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Your reference : Silverton CAS 155/07/2011 ANTI-CORRUPTION TASK TEAM
Lyttleton CAS 432/11/2011 DIRECTORATE FOR PRIORITY CRIME
Vosloorus CAS 340/02/1999 INVESTIGATION
My reference : 19/1/1 SILVERTON
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2012-03-02

**The Commander
ANTI-CORRUPTION TASK TEAM**

**FACTUAL REPORT: PROGRESS ON CRIMINAL INVESTIGATIONS: SILVERTON CAS 155/07/2011,
LYTTLETON CAS 432/11/2011 AND VOSLOORUS CAS 340/02/1999: ANTI-CORRUPTION TASK TEAM
(ACTT)**

1. This report is in response to a letter dated **29 February 2012** by your office. It seeks to address the issues raised by you regarding this investigation. It further seeks to highlight the interference experienced from within the South African Police Services (SAPS) as well as actions regarded as interference National Prosecuting Authority (NPA). It will also seek to highlight the lack of cooperation/assistance from other government departments.
2. The report will further seek to highlight the sequence of events since **18 March 2011** as to put the development of the entire investigation into context. This needs to be done in light of the allegations that the investigation into alleged criminal activities of certain members of Crime Intelligence (CI) is based on hidden agendas and ulterior motives.

3. The following documents are attached to this report highlighting *inter alia* and in more detail, the progress in respect of the investigations done and contributions by related parties to protect the integrity of the investigations:
- Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **18 April 2011**
 - Information Note addressed to Major General S Sibiya dated **20 April 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **18 June 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **07 July 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **11 August 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **26 October 2011**
 - Information Note addressed to Deputy National Commissioner, Lieutenant General A Dramat dated **05 December 2011**
 - Information Note addressed to the acting National Commissioner, Lieutenant General Mkhwanazi dated **23 February 2012**
 - Draft letter (not dated) addressed to the Office of the Inspector General of Intelligence compiled by Brigadier F van Graan on request of Colonel K Roelofse
 - Draft report compiled by Major General Jacobs and Colonel K Roelofse on instruction from the acting National Commissioner, Lieutenant General Mkhwanazi on **26 January 2012**. The purpose of the report was to show the sequence of events leading up to the referral of the investigation to the Office of the Inspector General of Intelligence. It also included an opinion on the jurisdiction, in terms of law, the SAPS have in respect of the investigation.
 - Draft letter (author and date unknown) compiled on instruction of the acting National Commissioner, Lieutenant General Mkhwanazi referring the matter to the Office of the Inspector General of Intelligence.

- Report dated **04 December 2012** compiled by Advocate L Mrwebi in response to the representations made by Lieutenant General Mdluli with regards to Silverton CAS 155/07/2011
4. Issues arising from your letter, specifically paragraph 4, are not addressed under each specific bullet point but are covered in the context of the report.
 5. The report does however not address the primary elements of investigations still outstanding and estimated time needed to conclude the cases as set out in paragraph 4.
 6. At this point it is very difficult to address both these issues due to factors outside the control of the investigative process. The debriefing of the witness (as referred to later in the report) within the Witness Protection Program has not been concluded which means that further criminal conduct might still come to light. Investigations into alleged criminality by members/informers of/from CI within Kwazulu-Natal have not even begun yet and as such the scope of such an investigation is not even known.

BACKGROUND

7. On **18 March 2011** a request was received from Deputy National Commissioner, Lieutenant General A Dramat that Colonel KD Roelofse and Lieutenant Colonel P Viljoen must avail themselves to assist in an investigation in Gauteng that was conducted by Major General S Sibiya. **Vosloorus CAS 340/02/1999** refers.
8. During a briefing session attended by Lieutenant General M Petros, Major General Z Matakata and Major General S Sibiya, Colonel KD Roelofse and Lieutenant Colonel P Viljoen on **21 March 2011** it came to light that a murder investigation was conducted in which a Lieutenant General Mdluli and three (3) other persons were implicated. It was also stated that the then investigation team, under the command of Major General S Sibiya, were

threatened and were unable to continue with the said investigation. Therefore an independent investigative team was needed to proceed with the investigation.

9. This meeting resulted in Colonel KD Roelofse and Lieutenant Colonel P Viljoen being requested to continue with the said investigation.

