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

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IN THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPITAL, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE, HELD AT JOHANNESBURG

IN RE: **APPLICATION OF DR JACOBUS PETRUS PRETORIUS SC ("THE APPLICANT"), FOR LEAVE TO CROSS-EXAMINE INNOCENT HUMBULANI KHUBA AND MATTHEWS SESOKO IN TERMS OF RULE 3.7 READ WITH 3.5 OF THE RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (*"THE RULES OF THE COMMISSION"*)**

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT that the abovementioned Applicant intends making an application in the following terms:

1. That leave be and is hereby granted for the Applicant to cross examine **KHUMBULANI INNOCENT KHUBA** and **MATTHEWS SESOKO** in terms of Rule 3.5 of the Rules of the Commission.

2. Further and or alternative relief.

KINDLY TAKE FURTHER NOTICE THAT the affidavit of **JACOBUS PETRUS PRETORIUS** attached hereto will be used in support of this application.

DATED at JOHANNESBURG on the 17th day of AUGUST 2020

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ATTORNEYS FOR DR JP PRETORIUS SC
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TO:

MS KB SHABALALA
ACTING SECRETARY
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IN THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPITAL, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE, HELD AT JOHANNESBURG

IN RE: **APPLICATION OF DR JACOBUS PETRUS PRETORIUS SC ("THE APPLICANT"), FOR LEAVE TO CROSS-EXAMINE INNOCENT HUMBULANI KHUBA AND MATTHEWS SESOKO IN TERMS OF RULE 3.7, READ WITH RULE 3.5 OF THE RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (*"THE RULES OF THE COMMISSION"*)**

FOUNDING AFFIDAVIT

I, the undersigned,

JACOBUS PETRUS PRETORIUS

do hereby declare under oath and state as follows:

1. I am an adult male Senior Advocate of the High Court of South Africa, duly admitted on 4 May 1982, in the employment of the National Prosecuting Authority ("the NPA") C/O the state attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.

3. Where I rely on facts and/or statements made by third parties, I do so based on the belief that same is true and correct and, where necessary, I annex to this affidavit the statement, affidavits and/or confirmatory affidavit of the relevant persons. The confirmatory affidavit of my instructing Attorney, Mr Kopman ("Kopman"), on which reliance is also placed, is attached hereto, marked as annexure "**X1**".

4. I have been implicated by a number of witnesses who have submitted "evidence" to the commission.

5. Where I make legal submissions, I do so on the advice of my legal representatives which advice I accept as both true and correct.

6. At the time of the events that form part of the allegations made against me in these proceedings, I was the Acting Special Director of Public Prosecutions and

Acting Head: Priority Crimes Litigation Unit ("PCLU"), having been so appointed with effect from 1 October 2015.

7. In that position I was enjoined to manage, direct investigations and take prosecutorial decisions relating to all the offences specified in the Prosecution Policy Directives Relating to the PCLU and any other matters which the National Director of Public Prosecutions ("the NDPP") refers to the PCLU.

8. I set out fully in the Supplementary Affidavit attached hereto as Annexure **"X2"** the mandate of the PCLU and ask that same be read herein as if specifically incorporated.

9. The Chairperson of the Commission ("the Chairperson") is requested to read the contents of the annexures attached to this affidavit as if specifically incorporated into this affidavit.

PURPOSE OF THE COMMISSION

10. The purpose of the Commission is more fully set out in the Terms of Reference published in Government Notice number 41403, Government Gazette of 25 January 2018.

11. In essence, the purpose of the Commission is to unearth the truth, to make findings and to recommend the appropriate remedial steps to be taken as a result of its findings.

12. In carrying out its duties and obligations, the Commission is bound to observe the relevant provisions of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the rules of the Commission, rules of natural justice and any other applicable legal prescript. The observance of the stated Constitution, rules of the Commission and rules of natural justice are even more pertinent if and when a person who is not part of the proceedings before the Commission is implicated, whether with or without his/her knowledge.

13. This is so because such an implicated person must be afforded an opportunity to present his/her case and interrogate submissions made before the Commission where he/she is implicated, if necessary, by way of cross examination. Absent any or all of the aforesaid, an implicated person's constitutional rights will be severely prejudiced and this in turn may amount to a miscarriage of justice.

PURPOSE OF THIS APPLICATION

14. The purpose of this application is to seek the relief as set out in the Notice of Motion to which this affidavit is attached.



15. As set out above, as an implicated person I am entitled to be placed in a position where I can exercise my rights to cross-examine persons that implicated me and to rebut and/or contradict the evidence put before the Commission which either implicates me or is likely to implicate me.

16. Khumbulani Innocent Khuba ("Khuba") appeared before the Commission on the 26th and 27th September 2019, and Matthews Sesoko ("Sesoko") appeared on 25 September 2019. In their oral evidence as well as their affidavits filed before the Commission, each one of them implicated me and/or attributed or insinuated some wrongful conduct or wrongdoing on my part.

17. In the normal course, and in line with rule 3.3 of the Commission's rules I was supposed to be served with a notice informing me that Sesoko and Khuba are likely to implicate me in their evidence, also indicating the manner in which they will be implicating me, and the date on which their evidence will be led.

18. This is what is necessary to place me in a position to not only become aware that I am likely to be implicated but also to participate fully before the Commission in respect of the evidence that implicates me or is likely to implicate me. The nature of the participation am entitled to in this regard, is not only to have access to the evidence that either implicates me or is likely to implicate me, but also to make my own submissions in rebuttal of such evidence, to test such implicating evidence and also, where deemed necessary, to answer questions which may be

posed to me in cross-examination by either or both of the Commission's legal team and representatives of the witnesses implicating me.

19. I have to date not been served with the required notices.

20. Therefore, as matters stand, the evidence (both oral and in written affidavits) of Sesoko and Khuba implicating me stands uncontroverted, and I have not been given an opportunity to make my submissions in rebuttal of the adverse submissions as far as they relate to me.

21. In the absence of submissions from me as well as being afforded an opportunity to cross-examine Khuba and Sesoko, the Commission would have, as its record, the one-sided version which in many respects is either inadequate or incorrect. It is therefore important that I be equally afforded an opportunity to make my submissions in the form of affidavits, annexures and oral evidence, as well as to cross-examine both Sesoko and Khuba.

22. It is important to point out that the evidence of Khuba and Sesoko implicating me in wrongdoing relates to decisions and/or actions I took in carrying out my duties and obligations as the Special Director of the PCLU, as stated heretofore.

23. At the conclusion of the gathering of evidence by the Commission in respect of the allegations and/or accusations against me, it should be clear as to which accusations are sound, considering what I am required in law to do in discharging

my duties as the then Acting Special Director. If the said allegations are the subject of a vendetta against me, that should also be clear to the Commission.

24. I submit that the Commission will not be in a position to a proper conclusion in the absence of considering my own submissions, as well as evaluating the submissions of Sesoko and Khuba in response to the questions that I, through my legal representatives, would be asking of them in cross examination.

25. The Commission will not suffer any prejudice in the event that the relief as prayed for in this application is granted. In fact, the granting of leave will be for the benefit of the Commission in that it will have proper and full facts before it for sound evaluation of both Sesoko and Khuba's evidence on the one hand and mine on the other, having had each of our versions as well as our responses in cross-examination.

26. I was, for the first time, informed on the 20th of July 2020, when my legal representatives made certain enquiries with the Commission's evidence leader that, when cross-examining me in respect of the evidence of McBride, reliance will also be placed on Khuba and Sesoko's testimony. I do understand why the evidence leaders would want to rely on the evidence of Sesoko and Khuba in the cross examination of myself, and this understanding is part of the reasons that informed my decision to make this application to the Commission. The reason for that is that the evidence of McBride, Khuba and Sesoko is interrelated.

27. I have already been granted leave to cross-examine McBride. However, because the evidence of McBride is inextricably linked to that of both Khuba and Sesoko, my right to cross-examine McBride will not be fully exercised in the absence of the right to also cross-examine Khuba and Sesoko. If I am to testify without the leave to cross-examine Khuba and Sesoko, their evidence would remain as unchallenged and regarded as such and that would be prejudicial to my right to natural justice. The link between the evidence of McBride, Khuba and Sesoko regarding my alleged wrongdoing is more fully dealt with in my supplementary affidavit and the annexures thereto, which is attached hereto as annexure **"X2"**.

28. It will be prejudicial for me to be subjected to cross-examination based on the allegations made by Khuba and Sesoko against me either directly or implicit in their affidavits and/or oral evidence or indirectly through the testimony of McBride in his affidavit and/or oral evidence, without me having an equal opportunity to cross-examine the each one of them.

29. I am advised that because I was never given a rule 3.3 notice in respect of Khuba and Sesoko, I do not need to apply for condonation, because in essence in the absence of a rule 3.3 notice my application to cross-examine them cannot be out of time.



30. The filing of my supplementary affidavit is by agreement between my legal team and the evidence leaders. Further, in the supplementary affidavit, I fully address matters which the evidence leaders requested me to deal with.

PREJUDICE

31. Taking into account the mandate of the Commission, I respectfully submit that it is important that the Chairperson should hear all the issues germaine to the matter. As already indicated, the Commission will not be prejudiced by granting me the relief as prayed for in the Notice of Motion to which affidavit is attached.

32. The contrary is that if I were not to be granted such leave, I will be severely prejudiced. The purpose of this application is to enable me to place relevant information before the Commission to enable the Chairperson to make informed and just findings.

33. In annexure **"X2"** hereto, I have demonstrated the intertwined nature of the testimony of McBride, Khuba and Sesoko pertaining to the alteration of the rendition report and that when I supported the arraignment of McBride, Khuba and Sesoko, I was neither actuated by bad faith nor did I do so as part of the alleged core group of captured Advocates whose objective was to persecute corruption fighters.



34. In light of the intertwined nature of the evidence of McBride, Khuba and Sesoko, if the Chairperson orders that the hearing proceed, whilst I have not been granted leave to cross examine Khuba and Sesoko, I will be deprived of the opportunity to have their versions tested *vis-à-vis* mine.

35. A further legal quagmire is that in leading my evidence, I have to make mention of the investigation conducted by Khuba, and also refer to Sesoko and, should I do so, the evidence leaders would be entitled to cross-examine me in respect of Sesoko and Khuba's evidence, whilst I am, on the other hand, deprived of an opportunity to cross-examine Sesoko and Khuba and test their evidence. This is clearly prejudicial to me.

IMPORTANCE OF THE MATTER

36. This matter is of utmost importance to me as I have to clear my name and protect my reputation and professional career and integrity, which has already been severely tarnished by the unfounded and malicious allegations made against me. Similarly, my version is important to the Commission, as it will:

36.1. help clarify aspects that are unclear;

36.2. give proper context to issues and matters that have been placed before the Commission without giving proper context thereon;



36.3. more particularly, correct evidence given before the Commission which will lead to incorrect and unjust findings if not corrected;

36.4. demonstrate that no evidence was put before the Commission to prove any wrong doing on my part.

GOOD CAUSE

37. In my supplementary affidavit, I set out fully the mandate of both the NPA and the PCLU, and how McBride, Khuba and Sesoko ought to have an understanding of same and on that basis, their submissions to the Commission are unfounded, baseless and unsubstantiated.

38. The interlink between McBride, Khuba and Sesoko's evidence is on its own sufficient reason for the application to be granted.

39. In light of the above, the objective facts of this matter, as set out herein together with the annexures hereto, demonstrate that I made out a case for the relief prayed for as set out in the Notice of Motion to which this affidavit is annexed.

CONCLUSION

40. I respectfully submit that I have made out a case for the relief as prayed for in the Notice of Motion.

WHEREFORE I pray for the relief as set out in the Notice of Motion to which this affidavit is attached.

JACOBUS PETRUS PRETORIUS

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Silverton on this 17 day of **AUGUST 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
SAPS 13
2020 -08- 17
PRIVAATSAK, PRIVATE BAG X567
SILVERTON 0127
SOUTH AFRICAN POLICE SERVICE

ANNEXURE X 1

IN THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPITAL, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE, HELD AT JOHANNESBURG

IN RE: **APPLICATION OF DR JACOBUS PETRUS PRETORIUS SC ("THE APPLICANT"), FOR LEAVE TO CROSS-EXAMINE INNOCENT HUMBULANI KHUBA AND MATTHEWS SESOKO IN TERMS OF RULE 3.7 READ WITH 3.5 OF THE RULES GOVERNING PROCEEDINGS OF THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (*"THE RULES OF THE COMMISSION"*)**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LUYANDA KOPMAN

do hereby declare under oath and state that: -

1. I am an adult male duly admitted Attorney, employed as such at the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts herein contained in this affidavit are within my personal knowledge and unless stated to the contrary or is evident from the context, are to the best of my knowledge and belief both true and correct.

3. I have read the founding affidavit deposed to by **JACOBUS PETRUS PRETORIUS** together with annexures, and confirm the contents thereof insofar as same relates to me.

LUYANDA KOPMAN

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Silverton on this 17 day of **AUGUST 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

SAPS 13
2020 -08- 17
PRIVAATSAK PRIVATE BAG X937
SILVERTON 0127
SOUTH AFRICAN POLICE SERVICE

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

IN RE: **SUPPLEMENTARY AFFIDAVIT OF DR J P PRETORIUS SC ("THE APPLICANT"), TO THE INITIAL APPLICATION FOR THE CROSS-EXAMINATION OF MR ROBERT McBRIDE AND GENERAL JOHAN BOOYSEN, AND IN SUPPORT OF THE APPLICATION FOR THE CROSS-EXAMINATION OF MR MATTHEWS SESOKO AND MR HUMBULANI INNOCENT KHUBA**

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

JACOBUS PETRUS PRETORIUS

do hereby declare under oath and state that: -

1. I am an adult male employed at the National Prosecuting Authority (NPA) based at 123 Westlake Avenue, Weavind Park, Pretoria, as a Deputy Director of Public Prosecutions c/o the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.



3. Where I rely on facts and/or statements made by third parties, I do so based on the belief that same is true and correct and insofar as same is necessary I annex to this affidavit the statements, affidavits and/or confirmatory affidavits of the relevant persons. The confirmatory affidavit of my instructing attorney, Mr Luyanda Kopman ("*Kopman*") and Advocate Anthony Mosing ("*Mosing*") on which reliance is also placed are attached hereto as annexures **"JPP1"** and **"JPP2"** respectively.

4. Where I make legal submissions, I do so on the advice of my legal representatives which advice I believe to be both true and correct.

5. The Chairperson of the Commission ("the Chairperson") is requested to read the contents of the annexures attached to this affidavit as if specifically incorporated into this affidavit, to avoid prolixity of the papers.

B. SHORT RESUMé

6. I joined the Department of Justice in November 1976 and have been an employee of the Prosecution ever since.

7. During my 43 years as a prosecutor, I have served in all the ranks of the NPA: from the lower court; clerk of the court and progressing to the traffic court as ordinary prosecutor, regional court prosecutor, to a state advocate. Later I was a senior State Advocate and then a Deputy Director of Public Prosecutions in the High Court. I acted as a Special Director for more than 3 years.

8. I was involved in cases like EA D Kock (Vlakplaas), Wouter Basson, and a number of other cases like S v Trollip - High Treason case of attack on ANC elective conference at Bloemfontein (Mangaung case) and the reopened inquest in the Ahmed Timol-matter. I handled the Okah appeal in the Supreme Court of Appeal and did the first prosecution for foreign Military Assistance, S v Rouget. I worked at the Directorate for Special Operations (DSO) Scorpions with Advocate Percy Sonn before being transferred to the PCLU with Advocate Ackermann in 2003 when the PCLU started.

9. I also worked at the SA Law Commission on Project 73 Simplification of Criminal Procedure and lectured at Justice College on International Law. I was one of the evidence leaders at the Goldstone Commission and was involved in inquiries regarding Phola Park, Boipatong, and the Bisho shooting and, in particular, the raid on DCC headquarters of Military Intelligence. I was part of the Pierre Steyn Inquiry that led to the sacking of several generals in the SADF.

10. I was part of the team in the second investigation into the air crash that resulted in the death of the former and late President of Mozambique, His Excellency Samora Machel. I am involved in the investigation into the Smit murders. Since 1994 I was part of the Special Investigation Unit of Dr J D 'Oliveira. I also did the case about the planning of a coup e'tat in regards to the DRC before Judge Mothle. I was conferred SC status on 7 December 2003.

11. I obtained my BA Law Degree at the end of 1979 from University of Pretoria. I obtained my LLB at the end of 1981 from the same institution and was admitted as Advocate of this Court on 4 May 1982. I obtained a Master of Laws at the University of London (University College London) on the 16 November 1983. In December 1992 I obtained my Doctor Legum LLD degree in Procedure and Evidence at the University of Pretoria and recently, in April 2014, I obtained another Magister Legum LLM degree in International Law with distinction. I applied this latest LLM in my work at the Priority Crimes Litigation Unit (*"PCLU"*) regarding international crimes, which is part of the mandate of the PCLU.

12. I published a book, Cross Examination in the South African Law (Butterworth) 1997.

13. More recently, I was also entrusted to be part of the investigation team that dealing with the recommendations made by the Farlam Commission of Enquiry (Marikana Commission) especially against the Police. Arising from the investigation, a number of police officers are currently standing trial. I submitted a memorandum in terms of which I recommended the reopening of the Ahmed Timol inquest and I was leading the team for the State in the reopened inquest before Judge Mothle.

C. PURPOSE OF THIS AFFIDAVIT

14. The purpose of this affidavit is to:

14.1. demonstrate how this Commission is being abused by the witnesses who ought to, by virtue of the positions that they held within the Security Services of the Republic of South Africa, know and understand the basic functioning of the NPA. As an employee of the NPA, I performed the duties and functions, and exercised the powers, in respect of which the complaints of state capture are made.

14.1.1. Mr Robert McBride (*"McBride"*), Mr Humbulani Innocent Khuba (*"Khuba"*) and Mr M Sesoko (*"Sesoko"*) were, at the time of lodging complaints of state capture against me with this Commission, all employed by IPID. IPID is an institution set up under the provision of Section 206(6) of the Constitution, to ensure independent oversight of the South African Police Service (*"SAPS"*), as well as the Municipal Police Services.

14.1.2. General Johan Booysen (*"Booysen"*), on the other hand, has been a high ranking officer for a long period of time within SAPS.

14.1.3. In their respective positions, McBride, Booysen, Sesoko and Khuba ought to have known that the averments made against me in their respective submissions, without any substantiation thereof, are an affront, not only to my position within the NPA, but mainly the NPA itself, as well as the respective institutions

within which they served and flowing from which their complaints against me, are alleged to have arisen.

14.2. demonstrate that Adv P J Pretorius SC (*"the evidence leader"*) does not fully understand the mandate of the PCLU, as demonstrated from what is set out below.

14.2.1. The evidence leader, in his opening address, correctly quoted the mandate of the PCLU.[1] However, the evidence leader is incorrect in his submission that:

> *"So clearly Chair this unit was set up to deal with specific category of crime."*[2]

> *"ADV PAUL JOSEPH PRETORIUS SC: As described in the proclamation of an international flavour informed by international statute. However we know and you will hear evidence in this regard that the Priority Crimes Litigation Unit was peopled under the authority of the National Director of Public Prosecutions at the time with a number of prosecutors* ***and investigators*** *and it was this unit that investigated and sought to prosecute the Minister of*

1 Transcribed record: Day 81, 11 April 2019, page 23, line 21 to page 24, line 8
2 Transcribed record: Day 81, 11 April 2019, page 24, line 9

Finance at the time, Mr Pravin Gordhan. (PCLU does not have investigators)

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: For the payment – the pension pay out payment.

CHAIRPERSON: Huh-uh.

ADV PAUL JOSEPH PRETORIUS SC: The previous Deputy Commissioner, Mr Ivan Pillay. Mr van Loggerenberg, all of SARS, Mr Robert McBride whom you will hear about of IPID in, Innocent Khuba of IPID, Matthews Sesoko of IPID, a previous state prosecutor Glynnis Breytenbach, Paul O'Sullivan and the secretary of Paul O'Sullivan.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: They were all prosecuted or sought to be prosecuted.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: ***Or investigated under the rubric of the International Security Crimes described in the proclamation.***

We will investigate whether this was a deliberate manipulation and distortion of the mandate of the PCLU and a misuse of that body. (our emphasis)

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: To conduct investigations for which it was not intended and we will ask questions around that and seek to address the issues arising out of that."[3]

14.2.2. I deem it necessary to bring it to the attention of the Commission that it is a misnomer to refer to the prosecutions under the mandate of the PCLU being *"under the rubric of the International Security Crimes"*. I say so because there is no crime defined as international security crime.

14.2.3. Instead there are "international crimes", such as genocide, war crimes and crimes against humanity. Then there are crimes that touches the security of the State and international terrorism.

14.2.4. Regarding "*such other priority crimes*" referred to in the 2003 proclamation, the discretion granted to the National Director is intended to be used for purposes of referrals regarding

3 Transcribed record: Day 81, 11 April 2019, page 24, line 11 to page 25, line 12

matters that require specialised skills or where the implicated persons are very high ranking officials or the matters are very sensitive, such that they may touch on the security of the state or the independence or integrity of state institutions. Such referrals are or were made in terms of the Omnibus Clause.

14.3. demonstrate that Booysen is disingenuous in alleging that the PCLU was involved in matters which it was not supposed to have dealt with, as such matters were properly, lawfully and legitimately referred for investigation and prosecution to it. He sets out the Presidential Proclamation and states:

> "*The point I want to make here is that I find it very strange that some of the prosecutors from this - from the PCLU would involve themselves with investigations against the likes of McBride, Dramat, Shadrack Sibiya for cases I will not say that are not serious but they are relatively much less serious than the things that they should be dealing with. Such ...*"[4] (except that he is wrong about Dramat and Shadrack Sibiya, as the matter was not dealt with by the PCLU)

14.3.1. Booysen continues:

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4 Transcribed record: Day 87, page 205/258 line 1 - 6

"***For instance they would prosecute certain people that I have now mentioned for fraud. That does not fall into the remit of what they should be doing in the first place***."[5]

14.3.2. After interaction with the Chair he finally responded:

"*I will not call the menial investigations but much less serious investigations.*"

14.3.3. However, later on Booysen describes the very same prosecutions as *"catastrophic effects on the economy of the country"*.[6]

14.3.4. Booysen continues:

"*And in this statement of mine I mention that those prosecutors should be dealing with cases and that is before I heard the evidence of Mr Agrizzi. I did not even know who Mr Agrizzi was* [the same with me and the prosecutors of PCLU] *and here in my statement I said that they should be – should have been dealing with matters such as Bosasa, state captures. All those cases which seriously affected the economy of the country.*"[7]

5 Transcribed record: Day 87, page 205/258 line 8 – 11
6 Transcribed record: Day 87, page 241 line 13
7 Transcribed record: Day 87, page 206 line 23 to page 207 line 9

"I previously alluded to the fact that the PLCU of which he is a member these investigations do not fall into the remit of the PCLU" (this is the prosecution of Mr Pravin Gordhan)[8]

14.3.5. It is not for Booysen to make a judgment call as to which type of matters should be referred to the PCLU. In any event, Booysen should make a choice as to whether the pension pay out matter is serious or not. He cannot have it both ways.

14.3.6. Equally so, it is important to mention that the pension pay out that was made to Ivan Pillay (*"Pillay"*), affects the economy of the country and the taxpayers.

14.3.7. It must be explained how the SARS investigation was allocated to the PCLU. The initial complaint laid referred to "Spying at the NPA" itself. Spying, intelligence and protection of information fall within the remit of the PCLU. The very independence of the NPA is at stake and such an investigation and touch the security of the institution. Once a team and prosecutor start with an investigation, they must handle all matters related to the investigation. During the investigation, the "golden handshakes' of the members of the investigation unit like Andries Janse van Rensburg (*"Skollie"*)

8 Transcribed record: Day 87, page 241/258 lines 13 – 15

etc came to the fore midstream. Thus any unlawful activities in the payment out of pension came to the fore and resorted with the PCLU and did not fall outside the remit of the PCLU. It was a very sensitive matter. During that time it was also made very clear during the Press statement that the investigation in the planting of 12 listening devices and transcribing the meetings in regard to the then National Commissioner of SAPS, J Selebi (*"Selebi"*) is continuing. That is how the fraud charges in relation to SARS resorted with the PCLU.

14.3.8. It is clear that Booysen understands the Omnibus Clause, which was used to refer matters to the PCLU, despite which fact Booysen criticises the PCLU for carrying out its mandate.

14.4. demonstrate that McBride is not candid with the Commission and is bent on misleading the Commission for his personal gain with regard to the mandate of the NPA and the PCLU.

14.4.1. On his own version, he stated:

"Ja. There is a direct link between CATS and PCLU both have to deal with priority issues, and yet -- cases are passed on to PCLU and my understanding is that there has to be a particular process of involving the NDPP in PCLU matters I am not sure the relevant legislation or regulations

but I am not sure whether they comply with this provision or not but they work hand-in-glove."[9] (my emphasis)

14.4.2. McBride should have verified the correct facts prior to making the reckless allegations which, on his own evidence, proved that he is not sure about the veracity and correctness of his allegations.

14.4.3. It is reckless and misleading for McBride to criticise the PCLU when, on his own version:

14.4.3.1. he does not know whether or not the proper process was followed prior to the PCLU investigating these matters. The matters complained of were properly, legitimately and lawfully referred for guiding the investigation and prosecution;

14.4.3.2. he is well aware that it is the function of the PCLU, *inter alia*, to guide investigations of priority issues.

14.4.4. McBride, in his evidence in chief, also canvassed the view that the PCLU should not have been involved in his criminal case. The relevant portion of his evidence reads as follows:

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9 Transcribed record: Day 84, 16 April 2019 page 114/136, line 23 to page 115 of 136, line 3

"MR ROBERT McBRIDE: The charges were withdrawn because according to the Prosecutor there isn't evidence to sustain the prosecution which obviously left us dumbfounded because we couldn't explain why we were arrested, and prosecuted if no evidence existed why it was the priority crimes litigation unit that was involve in the prosecution of the matter whereas the charges by every stretch of the imagination would amount to fraud …"[10]

14.4.5. To demonstrate that the evidence leader misconstrued the mandate of the PCLU, and that the allegations made by both McBride and Booysen are reckless and aimed at misleading the Commission, as they do not take into account the Omnibus Clause as set out below, namely:

"… or such other priority crimes to be determined by the National Director;" (my emphasis")

14.4.6. It is clear that McBride and Booysen have a clear understanding of an Omnibus Clause as, when it suits them, they rely on such clause, in particular, in relation to the Panday matter, which Booysen referred to as ***"also that nice little rider (sic) at the bottom that says any case that he head of IPID decide to allocate to IPID."*** [own emphasis]

10 Transcribed record, Day 81, 11 April 2019, page 68, lines 15 to 20

14.4.7. In fact, McBride is the one that abused the authority of his office for ulterior purposes, under the guise of Section 28 of the IPID Act, systemic corruption, as fully referred to in my affidavit pertaining to the cross-examination of both McBride and Booysen.

14.5. demonstrate that no evidence at all was put before the Commission to substantiate the averments persistently made that I am captured for corrupt and political purposes. Interestingly, general statements are made regarding acts and decisions taken by myself within the NPA to prefer charges against McBride, Booysen, Khuba and Sesoko, without identifying the particular persons, politicians and others who are alleged to be my handlers. In any event, I was not involved in the investigation of Booysen, save for giving a legal opinion as described in the relevant portion of this affidavit. From such an allegation relating to Booysen it is clear that, without having regard to the correct position, unfounded and malicious allegations are being made against me.

14.6. supplement my initial affidavits, which were submitted in support of applications for the cross-examination of McBride and Booysen. I have been advised by my legal team, which advice I accept, that in the initial affidavits I did not extensively address the allegations levelled against me;



14.7. address the allegations levelled against me implicit in the evidence of Khuba and Sesoko; and

14.8. address the request of the evidence leaders set out in an e-mail dated the 26th of July 2020, a copy of which is attached hereto, marked as annexure **"JPP3"**. At this juncture, it is critical that I indicate that, despite the fact that I was not involved in some of the matters, as clearly dealt with in the relevant sections of this affidavit below, I have addressed the request of the evidence leaders in full. The evidence leaders requested that in the supplementary affidavit I should address the matters set out below, namely:

14.8.1. The so-called SARS Rogue Unit;

14.8.2. The Cato Manor "hit squad" and particularly Booysen;

14.8.3. McBride, Sesoko and Khuba on charges of defeating the ends of justice, fraud and perjury and other charges;

14.8.4. Paul O'Sullivan and Sarah-Jane Trent;

14.8.5. Glynnis Breytenbach;

14.8.6. SAA; and

14.8.7. The Rendition matter.

15. In this affidavit I also, to a certain extent, deal with the conduct of the former National Director of Public Prosecutions, Mr Mxolisi Nxasana ("*Nxasana*"), relating to the rendition matter.

D. MANDATE OF THE NATIONAL PROSECUTING AUTHORITY (*"NPA"*)

16. Before dealing with the various complaints that were made against me by the "implicating" witnesses, expressly or by implication, it is quite important that the purpose, functioning and mandate of the NPA is clarified, to demonstrate that the averments made against me, are unsubstantiated and unfounded.

17. It is also important that the same clarification is offered for the purposes of elucidating the Commission itself. As I will demonstrate within the body of this affidavit, there are already on record some statements that underlie the glaring misconception that the fact that the implicating witnesses have had to face criminal charges is, by itself, evidence of state capture.

18. The National Prosecuting Authority (*"NPA"*) obtains its mandate in terms of Section 179 of the Constitution of the Republic of South Africa, Act 108 of 1996 ("*the Constitution*"). Section 179(1) establishes the NPA as a single prosecuting authority in the Republic of South Africa and structured in terms of an Act of Parliament. The Act of Parliament referred to is the National Prosecutions Authority Act, Act 32 of 1998 (*"NPA Act"*).

19. In terms of Section 179(2), the NPA has the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings.

20. The preamble to the NPA Act and Section 32(1)(a) of the NPA Act, in line with Section 179(4) of the Constitution, provides for the NPA to exercise its functions without fear, favour or prejudice.

21. The National Director of Public Prosecutions (*"NDPP"*) is the Head of the NPA and is appointed by the President. In such capacity, the NDPP shall have the authority over the exercising of all the powers and the performance of all the duties and functions conferred or imposed or assigned to any member of the NPA by the Constitution, the NPA Act, or any other law.

22. In terms of Section 32(1)(a), a member of the NPA shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith, without fear, favour or prejudice and subject only to the Constitution and the law.

23. Section 32(1)(b) provides that:

> *"Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise carrying out or performance of its, her or his powers, duties and functions."*

24. Section 41 provides that:

> *"41. Offences and penalties*

(1) Any person who contravenes the provisions of Section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment."

25. It follows from the above that the NPA has the sole preserve in instituting criminal proceedings against any person suspected of having committed an offence. Therefore, without fear, favour or prejudice, any person, regardless of his or her profile or standing, should be prosecuted if there is a reasonable prospect and/or *prima facie* evidence that such a person has committed an offence. No-one in South Africa is above the law.

26. As I have already indicated, the implicating witnesses have brought before the Commission unsubstantiated averments which seek to project me as an officer of the Court who abuses his position and authority with regard to prosecutions, to advance purposes that are ulterior to the mandate, functioning and purpose of the NPA. What is quite disturbing is that those averments are not only unsubstantiated but have been made without giving regard to the constitutional imperatives that define how the NPA is to be structured and operated, but also what considerations are to be taken in prosecutorial decisions.

27. It is important that one needs to guard against the NPA being hamstrung by popular sentiment canvassed, especially in the media, from executing on its constitutional mandate. While the witnesses complained, among others, that part of the strategy for state capture is that the targeted persons are paraded

in the media as bad and corrupt persons, or that their institutions are inefficient, they are the ones who actually went to the media and also came to this Commission, making serious allegations against me without any substantiation whatsoever. Nothing in their submissions tells this Commission exactly in which respects prosecutorial decisions taken against them, deviated from the legal and constitutional mandate of the NPA.

28. Furthermore, in their respective positions, the witnesses ought to know what avenues are available to anyone who is criminally prosecuted, where the prosecution ought not to be prosecuting them or have not followed legal prescripts that are applicable to the prosecution processes. It is not the case of any of the witnesses that they have pursued any particular avenue available in trying to obtain recourse for what they complain as an abuse of the prosecutorial powers of the NPA by me, when charging them criminally.

29. Section 179(5) of the Constitution empowers the NDPP to review a prosecutorial decision after following steps which are prescribed in that section. None of the witnesses makes out a case that an attempt was made then to have the NDPP review the prosecutorial decisions which they feel impacted unfairly, unnecessarily and adversely on them.

30. McBride, Sesoko and Khuba also ought to have known that even outside of the NPA, the Courts are available to review prosecutorial decisions where it is necessary. None of the witnesses here have approached the Court specifically for the review of the prosecutorial decision that they suggest I unfairly or unlawfully took against them.

31. Considering the imperative in Section 32(1)(b) of the NPA Act set out above, anyone who seeks to challenge the decision of the NPA to charge a person, should do so through the prescribed and/or available process, with proper substantiation.

E. MANDATE OF THE PCLU

32. The PCLU was established in terms of Proclamation No 46, 2003 published in the Government Gazette No 24876, of 23 May 2003, attached hereto, marked as annexure **"JPP6"** which sets out the duties and functions of the PCLU.

33. The mandate reads, *inter alia*, as follows:

> *"To exercise the powers, carry out the duties and perform the functions necessary,* ***within the Office of the National Director of Public Prosecutions as directed by the national Director and*** *–*
>
> *"(a) in particular to head the* ***Priority Crimes Litigation Unit*** *and to manage and direct the investigation and prosecution of crimes contemplated in the implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), and serious national and International crimes, which include acts of terrorism and sabotage committed under the Internal Security Act, 1982 (Act No. 74 of 1982), high treason, sedition, foreign military crimes committed by mercenaries, or such other priority*

crimes to be determined by the National Director;" (my emphasis)

(b) generally giving such advice ***or rendering such assistance to the National Director as may be required to exercise the powers, carry out the duties and perform the functions which are conferred or imposed on or assigned to him by the Constitution or any other law."***

34. The underlined portion in the quotation above is referred to as an Omnibus clause.

35. In this affidavit, I shall demonstrate what other criminal matters were referred to the PCLU by the NDPP. Once the NDPP has referred a matter to the PCLU, there is a legal obligation on the members of the PCLU to guide the necessary investigation. Until such time that the decision of the NDPP is reviewed and set aside, such decision is binding.

36. On the 27th of January 2004, the then NDPP referred the following categories of cases to the PCLU (Adv Ackermann). This was done by NDPP, Mr Bulelani Ngcuka ("*Ngcuka*").

37. All contraventions of the following Acts and all other offences connected thereto:

37.1. Non-Proliferation of Weapons of Mass Destruction Act No. 87 of 1993

37.2. National Conventional Arms Control Act No. 41 of 2002

37.3. Armaments Development and Production Act No. 57 of 1968

37.4. Regulation of Foreign Military Assistance Act No. 15 of 1998; and

37.5. Nuclear Energy Act No. 46 of 1999.

38. On the 7th of January 2008, the then NDPP, Adv Mokotedi Mpshe SC (*"Mpshe"*) referred the following cases to PCLU (to Advocate AR Ackermann SC):

38.1. The NDPP decided that contraventions of the following Acts are priority crimes which must be dealt with by the Priority Crimes Litigation Unit in terms of paragraph (a) of the Presidential Proclamation of the 24th of March 2003, issued under Section 13(1)(c) of the National Prosecuting Authority Act:

38.1.1. Non-Proliferation of Weapons of Mass Destruction Act, No 87 of 1993;

38.1.2. Nuclear Energy Act, No 46 of 1999;

38.1.3. National Nuclear Regulator Act, No 47 of 1999;

38.1.4. National Conventional Arms Control Act, No 41 of 2002;

38.1.5. Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, No 27 of 2006;

38.1.6. Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No 33 of 2004;

38.1.7. Protection of Information Act, No 84 of 1982;

38.1.8. Intelligence Services Act, No 65 of 2002;

38.1.9. The Second Criminal Law Amendment Act, No 126 of 1992;

38.1.10. All repealed versions of the above Acts in respect of which offences may still be tried in a court of law.

39. The NDPP also decided that the PCLU should deal with all other offences relating to specific contraventions of the above statutes, as well as all prosecutorial functions incidental to the management of investigations and prosecutions relating to the above contraventions.

40. The Truth and Reconciliation Commission (*"TRC"*) cases were also referred to the PCLU.

41. On the 4th of February 2015, when Adv Andrea Johnson (*"Johnson"*) was acting coordinator, the following additions were made to the mandate of the PCLU:

41.1. The Implementation of the Geneva Conventions Act, No 8 of 2012;

41.2. The Prevention of Combating and Torture of Persons Act, No 13 of 2013, but limited solely to offences that is committed outside the borders of the Republic of South Africa. This was done by Nxasana.

42. In this affidavit, I shall demonstrate to the Commission that all the matters that were referred to the PCLU were done so legitimately, properly and lawfully.

43. In making a determination, the NDPP is guided by, *inter alia*, the profile of the affected institution, the profile of the alleged perpetrator, the actual and potential impact that the alleged offence would have on the integrity and standing of the country. By way of demonstration, since its inception the following types of matters have inter alia beenreferred to the PCLU under the Omnibus Clause:

43.1. Disciplinary against Mr Terrence Joubert (Head of Security, NPA Offices KZN);

43.2. The allegations against the police in the Marikana Matter and specifically Section 6 of the Commissions Act against the then National Commissioner of Police Ria Phiyega – Perjury arising from her testimony during the Marikana Commission;

43.3. Murder of NUM Chairman – Prosecution of the assassination of the Chairman of the National Union of Mines in 2004;

43.4. Singh v Minister of Justice and Another – Mandamus for a *nolle prosequi* certificate by a Magistrate to privately prosecute senior NPA officials. [2009 (1) SACR 87 (N)];

43.5. Nokuthula Simelane matter - TRC matter given to Adv. Raymond Mathenjwa for prosecution;

43.6. S v Lotter and Pooe – A matter that deals with the interception and interruption of communication signals with a "grabber";

43.7. S v Tsepiso Moletsane – A senior State Security operative who leaked sensitive operational documents relating to the ANC Polokwane Conference

43.8. High profile Commercial matters, such as:

43.8.1. Hijacking of companies – State v Majali, Kalahari Resources [Majali v S (41210/2010) [2011] ZAGPJHC (19 July 2011);

43.8.2. Investigation into the fraudulent agreement purportedly entered into between David Cunningham King and the South African Revenue Services *SARS matter* (also known as *King III*). complaint by DC King *re*: alleged impropriety by Willie Hofmeyr, Jan Myburgh SC and Miles Carter: Silverton CAS 182/9/2010

43.8.3. Some Foreign Bribery matters, as well Anti-Corruption Task Team matters were attended to by some members of the PCLU, for instance Adv Chris MacAdam.

44. It is my firm belief that the aforesaid matters were correctly, legitimately and properly referred to the PCLU.

45. On the 18th of November 2015, the then Director of Public Prosecutions, Adv S K Abrahams (*"Abrahams"*), in terms of annexure **"JPP52"** hereto, the matters set out therein. The memorandum, *inter alia*, provides as follows:

> *"3. I have now referred the following matters to the PCLU which investigations and prosecutions must be managed and directed by the Acting Special Director:*
>
> *3.1 S v On-Point and Others;*
>
> *3.2 S v McBride & Others (Defeating the ends of justice);*
>
> *3.3 S v McBride*
>
> *3.4 The SARS 'Rogue Unit' investigations;*
>
> *3.5 The Nkandla Investigation;*
>
> *3.6 S v Breytenbach and Another (Deletion of information)*
>
> *3.7 S v Breytenbach & Another (Corruption)*

3.8 S v Booysen & Others (Cato Manor matter)

3.9 The South African Airways (SAA) matter

3.10 Investigations into alleged impropriety by NPA officials (SARS complaint re Selebi and Papparas matters)."

46. Below I fully demonstrate that the prosecutions complained off were not politically driven or conducted for a corrupt purpose. I further address the matters the evidence leaders requested me to deal with.

F. PROCESS FOR PROSECUTORAL DECISION

47. In certain instances where experienced prosecutors are directly involved with guiding an investigation in relation to a specific matter, the prosecutors prepare a memorandum and/or presentation to management for consideration and approval. In such an instance, management would not necessarily rely on a docket that could consist of numerous lever arch files. If the official to whom the memorandum or representation is made, is satisfied with either the content of the memorandum or the presentation, the relevant official will approve the memorandum.

48. In terms of Section 24(3) of the NPA Act, a consultation must be held with the relevant DPP of the area concerned.



G. BASIS FOR ALLEGATIONS OF CAPTURING

49. It is my case that the basis on which reliance is placed for making allegations that I am captured for political and corrupt reasons, and generally, is without any factual or legal basis. Such allegations are merely made to attack my professional integrity, reputation and good name. All persons that levelled unfounded allegations against me before the Commission, have a subjective interest to stop the prosecutions against them.

50. It is critical to indicate that despite such serious allegations being levelled against myself, no criminal charges were levelled against me, and also no complaint was directed to the President, the Minister and/or the National Director of Public Prosecutions (*"NDPP"*) by McBride, Khuba and Sesoko. McBride, Sesoko and Khuba should be aware that if they are not happy with a prosecutorial decision, they are constitutionally at liberty to approach the NDPP with a request to review the prosecutorial decision.

51. It is not sufficient to merely make press statements, write books and articles alleging that I am captured. McBride, Booysen, Sesoko and Khuba should have taken the necessary legal steps to assert their rights against me.

52. The unfounded and malicious allegations levelled against me received the attention of some civil organisations to the extent that a letter was written to the President, and an urgent application was launched, which was ultimately struck from the roll due to lack of urgency, as detailed below.



53. As referred to in annexure "SA2" to the answering affidavit in the matter of Helen Suzman Foundation (*"HSF"*) and another v The President of the Republic of South Africa, Case Number 87643/216, in the High Court of South Africa, Gauteng Division Pretoria, deposed to by Shaun Abrahams on the 15th of November 2016, HSF and Freedom Under Law (*"FUL"*) addressed a letter to the President on 1 November 2016, in terms of which they requested the President to suspend me, pending an enquiry into my fitness to hold office. Prior to the President responding, an urgent application was launched. In response to the above letter, I made representations, which representations already form part of the record as an annexure to my initial affidavit.

54. It is critical to indicate that at the time that Booysen testified, he knew of the existence of such representations and he did not bother to read it to determine whether or not there was any political interference.

55. The urgent application launched by FUL and HSF on 9 November 2016, was struck from the roll due to lack of urgency. This application was not pursued further.

56. Mr Johan van Loggerenberg (*"JVL"*) lodged a complaint with the National Director of Public Prosecution, which was referred to Advocate Smith (*"Smith"*), the then Director of Public Prosecution, North West, for investigation. It was prudent for such a complaint to be dealt with by a person who was not attached to either the Office of the NPA or the Office of the NDPP, Gauteng, where I am based. A copy of the alleged complaint is attached hereto, marked as annexure **"JPP4"**.

57. The investigation by Smith concluded that there was no substance or merit in the allegations levelled against me. A copy of the outcome of the investigation is attached hereto, marked as annexure **"JPP5"**.

58. If McBride, Sesoko, Khuba and Booysen were convinced that there was merit and truthfulness in their allegations, then it was expected of them to have ensured that the conduct complained of, was properly dealt with.

59. A careful perusal and analysis of the evidence presented before the Commission and documentation reveals that the alleged basis for insinuating that I was captured, are the following:

59.1. Suspensions;

59.2. Initiation of disciplinary process against officials in the employment of IPID, *inter alia*, McBride, Khuba, Sesoko, Viceroy Maoka (*"Maoka"*) and Moses Dhlamini (*"Dhlamini"*);

59.3. Political agenda;

59.4. Smear campaigns in the media;

59.5. The preferring of criminal charges against, *inter alia*, McBride, Khuba, Sesoko, Pillay, Minister P Gordhan (*"Gordhan"*), Booysen, and the failure to prosecute persons who allegedly have political connections, where the merits for prosecution are strong. This aspect is extensively addressed in this affidavit under the relevant section.

60. Below, I separately address the various allegations set out above.

60.1. **Suspensions**

60.1.1. This is a labour relations issue between employer and employee, which does not fall within the domain of prosecution.

60.1.2. The objective evidence, be it oral or documentary, presented before the Commission, did not demonstrate or establish that I was involved in the suspension of any of the officials, be it in the employment of IPID or SAPS.

60.2. **Disciplinary Process**

60.2.1. This is a labour relations issue between employer and employee, which does not fall within the domain of prosecution.

60.2.2. I was not involved in the disciplinary process of any person in the employment of IPID or in the instance of Booysen.

60.3. **Political Agenda**

60.3.1. No evidence was tendered before the Commission setting out the names of the politicians on whose behalf a political agenda was allegedly driven. It is critical to indicate that such details are not set out in the main and supplementary

affidavits of McBride, Khuba, Sesoko and also not in their evidence.

60.3.2. The same argument applies to Booysen in that, in all his affidavits and in his testimony, such details are not set out. It is not sufficient to merely make general allegations which are defamatory to a person against whom such allegations are made, without substantiating such allegations.

60.4. **Smear Campaign In The Media**

60.4.1. No evidence was tendered before the Commission that I am one of those persons that ran a smear campaign in the media against any of the witnesses that testified before the Commission.

60.4.2. The contrary is that a smear campaign was launched against me by Jacques Pauw relating to the Cato Manor matter in which I had no part to play, save for submitting a legal opinion as referred to below.

H. RENDITION MATTER

61. This matter was never referred to and dealt with by the PCLU. Any insinuation expressly or impliedly that PCLU dealt with this matter is mischievous and is solely aimed at placing the PCLU in a bad light.

62. However, in order to place in context the charges against McBride, Khuba and Sesoko in the charge preferred against them for defeating the ends of justice and fraud ("CAS2454"), it is necessary to fully set out material facts pertaining to the rendition matter.

63. The relevant units and/or divisions of the NPA that dealt with that matter or were in possession of the docket are as follows, in sequence:

63.1. The Special Projects Division (*"SPD"*) in the office of the NDPP. This unit guided the investigations. The relevant Advocates who dealt with the matter were Mosing, who was the Head of that unit, and his colleague, Advocate Billy Moeletsi (*"Moeletsi"*);

63.2. The matter was referred to the Director of Public Prosecutions: South Gauteng (*"DPP:SG"*) in February 2014. The Advocates who dealt with the matter and/or had possession of the docket are Advocates Chauke, the DPP:SG (*"Chauke"*) and Zacharias Johannes Van Zyl SC (*"Van Zyl"*), the Deputy Director: Public Prosecutions (*"DDPP:SG"*);[11]

63.3. The NDPP, Nxasana when the docket was delivered to him on the 13th of April 2014;[12]

63.4. The Director of Public Prosecutions: North Gauteng (*"DPP:NG"*). The matter was referred to that office on the 13th of January 2015. The

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11 See Memorandum dated 24th of February 2014 from Mosing to Jiba and Chauke, attached hereto, marked as annexure **"JPP7"**, and a memorandum dated 14th of February 2014 from Mosing to Chauke, attached hereto, marked as annexure **"JPP8"**

12 McBride's supplementary affidavit page Y7-RM-SUP-027 paragraph 47.

Advocates who dealt with the matter and/or had possession of the docket are Advocates Sibongile Mzinyathi (*"Mzinyathi"*), the DPP:NG and George Baloyi (*"Baloyi"*), the Deputy Director: Public Prosecutions (*"DDPP:NG"*). Mzinyathi and Baloyi made recommendation on the 13th of March 2015 and sent the docket back to Nxasana;[13] and

63.5. On the 1st of April 2015, Nxasana sent the docket back to Chauke, when Nxasana sent it there on the 1st of April 2015.[14]

64. Since I was never involved in the rendition matter, I rely on the documents obtained from the following sources:

64.1. My involvement in the matter where Khuba, McBride and Sesoko were charged with defeating the ends of justice;

64.2. Documents or information furnished to me by Mosing, who, at the time, was the Head: Special Projects Division, and was guiding the investigation with Advocate Billy Moeletsi (*"Moeletsi"*). A copy of Mosing's confirmatory affidavit is already attached hereto, marked as annexure **"JPP2"**;

64.3. Documents and/or information received from prosecutors who were involved in some of the matters under discussion in this affidavit, which matters are set out in the e-mail received from the evidence

13 Paragraphs 3.2.2.4 to 3.2.2.6 at page 32 of the Werksmans report.
14 Paragraph 3.2.2.8 at page 33 of the Werksmans report.



leaders dated the 25th of July 2020, attached hereto, marked as **"JPP3"**; and

64.4. Documents received by my legal representatives from the Commission and or accessed on the Commission's website.

Background of the referral of the investigation to the IPID

65. According to Ms Jenny Irish-Qobosheane, the then Civilian Secretariat for Police (*"Secretariat"*), as set out in her affidavit deposed to on the 17th of February 2014. A copy of her affidavit is attached hereto, marked as **"JPP9"**. In annexure **"JPP9"**, the Secretariat states that she first became aware of the allegation of the rendition of Zimbabweans when, on the 22nd of October 2011, she saw an article in the Sunday Times newspaper. The following then transpired:

65.1. The then Minister of Police, Minister Mthethwa was not available at the time the articles were published and on his return to office, she brought the matter to his attention.

65.2. Minister Mthethwa requested a detailed response from the Directorate of Priority Crimes Investigation ("DPCI") to be submitted in writing.

65.3. Two official responses were received in the form of information notes addressed to Minister Mthethwa, first signed by the Head of the DPCI on the 25th of November 2011, and the second on the 8th of December 2011.

65.4. In addition to the information notes to Minister Mthethwa, two official responses to Parliamentary questions were submitted to Minister Mthethwa. The first was submitted on the 10th of November 2011 and signed off by the Acting Head of the DPCI, Major General Meiring (*"Meiring"*) and the then Acting National Commissioner of Police. The second note was submitted on the 29th of November 2011 by the Head of DPCI Lieutenant General Dramat (*"Dramat"*) and the Acting National Commissioner of Police.

65.4.1. Based on the different information furnished in respect of the alleged renditions, Minister Mthethwa instructed the Secretariat to conduct an assessment of the information furnished to determine whether:

65.4.1.1. there was any substance to the allegations; and

65.4.1.2. there was any evidence that the South African Police Service (*"SAPS"*) might have *"violated international laws and procedures and/or South African laws and procedures..."*.

65.5. The Secretariat conducted an assessment of the information furnished by the SAPS, government departments, and a report prepared by Crime Intelligence (which dealt with allegations against the DPCI including alleged deportations/rendition). The Secretariat also received four Warrants of Detention and four Notification of

Deportations involving four Zimbabwean nationals and these were e-mailed to her by Dramat.

65.6. There were inconsistencies between the information made available to the Secretariat, and the Secretariat's interaction with the officials of the Department of Home Affairs, pertaining to how events unfolded as submitted by the DCPI. As a result of such inconsistencies, the Secretariat recommended that the matter be investigated by a retired judge or the IPID.

65.7. After recommending as aforesaid, Minister Mthethwa instructed IPID to institute an investigation and assess whether any criminal activity existed.

65.8. The Secretariat then submitted her report and supporting documents to IPID.

66. It is unknown to me when the Secretariat finalised her assessment and the date when she submitted her report to the IPID. Based on the date that the Secretariat became aware of the matter, and the dates of the information notes submitted to Minister Mthethwa, the last being the 29th of November 2011, it is ineluctable that the Secretariat may have concluded such assessment and report during the course of 2012. According to Khuba's main affidavit, Khuba and Francois Beukman (*"Beukman"*) met with the Secretariat in July 2012 and that may be when the Secretariat had finalised her report.

67. I also have no knowledge of when Khuba commenced with the investigation. Khuba alleges that Sesoko informed him that Khuba will be appointed to conduct the investigation involving the rendition of Zimbabwean nationals around July 2012. Khuba travelled to Pretoria to attend a meeting between the Secretariat and the former Executive Director of IPID, Beukman. At that stage, they were not handed the docket, they were told to hold off the investigation, on the alleged instructions of Minister Mthethwa. On the 23rd of October 2012, Mr Sesoko informed Khuba that the then Acting Executive Director, Ms Koekie Mbeki (*"Mbeki"*), had received instructions to now proceed with the investigation. Khuba then assembled his team of investigators.[15]

The crux of the testimony of Khuba, Sesoko and McBride's testimony pertaining to the preparation of the report dated 18 March 2014

68. Before I deal with reports prepared by Khuba and the memoranda drawn by Mosing, it is apposite that I mention that the crux of the testimony of Khuba, Sesoko and McBride before the Commission is that the report of the 18th of March 2014 is the final report and not the one dated the 22nd of January 2014. They allege, *inter alia*, that:

68.1. Sesoko was not involved in the production of the reports prior to that of the 18th of March 2014 because Mbeki instructed Khuba not to involve Sesoko in the investigation and, thus, Sesoko never had sight of the report dated the 22nd of January 2014;

15 Khuba's main affidavit, page HIK004 paragraphs 12 to 14.

68.2. In any event, the investigations were not yet complete;

68.3. Khuba was pressured into signing the report dated the 22nd of January 2014 by Mosing.; and

68.4. As a result, McBride instructed Sesoko and Khuba to finalise the investigation, review the evidence already gathered at the time of his appointment, and prepare a final report.

69. I have been advised by Mosing, and verily believe, that he did not pressurise Khuba to sign the report at any stage.

70. In dealing with the reports prepared by Khuba and memoranda drawn by Mosing, I want to demonstrate that the testimony referred to above is inaccurate. Khuba, Sesoko and McBride have not taken the Commission into their confidence and thus the allegations levelled against me are unfounded.

71. It is my respectful contention that the objective facts and documents I received from Mosing demonstrate that it is incorrect that Sesoko was not in any way involved or updated about the investigations, save for facilitating and/or accompanying Khuba to the interview with Dramat and Sibiya. Sesoko received, via e-mail, a report by Khuba on the 23rd of January 2014, to forward to the Secretariat. The information contained in the documents referred to in this affidavit on which reliance is placed, cast a serious doubt on the allegations that Khuba was instructed not to involve Sesoko in the investigation.

72. One such fact to demonstrate that Sesoko was involved and/or knew and/or had sight of more than what he alleges in his affidavit and testimony before the Commission, is that as early as the 15th of April 2013, almost three months before Khuba prepared his first report dated the 2nd of July 2013, Sesoko and Khuba received an e-mail from Nakiseni Mulaudzi (*"Mulaudzi"*), from Limpopo IPID. Attached to that e-mail was the statement of Lieutenant Colonel Ndanduleni Richard Madilonga (*"Madilonga"*). A copy of this e-mail is attached hereto, marked as annexure "**JPP10**". On this e-mail, there is a manuscript inscription which reads as follows:

> "*Sesoko received statement on 8/4/13 whereas it was only sent to me on 15/4/13.*"

73. If Sesoko was only involved in assisting Khuba in attending interviews with Dramat and Sibiya, Sesoko would not have received this statement, particularly at such an early stage of the investigation. The only plausible inference to be drawn from Sesoko being e-mailed such a material witness statement, is that Sesoko was either involved, or kept abreast of the investigation, as Khuba's supervisor.

74. It is common cause that Madilonga was based at Beit Bridge border post and that he was the one who phoned Dramat, informing him that there were Zimbabwean police who said they came to see Dramat. This statement of Madilonga is corroborated by two other statements of his two superiors. The

first is Colonel Dovhani Sharon Radzilani ("*Radzilani*")[16], who was the direct supervisor of Madilonga. When Madilonga informed her of the Zimbabwean police's request to be permitted entry to see Dramat she told him to speak to Brigadier Joseph Makushu ("*Makushu*").[17] The second is Makushu, who stated that he received a call from Madilonga, asking permission to permit the Zimbabwean police to enter, as they said they are going to see Dramat. Makushu then informed Madilonga to phone Dramat.

The reports prepared by Khuba and the memorandums prepared by Mosing pertaining to the progress of the investigation

75. According to Mosing, Khuba prepared five reports, dated as follows:

75.1. 2 July 2013, addressed to Mbeki, a copy of that report is attached hereto, marked as annexure **"JPP11"**;

75.2. 4 September 2013, addressed to Mbeki, a copy of that report is attached hereto, marked as annexure **"JPP12"**;

75.3. 22 October 2013 a copy of that report is attached hereto, marked as annexure **"JPP13"**;

75.4. 22 January 2014 a copy of that report is attached hereto, marked as annexure **"JPP14"**;

16 A54 in the rendition report of 22 January 2014 at page 10.
17 A53 Ibid.

75.5. 18 March 2014 a copy of that report is attached hereto, marked as annexure **"JPP15"**.

76. Mosing further informed the NDPP that after Khuba submitted each of the abovementioned reports, he in turn prepared memoranda in order to give a progress report to either the National Director of Public Prosecutions (*"NDPP"*) or Deputy National Director of Public Prosecutions or both. Mosing also prepared a memorandum to Chauke, who was the DPP:SG when the docket was referred to the latter to make a prosecutorial decision.

77. In discussing the different stages at which Mosing prepared the progress report memoranda, I may digress to indicate Sesoko's involvement. I do so to maintain, as far as practicable, the date chronology of the investigation and IPID reports.

78. Mosing prepared the following memoranda as progress reports to the NDPP and DNDPP.

Report dated 2 July 2013 and memorandum of 7 July 2013

79. In respect of the report dated 2 July 2013, Mosing prepared a memorandum dated 7 July 2013, addressed to Advocate Jiba *("Jiba")* who at the time was the Acting NDPP. A copy of that memorandum is attached hereto, marked as annexure "**JPP16**". In that memorandum, Mosing sets out the following:

79.1. background facts of how the operation pertaining to the rendition of the Zimbabwean nationals was conducted as well as the ultimate unlawful repatriation of some of these Zimbabwean nationals;

79.2. Discussion of the facts and the statements obtained, as well as the need to issue Section 205 subpoenas for the cell phone records and an expert analysis thereof in order to indicate the involvement of all police officials including the office of Dramat and Sibiya in the operations. That a major development had been made when a statement was obtained from a senior TOMS member who disproves the version submitted by the Hawks, in that he was instructed to provide escort services to the Hawks in transporting the victim arrested on the 23rd of November 2010 and the victim has since not been seen since taken to the border.

79.3. The outstanding investigation. Mosing stated that a lot of investigations are still outstanding. For example:

79.3.1. Statements surrounding the events of second and third operation;

79.3.2. Cell phone records need to be analysed to prove the presence or not of senior Hawks commanders;

79.3.3. Communications with Dramat regarding the carrying out of the operation through cell phone records analysis; and

79.3.4. Records of the Department of Home Affairs.

79.4. Recommendation, that the investigations be completed.

79.5. It is apposite to mention that the report of Khuba also had similar issues noted as outstanding investigations and had no recommendations. It recommended possible charges.

Report dated 4 September 2013

80. Khuba prepared a further report dated the 4th of September 2013. This report is much more detailed than the one prepared dated the 2nd July 2013. It, *inter alia,* sets out the following:

80.1. Background and summary of the allegations;

80.2. The available evidence:

80.3. Statements from independent witnesses;

80.4. Statements from members at Orlando Police Station;

80.5. Statements of Home Affairs officials;

80.6. Statements of members of SAPS Limpopo;

80.7. Statements of TOMS members in Gauteng who participated in the operation;

80.8. Statements of members of TRT who assisted in the arrest;

80.9. Statements of crime intelligence members who traced and arrested Gordon Dube and Johnson Nyoni;

80.10. Statements of Diepsloot SAPS members regarding Gordon Dube;

80.11. Documentary evidence:

80.12. Extracts from Occurrence Books and SAPS 14 registers;

80.13. Documentary evidence from DPCI offices;

80.14. Evidence from captain Maluleke's seized laptop;

80.15. Evidence from Home Affairs;

80.16. Evidence in terms of section 205 of the Criminal Procedure Act *("CPA");* and

80.17. Analysis of evidence and findings.

81. Recommendation that Generals Dramat and Sibiya together with other police officers including Maluleke be charged.

82. It bears noting that this report does not state what the outstanding investigations were at that stage.

83. Khuba emailed this report to Mosing on the 18th of September 2013. A copy of the e-mail is attached hereto, marked as annexure "**JPP17**".

22 October 2013 report

84. This report looks almost identical to the report dated the 4th of September 2013, save that it has various manuscript inscription made by Mosing. A copy of this memorandum is attached hereto, marked as annexure "**JPP18**". For instance, his inscriptions deal with, *inter alia,* the following:

84.1. The report still has a date for the draft prepared for the Acting Executive Director, and that date is 2013/09/04 and is circled;

84.2. With regard to the evidence referred to in the report, the inscription is that the annexures be numbered, such as A1, 2, 3 and so forth. Mosing informed me that the aim was so that if a statement goes missing or is removed from the docket this can be discovered by reference to the report and therefore make it difficult to remove evidence from the docket as it will not correlate with the summary of the report. This is important as it serves as a mechanism to prevent the destruction of evidence from the docket and is therefore a recordal of the contents of the docket.

84.3. Two instances where Mosing made a manuscript inscription that those aspects were not included in the September report. Those aspects are:

84.3.1. A statement by Mr Mngwenya. The inscription by Mosing is that "*not in Sept report check date of statement*". *This appears at page 14 of the report.*

84.3.2. A heading dealing with outstanding investigations. Again, Mosing made a manuscript inscription that "*not in sept report to AED*".

84.4. According to this report, the outstanding investigations were:

84.4.1. Warning statement of General Dramat, General Sibiya, warrant officer Makoe and Constable Leburu; and

84.4.2. Cellphone data interpretation report and mapping.

Memoranda dated 9 November 2013 and 12 November 2013 and pertinent events around that period (the unsworn statement of Dramat)

85. Mosing addressed a memorandum dated the 9th of November 2013 to Nxasana and Jiba. A copy of the memorandum is attached hereto, marked as annexure "**JPP19**". The purpose of the memorandum was to provide detailed report on the progress of the investigation particularly in light of the statement that had been received from Dramat, where he made allegations of "*witch-hunting*" and the speculation and comments in the media following a leak of information in the docket to the media. In the memorandum, Mosing summarises the evidence and then sets out the outstanding investigations, which at that stage, *inter alia*, were the following:

85.1. The reports of the analysis of cell phone records;

85.2. Report on the analysis of vehicle tracking information of members;

85.3. Maluleke was requested to provide a warning statement and he requested written questions, which were furnished and he had still not responded;

85.4. Dramat was approached to provide his warning statement. He requested an opportunity to consult his legal representatives. He was afforded an opportunity and thereafter he submitted an unsworn statement wherein he alleged that the investigation is a "*smear campaign*" and wanted to be "*furnished with a list of questions and proper and transparent summary of the merits and demerits against him.*"

86. The unsworn statement of Dramat, dated the 23rd of October 2013 under cover of his attorney's letter dated the 24th of October 2013, referred to above, is attached hereto, marked as annexure "**JPP20**". In that statement, Dramat, *inter alia,* deals with the following:

86.1. He was advised that he is being investigated in a matter surrounding the "Zimbabwe rendition" on 12 September 2013;

86.2. He sets out a long personal background and approach to the matter;

86.3. The integrity of DPCI;

86.4. He state that, with regard to his right to *audi alteram partem*, that he will apply himself if the IPID presents him with "*a list of questions and proper and transparent summary of the merits and demerits against*" him; and

86.5. He requests the NDPP himself or a duly delegated senior advocate who has not been involved in any of the matters which his unit has or is dealing with be involved in the decision-making process whether there is merit in pursuing a prosecution against him.

87. The unsworn statement from Dramat was received on the 24th of October 2013. At that stage the IPID's latest report was dated the 22nd of October 2013.

88. On the 31st of October 2013 at 12:53:08, Khuba wrote an e-mail to Sesoko requesting advice on what questions to put to Dramat. A copy of the email is attached hereto, marked as annexure "**JPP21**". I say this because, the attachment to the email states "*Questions for Lt General Dramat.docx(66.9KB).*"

89. On the same day, the 31st of October 2013, at 15:17:02 Khuba wrote another email to Sesoko. A copy of this email is attached hereto, marked as annexure "**JPP22**". Again, the attachment to that email is "*Questions for Lt General Dramat.docx(67.7KB).*" I also attach hereto, marked as annexure **"JPP23"**, a copy of the request for warning statement of Dramat, in compliance with his request in his unsworn statement of the 23rd of October 2013. It is apposite to

note that at page 3 of the copy of the request Dramat was informed that should he decide not to exercise his right to remain silent, his response should reach Khuba no later than the 11th of November 2013.

90. Mosing confirmed that Sesoko assisted Khuba to prepare the questions for Dramat whereafter Sesoko and Khuba sent him the questions for Mosing to advise them whether appropriate questions were set out in the document.

91. On the 12th of November 2013, a day after the deadline set for Dramat as mentioned above, Mosing addressed another memorandum to Nxasana and Jiba. A copy of this memorandum is attached hereto, marked as annexure "**JPP24**". Again, Mosing states that the purpose of the memorandum is to provide a detailed report on the progress of the investigation. In this memorandum Mosing, *inter alia,* states the following:

91.1. Dramat furnished an unsworn statement;

91.2. Background of the matter and attaches his previous memoranda;

91.3. Summary of <u>further evidence</u>;

91.4. Some outstanding investigations, which *inter alia* include:

91.4.1. Reports of analysis of cell phone records;

91.4.2. Report of vehicle tracking information of the members involved during the operation;

91.4.3. Maluleke has still not answered questions he requested;

91.4.4. Dramat furnished an unsworn statement. I reiterate that when Mosing prepared this memorandum the deadline set for Dramat to answer the questions he requested had passed the date being 11 November 2013.

92. On 27 November 2013, Khuba addressed an email to Mosing stating:

"We can meet tomorrow and finalise. I left a voice message on your phone regarding the meeting. I also sent the warming statement of General Dramat responding to questions."

Report of 22 January 2014

93. This report is somewhat similar to the report prepared in October 2013. However, it is clear that Khuba had not numbered the annexures as Mosing requested. At page 2 of the report there is a manuscript inscription where Mosing wrote *"now include statement numbers"*. It appears that the statement numbers were included after reference to the name of the witness, whereas usually it is the statement number that precede the witness name. I must also mention that not all witness statements were numbered, for example at pages 21, 22 and 24. This report also includes the statement of Khuba page 25 and Mosing wrote in manuscript "*new I/O statement*".

94. I note from the summary of Khuba's statement, at page 25 of the report, that he appointed several investigators from Limpopo Provincial office, and these

individuals include one N Mulaudzi. These investigators worked under his guidance and took instructions from Khuba as the team leader. I mention this because, I believe that this N Mulaudzi is the one who sent an email to Sesoko, on 8 April 2013, and carbon copied (cc) Khuba. Since Mulaudzi was acting on direct instructions from Khuba, the latter must have instructed him to send the statement of Madilonga to Sesoko. I reiterate that it is plausible to infer from these objective facts that as early as April 2013 Sesoko was kept abreast of the investigations and thus his testimony that he was excluded on the instructions of Mbeki is questionable.

Memorandum of 14 February 2014

95. On 14 February 2014, Mosing addressed a memorandum to Jiba and Chauke. In the memorandum, he *inter alia*, deals with the following:

95.1. The purpose of the memorandum is to provide a summary of the facts and evidence for the DPP:SG to enable him to make an informed decision regarding prosecution of the matter;

95.2. The investigation has been finalized and a report from IPID submitted for considering merits of the case and encloses a case docket comprising several lever arch files;

95.3. Summarises the facts and evidence;

95.4. Analysis;

95.5. Challenges, which included:

95.5.1. The case involved police and much of the documentation is still within their domain and they are not cooperative;

95.5.2. Involvement of senior police officers could not be established beyond reasonable doubt, more specifically Sibiya who it is alleged was present during the first two operations, but the evidence is not conclusive. It is unlikely that the operations were carried out without Sibiya's knowledge. "*The cell phone evidence does not corroborate his presence at the operations*". However, this can be looked at again more closely after an expert witness has been procured to analyse the cell phone data. This could not be done by the time of writing the report despite it being pointed out to the investigating team.

96. As stated above, the memorandum of 14 February referred to a docket enclosed for consideration by Chauke. I also attach hereto two copies of a one-page memorandum, marked as annexures "**JPP25**" and "**JPP26**" respectively, from Mosing to Chauke, where the former lists the contents of the docket (files). The first copy is one indicating that the docket was received on 14 February 2014.

97. The second copy has manuscript inscriptions. These inscriptions were made by Van Zyl. I know this because in the docket of defeating the ends of justice,

Van Zyl deposed to an affidavit confirming that he is the one who made these inscriptions and explained that they were his contemporaneous notes. I revert to this memorandum when I deal with the affidavit of Van Zyl later in this affidavit.

98. It is clear from a perusal of the September and October 2013 reports that the cell phone evidence pertaining to Sibiya, Maluleke, Neethling and Madilonga were available. What was outstanding had always been an analysis thereof by an expert.

Emails of 17 and 18 February 2014- Chauke, Jiba and Mosing

99. Chauke received the docket on 14 February 2014 as evidenced by the signature acknowledging receipt. After receipt of the docket, he wrote an email on 17 February 2014 at 03:39PM to Jiba and Mosing reminding them to furnish him with a certificate in terms of section 22 of the National Prosecuting Authority Act 32 of 1998 ("*NPA Act*") in order to enable his office to deal with the matter referred "*last week*". Jiba thanked him for the email on the same day at 03:39PM. Mosing wrote an email to Jiba on 18 February 2014 at 11:01:48 attaching the centralization directive memo and centralization authorization-Diepsloot. A copy of these trailing e-mails is attached hereto, marked as annexures "**JPP27**".

Memorandum of 18 February 2014

100. On the 18th of February 2014 Jiba wrote a memorandum to Nxasana, a copy of the centralization directive memorandum, dated the 18th of February 2014,

is attached hereto, marked as annexure "**JPP28**". In this memorandum Mosing indicates that its purpose is to request the issuing of a directive in terms of section 22(3) of the NPA Act for the offences in the subject matter to be investigated and tried within the jurisdiction of DPP: South Gauteng. Mosing further mentions that the docket has been submitted for decision under cover of a report dated 22 January 2014 as well as his memorandum. Of importance Mosing explains that although the events took place primarily at Diepsloot, which according to the "current demarcation" falls under DPP North Gauteng, it is envisaged that this will be changed during the course of the year and thus placing Diepsloot under the jurisdiction of the DPP: South Gauteng. Indeed, this was changed with effect from 1 December 2014. I attach hereto a copy of the Government Notice No 861 of 31st of October 2014, marked as annexure "**JPP29**".

101. A draft copy of the Directive in terms of section 22(3) of the NPA Act that Mosing prepared for Nxasana's signature is attached as "**JPP30**".

Warning statement of Sibiya

102. On 13 February 2014 Khuba sent an email to Sibiya requesting his warning statement. A copy of that request and the email is attached as **"JPP31"** and **"JPP32"** respectively. On page 3, heading 5, the request state that if Sibiya decides not to exercise his right to remain silent, his response must reach Khuba not later than 20 February 2014.

103. Similar to Dramat, Sibiya submitted unsworn statements. The first is a one paged document dated the 20th of February 2014, a copy is attached as "**JPP33**". The second is a two paged unsworn statement dated 26 February 2014. A copy is attached hereto, marked as "**JPP34**". In this document Sibiya complains about the conduct of Khuba and alleges that Khuba attempted to influence his subordinates to make false statements about him, as well as a covering letter from Sibiya's attorneys dated the 21st of February 2014, a copy is attached as "**JPP35**".

104. On 26 February 2014, at 02:23PM an email from the Deputy Provincial Commissioner of the DPCI's secretary was sent to Tshiamo Mahibila (*"Mahibila"*) at IPID attaching a response to questions posed by IPID to Sibiya. Mahibila forwarded the above email to Sesoko, Netsianda and Shuma. Sesoko forwarded the email to Khuba on 27 February 2014 and Khuba forwarded this email to Mosing on 28 February 2014. A copy of these trailing emails is attached as "**JPP36**".

105. On 28 February 2014, Mosing replied to Khuba's email and requested Khuba 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*" (my emphasis). A copy of this email is attached as "**JPP37**".

106. This email from Mosing is self-explanatory. It did not say that Khuba must retrieve the docket but "***file** the evidence in the docket*" and in future forward the evidence to him.

Appointment of McBride as Executive Director of IPID and events leading to the preparation of the report dated 18 March 2014

107. McBride assumed office on 3 March 2014. McBride, Khuba and Sesoko all testified that immediately after McBride's appointment he requested to be briefed on all high-profile matters, including the rendition matter.

108. Khuba testified that Sesoko telephoned him and informed him that McBride requires that Khuba attend the IPID national office, at Pretoria, to brief him about his investigation of the rendition matter. Khuba stated that he then emailed Sesoko the report in order for Sesoko to furnish same to McBride for McBride's attention so that when they met he would be well aware of the facts of the case.[18]

109. Sesoko testified that indeed he telephoned Khuba and informed him that McBride instructed him to phone Khuba and request that he attend the Pretoria office to brief McBride. Sesoko also confirms that Khuba emailed a report to furnish McBride for preparation of the briefing. However, he does not recall whether he gave McBride a hard copy or he emailed the report to McBride.[19]

110. This is relevant as it casts serious doubt on McBride's assertion that he never saw the first report and only saw the "final report" that Sesoko and Khuba

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18 Annexure **"HIK2"** to Khuba's transcript of the Werksmans interview conducted on 27 March 2015 at page 34, lines 23-25; page 44, line 1-2 and line 22-25; page 45 line 1-5 and page 46 line 4-11

19 Annexure **"MS1"** to Sesoko's sworn affidavit, deposed on 16 July 2019, page MS-029 line 16-25 and page MS-030 lines 6.

prepared and even then, his involvement was correcting the language and nothing more. I will demonstrate at the hearing that McBride's assertion in this regard is improbable. Even Sesoko at the beginning of the interview with Werksmans stated that he knows nothing about the two reports, he only knows one[20] but later had to admit that Khuba emailed a copy and he gave same to McBride.

111. Khuba briefed McBride on the rendition on 5 March 2013 and in his interview with Werksmans Khuba stated that he "*could pick up that he [McBride] had knowledge of it [the report].*[21] On this day, Khuba informed McBride that after he was appointed as the investigator on the rendition matter, Mbeki instructed him not to involve Sesoko on the investigation but rather work with Moukangwe from Crime Intelligence Gathering ("*CIG*").

112. The evidence of Sesoko and Angus confirm that Khuba first briefed McBride on 5 March 2014. Angus testified that McBride phoned him on 5 March 2014 to meet with him the next day.[22] Angus was in any event in Johannesburg on 5 March because IPID officials had a meeting with the Police Secretariat around that period. Angus arrived at 08:00 in the morning on the 6th of March 2024 to meet with McBride, as requested. The latter informed him that he wants Angus to ascertain that the investigation was procedural and thorough. It was also to ascertain that he obtains a statement of Mbeki and interview Khuba and Sesoko. Angus indicated that he was feeling uncomfortable and

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20 Ibid page MS-025 lines 7-10.

21 Annexure **"HIK2"** to Khuba's transcript of the Werksmans interview conducted on 23 April 2015 at page 4 line 25 to page 5 line 1; page 6 line 17-21.

22 **"A4"** affidavit of Glen Angus filed in the docket CAS 2454 paragraph 5 and 6.

that the best approach is to request Khuba and Sesoko to provide him with a brief on their approach and direction and that once that was done, a decision could be made on the need for such interviews.[23] On that same morning Khuba and Sesoko joined McBride and Angus where the briefing continued.[24] At this meeting, McBride instructed Khuba to retrieve the docket from DPP: South Gauteng. McBride instructed Khuba to involve Sesoko to review the investigation and finalise same.[25]

113. It is curious that when all these briefings occurred, Khuba did not mention that he had submitted a signed report on 22 January 2014 when he handed the docket over to Mosing. Why would he submit a docket to the NPA and not a report? Khuba was made aware, by Mosing's email dated 28 February 2014, that the docket was sent to the DPP: South Gauteng's office for decision. It is also unlikely that McBride and Sesoko did not ask Khuba why the docket was no longer with Mosing who was guiding the investigation and now been taken to the DPP's office.

114. All these unanswered questions point to the inescapable conclusion that when McBride issued the instruction to retrieve the docket form DPP: South Gauteng he knew or ought to have known that there was a report prepared and submitted before his arrival at the IPID. McBride most likely knew its contents and recommendations and for that reason he wanted the report reviewed. Otherwise, he would have simply instructed Khuba to file whatever

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23 Ibid paragraph 7 to 10.
24 Annexure "**HIK2**" to Khuba's transcript of the Werksmans interview conducted on 23 April 2015 page 5 lines 6525
25 Ibid page 7 lines 5-19.

further evidence in the docket as suggested by Mosing instead of instructing Khuba to retrieve the docket.

115. Taking the above into consideration, the assertion by Khuba, Sesoko and McBride that after Khuba returned with the docket from DPP: South Gauteng it was only Khuba who knew of the report of 22 January 2014, that Sesoko and McBride only had sight of the 22 January 2014 report in January 2015 is improbable.

116. As indicated above, this assertion is betrayed by their own testimony and affidavits before this Commission as well as the transcript of the Werksmans interview attached to their affidavits.

117. As evident from what I stated above, although Mosing had submitted the IPID report dated 22 January 2014 and stated that the investigations were finalised, there were a few outstanding issues for example, Sibiya submitted his response to the questions posed on 26 February 2014, when his secretary emailed the response to the secretary of Sesoko and Sesoko's secretary forwarded the email to Sesoko on 27 February 2014 and Sesoko forwarded the email to Khuba on the same day and Khuba forwarded the email to Mosing on 28 February 2014. On receipt of this email Mosing advised Khuba to "*file the evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or other matter directly with him.*"

Preparation of the IPID report of 18 March 2014

118. After Khuba and Angus retrieved the docket from DPP:SG, Khuba and Sesoko discussed and reviewed the evidence in the report and added new evidence and finalised the report.

119. Some of the evidence that Khuba had to include in the report was the unsworn statement of Sibiya and the expert cell phone report of the mapping of the records of Sibiya which cannot justify the change of removing Dramat as an implicated person because it had nothing to do with Dramat.

120. The statement of the Secretariat is dated 17 February 2014. This statement cannot by any stretch of imagination impact the analysis of evidence and thus lead to a change in the recommendation set out in the report of 22 January 2014. The statement of the Secretariat merely records the genesis of the investigation, and cannot justify the changing of the report.

121. The second piece of evidence is the alleged "expert report" dated 17 March 2014 and the "analysed statement of Madilonga" and the email, dated 4 October 2013, that attached that statement.

122. The alleged concerns and reasons raised by Khuba, and the referral of Madilonga's statement for expert analysis, is questionable and irrational.

123. It also begs the question why Khuba did not include the so-called expert analysis of Madilonga's statement in his 23 October 2013 and 22 January 2014 report, because according to his supplementary affidavit filed at the Commission, he received the analysed statement by email on 4 October 2013. A copy of that statement is attached to Khuba's main affidavit as "HIK6".



Whilst the email is attached to Khuba's first supplementary affidavit, deposed to on 22 August 2019 where he was correcting errors and attaching annexures he omitted to attach to his main affidavit, such as the email that attached the analysed statement and that email is also marked "HIK6".

124. A further report, compiled by A van Staden ("Van Staden") of Precision Forensics, confirmed that Madilonga's statement was analysed by Anna-Mari Van Staden and this report is dated 17 March 2014, a day before Khuba and Sesoko signed the report.

125. I am of the respectful submission that the so-called analysis and findings of the purported expert, are irrational, suspicious and lacks the necessary details. The report of the purported expert should not be relied on at all. It is clear that prior to compiling the report, Van Staden did not take into account other relevant independent material contained in the docket and was not sensitive and did not take into account the social background of Madilongwa. It is expected of an expert to be objective, independent and rational. A copy of this report is attached hereto, marked as annexure **"JPP38"**.

126. The person who analysed Madilonga's statement also failed to take into account that English is not Madilonga's mother tongue. The conclusion by the expert that Madilonga's statement is deceptive, is based mainly on the poor grammar used by Madilonga and lack of proficiency in English. It appears that the expert is not socially sensitised to sociological dynamics that make up different persons in South Africa.



127. For example, the so-called expert raised concern with the use of five pronouns[26] in one sentence or a missing pronoun. Not every person is South Africa is proficient in the use of grammar and sentence construction. Sometimes non-English speakers use direct translation in their writing. As such, more was needed to cast doubt on Madilonga's statement and not just his use of grammar.

128. I reiterate that the so-called analysis was irrational and that, maybe, that is the reason that Khuba did not include it in the October and January reports. It was only included in the March report because the latter report sought to cast doubt on Madilonga's statement. It failed to achieve that purpose because Madilonga's statement does not stand on its own, it is corroborated by two other statements and cell phone records.

129. A careful consideration and analysis of the information, as contained in the affidavit of Khuba deposed to on the 16th of July 2019[27], clearly demonstrates:

129.1. that on the 22nd of January 2014, Khuba was in possession of the report which, after signing, gave it to Mosing.

129.2. that the recommendation was *"based on the available evidence"*.

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26 See footnote 67 of the analysed statement
27 Pages 19/35 to 20/35: paragraphs 65 and 66

130. That the recommendation was based on the available evidence, is not supportive of his allegations that *"this was essentially a CIG and NPA driven/guided report."*.[28] It is also critical to note that he states that:

> *"Advocates Mosing and Moeletsi, and Colonel Moukangwe had met with me on several occasions previously and they had given me their input on the analysis of evidence contained in the docket. They were also adamant on what the recommendation should be."*[29]

131. It is critical to indicate that Khuba, and conveniently so, did not indicate which recommendations the aforesaid persons were adamant should be included in the report.

132. Telling is the fact that Khuba does not take the Commission into his confidence by indicating why, if it was an interim report, such is not reflected in the report. Most importantly, it contains a recommendation that specified people should be charged. The report in issue was not titled as a draft report and was not presented as such to Mosing.

133. Khuba and Sesoko allege that after updating the report, they then gave the report to McBride to read. He corrected grammatical errors and spelling mistakes and gave the report back to them to correct. Thereafter they signed the report and gave a signed copy to McBride to sign.

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28 Khuba's main affidavit, page 18/35, lines 1 to 3
29 Khuba's main affidavit, page 18/35 to page 19/35, paragraph 62

134. I digress and deal with the facts surrounding the removal of the docket from DPP: South Gauteng and how the docket ended up at Nxasana's office. I further deal with how the docket made its way to the office of the DPP: North Gauteng and subsequently it was taken back to DPP: South Gauteng.

Removal of docket from DPP: South Gauteng and Van Zyl's attempts to establish the location of the docket and its return to the office of the NDPP

135. On the 7th of March 2014, Khuba and Angus attended the offices of DPP: South Gauteng to retrieve the docket as instructed by McBride. As mentioned above, Chauke had allocated the docket to Van Zyl. Thus, Khuba and Angus retrieved the docket from Van Zyl and undertook to return the docket on 14 March 2014. This is stated by Van Zyl in the affidavit he deposed to pertaining to the charge defeating the ends of justice in the case of McBride, Khuba and Sesoko. A copy of Van Zyl's affidavit is attached as "**JPP39**". From that affidavit it is clear that it was never the intention of Khuba to return the docket to Van Zyl, despite the undertaking made by Khuba, and numerous requests made by Van Zyl to Khuba for the return of the docket. Van Zyl stated the following:

135.1. He phoned Khuba when the docket was not returned as undertaken, and he could not find him;

135.2. He phoned Mosing to ask if he had the docket and Mosing told him he does not know where the docket is or who has it;



135.3. He finally got hold of Khuba who informed him that the docket was taken to Nxasana;

135.4. That it was given to his secretary, but he did not know the name of the lady;

135.5. He wrote a memorandum to Chauke advising him that Khuba did not returned the docket and he alleges it was taken to NDPP and thus requested Chauke to confirm with the NDPP if, indeed, the docket was delivered to him. A copy of that memorandum is attached as "**JPP40**";

136. In Van Zyl's affidavit, he confirms the correctness of the memorandum, a copy of that memorandum is attached as "**JPP41**", he wrote to Chauke informing him that Khuba has not returned the docket. In the memorandum Van Zyl, *inter alia,* state the following:

136.1. he phoned Khuba and Angus on 30 May 2014 when the docket was not returned as undertaken, enquiring about the whereabouts of the docket. Van Zyl received a message from Khuba that the docket had been returned to the NPA Head Office. Khuba informed him that McBride taken the decision that that the matter had to be returned to the NDPP. There had been a meeting with the NDPP and the matter was returned there. Van Zyl wanted to know who the docket had been handed to because it bothered him that the investigating officer could supply this information;

136.2. he phoned Khuba on 23 June 2014 and asked him why he lied to him when he uplifted the docket and that he never intended to return the docket. In response Khuba stated that the docket had been handed to the NDPP's secretary but could not provide any name;

136.3. he managed to telephonically get hold Mosing on 27 June 2014 and Mosing stated that the docket had not been returned to him;

136.4. he was worried about the whereabouts of the docket because:

136.4.1. it had been uplifted from him under seemingly false pretenses as he was also not informed that the docket would not be returned to him or the office of DPP: South Gauteng from where it was uplifted;

136.4.2. The prosecutors who had prepared a memorandum of its referral to DPP: South Gauteng (Mosing and Moeletsi) did not have any information about its whereabouts.

136.5. He thinks it would be prudent to establish from the NDPP Mr. Nxasana that the docket had indeed reached his office.

136.6. In his affidavit, Van Zyl also refers to the memorandum prepared by Mosing to Chauke recording the files that constitutes the docket. A copy of this memorandum is attached as "**JPP42**". Van Zyl states that he made cryptic and contemporaneous notes about some of the phone calls with regard to the whereabouts of the docket on that

memorandum. Those notes indicate the dates on which Van Zyl made calls to different persons and their response thereto.

137. Chauke in his affidavit[30] filed in the case opened against Khuba, Sesoko and McBride for defeating the ends of justice ("CAS2454") confirms that he was placed in possession of the Werksmans report and that he studied the Werksmans report and confirms the contents of the report where it specifically relates to him and the office of the DPP: South Gauteng.

138. On 3 July 2014, Chauke wrote to Nxasana enquiring whether the docket was delivered to him.[31] A copy of that memorandaum is attached as "**JPP43**". In that memorandum, Chauke enquired from Nxasana about the following:

138.1. Whether he Nxasana received the docket;

138.2. Whether Nxasana will deal with the matter; if so,

138.3. Whether DPP: South Gauteng may close its file pertaining to the matter.

139. Nxasana wrote to Chauke on 20 August 2014 confirming that the docket was delivered to his office and that he is busy considering it and that Chauke may close his file. A copy of Nxasana's letter is attached as "**JPP44**".

30 "A29" in the docket
31 Paragraph 3.2.2.2 at page 31 of the Werskmans report.

140. Chauke stated that in December 2014, after the suspension of Dramat, he received a call from Nxasana enquiring about the rendition matter. Chauke indicated that he was informed by Nxasana that Dramat was suspended. Nxasana then requested Chauke to continue dealing with the matter, in response to which Chauke then informed Nxasana that he had closed his file on the matter and was not dealing with the matter anymore.

141. According to the Werksmans report,[32] in January 2015 Nxasana contacted Mzinyathi and advised him that he had received the docket from Chauke and that the matter fell under the jurisdiction of Mzinyathi. The report further states that on the 13th of January 2015, on return from leave, Mzinyathi was furnished with the docket by the NDPP. Mzinyathi and Baloyi perused the docket and engaged in discussions amongst themselves. In addition, on 3 March 2015, Baloyi consulted with Khuba who attended the consultation with Maoka and discussed the docket. On the 13th of March 2015, Mzinyathi and Baloyi issued their recommendation in respect of the matter. These facts also appear in the transcript where Werksmans interviewed Mzinyathi and Baloyi. A copy of this transcript is attached as "**JPP45**".

