

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 77 54 9 /17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, ROBERT JOHN MCBRIDE**

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU**

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG**

**SENIOR INVESTIGATING OFFICER,
MANTSHA RAPHESU**

and

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.**

**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA**

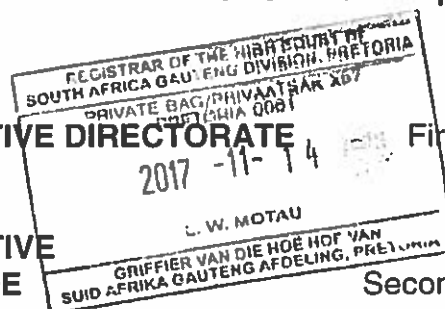
**NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE**

**NORTH WEST PROVINCIAL COMMANDER –
SPECIAL CRIMES UNIT
LIEUTENANT COLONEL ISMAIL DAWOOD**

**NORTH WEST PROVINCIAL HEAD –
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE**

**NORTH WEST PROVINCIAL POLICE SERVICES
COLONEL SM REDDY**

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE



First Applicant

Second Applicant

Third Applicant

Fourth Applicant

Fifth Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh Respondent

PJ

**NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE**

Eighth Respondent

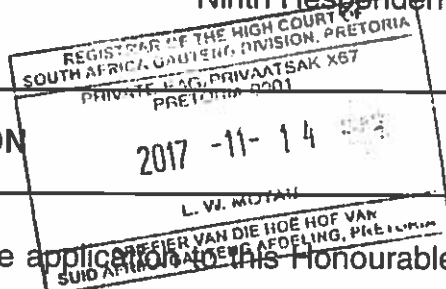
MINISTER OF POLICE

Ninth Respondent

NOTICE OF MOTION

TAKE NOTICE that the Applicants intend to make application to this Honourable Court on 28 November 2017 at 10:00 am or as soon thereafter as counsel may be heard, for an order in the following terms:

- 1 Dispensing with the forms, service and ordinary time periods provided for in the rules and disposing of the application urgently in terms of Rule 6(12).
- 2 Pending the final determination of case number 35894/17 in this Division ("the main application"):
 - 2.1 the first respondent ("the National Commissioner") is directed to take all necessary steps, within one week of the date of this order, to ensure that the SAPS investigations of the third to fifth applicants, namely Mr Mandlakayise Mahlangu, Temane Abram Binang and Mantsha Raphesu are undertaken and overseen by SAPS members other than the second to sixth respondents, namely Major General Ntebo Jan Mabula, Brigadier Daniel Pharasa Ncube, Lieutenant Colonel Ismail Dawood, Brigadier Clifford Matome Kgorane; and



P.J

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- 2.2 the National Commissioner is directed to file a report on oath with this Court and the Applicants within 10 days of the date of this order, setting out the steps taken to comply with paragraph 2.1 above.
- 3 The National Commissioner is joined as the sixth respondent in the main application.
- 4 The National Commissioner is directed to file an answering affidavit in the main application within 20 court days of the date of this order.
- 5 The costs of this application, including the costs of two counsel, are to be paid, jointly and severally, by those opposing it.
- 6 Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **ROBERT JOHN MCBRIDE** will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the offices of **ADAMS & ADAMS ATTORNEYS** as set out below as the address at which they will accept service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application, you are required to:

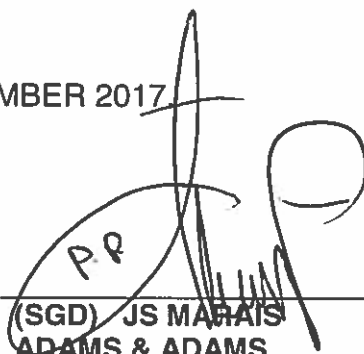
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3

- a) Notify the Applicants' attorney in writing (and by email at jac.marais@adamsadams.com / thando.manentsa@adamsadams.com / varana.chutterpaul@adamsadams.com) on or before **14 November 2017** that you intend opposing the application;
- b) Appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings;
- c) File your answering affidavits, if any, in respect of your opposition to this application, on or before 20 November 2017.

TAKE NOTICE FURTHER that the Applicants will within 3 (three) days from delivery of the Respondent's answering affidavits, if any, file their replying affidavits.

DATED AT PRETORIA ON THIS 13TH NOVEMBER 2017



(SGD) JS MARAIS
ADAMS & ADAMS
 Attorneys for the Applicants
 Lynnwood Bridge
 4 Daventry Road
 Lynnwood Manor
 Pretoria
 TEL: (012) 432 6000
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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT
 PRETORIA**

P.J



AND TO: **NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.**
First Respondent
c/o THE STATE ATTORNEY
 Salu Building
 Ground Floor
 316 Thabo Sehume Street
 Pretoria

SERVICE BY EMAIL

AND TO: **NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA**
Second Respondent
C/O THE STATE ATTORNEY
 First Floor
 East Gallery
 Mega City Complex
 Cnr. Sekame Road and Dr James Moroka Drive
 MMabatho
 By e-mail: mabulanj@saps.gov.za
Zwiegelhaar@justice.gov.za

SERVICE BY EMAIL

AND TO: **NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE**
Third Respondent
C/O THE STATE ATTORNEY
 First Floor
 East Gallery
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 Cnr. Sekame Road and Dr James Moroka Drive
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SERVICE BY EMAIL

AND TO: **NORTH WEST PROVINCIAL–
SPECIAL CRIMES UNIT
LIEUTENANT COLONEL ISMAIL DAWOOD**
Fourth Respondent
C/O THE STATE ATTORNEY
 Wespol Square
 Cnr Nelson Mandela and Peter Mokabe Streets
 Potchefstroom
 North West Province



AND TO: **NORTH WEST PROVINCIAL HEAD –
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE
Fifth Respondent
C/O THE STATE ATTORNEY
Wespol Square
Cnr Nelson Mandela and Peter Mokabe Streets
Potchefstroom
North West Province**

AND TO: **NORTH WEST PROVINCIAL POLICE SERVICES
Colonel SM Reddy
Sixth Respondent
C/O THE STATE ATTORNEY
First Floor
East Gallery
Mega City Complex
Cnr. Sekame Road and Dr James Moroka Drive
MMabatho
By e-mail: PDNcube@saps.gov.za
Zwiegelaar@justice.gov.za**

SERVICE BY EMAIL

AND TO: **LT. GENERAL JOHANNES KHOMOTSO PHAHLANE
Seventh Respondent
BDK ATTORNEYS
Ground Floor Oxford Terrace
3 on 9th Street
Houghton Estate
Johannesburg
Email: dinna@bdk.co.za**

SERVICE BY EMAIL

AND TO: **NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE
Eighth Respondent
C/O THE STATE ATTORNEY
First Floor
East Gallery
Mega City Complex
Cnr. Sekame Road and Dr James Moroka Drive
MMabatho
Email: motswenyanebb@saps.gov.za
nwpcsec@saps.gov.za /
Nwprov.staff@saps.gov.za
Zwiegelaar@justice.gov.za**

SERVICE BY EMAIL

PJ

AND TO: **MINISTER OF POLICE**
Ninth Respondent
C/O THE STATE ATTORNEY
Salu Building
316 Thabo Sehume Street
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Email: TNengwekhulu@justice.gov.za
SNakale@justice.gov.za

SERVICE BY EMAIL

P.J.



8

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

CASE NO.: 77 549/17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, ROBERT JOHN MCBRIDE** Second Applicant

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU** Third Applicant

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG** Fourth Applicant

**SENIOR INVESTIGATING OFFICER,
MANTSHA RAPHESU** Fifth Applicant

and

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.** First Respondent

**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA** Second Respondent

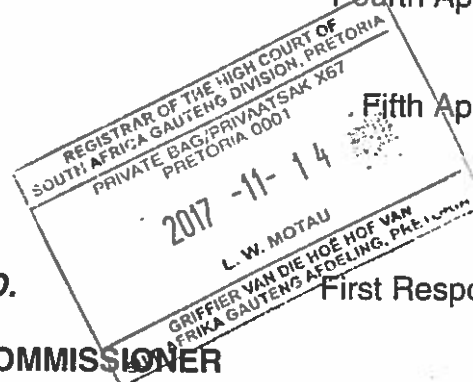
**NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE** Third Respondent

**NORTH WEST PROVINCIAL –
SPECIAL CRIMES UNIT
LIEUTENANT COLONEL ISMAIL DAWOOD** Fourth Respondent

**NORTH WEST PROVINCIAL HEAD –
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE** Fifth Respondent

**NORTH WEST PROVINCIAL POLICE SERVICES
COLONEL SM REDDY** Sixth Respondent

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE Seventh Respondent



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**NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE**

Eighth Respondent

MINISTER OF POLICE

Ninth Respondent

FOUNDING AFFIDAVIT

I, the undersigned:

ROBERT JOHN MCBRIDE

do hereby state under oath as follows:

- 1 I am the Executive Director and the accounting officer of the Independent Police Investigative Directorate ("IPID"), with head office at 114 Madiba Street, Pretoria, Gauteng.
- 2 Unless the context indicates otherwise, the facts deposed to in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3 Where I make legal submissions, I rely on the advice of the applicants' legal representatives, whose advice I believe to be correct and has been accepted by the applicants.

THE PARTIES

- 4 The first applicant is the Independent Police Investigative Directorate ("IPID"). IPID is established under section 3 of the Independent Police

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Investigative Directorate Act, 1 of 2011 (**"the IPID Act"**) to give effect to the provisions of section 206(6) of the Constitution. The objects of the IPID under section 2 of the IPID Act include:

- 4.1 to enhance accountability and transparency by the South African Police Service (**"SAPS"**) and Municipal Police Services in accordance with the principles of the Constitution;
 - 4.2 to ensure independent oversight of the SAPS and Municipal Police Services; and
 - 4.3 to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the SAPS and Municipal Police Services.
- 5 The second applicant is the Executive Director of IPID, appointed in terms of section 6 of the IPID Act.
- 6 The third to fifth applicants – Mr Mandlakayise Mahlangu, Mr Temane Binang and Mr Mantsha Raphesu – are employed by IPID investigators in terms of section 22 of the IPID Act. The third to fifth applicants are three of the four investigating officers at IPID who have been tasked with investigating serious complaints against Lt-Gen Phahlane. All three of these IPID investigators have had criminal charges laid against them in relation to the conduct of IPID's investigation against Lt-Gen Phahlane. I shall refer to them collectively as **"the IPID investigators"**.



- 7 The first respondent is the National Commissioner of the South African Police Service *nomine officio*, at Wachthuis, Pretoria. The National Commissioner will be served through the office of the State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria in terms of Rule 4(9).
- 8 The second to sixth respondents are all members of the SAPS in the North West Province, based at Wespol Building, corner Nelson Mandela Drive and Peter Mokaba Street, Potchefstroom. They are, respectively, the North West Deputy Provincial Commissioner, Major General Ntebo Jan Mabula; the North West Provincial Head: Commercial Crimes Investigations, Brigadier Daniel Pharasa Ncube; Lieutenant Colonel Ismail Dawood; Brigadier Clifford Matome Kgorane; and Colonel S. M. Reddy.
- 8.1 The second to sixth respondents are all the subject of pending investigations by IPID and are all involved in investigating the IPID investigators (the third to fifth applicants).
- 8.2 I shall refer to the second to fifth respondents as **“the North West SAPS team”**.
- 8.3 These papers will be served on the second to sixth respondents care of the State Attorney at First Floor, East Gallery, Mega City Complex, Corner Sekame Road & Dr James Moroka Drive, Mmbatho, North West, in terms of Rule 4(9).



- 9 The seventh respondent is the former Acting National Commissioner of SAPS, Lieutenant-General Johannes Khomotso Phahlane (**"Lt-Gen Phahlane"**). The seventh respondent will be served through his attorneys of record, BDK Attorneys.
- 10 The eighth respondent is the North West Provincial Commissioner, Lieutenant-General Baile Brenda Motswenyane. The eighth respondent will be served care of the State Attorney at First Floor, East Gallery, Mega City Complex, Corner Sekame Road & Dr James Moroka Drive, Mmbatho, North West, in terms of Rule 4(9).
- 11 The ninth respondent is the Minister of Police Fikile April Mbalula. The Minister will be served through the office of the State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria in terms of Rule 4(9).
- 12 I emphasise that the applicants do not seek any costs award against any party that does not oppose the relief sought. Indeed, the applicants are respectfully of the view that there is no reason for any party to oppose the narrow and interim relief sought in the present application and hopes that the matter can be sensibly resolved. It is only in the event of opposition that costs are sought against those parties that oppose.
- 13 This Court has jurisdiction because the National Commissioner's offices fall within the jurisdiction of this Court; the head-office of IPID falls within the jurisdiction of this Court; and this Court is already seized with the main case.

INTRODUCTION

- 14 This application arises as an ancillary matter to what I term the “main application” or “main case”, which is the matter pending before this Court under case number 35894/17.
- 15 That case involves relatively complex and novel issues of principle concerning the interaction between the SAPS and IPID, including which members of SAPS are entitled to investigate IPID members and raises a host of constitutional issues – including potentially the unconstitutionality of the relevant legislation.
- 16 This application, by contrast, has a far narrower focus. It has been necessitated by events over the past few days.
- 17 In this application, the only substantive relief sought is an interim order, pending the determination of the main application.
- 17.1 The effect of the interim order sought is that the National Commissioner is required to take all necessary steps to ensure that the SAPS investigations of the third to fifth applicants are undertaken and overseen by persons other than the second to sixth respondents.
- 17.2 This is due to the clear perceived or real conflict of interest involved in having the second to sixth respondents investigate the third to fifth applicants.

18 It is important to bear in mind the narrow ambit of this relief:

18.1 The applicants do not seek any order that bars the SAPS from investigating the IPID investigators *per se*. The applicants also do not contend that IPID members are immune from investigation or prosecution or above the law.

18.2 The applicants fully accept that if it is alleged in good faith that IPID members have breached the law, they must be investigated and, if there is a basis for it, prosecuted.

18.3 Rather, the applicants contend only that where the SAPS is required to investigate IPID members for alleged misconduct, the Constitution and the law requires that such investigations be undertaken and overseen by SAPS officials who have no personal interest in the investigations and who are not themselves the subject of IPID investigations.

19 The need for the urgent interim interdict now sought arose as follows:

19.1 Over the past few days it emerged that members of the North West SAPS team (who are presently being investigated by IPID) have once again been tasked with investigating the IPID investigators concerned.

19.2 In other words, the very members of the SAPS who are subject to an investigation by IPID investigators have now been tasked with investigating those very IPID investigators.

- 19.3 In these circumstances, the SAPS investigation of the IPID investigators is seriously and unavoidably compromised by conflicts of interest. The involvement of the North West SAPS team in investigating the IPID investigators also seriously undermines and threatens the independence and effectiveness of IPID.
- 20 The applicants seek an order preventing this from occurring – to prevent the further inevitable and imminent harm that will otherwise result to the third to fifth applicants themselves, to IPID as an institution and to the public interest.
- 21 I point out that there can be no conceivable harm to the respondents as a result of this order. It will leave the National Commissioner free to pick any investigators of his choosing from thousands of SAPS members where no such conflict of interest would arise.
- 22 In addition to this interim interdict, the applicants seek to join the first respondent, the National Commissioner of the South African Police Service *nomine officio* as the sixth respondent in the main application. This relief is required following the removal of Lt-Gen Phahlane from the office of the National Commissioner in June 2017, after the main case was launched. The office of the National Commissioner is presently held in an acting capacity by Lt-Gen Lesetja Mothiba.
- 23 I structure this affidavit as follows:

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23.1 I set out the background to this application, including a summary of the issues raised in the main case, the status of that application, and the recent developments;

23.2 I address the joinder of the National Commissioner *nomine officio*; and

23.3 I address the requirements for an interim interdict and urgency.

FACTUAL BACKGROUND

IPID's investigation of Lieutenant-General Phahlane

24 IPID is established by s 206(6) of the Constitution and the IPID Act as a body that is, and must remain, independent of the SAPS. IPID's functions are to investigate any alleged misconduct of, or offence committed by, any member of the SAPS.

