



## **INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

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**THE CHAIRPERSON, MR FRANCOIS BEUKMAN, MP  
THE PORTFOLIO COMMITTEE ON POLICE  
NATIONAL ASSEMBLY  
PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA  
CAPE TOWN  
8000**

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**ATTENTION: HONOURABLE MR F BEUKMAN**

Dear Mr Chairperson

**IN RE: ROBERT MCBRIDE'S SUBMISSION ON THE RENEWAL OF HIS APPOINTMENT AS  
EXECUTIVE DIRECTOR OF IPID**

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### **INTRODUCTION**

1. I have prepared this submission on an urgent basis, in accordance with the Committee's request that I do so in its letter of 20 February 2019. I structure this submission as follows:
  - 1.1. First, I respond to the Minister's reasons for his recommendation that my appointment not be renewed, as contained in the Minister's submissions of 18 February 2019.
  - 1.2. Second, I set out why, in my respectful view, renewing my appointment is in the best interests of IPID, and would serve to promote the independence of IPID and its effectiveness.
  - 1.3. Third, I address the current political context which must, I submit, inform the Committee's decision.



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### **THE MINISTER'S "REASONS" ARE FLAWED AND UNFOUNDED**

#### **There is no "prima facie evidence" of misconduct on my part**

2. The Minister contends that there is "prima facie evidence" that I am not fit and proper to hold the position of the Executive Director of IPID, and that it would therefore be irrational for the Committee to renew my appointment. The Minister relies on two alleged sources of "evidence" in this regard:
  - 2.1. First, an anonymous complaint (from "concerned staff") that the Public Protector is investigating, containing various allegations of maladministration and misconduct on my part;<sup>1</sup>
  - 2.2. Second, the allegations that a former IPID employee, Mr Cedrick Nkabinde, submitted to the Minister on 28 April 2018, which accuse me of unethical conduct in the management of certain high-profile investigations.<sup>2</sup>
3. According to the Minister, the allegations under investigation constitute "evidence" (albeit *prima facie*) that this Committee ought to take into consideration. I am advised and submit that this is incorrect as a matter of law.
  - 3.1. The allegations are (at most) no more than mere allegations – no findings by a competent body have been made to uphold them.
  - 3.2. Contrary to the Minister's contentions, the mere institution of an investigation on receipt of a complaint (by the Public Protector or any other body) does not render the allegations in the complaint more credible. They remain mere

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<sup>1</sup> Annexures B and C to the Minister's submissions.

<sup>2</sup> Annexure D to the Minister's submissions.



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allegations that are not established as fact, and so cannot possibly constitute “evidence”, even of a prima facie nature.

3.3. In fact, in the present case, they are considerably less than mere allegations because:

3.3.1. As I shall explain, the overwhelming majority of the allegations addressed to the Public Protector have already been investigated by the Public Service Commission (PSC) and were found to be unsubstantiated;

3.3.2. Nkabinde’s allegations were expressly withdrawn by him, in September 2018.

3.4. The Public Protector has not advised me of her investigation of the anonymous complaint. I learned of the investigation for the first time in the Minister’s submission. I am thus yet to be invited to respond to the allegations in the complaint before her, and I will certainly do so if given the opportunity.

4. The Minister seeks to make much of the fact that the Public Protector is investigating the complaint she received, and has not dismissed the complaint. The Minister says (in paragraph 16.1 of his submission) that *“The mere fact that the Public Protector has opened an investigation into the complaint against Mr McBride means that there is ‘information which points to conduct such as referred to in section 6(4) or (5)’”*.

4.1. I am advised and submit that this is simply unsustainable as a matter of law. It involves this is a patent misreading of section 7(1)(a) of the Public Protector Act 23 of 1994 (which the Minister appears to be quoting), and of the scheme of section 6 and 7 of the Public Protector Act.

4.2. Section 7(1)(a) of the Public Protector Act reads as follows:

*“(a) The Public Protector shall have the power, on his or her own initiative or on receipt of a complaint or an allegation or on the ground of information that has*



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*come to his or her knowledge and which points to conduct such as referred to in section 6 (4) or (5) of this Act, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.”*  
(Emphasis added.)

- 4.3. In this case, it is clear that the Public Protector is simply exercising her investigative power “on receipt of a complaint” as contemplated in s 7(1)(a). Indeed, this is reflected in the opening paragraph of the Public Protector’s letter to the Minister.<sup>3</sup>
- 4.4. The Public Protector does not claim that she is investigating “information that has come to her knowledge and which points to conduct such as referred to in section 6(4) and (5)”, as the Minister suggests. That is a separate category of instances where the Public Protector may exercise her investigative powers, which is of no relevance or application to the Public Protector’s investigation of the anonymous complaint.
- 4.5. I am advised that, properly interpreted, sections 6 and 7 of the Public Protector Act oblige the Public Protector to conduct a preliminary investigation of every complaint that she receives, subject only to the following three exceptions in section 6:
- 4.5.1. If the complaint is premature, in that it is made by a state employee or official that has not exhausted his or her legal remedies (section 6(3));
  - 4.5.2. If the complaint concerns a court decision (section 6(6)); and
  - 4.5.3. If the complaint is submitted more than two years after the occurrence of the incident or matter concerned (section 6(9)).

