



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

In the matter between: –

NKOSINATHI NHLEKO

Applicant

And

THE COMMISSION'S LEGAL TEAM

First Respondent

ROBERT MCBRIDE

Second Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the applicant intends to make an application on a date and time to be determined by the Commission for an order in the following terms: –

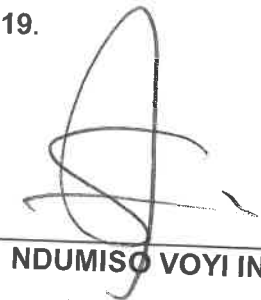
1. Granting the applicant condonation for the late filing of his statement;
2. Granting the applicant leave to cross-examine the second respondent;
3. Granting the applicant leave to testify; and
4. Granting the applicant leave to call witnesses.

BE PLEASED TO TAKE NOTICE FURTHER THAT any of the respondents who wishes to oppose this application is given seven (7) days from the date on which this application is served on them to file the notice and affidavit in opposition thereto.

BE PLEASED TO TAKE NOTICE FURTHER THAT the affidavit of **NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO**, attached hereto, together with annexures thereto shall be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has chosen **NDUMISO VOYI INC.** whose contact details appear below as his attorneys of record for purposes of this application.

DATED AT JOHANNESBURG ON THIS THE 4TH DAY OF JULY 2019.



NDUMISO VOYI INC.

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TO: THE CHAIRPERSON

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

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AND TO: MABUNDA INC.

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

SWORN STATEMENT BY NKOSINATHI
PHIWAYINKOSI THAMSANQA NHLEKO

I, the undersigned,

NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

do hereby make oath and state that:

1. I am an adult male person and I am the former Minister of Police and I was later also appointed Minister of Public Works, the position I occupied until the cabinet reshuffle by the current President of the Republic in 2018.
2. I hold a Master of Science Degree in Leadership and Change Management with Leads Metropolitan University, United Kingdom, as well as a National Diploma in Labour Law rated at an Honours Degree level with the Global Institute of Management Technologies. I am a member of the African National Congress in good standing. I am currently unemployed. My term as a member of Parliament ended with the fifth parliament during the national elections on 8 May 2019.

em.



**APPLICATION IN TERMS OF RULE 3.3.6 READ WITH
RULE 3.4 OF THE COMMISSION'S RULES**

3. This statement is submitted to the Commission of Inquiry in terms of Rule 3.3.6 of the Commission's rules, published in Government Gazette No. 41772 of 13 July 2018 ("the Rules").

4. The Commission communicated to me by notice in terms of Rule 3.3, dated 8 April 2019 that Mr Robert McBride ("McBride"), the former Executive Director of Independent Police Investigative Directorate ("IPID") has implicated me in the affidavit that he submitted to the Commission. The portions of the paragraphs where it is alleged McBride implicates me in wrongdoing were attached to the notice, and the paragraphs implicated were also identified in the notice. Subsequently McBride testified before the Commission, although I was not notified, and I only saw him when he was already testifying.

5. Rule 3.3.6 allows a person implicated to:
 - 5.1 give evidence;
 - 5.2 call any witness(es) to give evidence on his/her behalf;
 - 5.3 cross examine the witness (the person who has implicated him/her).

6. I, therefore, in terms of Rule 3.4, submit an application in terms of Rule 3.3.6 to:
 - 6.1 cross examine Mr Robert McBride (McBride);
 - 6.2 give evidence myself;
 - 6.3 call witnesses where appropriate on my behalf, to corroborate my version.

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7. Rule 3.4 requires the application to be made within 14 calendar days from the date of the notice in terms of Rule 3.3. This application is out of time and an application for condonation will be made on grounds of interest of justice, prejudice and good cause having been shown.
8. The statement serves two purposes. First, to support my application to cross examine McBride as contemplated by Rule 3.3.6 .3 and secondly, to ask leave of the Commission to give evidence myself, as contemplated by Rule 3.3.6.1. Thus, the statement is a statement contemplated in Rule 3.4 responding to McBride's statement insofar as it implicates me.
9. In responding to some allegations, I rely on matters that do not fall within my personal knowledge, and the probative value of such evidence is dependent upon the person from whom they emanate, hence the request to call such persons, failing which the Commission would exercise its powers to invite such persons to testify. In certain instances, although I may not have personal knowledge of what I say, such evidence is corroborated by objective evidence from the documents which are not disputed and could not be disputed thus making it unnecessary to call anybody to corroborate.
10. For instance, the Werksmans report exists as a matter of fact and law and is not been challenged or set aside by a court. The interviews conducted by Mr. Sandile July (Mr July), of Werksmans and his team of investigators were mechanically recorded and subsequently transcribed. McBride does not dispute the transcripts of the interviews as accurately recording what was said by him and other interviewees. The Werksmans report and the transcript of the interviews conducted by Werksmans will be submitted to the Commission in

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separate files and be incorporated as forming part of the record of my evidence as contained in the statement. The files will accordingly be paginated and indexed.

11. The disciplinary proceedings record of Mr. Mathews Sesoko (Sesoko) is in the custody of IPID. Similarly, the guilty plea of Mr. Innocent Khuba (Khuba), reduced to writing and signed by Khuba himself, acknowledges that himself, Sesoko and McBride unlawfully altered the final report. When Khuba pleaded guilty, he was properly represented by an attorney and did so freely and voluntarily.
12. However, it is necessary for the Commission to invite Khuba to explain why he deposed to an affidavit uninvited two days after he had pleaded guilty trying to distance himself from his guilty plea. Khuba's guilty plea will also form part of the file once it is procured. Advocate Anthony Mosing, of the National Prosecuting Authority testified at the disciplinary inquiry of Sesoko. That record is with IPID.
13. Importantly, advocate Mosing authored a memorandum in which he confirmed that the investigation was completed and submitted the final report signed by Khuba dated 22 January 2017 for a decision to prosecute. Khuba also confirmed that the report dated 22 January 2017 signed by him was the final report. As such, McBride say so evidence that the 22 January 2017 report was a provisional report is neither corroborated by documentary evidence nor Khuba himself. That evidence is patently false.
14. In this statement I also deal with condonation at the end.



15. I have therefore structured the statement as follows. In section A, I first deal with the chronology of facts as part of the evidence I intend to give if leave to do so is granted. Secondly I deal in section B with the allegations in McBride statement paragraph by paragraph. Thirdly I deal with condonation for the late submission of this statement.

SECTION A

BACKGROUND

16. I have 33 years of experience in managing people and organisations. These years exclude a period of social activism in student and youth politics; which is an account of and on its own. I essentially started off as a young student activist, interested in turning around our learning and teaching conditions that obtained at the time under an apartheid colonial system.
17. I joined the African National Congress in 1983 which also coincided with the formation of the United Democratic Front. Two years later, in June 1985, I was recruited into Umkhonto WeSizwe, the People's Army. Functioning at these levels led to a number of activities and other developments dictated to by operational needs and requirements obtaining at the time. It is not my intention to delve into the detail thereof in this submission.
18. In 1987, I joined the Transport and General Workers Union as a Branch Organiser in Northern Natal; an affiliate of the Congress of South African Trade Unions. In March of 1987, I began to serve as a Branch Secretary of the same union. Briefly; my tasks were coordination and management of trade union

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operations within the geographical scope of the branch. These activities entailed:

-

- 18.1 Supervision of branch staff members; Organisers and Administrators
- 18.2 Staff development and maintenance of discipline.
- 18.3 Principal liaison officer on behalf of the union.
- 18.4 Administrative coordination in the branch.
- 18.5 Ensuring proper books of account and reporting.

19. In December 1989, I was elected General Secretary of the Transport and General Workers Union; a responsibility which entailed the following: -

- 19.1 Enforcing compliance with all the Union's policies and its Constitution.
- 19.2 National administrative responsibility and accounting.
- 19.3 Financial management and budget holding.
- 19.4 Coordinating policy development, monitoring and review.
- 19.5 Strategic planning of the union, including sector and industrial analysis.
- 19.6 Ensuring synergy, effectiveness and efficiency.
- 19.7 Performance management of both the organisation and staff.
- 19.8 Establishing and maintenance of effective relationships throughout the organisation.
- 19.9 Maintaining external relations and being chief spokesperson to external stakeholders, including representing the union at Executive Committee meetings of COSATU.

20. In August 1993, I stepped down as General Secretary, as I wanted to go back to KZN. It is during this period that, in September 1993, I got elected at a Special

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COSATU Congress for ANC candidature for parliament. I was among the 20 COSATU delegates so identified by the said congress.

21. During the period of September 1993 and April 1994, I was assigned to be part of setting up a COSATU election machinery in support of the advent of democracy and the ANC taking over. Activities included: -
- 21.1 Ongoing critical analysis of the political and security situation in KZN.
 - 21.2 Participated in efforts to negotiate peace.
 - 21.3 Coordinating broader political activities and programmes, including mass activities such as the Worker's Forum.
 - 21.4 Integrating a COSATU election machinery into the ANC's at a provincial level.
22. After the April 1994 elections, I was sworn in as a Member of Parliament. Soon after this, portfolios of government were constituted. I was appointed to chair the ANC study group on transport. In that regard, I was responsible for coordinating of work plans and programmes, chairing and directing weekly meetings of the study group; as well as drawing up of annual programmes and plans and reports for consideration by the Chief Whip and the ANC national caucus.
23. In fulfilling section 236 of the Constitution, I was, in 1998, assigned to chair an Adhoc committee on funding of represented political parties in parliament.
24. This meant developing policy with regard to funding of political parties; coordinating consensus and agreement among parties represented in parliament on a funding formula. Developing a funding model for political parties; reporting and accounting to the Joint Rules Committee.

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25. In 1999, I chaired the Public Service and Administration Portfolio Committee; whose responsibilities were: -
- 25.1 Drawing up of annual programmes and plans.
 - 25.2 Directing work programmes of the portfolio committee.
 - 25.3 Presentation of reports for consideration by parliament and other structures.
 - 25.4 Liaison with stakeholders; Ministers, Departments, Institutions Supporting Democracy, Civil Society and others.
 - 25.5 Ensuring weekly meetings of the committee.
26. In 2001, I was appointed Chairperson of the ANC Parliamentary Caucus, a function that required that I had to serve as a point of contact between ANC MP's and the leadership of the organisation. Enabling discussion on the work of study groups, which play a role of portfolio committee work and are sub-structures of the national caucus. Enabling Members of Parliament to discuss and agree on the approach pertaining to all matters on the parliamentary agenda. I also had to represent the ANC caucus at the ANC NEC.
27. In 2002, I was appointed Chief Whip of the ANC, whose responsibility was political and financial resource management of the ANC in parliament. It is a function that required coordination between relevant structures of parliament, Cabinet Ministers and ANC Headquarters. I had to liaise between political parties, Presiding Officers and the Programming Committee.
28. In 2004, I served as the House Chairperson in the National Assembly, in fulfilling section 55(2) of the Constitution, I was responsible for oversight and

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accountability, parliamentary villages, labour relations, information, communication and technology, and the public participation unit.

29. I resigned from parliament in September 2005. In February 2006, I started working for the Department of Correctional Services as KZN Regional Commissioner; which meant managing and coordination of correctional services and programmes in KZN province. Duties also involved: -

- 29.1 Coordinating a security programme as constitutionally mandated.
- 29.2 Ensuring adherence to policies and guidelines of DCS in all management areas.
- 29.4 Setting standards to ensure high quality services.
- 29.5 Promoting coordination of stakeholders within the Criminal Justice System.
- 29.6 Promoting community involvement and awareness in correctional matters.
- 29.7 Managing the KZN Region in accordance with the Public Finance Management Act.
- 29.8 Reporting to the Accounting Officer, the National Commissioner.

30. In November 2008, I started working for Umhlathuze Municipality. I was hired as Deputy Municipal Manager; however, 75% of the time, due to other circumstances in the municipality, I functioned as an Acting Municipal Manager.

My responsibilities were the following: -

- 30.1 Implementation of the Integrated Development Plan.
- 30.2 Maintaining Organisational Management System.
- 30.3 Coordinating human resources activities and industrial relations.

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- 30.4 Risk management
- 30.5 Strategically, direct and manage the IDP, PMS and Internal Audit functions.
- 30.6 Strategic management of local Economic Development initiatives.
- 30.7 Public Relations and Communication.
31. In the period under review, I also served in other structures; such as in 2002 to 2005, a period in which I served as a member of the Judicial Services Commission. A structure primarily concerned with courts and the administration of justice, as well as the appointment of judges.
32. In the same period, I served as Deputy Chairperson of the ANC Political Committee; a committee whose task was to give political direction to the work of the ANC in parliament. It is a sub-structure of the ANC National Executive Committee.
33. I left uMhlatuze Municipality at the fall of 2010; as I had to take up a position with the Department of Public Service and Administration in 2011. The Minister of Public Service and Administration, Minister Baloyi requested me to come in and assist him in setting up a Special Anti-Corruption Unit.
34. I then became Head of the Special Anti-Corruption Unit in DPSA. This unit was at a conceptual stage with the view to structure it up as a government entity. I served DPSA in this capacity for only four months.
35. In May 2011, I was hired as Director General of the Department of Labour. Essentially, I was the accounting officer of the department. I held onto this position until May 2014 when I was appointed Minister of Police

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36. In summation, my work in KZN as a student and political activist, trade unionist, ANC MP and senior management experience equipped me with an ability to constructively deal with community needs, as well as issues of institutional support and reform of structures of governance.
37. Chairing the Public Service and Administration Portfolio Committee provided a legislative and policy formulation processes of government, as an experience. On the other hand, the Judicial Services Commission experience, enhanced my understanding of the challenges of transforming not only the judiciary but also the criminal justice system in its entirety. An experience that served me well in later assignments.
38. Post the May 2014 general elections, I was appointed Minister of Police by the then President Jacob Zuma. Section 206 of the Constitution states that; - ***‘A member of the Cabinet must be responsible for policing and must determine national policing policy...’*** Furthermore Section 207 states that: - ***“The National Commissioner must exercise control over and manage the police service in accordance with the national policy and the directions of the Cabinet member responsible for policing”.***
39. I was indeed the Cabinet member responsible for policing.
40. I relinquished this responsibility, soon after the then President reshuffled his Cabinet, as a result of which, in 2017, I assumed a new role as Minister of Public Works. A position I held onto until another Cabinet reshuffle by the current President, President Ramaphosa, in 2018.
41. Democracy is a social construct, established through elections, societal institutions and an active citizenry. All institutions arising from the democratic process are established and controlled by civilians as an expression of

democratic practice. The SAPS is part of the institutions established by democracy.

42. This viewpoint is also galvanized by the fact that the constitutional and legal framework governing the security environment is informed by the ANC's final submissions on the Constitution. These proposals were published on 15 June 1995 as a basis for the liberation movement's engagement with the Constituent Assembly. The African National Congress said:

42.1 The fundamental approach of the ANC is that the final responsibility for security should be taken out of the hands of the security apparatuses.

42.2 Final responsibility for security should be placed squarely in the jurisdiction of the democratically elected Parliament and Executive.

42.3 The security services are to be bound explicitly.

42.4 Civilian control over the security services at ministerial level and through other mechanisms should be constitutionally enshrined.

42.5 The right of the public to access information must be provided for constitutionally, with limitations in the interests of national security – a reasonable balance between democratic transparency and secrecy.

42.6 Security institutions should not act on their own authority, but under the guidance of Parliament and the Executive.

42.7 Threats to security are not limited to military aggression but also include poverty, social justice, social economic deprivation, abuse of human rights and disjunction of the environment.