142. On 1 April 2015, Chauke received the docket from the NDPP with a letter containing Mzinyathi's recommendations and was requested to make a decision on the matter.[33]

32 Paragraph 3.2.2.4 at page 32 of the Werksmans report
33 Paragraph 3.2.2.8 at page 33 of the Werksmans report.

The questionable conduct of Nxasana pertaining to the rendition docket

143. It is critical to indicate that Nxasana, by getting involved in the matter at that stage, compromised himself and his office in that, had it been necessary for him to consider a review of the matter, he would have disqualified himself from carrying out his constitutional duties and obligations in terms of Section 179(5) of the Constitution.

144. Despite the improper involvement of Nxasana at that stage, without fear or favour, I had to make an informed decision, guided by the facts as to whether or not there was sufficient evidence to justify a prosecution in regard to the changing of the recommendations in the first report.

145. I must point out that Nxasana's conduct pertaining to how he dealt with the rendition matter is questionable and calls for scrutiny when regard is had to the following objective facts:

145.1. Mosing wrote a memorandum to Nxasana and Jiba on 12 November 2013 giving an update of the matter attaching the October report;

145.2. Mosing wrote a memorandum to Jiba and Chauke informing them that the investigations were finalised and that the report from IPID was submitted for purposes of considering the merits and a memorandum of the same date to Chauke attaching the docket;

145.3. Chauke wrote, on 17 February 2014, enquiring about the certificate in terms of section 22 of the NPA Act;

145.4. Mosing wrote a memorandum, dated 18 February 2014, to Nxasana and Jiba requesting the issuing of a directive in terms of section 22(3) of the NPA Act and attaching a draft directive for Nxasana's signature;

145.5. The IPID delivered the docket to Nxasana on or about 8 April 2014 together with the report of 18 March 2014;

145.6. On 3 July 2014, Chauke enquired whether the docket which had been at his office was delivered to Nxasana;

145.7. Nxasana's confirmation that indeed the docket was delivered, and he is considering same;

145.8. Yet approximately eight months later, in December 2014, Nxasana enquired from Chauke whether he is dealing with the rendition matter whilst the docket is supposed to be in his possession. I am further advised by Mosing that he had a meeting with Nxasana towards the end of December 2014. It was during that meeting that Nxasana showed him a report relating to the rendition matter. Mosing was stunned by the recommendations as contained in that report, as the version contained therein was materially different from the version contained in the previous report.

145.9. Despite his knowledge that the docket had been sent to DPP: South Gauteng and a directive to that effect was sought from him in February 2014, and also that in view of the centralization of jurisdiction which came into effect on 1 December 2014 and thereby placing Diepsloot

in the jurisdiction of DPP: South Gauteng, he nevertheless send the docket to DPP: North Gauteng in January 2015 to study the docket and make a recommendation.

145.10. After the DPP: North Gauteng had studied the docket and made a recommendation, the docket was taken back to DPP: South Gauteng.

145.11. The following questions require answers from Nxasana:

145.11.1. After the docket was delivered to him in April 2014, when did he finish considering it?

145.11.2. After he finished considering the docket, what did he do with it?

145.11.3. Why did he call Chauke and ask about the docket, when he had it in his possession?

145.11.4. Why would he make a telephone call to Chauke and enquire about the progress of the matter when he had the docket in his possession?

145.11.5. Why did he take the docket to Mzinyathi and not back to Chauke, after learning that Chauke did not have the docket because it is with him?

145.11.6. Why did he not issue Mzinyathi and Baloyi with the section 22(3) certificate after they gave their recommendation,

instead of taking the docket back to Chauke to make a decision?

145.11.7. Did he expect Chauke to take a decision on the recommendation and therefore review the decision of Mzinyathi, alternatively did he expect Chauke to prosecute based on Mzinyathi's recommendation?

146. I respectfully submit that it is questionable why Nxasana despite the above facts failed to take action in respect of the docket. It bears mention that Dramat in his unsworn statement of 23 October 2013 had requested that the NDPP or an "independent" senior counsel take the decision. I would have expected that if Nxasana shared Dramat's sentiment that he ought to have taken the decision himself instead of idly sitting on the docket. It appears that the decision to prosecute was a hot potato for which Nxasana did not want to take responsibility. Throughout 2014, McBride, during several public platforms kept mentioning that IPID's report exonerated Dramat and that the NPA has the file, yet there was no word from the NDPP. Such is despite Nxasana being in possession of the docket and having had a meeting with McBride on 6 March 2014. The meeting occurred three days after McBride assumed office as the Director of IPID.

147. Without going into detail, I now deal with what I consider inconsistencies in the testimony of McBride, Khuba and Sesoko. In doing so, I make reference to portions of the transcript of the Werksmans report where Khuba and Sesoko were interviewed and or the relevant portions of the affidavits of McBride,

Sesoko and Khuba and as well as my comments to their testimony. I deal with these documents because the Chairperson specifically requested McBride, Khuba and Sesoko to file further affidavits dealing with the Werksmans report. I reserve my rights to fully respond thereto, should it be necessary, at the hearing.

The supplementary affidavit of McBride pertaining to the Werksmans report

148. McBride confirmed that he assumed office on 3 March 2014 and thus he has no personal knowledge of the facts pertaining to the preparation of 22 January 2014.[34]

149. In his supplementary affidavit, McBride stated that in early 2014, Sesoko and him had a lengthy discussion with Nxasana about the renditions matter and Nxasana agreed that there was insufficient evidence against Generals Dramat and Sibiya.[35]

150. McBride in his supplementary affidavit stated that during the meeting which was held on the 6th of March 2014, he undertook to give Nxasana the docket on the 13th April 2014.[36]

151. Khuba continued on the 6th of March 2014 with briefing McBride on the rendition matter in the presence of Sesoko and Angus.

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34 Paragraph 9 at page Y7-RM-SUP-003
35 Paragraph 17, Ibid
36 McBride's supplementary affidavit, paragraph 47 at page Y7-RM-SUP-027

152. Taking into account the contents of annexure **"JPP39"** hereto, that Khuba only uplifted the docket on the 7th of March 2014 from Van Zyl, it is clear that at the time that the discussion took place between Nxasana and McBride, the docket was still with Van Zyl. The docket was only uplifted from Van Zyl on the 7th of March 2014 by Khuba and Angus. It boggles one's mind as to how:

152.1. The merits and the demerits of the matter would have been discussed in the absence of the docket;

152.2. How an informed decision would have been derived at by Nxasana that *"there was insufficient evidence against Generals Dramat and Sibiya"*. This conduct on the part of both Nxasana and McBride was a clear interference with the functions and duties of the Office of the NDPP:South Gauteng.

153. A careful perusal and analysis of annexure **"JPP44"** clearly contradicts McBride's version that Nxasana agreed that *"there was insufficient evidence against Generals Dramat and Sabiya."* It is clear that as at the 20th of August 2014 Nxasana was considering the contents of the docket.

154. A further concern about McBride's alleged lengthy discussion with Nxasana is that he saw nothing wrong with having Nxasana "agree" with IPID's view instead of permitting the NPA to independently exercise its mandate to study the docket and make an independent decision. Yet on the one hand McBride complains about the independence of the IPID being undermined by what he calls "captured prosecutors" and the Minister of Police.

Relevant portions of the transcripts of the Werksmans interview with Khuba and Sesoko

155. It is apposite that from a reading of the transcript of Khuba's testimony of 27 March 2015 and that of 24 April 2015, I form a view that Khuba was not candid in his interview. I say so because:

155.1. In the transcript of 27 March 2015, Khuba appeared to be adamant that McBride did not know of the January report;

155.2. Khuba was of the view that the review of the investigation was *bona fide* because he had alleged that there was new evidence and that the report had to be updated in accordance therewith;

155.3. That the changes were made by Khuba in consultation with Sesoko, with him typing at Sesoko's office and on the latter's desktop because his laptop was small;

155.4. McBride did not make inputs save for grammatical and spelling corrections;

155.5. Khuba further stated that he was concerned how the evidence was taken out because, when they dealt with the report, there were only "*three hands that the reports went through. It was me, it was SESOKO and it was McBRIDE. Only three. The other person, ANGUS, only became part of the meeting where these things were discussed in detail. But when it comes to the issue of working on the report, it was*

myself and it was MR SESOKO…But my concern, when I'm looking at this, is what really happened? I really have a problem…So I do not know, because that report we did very quickly. We did it very quickly. If you check I think we signed it around the 18th. We did it very quickly, so I do not know how some of the information went missing…If you look at the analysis, it seems as if it was rewritten. It does not even conform with the old analysis ";[37]

155.6. Khuba also stated that they had inputs from McBride, which inputs they dealt with, more specifically the spelling. In respect of the evidence, he cannot recall as, when they dealt with the report, Angus was present.[38]

156. Khuba changed his stance as mentioned above during his interview of 23 April 2015 when he was informed that he was called to deal with the contradictions between his statement and what Werksmans heard from McBride.[39] I say so for the following reasons:

156.1. When Mr July told Khuba that Angus said that when they went to fetch the docket, he did not even know that the gentleman was Van Zyl, as he went for the Cato Manor matter, which was his own matter;

37 "HIK2" page 93 line 4 to page 94 lines 24
38 Ibid page 96 lines 1-7.
39 "HIK-W2" Werksmans transcript of 23 April 2015.

156.2. Khuba said he is "*forced to say this. I know exactly, when we went there, he went specifically with me regarding the same issue on Rendition. There was no CATO MANOR in the picture. We never went to any office…we had the name Van Zyl…when a new boss comes in, MR ANGUS was also bragging about the issue that: The boss spoke with me for over forty-five minutes…*";[40]

156.3. Khuba did not want to go "*with Angus but felt like he had been placed there to be able…*";[41]

156.4. When asked if according to him there was any new evidence that needed to be attached. Khuba stated that "*I think that is subject to interpretation…in fact the worst situation was that I couldn't talk to McBride. I still remember now, I spoke to SESOKO, and said: Why can't I attach all these things and return the docket?*";[42]

156.5. McBride wanted copies of everything I have including the docket.[43] This is in contrast to McBride's evidence that he did not have the docket and only corrected grammatical errors on the report;

156.6. Khuba stated that after they collected cellphone records they packed it and went straight to McBride at the venue (Birchwood hotel where the meeting of the Police Secretary was taking place), he thinks McBride wanted the one report and they briefed him whilst

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40 Ibid page 9 lines 15-25 and page 10 lines1-5.
41 Ibid page 10 lines 17-19.
42 Ibid page 12 lines 17-25 and page 13 lines 1-3
43 Ibid page 13, lines 5-15.

they had the records and Khuba never opened his mouth it was Angus who was talking and thereafter Khuba took the docket to the office;[44]

156.7. With regard to the updates on the report, Khuba stated that "*the docket firstly went to Sesoko. When we were at SESOKO's office, we started to do the updates, and we opened the docket and did this and that…there continuous- most of the meetings, in terms of the report, were not done when I was there*";[45]

156.8. Khuba was asked whether in his view the warning statements warrant the change of the report of 22 January. His response was that "*…the question should be: If you alone were to review that, would you have changed it, the answer is simply no. but because you have people giving you inputs…a person with prosecutorial background [Sesoko]*";[46]

156.9. When asked if they discussed the fact that they are discussing a report submitted to NPA as the final report, Khuba stated that:

> "*No, that was never part of that. But you see, my understanding of it is that some of the answers would never emanate at the time when thigs happened, but long after that, because you start to understand your boss better…if you ask*

44 Ibid page 14, lines 8-25
45 Ibid page 15, lines 15-21
46 Ibid page 15 lines 22-25 and page16 lines 1-5.

me whether he was suitable for the organisation, I would have my view. I cannot say now, but I would have my view. But the truth of the matter is to some of these things you cannot really have an answer when things are happening. For me, let alone the issue of rank, to have the confidence that could have pierced through the layer of political appointee to say: You can go wherever you want, but this is what I stick with, it would have been impossible. And I was happy, because when you sign a report the last signature is approval, it is not recommendation, it's approval. So the last person at the bottom of pile, that's why its (?), is the person who takes everything. You know. I was happy that he was signing this report. I had to sign because I had to sign, and I think I need to put that into context. I had to sign because I had to sign, but I was happy that he was signing the report. Whether it was the norm is different ball game, but I was happy that he signed."[47]

156.10. When asked if he was happy that McBride signed because of the changes in his conclusion, Khuba stated that:

"To tell you various facts, whether I was happy or not is a different thing, and I want to come to that point so that I can clarify it for you, because when you find a situation where a

47 Ibid page 17 5-22.

particular decision is taken by the person of authority, the issue of your feelings disappears… I was happy he was taking responsibility for the report. I cannot express a view about whether I was happy or not about the content"[48]

156.11. Khuba also stated that they were working on "that" and it seems that what was done after the final product, which the boss was happy about, that is when Sesoko emailed him a copy for his record purposes. Khuba went on to say that Sesoko called him and said that the boss was happy with the product and that they should sign the report. Khuba indicated that he was going to be in Pretoria because he was still doing some work around Pretoria.[49] The report was printed and Sesoko told Khuba to check whether he was happy with the report. Khuba then informed Mr July that:

"*Even the most thorough person, when you have gone through that, you can tell me what is it that you are going to be scrutinizing, because the word is that your boss is happy about it, and it is someone higher than any mistake you can find in the report. For me it was all about the issue that the boss was happy about it. I could not detect whether something was taken out, I could not detect whether there was an*

48 Ibid page 18 lines 1-8.
49 Ibid page 20 line 14-22.

addition which was not part of what I typed in, I could not detect anything. There was nothing to detect."[50]

157. The above indicate that the report was finalised in Khuba's absence. He was emailed the final product which McBride was said to be happy with and Khuba was told to come and sign the report. It appears that this is the reason he said he signed because he had to sign. That he could not have the confidence to question a political appointee and had to do what he was told to do. He also seem to suggest that, with time he realized that a decision had been taken but when things were happening he could not see because he was learning the character of McBride and decided not to express the view he held whether McBride was suitable for the organisation.

158. I respectfully submit that most of the answers Khuba gave required further inquiries which Werksmans did not follow up. He seemed reluctant to freely express his views but suggested that not all was well with what happened when the report was changed. I beseech the Honourable Chairman to impress upon Mr Khuba the need to take the Commission into his confidence and freely state what he meant in this transcript so that the sordid chapter of the two reports can be put to rest.

159. It is against this background that the charges in CAS2454 must be understood.

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50 Ibid page 20 line 25 and page 21 lines 1-11.

H. DEFEATING THE ENDS OF JUSTICE – McBRIDE, SESOKO AND KHUBA

160. It is prudent that I should demonstrate to the Commission the process that unfolded prior to taking the decision of charging McBride, Sesoko and Khuba with defeating the ends of justice.

161. At that stage, I was assigned to deal, *inter alia*, with criminal matters that arose from the recommendations that were made by the Marikana Commission of Enquiry. It was on a Friday afternoon, on the 26th of February 2016, when I was approached by Maema, who briefed and made a presentation to me regarding the matter under consideration. He was in possession of a memorandum which outlined how the investigation was conducted, and what his recommendations were arising from the investigation.

162. Maema extensively discussed the merits of the investigation that was done with me. A summary of the investigation is contained in a memorandum dated the 22nd of February 2016, attached hereto, marked as annexure **"JPP46".**

163. Maema presented the memorandum to me, which I read and considered over the weekend. I also took into account the probabilities in the matter. From the discussion I had with Maema, together with the contents of the memorandum and the probabilities, I was satisfied that there was *prima facie* evidence for making out a case for defeating and/or obstructing the ends of justice with reasonable prospects of success.

164. Once I was satisfied, I made an appointment with the DPP: NG for Thursday, the 3rd of March 2016 to consult with Mzinyathi in his office and discuss the

merits of the case with him. Mzinyathi agreed that there was a reasonable prospect of success and signed the memorandum accordingly. I attach hereto a confirmatory affidavit deposed to by Mzinyathi, marked as annexure **"JPP47"**, in support of this statement.

165. What is set out above is the checks and balances that are in place and have to be followed as a statutory imperative in the decision making process at the NPA.

166. It follows then that the matter was properly, lawfully and legitimately referred to the PCLU for investigation as it was deemed a priority crime as, *inter alia*, it involved the Executive Head of IPID. It is a practice for the NDPP to refer for investigation to the PCLU, matters involving high ranking officials or matters that touch on the integrity or independence of state organs and thus it was referred in terms of the Omnibus Clause.

167. McBride, Khuba and Sesoko were adamant that the IPID report does not bind the NPA in making its decision to prosecute. They refer to the statements of Van Zyl, Mzinyathi and Baloyi who all stated that they either did not read the report or, if they did, it was a cursory reading and does not influence their decision, as they only consider the facts as contained in the docket which evidence was not deleted in the docket. Thus the case of fraud or defeating the ends of justice was contrived. It is clear that IPID's officials seek to turn a blind eye to what their mandate is, namely that after an investigation, they are expected to compile a report and make the necessary recommendations.

168. I deny that the prosecution was contrived, for the following reasons:

168.1. It is common cause that the docket was uplifted from the DPP:SG after McBride was briefed on the matter;

168.2. McBride instructed that the evidence or investigation be reviewed and the new evidence be included and the report be finalised;

168.3. The so-called new evidence does not lay a basis for changing the recommendations contained in the report of 22 January 2020, especially the nature and import of the deletions of the first report, which I regarded as the final report, that convinced me that there is a cover-up. The result would be that only the foot soldiers would be prosecuted and the Generals would get protected. Having regard to the probabilities, just prosecuting the foot soldiers would constitute a grave injustice.

168.4. On his own version, McBride had discussed at length with Nxasana who also agreed that there was no evidence against Dramat and Sibiya. It is unclear this alleged view of Nxasana was before or after he had considered the docket or only the report that was presented to him. Even worse, on McBride's evidence it appears this view was held at a meeting they had on 6 March 2014 after McBride was briefed and the docket was still at DPP:SG;

168.5. Even more, McBride issued media statements that the IPID exonerated Dramat and Sibiya, whilst knowing fully well that it is not

the duty of the IPID to exonerate people but the role of the court and to that extent sought to create the impression that the NPA was persecuting and maliciously pursuing and charging Dramat and Sibiya;

169. It is therefore not a simple case of an incorrect analysis or summary of the evidence as remarked, during the evidence of Minister Nhleko, but a very serious matter of the head of an independent and oversight institution envisaged in the Constitution, deliberately misrepresenting facts in the institution's report and issuing wrong media statements

I. CATO MANOR PROSECUTION

170. It is correct that I signed a legal opinion regarding the interpretation of whether the Deputy Directors from outside Kwazulu Natal were properly mandated and/or appointed to prosecute the accused in the Cato Manor prosecution. The opinion did not relate to a prosecutorial decision. I still hold that opinion and I prepared a subsequent opinion with the same view point.

171. The fact that I signed an opinion should not be viewed as though I was involved in the prosecution. The giving of a legal opinion is not a prosecutorial decision *in casu*.

L. BOOYSEN'S IMPRECISE EVIDENCE ON DIAGRAM

172. In this section I demonstrate how imprecise and incorrect the evidence of Booysen is.

173. The Chairperson quite correctly did not understand the diagram presented by Booysen.[51]

> *"Yes. I thought that the purpose of the diagram was to show the cross section of certain prosecutors in regard to different matters. So in regard to the Cato Manor you can see there were a number of prosecutors but then in regard to the others it looks like you only see one name. So I am not sure if I understand the purpose of the diagram correctly because it appears only - it appears that it is only the Cato Manor where you have a number of them and a few of them ... So I am not able to make head or tail of what her presence in that portion means ... So I do not know what it means to have him there. So I guess that - that is – that shows that but I do not see other colours but also if you just see one prosecutor there I am not sure that it is in line with that I thought was the purpose of the diagram.* ***I thought the purpose was go - was to say look at the commonality of the same prosecutors and different cases****. That is what I thought the idea was but I might be mistaken."*

174. With respect that is exactly what the purpose of this diagram should have been to show the commonality of the same prosecutors from the different cases but Booysen's own diagram does not bear out his thesis. The Chairperson commented:

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51 Transcribed record: Day 88, 3 May 2019, page 33/170, line 11 to page 34/170, line 10

"But I am sorry. I am not sure that I understand this diagram completely."[52]

175. Booysen himself state the following in regard to his own diagram:

"That is correct Chair but I just want to clarify one aspect here. ***If you look at and it could perhaps be slightly misleading.***"[53]

176. This turnabout attitude on the part of Booysen clearly has a material bearing on his credibility and reliability as a witness, and also on the truthfulness of his allegations.

177. Previously the same problem was pointed out by the Chairperson.[54] It is stated specifically:

"now addresses prosecutors, individual prosecutors within the system in the context of the investigations, the four investigations that he has given evidence to".[55]

178. Where in regard to the four investigations, the following is said:

"The point I am making here Chair is that invariably in all these cases the same prosecutors appear as prosecutors." [56]

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52 Transcribed record: Day 88, 3 May 2019, page 31/170, line 5 – 6
53 Transcribed record: Day 88, 3 May 2019, page 35/170, lines 22 – 23
54 Ibid 31/170, line 5 – 6
55 Transcribed record: Day 87, 2 May 2019, page 197/258, lines 23 – 25
56 Transcribed record: Day 87, 2 May 2019, page 199/258, lines 10 – 12, page 201, line 20

179. The Chairperson also state:

> *"Have but I got the impression that I may be wrong it seemed to have or I thought it had only a few. I thought he might have more people in mind I am not sure. Does he have all?"*[57]

180. The evidence leader, Advocate Veruschka September, states:

> *"... Where these circles then interlace those would represent public prosecutors."*[58]

181. Notwithstanding the fact that Prosecutor Adv Dorian Paver's *("Paver")* name is in the diagram and he is the prosecutor that provisionally withdrew the charges in the Panday case, Booysen does not want to portray that Adv Dorian Paver, as a person, is on the wrong side.[59] The evidence leader once again asked a leading question.

> *"No, not at all Chair. If I may General Booysen - the prosecutors who are reflected in this diagram is it a comprehensive list of all prosecutors involved in all four matters."*[60]

182. Booysen answers:

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57 Transcribed record: Day 87, 2 May 2019, page 201/258, lines 20 - 22
58 Transcribed record: Day 87, 2 May 2019, line 13 – 14, page 202
59 Transcribed record: Day 88, 3 May 2019, page 37/170, lines 15 – 16
60 Transcribed record: Day 88, 3 May 2019, page 35/170, lines 5 – 7

"Bar the one or two who - whose names I do not know Chair - who I saw at Court but whose names I do not know."[61]

183. To which the Evidence leader replied:

"And these are certainly the prosecutors that you are aware of were involved ***in these four matters****. Is that correct."*[62]

184. The chair quite correctly point out: *"That was my - that was my understanding that the diagram shows a group of prosecutors who seemed to feature in most of these cases where people who were doing there job were been suspended charged and all. That was - that was the impression I had but what you are saying is it not all of them who appear on the .... (indistinct)"*.[63] The Chair indicate to him that he is not saying about all of them it is only in regard to **some**.[64]

185. He is pertinently asked by evidence leader who is **the some**.

"And who exactly are those some?"[65]

186. With regard to me, Booysen still states:

"Advocate Pretorius with **some** of the cases"[66]

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61 Transcribed record: Day 88, 3 May 2019, page 35/170, lines 8 – 10
62 Transcribed record: Day 88, 3 May 2019, page 35/170, lines 18 - 19
63 Transcribed record: Day 88, 3 May 2019, page 37/170, line 9 - 14
64 Transcribed record: Day 88, 3 May 2019, page 38/170, line 3
65 Transcribed record: Day 88, 3 May 2019, page 38/170, line 6
66 Transcribed record: Day 88, 3 May 2019, page 39/170, line 23

187. With respect, this is wrong in relation to the diagram that Booysen presented to the Chairperson. Even with a long stretch of the imagination I only signed a legal opinion that was drawn up for my consideration and approval by Maema, in the **one case** and that is at the end of the Cato Manor matter. His previous evidence on is:

> *"On **one** occasion he wrote a legal opinion"*[67]

188. So Booysen makes exceptions in regard to Paver, Vimbani and Chauke.[68] Chauke was far more involved in the Cato Manor matter than I was. They must not be seen to be on the wrong side. Booysen is further wrong in regard to Mathenjwa and Maema with regard to the diagram that he has drawn up in that they are only involved in one case not some cases. With a leading question Booysen is taken away from the Law Enforcement to the SAPS. It is stated the same rationale apparently underlying that part of the diagram. It is quite correct that I aligned myself with the conclusion arrived at by Maema regarding the appointment of the prosecutors. It is not understandable how the mere fact that I agreed with the research done by Maema about the appointments in Kwazulu Natal makes me captured. I still hold that opinion.

189. In regard to his further evidence relating to Mr Adams ("*Adams*"), Adams is neither a State Advocate, nor a prosecutor, but is in charge of the witness protection programme. Adams has nothing to do with the prosecutions. This is one more instance that demonstrates that Booysen is wrong. He still

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67 Transcribed record: Day 88, 3 May 2019, page 33/170, line 6

68 Transcribed record: Day 88, 3 May 2019, page 32/170 line 18 – 19: Advocate Chauke I think was more an administrative

includes Adams in the diagram[69]. Adams did not try to establish if he could find evidence against Booysen.[70] Adams attended to the security concerns of the witnesses and he worked with the Witness Protectors in Greece. I also refer to the gratuitous attack on Adams when Booysen investigated him to get dirt on his background.[71]

Choice between default or design

190. Booysen's evidence is not very precise. In regard to myself he gave the following evidence:

> *" .... but he constantly* ***seems*** *to get himself involved* ***or either by default or by design*** *and he also gave a legal opinion in the Cato Manor matter when we brought an application to have the matter struck off the roll, when he aligned himself with the prosecutors, Mahema* (sic) *the time."*[72]

191. There is quite a difference between default and design, yet he implicates me as being a person that enabled state capture. This is wrong and imprecise.

F. WRONG EVIDENCE

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69 Transcribed record: Day 88, 3 May 2019, page 32/170, line 7
70 Transcribed record: Day 88, 3 May 2019, page 32/170, lines 10 -12
71 Transcribed record; Day 88, 3 May 2019, page 26/170, lines 13 - 22
72 Transcribed record: Day 87, 2 May 2020, page 241, line 15 – 19
He does not indicate at this time that the matter was not struck from the roll - Transcribed record: Day 87, 2 May 2020, page 255/258, line 24-25

192. On numerous occasions, Booysen gave evidence with regard to Maema, as demonstrated below:

> *"Yes Chair. He publically took responsibility in the media for changing the prosecutors. At that time which was I think Gerrie Nel and Andrea Johnson who is still with the National Prosecuting Authority and* ***not surprisingly Mr Kebble was eventually acquitted****"*[73]

193. This is incorrect as Kebble was never charged and tried.

194. Booysen, further in his evidence, testifies that Maema *"gets roped in, in the prosecution of Booysen, Dramat and the like of that I have now detailed here"*.[74] This is wrong as Maema was not involved in the prosecution of Dramat[75] and Sibiya. *"These same prosecutors invariably were also involved in the prosecution of members from SARS and also Colonel Sibiya and Dramat in this so called rendition saga."*[76]

195. In addition to the above, the following evidence is not correct and/or precise:

195.1. In regard to Noko: *"I think she misled the panel there by saying to the panel she found the thing there on the court roll"*.[77]

195.2. *"I do not know whether she subsequently made representations…"*[78]

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73 Transcribed record: Day 87, 2 May 2019, page 231/258 lines 19 – 23
74 Transcribed record: Day 87, 2 May 2019, page 232/258 lines 12 – 14
75 Transcribed record: Day 87, 2 May 2019, page 232/258 line 13
76 Transcribed record: Day 88, 3 May 2019, page 18/170 lines 20 – 22
77 Transcribed record: Day 87, 2 May 2019, page 238/258 lines 18 – 20
78 Transcribed record: Day 88, 3 May 2019, page 21/170 lines 1 – 2

195.3. *"... and as far as I am concerned they were wasting taxpayers' money."*[79]

196. His evidence is that Adv Noko ("*Noko*") is at the coalface with Maema and Mosing, while I am at the background.[80] Noko is not a prosecutor at the coalface. She is a manager, the DPP, so, once again, he is wrong.

197. While Booysen very easily refer to office politics in regard to his own matters: he rely on office gossip in regard to two senior Advocates from the NPA: *"I have been told by two very senior advocates from the National Prosecuting Authority that there was a letter where a number of prosecutors had been promised promotion by Advocate Abrahams".*[81] Booysen's information is wrong. There are court records which prove that the gossip allegations he relied on, are not correct.

198. Booysen gave evidence:[82] *"and I refer to the PCLU at the National Prosecuting Authority yesterday who are mandated to do serious crimes like* ***human trafficking****, Foreign Military Assistance Act."* This is wrong. The PCLU does not deal with human trafficking.

199. *"So to me it is clear that there was a strategy from the National Prosecuting Authority side and I here I will say from Mosing's side, I do not know at whose behest, but from his - from the NPA's side and from the police's side*

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79 Transcribed record: Day 88, 3 May 2019, page 24/170, line 21
80 Transcribed record: Day 87, 2 May 2019, page 240/258 line 24 to page 241/258, line 3
81 Transcribed record: Day 87, 2 May 2019, page 242/258 lines 7 – 10
82 Transcribed record: Day 88, 3 May 2019, page 153/170 lines 13 – 16

Ntlemeza to get rid of General Dramat."[83] Mosing did not decide on the prosecution of Dramat. He left it to either Johannesburg DPP or North Gauteng. By and large the evidence of Booysen is very one-sided and subjective.[84]

200. I reiterate I had nothing to do with the Cato Manor prosecutions, save for the legal opinion already referred to. The objective facts demonstrate that Booysen attempted to use other cases to bolster his unfounded allegations against me.

L. CHARGES PREFERRED AGAINST PAUL O'SULLIVAN AND SARAH-JANE TRENT

Paul O'Sullivan

SAA - Kempton Park CAS 679/3/2015

201. This is the first matter relating to Paul O'Sullivan ("*O'Sullivan*") that was properly, lawfully and legitimately referred to the PCLU. I refer to annexure **"JPP52"** attached hereto.

202. In this matter O'Sullivan and his two co-accused were charged with extortion and criminal defamation. In this matter O'Sullivan wrote an email addressed

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83 Transcribed record: Day 88, 3 May 2019, page 67/170 lines 19 – 23

84 See for instance his evidence: "These proceedings have been occasioned by delay after delay occasioned by the National Prosecution Authority": Transcribed record: Day 87, 2 May 2019, page 253 of 258, line 16 – 18 Further evidence will be provided.

to the then Chairperson of the SAA Board, Dudu Myeni ("*Myeni*") and copied the State President Cyril Ramaphosa and others demanding that Myeni must resign from the Chairmanship of SAA, discontinue the disciplinary hearing of Kalawe and reinstate Kalawe as the CEO of SAA lest he would make available to the public the information about Myeni's bank statements which he alleged were monies from the E-Toll contracts.

203. After leaking the information to Sunday Times, which ran a story about the bank accounts, O'Sullivan realised that the bank statements were false. Pursuant thereto, O'Sullivan wrote to SAA's attorneys, Edward Nathan and Sonnenberg ("*ENS*") offering to pay R50 000.00 to Myeni if she undertook not to pursue criminal charges or a civil claim against him. He also offered to pay R25 000.00 to SAA for their costs in investigating the allegations that were made against Myeni.

204. Although the charges were withdrawn and remain withdrawn, I submit that there is a *prima facie* case to answer against O'Sullivan, if regard is had on the fact that O'Sullivan made the offers referred to above. A copy of his letter addressed to ENS is attached hereto marked "**JPP48**". The annexure will be filed during the course of the week of 17 August 2020. I therefore submit that charging O'Sullivan, Kalawe and Mbulawa for extortion and criminal defamation was justified.

205. Arising from the aforesaid case, a determination was made prioritising the matters involving O'Sullivan. It was deemed prudent to centralise all matters involving O'Sullivan and refer them to the PCLU.

206. In a further memorandum dated 12 April 2016, the NDPP referred to the PCLU all matters relating to O'Sullivan. In terms of the memorandum, I, as the Acting Special Director of Public Prosecutions and Head: Priority Crimes Litigation Unit, was enjoined to manage and direct all investigations and prosecutions in relation to O'Sullivan. A copy of the memorandum is attached hereto, marked as annexure **"JPP49"**. The referral was based on paragraph (a) of Proclamation No. 46 of 2003 published in Government Gazette No.24876 on 23 May 2003. Thus, PCLU was properly mandated to deal with the matters relating to O'Sullivan.

207. Matters relating to O'Sullivan were referred to PCLU because most of them were complex and difficult. These cases were referred to the PCLU because of the following reasons:

207.1. The cases were difficult and complex;

207.2. O'Sullivan, who is a very difficult person, has the *modus operandi* to intimidate prosecutors and witnesses;

207.3. O'Sullivan's strategy, whenever any charges are levelled against him, is to ensure that witnesses and prosecutors buckle under the pressure of his intimidation, with the aim of having such charges collapse.

207.4. I personally have been subjected to O'Sullivan's *modus operandi*. I received a plethora of intimidating e-mails from O'Sullivan in substantiation of my assertion and for the benefit of the Commission, and to avoid prolixity, I only attach a selection of such e-mails hereto,

marked as annexures **"JPP50.1"** to **"JPP50.5"**. The balance of the e-mails are available for inspection in the event that it is required. I am aware that Mr J J Mlotshwa was also subjected to threats by O'Sullivan.

207.5. Because of the experience of the members of the PCLU, they are best suited to deal with persons of O'Sullivan's rogue character. It is logical that the cases of O'Sullivan, having been declared priority crimes, should be located.

208. Below are set out in more detail further cases in which O'Sullivan was charged.

Rosebank CAS 47/05/2016

209. In this matter O'Sullivan was charged with kidnapping, extortion and intimidation. The complainant, Cora Van der Merwe, an employee of a firm of attorneys was accused by her employer of having leaked information about malpractice of her employer in handling their clients' MVA claim matters.

210. Van der Merwe's employer instructed O'Sullivan to "investigate" the allegations against Van der Merwe. In the process of the "investigation", O'Sullivan allegedly intimidated Van der Merwe and extorted information from her threatening her with arrest and being sent to jail if she did not confess to "stealing" confidential office information and furnishing it to outsiders.

211. It was alleged that O'Sullivan with the assistance of his employee took Van der Merwe to his office against her will. O'Sullivan released Van der Merwe after the intervention of Adv van Schalkwyk.

212. The matter was heard at the Randburg Regional Court. Amongst others, the court held that Van der Merwe acted illegally in furnishing the information to the journalists and acquitted O'Sullivan despite the Protected Disclosures Act, Act 26 of 2000 specifically stating that it is legal for a whistle blower to provide such information to journalists.

213. The state filed an appeal against the court's decision on a question of law and the appeal is pending.

214. The trial in this matter proceeded beyond the application in terms of section 174 of the Criminal Procedure Act, 1977 (CPA). Thus, there was a *prima facie* case to be answered by O'Sullivan in this matter and therefore charging him in the circumstances was justified.

Alberton CAS 799/11/2013

215. In this matter O'Sullivan together with his co-accused were charged with extortion and intimidation. The complainant in the matter was Neil Diamond ("Diamond").

216. The charges were withdrawn against the accused as a result of the request of the complainant. Diamond requested that the charges be withdrawn at that time as he was busy at work and preparing himself to be re-interviewed for a

post of the manager of the City of Mbombela. O'Sullivan had already approached him and threatened to expose his dirt in order to jeopardise his chances of being re-appointed as the city manager.

217. Although the criminal charges against O'Sullivan and his co-accused remain withdrawn for now, I submit that there is a *prima facie* case against O'Sullivan. I say this because in a related application for interdict against O'Sullivan in the matter of Neil Diamond v Paul O'Sullivan, based on the same facts, the court found as set out below.

> *"58. I have already concluded that O'Sullivan's conduct, properly construed amounted to this: O'Sullivan was not interested in anything that Diamond had to say. Whenever Diamond attempted either to ascertain further facts or to convey his own knowledge of the facts, O'Sullivan threatened to walk out of the meeting. The clear implication of that threat was that Diamond would shortly thereafter be arrested, based on information (the precise import of which O'Sullivan refused to share with Diamond) which he would convey to the police. That in my view is a substantial threat and one which Diamond could not guard against short of giving in to O'Sullivan's demand that he admits to misappropriation and pays back an as yet unspecified amount.*
>
> *59. I find that O'Sullivan's conduct is unlawful and amounts to attempted extortion.*



62. *.....Under the circumstances, it is clear to me that O'Sullivan acted with the requisite mens rea.*

65. *.....To apply the sort of illegitimate pressure on Diamond to make concessions in response to the threats issued in the manner described above, amounts in my view to O'Sullivan taking the law into his own hands. ....."* A copy of the judgment is attached marked "**JPP51**".

218. In view of the above, I submit that charging O'Sullivan with extortion and intimidation was justified.

M. SARAH-JANE TRENT

219. To the best of my knowledge and specifically in the period I worked in the PCLU, the Unit was never involved in any case where Sarah-Jane Trent was or is an accused.

N. GLYNNIS BREYTENBACH - CHARGE RELATING TO DELETION OF INFORMATION FROM NPA ASSIGNED LAPTOP

220. In a memorandum dated 18 November 2015, the NDPP referred, amongst others, the matter of Glynnis Breytenbach (*"Breytenbach"*) in relation to the deletion of the information to the PCLU. In terms of the memorandum, I had to manage and direct investigation and prosecution of this matter. A copy of the memorandum is attached marked "**JPP52**". The referral was based on paragraph (a) of Proclamation No. 46 of 2003 published in Government

Gazette No. 24876 on 23 May 2003. Thus, PCLU was properly mandated to deal with the Breytenbach matter in relation to the deletion of information.

221. The Breytenbach matters were referred to the PCLU at the discretion of the the then NDPP. Breytenbach held the rank of a Senior Deputy Director of the Public Prosecutions and was the Regional Head of the Pretoria Specialised Commercial Crimes Unit. Considering that this involved the charging of a senior NPA official for the contravention of the NPA Act amongst others, the reason is not hard to find as to why the NDPP would have elected to refer the prosecution to the PCLU. In doing so, the NDPP acted within the mandate granted by the Constitution, the NPA Act and Proclamation 8 of 2003.

222. Breytenbach together with her co-accused were charged with defeating or obstructing the ends of justice and the contravention of section 40A of the NPA Act.

223. Breytenbach was a prosecutor guiding the investigation in Kimberley CAS 263/04/2011. This was a docket opened by Kumba Iron Ore (Kumba) against Imperial Crown Trading Ltd (ICT). The legal representative of ICT lodged a complaint with the NDPP that Breytenbach had a close relationship with the Counsel for Kumba. ICT felt that Breytenbach was or might be controlled by the Kumba Counsel in the decision-making process.

224. Stemming from the above complaint, the NDPP ordered that an investigation be held. Pursuant to the investigation, on 2 February 2012 Breytenbach was served with a notice of intention to suspend her. A copy of the notice is

attached hereto marked "**JPP53**". At the time when she was served with the notice, she was advised that her official laptop must be surrendered to the NPA investigators as there were reasons to believe that the laptop contained information which could assist in the investigation processes. Breytenbach refused to surrender her laptop to the NPA.

225. On the 30th of April 2012 Breytenbach was served with a notice of precautionary suspension. Paragraph 7 of the notice categorically stated that all laptops and other equipment must be left at the workplace. The NPA's officials who served Breytenbach with the notice of precautionary suspension requested the laptop from her. She and her attorney refused to hand-over the laptop. A copy of the statement of Mr Sicelo Khanyile Victor Xaba is attached marked "**JPP54**". The annexure will be filed during the course of the week of the 17th of August 2020.

226. Breytenbach knew that NPA has a policy on Internet and Email Usage dated the 31st of May 2006 (*"the policy"*). A copy of the policy is attached hereto, marked as annexure **"JPP55"**. The annexure will be filed during the course of the week of 17th of August 2020. The policy states that:

> *"NPA reserves the right to examine personal file directories and other information stored on the NPA computer or IT systems at anytime without prior notice or consent by the user when required by and consistent with law, when there is substantiated reason to believe that infringement of policy or law has taken place or in exceptional*

circumstances when required to meet time dependent critical operational needs".

227. By refusing to hand-over the laptop on the 2nd of February 2012 and the 30th of April 2012, well knowing that there was a reason to believe that the laptop may have information which might assist in the investigation process, it was the opinion of the prosecutor that a *prima facie* case exists that Breytenbach obstructed the investigation process. In this regard, there was a reasonable prospect of success to prosecute Breytenbach for obstructing the ends of justice. I still maintain that charges in that regard were properly investigated and instituted against her.

228. Breytenbach, well knowing that the misconduct complained of against her related to Kimberly CAS 263/04/2011 which was the Kumba/ ICT criminal case, she caused contents of the laptop related to the above criminal case to be shredded. In this regard there was a *prima facie* case against Breytenbach of obstructing or defeating the ends of justice.

229. Subsequently, Breytenbach allowed an expert private IT technician to gain access and shred information contained in the laptop belonging to the NPA. In this regard she was charged with contravening section 40A(2)(a) of the NPA Act.

230. Breytenbach, after having been served with the notice of suspension on the 30th of April 2012, continued to access information in the laptop. Her act of accessing the information in the laptop, at that stage, was unauthorised as her

authority to access the NPA official laptop ceased to exist when she was served with the notice of suspension. In this regard, there existed a *prima facie* case that she contravened Section 40A(2)(a) of the NPA Act.

231. Breytenbach's abovementioned conduct impaired the operations of the official laptop and prevented or hindered access to any program or data held onn the NPA computer, in that she shredded official and private contents of the official laptop, well knowing that the contents of the official laptop were the subject of investigation. Amongst others, the shredded contents of the computer included the file contents of Kumba/ICT documents which was the subject of the complaint against Breytenbach. In this regard, there was a *prima facie* case that she contravened Section 40A(2)(B) of the NPA Act. Copies of the statement of Phillip Otto, the private technician used by Breytenbach to shred the contents of the laptop, and that of the Nexus Forensic Report are attached marked "**JPP56**" and "**JPP57**" respectively. The annexures will be filed during the course of the week of the 17th of August 2020.

232. In view of the above, I submit that charging Breytenbach for defeating or obstructing the ends of Justice and for contravening section 40A of the NPA Act, was justified.

233. It is critical to state that the application in terms of Section 174 of the CPA was unsuccessful. The implication thereof is that, at the close of the State's case, there was a *prima facie* case for Breytenbach to answer. This is a clear demonstration that the charges levelled against Breytenbach, were justified.

P. THE MATTERS RELATING TO THE SOUTH AFRICAN REVENUE SERVICES

234. One of the complaints that McBride and Booysen have lumped into the litany of matters they rely on to try and prove a point that the NPA is captured, relates to criminal charges that were preferred against Mr Oupa Magashula ("*Magashula*"), Pillay, and the then Minister of Finance Mr Pravin Gordhan ("*Gordhan*"), relating to the pension pay out to Pillay. This prosecution came midstream in the investigation of the unlawful interception of communication at 12 NPA offices.

235. There was concern about the establishment of an intelligence unit within the South African Revenue Services ("*SARS*"). There were media reports regarding the establishment of such unit and the unlawful conduct of members of the unit. When certain facts were disclosed to the Commissioner for SARS, he was obliged to lay a complaint with regards to the illegal activities of the unit. Two members of this unit who were involved in the illegal bugging of the 12 NPA offices came to the fore and provided extensive statements as to the bugging and the transcription of the recordings made of the meeting regarding, *inter alia*, the Jackie Selebi's criminal case. An investigation was launched into the activities of this intelligence unit. Through a private Advocate, Fanie Schnetler, a substantive number who were members of the unit provided affidavits to the DPCI.

236. It is critical to indicate that KPMG and the Inspector General of Intelligence compiled reports regarding the illegal activities of the unit. In deciding whether

or not to prosecute, reliance was placed on the affidavits which were independently obtained by an independent Advocate who is a member of the Bar.

237. Whilst guiding the investigation pertaining to the unlawful SARS intelligence unit, certain facts came to Maema's attention, which facts indicated a possible contravention of legal prescripts relating to the pension pay out of Pillay. Since the PCLU has to guide and manage the investigation of matters referred to them, and matters incidental thereto, Maema was obliged to guide the investigators and request them to investigate Pillay's pension pay out.

238. During September 2016, Maema briefed the NPA management on the alleged involvement of Gordhan in the unlawful authorisation of the following:

238.1. Firstly, the payment by SARS of Pillay's penalty to the Government Employee's Pension Fund (*"GEPF"*), which arose as a result of him taking early retirement. The penalty amount was in excess of R1.2 million. There is no dispute that this amount was paid by SARS, on behalf of Pillay, in circumstances where Pillay ought to have paid this amount himself by way of reducing his pension benefits as provided for in the Rules of the GEPF.

238.2. Secondly, the reappointment of Pillay to the very same position which he previously held, in circumstances where Pillay himself said he wanted to take early retirement.



238.3. Thirdly, the approval of Pillay's early retirement in circumstances where the intention behind such early retirement was to gain access to pension benefits for purposes of providing educational funding for Pillay's children and his reappointment at the same time – once the basis for him accessing the pension benefits had been created.

239. If there is nothing wrong with the above, there is no reason why the government does not allow all of its employees who are struggling to pay university fees for their children, to notionally take early retirement and then get reappointed at the same time so as to enable them to obtain access to their pension benefits to fund the university education of their children.

240. Maema's briefing revealed that:

240.1. There had been an initial retirement application made by Pillay in 2008, which is referred to in the affidavit of Coetzee.

240.2. In 2009, after Gordhan had been appointed as the Minister of Finance, Pillay submitted a memorandum dated 27 November 2009 to Magashula attached as "SA9" to Annexure "B" in the main application, who was the Commissioner for SARS at the time (*"the first retirement application"*).

240.3. In this memorandum, Pillay motivated his first retirement application as follows:



"PURPOSE

The purpose of this memorandum is to explain that I have decided to take early retirement as well as to request you to consider to recommend for possible approval by the Minister certain related matters that will flow from my decision to take early retirement.

DISCUSSION

As you know, I have been working in the Public Sector for the past 15 years, 10 which have been spent at SARS. For the most part of this period, especially my tenure with SARS, I was expected to perform at a very high level accompanied by the accountabilities that go with the performance of such a high-level job. This exacted its toll from me in the sense that my health condition is slowly deteriorating. Added to this, my family responsibilities, for a long time, suffered on account of the dedication required by my job. With the aforementioned in mind, although still not easy, I have decided to take early retirement.

However, I am still enthusiastic about SARS and the tremendous contribution it makes towards the establishment of an even better South Africa for all its citizens. With a view thereto, I am willing to serve in SARS in a different capacity where the demands of such a job will positivity support the reasons why I am in the first instance taking early retirement. (my emphasis)

Should you favourably consider my proposal to serve SARS in a different capacity, such service will have to be subject to that I be appointed as a contract employee. This will allow me more flexibility in terms of making a decision to finally part ways with SARS, should I come to such a decision. The second condition would be that my early retirement is approved in terms of the provisions of section 16(6)(a) and (b) of the Public Service Act, meaning that the Minister, in terms of the provisions of the abovementioned section approve that the penalty imposed on my pension benefits per Rule 14.3.3(b) of the GEPF Rules be paid by SARS to the GEPF. The GEPF has indicated that the penalty amount on my pension benefits that the employer has to pay on my behalf is R1 292 732,68. (my emphasis)

RECOMMENDATION

My recommendations are that you please:

- *take note that I intend to take early retirement*
- *consider to approve that I be appointed in a different capacity in SARS on a contract basis; and*
- *consider to recommend to the Minister that he approves that the penalty on my pension benefits be paid on my behalf to the GEPF by the employer."*



241. What is clear from the above quoted memorandum is the following:

241.1. Pillay's decision to take early retirement was for personal reasons which had absolutely nothing to do with the business of SARS at the time (and even thereafter);

241.2. Pillay asked to be appointed in a *"different capacity"* where the demands of such a job will positively support *"the reasons why I am in the first instance taking early retirement"*;

241.3. Pillay was fully aware that the ordinary consequences of his decision to take early retirement were, amongst others, that he himself would have to pay a penalty to the GEPF for his early retirement. It is for this reason that he then asked SARS *"to pay on* (his) *behalf"* of himself the amount of R1 292 732.68 as opposed to him paying the penalty himself from his own personal funds, by having his pension benefits reduced.

242. Also, in 2009 Pillay wrote directly to the Minister where he made a different request to approve his application for early retirement for different reasons (*"the second retirement application"*).

243. In his undated memorandum attached as "SA10" "to Annexure "B" in the main application, motivating the first retirement application, Pillay said the following the Gordhan:

"Dear Pravin,

PURPOSE

The purpose of this memorandum is to explain the reason why I have decided to take early retirement as well as to request you to consider to approve/recommend certain related matters that will flow from my decision to take early retirement.

DISCUSSION

I have reached the stage in my life where it has become a reality that I had to make some very important decisions about the education of my children. The decisions I have taken will require a considerable capital investment, money that can be raised by means of a bank loan, but which would be prohibitively expensive in view of the current financial circumstances where very high rates of interest are the order of the day and indications are that this situation will prevail for the foreseeable future.

In view of this I have decided to inform you that I intend to retire in 2009 when I reach the age of 56. As I have already reached the earliest optional retirement age of 55 years in terms of SARS retirement provisions, the retirement benefits will provide me with a lump sum benefit (which will financially support the decision I have made in terms of the education of my children) as well as a monthly pension. Whilst this may not be ideal in terms of maximum benefits when finally retiring, I am

of the opinion that this is the best option available to me as far as my children's education is concerned.

This brings me to the second issue at stake, namely how I view my retirement as raised above. Clearly I am doing this on account of a matter that has nothing to do with my work at SARS. I still feel that I am still capable of doing my work, I still have the enthusiasm and will to do it and I am of the opinion that through my work, I can still contribute to the establishment of an even better South Africa for all its citizens. Taking this into account, I will appreciate it if you could consider to approve that immediately after my early retirement, appoint me as a contract employee. No legal provision prevents you from making such an appointment.

The third matter is slightly more technical and complicated and it concerns my early retirement benefits payable by the GEPF. Although the Rules of the GEPF provides that a member of the GEPF can elect to retire from the age of 55 years and onwards, there is a penalty payable in terms of the benefits … As I intend to take early retirement at age 56 years … my pension benefits will be reduced by 14.4%. it was realized that the provisions of this particular GEPF Rule prevented many employees from an early retirement and in many instances these were employees Departments would have liked to take early retirement. In an effort to address the situation, Section 16(6) of the Public Service Act … was amended to provide that where early retirement is applied for,

Ministers can approve that employees (Departments/SARS) pay the penalties imposed on early retirees in terms of the GEPF Rules.

In view of this it would be appreciated if you, when I take early retirement, would recommend to the Minister that SARS pay to the GEPF my early retirement GEPF penalties. It is estimated that the penalties will amount to R1 064 257."

244. In the above quoted memorandum:

244.1. Pillay states correctly that what *"I am doing … has nothing to do with my work at SARS"*;

244.2. Pillay appreciates that *"there is a penalty payable in terms of the benefits"* for the early retirement which he has decided to take and that *"my pension benefits will be reduced by 14.4%"*;

244.3. Pillay is wrong in saying that section 16(6) of the Public Services Act was amended to enable government employees to pay penalties on behalf of their early retirees. The correct position is that the penalty is imposed by the Rules of the GEPF and the relevant Rule has never been amended to do that which Pillay asked the then Commissioner at the time, Gordhan, to do;

244.4. Pillay further says that whatever decision he has taken (to take early retirement) is intended to provide him with funds for the purpose of paying for the education of his children which funds *"can be raised by*

means of a bank loan, but which would be prohibitively expensive in view of the current financial circumstances where very high rates of interest are the order of the day …". It is therefore clear from this that Pillay simply wanted the taxpayers to save him from the ordinary financial hardships which he was facing and to which all taxpayers are exposed.

244.5. The first retirement application was not approved. It is not clear why it was not approved.

245. The fact that Pillay was fully aware of the aforesaid financial implications of his decisions to take early retirement is also apparent from the contents of the so-called Symington memorandum. In this memorandum, which is dated the 17th of March 2009 (which is a date long before the date of Pillay's above quoted memorandum dated the 27th of November 2009) Symington said the following:

"However, the financial soundness of his decision to apply for early retirement is dependent on whether the Minister approves SARS payment of the benefit penalty to the GEPF as well as whether SARS contracts with him for a period of post-retirement employment. This is so because of the relatively young age at which he will be retiring vis-à-vis his projected life expectancy. If the Minister does not approve his request or if SARS does not contract with him after his retirement, the financial risk of his decision will increase substantially and my advice then would



be for him to review his application for early retirement and to possibly withdraw it.

...

... However, if the minister is unable to approve his request relating to the penalty of if SARS is not in a position to contract with him after retirement, then his decision to apply for early retirement should probably all together be withdrawn."

246. The following is apparent from the Symington memorandum:

246.1. It is dated the 17th of March 2009 and it is addressed to the Commissioner for SARS.

246.2. Gordhan was the Commissioner for SARS until May 2009 and the Symington memorandum must have been addressed to him. There is nothing to suggest that Gordhan did not receive the Symington memorandum.

246.3. What Symington is saying in his memorandum is simply that Pillay's decision to take early retirement is not financially sound unless:

246.3.1. the Minister of Finance (at the time Trevor Manuel) approved the payment by SARS of the benefit penalty to the GEPF the payment of which would have been triggered by Pillay's early retirement; and

246.3.2. the Minister of Finance also approved that SARS should at the same time enter into a post-retirement contract of employment with Pillay.

246.4. Symington did not say that it was lawful for Gordhan and Magashule to burden the taxpayer with Pillay's penalty in excess of R1.2 million levied upon him as a result of his decision to take early retirement – which decision was clearly a ruse to enable him to access his pension benefits to fund the education of his children. At the end, SARS ended up financing a big portion of Pillay's children's education as stated in the affidavits to which I refer below.

247. The effect of the above is simply that in order to ensure that Pillay's early retirement did not result in financial prejudice to him, SARS had to pay the benefit penalty to the GEPF. It then entered into a post-retirement employment contract with him, otherwise, according to Symington, Pillay's decision to take early retirement would not have been financially sound.

248. It is for this reason that Symington made it clear in his memorandum that unless the Minister of Finance approved the whole package, i.e. early retirement, payment of the benefit penalty to SARS on behalf of Pillay, and post-retirement employment of Pillay by SARS (without advertising the position), Pillay would have had to forget about taking early retirement and would have had to raise finance for the education of his children differently. Symington did not take into account the total effect of the combination of the three elements, as set out above.



249. At the time when Maema decided to charge Pillay, Magashula and Gordhan, approved by myself and Mzinyathi, we did not have the Symington memorandum in our possession. The Symington memorandum was provided to the NDPP when Pillay and Magashula made Section 179(5) representation on the 14th of October 2016 for the withdrawal of the charges against them. In their representation, they provided new information in the form of the Symington memorandum.

250. The other document which we, the prosecutors (Maema, Mzinyathi and myself) had in our possession is a letter dated the 12th August 2010 from Magashula, (reflecting the third application from Pillay), who at the time was the Commissioner for SARS, addressed to Gordhan. In this letter, Magashula motivated the early retirement of Pillay with full retirement benefits as follows:

> *"1. PURPOSE*
>
> *The purpose of this memorandum is to request approval from the Minister for the early retirement of Deputy Commissioner Ivan Pillay with full retirement benefits from the GEPF as contemplated in Rule 14.3.3(b) of the Government Employees Pension Law, 1996, read with section 19 of SARS Act and section 16(2A)(a) of the Public Service Act, 1994 ...*
>
> *In addition, approval is requested to retain Mr. Pillay as Deputy Commissioner of SARS on 3 year contract with effect from 1 September 2010.*
>
> *2. BACKGROUND*



...

Ivan has always excelled at his job and made a significant contribution towards the establishment of SARS as the high respected organisation it is today.

For personal reasons, he has requested to take early retirement with effect from 1 September 2010. He is currently 56 years old.

Given Ivan's critical skills, experience and leadership, he has agreed to remain in the employ of SARS as Deputy Commissioner after his retirement on a 3 year contract to assist with the on-going leadership transition.

3. MOTIVATION FOR RETIREMENT WITH FULL BENEFITS

In the light of Ivan's exemplary service and sacrifice in the service of the people of South Africa, it is requested that he be granted early retirement with full retirement benefits as provided for in section 19 of SARS Act, 1997, read with section 16(2A)(a) of the Public Service Act, 1994.

Over the past 5 years the GEPF has approved over 3 thousand requests from various government departments for staff members to retire before the age of 60 with full benefits. The statistics are attached to this memorandum as received from the GEPF (Appendix).

In addition, the former and current Minister of Finance have approved at least five such requests over the past 2 years (see Appendix B).

4. MOTIVATION FOR REAPPOINTMENT ON A 3 YEAR CONTRACT

Ivan's wealth of knowledge and experience within SARS and his leadership position as Deputy Commissioner is an invaluable asset to the organisation. This is particularly important given the on-going leadership transition within the organisation following the departure of the Minister and the recent restructuring of the top leadership of the organisation as part of the revised Operating Model.

Ivan's continued guidance, leadership knowledge over the next 3 years will provide critical continuity as well as playing an important mentoring role in developing the next generation of SARS leaders.

In addition, it should be noted that there is precedent for the termination of employment and immediate rehiring of the same person under different conditions of employment within the public sector.

In this regard, advice was sought from the Acting Director-General of the Department of Public Service and Administration ... regarding the proposed early retirement of Mr. Pillay and his retention on a 3 year contract. He confirmed that there is no restriction on the appointment to the public service or to the same department of a person who has left on

an Employee Initiated Severance Package (EISP) and that he was aware of previous such cases.

5. FINANCIAL IMPLICATIONS

The financial implication of early retirement with downscaled benefits for Ivan will be considerable as his lump sum benefit will decrease by R243 605 to R121 443 and his monthly pension by R47 402 to R48 563.

The financial implications for SARS, should approval be granted to allow Ivan to take early retirement with full retirement benefits, will be an amount of R1 258 345.99 which SARS will be liable to pay the GEPF in terms of the provisions of section 17(4) of the GEPF Law, 1996."

251. The above quoted memorandum concludes with a recommendation that Gordhan approves Pillay's early retirement without downscaling his retirement benefits and that Gordhan also approves the reappointment of Pillay as Deputy Commissioner of SARS on a 3 year contract with effect from 1 August 2010 with the same remuneration that he was earning prior to the so-called early retirement.

252. The recommendations were approved by Gordhan on 13 October 2010. It is worth nothing that the then Deputy Minister of Finance, Mr. Nhlanhla Nene, did not approve the recommendation despite the fact that the memorandum made provision for his approval to be obtained. I understand that is also part of internal requirements in government that a Minister approve a

recommendation only after the Deputy Minister has applied his mind to it. This did not happen in this case.

253. We also had in our possession the following documents which we considered when we made the decision to bring the charges in issue.

Affidavit of Nico Johan Coetzee

254. The affidavit deposed to by Nico Johan Coetzee (*"Coetzee"*), who was previously employed by SARS is attached as "SA11" to Annexure "B" in the main application. There are other documents attached to such affidavit and I refer to them individually below.

255. In his affidavit, Coetzee says that in 2008, he was instructed to prepare a ministerial memorandum to be signed by Gordhan (who was Commissioner of SARS at the time), to recommend to the then Minister of Finance (Trevor Manuel) that he approve Pillay's early retirement.

256. Coetzee further states that:

"4.

I awaited the approval by the Minister of the request by Mr. Pillay. In October 2009 while waiting for the approval of the memorandum, I received a revised memorandum from the office of the Commissioner, Mr Oupa Magashula. The memorandum contained different reasons from my original memorandum as to why the Minister should approve

Mr. Ivan Pillay's early retirement. The reasons on the revised memorandum were that Mr. Pillay wished to go on early retirement in order to enable him to provide for his children's education and not as I have previously stated that he wished to pursue other interests. I raised concerns to the Commissioner through the e-mails dated the 8th and the 9th October 2009 respectively, that if the Minister should approve Mr. Pillay's application on the grounds of personal interest may create a precedent in terms of which, other employees might come forward with similar request for early retirement."

257. In the e-mails dated 8 and 9 October 2009 referred to in his affidavit, Coetzee said the following to Magashula:

"Hi Oupa

Luckily for me I have dealt with this matter during June this year but I do not know why the matter was not promoted at the time as I have certainly started the process. I have amended the two submissions (attached) to fit in with Mr. Pillay's latest request. It is not unusual that a retirement employee is re-appointed after retirement in a contract capacity. What may raise some eyebrows in this particular case is that the employee is appointed in the same position he held before his retirement. Ordinarily such a re-appointment will be a different and a lower-graded position. It will have to be decided if satisfactory reasons can be given for the re-appointment in the same position. We had two similar application for early retirement, both which were not approved by the Minister as the

Minister could not find sufficient reason to approve early retirement. In terms of section 16(6) of the Public Service Act, the Minister only has consider if sufficient reason exist to approve Mr. Pillay's early retirement ..."

258. In Coetzee's e-mail of 9 October 2009, he said:

"I am resending this e-mail on account of a slight change I have made to the two attached documents. The changes indicated that the reason why Mr. Pillay is requesting approval for early retirement is to provide for his children's education and not as I have previously stated that he wished to pursue other interests. You will now have to consider to recommend and the Minister consider to approve if this is sufficient reason to recommend/approve Mr. Pillay's application for early retirement. If his application is duly recommended/approved, it could technically be construed that SARS is willing to contribute from its budget an amount of ±R340 000 towards the education of his children. I admit it is a rather cynical viewpoint, but it can be a viewpoint that may be held by other parties as well and that may put yourself and the Minister in a tight spot, especially because Mr. Pillay was re-appointed in his present position. The argument may be that he was able to continue with his present functions, but his early retirement and reappointment was purely to assist him to be able to provide for his children's education with a R340 000 'contribution' from SARS."

Pillay's contract of employment

259. Pursuant to Magashula's recommendation, Gordhan approved Pillay's early retirement and re-appointment. The approved re-appointment was to be for a period of three years. Gordhan also approved that Pillay's penalty to the GEPF be paid by SARS.

260. Despite the fact that the Minister approved Pillay's re-appointment to be for a period of three years, on the 7th of February 2011, Magashula and Pillay concluded a five year contract, a copy of which is attached as "SA12" to Annexure "B" in the main application. This contract was clearly not approved by Gordhan and all the payments made in terms thereof were not lawfully authorised. Magashula and Pillay were fully aware of this illegality. They acted in contravention of the empowering approval given by Gordhan to conclude a three year contract (even though that approval itself was unlawful).

261. The aforesaid contract was to have come to an end in 2016. But, on the 26th of March 2014, Gordhan concluded a new contract, just weeks before his appointment to a different ministry. In terms of that contract, Pillay was appointed with effect from the 1st of April 2014 to the 31st of December 2018. There does not appear to be a lawful reason for concluding another contract before the expiry of the contract concluded in February 2011.

Affidavit of Chrisna Susanna Visser

262. Visser' affidavit, which is attached as "SA13" to Annexure "B" in the main application, largely confirms that there was no business reason for SARS to pay Pillay's penalty.

263. Visser deals with other things in her affidavit, amongst others, the circumstances under which Pillay concluded an employment termination agreement with Skollie. Of relevance for purposes of this application, Visser says the following:

"8

Nic Coetzee and I were both uncomfortable with the request as it was for personal reasons and we could find no business reasons to pay the penalty on behalf of Mr. Pillay. We were requested to draft a memorandum to the Minister of Finance for his approval. Nic Coetzee and I both advised Mr. Oupa Magashula in the Commissioner's boardroom that it is not advisable to continue with the early retirement of Mr. Pillay because it was personal reasons and not business reasons. We were also concerned that it could set a precedent whereby others could come and claim the same benefit. We informed him that no such case was recommended in the past as it was for personal reasons. He instructed us to continue with the memorandum.

...

I was presented with the signed approved memorandum by the Minister and I initiated the process of the exit of Mr. Ivan Pillay from the Pension Fund and his re-employment on a contract basis. Part of this process was to sign a contract of employment with Mr. Ivan Pillay. I drafted a three year contract of employment to be signed by Mr. Oupa Magashula as the Commissioner and Mr. Ivan Pillay as the employee. The contract document was however

amended to five years … Mr. Oupa Magashula requested that I sign as a witness. I queried the matter of the contract that was amended to five years. Mr. Oupa Magashula indicated that they decided that it will be five years and not three and continued to sign the contract. I signed as witness as I believed it was merely to indicate that it was Oupa Magashula who signed the contract. I advised but the advice was case aside and not taken.

11

In 2014 a new contract of employment … was requested from my Office via Rita Hayes who was employed by Mr. Ivan Pillay. I enquired why a new contract was needed as the previous employment contract was still valid however I was just advised that the Minister Pravin Gordhan and Mr. Ivan Pillay wanted to conclude a new contract. I then continued to e-mail a draft contract to her office. I was presented with a new contract of employment to implement for Mr. Ivan Pillay."

264. Pillay's aforesaid contract was concluded in April 2014 – the very last year of Gordhan's tenure as Minister of Finance. In view of the fact that Pillay's contract of employment signed in February 2011 was still valid and of full force and effect until February 2016, there was no lawful reason to conclude a new contract other than to unduly benefit Pillay with a further contract of employment for another period of two years after what would have been the end of his contract concluded in February 2011.

Statement of Gordhan

265. In his own statement attached is attached as "SA14" to Annexure "B" in the main application, which statement was not made under oath, **the Minister** says the following about Pillay's early retirement and his approval thereof:

> *"15. Mr Pillay took early retirement and was re-appointed when I was Minister of Finance. I seem to recall that it happened in early 2010.*
>
> *16. The then Commissioner of SARS, Mr Oupa Magashula, addressed a memorandum to me on 12 August 2010, seeking my approval for Mr Pillay's early retirement and re-employment on a fixed term contract. I was told that Mr Pillay sought in this way to gain access to his pension fund to finance the education of his children. I understand that Mr Magashula had established from enquiries made with the Department of Public Service and Administration that the terms of Mr Pillay's early retirement and re-appointed were lawful and not unusual. I approved Mr Magashula's proposal because I believed it to be entirely above board and because I thought it appropriate to recognise the invaluable work Mr Pillay had done in the transformation of SARS since 1995."*

266. Gordhan's statement creates an impression that he approved Pillay's early retirement package on the basis that Pillay needed money to finance his

children's education. This, however, is not what is stated in Magashula's memorandum to Gordhan of August 2010. The issue of raising funds to provide for the education of Pillay's children is referred to in Pillay's memorandum to Gordhan in 2008, which is not the one which Gordhan approved in 2010.

267. What Gordhan does not say in his unsworn statement is the following:

267.1. The legal basis on which he approved the request that Pillay's penalty to the GEPF be paid by SARS;

267.2. The fact that the memorandum which he approved in 2010 does not say anything about Pillay wanting to access his pension benefits on order to provide for the education of his children;

267.3. That he became aware of Pillay's need for money to educate his children when he still worked with him whilst he was still the Commissioner for SARS;

267.4. Why he did not approve the request made to him by Pillay in 2008;

267.5. Why he considered it to be above board to approve the early retirement and re-appointment of Pillay in circumstances where he knew that upon early retirement, the position of Pillay had to be advertised to enable interested parties to apply to be considered for the position – and more so when Magashula resigned from the position of Commissioner for SARS pursuant to allegatons that he

offered a member of the public employment at SARS without following the prescribed recruitment procedures;

267.6. That he was, in fact, a party to the *"enquiries made with the Department of Public Service and Administration"* referred to in paragraph 16 of his statement. In this regard, in an e-mail dated 23 July 2010, which is attached as "SA15" to Annexure "B" in the main application (and which was obtained only in the review process), addressed to the then Acting Director-General of the Department of Public Service and Administration, Magashula said:

> *"Dear Kenny,*
>
> *Thank you very much for a quick discussion yesterday with my Minister regarding the early retirement of our Deputy Commissioner of SARS. In my discussion this morning with my Minister we agreed that I should ask you for a written response to our discussion and the questions I posed yesterday ..."*

268. The reference to "my Minister" in the above quoted e-mail is a reference to Gordhan. It is clear from the above quoted e-mail that Gordhan was fully involved in the process leading to Pillay's early retirement. The enquiries referred to in his statement were made at his request, yet he does not say this in his statement.

269. In his aforesaid e-mail, Magashula did not enquire about the payment of Pillay's penalty to the GEPF or the legalty of paying it. Of relevance, for purposes of the charges in issue, he asked the following questions:

- *"Is there a precedent for authorising early retirement and re-engaging the same person on a short contract completely different from permanent employment, with a scaled down responsibility, salary and other conditions of employment?*
- ...
- *Related to the first bullet point – do you have any statistics of how many of these early retirement cases without re-engagement have been processed thus far?"*

270. The response from the Acting Director-General of the Department of Public Service and Administration is attached as "SA16" to Annexure "B" in the main application, and it was silent on the question whether it was lawful for SARS to pay Pillay's penalty to the GEPF. This response must necessarily be silent on this issue due to the fact that the issue was not raised. In fact, the response shows that what was asked in the discussion was the so-called Employee Initiated Severance Package, which is completely different from what Pillay wanted to do.

271. The Employee Initiated Severance Package was introduced into the public service in terms of a ministerial determination made by the Minister of Public

Service and Administration. A copy of the relevant determination is attached as "SA17" to Annexure "B" in the main application. Paragraph 1 of this determination says that it is *"applicable to all employees appointed in terms of the Public Service Act, 1994, as amended."* Pillay was employed in terms of the South African Revenue Service Act 34 of 1997 and the determination did not apply to him. Furthermore, the determination did not apply to Pillay due to the fact that in terms of paragraph 3 thereof, its purpose is to:

> *"... allow employees affected by transformation and restructuring who wish to exit the public service, to apply for an employee-initiated severance package."*

272. Pillay's application was in any event not made in terms of the ministerial determination referred to above.

273. What appears from Gordhan's statement is that he was not a party to the process which led to Pillay's application for early retirement and re-appointment and that he only became involved in that process when he was Minister of Finance. As demonstrated by the documents to which I have referred above, this is simply not true.

274. In his memorandum dated 27 November 2009, Pillay requested that his approval be granted in terms of section 16(6)(b) of the Public Service Act, 1994. It provides.

> *"(b) If an employee is allowed to so retire, he or she shall notwithstanding anything to the contrary contained in subsection*

(4) be deemed to have retired in terms of that subsection, and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that subsection."

275. Section 16(4) of the Public Service Act, 1994 provides that an officer, other than a member of the services or an educator or a member of the State Security Agency who has reached the age of 60 years may, subject in every case to the approval of the relevant executive authority, be retired from the public service. Pillay had not reached the age of 60 years provided for in this section. This being the case, section 16(4) of the Public Service Act did not apply to him.

276. Section 16(6)(a) of the Public Service Act, 1994 upon which Pillay also relied on his aforesaid memorandum provides that an executive authority may, at the request of an employee, allow him or her to retire from the public service before reaching the age of 60 years, notwithstanding the absence of any reason for dismissal in terms of section 17(2), if sufficient reason exists for the retirement. This provision simply authorises the executive authority, Gordhan in this case, to authorise the early retirement of an employee who has not yet reached the age of 60 years. This provision, however, is silent as far as the retirement or pension benefits are concerned.

277. In his letter to Gordhan referred to above, Magashula sought Gordhan's approval in terms of section 16(2A)(a) of the Public Service Act 1994. This section provides that:



"(2A)(a) Notwithstanding the provisions of subsections (1) and (2)(a), an officer, other than a member of the services or an educator or a member of the State Security Agency shall have the right to retire from the public service on the date on which he or she attains the age of 55 years, or any date after that date."

278. This section simply creates a right of a Public Service Employee to retire at the age of 55 years or after attaining that age. The executive authority's approval is not required for that purpose.

279. In his letter to Gordhan, Magashula further relied on Rule 14.3.3(b) of the Rules of the GEPF. Rule 14.3.3 deals with members with 10 years and more pensionable service. Rule 14.3.3(b) provides that:

"(b) A member who retires on account of a reason mentioned in Rules 14.3.1(d) or (e) and who has at least 10 years' pensionable service to his or her credit, shall be paid the benefits referred to in Rule (a) above: Provided that such benefits shall be reduced by one third of one percent for each complete month between the member's actual date of retirement and his or her pension-retirement date."

280. It is clear from Rule 14.3.3(b) that it only applies to a person who retires on account of a reason mentioned in Rules 14.3.1(d) or (e).



281. Rule 14.3.1(d) deals with a member who retires before his or her pension-retirement date but not on a date prior to the member attaining the age of 55 years: Provided that such a member has the right to retire on that date in terms of the provisions of any Act which regulates his or her terms and conditions of employment. Pillay had a right to retire n terms of provisions of the Public Service Act 1994 referred to above. Accordingly, Rule 14.3.1(d) is the one which applied to him.

282. Rule 14.3.3(b) to which reference has already been made above, provides that a person who retires on account of a reason mentioned in Rule 14.3.1(d) or (e) shall be paid *"the benefits referred to in Rule (a) above: Provided, that such benefits shall be reduced by one third of one percent for each complete month between the member's actual date of retirement and his or her pension-retirement date."* This Rule applied to Pillay because in terms of Rule 14.3.1(b) he was retiring *"before his or her pension-retirement date in terms of the law governing his or her terms and conditions or service"* being the Public Service Act to which reference has been already been made above.

283. There is no provision in the Public Service Act, 1994, in particular in section 16 thereof, in terms of which provision is made for SARS to pay what Pillay himself described in his memorandum as *"the penalty imposed on my pension benefits per Rule 14.3.3(b) of the GEPF Rules."* Rule 14.3.3(b) of the GEPF Rules simply makes provision for the reduction of the pension benefits of a person who retires before his or her pension retirement date and does not

make provision for the employer of such a person to pay the penalty which is imposed in terms thereof.

284. When we decided to bring charges, we clearly took into account that there was no authorisation in law for SARS to pay the penalty, effectively financing Pillay's retirement and education of his children.

285. In addition, we took into account that the so-called early retirement was in fact not an early retirement at all. This is so due to the fact that Pillay did not intend to retire and both Gordhan and Magashula were fully aware that Pillay did not truly intend to retire. The fact that Pillay did not genuinely truly intend to "retire" is not concealed in his memorandum dated 27 November 2009.

286. In the aforesaid memorandum, a false impression is created that Pillay was to serve SARS in a *"different capacity"* where the demands of such a job will *"positively support the reasons why I am in the first instance taking early retirement."* The reason given for early retirement is that *"my health condition is slowly deteriorating"* and *"my family responsibilities, for a long time, suffered on account of the dedication required by my job."*. Despite all of this, Pillay was at the very same time reappointed to the very same position from which is so desperately wanted to *"retire"*.

287. In the light of the above, it is respectfully submitted that we were quite correct in bringing the charges against the three individuals.

288. In addition to the above, the fact that Pillay was reappointed at the same time that he went on early retirement clearly meant as far as we were concerned,

that the position of Deputy Commissioner of SARS, to which he was reappointed immediately was not advertised and other interested parties were not given an opportunity to apply to be appointed to that position. This would have been necessary due to the fact that at the very moment that Pillay took early retirement, his position of Deputy Commissioner became vacant and the position had to be advertised to give all interested parties an equal opportunity to apply for it. This was not done.

289. Pillay, Magashula and Gordhan's reliance upon the provisions of section 17(4) of the GEPF Law, 1996; Rule 20 of the Rules of the GEPF; and the contents of the Government Employees Pension Fund Members Guide is not only incorrect, it is also misleading the public because Pillay, Magashula and Gordhan's papers have been published for all to see.

Section 17(4)

290. Section 17(4) of the GEPF Law, 1996 deals with a situation where the employer or if any legislation adopted by parliament places an additional financial obligation on the GEPF. In that event, the employer or the government shall pay the financial obligation it has placed on the GEPF. This is not what happened in this case. The penalty obligation was imposed upon Pillay by the Rules of the GEPF and not upon the GEPF. The penalty obligation also did not arise from the employer's action or operational requirements, it arose from Pillay's early retirement.

291. Section 17 of GEPF Law deals with the funding of the GEPF. The section does not deal with penalties which must be paid by employees who are taking early retirement. The section is clearly not concerned with penalties which the Rules of the fund impose upon retiring employees. The GEPF is not funded by penalties levied upon early retirees.

292. Section 17(4) makes it clear that it is concerned with any action taken by the employer or if any legislation adopted by parliament (places any additional financial obligation on the Fund) the person who places such an obligation on the Fund is then made responsible to pay the fund *"an amount which is required to meet such obligation."*

293. In the case of Pillay, no obligation whatsoever was placed on the GEPF. On the contrary, the obligation was placed on Pillay to pay the penalty. In the premises, section 17(4) of the GEPF Law does not assist Pillay, Magashula and Gordhan.

Rule 20

294. Rule 20 of the Rules of the GEPF similarly does not assist Pillay, Magashula and Gordhan. Rule 20 deals with compensation to the GEPF on retirement or discharge of a member prior to attachment of the member's pension retirement date.

295. The Rule applies to a situation where a member *"becomes entitled in terms of Rule 14.8 to the pension benefits in terms of a severance package, referred to in that Rule, or is discharged prior to his or her pension retirement date and*

at such retirement ... in terms of the Rules becomes entitled to the payment of an annuity or gratuity or both an annuity and a gratuity in terms of the Rules, and any of these actions result in an additional financial liability to the fund."

296. In this case, the GEPF did not attract *"an additional financial liability"*. On the contrary, it is Pillay who attracted a penalty for himself. He, and not SARS, had to pay the penalty.

The Guide

297. Pillay, Magashula and Gordhan's reliance on the Government Employees Pension Members Guide is completely wrong. The sentence quoted therefrom, is inconsistent with what is contained in the GEPF Law and the Rules of the GEPF.

298. It cannot be, as Pillay, Magashula and Gordhan are suggesting that the guide supersedes the GEPF Law and the Rules. In any event, on any proper and rational interpretation of the guide upon which Pillay, Magashula and Gordhan seek to rely, the only situation which could be contemplated therein is where *"the employer granted permission for your early retirement"* for the employer's own operational reasons. There can be no basis on which the government should fund the early retirement of its employees. In circumstances where that has nothing to do with the government's operational reasons.

299. When regard is had to the above background and provisions of the GEPF Law and the GEPF Rules, it cannot be said that there was no rational basis to bring charges against Gordhan, Pillay and Magashula.

THE DECISION TO PROSECUTE

300. Maema made a full and comprehensive presentation to me and Mzinyathi. The final decision to prosecute was made by me, and Mzinyathi concurred. The decision was taken pursuant to a consideration of the available evidence at the time.

301. As required by protocol, a memorandum was sent to the President, advising the President of the prosecutorial decision, once it was taken, to charge Gordhan, prior to levelling the charges against him.

302. I also required research and took into the public interests into account prior to taking the prosecutorial decision to charge Pillay, Magashula and Gordhan.

303. Thus, once again, a Section 24(3) of the NPA Act Consultation was held with Mzinyathi in compliance with the statutory imperative of checks and balances in the system.

304. In this case:

304.1. The outside world was told that Pillay took early retirement;

304.2. In fact and in truth, Pillay never retired;

304.3. Pillay remained in the very same position of deputy commissioner which, according to his first memorandum, he desperately wanted to retire from;

304.4. The GEPF was made to understand that Pillay was leaving the public service by way of an early retirement, when, in fact, he was not leaving the public service;

304.5. The transaction was concluded to enable Pillay to have access to his pension benefits to provide for the education of his children;

304.6. The early retirement transaction would not have been concluded if Pillay did not need to provide for the education of his children;

304.7. Gordhan approved a three-year contract of employment; however, Pillay and Magashula concluded a five-year term contract commencing in February 2011 with the intended end date being in 2016;

305. The transaction was therefore, not a genuine, lawful and proper early retirement transaction because an early retirement transaction results in the retiree actually leaving the employment of the employer. It is common cause that Pillay did not leave the public service, nor was it intend that he would leave the public service.

Unlawful interception of communication

306. With regard to the interception of and transcribing of the meetings relating to *inter alia* the Jackie Selebi prosecution, there is an exceptionally strong case.

Not only is there physical evidence of the bugging devices that were found in the NPA offices and the CDs on which these recordings of the interceptions were made, as well as the transcriptions of such recordings, but also all the documents relating to the installation of these bugging devices which were located. Further, the persons involved in obtaining the finances funding such operations, gave statements with regard to such activities.

307. The persons directly involved in the installation, listening and transcribing of such recordings provided statements through their independent legal representative, Adv F Schnetler. Material corroboration was also obtained from other members of the unit. There can be no doubt about the authenticity of these recordings.

308. From the objective evidence that was obtained, the devices, statements of persons intricately involved together with the probabilities, the inescapable conclusion is that there is a *prima facie* case.

309. An amount of R1 426 382.26 million was paid to Helgaard Lombard (*"Lombard"*) for the obtaining and installation of the interception devices and various related expenses. A residue of approximately R100 000.00 was left after installation of all the devices and equipment. Lombard approached JVL to enquire what should be done with the remaining R100 000.00. JVL indicated to him that it could not be reflected in SARS system and that he could keep it for himself. This constituted a *prima facie* case of corruption.



310. Once again, a complete presentation was done to me and Baloyi and a panel of senior advocates on the 26th of February 2018. I attach hereto a copy of a memorandum dated 1st of March 2018, marked as annexure **"JPP58"**.

311. I still contend that there is a reasonable prospect of a successful prosecution.

312. Considering the content of the statement of Lombard, which I attach hereto as annexure "**JPP59**", there is a clear *prima facie* case that has been made out against the three accused in respect of what has now become known as the "Rogue Unit", and for that reason the prosecution was entitled to prefer the charges it did against the three accused. A copy of the charge sheet is annexed hereto, marked as annexure **"JPP60"**.

CONCLUSION

313. I respectfully submit that the objective facts of this matter established that:

313.1. No evidence at all was tendered before the Commission in support of the allegations that I am captured for political or corrupt reasons;

313.2. I did not protect criminals by not prosecuting when there was a *prima facie* case to prosecute;

313.3. The matters where I took a prosecutorial decision to prosecute, were done so after checks and balances were followed which proved that there was a *prima facie* case to initiate a prosecution.

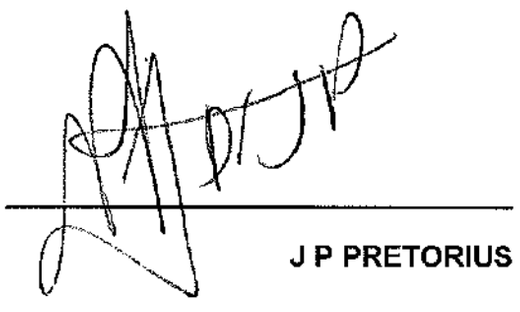
313.4. The investigations and prosecutions that were referred to PCLU were referred properly, lawfully and legitimately.

313.5. The persons making allegations against me before the Commission, did not assert their constitutional rights by pursuing appropriate legal recourse available to them against me;

313.6. I was not responsible for either the suspension or the initiation of any disciplinary steps against Booysen, McBride, Khuba, Sesoko, Dhlamini and Maoka.

314. All the persons who made unfounded allegations against me before the Commission, have a personal interest in preventing the prosecution and finalisation of the matters involving them.

315. In the premises, I urge the Chairperson to reject the evidence that was tendered before the Commission, alleging that I enabled or was captured, either for political or corrupt reasons, for the benefit of the unnamed persons, as no valid and substantive evidence of state capture was tendered against me.



J P PRETORIUS

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both

true and correct. This affidavit was signed and sworn to before me at Silverton on this 17 day of **AUGUST 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

316.

SUID-AFRIKAANSE POLISIEDIENS
SAPS 13
2020 -08- 17
PRIVATE BAG X537
SILVERTON 0127
SOUTH AFRICAN POLICE SERVICE

JPP1

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

IN RE: **SUPPLEMENTARY AFFIDAVIT OF DR J P PRETORIUS SC ("THE APPLICANT"), TO THE INITIAL APPLICATION FOR THE CROSS-EXAMINATION OF MR ROBERT McBRIDE AND GENERAL JOHAN BOOYSEN, AND IN SUPPORT OF THE APPLICATION FOR THE CROSS-EXAMINATION OF MR MATTHEWS SESOKO AND MR HUMBULANI INNOCENT KHUBA**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LUYANDA KOPMAN

do hereby declare under oath and state that: -

1. I am an adult male duly admitted Attorney, employed as such at the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts herein contained in this affidavit are within my personal knowledge and unless stated to the contrary or is evident from the context, are to the best of my knowledge and belief both true and correct.

3. I have read the supplementary affidavit deposed to by **JACOBUS PETRUS PRETORIUS** together with annexures, and confirm the contents thereof insofar as same relates to me.

LUYANDA KOPMAN

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Silverton on this 17 day of **AUGUST 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
SAPS 13
2020 -08- 17
PRIVAATSAK, PRIVATE BAG X...
SILVERTON 0127
SOUTH AFRICAN POLICE SERVICE

JPP 2"

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

IN RE: **SUPPLEMENTARY AFFIDAVIT OF DR J P PRETORIUS SC ("THE APPLICANT"), TO THE INITIAL APPLICATION FOR THE CROSS-EXAMINATION OF MR ROBERT McBRIDE AND GENERAL JOHAN BOOYSEN, AND IN SUPPORT OF THE APPLICATION FOR THE CROSS-EXAMINATION OF MR MATTHEWS SESOKO AND MR HUMBULANI INNOCENT KHUBA**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ANTHONY MOSING

do hereby declare under oath and state that: -

1. I am an adult male employed at the National Prosecuting Authority (NPA) based at 28 Church Square, Pretoria, as Senior Deputy Director of Public Prosecutions c/o the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.

M.M

3. I have read the supplementary affidavit deposed to by **JACOBUS PETRUS PRETORIUS** together with annexures and confirm the contents thereof, insofar as same relates to me.

A MOSING

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Knoxville on this 16th day of **AUGUST 2020** and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

715 47797 Sgt

COMMISSIONER OF OATHS

JPP 3

Tebogo Mathibedi

From: luyanda kopman <kopmanluyanda@gmail.com>
Sent: Friday, 14 August 2020 1:22 PM
To: Tebogo Mathibedi
Subject: Fwd: ADV. J. P. PRETORIUS SC: HEARING DATE 29 JULY 2020
Attachments: image001.jpg

Can you please print this out for me?

---------- Forwarded message ---------
From: **Garth Hulley** <GarthH@commissionsc.org.za>
Date: Sun, 26 Jul 2020, 09:36
Subject: ADV. J. P. PRETORIUS SC: HEARING DATE 29 JULY 2020
To: Mathibedi@thulamelachambers.co.za <Mathibedi@thulamelachambers.co.za>, zuko.madlanga@gmail.com <zuko.madlanga@gmail.com>, Kgaogelo Ramaimela <adv.kaygee@gmail.com>, Jacobus Pretorius <torie007@gmail.com>, Marco MP. Voller <MVoller@npa.gov.za>, luyanda kopman <kopmanluyanda@gmail.com>
Cc: Susan Wentzel <SusanW@commissionsc.org.za>

Hi Frank

Pursuant to our discussion this morning, I note your indication that you have instructions to bring an application for a postponement. As previously advised, it was our intention to oppose such an application if it were brought. I have since then being considering your concerns and the issues you have previously raised and how I might be of assistance to you. I have discussed it also with Susan. I wish to propose a way forward that may be mutually beneficial and, no doubt, may assist in reducing the issues in dispute and make it easier to get to the truth. First, a bit of background to my proposal.

