of those cases, about seven or nine of them. I am not sure, I am still going to find out, were acknowledged by the DDP here. The DPP already acknowledged them. They went and took those dockets and they discharged the people.

SPEAKER 1: And were they already [intervene]

GENERAL BOOYSENS: There is six dockets, with J56 in, I can
10 show you, I have got them on my laptop here.

SPEAKER 1: I don't believe it.

GENERAL BOOYSENS: Six of those deceased, there is J56 issues and nine cases were declined by the DPP here. I just want to put all those dockets together.

SPEAKER 1: They were talking about new evidence?

GENERAL BOOYSENS: Huh?

SPEAKER 1: Were they talking about new evidence, what new evidence?

GENERAL BOOYSENS: Whose got the evidence?

20 SPEAKER 1: These guys, this team?

GENERAL BOOYSENS: They actually lied in court.

SPEAKER 1: Ohhhh.

GENERAL BOOYSENS: Paul or Puba or [intervene]

SPEAKER 1: Pula, ja, ja.


MP

IPID

67

GENERAL BOOYSENS: Is it policemen or?

SPEAKER 1: Ja, it is the Lieutenant Colonel.

GENERAL BOOYSENS: He lied in court. He told the magistrates on record, they are going to open dockets against me. We are going to open a docket, he lied under oath. He told them, the magistrate, there is one shooting incident in Melmoth, there are 37 witnesses, under oath. Go and read the court record.

Do you know how many witnesses there are? Three.

SPEAKER 1: Joh.

10 GENERAL BOOYSENS: And they not even eye-witnesses.

SPEAKER 1: He said so himself?

GENERAL BOOYSENS: He told the magistrate. We have got 37 witnesses. It is on, on the court record.

When the dockets came, there was three statements of people, not even witnesses, there is people that were there by the homestead. They heard the noise and the shooting.

SPEAKER 1: Ja.

20 GENERAL BOOYSENS: Not in one of those dockets, not in one single one is there an eye-witness. It is all people that are going to say, no they were sleeping next door, they heard a [indistinct], the police came in [intervene]

SPEAKER 1: This is another witness?

GENERAL BOOYSENS: I went through those dockets. There is one docket, that there is an eye-witness, only one docket. But IPID

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fucked that thing up themselves. Because they took a statement of that person and three years later, they took another statement.

SPEAKER 1: That [indistinct] with the first statement?

GENERAL BOOYSENS: If you read the two, you would think they copied the same, same witness, with the same witness. Completely, completely different. Completely different, completely different.

SPEAKER 1: No.

GENERAL BOOYSENS: That is the only docket in which there is an eye-witness, but that eye-witness if *fucked up*. The rest of them,
10 there is not one single, it is people that says no, they were sleeping, we heard the dogs barking. Next minute the police came in the house and they took them to the other room, gunshots fired, what you do, what you doing?

SPEAKER 2: They can't witness the shooting?

GENERAL BOOYSENS: There is not one single, except that one, but they compromised that witness, by taking two statements.

SPEAKER 1: Then we [indistinct], let us go to Jo'burg.

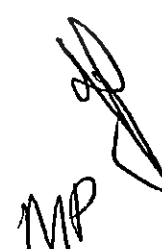
GENERAL BOOYSENS: Ja, don't make an accident down the way.

20 SPEAKER 1: No.

SPEAKER 2: No, no, no.

GENERAL BOOYSENS: Is it quiet now?

SPEAKER 2: You know, you know what, as to what we actually want *nê*? Is to assist your investigation and also make sure

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that you are not getting involved in addition to that, [indistinct]

GENERAL BOOYSENS: Ja.

SPEAKER 2: Ja but [indistinct] according to the prosecutor at this stadium, as they are placing people like yours [intervene]

GENERAL BOOYSENS: Exactly.

SPEAKER 1: You know like you, they must believe, you know what I am saying?

GENERAL BOOYSENS: You see [intervene]

10 SPEAKER 2: They must believe.

SPEAKER 1: They must believe.

GENERAL BOOYSENS: You see Mabula, what he is going for? He is going for the deputy's post.

SPEAKER 2: Ja, ja mmm.

GENERAL BOOYSENS: Ja, he is going for that thing.

SPEAKER 1: But I will [indistinct]

SPEAKER 2: That is why he is pushing so hard.

SPEAKER 1: [Indistinct] can emerge before, he won't get that post.

20 GENERAL BOOYSENS: That is why, for various reasons, look I will be honest with you, it suits me, this thing of yours, suits me now.

SPEAKER 1: Ja.

GENERAL BOOYSENS: I am not a bullshitter, I am telling you that straight forward, but for various reasons, one has to prevent him

MP

IPID

70

from getting that, because you can't have a person in that position, who has done something like that, number 1.

Number 2 is, in your situation, he is the type of person, who will turn around and make a statement against you. To save his own ass. That is what he will do and that is why my advice to you is, go back to Sibiya and talk about it today still, don't wait [intervene]

SPEAKER 1: No.

GENERAL BOOYSENS: You know how it works, once they come and [knocking on table], then it is too late, then you want to be a
10 204, then they say, no *fuck* you, already got one 204's.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: Like I say, speak with Mabula and then, you can arrange through the attorneys here, for you that side to go and take a full statement, then they must go with you to IPID and say, they want to make a 204 statement and at the same time, the attorney says, he is acting on behalf of you, they want to ask you anything, they must do it through the attorneys, then you are covered.

Then they can't say later, no you never spoke the truth.

20 SPEAKER 1: Mmm.

GENERAL BOOYSENS: Because you came out of your own. That's, that's the big difference, if you come out of your own, but if they first arrest you, then you, then they will say, no man, you do save your own ass, that is why are coming with the story now.

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SPEAKER 1: No, I understand. Now tomorrow then, general will phone me to Johannesburg.

GENERAL BOOYSENS: Ja. You can phone me tonight as well, but you must just go to a safe place and then you must give me about 15 minutes. I will go to my friend's house, I will use his phone.

If he wants to phone me, you must say to me, okay phone me at this number, but then they must give me a safe number.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: Then I will drive to my friend's house and
10 I will phone from there.

SPEAKER 2: Ja they then, the number is not
[intervene]

SPEAKER 1: It is not [intervene]

SPEAKER 2: This one is the safe number, as well.

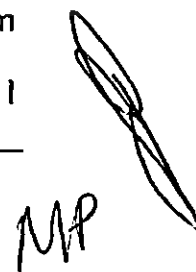
SPEAKER 1: I locked it, I do not know how to unlock
this phone.

SPEAKER 1: It is not Rica'd, nothing this thing.

GENERAL BOOYSENS: Yes. Is it right now? Prepaid as well?

SPEAKER 2: This thing is not Rica'd.

20 GENERAL BOOYSENS: And one thing that, one thing that you can go, I don't know if you know any [Indistinct] from, from the HAWKS or any of the guys? If there is one thing that I know. It is the law. Even my advocates and attorneys, they say when I am finish here, I must come and work with them. I and you are seeing I

A handwritten signature in black ink, appearing to be 'MP' with a long, sweeping flourish extending upwards and to the right.

IPID

72

am bringing an application in the High Court.

SPEAKER 1: I wanted to make sure that you are having the right number that is [indistinct], unlocked.

GENERAL BOOYSENS: It is unlocked?

SPEAKER 2: It is unlocked né? What is the [indistinct]?

GENERAL BOOYSENS: This one here?

SPEAKER 2: Yes.

GENERAL BOOYSENS: They are [indistinct] it must go up, I can't
10 remember the thing myself. You haven't got BBM hey?

SPEAKER 2: BBM is on my Blackberry. The office cell phone.

GENERAL BOOYSENS: No, cannot trust it.

SPEAKER 2: Not that one, no?

GENERAL BOOYSENS: Uh-uh.

SPEAKER 2: That one is not reliable?

GENERAL BOOYSENS: Uh-uh. Uh-uh.

SPEAKER 2: Then the, when they are doing the arrest, they will take it for [indistinct] and then [intervene]

20 GENERAL BOOYSENS: No, no, no.

SPEAKER 2: [Laughing]. That one is not right.

GENERAL BOOYSENS: So if you phone me, just say it is Bob.

SPEAKER 1: Okay.

GENERAL BOOYSENS: Contact me at this number.

MP

IPID

73

SPEAKER 1: Okay.

GENERAL BOOYSENS: Sms me. Contact Bob and then the number.

SPEAKER 1: That is it.

GENERAL BOOYSENS: Ja, but then you must give me like 10 or 15 minutes.

SPEAKER 1: So that you can go to a public phone.

GENERAL BOOYSENS: Mmm.

SPEAKER 1: Ja.

10 SPEAKER 2: No it is fine.

GENERAL BOOYSENS: But the, honestly I, can I guarantee you even if you speak to an attorney, he is going to tell you, that is your, not your best option, that is your only option.

SPEAKER 1: No, I understand.

SPEAKER 2: We will discuss it with [intervene]

GENERAL BOOYSENS: Ja and when your guys [indistinct] give me a shout, you can give me a shout tonight if you wants to.

SPEAKER 1: Ja, because now what time is it now?

GENERAL BOOYSENS: Now it is two o'clock. You will get there
20 half past seven, if you leave now and you will get there half past seven tonight. What car are you driving? What car are you driving?

SPEAKER 1: Kia.

GENERAL BOOYSENS: What size engine?

SPEAKER 1: It is 20 cylinder.

IPID

74

GENERAL BOOYSENS: Ja you can put put.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: Have you got blue light?

SPEAKER 1: In Gauteng, we don't use blue lights?

GENERAL BOOYSENS: Petros took away?

SPEAKER 1: [Laughing]

GENERAL BOOYSENS: But the criminals is using it.

SPEAKER 1: Ja, criminals are using it. [laughing]

SPEAKER 2: When I will be calling you, I will call you

10 Martin né?

GENERAL BOOYSENS: Martin?

SPEAKER 1: Ja, using Martin, ja.

GENERAL BOOYSENS: Okay, you are Bob and I am Martin. Bob
Martin. [laughing]

SPEAKER 1: [Laughing]

GENERAL BOOYSENS: I know Bob Martin's were medicine for
the dogs. [Laughing]

SPEAKER 1: Now things will be [indistinct]

GENERAL BOOYSENS: I just want to tell these guys that

20 [intervene]

SPEAKER 1: [Indistinct]. Around nine [intervene]

GENERAL BOOYSENS: They can give the bill to Wimpie, from the
casino.

WAITRESS: To?

MP

IPID

75

GENERAL BOOYSENS: Mr Vermaak, from the casino.

WAITRESS: Oh, did he sign for it.

GENERAL BOOYSENS: I think he did.

WITNESS: Thank you, you do not have those black cards?

GENERAL BOOYSENS: No, no.

WAITRESS: Thank you.

GENERAL BOOYSENS: You know Mr Vermaak?

WAITRESS: I, I will check up now.

10 GENERAL BOOYSENS: Ja, he is in charge of the Savannah's.
Okay. The one who came here now with us, the tall one.

WAITRESS: Oh, okay.

GENERAL BOOYSENS: Okay.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: No, I started with my law studies, but I never finished it, but then I did the police science.

SPEAKER 2: Oh, police science long time ago?

GENERAL BOOYSENS: Ja.

SPEAKER 2: You finished [indistinct]?

20 GENERAL BOOYSENS: Ja.

SPEAKER 2: And you have done a degree as well?

GENERAL BOOYSENS: Ja. I have got two degrees.

SPEAKER 2: Police science and what?

GENERAL BOOYSENS: And the management. I have got


MP

IPID

76

management, *ja*. Actually my degree for management is a Honours Degree.

SPEAKER 2: Honours?

GENERAL BOOYSENS: *Ja*.

SPEAKER 2: Really?

GENERAL BOOYSENS: *Ja*.

SPEAKER 2: You know, looking at the [indistinct] at the list of the generals, there are generals who are having [indistinct], others have [laughing]. I said this guys, general [indistinct]. They
10 are not even educated these people.

GENERAL BOOYSENS: I have a, I have got two degrees, I have got a National Diploma.

SPEAKER 2: *Ja?*

GENERAL BOOYSENS: I have got a police science degree. I have got a Honours Degree.

SPEAKER 2: In management.

GENERAL BOOYSENS: And then I have done the Presidential Executive Program.

SPEAKER 2: Okay.

20 GENERAL BOOYSENS: I have been to China for three weeks for Forensic Investigation.

SPEAKER 2: Yes?

GENERAL BOOYSENS: I have been to the FBI in America for Forensic Training for 3 weeks.

IPID

77

SPEAKER 2: Really?

GENERAL BOOYSENS: Ja. And I have received training by the FBI for short courses as well, three, three different courses and I also got trained by the American Justice Department. The top advocate in America, Michael Johnson,

SPEAKER 2: Michael Johnson.

GENERAL BOOYSENS: He is doing all the racketeering charges. I did three courses with him as well.

SPEAKER 2: Really?

10 GENERAL BOOYSENS: Ja.

SPEAKER 2: So these guys are playing with fire?

GENERAL BOOYSENS: That is why you must see, you must see their dockets, I, I, you know if, if, one day I am going to tell General Dramat this, you know and I am not going be disrespectful, I want to say to him, you know General, you send a General with Brigadiers, but look at this product.

SPEAKER 2: Ja.

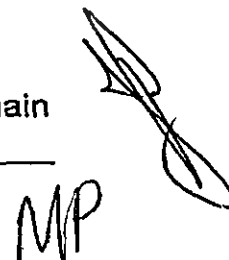
GENERAL BOOYSENS: I can never put something like that on your table.

20 SPEAKER 2: Ja.

GENERAL BOOYSENS: It is *deurmekaar*. The things are, it is not probably filed, there is no chain evidence, it is, [intervene]

SPEAKER 2: There is no chain evidence at all?

GENERAL BOOYSENS: Not one of those dockets, the chain

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evidence is intact, not one. We have got 200 pages that was typed, from mistakes in those dockets.

SPEAKER 1: Mmm.

GENERAL BOOYSENS: I don't think somebody could have inspected those dockets. But like you say, some of them do not know how to inspect it.

SPEAKER 1: Yes, yes.

GENERAL BOOYSENS: Ja. How is the weather there in Pretoria, getting cold now?

10 SPEAKER 1: Ohh, cold, very cold.

GENERAL BOOYSENS: Ja.

SPEAKER 1: But yesterday, it was much better.

GENERAL BOOYSENS: Ja.

SPEAKER 1: But right from Thursday up until was it Friday, Saturday it was [indistinct]

SPEAKER 2: Raining.

SPEAKER 1: It was raining.

SPEAKER 2: You know what is bad?


GENERAL BOOYSENS: Uh?

20 SPEAKER 2: You know, you need to be clean before you can go and investigate somebody else.

GENERAL BOOYSENS: That is it.

SPEAKER 2: You need to be very clean. Make sure that you are clean, because once this thing emerge...

MP



IPID

79

GENERAL BOOYSENS: Ja.

SPEAKER 2: Those guys are going to sweat, I am telling you.

GENERAL BOOYSENS: Ja. There is a saying, but I think in Zulu there is a same thing, you dig a hole. You will fall in your own hole.

SPEAKER 1: [African language]

GENERAL BOOYSENS: When you dig a grave for someone else, you are going to fall in your own grave.

SPEAKER 2: Ja they say you want to clean somebody
10 else's house, make sure that your house is clean as well.

GENERAL BOOYSENS: Ja, ja.

SPEAKER 2: Make sure that your house is clean as well.

GENERAL BOOYSENS: I am clear with my, with my stories, I know that.

SPEAKER 1: Ja.

GENERAL BOOYSENS: They have got nothing, because there is nothing.

SPEAKER 1: [Talking on phone with someone in
20 African language]

SPEAKER 2: You know this guy is my, is my true friend and [indistinct].

GENERAL BOOYSENS: This one?

SPEAKER 2: So, I don't want him to get in deep shit,

IPID

80

you know?

GENERAL BOOYSENS: From my side too, I will.

SPEAKER 2: I don't want him to get into deep shit,
[indistinct] maybe I will accompanied him as well, when he came to
see you.

GENERAL BOOYSENS: [Indistinct] do this. Speak to Sibiya and
then we will, you don't have to do it, but I am telling you, believe me,
it is not one of, it basically has only the one offer.

SPEAKER 2: Ja.

10 GENERAL BOOYSENS: And you must do it, while you still have
the opportunity to do that.

SPEAKER 2: Ja, ja.

GENERAL BOOYSENS: And even if going just speak to the lawyer
and let the lawyer explain to you, listen here, this, a lawyer will then
you exactly the same thing.

SPEAKER 2: You know, when was the, the day before
yesterday, when I think Shongwa phoned you *né*? I acting like
Shongwa, because he is my friend.

GENERAL BOOYSENS: Oh Dume?.

20 SPEAKER 2: One Dume, ja.

GENERAL BOOYSENS: Oh is that the, [intervene]

SPEAKER 2: The attorneys, I was not aware that they
are talking about this case. Then Dume said no, BooySENS is going
to call your yourself. Ah. What am I going to say now? Because I

MP

IPID

81

don't know anything about this thing. It's my friend who was looking for [intervene]

GENERAL BOOYSENS: Uh, uh. [Laughing]

SPEAKER 2: You know. Then I met him yesterday [intervene]

GENERAL BOOYSENS: Oh I was wondering how they got to me?

SPEAKER 2: Ja, ja.

GENERAL BOOYSENS: Do you know Dume?

SPEAKER 2: I know him, ja.

10 GENERAL BOOYSENS: Now you are going to ask him about me.

SPEAKER 2: Ja, ja I was with him in the [indistinct]

GENERAL BOOYSENS: I got him when he got promoted there, I send him my work number, Organised Crime, I got him back.

SPEAKER 2: You got him back.

GENERAL BOOYSENS: Ja.

SPEAKER 2: Uhmm.

GENERAL BOOYSENS: No, I was wondering how he got that number. Because when they, when they send me a message, one of my people. They said no, there is people from [Indistinct], they is
20 looking, they want to phone me and they didn't want to give the number.

SPEAKER 2: Ja. [Laughing]. No, I was still like asking myself, what am I going to say now, when he phones me? Lucky enough when you phoned, he was right next to me. You know, we

IPID

82

went to see him yesterday, you know.

GENERAL BOOYSENS: [Laughing]. Uh.

SPEAKER 2: When you phoned, he was right next to me.

GENERAL BOOYSENS: Uh.

SPEAKER 2: And we in the middle of this conversation, we are talking about now. I said now general, this General Booyesen.

GENERAL BOOYSENS: Uh.

SPEAKER 1: Because, because you know ultimately,
10 we need to come up with something. Something that can help this gentleman at the back of you. But also assist you in this case.

GENERAL BOOYSENS: I just want to say something quickly.

SPEAKER 1: You must bring this guy down.

SPEAKER 2: He must, he must. You must, because he wants me [indistinct]

GENERAL BOOYSENS: Then he is going to be too strong.


SPEAKER 2: And [indistinct]

GENERAL BOOYSENS: See if this [indistinct]. [Making cell phone call]. Howzit Carl, where are you?

20 SPEAKER 12: Now I am here, just walking into my office.

GENERAL BOOYSENS: Is it? Do you, have you got 5 minutes for me?

SPEAKER 12: Ja, ja.

MP 

IPID

83

GENERAL BOOYSENS: Close, close to your office?

SPEAKER 12: Okay I will go back *ja*.

GENERAL BOOYSENS: Okay I am leaving, I will be there in about 5 minutes.

SPEAKER 12: Okay no problem.

GENERAL BOOYSENS: Okay just to put your mind at ease.

SPEAKER 2: Yes.

GENERAL BOOYSENS: I am going to drop you by your car, follow me. This guy is my friend, he is the top advocate here.

10 SPEAKER 2: Okay.

GENERAL BOOYSENS: Then we ask him, what, what does he think?

SPEAKER 1: About this thing? Or his idea?

GENERAL BOOYSENS: *Ja, ja*.

SPEAKER 1: Okay.

GENERAL BOOYSENS: He is a, are you happy with that?

SPEAKER 1: Yes, yes, just he, maybe he can give us the guidance.

GENERAL BOOYSENS: Yes.

20 SPEAKER 1: I think somebody went there and complained about this case.

GENERAL BOOYSENS: It is one of two things, either someone is *de moer* in for Mabula.

SPEAKER 1: Yes.

Handwritten signature and initials, possibly 'MP' and a stylized 'A' or 'S'.

IPID

84

GENERAL BOOYSENS: And they want to [indistinct] him.

SPEAKER 1: Ja, uh.

GENERAL BOOYSENS: Or else it is the, someone like that blue light guy, want to get himself out of the shit.

SPEAKER 1: Ja.

GENERAL BOOYSENS: Do you know Madontsela?

SPEAKER 1: Madontsela?

GENERAL BOOYSENS: Brigadier?

SPEAKER 1: Oh ja, I know him.

10 GENERAL BOOYSENS: That man and me, we are like this.

SPEAKER 1: I know him. I think he was working here and then he took the transfer.

GENERAL BOOYSENS: Ja but he is crying, he wants to come back. [Laughing]

SPEAKER 1: He wants to come back?

GENERAL BOOYSENS: Ja.

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: Ja but he hates that place. He hates it.

SPEAKER 1: He hates it.

20 GENERAL BOOYSENS: Ja, they fight too much.

SPEAKER 1: They fight too much.

GENERAL BOOYSENS: But they, if, if, you must ask him, Simon and myself, we are like blood brothers. Okay follow, follow, okay you can come out.

MP 

IPID

85

SPEAKER 1: You mean follow us?

GENERAL BOOYSENS: Okay. You have got your belt on.

SPEAKER 2: [Laughing]. You know this, this cars.

SPEAKER 1: Of today.

SPEAKER 1: This cars of today, you can't drive without putting your belt.

GENERAL BOOYSENS: But I prefer to drive with a belt.

SPEAKER 2: You are afraid.

GENERAL BOOYSENS: No I prefer the belt.

10 SPEAKER 2: You prefer the belt?

GENERAL BOOYSENS: Ja.

SPEAKER 2: You know us guys on that bound, we, we like to drive without the belt, if anything happens [intervene]

GENERAL BOOYSENS: No if you go to townships, if I go into a township, then I put the thing behind my back.

SPEAKER 2: Behind your back?

GENERAL BOOYSENS: Or when we go for [intervene]

SPEAKER 2: Your firearm, is next to you?

GENERAL BOOYSENS: Ja. My firearm is here. But these
20 *fucking* people they even took my firearm.

SPEAKER 2: They took your firearm?

GENERAL BOOYSENS: There was evidence led in the court, not by myself, by Crime Intelligence that these people want to, they want to take me out.

MP

IPID

86

SPEAKER 2: They want to take you out?

GENERAL BOOYSENS: Ja.

SPEAKER 2: Want to kill you?

GENERAL BOOYSENS: They want to kill me. Not my evidence.
But of course I refused to stop the corruption investigation.

SPEAKER 2: Yes.

GENERAL BOOYSENS: And I wrote Dramat Halid, please let me
just keep my firearm to protect myself, he did not even answer me.

SPEAKER 2: Mmm.

10 GENERAL BOOYSENS: He did not even respond.

SPEAKER 2: He never responded on that? [Sigh]. I
don't know where the SAPS is going, I don't know where is this
going, because he is overwhelmed by politics.

GENERAL BOOYSENS: Ja.

SPEAKER 2: Overwhelmed by [intervene]

GENERAL BOOYSENS: But I just had [intervene]

SPEAKER 2: It is a bit of a sad thing, when you look at
it, things are not going to wait at all.

GENERAL BOOYSENS: Where do you stay, Pretoria?

20 SPEAKER 2: No, I am staying in Jo'burg.

GENERAL BOOYSENS: Where.

SPEAKER 2: Southside of Jo'burg. Do you know
Alberton?

GENERAL BOOYSENS: Hmm.

IPID

87

SPEAKER 2: You know Alberton?

GENERAL BOOYSENS: Ja.

SPEAKER 1: I am staying in Alberton, in the township.

GENERAL BOOYSENS: Now my two sons are staying in Pretoria.

SPEAKER 2: I was staying here in Durban for quite a long time.

GENERAL BOOYSENS: Where?

SPEAKER 2: But I was staying in Inanda.

GENERAL BOOYSENS: Oh Inanda?

10 SPEAKER 2: Yes, I was staying in Inanda.

GENERAL BOOYSENS: But did you work here as well?

SPEAKER 2: No, I was working like in private companies before I became a cop. I am just new in the SAPS.

GENERAL BOOYSENS: Oh okay.

SPEAKER 2: I am only 10 years' now.

GENERAL BOOYSENS: Did you start in Gauteng?

SPEAKER 2: I started at Gauteng, yes. I started in Gauteng, but my life is there, I see it actually. I have got families there, whilst still staying in Durban and I have got houses around
20 there. I even went to Natal Tech, long time ago.

GENERAL BOOYSENS: Is it?

SPEAKER 2: It was 1996 by then. I was doing marketing management then.