43. The existing Constitution is underpinned by the principles of the liberation movement, as the ANC essentially spoke of the need for:

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- 43.1 Final responsibility to be given to democratically elected representatives.
 - 43.2 Explicit binding of security services.
 - 43.3 Civilian control of security services; and
 - 43.4 These find expression in the Constitutional provision giving the Executive Authority powers in regard to both the Defence Force and the Police Service and enhancing their respective capacity through civilian secretariats.
44. I firmly believe that these principles are fundamental. They need to be jealously guarded as they talk to the realization of a democratic society. They also, when firmly upheld, would ensure stability of our society.
45. This part of the statement is sequenced in the following manner:
- A. The appointment of Leon Mbangwa as the Chief of Staff;
 - B. The Reference group;
 - C. Werksmans report on rendition of Zimbabweans;
 - D. McBride's disciplinary process;
 - E. Suspensions and eventual dismissals of Mr Innocent Khuba and Mr Matthews Sesoko;
 - F. Appointment of Mr Israel Kgamanyane;
 - G. Condonation
 - H. Conclusions.

A. MR LEON ABEDNIGO MBANGWA

46. Largely two issues have been raised in the past and before the Commission on State Capture; by both Mr Robert McBride and others at public ventilated levels. These are that he is: -
- 46.1 a fraudster, and
 - 46.2 a foreigner.
47. After assuming the office of the Police Ministry, I had a Chief of Staff, Ms Cathy Hendriks; who left my office to assume another role with the South African Police Service. This left me with a gap as I then had no one to head my office as Chief of Staff. I started a process of recruitment.
48. That process led me to KwaZulu/Natal Legislature, where in I located Mr Mbangwa, who held a position of Senior Manager which was an equivalent of a Chief Director in the Public Service. I went through his profile and found him suitably qualified for the position in my office.
49. Mr Mbangwa holds a master's degree in Business Administration with Regent Business School, a Diploma in Human Resources Management, a Diploma in Industrial Marketing with UNISA, a Diploma in Public Relations Practice with the Public Relations Institute of South Africa, a Teachers Diploma with the University of Zimbabwe, Program and Project Management with The American Graduate University. He is awaiting results of his dissertation for his Master's in Public and Development Management with Wits University.
50. On the work experience, Mr Mbangwa has a range of work experience which started with him:

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- 50.1 Teaching in Zimbabwe, Zambia, Botswana, and South Africa between 1986 and 1995;
- 50.2 Heading Communications: Mpumalanga Provincial Government, 1995 to 1998;
- 50.3 Being a Director: Independent Electoral Commission of South Africa, 1999 to 2001;
- 50.4 Being a Director: Department of Justice, 2001 to 2002;
- 50.5 Being Chief Director: KZN Department of Health, 2005 to 2010;
- 50.6 Being Senior Manager: KwaZulu Natal Legislature, 2011 to 2015

51. The above work experience shows that Mr Mbangwa has been with the South African public service for over twenty years. He was awarded a Merit Certificate by the Mpumalanga Provincial Government; as Director for IEC, together with Judge Kriegler represented South Africa in East Timor as an Electoral Officer of the United Nations. He was in the Minister of Justice office dealing with the implementation of the eJustice project.
52. I was satisfied that Mr Mbangwa was the correct candidate for Chief of Staff position in my office and I accordingly arranged for a lateral transfer from the KZN legislature to the Ministry of Police. At this point nothing was ever said about his possessing a criminal record or having been convicted for identification fraud. Understandably so, because any of these matters, would have been declared at the initial point of employment and not transfer.
53. On one particular occasion, I participated in a Power FM talk show. The focus was on the police portfolio. The anchor of the show asked a question relating to Mr Mbangwa's employment and citizenship, particularly that he had a criminal

record. I undertook to make a follow up on issues raised. On further enquiries on my part from Mr Mbangwa; indeed, he declared that he had a criminal record which occurred in 2002. He was arrested in connection with information on his South African identity document and charged with fraud. His identity document did not accurately reflect details of his birth. It recorded that his place of birth was Transkei and did not give the correct name of his birth mother; as well as his name was not properly recorded.

54. He was sentenced to 36 months imprisonment, for which he served 18 months and released from prison in 2004. At which point, he was given a letter to apply for citizenship by descent. He was not deported. Mr Mbangwa informed me that in all positions of employment, post his prison sentence, he declared his criminal record and completed his Z204 form for security clearance.

55. Upon his release in 2004, he took steps to rectify his citizenship and identity document, in accordance with Section 3(1) of the South African Citizenship Act, No. 88 of 1995. However, to date the Department of Home Affairs has not been forthcoming, as a result of which the Pietermaritzburg High Court was approached to give force to this attempt. The following was the result: -

55.1 The Pietermaritzburg High Court, Case Number 6840/09, ordered that an oral evidence be held on 16, 17, 18 March 2011 on determining descendency for Mr Mbangwa.

55.2 On 17 March 2011, a settlement agreement was entered into before the Pietermaritzburg High Court for a DNA test between Mr Mbangwa and a surviving sibling in South Africa.

55.3 Such a DNA test results were in Mr Mbangwa's favour.

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56. The Department of Home Affairs has continuously reneged from this Court Order.
57. In any case, it is strange and anomalous to refer to an African person as a foreigner in the African Continent. At issue here, is what European powers did in 1884, on account of being white and considering themselves as being supreme to humankind, to carve and dissect Africa in pursuance of their exploitative interests.

B. THE REFERENCE GROUP

The establishment of the reference group

58. Following the announcement of the new Cabinet by the then President, in May 2014, I as Minister of Police then, embarked on a programme aimed at familiarising myself with the policing environment. This included meeting with senior management of the institutions for which I was responsible; as well as studying the Constitutional and legal framework governing the environment.
59. I met with various stakeholders to solicit their views and perceptions on what was required to improve the delivery of the policing function aligned to the National Development Plan – Vision 2030, which seeks to: -
- 58.1 Strengthen the criminal justice system
 - 58.2 Make the police service professional
 - 58.3 Demilitarise the police service
 - 58.4 Build safety using an integrated approach and
 - 58.5 Build community participation in community safety.



60. During the familiarisation process many critical issues were brought to the fore. In this regard a number of legal and disciplinary issues and long outstanding matters relating to institutional reform and transformation were identified as requiring urgent intervention and resolution as they impacted negatively on the morale, efficiency, effectiveness and image of the Service.

61. The burning and topical matters were: -

60.1 **Human Resources Management**

60.1.1 In this category, appointments, suspensions, disciplinary and criminal proceedings involving senior management, was a specific focus.

60.2 **Operational Issues**

60.2.1 The focus here was the alleged involvement of police members in illegal renditions of Zimbabwean nationals.

60.3 **Crime Intelligence**

60.3.1 At the time, there were lots of matters that were publicly ventilated. Those matters ranged from management and leadership instability to perpetual suspension of Mr Richard Mdluli.

60.4 **Integration and Transformation Issues**

60.4.1 There were allegations pertaining to rank structure including promotions and perceived salary discrepancies.

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Lack of progress with regards to integration of non-statutory forces.

60.5 **Reviewal of the National Key Points Act.**

60.6 **The Secure in Comfort report by the Public Protector (anticipated referral by parliament at the time)**

62. As Minister of Police, I had to objectively deal with the dynamic issues in the policing environment, as well as respond objectively to the critical issues dominating the public discourse. Thence the establishment of the Reference Group.

The legal framework in establishing the reference group

63. The Civilian Secretariat for Police, in terms of Section 3(e) and (j) of the South African Police Act; 1995, must: -

(e) *“provide the Minister with legal services and advice on constitutional matters”*

(j) *“evaluate the functioning of the Service and report to the Minister thereon”*

64. Section 9 (b) of the Civilian Secretariat for Police Act, 2011, further states, that the Secretary may do all that is necessary to perform the functions of the Secretariat, including; *“requesting and obtaining information and documents relating to any matter under the control of the police service”*

65. Section 12A of the Public Services Act, 1994 states that:

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"...executive authorities as the Cabinet may appoint one or more persons under a contract, whether in a full-time or part-time capacity –

- (a) To advise the executive authority on the exercise or performance of the executive authority's powers and duties;*
- (b) To advise the executive authority on the development of policy that will promote the relevant department's objectives; or*
- (c) To perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties"*

66. Part III G of the Public Service Regulations, 2001 states that:

"An executive authority may, within the relevant budget, employ persons additional to the approved establishment where... (b) a temporary increase in work occurs; or it is necessary for any other reason to temporarily increase the staff of the department"

67. These are the legal prescripts that, I, as Minister then, had to follow to the letter in establishing a Reference Group. In this instance, the Reference Group, under the auspices of the Civilian Secretariat for Police, was to provide legal services and advice on constitutional matters and evaluate the functioning of the service and report to the Minister thereon. I accordingly proceeded to establish the Reference Group guided by our law.

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The composition of the reference group

68. The Reference Group was made of five (5) individuals who possessed a variety of skills that were required for the task at hand. Members possessed legal, strategic planning management, organisational development, intelligence and security work, as well as institutional reform skills. In approaching its work, the Reference Group was to:

- 67.1 Gather all necessary background information and material in relation to each of the identified areas.
- 67.2 Invite inputs on the specific issues from police management and directly or indirectly from affected or involved individuals from within the service.
- 67.3 Interview any relevant person/s who may provide any information in connection with identified matters.
- 67.4 Conduct research, examine and analyse any written material, document or media article relevant to each identified matter.
- 67.5 Conduct research and analyse the implications of the legal, regulatory or governance environment pertaining to the identified matters.
- 67.6 Compile reports in respect of each identified matter.

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69. Essentially, in its work, the Reference Group, was to interrogate and review the legal and disciplinary implications in respect of specific matters that required urgent intervention and resolution. It also had to interrogate and review good corporate governance issues in relation to such identified matters. Consequently, the Reference Group was to advise the Minister as to the best course of action to be taken to resolve the issues so identified and bring about closure with the view to impact positively on the creation of stability within SAPS.

The process followed

70. On or about the 30 September 2014 and 01 October 2014, I called in the National Commissioner of Police at the time, General Riah Phiyega, and hours later her top management team; to advise and inform them of my decision to constitute the Reference Group. Such a meeting was held at the SAPS College on 01 October 2014. On the same day, I addressed the media and released a statement in this regard.

71. This was followed by an official communique' of 03 October 2014, addressed to the National Commissioner, which among other things, called upon:

"The National Commissioner and the Administration will be required to cooperate fully with the Reference Group and is particularly required to timeously provide all documentation requested, to ensure that the Reference Group completes its responsibilities within the stipulated time-frame. All necessary steps have been undertaken to safe-guard the confidentiality and security of information obtained."

72. Communication was also distributed to all structures within the Police portfolio, including all agencies reporting to the Minister of Police.

The work of the reference group

73. The Reference group commenced with its work and continued functioning. It produced reports on a variety of issues. In the execution of its tasks, the Reference Group was at liberty to co-opt any other person/s that would have been resourceful and of value to its work. It also focused itself on different streams. In certain areas of work, the Reference Group was able to rope in experts for opinions and guidance.

74. In its existence, the Reference Group produced reports in the following areas: -

- 73.1 Fitness of the National Commissioner of Police to hold office.
- 73.2 Secure in Comfort – the four aspects of the main report referred to the Minister of Police by Parliament.
- 73.3 The illegal rendition of the Zimbabwean nationals.

75. The Reference Group, in dealing with unlawful rendition of Zimbabwean nationals, identified that there was an investigation report by IPID conducted earlier and signed off on the 22 January 2012. It also identified that there was another report by IPID, soon after Mr Robert MacBride had assumed function as Executive Director of IPID in March 2012. The predicament with this was that, there were now two (2) reports on the same subject matter of the rendition of the Zimbabwean nationals; each report with recommendations that were in contradiction with one another, save the last recommendation on both reports.



76. The initial report by the Reference Group also pointed out to the seriousness of this matter. The report pointed to the violation of the Extradition Act, the African Union Protocol and the United Nations Convention, among others.
77. It must also be remembered that the Criminal Justice Cluster was also seized with this matter in 2012 as this matter attracted media and public interest, after the expose' by the Sunday Times publication. In 2014, when I appeared on SABC talk channel for the presentation of crime statistics, the show anchor jumped me with a sudden question on the renditions and asked as to why disciplinary steps were not instituted against senior police personnel, such as General Dramat and others, as they were implicated in the said report. I undertook right there and then that I was going to follow up on the said complaint.
78. Given all these matters as they were brought to the fore, I felt the need for more detailed investigation to clarify ourselves on these issues. I then proceeded to appoint the Werksmans Attorneys to conduct an investigation.

C. THE WERKSMANS REPORT

79. The investigation was guided by the following terms of reference: -
- 78.1 Who and under what circumstances was the original report altered or how the second report came about with both reports signed by the same person? i.e. Mr Khuba;

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- 78.2 Whether any misconduct or offence has been committed and if so by whom?
- 78.3 Whether there is prima facie evidence of misconduct and criminal liability by Lieutenant General Dramat; Major-General Sibiya; and any other officers mentioned in the original report;
- 78.4 The circumstances under which report, and the docket handed in the NPA and what happened to the docket whilst in the NPA possession;
- 78.5 Any other matter that might come to your attention during the investigation which is relevant to your conclusions and findings.
80. The report with its conclusions and findings was given to me as the Minister of Police for information. The Werksmans report is attached hereto and marked "NN1". It is on the basis of this report that I commenced further disciplinary processes against the implicated individuals. I now set to deal with the investigation report. The report is in four separate sections as follows:
- 79.1 Section A: Circumstances surrounding the compiling of each report;
- 79.2 Section B: Deletion of evidence from the First Report;
- 79.3 Section C: Analysis and findings; and
- 79.4 Section D: Recommendations.
81. For the sake of brevity, I do not intend to reproduce the Werksmans report verbatim herein but to only highlight those salient aspects thereof.

Factual background of the rendition

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82. During the period November 2010 until January 2011, a number of Zimbabwean nationals were arrested by SAPS together with Zimbabwean police officials. The arrest of these individuals was explained by the DPCI, in response to a parliamentary question posed by a member of the Congress of the People. The DPCI, through Dramat, advised parliament that the individuals in question were deported as illegal immigrants and had been arrested on suspicion of having committed or been involved in certain crimes, such as ATM bombings. The DPCI in its parliamentary response, further stated that when it came to light that the arrested individuals could not be linked to specific crimes, the individuals were deported to Zimbabwe.
83. The circumstances surrounding the arrests appeared to be questionable and raised a number of legal considerations relating to, inter alia, the lawfulness of the process followed by the SAPS in deporting the relevant Zimbabwean nationals.
84. The arrests of the five Zimbabwean nationals was effected in three (3) stages which will be summarised briefly, below.

83.1 ***The first operation***

- 83.1.1 The first operation relating to the arrest of Zimbabwean nationals took place on 5 November 2010 where four Zimbabwean nationals (Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma) were arrested in Diepsloot and detained in the Orlando police station in Soweto.

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- 83.1.2 The reasons stated for their detention was that they were illegal immigrants. The operation was conducted by the Directorate for Priority Crime Investigation (DPCI) head office and DPCI provincial office Tactical Operations Management Section (TOMS). It was alleged that DPCI and TOMS were accompanied by two Zimbabwean police officers. The members of the operation were informed during a briefing meeting that they were tracing suspects involved in a robbery committed in Zimbabwe during which a Zimbabwean police superintendent was fatally shot.
- 83.1.3 After the four Zimbabwean nationals referred to were booked into Orlando police station, Dumisani Witness Ndeya was booked out of Orlando police station in order to assist the SAPS with the tracing of a certain individual named John. John could not be traced and Dumisani Witness Ndeya was returned to Orlando police station. The four Zimbabwean nationals were detained over the weekend as illegal immigrants and on the morning of 8 November 2010 they were booked out of Orlando police station by Maluleke.
- 83.1.4 Maluleke indicated that the Zimbabwean nationals were to be transported to Beitbridge border post. Two of the Zimbabwean nationals were released and the remaining two were transported to Beitbridge border post and handed over to a contingent of Zimbabwean police.