Adv. Pretorius, SC has been implicated by several people, including Messrs McBride, Sesoko and Khuba and Gen. Booysen. I imagine he has been implicated by other people, as well, although I cannot identify all the people at this point in time. The essence (and without limiting this) of the allegations against him in respect of the aforesaid witnesses relates to Adv. Pretorius' role as the head of the Priority Crimes Litigation Unit and that Unit's role in prosecuting certain people. In a nutshell (and I merely give a short list, there may be more), the allegation is that the Unit was involved in the prosecution relating to:

1. The so-called SARS Rogue Unit.

2. The Cato Manor "*hit squad*" and particularly Gen. Booysen.

3. McBride, Sesoko and Khuba on charges of Defeating the Ends of Justice, Fraud and Perjury and other charges.

4. Paul O'Sullivan and Sarah-Jane Trent.

5. Glynnis Breytenbach.

6. SAA.

7. The Rendition matter.

The Unit was also involved in many prosecutions where the investigations were conducted by Crimes Against the State (CATS).

Against this backdrop, what I propose is the following:

1. Adv. Pretorius file a new affidavit within a specified time period. I'm happy with 10 August 2020.

2. The affidavit should be specific and not vague. It should be prepared in the active voice and not the passive. In other words, if an allegation is made, it must be clear whether Adv. Pretorius is making the allegation or the allegation is made by somebody else. If he relies upon another person, he should state who that person is. He should provide corroboration for his assertions including documentary. If he knows of the existence of a document but does not have it, he must state where it is and who has control over it.

3. Where either McBride or Booysen has made an allegation that he feels is either vague, unsubstantiated or hearsay, he must nevertheless deal with it.

I trust this is of assistance to you.

Best regards,

Garth I. Hulley, SC

COMMISSION OF INQUIRY INTO STATE CAPTURE |Hillside House, 3rd Floor, 17 Empire Road, Parktown, Johannesburg, 2193|Gauteng| South Africa|

mobile: (083) 442-8291|email: GarthH@commissionsc.org.za | www.sastatecapture.org.za



JPP4

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President Cyril Ramaphosa
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The Honourable TM Masutha M.P.
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YOUR REFERENCE: S v V PILLAY AND OTHERS: CAS 427/05/2015
OUR REFERENCE: Mr B Hotz/tmp4/PILL38396.1/#5630677v1
DIRECT PHONE: +27 11 535 8106
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EMAIL ADDRESS: bhotz@werksmans.com

12 July 2018

Dear Advocate Abrahams

IN RE: FORMAL COMPLAINT AGAINST MEMBERS OF THE NATIONAL PROSECUTING AUTHORITY: ADVOCATES S MZINYATHI, JP PRETORIUS SC AND S MAEMA (NOW ADDING JJ SMIT SC AND S RAMAITE SC)

1 As you know, we act for Mr Johannes Hendrikus van Loggerenberg **("our client")**.

2 Your letter dated 6 July 2018 **("the letter")**, its attachment in the form of a report **("the report")** and prior correspondence in the above matter refer.

3 Our client is naturally disappointed with the content of your letter and will be taking legal advice on the best recourse in law to address his legitimate complaint. Our client has nevertheless instructed us to formally record the following:

3.1 The formal complaint registered by our client was intended for your personal attention, in your capacity as National Director of Public Prosecutions **("NDPP")**, and was submitted in

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham C Andropoulos BA Aronoff DA Arteiro T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer A Kenny A Khumalo R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo JE Meiring SM Moerane C Moraitis PM Mosebo KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DE Willans DG Williams E Wood BW Workman-Davies **Consultant** AL Armstrong

terms of the Constitution of the Republic of South Africa **("the Constitution")**, the National Prosecuting Authority Act **("NPA Act")** and the NPA Code of Conduct **("the Code")** and Prosecution Policy **("the Policy")**.

3.2 The complaint set out facts, the sequence of events and substantiating evidence in support of the complaint, as directed against three senior NPA prosecutors, namely Advocates Sibongile Mzinyathi **("Mzinyathi")**, Jacobus Petrus Pretorius SC **("Pretorius")** and Sipho Maema **("Maema")**.

3.3 The complaint set out how Mzinyathi, Pretorius and Maema had failed to abide by the Constitution, the NPA Act and Prosecution Policy.

4 As the NDPP, to whom Mzinyathi, Pretorius and Maema ultimately account, it was incumbent upon you to have personally considered not only the report as attached to your letter, but also our client's complaint, the facts set out in the complaint, the sequence of events and the substantiating evidence as submitted by us to you on our client's behalf.

5 The report attached to your letter is eminently contestable on a number of grounds and for a number of reasons, bearing in mind that the report does not attach any additional correspondence or records on which it seeks to rely. We do not intend to deal with all of these herein. Suffice at this stage to record:

5.1 The report completely mischaracterises our client's complaint and fails to deal with virtually all of the complaints, facts and evidence, as sent to you in your official capacity as the NDPP, by us on behalf of our client.

5.2 Contrary to what was initially contended by Mzinyathi, Pretorius and Maema in writing and under oath, it is now common cause that no version and/or defence of our client in respect of the charges he now faces exist/s or have/has ever existed. This is only one aspect of the complaint by our client, which is still being ignored, remains unaddressed and was not considered or reflected upon in the report.

5.3 It was initially advanced by the NPA that the version and/or defence of our client in respect of the charges he now faces had been obtained and was considered prior to deciding to prosecute him on the charges he now faces. This has been consistently denied by our client. The report now introduces a new and mutually exclusive version that our client had somehow "*elected*" not to provide his version and/or defence on the charges he now faces. Our client emphatically denies this new and contradictory contention.

5.4 Crucially, what the report does not address in any manner or form, is the fact that at no stage during the investigative and prosecutorial processes was the version and/or defence of our client sought and considered by the NPA in relation to the charges he now faces on any occasion prior to deciding to prosecute him as is explicitly required by the Prosecution Policy, NPA Act and Constitution.

6 The facts of the matter are rather simple, and none have been addressed or responded to by you nor are they reflected upon in the report:

6.1 Contrary to the NPA's initial stance, the South African Police Services **("SAPS")**, the Directorate of Priority Crimes Investigations **("DPCI")**, and the National Prosecuting Authority **("NPA")** never sought of our client, nor obtained from our client, a warning statement with respect to the charges reflected in the April 2018 indictment to wit:

6.1.1 any events that allegedly occurred "*between August and September 2008*" at an unspecified date and time and venue; and/or

6.1.2 any allegations concerning "*Mr Helgard Lombard*"; and/or

6.1.3 any allegations relating to an "*unauthorised gratification*" in the amount of "*approximately R100 000-00*"; and/or

6.1.4 any specific allegations with respect to the contents of paragraphs 6.1.1 to 6.1.3 *supra* and Sections 10 (b) and 3 of PRECCA as reflected in the indictment;

6.1.5 The DPCI did in fact request a warning statement from our client with respect to totally different allegations, which were clearly set out in detail in their written request of August 2016 and are reflected in the incomplete warning statement, upon which the NPA now seeks to rely on.

6.1.6 None of the allegations put to our client in August 2016 by the DPCI relate to the charges reflected in the current indictment received in April 2018:

6.1.6.1 Our client was invited by the DPCI in August 2016 to consider providing a warning statement, by giving his version and/or defence in respect of:

6.1.6.1.1 An allegation relating to persons that had supposedly been under investigation of an investigative unit at the South African Revenue Service ("SARS") and a fundraiser for charitable causes of which he had been involved in since October 2012 only when it came about; and

6.1.6.1.2 An allegation concerning an investigative unit he managed at SARS whilst an employee there, specifically from 2010 onward.

6.1.6.2 The facts show that the warning statement sought by the DPCI was never completed by our client because an undertaking was given by the DPCI to afford our client an opportunity to consider the allegations, obtain necessary records and return to them by 5 September 2016 to conclude the process because the docket had to "*urgently go to the NPA*". This is clearly annotated in the relevant section of the incomplete warning statement and was also recorded during the meeting with the DPCI and our client and his erstwhile attorneys.

6.1.6.3 The facts show that the DPCI did not wait for our client to return to them in order to complete the warning statement as agreed and for him to provide his version and/or defence or not. Instead, prior to the promised date of 5 September 2016,the DPCI unilateral handed the docket, CAS 427/05/2015 over to the NPA. The process of our client concluding his warning statement was therefore interrupted by the DPCI's unilaterally handing over of the docket to the NPA and the NPA accepting such without the benefit of our client's version and/or defence.

6.1.6.4 The facts show that upon becoming aware of this, our client through his erstwhile attorneys, then addressed both the DPCI and NPA, specifically Pretorius, on 2 September 2016, wherein it was i) confirmed that the docket had been handed to the NPA, ii) confirmed that the investigation was complete, and iii) confirmed that our client would consequently address the NPA from that point on.

6.1.6.5 The facts show that our client then sought of Pretorius, still in September 2016, permission to approach the complainant, or alternatively request of the NPA and Pretorius to obtain from the complainant, records and information that our client required in order to exercise his right to provide his version and/or

defence or not, to the NPA and specifically in relation to the allegations as they stood at that stage and were put to him.

6.1.6.6 Our client never received a reply from the NPA or Pretorius to his above request.

6.1.6.7 Consequently, our client never concluded a warning statement even in respect of completely different allegations.

6.1.6.8 Even if our client had completed that warning statement or had decided to decline to do so, it would not have served any purpose in respect of the charges he was ultimately charged with more than eighteen months later by Mzinyathi, Pretorius and Maema. The warning statement and letter from the DPCI clearly set out different allegations that he was requested to respond to and do not relate to the charges reflected in the current indictment.

6.1.7 By stating a wholly new version of events, the report not only contradicts the original stance advanced by the NPA, but in fact compounds the facts set out in the complaint by our client.

6.1.8 The facts which have not been considered and are not addressed in the report are listed in detail in our client's complaint.

6.1.8.1 The Constitution, NPA Act, read with the Code and the Policy obliged the NPA and specifically the relevant prosecutors to do a number of things;

6.1.8.2 Maema, Mzinyathi and Pretorius did not do any of these things;

6.1.8.3 Maema, Pretorius and Mzinyathi clearly i) disregarded the rights of our client when they decided to prosecute him contrary to their obligations in terms of the Constitution, and the NPA Act, the Policy and Code, ii) avoided explaining the reasons for the exercise of their prosecutorial discretion and iii) did not safeguard the rights of our client as an accused person.

6.1.8.4 The decision to prosecute our client was, accordingly, not taken with the care and diligence expected of prosecutors in terms of the Constitution, the NPA Act, the Policy and the Code.

6.1.8.5 These failures have had profoundly prejudicial consequences for our client and his family.

7 In the result, the formal complaint by our client, in its totality, as addressed to you in your official capacity as the NDPP, still stands.

8 In addition, our client herewith adds NPA advocates JJ Smit SC and Dr Sallas Ramalte SC to his complaint.

9 You are invited, as a last resort, in your capacity as NDPP at the top of its apex structure, to personally consider our client's complaint and to urgently confirm that you will be doing so. In the event that you decide not to do so, we require from you detailed reasons as to why you have elected not to do so.

10 This complaint is clearly a matter of public interest, in the interests of justice and concerns very senior prosecutors of the NPA. In light hereof, it is incumbent upon you as the NDPP to personally consider the complaint and act with the necessary urgency that this complaint clearly deserves.

11 Our client's rights remain strictly reserved.

12 Kindly acknowledge receipt hereof at your earliest convenience.

Yours faithfully

Werksmans Inc
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

The National Prosecuting Authority of South Africa
Igunya Jikelele Lobetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

AUTHORISATION IN TERMS OF SECTION 20(4) READ WITH SECTION 20(1) AND SECTION 15(1)(c) OF THE NATIONAL PROSECUTING AUTHORITY ACT, 1998 (ACT NO. 32 OF 1998)

Under the provisions of section 20(4), read with sections 20(1) and 15(1)(c) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), I, **MXOLISI SANDILE OLIVER NXASANA**, National Director of Public Prosecutions, hereby authorise **ANDREA JOHNSON**, a Senior Deputy Director of Public Prosecutions in the Office of the National Director of Public Prosecutions to –

(a) Institute and conduct criminal proceedings on behalf of the State in respect of all offences connected to the mandate of the PCLU;
(b) Carry out any necessary functions incidental to the instituting and conducting of such criminal proceedings; and
(c) Discontinue such criminal proceedings,

in the jurisdictional areas and courts within the Republic of South Africa.

2015-02-06

MR. M.S.O NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE

Note: The powers and duties embodied in this authorisation are exercised subject to the general and specific instructions from the National Director of Public Prosecutions and/or any other person holding supervisory authority in the prosecution service.

The National Prosecuting Authority of South Africa
Igunya Jikelele Labelahulshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

AUTHORISATION IN TERMS OF SECTION 105A(1)(a) OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT 51 OF 1977) AS AMENDED

I, **MXOLISI SANDILE OLIVER NXASANA**, National Director of Public Prosecutions, hereby, in terms of Section 105A(1)(a) of Act No 51 of 1977, authorise to negotiate and enter into plea and sentencing agreements in respect of matters over which the Priority Crimes Litigation Unit has jurisdiction:

ANDREA JOHNSON

JACOBUS PETRUS PRETORIUS

RAYMOND CHRISTOPHER MACADAM

SUSAN CHARLOTTE BUKAU

SHAUN KEVIN ABRAHAMS

This authorisation is subject to the directives already issued by me in terms of the aforesaid section.

Given at PRETORIA on this 6th day of FEBRUARY 2015.

MR. M.S.O NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AUTHORISATION IN TERMS OF SECTION 20, 21, 22 AND 24 OF THE NATIONAL PROSECUTING AUTHORITY ACT, NO 32 OF 1998

I, **NOMGCOBO JIBA,**

Acting National Director of Public Prosecutions of South Africa, do hereby in terms of section 20, read with sections 21, 22 and 24 of the National Prosecuting Authority Act, No 32 of 1998 (the Act), authorize

SELLO GLADSTON MAEMA

to exercise the powers set out in section 20(1) of the Act in the Lower and High Courts within the area of jurisdiction of the KwaZulu- Natal Division in all offences committed by the members of the South African Police Services in the province of KwaZulu- Natal,

And to act on behalf of the State in any appeal, review or other applications arising from such criminal proceedings within the Province of KwaZulu- Natal, subject to the Prosecution Policy of the National Prosecuting Authority and any directive issued by the National Director.

GIVEN UNDER MY HAND AT PRETORIA ON THIS THE 8TH DAY OF MARCH 2012.

ADV. NOMGCOBO JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
REPUBLIC OF SOUTH AFRICA

(W) Finalised

PART

MANDATE OF THE PRIORITY CRIMES LITIGATION UNIT (PCLU):

1. All representations, investigations, enquiries, requests to execute extraditions and mutual legal assistance and case dockets pertaining to the following Acts and / or offences must be forwarded to the Priority Crimes Litigation Unit (PCLU) at the Office of the National Director of Public Prosecution for its decision, further management and finalization:

(a) Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002;

(b) High treason;

(c) Sedition;

(d) All offences and freezing provisions created in terms of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004;

(e) Regulation of Foreign Military Assistance Act 15 of 1998 (and the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006);

(f) Non-Proliferation of Weapons of Mass Destruction Act 87 of 1993;

(g) National Conventional Arms Control Act 41 of 2002;

(h) Nuclear Energy Act 46 of 1999;

(i) National Nuclear Regulator Act 47 of 1999;

(j) Protection of Information Act 84 of 1982 and any other Act which may replace it;

(k) Intelligence Services Act 65 of 2002;

(l) Criminal Law Second Amendment Act 126 of 1992;

(m) Offences falling within the ambit of the Truth & Reconciliation Commission;

(n) Offences which may still be tried in a court of law under repealed versions of the above Acts; and

(o) Any other priority crimes determined by the NDPP;

(p) Any offence under Section 2 of the Prevention of Organized Crime Act, No 121 of 1998 (POCA) where the predicate offences are offences falling within the mandate of the PCLU and meet the criteria set out in Schedule 1 of POCA.

(q) Any other offences committed as a consequence to the above.

2. As these matters have an impact on national and / or international security, the necessary steps must be taken to ensure that:

(a) the case material and / or case docket(s) is / are forwarded to this unit without any delay under a covering letter accompanied by a detailed memorandum, setting out the facts of the matter;

(b) Should an accused have been arrested prior to the referral of the matter to the PCLU, the PCLU must immediately be telephonically contacted upon the first appearance of the accused and guidance obtained as to the issue of bail.

3. The following persons can be contacted by these numbers:

(a) Helena Zwart (Assistant Director): (012) 845 6473

(b) Adv AR Ackermann SC (Special Director of Public Prosecutions): (012) 845 6474 or 084 291 3550

(c) Adv RC Macadam (Deputy Director of Public Prosecutions): (012) 845 6431 or 082 498 6011

(d) Dr JP Pretorius (Deputy Director of Public Prosecutions): (012) 845 6482 or 084 821 1378

JPP 5

NATIONAL PROSECUTING AUTHORITY
South Africa

OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS

Victoria & Griffiths Mxenge Building,
123 Westlake Avenue, Weavind Park Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6758
Email: ndpp@npa.gov.za
www.npa.gov.za

Your ref: Mr B Hotz/tmp4/PILL38396.1/#5630677v1

31 July 2018

Mr B Hotz
Werksmans Attorneys
Private Bag X 10015
SANDTON
2146

Email: bhotz@werksmans.com

Copies to: The President of the Republic of South Africa
His Excellency President Cyril Ramaphosa
Email: Malebo@presidency.gov.za

Minister of Justice & Correctional Services
The Honourable TM Masutha, MP (Adv)
Email: ShAfrika@justice.gov.za

Dear Sir

FORMAL COMPLAINT AGAINST MEMBERS OF THE NATIONAL PROSECUTING AUTHORITY: ADVOCATES S MZINYATHI, JP PRETORIUS SC AND S MAEMA

1. Your letter, dated 12 July 2018, refers.

2. I am entitled and have the power to assign responsibilities to senior members of the National Prosecuting Authority (NPA). In this regard, I refer you to section 23(1) of the NPA Act, 32 of 1998, which reads as follows:

   "Any Deputy National Director may exercise or perform any of the powers, duties and functions of the National Director, which he or she has been authorized by the National Director to exercise or perform."

3. I assigned your client's complaint to Dr Silas Ramaite SC, a Deputy National Director of Public Prosecutions and Adv Johan Smit SC, a Director of Public Prosecutions with 35 years' experience, firstly as an Attorney General and later as a Director of Public Prosecutions with the commencement of the NPA Act.

4. I have fully considered the complaint and studied the report produced by Dr Ramaite SC and Adv Smit SC. After applying my mind to both the complaint and the report, I concluded that I agreed with their recommendations in the report.

5. I note the views expressed by you in your letter and in particular para 5 thereof. Having fully applied my mind to the complaint and the report, I do not now intend debating with you the issues you raised concerning the report, nor your dissatisfaction therewith. For this reason, I am deliberately not engaging with each and every allegation contained in your letter and the reply. Obviously my decision not to do so must not be construed as an admission of any of the allegations, contents or contentions raised by you.

6. Your client is at liberty to provide his version and/or to the allegations levelled against him to the investigating officer of the Directorate for Priority Crime Investigation and/or to the prosecutor in the reconsideration of the matter by the Priority Crimes Litigation Unit, prior to your client invoking the provisions of section 179(5)(b) of the Constitution.

7. I note that you have added both Ramaite SC and Smit SC to your complaint. It is unclear what you request of me in this regard.

8. In regard to the invitation in para 9 of your letter, I reiterate that I did personally consider your client's complaint, both before and after receiving the report from Dr Ramaite SC and Adv Smit SC. I have communicated my decision to you and your client and he must take whatever steps he may be so advised.

9. I reserve the right to respond to any of the contents of your letter should I find that there is a need to do so, either in correspondence or in any other form.

Yours sincerely

ADV SK ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 01-08-2018

National Prosecuting Service

Director of Public Prosecutions: North West

NATIONAL PROSECUTING AUTHORITY
South Africa

MEMORANDUM

NORTH WEST DIVISION

Mmabatho

Tel: +27 18 381 9001/2
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Megacity Complex
East Gallery
Sekame Road
Mafikeng

P/Bag X2009
Mmabatho
2735
South Africa

jjsmit@npa.gov.za

OFFICE OF THE NATIONAL DIRECTOR
TIME:..... BL.....
2018 -06- 29
SIGN:.....
OF PUBLIC PROSECUTIONS

TO: **ADV S ABRAHAMS**

FROM: **DR SILAS RAMAITE SC**
ADV JJ SMIT SC

DATE: **11 JUNE 2018**

SUBJECT: **FORMAL COMPLAINT FROM WERKMANS ATTORNEYS AGAINST ADV S MZINYATHI AND TWO OTHERS**

N.D.P.P,

1) On 25 April 2018 you instructed us to investigate the above matter and report to you by 4 June 2018. We drafted and submitted a memo to the three "respondents" and handed it to them on 3 May 2018.

2) They then requested extention of the due date we gave them, twice, and we agreed. We eventually received their response on 4 and 6 June respectively. Hence now this report to you.

3) Please note that we have decided to keep our report as brief as possible because we anticipate possible litigation following upon your decision in this matter and we don't want our report to become an additional issue in any such litigation.

4) Your instruction to us is very simple: to investigate and report to you on the complaint by Werksmans Attorneys against the three officials, with the goal of enabling you to decide whether any steps should be taken against the three officials.

5) There are a number of very technical issues contained in the complaint of Werksmans Attorneys, as well as in the response by the three officials. Some of these are:

- Is a prosecutor obliged to have a statement obtained (commonly referred to as a warning statement) from an accused or suspect before a decision to prosecute is taken?
- What is the position should new charges be added after a warning statement has been obtained?
- What, exactly, constitutes a warning statement?
- At what stage of the investigation is a suspect or accused entitled to the contents of the docket.
- Is an accused or suspect entitled to the contents of the docket before he gives his (warning) statement and what is the effect if he is denied the contents of the docket.

6) We have decided to refrain from attempting to give a considered legal opinion on these issues because we feel that it is not our mandate to do so. Also, it should rather be left to counsel at the eventual trial (whatever it may be) to do so.

7) However, we will touch on some of the issues in as far as it is required to do so to enable us to make our recommendations to you.

THE COMPLAINT

8) Van Loggerenberg, who is the main figure in this complaint, is an accused, together with two others in a case handled and decided by Adv Maema, agreed to by Dr Torie Pretorius, after consultation with the acting DPP of Gauteng-North.

9) Van Loggerenberg, who is accused number three in the case, stands indicted of contraventions of the POCA Act, details of which are not relevant at this moment.

10) After it was decided to prosecute him, he brought an application, together with his two co-accused, for a stay of prosecution, on the basis that he was not given an opportunity to present an explanation by way of a warning statement, on the charges against him.

11) Adv Mzinyathi deposed to the answering affidavit in the application in his capacity as acting Deputy National Director in charge of the NPS.

12) This affidavit was confirmed by Dr Torie Pretorius in the form of a confirmatory affidavit.

13) In his affidavit, Adv Mzinyathi, inter alia, states as follows:

Par.61 "The decision to prosecute was taken after due consideration of the evidence under oath contained in the docket, with consideration also of the warning statements that were provided to the investigators. Obtaining of the versions of the Applicants is an investigative task, which was dealt with by the police"

Par.70 He quotes from a letter dated 14 March 2018 by Dr Pretorius, thereby incorporating it into his affidavit, where Dr Pretorius states: "The versions of the three Applicants as contained in the warning statements were considered before the decision to prosecute was taken"

Par.76 He quotes from a letter written by himself, dated 28 March 2018, thereby incorporating it into his affidavit in which he said: "The decision to prosecute was taken after due consideration of evidence under oath

contained in the docket, plus the warning statements that were provided to the investigators"

Par.117 He also states that: "I dispute that a decision to prosecute was taken without consideration of warning statements" and

Par.119 "It is not clear what is meant by the allegation that the warning statements were not ever completed. In any event, the Applicants failed to respond to an invitation to supplement the warning statements in September 2016"

14) In his confirmatory affidavit, Dr Pretorius states that he confirms the contents of Adv Mzinyathi's affidavit.

15) These aversions are clearly in reply to the direct statement in the founding affidavit of the complainant, where he states in paragraph 46 that: "In my case, in particular, no warning statement was ever sought from me in respect of any of the charges that I now face."

16) In the document that is apparently regarded as complainants warning statement, the following appears:

16.1) He was warned of "Contravention of Section 4 of Prevention of Corrupt Activities, Act 12 of 2004 and section 3 of The National Strategic Intelligence Act 39 of 1994." No further particulars are given.

16.2) The person who completed the prescribed form of the warning statement, then noted that "The suspect was given a chance/opportunity to consult with his lawyers" and this resulted in "The suspect will consult with this legal team to answer questions which were asked/ see page 3 paragraph 5 (c)"

16.3) On page 3, paragraph 5 (e), it is written that "The suspect has requested an opportunity to consider his position and take legal advice such that he may respond by 5 September 2016" (This document was completed on 25 August 2016)

16.4) In the part of the document that normally contains the actual statement or version of a suspect, it is written:
"Refer to page 3 paragraph 5 (c)"

16.5) Paragraph 5 (c) is a bit confusing because it states " The suspect indicated that he

a) _____

b) _____

c) Would personally see to the drawing up of the statement and would furnish me with the statement on 2016-09-05" However, it appears that par 5(c) was scratched out. It is more likely that it was not paragraph 5 (c) that is referred to, but rather paragraph 5 (e). This is the total content of the "warning statement" that is relevant to the issue at hand.

17) Succinctly put, the complaint against Adv Mzinyathi and Dr Pretorius is that they "misrepresented facts under oath in papers which were to be presented before a High Court and / or withheld material facts which were to be presented before a High Court" This, obviously relates to their version that they had considered the contents of the warning statement of Van Loggerenberg, when it seems from the document itself that there is no "content" to the warning statement that could have been considered.

18) The complaint against Adv Maema is that he took a decision to prosecute without a version having been given by the suspect/accused, Van Loggerenberg, (contrary to the NPA Policy)

THE MERITS OF THE COMPLAINT

19) The warning statement of an accused or suspect is normally taken at an early stage of an investigation, in fact as soon as it can be established what the charge or charges against the person is.

20) Usually it happens before a person is formally charged but sometimes it happens after he is charged, depending on the circumstances.

21) When a case is presented to a prosecutor, he or she always checks whether the suspect/accused has given his/her version by way of a warning statement. This is always important because it discloses the defence of the person and it may also contain very useful admissions.

22) A prosecutor would consider a warning statement to have content, and qualify as a statement when

- It indeed contains a version by the suspect or
- It states that the suspect declines to make a statement.

23) It is a fact, that since the adoption of the Constitution, we find that more and more suspects/accused, follow the route of declining to make a statement. The prosecutor then has no choice but to take a decision without the version of the accused/suspect.

24) On 2 September 2016, Attorneys Allan Levin and Associates wrote to Dr Torie Pretorius on behalf of Van Loggerenberg and stated, inter alia, as follows:

Par.7 "We re-iterated our request that our client be afforded a copy of the docket. The Hawks investigators advised that, notwithstanding the recordial in their letter addressed to our offices that the investigation

was complete, the docket would be provided only when our client had been charged."

and

Par.3 "..... in the absence of the content of the docket, our client is not in a position to meaningfully consider the request that he make a submission that might assist your office to arrive at a decision whether to prosecute him or not"

25) This, in our opinion is a clear indication that Van Loggerenberg had declined to make a statement before it was decided to proceed with the prosecution against him, which happened only in March 2018. It is also our opinion that nothing turns on the fact that the decision not to submit a statement appears on a separate document, other than the warning statement itself. Fact is, when the decision to prosecute was taken, it was known that Van Loggerenberg did not wish to submit a statement.

26) In his affidavit, Adv Mzinyathi each time refers in plural, to statements. Remember, he was referring to all three applicants, and the other two, had in fact made statements. In any event, as discussed in par 22 above, Van Loggerenberg's warning statement, together with the letter referred to in par 24 above can surely be considered as a version of what Van Loggerenberg wanted to do.

27) We accept the explanation from Adv Mzinyathi and Dr Pretorius when they state:

"It must be borne in mind that the affidavit in issue had nothing whatsoever to do with the warning statement in particular or the evidence against the accused in general. It was prepared in haste in opposition to an urgent application to strike the matter from the roll until the NDPP had considered the accused's representations"

28) This is in line with another fact that totally vitiates any notion of any intention to deceive or mislead on the part of Adv Mzinyathi and Dr

Pretorius. The fact is that the "warning statement" that forms the basis of this complaint, in actual fact was included in the papers that supported the founding affidavit of Van Loggerenberg for the stay of prosecution. It was there for all to see, the court included, so how could anybody attempt to deceive the court with the relevant document right there in front of it?

CONCLUSION

29) We find that by the time a decision to prosecute was taken, there was in fact a "statement" by Van Loggerenberg to indicate that he declined to make a statement.

30) We find that the reference to the statement by Adv Mzinyathi and Dr Pretorius in their affidavits does not contain the element of deceit nor was it done in an attempt to misrepresent or withhold any facts.

RECOMMENDATION

31) We recommend that no action be taken against Adv Mzinyathi, Dr Pretorius and Adv Maema..

12/06/2018

DR S RAMAITE SC

ADV JJ SMIT SC

JPP6

PROSECUTION POLICY DIRECTIVES

Policy Directives issued by the National Director of Public Prosecutions

1 June 2014

The Policy Directives are confidential and, unlike the Prosecution Policy, Code of Conduct and United Nations Guide on the Role of Prosecutors which are public document and may be made available to members of the public on request, the Policy Directives and circulars are not public documents. Where legislation requires the issue and publication or tabling in Parliament of policy and/or directives these are available separately and are also published on the NPA website and intranet.

The Policy Directives are amended from time to time in order keep abreast with legal and process changes and other developments. Amendments come into effect on the first day of the month following approval unless otherwise specified. Prosecutors are invited to submit suggested amendments or additions for consideration to directives@npa.gov.za.

PART 45: INVESTIGATING AND SPECIAL DIRECTORATES

A. Investigating Directorates

1. The NPA Act provides for Investigating Directorates to be established in the Office of the National Director, by Presidential proclamation in the Gazette.

2. A Director of Public Prosecutions must be appointed as the head of any investigating directorate that is established.

3. In terms of the *South African Police Service Act, 68 of 1995,* a Directorate for Priority Crime Investigation (commonly referred to as the Hawks) has been established within SAPS to prevent, combat and investigate national priority offences, which is includes organized crime, crime that requires national prevention or protection, or crime which requires specialized skills in the prevention and investigation thereof.

4. In terms of section 17F of the said Act the National Director must ensure that a dedicated component of prosecutors is available to assist and co-operate with members of the Hawks in conducting its investigations.

B. Priority Crimes Litigation Unit

1. All representations, investigations, enquiries, requests to execute extraditions and mutual legal assistance and case dockets pertaining to the following Acts and / or offences must be forwarded to the Priority Crimes Litigation Unit (PCLU) at the Office of the National Director for its decision, further management and finalisation:
   (a) Implementation of the *Rome Statute of the International Criminal Court Act, 27 of 2002.*
   (b) High treason.
   (c) Sedition.
   (d) All offences and freezing provisions created in terms of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 33 of 2004.*
   (e) *Regulation of Foreign Military Assistance Act, 15 of 1998* (and the *Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 27 of 2006*).
   (f) *Non-Proliferation of Weapons of Mass Destruction Act, 87 of 1993.*
   (g) *National Conventional Arms Control Act, 41 of 2002.*
   (h) *Nuclear Energy Act, 46 of 1999.*
   (i) *National Nuclear Regulator Act, 47 of 1999.*
   (j) *Protection of Information Act, 84 of 1982.*
   (k) *Intelligence Services Act, 65 of 2002.*
   (l) *Criminal Law Second Amendment Act, 126 of 1992.*
   (m) Offences arising from conflicts of the past committed between 1 March 1960 and 5 May 1994.
   (n) Offences which may still be tried in a court of law under repealed versions of

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the above Acts.

(o) Any other priority crimes as may be determined by the National Director.

(p) Any offence under Section 2 of the *Prevention of Organized Crime Act, 121 of 1998* (POCA), where the predicate offences are offences falling within the mandate of the PCLU and meet the criteria set out in Schedule 1 of POCA.

(q) Any other offences committed during the course of the commission of the offences referred to above.

2. As these matters have an impact on national and / or international security, the necessary steps should be taken to ensure that the case material and / or case docket(s) is / are forwarded to the PCLU without delay under a covering letter from the DPP accompanied by a memorandum, setting out the facts of the matter.

3. Should an accused person have been arrested prior to the referral of the matter to the PCLU, the PCLU must immediately be telephonically contacted upon the first appearance of the accused person and guidance obtained as to the issue of bail.

C. Special Commercial Crime Unit

1. The Specialised Commercial Crime Unit (SCCU) prosecutes commercial crime as well as serious organised and complex financial crime cases.

2. The prosecutors fall under the auspices of a Special Director of Public Prosecutions appointed by the President in terms of section 13(1)(c) of the NPA Act. In terms of this appointment the Special Director shall head the SCCU, conduct prosecutions of commercial crime cases, manage and direct the investigation and prosecution of serious organised and complex financial crimes, manage special projects and operations as per the directives of the National Director and to give such advice or render such assistance to the National Director as may be required.

3. The Special Director exercises the powers, carries out the duties and performs the functions conferred, imposed and assigned by the President subject to the control of the National Director. Where these include instituting and conducting prosecutions they shall be exercised, carried out and performed in consultation with the DPP of the area concerned.

4. For the purposes of ensuring such consultation, the Special Director and relevant DPP shall, at the beginning of each financial year, determine and agree on all such matters where consultation will be required as well as the nature and form which such consultation shall take. The agreement shall be signed by each relevant DPP and by the Special Director and shall form part of the Annual Performance Plan of the relevant office.

5. The Special director will consult with the relevant DPP in respect of—

(a) requests for a certificate *nolle prosequi*;

(b) requests for authority to make use of traps and undercover operations;

(c) requests for extradition;

(d) requests for a 342A(3)(c) written instruction to resume or reinstitute a prosecution; and



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

2015 -02- 06

INTERNAL MEMORANDUM

TO: ADV. A. JOHNSON
SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS AND
COORDINATOR: PCLU

FROM: MR. M.S.O. NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: REFERRAL OF CASES TO PRIORITY CRIMES LITIGATION UNIT

DATE: 4 FEBRUARY 2015

Dear Adv Johnson

1. By virtue of your appointment as Coordinator: PCLU from 1 February 2015, I have decided that you must manage and direct investigations and prosecutions relating to all the offences specified in the Prosecution Policy Directives relating to the PCLU, which came into effect on 1 June 2014.

2. You are in addition mandated to manage and direct investigations and prosecutions relating to:

   1.1 The Implementation of the Geneva Conventions Act, No 8 of 2012;

   and

   1.2 The Prevention of Combating and Torture of Persons Act, No 13 of 2013 (but limited solely to offences committed outside the territory of the Republic of South Africa as contemplated in section 6 of the Act).

MR. M.S.O. NXASANA
NDPP
DATE 2015-02-06

The National Prosecuting Authority of South Africa
Igunya Jikelele Labatshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

DELEGATION OF POWERS TO COORDINATOR: PRIORITY CRIMES LITIGATION UNIT, OFFICE OF NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

I, **MXOLISI SANDILE OLIVER NXASANA**, in my capacity as National Director of Public Prosecutions, hereby authorise

ANDREA JOHNSON

(a) To perform the powers referred to in sections 205 and 252A of Act 51 of 1977, insofar as they relate to matters falling within the mandate of the Priority Crimes Litigation Unit;

(b) To delegate the powers referred to in section 205 to the Senior Deputy Directors of Public Prosecutions, attached to the Priority Crimes Litigation Unit.

This authorisation replaces all previous authorisations issued to members of the PCLU.

Signed at Pretoria on this 6th day of **February 2015.**

MR. M.S.O NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

JPP 7

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO	:	ADV. A. M. CHAUKE DIRECTOR OF PUBLIC PROSECUTIONS: SOUTH GAUTENG
FROM	:	ADV. A MOSING HEAD: SPECIAL PROJECTS DIVISION
SUBJECT	:	DIEPSLOOT CAS 390/07/2012
DATE	:	14 FEBRUARY 2014

1. Please find attached the case docket with accompanying files for your attention and further action as discussed with the Head of NPS. The files included are as follows:
   - 1x A- section of docket
   - 1x B- section of docket
   - 1x forensic report of retrieved computer documents and emails
   - 1x AVL analysis
   - 2x Cell phone data of various cell phones
   - 1x Copies of Wierdabrug case dockets.
2. I trust you find the above in order.

Kind Regards

Received: [signature]
DATE: 14/02/2014

ADV. A MOSING
SPECIAL PROJECTS DIVISION
OFFCIE OF THE NDPP
DIEPSLOOT CAS 390/07/2012

JPP8

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO: ADV N JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV A CHAUKE
DPP: SOUTH GAUTENG

FROM: ADV A. MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT: PROJECT X

DATE: 14 FEBRUARY 2014

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1. PURPOSE

The purpose of this memorandum is to provide a summary of the facts and evidence in the matter for the Director of Public Prosecutions: South Gauteng to be able to make an informed decision regarding the prosecution of the matter.

2. BACKGROUND

The investigations has now been finalised and a report from the IPID has been submitted for purposes of considering the merits of the case. The case docket comprising of two lever arch files, together of other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed.

3. SUMMARY OF FACTS

3.1 The first police operation took place on the 5th November 2010 where four Zimbabwean Nationals (Victims) were arrested in Diepsloot and detained the Orlando Police station in Soweto. The operation was conducted by DPCI Head Office and DPCI Gauteng Provincial office (TOMS). It is also alleged that they were accompanied by two Zimbabwean police officials.

Members were informed during a briefing meeting that they were tracing suspects who had killed a Zimbabwean police Superintendent in Zimbabwe and that the operation was sanctioned from DPCI head office by Lt. General Dramat (Dramat) himself. The four victims were traced to an address in Diepsloot and arrested. The victims were assaulted and their properties, i.e cell phones and cash taken from them and not booked in SAPS registers during arrest. After the four victims were booked into the cells in Orlando, one of the victims was taken out in order to trace further victims, among others a person by the name of John around Soweto. This victim could not be traced and the other victim was returned to the cells at Orlando Police station. They were detained over the weekend as illegal immigrants and on the morning of 08 November 2010 the victims were booked out of the police cells by Col Maluleke (who was a captain by then) of the DPCI Head office indicating that they were to be transported to Beit Bridge border post.

Two of the victims were released near Diepsloot and the other two were taken to Beit Bridge border post and directly handed over to a contingent of the Zimbabwe police who was waiting for these victims to be delivered. One victim was released by the Zimbabwean police after about 11 days in custody, being tortured. He later returned to South Africa where he has reported the ordeal in an affidavit and is currently kept at a safe house under witness protection. He reported that his compatriot was killed while in police custody in Zimbabwe by a hail of bullets and that he attended the funeral of the person.

3.2 The second operation was conducted on 22/23 November 2010 by the same police units. One victim (Pritchard Chuma) was arrested in Diepsloot and detained at Alexandra police station. The next day on the 23 November 2010 Warrant Officer

Selepe of the Gauteng TOMS unit of the DPCI, on instructions of Col Maluleke booked out the victim and transported him to Beit Bridge border post accompanied by Col Maluleke, where he was handed over to Col Maluleke at the border and the victim has never been seen since. It is presumed that he also died in Zimbabwe police custody. This victim was booked in at the police station under reference of a Zimbabwe police reference number.

3.3 A third operation was carried out by Col Maluleke with the assistance of the CIG members of Pretoria. It appears that Col Maluleke approached the Wierdabrug Crime Intelligence Officers (CIAC) seeking information pertaining to the whereabouts of two suspects, namely Gordon Dube and Johnson Nyoni. Coincidentally the CIG of Pretoria were also carrying out a search for most wanted criminals in the Wierdabrug policing area of which Maluleka's suspects were on the wanted list. Col Maluleke requested the CIG members to assist him in tracing these suspects. The first suspect/victim (Dube) was traced by way of informers at Diepsloot on the 12th of January 2011. He was arrested together with two others in Diepsloot and detained at Wierdabrug police station on charges of Wierdabrug case dockets, which included murder, robbery, etc. He was shot by the police during the arrest and a firearm was found in his possession. It was alleged that the firearm was the very same firearm that was robbed from the Zimbabawe Police Superintendent that was killed in Zimbabwe. The two suspects arrested with Dube appeared in court at Atteridgeville court, while Dube could not appear due to being treated for the gunshot wound. The case was remanded several times and was due back in court again on the 28th of January 2011. On this day Col Maluleke instructed the Investigating officer of the Wierdabrug case, W/O Meyer to release Dube into his custody so that he can deliver him to the Zimbabwean law enforcement authorities to be dealt with by them, instead of taking him to court. This was duly done. Col Maluleke also instructed the investigating officer of the Diepsloot case of unlawful possession of firearm that was seized from Dube and handed to Ballistic unit for analysis, to retrieve same from the Ballistic unit and bring it to him (i.e Malauleka) in Pretoria. They complied with the instruction and received an acknowledgement of receipt from Maluleke. Ultimately the case of the two suspects and Dube was struck from the roll due to the court being informed that Dube was convicted in Zimbabwe and sentenced to life imprisonment and that he

would never return to the SA to stand trial. Col Maluleke provided the I/O Meyer with an affidavit to this effect.

3.4 While the events pertaining to Dube transpired, Col Maluleke requested the same CIG members to further assist in tracing the outstanding person, namely Johnson Nyoni. Nyoni was subsequently traced also in Diepsloot on 26 January 2011 and arrested by the CIG members, working with Maluleke and the TRT unit of the Johannesburg Central police station (who were seconded to Diepsloot police station at the time and requested by Maluleke to provide support during the operation). The victim was taken directly to the offices of the DPCI head office in Pretoria, where the members that participated in the arrest of Nyoni were congratulated by Lt General Dramat. Photographs depicting the members involved in the arrest, the victim (Nyoni), two Zimbabwean police members and their vehicle, the firearm retrieved from Dube and handed to Maluleke (still in the forensic bag) were taken by a third Zimbabwe police official at the said DPCI head office. Nyoni was thereafter booked into and detained at Pretoria Moot police station on a charge of fraud. He was then booked out on the 28th of January 2011 by Maluleke and taken, together with Dube, to the Beit Bridge border post. The entry in the registers at the Moot police station reflects that he was booked out for the purpose of extradition to Beit Bridge border post.

4. SUMAMRY OF EVIDENCE

4.1 The above facts are supported by the following evidence:

- Cell registers and occurrence books from the various police stations where victims were detained;
- Affidavits from witnesses:
  - Surviving victims
  - Gauteng TOMS members
  - CIG members
  - TRT members
  - Home affairs officials

- Wierdabrug police officers
- Police officials based at Beit Bridge border post

- Cell phone records
- AVL of DPCI members vehicles
- Success reports of the DPCI
- Itenerary and travelling claims of Maluleke
- Handwriting expert reports
- Documents and emails retrieved from Maluleke's computer
- Relevant dockets and court documents

5. ANALYSIS

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

- that Maluleke was tracing suspects in connection with ATM bombings and other SVC around Diepsloot and Soweto in the normal course of his duties, when he arrested the first four victims in Diepsloot. He could not link them with any of the offences he investigated, but decided to detain them as illegal immigrants at Soweto with a view to have them deported. He felt they are dangerous criminals and that it is therefor incumbent upon him to ensure that they are deported and not follow the usual deportation route which is to take them to Lindela facility by Home affairs officials, but instead to transport them himself to the border. He alleged that home affairs officials were involved in issuing the deportation documents and detention warrants. He further alleges that DPCI merely transported the victims to the border and that they were handed over to immigration officers and not to Zimbabwean authorities. They further denied that they were acting on request of any request from the Zimbabwean authorities. The version entailed that all four victims were deported. No mention was made of the other arrests and rendition of the other victims, such as Pritchard Chuma, Gordon Dube and Johnson Nyoni.

Despite further opportunity to provide an explanation in the criminal investigation, they have failed to do so.

5.2 The investigation raises a number of issues that shows that the official version was a mere attempt to cover up the act of rendition. Initially the DPCI conducted an investigation, which concluded with the official version given above. This was a superfluous investigation, which apparently was intended to cover up the true facts. The evidence obtained by IPID in the docket shows that a convoy of Zimbabwe police officials arrived at the border with South Africa and requested permission to enter the country at the blessing of Dramat. The evidence shows that a member at the border phoned Dramat's cell phone number supplied by the Zimbabwe police officials, to confirm and he was instructed to allow the convoy to come to Pretoria. A meeting between Dramat and these officials from Zimbabwe took place in the morning of 5 November 2010 in Pretoria at the DPCI HQ. The purpose was to request the assistance in tracing the suspects connected with the killing of the Zimbabwe police officer. Maluleke was tasked by Dramat to carry out the operations detailed above. He made use of the Gauteng Toms during the first and second operations, but later used other units of the SAPS as detailed above. Members of the CIG Pretoria involved during the latter operations received letters of commendation from the Zimbabwean police authority as well as the Provincial Commissioner of Police in Gauteng. Maluleke seemingly was promoted as a result of his carrying out of this task.

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

5.4 CHALLENGES

5.1 The suspects in this case are police officials and are adept at keeping the truth from coming to light. Much of the documentation is still within their domain as they were not cooperative.

5.2 The events happened some time ago.

5.3 The involvement of other senior police officers could not be establish beyond reasonable doubt, including the head of the DPCI Gauteng, Major General Sibiya, who it is alleged was present during the first two operations, but the evidence is not conclusive. He is also responsible for the TOMS n Gauteng and it is unlikely that the operations were carried out without his knowledge. The cell phone evidence however, does not corroborate his presence during the operations. This can be looked at again more closely after an expert witness has been procured to analyse the cell phone data. This could not be done by the time of writing this report despite it being pointed out to the investigating team.

6. **RECOMMENDATIONS:**

The recommendation by the IPID that the DPCI carried out an illegal deportation of Zimbabwean nationals is supported and is borne out by the evidence obtained in the docket. Those directly implicated in the actions and are not considered cooperating witnesses in terms of section 204 witnesses are the head of the DPCI, Lt. General Dramat; Lt. Col. Maluleke; W/O Makoe, Constable Radebe and Capt Nkosi. The recommendation iro of Major General Sibiya is not supported on for the reasons mentioned above. In addition to the charges mentioned, we would also recommend a charge of fraud, alternatively forgery and uttering in respect of the home affairs documents that were submitted to the Civilian Secretariat.

Kind regards

ADV. B.T. MOELETSI
ADV A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP



JPP9

I, Jennifer Irish-Qhobosheane born on 14 June 1962 with following work address Office of the Secretary of Police, Van Erkom Building, 7th floor, 217 Pretorius Street Pretoria and contact numbers 012 393 2519 do hereby state under oath in English as follows.

1

I am a female adult employed by the Civilian Secretariat for Police as the Head of the Department and Secretary of Police.

2

I first became aware of allegation of rendition of Zimbabweans when on 22 October 2011 I saw an article in Sunday Times newspaper entitled "journey to death in an unmarked car". The article gave a detailed account of the alleged rendition of at least two Zimbabwean nationals one of whom had allegedly been killed following this rendition. A week later the same issue was raised in an article in the Sunday World Newspaper in which the Minister of Justice and Constitutional Development stated that any rendition would be completely unlawful and that he would want answers from the Police regarding these allegations.

3

The Minister of Police was not available at the time the articles were published and on his return to his office I brought the matter to his attention.

4

The Minister of Police then requested a detailed response from the DPCI to be submitted to him in writing.

5

Two official responses were subsequently received in a form of information notes addressed to the Minister of Police. The first of the information notes was signed by the head of the DPCI on 25 November 2011 and the second on 08 December 2011.

6

In addition to the information notes supplied to the Minister of Police, two official responses to Parliamentary questions on the allegations of renditions were submitted to the Minister of Police. The first was submitted on 10 November 2011 and signed off by both the acting head of the DPCI, Major General Meiring and by the Acting National Commissioner of Police. The second was

JJ

submitted to the Minister of Police on 29 November 2011 and signed off by the Head of the DPCI, Lt General Dramat and Acting National Commissioner of Police.

7

Based on the different information supplied to the Minister of Police and after perusing such information, the Minister of Police felt that the matter needed further enquiry to establish whether there was any evidence that the SAPS might have violated International laws and procedures and/or South African laws and procedures with regard to the allegations.

8

The Minister of Police then instructed myself, as Secretary of Police, to undertake an assessment of the information available and to check whether there was any substance to the allegation of renditions. In addition, the Minister of Police requested information on whether if there was substance whether he may have been misinformed by the DPCI and SAPS regarding this matter.

9

In terms of the powers granted to me, as the Secretary of Police, in terms of Civilian Secretariat for Police Act 2 of 2011, the Secretary of the Police does not have investigative powers but has assessment and oversight power over the Police.

10

On the instruction of the Minister of Police, and in my capacity as Secretary of Police, I conducted an assessment and appraisal of the information available from SAPS, other government departments and other open sources such as the media. In addition I was given access to a report prepared by Crime Intelligence which dealt with number of allegations made against the DPCI including the alleged deportation/renditions. I also received four Warrants of Detention and four Notifications of Deportation involving four Zimbabwean Nationals which were emailed to me by Lt General Dramat himself.

11

Based on the information which was made available to me and interaction I had with Home Affairs officials certain inconsistencies were identified with the version of events which was submitted by the DPCI to the Minister of Police.

JMJ IN

12

Certain records were also sourced from local police stations and such records also indicated particular inconsistencies.

13

These inconsistencies as well as process used during the assessment report form part of a report which was submitted to the Minister of Police and subsequently to Independent Police Investigative Directorate.

14

Based on this report and inconsistences that surfaced, it was recommended that the matter required further investigation either by retired judge or by the Independent Police Investigative Directorate.

15

In terms of the Independent Police Investigative Directorate Act, Act 1 of 2011, the Independent Police Investigative Directorate has powers to investigate any serious matters of police abuse that has referred to it by either the Minister of Police or Secretary of Police.

16

As a result of the above, the Minister of Police instructed the IPID to institute an investigation into the matter to assess whether any criminal liability existed and to look into the inconsistences raised in my report to the Minister of Police.

17

Due to the matter being submitted to IPID for further investigation, and in my capacity as Secretary of Police, I provided IPID with both copy of the report and supporting documents I have obtained during the assessment

I know and understand the content of this statement.

I have no objection in taking the prescribed oath.

JKT

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: JAZIL

PRINT SURNAME AND INITIALS: J A Irish - Mhobosheane

DATE: 17 February 2014

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: 17/02/2014 COMMISSIONER OF OATH: [signature]

TIME: 10h25 NAME AND SURNAME: INNOCENT NKOSINATHI KHUMALO

PLACE: PRETORIA RANK: A-P IV

IPID

JPP10

Fw: statement

IKhuba@ipid.gov.za
15/04/2013 at 12:04:42

From: IKhuba@ipid.gov.za
Sent: 15/04/2013 at 12:04:42
To: **Anthony Mosing (A)** <amosing@npa.gov.za>
Cc:

1 Attachment(s) Total 18.5 KB View

STATEMENT OF LIEUTENANT COLONEL NDANDULENI RICHARD MADILONGA.docx (18.5 KB)

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2013/04/15 12:04 PM -----

From: Nakiseni Mulaudzi/Limpopo/IPID
To: Matthews Sesoko/NorthWest/IPID@IPID
Cc: Innocent Khuba/Limpopo/IPID@IPID
Date: 2013/04/08 03:31 PM
Subject: statement

Sesoko received statement on 8/4/13 whereas it was only sent to me on 15/4/13.

JPP 10

ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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

Enq: I H Khuba
Date: 2013/07/02

TO: ACTING EXECUTIVE DIRECTOR

FROM: INNOCENT H KHUBA
ACTING PROVINCIAL HEAD

DATE: 02 JULY 2013

SUBJECT: PROGRESS REPORT ON DIEPSLOOT CAS 390/07/2012 (RENDITIONS)

1. BACKGROUND

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

2.1 It is alleged that on 2010/11/05 Captain M L Maluleke and Warrant Officer Makwe through the direction of the General Sibiya, conducted an operation in Soweto to trace Zimbabwean foreigner nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by two Zimbabwean police officers. Four Zimbabwean were arrested in Diepsloot and detained at Orlando police station as illegal Immigrants. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge were they were handed over to the Zimbabwean authorities and one of them was allegedly murdered in Zimbabwe by the Zimbabwe Police.

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. LEGAL MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. The Independent Police Investigative Directorate (IPID) decided to investigate this matter in terms of section 28(1)(f) and 28(1)(h).

4. EVIDENCE

The following evidence was obtained from witnesses in this case.

Shepard Tshuma: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown black males. One of them produced an appointment card and the other produced the firearm and ordered them to lie down.
He will further state that one of the police officer then took out a paper and started reading names like Mthelisi Sibande, Godine Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later Cowboy asked the other police officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted form a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" who took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was told that he was informed that his finger prints will be taken at Musina.
On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorspruit were they were moved into a Toyota being handcuffed. They were then taken to Musina and arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the boarder Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean police officers about a Zimbabwean police colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maqhawe Sibanda: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two black males who identified themselves as Police officers. They instructed them to lie down and they cooperated

with them. Few minutes later there were many cars of police officers in civilian clothes and they started searching them. He will further state that they were assault and the also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Bongani Henry Yende: He will state that he is a member South African Police Services attached to Crime Intelligent. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Siblya. On 2010/11/05 he received a call from W/O Makwe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makwe. On their arrival at the Shopping Center W/O Makwe also introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makwe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and great him. They went to Diepsloot and Captain Maluleke Known as Cowboy with W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects. Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makwe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

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

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

will state that he collected W/O Ndobe and rushed to Fourways where they met other members.

He will state that W/O Makwe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. He will state that on their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.
He will state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makwe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. He will state that General. Sibiya was present in the second operation. He will state that they went to Diesploot where an African Male Pritchard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell: He will state that on 2010/11/05 General Sibiya arranged with W/O Makwe to call them for operation at Diesploot for tracing wanted suspects in a murder case where a Colonel was killed. He will state that he received a call from Constable Radebe that they have already arrested the suspects. He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with the murder of the police Colonel in Zimbabwe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe murder case of the colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He will state that he never saw General Sibiya being involved in the operation but that there was a person who was always seated in the black tinted BMW and W/O Makwe referred to the person as General Sibiya.

Alfred Ndobe: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. He will state that on 2010/11/05 Gen. Sibiya arranged with W/O Makwe to call them for operation at Diesploot for tracing wanted suspects in a murder case where a Colonel was killed. He will state that he was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He will state that he received a call from Constable Radebe that they have already arrested the suspects. He will state that the suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makwe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the colonel.

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

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

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

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

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

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

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

state that he attended Johnson Nyomi's funeral which was held at Tsholotsho in Zimbabwe.

DOCUMENTARY EVIDENCE: ORLANDO POLICE STATION

The investigation at Orlando Police station uncovered the following,

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

SAPS 14 – The cell register dated 2010/11/05 to 2010/11/08 indicated that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as "illegal Immigrants'. The entry was made by Sargent Thomas Pixane Setage who also confirmed through a sworn statement.

STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

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

DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. However the form has wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used she was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a police officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.
He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by immigration Officer.

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

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

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

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

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

STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madilonga: He will state that he is a police officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a commander of crime prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to my previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Belt Bridge Police Station as a commander. His duties included crime prevention, liaison with the Immigration Officials and other police officials from other stations.

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

When he approached them, one of them introduced himself to him as the leader of the group and he said to he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place and sit down and discuss. Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

He 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 called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.

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

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

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

While we were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When 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 them. He knew that they were police officers because I had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country. One of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.
In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him. Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

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

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

Lt Col Neethling: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer. He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in cross border crimes than Captain Maluleke. He discussed the

tactical approach of the operation with his team since he considered the operation to be high risk. He stationed himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three police officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.
After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.
He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.
Captain Arnold Boonstra: He stated that in November 2010 of which he cannot remember the exact date he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentions that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.
The operation moved to Soweto but he did not see people who were arrested. He stated that he did not witness any assault because he was not near the operation. He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

W/O PJD Selepe: He stated that he is a male person employed by DPCI in Gauteng with a rank of a warrant officer. In November 2010 of which he cannot remember the exact date he received a call from his commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.
He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hardbody Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect

Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.
On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived he found the suspect he transported the previous day no longer in the cells in Silverton Police station but with Captain Maluleke. He was brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.
He did not speak with the suspect. When they pass Botloka, they turn into a Total garage which is just after the tollgate for the purpose of filling up the tank of his vehicle. Captain Maluleke also took the suspect to the toilet.
They drove to Musina and when they arrived, he signaled Captain Maluleke that he is turning to the police station as directed by the GPS. However Captain Maluleke signaled using the head lights that they have to proceed straight. He then received a call on his cell phone from Captain Maluleke informing him that the destination is Beit bridge border gate. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.
Interview with Leonie Verster: She was a direct supervisor of Captain Maluleke before she joined Protea Coin Security. She confirmed that Captain Maluleke in 2010 and 2011 was responsible for Cross border crimes. However captain Maluleke was reporting and getting instruction from General Sibiya of which one time she complained and refused to sign the itineraries and his overtime. She discovered that some the victims deported were record as success. She promised to draw all reports in relation to other victims, itineraries, overtime claimed by Captain Maluleke.

EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT

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

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called the state witness Colonel Madilonga on

08/11/2010 at 19:10:47, when he was approaching Musina which is corroborated by Colonel Madilonga' statement.

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

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

5. FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. There is enough evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestone of the operation. Not stated like this in report!

- There is corroborated version that police from Zimbabwe were received by General Dramat and they were looking for wanted suspects in a case Murder involving the Police Chief in Bulawayo. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by them and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani as well as telephone records. The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestone of the operation. He also received an SMS from Captain Maluleke which he also did not respond to
  The witnesses corroborate each other in that there were two Zimbabwean police amongst the TOMS members and the reasons for their presents was outlined as to trace Zimbabwean foreigners wanted in connection with the death of Police Colonel In Zimbabwe.

- There is no proof provided by the police that the Zimbabwean foreigners were wanted in connection with ATM bombing as alleged and no case docket was produced regarding such offense.

- The Zimbabwean nationals were arrested in Diepsloot but detained at Orlando Police Station with no reasons advanced why they could not be detained at Diepsloot.

- There is documentary proof that the four Zimbabwean nationals were detained at Orlando Station by Captain Maluleke. Procedures were not followed in processing them, to the amazement of other members including the station Commander Brigadier Zangwa. The disregard of procedures and effort to transport illegal immigrants to Beit Bridge, which is not a priority crime to be dealt by DPCI and not part of their mandate, support the contention that member of DPCI were involved in rendition activities to assist Zimbabwean authorities in avoiding tedious extradition process. Colonel Madilonga also confirmed that Captain Maluleke informed him that the reason for deportation is to avoid extradition process which may take long

- There is proof that the Zimbabwean Police came into South Africa on 31/10/2010 and left the country on 2010/11/07, a day before Captain Maluleke took the wanted suspects to the border.

- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported to the Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.

- On 26/01/2011, Johnson Nyoni was arrested at Diepsloot by Captain Maluleke and four other police officers.

- The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
  It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maghawe Sibanda were deported through Beit Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.
  The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

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

- The Zimbabweans were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011.

6. **OUTSTANDING INVESTIGATIONS**

The following investigations are outstanding;

- Cybercrimes unit investigation report on SMS exchange.
- Email exchanged between General Dramat, General Sibiya, Lt Col Maluleke and their Zimbabwean counterparts during the period of abduction and deportation of suspects.
- Application of a search and seizure warrant for Lt Col Maluleke's laptop.
- Verification of the names of Zimbabwean police with Interpol from received Home Affairs data (information).
- Copies of Silverton Police Station cell registers, OB and statements of members who were on duty on 23/11/2010 and 24/11/2010 when Prichard Chuma was booked in and out by Captain Maluleke.
- Cellphone records interpretation/analysis by experts
- Warning statements of all the suspects.
- AVL of all vehicles attached to TOMS.

7. **CONCLUSION**

The following possible charges are recommended (a) Kidnapping (b) Contravention of Immigration Act (3) Forgery (4) Assault.

_____signed_____
Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

JPP12

ipid
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Independent Police Investigative Directorate
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Enq: I H Khuba
Date: 2013/09/04

TO: ACTING EXECUTIVE DIRECTOR

FROM: INNOCENT H KHUBA
ACTING PROVINCIAL HEAD

DATE: 04 SEPTEMBER 2013

SUBJECT: PROGRESS REPORT ON DIEPSLOOT CAS 390/07/2012 (RENDITIONS)

1. BACKGROUND

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provide that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Sheoard Chuma: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced the firearm and ordered them to lie down.
He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted form a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Lebrun" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

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

about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

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

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

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

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

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

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

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

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

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

Alfred Ndobe: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the colonel.

Andrew Mark Sampson: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maqhawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as

result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

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

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

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

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

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

Madala Bhekisisa Nyoni: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late

and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

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

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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

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

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

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

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

Kobela Margret Mohlahlo: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She

does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndandzeni Richard Madilonga: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.
Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.
In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.
Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.
He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.
For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.
The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a

male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.
While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.
While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.
Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.
In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.
Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

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

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

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

Lt Col Neethling: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

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

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

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

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

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

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

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

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

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

New evidence

Avhashoni Desmond Takalani: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of

wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to me arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.

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

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

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

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

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

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

Plantinah Mokgobu: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them about a crime that was going to take place at Diepsloot.
They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.
In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasoi Witness Rambuda: he will sate that in January 2011 he was working Diepsloot as a Detective. There were three suspects who arrested after they were involved in the shooting incident with the police. The recovered firearm was booked in SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville.
After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.
He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Attridgeville to withdrew the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Isaac Dlamini: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.
He will further state that Captain Cowboy in the presence of Constable Rambuda to him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name , he opened a duplicate and send it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

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

Sindy Daisy Dorcus Sombhane: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave

Constable Rikhotso a list of wanted suspects in Wierdebrug. She also met Captain Maluleke at Wierdebrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikotso and informed him that Cpatain Malukele was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.
She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikotso. Constatble Rikotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulte.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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

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

The Investigation at Alexandra Police Station uncovered the following:

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

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

The Investigation at Silverton Police Station uncovered the following:

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

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

The investigation at Pretoria Moot Police station uncovered the following:

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

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

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

The investigation at Wierdabrug Police Station uncovered the following:

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

Body Receipts SAPS 216: They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

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

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011: The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.
The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013: The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Sefundu. Paragraph "1" of the report states that the Zimbabwean Police visited the office of the Divisional National Commissioner regarding Zimbabwean Nationals who

were hiding in South Africa. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

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

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP.

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

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean

authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Bait Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Bait Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Bait Bridge Duty Roster – This is a duty register used by Immigration Officers at Bait Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Bait Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

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

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

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

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

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L. Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects emanate from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
    - ***He allowed Zimbabwean police into the country.*** The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by

Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police.

- *Evaluation of the above findings*: In the entire cellphone records of General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date.

- ***He held a meeting on 05/11/2010 with Zimbabwean police planning the operation***. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
  - *Evaluation of the above findings*: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.

- ***He committed the government resources into the operation***: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Bait Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Bait Bridge and also claimed overtime. On 28/01/2011 he went to Bait Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries

indicating the dates in which the suspects were booked out from the stations.

- *Evaluation of the above findings:* Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Captain Maluleke to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.

- ***He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret:*** According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
  - *Evaluation of the above findings:* Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.

- ***He received communication regarding successes and photos of the operation through his Personal Assistance Phumla:*** According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- ***He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals:*** The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- ***Report to parliament in response to the allegation:*** A copy of the letter sent by Zimbabwean authority to Col Ntenteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.

- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone

records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestone of the operation. Following suggest the involvement of General Sibiya;

- Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
- In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation.
- 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.

- There is insufficient evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
  - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

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

    The stamp number 20 belonging to Belt Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in

the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.
There is a duty roster used by Immigration Officers at Bait Bridge, which confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on the 7th and 8th of November 2010.

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Bait Bridge.
- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media. This shows that the letter was not meant to acquire assistance or approval if generated after the fact. In addition he stated that the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This clearly shows that he was aware of the deportation manotorium for Zimbabwean Nationals.
- Statements of Constable Rammbuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dude was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.
- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Bait Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011, the same day when Johnson Nyoni and Gordon Dube were transported to Bait Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is not Mike Dube, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for investigators to follow the wrong leads. Both suspects were persuaded to be involved in

the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.

- The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

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

RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Col Maluleke, Constable Radebe and Warrant Officer Makoe be charged criminally for ;

- Kidnapping
- Contravention of Immigration Act
- Defeating the ends of justice
- Assault (only for Lt Col Maluleke, Constable Radebe and Warrant Officer Makoe)

It is further recommended that the same officers be charged departmentally for the contravention of;

- Regulation 20 (z) in that he committed a common law and statutory crimes.

_____signed_____
Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

Annexure A6 HIK/W5 JPP13

Am 1.
A6

Ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Enq: I H Khuba
Date: 2013/10/22

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

Case Investigative Report

1. COMPLAINT IDENTIFICATION

1.1 CCN	2013030375
1.2 Incident Description Code	312
1.3 Type of Report	Criminal Recommendation
1.4 Report Date	22 October 2013
1.5 Date of Last Report	09 November 2012
1.6 Complaint Category	Section 28(1)(f) and 28(1)(h)
1.7 Complainant	Shepard Chuma and others
1.8 Date of Complaint	10 October 2012
1.9 SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
1.10 Suspect Identification	Lt Gen. Dramat and others
1.11 Investigator	Task Team
1.12 Assignment	Investigations
1.13 Reporting Staff Member	Innocent Khuba

1. **BACKGROUND**

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

2. **SUMMARY OF ALLEGATIONS**

The following allegations were made:

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

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. **CONSTITUTIONAL AND STATUTORY MANDATE**

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. **AVAILABLE EVIDENCE**

4.1 **STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES**

The following witnesses were interviewed and statements obtained.

A1 A15 3rd 2

Shepard Chuma: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Mafatlle Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked

them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

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

A2 A16 3rd.

Maghawe Sibanda: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R600-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

A4 A14

Boncani Henry Yende: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/06 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went

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

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

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

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

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

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

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

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

A7 A13 ***Alfred Ndobe***: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

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

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

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

A20 ***Reasons Mhlawumbe Sibanda***: He will sate that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He

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

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

A22 ***Brightness Nika Ncube***: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

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

A27 ***Padile Abrina Papo***: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h46 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 **STATEMENTS OF HOME AFFAIRS OFFICIALS**

A29 ***Nolwandle Qaba***: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

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

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

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

A33 ***Job Jackson***: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process

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

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

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

A37 ***Richard Peter Elberg***: He state that he is an Immigration Officer based at Belt Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

A39 ***Kobela Margret Mohlahlo***: She will state that she is an Immigration Officer based at Belt Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

A5-1 2nd ?? ***Ndandulani Richard Madilonga***: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.
Before he was transferred to Thohoyandou SAPS, he was working at Belt Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.
In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.
Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been

murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.
He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.
For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.
The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.
While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.
While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.
Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.

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

A53

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

A54

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

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

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Lt Col Neethling: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

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

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

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

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

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

A51 Warrant Officer PJD Selepe: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

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

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

4.6 **STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.**

A61 ***Avhashoni Desmond Tshilaoni***: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.

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

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

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

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

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

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

A69 ***Plantinah Mokgobu***: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them about a crime that was going to take place at Diepsloot.

A67 They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt

that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

A68 ***Emmanuel Dinizulu Mkasibe***: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.
He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

A75 ***Mr M Mnguenya***: He will state that he is a member of Crime Intelligence and he was involved in the operation that traced and arrested Godi Dube. He will further state that on 26/01/2011 he was called by his colleagues to attend a braai at Silverton Hawks. When he arrived he participated in photo shoot and they were addressed and congratulated by General Dramat for the arrest of Johnson Nyoni.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

A72 ***Avhasei Witness Rambuda***: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville.
After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.
He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Attridgeville to withdrew the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

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

A73 ***Leon Meyer***: He will state that he was investigating several cases wherein Godi Dube was a suspect. The case were as follows, Wierdabrug CAS 531/12/2010, Wierdabrug CAS 220/02/2010, Wierdabrug CAS 147/11/2010, Wierdabrug CAS 1022/12/2010, Wierdabrug CAS 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through immigration channels.

A74 ***Sindy Daisy Dorcus Sombhane***: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdebrug. She also met Captain Maluleke at Wierdebrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikotso and informed him that Cpatain Malukele was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.
She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikotso. Constable Rikotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279: The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirms that Captain M L Maluleke of the DPCI with force number 0622729618 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

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

The Investigation at Alexandra Police Station uncovered the following:

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

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

The investigation at Silverton Police Station uncovered the following:

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

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

The investigation at Pretoria Moot Police station uncovered the following:

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

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

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

The investigation at Wierdabrug Police Station uncovered the following:

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

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

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

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

Facts ?

5.2 **DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.**

Success report dated 04/02/2011: The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.
The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

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

Overtime and Itineraries of Captain Maluleke: On 08/11/2010 went to Balt Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Belt Bridge and also claimed overtime. On 26/01/2011 he went to Balt Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

NB check

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

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

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

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

6.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were

detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Balt Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Balt Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Balt Bridge Duty Roster – This is a duty register used by Immigration Officers at Balt Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Balt Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

5.5 **EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.**

Cellphone record of Major General Sibiya (0725953168): Upon perusal of the cellphone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent 30 SMS to Major General Dramat (0825515811). However Major General Dramat never responded to the SMS. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs.

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

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

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

5.6 OUTSTANDING INVESTIGATIONS

The following investigations are outstanding:

- Warning statement of General Dramat, General Sibiya, Warrant Officer Makoe and Constable Leburu.
- Cellphone data interpretation report and mapping.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects emanate from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
  - ***The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to see him.*** The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Belt bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6800 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the

country was to arrest wanted Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- *Evaluation of the above findings*: In the entire cellphone records of General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0165346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date.

- ***He held a meeting on 05/11/2010 with Zimbabwean police planning the operation***. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
  - *Evaluation of the above findings*: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madlonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Belt Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.

He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Belt Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Belt Bridge and also claimed overtime. On 28/01/2011 he went to Belt Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

- *Evaluation of the above findings*: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain

- Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
- In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation.
- 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 the cellphone records of Major general Sibiya do not corroborate the witness version that he was at the scene.

- There is insufficient evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
  - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
    It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Belt Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.
    The stamp number 20 belonging to Belt Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

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

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Bait Bridge.
- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Bait Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media. This shows that the letter was not meant to acquire assistance or approval if generated after the fact. In addition he stated that the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This clearly shows that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period.
- Statements of Constable Rammbuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dude was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.
- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Bait Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011, the same day when Johnson Nyoni and Gordon Dube were transported to Bait Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is not Mike Dube, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for investigators to follow the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.

No it did proceed but not guilty verdict

JPP14

ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Date: 2014/01/22

Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Prosecution
Report Date	22 January 2014
Date of Last Report	09 November 2012
Complaint Category	Section 28(1)(f) and 28(1)(h)
Complainant	Shepard Chuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot Cas 390/07/2012
Suspect Identification	Lt Gen. Dramat and others
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Now included Statement A no 3

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short

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

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

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

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

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

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

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

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

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

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

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

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

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

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

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

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

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

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

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

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

Brightness Nka Ncube A22: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

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

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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

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

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

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

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

Richard Peter Eiberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

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

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

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

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

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

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

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

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

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.
Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.
In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.
Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

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

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

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

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

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

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

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

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

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

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

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

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

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

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

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

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

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

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

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads' "HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED". He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maqhawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers.

Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.
They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

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

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

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

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

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

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices were they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

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

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organizes with his contact to look for Gordon Dube it took two week to find a wanted suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa they managed to see the suspect and when he moved the pursued until they arrested his in Diepsloot. They found the suspect in possession unlicensed firearm. He saw the same firearm with captain Maluleke at the Hawks offices after it was returned from ballistic testing. The suspect was taken to Wierdabrug to detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was search but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done. He will further state that Lt General Dramat was wearing a white shirt and a red tie.

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenteni from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenteni to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville.
After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the

Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases whereln Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean govemment through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The Investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal Immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following;

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The Investigation at Silverton Police Station uncovered the following;

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following;

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

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

The Investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES:

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.
The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. Paragraph "1" of the report states that the Zimbabwean Police visited the office of the Divisional National Commissioner regarding Zimbabwean Nationals who were hiding in South Africa. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A89).

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

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime

Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

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

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 **EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.**

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

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of

received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

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

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

22 Oct 2013 Jersey Lv Ellis

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS

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

Lt General Lebeya: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

New - No statement

Innocent Humbulani Khuba A100: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals; Mr Kenneth Ratshitali, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Emmanuel Madilonga Still to get statement

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Chuma.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Port of Entries. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident. On 28/01/2013 he was called by the former Executive Director who gave him the following documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated

25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DHA-1689) for Nelson Ndlovu, Shepherd Chuma and Maghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled " journey to death in an unmarked car" and is filed as per A35.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Beit Bridge and obtained a statement of Peter Eiberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton. During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree

Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Chuma and Nelson Ndlovu. There were also three Notification of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma and Maqhawe Sibanda. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat via the former Acting Executive Director Ms. K Mbeki on 28/01/2013. The Warrants of Detention and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Chuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.
On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved

overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenteni requesting interview with his members who are mentioned is success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtain the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interview Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 Arch file.

On 16/07/2013, he received a Laptop Dell Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 arch file.

In October 2011 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka

representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.
In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.
During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects should have emanated from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials. The letter dated 2010/07/29 addressed to Commissioner Chibage of Zimbabwe by Lt General Dramat request a meeting on 05/08/2010 to discuss operational matter but limited to fugitive of serious crime like robberies, cash in transit and extradition.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
    - ***The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to***

see him. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of Lt General Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the country was to arrest Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- *Evaluation of the above findings*: In the entire cellphone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.

- ***He held a meeting on 05/11/2010 with Zimbabwean police planning the operation***. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.

  - *Evaluation of the above findings*: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records; General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report.

- ***He committed the government resources into the operation***: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.
  - *Evaluation of the above findings*: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.

- ***He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret***: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
  - *Evaluation of the above findings*: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.

- ***He received communication regarding successes and photos of the operation through his Personal Assistance Phumla:*** According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- ***He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals:*** The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- ***Report to parliament in response to the allegation:*** A copy of the letter sent by Zimbabwean authority to Col Ntenteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was

joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.

- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;
    - Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
    - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
    - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.

- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Toka, Lt General Lebeya and Major General Hlatshwayo was involved except that they received communication regarding this matter.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
    - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

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

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

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

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Beit Bridge.
- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police' (dated 08/11/2010) was generated in 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.
- The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order

to handover the suspect to the Zimbabwean police. The suspects was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dude was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.

- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Beit Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011 (Silverton Cas 566/01/2011), the same day in which Johnson Nyoni and Gordon Dube were transported to Beit Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is Shadrack Wisley Kebini, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for to go on wild chase, following the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.
- The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.
- The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean Nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cell record towers recordings.

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

RECOMMENDATION

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

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

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
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JPP15 HJK-139

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Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Recommendation to NDPP
Report Date	18 March 2014
Date of Last Report	18 March 2014
Complaint Category	Section 28(1) (f) and 28(1) (h)
Complainant	Shepard Tshuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
Suspect Identification	Lt Col M Maluleke
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

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

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2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained

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and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

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

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

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

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

introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

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

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

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

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

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

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

always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

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

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

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

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

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

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/01/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the

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

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

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

Richard Peter Elberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndandzeni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.
Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.
In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is

Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

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

Removal 1

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

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

Removal 2

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

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

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

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

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

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

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members

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posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

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

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

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

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

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot

remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

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

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

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

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

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

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

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads' "HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED". He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maqhawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.
They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

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

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

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

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

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

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices were they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

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

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organized with his contacts to look for Gordon Dube. It took two weeks for the contact to trace the suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be

coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa and they managed to spot the suspect. When he moved they pursued him until they arrested him in Diepsloot. They found the suspect in possession unlicensed firearm. He saw the same firearm with captain Maluleke at the Hawks offices after it was returned from the ballistics. The suspect was taken to Wierdabrug to for detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was search but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected an arrest on Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then

gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

Removal 3

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

Removal Lt

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenteni from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenteni to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases whereln Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

MS H1

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as "illegal Immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following:

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2)): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The investigation at Silverton Police Station uncovered the following:

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following:

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

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

The Investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Ollevenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession off in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeti area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 **DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.**

REMOVAL 5

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.
The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Belt Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Belt Bridge and also claimed overtime. On 28/01/2011 he went to Belt Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

MS HI

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A87).

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

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

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

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

Renown 6

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

Renown 7

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They

then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

CELLPHONE RECORD OF MAJOR GENERAL SIBIYA (0725953168) AND (0724798484)	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged to have seen Major General Sibiya at the crime scene	*Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence.*

CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)	
Reason for 205 application	**Findings**
To verify whether he had interaction with the Zimbabwean Authority regarding the arrests of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe	*The entire cellphone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence.*

CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)	
Reason for 205 application	**Findings**
To test the version that Captain Maluleke was reporting direct to Major General Hlatshwayo regarding cross border issues. During the interview with the said General she denied having known about the Zimbabwean police and requested us to do apply for 205 in order to clear her name.	*Her interaction with Captain Maluleke confirms her version that she did not know anything about the arrest and deportations of Zimbabwean Nationals. She was never at the scene or at Fourways Shopping center where the alleged planning took place.*

CELLPHONE RECORD OF LT GENERAL LEBEYA (0825751899)	
Reason for 205 application	**Findings**
To verify the automated SMS send by Major General Sibiya and whether when he signed on one of the success report he had more information about the operation.	*The evidence shows that he did not know anything about the operation that led to the arrest of the Zimbabwean Nationals.*

CELLPHONE RECORD OF CAPTAIN MALULEKE (082 7729518)	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged that Captain Maluleke led the operations that led to the arrest of Zimbabwean Nationals.	*There is prima facie case against Captain Maluleke.*

CELLPHONE RECORD OF CAPTAIN NKOSI, W/O MAKOE AND CONSTABLE RADEBE (0834373227), (0723050697), (0824198303) AND (0737313808).	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged that they were at the crime scenes and they took money and assaulted the Zimbabwean Nationals.	*The record confirms that they were at the scene even though the allegation of theft is not corroborated*

CELLPHONE RECORD OF LT COL MADILONGA (078 520 9741) AND (0713550548)	
Reason for 205 application	**Findings**
To test his version in which he alleged that he received a call from Captain Maluleke on 08/11/2010 regarding the deportation of Zimbabwean Nationals	*Their interaction confirms the version of Madilonga.*

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

Lt General Mkhwanazi A99: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Radebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Belt Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya A97: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

Ms. Jennifer Irish-Qhobosheane A100: She will state that she is the Head of the Civilian Secretariat and the Secretary of Police. She became aware of the allegations

of renditions on 22/10/2011 when she saw an article in a Sunday Times newspaper entitled, "journey to death in an unmarked car". The Minister requested a detailed response from the DPCI to be submitted to him in writing. She received two official responses in a form of information notes to the Minister. Based on the different information supplied to the Minister of Police, the Minster felt that the matter needed further inquiry to establish whether there is any evidence that the SAPS might have violated international laws and procedures and/or South African laws.

Warning Statement of Lt General Dramat A94/1: He will state that he is the Deputy National Commissioner of the South African Police Services. He unequivocally point out that at no stage during his correct role as the National Head of the DPCI did he ever personally authorize the unlawful and intentional depriving of a person liberty, or movement, and/or his custodians of control on any basis whatsoever.
He will further sate that never authorized anyone or sanctioned the kidnapping any of the Zimbabwean Nationals. He knows of no action that he took or authorize which was aimed at defeating the administration of Justice.

Warning Statement of Major General Sibiya A101: He will state that he was never appointed as the head of TOMS. However he received reports from his members regarding successes as routine. He was never part of the operation that arrested the Zimbabwean National who was wanted in connection with the murder of Zimbabwean Colonel in Zimbabwe.

Warning statement of Lt Col Mahlangu Maluleke A88: He exercised his right to remain silent.

5.7 **STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED**

Innocent Humbulani Khuba A102: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of Investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitali, Mr. L Maphelho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary

question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeva's death certificate.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.
On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Belt Bridge and obtained a statement of Peter Elberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton.

During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndandulani Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.
On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Nlenteni requesting interview with his members who are mentioned is success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interview Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.
He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained

In connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Malulake to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 (arch file).

On 16/07/2013, he received a Dell Laptop from Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 (arch file).

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleke representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Qhobosheane and is filed as

per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madilonga's statement analysis from Precision Forensics.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crimes fugitives. In this responsibility he mends the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonstra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- ***The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma on 05/11/2010.***

The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

also confirms, backed by the cellphone records of Captain Maluleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiya were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Maluleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Maluleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Maluleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Maluleke new that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maqhawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiya alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiya which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiya was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

while they were aware of the presence of Zimbabwean police at the scene, Major General Sibiya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Maluleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of Lt Col Ndanduleni Madilonga and his cellphone records confirms that he received a call from Captain Maluleke when he was approaching Musina on 08/11/2010. According to Lt Colonel Madilonga (A51) he assisted Captain Maluleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Maluleke as four warrants of detentions and four notices of deportations. The documents which the Captain Maluleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Maluleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maqhawe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

Potiswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Maluleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. According to Peter Elberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlahlo (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlahlo was off duty. The stamp could have been easily duplicated.

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

the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

- ***The arrest of Prichard Chuma on 23/11/2010***

On 23/11/2010 and operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Neethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibiya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibiya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

With specific reference to OB entry dated 23/11/2010 (A57/2)) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Neethling to assist Captain Maluleke. Lt Col Neethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Beit Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and itineraries of Captain Maluleke.

Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Moot Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.

The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

7. FINDINGS

- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maqhawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal Imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hlatshwayo were involved.

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8. RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Matuleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

Recommended/~~not recommended~~

Mr. M SESOKO
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT
IPID: NATIONAL OFFICE
DATE: 15/03/2014

Approved/~~Disapproved~~

MR. RJ MCBRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 09/04/2014

JPP16

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

FROM: ADV A MOSING
HEAD: SPECIAL PROJECTS DIVISION

TO: ADV N JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: PROJECT X CASE

DATE: 7 JULY 2013

Dear Adv Jiba

PURPOSE

The purpose of the memorandum is to give feedback on the progress of this matter.

BACKGROUND

The essential allegations are that on 5 November 2010 the four victims were "arrested" at a house of one of them in Diepsloot and detained later that night at Orlando police station in Soweto during an operation allegedly conducted by members of the so-called "TOMS" Unit under the command of Major General Sibiya, the Head of the HAWKS in Gauteng. This task team included members of the Hawks, Gauteng Provincial Office and Hawks National Office, CI Johannesburg, who had been seconded to the TOMS.

During this operation approximately 20 members and about 16 cars participated. Members were told that they were tracing suspects who had killed a police Colonel and are wanted for Murder and Robbery in this regard. It later transpired that the policeman killed was a Zimbabwean police man and not a SAPS member.

During the briefing at a rendezvous point just before the operation commenced, members were introduced to two men, who it was alleged were Zimbabwean Policemen who were there via the office of Lt. Gen Dramat and apparently were the ones chasing the wanted suspects. These two men accompanied the team throughout the operation. The victims were held over the weekend at Orlando Police Station and charged for being illegal immigrants.

On Monday they were taken by members of this same unit to Bronkhorstspruit, where after two of them were taken to the Beit Bridge border in Limpopo and illegally handed over to Zimbabwean police. These two were allegedly detained by the Zim Police and subjected to torture. One victim was release after about 11 days and went to his home in Zim, but later return to SA. The other victim, now deceased, was separated from him after 8 days in custody and was never seen again alive by the co- victim, until he was told that the person is dead and was shot while in police custody attempting to escape.

The other two victims that were detained were release along the N14 freeway close to their residential area of Diepsloot by two members from Orlando Police Station, who had transported them from the police station to Bronkhorstspruit before being separated from the other two. These two were visited by members that carried out the arrest again and warned to not say anything about what transpired that night.

On 23 November 2010 a follow-up operation was conducted by apparently the same TOMS, but there were no Zimbabwean counterparts this time round. Members met at Diepsloot Shoprite before being briefed. They were allegedly looking for a remaining suspect. He was found at a certain house and also arrested. He was later detained at Alexandra Police Station. It is not clear what happened to this victim. A third operation was apparently carried out on 26 January 2011 and a further victim was "arrested" by the TOMS, and it later transpired that he too was killed in custody of the Zim police.

DISCUSSION

After the early investigations trying to establish supporting evidence for the allegations, since they were mainly made by members of CI who were part of TOMS and to overcome the allegations of biasedness, it later transpired that the matter was fully reported on by the Hawks after calls for enquiry was made following a Sunday newspaper exposition of rendition. Perusal of these documents and reports from the police lend confirmation to the claims by the initial witnesses. A breakthrough also came when a statement was obtained from a senior police officer who was employed at the border at the time that a convoy of Zimbabwean police officers entered the country some two weeks before the alleged arrest of the first four Zimbabweans. He claimed that these visitors were coming to see General Dramat and after confirmation with Dramat was allowed to enter the country and only returned two weeks later, a day before two Zimbabweans were brought to the border and handed over to the Zim police.

An initial investigation was done by the Hawks and they reported that four Zimbabweans were "deported" by them legally through the assistance of DHA. They even obtained an affidavit of a senior DHA immigration officer to confirm the involvement of DHA. It later transpired that this was a mere cover up investigation and that the DHA official was long since retired when he allegedly made the affidavit. The police member at the border had also made a statement confirming that this was a legal deportation, but in his later statement he recanted and gave the version about the involvement of Zim police in the so-called deportation of the people. Various statements were obtained from DHA to disprove that this was a legal deportation. The documents supplied by the Hawks were shown to be false documents not in use by DHA at the time.

Section 205 subpoenas were issued for cell phone records. These still need to be analysed and a private expert company has apparently been engaged by IPID to assist. These records are intended to indicate the involvement of all police officials, including the office of Dramat and Sibiya in the operations.

A further major development occurred last week when statements were obtained from senior members of the TOMS who disproves the version submitted by the Hawks

previously that they arrested suspects involved in serious violent crime, proving that this operation was carried out by Zimbabwean police who were present during the operations. A significant statement obtained in this regard is of a W/O Selepe, who was also attached to the TOMS and was instructed to provide escort services to the Hawks in transporting the victim arrested in the second occasion on 23 November 2010. This victim was also not seen since he was taken to the border. Further statements were taken of the girlfriend of the victim taken on the third occasion on 26 January 2011. He was also said to have been killed by the Zim police according to his brother who has given a statement.

OUTSTANDING INVESTIGATIONS

There are still a lot of investigations outstanding. In particular statements needs to be obtained surrounding the events of the second and third operation following the revelations in the statements obtained last week. The cell phone records need to be analysed to prove the presence or not of Senior Hawks commanders, including Sibiya and Dramat. It is not clear at present that Sibiya was present during the first operation. He was allegedly present during the second operation. No evidence yet of his involvement during the third operation. Communications with Dramat regarding the carrying out of the operation still also need to be verified through an analysis of the cell phone records.
We also need to get the records from DHA or border records showing what happened to Pritchard Tshuma who was kidnapped on 22/23 November 2010 (the second operation). A statement is also awaited from hø close relatives to confirm that he was last seen on this date.