GENERAL BOOYSENS: Okay.

MP



SPEAKER 2: I dropped out, I dropped out on my second day.

GENERAL BOOYSENS: My daughter she finished now her communications science and my oldest son, he is an engineer and my second son he is a computer programmer.

SPEAKER 2: How old are they?

GENERAL BOOYSENS: My oldest son is 37.

SPEAKER 2: General so you are old?

GENERAL BOOYSENS: Ja.

10 SPEAKER 1: [Laughing].

GENERAL BOOYSENS: No, started young.

SPEAKER 1: General, you are old *hê*?

GENERAL BOOYSENS: And my second son is 33 and my daughter is 28.

SPEAKER 2: I am like your son, as well I am 38.

GENERAL BOOYSENS: Oh you are the same age as my son?

SPEAKER 2: Ja, that is what I am saying. [Laughing]

GENERAL BOOYSENS: But I have got a young heart.

20 SPEAKER 2: You have got a young heart, you have got a young heart.

GENERAL BOOYSENS: The people ask me, if this thing [intervene]

SPEAKER 1: ecause you look good.

GENERAL BOOYSENS: This people ask me, if I am finish, do I

IPID

89

want to go back to the police? I say yes, because I am a born policeman and I will stay there until ..., they ask me but if I go back, I will still be positive? I said, I will be more positive?

SPEAKER 2: You will be more positive.

GENERAL BOOYSENS: Because, [intervene]

SPEAKER 2: You know things like this nè, they make you strong.

GENERAL BOOYSENS: Ja.

SPEAKER 2: They make you strong and they keep you
10 going.

GENERAL BOOYSENS: Ja.

SPEAKER 2: But now when they suspend you, without pay you.

GENERAL BOOYSENS: No with pay.

SPEAKER 2: Okay, thanks God, no, that is good. That is good, the other guys?

GENERAL BOOYSENS: Also.


SPEAKER 2: Really?

GENERAL BOOYSENS: Ja,

20 SPEAKER 2: Now then it is good. I mean I was worried that the guys are not getting anything now.

GENERAL BOOYSENS: No.

SPEAKER 2: No, then it is good, then it is good General.

MP 

IPID

90

GENERAL BOOYSENS: But they know, if they suspend us without pay, we will take them to court. I already took them to court twice. I have beat them twice. They had to pay all my costs.

SPEAKER 2: Mmm. No, then it is with pay.

GENERAL BOOYSENS: And there is a contempt of court case, outstanding against Dramat, as well.

SPEAKER 1: Against Dramat?

GENERAL BOOYSENS: Ja.

SPEAKER 2: Okay.

10 GENERAL BOOYSENS: Because I have got an interdict against him, not to suspend me. Because they refused to tell me why they want to suspend me.

SPEAKER 2: Mmm.

GENERAL BOOYSENS: And then I got an interdict, he is not allowed to suspend me, unless he can tell me why he want to suspend me. He never asked me, he just suspend me. Went to court, the next day, we got a, the court overturned [indistinct]

SPEAKER 2: So this thing that Dramat is doing all that, [intervene]

20 GENERAL BOOYSENS: No, he is under pressure. It is under pressure.

SPEAKER 2: From the top guys?

GENERAL BOOYSENS: Yip. Because I am investigating friends and family and he knows it. He knows it.

IPID

91

SPEAKER 2: But why, why somebody is going to the SAPS and ask to be investigated?

GENERAL BOOYSENS: You know in, we are busy with an investigation, we had an agent in the field and the agent, the agent told me on that date, the policeman that I arrested for corruption, on that date, the suspension will be lifted and I will be suspended.

I report to Dramat the exact date, on that date that policeman suspension was lifted, I got suspended.

SPEAKER 2: Because that is [indistinct]

10 GENERAL BOOYSENS: Because the criminals was working with the agent. Because we had an agent in the field, talking to the, the criminals. The criminals told him, don't worry on that date, the policeman that Booysen arrested, they go back to work, but Booysen will be suspended. We reported that to Dramat before the time and it turned out to be accurate. It shows you that the people involved in corruption, they have got direct links with certain people at police headquarters.

But all those things will be exposed.

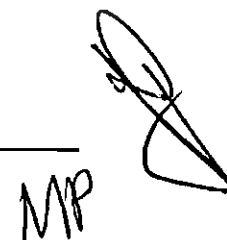
SPEAKER 2: All those?

20 GENERAL BOOYSENS: It will be exposed. *Shit*, I turned too quickly now.

SPEAKER 2: You turned too quickly?

GENERAL BOOYSENS: I always make this *fuckup*.

SPEAKER 2: You must reverse as well.

Handwritten signature and initials, possibly 'MP' and a stylized 'S' or 'D'.

IPID

92

GENERAL BOOYSENS: I will always make the same *fuckup*.

SPEAKER 2: Just watch your car, don't bump it.

GENERAL BOOYSENS: Hmmm?

SPEAKER 2: [Indistinct]

GENERAL BOOYSENS: What about them?

SPEAKER 2: When you come from that side, before you turn, you must check that [intervene]

GENERAL BOOYSENS: I come here often, but always, I was busy talking to you, I was not concentrating.

10 SPEAKER 2: Ohhhhkay.

GENERAL BOOYSENS: This is a police car, this white one.

SPEAKER 2: This one?

GENERAL BOOYSENS: Ja.

SPEAKER 2: Ja.

GENERAL BOOYSENS: This other day, I got out of my car, I forgot to switch it off, I came back, it was still idling.

SPEAKER 2: Huh?

GENERAL BOOYSENS: Go, go, plenty space, go, go, go, come, come, come, come. That is it. Come sit guys, this is Carl. This is
20 my attorney. Sit down guys, sit. Carl we will be very brief, my counter party in Gauteng, General Sibiya, him and myself they work for him.

When, when did I come up there to see your guys? How long ago was it? About four months, five months?

SPEAKER 2: Ja, somewhere there.

SPEAKER 1: It is about 5 months.

GENERAL BOOYSENS: I met him and General Sibiya there and they alerted me to this investigation team against us, General Mabuła.

CARL: es.

GENERAL BOOYSENS: And there is a female Brigadier Mokoena and a few others involvement in the, where a suspect was interrogated and then he subsequently died. That was 2006. Okay.

10 [Indistinct] for inquest?

SPEAKER 1: Ja, it went for inquest, now it is [indistinct]

GENERAL BOOYSENS: But was there ever a J56 issued?

SPEAKER 1: I think so, I am not sure.

GENERAL BOOYSENS: Okay.

CARL: Where was the inquest held?

SPEAKER 1: I think in Pretoria.


CARL: Oh is it up that side?

GENERAL BOOYSENS: Ja it is a....

CARL: Okay, okay.

20 GENERAL BOOYSENS: Hello, hello, ja, ja, ja, ek gaan jou netnou 'n luitjie gee, ek is net gou besig met 'n, met iemand hierso, ek gaan jou nou 'n luitjie gee. Dankie Wimble, bye, bye. And then they came back to come and see us.

So I was supposed to follow the thing up, but you know how


MP

IPID

94

busy, we have been running around with our stories. About three weeks ago, a month ago, I phoned Sibiya again, I said to him look, there is still a thing on the table.

He wouldn't speak on the phone. So yesterday, he phones me, but from another phone, so we speak on [indistinct]. So he says to me, someone approached him from IPID now, approached him to make a statement.

Obviously against Mabula now, so they suspected, maybe I spoke to someone. So I said to him, I said to Sibiya, I never spoke
10 to anyone. I haven't spoken to anyone about this.

So he said, well we need to talk then, so they drove through the night now. Now, what time did you get here?


SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: So, I met them now and we had a discussion now, but the reason why I want you to, to listen to the basic story and then say what would you do, if you were in their shoes now, as a legal advisor.

He was present when this thing happened. What apparently happened is, the suspect was arrested, there were a policeman
20 involved and there were a Haasman involved, a member of the public involved, interrogation took place.

Mabula was next to [indistinct] and Bobolas Mokoena, also next door, then the guy expired. When they went and told Mabula he capsized. He fainted and they had to bring, try and bring him

MP



IPID

95

about.

CARL: The same guy that was down here?

GENERAL BOOYSENS: The guy who was in charge of the investigation against us.

CARL: The general that was here?

GENERAL BOOYSENS: Ja. Then he fainted, cut loss for a short, he then arranged for the guy to be taken to hospital, ostensibly he had a heart attack. But when they arrived the doctor said, no this guy has been dead for two hours already.

10 But the whole thing was seen trough as natural causes, buried, but the family apparently made a lot of noise at the time. It was on the radio and that stations.

CARL: Is this the one that's been on newspapers now, digging up the bodies?

GENERAL BOOYSENS: No, no it is not the same.

CARL: s it something else?

GENERAL BOOYSENS: This is now something complete different.

CARL: Okay.

GENERAL BOOYSENS: Now I haven't spoken to anyone and the
20 reason why I haven't spoken to anyone about this, I don't want to, if I get involved, it will look like I am setting this whole thing up against Mabula.

So, I, I would never have raised issue myself. Now what I suspect what happened here, they have arrested someone recently,

MP

IPID

96

there were twelve people present, when this happened. He was not [indistinct]

But there were twelve people present. Now I, I say, it is one of two things that's happening here. One is, either someone in that group has got sour grapes with Mabula and they want to stuff him up and because there were two people that they have approached, it is you and Malemela?

SPEAKER 2: Yes, but Manemela is sick now [indistinct]

GENERAL BOOYSENS: But now Malemela, I never met
10 Malemela, I only met him, so I was not even aware of Malemela, so it must be someone outside myself, that told those people to give them Malemela's name and your name and as I said to him, I call him Bob, I don't even know what his real name is.

So he sits now in a situation, where he was present when this happened, IPID has approached him for a statement. Now one of two things happened what I suspect, is either someone of the twelve is in the deep water for something they did wrong, because you said you arrested the one guy for a blue light story.

Is it a blue light robbery story or?

20 SPEAKER 2: Ja it is robbery, he went to that place to rob and he were arrested before they came out.

GENERAL BOOYSENS: Okay.

SPEAKER 1: They were using blue lights.

GENERAL BOOYSENS: And he is part of the twelve?

Handwritten signature and initials, possibly 'MP' and a stylized 'D' or 'P'.

IPID

97

SPEAKER 1: Ja.

GENERAL BOOYSENS: Now it is either that he is trying to
[intervene]

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: In the inquest?

SPEAKER 1: Yes.

GENERAL BOOYSENS: Ja, so it is either this guy who is trying to
negotiate himself out of that trouble by raising this issue, if that is not
the case, it could be someone of the twelve that has got sour grapes
10 with Mabula now and who has now phoned IPID.

He is sitting in a situation now [intervene]

CHARL: Now why is Mabula and and, so he is the
one that was on the outside? So he nearly had a heart attack, now
what about the guys that participated?

GENERAL BOOYSENS: Well the situation that you sit with,
Mabula was a colonel then hey? At the time.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Ja, [indistinct] colonel. Huh?

SPEAKER 1: He was in charge.

20 GENERAL BOOYSEN: He was in charge?

CARL: He was in charge?

GENERAL BOOYSENS: And he also devised the plan now to
send the guy to hospital.

CARL: Say he had a heart attack?

Handwritten signature and initials, possibly 'MP' and a large stylized 'S' or 'Z'.

GENERAL BOOYSENS: Ja and then they had a subsequent meeting on two occasions at, to try and [intervene]

CHARL: Ja, have you guys been approached as witnesses or as suspects?

SPEAKER 2: No, as witnesses. Because they said we must submit a statement.

CARL: To say what?

SPEAKER 2: To what happened on that day.

CARL: Oh.

10 GENERAL BOOYSENS: But bearing in mind, that there is a strong possibility that someone else in that group has, because why would they come six years later now and approach and his name was never even in the docket.

SPEAKER 2: Never.

GENERAL BOOYSENS: So someone in that group, who knows that he was there, must have spoken.

CARL: Okay so you were not [intervene]

GENERAL BOOYSENS: No, this is friends, they are just friends.

CARL: So, it is just you that is involved?

20 SPEAKER 1: That is correct.

CARL: With how many other guys?

SPEAKER 1: I think we are more than twelve, [indistinct] but twelve guys submitted statements.

GENERAL BOOYSENS: In the inquest, but that will be exculpatory

IPID

99

statements, where they [intervene]

CARL: But you submitted it as a witness?

GENERAL BOOYSENS: He never submitted anything.

SPEAKER 1: I never submitted a statement, even
Manamela, he never submitted a statement.

GENERAL BOOYSENS: And their names are not in the docket
either.

SPEAKER 1: Yes.

GENERAL BOOYSENS: Although they were present.

10 SPEAKER 1: But the others, they have submitted the
statement.

GENERAL BOOYSENS: So it went through, obviously they made
bullshit statements [intervene]

SPEAKER 1: No one mentioned my name there, I do
not know where these guys they got my name, they phoned me and
said I must submit.

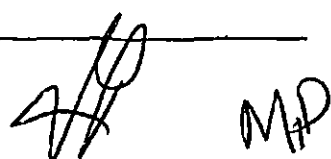
CARL: Now has the general also been
approached? Did he submit a statement in the original docket?

SPEAKER 1: No.

20 CHARL: Do you know if he has been approached
now by [intervene]

SPEAKER 1: I don't know.

GENERAL BOOYSENS: Carl what, what I and that is why, just
before I dropped them off, I said, let us speak to someone else, with

Handwritten signatures and initials at the bottom right of the page. There are two distinct signatures, one appearing to be 'HJ' and the other 'MD'.

IPID

100

legal knowledge, what my suggestion to him is, you know how these guys operate from IPID.

If someone had already spoken and you don't know if they busy negotiating with someone, to be a 204 anything that, what, what would be his position if he arrives, if he reports back in Pretoria and he goes and see an attorney, that takes his full statement, they go to IPID and say listen here, we want to lay cards on the table now, the main reason why he is only doing that now, is for obvious reasons for fear of his life and that he wants to submit a 204 statement?

CARL: Are you, are you one of the suspects in the docket? Is there anybody that can say that you participated or failed to participate in something, to stop something?

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: She does know it is in the docket.

CARL: Because if, [indistinct] if you are going to tell the truth in other words, one has to negotiate a status for you, in other words.

GENERAL BOOYSENS: Ja.

20 CARL: It has got to be negotiated before you even put pen to paper, [indistinct] you say, I want from here, an affidavit now and I will give you the whole story, so I will say, thank you very much, this is a confession now and you request and you know what you are [indistinct]. That is, that is [indistinct] you have, so if [indistinct]

IPID

101

negotiate, some kind of deal.

GENERAL BOOYSENS: But how will he do, how much, how much to do that?

CHARL: He will have to negotiate with an attorney. You have got to, who is the other people, is it from here?

GENERAL BOOYSENS: No, it is from that side. It is from that side.

SPEAKER 1: Jo'burg.

CHARL: You see if it was from here, I get hold
10 Andy's one time. I would, I would suggest that, if depending on what your attitude is, what you want to do. Do you [intervene?]

GENERAL BOOYSENS: Well, there is two things we want to do here, for obvious reasons.

CARL: Ja.

GENERAL BOOYSENS: These guys, we are from the same mould. We are from the same mould.

CARL: Okay.

GENERAL BOOYSENS: Well I do not, I have met these guys before, we talk the same language.

20 CARL: Yes.

GENERAL BOOYSENS: They, they get upset with what is going on in KZN.

CARL: Ja.

GENERAL BOOYSENS: That is the one angle, the other angle is,

the last thing he needs now, is someone else has made a statement,

CARL: Absolutely.

GENERAL BOOYSENS: And they do exactly what they did here with the Cato Manor guys, [indistinct] same thing. They all went to, to [indistinct]

CARL: Ja.

GENERAL BOOYSENS: Two weeks later they came *bopha* the whole lot of them. They told them they want statements from them, two weeks later, they *bopha'd* every single one of them.

10 CARL: You see, if you don't look after your own backdoors, [intervene]

GENERAL BOOYSENS: Look after your own [intervene]

CARL: If you don't look after your own backdoor sir, somebody else is going to shoot that, without you even knowing, because you don't know now, in this group, because they obviously got some kind of information. Why would they resurrect it six years later?

GENERAL BOOYSENS: And go to him and Malemela. Whose names are not even in the docket.

20 CARL: So that will mean that somebody has gone to them and either give them information or made a deal with them. That is, that is the whole thing now. Now, your General Sibiya, does he know what is going on?

GENERAL BOOYSENS: He knows what is going on, ja.

IPID

103

CARL: Okay and he is on your side?

GENERAL BOOYSENS: Yes.

CARL: And he will protect you?

GENERAL BOOYSENS: He will.

CHARL: Okay, then my advice [intervene]

GENERAL BOOYSENS: Sorry he, Sibiya is also against what is happening here.

CHARL: Ja, then my advice to you is that, once you make your decision, you have got to stick tight, because it is a
10 hard road to run. If you are going to be a 204, then you have to negotiate your status as a 204, from the beginning.

I know it is a bitter pill to swallow, but the fact is, what is going to happen to you, if somebody else has done it? And that and you are policemen, I can see you are not youngsters. Somewhere along line there is something, they would not just open up an inquest docket, after six years.

Somewhere along the line, somebody has gone and said wow, draw that docket, this is a [indistinct]

GENERAL BOOYSENS: Who is in charge of IPID that side?

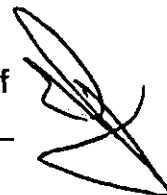
20 SPEAKER 1: It is [indistinct], lady boss, it is a lady.

GENERAL BOOYSENS: Is she experienced?

SPEAKER 1: [Indistinct]

SPEAKER 2: She was a prosecutor before.

GENERAL BOOYSENS: Okay then she must have a bit of



IPID

104

experience in the investigation world.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Sorry?

SPEAKER 1: We are very close to her.

GENERAL BOOYSENS: Who, you?

SPEAKER 1: Ja, [indistinct] this guy knows, he knows her very well.

GENERAL BOOYSENS: Which guy?

SPEAKER 1: This one, my colleague.

10 GENERAL BOOYSENS: Well that makes it a slightly better, to negotiate, like Carl says now, negotiate 204 status first and then make a statement.

CARL: You see today guys [intervene]

GENERAL BOOYSENS: And that was all part of the statement.

CARL: It is no more like it used to be, they just come in the middle of the night now, they humiliate you, they lock you up, they oppose bail, they make a big sing-song in the newspapers [intervene]

GENERAL BOOYSENS: Come with the TV cameras.

20 CARL: They suspend you without pay and that is the way that these guys operate now. Especially with a situation, a situation like this, it is very, very delicate. I would, I would, I would double up, I would double-up.

Get hold of Angus, so that he knows it, someone can say,



there is not only one person [intervene]

GENERAL BOOYSENS: Ja but the thing is, don't you think it could compromise, the issue about if you tell Angus now, it will look like we are trying to basically tarnish Mabula's men, it is inspired by us?

CARL: Ja, the fact is they, how do you get, how do you play your cards, that you have got security there. Because if you go to the lady in Jo'burg or Pretoria and she says no, no it is too much [indistinct] arbitrator, who is to back you up if you have [intervene]

10 GENERAL BOOYSENS: Do you think, do you think you could have an attentive talk with Angus, without giving names and then if he says, no it's fine and then we can take it from there?

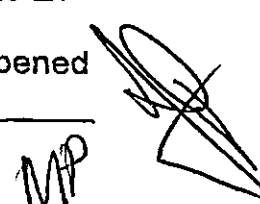
CARL: You see Angus, I don't know him, but he is a well advisor, in politics, but he says he is always true, but I don't Angus, I am just thinking of, coz just now something happens to you, then what backup have we got? You will know, I will know, the general will know.

You have got backup but you have got nobody here, General Sibiya might know. But the fact is, what can you, what can you offer
20 them, what can you tell them?

GENERAL BOOYSENS: But he can tell him, they can tell them everything.

CARL: Can you tell him everything, from A to Z?

GENERAL BOOYSENS: The meetings afterwards, what happened

Handwritten signature and initials, possibly 'MP' and a large stylized mark.

IPID

106

during the time. You know how a 204 works?

SPEAKER 1: Ja I know the 204.

CARL: The trouble is guys, if you are going to go for a 204, you have to come clean. If you fail on the 204, then they can charge you. That is why you cannot hold back, [intervene]

GENERAL BOOYSENS: No you gotta [intervene]

CARL: You can't hold back anything. A 204 has to be negotiated in good faith, with absolute transparency.

GENERAL BOOYSENS: What, what other alternatives has he got?

10 CARL: The other alternative, that he keeps quiet and says, I know nothing and somebody has burned his backside, it means that he is going to be arrested soon. It is as simple as that.

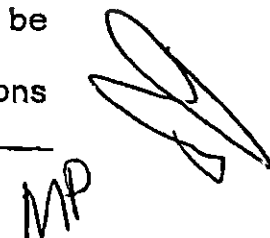
GENERAL BOOYSENS: Then he goes down with the group. You see what I have told you. I told them, there is basically, there are not two options here, there is only one option here. Because if [intervene]

CARL: It is a choice, if you, if you run the risk of not negotiating, then you run the risk of being arrested. If somebody has given a statement already, why are they approaching you now?

20 The must know something. They are not going to just [intervene]

GENERAL BOOYSENS: Six years later

CARL: Pull you out of, out of nowhere, somebody has given them inside information and that can only be one of the persons that was on the scene, or one of the persons

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IPID

107

lovers or something that they confessed to and they are gone, the lovers are gone so they [intervene]

GENERAL BOOYSENS: Someone with sour grapes.

CARL: You leave, I am going to go and tell what you told me.

SPEAKER 1: But you know what I am, what surprises me, those guys who submitted the statements, they were [indistinct]. I was just there and standing and watching.

CARL: You see there is this case law.

10 SPEAKER 1: Yes.

CARL: It is very strong case law. It says as a policeman, if somebody else is doing something and you do not stop that something, it is unlawful, [indistinct background noise]

GENERAL BOOYSENS: So if I assault Carl now in front of you and you fail to act, they charge you for assault as well. Look at me, I was not even there, I was not [intervene]

SPEAKER 1: They arrested you.

SPEAKER 2: Let us go back to Johannesburg and then we will come back to you.

20 CARL: Okay.

SPEAKER 2: I will phone you tonight.

GENERAL BOOYSENS: I , I still of the, of the opinion, although, it is just as well we came and spoke to Carl now, before you draft the statement, negotiate your status first.

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CARL: Ja, you must, you must before, don't put pen to paper and be very carefully who you speak to. Because remember, whoever you speak to [intervene]

GENERAL BOOYSENS: Carl, I will organise an attorney from that side.

SPEAKER 1: Ja.

GENERAL BOOYSENS: He must go with an attorney to that woman and say, this man here, has been approached for a statement, he is in fear of his life, he still is in fear of his life, that is
10 why he is coming forward now. You must say, you are fearing for your life, that is the main reason why you don't, you never want to talk about this thing.

You are in fear of your life, but you want to make a 204 statement now and they must give him something in writing, that this is a 204 statement.

CARL: You must have, a [indistinct] situation, an attorney and client privilege, where negotiations are [indistinct] if we come, like I have said it is a situation where we tell you everything, you give us 204 status? If they say yes, then you can negotiate.

20 If they say no, then say thank you very much, I [indistinct]. This is no good in giving them bullets for their own gun. That's what they hoping for.

GENERAL BOOYSENS: But, but I can guarantee you, the way they are scratching now, they, no they are waiting for something like



this, someone to become a 204. It is like, like, if I were an investigator and you are battling to make a breakthrough and someone comes and say, okay hold on sec., I will tell you everything.

So speak to General Sibiya and then if you want to go along with this, through my contacts that side, we will get you an attorney, you go and see him, with, maybe I can even get you to, to brief him on the phone Carl and then let him take you to that woman and negotiate a 204 status for you.

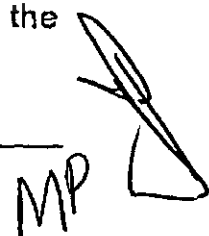
10 And once they set a 204 status, they might as well take his, but what you must also do is, the preamble to your statement, you know, you have done 204 statements previously, the preamble of your statement must contain, that position of Section 204 of the Criminal Procedure Act. Making that statement on that basis, after agreeing with, because the obvious thing that she would do, she would probably phone the, the DPP's office.

CARL: You see the DPP that is why I am concerned, because the DPP's office in Johannesburg and Pretoria are very much with that general hey?

20 GENERAL BOOYSENS: Okay but, but this thing happened at? Gal, Makau?

SPEAKER 1: That is under Pretoria.

GENERAL BOOYSENS: Okay but it is on court, where is the closest court there?

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IPID

110

CHARL: They have got their own [intervene]

SPEAKER 1: Garankuwa, that is a [intervene]

CHARL: Where is Gerrie Nel from?

SPEAKER 1: Pretoria.

GENERAL BOOYSENS: He is in Pretoria. Which matter, he is in the Pistorius case.

