



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

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

NOTICE IN TERMS OF RULE 3.3

TO : ADV SHAUN ABRAHAMS

**AT : 3 ALLIWAY
LONEHILL
2062**

EMAIL : shaunabrahams@hotmail.com

CC : pseleka@justice.gov.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 On the 11th of April 2019, the Commission’s Legal Team intends to present the evidence of Mr Robert McBride (“Mr McBride”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg at 10h00. The evidence in question implicates you, or may implicate you, in unlawful, illegal or improper conduct in the respects set out below.
- 2 Due to the fact that you are or may be implicated by the evidence of Mr McBride, you are entitled to attend the hearing at which that evidence would be presented. You are also entitled to be assisted by a legal representative of your choice when that evidence

is presented. You may also refer to the hearing transcripts which are uploaded daily on the Commission's website (www.sastatecapture.org.za).

3 The allegations set out in the evidence of Mr McBride implicates or may implicate you in, *inter alia*, the following respects:

3.1 During your term of office as the head of the National Prosecuting Authority ("NPA"), you improperly and/or unlawfully sought to-

3.1.1 unduly interfere in the investigative independence of the NPA, the Independent Police Investigative Directorate ("IPID") and the Hawks- Directorate for Priority Crime Investigation ("DPCI");

3.1.2 unduly delay or fail to act upon recommendations relative to prosecutions;

3.1.3 unduly decline to prosecute suspects investigated by IPID;

3.1.4 unduly persecute officials of the NPA, IPID and/or the DPCI; and

3.1.5 destabilize the NPA, IPID and/or the DPCI.

3.2 In acting as set out above, you allegedly sought to enable the state of capture of the criminal justice cluster.

4 The evidence of Mr McBride which implicates, or may implicate you, in the above allegations is set out in paragraphs 125 to 128 of his statement.

5 A full copy of the statement of Mr McBride is annexed hereto marked "A".

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

then you must apply, within nine calendar days of this notice, in writing to the Commission for leave to do so.

- 7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness's statement in so far as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.

- 8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

- 9 Please take note that even if you do not make an application under Rule 3.4:
 - 9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

 - 9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.

- 10 The extracts of the witness statement provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.

DATED AT PARKTOWN ON THIS 8th DAY OF APRIL 2019.

A handwritten signature in black ink, appearing to be 'P Pedlar', written over a horizontal line.

MR P PEDLAR
Acting Secretary
Judicial Commission of Inquiry into Allegations of
State Capture, Corruption and Fraud
in the Public Sector including Organs of State

AFFIDAVIT
ROBERT JOHN MCBRIDE

I, the undersigned

ROBERT JOHN MCBRIDE

do hereby make oath and state:

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

The Independent Police Investigative Directorate

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

Legislative mandate

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

 **MP**

See Annexure T.

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

Unjustified Attacks against IPID

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

124. An overview of these attacks follows:

National Prosecuting Authority Bias

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

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

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

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



MP