CHARGES AND ACCUSED

At present the evidence shows that Maluleke was the main role-player assisted by certain members of the TOMS. It is not clear whether he was working alone as he was attached to a "Cross Border Desk" at Head Office of the Hawks. Further investigations in this regard are ongoing and may reveal whether these operations were sanctioned by Dramat's office. Dramat

The involvement of Sibiya as commander of the Gauteng Hawks is also still under investigation as he is only mentioned during the second operation. Should more evidence come to light then the charges will be reconsidered, but for now the attached charges reflective of the evidence at our disposal. Sibiya

RECOMMENDATION

It is recommended that the investigations be completed as indicated. It is possible to charge those identified in the attached charge sheet and to institute prosecution against them at present.

who are these ppl?

Kind regards.

ADV A MOSING
HEAD: SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPPP

JPP17

Diepsloot Cas

IKhuba@ipid.gov.za
18/09/2013 at 14:06:34

From: **IKhuba@ipid.gov.za**
Sent: 18/09/2013 at 14:06:34
To: **Anthony Mosing (A)** <amosing@npa.gov.za>
Cc:

1 Attachment(s) Total 114.4 KB View

DIEPSLOOT RENDITIONS CASE REPORT.docx (114.4 KB)

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

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

A3
A18

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

A5
A17

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

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

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

A6 +
A11

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

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

A7
A13 ***Alfred Ndobe***: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.

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

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

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

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

A20 ***Reasons Mhlawumbe Sibanda***: He will sate that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He

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

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

A22 ***Brightness Nka Ncube***: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

A24 Lt Maluleke

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

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

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

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

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

A29 ***Nolwandle Qaba***: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

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

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

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

A33 ***Job Jackson***: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process

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

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

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

A37 ***Richard Peter Eiberg***: He state that he is an Immigration Officer based at Belt Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

A39 ***Kobela Margret Mohlahlo***: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

A51 2nd ? ***Ndanduleni Richard Madilonga***: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.
Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.
In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.
Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been

JPP 18

ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Tel.: (015) 291 9800 Fax: (015) 295 3409

Enq: I H Khuba
Date: 2013/10/22

Enq: I H Khuba
Date: 2013/09/04 → Same date as report to DCI.

Case Investigative Report

1. COMPLAINT IDENTIFICATION

1.1 CCN	2013030375
1.2 Incident Description Code	312
1.3 Type of Report	Criminal Recommendation
1.4 Report Date	22 October 2013
1.5 Date of Last Report	09 November 2012
1.6 Complaint Category	Section 28(1)(f) and 28(1)(h)
1.7 Complainant	Shepard Chuma and others
1.8 Date of Complaint	10 October 2012
1.9 SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
1.10 Suspect Identification	Lt Gen. Dramat and others
1.11 Investigator	Task Team
1.12 Assignment	Investigations
1.13 Reporting Staff Member	Innocent Khuba

1. BACKGROUND

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Matatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down.
He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked

them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

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

A2 A16 3rd

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

Nelson Ndlovu included 23 Jan 2014 1 13h

A4 A14 SAPS TOMS

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

murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.
He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.
For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.
The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.
While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.
While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.
When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.
Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.
Captain Maluleke told him that what happened is top secret and people must not know about it.

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

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

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

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

Lt Col Neethling: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

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

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

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

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

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

A51 **Warrant Officer PJD Selepe**: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

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

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

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

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

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

A61

Avhashoni Desmond Takalani: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

A63 Tshabalala ?

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.

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

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

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

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

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

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

A69 ***Plantinah Mokgobu***: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them about a crime that was going to take place at Diepsloot.

A67 They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt

that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

A68 ***Emmanuel Dinizulu Mkasibe***: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.
He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

A75 ***Mr M Mngwenya***: He will state that he is a member of Crime Intelligence and he was involved in the operation that traced and arrested Godi Dube. He will further state that on 26/01/2011 he was called by his colleagues to attend a braai at Silverton Hawks. When he arrived he participated in photo shoot and they were addressed and congratulated by General Dramat for the arrest of Johnson Nyoni.

NB - not in Sep report Check date of Statement.

Wierde bars

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

A72 ***Avhasei Witness Rambuda***: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville.
After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.
He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Attridgeville to withdrew the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

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

A73 ***Lean Meyer***: He will state that he was investigating several cases wherein Godi Dube was a suspect. The case were as follows, Wierdabrug CAS 531/12/2010, Wierdabrug CAS 220/02/2010, Wierdabrug CAS 147/11/2010, Wierdabrug CAS 1022/12/2010, Wierdabrug CAS 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

A74 ***Sindy Daisy Dorcus Sombhane***: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdebrug. She also met Captain Maluleke at Wierdebrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikotso and informed him that Cpatain Malukele was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.
She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikotso. Constatble Rikotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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

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

The Investigation at Alexandra Police Station uncovered the following;

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

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

The Investigation at Silverton Police Station uncovered the following;

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

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

The investigation at Pretoria Moot Police station uncovered the following;

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

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

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

The Investigation at Wierdabrug Police Station uncovered the following;

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

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

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

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

Facts ?

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011: The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.
The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

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

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

NB check

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP.

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

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

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

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were

detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauleng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Bait Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Bait Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Bait Bridge Duty Roster – This is a duty register used by Immigration Officers at Bait Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Bait Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

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

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

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

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

5.6 OUTSTANDING INVESTIGATIONS

The following investigations are outstanding;

- Warning statement of General Dramat, General Sibiya, Warrant Officer Makoe and Constable Leburu.
- Cellphone data interpretation report and mapping.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects emanate from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
    - ***The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to see him***. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the

country was to arrest wanted Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- *Evaluation of the above findings*: In the entire cellphone records of General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date.

- ***He held a meeting on 05/11/2010 with Zimbabwean police planning the operation***. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
  - *Evaluation of the above findings*: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.

- ***He committed the government resources into the operation***: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Bait Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Bait Bridge and also claimed overtime. On 28/01/2011 he went to Bait Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.
  - *Evaluation of the above findings*: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain

Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.

- ***He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret***: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
  - *Evaluation of the above findings*: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.

- ***He received communication regarding successes and photos of the operation through his Personal Assistance Phumla:*** According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. However it is not clear whether Lt General Dramat received the photos.
- ***He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals:*** The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- ***Report to parliament in response to the allegation:*** A copy of the letter sent by Zimbabwean authority to Col Ntenteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.

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

- Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
- In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation.
- 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 the cellphone records of Major general Sibiya do not corroborate the witness version that he was at the scene.

- There is insufficient evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke were uncovered;
  - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
    It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Bait Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.
    The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

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

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Bait Bridge.
- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media. This shows that the letter was not meant to acquire assistance or approval if generated after the fact. In addition he stated that the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This clearly shows that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period.
- Statements of Constable Rammbuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dude was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.
- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Bait Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011, the same day when Johnson Nyoni and Gordon Dube were transported to Bait Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is not Mike Dube, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for investigators to follow the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.

JPP 19

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

FROM: ADV A MOSING
HEAD: SPECIAL PROJECTS DIVISION

TO: Mr M.S.O.NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV N JIBA
FORMER ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: PROJECT X CASE (RENDITION)

DATE: 9 NOVEMBER 2013

Dear Mr Nxasana/ Adv Jiba

PURPOSE

The purpose of the memorandum is to provide a detailed report on the progress of this investigations conducted by the IPID as requested by Adv. Jiba. The matter has been recently reported in the media and I believe that the NDPP has been furnished with an unsworn statement by General Dramat concerning the matter. It is necessary to provide the background and detail of this investigation in order to enable you to make informed decisions thereon.

BACKGROUND

I attached hereto our previous memoranda to Adv Jiba wherein the background of the matter appears. In addition and in light of the allegations of "witch- hunting" made by General Dramat in the afore- mentioned statement and the speculation and comments in the media following a leakage of the information in the docket to the media, I would like to point out that The Civilian Secretariat in the Office of the Minister of Police had initially conducted its investigation into the allegations of Rendition of Zimbabwebabwean nationals following an exposition in the Sunday Times during 2011. Various questions were also posed in Parliament at the time. The SAPS, and in particular the DPCI had

responded to the media expose and parliamentary questions and gave a certain explanation, which the Civilian Secretariat found unsatisfactory. A thorough Criminal investigation was called for by the Minister's office. The Minister of Justice and Constitutional Development, the Honourable Jeff Radebe is also on record, when he addressed the conference of Senior Managers of the NPA during 2012, calling for these allegations to be investigated and thereby reflecting the Governments concern with the allegations. The Special Projects Division was requested provide the necessary guidance to the investigations, which are not yet complete as at the writing of this memorandum, but have nevertheless provided a clearer picture of what may have transpired during these operations conducted by the DPCI. Adv B Moeletsi and writer were responsible for providing the guidance to the investigators.

SUMMARY OF FUTHER EVIDENCE

Significant progress was made by the investigating team since July 2013. In summary the following evidence was obtained:

- Statements on various members who participated during the first arrests in November 2010. Of significance is that these confirmed for the first time that the operation was carried out pertaining to the murder and robbery case that took place in Zimbabwe and also the presence of Zimbabwean police officials during this operation and not as previously reported by the DPCI that they were merely investigating serious crime suspects, who later could not be linked, but deported because they were foreign nationals.
- Statements obtained from members involved during the events of January 2011 when a further two people were arrested on 12 January 2011 and again on 26 January 2011 respectively and both handed over to the Zimbabwean police on 28 January 2011. These for the first time included statements of members of Crime Intelligence Gathering (CIG) of the Pretoria office, who seem to have been used to assist during these latter operations in January 2011. Evidence shows that these CIG member were carrying out there normal duties of tracing most wanted suspects around the Wierda Brug policing area, of which a person by the name of Gordon Dube was at the top of the list. This was also one of the outstanding people that were sought by the Zimbabwe police regarding the incident. These CIG members were approached by Col. Maluleke (Maluleke), who was leading this initiative to trace and arrest those involved in the Zimbabwe incident, since the suspect Dube was also sought by Maluleke. Through use of sources the CIG members managed to trace Dube in Diepsloot and he was arrested on Wierda Brug cases, including for murder and robbery. He was shot during the incident and an unlicensed fire- arm was seized during the arrest. Other suspects were also arrested with Dube during the incident. All suspects were taken to Wierda Brug Police station and charged. They made their appearance in the Atteridgeville court on these charges and the case was remanded to 28 January 2011. They were naturally kept in custody.
- Due to the successes made by the CIG members in arresting Dube, they were requested by Maluleke to also trace Nyoni, who was the last person on his list. Through making use of the same source the CIG members managed to trace Nyoni to an address in Diepsloot. Maluleke was informed and arrangements were made to arrest him, using this time the TRT unit of Johannesburg, which had been based in and around Diepsloot due to Xenophobic violence at the time. This person was arrested on 26 January 2011 and transported directly to the offices of the DPCI

head office in Silverton Pretoria by some of the members of the TRT unit. Upon arrival all the members were allegedly addressed by General Dramat and photographs were taken of the group. Two members of the Zimbabwean police were present throughout this operation driving a white BMW with Zimbabwe registration numbers and are visible on photos taken at DPCI head office. A braai was organised in honour of all members who participated in the operation. Nyoni was taken to the Moot police station and detained there. The entries in the record books of the police station reflect that he was detained for fraud. The records also show that he was booked out on 28 January 211 by Maluleke to be transported to Beit Bridge border post. The reference to Fraud allegations is significant as another docket was traced whoch was fraud docket registered at Silverton police station with the suspects being Johnson Nyoni and Gordon Dube, similar names to the people handed over by the DPCI to Zimbabwe Police. It looks like it was intended to confuse. This is being probed further through interviews of the investigating officer and the suspects of this Silverton docket, which was mysteriously never taken to court.

- On the day that Dube was due to appear in court in Atteridgeville (28/11/2011) he was booked out of prison by the investigating officer from Wierda Brug, one Leon Meyer, but instead of court, he was handed over to Maluleke on the latter's insistence, stating that the suspect Dube is to be transported and handed to the Zimbabwe police to be dealt with there. He further informed the investigation officer that he will make arrangements with the prosecutor to withdraw the case. Further details as to what happened with the SA case in atteridgeville are still being followed up. The evidence further shows that both Dube and Nyoni were transported together to the border and handed over to the Zimbabwe police. Maleleke made an affidavit at the time in which he stated that the suspect Gordon Dube was handed over to the Zimbabwean Government through "Immigration Related Matters" and that he was sentenced to life imprisonment by the Zimbabwean Government and will never be back in South Africa. This affidavit is presumably intended to close the cases against Dube in South Africa.
- The firearm seized during the arrest of Dube was identified as the firearm that was robbed from the Zimbabwe Police Colonel killed during the robbery incident in Bulawayo. It had been sent to Ballistics in South Africa in the normal course, but was later fetched from Ballistics on instructions of Maluleke and handed over to the Zimbabwe police on the day of Nyoni's arrest. The handing over is also captured on photographs.
- The CIG members were commended by a letter from the DPCI directed to among others the Head: Crime Intelligence, Lt. Gen Toka. Furthermore A letter from the Zimbabwean Police Provincial CID directed to The Commander Criminal Investigations Unit, SAPS dated 14 March 2011 commending the four members of the CIG for the assistance in the tracing and arrest of Dube and Nyoni. This furthermore was referred to the Office of the then Provincial Commissioner, Gen Petros, who gave out letters of commendation to each of eh four members involved.
- Documentary evidence recovered from the laptop used by Maluleke at the time and which had been formatted and decommissioned, further provided evidence and insight into what transpired during these operations. These show that the Zimbabwe police visited the DPCI and had a meeting with General Dramat on 5 November 2010, a day before the commencement of the operation. Following on the meeting Maluleke was tasked to carry out the operation to trace the people said

to have been involved in the incident in Zimbabwe as he is shown to have done (interestingly Maluleke was promoted to his current rank after these events as he was a Captain at the time of the operations). This visit is corroborated by the evidence of the member who worked at the border and related the story of the Zimbabwe police entering the country to see Dramat, whereupon he had called Dramat to confirm. Proof of such a call to Dramat's official cell phone can be found from the telephone records of the witness's office and on Dramat's cell phone records. The meeting with Dramat is also corroborated by an affidavit of the then SAPS spokesperson, McIntosh Polela, that he was introduced to Zimbabean police members, who were having a meeting with Dramat, by Dramat himself. He also did enquiries subsequent to the events reported in the Sunday Times during 2011.

OUSTANDING INVESTIGATIONS

As can be seen from the above there are still some investigations outstanding. These include among others the reports of the analysis of the cell phone records are still outstanding. So is the report on the analysis of the vehicle tracking information of the members involved during the operations. It should be stated as well that there may be much evidence available, to which the investigating team is unable to obtain, due to non-cooperation.

Maluleke has been approached for a warning statement, but requested that written question be directed to him. This was done, but he has not yet responded. Other members warning statements are outstanding, including members from TOMS Gauteng who have not yet submitted any statement of any kind.

General Dramat also was approached for his warning statement and requested that he first consult with his legal representative. He was afforded the opportunity, but however submitted an unsworn statement in which he accused the investigation of an ulterior motive. He indicated that he will only respond if he is supplied with a "list of questions and a "proper and transparent summary of the merit and demerits" against him. He alleges that the case is a "smear campaign" against him for cases that the DPCI is involved in and requests that the ***"NDPP himself and/or a duly delegated senior advocate who has not been involved in any of the matters which my unit has or is dealing with and, which have been rather controversial in recent times, be involved in decision-making process as to whether there is merit in pursuing a prosecution against me".*** He furthermore wants somebody who has ***"no vested interest in the outcome of the decision against him"*** to decide the matter. Although it is not clear to me which matters he is referring to, it can safely be assumed that it is a reference to among others the Mdluli matter. There may be others.

A further incident involving a Zimbabwe national, Moyo, who was charged in South Africa for various bank robberies was allegedly also the subject of a Rendition, this time from Zimbabwe to South Africa. This apparently happened during May 2011, after Moyo had escaped from SA to Zimbabwe. The very same Maluleke was pivotal in securing his return. This is also still under investigation.

Another unrelated incident of cooperation involving the above- mentioned CIG members is noted in the letter of commendation from Zimbabwe. It is not yet clear what assistance was rendered during this incident.

DISCUSSION AND RECOMMEDNDATION.

In summary, the facts of this investigation show that a robbery incident took place in Zimbabwe, which led the Zimbabwe police to approach the DPCI to assist in capturing these suspects and handing over to them. It is not clear in terms of what authority the DPCI carried out the instructions as they have refused to explain their actions. In terms of the SARPCO agreement, to which South Africa and Zimbabwe have acceded to, law enforcement authorities of both countries are obliged to assist one another in criminal investigations. However this agreement does not provide for the circumventing of legal extradition or Mutual Legal assistance process provided for in law. Although there is no Extradition treaty between the two countries concerned, there are many cases recorded since 2010 to date where the countries have cooperated in the arrest and extraditing of suspects between the said countries through a legal court process. To use deportation as an alternative to following the legal process does not make the acts lawful.

The first operation (during 5-6 November 2010), four people were arrested. Two were release (although also illegal foreigners just as the other two) and the two were taken to the border and handed over to the Zimbabwe Police. Deportation documents were forged to make it look like a deportation, even though there was a moratorium against deporting Zimbabwe nationals at the time. Allegations of assault and theft of cell phones and cash are also levelled against the members involved in addition to the unlawful arrest and detention and handing over (which amounts to kidnapping).

The second incident occurred on 22 November 2010 when Prichard Tshuma was arrested and detained at Alexandra police station and taken to the border the following day to be handed over. No attempts to make it look like a deportation can yet be traced. It is also not certain whether the person is alive or not.

The third incident refers to the arrest of Dube and Nyoni who were both handed over to Zimbabwe police on 28 January 2011, thereby concluding all suspects sought in connection with the robbery incident in Zimbabwe. In total therefore seven people were arrested and five handed over to Zimbabwe Police contrary to a lawful process.

Whether the evidence contained in the case docket to date is sufficient to secure a conviction is something that will have to be decided after a careful and independent assessment of the totality of the evidence. One thing is very clear though and that is that the explanation provided by the DPCI when the matter first surfaced is far from the truth as revealed through this investigation.

I trust that you will find the above in order.

Kind regards.

ADV A MOSING
HEAD: SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPPP



JPP20

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.

3. Pursuant to that and without burdening this statement with the content thereof I addressed correspondence to the Honourable National Commissioner of SAPS requesting legal assistance in the matter. Pursuant to this letter certain events took place and a legal representative from the State Attorney was appointed to represent me. This being one **Mr Peter Seleka.**

4. I have subsequently however engaged the services of Mr John Riley (my attorney) of Riley Incorporated of 212 Rosmead Avenue, Wynberg, Western Cape. I have also requested my attorney to instruct two counsel of my choice to represent me in this matter.

5. The teleological purpose of my current statement is to provide IPID with certain background information and to, right from the outset, set out where I intend to go with this matter and how I intend to deal with it.

MY PERSONAL BACKGROUND

6. I was born on the 16th of July 1968. Both my parents are alive. I have two brothers and one sister. I grew up in an area known as Bonteheuwel in the Western Cape.

7. From a very early age I became acutely aware of the injustices brought about by apartheid in South Africa. I saw many things that were wrong with the country, among other things, the severe impact of racial discrimination and the gross inequality that "non white" and black people were subjected to. I

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 conclentised 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

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

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 instil in them the values that I have always stood for and that I have sacrificed my freedom for, and that I hoped to achieve. I verily believe that my integrity and my commitment to a better South Africa has been displayed through various independent acts by myself and in the manner in which I have performed my extremely difficult task as a police man and in particular the present position that I hold.

AD MY APPROACH

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

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

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

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

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

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

AD INTEGRITY OF THE DPCI

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

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

23. Similarly I do not expect any special treatment whatsoever. I have no hesitation in 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

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.

AD

AD RULES OF ENGAGEMENT

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

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

CONCLUDING REMARKS

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

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

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

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

07/05/2019 Personal Portal

JPP21

draft questions for your advise

IKhuba@ipid.gov.za
31/10/2013 at 12:53:08

From: **IKhuba@ipid.gov.za**
Sent: 31/10/2013 at 12:53:08
To: **MSesoko@ipid.gov.za**
Cc:

1 Attachment(s) Total 66.9 KB View

Questions for Lt General Dramat.docx (66.9 KB)

JPP22

revised questions

IKhuba@ipid.gov.za
31/10/2013 at 15:17:02

From: IKhuba@ipid.gov.za
Sent: 31/10/2013 at 15:17:02
To: MSesoko@ipid.gov.za
Cc:

1 Attachment(s) Total 67.7 KB View

Questions for Lt General Dramat.docx (67.7 KB)

JPP23

ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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

DIEPSLOOT CAS 390/07/2013

REQUEST FOR A WARNING STATEMENT OF LT GENERAL A DRAMAT A

BACKGROUND

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

The case was taken over in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It is also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

During the investigation of the case the office of Lt General Dramat was visited on 07/03/2013 and a meeting was held between Lt General Dramat and the Investigating Officer Mr. Khuba. At that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat.

Lt General Dramat was informed about the allegation of renditions leveled against members of DCPCI. He said that he sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. He said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed the Investigating Officer that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

A letter to Col Basi was generated and emailed to him the same day of the meeting. On 28/03/2013 an e-mail was recieved from Col Basi for the collection of the documents but without the statement of Lt General Dramat.

During the investigation we then uncovered that Lt General sanctioned the operation that led to the arrest and deportation of the Zimbabwean Nationals. He was approached

for a warning statement and afforded with an opportunity to consult with his lawyer regarding the matter.

ALLEGATION

It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of Major General Sibiya and Lt General A Dramat, conducted operations in Soweto and Diepsloot to trace the following Zimbabwean Nationals, Witness Ndeya, Shepard Chuma, Prichard Chuma, Gordon Dube, Johnson Nyoni, Maqhawe Sibanda and Nelson Ndlovu . The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The DPCI members were accompanied by Zimbabwean Police during the operation that led to the arrest of the above mentioned individuals. Zimbabweans Nationals were arrested in Diepsloot and Soweto and were detained at various stations as illegal Immigrants and others for fictitious charges. They were allegedly assaulted by DPCI members and Zimbabwean Police and transported to Bait Bridge as follows, Witness Ndeya, Shepard Chuma, Maqhawe Sibanda on 08/11/2010; Prichard Chuma on 24/11/2010, Johnson Nyoni and Gordon Dube on 28/01/2011. The above Individuals were allegedly handed to the Zimbabwean Authorities.

POSSIBLE CHARGES

Possible charges against suspects in this case are as follows

- *Kidnapping,*
- *assault,*
- *defeating the ends of justice*
- *fraud and*
- *theft.*

You are hereby informed of your rights as follows:

The purpose of these questions is to give you the opportunity to make a statement concerning the allegations against you that you were involved in the commission of the offence.
You have the right to remain silent and you are not compelled to make any statement or to answer any question.
Any statements that you make may be used as evidence in a court of law. Should you prefer to make a statement or to answer questions, such statement or answers will be submitted to the Director Of Public Prosecutions or public prosecutor and can also be used in deciding whether to prosecute you or not.
You have the right to consult with a legal practitioner of your choice or, if you prefer, to apply to the Legal Aid Board to be provided with the services of a legal practitioner at state expenses. The legal practitioner of your choice or the one provided to you by the Legal Aid Board may also be present when you respond to questions below.

QUESTIONS B

2.1 Did you receive any request from Zimbabwean Authorities (police) to assist in the tracing and arrest of the following Zimbabwean Nationals

2.1.1 Witness Ndeya
2.1.2 Shepard Churna
2.1.3 Prichard Churna
2.1.4 Gordon Dube
2.1.5 Johnson Nyoni
2.1.6 Maqhawe Sibanda
2.1.7 Nelson Ndlovu

2.2 What was the reason for the arrest of the above individuals and what happened to them after the arrest?

2.3 Who did you appoint to assist the Zimbabwean in the tracing and arrest of the above individuals?

2.4 Who was the Team leader of the operation?

2.5 Did you speak to Lt Col Madilonga about the Zimbabwean Police who wanted to see you regarding the above mentioned individuals?

2.6 What the meeting between you and the Zimbabwean police all about?

2.7 When you visited Zimbabwe on 05/08/2010 what was the purpose of the trip, with whom did you visit the country and what agreements regarding cooperation and mutual assistance were reached or concluded?

RESPONSE DATE C

If your Client decides not to exercise the right to remain silent, his response should reach us not later than 11 /11/2013

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

SEQ 29/2020-393

HIK/W7

JPP 24

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO: MR M.S.O. NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV. N JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

FROM: ADV. A MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT: PROJECT X CASE – RENDITION

DATE: 12 NOVEMBER 2013

OFFICE OF THE NATIONAL DIRECTOR
2013 -11- 12
NATIONAL PROSECUTING AUTHORITY

Dear Mr Nxasana and Adv Jiba

1. PURPOSE

The purpose of the memorandum is to provide a detailed report on the progress of the investigations conducted by the IPID as requested by Adv. Jiba. The matter has been recently reported in the media and I believe that the NDPP has been furnished with an unsworn statement by General Dramat concerning the matter. It is necessary to provide the background and detail of this investigation in order to enable you to make informed decisions thereon.

2. BACKGROUND

I attached hereto our previous memoranda to Adv Jiba wherein the background of the matter appears marked Annexure "A" and "B". In addition and in light of the

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allegations of a "smear campaign" made by General Dramat in the afore-mentioned statement and the speculation and comments in the media following a leakage of the information in the docket to the media, I would like to point out that the Civilian Secretariat in the Office of the Minister of Police had initially conducted its investigation into the allegations of Rendition of Zimbabwean nationals following an exposition in the Sunday Times during 2011. Various questions were also posed in Parliament at the time. The SAPS, and in particular the DPCI, had responded to the media expose and parliamentary questions and gave a certain explanation, which the Civilian Secretariat found unsatisfactory. A thorough Criminal Investigation was called for by the Minister's office. The Minister of Justice and Constitutional Development, the Honourable Jeff Radebe is also on record, when he, among other occasions, addressed the conference of Senior Managers of the NPA during 2012, calling for these allegations to be investigated and thereby reflecting the Governments concern with the allegations.

The Special Projects Division was requested to provide the necessary guidance to the investigating team, whose investigations are not yet complete as at the writing of this memorandum, but have nevertheless provided a clearer picture of what may have transpired during these operations conducted by the DPCI. Adv B Moeletsi and writer were responsible for providing the guidance to the investigators.

3. SUMMARY OF FUTHER EVIDENCE

Significant progress was made by the investigating team since July 2013. In summary the following evidence was obtained:

- Statements on various members who participated during the first arrests in November 2010. Of significance is that these confirmed for the first time that the operation was carried out in connection with the murder and robbery case that took place in Zimbabwe and also the presence of Zimbabwean police officials during the operation and not, as previously reported by the DPCI, that they were merely investigating serious violence crime suspects, who, because they could not be linked to specific crimes, ended up being deported because they were illegal in the country.

- Statements obtained from members involved during the events of January 2011 when a further two people were arrested on 12 January 2011 and again on 26 January 2011, respectively and both handed over to the Zimbabwean police on 28 January 2011. These, for the first time, included statements of members of Crime Intelligence Gathering (CIG) of the Pretoria office, who seem to have been used to assist during these latter operations in January 2011. Evidence shows that these CIG member were carrying out their normal duties of tracing most wanted suspects around the Wierda Brug policing area, of which a person by the name of Gordon Dube was at the top of the list. This person happened to be one of the outstanding people that were sought by the Zimbabwe police regarding the incident. These CIG members were approached by Col. Maluleke (Maluleke), who was leading this initiative to trace and arrest those involved in the Zimbabwe incident, since the suspect Dube was also sought by Maluleke. Through use of sources the CIG members managed to trace Dube in Diepsloot and he was arrested on Wierda Brug cases, including for murder and robbery. He was shot during the incident and an unlicensed fire- arm was seized during the arrest. Other suspects were also arrested with Dube. All suspects were taken to Wierda Brug Police station and charged. They made their appearance in the Atteridgeville court on these charges and the case was remanded to 28 January 2011. They were naturally kept in custody. It transpires that Dube did not attend the first appearance as he was receiving treatment for the gunshot injury, but he was nevertheless required to attend the next court appearance.

- Due to the successes made by the CIG members in arresting Dube, they were requested by Maluleke to also trace Nyoni, who was the last person on his list. Through making use of the same source the CIG members managed to trace Nyoni to an address in Diepsloot. Maluleke was informed and arrangements were made to arrest him, using this time the TRT unit of Johannesburg, which had been based in and around Diepsloot due to xenophobic violence at the time. This person was arrested on 26 January

2011 and transported directly to the offices of the DPCI head office in Silverton, Pretoria by some of the members of the TRT unit. Upon arrival, all the members were allegedly addressed by General Dramat and thanked for their efforts. Photographs were taken of the group. Two members of the Zimbabwean police were present throughout this operation driving a white BMW with Zimbabwe registration numbers and are visible on photos taken at DPCI head office. A braai was organised in honour of all members who participated in the operation. Nyoni was taken to the Moot police station and detained there. The entries in the record books of the police station reflect that he was detained for fraud. The records also show that he was booked out on 28 January 211 by Maluleke to be transported to Beit Bridge border post. The reference to Fraud allegations is significant, as another docket was traced which was a fraud docket registered at Silverton police station with the suspects being Johnson Nyoni and Gordon Dube, similar names to the people handed over by the DPCI to Zimbabwe Police. It looks like it was intended to confuse. This is being probed further through interviews of the investigating officer and the suspects of this Silverton docket, which was mysteriously never taken to court.

- On the day that Dube was due to appear in court in Atteridgeville (28/11/2011) he was booked out of prison by the investigating officer from Wierda Brug, one Leon Meyer, but instead of court, he was handed over to Maluleke on the latter's insistence, stating that the suspect Dube is to be transported and handed to the Zimbabwe police to be dealt with there. He further informed the investigation officer that he will make arrangements with the prosecutor to withdraw the case. Further details as to what happened with the SA case in Atteridgeville are still being followed up. The evidence further shows that both Dube and Nyoni were transported together to the border and handed over to the Zimbabwe police. Maleleke made an affidavit at the time in which he stated that the suspect Gordon Dube was handed over to the Zimbabwean Government through "Immigration Related Matters" and that he was sentenced to life imprisonment by the Zimbabwean Government and will never be back in South Africa. This affidavit is presumably intended to close the cases against Dube in South Africa.

- The firearm seized during the arrest of Dube was identified as the firearm that was robbed from the Zimbabwe Police Colonel killed during the robbery incident in Bulawayo. It had been sent to Ballistics in South Africa in the normal course, but was later fetched from Ballistics on instructions of Maluleke and handed over by Maluleke to the Zimbabwe police on the day of Nyoni's arrest. The handing over is also captured on photographs.

- The CIG members were commended by a letter from the DPCI directed to among others the Head: Crime Intelligence, Lt. Gen Toka. Furthermore A letter from the Zimbabwean Police Provincial CID directed to The Commander Criminal Investigations Unit, SAPS dated 14 March 2011 commending the four members of the CIG for the assistance in the tracing and arrest of Dube and Nyoni. This furthermore was referred to the Office of the then Provincial Commissioner, Gauteng, Gen. Petros, who gave out letters of commendation to each of the four members involved.

- Documentary evidence recovered from the laptop used by Maluleke at the time and which had been formatted and decommissioned, further provided evidence and insight into what transpired during these operations. These show that the Zimbabwe police visited the DPCI and had a meeting with General Dramat on 5 November 2010. Following on the meeting Maluleke was tasked to carry out the operation to trace the people said to have been involved in the incident in Zimbabwe as he is shown to have done (Interestingly Maluleke was promoted to his current rank after these events as he was a Captain at the time of the operations). This visit is corroborated by the evidence of the member who worked at the border and related the story of the Zimbabwe police entering the country to see Dramat, whereupon he had called Dramat to confirm. Proof of such a call to Dramat's official cell phone can be found from the telephone records of the witness's office and on Dramat's cell phone records. The meeting with Dramat is also corroborated by an affidavit of the then SAPS spokesperson, McIntosh Polela, that he was introduced to Zimbabwean police members, who were

having a meeting with Dramat by Dramat himself. He also did enquiries subsequent to the events reported in the Sunday Times during 2011.

4. OUTSTANDING INVESTIGATIONS

As can be seen from the above there are still some investigations outstanding. These include among others the reports of the analysis of the cell phone records are still outstanding. So is the report on the analysis of the vehicle tracking information of the members involved during the operations. It should be stated as well that there may be much evidence available, to which the investigating team is unable to obtain, due to non-cooperation.

Maluleke has been approached for a warning statement, but requested that written question be directed to him. This was done, but he has not yet responded. Other members warning statements are outstanding, including members from TOMS Gauteng who have not yet submitted any statement of any kind.

General Dramat also was approached for his warning statement and requested that he first consult with his legal representative. He was afforded the opportunity, but however submitted an unsworn statement in which he accused the investigation of an ulterior motive. He indicated that he will only respond if he is supplied with a "list of questions and a "proper and transparent summary of the merit and demerits" against him. He alleges that the case is a "smear campaign" against him for cases that the DPCI is involved in and requests that the ***"NDPP himself and/or a duly delegated senior advocate who has not been involved in any of the matters which my unit has or is dealing with and, which have been rather controversial in recent times, be involved in decision- making process as to whether there is merit in pursuing a prosecution against me".*** He furthermore wants somebody who has ***"no vested interest in the outcome of the decision against him"*** to decide the matter. Although it is not clear to me which matters he is referring to, it can safely be assumed that it is a reference to among others the Mdluli matter. There may be others. The statement of Dramat is marked Annexure "C".

A further incident involving a Zimbabwe national, Moyo, who was charged in South Africa for various bank robberies was allegedly also the subject of a Rendition, this time from Zimbabwe to South Africa. This apparently happened during May 2011, after Moyo had escaped from SA to Zimbabwe. The very same Maluleke was pivotal in securing his return. This is also still under investigation.

Another unrelated incident of cooperation involving the above- mentioned CIG members are noted in the letter of commendation from Zimbabwe. It is not yet clear what assistance was rendered during this incident.

5. DISCUSSION AND RECOMMENDATION

In summary, the facts of this investigation show that a robbery incident took place in Zimbabwe, which led the Zimbabwe police to approach the DPCI to assist in capturing these suspects, who were allegedly in SA around Diepsloot and Soweto and handing over to them. It is not clear in terms of what authority the DPCI carried out the instructions as they have refused to explain their actions. In terms of the SARPCO agreement, to which South Africa and Zimbabwe have acceded to, law enforcement authorities of both countries are obliged to assist one another in criminal investigations. However this agreement does not provide for the circumventing of legal extradition or Mutual Legal assistance process provided for in law. Although there is no Extradition treaty between the two countries concerned, there are many cases recorded since 2010 to date where the countries have cooperated in the arrest and extraditing of suspects between the said countries through a legal court process. To use deportation as an alternative to following the legal process does not make the acts lawful.

The first operation (during 5-6 November 2010), four people were arrested. Two were release (although also illegal foreigners just as the other two) and the two were taken to the border and handed over to the Zimbabwe Police. Deportation documents were forged to make it look like a deportation, even though there was a moratorium against deporting Zimbabwe nationals at the time. Allegations of assault and theft of cell phones and cash are also levelled against the members

involved, in addition to the unlawful arrest and detention and handing over (which amounts to kidnapping).

The second incident occurred on 22 November 2010 when Prichard Tshuma was arrested and detained at Alexandra police station and taken to the border the following day to be handed over. No attempts to make it look like a deportation can yet be traced. It is also not certain whether the person is alive or not.

The third incident refers to the arrest of Dube and Nyoni who were both handed over to Zimbabwe police on 28 January 2011, thereby concluding all suspects sought in connection with the robbery incident in Zimbabwe. In total therefore seven people were arrested and five handed over to Zimbabwe Police contrary to a lawful process. In addition to the already mentioned charges, charges of defeating the ends of justice can be brought iro Dube's removal from the court roll and the firearm exhibit being handed to Zimbabwean Police.

Whether the evidence contained in the case docket to date is sufficient to secure a conviction is something that will have to be decided after a careful and independent assessment of the totality of the evidence. One thing is very clear though and that is that the explanation provided by the DPCI when the matter first surfaced is far from the truth as revealed through this investigation.

I trust that you will find the above in order.

Kind regards.

ADV A MOSING
HEAD: SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP

JPP25

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO	:	**ADV. A. M. CHAUKE** **DIRECTOR OF PUBLIC PROSECUTIONS: SOUTH GAUTENG**
FROM	:	**ADV. A MOSING** **HEAD: SPECIAL PROJECTS DIVISION**
SUBJECT	:	**DIEPSLOOT CAS 390/07/2012**
DATE	:	**14 FEBRUARY 2014**

1. Please find attached the case docket with accompanying files for your attention and further action as discussed with the Head of NPS. The files included are as follows:
   - 1x A- section of docket
   - 1x B- section of docket
   - 1x forensic report of retrieved computer documents and emails
   - 1x AVL analysis
   - 2x Cell phone data of various cell phones
   - 1x Copies of Wierdabrug case dockets.

2. I trust you find the above in order.

Kind Regards

Received:

Date: 14/02/2014

ADV. A MOSING
SPECIAL PROJECTS DIVISION
OFFCIE OF THE NDPP
DIEPSLOOT CAS 390/07/2012

JPP26
ANNEXURE

281

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO : ADV. A. M. CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS: SOUTH GAUTENG

FROM : ADV. A MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT : DIEPSLOOT CAS 390/07/2012

DATE : 14 FEBRUARY 2014

1. Please find attached the case docket with accompanying files for your attention and further action as discussed with the Head of NPS. The files included are as follows:
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   - 1x AVL analysis
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   - 1x Copies of Wierdabrug case dockets.

2. I trust you find the above in order.

Kind Regards

ADV. A MOSING
SPECIAL PROJECTS DIVISION
OFFCIE OF THE NDPP
DIEPSLOOT CAS 390/07/2012

JPP27

RE: Rendition matter

Anthony Mosing (A) <amosing@npa.gov.za>
18/02/2014 at 11:01:48

From: **Anthony Mosing (A)** <amosing@npa.gov.za>
Sent: 18/02/2014 at 11:01:48
To: **Nomgcobo Jiba** <NoJiba@ndpp.local>
Cc:

2 Attachment(s) Total 294.4 KB View

CENTRALISATION DIRECTIVE MEMO.doc (276.5 KB) Centralisation Authorisation - Diepsloot.docx (17.9 KB)

Dear Adv Jiba, I deemed it expedient to draft this memo for your consideration and further attention, together with accompanying draft directive for the issuing by the NDPP (I was not sure whether you may have been authorised in writing by the NDPP to decide the matter of Centralisations, but I assumed that not to be the case). I trust that this is what is required by Adv Chauke. 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: Nomgcobo Jiba
Sent: 17 February 2014 03:39 PM
To: Andrew KMA. Chauke; Anthony Mosing (A)
Subject: RE: Rendition matter

Thank you, Andrew.

From: Andrew KMA. Chauke
Sent: Monday, February 17, 2014 3:37 PM
To: Nomgcobo Jiba; Anthony Mosing (A)
Subject: Rendition matter

Dear Colleagues,

May I please remind you of the certificate in terms of section 22 of the NPA Act for this office to deal with the matter was referred last week.

Regards,

MA Chauke

Director of Public Prosecutions, South Gauteng

JOHANNESBURG

Tel: 011 220 4122

Fax: 011 220 4232

JPP28

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO: **MR. M. S. O. NXASANA**
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

FROM: **ADV. NOMGCOBO JIBA**
HEAD: NATIONAL PROSECUTING SERVICES

SUBJECT: **DIRECTIVE IN TERMS OF SECTION 22(3) OF THE NATIONAL PROSECUTING AUTHORITY ACT, 32 OF 1998 (NPA ACT): RENDITION OF ZIMBABWEAN NATIONALS: DIEPSLOOT CAS 390/7/2012**

DATE: **18 FEBRUARY 2014**

---

1. PURPOSE

The purpose of this memorandum is to request the issuing of a directive in terms of section 22(3) of the NPA act, read with sections 111 of the Criminal Procedure Act, 51 of 1977 (the CPA) for the offences in the above- mentioned matter, committed wholly or partially in the area of jurisdiction of the Director of Public Prosecutions, North Gauteng (DPP: NG), be investigated and tried within the jurisdiction of the Director of Public Prosecutions, South Gauteng (DPP: SG).

2. BACKGROUND

The above- mentioned case docket has been submitted for decision by the IPID under cover of report dated 22 January 2014 (the report and case docket are available if required for insight). A memorandum by the Special Projects Division,

which was tasked to guide the investigations, has also been submitted regarding the investigation.

3. DISCUSSION

3.1 The events dealt with under this investigation took place primarily in Diepsloot, which according to the current demarcation falls under the DPP: NG. It is envisaged that this will be changed during the course of this year, effectively placing Diepsloot under the jurisdiction of the DPP: SG. The nature of the proposed charges, especially kidnapping, however is not limited to one jurisdiction only and cover the whole of Gauteng and Limpopo provinces, thus falling under both DPP jurisdictions. Essentially victims were kidnapped from Diepsloot informal settlement and kept in custody at the police stations in Orlando in Soweto, Alexandra in Sandton and Wierdabrug and Moot in Pretoria, where after they were transported by road to the Beit Bridge border in Limpopo and handed over to Zimbabwean police authorities. The suspects implicated in the matter are high ranking officers in the DPCI, including the Head of the DPCI, based at head office in Pretoria and to a lesser extent at the Gauteng Provincial office of the DPCI, which is based in Johannesburg. The majority of the suspects are/were also based in the Johannesburg offices of the DPCI.

3.2 It is deemed in the interests of the administration of justice that the DPP: SG takes responsibility for the prosecution of the entire matter in view of the fact that it is the more slightly removed from the close proximity of the affected DPCI head office. Coupled with the fact as afore- mentioned of the change in demarcation later in the year when it is anticipated that the trial, if any, may ensue. The defence is also on record that it requires an independent and fair decision of prosecution of this matter as it alleges that there are unlawful motives behind the investigation of this matter. It is submitted that this directive will also go a long way to provide the assurance of objectivity that is insisted upon by the suspects.

4. CONCLUSION

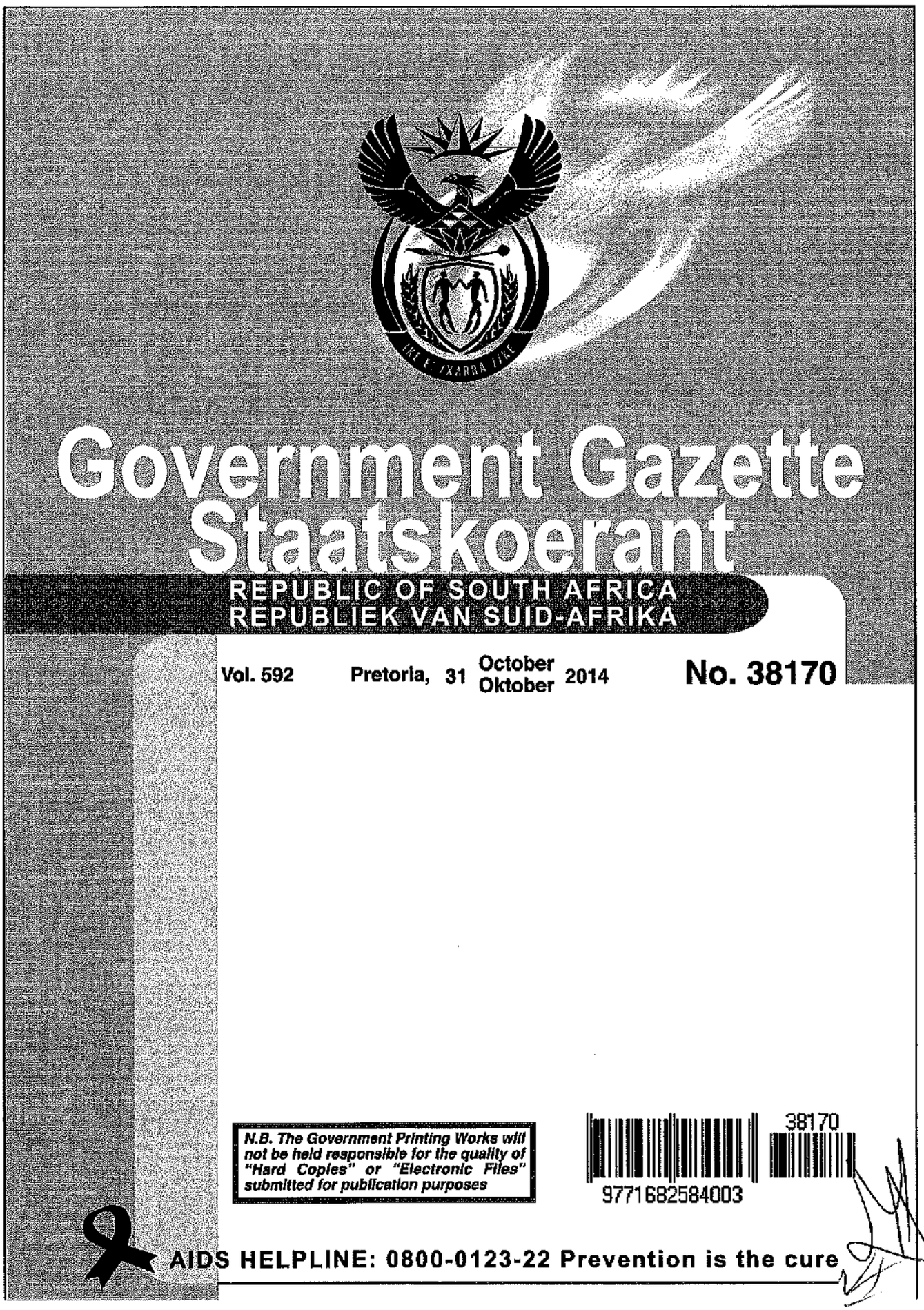
It is therefore humbly submitted that the NDPP issue the directive as requested. The DPP: SG is already in possession of the case docket and related documents. Kindly find enclosed the draft directive.

Kind Regards.

ADV. NOMGCOBO JIBA
HEAD: NATIONAL PROSECUTING SERVICE
NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA.

SEQ 29/2020-408

JPP29



Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 592 Pretoria, 31 October Oktober 2014 No. 38170

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SEQ 29/2020-409

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SEQ 29/2020-410

GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. 861 **31 October 2014**

MAGISTRATES' COURTS ACT, 1944 (ACT NO. 32 OF 1944): DEFINITION OF LOCAL LIMITS OF DISTRICTS CREATED IN RESPECT OF THE GAUTENG AND NORTH WEST PROVINCES

I, Tshililo Michael Masutha, Minister of Justice and Correctional Services, acting under section 2 1 (a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), hereby, with effect from 1 December 2014, in respect of the magisterial districts created in terms of Government Notice No. 43 of 24 January 2014, define the local limits of each such district as indicated in Schedules 1 and 2 respectively.

Any amendment to the name of the district, sub-district or place of sitting under this Notice shall be applicable to the place appointed for the holding of a court for each regional division and all seats mentioned in the Schedule to Government Notice No. 219 of 27 February 2004.

Given under my hand at Cape Town on this the 29 day of October

Two Thousand and Fourteen.

TM MASUTHA, MP (ADV)

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

SCHEDULE 1: GAUTENG PROVINCE

Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
Ekurhuleni Central	Palm Ridge	Starting from the intersection of the N12 Motorway with the eastern boundary of Busoni Rock, proceed in an easterly direction along the N12 motorway, until it intersects with the eastern boundary of Linmeyer Township. Then proceed in a northerly direction along this eastern boundary of Linmeyer, then in a north-easterly direction, then in an easterly direction, along the southern boundary of Moffatt Park, then southern boundary of South Hills until it intersects with the eastern boundary of South Hills as will further appear from the map. From there proceed in a northerly direction along the eastern boundary of South Hills until it intersects with the southern boundary of Tulisa Park. Then proceed in an easterly direction along the southern boundary of Tulisa Park, then southern boundary of Elandspark until it intersects with the N12 motorway. From there proceed in a northerly direction along the N12 until it intersects with N17 motorway. From there, proceed in an easterly direction along the N17, until it intersects with the N3 motorway, and then proceed in a southerly direction along the N3 until it intersects with Leondale Road. Then proceed in a westerly direction along Leondale Road until the intersection with Natalspruit River. Proceed southwards along Natalspruit River until the intersection with Venus Drive, which is the northern boundary of Katlehong South. Then proceed in an easterly direction along the northern boundary of Katlehong South until the intersection with a spruit. From there, proceed in a north-easterly direction along the spruit until the intersection with the N3 motorway. Proceed in a southerly direction along the N3 until the intersection with the eastern boundary of the farm Koppieskraal No.157. From there proceed in a southerly direction along the eastern boundary of Koppieskraal No.157 until the intersection with the southern boundary thereof. Then proceed in a westerly direction along the southern boundary of Koppieskraal until it intersects with the eastern boundary of Tamboekiesfontein No.173-IR. From there proceed along this boundary of Tamboekiesfontein in a southerly, then westerly, then southerly, then westerly along the R550, then southerly direction, then north-westerly, along the municipal boundary as will further appear from the map, then north-easterly until the intersection with both the R550 and the south-eastern beacon of Magagula Heights township. Then proceed in a westerly direction along the southern boundary of Magagula Heights until the intersection with the western boundary thereof. Then proceed in a northerly direction along the western boundary until it intersects with the railway line. Proceed in a south westerly direction along the railway line until it intersects with the eastern

SEQ 29/2020-411

Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		boundary of Rietspruit Agricultural Holdings (A.H). From there, proceed in a north-westerly direction along the eastern boundary of Rietspruit Agricultural Holdings (A.H) until it intersects with the Municipal boundary running east-west through Rietspruit A.H. Then proceed along the Municipal boundary in a westerly direction, then south-easterly direction, then south-westerly direction until the intersection with the eastern boundary of Gardenvale A.H. Then proceed along the eastern boundary of Garthdale A.H in a north-westerly direction until it intersects with R550. From there proceed in a westerly direction along the R550 until it intersects with the R59 motorway. From there proceed northwards along R59 until it intersects with the south western boundary of Brakensdown township. Proceed in a north-westerly direction along this Brakensdown boundary until it intersects with the southern boundary of Kromvlei Cemetery. Then proceed in a south-westerly direction along the southern boundary of Kromvlei Cemetery, then in a northern direction, then north-eastern direction until it intersects with the western boundary of Brackendowns. From there, proceed in a northern direction along the western boundary of Brackendowns until it intersects with the north-eastern boundary thereof. Proceed in a north-eastern direction along this boundary until it intersects with the western boundary of Brackenhurst. Then proceed along the western boundary of Brackenhurst in a northerly direction, then eastern direction until it intersects with Hennie Alberts Street. Proceed in a northerly direction along Hennie Alberts Street until it intersects with the southern boundary of Meyersdal Township. Then proceed westwards along the southern boundary of Meyersdal until it intersects with the western boundary thereof. Then proceed in a northerly direction along the western boundary of Meyersdal, which then becomes the eastern boundary of Busoni Rock until it intersects with the northern boundary of Busoni Rock. Then proceed along the northern boundary of Busoni Rock in a westerly direction until it intersects with the eastern boundary of Busoni. Then proceed in a northerly direction along this eastern boundary until it intersects with the N12, which is the starting point.
Ekurhuleni East	Springs	Starting from the intersection of the N12 with Alliance Road, proceed in an easterly direction along the N12 until it intersects with Laris Street. Proceed in a north-easterly direction along Laris Street until it intersects with Modder Road. From there, proceed in a south-easterly direction along the north-western boundary of the farm Modderfontein No.236-IR, until it intersects with the western boundary thereof. Proceed southwards along the western boundary of Modderfontein No.236, until it intersects with the southern boundary thereof. Proceed in an easterly direction along the

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		southern boundary of Modderfontein until it intersects with the western boundary of the farm Droogefontein No.242-IR. Proceed southwards along the western boundary of Droogefontein until it intersects with the southern boundary thereof. From there, proceed in an easterly direction along the southern boundary of Droogefontein, then southern boundary of Strydpan No.243-IR, until the intersection with the eastern boundary of Vischkuil No.274-IR. Then proceed southwards along the eastern boundary of Vischkuil until it intersects with the northern boundary of Hetblok No.287-IR. Proceed in an easterly direction along the northern boundary of Hetblok until it intersects with the eastern boundary thereof. From there, proceed in a southerly direction along the eastern boundary of Hetblok, then the eastern boundary of the farm Nooitgedacht No.286-IR until the intersection with the N17 motorway. From there, proceed in a westerly direction along the N17 until it intersects with the R42. Then proceed in a south-westerly direction along the R42 until it intersects with the Blesbokspriuit. Proceed northwards along Blesboksruit until the intersection with the south-eastern boundary of Daggafontein Gold Mine. Proceed in a westerly direction along this boundary until it intersects with the north-western boundary thereof. Proceed in a south-eastern direction along this boundary until it intersects with Marievale Road. From there, proceed in a westerly direction along Marievale Road until it intersects with the eastern boundary of Sharon Park township. Then proceed northwards along the eastern boundary of Sharon Park until it intersects with the R51. Proceed northwards along R51 until it intersects with the northern boundary of Sharon Park. From there, proceed in a westerly direction along the northern boundary of Sharon Park until it intersects with the eastern boundary of Kwa-Thema Phase 3. Proceed southwards along the eastern boundary of Kwa-Thema Phase 3 until it intersects with the southern boundary thereof. From there, proceed in a westerly direction along the southern boundary of Kwa-Thema Phase 3, until it intersects with the south-eastern boundary thereof. Then proceed in a south-westerly direction along the south-eastern boundary of Kwa-Thema Phase 3, until the north-eastern beacon of Langaville Ext.9. From this beacon, proceed in a north-westerly direction along the northern boundary of Langaville Ext.9, until it joins with Vlakfontein Road. Then proceed in a north-westerly direction along Vlakfontein Road until it intersects with 12th Avenue. Proceed in a northerly direction along 12th Avenue until it joins with Pilandsberg Road. Proceed northwards along Pilandsberg Road until it intersects with Springs Road west. Then proceed in a westerly direction along Springs Road west, until it intersects with the eastern boundary of Brenthurst Township. Then proceed northwards along the eastern boundary

SEQ 29/2020-413

Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		of Brenthurst, then eastern boundary of Weltevreden, until it intersects with the western boundary of Krugersrus. From there, proceed northwards along the western boundary of Krugersrus until it intersects with a railway line and R51 (Kingsway Avenue). Proceed in a north-westerly direction along Kingsway Avenue until it intersects with R29. Proceed in a westerly direction along R29 until it intersects with Blesbokspruit. Proceed in a northerly direction along Blesbokspruit all around the perimeter boundary of Kingsway township until the intersection with Kingsway Avenue, as will further appear from the map. From there, proceed southwards along Kingsway Avenue until it intersects with the southern boundary of Lindelani Village. Proceed eastwards along the southern boundary of Lindelani until it intersects with the eastern boundary thereof. From there, proceed in a northerly direction along the eastern boundary of Lindelani, until it intersects with Alliance Road. Proceed in a northerly direction along Alliance Road until it intersects with the N12 motorway, which is the starting point.
Ekurhuleni North	Kempton Park	Starting from the intersection of the northern boundary of the farm Bergvlei No.37, with the western boundary of the farm Longmeadow No.297, Proceed in an easterly direction along the northern boundary of Longmeadow, then northern boundary of Longmeadow No.296 then northern boundary of Klipfontein No.12, until the intersection with Chloorkop Road. Proceed in a south easterly direction along Chloorkop Road until the intersection with Zuurfontein Avenue/ Andrew Mapheto Drive. From there proceed in a northerly direction along Andrew Mapheto Drive, until the intersection with the northern boundary of Birch Acres ext.6. Then proceed in an easterly direction along the northern boundary of Birch Acres Ext.6, then northern boundary of Norkem Park, until the intersection with north-south running stream. Then proceed northwards along the stream until the intersection with the south-eastern boundary of Isiphetweni Township. Then proceed north-easterly along the south-eastern boundary of Isiphetweni, Ililiba, and Emangweni until the intersection with the railway line. Then proceed in a south-easterly direction along the railway line until the intersection with Link Road. Then proceed eastwards along Link Road, until it becomes R25, and then continue eastwards along R25, until it intersects with the western boundary of Serengeti Golf Estate. From there, proceed in a southerly direction along the western boundary of Serengeti until it intersects with the southern boundary thereof. Proceed eastwards along the southern boundary of Serengeti until it intersects with the eastern boundary of Bredell Agricultural Holding (A.H). From there, proceed southwards along the eastern boundary of Bredell A.H until it intersects with the southern boundary of Marister A.H. Then proceed eastwards along

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	Courts established for the districts	Point-to-point descriptions
		the southern boundary of Marister A.H, until it intersects with the western boundary of Benoni A.H. Then proceed southwards along the western boundary of Benoni A.H until it intersects with the south-eastern boundary of Vlakfontein No.29. From there, proceed in a south-westerly direction along the southern boundary of Vlakfontein, then southern boundary of Pomona A.H, then southern boundary of Brentwood Park A.H, along Road No.5 until it intersects with Blaauwpan. Proceed southwards along Road No.5 and then westwards around Blaauwpan until Road No.5 becomes Busschan Road and then proceed in a south-westerly direction along Busschan Road until it intersects with Atlas Road (43). From there, proceed southwards along Atlas Road until it intersects with the northern boundary of Impala Park township. Then proceed along the northern boundary of Impala Park in a westerly direction then, northerly direction, and then north-westerly direction until it intersects with the western boundary thereof. Then proceed southwards along the western boundary of Impala Park until the intersection with Ridge Road. From there, proceed westwards along Ridge Road until it intersects with R21. Then proceed in a northerly direction along R21 until it intersects with Pretoria Road. From there, proceed in southerly direction along Pretoria Road, until it intersects with Hatting Street. Then proceed along Hatting Street in a northerly direction until it intersects with Barbara Road (59). Then proceed in a north-westerly direction along Barbara Road until it becomes Driefontein Road, then Lunik Drive; then Terrace Road until it intersects with Betschana Road. Then proceed in a northerly direction along Betshana Road, then Laurie Road until it intersects with R25 (Modderfontein Road). From there, proceed in a westerly direction along R25 until the intersection with the eastern boundary of Bushwillows Park. Then proceed in a southerly direction along the eastern boundary of Bushwillows Park, then eastern boundary of Greenstone Hill until the intersection with the northern boundary of Eden Glen ext.60. From there, proceed in a westerly direction along the northern boundary of Eden Glen ext. 60, then northern boundary of Eastleigh, until the intersection with van Riebeck avenue. Proceed northwards along Van Riebeck Avenue until the intersection with Modderfontein Road. From there, proceed northwards along the western boundary of Sebenza SAPS through the eastern boundary of Linbro Park A.H, through the western boundary of Longmeadow No.297, until the intersection with the northern boundary of Bergvalei No.371, which is the starting point.
Ekurhuleni South East	Benoni	Starting from the intersection of the eastern boundary of Bredell Agricultural Holdings (A.H) with the southern boundary of the farm Witfontein No.16-IR; proceed in an easterly direction along the

SEQ 29/2020-415

Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		southern boundary of Witfontein until the intersection with the western boundary of the farm Tweefontein No.19-IR. From there, proceed in an easterly direction along the southern boundary of Tweefontein until the intersection with the eastern boundary of the farm Zesfontein No.27-IR. Then proceed southwards along the eastern boundary of Zesfontein until it intersects with Pretoria Road. Then proceed in a south-westerly direction along Pretoria Road until it intersects with R51. Proceed southwards along R51 until it intersects with the N12 motorway. From there, proceed in an easterly direction along the N12 until it intersects with Alliance Road. Proceed southwards along Alliance Road until it intersects with the railway line. Then proceed westwards along the railway line until it intersects with the eastern boundary of Lindelani Village. Proceed southwards along the eastern boundary of Lindelani Village until it intersects with the southern boundary thereof. Proceed westwards along the southern boundary of Lindelani until it intersects with R51. Then proceed in a southerly direction along R51 until it intersects with R29. From there, proceed in a westerly direction along R29 until it intersects with Main Reef Road. Then proceed southwards along Main Reed Road until it intersects with Apex Road East. Proceed westwards along Apex Road East until it becomes Dewald Hattingh Road, until it interests with R23. From there, proceed southwards along R23 until it intersects with the southern boundary of Leachville. Proceed westwards along the southern boundary of Leachville, then southern boundary of Tamboville. From there, proceed in a north-westerly direction along the south-eastern boundary of Tamboville, until the intersection with Van Dyk Road. From there, proceed northwards along Van Dyk Road, which becomes Atlas Road, until the intersection with Mecury Road. From there, proceed in a north-easterly direction along Mecury Road until the Intersection with a stream. Then proceed in a northerly direction along the steam, until Blaauwpan. Proceed in an easterly direction around Blaauwpan until the intersection with the western boundary of Brentwood Park A.H.; at Road No.5. Proceed in an easterly direction along Road No.5, then Stanley Road, then southern boundary of Bredell A.H, until the intersection with the western boundary of Vlakfontein No.29-IR. Proceed in a north-easterly direction along the western boundary of Vlakfontein, then the south-eastern boundary until the intersection with the eastern boundary of Bredell A.H. From there, proceed in a northerly direction along the eastern boundary of Bredell A.H until the intersection with the southern boundary of Witfontein No.16-IR, which is the starting point.
Emfuleni	Vanderbijlpark	Starting from the north-west beacon of the farm Patriotsfontein No.564- ; proceed in an easterly direction along the northern boundary of Patriotsfontein, then northern boundary of Holfontein

SEQ 29/2020-416

Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		No.556- ; until the intersection with the western boundary of the farm Tweefontein No.523- ; then proceed northwards along the western boundary of Tweefontein until the intersection with the north-eastern boundary thereof. Then proceed along the north-east boundary in a south-easterly direction until the intersection with the eastern boundary of the farm Tweefontein No.523- . From there proceed northwards along the eastern boundary of Tweefontein until the intersection with a north-east running railway line. Proceed in an easterly direction along the railway line, until it intersects with the N1 motorway, and then proceed southwards along the N1 until it intersects with the R54. Then proceed in an easterly direction along the R54/R28 until an intersection with Houtkop Road. From there, proceed in an easterly direction along the R54 until the intersection with the eastern boundary of the farm Vyfontein No.592- ; proceed southwards along the eastern boundary of Vyfontein, then eastern boundary of Tshepiso Township, until the intersection with the north-western boundary of Sharpeville township. From there, proceed in a south-westerly direction along the north-western boundary of Sharpeville until it intersects with the western boundary thereof. Proceed southwards along the western boundary of Sharpeville, then western boundary of Bedworth Park until the intersection with the northern bank of the Vaal River. Then proceed in a westerly direction along the northern bank of the Vaal River until it intersects with the western boundary of Vaal Oewer. Then proceed in a northerly direction along the western boundary of Vaal Oewer until it intersects with Olga Kirsch Street. Then proceed eastwards along Olga Kirsch Street until the intersection with the western boundary of Zoekoefontein No.573-; then proceed northwards along the western boundary of Zoekoefontein until it intersects with the north eastern boundary of the Farm Donkerhoek No.570- , then proceed in a south-westerly direction along the north-eastern boundary of Donkerhoek until the intersection with the eastern boundary of the farm Bronkhorstfontein No.566- ; then proceed northwards along the eastern boundary of Bronkhorstfontein, then western boundary of the farm Patriotsfontein No.558- ; then western boundary of Patriotsfontein No.564- , until the north-west beacon of Patriotsfontein, which is the starting point.
Johannesburg Central	Johannesburg	Starting from the intersection of the N1 (motorway) with Beyers Naudé Drive, proceed in a south-easterly direction along Beyers Naudé until it intersects with Preller Drive. Proceed in an easterly direction along Preller Drive until it becomes Hofmeyer Drive, then Tana Road, then Rustenburg Road and then turn north-west into 1st Avenue. Proceed along 1st Avenue until it intersects with Braam Fischer Drive. Then proceed north along Braam Fischer Drive until it intersects with Conrad

SEQ 29/2020-417

Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		Drive. Proceed in an easterly direction along Conrad Drive until it intersects and end at Jan Smuts Avenue. From there proceed in a south easterly direction along Jan Smuts Avenue until it intersects with William Nicol Drive. Then proceed in southerly direction along Jan Smuts Avenue until the intersection with Bompass Road. Proceed in an easterly direction along Bompass Rd until it intersects with Oxford Road. Then proceed in a northerly direction along Oxford Rd until the intersection with Corlett Drive. Proceed in an easterly direction along Corlett Drive until the intersection with the northern boundary of Waverley township. From there, proceed in an easterly direction along the northern boundary of Waverely township until it intersects with the southern boundary of Gresswold Township. From there, proceed in a southerly direction along the eastern boundary of Highlands North until the intersections with the northern boundary of Sydenham township. Proceed in an easterly direction along the northern boundary of Sydenham, along George Avenue, until the intersection with Club Street. Then proceed southwards along Club Street, along the municipal boundary until at Balfour Park township. Then proceed southwards along the municipal boundary all the way until it links up with Lower Germiston Road in Hariotdale Ext.3. Proceed south along the N12 (motorway) until it intersects with the municipal boundary at Elandspark Township. Then proceed in a westerly direction along this municipal boundary until it intersects with R103 (Voortrekker Road). Then continue westwards until the intersection with South Rand Road, which is at the north-western beacon of South Crest township. Then proceed all the way along the municipal boundary until the northern boundary of (Johannesburg Zoo) Rietvlei Zoo farm as will further appear from the map. Then proceed southwards along the municipal boundary until you reach Kromvlei Cemetery in Brackensdowns. Proceed around the perimeter boundary of the cemetery, and proceed along the municipal boundary along the western boundary of Brackendowns until the intersection with R550 (Kliprivier Drive). Proceed in a westerly direction along R550, along the municipal boundary, through the northern boundary of Tedderfield A.H, until the intersection with the N1. Proceed northwards along the N1 until the intersection with the northern boundary of Claremont township. Proceed in a north-easterly direction along the northern boundary of Claremont, until the intersection with the boundary between Greymont and Albertskroon Township. Proceed in a northerly direction along this boundary until the Northcliff Ridge. Proceed in an easterly direction around the perimeter of the Northcliff Ridge until the intersection with Cedar Street. Proceed westwards along Cedar Street; then Soutpans Ave, until the intersection with N1. Then proceed northwards along the N1 until it

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		intersects with Beyers Naude Drive, which is our starting point.
Johannesburg North	Randburg	Starting from the intersection of R512 and the Crocodile river, proceed North East along the Crocodile river until it intersects with the southern boundary of Lindley Agricultural Holding(A.H), then proceed east along the southern boundary of Lindley A.H until the intersection of the southern boundary and its north-east boundary. Proceed north along the north-eastern boundary of Lindley A.H until it intersects with the southern boundary of Erasmia SAPS, and then proceed in an easterly direction along the southern boundary of the farm Vlakfontein No.294, until the south eastern beacon of the farm. Then proceed directly south along the eastern boundary of Rietfontein No.532 until it intersects with N14 motorway. Then proceed along N14 in an easterly direction until it intersects with the boundary of the farm Knopjeslaagte No.385. Then proceed in a southerly direction, until you reach R562, and then proceed in an easterly direction along R562 until the intersection of R562 with the eastern boundary of Knopjeslaagte No. 385. Then proceed north along the boundary until it intersects with the southern boundary of Olivenhoutbosch ext.26 township. Then proceed in an easterly direction along the southern boundary of Olivenhoutbosch ext. 26, south along the western boundary of Blue Hills A.H, then east along the southern boundary of Blue Hills over R55 until the intersection with the western boundary of Centurion 1. Then proceed in a southerly direction along the boundary of Centurion 1, until it intersects with R55. Then proceed in an easterly direction along the southern boundary of Centurion 1 over the M1 (Ben Schoeman) and R101 until you reach the intersection with the eastern boundary of Randjesfontein A.H. Then proceed south along the eastern boundary of Randjesfontein A.H until the intersection with the southern boundary thereof. From there, proceed in a south-westerly direction along the southern boundary of Randjesfontein until it intersects with the eastern boundary of President Park A.H. Proceed southwards along the eastern boundary of President Park until it intersects with the southern boundary thereof. From there, proceed in a south-westerly direction along the southern boundary of President Park until the intersection with Modderfontein Rd. Proceed southwards along Modderfontein Road, until the intersection with the northern boundary of Mayibuye Township. Proceed westwards along the northern boundary of Mayibuye, then northern boundary of Commercia Township, until the intersection with Chloorkop Road as will further appear from the map. Then proceed in a south-easterly direction along Chloorkop road, until the intersection with the north western boundary of the farm Longmeadow No.296. Then proceed in a south westerly direction along north western boundary of Longmeadow, until

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		the intersection with the northern boundary of the farm Bergvallei No.37. From there, proceed westwards along the northern boundary of Bergvallei until the intersection with the N3. Proceed southwards along the N3 until it intersects with Malboro Drive. From there, proceed in a westerly direction along Marlboro drive until the intersection with the M1 motorway. Proceed in a southerly direction along the M1 until the intersection with Corlett Drive. Proceed westwards along Corlett Drive, south along Oxford Road, and west along Bompass Road until the intersection with Jan Smuts avenue. From there, proceed north along Jan Smuts Avenue, until the intersection with William Nicol Drive. Then proceed in a westerly direction along Jan Smuts Avenue until it intersects with Braam Fischer Drive. Then proceed south along Braam Fischer Drive until it intersects with 1st Avenue. Proceed south along 1st Avenue until it intersects with Tana Road. Then proceed west along Tana Road until it intersects with Beyers Naude Drive. Proceed in a north-westerly direction along Beyers Naude Drive, over the N1 motorway until it intersects with municipal boundary as will further appear from the map. Then proceed westwards along the municipal boundary until it intersects with the R564. Proceed northwards along R564, until it intersects with Beyers Naude Drive. Then proceed in a north westerly direction along Beyers Naude Drive until it intersects with the eastern boundary of Rietfontein A.H. Then proceed in a northerly direction along the eastern boundaries of Rietfontein A.H, Nooitgedacht A.H up to the intersection of R512 and R114. Proceed in a northerly direction along the R512 which is also along the municipal boundary, all the way until the municipal boundary intersects with R512 again, by the arm Lindley No.528 (see map). Proceed northwards along R512 until it intersects with the Crocodile river, which is the starting point.
Johannesburg West	Roodepoort	Starting from the intersection of the Crocodile River with the southern boundary of Ruimsig Country Estate, proceed in an easterly direction along the southern boundary of Ruimsig Country Estate until the intersection with the north-western boundary of Roodekrans Agricultural Holdings (A.H). Proceed in a north-westerly direction along the north-western boundary of Roodekrans A.H, then in a northerly direction, then north-easterly direction along the same boundary until the intersection with the eastern boundary thereof. From there, proceed in a southerly direction along the eastern boundary of Roodekrans A.H, then in an easterly direction along the Municipal boundary until the intersection with Muldersdrift Road as will further appear on the map. Then proceed in a south-easterly direction along Muldersdrift Road until it intersects with the eastern boundary of Lazer Park. Proceed southwards along the eastern boundary of Lazer Park, then

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		eastern boundary of Eagle Canyon until the intersection with R564. Then proceed southwards along R564 until it intersects with the south-western boundary of Randpark Ridge Township. From there, proceed in a south-easterly direction along the south-western boundary of Randpark Ridge until it intersects with the N1 motorway. Then proceed southwards along the N1 until it intersects with the northern boundary of Quellerina. From there, proceed eastwards along the northern boundary of Quellerina until the intersection with the western boundary of Sophiatown SAPS. Proceed in a south-easterly direction along the western boundary of Sophiatown SAPS until it intersects with a Municipal boundary as will further appear on the map. Then proceed in an easterly direction along the Municipal boundary all the way through Newlands, Montclair, and Industria North until it intersects with the N1 motorway as will further appear from the map. Then proceed southwards along the N1 until the intersection at Main Reef Road East, and New Canada Road. Then proceed in a south-westerly direction along the New Canada Road until the intersection with the railway line. Proceed in a south-westerly direction along the railway line until the intersection with the Soweto Highway. From there, proceed in a westerly direction along the southern boundary of consolidated Main Reef Gold Mine, Rand Lease Gold Mine, until the intersection with the eastern boundary of Soteba Township. Proceed southwards along the eastern boundary of Soteba, Dobsonville until the intersection with the northern boundary of Zondi Township. From there, proceed in a westerly direction along the southern boundary of Dobsonville ext 2, Dobsonville ext.3, Dobsonville Gardens until the intersection with R558. Proceed northwards along the R558 until the intersection with the northern boundary of Doornkop 2. From there, proceed in an easterly direction along the northern boundary of Doornkop 2, until the intersection with a stream. Proceed northwards along the stream until it intersects with the western boundary of Witpoortjie. From there, proceed northwards along the western boundary of Witpoortjie until it becomes the eastern boundary of Breaunanda, until the intersection with the northern boundary of Breaunanda. Proceed westwards along the northern boundary of Breaunanda, until it intersects with the Krans Alwyn Hiking Trail. Proceed northwards along the hiking trail until it intersects with the Crocodile River. From there, proceed northwards along the Crocodile River, until it intersects with the eastern boundary of Range view township. Then proceed northwards along the eastern boundary of Rangeview until the intersection with the southern boundary of Featherbroke Estate. From there, proceed eastwards along the southern boundary of Featherbroke Estate until it intersects with the Crocodile River. Then proceed

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		northwards along the Crocodile River until the intersection with the southern boundary of Ruimsig Country Estate, which is the starting point.
Lesedi	Heidelberg	Starting from the intersection of N3 motorway with the north-eastern boundary of the Farm Villa Liza No.675- ; proceed in a north-easterly direction along the north-east boundary of Villa Liza, until the intersection with the eastern boundary thereof. Proceed in a south-easterly direction along the eastern boundary of Villa Liza until it intersects with the north-western boundary of the farm Rietvalei No.172- ; then proceed in a north-easterly direction along the north-western boundary of Rietvalei, until it intersects with the north-eastern boundary thereof. Then proceed in a south-easterly direction along this boundary until it intersects with south-eastern boundary of the farm Vlakfontein No.16-IR. From there proceed in a north-easterly direction along the south-eastern boundary of Vlakfontein until it intersects with the western boundary of Masetjhaba View township. Then proceed southwards along the western boundary of Masetjhaba View until it intersects with the south-eastern boundary thereof. Proceed eastwards along this boundary until it interests with the R550. Then proceed eastwards along R550 until it intersects with the eastern boundary of Sonstraal Agricultural Holdings. Then proceed southwards along the eastern boundary of Sonstraal A.H until it intersects with a railway line. Proceed in a south-easterly direction along the railway line until the intersection with the western boundary of Kaydale A.H. Proceed in a north-easterly direction along the western boundary of Kaydale until the intersection with the western boundary of Jameson Park, which is also a municipal boundary as will further appear from the map. Proceed in a southerly direction, then easterly direction along the municipal boundary all the way through the farm Rietpoort No.193, until the intersection with the eastern boundary of Groenfontein No.395, which is the provincial boundary of Mpumalanga. Proceed in a southerly direction along the Mpumalanga Provincial boundary until the intersection with the northern boundary of the farm Malanskraal No.407. Then proceed westwards along the northern boundary until it intersects with the western boundary of Lagerspoort No.406. Then proceed northwards along the western boundary of Lagerspoort until it intersects with the Suikerbosant Rivier. Proceed westwards along the Suikerbosrant Rivier until it intersects with the southern boundary of the farm Riviersdraai No.416- ; proceed westwards along the southern boundary of Riviersdraai until it intersects with the western boundary of the farm Elandsfontein No.412- ; then proceed northwards along the western boundary of Elandsfontein, until it intersects with the southern boundary of the farm Schikfontein No.421- ; from there, proceed westwards along the southern

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		boundary of Schikfotnein, until it intersects with Suikerbosrantrivier, then proceed south-westwards along the river until it intersects with the western boundary of Schikfontein No.421- ; then proceed in a north-westerly direction along the western boundary of Schikfontein until it intersects with the northern boundary thereof. Then proceed eastwards along the northern boundary of Schikfontein until it intersects with the R42. Then proceed northwards and then eastwards along the R42 until the intersection with the municipal boundary next to Ratanda Township as will further appear from the map. Then proceed along the municipal boundary all the way until the intersection with the western boundary of the farm Diepkloof No.182. Then proceed northwards along the western boundary of Diepkloof until the intersection with the municipal boundary through the farm Koppieskraal No.157. Then proceed eastwards along the municipal boundary until it intersects with the N3 motorway as will further appear from the map. Then proceed northwards along the N3, until it intersects with the north-eastern boundary of Villa Liza No.675, which is the starting point.
Merafong	Oberholzer	Starting from the north-west beacon of the Farm Phatiki No.55- , proceed eastwards along the northern boundary of Phatiki until the intersections with the eastern boundary of Leriana No.41. Then proceed northwards along the eastern boundary of Leriana, then eastern boundary of Roma No.42, until the intersection with the northern boundary of the farm No.697-IQ which is also the provincial boundary of north-west. Then proceed eastwards along the provincial boundary until you reach the north-eastern beacon of this farm. Then proceed northward along the western boundary of Vooruitsig No.48- , then the western boundary of the farm Houtkop No.43- , until you reach the north-western beacon thereof. Then proceed in an easterly direction along the northern boundary of Houtkop until you reach the north-eastern beacon. Then proceed along the eastern boundary of Houtkop in an easterly direction until the south-eastern beacon thereof. Then proceed in a southerly direction along the eastern boundary of Holfontein No.49- , until you reach the south-eastern beacon thereof. From there proceed westwards along the southern boundary of Holfontein until it intersects with the eastern boundary of the farm De Pan No.51- . From there proceed southwards along the eastern boundary of De Pan, then eastern boundary of the farm Oog van Wonderfontein No.110- , until it intersects with the south-eastern boundary thereof. From there proceed along the south-eastern boundary of Oog van Wonderfontein until you reach the intersection with the eastern boundary thereof. From there proceed southwards along the eastern boundary of Oog van Wonderfontein until it intersects with the northern boundary of

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		Driefontein Gold Mine. Then proceed in an easterly direction along the boundary until it intersects with the eastern boundary thereof. Then proceed southwards along the eastern boundary of Driefontein Mine until it intersects with R501. Proceed westwards along R501 until it intersects with the north-west provincial boundary by the farm Turffontein No.126, as will further appear from the map. From there, proceed in a northerly direction along the provincial boundary until you reach the north-west beacon of the farm Phatiki No.55, which is the starting point.
Mogale City	Krugersdorp	Starting from the north- west beacon of the farm Doornhoek No.392, proceed eastwards along the northern boundary of Doornhoek until the intersection with eastern boundary thereof. From there, proceed along the southern boundary of the farm Buffelsfontein No.344-, in an easterly direction, then the southern boundary of Buffelshoek No.468-, then the southern boundary of Elandskraal No.470-, and then the southern boundary of Buffelsfontein No.465- and then the southern boundary of Groenkloof No.464-, until the intersection with the eastern boundary of the farm Hartebeesfontein No.472, then proceed southwards along the eastern boundary of Hartebeesfontein until the intersection with the southern boundary of Bultfontein No.475, then proceed eastwards along the southern boundary of Bultfontein until the intersection with the eastern boundary of Kafferskraal No.501-. Then proceed south wards along the eastern boundary of Kafferskraal until the intersection with the southern boundary of the farm Hartebeeshoek No.498. From there proceed in an easterly direction along the southern boundary of Hartebeesthoek, then the southern boundary of Leeuwenkloof No.480-, then the southern boundary of Broedertroom No.481-, until the intersection with R512 as will further appear from the map. Proceed southwards along the R512, until the intersection with the northern boundary of the farm Rhenosterspruit No.495-. Proceed in an easterly direction along the northern boundary of Rhenosterspruit until it intersects with the eastern boundary thereof. Then proceed southwards along the eastern boundary of Rhenosterspruit (municipal boundary) until it intersects with the northern boundary of Mooiplaats No.524. Proceed eastwards along the northern boundary of Mooiplaats until it intersects with the eastern boundary thereof. Proceed southwards along the eastern boundary of Mooiplaats until it intersects with the northern boundary of Lindley Agricultural Holdings. Then proceed in an easterly direction along the north-eastern boundary of Lindley A.H until it intersects with the eastern boundary thereof. From there, proceed southwards along the eastern boundary of Lindley A.H, until it intersects with the southern boundary thereof. Then proceed in a westerly direction along the southern boundary of Lindley until it intersects with

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		the Crocodile river. Proceed in a south-westerly direction along the Crocodile river until it intersects with the R512 road. Then proceed southwards along the R512 until it intersects with the south eastern boundary of the farm Lindley No.528-. From there proceed in a south westerly direction along the south-eastern boundary of Lindley until the intersection with the eastern boundary of the farm Elandsdrift No.527-. Proceed in a southerly direction along the eastern boundary of Elandsdrift until the intersection with Muldersdrift Road. Proceed in an easterly direction along the Muldersdrift Road until it intersects with the eastern boundary of Noolgedacht A.H. Proceed southwards along the eastern boundary of Nooitgedacht A.H, until it intersects with the southern boundary thereof, Then proceed westwards along the southern boundary of Nooitgedacht A.H until it intersects with the eastern boundary of Rietfontein A.H. Proceed in a south-westerly direction along Crocodile river until it intersections with the R512 road. Then proceed southwards along the R512 until it intersects with the south-eastern boundary of the farm Elandsdrift No.527. Proceed in a southerly direction along the eastern boundary of Elandsdrift until the intersection with Muldersdrift road. Proceed in an easterly direction along the Muldersdrift road until it intersects with the eastern boundary of Nooitgedacht A.H. Proceed southwards along the eastern boundary of Nooitgedacht A.H. until it intersects with the southern boundary thereof. Then proceed westwards along the southern boundary of Nooitgedacht A.H until it intersects with the eastern boundary of Rietfontein A.H. Proceed in a southerly direction along the eastern boundary of Rietfontein A.H, as it zigzags along the municipal boundary as will further appear from the map, until the intersection with the eastern boundary of Roodekrans A.H. Proceed in a northerly direction along the eastern boundary of Roodekrans A.H then in a westerly direction until it intersects with the western boundary thereof. Then proceed in a south-easterly direction along this boundary until it intersects with the southern boundary of Ruimsig Country Estate. Proceed westwards along the southern boundary of Ruimsig until it intersects with the Crocodile river. Then proceed southwards along the Crocodile river until it intersects with the southern boundary of Featherbrooke Estate. Proceed westwards along the southern boundary of Featherbrooke Estate until it intersects with the eastern boundary of Rangeview township. Proceed in a southerly direction along the eastern boundary of Rangeview until it intersects with the Crocodile River. Proceed southwards along the Crocodile river until it intersects with the Krans Alwyn Hiking trail. Proceed southwards along the Hiking trail until it intersects with the northern boundary of Breaunanda. Then proceed in an easterly direction along the northern boundary of

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		Breaunanda until it intersects with the eastern boundary thereof. From there, proceed southwards along the eastern boundary of Breaunanda until it intersects with the R28. From there, proceed in a westerly direction along the R28 until it intersects with Randfontein Road. From this intersection, proceed northwards along the eastern boundary of Robin Park until it intersects with the southern boundary of Randfontein Estates Gold Mine, then proceed in an easterly direction along this southern boundary until it intersects with the eastern boundary thereof. Then proceed in a northerly direction along the eastern boundary until it intersects with the northern boundary thereof. From there, proceed in a westerly direction along the northern boundary of the Gold mine until it intersects with the railway line. Proceed westwards along the railway line, until it intersects with the western boundary of Helderbrom A.H. Proceed northwards along the western boundary of Helderbron until the intersection with the southern boundary of Eljeesee A.H. Then proceed westwards along the southern boundary of Eljeesee A.H, until it intersects with the eastern boundary of Eldorado A.H. Proceed southwards along the eastern boundary of Eldorado A.H until it intersects with the southern boundary of Vlakplaats A.H. Proceed westwards along the southern boundary of Vlakplaats until it intersects with the western boundary thereof. Then proceed in a northerly direction along the western boundary of Vlakplaats until it intersects with the eastern boundary of the farm Delarey No.164. Then proceed in a southerly direction along the eastern boundary of Delarey until it intersects with the northern boundary of Groenplaats No.157. Proceed in a westerly direction along the northern boundary of Groenplaats until it intersects with the western boundary of the farm Wolwekrans No.156- IQ. Proceed northwards along the western boundary of Wolwekrans No.156-IQ, until it intersects with the eastern boundary of Sluis No.46-IQ. Then proceed southwards along the eastern boundary of Sluis until the intersection with the northern boundary of the farm Witstinkhoutboom No.155-IQ. Then proceed in a westerly direction along the northern boundary of Witstinkhoutboom, then northern boundary of Houtkop No.49-IQ, until the intersection with the western boundary of the farm Kaalfontein No.44-IQ. Then proceed northwards along the western boundary of Kaalfontein, then eastern boundary of Kaalfontein until the intersection with the western boundary of Rietpoort A.H. Proceed northwards along the western boundary of Rietpoort, then western boundary of New Thorndale A.H, then western boundary of Doornkloof A.H until the intersection with the northern boundary thereof. Proceed eastwards along this northern boundary until the intersection with the western boundary of Doornkloof No.392. Proceed in a northerly direction along the western boundary until you reach

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		the north-west beacon of Doornkloof, which is the starting point.
Midvaal	Meyerton	Starting from the intersection of the N1 motorway with the municipal boundary, proceed in an easterly direction along the municipal boundary until the intersection with R556. Then proceed in a southerly direction along R556 until it intersects with R59. Proceed in a south-easterly direction along R556, until it intersects with R59. From there, proceed southwards along R59, until it intersects with R550 and Kliprivier Drive. From there, proceed eastwards along Kliprivier Drive, with municipal boundary making a zigzag along Kliprivier Drive, until it intersects with the western boundary of the farm Diepkloof No.182- . From there, proceed in a south-westerly direction along the western boundary of Diepkloof until it intersects with the municipal boundary in the middle of the boundary as will further appear from the map. Then proceed in an easterly direction along the municipal boundary until it intersects with the middle of the eastern boundary of the farm Valsfontein No.183-. Then proceed in a north-easterly direction along the eastern boundary of Valsfontein until it intersects with the municipal boundary as will further appear from the map. Proceed along the municipal boundary in an easterly, then southerly direction until the intersection with R42. Proceed in a westerly direction along R42 until it intersects with the western boundary of the farm Schikfontein No.421. Proceed southwards along the western boundary of Schikfontein until the intersection with Suikerbosrand River. Proceed in an easterly direction along the River, until it intersects with the western boundary of Elandsfontein No.412. From there, proceed southwards along this western boundary until the intersection with the southern boundary of the farm Riviersdraai No.445. Proceed in an easterly direction along the southern boundary of Riviersdraai, until it joins Suikerbosrand River. Proceed in an easterly direction along Suikerbosrand Rivier, until it intersects with the eastern boundary of Modderfontein No.410. Proceed southwards along the eastern boundary of Modderfontein, then eastern boundary of Kleinfontein No.446, until the intersection with the provincial boundary of Mpumalanga Province, as will further appear from the map. Proceed in a southerly and south-westerly direction along the provincial boundary until it intersects with the northern bank of the Vaal River. Proceed in a westerly direction along the northern bank of the Vaal River, until the intersection with the municipal boundary by the farm Panfontein No.437. Proceed in a northerly direction along the municipal boundary until it intersects with the R42. From there, proceed in a westerly direction along the R42 until it intersects with the railway line. Proceed northwards along the railway line until it intersects with the municipal boundary by Meyerton South (Kookrus). Where the municipal