- 83.1.5 The circumstances under which the Zimbabwean nationals were deported, was circumspect. The docket which was used during the deportation did not belong to the Department of Home Affairs, as it was required to be in the case of deportations.
- 83.1.6 Although there were documents which were presented as being documents issued under the auspices of the Department of Home Affairs in order to authorise the deportation, it appeared from an analysis of such documentation by an expert in that regard, that the documents which purported to be issued by the Department of Home Affairs, were forged.
- 83.1.7 Maqhawe Sibanda was later released by Zimbabwean police after allegedly spending eleven days in custody and being tortured. Dumisani Witness Ndeya died while in the custody of the Zimbabwean police.

83.2 ***Second operation***

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

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out on 23 November 2010 and taken to Silverton police station.

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

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

83.3 *Third operation*

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

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

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- 83.3.3 Dube did not appear in court as he was booked out of hospital on Maluleke's instructions. At the same time, Maluleke retrieved the gun that was found in Dube's possession when he was arrested from Weiradbrug police station. The same gun was allegedly used in the robbery in Zimbabwe which resulted in the death of the Zimbabwean superintendent.
- 83.3.4 Maluleke informed the investigating officer, Lean Meyer, that Dube would be dealt with through immigration channels. Maluleke then transported Dube to Beitbridge and Dube never returned to South Africa.
- 83.3.5 Maluleke once again enlisted the services of CIG in order to trace an additional Zimbabwean national, Johnson Nyoni ("Nyoni"). Nyoni was traced in Diepsloot and arrested by the CIG members and the TRT unit of the Johannesburg Central police station, on 26 January 2011.
- 83.3.6 Nyoni was taken to the DPCI head office where the members who participated in the arrest of Nyoni were congratulated by Dramat. Photographs depicting the members involved in the arrest, Nyoni, two Zimbabwean police members and their vehicle, and the gun retrieved from Dube's possession, were taken by a third Zimbabwean police officer.

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83.3.7 Nyoni was thereafter booked out on 28 January 2011 by Maluleke and taken, together with Dube, to Beitbridge border post. The entry in the registers at the relevant police station reflect that Nyoni was booked out for the purpose of extradition to Zimbabwe through the Beitbridge border post. Nyoni was killed while in the custody of the Zimbabwean police.

Circumstances surrounding the compiling of each report

First Report (January Report)

85. Prior to Khuba conducting any investigations into the Rendition, there were two investigations into the Rendition that had already been undertaken, by: –

84.1 the DPCI, in terms of which the DPCI members involved in the Rendition were exonerated from any wrongdoing in the Rendition; and

84.2 a member of Crime Intelligence, Colonel Moukangwe. According to the investigation conducted under the auspices of Crime Intelligence was never concluded, instead it was done jointly with IPID.

86. The First Report was compiled by Khuba with the assistance of Moukangwe and the guidance of Advocates Mosing and Moeletsi.

87. The Special Projects Division in the office of the NDPP was tasked to provide guidance to Khuba and Moukangwe during the course of their investigation. The Special Projects Division was headed by Mosing assisted by Moeletsi. The role

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of Mosing and Moeletsi was never to make a decision on whether to prosecute or not.

88. On 23 October 2012 Khuba received a docket from Sesoko and an appointment letter to conduct an investigation of all cases of alleged assault in relation to Sibiya. Upon perusal of the docket of Diepsloot 390/07/2012 he discovered that the DPCI had received a complaint relating to the Rendition.
89. Khuba was instructed by the former Acting Executive Director of IPID Koekie Mbeki to conduct an investigation into the Rendition. He was further instructed to liaise with Moukangwe so that the latter could assist him to conduct the investigation.
90. Khuba briefed Moukangwe on the intended investigation and it was agreed that Moukangwe will assist Khuba in conducting the investigation into the Rendition. What was further agreed was that Moukangwe's name would not appear in the report once the investigation is finalised as the investigation was commissioned by IPID and Moukangwe was employed by Crime Intelligence.
91. Khuba began his investigation by interviewing certain members of the Department of Home Affairs. At this stage the docket already had statements obtained from the TOMS, Crime Intelligence and the Zimbabwean nationals who had been subject to the Rendition.
92. On 7 March 2013, Khuba visited the office of Dramat. Moukangwe was a party to this meeting as well. At this meeting, Dramat stated that he did not recall meeting with the Zimbabwean Police. Khuba requested certain documents, including statements and documents related to the internal investigation into the Rendition conducted by DPCI, from Dramat. Dramat instructed Khuba that such request be made in writing.

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93. When Khuba was finally provided with the requested documents, it appeared as if the statements provided recorded that the internal investigation conducted by DPCI was conducted properly and that everything was in order. Khuba, however, was unconvinced as to the correctness of the statement of a particular individual, being Madilonga, which statement was signed but not commissioned. Khuba met with Madilonga who provided a new statement detailing the actual events regarding his involvement in the Rendition.
94. Khuba conducted further investigations relating to the passage of individuals through the Beitbridge border post on the dates relevant to the Rendition. In addition, Khuba spoke to Leonie Verster who was Maluleke's supervisor. Leonie Verster indicated that Maluleke did not respect the chain of command and would communicate directly with Sibiya. Leonie Verster also drew Khuba's attention to the success reports directed to Dramat, Lebeya, Hlatswayo and others. Khuba perused the three success reports with which he had been provided and noted that one report dealt with the deportation or the arrest of Ndeya, and others that were connected in relation to the murder of a Zimbabwean police officer in Zimbabwe.
95. One success report recorded that the Zimbabwean police came and met with Dramat on 5 November 2010 and requested assistance. The success report further recorded Maluleke's appointment to head the assignment to trace the Zimbabwean fugitives. Khuba obtained a laptop belonging to Maluleke and found that the success reports were generated from this laptop. The laptop also contained photographs of the operation as well as correspondence to Zimbabwean police officers.

96. As part of the investigation, Khuba met with members of crime intelligence. At their offices. He noticed that the photographs obtained from Maluleke's laptop relating to the operation were posted on the office walls of some members of crime intelligence. He was informed by a member of crime intelligence, Mkasibe that during January 2011 when the arrests were completed, they went to DPCI's offices and Dramat personally came to the offices at House No. 3 and congratulated them for a job well done.
97. According to Mkasibe, Dramat requested that they not tell anyone about the details of the operation. According to Khuba, Mkasibe confirmed that he has a historical relationship with Dramat due to their mutual involvement in Umkhonto We Sizwe.
98. Mkasibe's statement was corroborated by Mngwenya who confirmed that Dramat addressed the officers and congratulated them; however, Mngwenya did not mention Dramat telling them not to divulge the details of the operation. In addition, a third officer, Mokgobu, stated that she was out of the office at the time that Dramat attended to congratulate them; however, upon her return, she was informed that Dramat was congratulating the officers at House No.3.
99. Information about the investigation was leaked and was published in the Sunday Times. At this time, Khuba and Mosing began drafting questions to Dramat enquiring about Dramat's involvement in the Rendition.
100. Khuba also interviewed Maluleke specifically regarding his promotion from captain to colonel. Khuba was not successful in obtaining the file regarding Maluleke's promotion.
101. Khuba recorded that Dramat sent a report, in response to the parliamentary question posed by a member of Congress of the People (COPE) regarding the

Rendition, explaining the circumstances of the Rendition, by stating that the Zimbabwean nationals were deported as illegal immigrants. This caused Khuba to investigate the matter further. He considered expense claims relating to the travelling to Beitbridge border post, as well as cell phone and vehicle tracker records positioning of Maluleke, Makoe, Nkosi and constable Radebe at Diepsloot on the night of the arrests.

102. The booking in and out of certain police stations of the relevant Zimbabwean nationals following their arrests at Diepsloot was also examined by Khuba. He then began finalising the report but did so in the absence of an analysis of the cell phone records of Sibiya. Although Khuba was in possession of cell phone records in relation to Sibiya, they required to be interpreted by an expert.
103. According to Khuba, as he was conducting the investigation with Moukangwe they would consult with Mosing and Moeletsi who were providing guidance in the process regarding the evidence to be collected in finalising the investigation.
104. At some point during 2013, Mosing and Moeletsi advised Khuba and Moukangwe as to which information in their draft investigation report dated October 2013 needed to be added. This information was the warning statements from Dramat, Sibiya, Maluleke, Leonie Verster and analysis of cell phone records by an expert.
105. Subsequent to the advice by Mosing and Moeletsi, Khuba and Moukangwe conducted further investigations to address the concerns raised by Mosing and Moeletsi. According to Khuba, Dramat, Sibiya, Maluleke and Leonie Verster, refused to provide warning statements.
106. In light of their refusal to provide warning statements, Khuba and Moukangwe finalised their investigation and provided a report with recommendations. This



report was submitted to Mosing and Moeletsi on 22 January 2014. This report, being the first report, was, in the opinion of Moukangwe and Khuba, final. The recommendations made in this report were that Dramat, Sibiya, Maluleke, Makoe, Radebe and Nkosi be criminally charged with defeating the ends of justice and kidnapping.

107. According to Khuba, the First Report was submitted as a final report and they expected the NPA to take further action as required by law, on the basis of their recommendations set out therein.
108. Moukangwe corroborated Khuba's version regarding his (Moukangwe's) involvement in the investigation and the compilation of the First Report when interviewed by Werksmans.
109. Moukangwe explained why he, as a member of SAPS, was tasked with conducting an investigation on behalf of IPID. He said that the majority of the work had already been done by Crime Intelligence and that his superiors were of the view that he should assist Khuba in finalising the investigation.
110. According to Moukangwe, when they (Moukangwe and Khuba) finalised the First Report on 22 January 2014, the only outstanding information was the warning statements from Dramat, Sibiya, Verster and Maluleke who had all refused to provide these warning statements.
111. Moukangwe, corroborated Khuba's testimony that Dramat, Sibiya and Maluleke had refused to provide warning statements when they approached them pursuant to the advice of Mosing and Moeletsi:
- 110.1 Dramat told them that he wants to involve his attorney and would only give a statement after discussing same with his attorney;

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- 110.2 Sibiya requested that he be sent questions and would thereafter respond to such questions; and
- 110.3 Maluleke refused and advised them that he will answer all the questions in Court. Vester, who in their view was quite knowledgeable about the operation, was also refusing to provide them with a statement.
112. According to Moukangwe this was the only outstanding information in the First Report and that in their view, nothing further could be done to obtain this information. As such, the First Report was not contemplated to be subject to any further amendment or revision.
113. Moukangwe went on to say that the report of 22 January 2014 was final as they could not force anyone to make statements or give evidence. He did not know anything about the Second Report and was not involved in the drafting of the said report.
114. Khuba and Moukangwe's evidence in relation to their involvement of Mosing's office in the investigation into Rendition was corroborated by him. Mosing explained that the Preliminary Report was prepared on 22 October 2013, compiled by Khuba and Moukangwe and was presented to Mosing and Moeletsi for consideration. This was a draft report. Mosing and Moeletsi advised Khuba and Moukangwe to conduct further investigations.
115. On 12 November 2013 Mosing addressed an NPA internal memorandum to Nxasana and Jiba updating them on the status of the investigation conducted by

IPID. Mosing attached the Preliminary Report to this memorandum. In this memorandum Mosing, *inter alia*, summarised the evidence gathered at that stage and stressed the need for further investigation to be conducted in relation to certain aspects of the investigation.

116. Paragraph 4 of Mosing's memorandum specified the outstanding investigations required at that stage to finalise the report. That included: -

115.1 The reports of analysis of cell phone records;

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

115.3 The statements from Dramat, Sibiya and Maluleke.

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

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

119. On 13 February 2014, Mosing addressed an internal memorandum to Jiba and Chauke, indicating that the investigations have been finalised and that the report from IPID has been submitted for the purposes of considering the merits of the case. The First Report was attached to this memorandum. Mosing further stated that the docket comprising of two lever arch files, together with other files containing the cell phone data and evidence obtained from a computer belonging to the DPCI, was also enclosed.
120. Jiba confirmed that the internal memorandum was drafted on her advice and she confirmed receipt of both internal memorandums from Mosing.
121. After the docket was sent to Chauke, Chauke handed the docket to Adv. Van Zyl. On 7 March 2014, Khuba accompanied by Angus removed the docket from the possession of Adv. Van Zyl.
122. The First Report contains, inter alia, a summary of the material statements provided by the individuals interviewed during the investigation as well as an analysis of the evidence. It recommends that Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe be prosecuted for their involvement in the Rendition, specifically in relation to the crimes of kidnapping and defeating the ends of justice. It further recommends that Maluleke, Radebe, Nkosi and Makoe be prosecuted for assault and theft.
123. After the submission of the First Report, on 3 March 2014, McBride was appointed as Executive Director of IPID. He requested an update of all the high-profile matters that were handled by IPID, including the Rendition.
124. Sesoko, McBride and Khuba began working on the Second Report. This was done in the absence of any consultations in this regard with Moukangwe and/or

Mosing who were both active in the investigation and the submission of the First Report.

125. A careful perusal and analysis of the First and Second Reports reveal that the Second Report is actually a version of the First Report which was altered by the deletion of certain evidence in order to arrive at a conclusion which was far removed from the conclusion of the First Report. There was no valid explanation for the deletion of evidence.
126. The Second Report differs from the First Report in respect of the recommendations made by each report and the summary of evidence contained in each report.
127. While the First Report was signed by Khuba, the Second Report was signed by Khuba, McBride and Sesoko. It was Khuba's version that the submission of the Second Report was necessitated by two things, namely the addition of new evidence and as a result of discussions with Sesoko.
128. Both Moukangwe and Mosing confirmed that even though they were part of the investigation team in respect to the submission of the First Report, they were not consulted in the decision to amend the findings and recommendation of the First Report, which subsequently resulted in the drafting of the Second Report.
129. In his interview with Werksmans Khuba said that he met with McBride in order to discuss his investigation, however, prior to meeting with McBride, he provided Sesoko with an email copy of his report to pass along to McBride so that McBride would be able to prepare for their meeting. Sesoko confirmed receipt of such email from Khuba. He was unclear of whether he provided McBride with a hard copy or a soft copy of the report.

130. Khuba further stated that he emailed a copy of the First Report to Sesoko for McBride's attention, and Sesoko confirms that he provided the report to McBride. However, both Sesoko and McBride were adamant in stating that they did not have knowledge of the First Report. This version by McBride was contradicted by Khuba who said that in his first meeting with McBride, it was evident from their discussion regarding the Rendition, that McBride had had regard to the First Report. On 5 March 2014, McBride met with Khuba.
131. The following day, on 6 March, Khuba met with McBride, Sesoko and Angus. It was on that day that McBride requested Khuba to retrieve the docket from the NPA and to provide him with every document he possessed regarding the Renditions matter.
132. On 7 March 2014, Khuba attended at the offices of the DPP with Angus and specifically to Advocate Van Zyl who was in possession of the docket at the time. Khuba and Angus then removed the docket from the possession of Advocate Van Zyl.
133. The first draft of the Second Report went to and fro amongst the Khuba, Sesoko and McBride.
134. Khuba stated that he signed the last page of the Second Report once it was finalised and did not initial each page; as such, he was not in a position of knowing if any information was added or removed. He said the Second Report was then submitted and dated 18 March 2014.
135. When the discrepancies between the recommendation of the First Report was drawn to Khuba's attention during his interview, his initial explanation for certain deletions was related to the fact that an evaluation of the evidence in relation to Sibiya and in conjunction with his discussions with Sesoko, it was decided that it

would not be possible to prove that Sibiya was guilty of assault beyond a reasonable doubt.