CHARL: Pistorius case. You have to have, you cannot go there and proceed by yourself, you have to go with somebody that will say, I am the legal representative, I am advising
10 my client his rights all the time. Otherwise they will bullshit you left, right and centre, you need a criminal lawyer.

GENERAL BOOYSENS: Someone like that Kleinsmith.

CARL: It is Kleinsmith, Oloff De Meyer and [intervene]

GENERAL BOOYSENS: Oloff De Meyer, he is getting old now.

CARL: Kleinsmith is fine.

GENERAL BOOYSENS: Do you know Kleismith up there? But you can get hold of him through Marius, Marius knows him. Kleinsmith, they call him the Calfman [indistinct] from Pretoria.

20 SPEAKER 1: No.

CARL: He does a lot of criminal work. You have got to go to a man that does criminal work that also knows the DPP's office very well.

GENERAL BOOYSENS: But he probably will.

IPID

111

CARL: I still, I still, once you, I think once you have seen Sibiya, where is Sibiya, in Pretoria now?

SPEAKER 1: Yes.

GENERAL BOOYSENS: They are going to drive back straight back now.

CARL: I think once you have seen him, one might [indistinct], they don't usually [indistinct].

GENERAL BOOYSENS: Okay but what, from my side, my undertaking is, if something happens to you before you get your
10 ducks in a row, I am prepared to make a statement that you reported it to me and that we had a discussion with my attorney and he advised you to go back there, but the thing is, you cannot leave this thing.

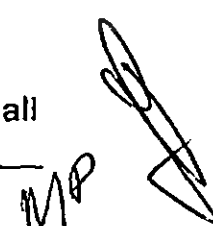
CARL: You can't, you will have to make a decision and once you have made that decision, you will have to stick by it.

GENERAL BOOYSENS: If your decision is, you are just going to leave it, then leave it. If your decision is that you want to do something about it, then you must do it.

20 CARL: But I can honestly say to you now, that I, knowing these guys mentality, this IPID, they will sooner or later arrest you. This is all glory.

GENERAL BOOYSENS: And they come with the TV cameras.

CARL: Ja, you know what the situation is, it is all

Handwritten signature and initials, possibly 'MP' and a stylized 'J' or 'L'.

IPID

112

glory now and IPID, IPID does not, some of them work very closely to the police, others are not [indistinct]. It is unfortunate, but that is the way it is.

GENERAL BOOYSENS: Don't look so worried man.

SPEAKER 1: Oh no, I am not worried, I am just worried about the time. Because we have to go and see and General Sibiya.

GENERAL BOOYSENS: Okay you guys hit the road now.

CARL: Does the general know you had come
10 down?

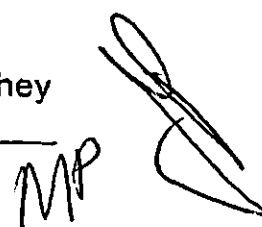
GENERAL BOOYSENS: Ja,

SPEAKER 1: Yes.

GENERAL BOOYSENS: He phoned me yesterday, because he told me that someone has approached him, but when we were talking, I thought, because he said to me we need to get together, I said, but I haven't spoken to anyone about it and then he sounded a bit surprised and the prove in the fact, that I didn't speak to anyone, even [indistinct] I call him Bob and also this other man, I never even met this man or knew him and yet to say they approached him and
20 Malameia.

CHAIR: You see the other way of doing things obviously, is for them to come here, see IPID here, but with an independent attorney.

GENERAL BOOYSENS: And say they don't wanna go there, they

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IPID

113

[intervene]

CARL: Say they don't wanna go there, it is too close.

GENERAL BOOYSENS: Okay that is another option.

CARL: That is another option.

GENERAL BOOYSENS: The other option is you go and speak to Sibiya, if you agree on that course, then you contact me, then we will get another criminal lawyer here, whom Carl can liaise with, but obviously confidential.

10 Carl can brief a local lawyer here, this local lawyer can go here with you to IPID and negotiate it, because then it is closer here for us to control.

CARL: Coz then not only that, then this office is then, they can't squash it.

GENERAL BOOYSENS: Ja.

CARL: Because this office is aware of it. Then they can't squash it, because you never know what the political situation is up in Pretoria and now everybody is, but when there is another office involved, that is not politically aligned up there, then
20 they will have to do the job now.

GENERAL BOOYSENS: The thing is [intervene]

CARL: There is an eye watching them, you see.

GENERAL BOOYSENS: But the thing is, we first have to negotiate the 204 statement.

IPID

114

CHARL: No, no that is why I said, 204 has to be done and that can only be done, these guys will apply [indistinct]. But I think you have to get the general on board, what does he want you to do. How, what is the general's Sibiya's relationship with [indistinct]

GENERAL BOOYSENS: Not good.

SPEAKER 1: Which one, General Mabula?

CARL: Ja.

GENERAL BOOYSENS: Nom it is not good.

10 CARL: Not good? So he is not going to try and protect him?

GENERAL BOOYSENS: Who? No he won't. No, no. No he will never do that.

CARL: Is there bad blood?

GENERAL BOOYSENS: Ja.

CARL: Now that makes it even more easier.

GENERAL BOOYSENS: No he is [intervene]

CARL: That is why I would suggest you, so that the seed can't be swept under the carpet. Speak to the general, if
20 he says yes, I am with you, come back here, see these guys, I [indistinct] to go with you. We will go and negotiate the whole situation. Let them draft affidavits for you, so that you know that there is a backup.

Because we know what his political situation guys, we know

MP

IPID

115

how it works. Maybe, maybe your IPID person wants bigger things, they scared now to rock the boat. These people can't be wanting [indistinct] there, they want bigger things here.

SPEAKER 1: Mmm.

CARL: And to show their independence, they will make sure that it goes the right channels. Especially if you have an attorney from here that we can say right, query, query, query all the time.

GENERAL BOOYSENS: So if you come here, the moment you get an undertaking from them, that you have got 204 status, then you
10 can relax, because then it is just a matter of reducing it to your statement.

SPEAKER 1: Ja.

GENERAL BOOYSENS: And then you are covered, I mean they can never take it away from you, as long as, if it turns out that you have to give evidence, you do a satisfactoral [intervene]

CARL: They can't use that statement [intervene]

GENERAL BOOYSENS: Against you.

CARL: If you have negotiate a 204.

SPEAKER 1: Ja.

20 GENERAL BOOYSENS: They can't use it.

CARL: The statement then falls away.

GENERAL BOOYSENS: Ja.

CARL: You see they now probably exhume that body [indistinct]

GENERAL BOOYSENS: They will, they will.

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IPID

116

CARL: [Indistinct]

SPEAKER 1: No, no.

GENERAL BOOYSENS: I can guarantee they will do that.

CARL: [Indistinct]

SPEAKER 1: I don't know [intervene]

GENERAL BOOYSENS: No, if it, [intervene]

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: No, they would not have done a post-mortem, because if, he went to hospital for natural causes, there
10 would not have been a post-mortem. Ag there will be a post-mortem, not an inquest. [Indistinct] not even had a post-mortem, you don't know. Because if a guy goes to the hospital and they said no he had a heart attack, depends what they told them. Then they just tell the undertakers to come and fetch him.

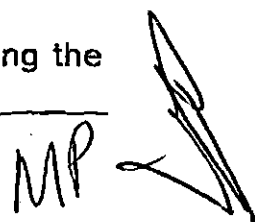
CARL: You see, they must have known somebody at the hospital, that would have given a doctor's certificate, to say that he died a natural death.

GENERAL BOOYSENS: What happened there, did they bullshit the doctor or did they negotiate with them?

20 SPEAKER 1: [Indistinct]

CARL: You see that is why I am saying, there is always people that are committing. Because that is [intervene]

SPEAKER 1: Anyway, now thanks for the advice then.
Let us just go to see the general, then I will phone after seeing the



IPID

117

general, maybe around nine, ten.

GENERAL BOOYSENS: Doesn't matter what time you phone, but remember just give me 15 to 20 minutes to go to another, safe place, then you will send me a number, phone me, say to me, Martin I want to talk to you. Then I can check on my phone, you sms me your number.

SPEAKER 1: Yes.

GENERAL BOOYSENS: Then I will go to a safe phone, I will phone you from there.

10 CARL: But you must also, have another number that you can receive that call on. You can't have the same phone that you are using, to phone, to say, phone me back. You must have another number.

SPEAKER 1: Another number, ja.

GENERAL BOOYSENS: You see Carl the thing is, if, if they pick up that we are talking to each other, it is not that we are busy with criminal activity, they actually did [intervene]

CARL: Ja no I know.

GENERAL BOOYSENS: This is actual advancing the opposite.

20 CARL: You don't want them to say, that there is a conspiracy.

GENERAL BOOYSENS: Ja.

CARL: And all that types of things, you know how the telephones work.

IPID

118

SPEAKER 1: Yes, yes.

CARL: Even if you phone the general and they speak from the general's phone.

GENERAL BOOYSENS: Now that is what he did, what I did in the beginning, I phoned him on his phone.

SPEAKER 1: Another thing is, you know most of the generals [intervene]

GENERAL BOOYSENS: But I can tell you, I can tell you Sibiya's phone is bugged, I can *fucking* guarantee you that.

10 SPEAKER 1: [Indistinct] with another number, it is safer.

CARL: Now that is what I say, one that they have not connected [indistinct], they can't intercept a call that has not been [indistinct].

GENERAL BOOYSENS: They, they have, they know how to [intervene]

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Just remember, you can change cards all the time, but the IME number they can pick it, so [intervene]

20 SPEAKER 2: Yes, I know about that, *ja*.

GENERAL BOOYSENS: That is why I say it is better to go there, if it is confidential, go to spaza shop, [indistinct] spaza shop, but then you have to give 15 to 20 minutes, so that I can get to my friends' house.

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IPID

119

CARL: Sms's you know that you can't pick them afterwards.

GENERAL BOOYSENS: No, they pick it up, as they go through. As they go through, they pick it up.

CARL: They pick it up?

SPEAKER 1: [Indistinct]

CARL: Now just be careful, you don't want to, you know these guys can do anything to [intervene]

GENERAL BOOYSENS: Let me give you another number, wait,
10 wait. Let me give you another number. Let me give you this number. Okay now, this is my friend. He stays close by. You just tell my friend, I will tell him now when I go home, to say,

SPEAKER 2: What is the number?

GENERAL BOOYSENS: It is 083

SPEAKER 2: 083

GENERAL BOOYSENS: 704

SPEAKER 2: 744

GENERAL BOOYSENS: 23

SPEAKER 2: 23

20 GENERAL BOOYSENS: 70.

SPEAKER 2: 70.

GENERAL BOOYSENS: It is a female. She will pick up the phone. Ja, then just say, tell her, Martin is looking for you.

SPEAKER 2: Martin, ne?

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IPID

120

GENERAL BOOYSENS: Ja.

SPEAKER 2: You must tell her, you must tell her that you are Martin now.

GENERAL BOOYSENS: No you, you, ja I will tell her I am Martin, but then you have to [intervene]

SPEAKER 1: So when I phone?

GENERAL BOOYSENS: Ja say, you say, she must, you must tell her, tell Martin, Bob is looking for him. But then you must leave a number with her. But phone from the spaza shop or from somebody
10 else's phone.

SPEAKER 2: I will use this number. [Indistinct]

GENERAL BOOYSENS: Okay, okay, I will save it. [Cell phone ringing]. Exactly what they did with the, with these other guys.

CARL: [Indistinct]

GENERAL BOOYSENS: You see with, this is how the Cato Manor things, by Colonel Olivier, they asked him to come and make a statement, he says no he went there, he was still in the car, he heard a [indistinct], he was not even there, they said okay, two weeks later they came an *bopha'd* him.


20 CARL: Ja, because he put himself on the scene.

GENERAL BOOYSENS: Ja.

SPEAKER 2: [Laughing]

GENERAL BOOYSENS: Get the 204 status and then make sure it's part of the preamble to your statement.

MP



IPID

121

SPEAKER 1: [Indistinct]

SPEAKER 2: That is a petty guy.

GENERAL BOOYSENS: Hmm?

SPEAKER 2: He is a Pedi guy?

GENERAL BOOYSENS: A what guy?

SPEAKER 1: Pedi, a Pedi guy.

GENERAL BOOYSENS: Pedi?

SPEAKER 1: [Indistinct]

CARL: [Indistinct] where they want you to submit

10 statements and things like that, they can actually [indistinct], but the
moment you are a suspect, they can't use that portion [Indistinct].
That is why it is important to find out what is your status.

This is not asking your for a statement six years down the
line.

GENERAL BOOYSENS: For nothing.

CARL: [Indistinct]

SPEAKER 1: I know.

GENERAL BOOYSENS: Uh-uh.

SPEAKER 1: I think they know something.

20 CARL: a for guaranteed, something is [intervene]

GENERAL BOOYSENS: That's why, that is why I am telling you,
they have jumped the gun.

SPEAKER 1: They know something that is why, they
want my statement, so that he can [indistinct]

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IPID

122

CARL: You see when they get all the statement, then they can decide who are they going to use as 204's and I can tell you know, somewhere along the line, somebody has negotiated a 204.

SPEAKER 1: [Indistinct]

CARL: If the general is on your side, that is all you need at this stage. If Sibiya was against you, that would be a different ball game, but if he is with you [intervene]

GENERAL BOOYSENS: No, he is definitely with him.

10 CARL: I will advise you, grab it now while you can, before it is too late.

SPEAKER 1: [Indistinct]

GENERAL BOOYSENS: Guys you must drive carefully, don't fall asleep on the road now, okay.

CARL: Are they driving back now?

GENERAL BOOYSENS: Ja, they came up this morning to see me, now they are going straight back. Don't fall asleep now. Please.

CARL: If you even need my help, you have got my number.

20 SPEAKER 1: Okay.

GENERAL BOOYSENS: You can get from me.

CARL: You can get it straight from the general
[indistinct]

SPEAKER 1: Okay thanks.

IPID

123

GENERAL BOOYSENS: Keep well, cheers hey.

CARL: I have send you a sms did you get it?
Because your phone has been off the whole morning.

GENERAL BOOYSENS: It is strange, it is on Carl, I don't know
what is wrong.

CARL: Let me just ring you?

GENERAL BOOYSENS: What number did you send it to?

CARL: Well, your last one that you gave me.
Number 3. I will tell you what it is.

10 GENERAL BOOYSENS: It does not show missed calls.

CARL: It is always on voice mail. That thing is
[intervene]

GENERAL BOOYSENS: Okay Carl, but does it say something on
the voice mail?

CARL: Ja.

GENERAL BOOYSENS: Then you have got the wrong number,
because I don't, there is no voice mail on this thing.

CARL: No I am not talking when it is off.

GENERAL BOOYSENS: The other one says, you know what to
20 do.

CARL: Tell me what time I phoned you.

GENERAL BOOYSENS: Let me just take this off.

END OF RECORDING

MP

ANNEXURE “S”



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

**CASE NOS: 35894/17
77549/17**

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

EXECUTIVE DIRECTOR, INDEPENDENT POLICE

INVESTIGATIVE DIRECTORATE,

ROBERT JOHN McBRIDE

Second Applicant

PRINCIPAL INVESTIGATING OFFICER,

MANDLAKAYISE MAHLANGU

Third Applicant

PRINCIPAL INVESTIGATING OFFICER,

TEMANE ABRAM BINANG

Fourth Applicant

and

(1) **REPORTABLE: YES / NO**

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

26/06/18
DATE

Ali. Ameli
SIGNATURE

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE First Respondent

NORTH WEST PROVINCIAL COMMISSIONER OF

THE SA POLICE SERVICE,

LT. GENERAL BAILE BRENDA MOTSWENYANE Second Respondent

MP

NORTH WEST DEPUTY PROVINCIAL COMMISSIONER

OF THE SA POLICE SERVICE,

MAJOR GENERAL NTEBO JAN MABULA

Second Respondent

NORTH WEST PROVINCIAL HEAD -

COMMERCIAL CRIMES INVESTIGATIONS,

BRIGADIER DANIEL PHARASA NCUBE

Third Respondent

NORTH WEST PROVINCIAL COMMANDER

SPECIAL CRIMES UNIT

LT COLONEL ISMAIL DAWOOD

Fourth Respondent

NORTH WEST PROVINCIAL HEAD -

ORGANISED CRIME

BRIGADIER CLIFORD MATOME KGORANE

Fifth Respondent

NORTH WEST PROVINCIAL POLICE SERVICE

COLONEL SM REDDY

Sixth Respondent

LT. GENERAL JOHANNES KHOMOTSO

PHAHLANE

Seventh Respondent

NORTH WEST PROVINCIAL COMMISSIONER OF

THE SA POLICE SERVICE,

LT. GENERAL BAILE BRENDA MOTSWENYANE

Eighth Respondent

MINISTER OF POLICE

Ninth Respondent

JUDGMENT

Tuichten.1:

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Independent body. See *McBride v Minister of Police and Another (Helen Suzman Foundation as amicus curiae)*.¹

4 The first applicant was suspended from office in March 2015. He returned to office in October 2016. In early 2016, IPID initiated an investigation against the seventh respondent. The first applicant felt that little progress had been made in this investigation and appointed a new team of IPID officers, namely the second, third and fourth applicants, to investigate the complaints against the seventh respondent.

5 IPID initiated two criminal cases against the seventh respondent. One of them was Kameeldrift CAS 145/08/2017 (the Kameeldrift case). It concerned the construction costs to the seventh respondent's private home. It is alleged that construction costs of over R1 million were paid from the accounts of two SAPS service providers who had benefited from tenders awarded to them. As part of the investigation, IPID obtained and executed a search warrant at the seventh respondent's home.

9 Pursuant to the urgent application, interim relief was granted by consent and without prejudice by Prinsloo J and both the urgent application and the initial application were postponed and came before me for argument on 21 June 2018.

10 Shortly before argument before me commenced on 21 June 2018, the applicants and the seventh respondent came to terms and embodied their consensus in a draft which I made an order of court. The seventh respondent undertook not to involve himself in the investigation or play any role in overseeing it. The case then continued between the other parties. The applicants were jointly represented by counsel and the remaining respondents, whom for convenience I shall henceforth call the respondents, were represented by a team of counsel.

11 At the outset, I invited argument as to the applicability of s 41 of the Constitution. Counsel satisfied me that s 41 was of no application because IPID is not an organ of state in the sphere of national government. IPID's independence takes it out of that category. Compare *Independent Electoral Commission v Langeberg Municipality*.²

² 2001 3 SA 825 CC especially paras 17 to 27


MP

addressed to the present National Commissioner and the state attorney. The bundle shows that IPID made strenuous efforts to settle the matter. I regret to say that none of these eight letters which constituted the bundle ever received a reply. It also appears that in a letter dated 23 May 2018 addressed by IPID to the present National Commissioner, IPID records that IPID understood that both the Minister and the National Commissioner agreed with IPID in principle on how the matter should be resolved.

15 But the Minister and the National Commissioner did not participate actively in these proceedings, They gave notice that they would abide the outcome of the case.

16 I was told from the bar that there is no code of conduct embodied in a standing order, set of regulations, national legislation or the like that governs in what circumstances a SAPS member will become conflicted in relation to a SAPS investigation against an IPID investigator to the extent that the SAPS member should withdraw from participation in the SAPS investigation. I think this is unfortunate and that such a code of conduct would contribute to an improved relationship between the two services. Had I the requisite jurisdiction under § 41 of the Constitution, I would given serious consideration to referring the matter back to the National Commissioner and the



19 The respondents, on the other hand pointed to s 25 of the IPID Act, which reads, under the heading "Conflict of interest and disclosure of interest":

- (1) No member of the Directorate may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he or she has a financial or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner.
- (2) If, during an investigation, it appears to a member of the Directorate that a matter concerns a financial or other interest of that member as referred to in subsection (1), that member must-
 - (a) immediately and fully disclose the fact and nature of that interest to the Executive Director; and
 - (b) withdraw from any further involvement in that investigation.

20 This provision regulates, in the context of conflict of interest, the conduct of IPID members toward SAPS members but there is no equivalent statutory provision which regulates the conduct of SAPS members toward IPID members.

21 Accordingly, the respondents propose that I simply adopt s 25 of the IPID Act, with the necessary changes, to regulate the position which arises in this case and in future cases of alleged conflicts of interest



MP

- 24 Of special concern to IPID members, as demonstrated by the allegations in the present case, is the risk of what I might term a revenge investigation, is the risk that a member of SAPS subject to or fearing an IPID investigation might use the powers vested in that SAPS member to conduct a counter-investigation against the very IPID member investigating or likely to investigate the SAPS member.
- 25 It must seldom, if ever, be necessary for a SAPS member in the position I have just described to participate in such a counter-investigation. Perhaps the participation in the investigation of such a SAPS member can be justified on the basis of very scarce skills or knowledge without which the counter-investigation cannot be conducted. In such a rare case, the SAPS member in question would have to be subject to a stricter level of oversight to ensure that the IPID investigation was not compromised.
- 26 I have dwelt on this hypothetical situation because it brings me to my next point, one made forcefully by the respondents. The precise delineation of the boundaries of permissible conduct by members of SAPS is preeminently a matter where policy considerations will play an important part. I was reminded by the respondents that it is not generally the province of the courts to rule on such matters. I agree. But where, as in the present case, those vested with the power to



MP

28 I was further told by counsel for the respondents that neither the Minister nor the National Commissioner wished to be heard on the subject and that these two office bearers continued to abide the judgment of the court and appreciated that they were bound by the declaration.

29 As to the interdicts sought by the applicants, this aspect was addressed and resolved when, following an adjournment in the course of argument sought by counsel for the respondents, the effected respondents furnished a written undertaking to the court by the Deputy National Commissioner, Lt General Mfazi, which was acceptable to the applicants. I received the undertaking, initialled it and dated it and I now mark it "Y", for purposes of identification.⁴

30 Finally, as to costs: both sets of litigants are organs of state and their funding comes from the same public purse. For this reason counsel for the respondents argued that there should be no costs order. I am persuaded however that a costs order would have a legitimate symbolic and perhaps practical effect. Although I prefer the formulation of the declaration put up by the respondents, the applicants were substantially successful and they were justified in

⁴ When I received General Mfazi's undertaking in court, I marked it "X", overlooking that I had identified the earlier undertaking of the seventh respondent in that way. I have amended my notation on the later undertaking to mark it "Y".

 MP

- 1.2 If, during an investigation, it appears to a member of SAPS that a matter concerns a financial or other interest of that member as referred to in paragraph 1.1 of this order above, that member must-
- (a) Immediately and fully disclose the fact and nature of that interest to the National Commissioner of SAPS; and
 - (b) withdraw from any further involvement in that investigation.
- 2 The declaration in paragraph 1 above shall remain in force until the coming into operation of any statutory rules, whether in the form of standing orders or the like or regulations having nation wide effect or national legislation, governing the subject matter in paragraph 1 above.
- 3 It is recorded that the written undertaking of the seventh respondent, Lt General Phahlane, given on 21 June 2018 and marked "X", attached to this order was made an order of court by consent between the applicants and the seventh respondent on 21 June 2018.
- 4 The undertaking of the Deputy National Commissioner, Lt General Mfazi, given on 21 June 2018, amended to be marked "Y" and attached to this order, is hereby made an order of court.



MP

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NOS.: 35894/17
77549/17

X
160
21/06/18.