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		boundary intersects with the eastern boundary of Rust-Ter-Vaal township, proceed in a northerly direction along the boundary until it intersects with the southern boundary of De Deur Estates. Proceed in a westerly direction along the southern boundary of De Deur until it intersects with the western boundary thereof. Proceed in a northerly direction along this western boundary until the intersection with the southern boundary of Althea A.H. Proceed eastwards along the southern boundary of Althea A.H, until it intersects with the western boundary of Walkerville A.H. Proceed northwards along the western boundary of Walkerville, until it intersects with the southern boundary of Elandsfontein A.H. Proceed westwards along the southern boundary of Elandsfontein A.H, until it intersects with the N1 motorway. From there, proceed northwards along the N1, until it intersects with the municipal boundary, which is the starting point.
Randfontein	Randfontein	Starting from the north-west beacon of the farm Witstinkhoutboom No.155-IQ; proceed in an easterly direction along the northern boundary of Witstinkhoutboom until it interests with the eastern boundary of Migalsoord No.152. Then proceed northwards along the eastern boundary of Migalsoord, until it intersects with the western boundary of the farm Wolvekrans No.156-IQ, and then proceed southwards along the western boundary of Wolvekrans until it intersects with the northern boundary of the farm Groenplaats No.157-IQ. Then proceed along the northern boundary of Greonplaats in an easterly direction until it intersects with the eastern boundary of the farm De Larey No.164-IQ. From there, proceed in a northerly direction along the eastern boundary of De Larey until the north-west beacon of Vlakplaas Agricultural Holdings (A.H). Then proceed southwards along the western boundary of Vlakplaas A.H until it intersects with the southern boundary thereof. Proceed eastwards along the southern boundary of Vlakplaas A.H, until it intersects with the eastern boundary of Eldorado A.H. Then proceed in a northerly direction along the eastern boundary of Eldorado A.H, until it intersects with the southern boundary of Eljeesee A.H. Then proceed in an easterly direction along the southern boundary of Eljeesee until it intersects with the western boundary of Helderblom A.H. From there, proceed southwards along the western boundary of Helderblom A.H, until it intersects with a railway line. Proceed along the railway line in an easterly direction until it intersects with another railway line running in a southerly direction. Then proceed southwards along the new railway line until it intersects with the R28. From there, proceed in a westerly direction along the boundary of the farm Randfontein No.247-IQ until it intersects with an eastern boundary thereof. Then proceed southwards along this eastern boundary until it intersects with R28 and then municipal boundary as will further

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Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		appear from the map. Then proceed in an easterly, then southerly direction along the municipal boundary, all the way to the western boundary of Azaadville Township. Then proceed in a southerly direction along the municipal boundary until it intersects with Rietrivier Street in Toekomsrus Township. From there, proceed eastwards along the northern boundary of Toekomsrus, then southwards along the eastern boundary of Toekomsrus. Following the municipal boundary until it intersects with the western boundary of the farm Zuurbult No.240-IQ. From there, proceed southwards along the western boundary of Zuurbult until it intersects with the northern boundary of Panvlak Gold Mine. From there, proceed westwards along the northern boundary of Panvlak Gold Mine, all the way until the intersection with the eastern boundary of Ten Acre A.H. Proceed northwards along the eastern boundary of Ten Acre A.H, until it intersects with the railway line. Then proceed in a south-westerly direction along the railway line until it intersects with the northern boundary of Dennydale A.H. Proceed westwards along the northern boundary of Dennydale until it intersects with the western boundary thereof, which is also the municipal boundary as will further appear from the map. Proceed westwards along the municipal boundary, through the middle of the farm Oog Van Wonderfontein No.110-IQ, until it joins the western boundary of the farm Doornfontein No.50-IQ. Proceed northwards along the western boundary of Doornfontein until it intersects with the southern boundary of Holfontein No.49-IQ. Proceed eastwards along the southern boundary of Holfontein until it intersects with the eastern boundary thereof. From there, proceed northwards along the eastern boundary of Holfontein until it intersects with the western boundary of Witstinkhoutboom. Proceed in a northerly direction along the western boundary of Witstinkhoutboom until you reach the north-west beacon, which is the starting point.
Tshwane Central	Pretoria	Starting from the north-west beacon of the farm Kameeldrift No.313, proceed in an easterly direction along the northern boundary of Kameeldrift, northern boundary of Hornsoord A.H, all the way until the intersection with the R80. Then proceed southwards along the R80 until the intersection with the municipal boundary. Proceed eastwards along the municipal boundary through Suiderberg, Mountain View, Gezina, Riesfontein, and Waverley until the intersection with the N1. Proceed northwards along the N1 until it intersects with the municipal boundary by Pumulani A.H. Proceed in an easterly direction along the municipal boundary until the intersection with Hartebeespruit. Hartebeespruit is also a municipal boundary. Proceed southwards along Hartebeespruit, and then along the municipal boundary until the intersection with the eastern

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		boundary of Eersterus Ext.6. Proceed southwards along the eastern boundary of Eersterus until it intersects with the railway line. Proceed in an easterly direction along the railway line until it intersects with a Spruit. Proceed eastwards along the Spruit until the intersection with Hans Strydom Drive by Nellmapius Ext.8. Proceed southwards along Hans Strydom Drive until the intersection with the municipal boundary. Proceed in an easterly direction along the municipal boundary until the intersection with the eastern boundary of Zwartkoppies No.364. Proceed in a southerly direction along the eastern boundary of Zwartkoppies until the intersection with the southern boundary thereof. Proceed in a westerly direction along the southern boundary until the intersection with the eastern boundary of Zwavelpoort No.373. Proceed in a southerly direction along the eastern boundary of Zwavelpoort until the intersection with the southern boundary thereof. Proceed westwards along the southern boundary of Zwavelpoort until it intersects with the eastern boundary of Grootfontein No.394. Proceed in a southerly direction along the eastern boundary of Grootfontein until it intersects with the northern boundary of Bashewa A.H, until the intersection with the south-western boundary of Grootfontein No.394. Proceed in a westerly direction along the south-western boundary of Grootfontein until the intersection with the western boundary thereof. Proceed northwards along the western boundary of Grootfontein until the intersection with the northern boundary of Witkoppies No.393. Proceed westwards along the northern boundary of Witkoppies until the intersection with the eastern boundary of Doornkloof No.391. Proceed southwards along the eastern boundary of Doornkloof until the intersection with the northern boundary of Sterkfontein NO.401. Proceed in a westerly direction along the northern boundary of Sterkfontein until the intersection with the western boundary of Midstream Estate. The western boundary of Midstream Estate coincides with the municipal boundary. Proceed in a southerly direction along this boundary, then westerly direction, then all the way until the intersection with Summit Rd by Bridle Park A.H. Proceed along Summit Rd in a westerly direction until the municipal boundary intersects with N14. From there, proceed northwards along R511 until it intersects with R114. Proceed in a north-easterly direction along R114 until it intersects with Swartboomspruit as will further appear from the map. Proceed in a northerly direction along the Spruit until the intersection with the southern boundary of Hoekplaats No.384-JR. Proceed in an easterly direction along the southern boundary of Hoekplaats until the intersection with the eastern boundary of Sunderland Ridge until it joins with R55, and proceed northwards along R55 until it intersects with M24. Proceed in a north-easterly direction along M24 until it intersects with

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	Courts established for the districts	Point-to-point descriptions
		the southern boundary of Claudius township. Proceed in a westerly direction along the southern boundary of Claudius, until it intersects with the eastern boundary thereof. Then proceed in a northerly direction along the eastern boundary of Claudius until it intersects with the R55. Then proceed in a northerly direction along R55 until it intersects with the railway line. Proceed in a north-westerly direction along the railway line until it intersects with Kalafong Road in Atteridgeville. Proceed northwards along Kalafong Road until it joins Arcindian Street in Lotus Gardens. Proceed all the way until the intersection with the northern boundary of the farm Atteridgeville No.646. From there, proceed in a westerly direction along the northern boundary of Atteridgeville, then northern boundary of Elandsfontein No.352, until the intersection with the western boundary of Kameeldrift No.313. Proceed northwards along the western boundary of Kameeldrift until the north-west beacon, which is the starting point.
Tshwane East	Ekangala	Starting from the north-western beacon of Ekandustria Township (north-west beacon of the farm Lunsriem No.612) proceed along the northern boundary of Ekandustria in an easterly direction until it intersects with the western boundary of the farm Ekangala No.610- . Proceed northwards along the western boundary of Ekangala until it intersects with the northern boundary thereof. From there proceed along the northern boundary of Ekangala, in an easterly direction until the north-east beacon of this farm. Then proceed along the eastern boundary of the farm in a southerly direction until it intersects with the northern boundary of Ekangala Section D township. Then proceed along the northern boundary of Ekangala Section D in an easterly direction until the north-east beacon thereof. Then proceed southwards along the eastern boundary of Ekangala Section D until you reach the south-eastern beacon thereof. Then proceed in a westerly direction along the southern boundary of the farm Ekangala No.610- until it intersects with R568. From there, proceed in a southerly direction along R568, until it intersects with R513. Then proceed in a westerly direction along R513 until it intersects with the western boundary of Ekandustria. Then proceed northwards along the western boundary of Ekandustria, then slightly north-west, then eastwards, then north-west, then in a westerly direction until this boundary intersects with the western boundary. Then proceed in a slightly north-westerly direction, then northerly direction along the western boundary of Ekandustria until the north-western beacon of Ekandustria, which is the starting point.
Tshwane North	Pretoria North	Starting from the north-west beacon of the farm Sterkwater No.106- , proceed in an easterly direction along the northern boundary of Sterkwater until it intersects with a municipal boundary

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Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		traversing through the middle of this farm. From there, proceed in a southerly direction along the municipal boundary until it intersects with the northern boundary of the farm Rooiwal No.270. Proceed in an easterly direction along the northern boundary of Rooiwal until the intersection with N1. Proceed southwards along N1 until it intersects with the municipal boundary through the middle of the farm Waterval No.273. . Proceed in an easterly direction along the northern boundary of Doornpoort until it intersects with the N1 motorway. From there, proceed in a southerly direction along the N1 until it intersects with the northern boundary of Waverley township. Then proceed in a westerly direction along the northern boundary of Waverley, then northern boundary of Villieria, then northern boundary of Rietfontein until it intersects with the western boundary of Rietfontein. Then proceed in a southerly direction along the western boundary of Rietfontein until it intersects with Frederika Street in the north of Gezina suburb. Then proceed in a westerly direction along Frederika Street until it intersects with Voortrekker Road. Then proceed northwards along Voortrekker Road until it intersects with the northern boundary of Les Marais township. Then proceed in a westerly direction along the northern boundary of Les Marais until it intersects with the R80. From there, proceed in a westerly direction along R80 until it ends and make a 90º turn in a northerly direction. Proceed in a northerly direction along R80 until it intersects with the middle of the Magaliesberg Mountain Range. Continue in a westerly direction along the Magaliesberg until the south-west beacon of the Farm Visserhoek No.435- . From there, proceed in a northerly direction along the western boundary of Visserhoek until the north-west beacon thereof. From there, proceed in an easterly direction along the northern boundary of Visserhoek, then northern boundary of Middelwater No.593- , then northern boundary of Wildebeeshoek until the north-east beacon of Wildebeeshoek No.309- . From there, proceed in a northerly direction along the eastern boundary of Medunsa, then eastern boundary of Ga-Rankuwa until it intersects with southern boundary of the Farm Kameelfontein No.257. Then proceed in a northerly direction along the eastern boundary thereof until the intersection with the northern boundary of Soshanguve South Ext.1. Then proceed in an easterly direction along the northern boundary of Soshanguve South Ext.1, then southern boundary of Soshanguve East Ext.3 until the intersection with the R80 again. Then proceed in a northerly direction along R80 until it intersect withM35 (Soutpan Road). Then from this intersection, proceed in a northerly direction along the eastern boundary of Soshanguve until the north-west beacon of the Farm Sterkwater No.106- , which is the starting point

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
Westonaria	Westonaria	Starting from the south-west beacon of Vleikop Agricultural Holding (A.H) proceed along the southern boundary of Vleikop A.H in an easterly direction until it intersects with the eastern boundary of the farm Smallbank No.279, proceed along the eastern boundary of Smallbank in a southerly direction until it intersects with the northern boundary of Dennydale A.H. From there, proceed along the northern boundary of Dennydale in an easterly direction until it intersects with a railway line. Proceed in a north-easterly direction along the railway line until it intersects with the eastern boundary of Ten Acre A.H. From there, proceed along the eastern boundary of Ten Acre A.H in a southerly direction until it intersects with the southern boundary of the farm Middelvlei No.255. From there proceed in an easterly direction, along the southern boundary of Middelvlei No.255, then southern boundary of Pelzvale A.H, then southern boundary of Randfontein A.H, then southern boundary of Zenzele township, then southern boundary of the farm Luipaardsvlei No.243- ; until it intersects with the eastern boundary of the Luipaardsvlei; then proceed along the eastern boundary of Panvlak Gold Mine in a southerly direction until it intersects with the northern boundary of West Rand A.H. Then proceed along the northern boundary of West Rand A.H, in an easterly direction until it intersects with the eastern boundary thereof. From there, proceed in a southerly direction along the eastern boundary of West Rand A.H, until it intersects with the railway line. Then proceed eastwards along the railway line until it intersects with the western boundary of West Rand A.H. Proceed in a northerly, then easterly direction along the boundary until it intersects with R558, which will also be the western boundary of Lenz. Then proceed southwards along the western boundary of Lenz, then western boundary of the farm Roodepoort No.302- , until it intersects with the northern boundary of Lawley Ext.2 township. Then proceed westwards along the northern boundary of Lawley Ext.2, until the intersection with the western boundary of Elandsfontein No.308, which is also the municipal boundary. Proceed in a southerly direction along the municipal boundary all the way until it intersects with the southern boundary of the farm Doornpoort No.347. Proceed westwards along the southern boundary of Doornpoort until it intersects with the western boundary thereof. Proceed in a northerly direction along the western boundary of Doornpoort until the intersection with the eastern boundary of Davonia No.363. Proceed in a north-westerly direction along the eastern boundary of Davonia, which joins with a municipal boundary and proceed in a westerly direction along the municipal boundary, until the intersection with the northern boundary of Weltevreden No.357. From there, proceed northwards along the municipal boundary as will

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Column A	Column B	Colum C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Courts established for the districts**	**Point-to-point descriptions**
		further appear from the map, until it intersects with the northern boundary of Driefontein Gold Mine. Proceed westwards along the northern boundary of Driefontein Gold Mine until it intersects with the western boundary of the farm Smalbank No.279 and until it intersects with the north-eastern boundary of the farm Oog Van Wonderfontein No.110; from that point proceed along the eastern boundary of Oog Van Wonderfontein in a northerly direction along the municipal boundary in a northerly direction until you reach the south-west beacon of Vleikop A.H, which is the starting point.

SCHEDULE 2: NORTH WEST

Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
Ditsobotla	Lichtenburg	Starting at the north west beacon of the farm Rhenosterfontein No.304. Proceed in a north easterly direction until the south east beacon of kwaggerfontein No.297. Then proceed in a south easterly then a north easterly direction along the southern boundary of Waterklooof No.266. Proceed in a south easterly direction along the northern boundary of the farm Zyferfontein No.293 then in a south westerly direction along the eastern boundary until northern boundary of Saamgevoes No.526. Continue in an easterly direction then south westerly direction along the boundaries of Saamgevoes No.526. Then proceed in a south easterly then southerly direction on the eastern boundary of the farm Draaifontein No.314. Then in a south easterly direction along the northern boundary of Grootfontein No.319 until it intersects with the Sterkstoom River. Then proceed in a north westerly direction until the north west beacon of the farm Rhebokfontein No.317. Then proceed in a south easterly direction until the south west beacon of the farm Rietfontein No.447. Proceed in a south-easterly direction to the south east beacon of Reitfontein then in a north easterly direction to the south west beacon of the farm Kwaageshoek No.448. Proceed in a south easterly direction until it intersects with the north west beacon of the farm

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Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		Zuurfontein No.454. Then proceed in a southerly direction until the northern boundary of Vlaknek No.467, then in a south westerly direction and then a south easterly direction along the western boundary until it intersects with the northern boundary of the farm Kruidfontein No.470. Then proceed along the northern boundary of Kruidfontein in a south westerly direction then a south easterly direction along the western boundary until the south east beacon of the farm Vlaknek No.472. From there proceed in a southerly direction until it intersects with the north west beacon of the farm Schoongezicht No.124. Then proceed in a south westerly direction along the southern boundaries of the farms Rietpan No.479, Corsindae No.118, Grootpan No.117 until it intersects with the north west beacon of the farm Goedvooruitzicht No.120. From there, proceed in a southerly direction till the south east beacon of the farm Klippan No.15. Proceed to the south west beacon of Klippan No.15 in a south westerly direction. From there, proceed in a southerly, then westerly, then northerly, then westerly then, southerly then lastly in a south westerly direction until the south west beacon of Gruisfontein No.40. Then proceed in a south westerly direction along the Doornhoek No.46, and Kaalfontein No.48 until the south west beacon thereof. Then proceed in a north westerly direction then a south westerly direction until the south east beacon of the farm Vlakfontein No.86. Proceed in a south westerly direction on the southern boundaries of the farms; Vlakfontein No.86, Platvallei No.74, and Goedgedacht No.79 until the south eastern beacon of the farm Turflaagte No.30. Then proceed in a southerly direction along the eastern boundaries of Rhenosterdoorns No.88 and Koppiesfontein until the south east beacon thereof. Then proceed in a south westerly direction until it intersects with the R505 road. Then proceed in a south westerly direction until the southern boundary of Kaalaagte No.86. Then continues in a south westerly direction then a north westerly and a south westerly direction until the north east beacon of the farm Zoolhuis No.148. Then proceed in a north westerly direction until it intersects with the south west beacon of Pleizier No.113. Then continue in a north westerly direction then a north easterly direction until it intersects with the south east beacon of Makoeiespan No.97. Then proceed in a north westerly direction along the western boundary of Keerom No.96, then in a north easterly into the farm then a north westerly back to the eastern boundary. Then proceed in a north westerly along the eastern boundary of Keerom No.96 and until the north west beacon of Zoetmelksvalei No.93. Then along the southern boundary of Lusthof No.79 and Bloedzuigerspan No.91, continue in a north westerly direction until the eastern boundary of the farm Kaalpan

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Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		No.82. Then proceed in north easterly direction along the western boundaries of the farms Bloedzuigerspan No.91 and until the north west beacon of Lusthof No.79. Then proceed in a north easterly direction along the northern boundaries of Lusthof No.79., Kleinwesterford No.78 and until the north east beacon of Bethlehem No.75. Proceed in a north westerly direction, then a north easterly until it intersects with the R503 road. From there proceed in a north westerly direction until the south west beacon of the farm Mooimeisjesfontein No.118. In a northerly direction proceed to the south western beacon of the farm Wagendrift No.100. Then proceed in an easterly direction until the south east beacon of Doornplaat No.106. Then proceed in a north westerly direction until it intersects the Molopo river. Then proceed along the Molopo river in a south easterly direction until it intersects the R505 road. Then proceed in a north easterly direction until the south east beacon of Strydfontein No.326. Then continue in a westerly direction to the south west beacon of Strydfontein No.326. Proceed in a north westerly then a north easterly along the western boundary of the farm Strydfontein No.326 until its north west beacon. Then proceed in a north easterly direction until the north west beacon of the farm Rhenosterfontein No.304, which is the starting point.
Kagisano-Molopo	Ganyesa	Starting on the north west beacon of the farm Zuurbult No.247. Proceed in a south easterly direction until the western boundary of the farm Koodoos Kop No.206. Then continue in a south easterly direction until the south west beacon of the farm Kolokolani No.211. Then proceed to the south east beacon of Kolokolani No.211. Then in a south westerly direction on the western boundary of the farm Highlands No.230 in a south easterly direction. Then continue ins a south easterly direction until it intersects with the R375 and R378. Then proceed in a north easterly direction along the southern boundaries of the farms; Donegal No.238, Reitzdale No.239, Chwabe No.240 and until the south east beacon of Mirfield No.88. Then proceed in a northerly direction, then easterly direction, the southerly direction and then a north easterly direction until it intersects with the R377 road. From the R377 road proceed in a north easterly direction until the south east beacon of the farm Cavers No.75. Then proceed in a south easterly direction then north easterly direction until the north east beacon of Weg Draai No.205. Then proceed in an easterly direction along the northern farms Bavlaanskloof No.204 and until the north west beacon of Koodoobosch No.203. Then proceed in a south easterly direction along the eastern boundaries of the farms; Koodoobosch No.203, Wolfdran No.214, Kopje Alien No.219, Hope No.233, Faith

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Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		No.238 and until the south eastern beacon of Mosita Native Reserve No.251. From the south east beacon of Mosita Native Reserve No.251 proceed in a south easterly direction until it intersects with the north east beacon of the farm Bontbok No.258. Then proceed in southerly direction to the south east beacon of Wierealsput No.268 and the R377 road. Then proceed in a south westerly direction to the north west beacon of the farm Gemsbokspoor No.314. Then proceed in a south easterly direction to the northern boundary of the farm Vogelvlei No.450. Then proceed in a north easterly direction to the north west beacon of the farm Beestdam No.449. Then in a south easterly direction until the northern boundary of the farm Kromlaagte No.544. Then proceed in a easterly direction, then north easterly, then easterly, then a southerly direction and then a westerly direction until the eastern boundary of Kromlaagte No.544. Continue in a southerly direction to the south east beacon. Then in a south westerly direction along southern boundaries of the farms; Kromlaagte No.544, Gansvlakte No.543, Verdwaalvlakte No.540, Gruis Rand No.536, Sweet Valley No.535, Middelkop No.532, Hoepvlei No.531, Harbro No.527, Mateba No.524 and until the south west beacon of England No.523. Then proceed in a south easterly then south westerly to until the north east beacon of Hamburg No.617. Then proceed in a south easterly direction to the south east beacon of Putpan No.618. Proceed in a south westerly direction along the southern boundary of Putpan No.618, Geluk No.619 and until the south west beacon of Zoetvlei No.623. Then continue in a north westerly direction until the north west beacon of the farm Twistfontein No.622. Then proceed in a south westerly direction until it intersects with the Northern Cape provincial boundary. Then along the Northern Cape Provincial boundary proceed in a north westerly direction until the north west beacon of Summerfeild No.480. Then along the Northern Cape provincial boundary proceed in a westerly direction, then southerly direction, and then a north westerly direction to the south west beacon of Garaphoane No.502. Then proceed in a North easterly direction along the provincial boundary until the western boundary of farm Poler No.428. Then in a north westerly direction along the provincial boundary until it intersects with Kgokgole river. Then proceed in a north westerly direction along the provincial boundary until the eastern boundary of the farm Bute No.306. Then along the provincial boundary proceed until the south west beacon of the farm Mowbray No.246. Then proceed in a westerly direction then northerly direction, then an easterly direction along the Northern Cape provincial boundary which goes around the farms Egham No.297 and Howden No.295. Then proceed in a north easterly direction

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Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		to the south west beacon of the farm Zuurbult No.247. Then proceed in a north westerly direction until the north west beacon Of Zuurbult No.247, which is the starting point.
Kgetlengrivier	Koster	Starting from the north west beacon of the farm Woodstock No.397, proceed in an easterly direction along the northern boundary until it intersects with the eastern boundary thereof. From there, proceed in a southerly direction along the eastern boundary until it intersects with the northern boundary of the farm JP No.367. From there, proceed in an easterly direction along the northern boundary of JP until it intersects with the eastern boundary of the farm Amorville No.399. From there, proceed northwards along the eastern boundary of Amorville until it intersects with the northern boundary thereof, then proceed in a westerly direction along the northern boundary of Amorville until the intersection with the western boundary of Rietfontein No. 394. From there, proceed in a northerly direction along the western boundary of Rietfontein until it intersects with the northern boundary thereof. Proceed in an easterly direction along the northern boundary of Rietfontein until the intersection with the eastern boundary thereof. From there, proceed in a southerly direction along the eastern boundaries of the following farms: Rietfontein, Wysfontein No.427 Hartebeesfontein No. 431, Koedoesfontein No.432, until the intersection with the southern boundary of Magaliesburg Nature Reserve. From there, proceed in an south-easterly direction along the boundary of Magaliesburg Nature Reserve until it intersects with the eastern boundary of Municipal boundary running in a north south direction. Proceed in the south-easterly direction along the Municipal boundary all the way until the intersection with the northern boundary of the farm Cyferfontein No.35. Proceed in an easterly direction along the northern boundary of Cyferfontein until the intersection with the Western boundary of Migalsoord No. 152. From there, proceed in southerly direction along the western boundary of Migalsoord all the way until the intersection with the southern boundary of the farm Platklip No.40. From there proceed in southerly direction along the eastern boundary of Moadowns No.39 until the intersection with the southern boundary thereof. From there proceed in a westerly direction along the southern boundaries of the following farms; Moadowns No.39, Vlakfontein No.37 Rietfontein No.33, Grens No.31, Weltevreden No.26, Elandsfontein No.21, Booyskraal No.20 until the intersection with the eastern boundary of the farm Weltevreden No.16. Proceed in a southerly direction along the eastern boundary of the Weltevreden until the intersection with the southern boundary thereof. From there proceed in a westerly direction along the southern boundary of

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Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		Weltevreden then southern boundary of Hartebeesfontein No.14 until the intersection with the western boundary of Morgenzon No.9 Proceed south along the western boundary of Morgenzon until the intersection with the northern boundary of Wildebeeslaagte No.72 which is also the municipal boundary. Proceed west along the municipal boundary, then in a northerly direction all the way until the intersection with the western boundary of Leeuwfontein No.3 as will further appear from the map. Proceed in a westerly direction along the northern boundary of Almoro No.173, Klipan No.140 until it intersects with the western boundary Wolvengat No.2. Proceed in a northerly direction along the western boundary of Wolvengat until the intersection with the southern boundary of the farm Leliefontein No.138. From there proceed in a westerly direction along the southern boundary of Leliefontein No.138 until the intersection with the eastern boundary of the farm Kaallaagte No.136. Then proceed in a southerly direction along the eastern boundary of Kaallaagte to the southern boundary thereof. From there proceed in a westerly direction along the southern boundary of Kaallaagte until the intersection with the eastern boundary of Kerkgrond No.131, then proceed in a westerly direction along the municipal boundary and southern boundaries of: Kerkgrond, Bultfontein No.132, Nooitgedacht No.131 until the intersection with the western boundary of Nooitgedacht 131. From there, proceed in a northerly direction along the western boundary of Nooitgedacht until the intersection with the southern boundary of Schoongezicht No.124. Proceed in a westerly direction along the southern boundary of Schoongezicht until it intersects with the western boundary thereof. From there, proceed in a northerly direction along the western boundary of Schoongezicht, Kruidfontein No.470, Vlaknek No. 467 until the intersection with that north west boundary of Zuurfontein No.454. Then proceed in a north-easterly direction along the north western boundaries of Uitspanpan No.444, Bankdrift No.443 until the intersection with the southern boundary of Tweefontein No.441. From there proceed in a northerly direction along the eastern boundary of Tweefontein, then eastern boundary of Doornkom No. 418, eastern boundary of Opengevaliengrond No. 421, eastern boundary of Melrose No. 524 until the intersection with the northern boundary of Woodstock No.397 which is the starting point.
Lekwa-Teemane	Bloemhof	Starting on the north west beacon of the farm Vuurfontein No.117. Proceed in a westerly direction until the western boundary of farm Grootdoorns No.116, then in a northerly direction to the north west beacon. Then proceed in a northerly direction on the western boundary of Grootdoorns

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		No.116 until the north east beacon, then in a north-westerly direction till the south west beacon of farm London No.112. Then proceed in a north easterly direction on the northern boundaries of the farms; Schoonzight No.237, Leeuwbosch No.236, and Commissies Rust No.234 until the north east beacon Kareeboschfontein No.222. Then proceed in a northerly direction until the north east beacon of the farm Hartsfontein No.216. Then proceed in a north westerly direction then north easterly direction on the south and western boundary of the farm Vaalboschfontein No.188 until it intersects with the north east beacon of farm Ho No.394. Then proceed in a westerly direction until the south western beacon of the farm Zoetendal No.175. Then proceed in a north westerly direction along the western boundary of Zoetendal No.175 until the south western beacon of Spioenkop No.166. Then along the southern boundary of Spioenkop No.166 in a north westerly direction then a north easterly direction on the eastern boundary until the northern boundary of Zoetendal No.175. Continue in a north easterly direction until the north east beacon of Zoetendal No.175. Then proceed in a south-easterly direction until the northern boundary of the farm Mietjesdoorns No.187. Then along Mietjesdoorns No.187 proceed in a north easterly direction until the north east beacon thereof. Then proceed in a southerly direction along the eastern boundary of Mietjesdoorns No.187 until it intersects with the eastern boundary of the farm Goedgedacht No.197. Continue to the south east beacon of Goedgedacht No.197. Then in a southerly direction proceed to the south east beacon of the farm Zoutpan No.212. Then proceed in a westerly direction then a northerly direction until the south east beacon of the farm Rietpan No.214. Then in a south westerly direction proceed until the south west beacon of Rietpan No.214. Then proceed in a south easterly direction until the north west beacon of the farm Graspan No.230. Continue on the northern boundary until the north east beacon of Graspan No.230. Then proceed in a southerly direction until the north east beacon of Rietfontein No.247. Then in a south westerly direction along the northern beacon of Rietfontein No.247 proceed to the south east beacon of Kalkputs No.245. Then proceed in a southerly direction along the western boundary of Rietfontein No.247 then a north easterly direction along the southern boundary until the north east bacon of the farm Verlatenkraal No.352. Then proceed in a southerly direction on the eastern boundary of Verlatenkraal No.352 until the Vaal river. Then proceed along the Vaal river in a south westerly direction until it intersects with the R34 road. Then proceed in a southerly direction then north westerly direction along the Vaal river until the intersection of the R34 and the N12

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		motorway. Then proceed in a south westerly direction along the Vaal river until the north western beacon of the farm Kareepan No.300. Then proceed in a north westerly direction along the boundaries of Karee pan No.300 pass the rail way and N12 motorway until the south west beacon of Matlabans Stad No.299. Continue on the western boundary of Matlabans Stad No.299. and Zendelingsfontein No.294 ina north westerly direction, until the north west beacon of Zendelingsfontein. Then proceed in a westerly direction until the south west beacon of the farm Kafferpan No.273. Then in a northerly direction along the western boundaries of the farms; Kafferpan No.273, Gezicht No.265 and until the north west beacon of Boschplaats No.138. Then proceed in a north easterly direction until the north west beacon of the farm Vuurfontein No.117, which is the starting point.
Madibeng	Brits	Starting from the intersection of the eastern boundary of the farm Elandsfontein No.23 with the provincial boundary of Limpopo province, proceed in an easterly direction along the provincial boundary of Limpopo until the intersection with the eastern boundary of the farm Paalkraal No.556. From there, proceed in a southerly direction along the eastern boundaries of the following farms: Paalkraal, Ruigtepoort No.162, Klipvoor Agricultural Holding until the intersection with the northern boundary of Borakalalo Nature Reserve. From there, proceed in an easterly direction along the northern boundary of the nature reserve until it intersects with the western boundary of the Baphuthing Ba Ga Nawa Traditional Council. From there, proceed in a southerly direction along the western boundary of the Traditional Council all the way until the intersection with the southern boundary of the farm Syferbult No.232. From there proceed in a north westerly direction along the southern boundary of Syferbult until the intersection with the Municipal boundary running north-south. Proceed in a southerly direction along the western boundary of the Bakgatla Ba Mmakau Traditional Council all the way until the intersection with the Gauteng provincial boundary as will further appear from the map. From there, proceed in a south-westerly direction along the provincial boundary until the intersection with the Municipal boundary by the farm Elandskraal No.470. From there, proceed in a northerly direction along the western Municipal boundary as will further appear from the map, all the way until the intersection with the southern boundary of the farm Roodekopjes No.203. From there proceed in a northerly direction through, until the intersection with the south eastern boundary of Palmietfontein No.72. From there, proceed in a south westerly direction along the eastern boundary of Palmietfontein until the

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		intersection with the southern boundary thereof. Proceed in a westerly direction along the southern boundary until the intersection with the western boundary thereof. From there, proceed in a northerly direction along the western boundary of Palmietfontein, Vlakplaats No.74, western boundary of the farm Langrad No.143, then the Municipal boundary through the farm No. 139 until the intersection with the southern boundary of the farm Elandsfontein No.23. Proceed in an easterly direction along the southern boundary of Elandsfontein until the intersection with the eastern boundary thereof. From there, proceed in a northerly direction along the eastern boundary of Elandsfontein until the intersection with the provincial boundary of Limpopo Province which is the starting point.
Mahikeng	Mmabatho	Starting from the intersection of the eastern boundary of the farm Dalys Pan No.94 with the southern bank of Molopo River, Proceed in an easterly direction along the southern bank until it intersects with the northern boundary of the farm Sekei No.310. From there, proceed in an easterly direction along this boundary until it intersects with the northern boundary of the farm De Putten No.56. From there, proceed southwards along the eastern boundary of De Putten, then Twyfelhoek No.62. Then in an easterly direction along the northern boundaries of Zondagspan No.72, Riespoort No.69, Stinkhoutboom No.68, all the way along the municipal boundary until it intersects with the southern boundary of Strydfontein No.326. Proceed in an easterly direction along the southern boundary of Strydfontein until the intersection with the northern boundary of Wonderfontein No.336. Proceed westwards along the northern boundary of Wonderfontein until the intersection with the south-eastern boundary of Naauwpoort No.326. Proceed southwards along the boundary until the intersection with Molopo River. Proceed westwards along the river until the intersection with the municipal boundary. Proceed in a southerly direction along the municipal boundary all the way until it intersects with the southern boundary of Mooipan. Proceed in a westerly direction along the southern boundary of Mooipan until it intersects with the eastern boundary of Kunana Location 4. Proceed in a northerly direction along the eastern boundary of Khunwana Location until the intersection with the Traditional Council boundary by Siberia. Proceed in an easterly, northerly, westerly and southerly direction along the traditional council boundary until the intersection with the southern boundary of the farm Jakhals Put No.597. Then proceed westwards along the southern boundary of Jakhals Put, then northwards along the eastern boundary of Damaskus No.346, then westwards along the southern boundary of

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		Voorspoed No. 596, then northwards along the eastern boundary of Regen Vlakte No.338, then westwards along the southern boundary of Papie's Vlaktea No.323. Then northwards along the eastern boundary of Koodoos Rand No.321, Gemsbokpan No.309, Groot Gewaagd No.270, Klip Pan No.257, until the intersection with the southern boundary of Mosita Native Reserve. From there, proceed eastwards along the southern boundary of Mosita Native Reserve until the intersection with the eastern boundary thereof. Then proceed in a north-westerly direction along the eastern boundaries of Faith No.238, Hope No.233, Wolfdraai No.214. Koedoebosch No.203, all the way until the intersection with R375. Proceed eastwards along R375 until the intersection with the north-eastern boundary of a Traditional Council. Proceed in a north-westerly direction along the Traditional Council boundary until it intersects with the eastern boundary of Dalys Pan No.94. Then proceed northwards along the boundary until it intersects with the southern bank of Molopo River, which is the starting point.
Mamusa	Schweizer-Reneke	Starting on the north west beacon of the farm Welgevonden No.3. Proceed in a north easterly direction until the north east beacon of the farm Welgevonden No.4. Then proceed in a south easterly direction along the eastern boundary of Welgevonden No.4 until the south east beacon thereof. Then proceed in a north easterly direction until the south western beacon of the farm Doornpan No.262. Continue in a south easterly direction until the south western beacon of Lot 36 No.6. Then proceed in a north easterly direction until the south east beacon of Lot 36 No.6. Then proceed in a south easterly direction along the eastern beacons of farms Defence No.7 and Lot 22 No.17 until the south western beacon of farm Lot 25 No.9. Then proceed in a north easterly direction until it intersects with the R506 road. Proceed in a north westerly direction along the western boundaries of the farms; Lot31 NO.12, Rustfontein No.289 and until the north west beacon of the farm Rietpan No.254. Then proceed in a north easterly direction along the southern boundaries of Schietfontein No.246 and until Stropan No.247 south east beacon. Proceed along the eastern beacon of Stropan No.247 in a north westerly direction until the north west beacon thereof. Then proceed in a north easterly beacon along the northern boundary of farm Poortje No.248, and then continue in a south easterly direction until the intersection of the R506 road. Then proceed in a south easterly direction until it intersects with the Hartsriver. Then proceed in a south easterly direction along the southern boundary of Rietgat No.387 until its south east beacon. In a north westerly direction proceed until the Wilgervlei No.362 south boundary, and then

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		continue in a southerly direction until the northwest beacon of Klipsruit No.384. Then proceed in a north easterly direction until the north east beacon of Klipspruit No.384. Continue in a southerly direction until the south east beacon of Klipsruit No.384. Then proceed in a westerly direction then south easterly direction then westerly direction until the eastern boundary of Doornbult No.393. From there proceed in a south easterly direction along the eastern boundaries of the farms; Doornbult No.393, Vleesschkraal No.145 and until the south east beacon of Doornhoek No.165. Then proceed in a south westerly direction along the southern boundary of Doornhoek No.165 until its south west beacon. Then proceed in a south westerly direction until the northern boundary of Grootdoorns No.172 then until its north east beacon in an easterly direction. Continue on the eastern boundary of Grootdoorns No.172 until it reaches the northern boundary of Ho No.394 proceed in an easterly direction to the north east beacon thereof. Then proceed in a south westerly direction to the northern boundary of the farm Lanverwacht No.196. Then proceed to its south easterly beacon in a south easterly direction. Then continue in a southerly direction until the south east beacon of Hartsfontein No.216. In a south westerly direction along the southern boundaries of the farms; Hartsfontein No.216, Koppie Allen No.221, Diamantfontein No.220. Pienaarsfontein No.113 and London No.112 until it intersect with the eastern boundary of Houtvolop No.111. Then proceed to the south east beacon of Houtvolop No.111 in a south easterly direction, then to the south east beacon in a westerly direction. Continue on the eastern boundary of Hamansvley No.110 in a southerly direction until its south east beacon. Then proceed in a westerly direction to the eastern bacon of the farm Sandringham No.118. Then proceed in a south westerly direction to its south westerly beacon. Proceed in a westerly direction until the eastern boundary of the farm Vryheid No.134. Then proceed in a south westerly direction along the eastern boundaries of the farms; Kleinbegin No.386 and until south easterly beacon of Nooitgedacht No.258. Then continue to the south westerly beacon of Nooitgedacht No.258. Then in a north westerly direction until the southern boundary of Niekerspan No.128. Then proceed in a south westerly direction along the southern boundaries of Niekerspan No.128 and Morgenzon No.127, until it intersects with the eastern boundary of Moneyskop No.126. Continue in a southerly direction until the south east beacon of Homerule No.53. Then proceed in a westerly direction to the south east beacon of Homerule No.53. In a northerly direction proceed to the southern boundary of the farm Killarney No.52. Then proceed in a north westerly direction to the

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		south west beacon of the farm Pendomer No.51. Then along the western boundary of Pendomer No.51 proceed in a north easterly direction then north westerly direction unit its north west beacon thereof. From there proceed in a westerly direction along the southern boundary of Fouriesgraaf No.23 and Pudumong No.22, continue the south west beacon. Then proceed in a northerly direction until intersects of the Pudumong River and the R504 road. Then proceed in a northerly direction until in the farm of Rosenburg No.19. Then in a north easterly direction through the farms; Rosenburg NO.19, Botmanspoort No.12, Vlaklaagte No.10, and Wolhuterskop No.829 until the north west beacon of Schoonheid No.2. Then proceed on the northern boundary of Schoonheid No.2 until north east beacon. Continue in a north easterly direction along the northern boundary of Marokane No.1 until its north east beacon thereof. Then proceed in a south easterly direction along the western boundaries of the farm; Honingspruit No.32, Uitkyk No.34 and Goedehoop No.36. Continue till the south west beacon of Goedehoop No.36. Then proceed in a north easterly direction along the southern boundaries of Goedehoop No.36 and until the south eastern beacon of Republiek No.37. Then proceed in a north easterly direction until the R34 road. Then continue in a north easterly direction until the western boundary of Weltevreden No.28, proceed to its north west beacon thereof. Then proceed in a north westerly direction to the north west beacon of the farm Welgevonden, which is the starting point.
Matlosana	Klerksdorp	Starting on the north east beacon of Boschpoort No.253 proceed in a north easterly direction then north westerly direction until you intersect with the north west beacon of farm Goedvoorruitzicht No.242-. Then proceed in a north easterly direction on Goedvoorruitzicht No.242- northern boundary until you intersect with Kafferskraal No.243- north east boundary. Proceed in a southerly direction then south-easterly direction along the Zwarlaagte No.116 southern boundary until it intersects with Opraap No.335- north westerly beacon. Then proceed in a north-easterly direction until it intersects with Bonnie Esperance No.342-IP north west beacon. Then proceed in south easterly direction through the Skoonspruit river and R30 road along the Palmietfontein No.343- farm northern boundary, until it intersects with farm Doornfontein No.345- north western beacon. Proceed in a southerly direction, then south westerly then south easterly until it intersects with Doornfontein No.358 north eastern beacon. Then proceed in south westerly direction on Doornfontein No.358- eastern boundary until it intersects with Doornfontein No.525 northern boundary then in a westerly direction, then southerly direction, until the northern boundary of

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		Palmietfontein No.374. Proceed on the northern boundary of Palmietfontein No.374- until it intersects with the north-west beacon of farm Buffelsdoorn No.389-. Continue in south westerly direction, then south easterly direction, then south westerly, then south easterly until the intersection of Welgegund No.396- north east beacon. Then proceed in a south westerly direction until it intersects with Palmietfontein No.403- north west beacon. Then proceed in a north easterly direction until you intersect with the N12 motorway. Proceed west on the N12 until it intersects with Stilfontein farm. Then proceed in a south westerly direction on the boundary of Stilfontein farms west boundary until it intersects with Vaal Reef Gold Mine B boundary. Proceed in a south westerly direction on Vaal Reef Gold Mine B boundary until it intersects with the R30. Proceed in a westerly direction until the intersection on south west beacon of farm Roodepoort No.435-. Then proceed in southerly direction until Kanana township. Then proceed south westerly until it intersects with Zwartkoppies No.431- south east beacon. Proceed in south westerly direction along the Zwartkoppies No.431- southern boundary until it intersects with Elandslaagte No.427- south east beacon. Then proceed in north westerly direction along the Elandslaagte No.427- southern boundary, then south westerly through Opraap No.334 southern boundary, and Syferfontein No.13-southern boundary, until it intersects with Doornplaat No.14- north west beacon. Then proceed in a southerly direction on Doornplaat No.14-western boundary until it intersects with Syferkuil No.20- south east beacon. Proceed on the southern boundary of Syferkuil No.20- until it intersects with Majesspruit No.19 north eastern beacon. Then proceed in a southerly direction on Majesspruit No.19- eastern boundary until Majespruit No.145-south east beacon. Then proceed along the southern boundary of Majesspruit No.145-. Then proceed in a north-westerly direction through the western boundaries of Syferkuil No.20- and Syferfontein until the southern boundary of Strydfontein No.320-. Then proceed in a westerly direction on the southern boundary of Strydfontein No.320- then north westerly direction on the western boundary of the farm until the intersection of south east beacon of Welgelegen No.316- beacon. Then proceed on the southern boundary of Welgelegen No.316- until it intersects with south east beacon of Uitval No.6-. Then proceed in a north easterly direction until the southern boundary of the farm Doornfontein No.313-. Continue on the southern boundary of Doornfontein No.313- until Vlakfontein No.315- south east beacon. Then proceed in a north westerly direction on the eastern boundary of Vlakfontein No.315- then in south westerly on the northern boundary Vlakfontein No.315- until it

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		intersects with the south west beacon of Frischgewaargd No.307-. Then proceed in a north westerly direction until the eastern boundary of Rietkuil No.309- then proceed on the eastern boundary of Rietkuil No.309- till the north east beacon. Then proceed in a north easterly direction along the western boundaries of the farms Frischgewaargd No.307, Frischgewaargd No.336- and Witfontein No.306 proceed through the R507 and railway until the intersection of Rietfontein No.234- north west beacon. Procced in a north easterly direction on the southern boundaries of Doornpoort No.488 and Doornpoort No.262 until the south west beacon of farm Werk Met Lust No.263. Then proceed in a easterly direction through Leeuwfontein No.275 northern boundary. Then proceed in a north westerly direction along the eastern boundary of Werk Met Lust No.263 until the southern boundary of Boschpoort No.253- then proceed to south east beacon of Boschpoort No.253- , then in a north westerly direction to along the western boundary to until the north west beacon of Boschpoort No.253, which is the starting point.
Maquassi Hills	Wolmaranstad	Starting from the intersection of the western boundary of the farm Vlakplan No.381 with the northern boundary of the farm Biesjeslaagte No.397, proceed in an easterly direction along the northern boundary of Biesjeslaagte and then northern boundary of Brakpan No.380 until the intersection with the eastern boundary thereof. Then proceed in a southerly direction along the eastern boundary of Brakpan until the intersection with the southern boundary of Doornpan No.371. From there, proceed in an easterly direction along the southern boundary of Doornpan until the intersection with the eastern boundary thereof. Proceed in a northerly direction along the eastern boundary of Doornpan until the intersection with the western boundary of Doornspruit No.353. From there, proceed in a southerly direction along the western boundary of Doornspruit until the intersection with the southern boundary thereof. Proceed in an easterly direction along the southern boundary of Doornspruit until the intersection with the municipal boundary through Witpoort No.281 as will further appear from the map. Proceed in a southerly direction along the eastern boundary of Witpoort all the way until the intersection with the eastern boundary of the farm Reitkuil No.309. Proceed in a southerly direction along the eastern boundary of Reitkuil until the intersection with the southern boundary of the farm Frischegewaald No.307. Proceed in an easterly direction along the southern boundary of Frischegewaald until the intersection with the eastern boundary thereof which is also Makwassiespruit river. Proceed northwards along the river until the intersection with along the western boundary of

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		Blaaiwboschkuil until the intersection with the southern boundary of Doornbult No.224. From there, proceed in a westerly direction along the southern boundary of Doornbult then southern boundary of Anniesrust No.223 until the intersection with the western boundary of the farm and Rietpan No.214. From there proceed in a northerly direction along the western boundary of the Rietpan until the intersection with the western boundary of the farm Vaalboschfontein No.188. From there proceed in a north-westerly direction along the western boundary of Vaalboschfontein until the intersection with the northern boundary thereof, and then proceed in northerly direction along the boundary until the intersection with the southern boundary of the farm Zoetendal No.175. Proceed in a westerly direction along the southern boundary of Zoetendal until the intersection with the western boundary of Spioenkop No.174, and then proceed in a northerly direction along the boundary of Spioenkop until the intersection with the southern boundary of the farm Doornhoek No.165. Proceed in a north-easterly direction along the southern boundary of Doornhoek until the intersection with the eastern boundary thereof. From there, proceed in a northerly direction along the eastern boundary of Doornhoek, and the eastern boundary of Doornbult No.393, all the way until the intersection with the southern boundary of the farm Klipspruit No.384. Proceed in an easterly direction along the southern boundary of Klipspruit until the intersection with the eastern boundary thereof. Then proceed southwards along the eastern boundary of Klipspruit until the intersection with the northern boundary of Brakpan No.395. Proceed in an easterly direction along the northern boundary until intersection with their western boundary of Brakvallei No.396. From there proceed along this boundary in an easterly direction until the intersection of the eastern boundary of Vlakpan No.381 with the southern boundary Biesjeslaagte No.397 which is the starting point.
Moretele	Temba	Starting on the north west beacon of the farm Waterval No.561, proceed in an easterly direction along the northern boundary of the farms Waterval No.561, and until the north east beacon of the farm Klippoortje No.564. From there proceed in a northerly direction until the north west beacon of the farm Vangheining No.565. From there, proceed in a north easterly direction then a south easterly direction until it intersects with the north west beacon of the farm Lochness No.478. Then proceed in an easterly direction along the northern boundary of Lochness No.478, Tower No.480 and until the north east beacon of Worchester No.481.Then proceed southwards along the eastern boundary of Worchester, then in a south easterly along the southern boundaries of Vooruitzicht

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		No.7, Vlaklaagte No.8 and until the south east beacon of Langkuil No.13. From there, proceed in a south westerly direction until it intersects with the north west beacon of the farm Klipplaatdrift No.43. Then proceed in a westerly direction until it intersects with the Platsrivier River. Then proceed in a north westerly direction then a westerly direction until it intersects with the north west beacon of the farm Haakdoornbult No.49. From there proceed in a southwards direction along the western boundary of Haakdoornbult until its south west beacon , then continue in an easterly direction until it intersects with the north west beacon of the farm Zaagkuildrift No.46. Then proceed in a southerly direction till the south west beacon thereof. From there, proceed in an easterly direction along the southern boundary of Zaagkuildrift Woolhuiskraal No.45 and until the south east beacon of Klipplaatdrift No.43. Then proceed in a south easterly direction along the western boundary of Boschrust No.52 and Irragasie No.69 until it intersects with the R101 and N1 motorway. Then in a southerly direction along the N1 motorway proceed until and around the Mandela Village in a south easterly and south westerly, as it will further appear on the map, back onto the N1. Continue in a southerly direction along the N1 motorway until the intersection with the north western beacon of the farm Klipdrigft 90. Then proceed eastward to the north eatern beacon of the same farm, then southwards along the eastern boundaries of the farms Klipdrift 90 and 121 to the south eastern beacon of klipdrift 121 then proceed in a westerly direction along its southern boundary to intersect the N1. Then proceed southwards along the N1 boundary of the farm Waterval No.273. Then proceed in a westerly direction along the R327 road until it intersects with R101 road. From there proceed northerly along the R101 until the southern boundary of the farm Grootvlei No.272. Then proceed in a westerly direction along the southern boundary of Vastfontein Agricultural Holdings until it intersects with Tshwane River. From there proceed in a northerly direction through the farm Bulfontein No.107 until the southern boundary of the farm Sterkwater No.106, then continue in a north westerly direction to the north west beacon thereof. Then proceed in a northerly direction until it intersects with the south west beacon of the farm Bezuidenhoutskraal No.96. From there proceed in a south westerly then a north westerly along the Soshanguve Sub-district boundary until the Mmakaunyana school, continue to the south western beacon of Vygerboschlaagte No.236. Then proceed in a northerly direction along the western boundary of Vygerboschlaagte until the north west beacon thereof. Then proceed in a north easterly direction along the northern boundary of Vygerboschlaagte until it intersects with

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		the eastern beacon of the Kalkbank No.234, then proceed in a westerly direction through the farm until it intersects with the Ga-Motle township. Then proceed in a north westerly direction until it intersects with the southern boundary of Koedoespoort No.174. Then along the southern boundary of Koedoespoort proceed in a north easterly direction until the south east beacon, and then proceed in a northerly direction until it intersects with the southern boundary the farm Wildebeestkuil No.173. From there, proceed in a south westerly direction, and then a north westerly until it intersects with the western boundary of Wildebeestkuil. Then proceed in a south westerly direction until the south west beacon of the farm Aasvogelboom No.176. From there, proceed in a northerly direction until it intersects with the Klipvoor Dam. Then proceed in north easterly along the southern boundary of Klipdraai No.166 then a northerly direction along the eastern boundary until it intersects with the southern boundary of the farm Tambootielaagte No.164. Then continue in a south westerly until the south west beacon thereof. From there, proceed in a northerly direction along the western boundary until it intersects with the south east beacon of the farm Ruigtepoort No.162. Then proceed in a north easterly direction along the eastern boundary of the farm Paalkraal No.556 until it intersects with the north west beacon of the farm Waterval No561, which is the starting point.
Mosses Kotane	Mankwe	Starting on the north west beacon of the farm Koodebloem No.944 and the Limpopo Provincial boundary. Proceed in a north easterly direction along the provincial boundary until it intersects with the eastern boundary of the farm Cyferkuil No.330. Then continue in a northerly direction until the north west beacon of Cyferkuil No.330. Continue in a easterly direction until the north east beacon. Then proceed in a southerly direction along the Limpopo provincial boundary until the south west beacon of the farm Pony No.395. Continue along the provincial boundary in a south easterly direction until the south east beacon of Pony No.395. Then proceed in a south westerly direction until the north eastern boundary of the Rustenburg Platinum Mine. Then proceed in a north easterly direction until it intersects with the Railway Line. Then proceed in a south westerly direction until it intersects with the north east beacon of the farm Spitskop No.410. Then continues along the Limpopo provincial boundary in a southerly then south easterly direction until the Syferkuil No.9 eastern boundary and continue in an easterly direction then southerly then north easterly direction until the south west beacon of Tusschenkomst No.15. Then proceed in an easterly direction along the provincial boundary until the south east beacon of Tusschenkomst

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		No.15. Then proceed in a south easterly direction until it intersects with the north west beacon of Renosterspruit No.28. Then proceed in a north easterly direction until the western boundary of the farm Doornpoort No.21 then continue to the south west beacon thereof. Then proceed in a north easterly direction until the south east beacon of Doornpoort No.21. Then proceed in a south easterly direction to the south east beacon of the farm Elandsfontein No.23. Then continue along the southern boundary In a westerly direction until it intersects with the eastern boundary of Geluk No.24. Then proceed in a southerly direction until the south west beacon of the farm Langrand No.143. Then continue in a south westerly direction until the eastern boundary of Mankew No.927. Continue to the south west beacon in a south westerly direction. Then proceed in a southerly direction until it intersects with the Elands River. Then proceed in a south westerly direction along the Elands river until it intersects with the eastern boundary of the farm Ruffelsfontein No.85. Then continue to the south east beacon in a southerly direction then in a south westerly direction to the south west beacon. Then continue in a north westerly direction until it intersects with the Elands river. Then proceed in a south westerly direction along the river until it intersects with the R556 road. Then continue along the R566 in a south westerly direction until the eastern boundary of the farm Ledig No.969. Then proceed in a southerly direction until it intersects with the Elasnd River. Proceed in a south westerly direction until the south west beacon of the farm Koeddoesfontein No.94. Then proceed in a northerly direction till it intersects with the south east beacon of Zandrivierspoort No.211. Then proceed in a south westerly direction until the south east beacon of the farm Vlakfontein No.207, continue in a south westerly to the south west beacon thereof. Then proceed in a northerly direction until it intersects with the south east beacon of the farm Blinkklippen No.201. Then proceed in a westerly direction to the south east beacon. Then proceed in a northerly direction along the western boundaries of the farms farm Blinkklippen No.201, Syferfontein No.178, and until the north west beacon of Mabeskraal No.161. Then proceed in a north westerly direction until the south west beacon of the farm Elandsdoorn No.144. Proceed in a northerly direction until it intersects with the north west beacon of the farm Leeuwkop No.123. Then proceed in a north westerly direction until the north west beacon of the farm Okkerrskraal No.280. Continue in an easterly direction until the north east beacon of Okkerrskraal No.280. Then in a northerly direction along the western boundary of the farm Langverwacht No.284 proceed until it intersects with the southern boundary of De Paarl No.246.

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		Then proceed along the southern boundary of De Paarl No.246 in a westerly direction until the south west beacon thereof. Then continue in a north easterly direction until it intersects with the Limpopo Provincial boundary. Then proceed in a north easterly direction along the provincial a boundary until it intersects with the north west beacon of the farm Koodebloem No.944 which is the starting point.
Naledi	Vryburg	Starting on the north west beacon of the farm Morgenzon No.607. Proceed in a north easterly direction along the northern boundaries of the following farms; Sans Souci No.602, Schilpad Hil No.509, Manchester No.503, Massouws Kop No.592, Komspruit No.587, Welgeleven No.586, and until the north east beacon of Lawaais Vlakte No.585. Then proceed in a south westerly direction along the eastern beacon of Lawaais Vlakte No.585 until the northern boundary of the farm Dryfesdale No.579. Then in a north easterly direction to the north east beacon. Then proceed in a south easterly direction along the eastern boundaries of Dryfesdale No.579 and Verkeerdevlei No.580 then to the south east beacon thereof. Then proceed in a north easterly direction to the north eastern beacon of the farm Elma No.575. Proceed in a south easterly direction to the north west beacon of the farm Villa Franca No.680. Then proceed in a north westerly direction on the northern boundaries of the farms Vaarwel No.683, O'Reillys Fontein No.686 and until the north east beacon of Middelmeet No.615. Then proceed in a south easterly direction until it intersects with the N14 motorway. Proceed along the N14 motorway in a easterly direction until the north east beacon of Klipfontein Annex No.625. Continue in a south easterly direction along the eastern boundary of Klipfontein Annex No.625 until it intersects with the Losasa river. Then proceed to the eastern beacon of the farm Blaauwboschpan No.237. In a easterly direction along the northern boundaries of the farm Kaalplaats No.235, Graspan No.234, and Mooiplaats No.233 in which the N14 motorway runs along the boundary until the north east beacon thereof. Then proceed in a south easterly direction along the eastern beacon of the farms Mooiplaats No.233 and Witpan No.231, until it intersects with the northern boundary of the farm Schietfontein No.246. Then proceed in a easterly direction until the north east beacon of Stroppan No.247. Continue in a south easterly direction until the southeast beacon. Then proceed in a south westerly direction along the southern boundaries of Stroppan No.247, and Schietfontein No.246. Then proceed in a southerly direction along the eastern boundaries of the farms; Luzon No.271, Lot 30 No.267, and until the intersection of the south east beacon of Jala Jala No.10 and the R506 road. From there proceed in

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		south westerly direction until the south west beacon of Lot 25 No.9. Then proceed in a north westerly direction until the south east beacon of Lot 36 No.6. then proceed in a westerly direction then north westerly until the south west beacon of Makouspan No.260. Then proceed in a north westerly direction until it intersects with the south west beacon of the farm Vredeburg No.256. Then in a south westerly direction along the southern boundaries of the farms Vredeburg No.256 and Losasa No.258 until it intersects with the north east beacon of the farm Doornbult No.29. Continue in a south easterly direction till the intersection of the south east beacon of Doornbult No.33. Then proceed in a westerly direction until the R34 road. Then continue in a south westerly direction along the eastern boundary of Republiek No.37 to the south east beacon thereof. Then in a south westerly direction along the southern boundaries of Republiek No.37 and Goedehoop No.36. Then proceed in a north westerly direction along the western boundaries of the farms; Goedehoop No.36, Uitkyk No.34 and until Honingspruit No.32 north west beacon. Then proceed in a south westerly direction through the farms; Marokane No.1, Schoonheid No.2, Wolhuters Kop No.829 Botmanspoort No.12 and until Rosenburg No.19 south west beacon. Then in a north westerly direction along the eastern boundary of Batlhaping Ba Phuduhutswara traditional council, until the south east beacon of the farm Madrid No.816. From there proceed in a south westerly direction along the northern boundary of Batlhaping Ba Phuduhutswara traditional council until the eastern beacon of the farm Eensgevonden No.807. Then in a south easterly direction to the south east beacon of the farm Therons Rust No.806. Then proceed in a south westerly direction to the eastern beacon of the farm Bastplaats No.802, continues south easterly to the south east bacon thereof. Then proceed in a south westerly direction along the southern boundaries of Bastplaats No.802 and Biesjesdal No.799 then to its south west beacon. Then proceed in a north westerly direction along the western boundary of Biesjesdal No.799, Salpetre Pan No.800, Paddafontein No.753, Dorst No.754, and until the north west beacon of Limerick No.755. Then proceed in a north easterly direction to the south west beacon of the farm Annas Geluk No.749. Then proceed in a north westerly direction along the western boundaries of the farms; Annas Geluk No.749, Kalk Plaats No.655, Rocklands No.654, and until the north west beacon of Doornfontein No.653. Then proceed in a north easterly direction until the western boundary of farm Wilde Als Laagte No.611. Then continue in a north westerly direction along the farms Als Laagte No.611 and Dorenpoort No.612 until the southern boundary of Schiet Pan No.613. Then

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		proceed along the southern boundary of Schiet Pan No.613 until the south west beacon of the farm Morgenzon No.607. Then continue in a north westerly direction till the north west beacon of Morgenzon No.607, which is the starting point.
Ramotshere Moiloa	Lehurutshe	Starting on the north west beacon of the farm Schuinsdam No.1, proceed along the northern boundary in a north-easterly direction until the north east beacon of the farm Wildebeestkop No.2. From there, proceed along the eastern boundaries of Wildebeestkop and Schoonlaagte No.4 in a southerly direction until it intersects with the north west beacon of the farm Sebenani No.103. Proceed along the northern boundary of Sebenani in an easterly direction until its north east beacon. Then proceed in a southerly direction along the western boundary of Sebenani and until it intersects with the south east beacon of Middelrand No.122. From there, proceed in a south westerly direction along the southern boundary of Middelrand and Lekkerlach No.8 until it intersects with the north east beacon of the farm Van Tondershoek No.10. Then proceed in a southerly direction along the western boundaries of the farms Koedoesrand No.9 and until the south west beacon of Logaga No.124, and then proceed in a south westerly to the north west beacon of Kalkfontein No.1. Prom there, proceed southwards along the western boundary of Kalfontein, and then a south westerly direction along the northern boundary to the north west beacon of Zwartfontein No.34. Then proceed in a south easterly direction to the south west beacon thereof. From there, proceed in a southerly direction along the western boundaries of the farms Zandfontein No.35, Langgezocht No.56, and until it intersects with the south west beacon of Bergfontein No.60. Then proceed in a westerly direction along the northern boundary of Pienaar Nature Reserve until it intersects with the north west beacon of the farm Rietgat No.91. Then proceed in a southerly direction along the western boundary of Rietgat No.91, Palmietfontein No.92 until it intersects with the N4 motorway. From there continue in a southerly direction until the south east beacon of the farm Willowpark No.41. Then proceed in a westerly direction along the southern boundary of Willowpark until it intersects with the north west beacon of the farm Stinkhoutboom No.43. Then proceed in a southerly direction until the south west beacon thereof. From there, proceed in a south westerly direction along the northern boundary of the farm Moilos Suid No.36 until it intersects with the Mafikeng Magisterial District boundary. Then proceed along the magisterial boundary in a north westerly then a westerly direction until it intersects with the South African border boundary as it will further show on the Map. Then along the South Africa

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		Boundary proceed in a northery direction until it intersects with the N4 motorway and Gopane 2 township. Then continue in a northerly direction until the Ngotwane river, then continue along the river until it intersects with the north west beacon of the farm Schuinsdam No.1 which is the starting point.
Rustenburg	Rustenburg	Starting on the north west beacon of the Magaliesberg Nature Reserve B, proceed in an easterly direction then a southerly direction and then an easterly direction until it intersects with the R565 road. Then proceed southerly along the R565 which merges onto the N4 motorway continue past the merger until the north eastern boundary of the Magaliesberg Nature Reserve B. Then proceed in a north-easterly direction until the south east beacon of the Wildbeefontein Mine. From there, proceed in a southerly direction then a north easterly direction until it intersects with the R510 road. Proceed in a north easterly direction along the R510 road until the Thlabane SAPS, then in a easterly direction, then a south westerly direction until the north east beacon of the farm Paardekraal No.279. From there proceed in a north easterly direction then a northerly direction and then a north easterly until it intersects with the Madibeng Magisterial District boundary. Then proceed along the western boundary in a southerly direction, then a south westerly direction, then a south easterly direction until it intersects with Tlapa A township. From there, proceed in a north easterly until the Maumong school. Then proceed in a south easterly direction until it intersects with the south west beacon of the farm Pearl No.401. Then proceed in a south westerly direction until you intersect with the north east beacon of the farm Zwartkoppies No.296. Then proceed in a southerly direction along the eastern boundaries of the farms Zwartkoppies and Rooikoppies No.297 until it intersects with the northern boundary of the farm Kafferskraal No.342, then continue to the north east beacon thereof. From there, proceed in a southerly direction along the eastern boundary of Kafferskraal No.342, and until the south east beacon of Buffelspoort No.343. Then proceed in a westerly direction to the north east beacon of Buffelsfontein No.344. Then proceed in a southerly direction until the northern western boundary of the Gauteng Provincial boundary. Then proceed in a westerly direction until it intersects with the north west beacon of the farm Doornhoek No.392. Then in a southerly zig-zag direction along the western boundary of Doornhoek, Doornkloof Agricutural Holdings, and New Thorndale Agricultural Holdings until it intersects with the north western part of Rietpoort A.H. Then proceed in a westerly direction until the intersection of the north west beacon of the farm Cyferfontein No.35. Then along the

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		southern boundary of the Rustenburg Magisterial and Kgetlengrivier Magisterial boundary proceed in a northerly direction then a north westerly direction, then a northerly direction, then a westerly direction then a northerly direction until it intersects with the R30 road as it will further appear on the map. From the R30 road, proceed in a north westerly direction, then a northerly direction until it intersects with the south west beacon of the Magaliesberg Nature reserve. Then proceed in a north easterly direction until it intersects with the western boundary of the farm Rustenburg Nature Reserve. Then proceed in a northerly direction until the south west beacon of Magaliesberg Nature Reserve B. Then proceed in north westerly direction to the north west beacon of Magaliesberg Nature Reserve B, which is the starting point.
Taung	Taung	Starting on the north west corner of farm Sterkfontein No.812- proceed in a north-easterly on the northern boundary of Sterkfontein No.812- until it intersects with Moretele township. Then proceed in a northerly direction on farms Vyeboomsvlaakte No.814- western boundary until you intersect with Roodepoort No.815 north west beacon. Then proceed on the northern boundary of Roodepoort No.815- in a north-easterly direction then, a southerly direction on the eastern boundary of Roodepoort No.815-. Proceed in a south easterly direction along the eastern boundaries of farms Vyeboomsvlaakte No.814-, Verona No.813-, and Zwartkoppies No.21- until it intersects with R504 road and Pudumong river. Proceed in a southerly direction along the western boundary of farm Pudumong No.22- until it intersects with then north west beacon of farm Highlands No.842-. Then proceed in a westerly direction on the northern boundaries of the farms Highlands No.842- and Modimo No.843- until it intersects with the north west beacon of farm Pendomer No.51- . Continues on the western boundary of Pendomer No.51- in a south-easterly then south westerly, and south easterly on the southern boundary until it intersects with Harts River. Then proceed in a south easterly direction on the northern boundary of Tlapeng No.846-, then south on the eastern boundary until it intersects with the northern beacon of Tweelingpan No.848-. Then proceed on the northern boundary in an easterly direction of Tweelingpan No.848-. Then in a south-easterly direction on farms Tweelingpan No.848- eastern boundary, Panmure No.849-, and Kokuming No.850 until you intersect with farm Kopje Enkel No.851- south east beacon. Then proceed on Kopje Enkel No.851- south-east boundary until it intersects with the Northern Cape provincial boundary. Then proceed in south westerly direction on the Northern Cape provincial boundary until it intersects with Harts River in Motsweding township. Then

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		proceed in a north westerly direction until the western boundary of the farm Thoming No.893. Proceed along the northern boundary of Thoming No.893- in a westerly, and in a southerly direction on the eastern boundary. until the northern boundary of the farm Dingley Dell No.1041-. Then proceed in a north-westerly direction along the boundary of Dingley Dell No.1041- until the north east boundary of Hoekplaats No.1040-. Proceed on the northern boundary Hoekplaats No.1040- in south westerly direction until it intersects with the south east beacon of farm Vaalbult No.922-. Then proceed in north-easterly direction on the eastern boundaries of the farms: Vaalbult No.922-, Kankaro No.921-, Marea Amoet No.895-, Kang No.796-, and Kgantsang No.797- until the southern boundary of the farm Klipplaats No.804. Continue on the southern boundary of Klipplaats No.804 in a north easterly direction, then in a north-westerly on the east boundary until the South west beacon of farm Dwaal Vlakte No.805-. then proceed in a north easterly direction on the southern boundary of Dwaal Vlakte No.805-until it intersects with western boundary of the farm Sterkfontein No.812-. Then proceed on the western boundary of Sterkfontein No.812- until the north west beacon, which is the starting point. As indicated on the map marked.
Tlokwe	Potchefstroom	Starting from the north west beacon of the farm Rooipoort No.354, proceed in an easterly direction along the northern boundary of Rooipoort until the intersection with the western boundary of the farm Witrandsfontein No.348. Then proceed in northerly direction along the eastern boundary of Witrandfontein until it intersects with south west beacon of the farm Kaalfontein No.349. From there, proceed in an easterly direction along the southern boundary of Kaalfontein, then southern boundary of Leeuwfontein No.350, until the intersection with the north-western boundary of Wilgegund No.375. Proceed in a north-easterly direction along this boundary until the intersection with the southern boundary of Wildebeestlaagte No.374. Proceed in an easterly direction along the southern boundary of Wildebeestlaagte, until the intersection with the eastern boundary thereof. From there, proceed in a northerly direction along the eastern boundary of Wildebeestlaagte until the intersection with the northern boundary of Buffelsvlei No.383. From there, proceed in an easterly direction along the northern boundaries of Buffelsvlei No.383, until the intersection with a municipal boundary running north-south through Buffelsvlei as will further appear from the map. Proceed in a southerly direction along the municipal boundary until the intersection with the northern boundary of Witkoppiesfontein No.392. From there, proceed in an easterly direction along the northern boundary of Witkoppiesfontein until the

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		intersection with the eastern boundary thereof. Proceed southwards along this boundary until the intersection with the southern boundary of Boschhoek No.393. Proceed in an easterly direction along the southern boundary of Boschhoek, then northern boundary of Klipdrift No.395, until the intersection with the eastern boundary of Klipdrift. Proceed southwards along this boundary until the intersection with the northern boundary of Palmietfontein No.410. Proceed in an easterly direction along this boundary until the intersection with the eastern boundary thereof. Proceed in a south-easterly direction along this boundary until the intersection with the north-western boundary of Eigenaarsfontein No.442. Proceed in an easterly direction along this boundary, then easterly direction along the northern boundary of Frischgewaagd No.562, until the intersection with the municipal boundary running north-south through Frischgewaagd. From there, proceed in a southerly direction along the municipal boundary until it intersects with Vaal River. From there, proceed in a westerly direction along Vaal River until it intersects with a municipal boundary running north-south through Buffelsfontein No.443. Proceed in a northerly direction along the municipal boundary, until the intersection with the northern boundary of Wildebeestpan No.442. Proceed along this boundary in a westerly direction, until the intersection with the southern boundary of Witstinkhoutboom No.409. Proceed in an easterly direction along this boundary until the intersection with the eastern boundary thereof. Then proceed northwards along the eastern boundary until the intersection with the northern boundary thereof. From there, proceed in a westerly direction along the northern boundary of Witstinkhoutboom until the intersection with the western boundary of Hessie No.386. Proceed in a northerly direction along the western boundary of Hessie until the intersection with the northern boundary thereof. Proceed in an easterly direction along this northern boundary until the intersection with eastern boundary of Rietfontein No.3. Proceed northwards along this boundary until the intersection with the southern boundary of Nooitverwacht No.385. Proceed in a westerly direction along this boundary until the intersection with the eastern boundary of Eleazar No.377. Proceed in a northerly direction along this boundary until the intersection with southern boundary of Rietkuil No.378. From there, proceed in a westerly direction along the southern boundary of Rietkuil, until the intersection with the western boundary of Cutout No.387. From there, proceed in a northerly direction along western boundary of Cutout until the intersection with the southern boundary of Rooipoort No.354. Proceed in a westerly direction along the southern boundary of Rooipoort, until the

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		intersection with the western boundary thereof. From there, proceed in a northerly direction along the western boundary of Rooipoort until you reach the north-west beacon thereof, which is the starting point.
Tswaing	Delareyville	Starting from the north west beacon of the farm Mooiplaats No.9, proceed in a south-easterly direction along the northern boundaries of the farms: Lynplaats No.8, Hendriksdal No.7, Drieangle No.165, Schuinsvlakte No.166 and Marotzi No.167until the intersection with the northern boundary of the farm Gannapan No.11. Proceed in a north-easterly direction along the northern boundary of Gannapan until the intersection with the eastern boundary of the farm Kunana Location No.4. From there, proceed in a north-westerly direction along the eastern boundary of Kunana Location until it intersects with the south west beacon of the farm Mooipan No.104. Then proceed in a north-easterly direction along the southern boundary of Mooipan until the intersection with the eastern boundary thereof. From the eastern boundary of Mooipan No.104, proceed in a northerly direction until the intersection with the northern boundary of the farm Deelpan No.106. Then proceed in a north-easterly direction along the northern boundary of Deelpan, and proceed in a easterly direction along the northern boundary of Springbokfontein No.107, until the intersection with the western boundary of Rietkolk No.99. From there, proceed in a southerly direction along the western boundary of Rietkolk until the intersection with the northern boundary of Vaalplaats No.108. Proceed in an easterly direction along the northern boundary of Vaalplaats, until the intersection with a municipal boundary as will further appear from the map. From there, proceed in a southerly direction along the municipal boundary until the intersection with the northern boundary of Reitz No.119. Proceed in a westerly direction along the northern boundary of Reitz until the intersection with the western boundary of Reitz No.124. Proceed in a southerly direction along the eastern boundary of Reitz No.124 until the intersection with a municipal boundary running through the farm Taaiboschpan No.135. Proceed in a southerly direction along the municipal boundary, then in an easterly direction until the intersection with the western boundary of the farm Schoongezicht No.109. Proceed in a southerly direction along the western boundary of Schoongezicht until the intersection with the northern boundary of the farm Valeiplaats No.142. From there, proceed in a north easterly direction along the northern boundary of Valeiplaats until the intersection with the eastern boundary thereof. Proceed in a southerly direction along the eastern boundary of Valeiplaats, then Platvalei No.144, until the

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		intersection with the northern boundary of Leeuwkuil No.284. Proceed in an easterly direction along the northern boundary of Leeuwkuil until the intersection with a municipal boundary running through Kamaland No.285 as will further appear from the map. Proceed southwards along the municipal boundary until the intersection with the northern boundary of the farm Dieselboompan No.290. Proceed in an easterly direction along the northern boundary of Dieselboompan until the intersection with the eastern boundary thereof. Proceed in a southerly direction along the eastern boundary of Dieselboompan until the intersection with the southern boundary thereof. From there, proceed in a westerly direction along the southern boundary of Dieselboompan until the intersection with the eastern boundary of the farm Wesselsdal No.326. Proceed in a southerly direction along the eastern boundary of Wesselsdal until the intersection with the southern boundary thereof. Proceed in a westerly direction along the southern boundary until the intersection with the western boundary thereof. From there, proceed in a northerly direction along the western boundary of Wesselsdal until the intersection with the southern boundary of Palmietkuil No.319. Proceed in a westerly direction along the southern boundary of Palmietkuil until the intersection with the eastern boundary of the farm Klipdrift No.335. Then proceed in a southerly direction along the eastern boundary of Klipdrift, then eastern boundary of Geluk No.333, until the intersection with the northern boundary of the farm Gunsteling No.345. From there, proceed in a westerly direction along the northern boundary of Gunsteling, then northern boundary of Nooitgedacht No.343, until the intersection with the eastern boundary of the farm Holpan No.342. Then proceed in a southerly direction along the eastern boundaries of Holpan, Diamant Aar No.359, Doornbult No.365, Bossielaagte No.369, until the intersection with the northern boundary of Simonsvallei No.382. Proceed in an easterly direction along the northern boundary of Simonsvallei, until the intersection with the western boundary of Vlakpan No.381. From there, proceed in a southerly direction along the western boundary of Vlakpan until the intersection with the south-eastern boundary of Simonsvallei No.382. Proceed in a southerly direction along the south eastern boundary of Simonsvallei, until the intersection with the southern boundary thereof. From there, proceed in a westerly direction along the southern boundary of Simonsvallei until the intersection with the western boundary thereof. From there, proceed in a northerly direction along the western boundary until the intersection with the southern boundary of the farm Bossielaagte No.369. Proceed in a westerly direction along the

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		southern boundary of Bossielaagte until the intersection with the western boundary thereof. From there, proceed in a northerly direction along the western boundary of Bossielaagte until the intersection with the eastern boundary of Goedgevonden No.366. Then proceed in a southerly direction along the eastern boundaries of: Goedgevonden, Rietgat No.387, until the intersection with the southern boundary of Rietgat. Proceed in a westerly direction along the southern boundary of Rietgat until the intersection with Harts River. Proceed in a north-easterly direction along Harts River until the intersection with the southern boundary of Rietpan No.225. Proceed in a westerly direction along the southern boundary of Rietpan, until the intersection with the southern boundary of the farm Blesbokpan No.227. Proceed in a south-westerly direction along the southern boundaries of: Blesbokpan No.227, Boesmanpan No.228, Hakiesrsut No.230, until the intersection with the western boundary of Hakiesrust No.230. From there, proceed in a northerly direction along the western boundaries of the farms: Hakiesrust No.230, Graspan No.217, until the intersection with the N14. From there, proceed in a south-westerly direction along the N14, then southern boundary of the farms: Kameelpan No.214, Broederspust No.213, until the intersection with Losase River. Proceed in a northerly direction along Losase River until it joins with the Municipal Boundary as will further appear from the map. Proceed northwards along the municipal boundary until the intersection with the southern boundary of the farm Plaas No.637. Proceed in a north-easterly direction along the eastern boundary of Plaas No.637 until you reach the north west beacon of the farm Mooiplaats No.9, which is the starting point.
Ventersdorp	Ventersdorp	Starting from the north-west beacon of the farm Goedvooruitzicht No.120, proceed in an easterly direction along the northern boundary of Goedvooruitzicht, and northern boundary of Kwaggaslagte No.121, northern boundary of Zwartrand No.123 until the intersection with the western boundary of Schoongezicht No.124. Proceed in a southerly direction along the western boundary of Schoongezicht, until the intersection with the northern boundary of Witkrans No.130. Proceed in an easterly direction along the northern boundary of Witkrans until the intersection with the eastern boundary thereof. Proceed southwards along this boundary until the intersection with the northern boundary of Hartebeestlaagte No.146. Proceed in an easterly direction along this boundary, then in an easterly direction along the farm Ray No.134, all the way until the intersection with the western boundary of Klippan No.140. Proceed northwards along this boundary until the intersection with the southern boundary of Leliefontein No.138. Proceed

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Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		eastwards along this boundary until the intersection with the eastern boundary of Klippan No.140. Proceed in a southerly direction along this boundary until the intersection with the northern boundary of Almoro No.173. Proceed eastwards along the northern boundary of Almoro, then eastwards along the municipal boundary until the intersection with the western boundary of Morgenzon No.9, as will further appear from the map. Proceed northwards along the western boundary of Morgenzon until the intersection with the northern boundary thereof. From there proceed in an easterly direction along the northern boundary of Morgenzon and Klipgat No.18 until it intersects with the Mooi River. Proceed along the Mooi River in a northerly direction until the north west beacon of Kleingenoeg No.17. From there proceed in a south-easterly direction along the northern boundary of the farms Kleingenoeg No.17, Goededacht No.27, IQ No.696, and Roma No.42 until it intersects with the Gauteng Provincial Boundary. Then along the Gauteng provincial boundary, proceed in a southerly direction along the eastern boundary of Roma No.42, then in a westerly direction along the southern boundary of Leriana No.41 until the north east beacon of the farm Buchansvale No.61. From there, proceed along the provincial boundary and the eastern boundary of the farms Buchansvale No.61, Prestonpans No.59 and until the south east beacon of Leeuwpan No.58 in a southerly direction. Then proceed in a south westerly direction along the provincial boundary and the southern boundaries of the farms Leeuwpan No.58, Rooipan No.96, and the eastern boundary of De Beers Kraal No.94, Rysmierbult No.88, Douglasdale No.95 until it intersects with the north east beacon of the farm Rooidraai No.85. From there still along the provincial boundary, proceed in a south easterly direction until the south east beacon of Turftontein No.126, then continue in a southerly direction until the south east beacon of Gerhardminnebron No.139. Then proceed in a westerly direction on the southern boundary of the farms; Gerhardminnebron No.139, Gerhardminnebron No.122 and Katdoornbosch No.138 until the intersection with the eastern boundary of the farm Wildebeestlaagte No.374. In a southerly direction along the eastern boundary of Wildebeestlaagte proceed to the south east beacon, then in a westerly direction to the south west beacon thereof. Then proceed in a south westerly direction until the intersection with the southern boundary of farm Syferfontein No.351. From there, proceed in a westerly direction along the southern boundary of Leeuwfontein No.350 until its south west beacon thereof. Then proceed in a westerly direction until the eastern boundary of Witrandsfontein No.348, then a southerly direction to the south east beacon, and then continue in

SEQ 29/2020-462

Column A	Column B	Column C
Magisterial District created in terms of Government Gazette No.43 of 24 January 2014	**Places appointed as seat of the magistracy**	**Point-to-point descriptions**
		a westerly direction until the south west beacon thereof. From there, proceed in a south-westerly direction along the eastern boundary of the farm Lustfontein No.346 until the intersection with the southern boundary thereof. Then proceed in a westerly direction along the southern boundary of Lustfontein, Doornfontein No.345 and Biezenhout No.357 until the intersection with the eastern boundary of Palmietfontein No.343. Then proceed in a northerly direction along this boundary until the intersection with the southern boundary of the farm Klipfontein No.344. From there, proceed in a north westerly direction along the southern boundary of Klipfontein, and Buffelsvallei No.222, Klippan No.221, until it intersects with the south beacon of Zwartlaagte No.116. Continue in a north-westerly direction along the western boundary of Zwartlaagte, Kafferskraal all the way along the municipal boundary until the intersection with the southern boundary of Roodepoortje No.154 as will further appear from the map. Proceed in an easterly direction along the southern boundary of Roodepoortje until the intersection with the eastern boundary thereof. Proceed northwards along this boundary until the intersection with the northern boundary thereof. Then proceed in a northerly direction along the western boundary until the north west beacon of Goedvooruitzicht, which is the starting point.

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SEQ 29/2020-463

JPP30

DIRECTIVE IN TERMS OF SECTION 22(3)
OF ACT 32 OF 1998
(READ WITH SECTION 111 OF ACT 51 OF 1977 AS AMENDED).

DIEPSLOOT CAS 390/7/2012

WHEREAS I, **MXOLISI SANDILE OLIVER NXASANA,** National Director of Public Prosecutions, deem it in the interest of the administration of justice that the offences emanating from the above- mentioned investigation, inter alia,

1. **KIDNAPPING**
2. **FRUAD**
3. **THEFT**
4. **ASSAULT**
5. **DEFEATING THE ENDS OF JUSTICE**

Allegedly committed by the suspects in the area of jurisdiction of both the Directors of Public Prosecutions, North Gauteng and South Gauteng, be tried within the area of jurisdiction of the Director of Public Prosecutions, South Gauteng.

GIVEN UNDER MY HAND AT PRETORIA ON THIS ..... DAY OF..... 2014

MR. M.S.O. NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
REPUPLIC OF SOUTH AFRICA

JPP31

<<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 :

A good head and a good heart are always a formidable combination - Nelson Mandela

----- Message from <IKhuba@ipid.gov.za> on Thu, 13 Feb 2014 17:15:59 +0200 -----

To: "GP:DPC DPCI Secretary" <gpdpcisec@saps.gov.za>

Subject: warning statement

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

JPP 32

ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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

DIEPSLOOT CAS 390/07/2012

REQUEST FOR A WARNING STATEMENT MAJOR GENERAL SIBIYA

With reference to your telephonic conversation with Mr. M Sesoko on 13/02/2014, kindly find questions as agreed for the purpose of a warning statement.

1. *BACKGROUND*

The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI in Gauteng. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.
The case was taken over in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It is also in terms of Section 28 (1)(f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

2. ALLEGATION

It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of Major General Sibiya and Lt General A Dramat, conducted operations in Soweto and Diepsloot to trace the following Zimbabwean Nationals, Witness Ndeya, Shepard Tshuma, Prichard Chuma, Gordon Dube, Johnson Nyoni, Maqhawe Sibanda and Nelson Ndlovu. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The DPCI and Crime Intelligence members were accompanied by Zimbabwean Police during the operation that led to the arrest of the above mentioned individuals. Zimbabweans Nationals were arrested in Diepsloot and Soweto and were detained at various stations as illegal immigrants and others for fictitious charges. They were allegedly assaulted by DPCI members and Zimbabwean Police and transported to Bait Bridge as follows, Witness Ndeya, Shepard Tshuma, Maqhawe Sibanda on 08/11/2010; Prichard Chuma on 24/11/2010, Johnson Nyoni and Gordon Dube on 28/01/2011. The above individuals were allegedly handed to the Zimbabwean Authorities.

3. *POSSIBLE CHARGES*

Possible charges against suspects in this case are as follows

- ***Kidnapping,***
- ***assault,***
- ***defeating the ends of justice***
- ***fraud and***
- ***theft.***

You are hereby informed of your rights as follows:

The purpose of these questions is to give you the opportunity to make a statement concerning the allegations against you that you were involved in the commission of the offence.
You have the right to remain silent and you are not compelled to make any statement or to answer any question.
Any statement that you make may be used as evidence in a court of law. Should you prefer to make a statement or to answer questions, such statement or answers will be submitted to the Director Of Public Prosecutions and can also be used in deciding whether to prosecute you or not.
You have the right to consult with a legal practitioner of your choice or, if you prefer, to apply to the Legal Aid Board to be provided with the services of a legal practitioner at state expense. The legal practitioner of your choice or the one provided to you by the Legal Aid Board may also be present when you respond to questions below.

4. QUESTIONS

4.1 Where you appointed by Lt General Dramat to head TOMS?

4. 2 What was the mandate of TOMS and who are the members of the TEAM?

4.3 Do you know about the arrest or received any request from Zimbabwean Authorities (police) or Lt General Dramat to assist in the tracing and arresting the following Zimbabwean Nationals?

4.3.1 Witness Ndeya
4.3.2 Shepard Tshuma
4.3.3 Prichard Chuma
4.3.4 Gordon Dube
4.3.5 Johnson Nyoni
4.3.6 Maqhawe Sibanda
4.3.7 Nelson Ndlovu

4.4 What was the reason for the arrest of the above individuals and what happened to them after the arrest?

4.5 Did you accompany Lt General Dramat to Zimbabwe between 04/08/2010 and 08/08/2010? If so, what was the purpose of the trip, and what role were you given as a result of the resolutions reached with Zimbabwean Police?

4.6 Did you attend any meeting with Lt General Dramat and Zimbabwean police at the DPCI Head Office in the morning of 05/11/2010 and if so what was the purpose of the meeting? If not, explain the purpose of your presence at the vicinity of DPCI Head office in the morning of 05/11/2010 (for the duration of the meeting).

4.7 Where you ever in the company of the Zimbabwean police on 05/11/2010 and 22/11/2010? If yes explain the reason.

4.8 Where you ever in Diepsloot or Soweto between 04/11/2010 and 24/11/2010 for the purpose of assisting members of TOMS in the arrest of Zimbabwean Nationals mentioned in 4.3?

4.9 Did you receive any progress from any member of TOMS regarding the arrest of people mentioned under 4.3?

4.10. Did you send any report or SMS to Lt General Dramat and or Lt General Lebeya or any other senior member of SAPS regarding the arrest of the people mentioned under 4.3?

4.11 Did you provide a report or information that became part of the report to parliament as a result of allegations of rendition on Zimbabwean Nationals? What was the basis or the source of the information you provided?

5. **RESPONSE DATE**

If you decide not to exercise the right to remain silent, your response should reach us not later than 20 /02/2014

_____Signed_____
Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

JPP 33

Warning statement by Major General Shadrack Sibiya

I respond to your questions as follows:

Ad 4.1 No

Ad 4.2 The mandate of TOMS was to assist in the tracking and arrest of dangerous, violent and wanted criminals, for offences that includes armed robberies, cash-in- transit robberies and ATM bombings as well as to assist in tactical operational support to other police units including IPID. There are many members but from what I have established the ones involved in this specific matter was Lt Col Neethling, Capt Boonstra, Capt Nkosi, WO Makoe, WO Ndobe (Gutries), WO Chauke (Sarajevo) WO Yende, and Const Radebe. Ndobe, Chauke and Yende left TOMS after a warrant of arrest was authorised by the authorities and forwarded to my unit for execution of a senior police officer to whom they felt some sort of open-ended loyalty. They are all deployed at Crime Intelligence.