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<sup>3</sup> Annexure B to the Minister’s submissions.



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- 4.6. In the above three instances only, the Public Protector may refuse to investigate a complaint at all. In all other instances, the Public Protector must at least conduct a preliminary investigation (under section 7(1)) or delegate or refer the matter to another public body for investigation (under section 7(3)).
- 4.7. There is good reason for the Public Protector's obligation to conduct a preliminary investigation of all complaints she receives (subject to the three narrow exceptions I have described above). The office of the Public Protector is obliged to be impartial, and must exercise its powers "without fear, favour or prejudice". This requires even-handedness in receiving and responding to complaints. The result is that the Public Protector (like a court of law) cannot pick and choose which of the matters that are reported to her will be considered.
5. Thus, in investigating the complaint she has received, the Public Protector is doing simply what she is obliged by law to do. The fact of her investigation does not in any way suggest that it is a well-founded complaint; or that the Public Protector has already determined that it has some merit. The Minister's suggestion that this is so is incorrect and misleading.
6. I turn next to address the allegations in the complaints on which the Minister relies. I deal firstly with the anonymous complaint to the Public Protector, and then with Mr Nkabinde's complaint. The allegations in these complaints are false, trumped-up and unfounded. They are all strenuously denied.

### **The allegations in the complaint to the Public Protector are unfounded**

7. The overwhelming majority of the allegations apparently being investigated by the Public Protector are allegations that have already been investigated by the Public Service Commission (PSC) and found to be unsubstantiated. I responded fully to the



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allegations in submissions to the PSC, after which I received a letter from the PSC's Chairperson stating that:

"The Public Service Commission (PSC) has thoroughly considered your comprehensive response, dated 21 February 2018 and the supporting documentation provided in respect of the allegations made in the above-mentioned complaint lodged anonymously with the National Anti-Corruption Hotline.

The PSC finds that the allegations are unsubstantiated and the matter is regarded as closed on the Case Management System of the NACH."

8. In the bundle of documents that accompanies this submission, I have included:
  - 8.1. the PSC's letter advising that it had received a complaint against IPID which it was investigating;
  - 8.2. the submissions that IPID made to the Public Service Commission in response to the complaint, including all supporting documents annexed thereto; and
  - 8.3. the letter from the PSC Chairperson recording that the allegations were found to be unsubstantiated, and the case regarded as closed.
9. I do not repeat what is stated in IPID's response to the PSC complaint. I ask the Committee to have regard to the contents of that response and its supporting documents.
10. My attorneys have prepared a table comparing the allegations investigated and dismissed by the PSC, and those contained in the complaint now made to the Public Protector. The table is attached hereto marked "RJM1". It shows the extensive overlap in the complaints made to the two public bodies. In fact, as is reflected there, only two new allegations are made in the complaint to the Public Protector:



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- 10.1. First, that I *“side-lined the Chief Financial Officer (CFO) for refusing to approve the above-mentioned payments and instead appointed Ms Netsianda, Head of Corporate Services (Mr Netsianda), to approve the payments despite it being the function of the CFO”* (paragraph 3.1.6 of the Public Protector’s letter to the Minister).
  - 10.2. Second, that I *“failed to implement the recommendations of the Health Risk manager regarding the incapacity of the Chief Director: Legal Service to hold a managerial position”* (paragraph 3.3.6 of the Public Protector’s letter).
11. These allegations are totally unfounded.
- 11.1. On the first, the CFO was not side-lined at all. In fact, the CFO was actively involved in the process. Her participation is apparent from the Memorandum, dated 25 October 2016, wherein the CFO, in her own handwriting and under her signature, writes a motivation in favour of paying me an HOD allowance (as my suspension had come to an end), and, recommending that “HRM issues a directive to pay the HOD allowance to Mr McBride as he is no longer suspended”. She goes on to say that the recommencement of the HOD allowance follows so naturally upon the termination of my suspension that, in her view, it would not even have been necessary to involve her in the process.
  - 11.2. On the second, upon my return from suspension received a report relating to the health and possible incapacity of an employee. Section 11 of the Code of Good Practice: Dismissal,<sup>4</sup> requires consideration of the following:  
  
*“Any person determining whether a dismissal arising from ill health or injury is unfair should consider-*

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<sup>4</sup> Schedule 8, Labour Relations Act 66 of 1995.