SEQUENCE OF EVENTS

10. On **31 March 2011** Richard Naggie Mdluli was arrested at Boksburg Magistrate Court for murder as well as other charges that range from intimidation, kidnapping, assault with the intent to cause grievous bodily harm and defeating the ends of justice. The court hearing (bail) against Lieutenant General Mdluli started on **07 April 2011**. After the conclusion of the bail hearing on **20 April 2011** in which Lieutenant General Mdluli and his co-accuse were granted bail, the case was postponed to **30 September 2011** for further investigation and the determination of a High Court date. On **30 September 2011** this matter was postponed to **10 April 2012** for trial in the High Court, Johannesburg.
11. This matter was provisionally withdrawn on **14 February 2012** in the High Court, Johannesburg. This was done after a decision was taken by the National Prosecuting Authority (NPA) to withdraw the matter and institute a formal inquest. The formal inquest is to be held at Boksburg Magistrates Court on **10 April 2012**.
12. At the time of his arrest Lieutenant General Mdluli was the national head of Crime Intelligence within the SAPS.
13. After the arrest of Lieutenant General Mdluli, some members of Crime Intelligence (CI) came forward with information regarding alleged crimes committed by members working at Crime Intelligence. On **18 April 2011** an information note was compiled regarding some of the information obtained during the murder investigation. It is clear from this information

note that additional information regarding alleged criminality within CI had to be investigated further.

14. Further to the information mentioned above the investigative team have had the opportunity to follow up on the information that was uncovered during the investigation into the above mentioned murder incident. The investigative team discovered two vehicles registered in the name of Theresa Lyons, namely a blue 330D BMW with registration number CF 165358 and a black ML 350 CDI with registration number CF 171881. In this regard it must be mentioned that she is married to Lieutenant General Mdluli.

FACTS IN RESPECT OF SILVERTON CAS 155/07/2011

15. In approximately **April 2010** a Colonel HJ Barnard, Head Procurement, Crime Intelligence, Pretoria approached Leo Haese Pretoria informing them that he was interested in buying a 5 series BMW and that he wanted to trade in a 7 series BMW on the 5 series BMW. One of Barnard's functions is to buy vehicles for Crime Intelligence through a front company Universal Technical Enterprises (UTE). He therefore approached Leo Haese Pretoria as a representative of UTE. UTE is funded through the Secret Services Account (SSA).
16. The trade in vehicle belonged to Lieutenant General Mdluli and he had a settlement amount of R560 526.01 outstanding on his hire purchase through BMW Financing.
17. Leo Haese Pretoria could only offer Lieutenant General Mdluli R470 000.00 for his vehicle. This accounted for a deficit of R90 526.01 that Lieutenant General Mdluli had to settle.
18. In essence the deal that was negotiated between Leo Haese Pretoria and Barnard entailed that Barnard (through UTE) had to buy two (2) vehicles from them in order to finance the shortfall on the trade in vehicle that belonged to Lieutenant General Mdluli. This deal also included a payment from Atlantis Nissan on 02 June 2010 to cover the shortfall between the

sale of the 3 series BMW in June 2010 and the 5 series BMW in August 2010 to UTE which amounted to R48 213.01.

19. The shortfall between the cover price of R470 000.00 and preferred settlement amount R512 313.00 was covered with a discount and trading assistance of R42 313.00 which was generated by the sale of the 3 series BMW.
20. Together with the discount and trading assistance of R42 313.00 Leo Haese Pretoria also received a payment from Atlantis Nissan on 02 June 2010 for R48 213.01. The amount of R90 526.01 that was generated through discount and trading assistance allowed for the full and final settlement of the settlement amount of R560 526.01 in respect of the trade in vehicle.
21. On 26 August 2010 Leo Haese Pretoria sold a 530d BMW Sedan to Barnard of UTE. The total cost to UTE amounted to R706 150.00. The discount that UTE was entitled to amounted to R31 500.00. This amount was paid back to Atlantis Nissan as per their previous agreement.
22. Through the above-mentioned actions Lieutenant General Mdluli fraudulently benefited an amount of R90 526.01. This amount was owed to the state as the trade in assistance and discount should have accrued to the 3 and 5 series BMW's.
23. It also became apparent that there never was a need for Barnard to buy the 3 series BMW but he only did so to contribute to Lieutenant General Mdluli's settlement amount. Subsequent to the sale of this specific vehicle it was registered to Theresa Lyons in August 2010 for her exclusive use. She got to married Lieutenant General Mdluli on **19 February 2011** and continued to use it up until it was confiscated on **15 April 2011**.