25 The institutional and operational independence of IPID is necessary to ensure that it is able to exercise effective oversight of the SAPS. Such oversight, in turn, promotes the accountability, responsiveness and openness of the SAPS, as required by the Constitution.

26 In March 2016, acting on complaints received from Police and Prisons Civil Rights Union (POPCRU) and the forensic consultant, Mr Paul O'Sullivan, IPID initiated an investigation against the then-Acting National Commissioner, Lt-Gen Phahlane. These complaints concerned

allegations of tender irregularities and irregular appointments and suspected corruption.

- 27 In October 2016, when I returned to the office as the Executive Director of IPID (after my unlawful suspension), I learned that little progress had been made in the investigation. I appointed a new team of IPID investigators to investigate the complaints against Lt-Gen Phahlane – specifically, Mr Mahlangu, Mr Binang, Mr Raphesu and Mr Nkabinde. Upon the establishment of the team, witnesses were identified and interviewed and statements obtained.
- 28 The details of the main case against Lt-Gen Phahlane are not material to the present application. However, the papers filed in the main case will be made available at the hearing of this application in the event that this is required.
- 29 In short, and by way of background, the *prima facie* evidence against Lt-Gen Phahlane involves the unexplained source of funds for the purchase of his private property at Sable Hills Waterfronts Estate and construction of a large home on the property; large bond payments; the payment of constructors by means of large cash payments; and Lt-Gen Phahlane's ownership of a fleet of vehicles. The source of the funds for all of the above is suspicious because Lt-Gen Phahlane contends that he has no other sources of income other than his police service salary, and he has not disclosed any financial interests. This investigation is ongoing, and is at advanced stage.

The SAPS' investigation of the IPID investigators

30 IPID's investigation against Lt-Gen Phahlane has faced serious and persistent obstruction from members of the SAPS.

30.1 Lt-Gen Phahlane unlawfully obtained the section 205 applications made by IPID from the Magistrates' court file, to obtain details of who IPID had subpoenaed (under s 205 of the Criminal Procedure Act).

30.2 When Lt-Gen Phahlane became aware of IPID's approach to witnesses, Lt-Gen Phahlane contacted the witnesses directly, intimidated them and instructed witnesses not to cooperate with IPID's investigators. These actions prompted IPID to open a case of defeating the ends of justice against Lt-Gen Phahlane. IPID referred this docket to the NPA in December 2016 (Kameeldrift CAS 123/11/2016).

30.3 IPID's principal investigator, Mr Mahlangu, the complainant, Mr O'Sullivan and I all received death threats by anonymous text messages after the commencement of the investigation. One of these messages was traced to the phone of an SAPS officer stationed at OR Tambo International Airport.

30.4 Lt-Gen Phahlane instituted civil proceedings against the Executive Director of IPID (under case no. 8258/2017) to review and set aside a search warrant that was issued as part of the IPID

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investigation. These proceedings are pending in the High Court (Pretoria).

30.5 In November 2016, the North West SAPS team, led by Major General Mabula, commenced investigations into the conduct of IPID's investigation against Lt-Gen Phahlane. The North West SAPS investigation was commenced ostensibly at the behest of the SAPS Crime Intelligence Division for alleged "security threats" against Lt-Gen Phahlane, although the applicants maintain that this investigation was in fact instituted at the behest of Lt-Gen Phahlane. (The dispute is not material to the present application.)

31 As indicated, it is the investigations by the North West SAPS team into the IPID investigators that are the subject of concern in this application.

32 The North West SAPS investigations led to criminal charges being laid, by Major General Mabula, against the principal complainant in IPID's investigation into Lt-Gen Phahlane, Mr O'Sullivan.

33 On 4 January 2017, Major General Mabula laid charges against Mr Paul O'Sullivan and his assistant, Ms Sarah-Jane Trent for their alleged involvement in IPID's investigation against Lt-Gen Phahlane. Mr O'Sullivan and Ms Trent were charged with fraud, conspiracy to contravene section 33(5) of the IPID Act, as well as extortion, contravention of section 18(b)(v) of the Prevention and Combatting of

Corrupt Activities Act. The case against them is, *inter alia*, that, on 9 November 2016, Mr O'Sullivan and Ms Trent impersonated IPID officers when they attended at Lt-Gen Phahlane's home at Sable Hills, in the company of two of the IPID investigators, Mr Mahlangu and Mr Binang.

34 In May 2017, the two IPID investigators, Mr Mahlangu and Mr Binang, were joined as co-accused in the criminal prosecution of Mr O'Sullivan and Ms Trent.

34.1 Mr Mahlangu and Mr Binang first learned that there were subject to criminal investigation on 29 April 2017, when they were called and so informed by Brigadier Ncube.

34.2 On 3 and 9 May 2017, Mr Mahlangu and Mr Binang met with Brigadier Ncube in relation to the criminal investigation, and warning statements were taken from them. On 9 May 2017, they were formally summoned to appear in the Pretoria Regional Court on criminal charges.

34.3 On 30 May 2017, Mr Mahlangu and Mr Binang were formally joined as co-accused in the prosecution of O'Sullivan and Trent.

34.4 Mr Mahlangu and Mr Binang are charged with (amongst others) conspiring with Mr O'Sullivan and Ms Trent to contravene the IPID Act, and to commit fraud and extortion.

34.5 Although the merits of the charges against the two IPID investigators are not material to the present application, the

applicants maintain that the charges are spurious and are unlawfully concocted to obstruct IPID's investigation against Lt-Gen Phahlane. Notably in this regard, the prosecution against all four accused was struck off the roll on 8 November 2017 for unreasonable delay in the proceedings.

- 35 The SAPS investigation of Mr Mahlangu and Mr Binang precipitated the applicants' institution of the main case.

The main case

- 36 One of the concerns raised in the main case is that the members of the North West SAPS team tasked with investigating the IPID investigators – who include Major General Mabula, Brigadier Ncube, Lieutenant Colonel Dawood and Brigadier Kgorane – are themselves the subject of complaints that are being investigated by IPID, and by the very same IPID investigators who the North West SAPS team are now investigating.
- 37 I attach a table which details the investigations that are being conducted by IPID's Mr Mahlangu and Mr Binang, marked "RJM1". The table was prepared by IPID's Head: Investigation and Information Management, Mr Matthews Sesoko, together with Mr Mahlangu and Mr Binang.
- 38 As appears from the table (and as is detailed in the main case), Brigadier Ncube, Lieutenant Colonel Dawood, Brigadier Kgorane and Major General Mabula are all subject to criminal investigation by the IPID – and specifically by Mr Mahlangu, Mr Binang and Mr Raphesu. The

complaints under investigation are serious and include charges of contempt of court (eg. under Littleton CAS 309/02/2017); kidnapping and defeating the ends of justice (eg. Sandton CAS 688/02/2017); and charges of torture, murder and assault GBH (eg. under Akasia CAS 123/06/2006; Mogwase CAS 91/04/2008; Potchefstroom CAS 175/04/2008; Kanana CAS 188/01/2010; Klerksdorp CAS 113/02/2010).

- 39 In addition to the cases referred to in paragraph 38 and in the table RJM1, the North West SAPS team, including the sixth respondent, Col. S.M. Reddy, is also the subject of an IPID investigation under Pretoria Central CAS 534/05/2017. The case relates to charges of defeating the ends of justice. The allegations are summarised in the document attached hereto as annexure "RJM2" as follows:

"During the investigation of the allegation of Corruption and Money Laundering against Lieutenant General J.K Phahlane, the former Acting National Commissioner as per CCN 2016030085, it is alleged that Lt General JK Phahlane abused his powers and in conspiracy with Lt General BB Motswenyane the Provincial Commissioner: North West, Major General MA Makhele, the former Acting Divisional Commissioner: Crime intelligence. They established a team from North West Detective lead by Major General NJ Mabula to interfere with IPID investigation against Lt General Phahlane and to interfere with witnesses under a false presence of security breach."

40 In all of the abovementioned cases under investigation by IPID, the implicated SAPS members were reporting to Major General Mabula. Some witnesses in those cases alleged that Major General Mabula was aware of the torture and that he even ordered further torture on victims (eg. in Mogwase CAS 91/04/2008 and Potchefstroom CAS 175/04/2008).

41 In instituting the main case, the applicants sought the following primary relief:

41.1 A final interdict to prevent Lt-Gen Phahlane (then Acting National Commissioner) and the North West SAPS Team under Major General Mabula to continue investigating the IPID investigating officers; and

41.2 An order declaring that it is unlawful and/or unconstitutional for any member of the SAPS to undertake or oversee an investigation into a member of IPID where that SAPS member has a personal interest in such investigation or is himself or herself the subject of an IPID investigation.

42 The applicants' contentions motivating the relief in the main case are:

42.1 First, that it is unlawful and unconstitutional for any member of the SAPS to undertake or oversee a police investigation in respect of which he or she has a personal interest; and

42.2 Second, that it is especially unlawful and unconstitutional for any member of the SAPS to undertake or oversee a police investigation in respect of an IPID member, when that IPID member is investigating the SAPS member concerned.

43 The first proposition applies to any person who is being investigated by the SAPS for a crime – not merely IPID investigators. It flows from the constitutional and statutory duties of members of SAPS, as organs of state and functionaries exercising public power under the SAPS Act and in accordance with the SAPS Code of Conduct.

44 SAPS members must –

44.1 act in accordance with the Constitutional principles of legality, rationality, accountability and transparency as imposed by sections 1(c), 1(d), 198(c), 199(5), and 199(8) of the Constitution;

44.2 maintain a high standard of professional ethics as required by section 195(1)(a) of the Constitution when discharging their duties or otherwise exercising any power conferred, or incidental to the powers conferred under the SAPS Act. This obligation includes a duty to avoid a conflict of interests;

44.3 exercise any power conferred, or incidental to the powers conferred under the SAPS Act impartially, fairly, equitably and without bias as is required by section 195(1)(d) of the

Constitution. This obligation includes a duty to avoid a conflict of interests;

44.4 be accountable for the exercise any power conferred, or incidental to the powers conferred under the SAPS Act as contemplated in section 195(1)(f) of the Constitution; and

44.5 comply with the SAPS Code of Conduct when carrying out their functions or exercising any power conferred, or incidental to the powers conferred under the SAPS Act. They must, accordingly -

44.5.1 uphold the Constitution and the law (SAPS Code of Conduct paragraph 2(a));

44.5.2 co-operate with all interested parties in the community and the government at all levels (SAPS Code 2(a));

44.5.3 act with integrity (SAPS Code 3(a));

44.5.4 act in a manner that is impartial, courteous, honest, respectful, transparent and accountable (SAPS Code 3(f));

44.5.5 exercise their powers responsibly (SAPS Code 3(g)); and

44.5.6 work towards preventing any form of corruption (SAPS Code 3(h)).

P.J.



- 45 The notion that any member of the SAPS can undertake or oversee a police investigation in respect of which he or she has a personal interest is contrary to these principles and obligations.
- 46 The second proposition – that it is especially unlawful and unconstitutional for any member of the SAPS to undertake or oversee a police investigation in respect of an IPID member, when that IPID member is investigating the SAPS member concerned – flows from the constitutional and statutory requirement of an independent IPID.
- 46.1 The members of the SAPS are constitutionally and statutorily obliged to respect and protect the IPID's independence. This duty flows from section 206(6) of the Constitution and the IPID Act.
- 46.2 To give effect to the Constitutional guarantee of independence and to ensure the effective of IPID, the IPID Act:
- 46.2.1 specifies that the IPID is independent from the SAPS (section 4(1));
- 46.2.2 requires each organ of state to assist the IPID to maintain its impartiality and to perform its functions effectively (section 4(2));
- 46.2.3 requires the IPID to independently and impartially investigate identified criminal offences allegedly

P-J



committed by members of SAPS and Municipal Police Services (section 2(d));

46.2.4 requires the members of SAPS to provide full cooperation to the IPID (section 29(2)); and

46.2.5 requires the members of SAPS not to interfere, hinder or obstruct the IPID from exercising its powers or performing its functions (section 33(1)).

- 47 The notion that members of the SAPS who are themselves the subject of pending IPID complaints can undertake or oversee investigations of IPID members – and specifically, the IPID members who are conducting the investigation against the – is, I submit, wholly at odds with these principles and legal obligations.

The status of the main case

- 48 The applicants' prosecution of the main case was interrupted before the exchange of pleadings was complete, by the termination of Lt-Gen Phahlane's appointment as acting National Commissioner of the SAPS on 1 June 2017.
- 49 The applicants sought to engage with the new acting National Commissioner, Lt-Gen Mothiba in an effort to resolve the disputes of principle in the case and specifically, to prevent the North West SAPS



team from conducting any further investigations against the IPID investigators. Thus –

49.1 On 8 June 2017, the applicants' attorneys addressed correspondence to the State Attorney, proposing that agreement be reached with the new acting National Commissioner on the issues raised in the matter: namely, that where SAPS is to investigate IPID members for alleged crimes, such investigations shall be overseen by SAPS officials who have no personal interest in the investigations and are not themselves the subject of IPID investigations. The applicants also sought an undertaking that Major General Mabula, Lt-Gen. Motswenyane and Brigadier Ncube would not continue to undertake the investigation of the IPID investigators, Mr Mahlangu and Mr Binang. This letter is attached marked "RJM3".

49.2 On 21 June 2017, the applicants' attorneys met with the State Attorney, in an effort to reach agreement on the above issues, and to dispose of the pending proceedings. IPID undertook to provide the SAPS with information to enable the SAPS to identify which SAPS officials who are subject to IPID investigations are investigating those same IPID officials, with a view to removing those SAPS officials from the investigations. It was agreed that the meeting would reconvene as soon as possible.

49.3 On 13 July 2017, the applicants' attorneys addressed a letter to the State Attorney and to Major General Johnson, the Divisional

Commissioner of Detective Services summarising the outcome of the meeting of 21 June 2017, and furnishing a table setting out the details of IPID's investigations into the SAPS members being investigated by the IPID Investigators, Mr Mahlangu and Mr Binang. I attach this letter marked "RJM4" and proof of delivery as "RJM5" and "RJM6".

50 The present status of the main case is as follows:

50.1 The founding papers were filed on 25 May 2017.

50.2 An answering affidavit was filed by Major General Mabula on 8 June 2017.

50.3 An answering affidavit was filed by Lt-Gen Phahlane on 14 August 2017.

50.4 The Minister has not filed a notice to oppose or abide in the matter.

50.5 No replying affidavit has yet been filed.

The developments necessitating this application

51 IPID had hoped that the main case would be resolved by engaging with the new Acting National Commissioner of the SAPS, Lt-Gen Mothiba. However, it has become apparent that the change in leadership at the SAPS has not resulted in a change in position on the critical principled issue in dispute – namely, whether members of the SAPS who are being

investigated by IPID investigators, are entitled, in turn, to investigate those IPID Investigators.