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, MR ROBERT JOHN MCBRIDE** Second Applicant

**PRINCIPAL INVESTIGATING OFFICER
MANDLAKAYISE MAHLANGU** Third Applicant

INVESTIGATING OFFICER TEMANE ABRAM BINANG Fourth Applicant

and

**THE ACTING NATIONAL COMMISSIONER OF
THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL PHAHLANE** First Respondent

**THE NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE** Second Respondent

**THE NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL MABULA** Third Respondent

**THE NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER D.P. NCUBE** Fourth Respondent

MINISTER OF POLICE Fifth Respondent

AND

10
T M Shogwe
MP

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DR 7
21/06/18

CASE NOS: 35894/17
77549/17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

First Applicant

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE, ROBERT JOHN MCBRIDE**

Second Applicant

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU**

Third Applicant

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG**

Fourth Applicant

and

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE

First Respondent

**THE NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE**

Second Respondent

**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA**

Third Respondent

**NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE**

Fourth Respondent

MINISTER OF POLICE

Fifth Respondent

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.**

Sixth Respondent

AND

Jim Shogwe

MP

DRAFT ORDER

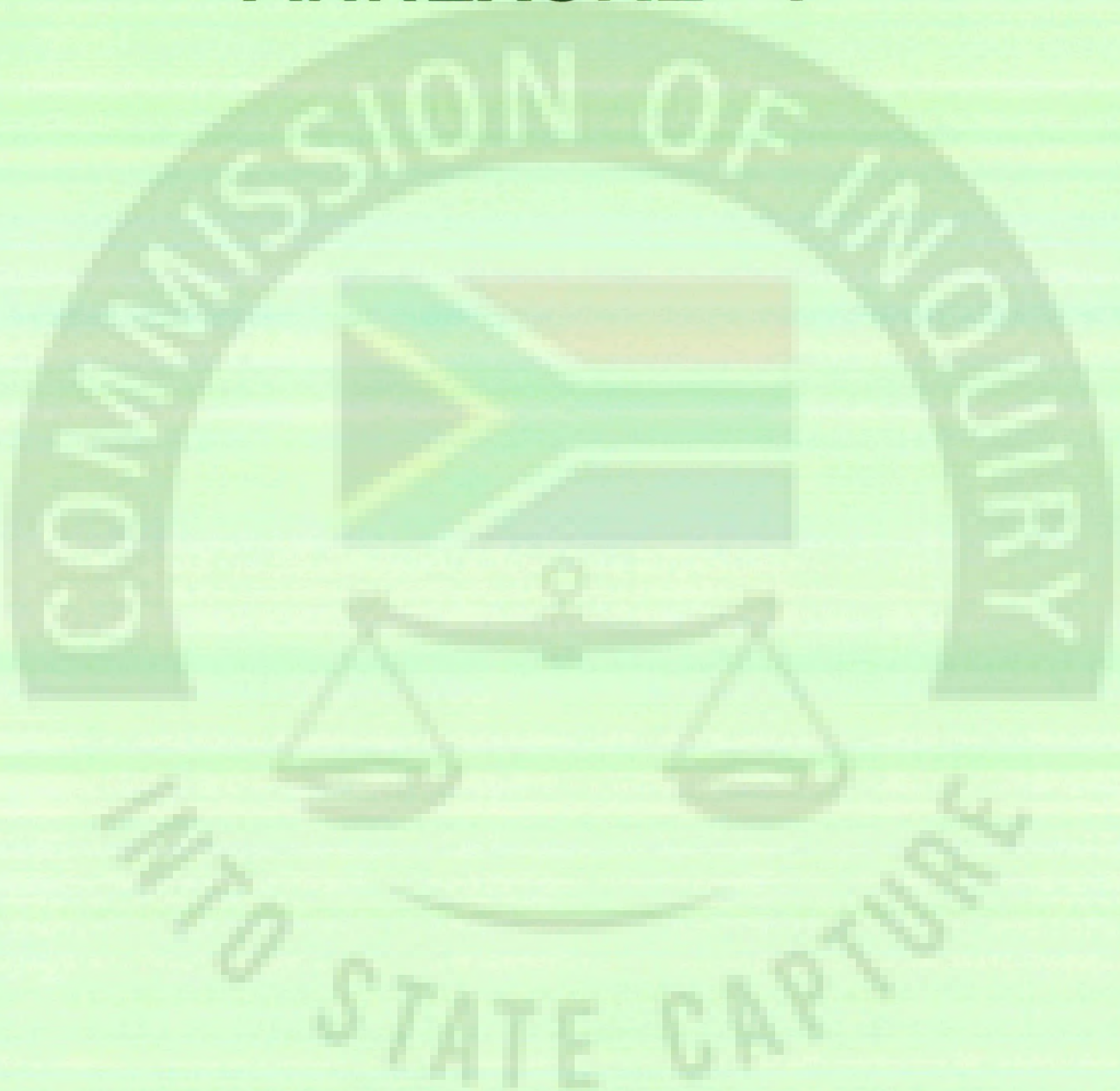
IT IS RECORDED, BY THE UNDERTAKING OF DEPUTY NATIONAL COMMISSIONER, LT. GENERAL MFAZI, IN THE CAPACITY OF THE ACTING NATIONAL COMMISSIONER, THAT:

1. The following members of the SAPS will be removed with immediate effect from the investigation of the second to fifth applicants in Kameeldrift CAS 12/01/2017:
 - 1.1 Major General Ntebo Jan Mabula;
 - 1.2 Brigadier Daniel Pharasa Ncube;
 - 1.3 Lt. Colonel Ismail Dawood;
 - 1.4 Brigadier Clifford Malome Kgorane; and
 - 1.5 Colonel S.M. Reddy.
- 2 The National Commissioner of the SAPS shall take all necessary steps to ensure that the investigations referred to in paragraph 1 above are undertaken and overseen by SAPS members who have no financial or any other interest which might preclude them from exercising or performing their powers, duties, functions in an objective manner.
- 3 The National Commissioner of the SAPS shall file a report with this Court and the applicants by no later than 4pm on Thursday, 28 June 2018, setting out the steps taken to comply with the undertaking in paragraphs 1 and 2 above.

Tom Skogwe

MP

ANNEXURE “T”



RMB.T

RJM-1708



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

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / ~~NO~~

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

(3) REVISED

03/08/2018

DATE

SIGNATURE

CASE NO: 86233/2017

DATE: 03/08/2018

IN THE MATTER BETWEEN:

KEITH WARREN KEATING

First Applicant

**FORENSIC DATA ANALYSTS
(PTY) LTD**

Second Applicant

DURAND SNYMAN

Third Applicant

**MOTOXPRESS MENLYN (PTY)
LTD**

Fourth Applicant

CHRISTO DE BRUIN

Fifth Applicant

and

**SENIOR MAGISTRATE I.P. DU
PREEZ N.O.**

First Respondent

**THE MINISTER OF SAFETY
AND SECURITY**

Second Respondent

**COLONEL KOBUS DEMEYER
ROELOFSE**

Third Respondent

COLONEL J. DU PLOOY

Fourth Respondent

[Handwritten signature]

MP

**EXECUTIVE DIRECTOR:
INDEPENDENT POLICE
INVESTIGATIVE
DIRECTORATE N.O.**

Fifth Respondent

JUDGMENT

KOLLAPEN J:

1. This application relates to the authorisation of a search and seize warrant issued by the first Respondent on the 1st of December 2017 as well as the circumstances relating to the execution of that warrant on the 4th of December 2017.
2. It is common cause that on the 1st of December 2017 the first Respondent authorised a Search and Seizure Warrant in favour of the third Respondent on behalf of the Independent Police Investigative Directorate ("IPID") and the Directorate for Priority Crime Investigation ("DPCI"). That warrant was executed on the 4th of December 2017 at various places mentioned in the warrant and documents and articles were seized.
3. It is both the warrant and the seizure that the Applicants attack in these proceedings, which the third to the fifth Respondents oppose.

Litigation history

4. The matter commenced as an urgent application and was enrolled for the 2nd of January 2018. The parties were able to resolve some of the issues that rendered the matter urgent and on the 10th of January 2018 this Court made an order that



MP

regulated the timeline for the exchange of further affidavits, and also provided for the return of some of the items seized, provided the investigation in respect of those items were completed, and for the making and furnishing to the Applicants of hard copies of all documents seized from them.

The background facts

5. On the 1st of December 2017, the first Respondent authorised a search and seizure warrant in terms of Section 21 read with Section 20 and Chapter 2 of the Criminal Procedure Act 51 of 1977 ("the Act"). The warrant identifies the offences that have been /are being/are intended to be committed, as follows:

"Fraud and/or Theft and Corruption, as well as racketeering and money laundering contraventions, as set out in the Prevention of Organized Crime Act, suspected to have been committed during the period, January 2014 to date by one Durand Snyman and others during his directorship/ownership of Prima Inspectacar Wonderboom (Pty) Ltd with registration number 2005/009567/07, Prima Inspector trading as Hyundai Mokopane (Pty) Ltd with registration number 1999/015215/07 and Ronat Nissan Mosselbay (Pty) Ltd with registration number 2001/028018/07 by supplying vehicles free of charge to police officials and/or inflating trade-in prices on private vehicles of said police official/s involved in the SAPS's procurement processes

And/or

Fraud and/or Theft and Corruption, as well as racketeering and money laundering contraventions, as set out in the Prevention of Organized Crime Act, suspected to have been committed during the period, January 2014 to date by one Keith Keating and others during his directorship/ownership of Forensic Data Analyst (Pty) Ltd with registration number 1999/023867/07 by supplying vehicles free of charge to police officials involved in the SAPS's procurement processes.



And/or

Fraud and/or theft and Corruption, as well as racketeering and money laundering contraventions, as set out in the Prevention of Organized Crime Act, suspected to have been committed during the period, January 2010 to date by one John Henry Deale, Jolanta Regina Komodolowicz during their directorship/ownership of Crimeteach (Pty) Ltd with registration number 2012/068069/07 and Kriminalistik (Pty) Ltd with registration number 2009/027418/07 by supplying financial incentives to police official/s involved in the SAPS's procurement processes."

6. The warrant provides the following details in respect of the premises and persons that are subject to it:

"Such articles –

- i) Are upon or at the following premises within my area of jurisdiction, namely*
- Desire Smith: 15 Simone Place, Moreleta Park, Pretoria*
 - Durand Snyman: 6 Jamaican Music Avenue, Mooikloof and*
 - Motor Express, 109 Atterburry Road, Pretoria*
 - Keith Keating: 10 Politician Road, Mooikloof, Pretoria*
 - Forensic Data Analyst (Pty) Ltd with registration number 1999/023867/07, Stonehill Office Park, Horizon Building, corner of Hans Strijdom and Disselboom Street, Wapadrand*
 - JK Phahlane: 10 Mongoose Avenue, Sable Hills Waterfront Estate, Kameeldrif, Pretoria*
 - BN Phahlane: 10 Mongoose Avenue, Sable Hills Waterfront Estate, Kameeldrif, Pretoria*
 - C de Bruin: 10 Naval Escort Street, Mooikloof, Pretoria*
- (such being hereafter referred to as, "the premises"); and/or*



MP

ii) *Otherwise are under the control of or upon the following person(s) who currently reside(s)/work(s) within my area of jurisdiction*

- *Durand Snyman with identity number 7006295311088*
- *Desire Smith with identity number 8705180054088*
- *Keith Keating with identity number 6608095070086*
- *JK Phahlane with identity number 6705295314080*
- *BN Phahlane with identity number 6701230480086*
- *JJ Potgieter with identity number 6708025175086*
- *C de Bruin with identity number 9602120102086*

(such being hereinafter referred to as "the identified person(s))."

7. The warrant also has the details of IPID and DPCI officials who are authorised to take part in the search and seizure as well as three individuals who are not part of the IPID or DPCI and they are dealt with as follows:

"In addition to the above mentioned officials the following individuals will also take part in the search and seizure in the following capacity as Annexure A:

- *Independent professional valuator Mr. AL van Graan with identity number 4505285008086 from Lock Stock and Barrel Valuers to 10 Mongoose Avenue, Sable Hills Waterfront Estate, Kameeldrif, Pretoria to establish the actual value during the search and seizure*
- *Mr CR Oellerman with identity number 7212115049086 and Mr CC Wissing with identity number 7204065094089 from Bowman Gilfillan to Forensic Data Analyst (Pty) Ltd, Stonehill Office Park, Horizon Building, corner of Hans Strijdom and Disselboom Street, Wapadrand. They will only be present in an advisory*



MP

capacity in order to assist in identifying the specific documentation as mentioned in annexure B."

8. The warrant then has attached to it as Annexure A the list of members who will execute the search and seizure warrant with the names of Messrs Oellerman, Wissing and van Graan clearly identified thereon as being authorised to be present in an advisory capacity only.
9. Annexure B to the Warrant deals with the documentation that is sought to be searched for and seized and relates to documents relevant to the acquisition of vehicles, the affairs of various individuals and entities who are named or referred to in the warrant as well as details of some 21 motor vehicles in respect of which the warrant would also apply.
10. Finally it also provides for the search and seizure of documentation that relates to various individuals and entities in respect of *inter alia* company documents, banking and financial details and records, tenders received, and the personal financial records relating to various individuals mentioned in the warrant.
11. The Warrant was issued on the basis of an affidavit deposed to by the third Respondent, Colonel Kobus Demeyer Roelofse ("Colonel Roelofse"), who describes himself as a colonel in the SAPS stationed at Directorate Priority Crime Investigations. While the matter of whether the document that I have referred to constitutes an affidavit or not, has been placed in dispute, for now I will deal with its contents.

 MP

12. Colonel Roelofse states that the warrant is required as its execution is likely to give material and relevant information relating to the alleged offences of fraud and/or theft and/or corruption and/or Racketeering and/or Money Laundering. He then makes reference to an investigation involving the former Acting National Commissioner, Lieutenant General Johannes Khomotso Phahlane on the one hand, and John Deale and Jolanta Komodolowicz (both as directors of Crimotech) in what is described as an alleged corrupt relationship and alleging the receipt of cash that Lt Gen. Phahlane would have received from Crimotech to fund the financing of his private dwelling.

13. He states further that the investigation led to the discovery of numerous vehicles in the name of Lt Gen. Phahlane and his wife in respect of which no financing agreements could be found and then provides details of various vehicles that Lt Gen. Phahlane either would have traded in at a loss to the dealership as well as vehicles that Lt Gen. Phahlane would have received from the dealership known as Prima InspectaCar. He also alluded to 2 vehicles delivered to one Colonel Potgieter (involved at the time in procurement in the SAPS forensic division) and C de Bruin (daughter of a friend of Mr Snyman). Mr Snyman was described as the former owner of Prima InspectaCar. Mr Snyman is the third Applicant in these proceedings.

14. It was alleged by Col. Roelofse and relying in part on bank records, that the first Applicant made various payments to Mr Snyman into his Namibian bank account that correspond in part to the value of the vehicles that Prima Inspectacar would have delivered to Lt Gen. Phahlane, Col. Potgieter and de

Bruin and that Mr Snyman then effected payments out of this account to other entities.

15. Col Roelofse suggests that what the investigation and the documentation revealed was an arrangement in terms of which Mr Snyman (now director of the fourth Applicant) would provide vehicles to Lt Gen. Phahlane and others who were involved or connected with those involved in the SAPS procurement process and that the first Applicant, who is also a director of the second Applicant, would be responsible for the payment for such vehicles.

16. Finally the affidavit of Col Roelofse provides some detail with regard to the investigation into the alleged irregular awarding of tenders by SAPS Forensics Division (of which Lt Gen. Phahlane was the Divisional Commissioner at the time) to the second Applicant. Col Roelofse by way of example, provides an instance where he alleges that a quotation provided by the second Applicant for over R45 million was considered, recommended and approved on the same day. A further amount of some R 7 million was added, and the sum of about R52 million was paid to the second Applicant. He states that the additional amount was not included in the quote but also that the contract was not advertised and that proper bidding processes were not followed.

17. Finally he contends that the first Applicant made corrupt payments to the Phahlanes and Col Potgieter using the conduit of Mr Snyman (via vehicle dealerships) to influence the tender process and ensure tenders were awarded to the second Applicant.



The execution of the warrant

18. Following its issue on the 1st of December 2017 the Warrant was executed at many of the addresses to which reference is made in the warrant and various articles were seized purportedly in terms of the warrant. It is also common cause that a Mr de Villiers of the firm Bowman Gilfillan was present during part of the search and seizure operation and that the warrant does not make reference to him being authorised to be there in an advisory capacity. This is a matter I will return to later in this judgment.

The challenge of the Applicants

19. In seeking the relief they seek the Applicants contend that:

- a) **The document that purports to be an affidavit by Col Roelofse is not an affidavit:**

The Applicants contend that the document that purports to be Col Roelofse's affidavit is not an affidavit as it does not appear that it was properly commissioned in that:

- i) There is no proper identification of the Commissioner of Oaths including his/her designation and whether the office is held *ex officio* or whether the person was appointed specifically as Commissioner of Oaths;

 MP

- ii) That from the certificate it appears that the person who appeared before the Commissioner of Oaths was a woman while Col Roelofse is a male;
- iii) There is no reference to the prescribed oath being taken.

20. When one has regard to the "attestation" then the following emerges: The questions that customarily precede the signature of the document that relate to understanding the contents of the statement, the absence of objections to taking the oath, the oath as being binding on the deponent's conscience and the swearing that the contents of the statement are true, all appear clearly and without ambiguity from the attestation section. There is therefore little merit in this part of the complaint.

21. The reference to "she" must clearly have been an error as it is common cause that Col Roelofse is a male. The Commissioner of Oaths, Mr Mabasa, says as much in the Answering Affidavit filed on behalf of the third to the fifth Respondents. He also deals with his lack of interest in the matter under investigation.

22. In *S. v. MSIBI* 1974 (4) SA 821 (T) the Court expressed the following view on the matter of compliance with the regulations dealing with affidavits:

"The requirements as contained in regulations 1, 2, 3, and 4 of Government Notice R.1258 of 21 July 1972 and published in terms of section 10 (1) of the Justices of the Peace and



MP

Commissioners of Oath Act, 16 of 1963, are not peremptory but merely directory.

In a suitable case, where the requirements have not been complied with, the court may refuse to accept the affidavit concerned as such or to give any effect to it. The question should in each case be whether there has been a substantial compliance with the requirements."

23. Looking at this challenge holistically I am satisfied that there was an affidavit before the first Respondent when he considered the issue of a Warrant and that the shortcomings (if one could call them that) were hardly so significant or material that they called into question whether it could be said that the document was, for those reasons, not an affidavit. The signature of the deponent, Col Roelofse, appears after the section that provides for the questions relating to the oath as well as the actual oath while the signature of the Commissioner of Oaths appears together with his full names as well as details of his physical address, rendering it capable of readily identifying him and his physical location, if need be. That there is a reference to a 'she' instead of a 'he' as well as there being no indication whether he is a Commissioner of Oaths *ex officio* or by special appointment, can hardly be material in my view to the extent that it would have as its consequence the invalidation of what would otherwise be an affidavit. Such an approach would elevate formalism above substance in every respect and should not be countenanced.



MP

24. When I have regard to the Regulations governing the administration of an oath or affirmation published under GN R1258 in GG 3619 of 21 July 1972, and as amended from time to time, then indeed there has been compliance with those regulations except in the relatively minor aspects described above. Even if I am wrong on that score then the Court has the power to condone what the Applicants have characterised as an irregularity. The affidavit of Mr Mabasa, the Commissioner of Oaths, sufficiently explains the circumstances under which the error with regard to the gender of the deponent arose, and to that extent and only if necessary, I would have condoned the failure to comply with the Regulations that relate to the administering of an oath or affirmation.

b) The warrant was *ultra vires* in that it authorised IPID officials to execute the warrant; as well as the presence of civilians:

25. The second challenge advanced in respect of the lawfulness of the warrant is that:

- a) The warrant, to the extent that it authorises IPID officials to be clothed with the power to search and seize, is unlawful as Section 20 read with Section 21 of the Act only allows the first Respondent, when considering an application under the Act, to provide authorisation to members of the police to search and seize. Contending that IPID officers are not members of the police, it was argued that the warrant was, to that extent, *ultra vires*;



- b) That in authorising the presence of three persons who can best be described as civilians, Mr C R Oellerman and Mr C C Wissing from Bowman Gilfillan in an advisory capacity; as well a valuator, Mr van Graan, the first Respondent exceeded his powers in terms of the Act which does not provide for the presence of persons other than the police even in an advisory capacity, or for particular technical reasons by virtue of the expertise they bring.

26. On the first component of the challenge and while it is so that Sections 20 and 21 of the Act make reference to a police official, the provisions of Section 24(2) of the Independent Police Investigative Directorate Act 1 of 2011 ("the IPID Act") provides that an IPID investigator is cast in the same position as a police official for various purposes contemplated in the Criminal Procedure Act 51 of 1977.

27. Section 24(2) of the IPID Act provides as follows:

- "(2) An investigator has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to-*
- (a) the investigation of offences;*
 - (b) the ascertainment of bodily features of an accused person;*
 - (c) the entry and search of premises; (d) the seizure and disposal of articles;*
 - (e) arrests;*
 - (f) the execution of warrants; and*
 - (g) the attendance of an accused person in court."*



MP

28. That being the case I do not take the view that the first Respondent was acting *ultra vires* when he authorised the warrant to include in the list of persons to execute the warrant, various IPID investigators as the provisions of Section 24(2) of the IPID Act read with the Act renders this a permissible authority to bestow on IPID investigators as the first Respondent did.
29. On the second leg of the challenge it is important to distinguish the role that the warrant contemplates the outside or independent persons are to play. The warrant clearly provides authority for their presence but in a very limited capacity – Mr Oellerman and Mr Wissing in an advisory capacity to assist in identifying specific documentation as mentioned in the warrant; and Mr Van Graan as valuator. The list of authorised persons (Annexure A to the warrant) also includes their names in the same limited capacity. Finally the affidavit of Col Roelofse explains why the presence of the 3 persons is necessary – Mr Van Graan to value the home of Lt Gen. Phahlane in line with the approach that the value of his house far exceeds the financing he utilised, which in turn supports the allegation that he (Phahlane) received various amounts of money from service providers to assist in financing his private dwelling;
30. Insofar as Mr Oellerman and Mr Wissing are concerned, Col Roelofse explains that both are from the law firm Bowman Gilfillan who were tasked by Treasury to do an investigation into alleged irregularities in the awarding of tenders and contracts to service providers and their presence in an advisory capacity would assist in identifying the specific documentation mentioned in Annexure B of the warrant.



31. The Applicants relied on the *dicta* in **SMIT & MARITZ ATTORNEYS AND ANOTHER v LOURENS NO 2002 (1) SACR 152 (W)** where the Court concluded as follows with reference to the validity of a search warrant addressed to "all police officers":

"The first applicant is a firm of attorneys practising from the same premises as the second applicant..." (at page 154c)

"Both search warrants were addressed as follows: 'Aan alle polisie beamptes'. (154c-d)

In this matter the second applicant was a registered accountant and auditor, while the first Respondent was the Magistrate. The Fourth Respondent was appointed by the Department of Development Local Government and Housing, North West Province to "...undertake a full scale forensic audit into allegations of irregularities and maladministration in respect of the Eastern District Council". The third Respondent was the investigating officer.

32. In respect of the legality of the search and seizure van Oosten J considered and concluded as follows at page 158:

"One of the grounds of objection raised was that the police officers were assisted in the execution of the search warrants by representatives of the fourth respondent who were not authorised in terms of the warrants either to be present at or involved in the execution thereof." (at page 158b-c)

....

"In terms of the search warrant the fourth respondent's representatives were not authorised either to be present during

[Handwritten signature] *MP*

or to assist members of the South African Police Services in the execution of the warrants.” (at 158c-d)

33. The Applicants also relied on the approach taken in *EXTRA DIMENSION AND OTHERS v KRUGER NO AND OTHERS* 2004 (2) SACR 493 (TPD). With reference to s 21(2) of the Criminal Procedure Act, Motata J decided that:

“From the foregoing it is clear that the magistrate can only authorise a police official to search” (at 497b-c)

34. The Court also stated that:

“The first respondent’s authorization of the warrant to private individuals to search and seize is clearly ultra vires the Criminal Procedure in the light of the aforementioned and the legality thereof is tainted.” (at 497h)

35. I fully concur with the approach taken in both of these matters but point out that they are distinguishable. In *SMIT & MARITZ ATTORNEYS* the warrant did not provide for the authorisation of the representatives of the Department of Housing and Local Government to either be present or to assist members of the SAPS in the execution of the warrant, while in *EXTRA DIMENSION* the Court was correctly and understandably concerned that the warrant authorised private individuals to search and seize, something Section 20 and 21 of the Act does not contemplate.


36. On the facts before me, the inclusion of the names of the private persons is well motivated and authorised, and then in a purely advisory capacity in respect of Messrs Oellerman and Mr Wissing; and in the case of Mr van Graan, as



valuator. Clearly if regard is had to the terms of the warrant then such persons are authorised to be present (which was not the case in *SMIT & MARITZ ATTORNEYS*) and their role did not extend to being authorised to search and seize (which was what occurred in *EXTRA DIMENSION*).

37. That being the case the question that still arises is whether it is permissible for outside persons to be authorised to be present at a search and seizure for the limited purpose of the expertise they bring. My view is that one must take a realistic approach to the issue while at the same time guarding against outsourcing the functions and powers of the SAPS or allowing private individuals or entities to usurp such powers. In an age where technology and expertise become increasingly specialised and significant bodies of knowledge and expertise are developed in dedicated areas, it is unrealistic to expect the investigative agencies of the State at any given time to possess all of the technical and other expertise that may from time to time be necessary to conduct a successful investigation. It may well happen that such expertise may reside outside of the State and under such circumstances I can think of no principled reason that offends the legal and constitutional order we live under that should permit such expertise to go unused with all the attendant negative consequences that go with it.

38. On the contrary, efficient and effective policing may require that such expertise as may exist be utilised both to assist in the effective investigation of crime as well as to fill knowledge gaps in particular instances. When so used in search and seizure operations, then there is clearly a greater need to specifically carve out and define the role to be played by such outside persons both in seeking the

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authorisation for their presence as well as their role in the actual execution of the warrant.