CONTINUATION OF THE SEQUENCE OF EVENTS

24. Information notes dated **18 June 2011** and **10 July 2011** set out the facts as described above and were handed to Lieutenant General Dramat. On **11 July 2011** a case docket was registered in respect of the above-mentioned incident.
25. As stated earlier in this document the investigative team were also approached by various individuals regarding alleged irregularities by senior members within CI. Due to the fact that the investigation into the murder neared completion more time was available to concentrate on the reports that were received from these various individuals.
26. In this respect the investigative team was able compile a file regarding some of the allegations made by members working at CI. This file was handed to Lieutenant General Dramat on **17 August 2011** with the request that it be handed to the Office of the Inspector General of Intelligence. A memo dated **11 August 2011** was attached to the file. This was handed to the Inspector General of Intelligence personally on **18 August 2011**.
27. On **25 August 2011** a report in terms of regulation 12 was handed to Lieutenant General Lebeya in respect of Silverton CAS 155/07/2011. The report is not attached but is available on request.
28. Applications for warrants of arrest and search warrants in respect of the case docket, Silverton CAS 155/07/2011 was prepared and handed to the National Prosecuting Authority (NPA) on **02 September 2011** for decision. On the same day the case docket was handed to the relevant senior magistrate at Pretoria Magistrates Court for consideration and decision.
29. The warrants of arrest and search warrants were duly signed by the relevant senior magistrate on **06 September 2011**. The said warrants of arrest and search warrants were obtained from the Pretoria Magistrates Court on the same date.

30. Due to the sensitivity of the matter Lieutenant General Dramat was requested to intervene and facilitate compliance with the said search and seizure warrants without compromising the covert premises in question. This intervention took place and a meeting was held on **13 September 2011** which was attended by Lieutenant General Dramat, Lieutenant General Lebeya, Major General Sibeya, Major General Matshatshe, Colonel KD Roelofse and Lieutenant Colonel P Viljoen. An agreement was reached as how best to comply with the search and seizure warrant.
31. Major General Hankel was appointed to facilitate the process on behalf of Crime Intelligence. Brigadier F van Graan from Legal Services, Head Office was requested to monitor the process. The first meeting was held on **14 September 2011**. It was clear from the meeting that CI wanted to deviate from the agreement that was reached on **13 September 2011** in that they wanted a list of documents as per the search and seizure warrants with the view of supplying the documents at a later stage.
32. The matter was then referred back to Lieutenant General Dramat in order for him to intervene. The original agreement was only acknowledged on 21 September 2011 by CI, after the intervention.
33. On **16 September 2011** the National Director of Public Prosecution Adv Semilane requested to be briefed on this matter due to a request by the Office of the Inspector General of Intelligence. The nature of the request is not known. Advocate Willie Hofmeyer and the Director of Public Prosecution of North Gauteng, Advocate S Mzinyathi was briefed by Advocate C Smith (prosecutor in this matter) and Colonel KD Roelofse, which in turn briefed Advocate Semilane.
34. After the briefing session the National Director of Public Prosecution, Adv Semilane stated that the warrants of arrests and search warrants was duly obtained and had to be executed by the South African Police Services.

35. On **20 September 2011** the investigative team were informed by Lieutenant General Dramat that he was informed in writing by the Office of the Inspector General of Intelligence that they will not be attending to the report given to them on **18 August 2011** as a report of this nature can only be referred to through the office of the Minister of Police.
36. On **20 September 2011** Lieutenant General Mdluli was brought before the Specialized Commercial Crimes Court, Pretoria. Lieutenant General Mdluli was granted bail and the case was postponed to **14 December 2011**.
37. On **21 September 2011** Major General Hankel facilitated the process as agreed upon earlier and various documents, as requested, were handed over to the investigation team. To limit any exposure only Colonel K Roelofse accompanied Major General Hankel to the covert premises in question. Brigadier F van Graan not only assisted in this process but accompanied Major General Hankel and Colonel K Roelofse.
38. On **04 October 2011** Colonel Barnard was also arrested and brought before the Specialized Commercial Crimes Court, Pretoria in respect of Silverton CAS 155/07/2011. Barnard was granted bail and the case was also postponed to **14 December 2011**.
39. On **18 October 2011** a member of CI was interviewed regarding certain of the above mentioned allegations as well as allegations made in the attached information notes. He made certain allegations in respect of criminality within CI and an affidavit was obtained. The allegations made by this member have far reaching consequences if proved to be true. He was placed within the Witness Protection Program on **21 October 2011**.
40. The witness was made available to Major General Hankel due to the serious nature of the allegations made by him. As part of the investigation certain documentation was requested that the witness referred to in his affidavit. These documents on face value seem to corroborate the allegations made by the witness.