136. Khuba later stated that he was strongly concerned about the removal of certain information, specifically the deletion of evidence which implicates Dramat. He stated that the Second Report only went through three hands, being the three co-signatories to the report, including himself and that all that he did in respect of the report was to add information which was outstanding at the time.
137. Khuba could not adequately address the issue as to why the recommendation in respect of Dramat was changed, when initially the recommendation in the First Report was based on Dramat's knowledge of the events and not his physical participation.
138. Khuba stressed that if there were changes to the First Report; he had no way of knowing if the Second Report reflected such changes. According to him he did not check whether the final version of the report was the same document that he emailed to Sesoko. Furthermore, he signed the Second Report and provided it to the other two co-signatories for signature after which, he cannot advise as to how the report was presented to the NPA.
139. McBride's version was that the only input he had into the Second Report related to grammatical changes he made and that he did not see the First Report, nor did he make substantive changes. This version was contradicted by Khuba who stated that McBride had seen the First Report and had given input into the report which was not just grammatical.
140. According to McBride, he was provided with the Second Report which was already signed by both Khuba and Sesoko.

141. The First and the Second Reports differed in a number of aspects.
142. In summary, the most dramatic differences between the two reports are the difference between the recommendations contained in each report. While the First Report recommends that Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe be charged criminally for their participation in the Rendition, the Second Report recommends that only Maluleke be charged criminally for his participation in the Rendition: -
- 141.1 While the Second Report contains summaries of the statements given by all the relevant individuals whose statements were summarised in the First Report (but for the addition of statements from Dramat, Sibiya, Maluleke and Jennifer Irish Qhobosheane), the manner in which certain statements are summarised in the Second Report has been changed insofar as the portions of certain statements and/or evidence and even the analysis of findings which are reflected in the First Report, have been altered to remove wording which implicates Dramat as having knowledge of the Rendition.
- 141.2 Although Khuba states that one of the reasons for the necessity of drafting the Second Report is the addition of new evidence, it is clear from an analysis of both reports, that the only addition to the Second Report relates to the addition of the statements mentioned above, and the addition of the analysis of Dramat's cell phone records. Other than the above, nothing additional was added. More importantly, as noted above, is that certain material portions of the individual statements found in the First Report were removed from the Second Report.

141.6 Pertinent information relating to the analysis of cell phone records were removed and the records were analysed in a way that falls short of the scrutiny contained in the First Report and which was required in an investigation process.

The docket

143. On 18 June 2014 Advocate Van Zyl telephonically requested the docket from Khuba. Khuba's response was that McBride had instructed him to return the docket to the NDPP and that, that had been done.
144. Chauke addressed a letter on 3 July 2014 to Nxasana informing him about the above sequence of events regarding the docket. The NDPP responded to the letter on 20 August 2014 indicating that the NDPP is in a process of considering the matter and that Advocate Chauke may close his file.
145. In December 2014, after the suspension of Dramat, according to Chauke he received a call from the NDPP enquiring about the Rendition matter and was informed that Dramat had been suspended. The NDPP requested Chauke to proceed with dealing with the matter. Chauke advised the NDPP that he had since closed his file on the matter and was not dealing with it anymore.
146. Subsequently, on or about January 2015, the NDPP contacted Mzinyathi and advised Mzinyathi that the NDPP had received the docket from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot, wherein the arrests of the Zimbabwean nationals took place, fell under the jurisdiction of the North Gauteng DPP. According to McBride, it was IPID (and not Chauke) that

took the docket to the NDPP after McBride had signed the Second Report on 9 April 2014.

147. Shortly after his return from leave and on 13 January 2015, Mzinyathi was furnished with the docket by the NDPP. At the time, Diepsloot did not fall under the jurisdiction of Mzinyathi which the NDPP was aware of.
148. Mzinyathi, together with Baloyi, perused the docket and engaged in discussions amongst themselves. In addition, Baloyi engaged in discussions with Khuba. Mzinyathi and Baloyi issued their recommendation in respect of this matter on 13 March 2015.
149. 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.

Deletion of evidence from the first report

150. What follows is a tabular presentation of evidence deleted from the first report.

IPID REPORT 1	IPID REPORT 2
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Page 9: The statement of Ndanduleni Richard Madilonga	Page 9: The statement of Ndanduleni Madilonga
	<p>The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p>
<p>The statement of Madilonga states as follows in the relevant paragraphs:</p> <p><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p><i>"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by</i></p>	<p>(The paragraph that follows the above preceding paragraph has been deleted)</p> <p><i>"For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe"</i></p> <p>The paragraph that begins with <i>"He will state.."</i> from the first report is deleted in the second report.</p>

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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"

Page 21: para 5.2 reads

Success report dated 04/02/2011:

This report is addressed to Dramat, Hlatshwayo and Toka

The relevant paragraph of the Success report reads as follows:

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

In page 20 para 5.2

In this report, this is what is deleted:

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

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Page 21 para 5.3 Emails by Captain Maluleke:

The quoted email states the following:

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

Page 21 para 5.3

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

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

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

The said letter states thus:

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

Page 21: Letter to stakeholders

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

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

<p>Page 22: Documents Regarding Moyo's case.</p> <p>Towards the end of this paragraph, Maluleke stated the following in a letter:</p> <p><i>"In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police".</i></p>	<p>Page 21: Documents Regarding Moyo's case.</p> <p>The letter referred to by Maluleke does not disclose to whom the letter was addressed: In this report, this is what is stated:</p> <p><i>" In a letter he states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on11/05/2011</i></p>
<p>Page 23: Evidence in terms of Section 205 of CPA 51 of 1977</p> <p>Evidence of Sibiya's cell records show that he communicates with officers involved including Dramat, the analysis is put thus:</p> <p><i>"Cell phone record of Major General Sibiya (0725953168): Upon perusal of the cell phone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent more than 20 SMS to Major General Dramat (0825515311). However Major General Dramat never responded to the SMS. The same automated SMS were sent to Lt General</i></p>	<p>Page 23: Evidence in terms of Section 205 of CPA 51 of 1977</p> <p>The analysis of Sibiya's cellular phone records now only analyses Sibiya's presence at the crime scene, not communicating with the officers involved, the analysis is as follows in this report:</p> <p><i>"Findings</i> <i>Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence."</i></p>

Lebeya at 0825751899. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs."

Dramat's cellular phone records aren	According to this report Dramat's entire cellular phone record does not show any interaction between him and the Zimbabwean police. The findings are formulated thus: <i>"The entire cell phone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However, the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt. General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence</i>
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Cell phone Records of Maluleke are analysed in the following manner:

"Cell phone records of Captain "Cowboy" Maluleke (08277295181 *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.*

There is no analysis of Maluleke's cell-phone records, only that there is a prima facie case against him

<p>Cellular phone records of Col Neethling are analysed thus in this report:</p> <p>Page 24: Cellular phone records of Nkosi, Makoe and Radebe.</p> <p><i>"Cell phone records of Lt Colonel Neethling (0827787624): He was directly reporting to Major General Sibiya. He contacted General Sibiya telephonically and in his statement, he stated that he believed he reported the operation to Major General Sibiya".</i></p>	<p>There is no mention of this information and statement by Neethling in this report.</p> <p>Page 24: Cellular phone records of Nkosi, Makoe and Radebe</p>
<p><i>Telephone call made by Madilonga to Dramat</i></p> <p><i>"Cell phone records of Lt Colonel Madilonga: He is a police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with suspects.</i></p> <p><i><u>He contacted Lt General Dramat when he welcomes the Zimbabwean police for the first time.</u> His cell phone records his interaction with Captain Maluleke in line with his statement.</i></p> <p>This report does not contain the cellular phone records of these employees.</p> <p>Statement by Khuba explaining his findings, the relevant deleted paragraph in the second report is as follows:</p> <p><i>"On 28/01/2013 he was called by the former Executive Director who gave him the</i></p>	<p>The report only tests the version of Madilonga making contact with Maluleke, the version by Madilonga in the first report that he contacted Dramat is obliterated and not discussed in the analysis.</p> <p>This report contains the cellular phone records of the above employees:</p> <p><i>"The record confirms that they were at the scene even though the allegation of theft is not corroborated"</i></p>

following

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documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated 25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following: Dumisani Witness Ndeya, Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DNS – 1689) for Nelson Ndlovu, Shepard Chums and t1.4aghwawe 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.

Khuba's findings on Dramat Page 29.

Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:

"Evaluation of the above findings: In the entire cell phone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appears once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.

Khuba's findings on Dramat

Nothing is said about this issue

<p>Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the</p>	<p>•Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation</p> <p>Khuba states the following in respect of this allegation in this report:</p> <p><i>·"The success report that claim that LI General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation but need corroborated facts".</i></p>
<p>operation. Khuba finds the following in this respect:</p> <p>"Evaluation of the above findings: <i>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 31101/2011 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</i></p>	

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

<p>Congratulating the officers for the arrest of John Nyoni.</p> <p>Khuba makes the following finding in this regard:</p> <p><i>"Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the operation. If the operation was lawful, he would not have warned them not to tell anyone about it".</i></p>	<p>•Congratulating the officers for the arrest of John Nyoni.</p> <p>Nothing is said about this issue</p>
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p> <p><i>" According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.</i></p>	<p>Nothing is said about this issue</p>

<ul style="list-style-type: none"> • He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals. • <i>"The cell phone records of General 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".</i> <p>□</p>	
<ul style="list-style-type: none"> • Report to parliament in response to the allegation: <p><i>"A copy of the letter sent by Zimbabwean authority to Col Ntteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was joined operation between South African Police and Zimbabwean police to trace and arrest the suspects."</i></p>	

<p>Innocent Khuba's findings on Sibiya page 32</p>	
<p><input type="checkbox"/> The meeting held between IPID and Dramat on 2013/03/07</p> <p><i>"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General- Dramat on 2013/03/07 confirmed that General-Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects.</i></p>	
<p><input type="checkbox"/> Sibiya's presence at the scene</p> <p><i>"Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma"</i></p>	
<p>Cell phone Records Analysis</p> <p><i>"In other operations cell phone record of WarrantOfficer 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</i></p>	

Sibiya was in the car rather than seeing him personally"

The meeting with Zimbabwean Police for Cross-Border Crimes

"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"

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

Lieutenant-General Anwar Dramat

151. Khuba's analysis of findings in respect of Dramat and Sibiya in the first report recommended that Dramat be criminally prosecuted. His findings were based on the following, amongst others: -

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

150.1 Madilonga's statement reflects that he was stationed at the border when Zimbabwean police officers attempted to cross into South Africa for the purposes of meeting with Dramat. Madilonga placed a call to Radzilani and Makushu, who both corroborate this evidence, in order to verify the averments by the Zimbabwean police.

150.2 Madilonga was even provided with Dramat's cell phone number by Superintendent Ncube of the Zimbabwean police who identified himself to Madilonga as the leader of the group. Madilonga contacted Dramat in order to confirm the averment by the Zimbabwean police that they were going to meet with Dramat, and according to Madilonga, Dramat confirmed that he was aware of the Zimbabwean police's presence and that Madilonga should let them cross the border into South Africa.

150.3 The success report dated 4 February 2011, addressed to, inter alia, Dramat and signed by Leonie Verster, recorded as its first point that on 5 November 2010, the Zimbabwean police visited the office of DPCI met with Dramat regarding Zimbabwean nationals who allegedly shot and killed a senior Zimbabwean police officer.

224.4 The success report furthermore gave information relating to the arrest of two of the wanted Zimbabwean nationals. This success report was addressed to Dramat and there was no record of Dramat contradicting any statement of fact in the success report.

Dramat received communications during and after the commissioning of the Rendition

150.5 The cell phone records of Sibiya showed that 30 SMSs were sent to Dramat at various milestones in the operation. Dramat also received an SMS from Maluleke shortly after the arrest of the Zimbabwean nationals. Although Dramat never responded to the SMSs, when

viewed in the context of Dramat's meeting with the Zimbabwean police, the success reports received after the operation and Dramat's congratulating of the crime intelligence officers, the SMSs led to the conclusion that he was aware of the operation as it unfolded.

- 150.6 The evidence of that emails circulating 20 photos of both the Zimbabwean nationals and the police members involved in the operation, were sent by Maluleke to Dramat's personal assistant.

Dramat congratulated members of crime intelligence after completion of the operation

- 150.7 According to Mkasibe and Ngwenya, Dramat attended at the offices of the DPCI and thanked the officers present for their participation in arresting the Zimbabwean nationals. Mkasibe went further to state that Dramat warned them not to tell anyone about the operation.

Dramat's statement to Acting National Commissioner of SAPS

- 224.8 According to former Acting National Commissioner of SAPS, Lieutenant General Mkhwanazi ("**Mkhwanazi**"), in late 2011, news of the Rendition came to light. He contacted Dramat who confirmed that members of his unit transported the Zimbabwean nationals as illegal immigrants.
- 150.9 Mkhwanazi then summoned Dramat to his office. Dramat arrived with Maluleke. Maluleke informed Mkhwanazi that he was investigating a case of ATM bombings which led him to the Zimbabwean nationals.

Once he realised that they were not linked to the ATM bombing case, he decided to deport them after getting the necessary documentation from Home Affairs. When Mkhwanazi asked whether it was necessary to transport illegal immigrants, Dramat could offer no explanation.

Sibiya

152. Sibiya was the head of the TOMS unit. Its main objective was to fight priority crimes, which included inter alia, combating armed robberies by dangerous criminals, investigating and arresting those responsible for ATM bombings.

153. Sibiya stated as follows:

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

154. This confirmed Sibiya's knowledge of the operation that led to the Rendition of Zimbabwean Nationals. He provided TOMS personnel to assist DPCI National Head Office to carry out the Rendition. Furthermore, Maluleke carried out the operation on instructions of his superiors.

155. The Rendition was carried out by the members of TOMS under the leadership of the Maluleke. The First Report suggested that Sibiya not only sanctioned the operation, but also that he actually participated in the Rendition. Several statements and affidavits from various witnesses confirming the participation of Sibiya in the Rendition were obtained. These were the statements by:

154.1 **Bongani Henry Yendewho** stated that:

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

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

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

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

154.2 **Petros Jawukewho** said at paragraphs 2, 9 and 10 of his statement, that:

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

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

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

- 154.3 **Shepard Tshumawho** gave an account as to what transpired during the operation of 5 November 2010. Shepard stated the following in relation to Major-General Sibiya:

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

- 154.4 **Maqhawe Sibanda** who stated the following in relation to Sibiya's involvement in the operation of that 5 November 2010.

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

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

I saw Sibiya coming out from the Black BMW and gave instructions to be taken to Orlando SAPS and they took us to Orlando SAPS. Arrived at the Police station in the yard I was following Shepard and

saw Leburu (coloured police officer) taking the money at the back pocket of the trouser of Shepard."

156. The above statements by eyewitnesses from Crime Intelligence confirmed that the operations on 5, 22 and 23 November 2010 were carried out in connection with the murder and robbery case that took place in Zimbabwe where a Police Superintendent was killed. This conclusion was confirmed by the presence of Zimbabwean Police officials during operations.
157. The statements were made under oath and were from the Zimbabwean nationals as well as members of Crime Intelligence who claimed that they all saw Sibiya at either the first or the second operation of the Rendition.
158. The assessment of Sibiya's cell phone records revealed that Sibiya communicated with officers who were involved in the operation, one of which was Maluleke and he sent 30 SMSs to Dramat at the 0825515311 number during various milestones of the Rendition. Khuba recorded in the First Report that Dramat never responded to any of the SMSs from Sibiya.