52 This is the untenable situation that continues to prevail – and is escalating – in respect of the IPID investigators who are investigating Lt Gen Phahlane and members of the North West SAPS team.

53 During or about 9 November 2017, it came to the applicants' attention that Major General Mabula and the North West SAPS team were continuing to investigate the IPID investigators, Mr Mahlangu and Mr Binang. This is despite the fact that IPID had specifically advised Major General Johnson, the Divisional Commissioner of Detective Services, the State Attorney (Mr T Mukasi) of the investigations that Mr Mahlangu and Mr Binang were conducting in respect of members of the North West SAPS Team. The SAPS was thus well advised of the obvious conflicts of interest arising from the North West SAPS team's investigations against these IPID investigators.

54 The continued involvement of the North West SAPS team in investigations against the IPID investigators was confirmed in correspondence that the applicants' attorneys received from the State Attorney on 10 November 2017, attached marked "RJM7". The State Attorney's letter was a response to a letter of demand sent by the applicants' attorneys on 9 November 2017, attached marked "RJM8".



55 Moreover, it is now clear that a third investigator involved in IPID's investigation of Lt-Gen Phahlane, Mr Raphesu, is also under criminal investigation by the North West SAPS team. These charges are also in relation to the prosecution of Mr O'Sullivan and Ms Trent and their involvement in IPID's investigation of Lt Gen Phahlane (as per Kameeldrift CAS 12/01/2017).

56 On 9 November 2017, Mr Raphesu was presented with allegations relating to charges of the following crimes –

56.1 Contravening section 33(ii) of the IPID Act by disclosing confidential IPID information to Ms Sarah-Jane Trent on 14 December 2016;

56.2 Contravening section 18(2)(a) of the Riotous Assemblies Act 17 of 1956 and conspiring to contravene section 33 (ii) of the IPID Act by joining a secret WhatsApp group created by Sarah Jane Trent where confidential IPID information was disclosed to Ms Trent between 15 December 2016 and 9 February 2016;

56.3 Contravening section 33 (ii) of IPID Act by disclosing confidential IPID information (including motor car ownership details and ID numbers) to Ms Trent on 25 January 2017;

56.4 Contravening section 21 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 by providing confidential IPID information to Ms Trent and by aiding Ms Trent, Mr O'Sullivan, Mr

Mahlangu and Mr McBride to commit corruption on 14 December 2016 and 25 January 2017;

56.5 Contravening section 4(1)(a)(i)(ii) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 by agreeing to divulge confidential information of IPID to a non-member, on 14 December 2016 and 25 January 2017, which amounted to misuse of information acquired in the course of exercise of powers arising out of statutory constitutional obligations amounting to a violation of legal duties.

56.6 I attach a copy of the allegations as presented to Mr Raphesu on 9 November 2017, marked "RJM9".

57 Of grave concern is that the SAPS officer charged with the investigation of Mr Raphesu – Brigadier Ncube – is himself the subject of an IPID investigation that is currently being conducted by Mr Raphesu, and in respect of which two Deputy Directors of Public Prosecution have recommended prosecution.

58 Since February 2017, Mr Raphesu has been involved in investigating two related cases against Brigadier Ncube and Lt-Col Dawood and Brigadier Kgorane (dockets Lyttleton 309/2/17 and Sandton 688/2/17), which concern the unlawful arrest (in contempt of a court order), kidnapping and intimidation of Mr O'Sullivan and his assistant Ms Trent. Ms Trent's complaint is that she was unlawfully arrested by Brigadier Kgorane, cuffed with cable ties and kept in isolation without her rights having been

P.J

explained to her. She was not presented with a warrant for her arrest nor allowed to contact her lawyer or relatives. Ms Trent's cellular phone was stolen and illegally tapped. The available evidence presents a case for kidnapping, theft and intimidation.

- 59 In addition to the above, Mr Raphesu has since February 2017 been investigating a complaint of kidnapping and contempt of court lodged by Mr O'Sullivan. Mr O'Sullivan's complaint is that he was arrested in contempt of a court order; that he was not presented with a valid warrant of arrest; and was intimidated. The evidence shows that there is a case of fraud in respect of Mr O' Sullivan's unlawful arrest as well as defeating the ends of justice.
- 60 In May 2017, Mr Raphesu informed Brigadier Ncube, Lt-Col Dawood and Brigadier Kgorane of IPID's investigation of these cases, and requested them to submit warning statements.
- 61 IPID sent the dockets of Mr Raphesu's investigation of the cases to the NPA. I attach marked "**RJM10**", a memorandum that the Deputy Director of Public Prosecutions (Gauteng, Pretoria) and Senior Advocate, Mr F.W. Van der Merwe addressed to the Acting Director of Public Prosecutions (Gauteng, Pretoria), Mr George Baloyi, in respect of these investigations on 31 May 2017. The memorandum is also endorsed and signed by the Deputy Director of Public Prosecutions (Gauteng, Pretoria) and Senior Advocate, Mr H.E. Van Jaarsveld. As appears from the memorandum:

P-J



- 61.1 The Deputy DPP and the Senior State Advocate found prima facie evidence of unlawful arrest (in contempt of a court order), kidnapping, fraud and defeating the ends of justice in respect of the arrest, by Brigadier Ncube and Colonel Dawood, of Mr O'Sullivan.
- 61.2 The Deputy DPP and the Senior State Advocate also found prima facie evidence of kidnapping, theft (of a cell phone) and intimidation, in respect of the arrest of Ms Trent, by Colonel Dawood and Mr Kgorane.
- 61.3 The Deputy DPP and the Senior State Advocate concluded by advising that, in the light of the prima facie evidence, "prosecution must be instituted" against the SAPS members. The recommendation reads as follows:

"Col Dawood appears to be a suspect in both dockets. Brig Kgorane and Ncube (appears) not to be involved in both dockets. It is possible to investigate further links and to connect the various accused and maybe even others in one case.

However, the matters can also proceed separately and action can be immediately instituted despite the further outstanding investigation.

The dockets already constitute prima facie cases. Adv. Van Der Merwe and I am therefore of the view that prosecution must be instituted in the Regional Court. I am aware and have been

informed that the decision cannot be made by me and will be taken at another level of authority.

I have to make it clear that in my view a failure to prosecute will be an injustice to the complainants and the public at large. If it is decided not to proceed with prosecution for whatever reason, care should be taken to that the decision will withstand the requirements for a Nolle Prosequi certificate. The possible delictual liability of both the NPA and SAPS should also be taken into account".

61.4 Notwithstanding this recommendation, it appears that no steps have been taken by the DPP to institute prosecution against the implicated members of the North West SAPS team.

62 On 9 November 2017, Brigadier Ncube attended at the applicants' attorney's offices in Pretoria to inform him of the criminal charges that SAPS was investigating against him, and to take Mr Raphesu's warning statement. At this meeting, the applicants' attorney of record, Mr Jac Marais, advised Brigadier Ncube that it was unlawful for the Brigadier to conduct the investigation against Mr Raphesu as Mr Raphesu was, to Brigadier Ncube's knowledge, presently investigating him for misconduct. Brigadier Ncube responded by insisting on taking the warning statement, and threatened to apply for a J50 warrant to arrest Mr Raphesu if he refused to cooperate. I refer to the confirmatory affidavit of Mr Jac Marais, the applicants' attorney of record who was present at the meeting. "RJM11"

63 From these recent developments, it is clear that –

63.1 A key issue of legal principle raised in the main case, which the applicants had sought to resolve with the acting National Commissioner, remains in dispute. The undertaking that IPID sought in respect of the investigations that the North West SAPS team is conducting against the IPID investigators has been effectively refused.

63.2 The position adopted by the SAPS seriously compromises the independence of IPID. The result is that IPID's investigators cannot function effectively and independently, without fear of reprisal and retaliatory investigation by the SAPS officers that they are required to investigate.

THE JOINDER OF THE NATIONAL COMMISSIONER

64 There can, I submit, be no dispute that the National Commissioner must be joined in the main case, in his or her official capacity. The Acting National Commissioner, General Mothiba, has a substantial legal interest in the relief sought in the main case, as it concerns the management of the SAPS and the lawful conduct of the powers vested in members of the SAPS. Under s 207 of the Constitution and s 11 of the SAPS Act, the National Commissioner of the police service is empowered and obliged *"to control and manage the police service"*.

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- 65 The applicants' failure to join the National Commissioner *nomine officio* was an oversight. In the answering affidavits filed in the main case, the respondents have taken issue with the non-joinder of the National Commissioner *nomine officio*. The applicants hereby seek to remedy that defect.

THE INTERIM INTERDICT

- 66 I have set out above the conduct of the second to sixth respondents in relation to the IPID investigators, Mr Binang, Mr Mahlangu and Mr Raphesu. I have also set out the legal obligations of the SAPS members in the exercise of their powers and in respect of IPID.
- 67 The IPID investigators have the right to an impartial and independent investigation and a fair trial. These rights are directly and inevitably infringed by the conflict of interest that arises when they are subject to investigation by members of the SAPS that have a personal interest in the investigation of the IPID investigators – because they are themselves being investigated by the IPID investigators for misconduct.
- 68 The investigation of the IPID investigators by the second to sixth respondents also has a serious and ongoing, detrimental impact on the independence, impartiality and effectiveness of IPID and the investigations conducted by the IPID investigators.

P.J



- 69 In carrying out their investigations, IPID investigators are entitled to co-operation and assistance from members of the SAPS. Under s 4(2), the SAPS is obliged to "*assist the Directorate [IPID] to maintain its impartiality and to perform its functions effectively*". The conduct of the second to sixth respondents contravenes this requirement. For so long as IPID investigators fear that their investigations will be met with retaliatory counter-investigations by the SAPS members they are charged with investigating, the IPID investigators cannot reasonably be expected to properly carry out their duties effectively and without fear of reprisal.
- 70 The involvement of the North West SAPS team in investigating their IPID investigators also seriously undermines the public perception of IPID's independence and effectiveness. This is important because (as the Constitutional Court has found) the public perception of, and trust in, IPID as an independent investigative body, is itself constitutive of IPID's institutional independence and effectiveness. As an oversight body that depends on the receipt of public complaints and public cooperation in its investigations, IPID cannot operate effectively without the public trust in its independence from the SAPS.
- 71 There is no alternative remedy available that is adequate in the circumstances. As I have explained, IPID's attorneys have sought an undertaking from the Acting National Commissioner that the North West SAPS team will not conduct or oversee investigations against the IPID investigators, but this undertaking has not been given. Instead, yet

another IPID investigator involved in investigating complaints against members of the North West SAPS team, Mr Raphesu, is now under investigation by the North West SAPS team.

72 Accordingly, I submit that an interim interdict is required and appropriate relief in the circumstances.

73 I point out that the applicants have sought the interim interdict only against the second to sixth respondents, as these are the only SAPS members of the North West SAPS Detective Squad that are confirmed to be investigating the IPID investigators. (This is confirmed in Major General Mabula's answering affidavit filed in the main case.) I trust that, should other SAPS members from the North West SAPS Detective Squad, or from any other unit of SAPS, be the subject of an investigation by the IPID investigators, that the National Commissioner will take the necessary measures to ensure that such SAPS members will also not oversee or undertake investigations of the IPID investigators.

URGENCY

74 This matter is urgent at two levels.

75 First, Mr Binang, Mr Mahlangu and Mr Raphesu are all subject to ongoing investigation that impacts on their rights to a fair and impartial investigation. It is essential that no further damage is done to their rights. With every day that passes, the SAPS Investigating Team is able to

pursue the investigation unlawfully and in manner that fatally prejudices Mr Binang, Mr Mahlangu and Mr Raphesu's rights. This must end immediately.

76 Second, the current situation is diverting the attention of the IPID investigative team and making it impossible for them to finalise the investigation into the former Acting National Commissioner, Lt-Gen Phahlane. Presently, three of the four principal investigators involved in the Phahlane investigation are now subject to counter-investigations by the North West SAPS team. As a result of the counter-investigations, the accused IPID investigators are barred from approaching any of the witnesses involved in the complaints against them. Given that the SAPS complaints against the IPID investigators concerns the conduct of the IPID investigation itself (in particular the alleged involvement of Mr O'Sullivan and Ms Trent), all of the material witnesses in IPID's investigation are now off-limits to the accused IPID investigators.

77 It is hard to imagine a more serious matter within IPID's remit than it being required to investigate the former Acting National Commissioner for corruption and money-laundering. Yet its attempts to do so effectively and independently are being undermined by the conduct of the second to sixth respondents.

78 Moreover, the current situation is affecting not only IPID's investigation of Lt-Gen Phahlane, but also other investigations that are presently being conducted by the accused IPID investigators. This includes Mr

Raphesu's investigation of Ms Trent's complaint against Brigadier Ncube, Lt-Col Dawood and Brigadier Kgorane. As a result of the counter-investigation against Mr Raphesu, the implicated members of the North West SAPS team now have access to all the information and evidence that Mr Raphesu has obtained in his investigation against them. This situation plainly jeopardises IPID's investigation and places the complainants and witnesses at risk of intimidation by the very SAPS officers that are implicated in the complaint.

79 It is in the interests of justice that the impasse be resolved as speedily as possible. Accordingly, I submit that the matter is urgent.

80 In the circumstances:

80.1 the Notice of Motion sets shortened time periods for the Respondents to file answering papers; and

80.2 should it be required, the applicants will approach the Deputy Judge President and request an expedited special allocation for the hearing of the matter.

WHEREFORE the applicants pray for the relief set out in the notice of motion.



 ROBERT JOHN MCBRIDE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Garsfontein on this the 13th day of NOVEMBER 2017, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

CNT
70728876 Kgatla P-J
 COMMISSIONER OF OATHS
 Full names: Tuleng Johannes Kgatla
 Address: 277 Johnny Craassen Street
 Capacity: CONSTABLE



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[Handwritten signature]

P5

IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND THREE OTHERS / THE ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE AND FOUR OTHERS, IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION PRETORIA, UNDER CASE NUMBER 35894/2017

DETAILS OF IPID'S INVESTIGATIONS INTO SAPS MEMBERS AS AT 21 06 2017

N o	INITIAL, RANK AND PERSAL SURNAME, AND PERSAL NUMBER	STATION / UNIT OF EMPLOYMENT	STATION NAME AND CAS NUMBER	CHARGE	NOTIFICATION BY IPID OF ITS INVESTIGATION INTO SAPS MEMBER
1.	1.1. Brig. P.D. Ncube: 0619153-3 1.2. Brig. M.C. Kgorane: 0636751-8 1.3. Lt/Col. I. Dawood: 0530778-3	1.1.NW Provincial commander: Commercial Crime unit. NB: Held a Colonel rank at Potchefstroom DPCI before he was promoted to his current rank. 1.2.NW Provincial Commander: Organised Crime unit. NB: Held a Colonel rank at Klerksdorp DPCI before he was promoted to his current rank. 1.3.NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Lyttleton CAS: 309/02/2017	Contempt of Court	May 2017 Members were notified and they refused to submit their warning statements citing that they will await warrants of their arrests.
2.	2.1. Brig. P.D. Ncube: 0619153-3 2.2. Brig. M.C. Kgorane: 0636751-8	2.1.NW Provincial commander: Commercial Crime unit. NB: Held a Colonel rank at Potchefstroom DPCI before he was promoted to his current rank. 2.2. NW Provincial Commander: Organised Crime unit. NB: Held a Colonel rank at Klerksdorp DPCI before he was promoted to his current rank.	Sandton CAS: 688/02/2017	Kidnapping, Intimidation, Theft of a Cellphone and Defeating the Ends of Justice	May 2017 Members were notified and they refused to submit their warning



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43

23

	2.3. Lt/ Col. I. Dawood: 0530778-3	2.3. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.			statements citing that they will await warrants of their arrests.
3.	3.1. Sgt S.S. Kutumela: 0615974-5 3.2. Lt/Col. Manamela: 0166096-9 3.3. Maj. Gen. N.J.Mabula: 0603397-1	3.1. Klerksdorp DPCI 3.2. Retired 3.4. NW: Deputy Provincial Commissioner: Detectives. NB: He was the head of DPCI/ Organised Crime units.	Akasia CAS: 123/06/2006 (Mmakau matter)	Torture and Murder	Still under investigation
4.	4.1. Lt/ Col. I.Dawood: 0530778-3 4.2. Sgt S.S.Kutumela: 0615974-5 4.3. Cst. G.M. Pebane: 7000247-9 4.4. Capt. T.Maano: 0602001-1 4.5. W/O. P.A Matthyser: 04307736-3 4.6. W/O. P.B. Vemeleun: 0428151-9	4.1. NW Provincial Commander: Vehicle Identification Section NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 4.2. to 4.8 Klerksdorp DPCI 4.4. Deceased	Kanana CAS 188/01/2010	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.