Ad 4.3 At the time of their arrest I did not know of their arrest and Lt Genl Dramat did not request me to assist in the tracing of them.

Ad 4.4 At the time of their arrest I was not involved in or aware of their arrest and I was only informed of the arrest later.

Ad 4.5 Yes. Drug problems in the region, illicit trafficking of firearms and humans, funding availability for training, generating a regional database, creating of various desks assisting with fugitives, firearms, and corruption related matters, real time sharing of information etc.

Ad 4.6 I did not attend such a meeting. I attend to the DPCI Head Office regularly for various police related reasons.

Ad4.7 No

Ad4.8 No

Ad 4.9 Yes. At that stage I receive high level feedback on all operational matters, either telephonically or via text or in person.

Ad 4.10 Although I cannot specifically recall I do so normally. The workings of TOMS have been streamlined considerably and I nowadays receive text messages which I simply forward on.

Ad 4.11 No

Signed at Johannesburg on 20 February 2014

Major General S Sibiya

JPP34

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

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 26 February 2014.

MAJOR GENERAL S.M. SIBIYA

JPP 35

BDK ATTORNEYS

David H Botha | Du Plessis | Kruger

21 February 2014

Mr HI Khuba

Acting Provincial Head

IPID

LIMPOPO

Per fax: 015 – 295 3409

Sirs,

RE: WARNING STATEMENT BY OUR CLIENT: MAJOR GENERAL S SIBIYA

1. We refer to your undated letter received by our client during the course of this week.
2. We attach hereto the answers to the posed questions.
3. We request that you inform our office who the advocate is at the National Prosecuting Authority with whom you are going to discuss the matter.
4. Our client has well-founded reasons to doubt your objectivity in the matter and wishes to engage with the specific advocate directly.

Established 1960

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JPP36

1?/04/2019 Personal Portal

Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

IKhuba@ipid.gov.za
28/02/2014 at 08:52:47

From: **IKhuba@ipid.gov.za**
Sent: 28/02/2014 at 08:52:47
To: **Anthony Mosing (A)** <amosing@npa.gov.za>
Cc:

5 Attachment(s) Total 2.3 MB View

- CCF20140226_00010.jpg (426.8 KB)
- CCF20140226_00007.jpg (516.3 KB)
- CCF20140226_00009.jpg (643.5 KB)
- Questions for Major General Sibiya.docx (68.2 KB)
- CCF20140226_00008.jpg (649.8 KB)

B4 McBride appointed

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2014/02/28 08:51 AM -----
From: Matthews Sesoko/NorthWest/IPID
To: Innocent Khuba/Limpopo/IPID@IPID
Date: 2014/02/27 12:56 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 0196
Fax2email: 0866301019
Cell: 0836328749

----- Forwarded by Matthews Sesoko/NorthWest/IPID on 2014/02/27 12:56 PM -----
From: Tshiamo Mahibila/HeadOffice/IPID
To: Matthews Sesoko/NorthWest/IPID@IPID
Cc: Nomkhosi Netsianda/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@saps.gov.za>
To: <TMahibila@ipid.gov.za>
Date: 2014/02/26 02:23 PM
Subject: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

JPP37

Y7-RM-SUP-147

RJM 11

Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA
Innocent Khuba to Louisa Temo 2015/05/28 09:38 AM

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2015/05/28 09:38 AM -----

From: "Anthony Mosing (A)" <amosing@npa.gov.za>
To: "IKhuba@ipid.gov.za" <IKhuba@ipid.gov.za>
Cc: "Billy BT. Moeletsi" <bmoeletsi@npa.gov.za>
Date: 2014/02/28 09:48 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 120456366
MOBILE: +27 847388076

From: IKhuba@ipid.gov.za [mailto:IKhuba@ipid.gov.za]
Sent: 28 February 2014 08:53 AM
To: Anthony Mosing (A)
Subject: Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2014/02/28 08:51 AM -----

From:	Matthews Seseko/NorthWest/IPID
To:	Innocent Khuba/Limpopo/IPID@IPID
Date:	2014/02/27 12:58 PM
Subject:	Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

Matthews Seseko
Acting Chief Director: Investigation & Information Management
Independent Police Investigative Directorate
Private Bag X941 Pretoria, 0001
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Tel: (012) 399 0049
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Fax2email: 0866304919

HIK-139

JPP38

RENDITIONS | DIEPSLOOT CAS 390/07/2012 |

ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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

Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Recommendation to NDPP
Report Date	18 March 2014
Date of Last Report	18 March 2014
Complaint Category	Section 28(1) (f) and 28(1) (h)
Complainant	Shepard Tshuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
Suspect Identification	Lt Col M Maluleke
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

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

H1

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Mafaljie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained

MCS HI VI

and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

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

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

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

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

introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

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

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

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

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

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

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

always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.
The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

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

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

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

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

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

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/01/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in –law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the

Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal Immigrant, Home Affair official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Belt Bridge.

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

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

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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

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

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

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

Richard Peter Eiberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.
He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndandzeni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.
He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.
Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.
In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is

Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

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

Removal 1

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

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

Removal 2

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

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

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

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

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

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

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members

posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

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

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.
He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

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

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

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot

remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

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

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

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.
Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

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

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

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

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads' "HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED". He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maqhawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.
While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.
They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

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

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

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

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

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

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices were they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

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

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organized with his contacts to look for Gordon Dube. It took two weeks for the contact to trace the suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be

coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa and they managed to spot the suspect. When he moved they pursued him until they arrested him in Diepsloot. They found the suspect in possession unlicensed firearm. He saw the same firearm with captain Maluleke at the Hawks offices after it was returned from the ballistics. The suspect was taken to Wierdabrug to for detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was search but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected an arrest on Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.
Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then

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gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

Removal 3

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mnqwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

Removal 4

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenteni from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenteni to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Attridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

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5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal Immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The Investigation at Alexandra Police Station uncovered the following;

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The Investigation at Silverton Police Station uncovered the following;

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following;

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

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

The investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Olievenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession off in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeti area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

REMOVAL 5

The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

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5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A87).

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

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

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

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

Renown 6

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

Renown 7

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They

affect from 3m apart

then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.
It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.
The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.

CELLPHONE RECORD OF MAJOR GENERAL SIBIYA (0725953168) AND (0724798484)	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged to have seen Major General Sibiya at the crime scene	*Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence.*

CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)	
Reason for 205 application	**Findings**
To verify whether he had interaction with the Zimbabwean Authority regarding the arrests of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe	*The entire cellphone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence.*

CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)	
Reason for 205 application	**Findings**
To test the version that Captain Maluleke was reporting direct to Major General Hlatshwayo regarding cross border issues. During the interview with the said General she denied having known about the Zimbabwean police and requested us to do apply for 205 in order to clear her name.	*Her interaction with Captain Maluleke confirms her version that she did not know anything about the arrest and deportations of Zimbabwean Nationals. She was never at the scene or at Fourways Shopping center where the alleged planning took place.*

CELLPHONE RECORD OF LT GENERAL LEBEYA (0825751899)	
Reason for 205 application	**Findings**
To verify the automated SMS send by Major General Sibiya and whether when he signed on one of the success report he had more information about the operation.	*The evidence shows that he did not know anything about the operation that led to the arrest of the Zimbabwean Nationals.*

CELLPHONE RECORD OF CAPTAIN MALULEKE (082 7729518)	
Reason for 205 application	**Findings**
To test the version of the witnesses who alleged that Captain Maluleke led the operations that led to the arrest of Zimbabwean Nationals	*There is prima facie case against Captain Maluleke.*

CELLPHONE RECORD OF CAPTAIN NKOSI, W/O MAKOE AND CONSTABLE RADEBE (0834373227), (0723050697), (0824198303) AND (0737313808).	
Reason for 205 application	Findings
To test the version of the witnesses who alleged that they were at the crime scenes and they took money and assaulted the Zimbabwean Nationals.	*The record confirms that they were at the scene even though the allegation of theft is not corroborated*

CELLPHONE RECORD OF LT COL MADILONGA (078 520 9741) AND (0713550548)	
Reason for 205 application	Findings
To test his version in which he alleged that he received a call from Captain Maluleke on 08/11/2010 regarding the deportation of Zimbabwean Nationals	*Their interaction confirms the version of Madilonga.*

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

Lt General Mkhwanazi A99: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Radebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya A97: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

Ms. Jennifer Irish-Qhobosheane A100: She will state that she is the Head of the Civilian Secretariat and the Secretary of Police. She became aware of the allegations

of renditions on 22/10/2011 when she saw an article in a Sunday Times newspaper entitled, "journey to death in an unmarked car". The Minister requested a detailed response from the DPCI to be submitted to him in writing. She received two official responses in a form of information notes to the Minister. Based on the different information supplied to the Minister of Police, the Minster felt that the matter needed further inquiry to establish whether there is any evidence that the SAPS might have violated international laws and procedures and/or South African laws.

ADDED NEW 6

Warning Statement of Lt General Dramat A94/1: He will state that he is the Deputy National Commissioner of the South African Police Services. He unequivocally point out that at no stage during his correct role as the National Head of the DPCI did he ever personally authorize the unlawful and intentional depriving of a person liberty, or movement, and/or his custodians of control on any basis whatsoever.
He will further sate that never authorized anyone or sanctioned the kidnapping any of the Zimbabwean Nationals. He knows of no action that he took or authorize which was aimed at defeating the administration of Justice.

ADDED NEW 7

Warning Statement of Major General Sibiya A101: He will state that he was never appointed as the head of TOMS. However he received reports from his members regarding successes as routine. He was never part of the operation that arrested the Zimbabwean National who was wanted in connection with the murder of Zimbabwean Colonel in Zimbabwe.

Warning statement of Lt Col Mahlangu Maluleke A88: He exercised his right to remain silent.

Where is version?

5.7 **STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED**

A100 is on file

Innocent Humbulani Khuba A102: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya.. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitali, Mr. L Maphelho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary

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question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.
On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Beit Bridge and obtained a statement of Peter Eiberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton.

During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices; he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.
On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenteni requesting interview with his members who are mentioned is success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interview Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.
He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained

in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 (arch file)..

On 16/07/2013, he received a Dell Laptop from Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 (arch file).

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Qhobosheane and is filed as

per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madilonga's statement analysis from Precision Forensics.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crimes fugitives. In this responsibility he mends the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonstra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- ***The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma on 05/11/2010.***

  The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

also confirms, backed by the cellphone records of Captain Maluleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiya were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Maluleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Maluleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Maluleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Maluleke new that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maqhawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiya alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiya which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiya was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

while they were aware of the presence of Zimbabwean police at the scene, Major General Sibiya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Maluleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of Lt Col Ndanduleni Madilonga and his cellphone records confirms that he received a call from Captain Maluleke when he was approaching Musina on 08/11/2010. According to Lt Colonel Madilonga (A51) he assisted Captain Maluleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Maluleke as four warrants of detentions and four notices of deportations. The documents which the Captain Maluleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Maluleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maqhawe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

Potiswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Maluleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. According to Peter Eiberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlahlo (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlahlo was off duty. The stamp could have been easily duplicated.

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

the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

- ***The arrest of Prichard Chuma on 23/11/2010***

On 23/11/2010 and operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Neethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibiya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibiya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

With specific reference to OB entry dated 23/11/2010 (A57/2)) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Neethling to assist Captain Maluleke. Lt Col Neethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Beit Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and itineraries of Captain Maluleke.

- *The arrest of Gordon Dube and Johnson Nyoni on 11/01/2011 and 26/01/2011.*

The arrest of Gordon Dube and John Nyoni started when Constable Rikotso (A67) went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived, he found Constable Sombhane who gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. At that time the name of Captain Maluleke had not yet surfaced and members of Crime Intelligence were just carrying out the daily duties. Constable Rikotso is corroborated by Constable Sombhane and Constable Plantinah Mokgobu who stated that the information about the wanted Zimbabwean National initially surfaced when the visited CIAC office at Wierdabrug.
Gordon Dube was arrested on 11/01/2011 and was found in possession unlicensed firearm. Constable Rikotso later saw the same firearm with captain Maluleke at the Hawks offices after it was returned from ballistics. It is also clear that the suspect Gordon Dube was facing many charges in South Africa including murder and robbery. Most of the cases against Gordon Dube were investigated by Constable Meyer except Diepsloot Cas 93/01/2011 which was investigated by Warrant Officer Dlamini. According Constable Meyer the following cases were against Gordon Dube, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Gordon Dube was also wanted in Zimbabwe. According to Constable Meyer, Captain Maluleke informed him that Gordon Dube was also wanted for murder as per Bulawayo CR 438/09/2010. He stated that he booked out suspect Gordon Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels. The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order to handover the suspect to the Zimbabwean police. The suspects was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Constable Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dude was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm to Zimbabwean Police. In January 2011 members of Crime Intelligence received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect murdered a police officer in Zimbabwe. The request to arrest John Nyoni was after a successful operation that led to the arrest of Gordon Dube. According to members of TRT, they received a call via two ways radio from the commander to go to Diepsloot police station. When they arrived they found the Station Commander of Diepsloot Police station who introduced them to Captain

Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Moot Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.

The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

7. FINDINGS

- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maqhawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe refered to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hlatshwayo were involved.

8. RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

Recommended/~~not recommended~~

Mr M SESOKO
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT
IPID: NATIONAL OFFICE
DATE: 18/03/2014

Approved/~~Disapproved~~

MR. RJ MCBRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 09/04/2014

JPP 39 AS

I, ZACHARIAS JOHANNES VAN ZYL state under oath in English as follows:

1

I am employed as a Deputy Director of Public Prosecutions in the office of the Director of Public Prosecutions, Johannesburg. The office is in Pritchardt Street, Johannesburg and my work telephone number is 011-2204133.

2

I have on various occasions before been requested to supply a statement with regard to my dealings with the docket in the so-called rendition matter. I have declined to do so as I did not have the permission of the National Director of Public Prosecutions to supply such a statement. I have now been supplied with an authorisation by NDPP Adv Shaun Abrahams dated 16 November 2015 and issued in terms of Section 41(6)(a) and (b) of the National Prosecuting Authority Act 32 of 1998 to consult with the investigating officer and to disclose any information which came to my knowledge in the performance of my functions in respect of Pretoria CAS 2454/05/2015.

3

The subject matter of Pretoria CAS 2454/05/2015 relates to Diepsloot CAS 390/07/2012, the so-called rendition matter. I previously prepared an internal memorandum for the attention of Adv MA Chauke (the DPP: Johannesburg and therefore my supervisor) in this regard. I confirm the correctness of that internal memorandum, but for paragraph 4, where the date should be 5 May 2014 and not 6 May 2014. The internal memorandum is attached hereto marked Annexure "A".

4

I furthermore attach hereto a copy of the internal memorandum dated 14 February 2014 from Adv Mosing, that accompanied the case docket, Diepsloot CAS 390/07/2012 to our office. It is the page on which Mssrs Angus and Khuba signed for receipt of the docket on 7 March 2014. I had furthermore made some cryptic and contemporaneous notes about some phone calls with regard to the whereabouts of the docket on this page. The page is attached hereto as Annexure "B". I believe that the original thereof is filed in our file JDS236/2014.

5

The internal memorandum of Adv Mosing was accompanied by an internal memorandum drafted by Adv Moeletsi and which was drafted on 13 February 2014. I quickly paged through the docket, comprising of 6 x lever arch files and 1 x thin file on the day that Adv Chauke handed it to me and provisionally agreed with that opinion. I however still wanted to do a thorough study of the material, especially the extensive cell phone records. The police docket was taken from my possession before I had the opportunity to study it by Mr Khuba who was accompanied by his colleague, Mr Angus.

ZACHARIAS JOHANNES VAN ZYL continues under oath in English:

6

I cannot recall taking much note of any Ipid report in or with the police docket. I often see such reports and generally don't hold them in high regard. I read every docket myself and then form my own opinion. As it is, I never had the opportunity to take any decision in this matter.

7

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

Date: 24 November 2015

Time: 15:00

Place: Johannesburg

(SIGNATURE OF DEPONENT)

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponents signature was placed thereon in my presence on 24 November 2015 at Johannesburg at 15:00.

COMMISSIONER OF OATHS
NYAMEKO XABA
GENERAL PIET JOUBERT BUILDING,
218 VISAGIE STREET, PRETORIA
BRIGADIER, SA POLICE SERVICE

"A"

JPP40

A 16 A5

Director of Public Prosecutions
South Gauteng

NATIONAL PROSECUTING AUTHORITY
South Africa

Reference number: 9/2/4/1(2014/0236)
Enquiries: Ms Thulare
Telephone number: (011) 220 4162

DPP South Gauteng
Regional Office

27 11 220 4000
27 11 220 4057

Inner Court Building
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Von Brandis
Johannesburg
2000

Private Bag X8
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2000

www.npa.gov.za

INTERNAL MEMORANDUM

TO : ADV M A CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS

FROM: Z J VAN ZYL SC
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: DIEPSLOOT CAS 390/07/2012

DATE: 27 JUNE 2014 How did you Zyl get told it do'nt "dealt" in by DPP North Gauteng - if it only arrived there in JANUARY 2015

Dear Sir

1 You handed me the above matter and an internal memorandum dated 14 February 2014 from Adv M Mosing (Special Projects Division) sometime late in February 2014. You will recall that I had a quick look at it and indicated a provisional view that the matter is best suited to be dealt with by our Head Office. That opinion was based on the clear international ramifications of the matter. I furthermore indicated that I required some time to study the content of the 6 lever arch files and another thinner file to confirm my provisional view.

2 Before I could do this, I was approached by Mr I H Khuba (who introduced him to me as the investigating officer from IPID with cell no 084 702 2741). Mr Khuba was accompanied by his colleague Mr Glen Angus (with cell no 0835655320).

3 These gentlemen approached me on 7 March 2014 in my office. Mr Khuba explained to me that he needed the whole docket for further investigation and that they would return the files on Friday 14 March 2014. I insisted that they both sign for the docket, which they did. They also supplied their contact details and I handed all the files to them. The files were not returned to me as agreed and I was not contacted by them.

4 I approached the representative of IPID who attended our "police meeting" on 6 May 2014 about the whereabouts of the docket. He said that he was unaware of the matter. I then gave him the names and

contact details of Mssrs Khuba and Angus, as well as my contact details. Nothing happened.

5 I phoned both Mssrs Khuba and Angus on 30 May 2014 and left messages enquiring about the whereabouts of the docket. I received a message from Mr Khuba that the matter had been returned to our Head Office. I managed to get hold of Mr Khuba on 18 June 2014 and he informed me that Mr McBride had taken a decision that the matter "... had to be returned to the NDPP". He said that there had been a meeting with the NDPP and the matter was then returned there. I wanted to know who the docket had been handed to. He said that he would find out. It bothered me that the investigating officer could not supply this information.

6 I then phoned adv Mosing and could not get hold of him. I also phoned Adv BT Moeletsi who had apparently drafted the internal memorandum dated 13 February 2014. Adv Moeletsi re-called the matter, but knew nothing about the whereabouts of the docket.

7 I phoned Mr Khuba on 23 June 2014 and asked him why he lied to me when he uplifted the docket. I told him that they never intended to return the docket. He said that he still had one thing to do. He denied lying to me, but did not deny that they never intended to return the docket to me, despite me making that statement several times. Mr Khuba stated that docket had been handed to "... the NDPP's secretary" but he could not provide any name.

8 I phoned and managed to get hold of Adv Mosing on 27 June 2014. Adv Mosing stated that the docket had not been returned to him. All he further knew was that the decision that the matter had to be dealt with in this division was taken by Adv Jiba DNDPP and that he had about 3 weeks ago received a telephonic enquiry about witnesses who were being protected in this matter. He was then told that the matter was now being dealt with in North Gauteng office of the DPP.

9 I am worried about the whereabouts of the docket as it had been uplifted from me under seemingly false pretenses, as I was also not later informed that it would not be returned to me or this office and as the people who drafted a report for the DPP of this office do not have any information about its whereabouts. I think that it would be prudent to establish from the NDPP Mr Nxasana that the docket did indeed reach his office.

10 I appreciate that this may be much to do about nothing, and that everything is fine, but prefer to be rather safe than sorry.

Kind Regards

Z J VAN ZYL SC
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG LOCAL DIVISION, JOHANNESBURG

JPP41

B.P.-S. 01/02

P. 21 (81/143198)

I Zacharias Johannes Van Zyl SC state under oath in English as follows

1.

I am employed as a Deputy Director of Public Prosecutions in the office of the Director of Public Prosecutions Johannesburg. The office is in Pritchard Street Johannesburg and my work telephone number is 011-2264133.

2.

I have on various occasions before been requested to supply a statement with regard to my dealings with the docket in the so-called redaction matter. I have declined to do so as I did not have the permission of the National Director of Public Prosecutions to supply such a statement. I have now been supplied with an authorisation by NDPP Adv Shaun Abrahams dated 16 November 2015 and issued in terms of section 41(6)(a) and (b) of the National Prosecuting Authority Act 32 of 1998 to consult with the investigating officer only to disclose any information which came to my knowledge in the performance of my functions in respect of Pretoria CAS 2454/05/2015.

3.

The subject matter of ... Pretoria CAS 245/05/2015 relates to Diepsloot CAS 390/07/2012, the so-called rendition matter. I previously prepared an internal memorandum for the attention of adv MA Chauke (the DPP: Johannesburg and therefore my superior) in this regard. I confirm the correctness of that internal memorandum save for paragraph 4, where the date should be 5 May 2014 and not 6 May 2014. The internal memorandum is attached hereto marked Annexure "A".

4.

I furthermore attach hereto a copy of the internal memorandum dated 14 February 2014 from adv Maring that accompanied the case docket Diepsloot CAS 390/07/2012 to our office. Set is the page on which Messrs Angus and Khuba signed for receipt of the docket on 7 March 2014. I had furthermore made some cryptic and contemporaneous notes about some phone calls with regard to the whereabouts of the docket on this page. The page is attached hereto as Annexure "B". I believe that the original thereof is filed in our file JD 236/2014.

5.

The internal memorandum of adv Mosing was accompanied by an internal memorandum drafted by adv Maeltsi and which was drafted on 13 February 2014. I quickly paged through the docket, comprising of 6 x Lever Arch files and 1 x thin file on the day that adv Chamberlain handed it to me and provisionally agreed with that opinion. I however still wanted to do a thorough study of the material, especially the extensive cellphone records. The police docket was taken from my possession before I had the opportunity to study it.

6.

I cannot recall taking much notice of any Ipid report in or with the police docket. I often see such reports and generally don't hold them in high regard. I read every docket myself and then form my own opinion. As it is, I never had the opportunity to take any decision in this matter.

JPP42

"B"

B - A5

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

INTERNAL MEMORANDUM

TO : ADV. A. M. CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS: SOUTH GAUTENG

FROM : ADV. A MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT : DIEPSLOOT CAS 390/07/2012

DATE : 14 FEBRUARY 2014

Need briefing - informed DPP @ 7/6 - Khuba - attended to DPP secretary * 3/6 Khuba attended to DPP (Lady) Attempts to get time with no return - Khuba I phone

* 18/6 Khuba : Mc Bride gave decision, took back to NDPP. Had meeting this Will inform back

1. Please find attached the case docket with accompanying files for your attention and further action as discussed with the Head of NPS. The files included are as follows:
   - 1x A- section of docket
   - 1x B- section of docket
   - 1x forensic report of retrieved computer documents and emails
   - 1x AVL analysis
   - 2x Cell phone data of various cell phones
   - 1x Copies of Wierdabrug case dockets.

I phoned both 13/6 left messages 14/6 got message from Khuba - must call him on HO.

2. I trust you find the above in order.

6 x Lever Arch files and 1 x thin file handed to Ill Khuba from IPID 084 7022741 accompanied by Glen Angus 0835655320 on 7 March 2014

Kind Regards (18763685 from Head: Linpop)

ADV. A MOSING
SPECIAL PROJECTS DIVISION
OFFCIE OF THE NDPP
DIEPSLOOT CAS 390/07/2012

Signed 07/03/2014

ANNEXURE 'JPP 43'

Hoosen AK - Colonel

From: Steven Powell [spowell@ensafrica.com]
Sent: 11 September 2015 12:35 PM
To: Hoosen AK - Colonel
Cc: Derek McMaster
Subject: George (00000002).docx
Attachments: George (00000002).docx

Dear Colonel

Attached please find the affidavit of my colleague, George van Niekerk. He is submitting it in draft as we would like to discuss the contents with the prosecutor before we finalise.

I mailed the annexures a few minutes ago.

Kind regards,

Steven

Steven Powell
director
forensics
tel: +27 21 410 2500
cell: +27 82 820 1036
email: spowell@ENSafrica.com
offices: ENSafrica locations

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AFFIDAVIT

I, the undersigned,

GEORGE MORRISON VAN NIEKERK,

state under oath as follows:

1. I am an adult male attorney practising as such as a director at Edward Nathan Sonnenbergs Inc, ENS House, North Wharf Square, 1 Lower Loop Street, Foreshore, Cape Town.

2. I have been requested to depose to an affidavit in relation to my dealings with Mr Paul O'Sullivan of Paul O'Sullivan & Associates.

3. I was instructed by our clients South African Airways (SOC) Ltd ("SAA") on Wednesday 25 February 2015 with a copy of an email by Mr O'Sullivan addressed to the Chairperson of the Board of Directors of SAA, Ms Duduzile Cynthia Myeni. I believe that a copy of that email has been provided to the authorities.

4. I sent an email to Mr O'Sullivan that evening at 18:03. For ease of reference I have prepared an index to the communications exchanged between us which identifies the emails and letters. The index is attached the end of this affidavit, and copies of the correspondence follows thereafter.

5. I informed Mr O'Sullivan that Ms Myeni denied the allegations he made about her in his email, and I added,

". . . we are urgently investigating the authenticity of the bank statements. In the meanwhile you are invited to provide your information to the investigating authorities

. . .

. . . in the meanwhile we are instructed to demand, as we hereby do, that you provide us immediately with the details of everyone with whom you have shared this information."

6. Mr O'Sullivan replied to me via email at 19:06 that evening and attached an email, which he had sent out at 18:52, to various recipients. In this email he purports to suggest that he had known all along that the content of his earlier emails had been false, and that he had sent out the earlier emails in an elaborate endeavour to 'trap' the real culprits behind the forged documents.

7. However, before I saw the email, I received a telephone call from Mr O'Sullivan, as it happens at exactly 19:06 on Wednesday evening 25 February 2015. What follows is a summary of our conversation.

   7.1. Mr O'Sullivan apologised for the delay in replying to my mail. He said the delay was due to connectivity problems in Geneva, Switzerland, where he was at the time.

   7.2. He explained to me that he had been trying to set a trap for someone whom he described as a 'third force'. The e-mail which he sent to my client on Wednesday morning 25 February 2015 was part of his plan, he said, to ensnare this 'third force' identified by him.

7.3. He described those who were feeding information to him about Ms Myeni's overseas bank accounts as 'shady people'. When he sent the e-mail out on Wednesday morning he knew that they could not be trusted.

7.4. Nevertheless, and despite his reservations, Mr O'Sullivan forwarded that same e-mail to a host of high-ranking officials and very senior politicians at approximately 15:37 on Wednesday, 25 February 2015.

7.5. He conceded to me that he had appreciated at all times that the information about Ms Myeni's alleged bank accounts was not reliable. However, he was intent on trapping the 'third force'.

7.6. I said to him that this was reckless conduct on his part, as the e-mails he sent out were highly defamatory. He said to me he hadn't thought of that.

7.7. I asked him whether he had e-mailed the documents to anyone else. He assured me that he had not. I asked him specifically whether he had sent the e-mail to any journalists. He said he had not, but that to his knowledge the 'third force' had done so.

7.8. He assured me that 'we are all on the same side' and invited my client to assist him in his quest to uncover the third force. I asked him for whom he acted or whom he represented. He told me he did not act for or represent anyone. His only interest in the matter was to expose this 'elaborate scam'.

7.9. This, I point out, was different to the version which Mr O'Sullivan gave to Steven Powell, to whom he had spoken shortly before calling me. He told Steven Powell he had been set up by a third force of four black national security members intent on undermining Ms Myeni and the airline.

7.10. He also indicated to Steven Powell that he was intent on flushing them out. The point is, according to Steven Powell, Mr O'Sullivan only realised he had been duped after he had sent out the email to the officials and ministers.

8. As appears from the email at 19:06 that same evening, Mr O'Sullivan professed to be engaged in an effort *"to flush out the architects of the elaborate scheme"*.

9. Later that same evening, at 20:58, he sent a further email to me, following our eight minute long telephone call at 19:06, in which he proposed to make up for his conduct. Although it was marked "*without prejudice and off the record*", I attach it as it forms the basis of the subsequent agreement between us.

10. I invited him to meet with us urgently, as appears from the subsequent exchange of correspondence on 26 and 27 February 2015.

11. I also attach, by way of background, copies of the correspondence we addressed to the public officials who were recipients of Mr O'Sullivan's emails, dated 28 February 2015. I point out that I noted in the letter to them that,

> *"We invited Mr O'Sullivan immediately and in writing to make his information available to the authorities*
>
> ...
>
> *The Board has unanimously resolved to pursue this investigation to its ultimate conclusion"*

12. Our subsequent engagements with Mr O'Sullivan were intent on realising these goals, i.e. to receive the information which Mr O'Sullivan was keen to provide to us,

and to make that information available to the law enforcement agencies with a view to establishing who was behind this swindle.

13. I also enclose a copy of our media release of 28 February 2015 and point out that we publicly reiterated our instructions to *"continue with the investigation"*.

14. Mr O'Sullivan subsequently arranged to meet with me and Steven Powell at Cape Town International Airport on Sunday 1 March 2015 at noon. I attach copies of our correspondence in this regard.

15. Steven Powell and I cautioned him during the meeting against any attempt to tamper with or destroy evidence on any of his electronic devices. We warned him that if he did so, it would constitute obstruction of justice and interference with evidence relating to the commission of a crime. He agreed, and volunteered to place the information somewhere safe where it could be held inviolate. He was concerned, he said, not to compromise information which he said was irrelevant to the investigation, but the disclosure of which could in his view be lethal to third parties.

16. Mr O'Sullivan appreciated that he had dug himself into a hole. He assured us that he already had, and was still going to get, conclusive incriminating evidence to identify the masterminds behind the hoax. All he wanted was an opportunity to do so. He did not yet want to share his information with us at that stage.

17. We told him we did not trust him. He said he would meet with us the next day in Johannesburg and he would share the evidence with us. He ask whether our client would agree, in return, not to pursue a civil claim against him. We said we would take instructions.

18. Our client instructed us to meet with him.

19. Steven Powell and I then met with Mr O'Sullivan from 18:15 to 20:20 the next day, Monday 2 March 2015 at our offices in Sandton.

20. Mr O'Sullivan related to us his knowledge of the conspiracy between Mr Monwabisi Kalawe and Mr Abe Mbulawa.

21. We were concerned that Mr O'Sullivan was feeding us information piecemeal, to suit his own purposes. We were also concerned that he was deliberately withholding information from us.

22. We agreed in essence that in exchange for making his 'conclusive incriminating evidence' available to us so that we could in turn provide it to the law enforcement agencies, our client would not pursue her remedies against him.

23. Our agreement with him was reduced to writing, and it was signed by him that same evening, 2 March 2015. I quote from the document which both he and I signed:

> *"1 you will pay an amount of R50 000.00 to a charity of our client's choice;*
>
> *2. you will pay a contribution of R25 000.00 towards the legal costs incurred by SAA in responding to the emails.*
>
> *3. you will make available the evidence regarding the source of the forged documents, and the identity of those behind what appears to be a campaign to procure the termination of:*
>
> *3.1 the tenure of Ms Myeni as chairperson of the Board of Directors of SAA;*

3.2 the disciplinary proceedings into the conduct of the CEO of SAA, Mr Monwabise Kalawe, and his reinstatement.

4. You have requested, and we have agreed to provide you with an opportunity to secure the evidence, such as it is, in a manner which is reliable, and which will withstand scrutiny in a criminal prosecution. You are convinced that the evidence is available, that it will withstand scrutiny, and that it is sufficient to secure the conviction of those responsible.

On the basis of these assurances Ms Myeni has instructed us that she will not pursue any of the legal remedies available to her insofar as you are concerned. This is on the express understanding though that the evidence you supply will be made available to the law enforcement agencies to proceed against those ultimately responsible for this campaign.

5. You agree that if the evidence is insufficient to secure a conviction of those responsible, then Ms Myeni will pursue the full extent of her legal remedies against you.

Insofar as both parties are concerned the payments by you are made and accepted without prejudice to the rights of either party, and subject to the terms of this agreement. In any event, you will not be entitled under any circumstances to repayment of these amounts."

24. I emphasised to him that the Board of SAA was anxious to establish the source of the fraud against Ms Myeni, in order to enable the law enforcement agencies to take appropriate steps against the perpetrators. I told him that the Board was

comforted by his confident assurance that he could secure the unequivocal evidence to establish the involvement of such individuals.

25. I reiterated in the letter,

> *". . .that it is necessary for you to ensure that the evidence you gather is collected in a manner which is beyond reproach, so as not to impugn any prosecution of those who are implicated. This means digital evidence must not be compromised, has to be safely stored by way of a mirror image, and must remain untampered and inviolate."*

26. Before I proceed with the narrative, and explain how Mr O'Sullivan breached the agreement, I want to emphasise a few salient features of the agreement. Mr O'Sullivan persuaded our client to suspend her legal remedies on the basis that

26.1. he had reliable evidence;

26.2. the evidence was sufficient to secure the conviction of those responsible;

26.3. he would be able to provide the evidence (most of which we understood was in electronic format) in a manner which is reliable, and which would withstand scrutiny in a criminal prosecution;

26.4. we would make the evidence available to the law enforcement agencies; and

26.5. if the evidence was insufficient to secure a conviction of those responsible, then our client would be entitled to pursue the full extent of her legal remedies against him.

27. Mr O'Sullivan thereafter proceeded to supply us with the evidence, mainly a number of emails, but, as appears from his email to Steven Powell of 3 March 2015 at 13:16, he did so subject to new conditions imposed by him

> *"These are supplied on the strict understanding that MK (Monwabisi Kalawe) does not know you have it".*

28. Further emails were sent to us *"strictly off the record"*. In other words, Mr O'Sullivan was playing a game of his own. He was feeding us information which we could not relay to the law enforcement agencies. I got the distinct impression that Mr O'Sullivan was trying to wrest back the initiative by attempting to take over the investigation and leaving us in his wake.

29. Subsequently, and without any reference to us, Mr O'Sullivan notified Steven Powell on 8 March 2015 that he had opened a docket of his own accord at the Bramley Police Station under reference CAS 94/3/2015. In his affidavit to the police he recounts, in paragraph 11, that he had a meeting with Mr Kalawe on 3 March 2015, in which he obtained some further albeit limited and redacted electronic evidence from Mr Kalawe.

30. He offered to "*make the original PDF files available to the police to carry out their own forensic process*". In other words, Mr O'Sullivan completely circumvented our agreement.

31. We were taken aback that Mr O'Sullivan had decided, of his own accord, and despite our agreement, to prefer criminal charges himself.

32. Steven Powell responded to him immediately, saying *inter alia*

"Hi Paul, We are in the process of pursuing Mbalawa. You really should have consulted with George and I before proceeding on anything related to this matter."

33. The next day, 9 March 2015 at 05:34, Steven Powell also warned him

"There are inconsistencies in the information supplied by you to us and the affidavit supplied by you to the authorities regarding Theron."

34. Steven Powell also reiterated in an email to Mr O'Sullivan at 10:24

"We are conducting an investigation into the forged documents and have been liaising with the authorities. Accordingly it may be counter-productive for you to initiate any action or investigation regarding the documents or any of the alleged role players including inter alia, Mbalawa, Kalawe or Shwete."

35. We were concerned that Mr O'Sullivan had placed restrictions on the information he had provided to us, and specifically that he was providing us with limited, incomplete and selective documents or extracts from documents.

36. Accordingly I wrote to him on Wednesday 11 March 2015. We placed him on notice, at 10:13, to comply with the agreement, specifically paragraphs 3 and 4 thereof, by 12 noon, failing which it would be cancelled.

37. He duly delivered a memory stick to us which he says had *"all the evidence thereon in a manner that allows proper forensic analysis."*

38. We reviewed the information and it became clear that he had given us nothing new. He was still withholding evidence, and moreover, it appeared that he did not actually have, as he had promised us at Cape Town International Airport on 1

March 2015, conclusive and incriminating evidence regarding the masterminds behind the hoax.

39. In the premises we cancelled the agreement as appears from my email to him of 11 March 2015 at 18:19.

40. I attach hereto the further emails exchanged between us.

41. I received a letter from his attorney on 12 March 2015 and responded thereto on 12 and 19 March 2015 respectively.

42. I reiterate that Mr O'Sullivan had failed to comply with paragraphs 3 and 4 of the agreement recorded in my letter of 2 March 2015.

43. It seems to us, with hindsight, that Mr O'Sullivan had hoped to play us along to avoid a debilitating claim against him by our client. However, either he never had the conclusive incriminating evidence he promised, or he was unable to find it. In other words, he could not meet the obligations he had undertaken in terms of the agreement.

44. On either construction he did not keep his end of the bargain. Hence our client was entitled to cancel the agreement.

GEORGE MORRISON VAN NIEKERK

I certify that:

I. the Deponent acknowledged to me that :

A. He knows and understands the contents of this declaration;

B. He has no objection to taking the prescribed oath;

C. He considers the prescribed oath to be binding on his conscience.

II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".

III. the Deponent signed this declaration in my presence at the address set out hereunder on **7 April 2016**.

COMMISSIONER OF OATHS

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G van Niekerk | our ref
your ref

25 February 2015

Paul O'Sullivan
paul.osullivan@poaa.za.com

Dear Sir

COMPLAINT – SOUTH AFRICAN AIRWAYS

We refer to your email of even date to Ms Duduzile Cynthia Myeni, and copied to our Mr Steven Powell.

We have been instructed to respond thereto on behalf of our client, South African Airways.

Ms Myeni categorically denies the scurrilous allegations that she had received any money whatsoever, whether *"linked to e-toll"* or *"linked to wide-bodied aircraft tender at SAA"*. She also denies that she has any foreign bank accounts whatsoever.

We are urgently investigating the authenticity of the bank statements.

In the meanwhile you are invited to provide your information to the investigating authorities.

The board of SAA does not intend to accede to your demand to abandon the disciplinary enquiry into the conduct of Mr Monwabise Kalawe. The Board has every confidence in the ability of the independent chair of that enquiry, Adv Nazeer Cassim SC, to determine the veracity of the charges against Mr Kalawe. The enquiry must run its course.

We are instructed, finally, to record, insofar as Ms Myeni is concerned, that your accusations are defamatory in the extreme. All her rights are reserved.

You are cautioned not to repeat these allegations in public as doing so will aggravate our client's damages.

In the meanwhile we are instructed to demand, as we hereby do, that you provide us immediately with the details of everyone with whom you have shared this information.

Yours faithfully
ENSafrica
Per:

George van Niekerk

Affidavit

I, the undersigned,

Steven David Powell

do hereby make oath and say that:

1. I am the managing director of ENS Forensics (Pty) Ltd (ENS Forensics), situated at ENS House, 1 North Wharf Square, Loop Street, Foreshore, Cape Town, with telephone number 021 410 2500.

2. In November 2014 ENS Forensics was mandated by board of South African Airways SOC Ltd ("SAA") to investigate allegations made against the Group Chief Executive Officer, Mr Monwabisi Kalawe (Kalawe) and the company.

3. I was furnished with a list of allegations by Tony Dixon and Dr John Tambi, who together formed a sub-committee of the board which oversaw the investigation and to whom I reported.

4. The list of allegations included but was not limited to the following:

   4.1. Breakdowns in Corporate Governance;

   4.2. Maladministration;

   4.3. Baggage-wrapping contract;

   4.4. Non-compliance with the Companies Act which emerged from enquiries by Companies Intellectual Property Commission (CIPC);

   4.5. Appointment of McKinsey;

   4.6. Grading of the Job of the Manager in the CEO's office;

   4.7. Acquisition of stake in the Senegal Airline;

   4.8. Late renewal of the RMB finance facility; and

   4.9. Changing of the Board resolution regarding the number of aircraft to be financed by Pembroke."

5. During January 2015, I submitted a report setting out the findings of the investigation to the SAA Board. The investigation resulted in misconduct charges being brought against the SAA Group CEO by SAA.

6. During February 2015, while the disciplinary process against Mr Kalawe was pending, I was copied on a series of e-mails which were sent to Ms Duduzile Cynthia Myeni, the Chair of the board of SAA and others, by Mr Paul O'Sullivan, in which he alleged that Ms Myeni is the holder of foreign bank accounts containing more than R250 million. These allegations were categorically denied by Ms Myeni and I was mandated by the sub-committee of the board to investigate the allegations. The correspondence from Mr O'Sullivan is set out below:

6.1. I was copied on an e-mail from Mr O'Sullivan dated 25 February 2015, sent at 10h04, which he addressed to Ms Myeni, the chairman of SAA. In this e-mail Mr O'Sullivan attached extracts from bank statements purporting to be statements belonging to Ms Myeni and *inter alia* stated that he has been informed that the "high balance" in these bank accounts is linked to payments received by Ms Myeni in respect of the wide-bodied aircraft tender for SAA and the e-toll systems of Gauteng's roads. In the e-mail Mr O'Sullivan *inter alia* requested Ms Myeni to come clean; he stated that Ms Myeni launched an unlawful attack on Mr Kalawe and that she be dismissed, alternatively she resigns and that she pays back the money. One of the bullet points in the conclusion to the mail was directed at ENS. It stated the following: "Since I am fairly certain that ENS will not want to be part of the unlawful attack you launched on Monwabise Kalawe for instilling counter corruption controls into the wide-bodied aircraft tender process, I am copying them in on this mail. At the very least, they should bring about your dismissal from SAA and the cessation of your unlawful witch-hunt" This e-mail is attached as Annexure "A1 to A3" to this affidavit.

6.2. At 11h17 on 25 February 2015, Mr O' Sullivan copied me on a further e-mail sent to Ms Myeni, attaching a further purported BNP Parabas bank Statement in the name of Ms Myeni, which he indicated had not gone through with his earlier transmission. This e-mail is attached as Annexure "B1-B4".

6.3. Mr O'Sullivan furthermore attached a complaint to this e-mail which he lodged against Ms Myeni in November 2014, in terms of which he, *inter alia*, accused Ms Myeni of launching an unlawful attack on Mr Kalawe, referred to the wide bodied aircraft tender and suggested that Ms Myeni may be involved in corrupt activity relative thereto and informed her of the rumour in respect of the father of her daughter. This complaint, dated 7 November 2014, as well as various e-mails between Adv Nkosi-Thomas and Mr O'Sullivan and the statement from O'Sullivan dated 10 February 2014 which was also attached to this complaint, is attached as Annexure "C1 – C19".

5. On 25 February 2015, I was copied on an e-mail which Mr O'Sullivan sent to various Ministers and the Deputy President at 03:55 pm attaching the statements purporting to be that of Ms Myeni and the Interpol Request for Surveillance. In terms of this e-mail Mr O'Sullivan accuses Ms Myeni of highly questionable activity resulting in her having cash in excess of R250 million at her disposal with reference to the wide bodied aircraft tender and

the e-tolls. Mr O'Sullivan further states that Ms Myeni victimised Mr Kalawe, launched an unlawful attack on him in the form of a witch-hunt on him which caused SAA to appoint ENS thereby incurring fruitless and wasteful expenditure. Mr O'Sullivan made a number of demands in the e-mail which *inter alia* included the suspension of Ms Myeni, reinstating Mr Kalawe and replacing the SAA Board. This e-mail which attached a number of documents purporting to be a report from a "Commission de Surveillance Du sector Financier" which in turn attached bank documents purported to be linked to Ms Myeni, is attached as Annexure "D 1- D9"

6. According to Mr O Sullivan these documents were originally sent to him by Mr Monwabisi Kalawe. After he complained to Mr Kalawe that the documents were not clear he received clear copies of the documents from Ms Jessica Bezuidenhout, a journalist at the Sunday Times who e-mailed the documents to him at 11h55 on 25 February 2015. This email is attached as Annexure" E1 – E7"

7. In terms of the sworn statement of Mr O'Sullivan Mr O'Sullivan states that the photos and/or documents were provided to him by Mr Kalawe "to look at" and that he took the unilateral decision to disseminate the information. The sworn affidavit by Mr O'Sullivan is attached as Annexures "F1-4"

8. On 25 February 2015 at 05:13 pm I sent an e-mail to the Ombudsman for the Bank of Austria and the Unicredit Group informing them of the statements purporting to be that of Ms Myeni and enquiring whether an account was indeed opened in Ms Myeni's name as Ms Myeni denies that these are her accounts. This e-mail and its attachments are attached as Annexure "G1-10"

9. ENS instructed attorneys in France (Bredin Prat) to verify whether the banks statements in respect of BNP Paribas purporting to be statements belonging to Ms Myeni were authentic. ENS received an e-mail from our attorneys in France on 25 February at 20h45 advising that Chris Sullivan and Barry Stevens whose names appear on the bank statements have never been employed BNP Paribas at any stage and that the IBAN issue is being investigated. This e-mail is attached as Annexure "H1-3".

10. On 26 February 2015 ENS received an e-mail from Bredin Prat advising that the anti-fraud service of BNP Paribas informed it that the IBAN number on the statement belongs to an account which was opened on 18 January 2008 and was closed on 2 December 2014. What is worth noting is that the statement runs up until 31 December 2014 while the IBAN number for the statement indicates that the account was closed on 2 December 2014. This e-mail is attached as Annexure "I 1-4".

11. On 25 February 2015 at 05:19 pm I was copied on an e-mail which Mr O'Sullivan sent to the same recipients as the e-mail which he sent at 03:55 pm which is attached as Annexure "J" In terms of this e-mail, Mr O'Sullivan informs the recipients that the statements may be fraudulent, that they exercise "extreme caution BEFORE doing anything" and that he will carry out further investigations and revert.

12. I contacted Mr O'Sullivan shortly after receiving the above e-mail to confirm that he had sent the mails. During that discussion Mr O'Sullivan indicated that he was abroad and he indicated that he was provided with these statements by Mr Kalawe and that he had no idea that they were fraudulent.

13. My colleague, George van Niekerk and I met with Mr O'Sullivan at Cape Town International Airport on 1 March 2015 and again at ENS in Sandton on the evening of 2 March 2015. Mr O'Sullivan indicated to my colleague and I that he will cooperate with ENS Forensics and provide our firm with the information Mr Kalawe provided to him on the condition that Ms Myeni does not institute civil or criminal action against him. We indicated to Mr O'Sullivan that while Ms Myeni may agree to this, there is no guarantee that other institutions may not institute action against him. We then entered into an agreement with Mr O'Sullivan that our client would not pursue action against him if he supplied us with the evidence regarding the source of the forged documents, and the identity of those behind what appears to be a campaign to procure the termination of the tenure of Ms Myeni as chairperson of the Board of Directors of SAA, as well as the disciplinary proceedings into the conduct of the CEO of SAA, Mr Monwabise Kalawe, and his reinstatement. We agreed that we would provide Mr O'Sullivan with an opportunity to secure the evidence in a manner which is reliable, and which will withstand scrutiny in a criminal prosecution. We conveyed that the evidence that Mr O'Sullivan supplied would be made available to the law enforcement agencies to proceed against those ultimately responsible for this campaign and that the agreement was based on him supplying evidence that is sufficient to secure a conviction against those responsible. In terms of the agreement we expressly stated that if the evidence Mr O'Sullivan supplies is insufficient to secure a conviction of those responsible, then Ms Myeni would pursue the full extent of her legal remedies against you. The agreement is attached as Annexure "K".

14. Subsequent to this meeting, Mr O'Sullivan supplied fragmented bits of information, most of which he marked as "off the record" and insisted that we not divulge to Mr Kalawe that the information came from Mr O'Sullivan.

15. On 11 March 2015, my colleague, George van Niekerk wrote to Mr O'Sullivan, copying me on his correspondence, notifying Mr O'Sullivan that the agreement is cancelled. Mr Van Niekerk conveyed to Mr O'Sullivan that what he had provided to date, was limited, incomplete and selected documents and extracts from documents and that this is a fundamental breach of the agreement. That email is attached as Annexure "L".

16. Prior to our cancellation of the agreement with Mr O'Sullivan, he had sent me the following:

16.1. On 3 March 2015, Mr O'Sullivan sent me an e-mail at 1:16 pm. Attached to the e-mails were four e-mails from Mr Kalawe to Mr O'Sullivan attaching the statements purporting to be those belonging to Ms Myeni. This e-mail and the attachments are attached as Annexure "M". It is apparent that Mr Kalawe sent the statements to Mr O'Sullivan on 25 February 2015 at 09h41, 09h42, 09h43 and 09h44 respectively, i.e. that is before Mr O' Sullivan sent the e-mail to Ms Myeni.

16.2. On 3 March 2015 Mr O'Sullivan sent me a further e-mail at 16:24 pm summarising how Mr Kalawe came into possession of the bank statements. According to Mr O'Sullivan's e-mail Mr Kalawe is aware that Mr O'Sullivan is providing this information contained in this e-mail to ENS Forensics. This e-mail is attached as Annexure "N".

16.3. Attached to the abovementioned e-mail is the e-mail trail between Mr Kalawe and Mr Mbulawa dated 14 February 2015. In terms of these e-mails Mr Mbulawa *inter alia* provided Mr Kalawe with his bank details to make the payment for the bank statements and Mr Kalawe requests that the "guys stick to the original quote". These e-mails are attached as Annexure "O".

16.4. The e-mails were also forwarded to me from Mr O'Sullivan. In terms of the first e-mail which was sent to Mr Kalawe from Mr Mbulawa on 26 February 2015 at 3:01 pm, Mr Mbulawa confirmed that the statements are authentic and originals. He further defended the integrity his team who obtained these statements for him.

16.5. Mr Kalawe responded to Mr Mbulawa's e-mail on the same day at 22:19 and stated that "there is fraud and theft here" and that "these ills must be confronted and there must be consequences for the guilty parties". This e-mail is attached as Annexure "P".

16.6. On 12 March 2015, Mr O'Sullivan provided us with a memory stick containing various documents. . The documents included e-mail correspondence between Mr Kalawe and Mr Mbulawa on or about 3 March 2015. These documents are attached as Annexure "R 1-4" and "S 1-10".

16.7. The memory stick also contained an e-mail sent my Mr Kalawe to Mr Mbulawa and Mr Tshwete on 2 March 2015 at 16:22:29 in which Mr Kalawe states that "I called for a 100% authentic document right from the start and this was the basis under which I was prepared to pay out of my own pocket such a lot of money for the service. What

I received is a document that is 100% fraudulent and therefore cannot be relied upon"; and

16.8. "I am the only one who paid for the document and yet a similar document was sent by some strange reason directly to the Sunday Times. As agreed with you I was going to follow a discreet and structured process in sharing the document with the relevant authorities. I was always of the understanding that I was working with a 100% authentic document."

16.9. The memory stick also contained e-mail correspondence between Mr O'Sullivan and Mr Kalawe requesting clearer copies of the documents sent, as well as an email from Ms Bezuidenhout of the Sunday Times to Mr O'Sullivan attaching copies of the bank statements purporting to be those of Ms Myeni.

17. This issue relating to the fraudulent bank statements was reported extensively in the media on 28 February 2015 and 2 March 2015 and there has been substantial subsequent media coverage, which has been damaging to both SAA and Ms Myeni. The media articles of end February and Early March are attached as Annexure "Q 1- 7"

18. Prior to receiving the memory stick, on Sunday 8 March 2015, I received an e-mail from Mr O'Sullivan attaching a sworn affidavit that he had deposed to and submitted to the Bramley Police station in Johannesburg on 7 March 2014. This document as well as a series of Annexures Marked POS 1-8 is attached as Annexure T1-41.

19. I noted that Mr O'Sullivan included a sworn statement marked POS 1, which was attached to the e-mail which he sent to Ms Myeni, on which I was copied on 25 February 2015. The statement and annexures are part of the complaint referred to in paragraph18 above. The statement describes how in January 2014 Mr O'Sullivan had met a private investigator by the name of Mr Hennie Theron who had requested him to assist in securing the bank records of certain SAA Directors. Mr O'Sullivan indicated that Theron's file contained credit checks that were performed on Mr Kalawe, Mr Andile Khumalo and Carol Roskruge.

20. In Paragraph 4 of the statement attached as Annexure "T5", Mr O'Sullivan indicates that he immediately pointed out that "***neither myself, nor any of my directors or staff "engage in unlawful activities, such as obtaining bank records and telephone records***". Mr O'Sullivan further stated the following: ***"I went on to say that if his client needed same, it should be obtained through the criminal justice system and then by opening a docket and the police using Section 205 of the Criminal Procedures Act"***. The statement attaches a series of e-mails purporting to be exchanges with Adv Lindiwe Nkosi Thomas, who was a board member at the time, but resigned shortly after this attempt at accessing Mr Kalawe and other director's bank statements.

21. In paragraph 8 of the statement, Mr O'Sullivan indicates that he "*contacted Monwabisi Kalawe as he is known to me, and advised him as to what had transpired*". According to Mr O'Sullivan, Mr Kalawe suggested that it would be good if he could obtain evidence as to whom had instructed Theron. He then proceeded with an attempt "to lure Theron into bringing his client to his offices, but this lure did not work."

22. I noted further that Mr O Sullivan had also attached notes from discussions that he had conducted with Mr Kalawe on 2 and 3 March 2015. According to Mr O'Sullivan's notes of those meetings marked as POS 8 and attached to the affidavit submitted by Mr O'Sullivan to me on 3 March 2015 which is as Annexure "T33", Mr Kalawe and Mr O'Sullivan discussed the sequence of events of how Mr Kalawe came to procure the information which he had then forwarded to Mr O'Sullivan who disseminated the information to Ms Myeni and the various parties as explained in paragraphs 2 to 5 of this statement. The summary explains that there were negotiations around price for obtaining the statements and this was fixed at R150, 000.00, which Mr Kalawe then transferred directly to a Mr Abe Mbulawa's, Standard Bank Account 300-558-198 with a reference Valor IT. According to Mr O'Sullivan, "*Mr Kalawe thought he was buying proof of wrong doing, confirmed in a surveillance report*".

23. Prior to receiving this statement, my colleague George van Niekerk and I interviewed Mr O'Sullivan on 2 March 2015 at our ENS offices in Johannesburg. During that meeting, Mr O'Sullivan indicated to Mr van Niekerk and I that Mr Kalawe had advised him that he (Mr Kalawe) was informed by Mr Mbulawa that there were two offshore accounts held by Ms Myeni and that Mr Mbulawa had wanted a payment of € 7500 to obtain and provide each account to Mr Kalawe and this amount was rounded off to R150 000, 00.

24. It is also important to point out that during that meeting as well as multiple telephonic discussions that I held with Mr O'Sullivan, he never once suggested that Mr Kalawe had blown the whistle to him. He also did not suggest that the provision of the documents to him amounted to a protected disclosure in terms of the Protected Disclosures Act as was subsequently alleged by Mr Kalawe in various statements that he submitted in labour proceedings.

25. On 7 March 2015 Mr O'Sullivan made a sworn statement to the SAPS. This sworn statement and its attachments is attached as Annexure "T" to this statement.

26. After receiving the sworn statement from Mr O'Sullivan on 8 March 2015, I telephoned Mr O Sullivan on 9 March 2015 in the presence of my colleagues, George van Niekerk and Rudi de Wet. I specifically asked Mr O'Sullivan if Mr Kalawe had ever indicated that he disclosed the documents relating to Ms Myeni's offshore bank accounts as a protected disclosure to him. He confirmed that he had not and immediately retorted that he is not an appropriate person to blow the whistle to.

27. I obtained the cellular telephone records of Mr Kalawe's company cell phone from SAA, which indicates that Mr Kalawe has been in contact with Mr O Sullivan and Mr Tshwete since September 2013 and Mr Mbulawa from 21 January 2015. There are a total of 172 records of communication between Mr Kalawe and these parties. A list of the cellphone communications is attached as Annexure "U 1-4" .

28. I have conducted internet research on the bank account details and confirm that the BNP Parabas Paris, Bank account number 00010099772 which Mr O' Sullivan initially claimed belonged to Ms Myeni as per the string of emails sent by Mr O' Sullivan referred to in paragraphs **Error! Reference source not found.** and 5 above.

29. My research has confirmed that the above account number in fact belongs to the European School of Haematology, which reflects the relevant bank number on line for potential applicants to make registration and other payments to, in respect of courses and services offered by the said school.

30. The European School of Haematology website can be accessed at the following link: *http://www.esh.org/about-esh/esh-bank-information/*

31. An extract from the website confirming the above account details is set out below:

"ESH Bank Information
If you prefer to pay your registration fee or sponsorship by bank transfer or cheque please use the information below:
Cheques should be made out to the order of the European School of Haematology and mailed to ESH, IUH Centre Hayem, 1 av Claude Vellefaux 75475, Paris Cedex 10, France (N.B. : it is very important that you keep a photocopy of your cheques and that you indicate cleary for which conference or activity you are making the payment as well as the name or names of participants for whom you are paying the registration fee)
If you choose to pay by bank transfer, please verify that the conference is a) ESH, b) ESH-EHA, c)ESH-ISTH and use the corresponding bank details below. (N.B.: it is very important that you keep a copy or proof of your bank transfer and that you indicate cleary for which conference or activity you are making the payment as well as the name or names of participants for whom you are paying the registration fee)
a) FOR ESH CONFERENCES:
Bank address: BNPParibas, 156 avenue Parmentier, 75010 Paris, France
Bank code: 30004.
Agency code: 01730.
Account number: 00010099772.
Control key: 92.
IBAN: FR 76 3000 4017 3000 0100 9977 292

BIC: BNPAFRPPPBU
b) FOR ESH-EHA WORKSHOPS/TUTORIALS:
Bank address: BNPParibas, 156 avenue Parmentier, 75010 Paris, France
Bank code: 30004.
Agency code: 01730.
Account number: 00010084349.
Control key: 92.
IBAN: FR 76 3000 4017 3000 0100 8434 992
BIC: BNPAFRPPPBU"

32. On 17 March 2015 I contacted the Ombudswoman of the Unicredit Group Ms Andrea Pompl to ascertain whether the documents purporting to be the bank statements of Ms Dudu Myeni with Bank Austria are authentic. My correspondence with attachments as attached as Annexure "V1-10".

33. At 09h45 on 17 March 2015 Ms Pompl confirmed by email that the bank statements purporting to be Bank Austria statements for Ms Myeni are "fakes" and that she has instructed the Bank Austria department of legal affairs to take all necessary steps against it. Ms Pompl therefore confirmed that these documents are not authentic. The –mail from Ms Pompl is attached as Annexure "W".

34. On 17 March at 12h33 I received an email from Mr Anton Gerold of Bank Austria – Member of UniCredit's Legal Department, confirming that Bank Austria does not *"hold any assets in the name of the person you mentioned in your e-mail below"* being Ms Myeni. The e-mail from Mr Gerold is attached as Annexure "X"

35. Mr Daniel Theron of ENS Forensics conducted an investigation on the electronic copies of these contentious documents. In summary Mr Theron found that the underlying MS Word document, from which the "pdf" document was created, was in fact created by Mr Mbulawa His affidavit explaining his findings is attached as Annexure "Y".

36. Further indications that these documents are in fact not authentic are as follows:

    36.1. The name of the UniCredit Group is misspelt. See Annexure "T 32"

    36.2. The signatories on the BNP Parabis statement are not employees of the bank. See Annexure "T 29" ;

    36.3. The account number which purports to be Ms Myeni's account number is in fact the account number for the School of Haematology. See annexure "T30"; and

36.4. The IBAN number relates to another account which has been closed on 2 December 2014 whilst the bank statement purports to be a statement of up to 31 December 2014. See annexure "T30";

37. On 17 March 2015, I conducted research on the internet website of the Commission De Surveillance Du Sector Financier (CSSF) Luxembourg, which was the institution purported to have supplied the attached bank statements from BNP Parabas and Bank Austria. The CSSF website contained a searchable database which reflected all entities which fall under the supervision of the CSSF. Powell's research confirmed that neither BNP Parabas nor Bank Austria were reflected on the CSSF database. Additionally Powell initiated enquiries directly to the CSSF and received a confirmation from Danielle Meyrer of the CSSF that the purported CSSF document which we had sent to him is a fake. The correspondence from Mr Meyrer is attached as Annexure "Z 1-7"

38. In addition, on 14 March 2015, Ms Myeni deposed to an affidavit under oath for purposes of the investigation under the auspices of the Directorate for Priority Crime Investigation and the South African Police Services. In her affidavit Ms Myeni confirms that the allegation by Mr O'Sullivan that theses bank accounts are her personal bank accounts is false. She further expressly confirms that she does not have bank accounts with Bank Austria or BNP Parabis and denies receiving corrupt payments to these bank accounts.

39. I have been mandated by the sub-committee of the board of SAA to investigate who is responsible for acquiring the documents disseminated by Mr O'Sullivan. I requested the ENS employment law team to request Mr Kalawe's bank statements, which he failed to respond to.

40. Ms Myeni has deposed to an affidavit setting out her denial of the allegations, referred to above. I request the South African Police Services to conduct further investigation into this matter. In this regard, I request the authorities to subpoena Mr Kalawe's bank accounts as well as those of Mr Abe Mbulawa as well as the private iPads and telephones of Mr Kalawe, as in my view, Mr Kalawe actions may constitute a violation of Sections 3 of the Prevention and Combating of Corrupt Activities Act, (Act 12 of 2004) in that he appears to have provided gratification to another person in order to influence that person to attempt to provide or procure private confidential records related to Ms Myeni.

Steven David Powell

I certify that:

I. the Deponent acknowledged to me that :

A. he knows and understands the contents of this declaration;

B. he has no objection to taking the prescribed oath;

C. he considers the prescribed oath to be binding on his conscience.

II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".

III. the Deponent signed this declaration in my presence at Sandton on 2nd September 2015

COLONEL
A.K. HOOSEN
COMMISSIONER OF OATHS

Amod Khalil Hoosen
Colonel
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(DPCI) Organised Crime Section
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SEQ 29/2020-547

JPP 44

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
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Adv. A Chauke

DPP South Gauteng

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0001

Tel: (012) 845 - 6000
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www.npa.gov.za

Date: 20 August 2014

Dear Adv. Chauke

ALLEGED RENDITION: DPCI GAUTENG
DIEPSLOOT CAS 390/07/2012

I refer to the above matter and your letter fax dated 3 July 2014, together with enclosures, which was transmitted to my office today. Kindly accept my apology for the delay in my response therein.

I confirm that indeed this docket comprising six lever arch files and one small file was delivered to my office. I am still busy considering it. You may accordingly proceed to close your file.

Kind regards,

Mr Mxolisi Nxasana

National Director of Public Prosecutions

HIK/WIO JPP45

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

SIBONGILE MZINYATHI

and

GEORGE BALOYI

PRESENT:		
	MR SIBONGILE MZINYATHI	- DPP
	MR GEORGE BALOYI	- DPP
	MR SANDILE JULY	- Director, Werksmans
	MS KERRY BADAL	- Associate, Werksmans
	MR SANDILE TOM	- Associate, Werksmans
	MR KWAZI BUTHELEZI	- Candidate Attorney

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17 April 2015

MR JULY: My name is SANDILE JULY, I'm from WERKSMANS, and today is 17 April 2015 at the offices of the DPP in PRETORIA, with ADV MZINYATHI and ADV BALOYI. I'm with SANDILE TOM, an Associate from WERKSMANS, KERRY BADAL, an Associate from WERKSMANS, and KWAZI BUTHELEZI, a Candidate Attorney from WERKSMANS. Mr Mzinyathi, we have given you the background, and told you what MR CHAUKE told us about the

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docket, when he received it, and it was taken away from them by KHUBA and a certain MR ANGUS from IPID. The docket was returned to the NDPP office, and according to CHAUKE when they enquired about the docket, they were told that the docket was never intended to be returned to his office. Then it was advised by the NDPP to close his file, therefore he was not going to deal with the matter anymore.

In December, when he was called by the NDPP about the same docket, he refused to accept the docket back because he had already decided to close his file, as per the advice of the NDPP. On 1 April this year, he found in his office a box, which was closed - sealed - to be opened by him only. Inside that box were arch-lever files, including a letter addressed to him dated 13 March 2015. In a nutshell what it said was that the DPP of NORTHERN GAUTENG, which is ADV MZINYATHI, has made a recommendation that DRAMAT and the others should be prosecuted. But in the letter he is requesting the DPP of GAUTENG, which is MR CHAUKE, to make a decision, after consulting with him as to whether prosecution should take

place on that. That's the summary of the letter, but there are other issues contained in that.

Mr Mzinyathi, you are supposed to tell us about your involvement in the matter.

MR MZINYATHI: Thank you. The week before 13 January - and I don't remember the exact date, but I was still on leave - I got a call from the NDPP who enquired from me about my knowledge of the Renditions case. I told him that I know nothing at all. Before then I had not been involved in any way with this matter. He then told me he was going to forward the matter to me, because he had received it from ADV CHAUKE, and he told me the reason why he intended to give it to me, was because it transpired to him that DIEPSLOOT, which is the area in which some of the incidents occurred, falls under my area of jurisdiction.

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

MR MZINYATHI: Yes.

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

when we started recording, it was taken to him by MR VAN ZYL by two people, which is KHUBA and ANGUS, and it never went back to CHAUKE.

MR MZINYATHI: In other words is your question that he got it from CHAUKE personally?

MR JULY: No, my question is did he get it from CHAUKE personally or from the office of CHAUKE.

MR MZINYATHI: Look, from my recollection I think he actually sent it from CHAUKE, but from my point of view I really don't know whether anything much turns on that.

MR BALOYI: It might have had a very long turn, but eventually what it means is it ended up on his table.

MR JULY: I will tell you that it is critical for our purposes, and I will tell you why. We need to know exactly what happened to the docket. That's one thing. Everything turns on that, as to who gave him the docket. Because our understanding is that the docket came from IPID back to his office.

MR MZINYATHI: Oh, I see. Then I follow what you are saying. Well, the information that he got it from CHAUKE - as I said a couple of minutes ago, because DIEPSLOOT is my jurisdiction, he said

I must have a look at this matter. I told him that in the NDPP I was on leave, but I was going back to work on Tuesday, the 13th. Indeed on the 13th I was here, and the docket came in a sealed box, with a covering letter. I think the docket constitutes five or six lever-arch files - the docket itself - with several fives of annexures and exhibits. What I then did, and even before talking to ADV MARAIS, was to read that docket myself, and I made comprehensive notes, which are these, off the original of the docket. I think I took about a week to read this docket, because I was reading it amongst the many other things that I had to do. Then I called one of the most senior deputies, ADV BALOYI, and said: George, I allocate this matter to you, go through this docket, and when you are done let's discuss it. I must mention that from time to time, as he was reading, ADV BALOYI would give me some verbal updates. I still remember, for instance, if he had made a call to the investigating officers, he would tell me, because I kept on enquiring from him: What is the progress in the matter?

In one of the files that was delivered with the docket to me on the 13th, I must confirm that I saw the report. I think this was the last report - the red one - the one ....

MR TOM: It's the one dated 18 March 2014?

MR MZINYATHI: Yes. It was part of the docket, it was an annexure. Then I was careful to finish reading that docket before reading the report. When I read the report, for me it was very, very useful, because in a very detailed way the report goes a long way to summarising the statements. Every statement in the docket is summarised in that report. I must say that helped me to cross-reference with my notes about whether I had captured a certain statement correctly. I do observe that the report concludes by making its own recommendations about who should be charged and who should not be charged.

While all of this was happening, I was not aware that there was anything called a first report. In fact it came to our attention, George, much later - I think after about a month - that there was a first report. That happened over the news, or something like that,

and we were all surprised there was a first report. I then went to visit the NDPP on a date which I don't remember for a matter unrelated to this matter.

MR JULY: That was more or less when? Was it before ...

MR MZINYATHI: No, before. This was definitely before our recommendation. He then told me: By the way, there is a first report here, have you seen it? I said: No, I was not aware that there was a first report. He then made me a copy, and this is the copy that my colleague, GEORGE, just showed you now, the one with scribbling on the cover. I did not read that report in any amount of detail, but on a cursory observation my point of view was that the summary of the statements was basically the same. Of course, as it has now become well reported, its recommendations differ from the second report. I gave it to GEORGE. In fact at that time the docket had already been with GEORGE for some time. I had finished reading the document myself.

MR JULY: Did he tell you whether he was in possession of that report when he gave you the docket?

MR MZINYATHI: I did not ask. As I was reading this document,

I was formulating conclusions or views in my mind, but I kept those to myself because I was waiting for GEORGE to come to his conclusion. Eventually then GEORGE came here - I think let me point out that as he was reading it, GEORGE from time to time would say: The DPP - I think this is were the case is going, in terms of his own reading. He eventually came up with recommended charges. GEORGE is going to talk about that at length.

MR JULY: Did you share the new report with GEORGE?

MR MZINYATHI: Yes. As soon as I received it - I didn't keep it for a long time. As I say, from my point of view I didn't even read it in any amount of detail, but just paged through it. It basically looks like the same report in terms of how it summarises the statements. The only difference is towards the end, with the recommendations.

Then GEORGE, after reading the report and having discussed the matter with me from time to time - I still remember on certain occasions in relation to one charge, for instance, we would debate whether this was a conspiracy, was it common purpose - all those things, because

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

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

MR BALOYI: That's from 1 December 2014.

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

MR MZINYATHI: You see that's a matter for you to determine.

In terms of the Criminal Procedure Act - and I'm sure we are all aware of it - I can only decided for another DPP if jurisdiction has been transferred. There is a specific section in the Criminal Procedure Act where the NDPP transfers jurisdiction to another DPP.

MR JULY: Yes, yes.

MR MZINYATHI: In such a situation I become seized with the matter as if I am the DPP of first instance, and then I can decide. We were constrained in this matter - and we were careful, Mr July, because inasmuch as DIEPSLOOT was under my jurisdiction where offences were committed, at the time we were making a decision I didn't have jurisdiction over DIEPSLOOT.

MR JULY: But do you know why that jurisdiction was not transferred, if we take your argument to its conclusion, which is that there can be a transfer of jurisdiction, even after the first, logically the NDPP had the power to say: I am transferring this to you.

MR MZINYATHI: Yes.

MR JULY: And that didn't happen?

MR MZINYATHI: No, it didn't.

MR BALOYI: Actually at some point we were contemplating

returning the docket to the NDPP to say: It doesn't fall within our jurisdictional area. It had the MUSINA leg, and obviously the matter had a chequered history, and we felt let's just make a recommendation at least.

MR MZINYATHI: So I think I have clarified or I have attempted to clarify why we chose the recommendation. You know, if you have a look at that recommendation even the style in which it is prepared, it is prepared in the style in which we normally make decisions. It's just that instead of saying the DPP decides, we say: It is recommended.

MR JULY: But in any event you were recommending a decision. It's not like you didn't make a decision.

MR MZINYATHI: No, we did.

MR JULY: You made the decision of recommending to them, meaning that: We are not imposing ourselves, you can still decide, but your decision that you recommended was that.

MR MZINYATHI: Yes.

MR JULY: So the issue of recommendation becomes too difficult.

MR MZINYATHI: Yes. After having done that - and this is also

another issue that I think is being questioned in some quarters, certainly if one takes what one reads in the newspapers to heart, because there is also apparently a school of thought that says: Why did I even return the docket to the NDPP? The same answer I'm giving you is going to hold, because if it was a decision we would have taken the docket to the police with the decision. But because it's a recommendation it goes back to where the docket came from, so that it can either be taken to the police, or he can then say to us: I have read your recommendations and you can maybe decide on the matter. It is at that point where, if we had been called upon to decide, we would have raised the issue of jurisdiction. Isn't that so, George?

MR BALOYI: Yes.

MR MZINYATHI: At that time we would have requested: Please transfer your decision, but then the matter went there on 13 March. Can I pause for now?

MR JULY: So that was in March, when you made your recommendation?

MR MZINYATHI: The recommendation was made a few days before that. 13 March is the date of the memo that

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forwards the recommendation, together with the docket, to the NDPP.

MR JULY: Would you be so kind as to give me that mail? We've got the answer from the NDPP, where he is...

MR MZINYATHI: Have you spoken to him already?

MR JULY: Who?

MR MZINYATHI: The NDPP?

MR JULY: No, not yet. We've got the memo that he sent to (?).

MR MZINYATHI: Okay. I don't think we've seen that.

MR JULY:

"YOUR LETTER DATED 24 MARCH:

The matter is duly referred to the NDPP in terms of (indistinct) the NDPP. I duly referred the matter to the appropriate DPP, Advocate Mzinyathi, who made a recommendation and since referred the matter to the head of NPS to advise on the way forward.

I am duly seized with the matter and will return the case docket to the appropriate authority once a decision has been made.

You will be informed in due course."

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

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

MR BALOYI: Yes.

MR MZINYATHI: Can you please find it for me quickly?

MR BALOYI: I think this is a response to the letter. No, this is from the attorneys.

MR MZINYATHI: This letter is actually a very, very interesting letter, and I think just for purposes of completeness it will become clear. This letter says:

"NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS: ATTENTION S MZINYATHI."

MR BALOYI: Here it is.

MR MZINYATHI: Thanks. It's a letter from the HAWKS of 18 March. NDPP, ATTENTION S MZINYATHI.

MR JULY: This is 18 March?

MR MZINYATHI: 18 March, and this is a letter I received immediately after I had confirmed my email address from COLONEL KWAI. I then forwarded this letter of the HAWKS to the NDPP in a letter dated March, and this letter is actually very, very simple, it's three lines.

"Dear NDPP

Please find attached hereto a letter dated 18 March from the head of the DPCI, the contents of which are self-explanatory."

This letter requests me to do things. I then

say in my letter of 19 March:

> "In response to the request contained in the aforementioned letter, I confirm that this office made a recommendation in this matter, which was forwarded to you together with the docket on 13 March for consideration and feedback."

I sent this to the NDPP via email and hard copy. Then after enquiring, the NDPP wrote to us - George?

MR BALOYI: Yes.

MR MZINYATHI: They wrote to us, questioning why I had forwarded this letter - this response to MR NDLALEZI as well. Because what I did was to write to the NDPP and copied MR NDLALEZI, who is the author of the request.

MR JULY: The letter you are referring to now is dated what?

MR MZINYATHI: The letter I received is dated 18 March.

MR JULY: No, the one that you sent to MR NDLALEZI?

MR MZINYATHI: My response to the NDPP is dated 19 March, the following day.

MR JULY: Oh, so you are responding to the NDPP: I have received this letter from ...

MR MZINYATHI: Yes.

MR JULY: ... and then you CCd him?

MR MZINYATHI: Yes, exactly.

MR JULY: Now he wants to know after the 19th, when you do that, why you CC'd NDLALEZI?

MR MZINYATHI: NDLALEZI.

MR JULY: But what is wrong with that, because it's a letter addressed to you, and now you are saying: Listen, Mr Ndlalezi, I think this should be directed to somebody else.

MR MZINYATHI: Yes.

MR JULY: And you are therefore advising him: This is where you should go.

MR MZINYATHI: Exactly. In fact that is precisely how I had approached it. I didn't want to waste time writing many letters to the NDPP, and then another letter to NDLALEZI to say: I have forwarded this thing. One email or one memo, in my view - and I think it's a view that makes sense as I sit here.

MR BALOYI: But these are the internal workings of the NPA. I suppose they do not form part of your investigation.

MR JULY: You see, we are where we are now because of the internal workings of all these institutions, IPID, the NDPP. Actually the whole issue is

centred around the workings, because it is through the workings that these things happened in the way which has lead to this investigation now. The relevance of certain things - and whether they are relevant we will make that judgment call, as to what is the relevance of the letter from NDLALEZI to MR MZINYATHI, and Mr Mzinyathi, if it does not add any value to our conclusion we will leave out anything that has no relevance. But what we need to appreciate is the fact that this whole thing is centred around how the NDPP handled the matter; how the docket moved from one place to another place, and what the reason was for the movement of the docket. Do you get what I'm saying.

I understand what you are saying there, but we are not here to deal with the general administration. Here we are being specific.

MR MZINYATHI: You see, the reason why I made reference to all these things is because of this letter. This letter creates a nexus to these communications. I could not simply have kept quiet after you had showed me this letter.

MR JULY: I think what needs to be clear to all of us

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here is that we are not here to investigate the administrative operations of the NPA. This is a specific assignment: What happened after the report, and the coming of the second report, and the docket. For instance, what we do know is that MR MZINYATHI was given a report - a report which was dated March, where the docket that was with MR CHAUKE did not have a report dated 18 March, it only had the report of 22 January, because it was handed to him in February. Do you get what I'm saying?

MR MZINYATHI: Mmm.

MR JULY: So it is through that administrative process that we will be able to come to a conclusion as to why things happened in the way in which they happened.

MR MZINYATHI: I think that concludes - of course, I responded to the question to say: Look, I copied Mr Ndlalezi because the letter was actually addressed to me, and I was not under any doubt that I was the intended recipient, because the person had called me and said: Confirm your email address.

MR JULY: So you came to a conclusion, and you sent a recommendation, but your recommendation is

stated in the letter of 1 April, which letter I have seen, where the NDPP writes a letter to CHAUKE saying you have recommended prosecution of several people. Again, who is NPS? The NATIONAL PROSECUTION SERVICE, what is that?

MR MZINYATHI: NPS is a business unit at VGM, at head office, which is responsible for prosecutions in the divisions. Let me put it this way. There are four business units in the NPA. You've got the Asset Forfeiture Unit, you've got NSSD - National Specialist Services Division, or something like that, you've then got the NPS, which is the National Prosecution Service, and then the fourth one?

MR BALOYI: Corporate Services.

MR MZINYATHI: You've got the four deputies: NPS, Asset Forfeiture, NSSD and then there is the LAD, the Legal Affairs Division. Now, the NPS is the business unit which is responsible for the DPPs. All the DPPs report to the head of the NPS.

MR BALOYI: And as the name says, it's responsible for prosecutions.

MR MZINYATHI: Yes, if you want to distinguish it for instance

from asset forfeiture and other issues.

MR JULY: This letter is dated 27 March. Anyway, that's fine.

MR MZINYATHI: I think now we can give over to GEORGE, because, as I say, GEORGE spent a lot of time working with this document.

MR JULY: You see with GEORGE - the other thing is if we speak to GEORGE now we are talking about the merits of his findings. You made mention of the fact that you may have the two reports, and they looked the same. Have you ever looked at the report later on - the other report which was given to you later by the NDPP? Have you ever looked at it to do the comparison?

MR BALOYI: The first report, yes. I remember when we were conferring here, and that was more or less at the stage, as the DPP mentioned. I think we conferred on two occasions. The first time around - and then we went away and just refined the charges in light of our discussions and our final deliberations. I think that's when the NDPP said he received a parcel the previous Friday. I think you met on a Monday, and you mentioned that you received a parcel - I think

you were not here that Friday, and I think you mentioned that it was delivered to your PA. As we were deliberating, I think you then opened that parcel and it turned out to be that first report, if my memory serves me well.

MR MZINYATHI: As I say, I didn't think it was important to have detailed tracking of these events at the time. But one thing is for sure, that when we got the first report we had almost reached a stage where our mind was clear about this thing. In fact GEORGE told me that he didn't even read the report.

They were clear what decision to make based on the second report without reading the first report.

MR JULY: We will just demonstrate to you the differences between the two reports.

MR MZINYATHI: Okay, please.

MR JULY: We have been asked as well whether there is a *prima facie* case, which means that we must decide, based on the information which is in the docket - the information that is before the two sets of people - is there a *prima facie* case to be made against those people. Whether we will be confirming what you have said, or whether we'll be saying there is no *prima facie* case, that will come later, but we have a view. Already we have our own view about what should

have happened.

Adv Baloyi, you then looked at the documents - the docket itself.

MR BALOYI: Yes. I got the docket from the DPP I think around 22 January or thereabouts. I have been looking for the note that the DPP made, and I can't find it, but he made a note to say: George, please read the docket and let's discuss it when you have finished. I would say it was around 22 January or thereabouts. I sat slogging through the docket, and it took me a while because in between I do other work. But from time to time, as the DPP mentioned, I would get an impression about the case, we would discuss it, and so it went. I must say, from the beginning, when I received the docket, as the DPP mentioned it had this email report - the second report. But I never had a look at the report, and I mentioned to the DPP that I might be taking a radical view - there is so much made about the first and the second report, but I don't look at reports. That's not evidence. When I read the docket I'm looking for admissible evidence. These reports are not evidence and they are not going to be

Reports is not evidence Mentioning reports this important

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tendered in court. You can't tell the court: Based on this report, I have decided this. And that's why I decided that I wanted to look at the matter with an unencumbered mind, and that's precisely what I did.

For our purposes reports help only just to have a record at our offices, in case someone phones after we have made our decision. You can quickly go to the file, and say - it's a summary basically, and it helps us in that way.

Firstly, as I said, the reason why I didn't look at it, I wanted to look at it with a clear mind. Secondly, I didn't know what the person who compiled the report was looking at. His summary of the evidence might be defective, and certain issues I would want to look at he might have overlooked. For instances, these reports were authored in January and March last year, and we're looking at the docket almost a year thereafter. Obviously a lot of water would have gone under the bridge in the meantime. So it's sort of updated. But I moved from the premise that I was going to look at the matter with a clear mind, and I read the docket from the front cover to the last page, without

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looking at the report. Actually to this date I have hardly looked at the report. The only time, when we were deliberating with the DPP before we made our final recommendations, when he mentioned that he received the first report, I said: Out of interest let me see what the final recommendation was. That was after we had already decided on our recommendations. I just said: Out of interest let's see what the recommendation was. I just say coincidentally the recommendation sort of dovetailed, even if not in precise terms, but to a great extent there is a confluence between our recommendation and the report.

I read through the docket, and at some point I felt I had broken the back of the evidence. That was around 23 February. I took much longer. I think the DPP spent about a week or so on the docket, but I took much longer. Mostly I was reading the docket after hours and at home, because during the day it's very busy. I deal with representations, so during the day you get members of the public coming to your office. So the only time to read the docket was after hours and on

weekends. On 23 February I called the IO to say I had been looking at the cold facts, and I just needed someone who had lived with this document for a while to give me first-hand information.

MR JULY: Who is this IO?

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

MR JULY: Who is the IO?

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

Maybe before I get to that, during the

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

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

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

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You see, the big problem in this case is that one of the important witnesses, COLONEL MADILONGA, has passed on. I debated certain issues with him, just to find out, should we decide on a prosecution, if there is a way that we can get other reliable evidence. I wanted to hear from the horse's mouth how we could close this big gap that has been left by MADILONGA. We went through the docket. The other issue I wanted him to give me clarity on is the version of former Acting Police Commissioner, NTLANTLA MKHWANAZI. He called DRAMAT at some point, and DRAMAT made an admission to him, that yes, he is aware that his guys took some people through the BEIT BRIDGE border post to ZIMBABWE. I wanted more on the circumstances surrounding that admission that DRAMAT made to MKHWANAZI. Actually I asked him to bring his LIEUTENANT COLONEL - I cannot remember his precise rank, but I said to him: Please see if you cannot get GENERAL MKHWANAZI here; let me just get from the horse's mouth what the discussions were with DRAMAT. But he told me that he couldn't get that right. So we went through the docket, and

I think I did ask him as to the first report, because at that point we only had the second report. He promised that he would send it, but I never received it. I never received it. After that I made my own notes and met with the DPP. We had our first round of discussions, I told him what my feeling was about the matter, based solely on the hard facts. We debated certain issues, I went away, looked at those issues and presented him with the final recommendations. That's how we came up with these recommendations.

Along with our recommendations we sent the NDPP a brief memo motivating why we think a prosecution should be instituted. On 13 March we sent the docket with our recommendations and the memo.

MR MZINYATHI: George, should we not talk about the letter that also (?), because that's very important.

MR BALOYI: Oh yes. On 10 March I was at a conference at EMPEROR's. I think I saw about four or so missed calls on my phone from the IO. That was on 10 March. It was clear to me that he was desperately trying to get hold of me. When I went through my emails in between the

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conference - I think at lunch, or when we were done - actually I tried to call him. Before that I sent him a message to say: I'm in a conference, as soon as I get an opportunity, I will call you. Which I did, just after 16h00, but he didn't pick up. I think I tried him twice or thrice. When I got home, as I was going through the emails, I saw his email, and he was referring to our discussions on 3 March. But what surprised me, obviously I put certain scenarios to him, to say: What if Scenario A eventuates? Let's say we decide to prosecute X, this is the evidence we have against him, if we decide to prosecute Y, this is the evidence we have against him, and what is your comment? On 10 March he sent me a very strange email, saying he understood the different scenarios I was putting to him to mean that that was the decision. I'm just looking for that email that he sent.

I then knocked off an email to him, and said: Look, you misunderstood me when I was debating the various scenarios. Those were not cast in stone, those were possibilities. We then received a letter - hence I said I don't really

want to dwell too much on the internal workings of the NPA. Anyway, we received a letter from the NDPP ...

MR JULY: Before that, that email that was sent by KHUBA was questioning the manner - he thought that you had already made up your mind.

MR BALOYI: Yes, he referred firstly to the telephone conversation that we had on 23 February. Because as I mentioned, he indicated to me that they obtained an opinion from senior counsel, and I was more interested in knowing what senior counsel said, especially around the fact that MADILONGA had since perished, and how could we fill that *lacuna* in the evidence. He told me what BARRY ROUX's views were, and on other matters as well.

Then in this email of 10 March he referred to the telephone conversation we had on 23 February. He said: This is what you said, and he then referred to the discussions we had here in my office on 3 March. He said: This is what you said. He seemed to indicate that I had changed my decision. I then sent him an email on the 10th, responding to his own email. I said: Look, I think you misunderstood me.

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When I was debating the various scenarios with you, it doesn't mean a firm decision had been taken. All I wanted was for you to tell me what your views are, and what evidence there is to sustain that particular scenario. We then received this letter on 31 March from the NDPP. It appears that these two gentlemen went to the NDPP to complain. Amongst other things they said - I told them there were certain issues that were outstanding, which needed to be investigated: the question of the cellphone records. When we discussed with the NDPP, already he mentioned the death certificates. In my discussion with them we mentioned the possibility of getting a statement from the prosecutor who withdrew the charges in ATTRIDGEVILLE - as to on what basis he withdrew the charges, and was there any Interpol warrant at that stage? So I said: Look, this thing has become urgent, it's in the news, and for the purposes of making a prosecutorial decision now we need to have these outstanding issues completed before we make a prosecutorial decision. I said: I will sit down and make a list of all these issues that are outstanding.

and I'll give them to you.

They went to the NDPP, and he said I promised to send them a list of outstanding issues, and I haven't fulfilled my promise. In the email that he sent me on 10 March, he also mentioned that I promised him a list of outstanding issues. I said: I will give it to you as soon as I get a chance to put pen to paper. They went to the NDPP and complained that they hadn't received a minute with the list of investigations. They made sworn statements - both of them - basically saying that I seem to have taken a certain line with the first telephonic conversation on 23 February, and that in the consultation on 3 March I seem to have deviated from that. He also made all sorts of ...

MR MZINYATHI: He went as far as saying that on 23 March (sic) GEORGE went out and came back with a changed view, saying that this is the view of the DPP, which is something that I frowned upon.

MR BALOYI: They say I told them I wanted to consult with the DPP, which is wrong. I went to the bathroom. We started consulting at 09h00, and at about lunchtime I said: Gentlemen, I just

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need a comfort break. I went to the bathroom, and when I came back I bumped into the DPP and said: The IPID guys are here, I'm consulting with them.