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*(a) whether or not the employee is capable of performing the work; and*

*(b) if the employee is not capable-*

*(i) the extent to which the employee is able to perform the work;*

*(ii) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted; and*

*(iii) the availability of any suitable alternative work".*

11.3. The employee in question was capable of performing her duties, and the subsequent assessments were satisfactory. Within my prerogative and in line with the Code of Good Practice, I exercised my discretion not to follow the recommendations that were made. That was the correct and, in any event, permissible decision. To date the employee concerned has performed extremely well, as is evident from the legal successes of IPID (which were achieved under her guidance), some of which are discussed below.

### **The allegations made by Mr Nkabinde are unfounded**

12. I have previously addressed Mr Nkabinde's allegations under oath. I did so in the application instituted by the former Acting National Commissioner of SAPS, Lt-Gen Phahlane to challenge the lawfulness of the search warrant that IPID executed at his home in January 2017 (High Court case no. 8258/17, Pretoria).





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13. In the course of that litigation, Phahlane sought to rely on an affidavit from Nkabinde which is in substance identical to “the report” Nkabinde sent to the Minister, to bolster his contention that IPID’s investigation against him is part of a plot “to usurp the power of the entire security cluster”.
14. In response, I deposed to a supplementary affidavit, in which I addressed the pertinent allegations in Nkabinde’s affidavit. As I stated under oath, Nkabinde’s allegations against me and IPID’s National Task Team for Special Investigations are “extravagant and utterly false”.
15. My affidavit is included in the bundle of documents supporting this submission, together with its annexures. I ask the Committee to have regard to the contents of my affidavit and the annexures.
16. The context in which Nkabinde’s report to the Minister and his affidavit were produced is crucial to appreciating their lack of veracity and credibility.
  - 16.1. Nkabinde sent his ‘report of unethical conduct’ to the Minister on 28 April 2018. This was five days after Mr Sesoko advised him, on 23 April 2018, that he was being released from IPID’s Special Task Team until the Phahlane investigation was complete.
  - 16.2. Mr Sesoko’s decision was informed by reliable information at his disposal (detailed in my affidavit), which indicated that SAPS Crime Intelligence had approached members of IPID’s Special Task Team, including Mr Nkabinde, promising them a promotion in SAPS Crime Intelligence if they agreed to give false statements implicating me and other senior IPID members involved in investigating Phahlane. Unlike other members of IPID, Nkabinde failed to disclose that he had been so approached when he was called upon to do so.



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- 16.3. From what subsequently transpired (including in the Phahlane litigation), it is evident that Nkabinde was indeed persuaded to assist Phahlane to obstruct and undermine IPID's investigation against him.
- 16.4. Nkabinde was placed on precautionary suspension on 4 June 2018, whereupon IPID commenced disciplinary proceedings against him.
- 16.5. Shortly thereafter, in July 2018, Nkabinde furnished Phahlane with an affidavit which contains the same allegations as appears in his report to the Minister. Phahlane has attested that on or about 24 July 2018, his attorneys were contacted by Nkabinde's attorneys and furnished with Mr Nkabinde's affidavit "for possible use in the pending litigation".
- 16.6. Nkabinde's disciplinary hearing was scheduled to commence on 19 September 2018. On that day Mr Nkabinde made a settlement proposal to IPID, which was accepted. Under the settlement, Mr Nkabinde agreed to resign from IPID.
- 16.7. Crucially for present purposes, in the settlement agreement, Nkabinde also formally withdrew his complaints against IPID.
- 16.8. The settlement agreement appears in the bundle of supporting documents. Paragraph 4 thereof reads:

*"The employee forthwith hereby withdraws all of his complaints of his statements related to those complaints (including any complaints under the Labour Relations Act, 66 of 1995, as amended and the Protected Disclosures Act, and in terms of the Public Protector's Act). Without limiting the generality of the foregoing, the employee hereby withdraw his complaints to the Public Protector, any complaints to any Ministers, Parliament and any of his referrals against the employer whilst in the employ of the employer to any forum, including any*



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*bargaining council, including but not limited to his suspension and/or the institution of disciplinary proceedings against him ... and undertakes to inform the said forums by no later than 21 September 2018 and furnish proof to the employer thereof by 21 September. If the employee fails to do so, the employer shall have the right to inform the said forums of this agreement.*