	4.7. W/O. M.P.Tshiponyane: 0616916-3				
	4.8. Const. Mashoko				
5.	5.1. Lt/Col. I.Dawood: 0530778-3 5.2. Sgt. S.S.Kutumela: 0615974-5 5.3. Cst. G.M. Pebane: 7000247-9 5.4. Capt. T.Mano: 0602001-1 5.5. W/O. P.A Matthyser: 04307736-3 5.6. W/O. P.B. Vemeleun: 0428151-9 5.7. W/O. M.P.Tshiponyane: 0616916-3 5.8. Const. Mashoko	5.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 5.2. to 5.8 Klerksdorp DPCI 5.4. Deceased	Kanana CAS 222/01/2010	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.

5-5

6.	6.1. Lt/Col. I.Dawood: 0530778-3 6.2. Sgt. S.S.Kutumela: 0615974-5 6.3. Cst. G.M. Pebane: 7000247-9 6.4. Capt. T.Maano: 0602001-1 6.5. W/O. P.A Matthyser: 04307736-3 6.6. W/O. P.B. Vemeleun: 0428151-9 6.7. W/O. M.P.Tshiponyane: 0616916-3 6.8. Cst. Mashoko 6.9. Capt. A. Lebodi 6.10. W/O. B. Motlhabane	6.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 6.2. to 6.12 Klerksdorp DPCI, Potchefstroom DPCI and Rustenburg DPCI 6.4. Deceased	Mogwase 91/04/2008	CAS	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12th of April 2017.
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	6.11. W/O. Ramorwesi 6.12. W/O Mashaba 6.13. Capt. Ngcoko 6.14. Sgt S.Ratsoma				
7.	7.1. Lt/Col. I.Dawood: 0530778-3 7.2. Sgt S.S.Kutumela: 0615974-5 7.3. Cst. G.M. Pebane: 7000247-9 7.4. Capt. T.Maano: 0602001-1 7.5. W/O. B.Motlhabane 7.6. Capt. A. Lebodi:	7.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 7.2. to 7.6. Klerksdorp DPCI and Potchefstroom DPCI 7.4. Deceased	Potchefstroom 175/04/2008	CAS	Assault GBH (Torture) Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
8.	8.1. Lt/ Col. I.Dawood: 0530778-3 8.2. Sgt. S.S.Kutumela: 0615974-5	8.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 8.2. to 8.5 Klerksdorp DPCI and Potchefstroom DPCI.	Klerksdorp 94/04/2008	CAS	Assault GBH (Torture) Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate.

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	8.3. Capt. T.Maano: 0602001-1	8.3. Deceased				The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
	8.4. W/O. B.Motlhabane					
	8.5. Capt. A. Lebodi:					
9.	9.1. Lt/ Col. I.Dawood: 0530778-3	9.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Klerksdorp 113/02/2010	CAS	Assault GBH (Torture)	
	9.2. Sgt. S.S.Kutumela: 0615974-5	9.2. to 9.14. Klerksdorp DPCI, Mahikeng DPCI and Potchefstroom DPCI				
	9.3. Cst. G.M. Pebane: 7000247-9	9.4. Deceased				
	9.4. Capt. T.Maano: 0602001-1					Members were notified and the matters are awaiting centralization certificate from NDPP.
	9.5. W/O. P.A Matthyser: 04307736-3					
	9.6. W/O. P.B. Vemeleun: 0428151-9					
	9.7. W/O. M.P.Tshiponyane: 0616916-3					
	9.8. Cst.P.Mashoko					

48

P-5

	9.9. W/O. S.J, Motlhaoleng: 09167668 9.10. Colonel. Dince 9.11. Cst. Mosala 9.12. W/O Moswang 9.13. W/O Thaga 9.14. Two unnamed white police male officers				
10	10.1. Lt/ Col. I.Dawood: 0530778-3 10.2. Sgt. S.S.Kutumela: 0615974-5 10.3. Cst. G.M. Pebane: 7000247-9 10.4. Capt. T.Maano: 0602001-1 10.5. W/O. P.A Matthyser 04307736-3	10.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 10.2. to 9.14. Klerksdorp DPCI, Mahikeng DPCI and Potchefstroom DPCI 10.4. Deceased	Klerksdorp 112/02/2010 CAS	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12th of April 2017.

P-5

	10.6. W/O. P.B. Vemeleun: 0428151-9 10.7. W/O. M.P.Tshiponyane: 0616916-3 10.8. Cst.P.Mashoko 10.9. W/O. S.J, Motlhaoleng: 09167668 10.10. Colonel. Dince 10.11. Cst. Mosala 10.12. W/O. Moswang 10.13. W/O. Thaga 10.14. Two unnamed white police male officers				
11	11.1. Maj. Gen. N.J.Mabula: 0603397-1 11.2. Colonel. M.Manamela: 0166096-9	11.1. NW: DPC: Detectives 11.2. Retired	Germiston 150/06/2017 (emanates Benoni 860/05/2006)	CAS: from CAS:	Tracing operation of a burglary at Benoni Police Station and the alleged Torture. Still under investigation

52

11.3. Lt/ Col. I.Dawood: 0530778-3	11.3. NW Provincial Commander: VIS		NB: For alleged murder see Akasia/ Mmakau matter
11.4. Sgt S.S.Kutumela: 0615974-5	11.4. Klerksdorp DPCI		
11.5. W/O. M.Makhubo: 0455718-1	11.5. Gauteng PC investigation Team		
11.6. Lt/ Col. N.Dube: 0627038-7	11.6. Roodepoort OCI unit		
11.7.W/O. P.Mompati: 0511478-1	11.7. Deceased		
11.8.W/O. M.Mashao: 0616058-1	11.8. Roodepoort OCI unit		
11.9. W/O. V.Makholoane: 0453488-3	11.9. Pretoria Central OCI unit		
11.10. W/O. A.Losaba: 0481668-7	11.10. Resigned		
11.11. W/O. I.Tlhapi: 0525059-5	11.11.Brits Detectives		

25

	11.12. Maj.Gen.(f) Mokoena: 0616424-2 11.13. Capt. T.Mano: 0602001-1 11.14. Brig. C.Kgorane: 0636751-8 11.15. W/O. S.Mzolo: 0462493-6 11.16. Cst. E.Ratau: 7001796-4	11.12. Mpumalanga head of DPCI 11.13. Deceased 11.14. NW Provincial Head: Organised Crime unit 11.15. Gauteng Railway police (Germiston) 11.16. Resigned			
12	12.1. Brig. P.D. Ncube: 0619153-3 12.2. Brig. M.C.Kgorane: 0636751-8 12.3. Lt/Col. I.Dawood: 0530778-3	12.1. NW Provincial commander: Commercial Crime unit. NB: Held a Colonel rank at Potchefstroom DPCI before he was promoted to his current rank. 12.2. NW Provincial Commander: Organised Crime unit. NB: Held a Colonel rank at Klerksdorp DPCI before he was promoted to his current rank. 12.3. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Pretoria Central CAS: 534/05/2017	Defeating the Ends of Justice	Still under investigation

12.4. Maj.Gen. N.J.Mabula: 0603397-1	12.4. NW: Deputy Provincial Commissioner: Detectives. NB: He was the head of DPCI/ Organised Crime units.			
12.5. Colonel. S.M.Reddy:	12.5. NW provincial detectives			
12.6. Lt/C ol.Mqaba	12.6. NW Provincial Detectives			
12.7. Capt. T.Molathegi: 7010283-0	12.7. Klerksdorp Anti-Corruption unit			



P-5

TABLE INDICATING WHETHER THE COMMANDING OFFICER OF THE SAPS MEMBER PRESENTING UNDER INVESTIAGTION BY IPID HAS BEEN INFORMED OF IPID'S INVESTIGATION AND A STATUS REPORT OF THE INVESTIGATION			
NO.	STATION NAME AND CAS NUMBER	CONFIRMATION THAT THE COMMANDING OFFICER OF THE SAPS MEMBER BEING INVESTIGATED BY IPID HAS BEEN INFORMED OF IPID'S INVESTIGATION INTO THAT PARTICULAR MEMBER	STATUS OF EACH IPID INVESTIGATION
1.	Lyttleton CAS 309/02/2017	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	DPP: queries (investigation)
2.	Sandton CAS: 688/02/2017	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	DPP: queries (Investigation)
3.	Akasia CAS 123/06/2006	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	Still under investigation
4.	Kanana CAS 188/01/2010	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
5.	Kanana CAS 222/01/2010	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.

54

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6.	Mogwase CAS 91/04/2008	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
7.	Potchefstroom CAS 175/04/2008	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
8.	Klerksdorp CAS 94/04/2008	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
9.	Klerksdorp CAS 113/02/2010	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
10.	Germiston CAS: 150/06/2017 (emanates from Benoni CAS: 860/05/2006)	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	Still under investigation
11.	Pretoria Central CAS: 534/05/2017	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	Still under investigation



55

By Lt Col 2017-11-09



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X941, PRETORIA, 0001 City Forum Building, 114 Madiba Street, PRETORIA
Tel: (012) 399 0000, Fax: (012) 326 0408, Email: complaints@ipid.gov.za

SAPS MEMORANDUM

To: Office of the National Commissioner SAPS

From: Independent Police Investigative Directorate
Province

Subject: Initiation of Disciplinary Recommendations in terms of s30 of the IPID Act

Reference: Pretoria Central Cas 534/05/2017: Defeating the ends of justice:
CCN 2017050274

Suspects: Lt General JK Phahlane, Lt General BB Motswenyane, Major General MA Makhele, Major General NJ Mabula, Brigadier CM Kgorane, Brigadier PD Ncube, Col SM Reddy and Lt Col I Dawood.

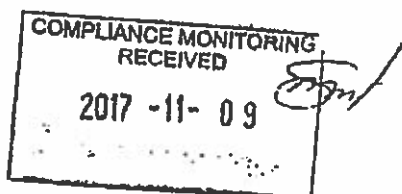
Summary of Allegations:

During the investigation of the allegation of Corruption and Money Laundering against Lieutenant General J.K Phahlane, the former Acting National Commissioner as per CCN 2016030085, it is alleged that Lt General JK Phahlane abused his powers and in conspiracy with Lt General BB Motswenyane the Provincial Commissioner: North West, Major General MA Makhele, the former Acting Divisional Commissioner: Crime Intelligence. They established a team from North West Detective led by Major General NJ Mabula to interfere with IPID investigation against Lt General Phahlane and to interfere with witnesses under a false presence of security breach.

The North West detective team comprises of: Major General NJ Mabula, Brigadier CM Kgorane, Brigadier PD Ncube, Col SM Reddy and Lt Col I Dawood.

Case Docket Contents:

1. In terms of section 30 of the IPID Act No. 1 of 2011 read with the SAPS Disciplinary Regulations issued on the 1 November 2016, you are hereby directed to initiate disciplinary proceedings against Lt General JK Phahlane (former acting National Commissioner), Lt General BB Motswenyane(PC North West), Major General MA Makhele (the former acting Divisional Commissioner: Crime Intelligence), Major General NJ Mabula (North West Detective), Brigadier CM Kgorane (North West Detective), Brigadier PD Ncube (North West Detective), Col SM Reddy (North West Detective) and Lt Col I Dawood (North West Detective).
2. All the necessary statements are attached in the docket for your attention.



PJ

[Signature]

3. Please find attached copies of the content of IPID Case Docket CCN 2017050274 containing the following information:

Reference	Case Docket Content
A1	Statement of Cedrick Nkabinde
A2	Statement of Lt General BB Motswenyane
A3	Statement of Major General MA Makhele
A4	Statement of Brigadier T Moyane
A5	Statement of Christiaan Hendrik Jooste
A6	Statement of Frederick Johannes Jacobus van der Walt
A7	Statement of Frederick Gerhardus Terblanche
A8	Statement of Captain J Coetzee
A9	Statement of Lt Col F H Kruger
A10	Statement of Lt Col J D Engelbrecht
A11	Statement of Mapula Hilda Morake
A12	Statement of Lt Col G S Masiangwako
A13	Statement of Lungile Octavia Dhlamini
A14	Statement of Mpho Perceverence Ulla
A15	Statement of Peter Tshepo Khoadi
A16	Statement of Col C Trollope
A17	Statement of Brigadier L A Lombard
A18	Statement of Captain Erika van Schalkwyk
A19	Statement of Heleen Beukes
A20	Statement of D M Pillay
A21	Statement of Captain Alwyn Petrus du Preez
A22	Statement of Lt General K J Sitole
A23	Statement of Captain R S Malope
A24	Statement of Lt General E Mawela
A25	Statement of Major General C Annandale
A26	Statement of Brigadier ME Tsiloane
A27	Additional statement of Brigadier ME Tsiloane
A28	Statement of Lt General J M Nkomo
A29	Statement of Lt General D S De Lange

IPID Recommendation:

4. Based on the above information contained in the case docket, the IPID recommends that disciplinary steps is taken against Lt General JK Phahlane, Lt General BB Motswenyane, Major General MA Makhele, Major General NJ Mabula, Brigadier CM Kgorane, Brigadier PD Ncube, Col SM Reddy and Lt Col I Dawood for the Defeating the ends of Justice by countering IPID investigation into Lt General Phahlane under pretext that they were investigating security breach on Lt General Phahlane.
5. IPID recommends further that, Lt General JK Phahlane, Lt General BB Motswenyane, Major General MA Makhele, Major General NJ Mabula, Brigadier CM Kgorane, Brigadier PD Ncube, Col SM Reddy and Lt Col I Dawood be placed on precautionary suspension pending the finalization of criminal and departmental investigation as there is a prima facie evidence that they are continuing with interference and the abuse of power.