MR JULY: Would there be anything wrong if the DPP had a view?

MR BALOYI: Well, I don't think it would be wrong, but what they are saying here is completely incorrect, because they say here I went out, and when I came back I said that DRAMAT must be charged, and that we will have to bite the bullet, something like that.

MR JULY: You see, this KHUBA guy is - we discussed it, and I find it very strange that KHUBA would think that an opinion expressed by anybody else about the charging of DRAMAT would have been influenced by things other than what was before him. Because from what was before him at the time, on 22 January, he came to that conclusion: that DRAMAT must be charged. Right? He then says to us he engaged SESOKO. SESOKO is...

MR TOM: ... the National Head of IPID.

MR JULY: ... the National Head of IPID. He was acting at the time. He engaged SESOKO, SESOKO is a

misinformed
Adv. JP
understand
investigation

former prosecutor, according to KHUBA, who has legal knowledge, and who influenced him otherwise. He influenced him otherwise, and again the issue is around the cellphone. This new information, we are told, is about cellphones. But what we do know, and what he doesn't know that we know - although we told him that we know - is that this so-called new information was there. It was there even before the influence he claimed happened.

MR BALOYI: Actually, MOSING, as I mentioned ...

MR JULY: Yes, he makes reference to the cellphones.

MR BALOYI: That was in February last year already.

MR JULY: Yes.

MR BALOYI: He made reference to it.

MR JULY: So that information about cellphones was there. He then says, as we were talking: You know, now that you are saying it - and that is me now talking to him - I think SESOKO influenced me incorrectly; he was wrong. Knowing what I know now, I would stick with my decision that I took.

MR BALOYI: The initial decision?

MR JULY: The initial decision. That's what he said.

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

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

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

MR BALOYI: Actually now that you mention it, Mr July, I think during our conversation, when he mentioned that the spoke to BARRY ROUX, he said BARRY ROUX amongst others said: Please go back to DRAMAT and let him comment on all these issues, especially that congratulatory meeting, and the meeting with LIEUTENANT COLONEL MKHWANAZI.

MR JULY: But it's very strange that you now would be required to have more information to come to a conclusion, when other people, including him,

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

MR BALOYI: Yes.

MR JULY: Why do you need additional information for you to come to a conclusion? Here are the two reports. Let's assume that they both stand, they both have conclusions based on the information that was before you. Remember these things were concluded in February and March so everything that they saw is before you. Why would you then need this outstanding information for you to come to a decision of some sort?

MR BALOYI: Anyway, I made it clear to them that for a prosecutorial decision we could acquire the outstanding information at a later stage. But I felt that those matters could not stand in the way of us taking a decision. We then say those were loose ends that needed to be tied up before we go to trial.

MR JULY: In any event we are meeting with this guy at 12h00. I think we are finished. We are happy

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

MR BALOYI: Of which report?

MR JULY: Page 9 of the 18 March report.

MR BALOYI: The second one?

MR JULY: Yes. It will be page ...

MR BALOYI: Actually, we had a look with the DPP.

MR JULY: If you look, there is ALFRED NDOBE on page 5. No, I'm on the wrong page, sorry. Page 9.

MR BALOYI: Of the second report?

MR JULY: The second report. If you look at page 9 of the first report and page 9 of the second report, you will see where a paragraph on page 9 of the first report starts with: "He will state", and it's after the paragraph ending with "suspects".

MR BALOYI: "General Dramat to assist them in tracing the suspects."

MR JULY: Yes. After that it's supposed to say:

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

That paragraph has been removed in the second report. If you go to the second report, where it talks about "in tracing the suspects", after that:

"For the period of two weeks ..."

That "For the period of two weeks" on page 9 of the first report is there.

MR BALOYI: So they omitted this.

MR JULY: They omitted this because it makes reference to DRAMAT and about the meeting. They have removed that and about having a meeting with the ZIMBABWEANS.

MR BALOYI:

"He then called him on his cellphone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit ..."

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

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

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

MR BALOYI: MADILONGA is no more.

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

MR BALOYI: Yes, the change.

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

MR BALOYI: I'm with you.

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

MR BALOYI: Yes.

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

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

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

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

And then it says:

> "General Dramat had a meeting ..."

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

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

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

> "EMAILS BY CAPTAIN MALULEKE."

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

> "He sent emails ..."

MR BALOYI:

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

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

need is knowledge, and to provide conditions for that to happen.

MR BALOYI: I mean, he's the head of HAWKS. How can it be said he didn't know about it?

MR JULY: He knew, because there were also SMSs that were not returned by DRAMAT. So if the knowledge was there, and DRAMAT knew, whether DRAMAT was or was not responding to SMSs is neither here nor there. The difficulty arises about his physical presence next to the scene where the crimes of theft and assault happened. That's it. The other ones of kidnapping and defeating the ends of justice - there is no way that he did not know about it.

MR BALOYI: Yes.

MR JULY: So there are a number of those cases where the information has been cut.

MR BALOYI: I think that's where we also brought in conspiracy.

MR JULY: So that is where we are.

THE INTERVIEW ADJOURNS

JPP 46

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TO : ADV S K ABRAHAMS
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV N JIBA
THE HEAD OF NPS
NATIONAL PROSECUTION SERVICE

FROM: ADV J P PRETORIUS
PRIORITY CRIMES LITIGATION UNIT
NATIONAL PROSECUTING AUTHORITY

SUBJECT: BRIEFING SUMMARY: ALLEGED FRAUD AND DEFEATING THE ENDS OF JUSTICE EMANATING FROM THE IPID (INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE)'S TWO SEPARATE REPORTS WITH TWO DIFFERENT RECOMMENDATIONS FROM A SINGLE INVESTIGATION: ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS BY MEMBERS OF THE DIRECTORATE OF PRIORITY CRIMES INVESTIGATION (DPCI) DURING NOVEMBER 2010 UNTIL JANUARY 2011

DATE : 22 FEBRUARY 2016

REF NUMBER: 10/1/3/5/3

A: INTRODUCTION

The objective of this briefing note is to update the National Director and the Head of NPS about progress in the investigations relating to

allegations of **Fraud** and **defeating the ends of justice** allegedly committed by the:-

- Executive Director of the Independent Police Investigative Directorate, Mr R J McBride,
- Acting Chief Director- Investigations & Information Management at the IPID Head office and
- Acting Provincial Head of the Limpopo offices, Mr Khuba

This follows the alteration of a report dated 22 January 2014 compiled by Khuba with the assistance of NPA officials (Advv Mosing and Moalosi) and a member of Crime intelligence, Mr Moukangwe.

The Role played by Mr Nxasana

We also considered the role played by Mr Nxasana in facilitating the defeating the ends of justice by keeping the docket in the office of the NDPP without having it allocated or despatched to a DPP to make a decision on it, for a period in excess of six (6) months, during which period Mr McBride made utterances about the role of Lt General Dramat and Major General Sibiya in the rendition; and decided not to include him. Charging him has the potential of dragging unnecessary side issues into the matter, which have a potential of dragging members of Senior Management such as Advv Chauke and Jiba into the matter. The allegations of defeating the ends of Justice against the ex NDPP will prove very difficult to prove when one considers the intention element; the accused must have subjectively foreseen the possibility that his conduct might defeat or obstruct the administration of justice or at least be aware that his conduct might thwart or interfere with judicial proceedings.

The first Report (dated 22 January 2014)

Mr Khuba did an in-depth investigation during the compilation of the first report into the allegations that members of the Tactical Operations Management Section (TOMS) who were under the direction of Generals Dramat and Sibiya conducted operations in Soweto and Diepsloot between 4 November 2010 and 31 January 2011 to trace Zimbabwean nationals who were alleged to have had a role in the killing of a senior Zimbabwean Police Colonel in Bulawayo. A number of Zimbabwean nationals were arrested and detained at various police stations as illegal immigrants and for fictitious crimes. Some of them were transported to Beit bridge border post where they were handed over to the Zimbabwean authorities contrary to the Immigration Act, Act 13 of 2002 and the Dispensation for Zimbabwean nationals' project. This project allowed Zimbabwean nationals to apply for documents to legalise their stay within the Republic during 20 September 2010 to31 December 2010. It was later extended to 31 July 2011.

Mr Khuba had consulted General Dramat; had access to and studied the documents and statements obtained during the DPCI investigation into the rendition. A statement of one Madilonga was not commissioned and he discovered that it was incorrect, he obtained a new statement. Khuba visited the Beit bridge border post on the dates relevant to the rendition and accessed reports made at the border post; he consulted Maluleke's supervisor, Leoni Vester, who drew his attention to success reports directed to General Dramat, General Lebeya, Hlatshwayo and others. Khuba had access to Maluleke's lab top and found that the success reports were generated from it. He also found photographs of the operation and correspondence with the Zimbabwe police.

Khuba also met with members of Crime Intelligence. He found some of the pictures of the operation on some of the Crime Intelligence's members' offices. One of the members, Mkhasibe informed him that after the arrests were completed in January 2011, they went to the offices of the DPCI where Dramat personally congratulated them for the job well done. He also indicated to them that they must not disclose the details of the operation to anyone. Khuba also interviewed Maluleke in relation to the rendition and his promotion to the rank of colonel.

He also had access to General Dramat's response to parliamentary questions asked by a member of the Congress of People, the expense claims relating to Maluleke's travelling to and from Beit bridge, cell phone records, vehicle tracker records. He also investigated bookings or entries made at various police stations relevant to the rendition. . Khuba and Moukangwe were guided by Advv Mosing and Moeletsi during the investigation, they asked the investigators to finalise the following investigations:

- to obtain analysis of cell phone records
- to obtain an analysis of the vehicle tracking information of the cars which were involved in the operation and
- to obtain warning statements from Dramat, Sibiya and Maluleke

Khuba also filed his investigation statement and submitted the docket to Mosing for further handling. The report was signed by Khuba only.

The recommendation from IPID was that Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe be prosecuted on charges of kidnapping and defeating the ends of justice for their role in rendition of the Zimbabwean nationals. It was further recommended that Maluleke, Radebe, Nkosi and Makoe be prosecuted for assault and theft.

The Second Report (dated 18 March 2014)

This report was compiled by Khuba, recommended by Sesoko on 18 March 2014 and approved by McBride on 9 April 2014. McBride was

appointed as Executive Director of IPD on 3 March 2014. Upon his appointment, he requested an update on all the high profile cases that the IPID was handling. On 5 March 2014, McBride called Angus, the Mpumalanga Head of IPID to a meeting in his office in Pretoria on 6 March 2014 around 08h00 and asked him to look into or review the investigation by Khuba to ascertain if it was done procedural and thorough. He indicated that it involved "highly placed SAPS/Hawks members" implicated in the rendition of Zimbabwean nationals. Mr Angus was asked to review the decision of Khuba and Sesoko and he had reservations about this process. On 7 March 2014, Messrs Khuba and Angus fetched the docket relating to the rendition matter from Adv van Zyl in the DPP South Gauteng under the pretext that they would return it, when they never did so.

McBride, Sesoko and Khuba started working on the Second Report without the consultation or involvement of Mosing, Moeletsi or Moukangwe who were actively involved in the First Report. The Second Report is a version of the First Report with the following alterations:-

1. the following paragraphs were **removed** from the First Report:

   Removal 1: Evidence of Lt Col Madilonga on Page 9 (middle)

   "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 this visit but if the people are saying they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come"

   Removal 2: Evidence of Lt Col Madilonga on Page 9 (bottom)

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

Removal 3: Evidence of Intelligence member Emmanuel Mkhasibe A68 on Page 16 (middle)

"General Dramat warned them not to tell anyone about the operation we had just done"

Removal 4: Evidence of Intelligence member Constable Mngwenya A75 (bottom of page)

"He will further state that Lt General Dramat was wearing a white shirt and a red tie"

Removal 5: Documentary Evidence from DPCI offices, Success report dated 05/02/2011

"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."

Removal 6: Documentary Evidence from DPCI offices, Letter to stakeholder dated 20/08/2012

"General Sibiya was appointed as the coordinator on the cooperation issue between the 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."

Removal 7: Documents regarding Bongani Moyo's case

"routed to General Dramat"

Removal 8: Statement on how Diepsloot Cas 390/07/2011 was investigated

"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 (B1-1725) for the following individuals, Dumisane Witness Ndeya; Sheperd Chuma, Nelson Ndlovu and three Notification of Deportation of an Illegal Foreigner (DHA-1689) for Nelson Ndlovu, Sheperd Chuma and Maghwawe Sibanda. The documents are filed in the docket as A36. An enlarged copy of death certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled "journey to death in an unmarked car" and is filed as per A35."

Removal 9: Analysis of Evidence and Findings

"The following findings were made"

The analysis of the evidence has been redone and anything that related to the role of General Dramat and General Sibiya has been changed completely.

The First report links General Dramat in that during the meeting in August 2010 between the Zimbabwean authorities and Generals Dramat and Sibiya, the latter was appointed as a coordinator regarding cooperation between the two countries. The letter dated 29/7/2010 addressed to Commissioner Chibage of Zimbabwe requesting a meeting on 5/8/2010, was signed by Dramat. When the Zimbabwean police came on 4/11/2010, they requested to see him and were received by him. The cell phone records confirm that they spoke on this date and as it was late, they met only the next day, 5/11/2010. Lt Madilonga was told by the Zimbabwe police that they were in the country to arrest Zimbabwean nationals in connection with the murder of a senior police officer in Zimbabwe.

The First Report also notes the following:-

- that General Dramat committed government resources to the operation
- that he congratulated the police officers for arresting Johnson Nyoni and advised them to keep it a secret
- that he received communication regarding the successes and photos of the operation through his Personal Assistance, Phumla
- that he was kept informed of the developments in the operation that led to the arrest of wanted Zimbabwean nationals and
- reported to parliament in response of the questions by Cope.
- That Sibiya was appointed the Head of Toms whose task was to trace wanted suspects and he interacted with Maluleke during the operation
- He was seen during the operation on 22/11/2010 when Prichard Chuma was arrested.

The only new insertions in the second Report are the following:-

- analysis of the cell phone records of Sibiya, Dramat, Hlatshwayo, Lebeya, Maluleke, Nkosi Makoe and Radebe

- warning statements of Dramat, Sibiya and Maluleke

- the second report was compiled without the involvement of the outside officials who participated in the earlier report.

A significant difference between the two reports is the fact that the second was co-signed by the trio of Khuba, Sesoko and McBride and the recommendation has been changed; IPID recommends that no charges should be brought against Dramat and Sibiya, only against Maluleke is there a prima facie case to sustain charges of kidnapping and defeating the ends of justice. A significant portion of the evidence and portions of statements linking Dramat and Sibiya has been removed from the First Report to justify the recommendation that there should be no charges against Dramat and Sibiya.

B: REFLECTION ON THE AVAILABLE EVIDENCE

There appears no acceptable reason or ground for alteration of the First Report when it was already presented for consideration with the dockets to the DPP South Gauteng. It is clear from the reasons given by Khuba to Adv van Zyl that there were further investigations to be done and the dockets would be returned on completion thereof; the dockets were removed with false pretences, there was no intention to return them to the DPP South Gauteng in the first place, Mr McBride instructed members of his staff to fetch the dockets and the report from the DPP office and directed the alteration of the report and the recommendations in order to exonerate Lt General Dramat and General Sibiya, despite the factual report drafted by Khuba which showed how in particular, Lt General Dramat was involved in the management of the activities of Captain Maluleke in the rendition of the Zimbabwean nationals. In so far as the role of General Sibiya in TOMS and in the rendition, McBride used the cell phone analysis of one of the cell phones of General Sibiya when he knew that Sibiya had more than one cell phone that he was using at the time.

The cell phone analysed was the one which he did not have during the operation which did obviously not place him at the scene. The investigating team has recently obtained all three (3) cell phones which Sibiya was using at the time and the cell phone information is being awaited. McBride 's statements in various cases, the Sibiya labour matter as well as his own High Court application when he challenged the Minister's suspension are also being awaited.

Khuba did such a thorough investigation into the rendition of the Zimbabwean nationals and was forced to agree on the alteration of his report by his supervisors despite the overwhelming factual support of their involvement in the report. On the basis of the how the process to alter the report unfolded, the conclusion is inescapable that McBribe was protecting Dramat and Sibiya in altering the recommendations and making statements to exonerate them in the rendition when that was the task to

be left to prosecutors. The alteration of the report prepared by Khuba amounted to a misrepresentation of true facts which were in the report, to prosecutors who were to consider them, with a potential to cause prejudice to the administration of justice and he thereby made himself guilty of fraud and defeating the ends of justice.

RECOMMENDATION

I recommend that criminal charges of Fraud and defeating the ends of Justice be considered against McBride, Sesoko and Khuba in the Regional court.

Approach Regional Court Coordinator Bekker continues roll

G S Maema
Deputy Director
24 February 2015

I have noted the recommendations of Adv Maema and agree/ do not agree with the recommendation. I wish to add the following comment

Adv JP

Adv T Pretorius
Acting Head
Priority Crimes Litigation Unit

Discussed with Adv Pretorius at present

3/3/15

JPP47

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

IN RE: **SUPPLEMENTARY AFFIDAVIT OF DR J P PRETORIUS SC ("THE APPLICANT"), TO THE INITIAL APPLICATION FOR THE CROSS-EXAMINATION OF MR ROBERT McBRIDE AND GENERAL JOHAN BOOYSEN, AND IN SUPPORT OF THE APPLICATION FOR THE CROSS-EXAMINATION OF MR MATTHEWS SESOKO AND MR HUMBULANI INNOCENT KHUBA**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIBONGILE MZINYATHI

do hereby declare under oath and state that: -

1. I am an adult male employed at the National Prosecuting Authority (NPA) based at 123 Westlake Avenue, Weavind Park, Pretoria, as Director of Public Prosecutions: North Gauteng c/o the State Attorney, Pretoria, 316 Thabo Sehume Street, SALU Building, Pretoria.

2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are to the best of my knowledge and belief both true and correct.

JLM

3. I have read the supplementary affidavit deposed to by **JACOBUS PETRUS PRETORIUS** together with annexures and confirm the contents thereof, insofar as same relates to me.

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

So help me God.

Signed on this 18th day of August 2020 at Pretoria at 12h15.

S MZINYATHI

JLM 18/08/2020

Ek sertifiseer dat bostaande verklaring deur my afgeneem is en dat verklaarder erken dat hy/sy vertroud is met die inhoud van hierdie verklaring en dit begryp. Hierdie verklaring is voor my beëdig/bevestig en verklaarder se handtekening/merk/duimafdruk is in my teenwoordigheid daarop aangebring.

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. The statement was sworn to/affirmed before me and the deponent's signature/mark/thumbprint was placed thereon in my presence.

JLM 18/08/2020

By/At Pretoria op/On 2020/08/18 om/At 12.15

Ag+72056-3A/46

MOSEKI JLM

(HANDTEKENING) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS

Joel L.M. Moseki

VOLLE NAAM EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

SAPS Pretoria Central

BESIGHEIDSADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)

137 Pretorius Street

D/W/O

RANG/RANK

SA POLISIEDIENS
SA POLICE SERVICE

SOUTH AFRICAN POLICE SERVICE
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PRETORIA CENTRAL
SOUTH AFRICAN POLICE SERVICE

COMMISSIONER OF OATHS

JPP 49

DPP 7

NATIONAL PROSECUTING AUTHORITY
South Africa

OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Victoria & Griffiths Mxenge Building,
123 Westlake Avenue, Weavind Park Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6750
Email: ndpp@npa.gov.za
www.npa.gov.za

INTERNAL MEMORANDUM

TO: ADV N. JIBA

COPY TO: DR J.P. PRETORIUS SC
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS: PCLU

FROM: ADV S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

REFERENCE: NDPP/JL/01/2016

DATE: 12 APRIL 2016

SUBJECT: REFERRAL OF CASES TO THE PRIORITY CRIMES LITIGATION UNIT

Dear Adv Jiba,

1. Over and above all the matters I have referred to the PCLU in my previous memorandum dated 18 November 2015, I also refer all matters relating to:

   Paul Robert O'Sullivan,

   to this unit, which investigations and prosecutions must be managed and directed by the Acting Special Director of Public Prosecutions and Head, Priority Crimes Litigation Unit [PCLU].

2. The PCLU should deal with all offences relating to the above named as well as all prosecutorial functions incidental to the management of investigations and prosecutions relating to the above named.

Yours sincerely

.....

ADV. S. K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 12 - 04 - 2016

JPP 501

Torie Pretorius (JP)

From: Paul O'Sullivan <Paul.osullivan@poaa.za.com>
Sent: 05 January 2018 10:16 AM
To: Shaun SK. Abrahams
Cc: Andrew KMA. Chauke; Sibongile Mzinyathi; Torie Pretorius (JP); glynis.breytenbach@gmail.com; Sarah Trent
Subject: Your Country Needs You .....

..... to RESIGN

I'm going to keep the heat on you and your accomplices, until you're all jobless, in jail, or both. (preferably both)

https://www.biznews.com/undictated/2018/01/04/npa-police-zupta-osullivan/?utm_source=BizNews.com&utm_campaign=bbfb2ed171-dailyinsider&utm_medium=email&utm_term=0_d5e2e8a496-bbfb2ed171-101185821

In 2018, you will pay for what you did to me in 2016/17

Expect no quarter!

Paul O'Sullivan CFE

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Tel: + 44 7784 886 408 (UK)
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JPP 50.2

Torie Pretorius (JP)

From:	Paul O'Sullivan <paul.osullivan@shcplc.com>
Sent:	19 April 2018 08:53 PM
To:	Shaun SK. Abrahams; Torie Pretorius (JP); George D. Baloyi; Sibongile Mzinyathi; Sello G.Maema; Molatlhwa M. Mashuga
Cc:	TebogoMo@presidency.gov.za
Subject:	NPA Criminal Skunks will go to prison
Attachments:	CREDIBLE EVIDENCE REQUEST

You crooked criminals have been protecting criminals whilst using my taxes to persecute me.

You will all go to prison.

Each and every one of you.

If I cannot send you to prison, I will exact my own form of justice on you and your families and will not stop whilst I n alive and breathing

All legal of course – because unlike you criminals, I do not break the law

You will NEVER escape me for what you criminals have done

NEVER

STOP ME IF YOU CAN YOU LOW-LIFE COWARDLY CRIMINALS

I am now closely watching each and everyone of you 24/7 and waiting for my chance to move on you all together, or pick you off one by one

Be prepared and be afraid, be very afraid, as you will all face justice and the slow punctures that follow

RUBBISH LOW-LIFE CRIMINALS!

Ju Abrahams, are top of my clean-up list.

Torie, you yellow criminal, you are next, then that fake advocate Mlotshwa, then you Maema, then you Mzinyathi, then I will save the best for last and deal with you Michael – I have something special for you Michael and – YOU WILL BE SURPRISED AT WHAT I HAVE

Not one of you will escape justice, no matter what you do to me.

When I've finished with you CRIMINALS, I will then go after your crooked cop criminals in the North-West – see the attached mails, they are barking up the wrong tree and committing offences as they go – offences sanctioned by criminals in the NPA – I will deal with them all – they cannot save Phahlane, or themselves, even with your criminal protection racket

Tebogo,

Please tell Cyril, that he MUST despatch these criminals as soon as possible, as they are holding up the clean-up of our beloved country

Every day these criminals are in office is a day too long

JPP 50/23

Torie Pretorius (JP)

From: Paul O'Sullivan <Paul.osullivan@poaa.za.com>
Sent: 03 May 2018 10:56 PM
To: Torie Pretorius (JP)
Subject: Supporting criminals is NOT OK

Torie.

I've never met you.

I'm sure you are probably an OK kind of guy. Your family probably think so too. But they do not know what I now know about you. I now know more about you than your family do!

However, what you have done in the last couple of years will see you spend the rest of your life in prison. **I can guarantee that!**

If you think you will escape justice, then you deserve what is coming to you. Ask Selebi, ask Phahlane and his crooked wife and corrupt mistress.

If you want to save yourself and your family from what is coming, then try and use that big thing between your ears and come clean.

If you don't come clean I **WILL** send you to prison and take everything you **think** you own. You helped fuck me, and if you don't come clean, you will pay the price for that.

Step aside and come clean, if you want to save yourself from prison and your family from a life in the gutter.

What your criminal associates will never understand is that I have more assets than all of you put together. My offshore assets exceed R150m so do not think you can beat me, because you cannot. You and your accomplices can **NEVER** beat me. I can buy all your assets in the flick of switch and still have spare change for a glass of Guinness. That's where you crooks went wrong, you under-estimated me my tenacity and my ability to sustain a prolonged war against you all.

Whilst you are all running out of steam with your crooked accomplices, I am just getting started.

Give it up now Torie, and you may walk free. Continue with your current criminal conduct and I **WILL** send you to prison, along with Mlotshwa, Mashuga, Maema, Abrahams and all the other crooked scum you are working with.

Do **NOT** make the mistake of thinking this is an idle threat. I **PROMISE** you prison, if you do not stop what you are doing and come clean. If you are happy to spend the rest of your life in prison and learn what a slow puncture means, then continue with your criminal ways.

You have my number, come clean now, or face the music. If you don't, I will wreak 'accountability' like you have never believed possible.

Continue with your criminal conduct at your own peril.

Put simply, make peace (with me) or spend the rest of your natural life in a South African prison, whilst your family go destitute as I will take everything from you.

It's not a threat Torie, it's a promise.

You should realise that the tide has turned and that criminal scum Abrahams, will drag you down with him.

The time has come for me to fuck you, ten times more than the way you fucked me.

I'm ready to deal with you Torie. Are you ready to be dealt with? Time is not on your side Torie.

When Abrahams gets dealt with, you are next on my list and if he gets dealt with before you come clean, you will not be given any ground.

Last chance saloon?

https://www.urbandictionary.com/define.php?term=last%20chance%20saloon

By the end of May 2018, if you have not crossed over, you will not be able to cross over.

Are you a gambling man? Then know this: I hold the aces!

Best wishes,

Paul O'Sullivan CFE

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PoS JPP 50.4

Torie Pretorius (JP)

From: Paul O'Sullivan <paul.osullivan@shcplc.com>
Sent: 09 November 2018 09:14 AM
To: George D. Baloyi; Torie Pretorius (JP); Sello G.Maema; Torie Pretorius (JP)
Cc: Johann van Loggerenberg; Silas Ramaite; sarah.trent@forensicsforjustice.org; Shadrack Sibiya (ShadrackS@joburg.org.za); Molatlhwa M. Mashuga; ntlemezaa@saps.gov.za
Subject: State Capture by criminals in the NPA
Attachments: Presidential Proclamation PCLU.pdf; SMS'as received from Ntlemeza's daughter 2017-05-19.docx

https://www.dailymaverick.co.za/article/2018-11-08-shadrack-siblya-has-a-right-to-justice-against-the-state-capture-enablers-still-jammed-in-the-system/

And you criminals with gowns are still chasing the SARS three on trumped up charges?

I'm surprised you did not charge me as well. I was the one that tipped off Gerrie Nel, and suggested for them to install some cameras at the offices in Silverton, because I had gathered intelligence that Selebi had contracted Mulangi Mphego, who in turn instructed Mdluli (then head of C.I. in Gauteng) to infiltrate and get a copy of the docket against Selebi, so that the witnesses could be 'dealt with'. Doesn't that make me an accessory to the trumped up charges you criminals have brought against the SARS three, having first of all spectacularly failed against Gordhan? Surely it must be a crome for me to want to stop Selebi criminals with badges from wanting to spy on the offices of the then DSO? If I had not of suggested to Gerrie to install some covert cameras, surely this thing would never even have taken off. When Gerrie said to me, *"Paul, how do we get the cameras installed, without people knowing"*, I said *"Gerrie, the people must come in on a Sunday evening, and must pretend to be electricians"*.

What you criminals are doing is nothing more, or less, than the last kicks of a dying horse. Its unethical, its wrong and its downright criminal and you will pay for it. In any event, the horse will still die.

Torie, you and your accomplices' PCLU badges (badges of shame) will be worn off in a dark prison cell, where you get to see the other side of the criminal justice system. Baloyi and Masuuga will be with you all. Or mayeb they will send you to Sun City, where it never gets dark.

You'll all get to learn, like Maema forced me to learn, the love-life of rats. Its amazing, wham-bam, not even a thank you maam, and its all over in less than three seconds. They scuttle all over the place and even climb onto you whilst you are not moving.

Soon there will be a new NDPP. Then you will all be toast.

Johann,

Tell the other two, your persecutors will be in prison long before your trial gets under way.

The *State Capture Enablers* that are still jammed in the system are running out of road. All it takes is a simple presidential proclmation to reverse Mbeki's proclamation, and that's the end of the PCLU. I will write to the President and ask him to sign the death warrant of the PCLU.

Maybe I can even get these clowns with gowns into the justice system before your next appearance.

Silas,

'Shame on you, for allowing this circus to continue. Why do you allow these criminals with gowns to continue with their crimes?

Are you a man or a mouse?

Read the Constitutiona and the act, you have legal obligations.

You are *de facto* in charge of the NPA. Stand up and do something about these criminals on your payroll, or I will name and shame you as one of the 'State Capture Enablers'.

I note that you refused to answer my previous mail about Ntlemeza's daughter, which pretty much shows me you are 'captured'. Otherwise how do you explain your procrastination and protection of Ntlemeza's criminal offspring, who got into the police and promoted, as a result of nepotism, carried out by Ntlemeza's mistress in Limpopo?

From: Paul O'Sullivan
Sent: 19 September 2018 01:56 PM
To: Silas Ramaite (msramaite@npa.gov.za)
Subject: criminal complaints against Warrant Officer Anele Ntlemeza

Dear Dr Ramaite,

Upon enquiring about the progress on the case against Ms Anele Ntlemeza today, I discovered that the matter has been postponed so that she can make representation as to why the charges against her should be withdrawn.

As a victim of her and her father's heinous crimes, I believe I also have a right to be heard:

1. Firstly, whilst not pertinent to the charges she is currently facing, I should like to mention that she was only appointed into the SAPS, as a result of nepotism.

2. Next, she is wholly unfit to be a police official. Just today, she was convicted of driving with almost four times the legal limit of alcohol.

3. She also benefitted from nepotism in her career path in the police.

4. Finally, and this is the crux of the matter, just take a look at the vile SMS's she sent to me, when I communicated with her and instructed her to STOP threatening Captain Ramahlaha, as he is a witness in criminal cases I had opened against her father, the then (now dismissed) unlawfully appointed head of the DPCI.

The vileness and the display of intentional unlawfulness cannot be better captured, as they are in her vile SMS's. She has displayed that she considers herself above the law, and a clear signal needs to be sent out to like-minded individuals.

As a result, I have assured Captain Ramahlaha, that if she is not prosecuted, then I will provide the funds for a private prosecution as she belongs behind bars with her father.

If it is then decided not to prosecute her, then please be so kind as to issue the relevant certificate, in terms of Section 7 (2) of the Criminal Procedures Act.

I look forward to hearing from you.

South Africa is sick and tired of these criminals with badges and gowns and if you don't do something now, I will publicly name you, as part of the problem.

Paul O'Sullivan CFE

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Sandton
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JPP50.5

Torie Pretorius (JP)

From: Paul O'Sullivan <Paul.osullivan@poaa.za.com>
Sent: 25 January 2019 08:39 AM
To: Torie Pretorius (JP)
Subject: Malicious Prosecutions

Pretorius,

You know that you and that fake advocate you have been protecting, worked together to bring all the fake cases against me.

Apart from the fake Diamond case, I require you to produce evidence of the compliance with Section 24 (3) of the NPA Act in respect of each and every fake case your fake advocate, under your control, brought against me. We now know that you retrospectively got Andrew Chauke to provide such evidence in respect of the fake Diamond case and he will be a witness in your criminal trial.

You have until Monday to provide the proof of compliance with Section 24 (3).

If you fail or refuse to provide them, then I shall assume you do not have them and will produce a substantial docket against you and publish it.

I shall also commence a campaign to have you suspended, fired and prosecuted for your role in Sate Capture.

The time for rubbish like you is over.

Paul O'Sullivan CFE

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The only thing **necessary for the triumph** of evil is for good men to do nothing. - Edmund Burke

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Torie Pretorius (JP)

From: Paul O'Sullivan <Paul.osullivan@poaa.za.com>
Sent: 06 February 2019 08:33 PM
To: Torie Pretorius (JP)
Cc: Sibongile Mzinyathi; Fred C Daniel (fred@cradleoflife.com); Minister@justice.gov.za; President@rsa.gov.za; yasmin.sooka@gmail.com; 'jwbooysen@icloud.com'; dudumyeni@telkomsa.net; Lebeya SG - Lieutenant General (LebeyaSG@saps.gov.za); parliamentaryleader@da.org.za; Molatlhwa M. Mashuga; Communication; sarah.trent@forensicsforjustice.org; dali mpofu; glynis.breytenbach@gmail.com; George D. Baloyi
Subject: The Truth is Coming Out -
Attachments: NDPP Memorandum 2016-04-12.pdf

Pretorius,

I'm certain that you, along with all the criminal thugs that have captured the heart of the NPA, including the PCLU, better known as **Politicised Criminal Litigation Unit** have not been serving my country for many years. Your recent admission to political interference in the TRC trials, is *prima facie* proof that you have abandoned your oath of office and the Constitution. Why did you not speak out sooner? Why?

It is abundantly clear that the unlawfully appointed Zupta crony, Abrahams, left a very large **sleeper-cell** in place, as a rear-guard for not only to protect himself, but the whole of the Zupta syndicate, most of that sleeper cell is embedded in the PCLU and elsewhere, such as George Baloyi, Sibongile Mzinyati and so on. Every day that sleeper cell remains in place, is a day too long for this country.

The NPA will REMAIN CAPTURED, until you have all been driven out or put into prison, or both and replaced with honourable people that serve the Constitution.

I say you Pretorius are one of the kingpins in the CAPTURE of the criminal justice system, along with Abrahams. If Booysen, Breytenbach, Gordhan, Dramat, Sibiya and the SARS three were asked, I am sure they would all agree with me.

Let's consider some facts over here:

We'll start with this Daily Maverick piece:

https://www.dailymaverick.co.za/article/2019-02-05-dudu-myenis-bosasa-woes-stack-up-beyond-a-louis-vuitton-handbag/

You and your accomplices have been **protecting Myeni** for years, so that she could bring a once proud airline to its knees, whilst being a part of the Zupta conspiracy, together with her boyfriend and their son, aimed at capturing Eskom. I confirm that I have opened FOUR criminal cases against her, dating back to March 2015. You and your accomplices have covered up and squashed those cases, whilst at the same time, working together with badged criminals in the DPCI to express-feed fake cases against myself, merely to stop me from speaking out. Some of those cases can be found here: https://www.forensicsforjustice.org/portfolio-posts/dudu-myeni-board-of-saa/ and here: https://www.forensicsforjustice.org/portfolio-posts/zuma-state-capture-smoking-gun/ all dockets that you and your accomplices have suppressed, whilst chasing me on fake cases.

As is now clear, each and every one of your fake cases against me, has spectacularly crashed and burned. I hear you and your accomplices have been desperately trying to conjure up some more, but the sand is nearly gone from the hour glass and it will soon be too late. What you do now, will be last kicks of a dying horse.

You were a part of that criminal enterprise that considered charging me with Espionage, Treason, unlawful interception and other grave offences, which according to then head of DPCI, Ntlemeza and Minister of Happy Endings (David Mahlobo) would see me spend the rest of my life in prison. For what? For the crime of standing up to state capture and systemic corruption, your accomplices raided my offices multiple times, dragged me off a plane with two of my minor daughters and imprisoned and tortured me, they kidnapped my lawyer and again arrested me and kept me against my will, just like they did in the Apartheid days to those speaking out against Apartheid. You all failed!

But I won't fail in dealing with you Pretorius. Ask Andre Bouwer, Vito Assante, Selebi, Agliotl, Clinton Nassif, Steven Chosi, Ntlemeza, Phahlane, Krejcir and so many others. When I set my mind on it, I never fail.

I hereby publicly state that you should be charged with corruption, because you accepted a significant pay rise at the hands of an unlawfully appointed criminal, Shawn Abrahams, and you gladly accepted that pay rise, for the *quid pro quo* that you would do what you were told to do and ignore your constitutional obligations in the process. Some of the particulars of the docket opened against your kind, are contained at this location: https://www.forensicsforjustice.org/portfolio-posts/how-why-mafia-captured-criminal-justice-system/ and here: https://www.forensicsforjustice.org/portfolio-posts/state-capture-criminal-justice-system/

/hat's changed you may ask? Well it's a little thing called time. In the time between opening those dockets and now, we have discovered just how pivotal your role was in State Capture and the protection of the country's largest ever crime syndicate. That's why you refused to comply with my requirement for you to supply the document sent by **Abrahams to Jiba on 2015-11-18**, and copied to you, which mirrors the attached, only with other victim's names on it. Names of the people that the Zupta captured NPA was desperate to silence.

That is why Pretorius, we are all calling for your dismissal and for you to go on trial, along with all your accomplices.

Maybe you should try and cut a deal with a Section 204, like those Kebble connected criminals did? Maybe you can do an 'Agllotti' or an 'Agrizzi'?

It's better to be unemployed and survive jail with a Section 204, than have to plead your case out in a very public criminal trial, with a the possibility of a long stretch in prison at the end. This is what the law society said about that fake advocate (Mlotshwa) that you, Abrahams and Ntlemeza unleashed on me:

> The council has carefully and diligently considered all the facts available to it concerning respondent as set out in this affidavit. It has concluded that whether such complaint is considered alone or all the complaints are considered cumulatively, respondent has made himself guilty of unprofessional or dishonourable or unworthy conduct and is no longer a fit and proper person to continue to practise as an attorney or as an officer of the honourable court. Respondent's conduct reveals character defects which cannot be tolerated in a practitioner or officer of the honourable court and does not meet the standard of behaviour and conduct and reputation which is required of an attorney and of an officer of the honourable court. By virtue of his conduct and behaviour respondent has damaged and affected the good standing and reputation of the profession as a whole. Consequently, his name should not be allowed to remain on the roll of attorneys.

Such a glowing commendation made him perfect to be a part of your capture team, but not to be employed by the NPA. His wife's time as an attorney was similarly cut short when she was caught stealing client funds, but that did not bother you and your accomplices, to have such people in your midst.

FRED DANIEL

To prove just how low you can stoop, I understand you have taken charge of the fraud, corruption and defeating the ends of justice docket opened last year by Mr Fred Daniel, with my assistance.

Mr Daniel has advised me, that he called you to ask why the suspect has not been arrested and your response was, *'because Paul O'Sullivan is involved'.*

This serves as further evidence that you are 'captured'. You are invited to explain precisely how the PCLU got its hands on that docket in the first place, which should have been dealt with at the jurisdictional court level. You are also invited to explain why you have not issued a J50 for the suspect, despite mountains of *prima facie* evidence.

I think it's no coincidence that the Fred Daniel docket investigation is being led by DPCI's very own (Vlok Symington kidnapper) Brigadier Xaba, who one of your other accomplices, George Baloyi, declined to prosecute.

Of course we know you won't reply. You won't reply because that reply may further incriminate you.

NEW LEADERSHIP

Adv Shamila Batohi might be in charge of the NPA, but she is **NOT** in control of the NPA and does not have a cat-in-hells chance whilst you and your accomplices are in office. It's precisely the same analogy I have applied to the DPCI when General Lebeya took the reins. At least he's now starting to kick it into shape. Until those engaged in State Capture are removed from the system, the Criminal Justice System remains captured. Its why the Myeni's, Zuma's, Jncent Smith's and Gavin Watson's of the country are walking around free as birds, when they plainly belong behind bars.

My parting shot – go ahead and sue for me for defamation. But first read up about publishing what's true and in the public interest. Your time is coming.

I've copied the DA and EFF, as well as the President. I'm sure they all want to know that the NPA is STILL captured and will remain so, whilst people like you are at your desks.

Paul O'Sullivan CFE

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JPP51

(1) REPORTABLE YES
(2) OF INTEREST TO OTHER JUDGES YES
(3) REVISED

SIGNATURE

DATE: _____

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 45270/12

In the matter between:

NEIL DIAMOND Applicant

and

PAUL O'SULLIVAN First Respondent

ANNELIEN VAN DER WALT Second Respondent

JUDGMENT

WATT-PRINGLE, AJ

1. On 30 November 2012, the applicant made application to this court *ex parte*, and as a matter of urgency, for a *rule nisi* interdicting and restraining the respondents from further threatening, harassing, intimidating or abusing, verbally or otherwise, the applicant; interdicting and restraining respondents from inciting any other person or entity to harass, threaten, intimidate or abuse, verbally or otherwise, the applicant; and interdicting and restraining respondents from extorting (from) the applicant or from

stalking at or entering into the business premises of the applicant at a given address.

2. Mokgoatlheng J granted such an order returnable on 4 December 2012, with interim relief in the terms of the *rule nisi*. The matter came before me on the extended return date.

3. I shall refer to the applicant as Diamond and to the first respondent as O'Sullivan.

4. The facts of this matter are relatively simple and are, despite O'Sullivan's best efforts to avoid admission of the best evidence of what transpired at the relevant time, essentially common cause. (I shall refer to the conduct of O'Sullivan and his legal representatives below, which forms the basis of the punitive costs order appearing at the end of this judgment.)

5. Diamond was, in February 2012, appointed as the executor of the Estate of the late Mr Jannie van der Walt ("*Van der Walt*"). They had been close friends prior to Van der Walt's death on 31 January 2012. Diamond states that he performed his functions as executor with some assistance from an attorney, Mr Bouwer, and the second respondent who is Van der Walt's widow, until 25 June 2012, when the second respondent requested him to resign, which he did. He advised the Master of his resignation as executor of Van der Walt's estate but this notwithstanding, the second respondent brought an urgent application against him on 20 July 2012 in which she

sought an order that he be replaced as executor and that a statement and debatement of the liquidation and distribution account be given. That application was still pending as at the date of this application. The second respondent was appointed executrix on 30 July 2012.

Diamond alleges that by the time he resigned as executor, the estate was all but wrapped up. He says that he was a creditor of Van der Walt's estate in the sum of R851 250 (plus interest) and another amount of R125 000 (plus interest) in respect of monies lent and advanced to Van der Walt during his life-time. In addition, he advanced the sum of R1 067 361 to cover urgently needed and immediate expenses of the second respondent and of the estate. During the course of his administration of the estate, Diamond, as he was "*legally advised to be entitled to do*", caused the estate to repay the loans due to himself. He did the same in respect of numerous other creditors.

6. He further states that on 21 August 2012 he met with an attorney, Mr Coetzer, who the second respondent in her capacity as executrix had appointed as her agent to administer the estate.

7. He says that at this meeting no demand was made by Coetzer in respect of the payments which he made to himself, nor was there any allegation that he had acted improperly. Moreover, as at date of this application, he

schedule a meeting and said that he would be back the next day. According to O'Sullivan, he was not advised to schedule a meeting but was told that he should not come back before 09h00 the following day as Diamond would be in a meeting with senior traffic officials before that time. Either way, O'Sullivan neither made an appointment to see Diamond, nor did he notify Diamond in advance of the meeting which ensued on 28 November, of the nature of his business.

11. Diamond alleges that on 28 November 2012, he arrived at his office at around 07h30. He says that from about 08h00 he noticed O'Sullivan and his associate sitting at the entrance to his building in a white Mazda with a given registration number but that they did not announce themselves at the door of his office. He left the office at 09h15 with his wife, whereupon O'Sullivan and his associate approached him as he exited the door.

12. O'Sullivan denies this version, stating that he arrived at the premises at 09h05 and after completing a telephone call, he was in the process of exiting his vehicle when he saw Diamond and his wife leave the office. He and his associate, Naidu, approached Diamond and he introduced himself.

13. Diamond says that he was startled by this sudden approach and that O'Sullivan had immediately addressed him in an aggressive tone. O'Sullivan told him that he had been investigating Diamond for some time. According to Diamond, O'Sullivan, in a threatening and intimidating tone,

said that Diamond could either co-operate with him in which event he could make Diamond's "*problems go away*" or O'Sullivan could have him arrested for criminal activities. O'Sullivan asked when Diamond was going overseas and before Diamond could answer, O'Sullivan responded by saying that he would have Diamond arrested on Sunday 2 December 2012 at the airport when he and his family were to leave for the United States of America. Diamond pointed out that this information was not widely known and that O'Sullivan must have been investigating his affairs and become privy to private information.

14. According to Diamond, O'Sullivan continued in this threatening and intimidating tone, stating that if Diamond co-operated with him he could avoid his "*imminent arrest for [his] criminal activities*". Diamond said that it was not clear on what basis O'Sullivan had become involved in investigating him but he was aware from reports in the media of O'Sullivan's conduct as a self-appointed *quasi* police officer and with his highhanded tactics of intimidating and threatening people and causing their arrest as if he was a policeman. Diamond stated that he felt threatened by O'Sullivan's demeanour and statements. He further alleged that according to O'Sullivan the latter could "*keep this out of the press*" and make the entire unpleasant business go away if "*money exchanged hands.*" He alleged that O'Sullivan was well aware of the fact that he, Diamond, is a politician who holds public office and O'Sullivan would know

that if he was arrested legitimately or otherwise, it would cause him and his family great embarrassment. At that stage, O'Sullivan provided no detail of his allegations or what he believed to be criminal activities on the part of Diamond which he was investigating.

15. Diamond told O'Sullivan that he and his wife were late for a meeting but that he could meet that afternoon. The parties agreed to meet at Diamond's office at 14h30.

16. O'Sullivan disputed much of this version of that first meeting. Apart from alleging that he arrived somewhat later than on Diamond's version, he alleges that he gave Diamond his business card and advised Diamond that he was acting on behalf of the estate of the late J M Van der Walt on the instructions of the executrix of the estate. He said that he needed to discuss with Diamond the repayment to the estate of certain funds that Diamond had stolen. He denies having used "*an aggressive tone*". He admits having told Diamond that it would be "*better to co-operate*" but denies having said that he could make Diamond's problems go away. O'Sullivan admitted having said to Diamond that he believed that Diamond was travelling overseas but on O'Sullivan's version, he did not know when Diamond was due to go overseas and had received this information from the second respondent "*who was worried that [Diamond] might be leaving the country with the money he had taken from the estate, with the intention of not returning to the country.*"

17. For her part, the second respondent was content to file a confirmatory affidavit which merely confirms O'Sullivan's version insofar as it pertains to her, but does not elaborate on her role, if any, in the matter. The court therefore has no way of ascertaining what she knew about the overseas trip, how she knew about it, or whether she had a basis to suspect that Diamond would leave the country without returning, having allegedly stolen money from the estate. It is telling that at a later stage and clearly in an attempt to shield the second respondent from any order in this application, O'Sullivan said the following:

> *"In particular, I deny that the second respondent either instructed me or gave me a mandate to speak to the applicant in the way I did. I took it upon myself to speak to the applicant as I was hoping there was a possibility that the matter could be settled on the basis that the money that he had unlawfully paid himself from the estate would be repaid to the estate and that his claims to be paid would be dealt with as normal claims in the winding up of the estate. My approach to the applicant was based on what I believed to be a common sense, fair and logical approach to the problem and not on instructions from the second respondent."*

18. That statement appears in answer not only to the first meeting in the car park adjacent to Diamond's office premises on 27 November 2012, but also the second meeting on 28 November 2012.

19. With reference to Diamond's allegations that O'Sullivan was well-known for his self-appointed "*crime busting*" activities, O'Sullivan stated that he did not know what Diamond read in the media but that any such allegations are hearsay and should be ignored. I do not agree. The allegations concerning O'Sullivan's reputation are not merely gratuitous. They go to the question of whether Diamond felt threatened and whether he reasonably contemplated that in the absence of the final interdict sought in this application, O'Sullivan might be tempted to repeat the conduct complained of. O'Sullivan cannot avoid the fact that he is a public figure who is not only frequently reported on and quoted in the media but has on several occasions conducted radio interviews in the course of which he has dealt with his investigations of, and the laying of charges against, various accused persons, some of whom have been high-profile individuals. I am entitled to take judicial cognisance of this as a fact well known by reasonably well-informed people living in the Johannesburg area. (**S v Mosala** 1968 (3) SA 523 (T); Schwikkard and van der Merwe, *Principles of Evidence*, 3rd edition at p 482) and I do so, although Diamond has said as much in his affidavit. O'Sullivan's reference to his profile in the media as "*hearsay*" is, in keeping with his general approach to the merits of this matter, both disingenuous and unhelpful.

20. O'Sullivan and his associate duly attended at Diamond's office at 14h30 that afternoon.

21. Unbeknown to O'Sullivan, Diamond recorded the entire meeting which took place in his office over a period of some 25 minutes. In his founding affidavit Diamond quoted the following portion of the transcript of the meeting. In what follows "*Paul*" is O'Sullivan and "*Neil*" is Diamond:

> *"**Paul**: It's not about emotion; it's about facts, alright. One thing I don't like doing is dancing around the bushes, ok. Neil, I can tell you right now, we have substantial evidence and the evidence is overwhelming. Now I am not in the business, I'm not a dancer that takes her clothes off in a club and you get to see a little bit more and a little bit more and a little bit more. The bottom line is very simple, very simple. We believe, and you may believe otherwise, and you are entitled to believe otherwise, you got constitutional rights, we believe, that our case is rock solid. Now, I said to our client, she wants you locked up*
>
> ***Neil:** I would imagine that's why ... (Paul interrupts)*
>
> ***Paul:** And I said to our client, let's try and resolve this without resorting to people getting locked up and all the publicity that gonna go with it, you know. I mean, we know probably as much about you by now as you do, you would be surprised about how much we know and at the end of the day ...*

***Neil**: My humble apologies would you mind if I give this to my personal assistant?*

***Paul**: Sure, at the end of the day, Neil, you know, the quickest solution is to put the money back where it belongs and I said to you that if you believe you have got a claim as a creditor as against the Estate, you can file your claim and I guarantee you that claim will be properly handled. But you don't, nobody has the right to say I am claiming and I am paying, I am claiming and I am paying, I am claiming and I am paying, and that is what you have done. That is theft, alright.*

***Neil**: Obviously, just a follow up question, so the mandate is then from Annelien Van der Walt as executrix of the Estate?*

***Paul**: You know, I have made it clear to you that we act for the Estate.*

***Neil**: I am just trying to understand, so are you saying....(Paul interrupts)*

***Paul**: I have not come here to be interrogated by you, Neil, alright. I didn't.*

***Neil**: I thought it was a discussion.*

> ***Paul**: It is a discussion but know what I am not in the business of being interrogated. If you want to interrogate me, get me in court and you can interrogate, you can cross-examine me after I given evidence cause I can tell you know if this matter goes to the full nine yards, you will need to get yourself a lawyer alright. I am hoping I can convince our client, not to go that route. Now, at this point in time, I got her swaying like that. I can assure you, if I go back to her and say to her, listen, you know what, I think we have resolved this now, calm down, blah blah blah. You are gonna come out of this a lot better than you currently, potentially can come out of it.*
>
> ***Neil**: Look, I am just trying to get on board; obviously I am not on board yet. My last discussion was with your client's representative, her attorney of record ...(Paul interrupts)"*

22. Diamond stated that O'Sullivan abruptly ended the conversation, said that he was not there to be interrogated by Diamond and that he was simply there to agree principles of repayment. O'Sullivan opened Diamond's office door to leave the meeting but did not leave the meeting and instead continued the discussion in the doorway, loudly so that Diamond's staff in the next office could hear him. Diamond said that O'Sullivan's conduct was designed to embarrass him. He further repeated that Diamond had stolen R921 000 and that he would be arrested soon. These statements were

made in the presence of Diamond's bookkeeper and one of his senior employees, whose confirmatory affidavits were tendered in evidence.

23. Diamond concluded that O'Sullivan had come to his office with the premeditated intention of extorting money from him and had done so on the instructions and mandate of the second respondent.

24. The above-mentioned extract, which was recited in Diamond's founding affidavit,[1] forms part of the longer transcript of the meeting in Diamond's office. That transcript shows that the general thrust of what was said in the extract was repeated several times during the entire course of the meeting.

25. From the transcript, it is apparent that:

    25.1 O'Sullivan claimed to have made a thorough investigation of Diamond and he alleged that he had a "*rock solid*" case demonstrating that Diamond had committed theft from the estate;

    25.2 he, O'Sullivan, was the "*good cop*" to the second respondent's "*bad cop*" in that the latter clearly wished to see Diamond in jail whereas O'Sullivan believed that if only Diamond would admit to having intentionally misappropriated funds from the estate (that is

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[1] I have corrected certain minor patent errors in the transcript which have no bearing on its accuracy as to the substance of what was said and by whom.

having committed theft from the estate, in the legal sense of the word) and undertaken to repay these monies, he would be in a position to persuade the second respondent not to pursue a criminal prosecution; and

25.3 that the general approach adopted by O'Sullivan was one of bullying.

26. A typical example of O'Sullivan's bullying and overbearing manner in dealing with Diamond is exemplified by the exchange which followed shortly after the exchange quoted above, which took place in the following context: Diamond pointed out that he had last discussed the matter with the second respondent's attorney of record in the High Court litigation between Diamond and the second respondent, Mr Coetzer. Diamond was clearly puzzled at O'Sullivan's approach given that, despite the pending litigation and despite having met with Coetzer, he had never received any demand based on unlawful misappropriation from the estate and yet O'Sullivan was there threatening him with arrest for what O'Sullivan described in no uncertain terms as criminal conduct: theft. It is not alleged that the disputed debt is the subject of that litigation.

27. O'Sullivan pointed out that Coetzer was no longer second respondent's attorney and thereafter the following exchange occurred:

*"**Neil**: – okay, but, you know, obviously I haven't been informed. The first… (Paul interrupts)*

***Paul**: you don't need to be informed, we forensic consultants, I even can give you my card. Monty Coetzer was handling the difficulties relating to the, your position as executor of the estate, alright. Monty Coetzer is no longer briefed in this matter. Okay, you know, I have made it clear to you, we have done our work, it is completed, we are ready to take the next step and before taking the next step, I am giving you an opportunity to say whether you want us to take the next step or not.*

***Neil**: Where does this leave us with regard to our current litigation in the Gauteng South High Court?*

***Paul**: Which litigation? Which matters are you referring to?*

***Neil**: You know, your client need to brief you on this. I cannot brief you on your client's … (Paul interrupts)*

***Paul**: Have you taken the matter further?*

***Neil**: In the Gauteng South High Court? Yes*

***Paul**: Okay, well, she is not aware of that.*

***Neil**: Once again, the attorney of record did not communicate to us they are no longer the attorneys of record.*

***Paul**: Whatever civil matters is going on, did you appeal the decision?*

***Neil**: There are no decisions.*

***Paul**: There was a decision in removing you as executor.*

***Neil**: No, no, no. Maybe let me make a suggestion, and obviously you are my intellectual superior as far as these matters are concerned, maybe you should get that information because there was no ruling as far as ... (Paul interrupts).*

***Paul**: That does not change the fact that you have stolen money from the Estate. Now, if we going to play cat and mouse, we will just go.*

***Neil**: That statement is a significant problem for me because you approach me in my office not on a fact finding mission ... (Paul interrupts)*

***Paul**: No, we got the facts already.*

***Neil**: But that is a little bit difficult if you have not engaged me. So you may have a set of facts ... (Paul interrupts)*

***Paul**: Let me explain something to you, taking money out of the account of the estate and paying it to yourself, is theft. Short and simple. And if we are going to go, if you have a defence, great, we are not interested in hearing it. We are going to leave now.*

***Neil**: I don't intend in providing you with a defence either. Could I get in indication just from you whether I am the only person you approached for a repayment. Have you approached ABSA as well for repayment?*[2]

***Paul**: We are not going to discuss the matter further. Let's go.*

***Neil**: Are you sure you want to leave Mr O'Sullivan?*

***Paul**: Absolutely, because you are not interested in settling this matter.*

***Neil**: No, I am absolutely ... (Paul interrupts)*

***Paul**: No, no, no. If you are going to start cross examining me, there is no discussion. The question I want answered, are you or are you not prepared to put the money back?*

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2 Elsewhere Diamond pointed out that he had made payment to other creditors of the estate, such as ABSA, in the same way as he had paid himself as a creditor of the estate.

> ***Neil:*** *Well, you need to give me an indication of what money you referring to. What amount is of that money, so that I have an idea … (Paul interrupts)*
>
> ***Paul:*** *I am talking about all the money you paid out of the Estate, okay, you know. No, I am not going to go into detail."*

28. In short, therefore, I find that O'Sullivan sought to convey the impression that he had uncovered information which showed not merely that Diamond had paid money to himself out of the estate, possibly in the mistaken belief that he could do so before the submission of a liquidation and distribution account to the Master,[3] but that he had done so intentionally and with knowledge that it was unlawful and that he had therefore committed the common law crime of theft, which requires the wrongful intention to commit a crime.

29. O'Sullivan was clearly not interested in anything that Diamond had to say. Indeed, on several occasions, when Diamond attempted either to ascertain further facts or even to convey his own knowledge of the facts, O'Sullivan threatened to walk out of the meeting. The evident implication of that threat was that Diamond would shortly thereafter be arrested, based on information (the precise import of which O'Sullivan refused to

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[3] I make no finding in this regard.

share with Diamond) which O'Sullivan would convey to the police. That, in my view, is a substantial threat and one which Diamond could not guard against short of giving in to O'Sullivan's demand that he admits to misappropriation and pays back, or agrees to pay back an unspecified amount.

30. It is clear that what was required of Diamond to avoid his arrest was an unequivocal undertaking to pay back whatever it was that O'Sullivan or the second respondent contended to be due to the estate, the precise quantum of which O'Sullivan refused to disclose. O'Sullivan only mentioned the figure of R922 000 as "*an example*" and not as the total amount of indebtedness. After further repeated threats from O'Sullivan, the following exchange took place:

> *"**Neil**: I am just trying to understand... (Paul interrupts)*
>
> ***Paul**: No, no, no, you don't want to understand anything. You have crooked the books and stolen from the Estate and you are now going to face the music.*
>
> ***Neil**: But Sir, you can't make those claims. You don't have .... (Paul interrupts)*
>
> ***Paul**: I am telling you, I am telling you, I have got the proof, I have got the proof.*

***Neil**: But then show … have the courtesy of sharing … (Paul interrupts)*

***Paul**: If you want to see the evidence, you are going to see it in court, and I have told you that. You don't want to settle this matter, let's go.*

***Neil**: Sir, if I walk into your office and ask you to fork out R920 000, would you do that?*

***Paul**: I don't want R921 000, I want a lot more than that.*

***Neil**: But then tell me what's the rest, so I know what you talking about because … (Paul interrupts)*

***Paul**: We are not going into detail. I said to you, right at the beginning, we are going to establish principles first, if the principle is that you agree to refund the money then we can sit and debate and you agree yes. Must pay that; we put it to one side, if you agreeing that …."*

31. The insidious part of O'Sullivan's conduct lies in his unsubstantiated claim that he was in a position to convey information to the police which would at the very least result in Diamond's arrest. O'Sullivan's attempts to characterise his conduct as that of a reasonable person attempting to persuade Diamond to do "*the right thing*" to avoid the unpleasantness of

his imminent arrest and criminal prosecution is belied by O'Sullivan's refusal firstly to share the nature and ambit of the information at his disposal (so that Diamond could respond to it) or indeed to hear Diamond's side of the story at all. In Diamond's mind, the possibility that O'Sullivan would present a one-sided and self-serving version to the police sufficient to ensure his arrest at least, must have loomed large and in my view, justifiably so.

32. I now turn to deal with the manner in which O'Sullivan sought to exclude the transcript from the admissible evidence before the court.

33. The transcript of the meeting in Diamond's office was typed by Diamond's assistant, Ms Schmidt. This appears from a confirmatory affidavit handed up to me by counsel for Diamond on the day of the hearing. Schmidt had in fact signed a confirmatory affidavit to the founding affidavit but she did not therein confirm that she had listened to the recording of the meeting and typed the transcript. Although Diamond's founding affidavit referred to the transcript, it did not state who had typed the transcript. Nevertheless, Diamond was present throughout the meeting and he deposed to the fact that the transcript was a transcript of the meeting. In my view, therefore, the transcript did not constitute hearsay evidence in the absence of an

affidavit from the person who transcribed it. In any event, in my discretion, I allowed the late filing of the confirmatory affidavit.[4]

34. Mr Roos SC who appeared for O'Sullivan sought to deal with an application to strike out certain portions of and annexures to Diamond's founding affidavit as a matter *in limine*. The application sought to strike out annexure ND3, which was the transcript of the recording of the meeting on the grounds, firstly, that it was unlawfully made and secondly, that there was (at that stage) no affidavit from the scribe that the transcript is a true and correct transcription of the recording. Secondly, he sought to strike out paragraph 22 of the founding affidavit which contains the quotation from the transcript first appearing in this judgment, on the basis that it is not admissible for the same reasons as the transcript is supposedly not admissible. Thirdly, he sought to strike out paragraphs 27 and 28 and annexures ND6 and ND7 on the grounds that the allegations therein are irrelevant and inadmissible as they refer to similar but unrelated facts. Those paragraphs and annexures relate to an earlier incident in which Diamond's attorney of record had brought an application in similar terms to the present application because O'Sullivan had allegedly threatened the attorney and accused him of criminal conduct and in which O'Sullivan had,

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4 See the Judgment of Wepener J in **Pangbourne Properties Ltd v Pulse Moving CC** 2010 JDR 1414 (GSJ) at paragraph 17 on the court's discretion to allow additional affidavits in motion proceedings.

in terms of a settlement agreement, accepted that his conduct was unlawful and warranted an interdict. (I will deal with this in more detail below.) Lastly, the respondents sought the striking out of paragraphs 29 and 30 of the founding affidavit on the basis that they constituted either hearsay or opinion evidence of a person not qualified to give an opinion. The relevant paragraphs read as follows:

> "29 *From the tone and content of the first respondent's threats and his past conduct and 'name' that he has made for himself in the media, it is clear that he is a self-appointed vigilante who has taken it upon himself the self-appointed right and duty to root out crime wherever, in his subjective opinion, crime manifests itself. He does not claim any appointment under the law to have this task. He does not claim any rationale beyond the reason for his picking the various persons that he chooses to target for his alleged crime fighting activities. Indeed, bereft, for the most part, of any admissible evidence, he chooses to threaten and intimidate his targets to achieve his own end. He also, quite evidently, enjoys publicity in the press for his self-appointed "white knight" activities.*
>
> 30 *It will be submitted that it is evident that the first respondent is emotionally unstable and believes himself to hold some*

special place in society where the ordinary rules of societal conduct do not apply to him. Persons such as Mr O'Sullivan are quite evidently dangerous in society if left unchecked."

35. Curiously, however, the respondents did not seek the striking out of paragraph 31 in which O'Sullivan is referred to as a megalomaniac or psychopath on the basis of the immediately preceding paragraphs.

36. I declined to deal *in limine* with the application to strike out. Instead I elected to hear Diamond's counsel first and to deal with the application to strike out as part of the respondents' case.

37. In addition to the formal application to strike out, counsel for the respondents contended that Diamond's replying affidavit fell to be disregarded *in toto* because of non-compliance with Uniform Rule 63(2) relating to the formalities applicable to affidavits attested to outside of the Republic. The replying affidavit was signed in Orlando, Florida, USA before a police service officer whose official stamp denotes that he is a commissioner. Counsel furthermore attempted to exclude the confirmatory affidavit of Schmidt on the basis that (in addition to being out of time) it purported to be a confirmatory affidavit of the replying affidavit and because, so it was contended, the replying affidavit was not properly attested for purposes of admission in a South African court, her affidavit fell to be disregarded altogether. This despite the fact that Schmidt's

confirmatory affidavit also states in a self-contained sentence that she confirmed having made the transcript referred to in the founding affidavit and annexed as annexure ND3 thereto and confirmed that it was a true transcript of the recording of the meeting between Diamond and O'Sullivan. This argument is a *non sequitur* and I thus admitted the confirmatory affidavit.

38. On the view I take of the matter, it is not necessary to decide this issue. The case against the respondents is made out in the founding affidavit read with the answering affidavit. The contents of the replying affidavit takes the matter no further.

39. As to the application to strike out the transcript, apart from the fact that any deficiency in its proof was cured by the confirmatory affidavit of Schmidt, even without that I do not regard it as hearsay evidence by reason of the fact that Diamond himself was a party to the conversation reflected in the transcript and he described the transcript as a transcript of that meeting. Although I accept that without listening to the recording he would not be able to state with certainty that the transcript had captured, word for word, what was said at the meeting, it is not hearsay in the sense that the deponent has no personal knowledge as to its accuracy. By analogy, witnesses are frequently called to confirm that the minutes of a meeting constitutes an accurate record of what transpired at the meeting, even when the witness in question did not keep the minutes.

40. The application to strike out reference to the similar, earlier application to this court brought against O'Sullivan by a third party under case number 12486/2011, to interdict O'Sullivan, as well as the settlement agreement in that matter, is in my view equally unfounded. That evidence was relevant and thus admissible for at least two reasons.

41. The first is the one tendered expressly in the founding affidavit, namely that it demonstrated a proclivity on the part of O'Sullivan. This, *inter alia*, goes to Diamond's reasonable apprehension that absent an interdict, there is a likelihood that O'Sullivan will continue to threaten and harass Diamond.

42. The second is that Diamond seeks a punitive costs order in this application. O'Sullivan appears not to have learnt anything from the fact that he has been taken to court for similar conduct in the past and on that occasion had accepted that his conduct was unlawful and warranted an interdict. It also provides a window into what he is capable of. That application was precipitated by an email from O'Sullivan dated 29 March 2011 and despatched to Diamond's attorney, in which he states the following:

> ***"Subject : You have crossed the line.***

*THIS MAIL IS DIRECTED TO *** ID NO ***[5]*

THIS IS A 24 HOUR WARNING NOTICE

IF YOU DO NOT GIVE A SUITABLE RESPONSE WITHIN 24 HOURS, ROLLING ACTION WILL BE TAKEN AGAINST YOU.

Hello scum,

Do not see this as a threat – Rather see it as a promise.

As a result of the lies you have procured the publishing of, I did call your office, but I see that your operator does not speak English too well so here it is in a fashion you will easily understand:

*When you chose to receive blood money (proceeds of crime – in contravention of Prevention of Organised Crime Acts) from *** that was one thing. Then you have chosen to lie for him, is a totally other matter. That you have chosen to lie to the media against me, and persuade your gangster friends to open false dockets against me, makes you move very quickly into my radar screen, something I am willing to bet, you will wish you had not done."*

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[5] I do not repeat and thus republish the names of the persons referred to in this email.

43. The email continues in similar vein and then refers to a number of individuals, including some high profile persons convicted of crime, impliedly as a result of O'Sullivan's efforts. The email concludes in melodramatic fashion as follows:

> "***** found out the hard way, you have the chance to avoid the big fall.*
>
> *Read Hosea VIII 7*
>
> ***For they have sown the wind and they shall reap the whirlwind***"

44. In the settlement agreement which followed upon an *ex parte* order obtained against O'Sullivan on 29 March 2011, the interim order was made final and in relation to the aforementioned email, O'Sullivan unreservedly tendered his apology to the applicant, the members of his family mentioned in the email and the directors of his firm and further records that it was never his intention that the said email should constitute a threat but conceded that it was reasonably so interpreted. He further declared his understanding for the constitutional right of any person charged with any offence to legal representation and the importance of a protection of this basic right and the maintenance of the rule of law and democracy. There is, furthermore, a concession by all parties to the settlement agreement "*including attorneys involved in the criminal law*

process, [that they] should abide by the legal principles governing their conduct and any specific legislation such as the Prevention of Organised Crime Act and the Financial Intelligence Centre's Act which may be applicable to the relationship between attorney and client." It was expressly agreed that the agreement would constitute a mutual press release which would be made available to the press upon the order being confirmed and made final.

45. The present application was necessary, despite O'Sullivan's previous experience of having to tender his unreserved apology and having to seek to characterise a communication which quite clearly constituted a threat or, in the comic-book caricature of a bully, "*a promise*" rather than a threat, as not having been intended that way.

46. It is now necessary to deal with various aspects of the manner in which the hearing before me was conducted. I first heard Diamond's counsel. Diamond's counsel stated at the outset that he had been taken by surprise in relation to the objection to the manner in which the replying affidavit had been attested, since no mention was made of it in the short heads sent to Diamond's counsel (or in fact, his predecessor in the matter) in advance of the hearing. It transpired that different versions of these heads had been sent to Diamond's counsel and to me, respectively. I accept that this was done in error, but must emphasise that it is an obligation of the legal representatives in any motion proceedings in this Court to ensure that a

copy of the practice note and short heads are provided to opposing counsel.

47. I then heard counsel for the respondents. I made it clear that I was not convinced by the arguments advanced in support of the formal striking out application but that I would deal with it together with the merits in the main judgment dealing with the merits.

48. Respondents' counsel argued in essence that O'Sullivan had done no more than advise Diamond that he had evidence of criminal conduct on his part which, if referred to the proper authorities, could result in his arrest and indictment before a criminal court if and only if the prosecuting authorities decided to prosecute. There were no unlawful threats and no extortion on his part. I will deal with this argument later on in this judgment.

49. After the lunch and adjournment (by which time I had heard Diamond's counsel and a considerable amount of argument by respondent's counsel), the latter informed me that he had been instructed to seek a postponement of the hearing, on the basis that the transcript of the meeting annexed to the founding affidavit was inaccurate in material respects and that the respondents sought an opportunity to produce an accurate transcript. He submitted (again based on his instructions) that an accurate transcript would alter entirely the supposedly false impression

created by the transcript and cast new light on Diamond's case, to the benefit of O'Sullivan.

50. I was not satisfied as to the *bona fides* of the application. Firstly I agreed with Diamond's counsel that the timing of the application was suggestive of the respondents' seeking to delay the matter and to seek their fortune before another judge, because the proverbial shoe was starting to pinch. Secondly, and more to the point, although O'Sullivan in his answering affidavit had sought to exclude the transcript on the grounds that it was inadmissible, he purported to deal with what had happened at the meeting in general terms and nowhere did he allege that the transcript was the product of a fertile imagination or that it was in any material respect inaccurate or incomplete. The existence of a recording was known by the respondents from late November, some two months before the hearing, and there was no suggestion that a copy thereof had ever been sought. The respondents had, moreover, been in possession of the recording for a day or two prior to the hearing, so I was informed. No explanation was tendered as to why, if the transcript was inaccurate to a degree that it misrepresented the general thrust and import of O'Sullivan's alleged conduct, the recording had not been procured earlier. Instead, respondent's legal representatives did their best to keep the facts of the matter from the Court by means of the application to strike out. As to Diamond's version of the meeting, O'Sullivan had been content in general

terms to deny that he had threatened Diamond. that his conduct constituted extortion or that he had in any manner acted unlawfully.

51. I refused the application for postponement, a decision which was vindicated by what followed.

52. Respondents' counsel thereupon sought a brief adjournment whereafter he sought my recusal on three grounds. These grounds were firstly that I had in the course of Diamond's counsel's address referred to O'Sullivan as a "*cowboy*"; secondly, that I had suggested to Diamond's counsel an argument which tended to favour his case and thirdly, that I appeared to be more disposed towards Diamond's than the respondents' case.

53. I dismissed the application for recusal and briefly gave my reasons for doing so. The reference to O'Sullivan or to his conduct as that of a cowboy was a figure of speech and not unreasonable given the content of the transcript. As to the second ground, there is nothing improper nor indicative of bias for a judge to suggest a point in one party's favour, particularly when counsel for the other party has yet to address the court and will have an opportunity to deal with it. As to the third ground, I had prior to the hearing read the papers and the heads of argument filed by both counsel and formed a *prima facie* view in favour of Diamond, at least on the facts of the matter. I consider the grounds of recusal advanced by counsel particularly flimsy and mendacious. Indeed the application for

postponement appears to have been a disguised application for recusal and the application for recusal, a disguised application for postponement. Both were baseless and both were advanced for purposes of avoiding the completion of the matter before me.

54. Argument ensued and I enquired of both counsel as to who had a copy of the recording. I was informed that there was a copy available in court and that neither party objected to my listening to the recording in court together with counsel. (Respondents' counsel had informed me that he personally had not listened to the recording.) This was done and I was able to follow the transcript whilst listening to the recording and able to determine that give or take an insignificant word here or there, the transcript was entirely accurate and certainly presented a fair picture of what had transpired at the meeting. The first part of the recording during which banalities were exchanged prior to the business of the meeting commencing had not been included in the transcript, but this had no impact on the merits of the case. It had been suggested in the course of the argument in favour of the application for postponement that Diamond and his companions could be heard laughing after O'Sullivan had departed and this supposedly demonstrated that Diamond was not fearful of O'Sullivan and that he therefore had no genuine or reasonable "*apprehension*" that O'Sullivan would infringe his rights. There was nothing in the recording which vindicated such a conclusion.

55. By this time it was abundantly clear that respondents' counsel's "*instructions*" which had given rise to the application for postponement, were misleading, to put it politely. Had I given respondents the opportunity to procure an accurate transcription of the meeting it would not to the slightest degree have altered the impression created by the transcript already before court. I enquired of respondents' counsel at that point from whom his instructions had emanated and he referred to an associate of Mr O'Sullivan as being that person.

56. I must say that I find this explanation most unsatisfactory. Whilst I have no reason to doubt counsel's word that he had not had the benefit of listening to the recording and that he was acting on instructions, I question whether he could properly have made sufficiently searching enquiries as to what the import of the differences would be in the transcript before court as opposed to the "*accurate*" transcript sought to be obtained by O'Sullivan, such as to warrant a postponement and supplementation of the papers. Whatever else might have been said at the meeting which may not have been included in the transcript, the transcript itself is clear and the conduct complained of occurs repeatedly in the course of the meeting. In my view, the application for postponement was not *bona fide* or based on any substantial grounds.

57. When counsel makes application for a postponement from the bar, both the opposing party and the court are placed in the invidious position of

having to assess the reasons advanced for the postponement on the basis of the facts, usually advanced by counsel from the bar, based on counsel's instructions. In these circumstances there is a duty on counsel to have obtained sufficiently detailed instructions to justify the submissions made in support of such an application. In this case, counsel would have to have been satisfied that a postponement would result in O'Sullivan being able to cast an entirely different light on the meeting of 28 November, given the opportunity to obtain an accurate transcript. In my view O'Sullivan's counsel ought to have been more circumspect in advancing his "*instructions*" as grounds for a postponement.

58. I have already concluded that O'Sullivan's conduct, properly construed amounted to this: O'Sullivan was not interested in anything that Diamond had to say. Whenever Diamond attempted either to ascertain further facts or to convey his own knowledge of the facts, O'Sullivan threatened to walk out of the meeting. The clear implication of that threat was that Diamond would shortly thereafter be arrested, based on information (the precise import of which O'Sullivan refused to share with Diamond) which he would convey to the police. That in my view is a substantial threat and one which Diamond could not guard against short of giving in to O'Sullivan's demand that he admits to misappropriation and pays back an as yet unspecified amount.

59. I find that O'Sullivan's conduct is unlawful and amounts to attempted extortion. The common law crime of extortion is committed when a person unlawfully and intentionally obtains some advantage, which may be either of a patrimonial or a non-patrimonial nature, from another by subjecting the latter to pressure which induces him or her to hand over the advantage (Snyman, *Criminal Law* 5th edition page 426).

60. It matters not whether the advantage is due or not by the victim (Snyman, *Strafreg* 6th edition page 445; Milton, *South African Criminal Law and Procedure* Vol II 2nd edition page 699), nor whether the advantage sought is to the perpetrator (Milton, *South African Criminal Law and Procedure* Vol. II 2nd edition page 695). It is also of no consequence whether an accusation made against a victim is true or false, where the threat made is to expose the victim (Milton, *South African Criminal Law and Procedure* Vol II 2nd edition page 699; **R v G** 1959 (4) SA 39 T at 41; **R v Lutge** 1947 (2) SA 490 (N)).

61. In enquiring into the lawfulness of the conduct of the perpetrator, the enquiry should not be restricted to whether or not the threat was to do something which the perpetrator lawfully and legitimately was entitled to do, including reporting a suspected offence to the police. The threat should not be seen in isolation. Unlawfulness lies in the combination of the threat, the purpose for which it was made, and the manner in which the perpetrator exercised his authority or entitlement to do something (MA

Hunt: South African Criminal Law and Procedure (formerly Gardiner and Lansdown Vol. II Common-Law Crimes 2 ed by RL Milton page 699; **R v N** 1955 (2) SA 647 (T); **R v Lepheana** 1956 (1) SA 337 (A); Snyman, *Strafreg* 6th edition, page 445). In addition, the conduct is considered wrongful if the use of pressure causes some harm to the victim (Milton, *South African Criminal Law and Procedure* Vol. II, 3rd edition, page 683).

62. On the facts disclosed in this application, the advantage sought by O'Sullivan was the resolution of his investigation for the second respondent on his terms without the inconvenience of seeking redress through legitimate avenues. He may have achieved this advantage had Diamond succumbed to his threats to place allegations before the police and undertaken to pay whatever O'Sullivan wanted. His conduct went well beyond that of a reasonable demand for something he believed was owed: it was accompanied by bullying and aggressive behaviour and a refusal to engage Diamond on the specific allegations against him in order to place him in a position to evaluate them and possibly to provide an answer thereto. The question of whether or not Diamond was obliged to repay the estate had not been adjudicated on by anyone other than O'Sullivan and the second respondent; the question of whether Diamond, even if he acted unlawfully, did so with criminal intent had also not been adjudicated on by anyone other than O'Sullivan and the second respondent; legitimate processes were available to the respondents to recover the estate's

money if indeed there had been misappropriation and indeed were already underway. Under the circumstances, it is clear to me that O'Sullivan acted with the requisite *mens rea.*

63. The failure of Diamond to be intimidated or succumb to the threats or the achievement of the advantage does not in any way detract from the unlawfulness of O'Sullivan's conduct. All this means is that O'Sullivan's conduct amounts to attempted extortion rather than extortion (Milton, *South African Criminal Law and Procedure* Vol. II 2nd edition page 694).

64. The advantage sought by second respondent was similarly a resolution of the matter on her terms and the return to the estate of monies that had been paid out. She had used O'Sullivan as her instrument to achieve this. While the extent of the second respondent's knowledge of O'Sullivan's tactics it is not clear on the facts before me, this is because of her failure to take the court into her confidence in circumstances in which she ought to have done so. It is not disputed that O'Sullivan was purporting to discharge his mandate from the second respondent. The conduct of the second respondent, through the use of O'Sullivan as her agent, was similarly wrongful and an infringement of the clear right of Diamond not to be the victim of unlawful conduct.

65. Even if I am wrong in the finding that O'Sullivan's conduct amounts to the criminal offence of attempted extortion, I am satisfied that it amounts to

unlawful harassment of Diamond. It is lawful for any person to assert rights or alleged rights by confronting the person said to owe satisfaction of those rights, but there is a point at which the manner in which this is done would constitute unlawful harassment. The courts are there for the resolution of such disputes and a right once asserted, must be vindicated in accordance with the rule of law and the rights to due process enjoyed by all in our constitutional democracy. To apply the sort of illegitimate pressure on Diamond to make concessions in response to the threats issued in the manner described above, amounts in my view to O'Sullivan taking the law into his own hands. My findings above relating to the role of the second respondent apply equally in this context.

66. In **Deneys Reitz v South African Commercial, Catering and Allied Workers Union** 1991 (2) SA 685 (W) the applicant, a law firm, sought *inter alia* an interdict against the respondent trade union's planned campaign against what it perceived to be "*union bashing*" conduct on the part of the applicant, arising from its representation of employers in labour disputes and submissions made by the applicant to the legislature in respect of proposed labour legislation amendments. This Court, per Flemming DJP, referred to the public policy considerations applicable to the question of when the law curtails the ostensible exercise of rights in a manner which may exceed reasonable bounds, to a degree that it is deemed unlawful. The learned judge held, at 693H to 694A:

Date Argued:
Date of Judgment:

For the Applicant:
Attorneys:

For the Respondents:
Attorneys:

JPP52

Mark Shaw

NATIONAL PROSECUTING AUTHORITY
South Africa

OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS

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Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact numbers: 012 845 6758
Email: ndpp@npa.gov.za
www.npa.gov.za

INTERNAL MEMORANDUM

TO: ADV N. JIBA

COPY TO: DR; J.P. PRETORIUS, SC
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS: PCLU

FROM: ADV S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

REFERENCE: NDPP/JL/01/2016

DATE: 18 NOVEMBER 2015

SUBJECT: REFERRAL OF CASES TO THE PRIORITY CRIMES LITIGATION UNIT

Dear Adv Jiba,

1. By virtue of the appointment of Dr. J.P. Pretorius, SC as the Acting Special Director of Public Prosecutions and Head: Priority Crimes Litigation Unit (PCLU) with effect of 1 October 2015, he is enjoined to manage and direct investigations and prosecutions relating to all the offences specified in the Prosecution Policy Directives relating to the PCLU, which came into effect on 1 June 2015 and any other matter(s) which the National Director refers to the PCLU.

2. In addition to the above, the Acting Special Director, PCLU is mandated to manage and direct investigations and prosecutions relating to:

   2.1 The implementation of the Geneva Conventions Act, No 8 of 2012; and,

   2.2 The Prevention and Combating and Torture of Persons Act, No 13 of 2013 (limited solely to offences committed outside the territory of the Republic of South Africa as contemplated in section 6 of the Act).

3. I have now referred the following matters to the PCLU, which investigations and prosecutions must be managed and directed by the Acting Special Director:

3.1 S v On-Point and Others;
3.2 S v McBride & Others (Defeating the ends of justice);
3.3 S v McBride
3.4 The SARS 'Rogue Unit' investigations;
3.5 The Nkandla investigation;
3.6 S v Breytenbach and Another (Deletion of information)
3.7 S v Breytenbach & Another (Corruption)
3.8 S v Bopysen & Others (Cato Manor matter)
3.9 The South African Airways (SAA) matter
3.10 Investigations into alleged impropriety by NPA officials (SARS complaint re Selebi and Pappas matters).

4. The PCLU should deal with all other offences in relation to the above as well as all prosecutorial functions incidental to the management of investigations and prosecutions relating to the above contraventions and specified matters.

5. There are other matters that I am contemplating to refer to the PCLU as well. In this regard, I endeavor to advise you hereof in due course.

Yours sincerely,

ADV. S. K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 18 - 11 - 2015

Annexure A JPP53 31

Corporate Services

The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi bakizantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

Tel: +27 12 845 6000

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Mxenge Building
123 Westlake Avenue
Weavind Park
Pretoria

P/Bag X752
Pretoria
0001

TO: G. BREYTENBACH
SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
SCCU- PRETORIA

RE: NOTICE OF INTENTION TO SUSPEND

1) This serves to inform you that the employer is intending to suspend you with the retention of emoluments applicable to your post and rank, until such time as the investigation of your alleged misconduct is finalised.

2) The reason for the above are as a result of the following allegations:

2.1 That you abused power in execution of your duties as a Senior Deputy Director of Public Prosecutions in an investigation under Kimberley CAS 263/04/2011.

3) You are requested to provide me with reasons within 48 hours from the time of receipt of this notice, why you should not be suspended.

Kind Regards

ADV K. VAN RENSBURG
ACTING CHIEF EXECUTIVE: NPA
DATE: 1/2/2012

2/2/2012
13h10.
obo Adv Breytenbach.
Gerhard Wagenaar
012 361 0907 (tel)
012 361 9425 (fax)
083 388 7077.
wagenaarg@mweb.co.za.

JPP 54

SUPPLEMENTARY STATEMENT OF MR. SKV XABA

1

I, Scelo Khayelihle Victor Xaba, I.D. 740212 5299 082, in the employ of the National Prosecuting Authority of South Africa as Deputy Director: Security Management Services. I would like to state in English that:

2

Further to my statement which I submitted to the police on the 20th May 2015 I wish to add that on paragraph five (5) of that statement I mentioned that the purpose of the visit to the offices of the NPA's SCCU (Specialised Commercial Crimes Unit) in Pretoria, was to serve a suspension letter to Adv. Breytenbach, since she was based there.

3

The copy of the letter of suspension is hereby annexed, which is dated 23 April 2012. It is the same (copy) letter I served to Adv. Breytenbach. It is marked as **KVX 1.** Adv. Breytenbach received and signed the said notice of suspension on the 30th April 2012 at or about 07h30. The notice of suspension, amongst others, stated that she must hand over the official laptop, office keys and building access card. She handed to me the office keys and the building access card but not the official laptop. I then locked the office and later handed the keys to Mr. Wasserman, from IMU.

I know and understand the content of this statement;

I have no objection in taking the prescribed oath;

I consider the oath to be binding on my conscience;

Deponent

I certify that the deponent has acknowledged that he knows and understand the contents of this statement. The statement was sworn to and signed before me at PRETORIA on this day the 02 of MARCH 2016 at 14H15 (Time).

Commissioner of Oaths

Name: Reginald Mmeli Makinyane

Designation: Brigadier, DPCI

Address: Serious Economic Offences, 83 Steve Biko Street, Pretoria 0001

SEQ 29/2020-658

OFFICE OF THE NATIONAL DIRECTOR
2012 -04- 27
NATIONAL PROSECUTING AUTHORITY

Office of the National Director of Public Prosecutions

NATIONAL PROSECUTING AUTHORITY
South Africa

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Pretoria
0001
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Fax: (012) 804 9529
www.npa.gov.za

TO : G. BREYTENBACH
SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS- SCCU

FROM : ADV N JIBA
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS

RE : PLACEMENT ON PRECAUTIONARY SUSPENSION

1) This serves to inform you that the act of misconduct allegedly committed by you has been brought to my attention.

2) The act of misconduct allegedly committed by you relates to the following:
   a. That you abused power in execution of your duties as a Senior Deputy Director of Public Prosecutions in an investigation under Kimberley CAS 263/04/2011.

3) After careful consideration of the facts at our disposal, you are hereby precautionary suspended.

4) Your suspension is with immediate effect, on full remuneration pending the outcome of the investigation.

5) To avoid possible interference with potential witnesses, you are not allowed to enter the premises of the NPA, or to have contact with any staff of the NPA, unless authorised to do so.

8) Further be advised that if you are in possession of an official cell phone, you are entitled to retain this during your period of suspension. However, all private calls will be for your own account.

7) All laptops and other equipment must be left at the workplace.

8) Please note that this suspension is a precautionary measure in terms of the Disciplinary Code and Procedure and does not constitute judgment against you.

Yours faithfully

ADV N JIBA
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS
Date: 23/04/2012

30-4-12

JPP 54 A

SUPPLEMENTARY STATEMENT OF MR. SKV XABA

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I, Scelo Khayelihle Victor Xaba, I.D. 740212 5299 082, in the employ of the National Prosecuting Authority of South Africa as Deputy Director: Security Management Services. I would like to state in English that:

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I know and understand the content of this statement;

I have no objection in taking the prescribed oath;

I consider the oath to be binding on my conscience;

Deponent

I certify that the deponent has acknowledged that he knows and understand the contents of this statement. The statement was sworn to and signed before me at PRETORIA on this day the 07 of MARCH 2016 at 14H15 (Time).

Commissioner of Oaths

Name: Reginald Mmeli Makinyane

Designation: Brigadier, DPCI

Address: Serious Economic Offences, 83 Steve Biko Street, Pretoria 0001

SEQ 29/2020-662

A27/1

OFFICE OF THE NATIONAL DIRECTOR
2012 -04- 24
NATIONAL PROSECUTING AUTHORITY

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TO : G. BREYTENBACH
SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS- SCCU

FROM : ADV N JIBA
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS

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8) Please note that this suspension is a precautionary measure in terms of the Disciplinary Code and Procedure and does not constitute judgment against you.