41. On **24 October 2011** the Office of the Inspector General of Intelligence requested copies of the search and seizure warrants issued in respect of case docket, Silverton CAS 155/07/2011. This was supplied to them on that day.
42. On **30 October 2011** Colonel K Roelofse was approached by Major General Sibiya regarding the investigation into this matter and more specifically the investigation into the alleged criminal abuse of the secret service account. Major General Sibiya informed Colonel K Roelofse that he had been taken to task by certain Generals within the SAPS, by allowing this investigation to continue beyond the scope of the murder investigation.
43. According to Major General Sibiya he was accused of having no control over the investigative team. Colonel K Roelofse informed Major General Sibiya that he reports to Lieutenant General A Dramat regarding the investigation and that any instruction regarding the termination of the investigation must be in writing and addressed to Lieutenant General A Dramat.
44. On **31 October 2011** Major General Hankel, Major General De Kock, Major General Jacobs and Brigadier F Van Graan went to see the Inspector General of Intelligence as to inform her of the situation developing at CI relating to the Secret Service Account.
45. On **02 November 2011** a meeting was held with the representatives of the Auditor Generals' Office. They were briefed regarding the allegations of criminal conduct. They were also requested to form part of the investigation in respect of these allegations. The investigative team was informed on **15 November 2011** that they do not wish to be part of the investigation.
46. The information provided by the witness as mentioned above and other evidence discovered during the investigation were relayed to the Office of the Inspector General of Intelligence, on their request, via a report dated **03 November 2011**. The report with the heading "**Report to the Inspector General of Intelligence on the matter of alleged mal-administration and crimes committed in respect of the Secret Services Account (SAA) of**

the Crime Intelligence Division of the South African Police Service” was signed by Major General Hankel and Major General De Kock on **03 November 2011**. The report was handed to the Office of the Inspector General of Intelligence on **03 November 2011** as well as to the acting Commissioner of the South African Police Service, Lieutenant General Mkhwanazi. A copy of this report is available if required.

47. On **08 November 2011** a request was made to the investigation team to obtain the case docket, Silverton CAS 155/07/2011 by a member of the NPA not involved in the investigation. The request was not entertained. This was followed up with a further request dated **10 November 2011**. This was also not entertained.
48. On **15 November 2011** a further case docket was opened at Lyttleton SAPS. Lyttleton CAS 432/11/2011 refers. This case docket was opened in respect of the investigation done regarding the allegations made by the member from CI who was admitted into the Witness Protection Program. The details of this matter are dealt with in the attached reports.
49. In response to the interference experienced, Colonel K Roelofse approached Advocate G Nel, the prosecutor designated by the Director of Public Prosecution, Gauteng North, Advocate S Mzinyathi in respect of Lyttleton CAS 432/11/2011 with the view to obtain a warrant of arrest for Major General Lazarus. In this regard an affidavit dated **16 November 2011** was compiled by Colonel Roelofse in which he sets out the basis of his application. The basis for the application is largely based on the lack of intervention by SAPS to preserve the integrity of the investigation. Repeated requests to intervene to ensure the integrity of the investigation were ignored and that led to the application for a warrant of arrest.
50. A representation dated **17 November 2011** (Thursday) by Lieutenant General Mdluli was handed (by hand) to Advocate L Mwrebi for consideration in respect of the case docket, Silverton CAS 155/07/2011. The representations contained the affidavit of Lieutenant Colonel P Viljoen which formed the basis of the application for the search and seizure warrants and warrants of arrest. Lieutenant General Mdluli based his representation firstly

on the assumption that according to him there is a conspiracy against him which constitutes an unfair prosecution and secondly that the criminal case against him is weak.

51. On **21 November 2011** (Monday) Advocate L Mwrebi forwarded Lieutenant General Mdluli's representations to Advocate G Breytenbach for consideration.
52. Lieutenant General Mdluli also handed on **21 November 2011** representations with regards to his disciplinary hearing to his employer (SAPS). In this representation he states that any investigation into the matter without involving the Office of the Inspector General of Intelligence would be unlawful.
53. On **22 November 2011** (Tuesday) Advocate C Smith (prosecutor in this matter) responded to the representations made by Lieutenant General Mdluli. This was then presented to Advocate G Breytenbach, Advocate Smith's supervisor. Smith, in his report to Advocate Mwrebi, made it clear that the matter cannot be withdrawn due to strength of the state's case. In fact he stated he is considering adding a new charge.
54. On **24 November 2011** (Thursday) Advocate C Smith's response to Lieutenant General Mdluli's representations was forwarded to Advocate L Mwrebi. A copy of Advocate C Smith's response is available.
55. On **28 November 2011** (Monday) Advocate Mwrebi informed Advocate Smith that he is not satisfied with his response to Lieutenant General Mdluli's representations. He then requested access to the actual docket.
56. The original docket was delivered to Advocate Smith on **28 November 2011**.
57. On **28 November 2011** the acting Divisional Commissioner of Crime Intelligence, Major General Matshatshe, Major General M Hankel and Major General Hslatswayo was temporarily transferred from CI to another division within the SAPS. Major General Lazarus was also given a notice of suspension on the same date.