39. All of this was done with great care in the affidavit of Col Roelofse and while already pointing out how this matter is clearly distinguishable from the approach taken in *SMIT & MARITZ ATTORNEYS* and *EXTRA DIMENSION*, my view is that there is nothing in Section 20 or Section 21 of the Act that offends against the presence of private persons at a search and seizure provided they are properly authorised to be there and their role is clearly defined and does not relate to the actual execution of search and seizure activities.

40. Some of the considerations that should, in my view, be placed before the authorising Magistrate may include (but not be limited) to the following:

- a) Why is the presence of such persons, regard being had to the nature of the search and seizure to be conducted, necessary?
- b) Whether such persons bring special expertise or knowledge to the search and seizure operation, which knowledge and/or expertise may not ordinarily reside within SAPS personnel;
- c) The clearly defined role that such persons are required to play in the search and seizure operation;
- d) Under whose control and authority will such persons operate during the search and seizure operation?; and
- e) In what manner will the presence and assistance of such persons render the search more effective and compliant and possibly reduce

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or limit the incursion into the privacy and other rights of those who are the subject of the search?

41. The consideration of these factors may go a long way in ensuring that a proper case is made out for the presence of such outside persons as well as to ensure that the authority that may ultimately be granted for their presence is carefully tailored to ensure their role is limited and their presence there is properly supervised.

42. In the context of this application my view is that there has been a proper case made out for the presence of the 3 individuals either in an advisory capacity or as expert valuator, which does not offend the architecture of the Act or result in an intrusion into the rights of those affected than what would be ordinarily warranted had such persons not been included in the warrant.

43. I accordingly conclude on this aspect that the inclusion of the 3 outside persons on the warrant was not *ultra vires* the powers of the first Respondent and accordingly does not form a basis for the setting aside of the warrant as contended for by the Applicants.

c) That the alleged offences investigated were not properly substantiated and that the warrant was breathtakingly wide:

44. The Applicants' stance is that the information supplied by Col Roelofse in the affidavit presented to the first Respondent and which led to the issue of the

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warrant was meagre and unsubstantiated. In this regard the Applicants sought to rely on a number of cases that supported the view that there should be reasonable grounds that the alleged offences were committed as well as reasonable grounds for believing that an article which is to be the subject of the search and seizure is believed to be concerned in the commission or suspected commission of the offence, or is intended to be used in the commission of an offence or may afford evidence in the commission or suspected commission of an offence.

45. In *MINISTER FOR SAFETY AND SECURITY v VAN DER MERWE AND OTHERS* 2011 (5) SA 61 (CC) the Court stated the following:

"All law-abiding citizens of this country are deeply concerned about the scourge of crime. In order to address this problem effectively, every lawful means must be employed to enhance the capacity of the police to root out crime or at least reduce it significantly. Warrants issued in terms of section 21 of the CPA are important weapons designed to help the police to carry out efficiently their constitutional mandate of, amongst others, preventing, combating, and investigating crime. In the course of employing this tool, they inevitably interfere with the equally important constitutional rights of individuals who are targeted by these warrants. Safeguards are therefore necessary to ameliorate the effect of this interference. This they do by limiting the extent to which rights are impaired. That limitation may in turn be achieved by specifying a procedure for the issuing of warrants and by reducing the potential for abuse in their execution. Safeguards also ensure that the

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power to issue and execute warrants is exercised within the confines of the authorising legislation and the Constitution. These safeguards are: first, the significance of vesting the authority to issue warrants in judicial officers; second, the jurisdictional requirements for issuing warrants; third, the ambit of the terms of the warrants; and fourth, the bases on which a court may set warrants aside. It is fitting to discuss the significance of the issuing authority first. Sections 20 and 21 of the CPA give authority to judicial officers to issue search and seizure warrants. The judicious exercise of this power by them enhances protection against unnecessary infringement. They possess qualities and skills essential for the proper exercise of this power, like independence and the ability to evaluate relevant information so as to make an informed decision. Secondly, the section requires that the decision to issue a warrant be made only if the affidavit in support of the application contains the following objective jurisdictional facts: (i) the existence of a reasonable suspicion that a crime has been committed and (ii) the existence of reasonable grounds to believe that objects connected with the offence may be found on the premises or persons intended to be searched. Both jurisdictional facts play a critical role in ensuring that the rights of a searched person are not lightly interfered with. When even one of them is missing that should spell doom to the application for a warrant. The third safeguard relates to the terms of a warrant. They should not be too general. To achieve this, the scope of the search must be defined with adequate particularity to avoid vagueness or overbreadth. The search and seizure operation must thus be confined to those premises and articles which have a bearing on the


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offence under investigation. The last safeguard comprises the grounds on which an aggrieved searched person may rely in a court challenge to the validity of a warrant. The challenge could be based on vagueness, overbreadth or the absence of jurisdictional facts that are foundational to the issuing of a warrant."

46. The principles enunciated in *VAN DER MERWE* case~~s~~ remain salutary but they must all be considered in the context of the facts of each case and it then becomes necessary to test the affidavit of Col Roelofse against the kind of particularity the Courts have alluded to. Col Roelofse mentions a number of offences that include fraud, corruption and money laundering. In his affidavit he sets out in some considerable detail the *modus operandi* of providing vehicles to the Phahlanes and other police officers, put into place by the first and third Applicants both in respect of the entities who supplied the vehicles, the entity who paid for it, and then the entity that received it. The role and involvement of those under investigation in this scheme of corruption is set out in some detail. The affidavit then goes on to deal with the investigation of tender irregularities which may include fraud and corruption and seeks to make the link between the supply of the motor vehicles and the irregular awarding of tenders and contracts.

47. These are not vague and unsubstantiated allegations that Col Roelofse alludes to, but allegations that are to some extent supported by documents and a money chain. Of course whether they constitute sufficient evidence to prove guilt in a criminal trial is not for this Court to determine and the standard in any event is



simply that there must exist reasonable grounds for holding the view that the offences under investigation have been committed.

48. For the reasons given I am of the view that such grounds clearly emerge from the affidavit of Col Roelofse and satisfied the jurisdictional requirement found in Section 20 of the Act that reasonable grounds must exist with regard to the commission or suspected commission of an offence.

49. A further and separate ground for the challenge to the warrant was that the scope and extent of the warrant issued by the first Respondent was described as being breathtakingly wide and in particular in relation to the documentation described therein and which includes the following:

1. Company Registration documents in respect of:

- *Prima Inspectacar Wonderboom with registration number 2005/009567/07*
- *Prima Inspectacar trading as Hyundai Mokopane with registration number 1999/015215/07*
- *Ronat Nissan Mosselbay with registration number 2001/028018/07*
- *Forensic Data Analyst (Pty) Ltd with registration number 1999/023867/07*

- 2. Audited financial statements and / or files and / or annual financial statements and notes of said companies*
- 3. All documentation and / or financial records relevant to any loan accounts*
- 4. Bank statements and bank correspondence relating to both local accounts as well as accounts held in another country*


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5. *Documents pertaining to local inter account transfers, including but not limited to documents showing Electronic Funds Transfers (EFT's)*
6. *Documents relating to international electronic wire transfers including but not limited to instructions to the bank to affect such transfers*
7. *All documents relating to Trusts in the name of the person/s and/or entities as mentioned above*
8. *Personal Diaries and Business Diaries of Keith Keating, FDA executives and personal assistants of such Executives, Durand Snyman, Desire Smith, JK Phahlane (Lieutenant General), BN Phahlaner (Brigadier), JJ Potgieter (Colonel)*
9. *All tender/contract files containing information relating to the following:*
 - *contract 19/1/9/1/141TD (13) – cancelled*
 - *contract 19/1/9/1/172TD (13) – cancelled*
 - *contract 19/1/9/1/228TD (13) – cancelled*
 - *contract 19/1/9/1/235TD (14) – February/March 2015*
 - *contract 19/1/9/1/236TD (14) - February/March 2015*
10. *The tender/contract file need to include inter alia but not limited to all bid application documents, quotations, all import/export documents, order forms, delivery notes, comprehensive list of goods provided, deviation application, maintenance contracts, guarantees provided by original supplier, cost per item as supplied by original supplier, maintenance contracts as supplied by the original supplier, any agreement between FDA and the original supplier awarding FDA the rights as a sole supplier of said goods within South Africa if any*
11. *All tender/contract documents relevant to the ROFIN, Spherin and Nikon contracts as per document number SUB 03/FDA, including but not limited to extensions, proposals between FDA, SAPS and SITA*



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12. *Receipt books, Deposit slips, Returned cheques, Cheque book stubs, Order books, Supplier invoices, Supplier statements, Delivery notes, Invoice books, Debtor statements, Sale lists, Cash book, Creditor ledger, General ledger, Trial balances, Management accounts, Journals, balance sheets, Income statements*

13. *Personal financial records relating to Keith Keating, Durand Snyman, Desire Smith, JK Phahlane (Lieutenant General), BN Phahlane (Brigadier), JJ Potgieter (Colonel). These would include:*

- *All personal and business bank accounts*
- *Details on local investments*
- *Details on foreign investments*
- *Foreign bank account statements and information*
- *Share certificates and/or related documentation*
- *Trust accounts and/or related documentation*
- *Vehicle finance and/or ownership information*
- *Loan agreements*
- *Commercial and personal contractual documentation*
- *Details of assets and liabilities*
- *Company, Close Corporation incorporation documentation*
- *Commercial and private transaction records related to any SITA and/or SAPS officials*

14. *Any electronic cards used for financial transactions which would include inter alia cards, debit cards in the possession of JJ Potgieter of which he is not the account holder*

15. *Any and all documentation relating to the building/upgrading of the Phahlane residence at 10 Mongoose Avenue, Sable Hills Waterfront Estate, Kameeldrif, Pretoria (Erf 53), including but not limited to supplier invoices, sub-contractor contracts, bond statements*



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16. *Itemised billing to cell phones and / or any electronic correspondence (SMS messages, emails send from and received on the particular cell phone, fax messages send from and received on the particular cell phone, etc.). The cell phone / electronic communication device will have to be confiscated to enable downloading of such information.*
17. *All other information relating to the cell phone or electronic communication device which may identify the unique serial number of such phone or device and which may identify the owner thereof*
18. *All computer hardware and software and all optical and magnetic storage devices which are used to generate and / or store and / or produce information and / or documents*
19. *Cellular contracts between the various suspects which would include applications such as inter alia Whatsapp, Facebook.*

50. While this is no doubt an extensive list the question as to whether it is overly wide must be considered in relation to the alleged offences under investigation as well as the *modus operandi* allegedly used. Here, Col Roelofse has stated that the supply of vehicles and the provision of funds by civilian entities to Lt Gen. Phahlane and other police officials was linked to the irregular awarding of tenders. Thus, the alleged corrupt scheme that he sets out would require investigation of a considerably wide remit that just did not include the question of the motor vehicles which are dealt with in some detail, but also contracts, awards, tenders, company documents and all of the matters covered in the warrant. While they are no doubt wide, that in itself does not render them unacceptably wide and I am unable to conclude that even on the face of it, any category of document set out therein could be regarded as being irrelevant.



51. I am satisfied that regard being had to the nature of the investigation, reasonable grounds existed to believe that the articles in question and specified in the warrant may have afforded evidence of the commission of the offences under investigation. It is worth recalling the caution in *CINE FILMS (PTY.) LTD. AND OTHERS v COMMISSIONER OF POLICE AND OTHERS* 1971 (4) SA 574 (W) to the following effect:

*"In fact a purpose of a search warrant is to aid in the detection of crime and to bring it home to the wrongdoer. Hence the fact that the Attorney-General has not got sufficient evidence to justify the institution of a prosecution does not mean that a Magistrate or a police officer has not got reasonable grounds for believing that articles, which will afford evidence as to the commission of an offence or which were used for the purpose of the commission of such offence, will be found pursuant to the issue of a search warrant. In this regard it is not relevant to state that it was held in *Andresen v. Minister of Justice*, 1954 (2) SA 473 at page 480, that "evidence" in this section is used in a colloquial sense and is not restricted to legal evidence admissible in a Court of law."*

52. Also in *THINT (PTY) LTD v NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS; ZUMA AND ANOTHER v NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS* 2008 (2) SACR 421 (CC) the Constitutional Court dealt with the reasonability of requiring an investigator to specify in advance every possible class of item relevant to the investigation to be specified in the warrant (at paragraph 175 and 176 at 493i and 494a-c):

"The 'catch-all' paragraphs, unlike the other paragraphs in annexure 'A' to the warrants, did not refer to a particular class

of documents; instead, they covered any document, of whatever nature or content, that either had, or might have had, a bearing on the investigation. This did not render these paragraphs unduly vague or overbroad. There may well have been documentation with a bearing on the investigation that did not fall into a category covered by any of the other paragraphs, and it was unreasonable to expect the investigators to specify in advance every possible class of item relevant to the investigation that might be found during a search."

53. The Applicants also take issue with the scope of the kind of articles the warrant authorises the search and seizure of, and argue that beyond it being overly wide, no basis is laid for the inclusion of such a wide array of articles in relation to the person mentioned in the warrant as there is no connection established between such documents and their relevance on the one hand, and the persons who are listed in that part of the warrant.

54. I am not convinced that such an approach that seeks to rigidly compartmentalise what is being investigated and against whom, is appropriate. While Annexure B of the warrant may appear to be composed of two parts – the one relating to the vehicles, and the other to the more general allegations of corruption and tender fraud, they are inextricably linked if one has regard to the affidavit of Col Roelofse as a whole and it would be simplistic to see and consider them as separate components of the investigation. That being the case, it is logical and practical to expect the investigation to canvass the broad range of documents and articles that the warrant contemplates and in respect of the persons mentioned, especially if regard is had to the stance of Col Roelofse that money and vehicles had changed hands. The mention of financial records,



company documents, diaries, bank accounts, tender documents, personal financial records, and suchlike articles assume a relevance that is quite obvious.

55. Finally it was argued from the perspective of the fifth Applicant that no basis existed for the issue of the warrant in respect the premises at 10 Naval Escort Street, Mooikloof or in respect of the person "C de Bruin with identity number 9602120102086". In particular, the fifth Applicant contends that there is no allegation of him being a suspect in any investigation and further that the identity number provided is that of his daughter who is a student residing in Potchefstroom. He does however admit that he acquired a vehicle from Mr Snyman in exchange for game, which vehicle was then registered in the name of his daughter.

56. Col Roelfse in his affidavit lists the vehicle in question as one of those delivered by Prima InspectaCar and for which he says he believes the first Applicant paid Mr Snyman and that this vehicle was one of those where the name John Doe was used in the records of Prima InspectaCar in order to hide the names of the future owners. In the overall scheme that Col Roelofse explains, this vehicle that the fifth Applicant admits he received, appears to have been dealt with by Mr Snyman and Mr Keating in the same fashion as the other vehicle and I do not think it is unreasonable for Col Roelofse to have included this as part of the investigation. In fact, that he did not regard the fifth Applicant or his daughter as a suspect, and that their names were not listed as such, suggests a careful approach taken by Col Roelofse. There were certainly reasonable grounds to consider the article (the vehicle) as providing some evidence of the commission of an offence that was being investigated.



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57. The issues that I have dealt with above all deal with the stance of the Applicants that the first Respondent should not have issued the warrant, as either the jurisdictional facts that were required were not present, and that the scope and extent of the warrant was impermissibly wide. In addition the Applicants contend that the warrant and the results of the search stand to be set aside also on the basis of the manner in which the warrant was executed and raise a number of complaints:

a) The unauthorised presence of a Mr De Villiers of the firm Bowman Gilfillan during a part of the search and seizure operations:

58. It is common cause that a Mr de Villiers, a partner at Bowman Gilfillan, played a limited part in the search and seizure operation on the 4th of December 2017. While the third to the fifth Respondents concede that his presence there was not authorised and therefore irregular, they point out that the irregularity was not of the kind that should lead to the setting aside of the warrant.

59. In an affidavit filed by him, Mr De Villiers says he is a partner in the firm of Bowman Gilfillan and that he was the team leader of the Treasury Investigation into the second Applicant and that Mr Wissing and Mr Oellerman were part of his team and that he was aware that their names were included in the warrant issued on the 1st of December 2017. He states that on the 2nd of December 2017, Mr Wissing informed him that Mr Oellerman was due to be in Cape Town on the 4th of December 2017 and would be unable to be part of the team and suggested that he, de Villiers, replace Oellerman. He agreed and joined the



team on the 4th of December 2017, was asked to consider the relevance of three to four files handed to him by SAPS officials and took the view that none of the documents he was asked to consider were relevant. He says he spent about 30 minutes in the premises before he was asked to leave which he did. Finally, he states that his presence there was purely as a result of the unavailability of Mr Oellerman, whose name was reflected on the warrant.

60. While there is no doubt that the presence of Mr De Villiers was not authorised on the warrant, I am not convinced that it is the kind of irregularity that should result in the setting aside of the warrant. He was the team leader at Bowman Gilfillan; he explains why he stepped in to fill the gap left by the absence of Mr Ollerleman; and then finally spent a very limited time in the operation, all of which was to advise that the documents he was asked to consider were not relevant. In this regard it could not be said that the presence of Mr De Villiers constituted an abuse of the power given in the warrant or a gross violation of the rights of the Applicants. It was irregular but a reasonable explanation has been advanced as to how it came about, and the precise role Mr de Villiers played in the process. To invalidate the warrant on that basis alone would in my view be yielding to an objection that is largely technical in nature.

61. Another basis for the setting aside of the warrant relates to the allegations by the Applicants that Mr Wissing, who was only authorised to be present in an advisory capacity, was actively involved in the search and seizure. Mr Wissing denies this and explains his role as follows:



"4.1 I deny the allegation made in Mr du Toit's affidavit that I was actively involved in the search and seizure and that I was not acting in an advisory capacity.

...

4.3 The assistance I provided was as follows:

4.3.1 A member of the SAPS would take possession of a document or file from an office of one of the second respondent's employees;

4.3.2 If that SAPS member was unsure about the document or file's relevance to an investigation, he/she would request me to provide my opinion;

4.3.3 I would provide that SAPS member with my opinion. The ultimate decision on whether the document should be seized rested with the relevant SAPS member."

62. Given that these are motion proceedings and regard being had to the rule in *PLASCON-EVANS PAINTS (TVL) LTD. v VAN RIEBECK PAINTS (PTY) LTD.* [1984] 2 All SA 366 (A) the issue falls to be determined on the version of the Respondents (unless that version is so far-fetched that it warrants rejection out of hand, which is not the case here), and accordingly the final relief sought by the Applicants is simply not competent.

63. Finally it is the submission of the Applicants that a number of documents seized were not relevant and fell outside the scope of the warrant, suggesting that the warrant was so wide that it went beyond what was legally permissible and that in addition, the officials who were tasked with executing the warrant, did not know the scope of what was permissible, resulting in them including the unlawful request for outside individuals to be present. I have already dealt with the presence of the outside persons while the point in respect of irrelevant

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documents being seized cannot on its own invalidate the search. The Respondents have indicated that whatever was taken that is not relevant, has been and/or will be returned.

64. It must be appreciated that in a search as extensive as this one was, and covering a wide array of documents, there will always be the risk that irrelevant documents will be taken or perhaps even documents that strictly fall outside the scope of the warrant. Provided that it does not constitute an abuse of power or an unwarranted interference in the rights of others, my view is that the offer to return the documents would be the most appropriate manner of resolving that issue. I am not satisfied that it constitutes a basis for the setting aside of the warrant or indeed for an order that the results of the search be excluded from evidence in any possible future trial.

65. For all those reasons I am not satisfied that the Applicants have made out a case for the relief they seek and that the application falls to be dismissed.

Costs

66. There is no reason to depart from the practise that generally, costs should follow the result and I intend to make such an order. The matter of the costs reserved on the 10th of January 2018 arose and the Applicants were of the view that whatever the outcome of the main application, those costs of the 10th of January 2018 which were reserved, should be paid by the Respondents. The stance of the Respondents was that those costs should follow the result of this application.



67. I have not been furnished with sufficient reasons as to why the reserved costs of the 10th of January 2018 should be dealt with on a different basis, and why in particular the Respondents should be liable for those costs. That being the case, the costs occasioned on the 10th of January 2018 should follow the result in this application.

Order

68. I make the following order

- The application is dismissed with costs including the costs of two counsel and which costs are to include the costs reserved on the 10th of January 2018.

N KOLLAPEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA

[Signature]

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ANNEXURE “U”



RMB.U



**OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

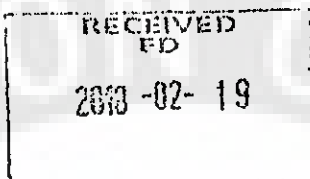
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Reference Number: 10/2/12/3-229/2017

Mr R J McBride
Executive Director: IPID
Private Bag X 941
PRETORIA
0001



Dear Mr McBride

REPRESENTATIONS: IPID REQUEST FOR THE NDPP INTERVENTION.

Your correspondence dated 02 May 2017, 11 August 2017 as well as the subsequent letter with annexures dated 22 November 2017 refer.

The representations pertaining to the various matters will be addressed as per the headings in your first two letters.

1. Defeating the ends of justice investigation against General Phahlane.

- 1.1. This matter was registered under Kameeldrift CAS 123/11/2016, the complainant being Mr P O'Sullivan and the suspect Lt-General K Phahlane.
- 1.2. After perusal of the available information, I have decided to confirm the decision of the Acting Director of Public Prosecutions, Pretoria ("ADPP") not to prosecute in this matter.
- 1.3. The State will not be able to prove beyond reasonable doubt that the suspect in this matter had the required intention to defeat the ends of justice or obstruct the course of justice or commit any other crime in circumstances where IPID has abdicated its responsibility to investigate the matter to private individuals.
- 1.4. The original case docket is returned herewith.

2. Investigation against former Acting Executive Director General Kgamanyane

- 2.1. Pretoria Central CAS 868/11/2016 refers. The suspects in the matter are Major-General K I Kgamanyane and Mr M Matsomela.
- 2.2. After having considered the matter in its entirety, I am of the view that the decision of the ADPP not to institute a prosecution against the erstwhile Acting Executive Director of the Independent Police Investigative Directorate

(IPID), Major-General K I Kgamanyane and Mr M Matsomela is indeed the correct decision.

- 2.3. I am not convinced that the allegations contained in the docket constitutes sufficient evidence that would lead to a successful prosecution.
- 2.4. The case docket is returned herewith.

2. Torture investigation against the Mabula Team.

- 3.1. The DPP Pretoria informed that a decision was made to prosecute Ismael Dawood and Senemela Kutumela in the Regional Court on eleven (11) counts of Assault with Intent to do Grievous Bodily Harm.
- 3.2. These charges stem from a holistic decision pertaining to the following dockets:
 - Kanana CAS 188/01/2010
 - Kanana CAS 222/01/2010
 - Kanana CAS 86/06/2010
 - Klerksdorp CAS 94/04/2008
 - Mogwase CAS 91/04/2008
 - Potschefstroom CAS 175/04/2008
 - Jouberton CAS 07/04/2008
 - Orkney CAS 05/04/2008
- 3.3. The matter will be prosecuted by a state advocate stationed at the DPP office and no further review of these matters are required.
- 3.4. The other case dockets mentioned in your correspondence are as follows:
 - 3.4.1 Klerksdorp CAS 113/02/2010 – According to your correspondence this matter was submitted to the ADPP for decision and is still pending.
 - 3.4.2. Benoni CAS 860/05/2006 – According to the DPP this case docket relates to a housebreaking incident and appears to be unrelated to the torture cases. You are kindly requested to verify the CAS number.
 - 3.4.3. Sinoville CAS 13/06/2006 – The DPP reported that the case docket is in possession of Mr A Sehas, an IPID member, and submission thereof is still awaited.
 - 3.4.4. Akasia CAS 123/06/2006 – You indicated that you are still busy investigating the matter as the medical evidence is inconsistent with the version of the Task Team members and that the case docket will be submitted to the NPA shortly.
 - 3.4.5. The DPP reported that the NPA was unable to trace Mamelodi CAS 280/06/2016.

4. Investigation against the Mabula Team on charges of Kidnapping, Defeating the ends of Justice and Contempt of Court.

- 4.1. The suspects and charges in two related case dockets pertaining to a incidents stemming from the above investigation are as follows:

Lyttleton CAS 309/02/2017: Brigadier P D Ncube and Colonel I Dawood: Contempt of Court, Kidnapping, Fraud and Defeating the ends of justice;

Sandton CAS 688/02/2017: Brigadier C M Kgorane and Colonel I Dawood: Kidnapping, Theft of a cellphone and Intimidation.

4.2. Please be advised that having considered the representations in respect of the above matters and in consultation with the ADPP, I agree with the decision taken by the ADPP to decline to prosecute in the abovementioned matters.

4.3. I am of the view that the prosecution will have extreme difficulty in proving the prerequisite intention and knowledge of wrongfulness on the part of the suspects in these matters.