Yours faithfully

ADV N JIBA
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS
Date: 23/04/2012

30-4-12

JPP 55

The National Prosecuting Authority of South Africa
Igunya Jikeleto Lobetshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

INTERNET AND E-MAIL USAGE POLICY OF THE NATIONAL PROSECUTING AUTHORITY

Document No:	NPAPP-0001
Version:	01
Revision	00
Authors:	Mr Fernandez Pedro
Contributors:	Adv Marnus Steyn
Editor:	Dr Kwandiwe Kondlo and Adv Gerhard Nel
Date Approved by Exco:	31 May 2005
Effective Date:	1 June 2005
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Electronic File:	Internet and E-mail Usage Policy

Notice

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Approval

The signatories hereof, being duly authorised thereto, determine and issue hereby the official Internet and E-mail Usage Policy of the National Prosecuting Authority.

National Director: Adv VP Pikoli — Date

Chief Executive Officer: Ms MM Sparg — 31/5/2006 Date

Foreword

This document is applicable to the National Prosecuting Authority.

Revision History

Revised Series	Version Revision	Change Control Meeting Date	NPA Approval Date

Abbreviations

EMS	Enhanced Messaging Services
ICT	Information and Communication Technology
IMSC	Information Management Service Centre
IRC	Internet Relay Chat
NPA	National Prosecuting Authority
PDA	Personal Digital Assistant
SMS	Short Message Service

INTERNET AND E-MAIL USAGE POLICY

1. **Definitions**

In this Policy, unless the context indicates otherwise—

(i) **"computing facility"** includes computing resources, services, and network systems such as computers and computer time, data processing or storage functions, computer systems and services, servers, networks, input or output and connecting devices, and related computer records, programmes, software, and documentation;

(ii) **"employee"** means any employee of the NPA;

(iii) **"electronic mail"(e-mail)** means any or several electronic computer records or messages created, sent, forwarded, replied to, transmitted, stored, held, copied, downloaded, displayed, viewed, read, or printed by one or several e-mail systems or services and includes SMS messages generated, delivered or received using EMS;

(v) **"e-mail records"** includes the contents of such records and any transactional information associated with such records, such as headers, summaries, addresses, and addressees. E-mail also includes SMS messages generated, delivered or received using EMS;

(vi) **"FTP System"** means a system for storing and retrieving data files on computer systems using the File Transfer Protocol;

(vii) **"Internet-Related Services"** means all services that are enabled through Internet technology, including but not limited to Web Browsing (WWW), FTP systems, Usenet groups, IRC systems and e-mail;

(viii) **"Internet Relay Chat System"** means a system for sending public and private messages to other users in "real time"- that is when a message appears on the recipient's screen as it is being typed;

(ix) **"messaging"** includes e-mail, electronic diary (scheduling, etc.), Electronic Task Management, Electronic Contact Management (address list), and Electronic Information Management (archiving/deleting/removing);

(x) **"possession of e-mail"**, a person is in possession of an e-mail record, whether the original record or a copy or modification of the original record, when that person has effective control over the location of its storage and an e-mail

record that resides on a computer server, awaiting download to an addressee, is deemed for purposes of this Policy to be in the possession of that addressee: Provided that—

(a) systems administrators are excluded from this definition of possession with regard to e-mail not specifically created by or addressed to them; and

(b) e-mail users are not responsible for e-mail in their possession when they have no knowledge of its existence or contents;

(xi) **"spamming"** means the flooding of the NPA network with multiple copies of the same message, in an attempt to force the message on computer users who would not otherwise choose to receive the message, but does not include official notices sent to all employees authorised by NPA management;

(xii) **"Usenet Groups"** means news groups for posting and responding to public bulletin board messages;

(xiii) **"Workstation"** means a desktop computer, notebook computer, PDA or any other device used to access Internet-related services.

2. BACKGROUND

2.1 Policy Statement

The Internet provides exciting opportunities by providing new resources, new services and inter-connectivity, but also introduces new risks that hold great challenges for protecting the systems and information used and owned by the NPA. This is particularly relevant due to the fact that the NPA uses extremely sensitive information that would be invaluable for the criminally-minded and those who wish to promote lawlessness and anarchy. The provision of Internet access by any organisation provides opportunities to individuals who wish to disrupt or harm that organisation, to attack or compromise the computer systems of the organisation. Therefore Internet access and the use of Internet services such as e-mail need to be strictly controlled.

Furthermore, section 38(1)(b) of the Public Finance Management Act, 1999, makes the accounting officer responsible for the effective, efficient, economical and transparent use of the resources of the department, trading

entity or constitutional institution. The resources of the NPA include the use of Internet-related services infrastructure.

2.2 Objectives

The objectives of this Policy are to—

(a) Limit the liability of the NPA;

(b) Crystallise the goals and expectations of the NPA as far as the use of Internet-related services are concerned, with the clear statement of the valid reasons for providing access to Internet-related services;

(c) Regulate the use of Internet-related services in order to ensure the effective, efficient, economical and transparent use of Internet-related services;

(d) Create a framework for the professional use of Internet-related services;

(e) Address the legal effect of e-mail messages;

(f) Address security risks in the use of Internet-related services;

(g) Regulate the possible infringement of privacy of employees;

(h) Create a framework and the concurrent responsible use of Internet-related services in the NPA; and

(i) Enable the NPA to deliver high quality services that are in line with and support the vision, mission and strategic outcomes of the NPA.

2.3 Scope

This Policy applies to all employees (users) within the NPA who have access to any Internet-related services using computing or networking resources of the NPA or linked to those resources of the NPA.

2.4 Legislation and documentation

The following legislation and documentation relevant:

(a) The National Prosecuting Authority, 1998 (Act No. 32 of 1998.

(b) The Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002).

(c) The Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

(d) The Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(c) The NPA Password Policy.

3. GUIDELINES FOR INTERNET-RELATED SERVICES

3.1 General

In general Internet-related services must be used in a manner that is consistent with the provisions of the Public Service Act, 1994, and the Public Service Regulations, 2001. This legislation prescribe the manner in which an employee must perform his or her duties, with specific reference to the authorised, honest and accountable use of state property and resources (which include computer systems and networks, and access to, and use of, Internet & E-mail). The Act and Regulations referred to above can be obtained from the NPA library.

3.2 Professional and Ethical Use of Internet-related Services

In general, users cannot be protected from receiving offensive electronic messages. Users of NPA electronic messaging facilities must act in a professional and ethical manner. In order to achieve this, the following conditions apply:

(a) Users must apply the same personal and professional courtesies and considerations in electronic messages as they would in other forms of communication.

(b) Users may not transmit messages unnecessarily or perform spamming of other users, whether internal or external to the NPA.

(c) Users may not transmit frivolous, abusive, offensive or defamatory messages. Offensive messages include, but are not limited to, messages containing sexual connotations, racial slurs, gender-specific comments or any comment that offensively addresses the age, sexual orientation, religious or political beliefs, nationality or disability of a person.

(d) Users may not transmit electronic messages that are unlawful or contravene other NPA policies.

(e) Users must express themselves carefully in order to clearly convey their message and not create any uncertainty in the mind of the recipient about the contents of the message.

(f) Users shall not cause interference with other users of electronic mail services. Examples of interfering techniques are transmission of e-mail

chain letters, widespread distribution of unsolicited e-mail, the repeated sending of the same e-mail message and the forwarding of virus hoax messages.

(g) Users may not use Internet-related services for engaging in non-NPA business, or for personal gain. Advertising and solicitation for sponsorship is also not allowed.

(h) Users may not use Internet-related services to solicit or promote religious or political causes, outside organisations or other non-work related causes.

(i) Users may not use Internet-related services to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary functional information, sensitive or mission-critical information pertaining to the NPA or any of its units or operations of any of its units.

(j) Users may not attempt to gain access to another employee's information without the express permission of the latter.

(k) Users may not employ a false identity when using Internet-related services.

(l) Users must include the prescribed standard disclaimer in all E-mail messages.

(m) Users may not use "stationery" embedded in e-mail messages (Pictures in background of e-mail messages).

3.3 Resource Usage

(a) The NPA management encourages staff to utilise Internet-related services, but if such use is for personal purposes, it should be done on personal time and not during official hours.

(b) Use of Internet-related services for personal purposes is permissible as long as the incremental cost of the usage is negligible, and as long as no business activity is pre-empted or compromised by such personal use.

(c) Users must attempt to minimise network traffic by reducing the size of large messages and attachments prior to transmission. Attached files can be compressed to minimise network traffic. In addition, large documents should be made available for download from a shared folder and the network address distributed to recipients. Electronic

documents in excess of NPA current maximum allowable size will automatically be excluded from transmission. All picture file formats such as JPEG, GIF, JPG, etc as well as executable files will be removed from e-mail messages. The IMSC reserves the right to add to the list of unacceptable attachments as may be required, in order to ensure adherence to this and other Policies, regulations or legislation.

(d) Users may not perform any data streaming (e.g. listening to radio stations or watching news casts), as this is very resource intensive and leads to unacceptable congestion of the network infrastructure.

4. LIMITATION OF LIABILITY

4.1 Use of Licensed Software

The NPA supports strict adherence to software vendors' licence agreements. When at work, or when NPA computing or networking resources are employed, copying of software in a manner that is not consistent with the vendor's licence is strictly forbidden. Participation in pirate software bulletin boards and similar activities represent a conflict of interest with NPA policy, and are therefore prohibited. Unlicensed software may not be downloaded from the Internet.

4.2 Use of Copyrighted Information

Reproduction of words, images or other information posted or otherwise available over the Internet must be done only with the permission of the author or owner. The NPA strictly forbids the use of copyrighted information without the consent of the owner.

4.3 Public Representations

(a) Users may indicate their affiliation with the NPA in bulletin board discussions, chat sessions, and other offerings on the Internet. This may be done by explicitly adding certain words, or it may be implied, for instance via an e-mail address.

(b) Whenever users provide an affiliation, they must also clearly indicate that the opinions expressed are their own, and not those of the NPA.

(c) All external representations on behalf of the NPA must first be cleared with the Unit Head or the Communications Unit. Additionally, to avoid libel actions, whenever any affiliation with the NPA is included with

an Internet message or posting, inflammatory or similar written attacks are strictly prohibited.

(d) Care must be taken to properly structure comments and questions posted to mailing lists, public news groups, and related public postings on the Internet.

5. REGULATION OF THE USE OF INTERNET-RELATED SERVICES

5.1 Responsibilities

(a) NPA information owners must see to it that the sensitivity of data is defined and designated on these systems in a manner consistent with government sensitivity classifications.

(b) NPA Unit Heads or persons delegated by them must ensure that employees under their supervision—

(i) Implement security measures as defined in this document;

(ii) Delete sensitive (confidential or secret) data from their disk files when the data is no longer needed or useful;

(iii) Who are authorised to use personal computers are aware of and comply with the policies and procedures outlined in all NPA documents that address information security;

(iv) Complete the pre-exit clearance process upon their official termination of employment or contractual agreement; and

(v) Make back-up copies of sensitive, critical, and valuable data files as often as is deemed reasonable.

(c) Users of NPA Internet connections must—

(i) Know and apply the appropriate provisions and practices pertaining to Internet security contained in this Policy;

(ii) Not permit any unauthorised individual to obtain access to NPA Internet connections;

(iii) Not use or permit the use of any unauthorised device in connection with NPA personal computers;

(iv) Not use NPA Internet resources (software/hardware or data) for other than authorised company purposes;

(v) Maintain exclusive control over and use of his or her password, and protect it from inadvertent disclosure to others;

(vi) Select a password that bears no obvious relation to the user, the user's organisational group, or the user's work project, and that is not easy to guess;

(vii) Ensure that data under his or her control and/or direction is properly safeguarded according to its level of sensitivity;

(viii) Report to the Executive Manager IMSC, IMSC staff or Security and Risk Management Unit any incident that appears to compromise the security of NPA information resources, including missing data, virus infections, and unexplained transactions;

(ix) Access only the data and automated functions for which he or she is authorised in the course of normal business activity;

(x) Obtain supervisor authorisation for any uploading or downloading of information to or from NPA multi-user information systems if this activity is outside the scope of normal business activities;

(xi) Make backups of all sensitive, critical, and valuable data files as often as is deemed reasonable by their programme director.

5.2 Accountability

The Head of each Unit is responsible for ensuring that the users of Internet-related services are aware of this Policy. New users should be provided with this Policy on assumption of duty. The manager must take immediate appropriate action where there is evidence of non-adherence to this Policy.

6. LEGAL EFFECT OF E-MAIL

Due to the fact that e-mail messages are easily intercepted, duplicated, altered or the identity of the sender easily concealed or fraudulently misrepresented the use of e-mail to give instructions that are legally binding or initiate proceedings or operations that have legally binding effect must be avoided. The above is exacerbated by the fact that it is difficult to confirm or verify the accuracy of the contents of e-mail messages or the identity of the author of the message or instruction. The above must be read with the provisions of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

7. SECURITY AND OWNERSHIP OF INFORMATION

7.1 Ownership of Information

(a) All information transmitted over NPA computer networks that has not been specifically identified as the property of other parties will be treated as though it is an NPA corporate asset and an NPA record, irrespective of the location or ownership of the facilities used to create or store the electronic record.

(b) It is the policy of NPA to prohibit unauthorised access, disclosure, duplication, modification, diversion, destruction, loss, misuse, or theft of this information. Users of Internet-related services and electronic messaging facilities must be aware of their responsibilities in regard to the management, retention and disposal of NPA records. Users of Internet-related services must be aware that all NPA records may be subject to disclosure.

(c) In addition, it is the policy of the NPA to protect information belonging to third parties that has been entrusted to the NPA in confidence as well as in accordance with applicable legislation.

7.2 Information Movement

(a) No unauthorised software downloads may be performed. Authorisation for downloading of software must be obtained from the IMSC Service Manager or IMSC Change Control Board. Downloads will be scheduled to run during periods when network activity is low such as after-hours.

(b) All software downloaded from non-NPA sources via the Internet must be screened with virus detection software prior to being opened or run. Whenever in doubt, downloaded software should be tested on a stand-alone (not connected to the network) non-production machine. If this software contains a virus, worm, or other program designed to interfere with computing services or Internet-related services, then the damage will be restricted to the machine involved.

(c) All information taken off the Internet should be considered suspect until confirmed by separate information from another source. There is no quality control process on the Internet, and a considerable amount

of its information is outdated or inaccurate. Contacts made over the Internet should not be trusted with NPA information.

(d) Users may not place NPA material (software, internal memos, etc.) on any publicly accessible Internet computer that supports anonymous file transfer protocol (FTP) or similar services, unless the Executive Manager, Information Management has first approved the posting of these materials.

(e) All publicly writeable (common/public) directories on NPA Internet-connected computers will be reviewed and cleared periodically. This process is necessary to prevent the anonymous exchange of undesirable information or information inconsistent with the business of the NPA.

(f) Undesirable information or information inconsistent with the business of the NPA includes, but is not limited to pirated software, passwords obtained unlawfully, stolen credit card numbers, and inappropriate written or graphic material (i.e., erotica). Users are prohibited from being involved in any way with the exchange of the material as described above.

7.3 Information Protection

(a) Wire-tapping and message interception are straightforward and frequently encountered on the Internet. Accordingly, the NPA secret, proprietary, or private information must not be sent over the Internet unless it has first been encrypted by approved methods. This includes sending sensitive information using e-mail.

(b) Credit card numbers, log-in passwords and other parameters that can be used to gain access to goods or services must not be sent over the Internet.

(c) NPA software, documentation, and all other types of internal information must not be sold or otherwise transferred to a non-NPA party for any purposes other than those expressly authorised by management.

(d) Exchanges of software and/or data between NPA and any third party may not proceed unless a written agreement has first been signed. Such an agreement must specify the terms of the exchange, as well as the ways in which the software and/or data is to be handled and protected.

7.4 Storing of Messages

In accepting access to NPA electronic messaging services, users consent to their electronic messages being stored both on-line and off-line (as a consequence of routine system backup operations and Disaster Recovery Processes).

7.5 Mis-directed Electronic Messages

(a) Electronic messaging should be read by the intended addressee(s) or their delegate(s) only. The recipient or his or her delegate of an electronic message may only use, reproduce, disclose or distribute the information contained in an electronic message and any attached files with the sender's permission.

(b) If the recipient of an electronic message is not one of the intended addressee(s) or their delegate(s), the sender must be notified, and the message and its attachments must be promptly deleted. In such cases, the recipient is strictly prohibited from using, reproducing, disclosing or distributing the information contained in the electronic message and any attached files.

(c) Messages received from e-mail distribution lists may come with implied permission to re-distribute messages; however, the recipient must ensure that the sender permits re-distribution of messages before reproducing the message or its attachments in any way.

7.6 Access Control

Unless the prior approval of the Executive Manager IMSC has been obtained, staff may not establish Internet or other external network connections that could allow non-NPA users to gain access to NPA systems and information. These connections include the establishment of multi-computer file systems (e.g. Sun's NIS), Internet home pages, FTP servers, news groups and chat rooms. Unless the Executive Manager IMSC has approved the practice in advance, users are prohibited from using new or existing Internet connections to establish new business channels. These channels include electronic data interchange (EDI) arrangements, electronic malls with online shopping, online database services, etc.

8. PRIVACY

8.1 General

(a) The NPA respects the privacy of users. It does not intend to routinely inspect or monitor electronic messages. However, viewing of stored messages may be necessary from time to time to help redirect messages that cannot be delivered, to examine contents for legal reasons, or for other operational purposes such as messages that cause failures in the system due to the presence of viruses, size, or message corruption.

(b) Users using NPA information systems and/or the Internet should realise that their communications are not automatically protected from viewing by third parties. Unless encryption is used, staff should not send information over the Internet if they consider it to be private.

(c) Electronic messaging users should be aware that due to the constitutional obligation of transparent and accountable government, electronic messaging may be subject to disclosure.

(d) Users need to be aware that electronic messages are inherently insecure and that confidentiality of information cannot be guaranteed unless specific data encryption techniques are adopted.

(e) Users should also note that all e-mail messages are retained in an automated vaulting system and that system logs may contain the sender and originator addresses of both incoming and outgoing electronic mail messages.

(f) The NPA reserves the right to examine personal file directories and other information stored on NPA computers or IT systems at any time without prior notice or consent by the user when required by and consistent with law, when there is substantiated reason to believe that infringements of policy or law have taken place or in exceptional circumstances, when required to meet time-dependant, critical operational needs.

8.2 Duties of administration Officers

The physical security of electronic messaging services, (records, data, application programmes, and system programmes, etc.) is the responsibility of network administrators and other staff responsible for information security.

Users should be aware that on occasion such personnel might, during the performance of their duties, inadvertently see the contents of electronic messages. Except as provided elsewhere in this Policy, such personnel are not permitted to do so intentionally or disclose or otherwise make use of what they have seen. One exception, however, is that of systems personnel (such as "postmasters") who may need to inspect the message content in order to redirect or dispose of otherwise undeliverable messages. This exception is restricted to the least invasive level of inspection required to perform such duties.

8.3 Inspection and Monitoring of E-mail

8.3.1 Inspection with Consent

The user's consent will normally be sought by the NPA prior to any inspection, monitoring or disclosure of NPA electronic messaging records in the holder's possession. To enable the NPA to meet its business and legal obligations, users must comply with management requests for copies of electronic messages in their possession that pertain to the business of the NPA.

8.3.2 Inspection without consent

The NPA permits the inspection, monitoring or disclosure of electronic messages without the owner's consent only when consistent with, and required by law. In this regard it is important to note that in terms of section 6 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002, the NPA is entitled to intercept any indirect communication relating to the business of the NPA or which takes place in the course of the carrying out of that business. Such interception may be necessary for, among others, the monitoring or keeping record of indirect communications for purposes of investigating or detecting the unauthorized use of Internet and e-mail facilities or to secure the effective operation of the NPA's communication system. **Therefore, all Internet and e-mail users within the NPA are hereby informed and warned that indirect communications transmitted by means of the Internet or e-mail may be intercepted from time for the purposes set out above. A similar notice and warning to this effect will be placed on the Intranet and e-mail facilities of the NPA.**

8.3.3 Authorisation

Except in emergency situations, interception must be authorised in advance and in writing by the authority specified by the law or policy under which the action is taken. If the authority is not specified, authorisation must be sought from the Executive Manager, IMSC or the Head of the Business Unit. The NPA must notify the affected individual of the action taken and the reasons for the action taken at the earliest possible opportunity, unless the law or other NPA policy specifically requires otherwise.

8.3.4 Emergencies

In emergency situations (e.g. when the community or its members are endangered or when access to electronic messaging services must be secured to ensure the preservation of evidence) special dispensations apply. The Executive Manager IMSC, the appropriate Executive Manager, Senior Manager or Head of Unit may take minimum necessary action to resolve the emergency. This may be done without authorisation with respect to the services under their respective control, but appropriate authorisation must be sought immediately following the procedures described above. If the action taken is not subsequently authorised, the Executive Manager or the Head will seek to have the situation restored as closely as possible to that which existed before action was taken.

9. FEASIBILITY AND APPLICABILITY

9.1 Network access accounts are issued to currently employed staff. These accounts provide access to Internet-related services and other computing facilities. The level and extent to which access to services is granted, depends on the professional requirements of the employee in question. The use of Internet-related services is a privilege that may be restricted wholly or partially by the NPA. The privilege may be restricted by the NPA without prior notice or without consent by the Internet-related services user when required by and consistent with law, when there is substantiated reason to believe that infringements of policy or law have taken place or in exceptional circumstances, when required to meet time-dependant, critical operational needs.

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9.2 In addition to the above a person's access to Internet-related services can, in consultation with the line manager concerned, be withdrawn or suspended in part or in total by the appropriate system administrator when instructed by the Executive Manager, IMSC or other person so delegated by the Executive Manager. Withdrawal of the extent of access to Internet-related services shall fall within the discretion of the Executive Manager and will be dependent on the nature of the transgression of these or other NPA policies or of other illegal conduct.

9.3 The IMSC may take any reasonable steps and implement any initiatives to curb the abuse of Internet-related services.

JPP 56/15

Marthinus Phillipus OTTO state under oath in English that:

1.

I am an adult male with ID number 6411295001088, 310-26 Villieria, Pretoria, employed by Risk Diversion Digital (PTY) Ltd ("Risk Diversion") as a Forensic Computer analyst, situated at corner Solomon Mahlangu and Disselboom Avenue, Stonehill Office Park, Wapadrand with contact details: Tel (012) 941 9202 or 082 696 9739.

2.

The facts contained in this affidavit fall within my personal knowledge unless otherwise indicated or unless the contrary appears from the context and are to the best of my belief true and correct.

3.

Firstly I would like to inform you that on Thursday, the 21st of January 2016, I was approached by the police officials from the Directorate for Priority Crime Investigation. The police wanted to interview me regarding the deleting of a folder in the laptop of Advocate Glynnis BREYTENBACH. During the interview I was informed that they have to take a warning statement from me, the warning form was complete, and I requested to consult with the file from long term storage and probably to consult with my legal practitioner before I can make any statement.

4.

On Wednesday, the 27th of January 2016 I received the said file out of long term storage; the file contained two affidavits that I have deposed at the time of the incident. See attached annexure A11/1 dated 2012-05-02 and annexure A11/2 dated 2012-05-02 in my warning statement.

5.

I know and understand the content of the statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath to be binding on my conscience.

.....
Marthinus Phillipus OTTO

MR

I certify that the deponent has acknowledged that he knows and understands the contents of this statement; he has no objection in taking the prescribed oath and he consider the prescribed oath to be binding on his conscience. The above statement was sworn to before me and the deponent's signature was placed there on in my presence at **PRETORIA** (place) **on the 2nd of February 2016** (date) **at 13:30** (time)

.....

Signature of Commissioner of Oath

Masocha Roy NTLHAMU
Full names and surname in block letters.

1 Cresswell Road, Promat Building, Silverton, PRETORIA
Business Address (Street Address).

Lieutenant
Rank

SOUTH AFRICAN POLICE SERVICE

G.P.-S. 002-9204 044/04/2021 SAPS 3M (h)

JPP57

STATEMENT REGARDING INTERVIEW WITH SUSPECT



SEQ 29/2020-685

SAPS 3M (m)

STATION AND CR/CAS No. .....

SOUTH AFRICAN POLICE SERVICE

STATEMENT REGARDING INTERVIEW WITH SUSPECT

This form must be completed every time a suspect is questioned, irrespective of whether the suspect is in detention after an arrest or not. Where any space provided on the form is insufficient, continue on a folio and attach the folio to that page. Folios must be signed by the suspect, interpreter, deponent and Commissioner of Oaths.

I, no. 7000946-5 rank Lieutenant full names Masotha Ron Matlhaku stationed at DPCI Head Office tel no. 0713517367 hereby declare in ENGLISH (language) as follows:

1

I conducted an interview with PHILLIP OTTO (hereinafter referred to as the suspect), at Arcadia on 2016.01.21 (date), at 12 : 45 (time). The following persons were also present at the interview: Big Makinyane

(a) ..... who acted as interpreter into the .....N/A..... (language), a language understood by the suspect; and

(b) .....N/A.....

2

I informed the suspect that I hold the above-mentioned rank in the South African Police Service and that I am investigating the alleged offence(s)* of Contravention of National Prosecution Act in that on or about 30th of April 2012, you shredded documentation / files from the State owned laptop belonging / issued to Gt Adv Glynnis Breytenbach.

**mention nature of offence(s) and the period during which or time, date and place where offence(s) had allegedly been committed.*

and that I have certain information at my disposal indicating that he/~~she~~* may have been involved in the commission of the offence(s). I enquired from the suspect whether he/~~she~~* understands this allegation. The suspect indicated that he/~~she~~* did.

Signature/Thumbprint of Suspect ..... N/A ..... Interpreter ..... Lieutenant ..... Deponent ..... Commissioner of Oaths

** Delete which is not applicable.*

3

I informed the suspect as follows:

(a) The purpose of this interview is to give you the opportunity to make a statement concerning the allegations against you and to put certain questions to you concerning the allegations that you were involved in the commission of the offence(s).

(b) You have the right to remain silent throughout this interview and are not compelled to make any statement or to answer any questions. Any statement that you make and anything you say, will be written down and may be used as evidence in a court of law. Should you prefer to make a statement or to answer questions, such statement or answers will be submitted to the Attorney-General or public prosecutor who will take the contents thereof into consideration also in deciding whether to prosecute you.

(c) You have the right to consult with a legal practitioner of your choice or, if you prefer, to apply to the Legal Aid Board to be provided with the services of a legal practitioner at state expense. The legal practitioner of your choice or the one provided to you by the Legal Aid Board, may also be present during the interview.

(d) In the case of a suspect who is a child, you have the right to have a parent, guardian or an appropriate adult present during the interview.

The suspect acknowledged that he/~~she~~* understood these rights and the purpose of the interview.

4

I enquired from the suspect whether he/~~she~~* wished to consult with a legal practitioner (parent, guardian or appropriate adult) before he/~~she~~* decides to make a statement. The suspect indicated that he/~~she~~*—

(a) wished to consult with a legal practitioner of his/her choice (or (in the case of a child), a parent, guardian or appropriate adult);

*(b) preferred to apply to be provided with the services of a legal practitioner at state expense; or

(c) did not wish to consult with a legal practitioner (parent, guardian or appropriate adult) before he/she would decide to make a statement.

Instructions:

** Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths.*

If (a) or (b) is correct, continue with the rest of this paragraph. If (c) is correct, delete the rest of this paragraph and continue from paragraph (5). All deletions must be initialled by the dependent, suspect, interpreter and Commissioner of Oaths.

I took the following steps to provide him/her* with the opportunity to do so:

Rights were explained to him and given an opportunity to consult / make statement through his attorney / by himself.

(Steps may include who was contacted, by whom, how and when.)

The following transpired as a result of the steps that I had taken:

.....

.....

.....

(Results may include: interview suspended until arrival of legal practitioner or parent etc.; /suspect consults legal practitioner, Legal Aid Board or parent, etc. on the phone and indicates his/her willingness to continue with the interview.)

Signature/Thumbprint of Suspect	Interpreter	Deponent	Commissioner of Oaths
	N/A		

5

I asked the suspect whether he/~~she~~* wished to make a statement in relation to the allegation(s) against him/~~her~~*. The suspect indicated that he/~~she~~*—

*~~(a)~~ was willing to make a statement. I proceeded to take the statement which is attached hereto as Annexure A;

*~~(b)~~ was not willing to make a statement;

*~~(c)~~ would personally see to the drawing up of the statement and would furnish me with the statement on .....(date);

*~~(d)~~ is only willing to make a statement to a magistrate or justice of the peace;

*(e) willing to make statement through my attorney and through on 28th-01-20 of his company

* *Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths.*

6

I informed the suspect that I am entitled to ask questions concerning his/~~her~~* alleged involvement in the commission of the offence(s) but that he/~~she~~* is not compelled to answer the questions. I also informed the suspect that his/~~her~~* answers to the questions will be written down and may be used as evidence in a court of law. I further informed the suspect that he/~~she~~* has a right to consult with a legal practitioner before answering any questions. I proceeded to ask the suspect questions, recorded both the questions and answers thereto and attached it to this statement as Annexure B. The annexure was signed by himself, the suspect, the interpreter and Commissioner of Oaths.

* *Delete which is not applicable.*

INSTRUCTIONS

(1) This paragraph [paragraph (6)] must be deleted if no questions were put to the suspect.

(2) If the suspect indicated that he/she was not willing to answer **any** question, that refusal must be recorded directly below and the suspect may thereafter not be asked questions. The refusal, as well as any reasons advanced by him/her for the refusal, must also be recorded directly below.

(3) If the suspect refused to answer **any particular** question, the question must be recorded in Annexure B as well as the fact that the suspect refused to answer the question. Any reasons offered by the suspect why he/she was not prepared to answer a particular question, must also be recorded in Annexure B.

.....

.....

.....

.....

.....

N/A

Signature/Thumbprint of Suspect | *Interpreter* | *Deponent* | *Commissioner of Oaths*

7

During the interview, I asked the suspect whether he/she* is injured. The suspect indicated that he/she* did/did not* have any injuries.

I asked the suspect to show me the injuries and I noticed the following:

.....

.....

.....

.....

I asked the suspect how and when he/she* had sustained the injuries and he or she replied as follows:

.....

.....

.....

.....

.....

* *Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths.*

8

I asked the suspect if he/she* was in any way threatened, assaulted or influenced to exercise the foregoing options. The suspect stated that—

* he/she* was not threatened*/assaulted*/influenced*;

* ~~he/she* was threatened*/assaulted*/influenced* in the following manner:~~

.....

.....

.....

.....

.....

* *Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths.*

9

During the interview—

(a)* the suspect was seemingly of sound mind and did not seem to be under the influence of liquor or any other intoxicating substance or in a state of shock;

(b)* the suspect was seemingly not of sound mind*/or seemed to be under the influence of alcohol or other intoxicating substance*/or in a state of shock*.

* *Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths*

Signature/Thumbprint of Suspect	Interpreter	Deponent	Commissioner of Oaths
	N/A		

10

The interview was interrupted during the time period(s) and for the reasons set out below:

Interruption: **Reason(s):**

From ..... : ..... until ..... : .....

From ..... : ..... until ..... : .....

From ..... : ..... until ..... : .....

After each resumption of the interview, following upon an interruption, the suspect was again informed of all his/her* rights as set out in paragraph (3) above.

11

At the end of the interview—

(a)* this statement;

(b)* the suspect's statement (Annexure A);

(c)* the questions and the suspect's answers to the questions (Annexure B)—

* was read to the suspect by me;

* was read to the suspect by the interpreter*/legal practitioner*/other person* .....

.....(state name);

was read by himself/~~herself~~*,

and he/~~she~~* confirmed the contents thereof to be a true and correct reflection of the interview.

* *Delete which is not applicable. All deletions must be initialled by the deponent, suspect, interpreter and Commissioner of Oaths.*

The above statement was made by me at the place, date and time as indicated:

I know and understand the contents of this statement.

* I have no objection to taking the prescribed oath.

I consider the prescribed oath as binding on my conscience.

OR

* I truly affirm that the contents of this statement is true.

.....
Signature of deponent
Member: South African Police Service

I certify that the deponent has acknowledged that he/~~she~~* knows and understands the contents of this statement which was sworn to/~~affirmed~~* before me and the deponent's signature was placed thereon in my presence.

Signed and sworn to/~~solemnly~~ confirmed* in my presence on this the 21st day of January

2016 at ARCADIA and at 13 : 00 (time).

.....
Commissioner of Oaths

Full names REGINALD MKHULU MAKHWANE

Capacity BRIGADIER

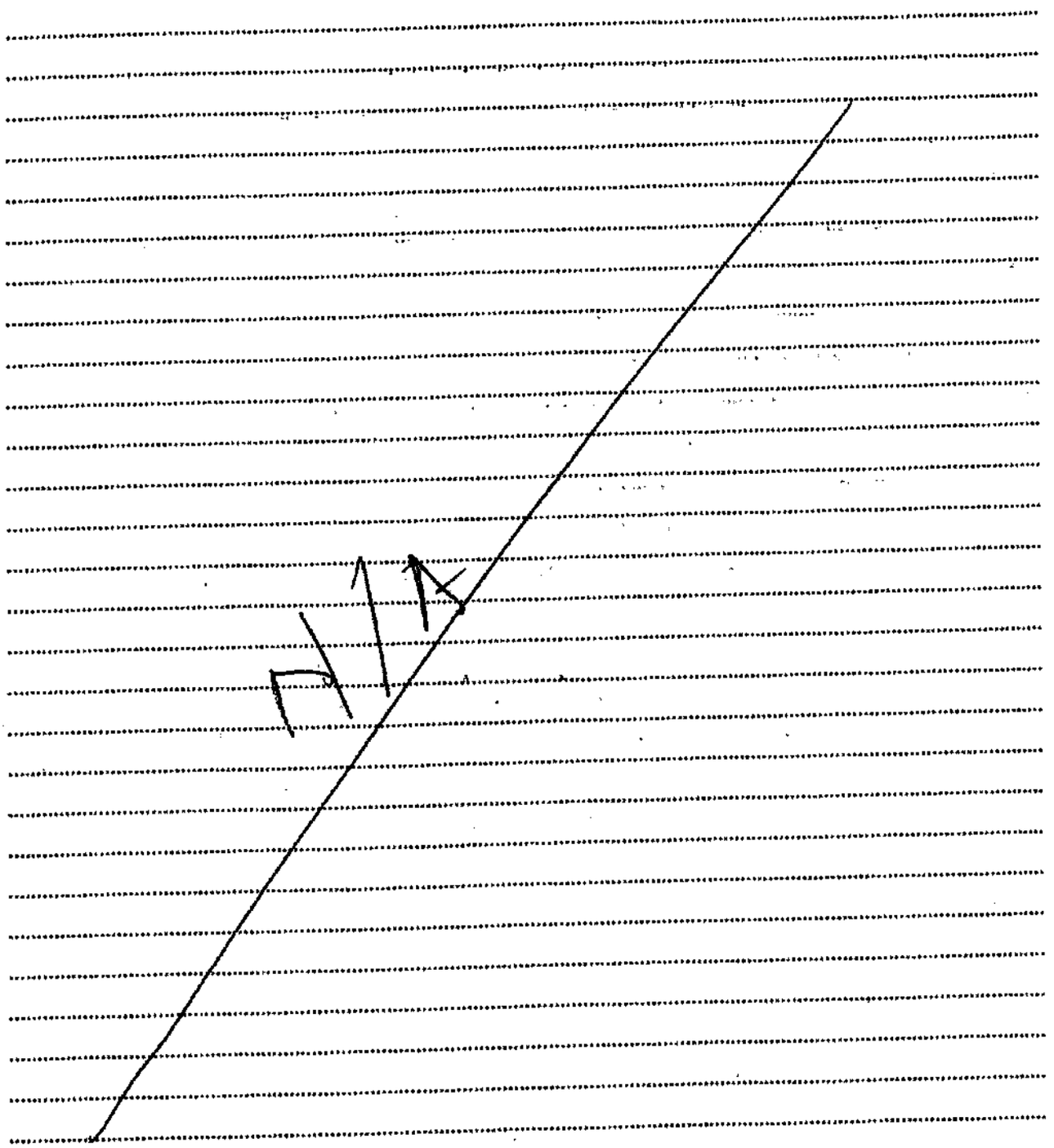
Business address SERIOUS ECONOMIC OFFENCES UNIT

Area 63 STEVE BIKO STREET ARCADIA

.....
Signature/Thumbprint of Suspect

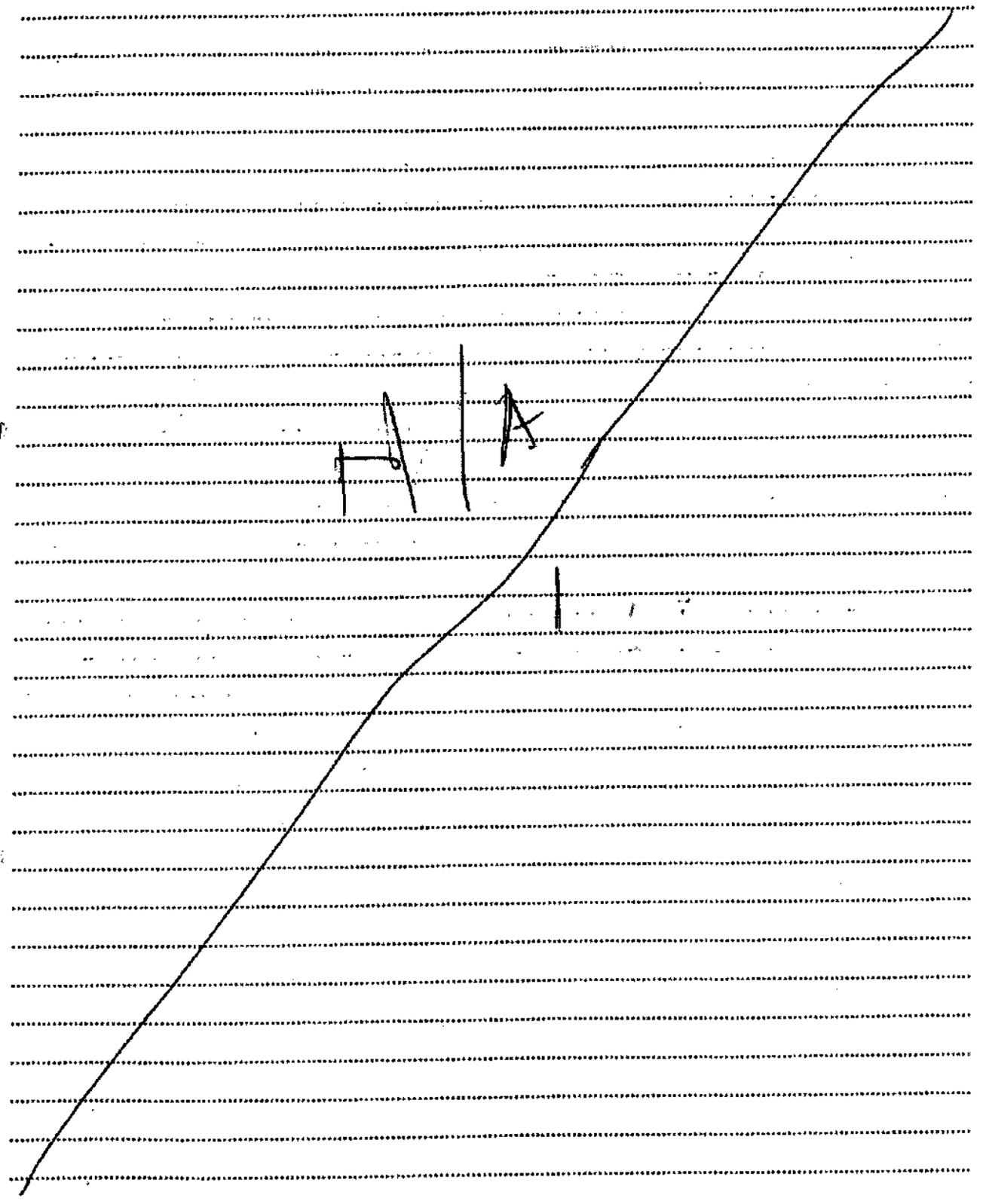
.....
Interpreter

* *Delete which is not applicable.*



Signature/Thumbprint of Suspect *Interpreter* *Member: South African Police Service*

Parent/Guardian/Appropriate adult/Legal Practitioner .....



Signature/Thumbprint of Suspect *Interpreter* *Member: South African Police Service*

Parent/Guardian/Appropriate adult/Legal Practitioner .....

JPP58

Priority Crimes Litigation Unit

NATIONAL PROSECUTING AUTHORITY
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INTERNAL MEMORANDUM

TO: **ADV. G BALOYI**
ACTING DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG DIVISION: PRETORIA

FROM: **DR JP PRETORIUS**
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
PRIORITY CRIMES LITIGATION UNIT

SUBJECT: **CONTINUED CONSULTATION IN TERMS OF SECTION 24 (3) OF THE NPA ACT , NO 32 OF 1998: S V VISANATHAN (IVAN) PILLAY, ANDRIES PETRUS JANSE VAN RENSBURG AND JOHANN HENDRICK VAN LOGGERENBERG: FINAL CONCURRENCE**

DATE: **1 MARCH 2018**

REF NO.: **10/3/5/SARS/PCLU 1/2016**

- The consultations with your office on Wednesday, 07 February 2018 and on Monday the 26 February 2018 refer.

- The purpose of this memorandum, is to provide you with the final indictment after consultations with your office in regard to the above matter. As there was substantial agreement about the fact of the prosecution; as well as the charges, the indictment is submitted for you for your final concurrence. Adv Maema have effected some of the changes that were recommended. This office have perused the evidence again and could not find evidence of a misrepresentation by accused 3 in regard to the unauthorised gratification. Once you have perused the indictment and is satisfied that it is correct reflection of the concurrence that was reached, this office would appreciated receiving your concurrence to the prosecution of Visnavathan

(Ivan) Pillay, Andries Van Rensburg and Johann Hendrick Van Loggerenberg on chargers of:

- Contravention of Section 49 (1) read with the provisions of Section 2 and Section 51 (1) (b) and section 1 of the Regulation of Interception of Communication and provision of Communication related Information Act, Act 70 of 2002 (Rica) Unlawful interception of communication (Accused 1 and Accused 2) ;
- Contravention of Section 10 read with the Provision of Sections 1, 2, 24, 25 and 26 (1) of the Prevention and Combating of Corrupts Activities Act, 12 of 2004 - Unauthorized gratification by a party to an employment relationship Accused 1 and 3

Alternative to Count 2

- Contravention of Section 3 read with the provisions of Sections 1, 2, 24, 25 and 26 (1) of the Prevention of Combatting of Corrupt Activities Act 12 of 2004 General Corruption

DR JP PRETORIUS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
PRIORITY CRIMES LITIGATION UNIT
DATE 2/03/2018

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I, the undersigned, **Helgard Lombard**, an adult male with identity number 570817 5018 087, and residing at 327 Theuns van Niekerk Street, Wierda Park, Centurion, 0149 declare under oath as follows:

1.

I am currently employed by the South African Revenue Services (SARS), situated at Riverwalk Office Park, Matroosberg Road (Erf4), Ashlea Gardens X6, Pretoria in the capacity of Manager Technical Physical Security with the effect April 2009. I am currently suspended and can be contacted at 0832709922.

2.

The contents of the affidavit in question pertains to the investigation of the South African Police Service (SAPS) into the existence and operations of an alleged SARS Rouge Unit (Brooklyn CAS 427\5\2015) and more particular to an operation called "Sunday Evenings".

3.

I am aware that the statement which I am about to make, may incriminate me with regard to contraventions of the provisions of the Regulations of Interception of Communications and Provision of Communication Related Information Act, 2002 (Act 70 of 2002). However on 17 May 2016 the Priority Crimes Litigation Unit and more particular, the Acting Special Director of Public Prosecutions informed me and my Legal Representative that they were prepared to use me as a witness in terms of Section 204 of Act 51 of 1977 and requested me to furnish the investigation team with my draft statement in terms of the said section. I was therefore afforded the opportunity to make a statement subject to the provisions of the said Section 204. The provisions of the said section have been explained to me and I understand it.

3.1 I have been informed that I am not obliged to make the statement and do so on my own free will.

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3.2 The National Prosecution Authority (NPA) did not promise me any indemnity from prosecution or amnesty for any crime or any other reward should I make this statement.

3.3 I also understand that the decision to be called as a state witness lies with the Prosecuting Authority.

3.4 I understand that my status as a witness will depend on me giving my full co-operation to the South African Police Service and to the Prosecuting Authority.

3.5 I understand that by making the statement I am not entitled to claim any immunity against prosecution. Furthermore, I understand that should I fail to co-operate as aforesaid or should I not make a full disclosure, my status as a witness may be reviewed.

3.6 I understand that should I later be prosecuted the contents of this statement may **NOT** be tendered in evidence against me except in a case of perjury.

I have already furnished the investigating team with an undated and unsigned draft statement.

I was however requested on 2 September 2016 to elaborate in detail (if possible) on some of the facts as contained in the said draft statement as well as other relevant facts including detailed information of my involvement in all projects that I lead \ conducted while I was a member off SPU \ NRG \ HRIU. This request was done in the form of questions that were directed to me.

4.

My legal representative informed me that the National Prosecution Authority (NPA) or the SAPS may file an application in terms of Section 71 of the Tax Administration Act, nr. 28 of 2011 requiring SARS to disclose information referred to in subsection 2 of the said Section. I was also informed that the said information refers to information, which may, *inter alia*, reveal evidence that:

- "an offence (other than a tax offence) has been or may be committed in respect of which a court may impose a sentence of imprisonment exceeding five years;
- may be relevant to the investigation or prosecution of the offence"

I was further informed that the National Commissioner of the South African Police Service indeed obtained an order in terms of Section 71. However, the contents of the said order is not applicable on the information that is requested from me.

On 29 September 2016 my legal representative handed me a letter dated 27 September 2016 in which the Commissioner of SARS, Mr. Tom Moyane, authorized me in terms of the power vested in him in terms of Chapter 6 of the Tax Administration act, Act 28 of 2011 to release confidential SARS information in my possession to the SAPS (the HAWKS) in an endeavour to assist the HAWKS in the investigation under Brooklyn CAS427/05/2015. The said information refers to information required and requested by the HAWKS.

The Commissioner, as the complainant in the investigation in question, declared in paragraph 3 of the said letter that I will not be disciplined and \ or criminally prosecuted as a result of my roll in assisting the HAWKS in this regard.

I now wish to make a detailed affidavit that is based on my recollection of the relevant events over the last ten years. However, I make the affidavit in question subject to the provisions of Section 204 of the Criminal Procedure Act, 1997.

INTRODUCTION

5.

I have been employed by the South African Defence Force (SADF) during 1984 and was transferred to Chief Staff Intelligence (Counter Intelligence: Operations) during 1986.

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In June 1988, I have been instructed by Chief Staff Intelligence to establish a covert office with the aim to conduct counter intelligence operations on espionage activities aimed at the SADF and its related institutions. I indeed established such a covert office and the office specialized mainly in surveillance operations, which included surveillance based on security technology. The said office was highly effective in surveillance and counter surveillance operations with the effect that the South African National Defence Force (SANDF) continued with the facility after 1994 without any changes. The office received its instructions from and reported to Defence Intelligence (Counter Intelligence).

6.

In 1996 I was appointed as the Manager, Technology for the facility, started to do research and specialized in surveillance technology. During this period, the focus moved from conducting counter intelligence operations for the SANDF Intelligence (DI) to assist other government departments as well. The office, *Inter alia*, assisted the SAPS and had joined operations with the NIA. I was involved in operations with SAPS and the DSO. I gave surveillance training to the surveillance team of the DSO in September 2001 and assisted them with technical surveillance. I assisted the DSO and SAPS with their Witness Protection Program by installing security equipment to safeguard the witnesses.

7.

In March 2002, I resigned from the SANDF and accepted an employment offer from Harmony Gold Mining Company Limited as "Group Technical Manager: Security". My main function was to employ current security technology to protect the assets of the company against theft and malicious actions. It included the installation and maintenance of CCTV systems, alarm systems, electric fencing, access control systems as well as the introduction of centralized control rooms situated in Gauteng and the Free State.

8.

At the end of 2005, I received a call from either Charl Fourie or Johan de

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Waal, informing me that the South African Revenue Service (SARS) planned to establish a similar office as the one I have run at the SANDF (DI). He enquired whether I would be interested to join this unit in a technical capacity as this unit will investigate and collect information on taxpayers and / or crime syndicates that are not tax compliant. I indicated to the person who called me that I will indeed be interested as it is challenging and that I am sure that I could positively contribute to the endeavours of such a unit. The said person then informed me that I could expect a call from a certain Mr Andries Janse van Rensburg, (known as "Skollie"), who would like to interview me. He also mentioned that Janse van Rensburg was previously employed at NIA. I did not know Janse van Rensburg at that stage.

9.

Janse van Rensburg called me late in 2005 or early in 2006 and arranged a meeting in Centurion. We met and Janse van Rensburg enquired about my technical knowledge. He asked me a few questions, inter alia, whether it will be possible to install CCTV, but to view it remotely, namely not in the close proximity of the installation. I told him that it will be possible, but that there are a few factors that have to be considered before such an installation could be done e.g. availability of ADSL or GPRS to stream video. After the meeting, I did not hear from Andries Janse van Rensburg until the last quarter of 2006.

Charl Fourie contacted me late in 2006 to conduct a few psychological tests, i.e. integrity tests, IQ tests as well as a few other tests. It was said that only those who pass these tests would be appointed at SARS. Charl Fourie, a qualified Clinical Psychologist, facilitated these tests and Johannes Muller assisted him. Andries Janse van Rensburg (Skollie) was also present.

10.

In May or June 2006 (I am not sure) the South African Secret Service (SASS) invited me for an interview and undertook to make me an offer should I be successful in obtaining a Top Secret Clearance. SASS indeed made me an offer which I accepted, but SARS followed with a better offer.

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11.

I informed Charl Fourie that I have accepted an offer from SASS, but he informed me that a letter from SARS would follow suit. Charl Fourie and Skollie Janse van Rensburg indeed provided me with a SARS offer. A day or two later I received another SARS offer to sign. The only difference between the two offers was that the second letter had the SARS logo on it while the first one was a letter without the logo. Charl Fourie later told me that he and Janse van Rensburg gave me the first letter just to ensure that I will accept the SARS offer and that they produced the letter themselves - it was not an original SARS offer. The SARS offer was much better than the SASS offer and I had to decline the SASS offer. I accepted the SARS offer because, I had to take in consideration that I only had fifteen years left to build up a reasonable pension and a higher salary would contribute to a higher pension.

I cannot recall that I signed any performance agreements and was monthly remunerated by SARS.

EMPLOYMENT

12.

I commenced my employment at SARS on 1 March 2007 as a "Specialist Agent" at "Customs Border Control Unit" **(Annexure A).** I presumed that the term "Specialist Agent" referred to my experience in physical and technical surveillance. I reported directly to Mr Andries P. Janse van Rensburg (Skollie) and he reported to Mr Ivan Pillay, General Manager, Enforcement and Risk. Mr Pillay was also the Deputy Commissioner of SARS. The employees of the newly formed unit were told that they would not be exposed to other SARS employees because, the unit might have to investigate them if necessary. As a result of this, the unit's employees would work from home as instructed by Janse van Rensburg. The unit used guesthouses and other venues for meetings so as not to be exposed to SARS employees. Later members of the group rented other venues that were not so expensive in an effort to save money.

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13.

The unit was informed to operate on a "need-to-know" basis and members of the unit were not to discuss any operation with each other unless approved by Janse van Rensburg. The unit was divided into cells to carry out specific SARS related investigations \ operations. This was to adhere to the "need-to-know" principle. All communication was directed to Janse van Rensburg who made the decision of who might communicate with whom in respect of operations. Communication to and from Mr Ivan Pillay was done through Janse van Rensburg. The only other person that I was aware of that had direct communication with Mr Ivan Pillay at the time, was Chari Fourie.

Mr Eddie Kotze managed the unit's administration and Mrs Rita Hayes assisted Mr Ivan Pillay with administrative communication between the unit and him.

14.

During the early stages of my employment, Janse van Rensburg enquired from me whether it was possible to install eavesdropping equipment in one of the DSO's offices. I told him that it will be possible, but with the necessary approval in terms of the provisions of Act 70 of 2002. I told him that it will be possible to install such equipment in any place with the said authorisation and the assistance of someone in the target area, namely an operational co-worker. The conversation ended on that note. I am not sure of the exact date of this conversation. It could have been between March and May 2007.

15.

Janse van Rensburg called me in June 2007 and informed me that the DSO contacted him unexpectedly for a quotation to install security systems in their offices. He further informed me that they needed to install a few systems because, they suspected that the South African Police Service (SAPS) entered their offices to gain access to sensitive documents regarding their investigations. Janse van Rensburg made an appointment for us to

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meet with Adv. Gerrie Nel and Andrew Leask, Head of the Special Investigation Unit at the DSO. Janse van Rensburg instructed me not to inform them that we are SARS employees because, we can use the opportunity to earn money for the unit. He instructed me therefore to make sure that I include profit that the unit could use. Adv. Gerrie Nel and Andrew Leaks informed us that they needed concealed and overt equipment to be installed in order to detect intrusions real time and remotely view it. This meant that they could monitor their offices from anywhere in South Africa, should they become aware of an intrusion. They would then have record of the said intrusions.

The initial request was for:

- CCTV cameras, overt and concealed, complete with digital video recorders and microphones.
- Equipment to monitor these CCTV cameras remotely, i.e. GSM 3G-routers and remote viewing software.
- Alarm systems at earmarked offices.
- Access system in the Special Investigation Unit's area.
- Boardroom protection to counter eavesdropping devices.
- Window tint. **(Annexure B).**

The scope later changed in order to procure equipment to support the CCTV system and to add to the audio capability in the offices. Andrew Leask gave these instructions to me verbally. The following equipment was procured for this purpose:

- Cellular telephones with remote viewing software installed on it.
- Digital audio recorders and concealed microphones.

Adv. Nel and Andrew Leask requested an additional quotation for cellular telephone encryption. The said quotation was given to the DSO in November \ December 2007 for an amount of R 247,500.00. This included the cellular device as well as military specification software. I had to register with the Department of Communications as a "Cryptography Service Provider" to provide the equipment to the DSO. I did so on 21 August 2007 and paid an annual fee until **(Annexure C)**. I do not have a copy of the "Encryption

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equipment" quotation that was given to the DSO. I am also not sure who presented the final quotation to the DSO, whether it was Janse van Rensburg or myself. In July 2007, Janse van Rensburg contacted me and informed me that the DSO accepted the quotation.

16.

After the DSO accepted the quotation, I realized that I had to open a new bank account to manage the funds of the said installation. However, my wife reminded me that we had an ABSA Flexi-savings account (nr 9062196036) of which she was the account holder. The account holder was indicated as H. Lombard trading as Protech.

The said account was approximately opened in 2001 \ 2002 (I am not sure of the exact date) and was previously used for small security installations that I did in my personal capacity while I was employed at Harmony Gold Mine. The said account was dormant at the time because, I did not do any installations for some time.

I decided to use the said account for the installation in question in order to separate the said funds from my personal funds. This was much easier for bookkeeping purposes and also made reconciliations easier. I could provide the bank statements to Janse van Rensburg for audit purposes but, he never audited it.

The name "Protech" describes the services that I am able to render. I was a so-called one-man-business and I was of the opinion that I was not obliged to register it at CIPRO. I also discussed the situation with Janse van Rensburg and he gave approval that I could use this bank account, because the unit did not have its own bank account.

17.

On 12 July 2007 an investigator, Piet Jonker of the DSO, called me and told me that he had money with him and wanted to hand it to me, being funds for the installation in question. It was quite a surprise because, I expected an electronic transfer of the money into "H. Lombard T\a Protech"-bank account. He handed me R300,000.00 cash and I deposited it into the said

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account **(Annexure D)**. On 17 July 2007 I received the rest of the money to make up the amount that was on the quotation. The amount was R600,705.46 **(Annexure D)**. I am not sure whether the DSO brought the said amount to me or whether I collected it from them at their offices. I also deposited the said amount into the said bank account.

In general I had to get verbal authorization from Janse van Rensburg before I could spend any money. The only exception was money that I could spend on the DSO-project although I had to inform him about it. I have sent a memorandum to Janse van Rensburg to confirm verbal authorisations that he gave me to spend some of the money on SARS projects but, he never provided me with such document. **(Annexure E)**.

INSTALLATION

18.

I commenced with the said security system installation in July 2007.

Initially Janse van Rensburg accompanied me to assist with the installations, which mainly took place afterhours when we did the installations at Adv. Gerrie Nel's office. The reason for this was not to expose the installation to the rest of the DSO personnel in the building who might have had links with the SAPS. One evening, after about two or three weeks, Janse van Rensburg informed Adv. Gerrie Nel and Andrew Leask that he had to leave for Germany for business and will most probably not see them for quite a while. They discussed the so-called places that he would visit. This was a lie because, Janse van Rensburg never left the RSA, but was looking for an excuse not to assist any further with the installations.

19.

During this time, our unit was busy with strategic as well as other planning at CSSI, CSSI House, 28 Augrabies Road, Waterfall Office Park, in Midrand. Frans van Niekerk acquired the said location from CSSI at no cost or at a special price for SARS. Janse van Rensburg used to call me out of the

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meetings and informed the other members of the unit that it was a special operation that we ran and that they need not to know what it was all about. It did not upset anyone because, it was this *modus operandi* that the unit followed and no questions were asked. I used this time to acquire equipment and consumables for the said installations. When I commenced with the installations at VGM Building in Weavind Park, I installed during the day to complete the installations. Janse van Rensburg used to excuse me from workshops and meetings so that I could complete the work.

Due to poor signal in the area, as well as a bug in the 3G-routers, it often happened that the routers hung up whereafter one could not remotely login to monitor the CCTV systems. I requested Andrew Leask if they would mind if I connect remotely with these systems to make sure that the routers did not hung up because, it needed a "hard reset" when this happened. A "hard reset" is when you remove power from the router and then restart it. Andrew Leask gave me verbal permission to remotely monitor these in order to do these maintenance checks.

Both Adv. Gerrie Nel and Andrew Leask ask me during this time whether Janse van Rensburg was in Germany and I had to lie by admitting that he left for Germany whilst carrying on with the installation.

I concluded the installation in December 2007.

20.

The following equipment was installed in the VGM Building as well as the DSO offices:

- **See Annexure F** – Equipment Distribution list with legend and abbreviations
- **See Annexure G** – IP Address settings and IMEI numbers of TeleEye DVRs, Router IMEI numbers and mobile phone viewing license keys
- **See Annexure H** – Available Equipment Serial numbers and "owners"
- **See Annexure I** – NPA Alarm Systems Cellular numbers and access codes
- **See Annexure J** – Software license keys

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- **See Annexure K: Equipment User Manuals, detail equipment specifications and capabilities)**
  - TeleEye RX504 DVR – In particular page 1 and 2
  - Marantz PMD660 – In particular from page 19 onwards
  - Cleo E12 Alarm Panel – In particular page 1 to 9

The Digital Video Recorders could have been accessed by any expert on the equipment and could download recordings from the unit. The distributor of the equipment in South Africa has the expertise to assist someone to reset the password on a DVR, but with the interaction of the manufacturer of the equipment. I am therefore of the opinion that with assistance of the said experts that Adv Nel, Leask and anyone who is acquainted with the systems could access the DVRs. As far as I can remember, the DVRs were set up in the "Basic Security Mode" with the username "Administrator" and password "000000". The occupants of the offices where I installed the equipment had knowledge of the equipment that have been installed and had access to the equipment. There was no server at all as the data were stored on the equipment's hard disk drive. Each DVR had an 80GB hard disk drive (HDD) installed and all video was recorded on this HDD. When the HDD reached its maximum storage, it started to overwrite the oldest data. A Notebook could be used to download data (video and audio) from the HDD of a DVR and could then be stored on the HDD of a notebook. I used this method to download data (video and audio) from the various DVRs that I had to monitor **(see Annexure L – Asset list for the SARS Notebook serial number).** These laptops are with SARS. After downloading the data (video and audio), I burnt CDs of it and handed the CDs to Janse van Rensburg. Thereafter I deleted the said data from the Notebook that I had used and therefore do not have any copies of it.

The communication between the DVRs was APN-driven. This means that all the SIM-cards in the routers had an IP address in the same IP range **(see Annexure G)**. In other words, all the routers could "see" each other. When you connect to a specific IP address, it would then forward the communication to the DVR and enable the operator to have control over the DVR.

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The access system had a 120GB Notebook with a Seagate HDD that served as a server for the access system. I cannot remember the passwords and \ or codes of any other of the said installed equipment.

In the presence of my legal representative, I pointed out (as far as possible) the offices and boardrooms where the equipment was installed.

Equipment bought, but not installed, was handed over to the DSO (I am not sure to whom). I do not have any knowledge of where the said equipment is currently.

INSTRUCTION TO MONITOR MEETINGS

21.

In mid-September 2007, Janse van Rensburg requested me to monitor meetings of the DSO. I told Janse van Rensburg that I could not adhere to his request unless he (SARS) had an Act 70/2002-approval to conduct eavesdropping and that it was the only way that we could do this. It was during this time that it became known that Commissioner Jackie Selebi could be arrested on corruption charges regarding his relationship with Glenn Agliotti. It was also during this time (2007) that President Thabo Mbeki suspended Adv. Vusi Pikole (Head of the NPA) from his duties.

22.

About a week to ten days after Janse van Rensburg's initial request to monitor meetings of the DSO, he called me late one evening (it was after 21:00) and informed me that he just had a meeting with Mr. Ivan Pillay who came from a meeting with President Mbeki. He informed me that we got permission to proceed to monitor the DSO- meetings. I asked him how did they (himself and Mr. Pillay) obtained the Act 70/2002-approval and Janse van Rensburg answered me: "How do you think the Judge or a Policeman will refuse a request from the President?" I asked Janse van Rensburg what the scope of the said approval was because, it could not have been a blanket approval to do what we (SARS) required. Janse van Rensburg's answer was

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that the President wants to know exactly what the DSO had against Commissioner Selebi and secondly, whether there was anyone else of the President's high ranking officials, e.g. Ministers, Director Generals, etc, that would be arrested. He said that the President told Mr Ivan Pillay that he could not afford another scandal like this and that the DSO did not even informed him about their intension to arrest Commissioner Selebi. Janse van Rensburg further said that the President did not want to be caught off-guarded.

23.

I asked Janse van Rensburg who else knew about the Act 70/2002-approval and he said that it was only six people, i.e. President Thabo Mbeki, Minister Trevor Manual, Commissioner Pravin Gordhan, Mr Ivan Pillay, himself and me. I believed Janse van Rensburg because, of the following reasons:

- Janse van Rensburg was a former employee of the National Intelligence Agency (NIA) and knew exactly what was needed to obtain an Act 70 / 2002-approval. He was also issued with "Top Secret" clearances, which was an indication that he was supposed to be trustworthy.
- We could only discuss operations with him or Mr Ivan Pillay because of the "need-to-know" principle. We never had an opportunity to meet with Mr. Ivan Pillay personally except when in a group.
- Janse van Rensburg conveyed all Mr. Pillay's instructions to the unit members. Janse van Rensburg could call Mr Pillay at any time, but kept all team members away from him. The only other person that I knew that had direct access to Mr. Pillay was Charl Fourie, one of the founder members, and a senior member in the group.
- I was told by various people that Mr Pillay was a very senior ANC member and that he could pick up the telephone and make an appointment with the President at any time. Janse van Rensburg also told me / us, on more than one occasion, that Mr. Pillay and he met the Minister of Finance every fortnight, but that he met with the Deputy Minister every two weeks to discuss the progress of the unit and to receive new instructions.

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- Charl Fourie told me that when he and his wife were invited to dinner at Mr. Pillay's house, Mrs Jesse Duarte and her husband also arrived at Mr Pillay's house. Fourie confirmed that Mr Pillay is a very senior person in the ANC.
- I was also told that the now President Jacob Zuma was one of the people that joined Mr Pillay's surprise 55th birthday party held in Durban.
- Janse van Rensburg did not request me to start monitoring the meetings of the DSO immediately after I had asked him for the Act 70 / 2002-approval, but only gave me the instruction a week or a week-and-a-half later being adequate time to obtain an Act 70 / 2002-approval.
- I was aware of the possibility that the unit would have been seconded to the SAPS (CIG), which would have made the Act 70/2002-requests through the SAPS possible **(Annexure M)**.

I did not ask Janse van Rensburg to see the Act 70/2002-approval as he was a senior SARS official (Grade 9) and the reports would have been forwarded to Mr Ivan Pillay (Deputy Commissioner of SARS) in any way.

If it was an unauthorized and illegal operation, Mr Ivan Pillay could have stopped the operation after he received the first report from Janse van Rensburg.

MONITORING OF MEETINGS

24.

I commenced to monitor the meetings as requested at the end of September or beginning of October 2007 and gave Janse van Rensburg verbal feedback on what I found. Janse van Rensburg told me that Mr. Pillay requested the conversations and / or evidence with regard to Commissioner Selebi, on CD. My modus operandi in monitoring the conversations regarding CommissionerSelebi was to download all meetings and conversations that Andrew Leask (head of the investigation against Commissioner Selebi) had. I

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then listen whether they were discussing Commissioner Selebi in this meeting or conversation and if this was confirmed, I downloaded it. I downloaded one conversation where they discussed the possible leak they had regarding the DSO's investigations. In the conversation, they suspected Adv Jiba to be the leak. Janse van Rensburg then wrote the report and handed it and the CD to Mr Pillay to verify the information on the CD if necessary.

25.

On a certain day in mid-November 2007, Andrew Leask needed a flash drive for a document he needed to complete at home. He did not have his flash drive with him as he borrowed it to his child for some reason. Whilst I was busy with the installation in his office, I offered him a flash drive. Andrew Leask returned the flash drive to me a day or two later. I am not sure of the date, but I think I opened the flash disk that evening or maybe a day or two later. I discovered that there was still a document on the flash disk and when I opened it, it contained information with regard to Commissioner Jackie Selebi, and about money he received in respect of the corruption charges against him. I took the flash drive to Janse van Rensburg and told him that I am of the opinion that they now obtained everything that the President required and that it was not necessary to continue with the monitoring.

26.

I am not sure, but I think it was that same day, Janse van Rensburg arranged a meeting with Mr Ivan Pillay. He told me that Mr Pillay wanted to discuss the information that was on the flash disk with me. Janse van Rensburg told me that I must call him "sir" or "mister Pillay" because, he liked it.

I met Mr. Pillay personally for the first time and assured him that I did not download the information from Andrew Leask's laptop. I asked him whether I must continue with the monitoring of the conversations regarding Commissioner Selebi's case. He confirmed that I must continue unless it is unsafe to do so. Janse van Rensburg said that I will continue with the

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monitoring and will cease monitoring when it is not safe to do so. I felt uncomfortable with the task and told Janse van Rensburg so when we left. I also requested Janse van Rensburg to terminate the operation, but he insisted that I do my work.

27.

I made one further recording relating to Commissioner Selebi's case at the end of November beginning December 2007 (I am not sure of the date) and handed it to Janse van Rensburg. I then unexpectedly and without an appointment, went to Janse van Rensburg's house (it might have been the day after I handed him the CD). I again wanted to discuss the situation with him.

On my arrival, I asked him what he was doing and he said that he was compiling a report regarding the information on the said CD that I gave him in respect of Commissioner Selebi's case. I read the report and became extremely upset because, he was manipulating the information that was on the CD and added fictitious information that was never said and \ or took place. If I am not mistaken, he stated that the DSO was going to make more arrests and that they were "not doing what they are supposed to do". I confronted him with the nonsense he wrote and he answered me by saying that if I am so "fucking" upset about the way he compiles reports, he will delete it. He then deleted the report and confessed that Johan de Waal did all the other reports \ transcriptions. I confronted him with the fact that Johan de Waal also knew about the operation as he originally informed me that only six people were aware of the said operation. He then confessed that Charl Fourie also knew about the operation.

28.

I was extremely upset about the situation. I recall however, that I managed to make an appointment with Mr. Ivan Pillay through Charl Fourie (not sure) and that he and Johan de Waal accompanied me to Mr Pillay's house. I am also not sure whether Johann Van Loggerenberg joined us that evening or on a follow-up meeting, but Mr. Pillay informed him in my presence about the "Sunday Evenings-operation". Mr Pillay said that he needed Van

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Loggerenberg to assist him with the said situation. I told Mr Pillay what happened and that he cannot trust any of the information he received from Janse van Rensburg because Janse van Rensburg distorted the truth. Mr Pillay told me that I must leave it in his hands and that he will deal with it.

29.

A few meetings took place to discuss the operation and Janse van Rensburg's behaviour. In one of the meetings Mr. Pillay said that if I was ever confronted with this operation he would say that he gave the instruction. I then asked him whether the President was aware of the said operation and the existence of an Act 70/2002-approval. Mr Pillay then denied that the President ever gave the instruction and or arranged the Act 70/2002-approval, but said that he will take responsibility for it. Mr. Pillay said that he and Johann van Loggerenberg would deal with the Janse van Rensburg-matter. I cannot recall whether Charl Fourie and \ or Johan de Waal attended these meetings.

Mr Pillay told us to carry on with our work and to interact with Janse van Rensburg while they will take action against Janse van Rensburg.

CONTINUATION WITH WORK AFTER THE EXPOSURE OF A.P. JANSE VAN RENSBURG

30.

Approximately, in April \ May 2008, I was seconded to SARS, Anti Corruption and Security (ACAS) unit to assist with the planning and installation of security at SARS sites nationally. I distanced myself from the unit and Janse van Rensburg because, I was disappointed in the way the unit was managed and specifically with the management of Janse van Rensburg. I concentrated on the work at ACAS. In April 2009, I was permanently transferred to ACAS after my first request for a transfer to ACAS in 2008 was lost or not processed. We had several meetings in 2008 where we were given the opportunity to take a financial package and leave SARS. I decided to stay.

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I was also present when Johan de Waal and Charl Fourie confronted Janse van Rensburg over a cellular telephone telling him that they disclosed all his misrepresentations, lies and dealings to Mr. Pillay. The cellular telephone was on speakerphone. I also told him during this conversation that I am now aware that he lied to me and mislead me regarding the DSO-operation while he was in a position of trust and authority. He just said "dankie vir dit" (thank you for that). Johann van Loggerenberg was also present during this conversation. Janse van Rensburg took a financial package in 2008 and parted with SARS.

31.

We also had a meeting with Janse van Rensburg after he left. I could initially not remember this meeting in 2008, but, Johan de Waal showed me minutes that were taken by Charl Fourie during this meeting. The said minutes are a true reflection of the facts that were discussed during this meeting **(See Annexure N)**.

The following abbreviations for the persons present at the meeting were used:

- CF = Charl Fourie
- HL = Helgard Lombard
- JdW = Johan de Waal
- S = Skollie

Reference was also made to people that was not present at the meeting:

- PG = Pravin Gordhan
- IP = Ivan Pillay
- FvN = Frans van Niekerk
- JvL = Johann van Loggerenberg

At this meeting that took place on 23 July 2008 at 08:00, I told Janse van Rensburg that if the DSO operation was illegal, I will institute a "civil claim" against him to recover all costs. Janse van Rensburg confirmed in the presence of all at this meeting the legality of the DSO-operation and said

that he had a letter with him, signed by Commissioner, Pravin Gordhan, that SARS authorised the said operation and that they will carry the legal costs should there be any "problems" due to the operation "Sunday Evenings". I requested a fax copy of this letter, but did not receive it.

I then broke all communications with Janse van Rensburg, but in April 2009 he called me and requested an urgent meeting. We met on 28 April 2009 at approximately 10:00 and during this meeting, Janse van Rensburg told me that he has a meeting with two NIA members. Janse van Rensburg asked me what he must tell them if it is about the DSO-operation. I told Janse van Rensburg that he could tell them whatever he want to because my superiors will have to take the "rap" for the instructions they gave me. **(Annexure O)**.

REPORTING THE DSO OPERATION TO THE SAPS (HAWKS)

32.

KPMG was appointed by Commissioner Tom Moyane to investigate allegations of a "Rogue" SARS Unit as reported in the newspapers.

On 19 March 2015, Johan de Waal told me that he received an e-mail from KPMG asking questions about "Operation Sunday Evenings" (the DSO-operation). They retrieved an e-mail from the PC Laptop of Rita Hayes, with the minutes of the meeting held with Janse van Rensburg on 23 July 2008 and forwarded it to Johan de Waal. According to Johan de Waal they wanted to know why I threatened Janse van Rensburg with a civil case if his instructions were illegal **(Annexure N)**.

33.

After I read the minutes dated 23 July 2008, I told Johan de Waal that we have to discuss the DSO-operation immediately with Commissioner Tom Moyane as I am no longer going to keep it secret because it will damage the image of SARS should it leak out. We then drove to the Commissioner's Office and told the Commissioner that we need an urgent meeting with him.

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Commissioner Moyane immediately put time aside for us, invited the Acting COO, Mr. Jonas Makwakwa, to the meeting and listened to what we had to say.

After I gave Commissioner Moyane and Acting COO Makwakwa a comprehensive briefing about the DSO operation ("Operation Sunday Evenings"), the Commissioner had a one-on-one talk with Johan de Waal. Mr Jonas Makwakwa and I left the office. In Mr Jonas Makwakwa's office, he (Makwakwa) promised me that I do not have to worry about anything, as I will not lose my work. He also promised that SARS would look after Johan de Waal and myself and will provide us with legal representation if necessary.

34.

After the meeting that Commissioner Moyane had with Johan de Waal, Mr Makwakwa and I returned to the Commissioner's office. Mr Makwakwa repeated his promise that he made to me in the presence of the Commissioner. The Commissioner then said that I must see him as my "Psychiatrist" and that I must tell him everything that I have not told him yet. I told the Commissioner that I furnished him with all the facts regarding the said operation.

When we left the Commissioner's office on 19 March 2015, he requested us, both Johan de Waal and myself, to provide him with a signed memorandum of what I told him as well as soft a copy (a flash disk thereof) of the signed document the next day. The next day I gave Commissioner Tom Moyane and the Acting COO Jonas Makwakwa a signed memorandum confirming what I told them on 19 March 2015 **(Annexure P)**.

35.

On 6 May 2015, I received a call from Charl Fourie in Australia, stating that he received a call from Adrian Lackay (former spokesperson of SARS). He enquired whether Johan de Waal or I spoke out about the operation (DSO-operation). Adrian Lackay indicated that he was with Sam Sole, a reporter from the Mail & Guardian, who stated that big trouble was eminent. Adrian Lackay wanted Charl Fourie to talk to Sam Sole, but Fourie refused. Fourie

then carried on by saying that he is, or was, also under the impression that the operation was legal. He also said that someone told him (he thought it was Johann van Loggerenberg) that it was an authorised operation **(Annexure Q)**.

I immediately informed Commissioner Tom Moyane, Acting COO Jonas Makwakwa and Adv. Theresa Kannemeyer (HR) via SMS about the conversation and told them that the Mail & Guardian was probably going to publish an article relating to the DSO-operation **(Annexure R)**. I am not aware who leaked this confidential information to the media because, this is a dismissible offence for a SARS employee to divulge confidential and /or unauthorized information to the media **(Annexure S)**.

36.

On Wednesday, 13 May 2015, Acting COO Jonas Makwakwa phoned me and requested that Johan de Waal and myself must be at Commissioner Moyane's office at 17:00. Johan de Waal and myself met with Commissioner Moyane and Mr Makwakwa at his office and the Commissioner informed us that the Mail & Guardian wanted input from SARS regarding the DSO-operation. Commissioner Moyane told us that SARS would provide us with legal assistance as we executed the DSO-operation **as per a SARS instruction.**

Commissioner Moyane then instructed us to report the matter to the SAPS (HAWKS) and he phoned a General to assist us. The General was not available as he was in Cape Town, but referred us to Lieutenant-Colonel Maluleke who met us at the Pretoria-North Police Station.

Johan de Waal and I informed him and a Warrant Officer (also from the HAWKS) about the DSO-operation.

37.

I provided Colonel Maluleke with an unsigned document on 14 May 2015, being the Memorandum that I handed to Commissioner Moyane on 20 March 2015. Colonel Maluleke explained to Johan de Waal and myself the possible steps that will follow before a case would be registered. Commissioner

Moyane, as well as Acting COO Makwakwa, wanted feedback regarding our meeting with the HAWKS and I gave feedback to the Commissioner and the Acting COO on 14 May 2015 **(Annexure T)**.

On Sunday 17 May 2015, Colonel Maluleke contacted me and requested me to meet him at General Piet Joubert Building, i.e. the DCPI (HAWKS) offices, at 17:30. Colonel Maluleke requested me to sign the said document I gave him, but I called Adv. Theresa Kannemeyer and she advised me not to sign the document. She explained that I could incriminate myself without proper legal advice. I handed the phone to Colonel Maluleke and she spoke to him.

He accepted her explanation. He said that I could sign an affidavit at an appropriate time.

FINANCES

38.

When I commenced my employment at SARS, it was said that the SARS unit in question would most probably be seconded to NIA to work exclusively on state revenue-related cases. I had to hand in a budget of high technology equipment that the unit would need but, it was more of a wish list. I am of the opinion that it was to calculate costs should the unit be seconded to work under the auspices of NIA. It was soon clear that the unit would not be seconded to NIA. It was said that if the unit needs equipment, it would be best if they raise the money themselves although SARS already approached the SAPS (CIG) to second the unit to them to "enhance the South African State's capacity to address criminal activity and to collect state revenue" **(Annexure M)**. The negotiations with the SAPS (CIG) were unsuccessful and the said SARS unit had to buy their own equipment to do their work. I am not aware whether such equipment was bought. The unit was dissolved in 2015.

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I believed that the installation of security systems at the DSO was from the onset an official operation because of the following:

- Janse van Rensburg did not inform the DSO that he actually was a SARS employee when they first contacted him for a quotation. However, I cannot confirm that the DSO was aware of it.
- Janse van Rensburg told me that it was an official operation and indicated that I must not discuss it with the rest of the unit.
- I accompanied Janse van Rensburg when we met Adv Gerrie Nel and Andrew Leask to give input regarding the security installation should it be necessary. Janse van Rensburg did not mention that we were SARS employees. The meeting took place during working hours although we worked from our homes.
- Janse van Rensburg approved the quotation before it was handed to the DSO. I got instructions from Janse van Rensburg to make sure that I included "profit" that the unit could use.
- Once the first payment of R 300,000.00 was made on 12 July 2007, I had to get authorization from Janse van Rensburg to spend the money. This changed soon and Janse van Rensburg gave me verbal authorization to buy the equipment and consumables for the installations at DSO without me contacting him. Janse van Rensburg usually called me regarding expenses of the unit such as to buy equipment or pay cash to members of the unit **(Annexure D & U)**.
- Janse van Rensburg called me out of official meetings to attend to the DSO security installations and mentioned to the other unit members that we are busy with an official operation. This happened more than once while the unit was busy with planning sessions at the CSSI House in Midrand. CSSI (Pty) Ltd in Midrand is a global data recovery laboratory and data storage specialist company, supplying a host of branded products, software and data storage services from data storage supply; hard drives, backup systems, data migration to digital forensics and data archival services.

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- Janse van Rensburg signed off my kilometres travelled for the purpose of the installation as official kilometres travelled.
- The fact that the DSO, Adv. Gerrie Nel and Andrew Leask, contacted Janse van Rensburg for the installation of the security equipment was questionable because, the DSO had its own technical capability at the time. There were also quite a few other companies that could have been approached to conduct the security installations.

40.

I reiterate that the unit had to generate its own funds for equipment. However, when the DSO security installation came up, the unit did not have a bank account that it could use for securing generated funds. I proposed to Janse van Rensburg that the unit could use the account as already mentioned in paragraph 16 above. The account was, as stated, with ABSA and the account number was 9062196036 **(Annexure V)**. Janse van Rensburg approved it and I agreed to do a reconciliation of the funds on a regular basis **(Annexure W)**. All the money that I received from the DSO was in cash and deposited into the said bank account **(Annexure V)**.

FINANCE FLOW

41.

I reiterate that I provided the DSO with a quotation **(Annexure B)**. If I am not mistaken, I followed this up with a pro-forma invoice with the exact details that were on the quotation.

42.

I reiterate that Piet Jonker, an Investigator at the DSO, phoned me on 12 July 2007 and informed me that he had R 300,000.00 in cash with him and that he wanted to hand it over to me so that I could commence with the security installations. I signed for the cash that I received and then deposited it into the bank account as mentioned above (ABSA Bank account

nr. 9062196036). I followed this procedure with all the payments that I received from the DSO. The total amount received was R 900,705.46 for the installation of the security equipment and a further R 247,500.00 on 07 December 2007 for cellular encryption equipment **(Annexure D)**.

43.

I then procured consumables and equipment by paying with my credit card and / or issuing a personal cheque for the payment. This was done because the ABSA bank account 9062196036 was a savings account and did not have a debit card facility. I then added the amounts of the invoices and requested my wife to do a transfer to my credit card or cheque account whichever one I used to pay for the consumables and equipment **(Annexure X)**.

At the service providers where I did not have an account, or where the amount exceeded my credit card limit or cheque overdraft limit, I requested my wife to obtain a "Bank cheque" in the name of the service provider and paid them directly with a "Bank Guaranteed Cheque" **(Annexure X)**.

I have done reconciliations on a regular basis **(Annexure W)**. I have done these reconciliations until 06 May 2008 **(Annexure W:** Reconciliation 06 May 2008**)**. I kept all invoices up and until 09 September 2008 when I did a final reconciliation of the DSO account **(Annexure Y)**.

44.

After Janse van Rensburg decided to take the financial package that SARS offered him, I once again met with Mr Ivan Pillay and Johan van Loggerenberg. I told them that there was an amount of approximately R100,000.00 in the said bank account and enquired from them in which SARS account I should deposit the money. Both of them then answered that there is no provision made for such an account and that I cannot pay the balance over to SARS. SARS would not be able to give an explanation of the money should anyone queried the deposit. Mr Pillay and Johann van Loggerenberg then said that I must take the money and regarded it as a "private installation" should anyone ask. Johan van Loggerenberg then gave me a letter that authorised me to conduct private work. This was the first

time for me to receive such letter. I attach the said letter as part of **Annexure Z.**

I declared R112,740.00 as profit in the 2008-tax year **(see Annexure W)** and paid an amount of R45,096.00 over to SARS being 40% on the declared additional income **(Annexure Z).**

I already did a final reconciliation of the DSO account on 9 September 2008 as mentioned in paragraph 42 above. An amount of R 266,840-69 had to be refunded to the DSO. On the same day, I deposited the said amount of R 266,840-69 directly into the DSO Head Office, C-Funds bank account - Standard Bank, Account number 011691379 **(Annexure Y).** I also supplied the DSO with an Asset List as well as an Asset Distribution list **(Annexure F and H).**

After September 2008, I kept on maintaining the DSO's alarm system account until June 2009 when the two-year contract with CellSecure (Pty) Ltd was terminated **(Annexure X).** I also maintained the data SIM-cards as supplied by TeleEye (Pty) Ltd.

I completed the final reconciliation after "Operation Sunday Evenings" leaked to the media and I reported the DSO-operation to the SAPS (HAWKS) **(Annexure W).**

In this reconciliation, it is clear that I still used some of the money to maintain accounts arising from the DSO-operation **(Annexure W).**

45.

On request of the investigating team I would like to add the following facts:

45.1 I was requested to elaborate in detail my involvement in all projects that I conducted while a member of the said unit. As far as I can recollect, I was involved in the following projects during the period 2007 to the end of 2008: **(see Annexure AA1 to AA5).**

45.1.1 Task Babu – Pinetown – March \ April 2007. The purpose of this task was to establish whether a certain tax payer was smuggling with abalone. I did a reconnaissance of the area to determine

whether a video transmitter could be installed to assist in the investigation. The procurement of the equipment was not approved and I just took pictures of the house and area (**see Annexure AA1**).

I was part of the investigating team. I can confirm that Jappi Tshabalala and Sipho Nkomo accompanied me.

45.1.2 Operation Fok Tim – Bramley - May 2007. Information was received that drugs were manufactured on the premises of a person from Chinese origin. After establishing the address, Danie le Roux and myself were present on 28 May 2007 when the SAPS entered the premises of 92 Beryl Street, Bramley.

During a conversation with Mr. Fok, he confirmed that he did not register for tax as his businesses were illegal. A search of his property confirmed that he ran a "Fafi" business from his garage and provided accommodation for approximately twenty (20) Chinese citizens. He also had false documents in his possession.

I handed a report to Itumaleng Leeuw regarding this operation on 04 June 2007 (**see Annexure AA2**).

45.1.3 Operation Erwin – Ladybrand (FS) –June 2007. The purpose of the reconnaissance was to determine whether a full time surveillance investigation had to be conducted to establish the frequency of smuggled abalone that was delivered at a cold storage in Ladybrand.

I was accompanied by Kenny Mphalele and Mike Peega to conduct the initial reconnaissance in Ladybrand (FS) in June 2007. I wrote a reconnaissance report on 02 July 2007 to Mr. A.P. Janse van Rensburg with my recommendations, which included the cost for surveillance equipment. The equipment was never procured and the surveillance operation was not approved (**see Annexure AA3**).

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45.2 The unit did not have the means to buy tracking equipment, but I recommended Inkwazi and FinTrack tracking equipment as being reliable.

45.3 As far as I can recollect, I received a SARS identification card during 2007. The said card had a SARS emblem and a photograph of myself, but with another name and surname printed on it. I do not know who instructed the issuing of the said cards. I had the said card for a short period in my possession, but never used it. I later returned the card. I am not aware of what happened to the card.

45.4 When Janse van Rensburg parted with SARS during 2008, Johann Van Loggerenberg communicated through me to the unit. I never received a letter stating that I am the "Acting Head" of the NRG and I never regarded me as the acting head. I cannot recall whether projects were conducted during this period because, I assisted the Anti-Corruption and Security Unit (ACAS) to plan and implement a national rollout of a CCTV-camera system with a centralised monitoring facility. During this period, I gave feedback from the unit members to Johann van Loggerenberg. I also reported to ACAS during this time. Although I was seconded to ACAS in 2008/2009, I was permanently transferred to the said unit on 1 April 2009.

I cannot recall whether I have signed a performance agreement.

45.5 I cannot recall whether I have conducted any projects (Crime Intelligence (SAPS) or NIA during the said period. Since 2009, after I joined ACAS, I conducted projects with SAPS (Hawks), SAPS (Crime Intelligence) and SSA on a few occasions.

45.6 While Janse van Rensburg was our manager, he allocated the projects. I am not aware who approved the said projects aware , nor do I know who monitored and evaluated the projects.

When J. Van Loggerenberg took over from Janse van Rensburg, we were made aware that no illegal methods were to be used to obtain information with regard to projects. He approved projects after he

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received a detailed motivation, including financial implications and expected outcome of the project. I took it that he evaluated it.

45.7 I am not aware that any member of the unit escorted prominent politicians.

45.8 I left the "NRG" in 2009. While I was doing operations in the said unit, I never used any SARS equipment except those that I bought during the DSO-installation. I was made aware of the existence of a surveillance vehicle but, cannot remember who informed me about it. I have never seen the said vehicle.

Deponent

Signed and sworn to before me at 26/10/2016 on Wierdabrug 2016. The Deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath binding on his conscience.

COMMISSIONER OF OATHS

FULL NAMES: [illegible]

ADDRESS: 75 Vindheia Road Vallecka

COMPONENT HEAD
2016 -10- 26
WIERDABRUG

DESIGNATION: Warrant Offic

AREA: Wierdabrug SAP