6. The following provisions Regulation 5(3) of the SAPS 2016 Disciplinary Regulations have relevance in the merits of this case;
- 6.1. Regulation 5(3)(a): Fails to comply with, or contravenes an Act, regulation or legal obligation;
 - 6.2. Regulation 5(3)(b)(ii): Performs any act or fails to perform any act with the intention to undermine the policy of the Service; or
 - 6.3. Regulation 5(3)(b)(iii): Performs any act or fails to perform any act with the intention not to comply with his or her duties or responsibilities.
 - 6.4. Regulation 5(3)(g): Prejudices the administration, discipline or efficiency of a department, office or institution of the State;
 - 6.5. Regulation 5(3)(t): Conduct himself or herself in an improper, disgraceful and unacceptable manner;
 - 6.6. Regulation 5(3)(u): contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her; and
7. Regulation 5(4) of the SAPS Disciplinary Regulations is also applicable and warrants the institution of an expeditious procedure as provided for in Regulation 9.

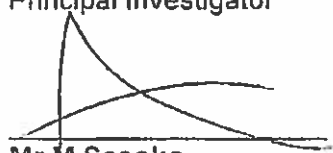
Conclusion

IPID awaits your report relating to when the disciplinary action will be instituted and how the matter was finalized to enable the institution to comply with the provisions of section 30(c) of the IPID Act.

Kind Regards


Mr CM Nkabinde
Principal Investigator

2017/11/09
Date


Mr M Sesoko
Chief Director
Investigations and Information management
IPID: National Office

09/11/2017
Date



Adams & Adams

RJM3 59

Jac Marais <jac.marais@adamsadams.com>

**IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE // THE ACTING
COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE CASE NO. 35894/17**

1 message

Jac Marais <jac.marais@adamsadams.com>

Thu, Jun 8, 2017 at 2:28 PM

To: "tmukasi@justice.gov.za" <tmukasi@justice.gov.za>

Cc: Jac Marais <jac.marais@adamsadams.com>, Thando Manentsa <Thando.Manentsa@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>, Thandiwe Seboletswe <Thandiwe.Seboletswe@adamsadams.com>, Adele Campher <Adele.Campher@adamsadams.com>, Mia Labuschagne <Mia.Labuschagne@adamsadams.com>, "beaukesh2@saps.gov.za" <beaukesh2@saps.gov.za>, Mariq Van Der Westhuizen <mariq@bdk.co.za>, "pdp@bdk.co.za" <pdp@bdk.co.za>, "PaMokoena@justice.gov.za" <PaMokoena@justice.gov.za>

Our ref: JSM/VC/tws/ LT3602

STATE ATTORNEY

Pretoria

Dear Sirs

**IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE // THE ACTING
COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE CASE NO. 35894/17**

Please see the **attached** correspondence in the above matter.

Kind regards

Jac

Jac Marais

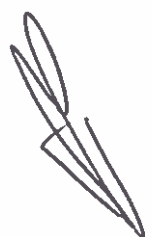
Partner

Adams & Adams

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FAX +27 12 432 6599

EMAIL jac.marais@adamsadams.com



PRETORIA OFFICE: Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor,
Pretoria, South Africa

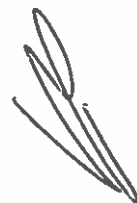
PO BOX 1014, Pretoria 0001, South Africa

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ATTORNEYS
Patents | Trade Marks | Copyright | Designs | Commercial | Property | Litigation
www.adamsadams.com

 Letter to the State Attorney 08.06.2017.PDF
593K

PJ



PATENT, TRADE MARK, COPYRIGHT, DESIGN,
COMMERCIAL, PROPERTY & LITIGATION ATTORNEYS

EMAIL MESSAGE

To: tmukasi@justice.gov.za

From: jac.marais@adamsadams.com

Cc: thando.manentsa@adamsadams.com
varana.chutterpaul@adamsadams.com
thandiwe.seboletswe@adamsadams.com
pdp@bdk.co.za
beaukesh2@saps.gov.za

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WEB www.adamsadams.com

Our Reference: JSM/VC/TDM/tws/LT3602

Your Reference:

Date: 8 June 2017

The State Attorney
Pretoria

Dear Sirs

**IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND THREE OTHERS //
THE ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE
AND FOUR OTHERS (CASE NO. 35894/17)**

1. We refer to the litigation pending under case number 35894/2017 ("the urgent application").
2. We are addressing this correspondence to you with a view to putting an end to the litigation in a sensible manner that would avoid all parties (who are all organs of state) incurring further unnecessary legal costs.
3. We have noted the removal of the acting national commissioner, Major General J.K. Phahlane ("Maj-Gen Phahlane"). As you are aware, the presently pending urgent application arises from charges laid by Maj-Gen Phahlane against two of the IPID investigators who were investigating him and the manner in which responsibility for investigating Maj-Gen Phahlane's charges was allocated within SAPS.

OFFICES: Pretoria | Johannesburg | Cape Town | Durban ASSOCIATED OFFICES: Angola | Botswana | Burundi | Cameroon (OAFI) | Egypt | Ghana | Kenya | Lesotho | Libya | Mozambique (ARIPO) | Namibia | Nigeria | Swaziland | Tanzania (including Zanzibar)

Partners: Gavin Kotze, Howard Rogers, Dario Tonzani, Johan du Preez, Colin Mackenzie, Nelia Hickman, Mariette du Plessis, Samantha Copeling, Gérard du Plessis, Phil Pla, Louis van der Walt, Chaméle Roux, Russell Bagnall, Simon Brown, Grégor Waller, Joseph Goedhals, Blain de Villiers, André Visser, Eugene Honey, Darren Olivier, Nolwazi Gcaba, David Scheepers, Megan Moerdijk, Kelly Thompson, Nolo Khechane, Janice Galvad, Nishi Chetty, Lucy Signorelli, Steven Yeates, Johnny Rendeiro, Leander Opperman, Jenny Pienaar, Danie Dahmen, Alexis Apostolides, Babs Daby, Debbie Mariotti, Lauren Ross, Dale Healy, Mandy Swanepoel, Roelof Gravé, Nicolette Koch, James Davies, Niccy Gamet, Vashen Pillay, Godfrey Budell, Jac Marais, Nthabisheng Phaswana, Nishan Singh, Pieter Visagie, Dieter Walhogen, Ferdi Myburg, Somayya Khan, Danie Strachan, Werina Griffiths, Sajida Gamieldien, Jani Cronje, Wilhelm Prozesky, Nicolette Biggar, Jean-Paul Rudd, Andrew Malver, Venashile Manner, Linds Semuter, Charl Potgieter, Stephen Halls, Alicia Kabini, Alicia van der Walt, Andrew Phillips

Senior Consultants: Esmé du Plessis, Chris Job, Craig Forbes, Tim de Wet, Gavin Noeth, Ize Dijkstra

Associates: Deborah Mariscano, Therese Davis, Claire Boltuna, Udi Pillay, Amina Suliman, Nicole Smalberger, Renée Nienaber, Nondumiso Msimang, Wynand Fourie, Wensel Britz, Kim Rampersadh, Zinoid Olivier, Uta-Mil Garmata, Jan-Harm Swanepoel, Dazala Luvhimbi, Kerry Wiers, Richard Wiers, Kareema Shok, Karen Lam, Femke Van Dyk, Jean-Louis La Grange, Vuyokazi Ndumbe, Nicole Harworth, Jevonne Le Roux, Tanyika Nkomo, Lisa Van Zuydam, Thando Manentsa, Alisa Noyanah, Helgard Jansz Van Rensburg, Thamaray Cavender, Catherine Wojtowicz, Farzana Rassool, Melissa Dreyer, Nevashni Pillay, John Ndlovu, Jeanette Visagie, Misha Van Heekerk, Dineo Madibedi, Robyn Müller-Mabasa, Roman Peters, Julie-Anne Toner, Jean-François Brunet, Shari Van Der Bergh, Reinhardt Biermann, Ute-Mari Van Dyk, Alicia Heyneke, Thembu Khoro, Lovathee Mandy, Shaina Sleyan, Varana Chutterpaul, Gabrielle Dewey, Sharine Viljoen, Shmuel Moch, Faranah Marjoo, Neale Christy, Maureen Makoko, Sophia Czumacki, Dami Cyster, Christoff Pretorius, Jamesel Hamid, Charlene Rupnarain, Nicholas Rosslee, Shivani Singh, Tammylyn Avis, Robyn Adams, David Legge, Yingsani Nyambi, Alegang Mogale, Lebogang Mosala, Esmé Voogt, Nolo Gungubele, Pamela Makuleke

Chief Operating Officer: Dave Forbes

Level 4 BBBEE Contributor rating (amended codes)

4. The core legal contention of IPID in the pending application is that, where the SAPS is to investigate IPID members for alleged crimes, the Constitution and the law requires that such investigations be undertaken and overseen by SAPS officials who have no personal interest in the investigations and who are not themselves the subject of IPID investigations.
5. We do not believe that this legal proposition can or should be challenged by the SAPS.
6. In the circumstances, we invite the new Acting National Commissioner to agree to the order in paragraph 2 of the notice of motion:

"It is declared that it is unlawful and/or unconstitutional for any member of the South African Police Service ("SAPS") to undertake or oversee an investigation into a member of the Independent Police Investigative Directorate ("IPID") where that SAPS member has a personal interest in such investigation or is himself or herself the subject of an IPID investigation."

7. If that agreement could be reached, then the only remaining issue would be the present investigation being undertaken by SAPS of the Third and Fourth Applicants.
 - 7.1. In this regard, we would invite the new Acting National Commissioner to make such proposals as he deems fit to ensure that these investigations are not undertaken or overseen by Maj-Gen Phahlane, the Second to Fourth Respondents and any other member of SAPS that has a personal interest in the investigations or is himself or herself the subject of an IPID investigations.
 - 7.2. If agreement can be reached in this regard, our clients would be quite prepared to accept undertakings made on behalf of the new Acting National Commissioner and would not require these to be included in a court order.
8. We await to hear from you as a matter of urgency. We and our clients are also quite prepared to attend a meeting to discuss these matter in an effort to reach agreement, if that would assist, provided that the meeting is scheduled urgently.
9. In an effort to allow the new Acting National Commissioner to consider this proposal properly, our clients are prepared to afford your clients a brief extension of the period to file an

answering affidavit. Accordingly, should the proposals above not result in settlement, your clients will be required to file their answering affidavits by Tuesday 13 June 2017.

10. We reiterate that the aforesaid offer is a *bona fide* attempt to resolve the matter. The offer is however made with prejudice and with full reservation of all our clients' rights.

Yours faithfully
ADAMS & ADAMS

J S MARAIS
Checked and signed by author and sent electronically

CC: THE MINISTER OF POLICE

P-5



From: Jac Marais
Sent: 13 July 2017 05:44 PM
To: headcrimeinvestigation@saps.gov.za
Cc: tmukasi@justice.gov.za; Varana Chutterpaul; Thando Manentsa
Subject: IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND 3 OTHERS / ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE AND FOUR OTHERS, IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA, CASE NUMBER 35894/2017
Attachments: EMAIL TO SAPS 23 06 2017.pdf; TABLE OF IPID_S INVESTIGATIONS IN SAPS MEMBERS 23 06 2017 (2).pdf
Categories: Printed

Our ref: JSM/VC/tws/LT3602

SOUTH AFRICAN POLICE SERVICE
Pretoria

ATTENTION: MAJOR GENERAL JOHNSON
DIVISIONAL COMMISSIONER DETECTIVE SERVICE

Dear Sirs

IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND 3 OTHERS / ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE AND FOUR OTHERS, IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA, CASE NUMBER 35894/2017

Please see attached.

Yours faithfully
Jac Marais
Partner

Adams & Adams

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FAX +27 12 432 6599
EMAIL jac.marais@adamsadams.com

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PJ



PATENT, TRADE MARK, COPYRIGHT, DESIGN,
COMMERCIAL, PROPERTY & LITIGATION ATTORNEYS

EMAIL MESSAGE

To: headcrimeinvestigation@saps.gov.za

CC: tmukasi@justice.gov.za

From: jac.marais@adamsadams.com

Adams & Adams

PRETORIA OFFICE: Lynnwood Bridge, 4 Davenport St,
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Our Reference: JSM/VC/tws/LT3602

Your Reference:

Date: 23 June 2017

SOUTH AFRICAN POLICE SERVICE

Pretoria

ATTENTION: MAJOR GENERAL JOHNSON
DIVISIONAL COMMISSIONER DETECTIVE SERVICE

Dear Sirs

IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND 3 OTHERS / ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE AND FOUR OTHERS, IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA, CASE NUMBER 35894/2017

1. We refer to previous correspondence, specifically our letter, dated 8 June 2017, and the meeting held on 21 June 2017.
2. At the meeting we were presented with a letter addressed to our offices, dated 26 May 2017. We had not received the letter prior to the meeting. It became apparent from the delivery report accompanying the letter that our e-mail address was entered incorrectly and that the letter accordingly never reached our server.
3. As you know, the meeting was called on the instructions of the Acting National Commissioner with a view to facilitating an agreement between IPID and the SAPS which would resolve the issues which form the subject matter of the pending proceedings.
4. Shortly after the meeting commenced, the legal representative for the Second, Third and Fourth respondents expressed concerns about certain concessions that were made, and, in particular in respect of the position adopted by the SAPS – that they agreed with the IPID that a SAPS official who is the subject of an IPID investigation, or who reports to a person who is the subject of an IPID

OFFICES: Pretoria | Johannesburg | Cape Town | Durban ASSOCIATED OFFICES: Angola | Botswana | Burundi | Cameroon (OAT) | Egypt | Ghana | Kenya | Lesotho | Libya | Mozambique (ARIPO) | Namibia
Nigeria | Swaziland | Tanzania (including Zanzibar)
Partners: Gavin Kotze, Howard Rogers, Dario Tanzani, Johan du Preez, Colin MacKenzie, Nelia Hickman, Mariëtte du Plessis, Samantha Copeling, Gérard du Plessis, Phil Pla, Louis van der Walt, Chamé le Roux, Lito-Mili Cornelia, Jan-Harm Swanepoel, Dalala Luvhimb, Kerry Wiers, Richard Wiers, Kareema Shaik, Karen Lam, Femke Van Dyk, Jean-Louis La Grange, Vuyolali Ndamse, Nicole Haworth, Jevonne Le Roux, Tayyiba Hada, Lisa Van Zuydam, Thando Mamenha, Alissa Nayanah, Helgard Janse Van Rensburg, Thamaray Govender, Catherine Wojtowicz, Farzana Rasool, Melissa Dreyer, Nevashni Pillay, John Ndlovu, Jeanette Visagie, Nisha Van Niekerk, Dineo Modibedi, Robyn Müller-Mabusa, Roman Pereira, Julie-Anne Tazer, Jean-François Buneau, Shani Van Der Bergh, Reinhardt Biermann, Lize-Mari Van Dyk, Alicia Heyneke, Thembi Khoza, Lavashnee Mandry, Deka Veeran, Varana Chatterpaul, Gabriele Dewey, Shanine Viljoen, Shmuel Moch, Farzanah Manjoo, Neale Christy, Maureen Makoko, Sophia Czarnocki, Danni Cyster, Christoff Pretorius, Jameel Hamid, Shaina Steyn, Charleen Rupnarain, Nicholas Rosslee, Shivani Singh, Tammylyn Avis, Robyn Adams, David Legge, Yingisani Nyambi, Lebogang Mosala, Denel Campbell, Ategang Mogole, Esné Voogt, Nola Gungubele, Pamela Makulele, Kanyisa Mapipa
Chief Operating Officer: Dave Forbes

Level 4 BBBEE Contributor rating (amended codes)

investigation, may not investigate any member of IPID. The concerns raised by the legal representative for the Second to Fourth respondents were not surprising in the light of the position that was adopted by his clients (the Second to Fourth respondents). That position appeared, however, to be at odds with the position that had been adopted at the meeting on behalf of the Acting National Commissioner.