Handling of the Second Report and the docket to NPA

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



160. It was against that backdrop that the Special Projects Division in the office of the NDPP was requested to provide guidance to the IPID investigating team led by Khuba. The Special Projects Division team was headed by Mosing assisted by Moeletsi. The team met with Khuba sometime in July 2013. The team produced the Preliminary Report into the Rendition on 22 October 2013. Mosing and Moeletsi advised Khuba to conduct further investigations into certain aspects of the report.
161. On 12 November 2013, Mosing addressed an internal memorandum to the NDPP and the DNDPP. This memorandum sought to provide an update on the progress made by the Special Projects team and the investigating team led by Khuba. The memorandum goes on to say that there was outstanding evidence that Khuba and the team had to obtain or gather in order to finalise the Preliminary Report.
162. According to Mosing, the outstanding information related to the warning statements from Dramat, Sibiya and Maluleke, an analysis of the cell phone data, as well as a report on the analysis of vehicle tracking information of the members involved in the operation during the Rendition.
163. The investigation team finalised its investigation on or about 22 January 2014 and compiled a report with final recommendations. That was a final report on the investigation in the Rendition. It was handed to the Special Projects team so that the NDPP could make a decision to either prosecute or not prosecute those implicated in the report.
164. On 13 February 2014 Mosing addressed another internal memorandum to Jiba and Chauke, indicating that the investigations had been finalised and that the report from IPID had been submitted for the purposes of considering the merits



of the case. This internal memorandum also enclosed the docket comprising of two lever arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI.

165. According to Chauke the receipt of the internal memorandum from Mosing on or about 14 February 2014 was preceded by a meeting wherein the NDPP advised Chauke to consider the docket and take a decision in regard to same. Chauke was assisted by Advocate Van Zyl who was the Deputy Director of Public Prosecutions for South Gauteng.
166. Subsequent to the internal memorandum from Mosing, the docket was handed to the office of Chauke for a decision on whether to prosecute on the matter. According to Chauke, before his office could even make a decision on the matter, Khuba and Angus from IPID collected the docket from Advocate Van Zyl's office on 7 March 2014 and signed a receipt thereof. It bears mentioning that this occurred shortly after McBride was appointed as the executive director of IPID. According to Khuba, he collected the docket following an instruction from McBride for him to do so.
167. On 18 June 2014 Advocate Van Zyl telephoned Khuba requesting the docket from the latter. Khuba told him that McBride had instructed him to return the docket to the NDPP and that it had been done. Khuba did not give or specify the date by which the docket was returned to the NDPP by himself.
168. Advocate Van Zyl telephoned Mosing to enquire whether the docket had been returned to the office of the NDPP. Mosing advised him that the dockets were never returned to him.
169. Chauke addressed a letter on 3 July 2014 to the NDPP informing him about the above sequence of events regarding the docket. The NDPP officially responded

to the letter on 20 August 2014 indicating that the NDPP is in a process of considering the matter and that Chauke may close his file.

170. Sometime in December 2014, the NDPP enquired from Chauke about the case and wanted to know whether he was still involved in the matter. Chauke was surprised by this enquiry from the NDPP as according to him (Chauke) he was instructed by the same NDPP to close his file on the matter. Chauke advised the NDPP that he had since close his file on the matter and was not dealing with it anymore.
171. Mzinyathi told Werksmans that he received a telephone call from the NDPP on or about 10 January 2015 asking him about his knowledge of the Rendition. Mzinyathi told the NDPP that he did not have a clue of what the NDPP was talking about. According to Mzinyathi the NDPP told him that he had received the docket in the matter from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot was under Atteridgeville which fell under North Gauteng DPP. On the day this call was made, Mzinyathi was on leave. He only returned from leave on or about 13 January 2015. Shortly after his return, the docket was delivered to his offices.
172. Mzinyathi spoke to his colleague the DDPP for North Gauteng, Baloyi regarding the docket and informed him that they must formulate a view on the matter. According to Mzinyathi sometime in March 2015 he received a report (being the Second Report) from the NDPP. This report summarised the statements in the docket and made its own recommendations as to who should be charged.
173. Before Mzinyathi made his own recommendations, he approached the NDPP to understand certain things. The NDPP told him that there was a First Report and that he should read it as well. The NDPP provided him with a copy of the First



Report. Mzinyathi shared this First Report with Baloyi and they discussed the potential charges to be brought against those implicated in the report.

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

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

176. The letter from the NDPP, inter alia, stated that the matter must be returned to the DPP South Gauteng because it now falls under the jurisdiction of the DDP South Gauteng since 1 December 2014. As from that date Diepsloot fell under the South Gauteng in terms of the Government Notice No 861 of 31 October 2014.

D. MCBRIDE'S DISCIPLINARY PROCESS

177. On or about 10 March 2015 I wrote a letter to Mr McBride inviting him to make written representations as to why I should not place him on precautionary suspension pending an investigation of certain various acts of serious misconduct. Chief amongst those various serious acts of misconduct was the altering of the IPID report which recommended that Lieutenant General Dramat and Major General Sibiya be criminally charged with kidnapping and defeating the ends of justice.

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178. Mr McBride denied the allegations I had put forward in my letter of intention to place him on precautionary suspension. He launched an urgent application before the High Court in which he sought to interdict me from suspending him from his position as Executive Director. The interim interdict was sought pending the final determination of Part B of the application in which he sought the declaration of my decision to initiate a process to suspend him from his position to be unlawful and invalid and it be set aside. He also wanted the court to declare certain provisions of the IPID Act to be unconstitutional and unlawful to the extent that they purport to authorise me to suspend or remove him from office. These provisions were section 6(6) of the IPID Act, section 17(1) and 17(2) of the Public Service Act, as well as paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.
179. Part A of the application was heard on 13 March 2015 and on 18 March 2015 judgment was handed down in which the application was struck off the roll for lack of urgency.
180. After the application was struck off the roll for lack of urgency and on 24 March 2015, I placed Mr McBride on suspension. His suspension was effected in terms of section 6(3)(a) and (6) of the IPID Act; section 16A (1), 16B, 17(1) and (2) of the Public Service Act and Regulation 13 of the IPID Regulations.
181. On or about 6 May 2015 Mr McBride was served with a notice to attend a disciplinary enquiry. The charges proffered against him included amongst others:
- 180.1 Alteration of recommendations in the 22 January 2014 report which report recommended that Lieutenant General Dramat and Major General Sibiya of the DPCI be charged with kidnapping and defeating the ends of justice;

- 180.2 The deletion/omission of evidence in the original 18 March 2014 incriminating Lieutenant General Dramat and Major General Sibiya in which it was recommended that no criminal charges be brought against the two;
- 180.3 Misrepresentation of facts surrounding the two reports to me;
- 180.4 Interference with the investigation by instructing Mr Khuba not to attend an interview with Werksmans Attorneys;
- 180.5 Misrepresentation that Lieutenant General Dramat and Major General Sibiya had been cleared by the IPID investigation;
- 180.6 Dishonesty in that he advised Werksmans Attorneys that he had only seen the March 2015 report and not the January 2014 report;
- 180.7 Gross insubordination and contravention of the PFMA in that he made a payment of R500 000.00 towards his legal fees by IPID for services relating to his High Court urgent application.”
182. The enquiry was scheduled to sit for the first time on or about 21 May 2015. Advocate Phillip Mokoena SC from the Johannesburg Bar was appointed to chair the enquiry. A day before the scheduled sitting of the enquiry Mr McBride launched an application before Advocate Mokoena to have the disciplinary enquiry stayed pending the final determination of the constitutional challenge of certain provisions of the IPID Act in the High Court, or alternatively that the



enquiry be stayed pending Cabinet's decision of a chairperson in terms of clause 7(3)(b) of the Disciplinary Code and Procedure of the Public Service.

183. Advocate Mokoena ruled against Mr McBride on or about 14 July 2015 and by agreement between the parties the enquiry was scheduled to reconvene on 27 to 31 July 2015.
184. Around 16 July 2015 Mr McBride launched an urgent application before the Labour Court wherein he sought to interdict the disciplinary enquiry pending the final determination of the constitutional challenge in the High Court. He also challenged the appointment of Advocate Mokoena in terms of clause 3(c)(i) of the Public Service Collective Bargaining Council Resolution 1 of 2003 as he alleged that the presiding officer for the enquiry ought to have been appointed by Cabinet.
185. Advocate Mokoena's ruling in which he declined to stay the disciplinary proceedings pending the Constitutional Court challenge in the High Court by Mr McBride was also sought to be reviewed. The Labour Court granted the interdict pending the final determination of Mr McBride's Constitutional Court challenge in the High Court.
186. Before the High Court, Mr McBride's case rested solely on the constitutionality of the removal provisions. The initial allegations of me acting in bad faith and with an ulterior motive were abandoned and did not feature in court. He persisted with an order declaring the removal provisions to be unconstitutional as they did not permit the necessary security of tenure for the executive of the IPID and as a result they also did not afford the IPID with the standards of independence required by section 206(6) of the Constitution.

187. Judgment was handed down on 4 December 2015 and it basically held that the removal provisions were unconstitutional to the extent that they purport to empower me to unilaterally suspend, institute disciplinary proceedings or remove the executive head. The order to suspend the declaration of invalidity to allow Parliament to rectify the defects in the IPID Act was made and an interim measure was that section 6(6) would be replaced by sections 17DA (3) to (7) of the South African Police Service Act 68 of 1995.
188. Mr McBride applied to the Constitutional Court for confirmation of the order of the High Court in terms of section 172(2)(d) of the Constitution and Rule 16(4) of the Constitutional Court Rules.
189. Before the Constitutional Court the issue was narrow and was whether the Minister's powers to suspend and remove the executive head as contained in section 6(6) of the IPID Act were constitutionally permissible or unduly impeded on the independence of the IPID as required by section 206(6) of the Constitution.
190. The Constitutional Court made the following order:
1. *It is declared that the following provisions are invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the executive director of the Independent Police Investigative Directorate –*
 - 1.1 *Section 6(3)(a) and section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;*
 - 1.2 *Sections 16A (1) and 16B, 17*1) and 17(2) of Public Service Act, Proclamation 103 of 1994;*
 - 1.3 *Regulation 13 of the IPID Regulations for the operation of the Independent Police Investigate Directorate (GNR98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).*

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

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

191. As is evident from paragraph 5 of the order of the Constitutional Court, the invalidity of my decision to suspend Mr McBride was suspended for a period of thirty days in order to allow the National Assembly and myself, if we so chose, to exercise our powers in terms of the provisions of the South African Police Service Act.

192. It is noteworthy that in all the forums that Mr McBride approached, none of them set aside his suspension and ordered his reinstatement.
193. In compliance with paragraph 5 of the Constitutional Court order in paragraph 5, I referred the matter to Parliament through its Parliamentary Portfolio Committee on police for Parliament to make a decision on whether to press on with the misconduct charges against McBride. I submitted the charge sheet and files containing portfolio of evidence in order to enable Parliament to make a decision.
194. Despite repeated follow ups to the Parliament whether a decision to charge McBride with misconduct had been taken, nothing happened until the 30 das prescribed by the Constitutional Court order had lapsed and McBride returned to work. In essence, Parliament blatantly violated the Constitutional Court order.
195. Subsequent to the lapse of the thirty-day period stipulated in the order of the Constitutional Court, there was no legal impediment to Mr McBride resuming his duties as the executive head of IPID.
196. Mr McBride resumed his duties as the executive head of IPID not as a result of being exonerated from the charges that were preferred against him, but because of a failure to take a decision to pursue the preferred charges against him by the committee authorised to do so pursuant to the Constitutional Court order. The merits or otherwise of the charges preferred against him were never tested and he also never had to place his version of events and contradict the *prima facie* evidence of altering the January report.
197. It is also noteworthy that there was no finding by any of the courts that I acted in bad faith, *mala fide* or for ulterior purpose in suspending and instituting disciplinary proceedings against Mr McBride. What was found by the court was that the provisions (which were the law then) that I relied on in suspending and

instituting disciplinary proceedings against Mr McBride unduly impeded on the independence of the IPID as required by section 206(6) of the Constitution and nothing else.

E. KHUBA AND SESOKO'S DISMISSALS

198. I have already stated and demonstrated that Mr McBride was not truthful when he, amongst others, alleged that he did not even know about the existence of the January report as it pre-dated his appointment as IPID Executive Director. He further alleges that the Werksmans report was the only evidence against him, Khuba and Sesoko, and it ultimately led to Khuba and Sesoko's dismissals.

199. Khuba was placed on precautionary suspension on or about 21 May 2015 and was notified to attend a disciplinary enquiry on or about 7 July 2015. The charges preferred against Mr Khuba related to gross dishonesty and defeating the ends of justice.

200. On 23 September 2015, the date of the disciplinary enquiry, Mr Khuba was represented by an attorney. He freely and voluntarily pleaded guilty to the charges preferred against him. IPID and Mr Khuba reached an agreement with regards to the sanction to be imposed on Mr Khuba for pleading guilty to serious charges of gross dishonesty and defeating the ends of justice. IPID agreed to impose a sanction of a final written warning valid for a period of six (6) months and to uplift Mr Khuba's suspension allowing him to resume his duties on or about 28 September 2015.

201. In pleading guilty to the charges preferred against him Mr Khuba essentially admitted that he in collaboration with Sesoko and McBride altered the January report. Despite the serious charges preferred against him, IPID agreed to a lenient sanction because the then Acting Executive Director, Mr Kgamanyane, believed that Mr Khuba was candid in accepting his wrongdoing.
202. On or about 25 September 2015 Mr Khuba deposed to an affidavit which contradicted what he pleaded guilty to. In IPID's view this was a perpetuation of Mr Khuba's dishonesty and defeating the ends of justice. In the affidavit he deposed to on behalf of Mr Sesoko, Mr Khuba sought to assert that Mr Sesoko and McBride were not aware of the existence of the January report and that the January report was not a final report. This was in stark contrast to what he pleaded guilty to. When interviewed by Werksmans he admitted that he regarded the January report as the final report and that in submitting the January report to the NPA, he was accompanied by Sesoko.
203. Mr Khuba was given an opportunity to make written representations as why he should not be dismissed in light of his dishonest conduct of deposing to a contradictory affidavit in favour of Mr Sesoko. Subsequent to a consideration of the written representations by him, IPID decided to summarily dismiss Mr Khuba on the grounds of the employment relationship having irretrievably broken down as a result of his dishonest conduct. A continued employment relationship in light of his dishonest conduct would have been intolerable and would have invariably put IPID into disrepute. IPID was of the view that the public would lose confidence in it if it knew that IPID kept in its senior ranks dishonest people such as Mr Khuba.

204. Subsequent to his dismissal, Mr Khuba approached the Labour Court on an urgent basis seeking, amongst others, payment of his salary pending the outcome of an unfair labour practice dispute that he had declared with the Bargaining Council. He effectively sought reinstatement. The application was dismissed by the Labour Court.
205. After the dismissal of his application by the Labour Court he declared a dispute with the Bargaining Council which was also dismissed. The arbitrator found that Mr Khuba's misconduct was serious and constituted a breach of the trust relationship. He also found that the trust in the employment relationship between Mr Khuba and IPID had been destroyed and that rendered the continued employment intolerable. He concluded that he could not interfere with the sanction that was imposed by IPID and considered it appropriate under the circumstances.
206. The same charges that were preferred against Mr Khuba were also preferred against Mr Sesoko. Both Mr Khuba and Mr Sesoko were scheduled to appear on the same day for the disciplinary enquiry, being 23 September 2015. However, Mr Sesoko did not attend the enquiry on the scheduled date.
207. Mr Sesoko's disciplinary enquiry ultimately commenced on or about 20 June 2016 and it was scheduled to run the entire week ending on 24 June 2016. Mr Sesoko was represented by attorney and counsel in the enquiry.
208. He raised certain preliminary objections which included, amongst others, the challenge of Mr Kgamanyane's appointment as Acting Executive Director as well as seeking the stay of the disciplinary proceedings until Mr McBride's case was heard in the Constitutional Court and judgment delivered. The preliminary

objections were dismissed on or about 3 June 2016 by the appointed chairperson, Advocate Mxolisi Zondo.