58. A memorandum from Advocate L Mwrebi dated **04 December 2011** (Sunday) instructs Advocate C Smith to withdraw the case against Lieutenant General Mdluli and Barnard. Barnard did not submit representations to the DDP.
59. Major General Lazarus's suspension came into effect on **05 December 2011**.
60. On **06 December 2011** the investigation team was informed that the matter against Lieutenant General Mdluli and Colonel Barnard was withdrawn. No reason for the withdrawal was given.
61. On **07 December 2011** a copy of the memorandum dated **04 December 2011** as compiled by Advocate L Mwrebi, was received by this office. Advocate L Mwrebi, in his memorandum indicates that he concurs with Lieutenant General Mdluli that the criminal case is indeed weak. He further states that even if the criminal matter was strong the SAPS do not have the mandate to investigate the matter as it falls within the mandate of the Office of the Inspector General of Intelligence and any investigation into this matter could be unlawful. He concludes that **"whether there was evidence or not, is in my view, not important for my decision in the matter"**.
62. The basis on which Advocate L Mwrebi took his decision did not form part of this representation but did in fact form part of the representations presented to the SAPS with regards to the instituting of disciplinary action by the employer. It is therefore unclear whether he received both representations and by mistake responded to the wrong representation.
63. On **08 December 2011** a meeting was held between Advocate Louw, Advocate Breytenbach, Advocate Smith, Major General Jacobs and Brigadier van Graan regarding the decision made by Advocate L Mwrebi. It was established that Advocate L Mwrebi already informed Lieutenant General Mdluli of his decision prior to him informing the prosecutor, Advocate Smith. Neither was the SAPS consulted in the decision made by Advocate L Mwrebi.

64. On the same date Advocate Breytenbach, Advocate S Mzinyathi and Brigadier van Graan went to the Office of the Inspector General of Intelligence in respect of the memorandum by Advocate L Mwrebi dated **04 December 2011**. A meeting with Advocate J Govender took place to seek clarity regarding the role the Office of the Inspector General of Intelligence in respect of this investigation. During this meeting Advocate J Govender again reiterated that the Office of the Inspector General of Intelligence is not mandated to conduct do criminal investigations.
65. On **09 December 2011** Advocate Breytenbach and Advocate S Mzinyathi went to see Advocate L Mwrebi in respect of his decision in the Mdluli matter. Advocate L Mwrebi refused to reconsider his decision. Advocate Breytenbach however indicated to Colonel Roelofse that an agreement was reached between the above-mentioned parties that the matter be provisionally withdrawn.
66. On **14 December 2011** the matter gets provisionally withdrawn against Lieutenant General Mdluli and Barnard in the Specialized Commercial Crimes Court, Pretoria.
67. On **14 December 2011** Colonel Roelofse met with Advocate Breytenbach in order to consider the various options open in respect of the investigation. It was decided to approach the Office of the Inspector General of Intelligence and the Office of the Auditor General in an attempt to include them in the investigation. Advocate Breytenbach had at that stage spoken to Advocate J Govender on various occasions. In each instance it was made clear that the Inspector General of Intelligence does not have the capacity and/or the mandate to do a criminal investigation.
68. Colonel K Roelofse also spoke to Advocate J Govender on **10 January 2012** in which she reiterated and confirmed the position of the Inspector General of Intelligence. She further added that the SAPS must make a formal request to the Inspector General of Intelligence regarding assistance in this matter. She also added that Advocate L Mwrebi did not consult with the Office of the Inspector General of Intelligence prior to him withdrawing the matter against Lieutenant General Mdluli and Colonel H Barnard.