5. After the adjournment the following was confirmed and agreed:

5.1. that the purpose of the meeting was to seek an agreement between the IPID and SAPS which would effectively dispose of the pending proceedings;

5.2. IPID would provide the SAPS with certain information, to enable the SAPS to identify matters where SAPS officials, who are subject to IPID investigations are investigating IPID officials, with a view to removing those SAPS officials from the investigations; and

5.3. that the meeting would reconvene as soon as possible.

6. The concerns raised at the meeting included the impact that the proposed draft order could have on the SAPS' ability to conduct investigations. These concerns are not supported by the facts:

6.1. there are nearly 200 000 police officers;

6.2. there are only a very limited number of SAPS investigations into IPID officials (at present we are only aware of 2).

7. We respectfully request that the SAPS again considers the proposed resolution in the letter of 8 June 2017 and look forward to hearing from you.

8. We **enclose** a table setting out the details of IPID's investigations into SAPS members being conducted by IPID investigators, the third and fourth applicants in the application, who are being investigated by SAPS. Kindly note that the persal numbers of the following SAPS members could not be obtained by our client:

8.1. Const. Mashoko;

8.2. Capt. A. Lebodi;

8.3. W/O. B. Motlhabane;

8.4. W/O. Ramorwesi;

8.5. W/O Mashaba;

8.6. Capt. Ngcoko;

8.7. Sgt S.Ratsoma;

8.8. Colonel. Dince;



P.J.

8.9. Cst. Mosala;

8.10. W/O Moswang; and

8.11. W/O Thaga.

9. We reiterate that our clients remain willing to resolve the matter amicably. Should this, however, not be possible, our instructions are to proceed with the pending litigation.

10. We are available to meet with you on an urgent basis.

ADAMS & ADAMS

J S MARAIS

Checked and signed by author and sent electronically

COPY TO: tmukasi@justice.gov.za

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IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND THREE OTHERS / THE ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE AND FOUR OTHERS, IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION PRETORIA, UNDER CASE NUMBER 35894/2017

DETAILS OF IPID'S INVESTIGATIONS INTO SAPS MEMBERS AS AT 21 06 2017

N o	INITIAL, SURNAME, RANK AND PERSAL NUMBER	STATION / UNIT OF EMPLOYMENT	STATION NAME AND CAS NUMBER	CHARGE	NOTIFICATION BY IPID OF ITS INVESTIGATION INTO SAPS MEMBER
1.	1.1. Brig. P.D. Ncube: 0619153-3 1.2. Brig. M.C. Kgorane: 0636751-8 1.3. Lt/Col. I. Dawood: 0530778-3	1.1.NW Provincial commander: Commercial Crime unit. NB: Held a Colonel rank at Potchefstroom DPCI before he was promoted to his current rank. 1.2.NW Provincial Commander: Organised Crime unit. NB: Held a Colonel rank at Klerksdorp DPCI before he was promoted to his current rank. 1.3.NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Lyttleton CAS: 309/02/2017	Contempt of Court	May 2017 Members were notified and they refused to submit their warning statements citing that they will await warrants of their arrests.
2.	2.1. Brig. P.D. Ncube: 0619153-3 2.2. Brig. M.C. Kgorane: 0636751-8	2.1.NW Provincial commander: Commercial Crime unit. NB: Held a Colonel rank at Potchefstroom DPCI before he was promoted to his current rank. 2.2. NW Provincial Commander: Organised Crime unit. NB: Held a Colonel rank at Klerksdorp DPCI before he was promoted to his current rank.	Sandton CAS: 688/02/2017	Kidnapping, Intimidation, Theft of a Cellphone and Defeating the Ends of Justice	May 2017 Members were notified and they refused to submit their warning

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	2.3. Lt/ Col. I. Dawood: 0530778-3	2.3. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.			statements citing that they will await warrants of their arrests.
3.	3.1. Sgt S.S. Kutumela: 0615974-5 3.2. Lt/Col. Manamela: 0166096-9 3.3. Maj. Gen. N.J.Mabula: 0603397-1	3.1. Klerksdorp DPCI 3.2. Retired 3.4. NW: Deputy Provincial Commissioner: Detectives. NB: He was the head of DPCI/ Organised Crime units.	Akasia CAS: 123/06/2006 (Mmakau matter)	Torture and Murder	Still under investigation
4.	4.1. Lt/ Col. I.Dawood: 0530778-3 4.2. Sgt S.S.Kutumela: 0615974-5 4.3. Cst. G.M. Pebane: 7000247-9 4.4. Capt. T.Maano: 0602001-1 4.5. W/O. P.A Matthyser: 04307736-3 4.6. W/O. P.B. Vemeleun: 0428151-9	4.1. NW Provincial Commander: Vehicle Identification Section NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 4.2. to 4.8 Klerksdorp DPCI 4.4. Deceased	Kanana CAS 188/01/2010	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.

4.7. W/O. M.P.Tshiponyane: 0616916-3				
4.8. Const. Mashoko				
5. 5.1. Lt/Col. I.Dawood: 0530778-3	5.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Kanana	CAS	Assault GBH (Torture)
5.2. Sgt. S.S.Kutumela: 0615974-5		222/01/2010		
5.3. Cst. G.M. Pebane: 7000247-9	5.2. to 5.8 Klerksdorp DPCI			
5.4. Capt. T.Mano: 0602001-1	5.4. Deceased			
5.5. W/O. P.A Matthyser: 04307736-3				
5.6. W/O. P.B. Vemeleun: 0428151-9				
5.7. W/O. M.P.Tshiponyane: 0616916-3				
5.8. Const. Mashoko				

15

6.	6.1. Lt/Col. I.Dawood: 0530778-3 6.2. Sgt. S.S.Kutumela: 0615974-5 6.3. Cst. G.M. Pebane: 7000247-9 6.4. Capt. T.Maano: 0602001-1 6.5. W/O. P.A Matthyser: 04307736-3 6.6. W/O. P.B. Vemeleun: 0428151-9 6.7. W/O. M.P.Tshiponyane: 0616916-3 6.8. Cst. Mashoko 6.9. Capt. A. Lebodi 6.10. W/O. B. Motlhabane	6.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 6.2. to 6.12 Klerksdorp DPCI, Potchefstroom DPCI and Rustenburg DPCI 6.4. Deceased	Mogwase 91/04/2008	CAS	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12th of April 2017.
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67

	6.11. W/O. Ramorwesi 6.12. W/O Mashaba 6.13. Capt. Ngcoko 6.14. Sgt S.Ratsoma				
7.	7.1. Lt/Col. I.Dawood: 0530778-3 7.2. Sgt S.S.Kutumela: 0615974-5 7.3. Cst. G.M. Pebane: 7000247-9 7.4. Capt. T.Maano: 0602001-1 7.5. W/O. B.Motlhabane 7.6. Capt. A. Lebodi:	7.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 7.2. to 7.6. Klerksdorp DPCI and Potchefstroom DPCI 7.4. Deceased	Potchefstroom CAS 175/04/2008	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12th of April 2017.
8.	8.1. Lt/ Col. I.Dawood: 0530778-3 8.2. Sgt. S.S.Kutumela: 0615974-5	8.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 8.2. to 8.5 Klerksdorp DPCI and Potchefstroom DPCI.	Klerksdorp CAS 94/04/2008	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate.

22

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	8.3. Capt. T.Maano: 0602001-1	8.3. Deceased				The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
	8.4. W/O. B.Motlhabane					
	8.5. Capt. A. Lebodi:					
9.	9.1. Lt/ Col. I.Dawood: 0530778-3	9.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Klerksdorp 113/02/2010	CAS	Assault GBH (Torture)	Members were notified and the matters are awaiting centralization certificate from NDPP.
	9.2. Sgt. S.S.Kutumela: 0615974-5	9.2. to 9.14. Klerksdorp DPCI, Mahikeng DPCI and Potchefstroom DPCI				
	9.3. Cst. G.M. Pebane: 7000247-9	9.4. Deceased				
	9.4. Capt. T.Maano: 0602001-1					
	9.5. W/O. P.A Matthyser: 04307736-3					
	9.6. W/O. P.B. Vemeleun: 0428151-9					
	9.7. W/O. M.P.Tshiponyane: 0616916-3					
	9.8. Cst.P.Mashoko					



73

27

	9.9. W/O. S.J, Motlhaoleng: 09167668 9.10. Colonel. Dince 9.11. Cst. Mosala 9.12. W/O Moswang 9.13. W/O Thaga 9.14. Two unnamed white police male officers				
10	10.1. Lt/ Col. I.Dawood: 0530778-3 10.2. Sgt. S.S.Kutumela: 0615974-5 10.3. Cst. G.M. Pebane: 7000247-9 10.4. Capt. T.Maano: 0602001-1 10.5. W/O. P.A Matthyser 04307736-3	10.1. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank. 10.2. to 9.14. Klerksdorp DPCI, Mahikeng DPCI and Potchefstroom DPCI 10.4. Deceased	Klerksdorp 112/02/2010 CAS	Assault GBH (Torture)	Members were notified and some were arrested and appeared at Klerksdorp Court. The cases were struck from the court roll pending centralization. This office still awaits such centralization certificate. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12th of April 2017.



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	10.6. W/O. P.B. Vemeleun: 0428151-9 10.7. W/O. M.P.Tshiponyane: 0616916-3 10.8. Cst.P.Mashoko 10.9. W/O. S.J, Motlhaoleng: 09167668 10.10. Colonel. Dince 10.11. Cst. Mosala 10.12. W/O. Moswang 10.13. W/O. Thaga 10.14. Two unnamed white police male officers				
11	11.1.Maj.Gen. N.J.Mabula: 0603397-1 11.2.Colonel. M.Manamela: 0166096-9	11.1. NW: DPC: Detectives 11.2. Retired	Germiston 150/06/2017 (emanates Benoni 860/05/2006)	CAS: from CAS:	Tracing operation of a burglary at Benoni Police Station and the alleged Torture. Still under investigation



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11.3. Lt/ Col. I.Dawood: 0530778-3	11.3. NW Provincial Commander: VIS		NB: For alleged murder see Akasia/ Mmakau matter	
11.4. Sgt S.S.Kutumela: 0615974-5	11.4. Klerksdorp DPCI			
11.5. W/O. M.Makhubo: 0455718-1	11.5. Gauteng PC investigation Team			
11.6. Lt/ Col. N.Dube: 0627038-7	11.6. Roodepoort OCI unit			
11.7.W/O. P.Mompati: 0511478-1	11.7. Deceased			
11.8.W/O. M.Mashao: 0616058-1	11.8. Roodepoort OCI unit			
11.9. W/O. V.Makholoane: 0453488-3	11.9. Pretoria Central OCI unit			
11.10.W/O. A.Losaba: 0481668-7	11.10. Resigned			
11.11.W/O. I.Tlhapi: 0525059-5	11.11.Brits Detectives			



96

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	11.12. Maj.Gen.(f) Mokoena: 0616424-2 11.13. Capt. T.Mano: 0602001-1 11.14. Brig. C.Kgorane: 0636751-8 11.15. W/O. S.Mzolo: 0462493-6 11.16. Cst. E.Ratau: 7001796-4	11.12. Mpumalanga head of DPCI 11.13. Deceased 11.14. NW Provincial Head: Organised Crime unit 11.15. Gauteng Railway police (Germiston) 11.16. Resigned			
12	12.1. Brig. P.D. Ncube: 0619153-3 12.2. Brig. M.C.Kgorane: 0636751-8 12.3. Lt/Col. I.Dawood: 0530778-3	12.1. NW Provincial commander: Commercial Crime unit. NB: Held a Colonel rank at Potchefstroom DPCI before he was promoted to his current rank. 12.2. NW Provincial Commander: Organised Crime unit. NB: Held a Colonel rank at Klerksdorp DPCI before he was promoted to his current rank. 12.3. NW Provincial Commander: Vehicle Identification Section. NB: Held a Captain rank at Klerksdorp DPCI before he was promoted to his current rank.	Pretoria Central CAS: 534/05/2017	Defeating the Ends of Justice	Still under investigation



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12.4. Maj.Gen. N.J.Mabula: 0603397-1	12.4. NW: Deputy Provincial Commissioner: Detectives. NB: He was the head of DPCI/ Organised Crime units.			
12.5. Colonel. S.M.Reddy:	12.5. NW provincial detectives			
12.6. Lt/C ol.Mqaba	12.6. NW Provincial Detectives			
12.7. Capt. T.Molatlhegi: 7010283-0	12.7. Klerksdorp Anti-Corruption unit			



78

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TABLE INDICATING WHETHER THE COMMANDING OFFICER OF THE SAPS MEMBER PRESENTING UNDER INVESTIGATION BY IPID HAS BEEN INFORMED OF IPID'S INVESTIGATION AND A STATUS REPORT OF THE INVESTIGATION			
NO.	STATION NAME AND CAS NUMBER	CONFIRMATION THAT THE COMMANDING OFFICER OF THE SAPS MEMBER BEING INVESTIGATED BY IPID HAS BEEN INFORMED OF IPID'S INVESTIGATION INTO THAT PARTICULAR MEMBER	STATUS OF EACH IPID INVESTIGATION
1.	Lyttleton CAS 309/02/2017	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	DPP: queries (investigation)
2.	Sandton CAS: 688/02/2017	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	DPP: queries (Investigation)
3.	Akasia CAS 123/06/2006	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	Still under investigation
4.	Kanana CAS 188/01/2010	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization. The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
5.	Kanana CAS 222/01/2010	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.



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57

6.	Mogwase CAS 91/04/2008	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
7.	Potchefstroom CAS 175/04/2008	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
8.	Klerksdorp CAS 94/04/2008	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
9.	Klerksdorp CAS 113/02/2010	Commanding Officer of SAPS members informed of the investigation into SAPS members concerned and disciplinary recommendation submitted to the Provincial Commissioner of North West	DPP: Awaiting centralization The cases are still with DPP, Adv Van der Westhuizen, who last consulted with witnesses on the 12 th of April 2017.
10.	Germiston CAS: 150/06/2017 (emanates from Benoni CAS: 860/05/2006)	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	Still under investigation
11.	Pretoria Central CAS: 534/05/2017	Commanding Officer of SAPS members not yet informed of the investigation into SAPS members concerned.	Still under investigation



17

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Message Information

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jac.maras@adamsadams.com

Sent Thu, 13 Jul 2017 17:44:20 +0200

Message From (Header)

Jac Marais

Processed Thu, 13 Jul 2017 17:44:20 +0200

Message To

headcrimeinvestigation@saps.gov.za

Message Cc

tmukasi@justice.gov.za; Varana Chutterpaul@adamsadams.com; Thando Manentsa@adamsadams.com

Subject

IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AND 3 OTHERS / ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE AND FOUR OTHERS, IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

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Message Information

Delivery Event	Email Delivered via MX resolution
Message Expires on	Sat, 14 Jul 2018 17:44:20
Message Expires in	246 Days
Processing Server	za-mta-19.za.mimecast.lan
Estimated Transmission Size	765553 Bytes
Remote IP	196.35.198.158
Remote Host	securemail.synaq.com
Remote Greeting	220 securemail-pl-mx25.synaq.com ESMTP Pinpoint
Receipt Acknowledgement	250 OK id=1dVgl9-00052Z-LW
Transmission Started	Thu, 13 Jul 2017 17:44:35
Transmission Ended	Thu, 13 Jul 2017 17:44:37
Transmission Duration	1790 ms
Encryption Information	TLS



62
R5M6

Silindile Mhlongo

From: Mukasi Terrence
Sent: 10 November 2017 12:55 PM
To: Jac Marais
Subject: RE: URGENT CORRESPONDENCE: IPID/SAPS
Attachments: S041000664_1711101227000.pdf

Good day.