209. While the disciplinary enquiry was proceeding, Mr Sesoko launched an urgent application before the Labour Court in which he sought the stay of the disciplinary proceedings on the basis that he was challenging the Acting Executive Director's appointment by me. In essence Mr Sesoko's challenge was that the appointment of the Acting Executive Director, Mr Kgamanyane, by me was unconstitutional and invalid and consequently the basis upon which Mr Kgamanyane had initiated disciplinary proceedings against him was equally invalid. The application was dismissed with costs.
210. The enquiry proceeded and the evidence of Advocate Mosing was led and he testified, amongst other things, that the January report was in fact the final report. Advocate Mosing was cross examined by Mr Sesoko's counsel. The chairperson of the enquiry, Advocate Mxolisi Zondo, found that the January report was the final report and that Mr Sesoko's conduct in co-authoring the March report amounted to alteration of the January report which constituted misconduct on his part. He found Mr Sesoko guilty of misconduct.
211. On the last day of the enquiry Mr Sesoko elected to waive his right to be heard. He did not give his version of the events and did not attend the proceedings. He instead, through his legal representative, provided the enquiry with what purported to be a sick note with the hope that the chairperson would allow for another postponement and thereby delaying and frustrating finalisation of the proceedings.
212. The chairperson of the enquiry gave an *ex tempore* ruling with regard to Mr Sesoko's guilt. He thereafter invited the parties to address him with regards to

aggravation and mitigation. Mr Sesoko's counsel declined to address the chairperson on mitigating factors as he was of the view that it would serve no purpose as Mr Sesoko was not there. IPID's counsel proceeded to advance aggravating factors where after consideration by the chairperson of the enquiry, he ruled that the appropriate sanction to be imposed in respect of Mr Sesoko's serious misconduct was that of a dismissal.

F. APPOINTMENT OF MR KGAMANYANE

213. Mr. Kgamanyane was appointed by me to act as Executive Director after I had suspended McBride. At the time of his appointment as acting Executive Director he was the provincial head of IPID in the Free State. I appointed him in an acting capacity and nothing more. He was a suitable candidate to be appointed as an acting Executive Director by virtue of his experience as well as his qualifications which include a Masters degree. His curriculum vitae will be made available with all corroborating documentation that will be provided to the commission once received.

SECTION B

AD SERIATIM RESPONSE TO CERTAIN PARAGRAPHS OF MCBRIDE'S STATEMENT

Ad paragraph 16

214. The allegation that IPID issued a progress report on 22 January 2014 is false. It is also false that McBride did not know about the 22 January 2014 report. The report dated 22 January 2014, which was signed by Khuba, the lead investigator was the final report. This was not only confirmed by Khuba, but the Werksmans

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investigation also came to the conclusion that the 22 January 2014 report was the final report.

215. This conclusion on every conceivable basis, cannot be faltered. Prior to the final report of 22 January 2014, Khuba produced two draft reports, to the best of my recollection, one was produced in October 2013 and the other in November 2013. Those were drafts, hence Khuba never signed them. Any suggestion that one would sign a draft or so-called progress report is absurd. The final report which implicates Mr Anwar Dramat (Dramat) and Mr Shadrack Sibiya (Sibiya) is the one which McBride deleted crucial and material information from it in order to unlawfully exonerate Dramat and Sibiya.

Ad paragraph 17

216. I admit that McBride was appointed on Friday March 2014 by my predecessor. However, he did not resume his duties on that day. He assumed his duties on or about 6 March 2014. On his arrival, on his first day of duty, he wanted the files pertaining to the "rendition" investigation. Prior to his appointment Ms. Koekie Mbeki was the acting Executive Director of IPID. She resigned shortly after McBride's arrival at IPID.
217. If Ms. Koekie Mbeki is invited to testify, she would shed light on the final report of 22 January 2014 because when the investigation was finalized, she was the acting Executive Director of IPID.



Ad paragraph 18

218. Whilst McBride said he wanted to be briefed on all high-profile matters, I understand that the only matter that he was interested in was the rendition matter and never thereafter asked about other high-profile matters.

219. This paragraph confirms that McBride was not only briefed about the rendition matter on the first day in office, but he was told about the final report, hence he concluded that he was rejecting the outcome of the investigation as being not conducted independently and impartially in line with the IPID Act. Thus, McBride's evidence that he did not see the 22 January 2014 report is false and should be rejected outright.

Ad paragraph 19

220. This paragraph confirms that McBride was briefed with a case file and that he looked at the case file. Otherwise, it would have been absurd for McBride to be briefed about the investigation in the absence of the file and without him asking to look at the file before concluding that the investigation was not conducted independently and impartially and before he could formulate his view that the evidence contained in the file was not satisfactory, fair and credible.

221. It follows that during the briefing, Khuba told him about the report that he had already submitted to the NPA and that the investigation was finalized. It also follows that once he told him about the report that he had submitted to the NPA, McBride asked for it. That is logical, otherwise it would not make sense for McBride to reject the evidence in the file without wanting to see how Khuba dealt with the evidence in the report and the recommendations Khuba had made in the

report. Besides, neither the report by Khuba and the Werksmans report say that Dramat and Sibiya were at the crime scene.

222. McBride's understanding seems to be that in order for Dramat and Sibiya to be guilty of anything, they ought to have been at the scene of the assault, kidnapping and transportation of the Zimbabwean nationals. Such a proposition by McBride is absurd.

Ad paragraph 20

223. The contents of this paragraph are denied.

224. There was no additional investigation that was undertaken which Khuba was not aware of when he submitted the final report to the NPA. The issue of the analysis of the cell phone records was already been alluded to by Khuba in his report. It matters not whether the cell phone records analysis placed them at the scene of the crime. The available evidence according to Khuba and supported by Mosing's memorandum established that Dramat and Sibiya were implicated in the unlawful rendition and that they were aware of it, hence Khuba and advocate Mosing proceeded to submit the report for a decision to prosecute.

Ad paragraph 21

225. I deny the contents of this paragraph.

226. The 18 March 2014 report is the unlawful report which is the product of unlawful tempering with the original report (final report) of 22 January 2014. The 18 March 2014 report is word for word the same as the 22 January 2014 report save for

the paragraphs which McBride deleted in order to exonerate Dramat and Sibiya and also altering the conclusion.

227. McBride deleted information from the 22 January 2014 report which confirmed that he (McBride) was aware of the 22 January 2014 report, saw it, read it and made alterations from it. The Werksmans report also correctly found that McBride deleted information from the final report in order to exonerate Dramat and Sibiya thus defeating the ends of justice. This conclusion cannot be faltered having regard to the overwhelming documentary evidence and common cause facts.

228. When interviewed by Werksmans, McBride confirmed that he was making deletions on the computer. What else was he deleting if it was not the information from the final report? Werksmans has tabulated the paragraphs deleted in the final report and those added in the doctored report of 18 March 2014.

Ad paragraph 22

229. This paragraph is false and misleading.

230. The IPID final report signed by Khuba is the one which recommends that Dramat and Sibiya be criminally charged. McBride unlawfully altered the report in order to exonerate them. McBride has not explained in his statement why he instructed Khuba and Angus to collect the docket from the NPA.

231. The docket was indeed collected from the Director of Public Prosecutions, South Gauteng from the office of advocate Van Zyl. When they collected the docket

they phoned McBride to find out whether they should deliver the docket to him at Benoni where he was attending a conference/workshop or whether they should take it to his office. McBride informed them to take it to his office. Mosing had confirmed that the final report was in the docket submitted for a decision to prosecute. Khuba also confirmed as such.

232. They (Khuba and Angus) gave the docket to McBride when they took it to his office. McBride does not say that he did not read the docket. It is logical that he read the docket. When reading the docket, he also read the report which was in the docket. Khuba said that McBride had requested him to email the report to him in soft copy which he did. This is to make it easy in order to effect changes in the report electronically, hence McBride's concession that he deleted or worked on the document.

233. The evidence am told is that he was physically sitting in front of the computer making the changes to the report. This again, demonstrate without a shadow of doubt that McBride is misleading this Commission when he says that he did not see the 22 January 2014 report.

Ad paragraph 23

234. I deny the contents of this paragraph.

235. The 22 January 2014 report was the final report. That is why it was signed by Khuba. Ms. Koekie Mbeki if called to testify would explain as she did to Werksmans Mr. July that she told Khuba to sign the report alone and submit it to the NPA for a decision which he did. She also told Sesoko not to be directly involved in the investigation because the outcome could be challenged by those

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implicated on grounds of Sesoko's criminal record which at the time he was in the process of trying to have it expunged.

236. There is no legislative provision which requires the final report to be signed by three people. That was not the case during the time of Ms. Koekie Mbeki. This requirement was introduced by McBride himself after his appointment.

Ad paragraph 24

237. I confirm that I suspended McBride in terms of the powers vested in me by the then statute before the provisions of section 6 of the IPID Act was declared unconstitutional by the court.

Ad paragraph 25

238. To the best of my knowledge, McBride has not in any of the affidavit he filed in the courts, challenged the Werksmans report. Hence no application to set it aside has ever been made.

Ad paragraph 26

239. The judgment was only confined to my powers as conferred by the impugned provisions. McBride has failed to motivate his allegations of ulterior motive and had faith and abandoned them before the High Court and the Constitutional Court. Both the High Court and the Constitutional Court declined to lift his suspension. He remained suspended until after 30 days had lapsed since the Constitutional court's judgment and after the Portfolio Committee of Parliament failed to take the decision as mandated by the Constitutional court order.

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Ad paragraph 27

240. I deny the allegations in this paragraph.

Ad paragraph 28

241. I deny the contents of this paragraph. The allegation is not even substantiated, and neither is it supported by any evidence.

Ad paragraph 29

242. I deny the contents of this paragraph.

243. Werksmans was not appointed to look into the rendition, but it was appointed to investigate thereto, report and make a finding on which of the two reports was the final report. The terms of reference that I gave to Werksmans are self-explanatory.

Ad paragraph 30

244. I deny the contents of this paragraph.

Ad paragraph 34

245. McBride was at all material times legally represented, that he knew the legal process available to him if he was not happy with the Werksmans report and he chose not to follow the legal process to challenge the report.

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246. I accepted the findings and recommendations of Werksmans report because they were both factually and legally sound. The process they followed was procedurally and substantively fair and they afforded those they interviewed including McBride a fair opportunity to deal with the questions put to them as is evident from the transcripts.
247. It is also disconcerting that McBride seeks to impugn the integrity of a reputable and respected lawyer, Mr. July without producing any shred of evidence of impropriety. It is also disconcerting that this issue was not taken further with McBride when he testified to produce evidence of impropriety.
248. McBride made no allegations of impropriety in any of the affidavit he filed in the High Court, Labour court and the constitutional court and never in those affidavit and in argument presented on his behalf in those courts attack the Werksmans report as flawed and illegitimate.

Ad paragraph 35

249. The report was in the very docket that McBride instructed Khuba and Angus to collect from the NPA. It is false that I got the report from the NPA. It is correct that the report signed by Khuba was submitted to the NPA with the docket and it was part of the docket. The statement that McBride said he considered to formulate a view that he was not satisfied with the evidence, were attached to the report. How did he consider the statements but at the same time not having seen the report? There is no doubt that McBride was attempting to mislead this Commission when he said he did not see the 22 January 2014 report.

Ad paragraph 36

250. It is again disconcerting that McBride simply without evidence makes defamatory allegations that Werksmans was in cahoots with me to conduct a sham investigation and he was not called upon to produce evidence to back up his defamatory allegations when testifying.

251. Rule 3.8 of the Commission's rules requires a member of the Commission's legal team to put questions to any witness who gives evidence, including putting questions aimed at assisting the Commission in assessing the truthfulness of the evidence of that witness.

252. I deny that Werksmans was in cahoots with me to conduct a sham investigation. I deny that I wanted to get rid of McBride. It would have been improper and reckless of me if I simply turned a blind eye to the serious allegations of tampering and defeating the ends of justice when people died during this illegal rendition. Werksmans is one of the largest reputable law firms in the country.

Ad paragraph 37

253. I admit the contents of this paragraph.

Ad paragraph 38

254. I have no knowledge of the contents of this paragraph.

255. Even if that could have happened, there was nothing wrong in the supervisor advising his subordinates to cooperate with an investigation.

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Ad paragraph 39

256. I deny that McBride strongly contested the Werksmans report.

257. McBride never contested the Werksmans report at all. In the High Court, and the constitutional court, McBride was contesting my powers to suspend and institute disciplinary proceedings against him as he was challenging the constitutionality of section 6 of the IPID Act. I have no knowledge of the leakage of the report to the media and I deny that I was involved in a false narrative to discredit "them" publicly. McBride has produced no evidence to back this false allegation.

Ad paragraph 40

258. The Werksmans report was the investigation report, the evidence is in the documents and the statements taken from the people who were interviewed, being the people upon whom the probative value of the evidence depends. McBride interdicted the disciplinary inquiry at the Labour Court, and the witnesses never got the opportunity to testify and advice evidence which implicated him in support of the charges that were levelled against him.

Ad paragraph 41

259. I deny the contents of this paragraph.

260. I have never instructed Kgamanyane to suspend Khuba and Sesoko. This is yet another unfortunate allegation which McBride has not backed up with evidence.

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Ad paragraph 42

261. The contents of this paragraph are patently false.
262. I have already demonstrated that McBride knew about the report and deleted certain paragraphs from it.

Ad paragraph 43

263. I have already stated that McBride did not challenge the Werksmans report in any of the court processes that he had embarked upon.

Ad paragraph 44

264. The contents of this paragraph are a blatant misrepresentation of what transpired between Mr. July and the prosecutor.
265. Mr. July told the prosecutor that it would serve no purpose in a criminal trial for the prosecutor to call him because whatever evidence he would have tendered would have been hearsay. He told the prosecutor that he should call those persons mentioned in the report as witnesses.

Ad paragraph 45

266. The contents of this paragraph are patently false. This is yet another unfortunate allegation made by McBride without providing proof.



Ad paragraph 46

267. The contents of this paragraph of false.

268. McBride has not provided evidence to back up this allegation that Khuba and Sesoko were suspended on my instruction. I have already demonstrated without a shadow of doubt that not only did McBride knew about the 22 January 2014 report but that he read it and then deleted some crucial information from it.

Ad paragraph 47

269. Mr Israel Kgamanyane (Kgamanyane) stabilized IPID during McBride's absence and managed it professionally and efficiently.

Ad paragraph 48

270. The constitutional court did not pronounce on the substantive merits of McBride's misconduct.

Ad paragraph 53

271. I have already stated that Kgamanyane performed exceptionally well at the helm of IPID during McBride's absence. The contents of this paragraph are denied.

Ad paragraph 54

272. The settlement aforesaid was unlawful because Sesoko was dismissed following a properly constituted disciplinary inquiry. Sesoko approached the Labour court



unsuccessfully during the disciplinary inquiry to interdict it. The settlement was to circumvent the court process so that the arbitrator and the courts do not pronounce on the fairness or otherwise of Sesoko's dismissal.

Ad paragraph 55

273. Khuba pleaded guilty to unlawfully altering the report together with McBride and Sesoko.

Ad paragraph 56

274. The contents of this paragraph are denied.

Ad paragraph 58

275. I have no knowledge of any discussion between Mr Berning Ntlemeza (Ntlemeza) and Khuba.

Ad paragraph 60

276. McBride unfortunately does not say which were those disparaging remarks that I made about the judiciary. I deny that I have ever made disparaging remarks about the judiciary.



Ad paragraph 61

277. I deny any interference with the IPID's independence. At the time I suspended McBride I acted on the strength of the law that empowered me to do so until that provision of the IPID Act was declared unconstitutional by the court.