69. On **12 January 2012** Colonel K Roelofse also spoke to Carl Dibetso from the Office of the Inspector General. He advised that the Inspector General of Intelligence does not have the capacity and/or the mandate to investigate criminal matters. The responsibility to investigate crime still lies with the SAPS. He also advised that the SAPS, through the office acting National Commissioner of the SAPS, Lieutenant General Mkwanaasi, must make a formal request to the Inspector General of Intelligence regarding assistance in this matter.
70. Also on **12 January 2012** Colonel Roelofse met with Brigadier van Graan and advised him of Govender and Dibetso viewpoint on this matter. Brigadier van Graan was requested to draft such a request in order to get clarity on the situation.
71. On **25 January 2012** the acting National Commissioner of the SAPS, Lieutenant General Mkwanaasi, requested a meeting regarding the investigation into the alleged criminal conduct of certain members of CI. Lieutenant General Mkwanaasi was informed of the above-mentioned request emanating from the Office of the Inspector General of Intelligence. A decision was taken that such a formal request will be forwarded to the Office of the Inspector General of Intelligence via the office of Lieutenant General Mkwanaasi.
72. It was further agreed upon that the investigation regarding Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011 would continue. Lieutenant General Mkwanaasi however did not want to the investigation to be discussed with the NPA and he indicated his objection to involving the NPA in the matter. He further instructed Colonel K Roelofse not to open any further case dockets. He instructed that any additional investigations must be referred to Lieutenant General Lebeya after which a decision will be made whether to open a criminal case docket or not. Lieutenant General Mkwanaasi did however indicate that disciplinary action must continue against members implicated in any alleged irregularities.
73. On **06 February 2012** Colonel K Roelofse made arrangements to interview two (2) members of CI regarding the allegations made by the CI member as referred to earlier in this report. The CI members were represented by the same attorney representing Barnard in his criminal matter. She enquired as to why the investigation into these matters are continuing

as Lieutenant General Mdluli's attorney is in possession of a letter from Advocate L Mwrebi informing them that the withdrawal of charges in this matter (Silverton CAS 155/07/2011) is final and not provisional as stated in during the withdrawal of the matter on **14 December 2011**. Advocate G Breytenbach was contacted and she confirmed that a letter to that effect was indeed send to the attorney representing Lieutenant General Mdluli. This letter was never presented to the investigative team.

- 74.** On **13 February 2012** Colonel KD Roelofse was informed by Lieutenant General A Dramat to immediately halt the investigations in respect of Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011. Lieutenant General Mkwanaasi gave this instruction to Lieutenant General A Dramat on **08 February 2012**. Colonel K Roelofse was further instructed not to hand over the relevant case dockets to the NPA. This instruction was apparently given pending the outcome of the formal request to the Office of the Inspector General of Intelligence. Colonel K Roelofse was further informed that Lieutenant General Mkwanaasi requested that the original case dockets (Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011) be delivered to his office. The reason for this instruction was not clear.
- 75.** Lieutenant General A Dramat also received an instruction from Lieutenant General Mkwanaasi to remove Colonel K Roelofse and the members working with him from the investigation into Vosloorus CAS 340/02/1999 as the investigation does not fall within the mandate of the DPCI. This instruction was also relayed to Colonel K Roelofse on **13 February 2012**.
- 76.** On **27 February 2012** Lieutenant General Mkwanaasi had a meeting with the Inspector General of Intelligence regarding these matters. Lieutenant General A Dramat was not requested to attend the meeting and no feedback had been received regarding the outcome of this meeting.
- 77.** Copies of the original case dockets (Silverton CAS 155/07/2011 and Lyttleton CAS 432/11/2011) were delivered to the office of Lieutenant General Mkwanaasi on **29 February 2012**. Up to date no written instruction from Lieutenant General Mkwanaasi has been

received regarding the discontinuing of the investigations into these matters and/or the handing over of the original case dockets to his office.

- 78.** On **29 February 2012** Lieutenant General Molefe instructed the halting of all disciplinary matters relating to Major General Lazarus and Lieutenant General Mdluli. He also instructed that all documents relating to the disciplinary matter to be handed to the Office of the Inspector General of Intelligence. The same reasoning apparently applies in that all investigations will be halted pending the outcome of the decision of the Office of the Inspector General of Intelligence.
- 79.** The question whether the SAPS had the mandate instituting departmental disciplinary hearings with relation to the question of national security was raised by Lieutenant General Mdluli as part of his representations dated **21 November 2011** against the instituting of said procedures. His representation was dismissed by the employer.

INTERFERENCE

- 80.** As mentioned above a member of CI decided to assist in the investigation. On **19 October 2011** he decided to speak to Barnard. He trusted Barnard and took him into his confidence. Barnard however broke that trust and informed Major General Lazarus on the same day that the member has spoken to the investigation team and that he admitted to submitting false claims on behalf of others and himself.
- 81.** On the same day this member was requested by V Singh, Major General Lazarus and DA Naidoo to accompany them. He was taken to Major General Lazarus's house where he was interrogated. He was confronted with the fact that he was working with the DPCI and they wanted to know what he told them. Khan joined them at Major General Lazarus's house. The member denied the allegations.
- 82.** The member states that they then had a general conversation until such time Khan said that his contact at the Hawks informed him that the member admitted to certain things and that

he is now on the side of the DPCI. The conversation turned to a general topic up to the point where Westville Travel air tickets were discussed. V Singh said that Hankel requested certain documentation from him regarding the air tickets. Khan told V Singh that he must try and destroy all the records pertaining to the air tickets.