5. Investigation of Kidnapping and Assault against Brigadier Xaba and others: Symington matter.

5.1. **Brooklyn CAS 790/10/2016** was opened by the complainant Mr V Symington, an employee of the South African Revenue Services against Brigadier N Xaba and Three Others. The alleged offences being Kidnapping, Intimidation, Assault and Robbery.

5.2. I support the decision not to prosecute members of the HAWKS and Mr Titi. Their actions during this incident should rather, be dealt with by means of disciplinary processes applicable to the SAPS and SARS respectively. The facts clearly do not warrant a full blown prosecution.

PERCEIVED DOUBLE STANDARDS BY SOME MEMBERS OF THE NPA IN DEALING WITH IPID CASES, COMPARED TO HOW THEY DEAL WITH SAPS CASES.

6. Decision to prosecute IPID investigators and issuing of J175.

6.1. You complained that the DPP North Gauteng and in particular Adv Mashuga took a decision to prosecute two IPID investigators within 72 hours after they had submitted their warning statements and that they were promptly required to appear in court. You further stated that the swiftness with which this decision was made on charges that do not even make sense is suspicious when contrasted with and the delay in taking decisions on IPID cases.

6.2. According to the information received from the ADPP the case docket under discussion is Kameeldrift 12/01/2017, the accused being Ms S Trent, Mr P O'Sullivan and the two IPID members, Mr Mahlangu and Mr Binang. The stand arraigned on the charges of Fraud, Intimidation, Extortion and a contravention of the IPID Act.

6.3. I am satisfied, following my consultation with the ADPP, that as this matter is handled by the Organised Crime Component with dedicated resources, the swiftness in the handling of the said matter is to be expected and nothing sinister can be found in this regard.

7. Failure by AFU to launch a preservation order.

7.1. Adv K Molelle, Acting Special Director AFU, submitted a report responding to your representations that you have not received any feedback from the NPA despite several enquiries and therefore came to the conclusion that there is a reluctance on the part of the NPA to launch this application. This also reinforced your perception that there are double standards in dealing with IPID matters.

7.2. I have been informed that it is not correct that the AFU preservation order application is completed. From the first draft submitted, several evidential gaps were identified, necessitating further investigations to be concluded. This matter was discussed with you and your team and you undertook to address the identified gaps and revert back to Adv Molelle. The feedback is still awaited.

7.3. As to the Phahlane application, the AFU application did not stall. The evidence that was presented in the first draft as a "completed application" did not properly reflect the case that AFU needed to make in court. Further and proper investigations needed to be made to address the evidential gaps. Detailed feedback was given to IPID members regarding further investigations that needed to be made and an undertaking was made by the said members to address the issues raised.

7.4. Adv Molelle has absolutely no relationship with Lt-General Phalane.

8. Refusal by NPA prosecutors to assist IPID in applying for Section 205 subpoena.

8.1. Your complaint about the conduct of a number of prosecutors in the Magistrate's Court, Pretoria as well as advocates in the DPP office pertaining to their alleged refusal to sign a Section 205 application related to Kameeldrift CAS 123/11/2016 was also investigated,

including your suspicion concerning Adv G Baloyi's interest in "an on-going investigation of the second defeating the ends of justice investigation against General Phahlane and the Mabula Team"

8.2. Following a perusal of the explanations supplied by the relevant prosecutors I am satisfied that no sinister or inconsistent conduct can be attributed to them.

9. Protocol on decision making by NPA.

I am confident, as mentioned before and referred to in your latest correspondence that the envisaged MOU between our organisations will adequately facilitate a working relationship based on mutual understanding and respect.

Kind regards


Adv S K Abrahams

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Date: 19-12-2017

ANNEXURE “V”



" RMB. V "

CONFIDENTIAL



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X941, PRETORIA, 0001, City Forum Building, 114 Madiba Street, PRETORIA
 Tel: (012) 399 0000, Fax: (012) 326 0408, Email: msecoko@ipid.gov.za

The National Director of Public Prosecution
 Adv. S Abrahams
NATIONAL PROSECUTING AUTHORITY
 VGM BUILDING
 123 Weslake Avenue
 Weavind Park
 SILVERTON
 0184

By Hand

23 February 2018

RE: REQUEST FOR INTERVENTION

Your letter dated 19/12/2017 refers, copy attached for easy reference.

IPID would like to respond as follows:

1. Defeating the Ends of Justice against General Phahlane (Kameeldrift, CAS 123/11/2016)
 - 1.1 We still do not agree with your decision not to prosecute and we question the rationality of this decision. IPID strenuously object to your assertion that we abdicated our responsibility to investigate this matter to a private individual.
 - 1.2 This assertion is exactly what is alleged by General Phahlane and the Mabula Team. The NDPP by perpetuating same already indicated bias, without taking into consideration IPID's position into these allegations. IPID take umbrage with the NDPP's position in this regard and request that the NDPP issue a *nolle prosequere* certificate.
2. Investigation against former Acting Executive Director, General Kgamanyane (Pretoria Central CAS 868/11/2016)

We also do not agree that there is no case to answer and we question the rationality thereof. We have however taken note of your decision and request that you issue a *nolle prosequere* certificate.

MP

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CONFIDENTIAL

3. Torture investigation against the Mabula Team:

(Kanana CAS 188/01/2010)

(Kanana CAS 222/01/2010)

(Kanana CAS 86/06/2010)

(Klerksdorp CAS 94/04/2008)

(Mogwase CAS 91/04/2008)

(Potchefstroom CAS 175/04/2008)

(Jouberton CAS 07/04/2008)

(Orkney CAS 05/04/2008)

- 3.1 While we appreciate that Ismael Dawood and Sememela Kutumela have been charged, we still do not understand why other accused members were not charged.
- 3.2 The office of the DPP, under the direction of Adv. Mzinyathi to Adv. Mrwebi, decided to prosecute 7 members of the Mabula Team and even issued J50 warrants of arrest in respect of all the accused. Find attached the DPP minute dated 07/10/2010 as well as the warrants of arrest marked Annexure "A" and "B1-7".
- 3.3 The case was only withdrawn because the prosecutor at the time indicated that they were awaiting the NDPP decision for centralization.
- 3.4 After consultation with witnesses in April 2017, Adv Van der Westhuizen instructed IPID investigators to obtain further statements from witnesses as she was of the view that General Mabula must be added as an accused. (See attached statements marked "C1 and C2")
- 3.5 The question that remains unanswered is what happened to influence the decision not to prosecute the other five suspects, as the evidence remained the same if anything there were additional statements obtained as per Advocate Van Der Westhuizen instruction to enable NPA to add General Mabula as an accused.
- 3.6 The question is, was Adv. Mzinyathi and Adv. Mrwebi's decision reviewed by the Acting DPP, Adv. Baloyi or was it reviewed by you as the NDPP. Did the NDPP receive representations in this regard and if so why was IPID not informed of such.
- 3.7 From our stand point the decision not to prosecute the other accused and not to add General Mabula as an accused is irrational. However, if your position remains the same, we request a

MP



CONFIDENTIAL

nolle prosequere certificate in respect of the other 4 accused not charged, as Captain Maano is now deceased.

4. Investigation against the Mabula Team on charges of Kidnapping, Defeating the Ends of Justice and Contempt of Court (Lyttleton CAS 309/02/2017 and Sandton CAS 688/02/2017)

Your decision is noted. We disagree with it. The complainant in this matter indicated that they intend pursuing private prosecution.

5. Investigation of Kidnapping and Assault against Brigadier Xaba and Others: Symington Matter (Brooklyn CAS 790/10/2016)

Your decision is noted. We disagree with it. The complainant in this matter indicated that they intend pursuing private prosecution.

PERCEIVED DOUBLE STANDARDS BY SOME MEMBERS OF THE NPA IN DEALING WITH IPID CASES COMPARED TO HOW THEY DEAL WITH SAPS CASES.

6. Decision to prosecute IPID Investigators and issuing J175 (Kameeldrift CAS 12/01/2017)

6.1 As you may be aware that Kameeldrift 12/01/2017 was removed from the court roll in terms of section 342A(3)(c) of the Criminal Procedure Act as amended.

6.2 We still hold the view that the investigation against the IPID is for an ulterior motive, which is to interfere with IPID investigations. Our view is that continuing with this prosecution will be irrational.

6.3 There is litigation pending before the North Gauteng High Court on this matter, we reiterate our position that before any decision is taken on this matter we should be informed as we would like to make representations in this regard.

 MP

CONFIDENTIAL

7. Failure by AFU to launch preservation order

7.1 Your response is noted. It is true that IPID officials engaged with Adv. Molelle. However, before that engagement IPID officials dealt with AFU investigators and an Advocate who advised that the preservation order will be done in respect of the vehicle investigation only. After engagement with Adv. Molelle, he was of the view that the preservation order must be done in respect of both the vehicles and the house.

7.2 We have however moved forward on this issue in consultation with the SCCU prosecutors assigned to the case and there is an agreement on how to move forward with this matter.

8. Refusal by NPA prosecutors to assist IPID in applying for section 205 subpoenas (Kameeldrift CAS 123/11/2016)

Your response is noted. However, we are not able to engage further on this issue as we are not privy to the explanation given to you.

9. Protocol on decision making by NPA

We agree with you in this regard and hope the MoU can be concluded soon.



Mr RJ McBride

Executive Director

Date: 26/02/2018

 MP

ANNEXURE “W”



RMB.W



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X941, PRETORIA, 0001, City Forum Building, 114 Madiba Street, PRETORIA
Tel: (012) 399 0000, Fax: (012) 399 1440, Email: complaints@ipid.gov.za

The National Director of Public Prosecution

Adv. S Abrahams

NATIONAL PROSECUTING AUTHORITY

VGM BUILDING

123 Weslake Avenue

Weavind Park

SILVERTON

0184

By Hand

02 May 2017

Dear Adv. S Abrahams

REQUEST FOR THE NDPP'S INTERVENTION

Over a period of 10 years General Mabula and his team have been committing Human Rights abuses and torture with impunity. As it will become clear below there has been a number of investigations against him and his team, even where the DPP had decided to prosecute, no prosecution has taken place.

This state of affairs has give an impression to the victims of their crimes and the society at large that General Mabula and his members are above the law.

General Mabula and his team continue to disregard the laws of this country as they recently interfered with the IPID investigation into allegations of corruption and defeating the ends of justice against the Acting National Commissioner General Phahlane.

They have unlawfully arrested and intimidated witnesses in General Phahlane investigation, approached witnesses who had already deposed statements and forced them to depose other statements with the aim of compromising the investigation into General Phahlane.

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LETTER TO THE NDPP

To show their brazen attempt to detail IPID investigation against the Acting National Commissioner, they have now approached two of our investigators for warning statements ostensibly for allegation of fraud and extortion linked to the Phahlane investigation.

Below are some of the cases investigated against General Mabula and his team, which need the NDPP's intervention:

1. ALLEGED OFFENCE: TORTURE CASES

1.1 During 2008 to 2010, torture cases were reported, whereby members of Klerksdorp Organised Crime under the leadership of General Mabula were implicated.

1.2 According to an analysis of the evidence, the modus operandi is the same. Victims are driven around far from where they were arrested and taken to other locations. They are handcuffed and sometimes leg-ironed also. They are usually tied to a chair. They are blind-folded with surgical gloves and/or exhibit bags.

1.3 The victim will then be electrocuted all over the body, especially private parts.

1.4 Alleged offences were committed at different Magisterial jurisdictions e.g. Klerksdorp, Kanana, Potchefstroom, Rustenburg, Tlhabane, Mogwase, Christiana, etc.

2. STATUS OF THE CASES

2.1 This office completed investigations in all reported cases and sent to DPP for decision as follows:

2.2 CNN 2010010535 Kanana CAS 188/1/2010 and CCN 2010020178 Kanana CAS 222/1/2010. On 07 April 2010 DPP, Pretoria North Gauteng, Advocate Mrwebi decided to prosecute the following members in Regional Court on six (6) counts of Assault GBH:-

- (i) Captain Dawood
- (ii) Sergeant Kutumela
- (iii) Constable Pebana
- (iv) Warrant Officer Andre Matthyser
- (v) Constable Mosala
- (vi) Warrant Officer Tshiponyane
- (vii) Captain Mano (Deceased)



LETTER TO THE NDPP

2.3 Warrant of arrests (J50) were secured and all above-mentioned members were arrested, charged and appeared before Klerksdorp Regional Court. After several postponements cases were withdrawn pending on centralization of all related cases.

2.4 CCN 2008060460 Mogwase CAS 91/4/2008 and CCN 2008100346 Potchefstroom CAS 175/4/2008, both cases were sent to DPP Mmabatho and DPP decided to prosecute all above-named members as per paragraph 2.2 above, including, Capt. Lebudi and Constable Motlhabane. Cases were redirected to DPP Pretoria North Gauteng for centralization.

2.5 CNN 2010020186 Klerksdorp CAS 113/2/2010, the Investigation has been completed. The case docket has been handed to DPP Pretoria North Gauteng to be decided with above mentioned cases.

2.6 The alleged offences were committed by same members of SAPS, Klerksdorp Organised Crime at different magisterial jurisdictions with same modus operandi.

2.7 It was resolved that all cases should be centralized.

2.8 The correspondence in relation to centralization as per Annexure "A" dated 10/05/2010 , Annexure "B" dated 21/06/2010, Annexure "C" dated 05/07/2010, Annexure "D" dated 18/08/2010 and Annexure "E" dated 9/11/2010.

2.9 All mentioned cases are currently with DPP, Pretoria North Gauteng, Adv. van der Westhuizen.

2.10 There has been consultation and re-consultation with witnesses since 2015, to date, Adv. van der Westhuizen has consulted with twelve (12) witnesses.

2.11 From our discussion with her, she indicated that she intends to proceed with the centralization process in terms of section 111 of the Criminal Procedure Act. He is also considering taking the matter to the High Court.

2.12 While we appreciate the work done by Adv. van der Westhuizen we remain concerned about the delay in bringing this matter to finality, the victims are also losing confidence in the criminal justice system.

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LETTER TO THE NDPP

3. MMAKAU MATTER**3.1. Serious Mthembi – Torture by members of Operation Greed.**

On 30/05/2006 Serious Mthembi, a SAPS investigator of Daveyton SAPS was arrested by Inspector Mpati of Operation Greed on Benoni Case 860/05/2006. Operation Greed members were part of the Investigation Unit headed By General Mabula in respect of the Money stolen from Benoni Police Station. Serious Mthembi was taken to SOCS Germiston where he found another suspect being tortured by SOCS members. Serious Mthembi saw a police officer known to him as Adam putting wires in the suspect's mouth and electrocuting him. He was then taken to a room where he identifies a Sgt Khutumela who physically assaulted and suffocated him with a car tyre tube.

He identified Captain Mano that also participated in his torture. He states a police officer named Mpati then tied a seat belt around his neck and dragged him around the table choking him. He was then transported to Mmakau SAPs where he was electrocuted, tubed and choked by the same people.

3.2. Sinoville Case 13/06/2006 – Inquest /Murder

On 01/06/2006 Frank Mampane was accosted by two plain clothes policemen at his residence. One of those policemen identified himself as only Hlope. He was kept inside his home by these two policemen and was heard screaming in pain for half an hour by his girlfriend before he was taken away. He was alleged to be one of the suspects in Benoni Case 860/05/2006. He was detained at Mmakau SAPS

On the 02/06/2006 Frank Mampane was being moved from Mmakau SAPS to allegedly point out another suspect's residence and it is alleged that he attempted to escape from custody, near the Phumlani Toll Plaza, when he was shot by a member of Klerksdorp Murder and Robbery named Warrant Officer Moahlodi. A case of Escaping from Custody, Sinoville CAS 12/06/2006 was opened against the Deceased by the police members who escorted him . Pathologist reports show he was shot in the lower back. Crime scene photos show he was handcuffed at the time he shot. This matter of Sinoville 13/06/2006 was opened as an inquest against the police official. The Inquest was later changed to Murder and the matter went on Trial. The suspect, Warrant Officer Moahlodi was found Not Guilty and Discharged.



LETTER TO THE NDPP

3.3. Akasia Case 123/06/2006 - Inquest

Solomon Ngwane a suspect in Benoni Case 860/05/2006 was arrested by members of the Operation Greed Task team headed by then Major General Jan Mabula. The members that were part of the team were:

Lt.Col. Ismael Dawood , Warrant Officer. Samuel Senemela Khutumela, Sgt. Makholoane (Interrogator), Sgt Mzolo (Interrogator), Warrant Officer. Abraham Losaba, Sgt Vekela Mokholoane ,Lt.Col. Manemela, Warrant Officer Thlapi, Phillip Mompoti, Capt. John Mano, Lt.Col. Meshack Makhubo, and other members not mentioned in the docket.

It is alleged on the 06/06 2006 the deceased Solomon Ngwane was arrested around 23h00 and taken to Mmakau SAPS for questioning. However the suspect was never booked into any official registers or detained on records

At Case of Mamelodi 280/06/2006 of Kidnapping was also opened by the victim's girlfriend at the same time.

It is alleged by members of Operation Greed that the suspect was being transported to point out another suspect in Mamelodi on 07/06/2006 at 03h45, while in transit to Mamelodi he allegedly developed breathing problems. According to Sgt Khutumela he immediately took the suspect to George Mukhari Hospital at 04h00 where he was declared dead on arrival.

The doctor who examined the deceased at the hospital stated in his expert opinion it was evident from the advanced stage of Rigor mortis that the victim had died at least 2-3 hours before he was brought to hospital. This medical opinion overrules the version of the members in their statements and suggests that they attempted to Defeat the Ends of Justice. We have information from a reliable source that General Mabula lost consciousness when the suspect /deceased passed away during the alleged torture. There is information that General Mabula in separate meetings discussed with all the members how they should draft their statements to cover up the incident. Investigation is at an advanced stage. IPID hope to conclude this investigation shortly.



LETTER TO THE NDPP

4. LYTTTELTON CAS 309/02/2017

Allegations: Contempt of court, defeating the ends of justice and Torture.



It is alleged by the complainant Mr. Paul O'Sullivan that on 2017-02-13, he was attending a meeting at Afri-Forum Building, Union Avenue in Kloofsig, Centurion. The meeting finished at or around 18:30. He was with Sarah J Trent; they drove out of the building at around 18:40.

They drove about 150m on DF Malan road when they were ambushed by a lot of vehicles, who blocked the road. Those vehicles had blue light and sirens on. He later found out that it was team of police officers under the command of Brigadier Ncube from North West province. He stopped, went out of the vehicle and was approached by Brigadier Ncube, who showed him his ID card. Ncube then informed him that he intended arresting him, for various offences. He immediately advised Brigadier Ncube that he cannot arrest him, as there was a high court order that required them to give notice. He told him that he did not care about any high court order.

Brigadier Ncube refused to listen to him and seized his firearm and other items. Sarah J Trent then contacted his attorney who was around and he immediately came to the scene. When the attorney arrived Brigadier Ncube was reading him his rights and immediately after that his Attorney Mr. Spies, indicated to Brigadier Ncube that his conduct was unlawful. Despite it being carefully pointed out to Brigadier Ncube that his conduct was unlawful and shown the Court Order, he persisted. Attorney Mr. Spies advised Brigadier Ncube that an urgent application will be made to High Court to challenge the unlawful arrest.

He was then placed in one of the police vehicles and they drove off with him. He was later detained at Kameeldrift SAPS. At or about 23:45 he was taken out of the cells by Brigadier Ncube and told that he had been ordered by the court to release him. He was later released. The complainant further indicates that he was shocked and horrified at the disgraceful unlawful conduct of Brigadier Ncube and his Team, which clearly was aimed at only punishing him for exposing corruption, and that he suffered physical, mental and emotional pain.

Witness statement of Sara-Jane Trent obtained and filed in the docket as per A2, will corroborated the version of the complainant and further state that she took a video of the occurrence of the arrest he made the video available to the investigating officer.



LETTER TO THE NDPP

- Copies of the SAP13 register where the Video was booked in and out to FSL for analysis.
- Chain statement of the video footage as per A5
- SAP 14 register of the Kameeldrift arrest of the complainant as per A6.
- Occurrence Book registers of the arrest and release of the complainant at Kameeldrift SAPS.
- Copy of the warrant of the arrest of the complainant as per A13
- Transcripts of the recordings from the video A14
- Copy of the Court order Case 75378/16
- Copy of the release order CAS 3050/2017
- 212 Statement from the Forensic Science Laboratory confirming the authenticity of the video, photos of same provide.

It is clear from the evidence obtained that Brigadier Ncube was well informed about the court order that was not only explained to him, he was provided with the copy. Brigadier Ncube decided to disregard the court order as a result the complainant's attorney filed an urgent high court application. The court ordered that the complainant be released.

The complainant is also alleging that his arrest was as a result of him laying corruption charges against General Phahlane, the aim was to defeat the ends of justice in respect of the ongoing investigations against Acting National Commissioner General Phahlane. He further alleges as a result of the above the aim was to punish him for exposing corruption by torturing him thus he suffered mental and emotional pain. He further indicates that he suffered physical pain because he was detained in a cell that was disgusting and not fit for humans. He was forced to stand for about four hours and if he was not released he was going to stand for the whole night.

5. Sandton CAS 688/02/2017

Complainant Sarah J Trent

This case is linked to Lyttelton CAS 309/02/2017 in which Mr Paul O'Sullivan's associate Sarah J Trent was arrested and charged together with O'Sullivan on charges of impersonating an IPID official and other charges.

On the case docket she alleges that she was arrested and abducted on 2017-02-10 on the case docket opened by General Mabula from North West province. She was arrested by Brigadier Kgorane at O'Sullivan's offices. The police drove with her to a Shell garage at

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LETTER TO THE NDPP

Malboro drive, Sandton. At the garage she was approached by an Indian male who asked that she be hand cuffed and a cable tie was placed on her hands tightly so. The Indian male introduced himself as Dawood. Dawood then demanded his cell phone.

She indicates that she was kept at the garage for an hour and half. Later Kgorane also asked him where her phone was, she indicated that the phone was in her vehicle at O'Sullivan's place. The police forced her to direct them back to the office so that they can get her phone. She indicates that she enquired from Kgorane if he had a search and seizure warrant for her phone. She was informed by Kgorane that her phone was part of the investigation. On arrival back to O'Sullivan's office she went to the vehicle and the phone was given to Kgorane, they then drove back to the same Shell garage.

On arrival Dawood was waiting for them, Kgorane went to Dawood with her cell phone and they were busy with the phone from the boot of Dawood's vehicle. At that time her family and friends were calling and texting her and did not know where she was, they were phoning her trying to find out where she was. She is of the view that Dawood was downloading her cell phone. She was later driven to Kammeldrift SAPS where she was detained. While at the station she was approached by a white male who indicated that he was Colonel Sales, she was there to download her phone. She also refused to give him her pin code before she sees her attorney.

She indicates further that her phone was still on and that it was at that stage sealed in evidence bag. Kgorane and Sales opened the evidence bag to have the phone charged before the battery dies. They used a portable battery charge to do same. Kgorane then gave Sales another evidence bag to replace the original one that had been opened. She was detained at the station. She was eventually released by the order of the North Gauteng High Court on the 2017-02-12.

Chain statement of the video recordings obtained and filed in the docket

SAP 13 register of video filed in the docket.

Chain statement of the video footage filed in the docket

212 statements from ballistic unit photograph section of the authenticity of the video filed in the docket.

The complainant alleges that she was abducted; she indicates that the police should have

 MP

LETTER TO THE NDPP

no kept her against her will at the Shell garage for an hour and half especially after she was arrested on a warrant of arrest. She indicates the police were supposed to transport her to the police station where she was supposed to be detained.

She further alleges that her cell phone was downloaded by Dawood illegally behind the boot of Dawood's vehicle. Further that she was forced by Kgorane to give the police her cell phone even when she insisted that they show her the search and seizure warrant.

She further alleges that the evidence bag was tempered with, actually the original bag was changed after the police realized that her phone battery was about to die, that happened after she refused to give them her pin code.

It is also alleged that the downloading of the cell phone was in relation to the corruption charges that O'Sullivan laid against General Phahlane. She alleges that the aim was to try and obtain information that the same group of police officers under the leadership of General Mabula can use to compromise General Phahlane investigation. The aim was to defeat the ends of justice on the corruption case against General Phahlane.

The video footage shows the police arrested the complainant at O'Sullivan's place and the second footage at the garage shows the police vehicle at the garage. The vehicles that the complainant alleges she was detained in at the garage for one (1) and half hour, the vehicle drove out from the garage and came back after sometime. Later they all drove off to Kammeldrift SAPS where the complainant was detained.

The group (team) that is investigating the complainant and O'Sullivan's case of impersonation the IPID investigator is from North West. The very same team obtained statements from the witnesses on the case of corruption against General Phahlane. It is alleged on the case that the two impersonated IPID officers and were with the IPID investigator; however the statement of that investigator Mr Mandla Mahlangu has since not being obtained.