Ad paragraph 72

278. I have never instructed that IPID should pay for the legal costs incurred by the police.

Ad paragraph 73

279. I have no knowledge of these allegations.

Ad paragraph 74

280. I deny the contents of this paragraph.

Ad paragraph 75

281. I am unaware of any instability which was occasioned by the transfers in IPID.

Ad paragraph 76

282. I have no knowledge of the interactions between Kgamanyane and McBride. Kgamanyane is better placed to deal with this allegation, should the Commission grant me permission to call witnesses or the Commission mero motu call him



Ad paragraph 77

283. I deny that Kgamanyane was irregularly transferred.

Ad paragraph 131

284. The contents of these paragraphs are not worthy of a response as they are ridiculous and far-fetched. Legal practitioners place their expertise and services at the disposal of all who need their services without discriminating against anyone.

Ad paragraph 135

285. Mr Leon Mbangwa is not a foreigner nor is he an illegal immigrant. He is a South African citizen. His dispute with the Department of Home Affairs ended in court and it was resolved in his favour. The appointment of Mbangwa was a transfer from another organ of State. Mbangwa would be available to give evidence. He was transferred from KwaZulu Natal legislature, where he was a senior manager.

Ad paragraph 138

286. The reference group was a legitimate structure or group which was established in terms of the relevant provisions of the Public Service Act.



Ad paragraph 139

287. I deny that there was an ulterior purpose to the establishment of the reference group.

G. CONDONATION

288. The commission's legal team served me with a notice in terms of rule 3.3 of the rules of the commission. My attention was drawn to the fact that the commission's legal team intends to present the evidence of McBride from 11 April 2019.

289. In paragraph 5 of the notice the commission's legal team advised me that if I wish to give evidence, call any witnesses to testify on my behalf or cross examine McBride I had to apply within 14 calendar days of the notice in writing to the commission for leave to do so. Such application was to be submitted to the secretary of the commission.

290. Unfortunately, I have not been able to meet the 14 days given to me. It is for this reason that I apply for condonation. The reasons for the lateness are the following. Firstly I had to apply for legal assistance from the State through the office of the State Attorney. I engaged the services of a private attorney, a senior counsel and a junior counsel. I requested that the State carry the legal costs of my legal team. It took some time for the legal funding to be approved. In order not to be way out of time, I requested my legal team to start working on the matter so that by the time legal funding is approved, they do not have to start



from the beginning. Indeed my legal team started requesting relevant documents from the Department, Werksmans Attorneys and Hogan Lovells Attorneys.

291. It was only on 23 May 2019 that I had my first consultation with my legal team to consider the statement by McBride as well as the supporting documentation to his statement. This was to enable me to give my legal representatives instructions with regards to the allegations by McBride that seek to implicate me.
292. Further documentation is still in possession of IPID whilst others is in the archives at Hogan and Lovells and Werksmans attorneys. It has not been easy to obtain all the required documentation. The legal team had commenced to peruse the documents received whilst awaiting others. Confirmation of legal funding was communicated on 25 June 2019. I then arranged a further consultation with my legal team to finalise the statement.
293. My legal team finalised the statement on 30 June 2019 for me to consider, make comments and then sign before Commissioner of oath. I had to arrange for my attorneys to travel to KwaZulu Natal where I currently reside to collect the statement.
294. I submit that I took all reasonable steps to minimize the delay. This is evidenced by me instructing my legal team to commence working on the matter despite having no confirmation of me being legally funded. This was on the understanding that when the approval for funding is granted, it would retrospectively apply from the date the legal team started working on the matter.
295. This Commission performs an important function, thus the interest of justice is paramount requiring the Commission to hear my version in rebuttal to the unfounded allegations by McBride.



296. It is in the interests of the work of the commission that I be granted condonation, and then leave to cross examine, testify and call witnesses is necessary.
297. Neither the Commission nor the evidence leaders or McBride have been prejudiced by the late submission of the statement. Non have suffered prejudice. The Commission is still dealing with other matters arising from time to time and continues to hear evidence of other witnesses. Its work is not hamstrung by the delay. Beside, the delay is not excessive. It is compensated by fairness and interest of justice.
298. The delay was not deliberate. It was simply beyond my powers.

H. CONCLUDING REMARKS

299. In one of his judgments, the then Chief Justice of the Constitutional Court, Justice Arthur Chaskalson once said, *"The rights to life and dignity are the most important of all human rights. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be declared thereby."*
300. The right to life stands at the apex of all the rights in the Bill of Rights. It ensures the continued existence of humanity, and awareness of all life. Without it, there is no one to say, *"This is life,"* and therefore no concept of life itself.
301. Our social experience as South Africans recognizes also, the sanctity of life – the idea of the ultimate importance and inviolability of human life. In our faith-based



traditions the concept of the sanctity of life transcends its “inviolability”, to include the view that, because people are made in God’s image, human life as an inherently sacred attribute that should be protected and respected at all times.

302. And thus, to entrench the full measure of the protection of human life, clauses 9 – 11 of our Constitution ensure:

301.1 Protection for everyone before the law and the rights to equal protection and benefit of the law;

301.2 Protection and respect of everyone’s dignity; and

301.3 Protection of the rights to life itself.

Primitive communism

303. In 1877, Lewis Henry Morgan describes “*liberty, equality and fraternity of the ancient gentes.*” He details how “*communism in living*” was reflected in the village architecture of native Americans.

304. In this “*communism in living*” – which is as he defines it, as, “*the collective right to basic resources, the absence of hereditary status or authoritarian rule, and the egalitarian relationships that preceded exploitation and economic stratification in human history*”. Thus, humanity, by and large, enjoys equality, dignity and lives in solidarity.

305. The transition from production for use to production for commodities for exchange – from slave owning to feudal and capitalist system of production; which transforms and reduces human life to a tradable economic asset in the labour market. The lesser the economic value of the individual, the lesser their

value as a human being. The intersection of race and class in South Africa, determined that the life of an African, in particular, would be viewed by many as worthless.

Rights in practice

306. Applied in lived reality, the clauses on equality, the right to life, dignity of the human person, etc. in our Bill of Rights, stand at the apex of rights, the “continued existence of humanity, and awareness of all life, as well as the sanctity of life.”
307. What is the value of the bill of rights if we do not make it part of our lived reality and experience? What are the implications thereof, for our country’s future stability and peace? Can our country’s best interests ever be best served by us taking tactical detours even in relation to the bill of rights? Can you do so and still maintain the people’s faith in the Constitution? We do not think so.
308. If we do not attend to issues affecting the rights to life, equality and human dignity, we will slowly but surely, be eroding the very foundations of our just order, and planting the seeds of future generalized turmoil.
309. One life lost is one too many. We must protect it ferociously. The issues relating to the former Executive Director of IPID, McBride must be dealt with fairly and honestly, for they go to the very heart of the struggle for justice and the future of our country. The matter at issue resulted in a number of African lives being lost, some foreign nationals and others, South African. The two South Africans were both key witnesses on the renditions case.

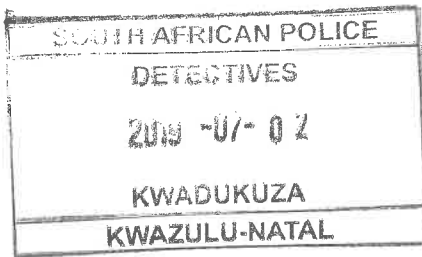
310. For centuries, African lives have been brutalized, emasculated and molested particularly by people claiming to hold the highest of moral virtue. This destruction and dehumanization of African lives must be brought to a stop. The few of us, that still remain true and committed to the cause for humanity, with all our might, shall ensure a stop to this anti-human behaviour.
311. The issues in question irrevocably, put an end to some people's rights to life, and to all their other personal rights. Nothing of the people was left, except the memory in others. The issues resulted in human lives being treated like objects to be eliminated. This is the issue that inevitably required to be investigated, but most importantly, the conduct of McBride in interfering with the cause of justice by deleting crucial information from a final investigation report which was already in the hands of the NPA, awaiting the NPA's decision. The mere fact that McBride never got to answer to these serious charges because Parliament decided to do nothing, is on its own a miscarriage of justice, and lessons should be learned from it so that it is never to be repeated.
312. And, as Chief Justice Moegoeng Moegoeng once said during one of his interviews, *"if the proper application of the Constitution and the law caused the heavens to fall, then let them fall."*



NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

CP2
 THIS SIGNED AND SWORN TO BEFORE ME AT AwadukuzA ON THIS
 THE 07 DAY OF JULY 2019, THE DEPONENT HAVING ACKNOWLEDGED THAT
 THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,

THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF THE DEPONENT'S KNOWLEDGE AND BELIEF, THAT THE DEPONENT HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON THE DEPONENT'S CONSCIENCE.




COMMISSIONER OF OATHS

Full names:

CYNTHIA PHINDILE ZAMELE

Capacity:

CSE

Business Address: *106 Chief Albert Lutuli*

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

In the matter between: –

NKOSINATHI NHLEKO

Applicant

And

THE COMMISSION'S LEGAL TEAM

First Respondent

ROBERT MCBRIDE

Second Respondent

SERVICE AND FILING SHEET

**HEREWITH: ANNEXURE NN1 TO THE APPLICANT'S SWORN STATEMENT
[WERKSMANS REPORT]**

DATED AT MIDRAND ON THIS THE 30TH DAY OF JULY 2019.


NDUMISO VOYI INC.

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TO: THE CHAIRPERSON

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

Hill on Empire
16 Empire Road
Parktown

FILED BY HAND

**AND TO: MABUNDA INC.
COMMISSION'S LEGAL TEAM**

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SERVED BY EMAIL

Fezile Sithole

From: Fezile Sithole <fezile@voyi.co.za>
Sent: 30 July 2019 09:19 AM
To: 'busani@mabundainc.com'
Cc: 'Ndumiso Voyi'
Subject: NKOSINATHI NHLEKO / THE COMMISSION'S LEGAL TEAM & ROBERT MCBRIDE
Attachments: SERVICE [WERKSMANS REPORT].pdf; Final Report 24 04 15.pdf

Dear Sirs,

Please find attachments herein for your attention.

Kind Regards

Fezile Sithole

Attorney

**NDUMISO VOYI INCORPORATED | Tel: 011-312 7537 | Fax: 086 246 2216 | Email: fezile@voyi.co.za |
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2592, Halfway House, 1685** **Please consider the environment before printing this email and/or
any related attachments**



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



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1 GLOSSARY OF TERMS

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



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



2 INTRODUCTION

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

2.1 Terms of reference for the investigation

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

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

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

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

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

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

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

2.2 Factual background of the rendition

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



- 2.2.2 During the period November 2010 until January 2011, a number of Zimbabwean nationals were arrested by SAPS together with Zimbabwean police officials. The arrest of these individuals was explained by the DPCI, in response to a parliamentary question posed by a member of the Congress of the People. The DPCI, through Dramat, advised parliament that the individuals in question were deported as illegal immigrants and had been arrested on suspicion of having committed or been involved in certain crimes, such as ATM bombings. The DPCI in its parliamentary response, further stated that when it came to light that the arrested individuals could not be linked to specific crimes, the individuals were deported to Zimbabwe.
- 2.2.3 From the documentation provided for our review, it appears that The DPCI was aware that the response to the parliamentary question was not factually correct. It is our view that they deliberately misled parliament in this regard.
- 2.2.4 The circumstances surrounding the arrests appeared to be questionable and raised a number of legal considerations relating to, inter alia, the lawfulness of the process followed by the SAPS in deporting the relevant Zimbabwean nationals.
- 2.2.5 The arrests of the five Zimbabwean nationals was effected in three stages which will be summarised briefly, below.
- 2.2.5.1 *The first operation*
- 2.2.5.1.1 The first operation relating to the arrest of Zimbabwean nationals took place on 5 November 2010 where four Zimbabwean nationals (Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma) were arrested in Diepsloot and detained in the Orlando police station in Soweto. The reasons stated for their detention was that they were illegal immigrants. The operation was conducted by the DPCI head office and DPCI provincial office (TOMS). It is alleged that DPCI and TOMS were accompanied by two Zimbabwean police officers. The members of the operation



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

2.2.5.1.2

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

2.2.5.1.3

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

2.2.5.1.4

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



2.2.5.2 *Second operation*

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

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

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

2.2.5.3 *Third operation*

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

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



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



2.3 Relevant legislation

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

2.3.1.1 Immigration Act

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

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

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

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



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

2.3.1.1.4

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

2.3.1.1.5

The Immigration Act defines 'immigration officer' to mean –

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



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

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

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

...

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

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

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



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

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

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

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

2.3.1.2 **The Act**

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

"(a) to give effect to the provision of Section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;

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

(c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;

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



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

2.3.1.2.2

Regulation 5(i) to the Act states:

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

2.3.1.3

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



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

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

2.3.1.5.1 ***Kidnapping:***

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

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

2.3.1.5.2 ***Murder:***

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

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

2.3.1.5.3 ***Assault:***³

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

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

¹ J. Burchell 'Principles of Criminal Law' 2013

² CR. Snyman 'Criminal Law' 2008

³ See footnote 1



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

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

2.3.1.5.4 ***Forgery and Uttering:***

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

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

2.3.1.5.5 ***Fraud:***

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

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

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

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

⁴ *Ibid at p733*

⁵ *Ibid at p721*

⁶ *Ibid 832*



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

2.4 Methodology in conducting the investigation

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

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

2.4.1.2 interviewed the following people:

2.4.1.2.1 Khuba;

2.4.1.2.2 Moukangwe;

2.4.1.2.3 Angus;

2.4.1.2.4 Sesoko;

2.4.1.2.5 Mosing;

2.4.1.2.6 Mzinyathi;

2.4.1.2.7 Baloyi;

2.4.1.2.8 Chauke;

2.4.1.2.9 McBride;

2.4.1.2.10 Jiba,

and



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

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

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

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

2.4.2.3 Section C: Analysis and findings; and

2.4.2.4 Section D: Recommendations.



3 SECTION A: CIRCUMSTANCES SURROUNDING THE COMPILING OF EACH REPORT

3.1 Section A1: First Report

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

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

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

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

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

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



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



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

- 3.1.11 One success report recorded that the Zimbabwean police came and met with Dramat on 5 November 2010 and requested assistance. The success report further recorded Maluleke's appointment to head the assignment to trace the Zimbabwean fugitives. Khuba obtained a laptop belonging to Maluleke and found that the success reports were generated from this laptop. The laptop also contained photographs of the operation as well as correspondence to Zimbabwean police officers.
- 3.1.12 Khuba's investigation continued. As part of the investigation, Khuba met with members of crime intelligence. At their offices, Khuba noticed that the photographs which he obtained from Maluleke's laptop relating to the operation were posted on the office walls of some members of crime intelligence. Khuba was informed by a member of crime intelligence, Mkasibe that during January 2011 when the arrests were completed, they went to DPCI's offices and Dramat personally came to the offices at House No. 3 and congratulated them for a job well done. According to Mkasibe, Dramat requested that they not tell anyone about the details of the operation. According to Khuba, Mkasibe confirmed that he has a historical relationship with Dramat due to their mutual involvement in Umkhonto We Sizwe.
- 3.1.13 Mkasibe's statement was corroborated by Mngwenya who confirmed that Dramat addressed the officers and congratulated them; however, Mngwenya did not mention Dramat telling them not to divulge the details of the operation. In addition, a third officer, Mokgobu, stated that she was out of the office at the time that Dramat attended to congratulate



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

- 3.1.14 Subsequently there was a leak of information regarding the investigation which was published in the Sunday times. At this time, Khuba and Mosing began drafting questions to Dramat enquiring about Dramat's involvement in the Rendition.
- 3.1.15 Khuba also interviewed Maluleke specifically regarding his promotion from captain to colonel. Khuba was not successful in obtaining the file regarding Maluleke's promotion.
- 3.1.16 Khuba records that Dramat sent a report, in response to the parliamentary question posed by a member of Congress of the People (COPE) regarding the Rendition, explaining the circumstances of the Rendition by stating that the Zimbabwean nationals were deported as illegal immigrants. This caused Khuba to investigate the matter further. He considered expense claims relating to the travelling to Beitbridge border post, as well as cell phone and vehicle tracker records positioning Maluleke, Makoe, Nkosi and constable Radebe at Diepsloot on the night of the arrests.
- 3.1.17 Khuba then investigated the booking in and out of certain police stations of the relevant Zimbabwean nationals following the arrests at Diepsloot. Khuba then began finalising the report but did so in the absence of an analysis of the cell phone records of Sibiya. Although Khuba was in possession of cell phone records in relation to Sibiya, such cell phone records had to be interpreted by an expert.
- 3.1.18 According to Khuba, as he was conducting the investigation with Moukangwe they would consult with Mosing and Moeletsi who were providing guidance in the process regarding the evidence to be collected in finalising the investigation. At some stage during 2013, Mosing and Moeletsi advised Khuba and Moukangwe as to which information in their draft investigation report dated October 2013 needed to be added. This information was the warning statements from Dramat, Sibiya, Maluleke, Leonie Verster and analysis of cell phone records by an expert.