83. The next day the member was again fetched at his home and taken to Major General Lazarus's office where he was subjected to intimidation. This time Barnard, Vanker and Khan was present. Due to these actions the member and his family were placed into the Witness Protection Program.
84. In an affidavit obtained from a witness he states the following when the investigative team enquired about interference: **"Between 19 and 20 October 2011 I received a call from Singh. He told me that personnel from Johannesburg or Pretoria would be coming down to Durban to pick up invoices from UTE and keep them ready. He also told me to add the name of the travellers to the invoices before I print it. I had to give these invoices to the personnel from Johannesburg or Pretoria. Singh also requested me to not reflect the names of the following passengers on the invoices, Abigail Lazarus, Senthumule Mashudu, Darren Lazarus, Sandra Lazarus. I did not get round to doing that"**.
85. The investigating team have also been informed on **10 October 2011** by the member that on the same evening that he was taken to Major General Lazarus's house he heard them discussing the placement of a news paper article relating to Lieutenant General Dramat and Major General Sibiya. He stated that the Major General Lazarus wanted to use sources within the media (journalists paid by CI) to write a story in order to take the focus away from them. This according to the member this is a strategy employed to cast suspicion on those they perceived to be a threat.
86. This news paper article was published in the Sunday Times on **23 October 2011**. Lieutenant General Mdluli has made representations to the National Prosecuting Authority earlier that month and uses the above mentioned article to cast suspicion on Lieutenant General Dramat and the investigating team.

87. As stated earlier, CI and the DPCI came to an agreement as to how best to deal with this investigation. The investigative team also stated that Hankel was appointed to facilitate and to assist the investigation on behalf of CI. As part of this process the investigative team requested various documents from CI and Hankel facilitated the process. The investigative team requested that the custodian of the specific documents required, deliver it in person. As most of these members' falls under the direct command of Major General Lazarus they were requested by him to report him as to what was requested. This happened on numerous occasions.
88. As part of the investigation the investigative team also obtained various search and seizure warrants. As part of an application in respect of premises in Gauteng the investigative team indicated that they would want to seize computers (hard drives, memory sticks, ect). The investigative team requested the Technical Support Unit (TSU), a unit within SAPS that deals with the forensic investigation of electronic equipment, to assist with search and seizure operations. They have subsequently been informed that the TSU falls under the direct command of Major General Lazarus. Major General Lazarus was in fact informed of the intended search by the commander of TSU, Pretoria as he is required to do so.
89. The premises searched are directly linked to the ongoing investigation in respect of fraud and/or corruption in which Major General Lazarus is also allegedly implicated. The most recent searches took place on **11 November 2011** and **12 November 2011**. The investigative team have confiscated a suspects' cell phone as part of the search and was able to determine that various "sms" messages between him (079 528 1696) and an cell phone 084 645 7220 were send in which they discuss a way of identifying the whereabouts of Naidoo that the investigative team placed within the witness protection program. The investigative team later determined that the cell number 084 645 7220 belonged to Avril Sahadew who is related to Eugene Sahadew. Eugene Sahadew in turn is a member of CI and a nephew to Major General Lazarus.
90. Major General Lazarus has the authority to release funds from the SSA and in this regard he is able to control funds being paid to sources and contact persons. The use of reporters to

publish and or withhold articles has already been discussed earlier in this report. According to Naidoo these reporters are paid from the SSA. The investigative team is also aware that Major General Lazarus used funds from the SSA to appoint defence lawyers to represent him after search warrants were issued in respect of two (2) CI offices.

91. The investigative team has also been informed that Major General Lazarus has approached the chairperson of the Joint Standing Committee on Intelligence, Cecil Burgess on various occasions without notifying his acting divisional head of these visits. Major General Lazarus is trying to convince Burgess that this investigation compromises national security. A letter from Burgess stating that Hankel must be removed from the investigation was sent to the acting divisional commissioner of CI. The investigative team has had insight to that letter.
92. As stated above that in response to the interference by members of CI, Colonel K Roelofse approached Advocate G Nel in respect of Lyttleton CAS 432/11/2011 with the view to obtain a warrant of arrest for Major General Lazarus. An affidavit dated **16 November 2011** was compiled by Colonel Roelofse in which he sets out the basis of his application. The basis for the application is largely based on the lack of intervention by SAPS to preserve the integrity of the investigation. Repeated requests to intervene to ensure the integrity of the investigation were ignored and that led to the application for a warrant of arrest.
93. Just after the submission of the affidavit to the NPA for consideration but prior to the issuing of an arrest warrant, Major General Lazarus was given a notice of suspension by the SAPS. This effectively took away the basis for the application and it was therefore abandoned.
94. The investigative team would submit that Major General Lazarus' efforts to influence Burgess constitute interference with a criminal investigation. In fact just the opposite is true in that the actions of the above-mentioned members of CI are actually compromising national security and if not investigate properly will have a lasting effect on the failure of the SAPS to combat crime.