It is clear that this case was opened by the members (Mabula team) so that they can have a case number that they can use, to get information in order to defeat the ends of justice. It is clear that the group wanted to download the complainant's phone to get information they can used to compromise the corruption investigation against General Phahlane.

It is our submission that the Brigadier Kgorane and Colonel Dawood be charged criminally with the charge of Intimidation and defeating the ends of justice.

H MP

LETTER TO THE NDPP

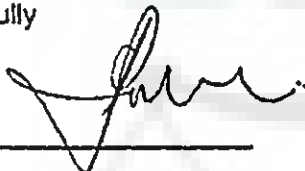
6. CONCLUSION

Having regard to the above, it is clear that we are dealing with rogue elements within the SAPS that have been operating with impunity over the years. It is clear to IPID that they are assisted by some in the NPA to further their nefarious objectives. To restore confidence in criminal justice system, we request that you appoint a team of prosecutors who will work with Advocate Van Der Westhuizen to look at all matters involving these members as well as looking into all investigation initiated by them linked to Phahlane investigation. It is IPID's firm view that senior members of the SAPS will not be held to account when every time they are investigated by IPID they start counter investigations against witnesses and IPID investigators, with the assistance of the NPA.

We would have expected as a matter of good governance that the NPA take an impartial position in this regard. We believe for justice not only to be done, but to be seen to be done, it will be in the interest of justice for the NDPP to intervene to ensure that state resources are not used to compromise legitimate investigations against senior members of the SAPS.

I trust you find the above in order.

Yours faithfully



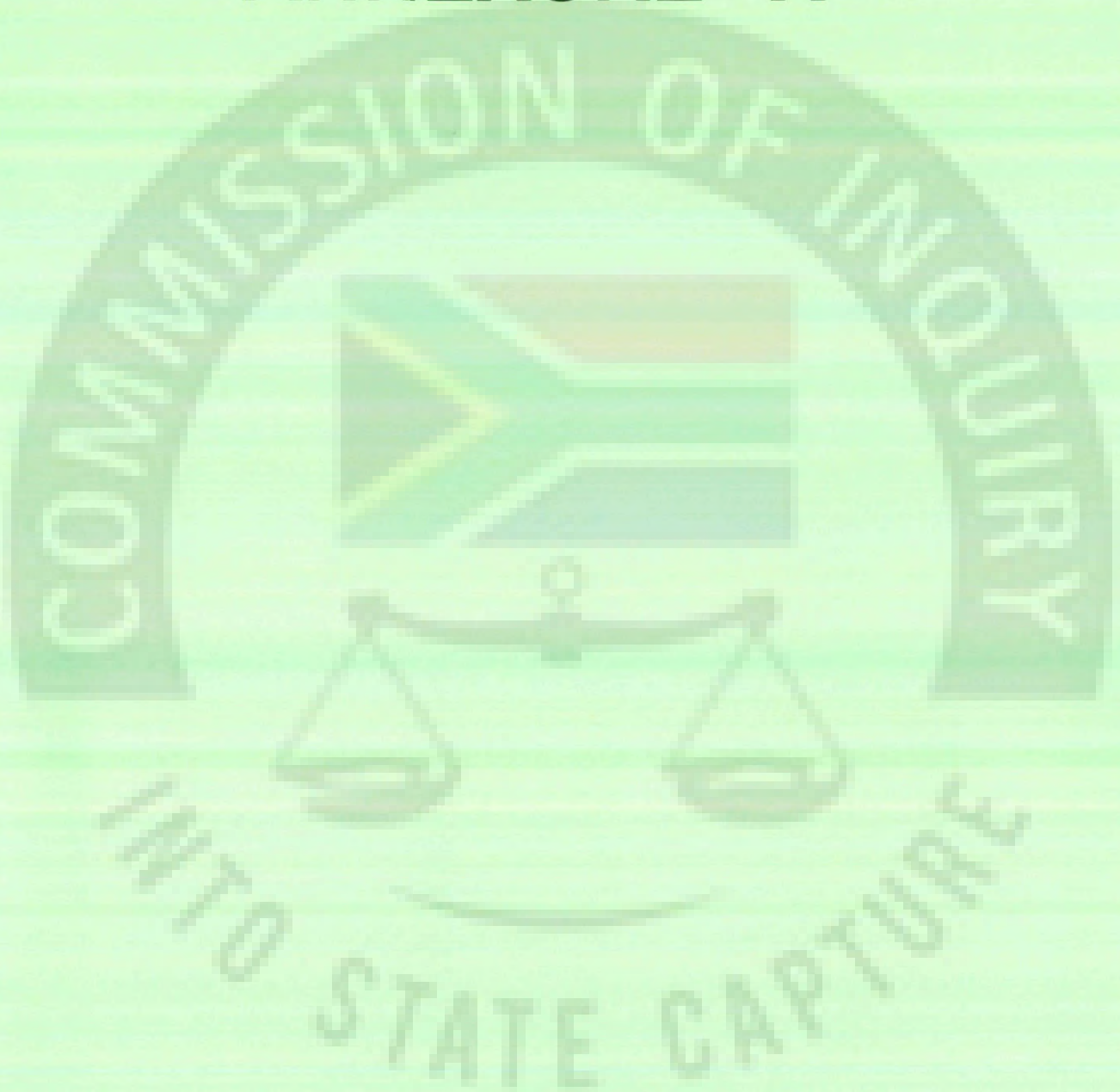
MR. RJ MCBRIDE

EXECUTIVE DIRECTOR

DATE: 02/05/2017



ANNEXURE “X”



"RMB.X"

A

Department
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X341, Pretoria 0001, 114 Mafisa Street (Government City Centre Building), Pretoria
Tel: (012) 399 0175 Fax: 012 325 0144

The General Manager
External Vetting
State Security Agency
Private Bag x 87
Pretoria
0001

22 February 2016

Attention: Mr Dlodlo

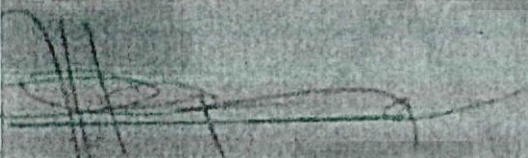
RE: REQUEST FOR URGENT PERSONNEL SUITABILITY CHECKS

1. The Independent Police Investigative Directorate kindly requests your urgent assistance to conduct Personnel Suitability Checks in respect of the following

NAME OF CANDIDATE	ID NUMBER
Leon Abednigo MBANGWA	830613 5903 081

2. We hereby request the State Security Agency to kindly assist the Directorate in conducting the Personnel Suitability Checks in relation to the credit worthiness, criminal records, citizenship and any other matter of National Security relevance.

3. Your assistance in this regard is highly appreciated.

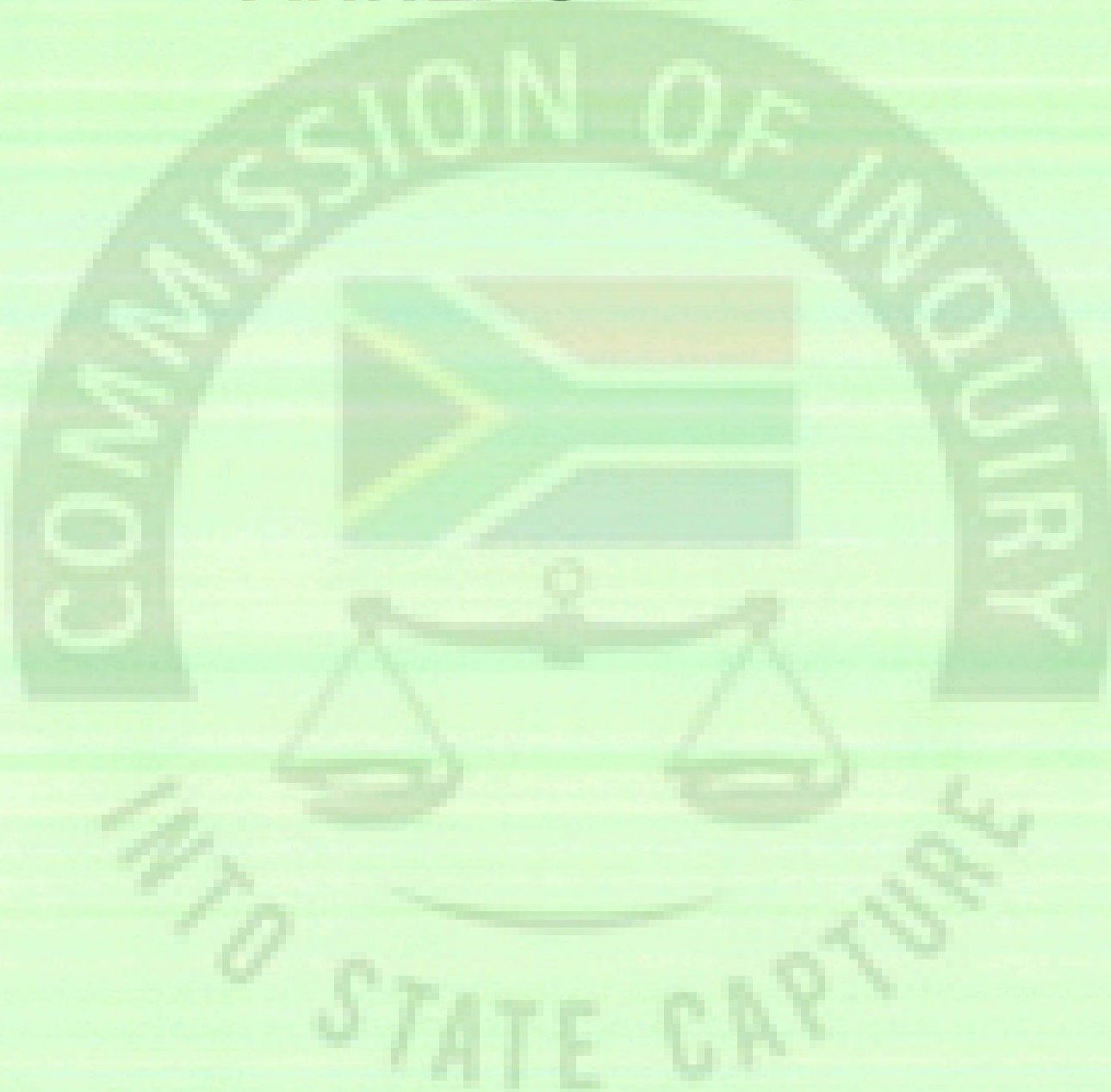

MR IK KGAMANYANE
ACTING EXECUTIVE DIRECTOR
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

CONFIDENTIAL

MP



ANNEXURE “Y”





RMB.Y

RJM-1767
'G'

ANNEXURE E

state security

State Security Agency
REPUBLIC OF SOUTH AFRICA

Private Bag X87, PRETORIA, 0001 State Security Agency Headquarters, Musanda, Delmas Road, PRETORIA
Tel: (012) 427 4000, Fax: (012) 427 4651, www.ssa.gov.za

SSDG/DG01 (VA32)/6/1/14/1/2
DMS10000891822

Office of the Director-General

03 March 2016

The Acting Executive Director
Mr IK Kgamanyane
Independent Police Investigative Directorate
Private Bag X941
PRETORIA
0001

For attention: Ms L Saohatse

Dear Acting Executive Director

Pre-employment Screening: Candidate at Independent Police Investigate Directorate

1. Your request in the above-mentioned matter refers.
2. Pre-employment screening was conducted on the following candidate:

Name	ID Number
MBANGWA Leon Abednigo	6306135903081

3. No negative information of national security relevance was obtained with regard to the above candidate.
4. The candidate is a confirmed South African citizen.
5. The candidate has a criminal record:

Name	ID Number	Offence	Place	Year	Outcome
MBANGWA LA	6306135903081	Fraud	PTA Central	2003	Guilty

6. The candidate has a negative credit record:

Name	ID Number	Institution	Action	Year	Amount
MBANGWA LA	6306135903081	ABSA	Adverse	2015	R9 830

- 6.1 It should be noted that the inability of a person to manage his/her finances could pose a security risk.

Sikhungo Setekuphepha Kwombuso Staatsveiligheidsagentskap I-Arhente yoKhuselo kaRhulumente Zondodazi la Vhutshelodzi la Muvhuso
Setheo sa Tshireletso sa Mmulo Setheo sa Tshireletso sa Puso Xiyongo xa Vuhlayiseki bye Mfumo Boemedi ba Tshireletso Pusing
Ikona yozokuphepha kwelizwe UPheko Lwezokuphepha Kwezwe

CONFIDENTIAL

MP

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CONFIDENTIAL

2

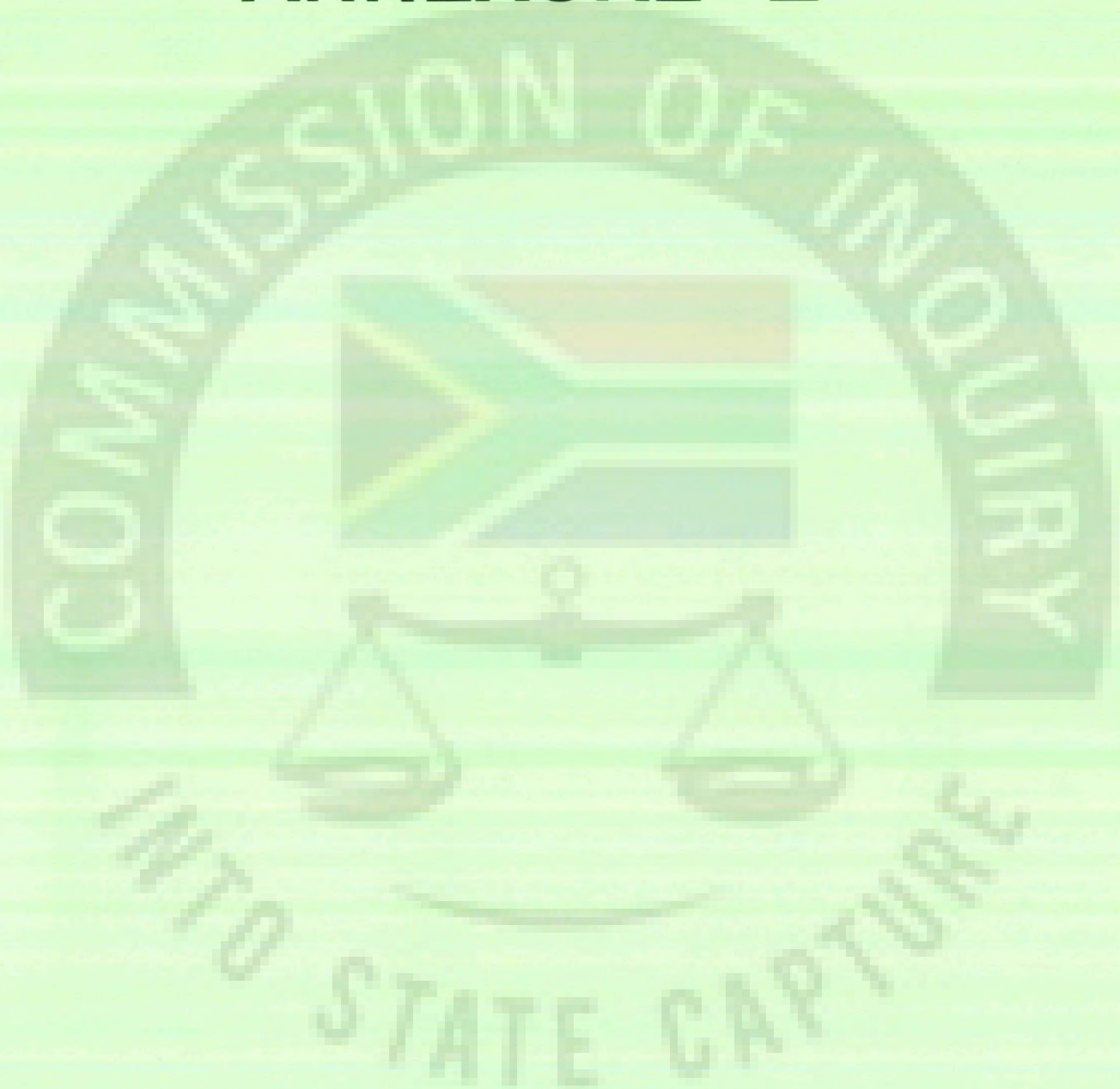
Pre-employment Screening: Candidate at Independent Police Investigate Directorate

7. The pre-employment screening is valid until the candidate is appointed. If appointed, the candidate should complete the Z204 form that must be forwarded to the SSA in order to conduct the necessary vetting investigation, at the end of which a relevant security clearance will be considered.
8. Lastly, please note that in terms of a cabinet approved memorandum, all pre-employment screening/personnel suitability checks are expected to be conducted by the Organs of State themselves. To this end you are referred to the instruction from the Department of Public Service and Administration (DPSA), reference 14/1/1/P dated 23 November 2007. Please feel free to contact us, should you have any queries in this regard, on 012 673 8064.

Pp
VM Dlodlo
For Director-General

CONFIDENTIAL

ANNEXURE “Z”



"RMB. Z"

RJM-1770



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel (012) 399 0000 Fax: (012) 326 0408

Enq. Executive Support

The Director-General
STATE SECURITY AGENCY (SSA)
Mr. Arthur Fraser
Musanda Complex
Delmas Road
Pretoria
0001
dg@ssa.gov.za
phakamab@ssa.gov.za

By Hand

25 October 2016

Dear Sir

**POSSIBLE THREAT TO NATIONAL SECURITY ("LEON MBANGWA") CHIEF OF
STAFF OFFICE OF THE MINISTER OF POLICE**

1. It has come to the attention of the Executive Director of IPID that the Chief of Staff of the Minister of Police is a Zimbabwean.
2. The Chief of Staff of the Minister is a convicted fraudster. He was convicted and sentenced for providing a false ID.
3. He continues to use this false I.D.
4. For some unexplained reason the request for Pre-employment Screening, was done via IPID, in my absence
5. Whilst the results of the Pre-employment Screening by your Domestic Branch was able to detect that the subject had a criminal record and had financial problems, it was unable to detect that the I.D was false and that the subject is a Zimbabwean.
6. I attach hereto documentation that attests to my assertions.
 - A- Request from the Acting Executive Director to SSA;
 - B- Criminal Record of Mbangwa;
 - C- False identity document of Mbangwa;
 - D- Zimbabwean details of Mbangwa;
 - E- Correct spelling of his township in Zimbabwe;
 - F- His twitter page; and
 - G- SSA results on Mbangwa

MP

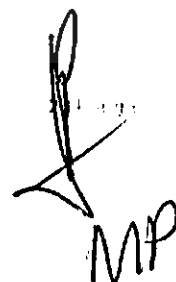
POSSIBLE THREAT TO NATIONAL SECURITY ("LEON MBANGWA") CHIEF OF
STAFF OFFICE OF THE MINISTER OF POLICE

7. I thought it necessary to bring this to your attention.
8. I trust that this is in order.



MR. RJ MCBRIDE
EXECUTIVE DIRECTOR

DATE: 25/10/2016



B

2016-08-29 LA PALMA CAN NUMBER 4334-2002	
COMPLAINT NO. 1 ALTERNATIVE COMPLAINT NO. ACT/ORD YEAR	DATE AND TIME 2003-12-31 09:11
OFFENCE CODE 64505 SEC/BFG SUBSECTION DETAILED GENERAL FRAUD NOT MENTIONED SYSTEMS DESCRIPTION	DIRECTOR MORGAN N
COURT RESULT GUILTY	
SENTENCE IMPRISONMENT: 1 YEARS	
UNT	

UNITED STATES CAPTAIN

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MP

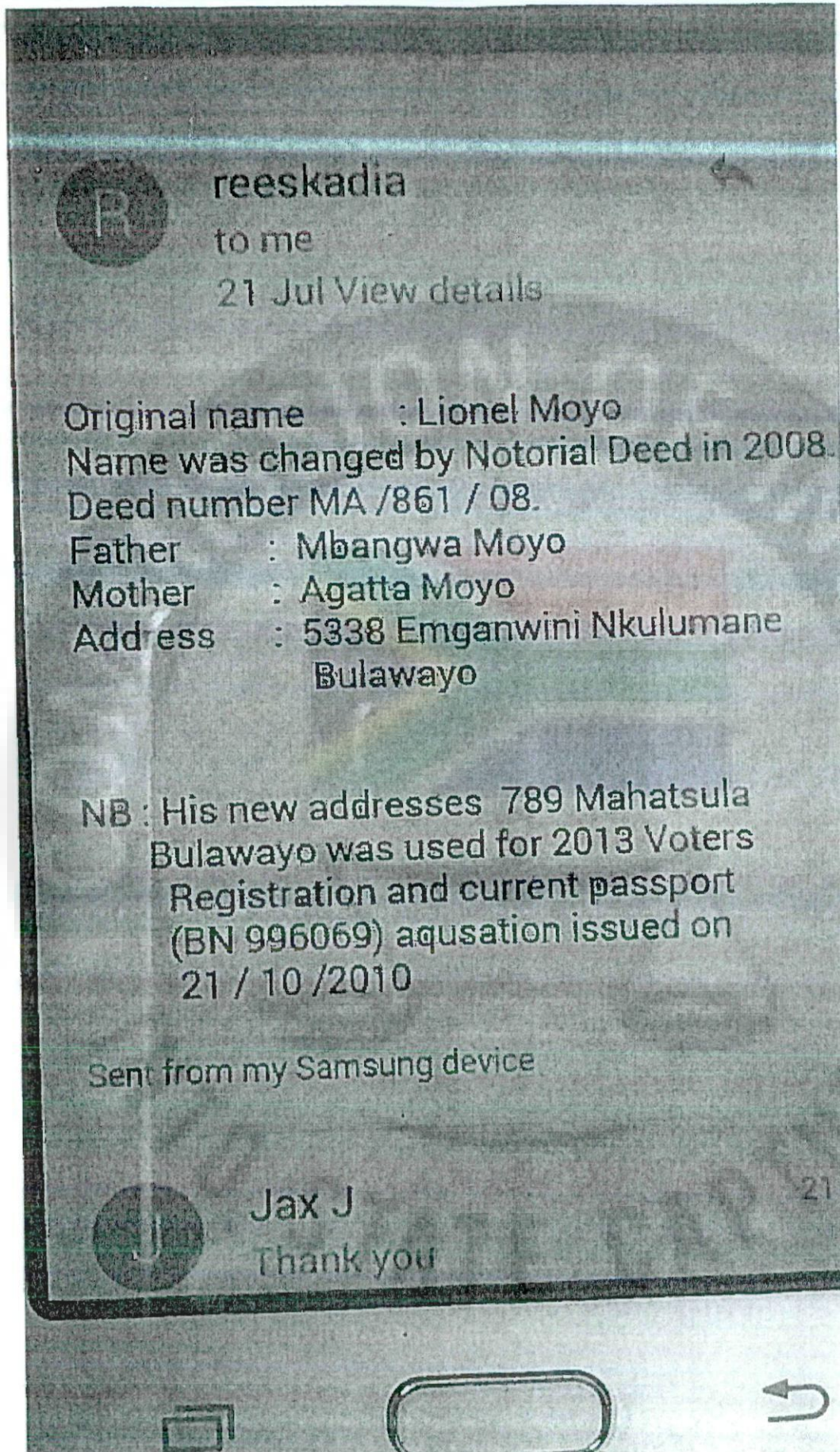
Geregistreerde woon- en posadres	
<p>1. Bewaak die bewys van u Geregistreerde woon- en posadres in hierdie sakke.</p> <p>2. Indien u van adres verander het, of indien besonderhede van u huidige adres, by. straatnaam en of nommer, vers. verander het, moet die vorm KENNISGEWING VAN ADRESVERANDERING, wat in die sakke agter in die identiteitsdokument is, gebruik word om die verandering aan te meld en moet dit ingedien word by of gepos word aan die nabyste streek/ distrikantoor van die DEPARTEMENT VAN BINNELANDSE SAKE.</p>	<p>1</p> <p>I.D.No. 630613 5903 08 1</p> <p>S.A. BURGER/S.A. CITIZEN</p> <p>VAN/SURNAME MBANGWA</p> <p>VOORNAME/FORENAMES LEON ABEDNIGO</p> <p>GEBOORTEDISTRIK OF -LAND/ DISTRICT OR COUNTRY OF BIRTH SOUTH AFRICA</p> <p>GEBOORTEDATUM/ DATE OF BIRTH 1963-06-13</p> <p>DATUM UITGEREIK DATE ISSUED 1997-02-04</p> <p>UITGEREIK OP BESAG VAN DIE DIREKTOR GENERAAL BINNELANDSE SAKE</p> <p>ISSUED BY AUTHORITY OF THE DIRECTOR GENERAL HOME AFFAIRS</p> 
<p>REGISTERED RESIDENTIAL AND POSTAL ADDRESS</p> <p>1. Keep the proof of your REGISTERED RESIDENTIAL AND POSTAL ADDRESS in this pocket.</p> <p>2. If you have changed your address, or, if particulars of your present address, e.g. name of street and/or street number, etc., have been changed, the NOTICE OF CHANGE OF ADDRESS form in the pocket at the back of the identity document must be used to report the change and it must be handed in or posted to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS.</p>	

CONFIDENTIAL

UNITED STATES CAPTURE

MP

[Signature]



E

----- Forwarded message -----

From: "reeskadia" <reeskadia@gmail.com>

Date: 21 Jul 2016 12:18

Subject: L A Mbangwa

To: <jax10can@gmail.com>

Cc:

First Names : Leon Abednico

Surname : Mbangwa

Date of Birth : 13 / 06 / 1963

Place of Birth : Filabusi Hospital

District : Insiza

Residential Address : 789 Mahatsula
Bulawayo

Please note correct spelling of Mahatsula is
Mahatshula but I just copied as it is in his fi

Sent from my Samsung device

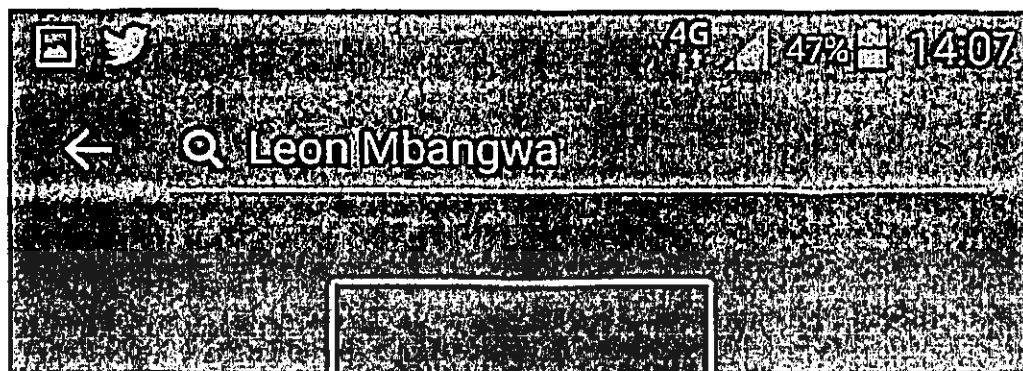
Reply

Reply all

Forward

MP

F



Leon Mbangwa



Add Friend



Message



Chief of Staff Ministry of Police.