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



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



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



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

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

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

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

3.2 **Section A2: Second report**

3.2.1 How the Second Report was compiled

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

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



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



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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

3.2.1.24.2

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

3.2.1.25

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

3.2.2

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

3.2.2.1

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

3.2.2.2

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



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



3.2.2.8

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



4 SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT

IPID REPORT 1	IPID REPORT 2
<p data-bbox="175 481 853 582">Page 9 The statement of Ndanduleni Richard Madilonga</p> <p data-bbox="167 728 853 817">The statement of Madilonga states as follows in the relevant paragraphs</p> <p data-bbox="167 828 853 862">:</p> <p data-bbox="167 884 853 1198"><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p data-bbox="167 1310 853 2038"><i>"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and</i></p>	<p data-bbox="877 492 1540 582">Page 9: statement of Richard Ndanduleni Madilonga</p> <p data-bbox="877 593 1540 683">The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p data-bbox="877 739 1540 1064"><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p data-bbox="877 1075 1540 1164">(The paragraph that follows the above preceding paragraph has been deleted)</p> <p data-bbox="877 1176 1540 1601"><i>"For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe"</i></p> <p data-bbox="877 1657 1540 1792">The paragraph that begins with "He will state.." from the first report is deleted in the second report.</p>



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



Page 21:para 5.2 reads

Success report dated 04/02/2011:

This report is addressed to Dramat, Hlatshwayo and Toka

The relevant paragraph of the Success report reads as follows :

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

In page 20 para 5.2

In this report, this is what is deleted:

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



Page 21 para 5.3 Emails by Captain Maluleke:

The quoted email states the following :

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

Page 21 para 5.3

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

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

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

The said letter states thus:

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

Page 21: Letter to stakeholders

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

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



Page 22: Documents Regarding Moyo's case.

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

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

Page 21: Documents Regarding Moyo's case.

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

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

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

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

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

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

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

"Findings

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



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



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



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



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



<p>warned them not to tell anyone about it".</p>	
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p> <p><i>"According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.</i></p>	<p>Nothing is said about this issue</p>
<p>• He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals.</p> <p><i>• "The cell phone records of General Sibiya shows 30 SMS sent to General Drama! at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress".</i></p> <p><i>•</i></p>	
<p>Report to parliament in response to the allegation:</p> <p><i>"A copy of the letter sent by Zimbabwean authority to Col Ntentei clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was</i></p>	



<p><i>joined operation between South African Police and Zimbabwean police to trace and arrest the suspects."</i></p>	
<p>Innocent Khuba's findings on Sibiya page 32</p>	
<p>• The meeting held between IPID and Dramat on 2013/03/07</p> <p><i>"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General- Dramat on 201-3/03/07 confirmed that General-Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects.</i></p>	
<p>• Sibiya's presence at the scene</p> <p><i>"Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma"</i></p>	
<p>Cell phone Records Analysis</p> <p><i>"In other operations cell phone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally"</i></p>	
<p>• The meeting with Zimbabwean Police for Cross-Border Crimes</p>	



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



5 SECTION C: ANALYSIS AND FINDINGS

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

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

5.1.1 Necessity of drafting the Second Report

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

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

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

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



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

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

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

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

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

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

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

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



- 5.1.1.6.4 the additional statements contained in the report, namely that of Dramat, Sibiya, Maluleke and Jennifer Irish Qhobosheane, do not contain material evidence which is capable of justifying an alteration in the conclusion of the report;
- 5.1.1.6.5 Khuba states that in discussions with Sesoko, his attention was drawn to the fact that the evidence against Sibiya may not withstand scrutiny in court and that Dramat simply having knowledge of the operation was not sufficient to implicate him criminally. This version by Khuba is contradicted by Khuba himself who states that he agrees that the knowledge of a crime is sufficient. Furthermore Khuba's version is not consistent in that Khuba himself drafted the First Report recommending the prosecution of Dramat which report was drafted with input from Mosing and Moeletsi, who had more experience with the NPA itself, than Sesoko; and
- 5.1.1.6.6 as an IPID investigator, Khuba would have to have a basic understanding of the workings of the law and would have or ought to have understood that his mandate is to investigate and to report and not to assume the role of the court in evaluating and testing evidence hypothetically.
- 5.1.1.7 Further to the above, both Angus, (who has substantial experience as an investigator), and Mosing confirm that if a report is submitted and new evidence comes to light subsequent to the submission of such report, the report may be updated to include the additional information. Any such update would not affect the status of the First Report.
- 5.1.1.8 Should the actual reasons which necessitated the submission of the Second Report be as Khuba stated (being to update the report with new evidence) the logical conclusion would be that the *recommendations* of the First Report would not be amended unless the additional information was so material that it required the alteration of a recommendation contained in the First Report.



- 5.1.1.9 In our opinion, and for the reasons discussed above, the additional information which according to Khuba necessitated the submission of the Second Report, was not sufficient or material and therefore did not require a change in the outcome of the report.
- 5.1.1.10 In light of the above, Khuba's alleged reasons for publishing the Second Report do not seem to be completely truthful.
- 5.1.2 Discrepancies between the two reports
- 5.1.2.1 The following material discrepancies are noted between the first and Second Reports-
- 5.1.2.1.1 Portions of the statements of individuals who implicate Dramat's involvement in the Rendition, which appear in the First Report, have been deleted in the Second Report;
- 5.1.2.1.2 the summary of evidence relating to the cell phone records of individuals has been altered to leave out information of evidentiary value;
- 5.1.2.1.3 the analysis and findings of the Second Report have been altered and truncated to no longer evaluate the evidence against Dramat which alteration coincides with the deletion of information implicating Dramat, in the individual statements; and
- 5.1.2.1.4 the recommendation in the Second Report has changed drastically, from recommending the prosecution of Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe in the First Report, to no longer recommending the prosecution of the aforesaid individuals other than Maluleke.
- 5.1.2.2 The discrepancies listed above, and specifically the removal of pertinent evidence, is not justified in any way and appears to be effected in order to justify the conclusion that Dramat should not be prosecuted for his involvement in the Rendition.



5.1.3 Explanation for the discrepancies

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

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

5.1.3.2.1 **Khuba**

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

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

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

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

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



5.1.3.2.1.6

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

5.1.3.2.1.7

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

5.1.3.2.1.8

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

5.1.3.2.2

Sesoko

5.1.3.2.2.1

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

5.1.3.2.2.2

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



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

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

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

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

5.1.3.2.3 **McBride**

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

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



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

5.1.3.2.3.3

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

5.1.3.2.3.4

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

5.1.3.2.3.5

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

5.1.3.2.3.5.1

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

5.1.3.2.3.5.2

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

5.1.3.2.3.5.3

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

5.1.3.2.3.5.4

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



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

5.1.3.2.3.5.5

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

5.1.3.2.3.5.6

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

5.1.3.2.3.5.7

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

5.1.3.2.3.5.8

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



5.1.3.2.3.5.8.1

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

5.1.3.2.3.5.8.2

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



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

5.1.3.2.3.5.8.3

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

5.1.3.2.3.5.8.4

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

5.1.3.2.3.5.8.5

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



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

- 5.1.4 The analysis and findings have also been altered to remove an analysis of evidence which may implicate Dramat and/or Sibiya. The alteration of the recommendation seems to be a non sequitur in light of the fact that the so-called additional information added to the Second Report does not appear to be capable of justifying an altered conclusion.
- 5.1.5 In the absence of a valid explanation for the deletions by the co-signatories, the only logical conclusion which can be drawn from the circumstances detailed above, is that the Second Report was created for the purpose of exonerating the high ranking officials, specifically Dramat and Sibiya, who were implicated in the First Report.
- 5.1.6 It is difficult to ascertain who is responsible for the deletion of the portions of the statements which appeared in the First Report and which do not appear in the Second Report. It is evident to us that none of the co-signatories to the report are being truthful in respect of their involvement in the submission of the Second Report.
- 5.1.7 Each of the co-signatories to the Second Report deny effecting the deletions. We are of the view that the deletion of material evidence which is likely to affect the decision of the NPA in determining whether or not certain individuals should be prosecuted, is a criminal offence, specifically, defeating the ends of justice or obstructing the administration of justice.
- 5.2 **Whether any misconduct or offence has been committed and if so by whom?**



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

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

5.3.1 **Lieutenant-General Anwa Dramat**

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

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

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

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



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

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

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

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



Dramat contradicting any statement of fact within the success report.

5.3.1.5.1.3

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

5.3.1.5.2

Dramat received communications during and after the commissioning of the Rendition

5.3.1.5.2.1

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

5.3.1.5.2.2

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

5.3.1.5.3

Dramat congratulated members of crime intelligence after completion of the operation

5.3.1.5.3.1

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



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

5.3.1.5.4

Dramat's statement to Acting National Commissioner of SAPS

5.3.1.5.4.1

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

5.3.1.5.4.2

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



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

5.3.2 **Sibiya**

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

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

5.3.2.3 Sibiya states as follows:

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

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

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



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

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

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

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

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

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

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



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

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

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

5.3.2.9

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

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

5.3.2.10

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

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



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

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

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

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

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



- 5.3.2.14 It is our view that there is a clear contradiction between the conclusion to be drawn from the evidence of the eye witness discussed above, which places Sibiyi in Diepsloot at the time of the operations, and the analysis of cell phone records which infers that Sibiyi was located at Pretoria in Sunnyside at the time relevant times.
- 5.3.2.15 It is our view that this contradiction should be tested and weighed by the NPA and or a court of law. We cannot discount one piece of evidence against the other. Neither can we recommend that certain weight be placed on certain evidence or recommend that certain piece of evidence be disregarded, without it having been tested in a court of law or some forum.
- 5.3.2.16 Further to the above, the mere allegation that the members of Crime Intelligence have conspired against Sibiyi by giving their eyewitness testimony can never be a rational basis to discount their evidence, or to fail to test the credibility of these witnesses or the veracity of their versions against the contrary evidence and conclusions which lead from the analysis of cell phone records.
- 5.3.2.17 According to our investigation we have established that the analysis of cell phone records serve two purposes. First, to assess the specific location of a phone at a certain time and secondly to assess the trail of communications for which the cell phone was utilised. In terms of the first assessment, Sibiyi's cell phone records place his cell phones at Sunnyside in Pretoria. According to this, Sibiyi was not present at any of the operations as alleged by the eye witnesses.
- 5.3.2.18 The second assessment of Sibiyi's cell phone records shows that Sibiyi communicated with officers who were involved in the operation, one of which is Maluleke and sent 30 smses to Dramat at the 0825515311 number during various milestones of the Rendition. Khuba records in the First Report that Dramat never responded to any of the smses from Sibiyi.



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

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

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

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

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



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

- 5.4.4 According to Mosing, the outstanding information related to the warning statements from Dramat, Sibiya and Maluleke, an analysis of the cell phone data, as well as a report on the analysis of vehicle tracking information of the members involved in the operation during the Rendition.
- 5.4.5 The investigation team finalised its investigation on or about 22 January 2014 and compiled a report with final recommendations. This was a final report on the investigation in the Rendition. It was handed to the Special Projects team so that the NDPP could make a decision to either prosecute or not prosecute those implicated in the report.
- 5.4.6 On 13 February 2014 Mosing addressed another internal memorandum to Jiba and Chauke, indicating that the investigations had been finalised and that the report from IPID had been submitted for the purposes of considering the merits of the case. This internal memorandum also enclosed the docket comprising of two lever arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI.
- 5.4.7 According to Chauke the receipt of the internal memorandum from Mosing on or about 14 February 2014 was preceded by a meeting wherein the NDPP advised Chauke to consider the docket and take a decision in regard to same. Chauke was assisted by Advocate Van Zyl who is the Deputy Director of Public Prosecutions for South Gauteng. Subsequent to the internal memorandum from Mosing, the docket was handed to the office of Chauke for a decision on whether to prosecute on the matter. According to Chauke before his office could even make a decision on the matter Khuba and Angus from IPID collected the docket from Advocate Van Zyl's office on 7 March 2014 and signed a receipt thereof. It bears mention that this occurred shortly after McBride was appointed as the executive director of IPID. According to Khuba, he collected the docket following an instruction from McBride for him to do so.



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



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

- 5.4.13 Mzinyathi spoke to his colleague the DDPP for North Gauteng, Baloyi regarding the docket and informed him that they must formulate a view on the matter. According to Mzinyathi sometime in March 2015 he received a report (being the Second Report) from the NDPP. This report summarised the statements in the docket and made its own recommendations as to who should be charged. Before Mzinyathi made his own recommendations, he approached the NDPP to understand certain things. The NDPP told him that there was a First Report and that he should read it as well. The NDPP provided him with a copy of the First Report. Mzinyathi shared this First Report with Baloyi and they discussed the potential charges to be brought against those implicated in the report.
- 5.4.14 Mzinyathi and Baloyi finalised their reading of the docket and the two reports and made recommendations on who should be charged and prosecuted. They sent their recommendations to the NDPP on 13 March 2015.
- 5.4.15 We are advised that on 31 March 2015 the NDPP wrote another letter to Chauke informing him that matter has been referred to Mzinyathi, who has recommended that all the accused including Dramat and Sibiya be prosecuted for inter alia kidnapping and defeating the ends of justice. This letter attached the letter addressed by Mzinyathi to the NDPP on 13 March 2015.
- 5.4.16 We are advised that the aforesaid letter from the NDPP inter alia states that the matter must be returned to the DPP South Gauteng because it now falls under the jurisdiction of the DDP South Gauteng since 1 December 2014. As from that date Diepsloot fell under the South Gauteng in terms of the Government Notice No 861 of 31 October 2014.
- 5.4.17 According to Chauke on 1 April 2015 he received a box consisting of the docket with a letter containing Mzinyathi's recommendations. On even



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

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

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

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

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

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

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



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

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

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

6 SECTION D: RECOMMENDATIONS

6.1 Maluleke

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

6.2 Dramat

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

6.3 Sibiya

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



6.4 Others

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

7 **Benefit of report**

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



- 7.2.2 in the context of practices and standards developed under South African law which have been applied and observed in light of our experience as South African attorneys.
- 7.3 No opinion is expressed or implied as to the laws of any jurisdiction other than South Africa and we express ourselves not to be experts on, or even generally familiar with, any laws other than the laws of South Africa.

8 **Limitation of liability**

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

This report was signed on 24 April 2015 at Sandton

Sandile July
Werksmans Attorneys