CONCLUSION

95. This investigation falls within the mandate of the SAPS and more particularly within the ambit of the DPCI. In this regard see the **South African Police Service Amendment Act, Act No. 57 of 2008**.
96. In an email written by Advocate J Govender she explains the function of the Office of the Inspector General of Intelligence. This email is incorporated in the combined draft report compiled by Major General Jacobs and Colonel K Roelofse. The contents of the email read as follows and speaks for itself:

“The Inspector-General (IG) has a constitutional mandate (section 210) of monitoring the activities of the Services. The Oversight Act provides for the IG to oversee the intelligence and counter - intelligence activities only of the Services. Her functions are set out in section 7(7) of the Oversight Act and is limited to these activities .i.e. the operations of the Services. The AG has the financial oversight mandate and not the IG.

Section 2 of the Oversight Act provides for the JSCI to perform the oversight functions over the operational functions and financial management of the Services. Of note is section 3 (a) which states that the AG must provide the JSCI with an audit report. This clearly includes an audit of the Secret Services Account.

The IG is mandated to conduct investigations within the parameters of the Oversight Act and must provide reports on these investigations which must include findings and recommendations. These reports are provided to the Ministers concerned. The IG does not conduct court driven investigations and information obtained by the IG during the oversight investigations cannot be used in a criminal prosecution.

Should the IG uncover criminality during an investigation a recommendation can be made for criminal investigation and information obtained by the IG will not be released to the

police for this purpose. The police will have to conduct their own independent investigation.

The provisions of the Secret Services Account fall outside the mandate of the IG. To suggest that only the IG may investigate this matter is absurd and a clear misinterpretation of the mandate of the IG.

The IG cannot get involved in criminal investigations being conducted by the police. To so do can be construed as obstructing the course of justice as the IG does not have to mandate to conduct criminal investigations for possible prosecution. In addition a disciplinary matter is an internal process over which we do not have a mandate.

Our involvement thus far was to ensure that legitimate operations of the CI during the Hawks investigation was not compromised.”.

97. The documentation attached to this report clearly indicates that the investigation complies with the requirements as set out in **Section 17 D of the Act** as well as **Section 16 of the South African Police Service Act No. 68 of 1995**.
98. Your attention is drawn to **Section 17 F of the said Act**. It is clear that the notion of a multi disciplinary approach is enshrined in the Act and according to subsections one (1) through to three (3) the Head of the Directorate request secondment to assist in an investigation to which the National Commissioner **shall** comply. It would appear from these subsections that the Head of the Directorate need to request the National Commissioner to facilitate the secondment of personnel to assist in this investigation.
99. Your attention is further drawn to **Section 17 K of the said Act**. At this stage a retired judge has not been appointed as required by the Act. As such no recourse exists in which a member of the DPCI can report complaints as stated in **subsection 17 L (4) (b) of the Act**.

100. It is submitted that the level of interference with respect to this investigation has already reached a level which necessitates the use of a complaints mechanism. Without a complaints mechanism the integrity of the investigation cannot be maintained. The question arises as to what would be the next step in ensuring that due process takes its course.
101. In terms of **Section 34(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004**, a “person in a position of authority, (Public Officer on an SMS level) who knows or ought reasonably to have known or who suspects that any other person has committed corruption or theft, fraud, extortion, forgery or uttering of a forged document involving an amount of R100 000.00 or more, **must** report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official”. Failure to do so constitutes a criminal offence in terms of section 34(2) of the act.
102. Major General M Hankel was advised not to lay a compliant in terms of **Section 34(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004** as it was felt that it was the responsibility of the acting Divisional Commissioner, Major General Matshatshe to assume the responsibility.
103. Up to date no complaint was lodged as per **Section 34(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004**. It is submitted that “**persons in a position of authority**” to which these allegations were made known and elected not to act in a manner a prescribed by law are actually in breach of the Act.
104. The **South African Police Service Amendment Act, Act No. 57 of 2008** is still valid and after perusing the proposed amendments to the Act, as prescribed by the Constitutional Court in the Glenister Judgement, it is clear that the current sections and subsections referred to in this report is not negatively affected by it but is enforced by it.

105. This report can be converted into an affidavit as the contents herein are true and correct and the majority of the points rose falls within the personal knowledge of the author of this report.

COLONEL
ANTI-CORRUPTION TASK TEAM: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
K ROELOFSE

Date: 2012-03-02