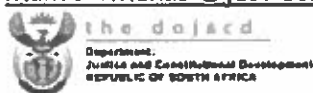
Please find the attached letter for your attention.

Kind regards

TERRENCE MUKASI

Senior Assistant State Attorney
 Salu Building
 Floor 20, Room 2035
 316 Thabo Sehume street, Pretoria
 Private Bag X91, Pretoria, 0001

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From: Jac Marais [<mailto:jac.marais@adamsadams.com>]
Sent: Thursday, November 09, 2017 9:07 AM
To: MoithibaL@saps.gov.za
Cc: nwpcsec@saps.co.za; mabulanj@saps.gov.za; PDNcube@saps.gov.za; dinna@bdk.co.za; Thando Manentsa; Varana Chutterpaul; Mukasi Terrence; Silindile Mhlongo
Subject: RE: URGENT CORRESPONDENCE: IPID/SAPS

Dear Sir,

The date referred to in paragraph 9 of the letter dated 8 November 2017 is incorrect and should be today, **9 November 2017**. An updated letter is attached.

We look forward to hearing from you.

Yours faithfully,

Jac Marais
 Partner

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P.J.



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10 NOVEMBER 2017

Enquires: T MUKASI
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My Ref: 3885/2017/Z42/DM
Your Ref: JSM/VC/TDM/tws/LT3602

MESSRS ADAMS & ADAMS
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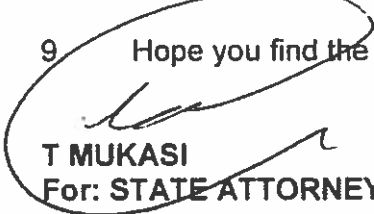
FAX: (012) 432-6599
EMAIL: jac.marais@adamsadams.com

Dear Sir/Madam

**RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE // THE
ACTING NATIONAL COMMISSIONER OF THE SOUTH AFRICAN
POLICE SERVICES**

1. Above matter and your letter dated 9 November 2017 bears reference.
2. As indicated in our letter of yesterday, we have now obtained instruction regarding contents of letter as indicated above.
3. We place on record that it is not correct that following the removal of the first Respondent, the investigation by second to fourth Respondent under CAS 12/01/2017 stopped. We record that the investigation was not dependent on the first Respondent.
4. Our client did not at any stage give undertaking or confirm the removal of the Mabula team.

5. We confirm our instruction that our client will not provide an undertaking to change or the removal of the Mabula team and as such if you believe there is grounds for urgency you may proceed to approach the court as indicated in your letter.
6. We confirm that in the meeting held between SAPS and IPID where legal representatives were in attendance, your client was requested to provide a complete list of names of SAPS members currently investigated by IPID, the charges levelled against such officials and the status of each case.
7. Your client has since failed to properly address the concerns raised by our client in that you only provided limited information which related to the Mabula team. Client again requested you to provide them with a complete list as per above, and you have since failed to do so.
8. In light of what appears above, we shall not be giving the undertaking as per your request.
9. Hope you find the above in order.


T MUKASI
For: STATE ATTORNEY (PRETORIA)

PATENT, TRADE MARK, COPYRIGHT, DESIGN,
COMMERCIAL, PROPERTY & LITIGATION ATTORNEYS

Adams & Adams

EMAIL MESSAGE

To: MothibaL@saps.gov.za

From: Jac.marais@adamsadams.com

Cc: nwpcsec@saps.co.za
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Our Reference: JSM/TDM/crl/LT3602

Your Reference:

Date: 9 November 2017

SOUTH AFRICAN POLICE SERVICE: ACTING NATIONAL COMMISSIONER
Pretoria

URGENT

ATTENTION: GENERAL MOTHIBA

Dear Sir,

IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE // THE ACTING NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE

1. We refer to the pending application under case number 35894/2017("the Application").
2. By way of background:

2.1 The application was served on 25 May 2017.

2.2 The basis for the relief sought in the application is summarized at paragraph 20 of the founding affidavit deposited to by the Executive Director of IPID, which states that:

"The Applicants contend that this is unlawful and unconstitutional on two bases.

20.1 *First, it is unlawful and unconstitutional for any member of the SAPS to undertake or oversee a police investigation in respect of which he or she has a personal interest.*

OFFICES: Pretoria | Johannesburg | Cape Town | Durban ASSOCIATED OFFICES: Angola | Botswana | Burundi | Cameroon (OAPI) | Egypt | Ghana | Kenya | Lesotho | Libya | Mozambique (ARIPO) | Namibia | Nigeria | Swaziland | Tanzania (including Zanzibar)

Partners: Gavin Kotze, Howard Rogers, Dario Tanziani, Johan du Preez, Colin MacKenzie, Nelia Hickman, Mariëtte du Plessis, Samantha Copeling, Gérard du Plessis, Phil Pla, Louis van der Walt, Chamé le Roux, Russell Bagnall, Simon Brown, Grégor Walter, Joseph Goedhals, Blain de Villiers, André Visser, Eugene Honey, Darren Olivier, Nohwazi Gcoba, David Schreepers, Megan Moerdijk, Kelly Thompson, Nola Khechane, Janice Galvad, Nishi Chetty, Lucy Signorelli, Steven Yeates, Johnny Rendeiro, Leander Opperman, Jenny Pienaar, Danie Dohmen, Alexis Apostolidis, Blikis Daby, Debbie Mariott, Lauren Ross, Dale Healy, Mandy Swanepoel, Roelof Grové, Nicolette Koch, James Davies, Nicky Gamell, Vishen Pillay, Godfrey Budele, Jac Marais, Nhabisheng Phaswana, Nshan Singh, Pieter Visagie, Dieter Wellthagen, Ferdi Myburg, Samayya Khan, Danie Strachan, Werina Griffiths, Sajida Gamieldien, Jani Cronje, Wilhelm Prozesky, Nicolette Biggar, Jean-Paul Rudd, Andrew Mohr, Venashree Mannar, Indie Semurier, Charl Potgieter, Stephen Hollis, Alicia Kabin, Alicia van der Walt, Andrew Phillips

Senior Consultants: Esmé du Plessis, Chris Job, Craig Forbes, Tim de Wet, Gavin Noeth, Ilze Dijkstra

Associates: Deborah Mariscano, Therése Davis, Claire Bathma, Udi Pillay, Amina Sulman, Nicole Smalberger, Renée Hienaber, Nondumiso Msimang, Wynand Fourie, Wensel Britz, Kim Rampersad, Tunda Olivier, Ula-Mili Oamata, Jan-Harm Swanepoel, Dalalo Luvhimb, Kerry Wiers, Richard Wiers, Kareema Shaik, Karen Lam, Femke Van Dyk, Jean-Louis La Grange, Vuyolazi Ndamsi, Nicole Haworth, Jevonne Le Roux, Tayyiba Nalla, Lisa Van Zuydam, Thando Manentsa, Alisa Nayanah, Helgard Janse van Rensburg, Thamaray Govender, Catherine Wojtowicz, Farzana Rassool, Melissa Dreyer, Nazi Naidoo, Nevashni Pillay, Jeanette Visagie, Nisha Van Niekerk, Dineo Modibedi, Robyn Müller-Mabuzza, Roman Pereira, Julie-Anne Tazer, Jean-François Bruneau, Shani Van Der Bergh, Reinhardt Biermann, Lize-Mari Van Dyk, Alicia Heyneke, Thembi Khoza, Lavashnee Mandry, Deba Veeran, Varana Chutterpaul, Gabriëlle Dewey, Shanine Vlojen, Shmuel Mach, Donald Malgette, Farrel Frank, Farzanah Marjoo, Neale Christy, Maureen Maloka, Sophia Czarnocki, Demi Cyster, Christoff Pretorius, Jameel Hamid, Shaina Sley, Charleen Rupnarain, Nicholas Rosslee, Tammylyn Avis, Robyn Adams, David Legge, Yingsani Nyambi, Lebohlang Masala, Denel Campbell, Allegang Magale, Esmé Voogt, Nala Gungubele, Pamela Mahuteke, Khanyisa Mapipa

Chief Operating Officer: Dave Forbes

Level 4 BBBEE Contributor rating (amended codes)

20.2 Second, and beyond this general proposition, it is especially unlawful and unconstitutional for any member of the SAPS to undertake or oversee a police investigation in respect of an IPID member, when that IPID member is investigating the SAPS member concerned." (our emphasis)

3. The relief sought in the application is, inter alia, that:

"It is declared that it is unlawful and/or unconstitutional for any member of the South African Police Service ("SAPS") to undertake or oversee an investigation into a member of the Independent Police Investigative Directorate ("IPID") where that SAPS member has a personal interest in such investigation or is himself or herself the subject of an IPID investigation."

4. On 1 June 2017, the First Respondent, General Kgomotso Phahlane, was removed from his position as acting national police commissioner and the current acting national police commissioner was appointed.
5. As a direct consequence of the removal of the acting national police commissioner, the investigation by the second to fourth respondents under CAS 12/01/2017 stopped and the "Mabula team" returned to the North West province.
6. IPID subsequently engaged with the new acting national police commissioner and the SAPS with a view to seeking a resolution of the pending proceedings.

6.1 On 15 June 2017 the Executive Director of IPID met with the acting national commissioner. An agreement was reached in respect of the legal basis for the relief sought against in the Application and it was common cause that members of the SAPS who were themselves the subject of investigations by IPID could not investigate members of IPID. The acting national commissioner seemingly adopted a sensible approach in this regard and tasked a number of senior police officers to engage with IPID with a view to resolving the pending litigation;

6.2 A meeting was arranged and took place on 21 June 2017 at the SAPS offices situated at Wachthuis. At the meeting the acting commissioner's instructions were confirmed and IPID was requested to provide information on the number of SAPS officers that were under investigation by IPID, to enable the SAPS to consider the practical impact of the relief sought in the Application, and, in particular, paragraph 2 of the notice of motion in the application. The information was provided under cover of a letter, dated 13 July 2017. To date, the SAPS has not yet responded.

7. As indicated above, the urgency of the application had reduced with the removal of the acting national police commissioner from his position, and the return of the Mabula team to the North West province. The situation has now changed as it has become apparent that the Mabula team has returned to continue with the very same investigation that formed the subject and the basis of the Application.
8. The aforesaid developments (SAPS' failure to respond to IPID's letter, dated 13 July 2017, as well as the reintroduction of the Mabula team in the investigation of CAS 12/01/2017) has rekindled the urgency of the matter.
9. In the circumstances, we request that you as soon as possible and, in any event, by noon on Thursday, 9 November 2017, confirm that General Phahlane, Lt. General Motswenyane, Major General Mabula and Brigadier Ncube, as well as members reporting to any of these officials, will immediately cease their

P.J.

involvement in any involvement in any investigation of an IPID official, including but not limited to investigations under CAS 12/01/2017.

10. Should the aforesaid undertakings not reach us timeously, our instructions are to approach the High Court for urgent relief.
11. We look forward to hearing from you.

Yours faithfully
ADAMS & ADAMS

J S MARAIS
Checked and signed by author and sent electronically

PT



Annexure A

MANTSHA RAPHESU

COUNT 1. CONTRAVENTION OF SECTION 33(2) OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT 1 OF 2011 – ON 14 DECEMBER 2016 DISCLOSED CONFIDENTIAL IPID INFORMATION (SECTION 205 s) TO A PERSON WHO IS NOT A MEMBER

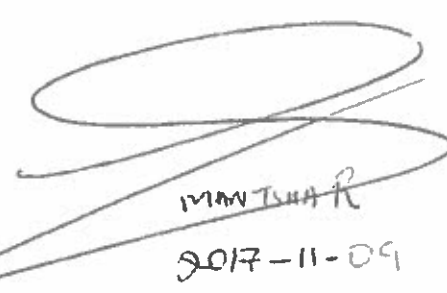
COUNT 2. CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT 17 OF 1956 CONSPIRACY TO CONTRAVENE SECTION 33(2) OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT 1 OF 2011 – BETWEEN 15 DECEMBER 2016 AND 09 FEBRUARY 2016 JOINED A SECRET WHATSAPP GROUP CREATED BY SARAH JANE TRENT WHERE INFORMATION WHICH WAS SUPPOSED TO BE KEPT UNDISCLOSED TO PERSONS WHO ARE NOT IPID MEMBERS WAS DISCLOSED TO SARAH JANE TRENT.

COUNT 3. . CONTRAVENTION OF SECTION 33(2) OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT 1 OF 2011 – ON 25 January 2017 DISCLOSED CONFIDENTIAL IPID INFORMATION (personal information including motor car ownership details and id numbers) TO SARAH JANE TRENT A PERSON WHO IS NOT A MEMBER

COUNT 4. CONTRAVENTION OF SECTION 21 © OF THE PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004- IN THAT ON 14 DECEMBER 2016 AND 25 JANUARY 2017 PROVIDED INFORMATION WHICH WAS SUPPOSED TO BE KEPT CONFIDENTIAL TO SARAH JANE TRENT WHO IS NOT A MEMBER OF IPID THEREBY AIDING SARAH JANE TRENT, PAUL O SULLIVAN, MANDLAKAYISE MAHLANGU AND ROBERT MCBRIDE TO COMMIT CORRUPTION

COUNT 5. CONTRAVENTION OF SECTION 4(1)(a) (i) and (ii) OF THE PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004 – IN THAT ON 14 DECEMBER 2016 AND 25 JANUARY 2015 AGREED TO DIVULGE CONFIDENTIAL INFORMATION OF IPID TO A NON MEMBER WHICH AMOUNTED TO MISUSE OF INFORMATION ACQUIRED IN THE COURSE OF EXERCISE OF POWERS ARISING OUT OF STATUTORY , CONSTITUTIONAL OBLIGATIONS AMOUNTING TO A VIOLATION OF A LEGAL DUTY.


Brig
P. Anand
2017/11/09


MANTSHA R
2017-11-09

RJ



THE ACTING DIRECTOR OF PUBLIC PROSECUTION
ADV GEORGE BALOYI
CHURCH SQUARE 28
PRETORIA

MEMORANDUM DEALING WITH THE PROSPECTS OF A SUCCESSFUL PROSECUTION OF CERTAIN MEMBERS OF SAPS

Both the case dockets Lyttleton 309/2/17 and Sandton 688/2/17 relate to the unlawful arrest of Mr O'Sullivan and his assistant (Trent).

1. **LYTTLETON 309/02/17**

O'Sullivan was at his office in Johannesburg when a traffic officer came to his office, and rang the doorbell and asked to be let in. She told O'Sullivan that his car was involved in an accident and she is there to investigate. O'Sullivan refused. She left the premises.

This is confirmed by Trent who was present.

The traffic officer (Mawikivana) states that she has received an instruction to go to Sandton where she will meet a certain Colonel. In Sandton she met the Colonel (Indian), who was later identified as **Colonel Dawood**, who told her to go to a certain address (house of O'Sullivan) because there is a warrant of arrest for this white man. The Colonel also told her what to do and say once she arrived at the house.

She did this but as the white man refused to come out she phoned the Colonel, told him what happened. He instructed her to leave which she did.

She parked down the street; the Colonel came to her and sat with them. A vehicle left the premises of the house and they tried to chase the vehicle to no avail. They went to a certain garage. The Colonel thanked them and she left.

