

Independent Police Investigations Directorate (IPID)

1. Robert McBride

Position: Executive Director

Appointed: 3 March 2014

Suspended:

- Precautionary Notice of Suspension – 10 March 2015
- Suspended - 25 March 2015

Reasons for Suspension:

- Altering investigation report in Zimbabwe ‘renditions’
- Removing Richard Mdluli’s device from Shadrack Sibiya’s office
- Undermining authority of the Minister of Police

Legal Actions:

Urgent Application to High Court

- To Interdict the Minister from suspending him
- Constitutional argument on IPID independence

Date: 13 March 2015

Outcome:

- No urgency on suspension argument as Minister had not instituted proceedings.
- Court ruled there may be good prospects of success on Constitutional argument.

Disciplinary Actions:

Date: 26 May 2015

- Charges instituted against McBride, Khuba and Sesoko. Chairperson of DC rules that proceedings must continue.

Labour Court Application:

- Urgent application for stay of DC
- Labour Court stays DC until arguments are presented to High Court on IPID Constitutional Independence

North Gauteng High Court application – independence of IPID

Date: 4 December 2015

Outcome: High Court ruled Minister of Police contravened Constitution by suspending and instituting disciplinary actions against the head of IPID. Legislation not sufficient to protect IPID independence.

Minister of Police concedes constitutional independence – March 2016

Constitutional Court application – independence of IPID. Seeking confirmation of North Gauteng High Court order.

Arguments before Court – **17 May 2016**

Criminal Charges:

Date: March 2016

- Fraud
- Defeating the ends of justice

Next appearance: June 2016

2. Innocent Khuba

Position: IPID Investigations – Limpopo

Suspended: 21 May 2015

Reasons for Suspension:

Legal Actions:

- Arbitration before Bargaining Council to challenge dismissal

Criminal Charges:

- Fraud and defeating the ends of Justice

Date: March 2016

Next appearance: June 2016

3. Paul Viceroy Hillary Maoko

Position: Head of Legal Services, IPID

Appointed: 4 August 2014

Date: 31 August 2015 – placed under precautionary transfer to Limpopo

Reasons for transfer:

- Allegations of disclosing confidential IPID information to the media
- Allegations were investigated by the State Security Agency
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Legal Actions:

Date: 29 April 2016 – challenged precautionary transfer before Labour Court

- Court found precautionary transfer was unlawful

- Court ruled that Maoka should return to IPID Head Office in Pretoria in his permanent position

Notice to suspend: 9 May 2016

Suspended: 12 May 2016

Reasons for Suspension:

- Potential conflict in his position because of his role in assisting employees in disciplinary hearings of disputes
- Non-disclosure of financial interests for 2015/16 financial year

Date: 13 May 2016 – filed unfair suspension dispute at Bargaining Council

4. Matthews Sesoko

Position: National Head of Investigations: IPID

Appointed: 01 April 1997

Suspended: 21 May 2015

Reasons for Suspension:

- Altering investigation report in Zimbabwe ‘renditions’

Legal Actions:

- To apply for Stay of the disciplinary proceedings
- **Date:** 6 May 2016 – Internal hearing
- **Date:** 20-24 June 2016 disciplinary proceedings continue if Stay application fails.
- If Stay application fails he will approach the Labour Court for relief.

Criminal charges:

- Fraud and defeating the ends of Justice

Date: 18 March 2016 and 15 April 2016

Next appearance: 15 June 2016

5. Felicia Azande Ntshangase

Position: Provincial Head, Gauteng (IPID)

Appointed: 1 November 2014

Suspended:

- Notice of intention to suspend 23 June 2015
- Suspension: 8 July 2015

Reasons for Suspension

- Alleged appointment of friends
- Alleged appointment of family members
- Gross misconduct

Anticipated Legal Action:

- Two cases of fraud opened at SAPS Pretoria Central

Date for Disciplinary Proceedings: 23-25 May 2016

Note: Ms Ntshangase provided a confirmatory affidavit for the McBride Constitutional Court challenge in which she confirmed that the Minister addressed IPID staff 5 days after McBride's suspension (alleged institutional interference) and also made alleged false allegations about the judiciary.

6. Nomkhosi Netsianda

Position: IPID Chief Director: Corporate Services

Date of appointment: 1 April 2012

Notice of intention to suspend: 6 August 2015

Suspended: 19 August 2015

Note: Netsianda challenged the appointment of the daughter of Maggie Soty, Deputy Minister of Police, as Deputy Director: Investigations for IPID in the Free State. The candidate was appointed against Netsianda's recommendation

Reasons for suspension:

- Disagreement with the acting Executive Director on three appointments
- "Raising her voice" at an Internal Audit meeting where the funding of the court case on IPID's independence was discussed
- Accused of leaking information about the appointment of Ms Soty daughter, who allegedly did not meet minimum requirements
- "Mislead" the Acting Head of IPID for making IPID appointments

Disciplinary Hearing: 24 -25 May 2016

Legal action:

- Criminal case (leaking information about Soty's appointment) has been registered with Pretoria Central SAPS

Note: Netsianda's position has been advertised externally whilst she is on suspension

Directorate for Priority Crime Investigation (DPCI) – The Hawks

1. Anwa Dramat

Position: Lieutenant - General – National Head of DPCI

Appointed: June 2009

Date: 10 December 2014 – Notice of Suspension

Suspended:

Date: 23 December 2014

Reasons for Suspension:

- 'Rendition' of Zimbabwean nationals

Legal Actions:

- **Date:** From 2010 onwards Helen Suzman Foundation has been involved in challenging constitutionality of certain provisions of the SAPS Act, relating to operational and structural independence of the DPCI
- **Date:** 2011 – Constitutional Court confirms provisions of the SAPS Act are unconstitutional and refers SAPS Act back to Parliament for amendment. Parliament amends but the Helen Suzman Foundation contends that revised legislation will still not pass constitutional muster
- **Date:** 2012 – Helen Suzman Foundation again approaches Constitutional Court. Court again confirms that certain provisions of the amended SAPS Act are still unconstitutional. Court itself remedies the legislation in order to pass constitutional muster
- In a judgment in November 2014, the Court effectively takes away power of Minister of Police to suspend National Head of DPCI
- **Date:** January 2015 – Helen Suzman Foundation applies to North Gauteng High Court on an urgent basis to have Dramat suspension declared unlawful and set aside. Also challenges the lawfulness of the appointment of an Acting National Head for the DPCI
- Court declares suspension and appointment unlawful
- Dramat nevertheless resigns in March 2015 **Date:** 11 September 2015 - Minister of Police appoints Berning Ntlemeza as (permanent) national head of the DPCI. Maj-Gen Ntlemeza has been acting national head of the Hawks since the suspension of Lt Gen Dramat in December 2014

Criminal Charges:

Date: 18 March 2016

- Kidnapping, defeating the ends of justice, illegal deportation in terms of the Immigration Act

2. Shadrack Sibiya

Position: Major General – Head of Hawks: Gauteng

Appointed: 1 October 2010

Suspended: 20 January 2015

Reasons for Suspension:

- Ought to have known about “illegal renditions” of Zimbabweans in Gauteng.
- Should have prevented these

Legal Actions:

Notice to suspend (precautionary suspension): 5 January 2015

- Requested further particulars for suspension – 7 January 2015
- Challenge the legitimacy of Acting Head of Hawks
- Applied to Labour Court to restrain Acting Head of Hawks from carrying out suspension
- Acting Head of Hawks (Maj-Gen Ntlemeza) withdraws notice to suspend – 13 January 2015
- Tendered costs for the applicant and removed application – 14 January 2015
- On the same day, Acting Head of Hawks issues second notice to suspend
- Acting Head of Hawks replaces legal counsel who advised that he does not have legal basis to proceed with suspension. Appointed William Mokhari as counsel
- Representations not to suspend made by Maj-Gen Sibiyi to Hawks – 19 January 2015
- Suspended 20 January 2015
- June 3 – 10, 2016: Arbitration at the Safety and Security Bargaining Council

Criminal Charges

Date: 18 March 2016

- Kidnapping
- defeating the ends of justice
- illegal deportation in terms of the Immigration Act

Date: 6 June 2016

- Criminal trial set to begin before Gauteng North High Court

3. Johan Booysen

Position: Major General – Head of Hawks: KwaZulu-Natal

Appointed: March 2010

Suspended: March 2012, despite obtaining a Labour Court interdict to prevent a suspension

Reasons for Suspension:

- Investigating fraud and/or corruption related to the 2010 FIFA Soccer World Cup, including investigations into the KwaZulu-Natal Provincial Commissioner of Police, Mamonye Ngobeni

Overview:

- Started investigations into tender fraud and/or corruption in the SAPS procurement system related to the 2010 FIFA Soccer World Cup

- Interference by the KZN Provincial Commissioner of Police, Ngobeni, trying to stop investigations
- Attempted bribe of R2 million by a KZN businessman and SAPS officials from the KZN Head Office Procurement division, who arrested in a 'sting' operation
- **Date:** *Sunday Times* headlines the first of a series of articles about the 'Gato Manor death squad' in KZN, led by Booysen. SAPS Crime Intelligence involved in disinformation campaign

Legal Actions:

- **Date:** February 2012: Receives notice of intention by employer to suspend
- Obtains Labour Court interdict on an urgent basis to prevent suspension
- Is suspended despite Labour Court interdict
- **Date:** March 2012 – Urgent application to the Labour Court, which overturns suspension. Court remanded contempt proceedings against the SAPS management.
- Returns to work and is arrested (**22 August 2012**) and suspended again (**11 September 2012**)
- **Date:** Feb 2014 - application to the High Court in Durban which rules the State has no case and the charges must be withdrawn
- **Date:** March 2014 - disciplinary hearing is conducted by the employer despite Labour Court judgment
- **Date:** September 2014 - DC Chairperson, Adv Nazeer Cassim, SC, finds not guilty on all charges. Adv Cassim critical of National and Provincial Police Commissioners
- National Police Commissioner, Riah Phiyega offers a settlement and 'golden handshake'
- Offer is refused
- Phiyega wants to discharge – obtains High Court order interdict against Phiyega
- Returns to work
- **Date:** December 2014 – asked to provide reasons for why he should not be discharged
- **Date:** October 2015: Acting national head of Hawks, Berning Ntlemeza, suspends
- Successfully approaches High Court on an urgent basis to have suspension overturned
- Ntlemeza seeks leave to appeal, which is denied
- Ntlemeza petitions the SCA
- **Date 11 May 2016:** Approaches Durban High Court – to have charges of racketeering set aside, NDPP acting unconstitutionally and abuse of power

South African Revenue Service (SARS)

1. Ivan Pillay

Position: SARS Deputy Commissioner

Appointed: 1 April 1999

Suspended: 5 December 2014

Reasons for Suspension:

- The findings of the Sikhakhane investigation, including:
 - o The unlawful establishment of a unit that operated ostensibly in a covert manner, has created a climate of intrigue, fear and subterfuge within SARS

- Unlawful establishment of the unit without having the requisite statutory authority
- Prima facie evidence that the unit may have abused its power and resources by engaging in activities that reside in the other agencies of Government, and which it had no lawful authority to perform
- Prima facie evidence that the recruitment, funding and practices of the unit were in violation of SARS's own Human resources policy
- Prima facie evidence that the existence of this unit had the real possibility of undermining the work of those agencies tasked with the investigation of organised crime and the collection of intelligence

Legal Actions:

Date: 17 December 2014

- Urgent application to the Labour Court to have suspension set aside and declared unlawful

Date: 18 December 2014

- Labour Court rules that suspension was “unlawful” and “illegal” and is set aside. Pillay must return to work the following day and be re-instated in his permanent position
- SARS is ordered to pay legal costs
- Returns to work and is again immediately suspended again

Date: 7 May 2015

- Reaches settlement and resigns from SARS with immediate effect

Criminal Charges:

Date: May 2015

- Criminal complaint registered by SARS Commissioner, following settlement with SARS and resignation
- Details of complaint and/or charges which are being investigated by the Hawks are not known

2. Peter Richer

Position: SARS Group Executive: Strategy Planning and Risk

Appointed: August 2003

Suspended: 5 December 2014

Reasons for Suspension:

- The findings of the Sikhakhane investigation, including:
 - The unlawful establishment of a unit that operated ostensibly in a covert manner, has created a climate of intrigue, fear and subterfuge within SARS
 - Unlawful establishment of the unit without having the requisite statutory authority

- Prima facie evidence that the unit may have abused its power and resources by engaging in activities that reside in the other agencies of Government, and which it had no lawful authority to perform
- Prima facie evidence that the recruitment, funding and practices of the unit were in violation of SARS's own Human resources policy
- Prima facie evidence that the existence of this unit had the real possibility of undermining the work of those agencies tasked with the investigation of organised crime and the collection of intelligence

Legal Actions:

Date: 17 December 2014

- Urgent application to the Labour Court to have suspension set aside and declared unlawful
- SARS withdraws notice to suspend before Court proceedings begin
- SARS is ordered to pay legal costs

Date: 18 December 2014

- Informed there is no need to return to office and is immediately suspended again

Date: 7 May 2015

- Reaches settlement and resigns from SARS with immediate effect

3. Johann van Loggerenberg

Position: SARS Group Executive – Tax and Customs Enforcement Investigations

Appointed: 1 December 1998

Suspended: 5 November 2014

Reasons for Suspension:

- To allow for further investigations (details of which not specified)

Date: 4 February 2015

- Reaches settlement and resigns from SARS with immediate effect

Criminal Charges:

Date: May 2015

- Criminal complaint registered by SARS Commissioner, following settlement with SARS and resignation
- Details of complaint and/or charges which are being investigated by the Hawks are not known

4. Yolisa Pikié

Position: Advisor to SARS Commissioner and Deputy Commissioner

Appointed: 28 April 2002

Suspended: 12 December 2014

Reasons for Suspension:

- Attempted theft of SARS property (SIM cards)
- Malicious damage to SARS property (SIM cards)
- Assisted Johann van Loggerenberg legally during Van Loggerenberg's suspension
- Bringing institution into disrepute

Resigned: 2 April 2015

Legal Actions:

- None. Resigned on 2 April 2015

Criminal Charges:

- Attempted theft of SARS property (SIM cards)
- Malicious damage to SARS property (SIM cards)
- Fraud

5. Adrian Lackay

Position: SARS Spokesperson

Appointed: 1 October 2003

Suspended: N/A. Resigned on 19 February 2015

Legal Actions:

- Application for Constructive Dismissal before CCMA – due to be enrolled
- Defending against a civil claim for Defamation by SARS and SARS Commissioner for R12 million damages – heads of argument filed by all parties. Awaiting court date.

ENDS.