Head of Communications at KZN Legislature



Former General Manager, Communications at
KZN Health - Head Office



Studied Public and Development Management
at University of the Witswatersrand



Went to St Bernard's High School, Bulawayo



Lives in Pietermaritzburg, KwaZulu-Natal



Married



From Pietermaritzburg, KwaZulu-Natal

MP

DOCUMENTS

**Why we were targeted - Robert McBride, Ivan Pillay & Anwa Dramat**

Robert McBride - Ivan Pillay - Anwa Dramat |

17 May 2016

There is a common thread to what has occurred across several state institutions trying to combat corruption

INDEPENDENT STATE INSTITUTIONS SHOULD BE SUPPORTED IN FIGHTING CORRUPTION

JOHANNESBURG, 17 May 2016 – The Constitutional Court today heard arguments in the application by Mr Robert McBride, the suspended Executive Director of the Independent Police Investigation Directorate (IPID).

McBride is seeking an order from the Court to confirm a previous judgment by the Gauteng Division of the High Court, Pretoria regarding the independence of IPID, that would determine whether or not the Minister of Police has the constitutional power to institute disciplinary actions against the head of IPID. Such actions include the right to suspend or terminate the contract of the Executive Director of IPID.

McBride was suspended by Police Minister Nathi Nhleko on 25 March 2015. Judgment has been reserved.

McBride's petition to the Court concerns the principle of protecting independent State institutions. Since the latter part of 2014, we have seen, in quick succession, the removal of high-ranking state officials who had previously served government with distinction. These officials had built public trust in the institutions they led. *(Please see the list and details of affected officials, attached to this statement below).*

The events at the Directorate for Priority Crime Investigation (DPCI or the "Hawks"), IPID, the South African Revenue Service (SARS), Crime Intelligence in the SAPS, the State Security Agency, Denel and the National Prosecuting Authority (NPA), are not unrelated. There appears to be a remarkable coincidence in the methods used to remove officials from these institutions, the players involved and their intersecting interests.

In our view, attacks on individuals in these institutions are aimed at undermining the fight against corruption. A key part of all of our mandates was to investigate cases of corruption. In reviewing our individual experiences over recent weeks, we have discovered a convergence in the cases that we were working on. A common thread is that cases under investigation involved individuals or entities with questionable relationships to those in public office. Most of these cases involved state tenders of some kind that were awarded due to patronage with influential individuals in public office.

The manner in which officials were removed has followed a similar pattern. Internal documents or "allegations" from within institutions are leaked to select journalists. Working in tandem with "anonymous" sources, facts are distorted in the media.

It is unclear how the leaks happen, but they do not originate from the accused. After the information is leaked, the institution in question then launches an "investigation" into the

accused officials, using news reports as pretext. The results of these “investigations” are then leaked to the same journalists again.

During the “investigations” the affected officials are suspended and prevented from defending themselves publicly. They are never called to answer to any allegations by the investigators. Any representation is usually ignored, distorted or rejected by the institution in question. The investigations are open-ended and the allegations constantly change.

When an “investigation” fails to reach a conclusion, the institutions enter into settlements with the officials. Later, based on the same allegations that preceded the settlement, officials are then criminally charged. It appears from this pattern that the intent is to hound officials out of institutions and destroy their credibility publicly.

Throughout, the affected officials are required to bear all the costs for their legal defence although the charges against them relate directly to the execution of their duties as state officials. The state, on the other hand, can rely on unlimited resources.

In all institutions cited here, the effective top leadership was removed and replaced. The replacements then institute far reaching structural and operational changes in the institutions. Often, the replacements themselves face legal challenges by public interest groups based on, either their appointments, or their subsequent actions.

Where matters have gone to court, the courts have consistently found in favour of the affected officials with cost orders against their institutions, only for them to be suspended again and investigated on a new slate of allegations. This was so in the matters of Messrs Robert McBride, Ivan Pillay, Peter Richer, Anwa Dramat, Shadrack Sibiya, Johan Booysen, and Glynis Breytenbach, amongst others.

It appears that the pattern of questionable processes has also been applied to the recent interactions of the Hawks with the Minister of Finance. They sent him 27 questions at a time when it was not feasible to answer, insisted on an unduly urgent deadline, leaked the questions to the media and excoriated him publically to answer on the pain of legal consequences. During all of this, they did not disclose what offence, if any, they were investigating or whether he was a witness or suspect.

To date, it is not clear whether the Minister of Finance was even named in the complaint that was laid with the Police by SARS in May 2015. There was also complete disregard by the Hawks for the broader consequences to the economy.

With recent judgments in the Constitutional Court and other courts, it is clear that the rule of law, rationality and the promotion of good governance in the public sector must be the cornerstone for sound public administration. The incumbents should be sensitive that the South African public is keenly aware of their duties and the limits to their authority and will not allow them to abuse it with impunity.

Corruption is the biggest threat to our constitutional democracy. This cancer has turned former comrades against each other. People who shared the same trenches in the fight for liberation are now at each other's throats for the sake of protecting corrupt activities. We should be concerned about the escalating levels of corruption and the damage it has inflicted on our country, service delivery, our economy and especially the poor. In January this year Transparency International ranked South Africa 61 out of 167 countries in its Corruption Index. According to Global Financial Integrity (GFI), South Africa loses about R147 billion through the illicit movement of money out of the country.

We will continue to use our experience and expertise to investigate, fight and expose corrupt activities in the private and public sector. We will continue to seek legal recourse from the courts in our respective matters against state institutions.

Although the immediate objective of our defence is private, our legal actions have a bearing on the public interest. In the first instance, they are aimed at curbing our harassment and

intimidation by the state. Further, our actions will bring light to the true reasons for the abuse of state resources in the manner described above.

We call on those in business, civil society, organised labour, NGOs and the general public who value and want to defend our constitutional democracy, to assist our efforts with legal advice and expertise and legal and financial resources.

Issued by Mr Robert McBride – suspended Executive Director: IPID; Ivan Pillay – former SARS Deputy Commissioner; and, Anwa Dramat – former National Head of the Hawks, 17 May 2016

ANNEXURE

Affected State Officials

Independent Police Investigations Directorate (IPID)

1. Robert McBride Position: Executive Director **Appointed:** 3 March 2014 **Suspended:**

- Precautionary Notice of Suspension – 10 March 2015
- Suspended - 25 March 2015

Reasons for Suspension:

- Altering investigation report in Zimbabwe ‘renditions’
- Removing Richard Mdluli’s device from Shadrack Sibiya’s office
- Undermining authority of the Minister of Police

Legal Actions:

Urgent Application to High Court

- To Interdict the Minister from suspending him
- Constitutional argument on IPID independence

Date: 13 March 2015 **Outcome:**

- No urgency on suspension argument as Minister had not instituted proceedings.
- Court ruled there may be good prospects of success on Constitutional argument.

Disciplinary Actions: Date: 26 May 2015

- Charges instituted against McBride, Khuba and Sesoko. Chairperson of DC rules that proceedings must continue.

Labour Court Application:

- Urgent application for stay of DC
- Labour Court stays DC until arguments are presented to High Court on IPID Constitutional Independence

North Gauteng High Court application – independence of IPID

Date: 4 December 2015

Outcome: High Court ruled Minister of Police contravened Constitution by suspending and instituting disciplinary actions against the head of IPID. Legislation not sufficient to protect IPID independence.

Minister of Police concedes constitutional independence – March 2016

Constitutional Court application – independence of IPID. Seeking confirmation of North Gauteng High Court order.

Arguments before Court – **17 May 2016**

Criminal Charges: Date: March 2016

- Fraud
- Defeating the ends of justice

Next appearance: June 2016

2. Innocent Khuba

Position: IPID Investigations – Limpopo

Suspended: 21 May 2015 **Reasons for Suspension: Legal Actions:**

- Arbitration before Bargaining Council to challenge dismissal

Criminal Charges:

- Fraud and defeating the ends of Justice

Date: March 2016

Next appearance: June 2016

3. Paul Viceroy Hillary Maoko Position: Head of Legal Services, IPID **Appointed:** 4 August 2014

Date: 31 August 2015 – placed under precautionary transfer to Limpopo

Reasons for transfer:

- Allegations of disclosing confidential IPID information to the media
- Allegations were investigated by the State Security Agency

Legal Actions:

Date: 29 April 2016 – challenged precautionary transfer before Labour Court

- Court found precautionary transfer was unlawful
- Court ruled that Maoka should return to IPID Head Office in Pretoria in his permanent position

Notice to suspend: 9 May 2016

Suspended: 12 May 2016

Reasons for Suspension:

- Potential conflict in his position because of his role in assisting employees in disciplinary hearings of disputes
- Non-disclosure of financial interests for 2015/16 financial year

Date: 13 May 2016 – filed unfair suspension dispute at Bargaining Council

4. Matthews Sesoko

Position: National Head of Investigations: IPID

Appointed: 01 April 1997

Suspended: 21 May 2015

Reasons for Suspension:

- Altering investigation report in Zimbabwe 'renditions'

Legal Actions:

- To apply for Stay of the disciplinary proceedings
- **Date:** 6 May 2016 – Internal hearing
- **Date:** 20-24 June 2016 disciplinary proceedings continue if Stay application fails.
- If Stay application fails he will approach the Labour Court for relief.

Criminal charges:

- Fraud and defeating the ends of Justice

Date: 18 March 2016 and 15 April 2016

Next appearance: 15 June 2016

5. Felicia Azande Ntshangase

Position: Provincial Head, Gauteng (IPID) **Appointed:** 1 November 2014 **Suspended:**

- Notice of intention to suspend 23 June 2015
- Suspension: 8 July 2015

Reasons for Suspension

- Alleged appointment of friends
- Alleged appointment of family members
- Gross misconduct

Anticipated Legal Action:

- Two cases of fraud opened at SAPS Pretoria Central

Date for Disciplinary Proceedings: 23-25 May 2016

Note: Ms Ntshangase provided a confirmatory affidavit for the McBride Constitutional Court challenge in which she confirmed that the Minister addressed IPID staff 5 days after

McBride's suspension (alleged institutional interference) and also made alleged false allegations about the judiciary.

6. Nomkhosi Netsianda

Position: IPID Chief Director: Corporate Services

Date of appointment: 1 April 2012

Notice of intention to suspend: 6 August 2015

Suspended: 19 August 2015

Note: Netsianda challenged the appointment of the daughter of Maggie Sotyu, Deputy Minister of Police, as Deputy Director: Investigations for IPID in the Free State. The candidate was appointed against Netsianda's recommendation

Reasons for suspension:

- Disagreement with the acting Executive Director on three appointments
- "Raising her voice" at an Internal Audit meeting where the funding of the court case on IPID's independence was discussed
- Accused of leaking information about the appointment of Ms Sotyu daughter, who allegedly did not meet minimum requirements
- "Mislead" the Acting Head of IPID for making IPID appointments

Disciplinary Hearing: 24 -25 May 2016

Legal action:

- Criminal case (leaking information about Sotyu's appointment) has been registered with Pretoria Central SAPS

Note: Netsianda's position has been advertised externally whilst she is on suspension

Directorate for Priority Crime Investigation (DPCI) – The Hawks

1. Anwa Dramat

Position: Lieutenant - General – National Head of DPCI

Appointed: June 2009

Date: 10 December 2014 – Notice of Suspension

Suspended:

Date: 23 December 2014

Reasons for Suspension:

- 'Rendition' of Zimbabwean nationals

Legal Actions:

- **Date:** From 2010 onwards Helen Suzman Foundation has been involved in challenging constitutionality of certain provisions of the SAPS Act, relating to operational and structural independence of the DPCI
- **Date:** 2011 – Constitutional Court confirms provisions of the SAPS Act are unconstitutional and refers SAPS Act back to Parliament for amendment. Parliament amends but the Helen Suzman Foundation contends that revised legislation will still not pass constitutional muster
- **Date:** 2012 – Helen Suzman Foundation again approaches Constitutional Court. Court again confirms that certain provisions of the amended SAPS Act are still unconstitutional. Court itself remedies the legislation in order to pass constitutional muster
- In a judgment in November 2014, the Court effectively takes away power of Minister of Police to suspend National Head of DPCI
- **Date:** January 2015 – Helen Suzman Foundation applies to North Gauteng High Court on an urgent basis to have Dramat suspension declared unlawful and set aside. Also challenges the lawfulness of the appointment of an Acting National Head for the DPCI
- Court declares suspension and appointment unlawful
- Dramat nevertheless resigns in March 2015 **Date:** 11 September 2015 - Minister of Police appoints Berning Ntlemeza as (permanent) national head of the DPCI. Maj-Gen Ntlemeza

has been acting national head of the Hawks since the suspension of Lt Gen Dramat in December 2014

Criminal Charges: Date: 18 March 2016

- Kidnapping, defeating the ends of justice, illegal deportation in terms of the Immigration Act

2. Shadrack Sibiya

Position: Major General – Head of Hawks: Gauteng

Appointed: 1 October 2010

Suspended: 20 January 2015

Reasons for Suspension:

- Ought to have known about “illegal renditions” of Zimbabweans in Gauteng.
- Should have prevented these

Legal Actions:

Notice to suspend (precautionary suspension): 5 January 2015

- Requested further particulars for suspension – 7 January 2015
- Challenge the legitimacy of Acting Head of Hawks
- Applied to Labour Court to restrain Acting Head of Hawks from carrying out suspension
- Acting Head of Hawks (Maj-Gen Ntlemeza) withdraws notice to suspend – 13 January 2015
- Tendered costs for the applicant and removed application – 14 January 2015
- On the same day, Acting Head of Hawks issues second notice to suspend
- Acting Head of Hawks replaces legal counsel who advised that he does not have legal basis to proceed with suspension. Appointed William Mokhari as counsel
- Representations not to suspend made by Maj-Gen Sibiya to Hawks – 19 January 2015
- Suspended 20 January 2015
- June 3 – 10, 2016: Arbitration at the Safety and Security Bargaining Council

Criminal Charges Date: 18 March 2016

- Kidnapping
- defeating the ends of justice
- illegal deportation in terms of the Immigration Act

Date: 6 June 2016

- Criminal trial set to begin before Gauteng North High Court

3. Johan Booysen

Position: Major General – Head of Hawks: KwaZulu-Natal

Appointed: March 2010

Suspended: March 2012, despite obtaining a Labour Court interdict to prevent a suspension

Reasons for Suspension:

- Investigating fraud and/or corruption related to the 2010 FIFA Soccer World Cup, including investigations into the KwaZulu-Natal Provincial Commissioner of Police, Mamonye Ngobeni

Overview:

- Started investigations into tender fraud and/or corruption in the SAPS procurement system related to the 2010 FIFA Soccer World Cup
- Interference by the KZN Provincial Commissioner of Police, Ngobeni, trying to stop investigations
- Attempted bribe of R2 million by a KZN businessman and SAPS officials from the KZN Head Office Procurement division, who arrested in a ‘sting’ operation
- **Date:** *Sunday Times* headlines the first of a series of articles about the ‘Cato Manor death squad’ in KZN, led by Booysen. SAPS Crime Intelligence involved in disinformation campaign

Legal Actions:

- **Date:** February 2012: Receives notice of intention by employer to suspend
- Obtains Labour Court interdict on an urgent basis to prevent suspension
- Is suspended despite Labour Court interdict
- **Date:** March 2012 – Urgent application to the Labour Court, which overturns suspension. Court remanded contempt proceedings against the SAPS management.
- Returns to work and is arrested (**22 August 2012**) and suspended again (**11 September 2012**)
- **Date:** Feb 2014 - application to the High Court in Durban which rules the State has no case and the charges must be withdrawn
- **Date:** March 2014 - disciplinary hearing is conducted by the employer despite Labour Court judgment
- **Date:** September 2014 - DC Chairperson, Adv Nazeer Cassim, SC, finds not guilty on all charges. Adv Cassim critical of National and Provincial Police Commissioners
- National Police Commissioner, Riah Phiyega offers a settlement and ‘golden handshake’
- Offer is refused
- Phiyega wants to discharge – obtains High Court order interdict against Phiyega
- Returns to work
- **Date:** December 2014 – asked to provide reasons for why he should not be discharged
- **Date:** October 2015: Acting national head of Hawks, Berning Ntlemenza, suspends
- Successfully approaches High Court on an urgent basis to have suspension overturned
- Ntlemenza seeks leave to appeal, which is denied
- Ntlemenza petitions the SCA
- **Date 11 May 2016:** Approaches Durban High Court – to have charges of racketeering set aside, NDPP acting unconstitutionally and abuse of power

South African Revenue Service (SARS)

1. Ivan Pillay

Position: SARS Deputy Commissioner

Appointed: 1 April 1999

Suspended: 5 December 2014

Reasons for Suspension:

- The findings of the Sikhakhane investigation, including:
- The unlawful establishment of a unit that operated ostensibly in a covert manner, has created a climate of intrigue, fear and subterfuge within SARS
- Unlawful establishment of the unit without having the requisite statutory authority
- Prima facie evidence that the unit may have abused its power and resources by engaging in activities that reside in the other agencies of Government, and which it had no lawful authority to perform
- Prima facie evidence that the recruitment, funding and practices of the unit were in violation of SARS’s own Human resources policy
- Prima facie evidence that the existence of this unit had the real possibility of undermining the work of those agencies tasked with the investigation of organised crime and the collection of intelligence

Legal Actions:

Date: 17 December 2014

- Urgent application to the Labour Court to have suspension set aside and declared unlawful

Date: 18 December 2014

- Labour Court rules that suspension was “unlawful” and “illegal” and is set aside. Pillay must return to work the following day and be re-instated in his permanent position
- SARS is ordered to pay legal costs
- Returns to work and is again immediately suspended again

Date: 7 May 2015

- Reaches settlement and resigns from SARS with immediate effect

Criminal Charges: Date: May 2015

- Criminal complaint registered by SARS Commissioner, following settlement with SARS and resignation
- Details of complaint and/or charges which are being investigated by the Hawks are not known

2. Peter Richer

Position: SARS Group Executive: Strategy Planning and Risk

Appointed: August 2003

Suspended: 5 December 2014

Reasons for Suspension:

- The findings of the Sikhakhane investigation, including:
- The unlawful establishment of a unit that operated ostensibly in a covert manner, has created a climate of intrigue, fear and subterfuge within SARS
- Unlawful establishment of the unit without having the requisite statutory authority
- Prima facie evidence that the unit may have abused its power and resources by engaging in activities that reside in the other agencies of Government, and which it had no lawful authority to perform
- Prima facie evidence that the recruitment, funding and practices of the unit were in violation of SARS's own Human resources policy
- Prima facie evidence that the existence of this unit had the real possibility of undermining the work of those agencies tasked with the investigation of organised crime and the collection of intelligence

Legal Actions:

Date: 17 December 2014

- Urgent application to the Labour Court to have suspension set aside and declared unlawful
- SARS withdraws notice to suspend before Court proceedings begin
- SARS is ordered to pay legal costs

Date: 18 December 2014

- Informed there is no need to return to office and is immediately suspended again

Date: 7 May 2015

- Reaches settlement and resigns from SARS with immediate effect

3. Johann van Loggerenberg

Position: SARS Group Executive – Tax and Customs Enforcement Investigations

Appointed: 1 December 1998

Suspended: 5 November 2014

Reasons for Suspension:

- To allow for further investigations (details of which not specified)

Date: 4 February 2015

- Reaches settlement and resigns from SARS with immediate effect

Criminal Charges: Date: May 2015

- Criminal complaint registered by SARS Commissioner, following settlement with SARS and resignation
- Details of complaint and/or charges which are being investigated by the Hawks are not known

4. Yolisa Pikie

Position: Advisor to SARS Commissioner and Deputy Commissioner

Appointed: 28 April 2002

Suspended: 12 December 2014

Reasons for Suspension:

- Attempted theft of SARS property (SIM cards)
- Malicious damage to SARS property (SIM cards)
- Assisted Johann van Loggerenberg legally during Van Loggerenberg's suspension
- Bringing institution into disrepute

Resigned: 2 April 2015 Legal Actions:

- None. Resigned on 2 April 2015

Criminal Charges:

- Attempted theft of SARS property (SIM cards)
- Malicious damage to SARS property (SIM cards)
- Fraud

5. Adrian Lackay

Position: SARS Spokesperson

Appointed: 1 October 2003

Suspended: N/A. Resigned on 19 February 2015

Legal Actions:

- Application for Constructive Dismissal before CCMA – due to be enrolled
- Defending against a civil claim for Defamation by SARS and SARS Commissioner for R12 million damages – heads of argument filed by all parties. Awaiting court date.

ENDS.

RMB.AB


WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Mr Robert McBride
Independent Police Investigative Directorate

Email: RMcBride@ipid.gov.za

Johannesburg Office
155 5th Street
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: ILLEGAL RENDITIONS INVESTIGATION
OUR REFERENCE: Mr S July/cm/MINI29566.1/#3597163v1
DIRECT PHONE: +27 11 535 8163
DIRECT FAX: +27 11 535 8663
EMAIL ADDRESS: sjuly@werksmans.com

2 April 2015

Dear Sir

REQUEST TO CONSULT: RE IPID REPORTS

- 1 The above matter bears reference.
- 2 As you are aware that Werksmans Attorneys has been appointed to conduct an investigation into the two reports that were submitted to the National Prosecuting Authority. For ease of reference, we attach hereto a copy of the appointment letter from the Minister of Police.
- 3 We have interviewed Mr Khuba, and Mr Sesoko who are members of the Independent Police Investigative Directorate ("IPID"). During the said interviews, you have been mentioned as one of the people who were involved in one of the reports in question.
- 4 In the circumstances, we would like to consult with you at our offices on 7 April 2015 at 15h00. We would appreciate it if you could accede to our request and attend such consultation.
- 5 We look forward to your most urgent response.
- 6 Should you have any queries, do not hesitate to contact us.

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

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Yours faithfully


Werksmans Inc



DELIVERED BY EMAIL

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13 April 2015

Dear Sir

**IN RE: INVESTIGATION BY MINISTER OF POLICE IN THE ILLEGAL RENDITION OF
ZIMBABWEAN NATIONALS IN 2010**

- 1 We refer to the above matter.
- 2 On 2 April 2015, we addressed a letter to Mr Robert McBride requesting to consult with him regarding the investigations into the renditions. We hereby attach the said letter for ease of reference. To this day, we have not received any response from Mr McBride.
- 3 We hereby request that you instruct Mr McBride to avail himself urgently for such consultation.
- 4 Furthermore, we would like to urgently consult with Mr Innocent Khuba once more today in our offices if possible.
- 5 We hope you accede to our urgent request.
- 6 Should you have any queries, do not hesitate to contact us.

Yours faithfully

Werksmans Inc

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