Maluleke confirms above statement.

Van Wyk from the JMPD state that he received a request from Col Dawood to assist with an operation. He made the arrangements and Manikivana and Maluleke were instructed to assist.

According to O' Sullivan (complainant) he was ambushed by a number of vehicles when he left Afriforum's office. This "operation" was led by **Brigadier Ncube** who arrested him. The SAPS were told that there is a court order preventing the Saps to arrest him, but they refused to listen.

Willie Spies from Afriforum arrived, told them as well and showed Ncube the court order. Despite this O'Sullivan was arrested and taken to the Kameeldrift Police Station.

There is a transcript of the conversation between Spies and Ncube as well as printed photo's that corroborate the complainant's version.

Brigadier/...

P.J.



Brigadier Ncube apparently applied for the warrant of arrest (A13). It is not clear based on what evidence this application was made. It is not clear at this stage whether the person who signed the warrant on behalf of the DPP had any information (evidence) available to him, and if so what. It is not clear who signed the warrant. According to the tape recording (A14) it is Adv. Mashuga. In the directions to the I/O the following was inter alia requested :

- 1.1 A statement from Willie Spies.
- 1.2 The docket (or the information) in respect of the charges against O' Sullivan supplied to Adv. Mashuga must be obtained.
- 1.3 A statement should be obtained from Adv. Mashuga.

Although it does not matter why the warrant was issued in the first place, (as the main charge should be contempt of court) it is advisable that this information be obtained.

2. **PRIMA FACIE CASES**

- 2.1 **Contempt of court** (in that O'Sullivan was arrested despite the court order being shown and explained to them) It will also be able that they were even before the issuing thereof aware of the court order as it was in the public domain and issued in one of the matters where the same investigating team is involved. In this regard the following is apposite :

"Prosecutors and Police Officers are in the employ of the state, and have a public law duty not to violate a person's right to freedom. It is a fundamental right of an accused not to be detained arbitrarily and without just cause and interference with physical liberty, without justification, is *prima facie* unlawful."

2.2 **Kidnapping**

If no valid warrant of arrest existed (that appears to be the case) it will be easy to prove that the facts of this matter warrant a conviction on a charge of kidnapping. The show of unnecessary force will also be a deciding factor in this regards and a charge of Intimidation will most probably also succeed. The fact that the warrant of arrest was requested by an advocate purportedly from the DPP's Office will also be of no avail as there is no evidence to infer that the prosecutor and the arresting officer acted within the authority conferred by the power in question, which, in turn, requires him or her to have taken all reasonable precautions to avoid or minimise injury to others. A failure to do so would render his or her conduct unlawful.

- 2.3 **Fraud and defeating the ends of justice** (in that the arrest was based on fraudulent allegations.) This all depends on the information or contents of the case docket, on strength of which the warrant was signed.

The/...

PT

The evidence shows that O'Sullivan had to be arrested at all costs. In this regard it should be noted that there are many cases against Mr O' Sullivan and he is also appearing on many cases in court. He is well known in South Africa and to SAPS. It is clear that even without the court order he should have never been arrested on the possible petty charges. It appears that the SAPS/ HAWKS behaviour was tantamount to police brutality. It is exactly for that reason why the court order was obtained by him to protect him against unlawful deprivation of his liberty. Total disregard for the rule of law cannot be ignored.

3. SUSPECTS

3.1 Brig Ncube and Col Dawood. SANDTON 688/02/17

This involves the arrest of Trent (complainant) at the office of O'Sullivan (after he left). This was on the same day that the traffic officer came to the office. Someone came to the office and arrested her where after she was taken to a Shell petrol station where she met Col Dawood who cuffed her with cable ties. According to her the arresting officer was Brig Kgorane.

Me Trent was kidnapped and kept in isolation at various places without her rights being properly explained. Her cell phone was also stolen from her and illegally tapped. A warrant for her arrest was never shown to her and she was not afforded an opportunity to contact her relatives or lawyer immediately. The show of force with which she was arrested also paints a clear picture and was totally unnecessary if a valid warrant of arrest on a valid charge was available. It is however, questionable why an arrest was necessitated on the alleged petty charges. A summons would have sufficed. The possibility that there was no warrant of arrest should be investigated. It appears that she was arrested on a whim after O' Sullivan could not be arrested

PRIMA FACIE CASES

3.1.1 Kidnapping

3.1.2 Theft of the cell phone

3.1.3 Intimidation.

3.2 SUSPECTS : Col. Dawood and Brig Kgorane

The OB books and registers from Kameeldrift SAPS station should be obtained in order to establish who booked her in.

4. RECOMMENDATION

Col Dawood appears to be a suspect in both dockets. Brig Kgorane and Ncube (appears) not to be involved in both dockets. It is possible to investigate further links to connect the various accused and maybe even others in one case.

However, the matters can also proceed separately and action can be immediately instituted despite the further outstanding investigation.

The/...

PJ

The dockets already constitute *prima facie* cases. Adv Van Der Merwe and I am therefore of the view that prosecution must be instituted in the Regional Court. I am aware and have been informed that the decision cannot be made by me and will be taken at another level of authority.

I have to make it clear that in my view a failure to prosecute will be an injustice to the complainants and the public at large. If it is decided not to proceed with prosecution for whatever reason, care should be taken that the decision will withstand the requirements for a *Nolle Prosequi* certificate. The possible delictual liability of both the NPA and SAPS should also be taken into account.

SIGN at PRETORIA on this 31st day of MAY 2017.



F W VAN DER MERWE
SENIOR ADVOCATE FOR THE STATE
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG, PRETORIA



H E VAN JAARSVELD
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG, PRETORIA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 77549 / 17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, ROBERT JOHN MCBRIDE** Second Applicant

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU** Third Applicant

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG** Fourth Applicant

**SENIOR INVESTIGATING OFFICER,
MANTSHA RAPHESU** Fifth Applicant

and

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.** First Respondent

**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA** Second Respondent

**NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE** Third Respondent

**NORTH WEST PROVINCIAL COMMANDER –
SPECIAL CRIMES UNIT
LIEUTENANT COLONEL ISMAIL DAWOOD** Fourth Respondent

**NORTH WEST PROVINCIAL HEAD –
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE** Fifth Respondent

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE Sixth Respondent

**NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE** Seventh Respondent



MINISTER OF POLICE

Eighth Respondent

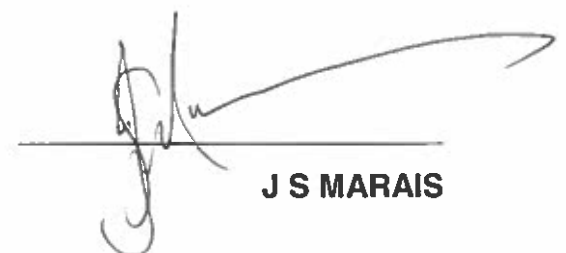
CONFIRMATORY AFFIDAVIT

I, the undersigned,

JACOBUS STEPHANUS MARAIS

hereby make oath and state:

1. I am an attorney of the High Court of South Africa, practising in partnership with Adams & Adams Attorneys of Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria.
1. The facts contained herein fall within my personal knowledge and are, to the best of my belief, both true and correct.
2. I have read the founding affidavit deposed to by **ROBERT JOHN MCBRIDE** in this application and confirm the contents thereof insofar as it relates and/or refers to me.



J S MARAIS



THUS SIGNED AND SWORN TO BEFORE ME AT PRETORIA ON THIS
14 DAY OF **NOVEMBER 2017**, THE DEPONENT HAVING ACKNOWLEDGED
THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,
THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND
BELIEF, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH
AND THAT THE PRESCRIBED OATH WILL BE BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

John Kleintjes
COMMISSIONER OF OATHS
EX OFFICIO
LYNNWOOD BRIDGE
4 DAVENTRY STREET
LYNNWOOD MANOR 0081
ATTORNEY, SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 77549/17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE **First Applicant**

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, ROBERT JOHN MCBRIDE** **Second Applicant**

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU** **Third Applicant**

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG** **Fourth Applicant**

**SENIOR INVESTIGATING OFFICER,
MANTSHA RAPHESU** **Fifth Applicant**

and

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.** **First Respondent**

**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA** **Second Respondent**

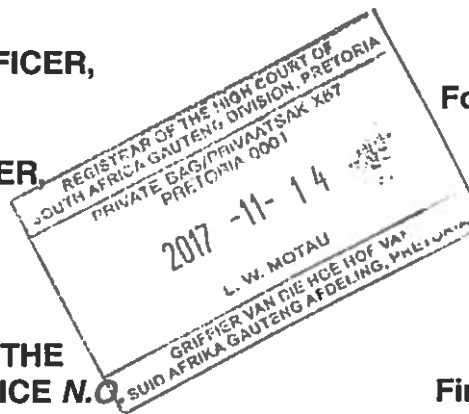
**NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE** **Third Respondent**

**NORTH WEST PROVINCIAL COMMANDER –
SPECIAL CRIMES UNIT
LIEUTENANT COLONEL ISMAIL DAWOOD** **Fourth Respondent**

**NORTH WEST PROVINCIAL HEAD –
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE** **Fifth Respondent**

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE **Sixth Respondent**

**NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE** **Seventh Respondent**



MINISTER OF POLICE

Eighth Respondent

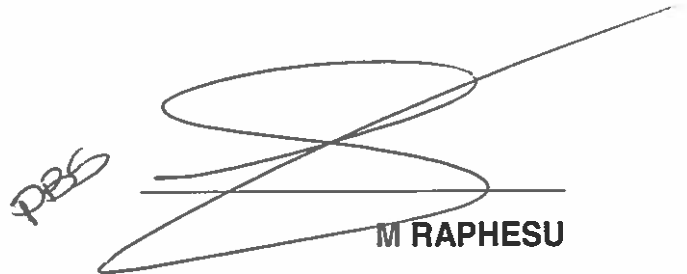
CONFIRMATORY AFFIDAVIT

I, the undersigned,

MANTSHA RAPHESU

hereby make oath and state:

1. I am a major male senior investigator, employed by the First Respondent stationed at the Head Office of the Independent Investigative Directorate (“IPID”), situated at 114 Madiba Street, Pretoria, Gauteng.
1. The facts contained herein fall within my personal knowledge and are, to the best of my belief, both true and correct.
2. I have read the founding affidavit deposed to by **ROBERT JOHN MCBRIDE** in this application and confirm the contents thereof insofar as it relates and/or refers to me.


M RAPHESU



99

THUS SIGNED AND SWORN TO BEFORE ME AT Garsfontein ON THIS
13 DAY OF **NOVEMBER 2017**, THE DEPONENT HAVING ACKNOWLEDGED
THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,
THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND
BELIEF, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH
AND THAT THE PRESCRIBED OATH WILL BE BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS



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

CASE NO.: 77549 /17

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INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE **First Applicant**

**EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, ROBERT JOHN MCBRIDE** **Second Applicant**

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU** **Third Applicant**

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG** **Fourth Applicant**

**SENIOR INVESTIGATING OFFICER,
MANTSHA RAPHESU** **Fifth Applicant**

and

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O.** **First Respondent**

**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA** **Second Respondent**

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BRIGADIER DANIEL PHARASA NCUBE** **Third Respondent**

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SPECIAL CRIMES UNIT
LIEUTENANT COLONEL ISMAIL DAWOOD** **Fourth Respondent**

**NORTH WEST PROVINCIAL HEAD –
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE** **Fifth Respondent**

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE **Sixth Respondent**

**NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE** **Seventh Respondent**



MINISTER OF POLICE

Eighth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MANDLAKAYISE MAHLANGU

hereby make oath and state:

1. I am a major male principal investigator, employed by the First Respondent stationed at the Head Office of the Independent Investigative Directorate (“IPIID”), situated at 114 Madiba Street, Pretoria, Gauteng.
2. The facts contained herein fall within my personal knowledge and are, to the best of my belief, both true and correct.
3. I have read the founding affidavit deposed to by **ROBERT JOHN MCBRIDE** in this application and confirm the contents thereof insofar as it relates and/or refers to me.



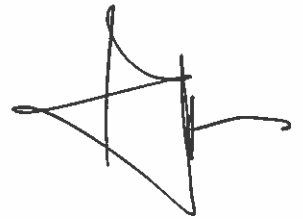
M MAHLANGU

10/1

THUS SIGNED AND SWORN TO BEFORE ME AT GARSFONTEIN ON THIS
13 DAY OF **NOVEMBER 2017**, THE DEPONENT HAVING ACKNOWLEDGED
 THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,
 THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND
 BELIEF, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH
 AND THAT THE PRESCRIBED OATH WILL BE BINDING ON HIS CONSCIENCE.

SOUTH AFRICAN POLICE SERVICE
GARSFONTEIN
2017 -11- 13
COMMUNITY SERVICE CENTRE
SUID-AFRIKAANSE POLISIEDIENS

Mulcooy^{SG} 70364391
 COMMISSIONER OF OATHS



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 77549/17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, ROBERT JOHN MCBRIDE Second Applicant

PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU Third Applicant

PRINCIPAL INVESTIGATING OFFICER,
ABRAM TEMANE BINANG Fourth Applicant

SENIOR INVESTIGATING OFFICER,
MANTSHA RAPHESU Fifth Applicant

and

NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O. First Respondent

NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA Second Respondent

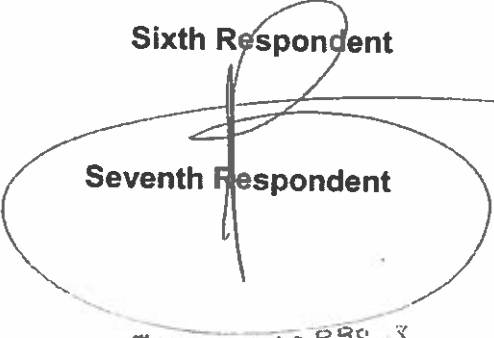
NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE Third Respondent

NORTH WEST PROVINCIAL COMMANDER –
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LIEUTENANT COLONEL ISMAIL DAWOOD Fourth Respondent

NORTH WEST PROVINCIAL HEAD –
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BRIGADIER CLIFORD MATOME KGORANE Fifth Respondent

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE Sixth Respondent

NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE Seventh Respondent



7167998.3
Motswenyane

MINISTER OF POLICE

Eighth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

TEMANE ABRAM BINANG

hereby make oath and state:

1. I am a major male principal investigator, employed by the First Respondent stationed at the Head Office of the Independent Investigative Directorate ("IPIID"), situated at 114 Madiba Street, Pretoria, Gauteng.
1. The facts contained herein fall within my personal knowledge and are, to the best of my belief, both true and correct.
2. I have read the founding affidavit deposed to by **ROBERT JOHN McBRIDE** in this application and confirm the contents thereof insofar as it relates and/or refers to me.

AT BINANG

7163995-3
10/05/2019

THUS SIGNED AND SWORN TO BEFORE ME AT VRYBURG ON THIS 13th DAY OF NOVEMBER 2017, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON HIS CONSCIENCE.

71639987
COMMISSIONER OF OATHS

Sholofela Motaung
FULL NAMES AND SURNAME

Const
RANK

73 Vryburg Vryburg
ADDRESS

TIRELO YA MAPODISI A AFRIKA BORWA
CELL OFFICE
2017 -11- 13
VRYBURG
SUID AFRIKAANSE POLISIEDIENS SOUTH AFRICAN POLICE SERVICE