- 16.9. Nkabinde has, therefore, retracted his complaints against IPID and has agreed that this should be conveyed to the relevant authorities.
17. I point out that IPID furnished the Minister with a copy of the settlement agreement it concluded with Nkabinde. IPID also furnished the Minister with the affidavits from IPID's investigators that refute Nkabinde's allegations (and which are attached to my affidavit). It is extraordinary that the Minister has failed to mention these at all in his submission to the Committee. It was plainly incumbent on him to do so. The Minister ought also to have explained why, notwithstanding Nkabinde's retraction of his complaint and the evidence before him that refutes (including affidavits from several IPID investigators), he persists in relying on Nkabinde's complaint.
18. I point out further that, in other litigation concerning Captain Morris "KGB" Tshabalala, the Court has found Nkabinde to be dishonest and his evidence unreliable. In those proceedings, Captain Tshabalala's attorney indicated that he had received information that showed unlawfulness on the part of IPID:
- 18.1. Mr Nkabinde was the Investigating Officer and Arresting Officer of Mr Tshabalala. Mr Nkabinde submitted an affidavit in opposition to a bail application by KGB Tshabalala. The bail application was dismissed;
- 18.2. Subsequently, Mr Tshabalala made another bail application. The bail application was based on information allegedly provided to Mr Tshabalala's attorneys by Mr
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Nkabinde, that the case against Mr Tshabalala was politically motivated. During this application Mr Tshabala's attorney testified about the information that he received from Mr Nkabinde. Mr Nkabinde then deposed to a second affidavit, refuting the evidence presented by Mr Tshabalala's attorney and disputed that the case was politically motivated.

18.3. Mr Tshabalala's attorney alleged that Mr Nkabinde provided the information to him during a second telephone call that he received from Mr Nkabinde, under oath, denied the making of more than one call to Mr Tshabalala's attorney.

18.4. To resolve the dispute of fact, IPID applied for access to Mr Nkabinde and Mr Tshabalala's attorneys' phone records. The phone records corroborated Mr Tshabalala's attorneys' version of events and showed that Mr Nkabinde had lied under oath about calling Mr Tshabalala's attorney a second time. The Magistrate accordingly found that Mr Nkabinde was an unreliable witness and as a result Mr Tshabalala was granted bail.

19. Mr Nkabinde has, on oath, denied that the case against Mr Tshabalala was politically motivated. He has, accordingly, answered the very complaint that the Minister is relying on in his "reasons". It is also clear that no reliance can be placed on the allegations made by Mr Nkabinde. Not only has he since withdrawn his complaint against me and IPID, but he has been found to be dishonest by a court. The affidavits together with part of the Transcript of the court proceedings are included in the bundle of supporting documents. We have requested the full transcript of proceedings which we will make available to the Committee as soon as we have received it.

### **MY REAPPOINTMENT WILL PROMOTE THE INDEPENDENCE AND EFFECTIVENESS OF IPID**



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20. I respectfully submit that there are good reasons for the Committee to renew my appointment. Over the last five years (and excluding the period 24 March 2015 to 19 October 2016, for which I was unlawfully suspended), IPID has become a highly effective and independent institution.
21. I also have a genuine concern that change in the leadership of IPID at this stage, or the Minister's appointment of an acting Executive Director, would threaten important and politically-sensitive investigations that are ongoing. In fact, I have experience of this happening, precisely because of what happened at IPID during the period of my unlawful suspension. The affidavits deposed to by me in the case of *McBride v Minister of Police and Another* [2016] ZACC 30 contains numerous examples. I request the Committee to consider these affidavits which form part of the accompanying bundles.
22. The Minister submits that renewing my term in office would impact negatively on the public's perception of IPID. That is evidently not so. In fact, the opposite is true – the public's perception of IPID will be enhanced if my term in office is renewed, notwithstanding IPID's investigation of politically sensitive matters. If I am removed in these circumstances, the public's perception will inevitably be that my removal is politically motivated. That would be a blow for the public's perception of IPID's independence and should not be countenanced.

### **The performance and strengthening of IPID under my tenure**

23. Over the past five years, IPID has conducted complex and politically-sensitive investigations, which are of crucial public importance. It has done so with determination, fearlessly and independently, and competently. These include, but are not limited to:



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- 23.1. IPID's investigation of the SAPS's role in the Marikana shooting. Following IPID's investigation, and referral of the matter to the NPA, eight police officers are currently on trial for the shooting which occurred on 16 August 2012 and for the body found in a SAPS Toyota;
- 23.2. IPID's investigation of high-level corruption in SAPS management, which resulted in the arrest of former Acting National Commissioner, Lieutenant General Khomotso Phahlane. The corruption uncovered by IPID's investigation involves Keith Keating's company Forensic Data Analysts (Pty) Ltd, a major supplier to the SAPS, and is estimated at more than R5 billion;
- 23.3. IPID's investigation of high-level corruption involving tender fraud at national level which resulted in the arrest of General Mokoena, General Napo, General de Lange and Brigadier Ramgulam in Gauteng Province. The corruption in this case is estimated in the amount of R86 million.
- 23.4. IPID's three investigations of procurement fraud involving SAPS Crime Intelligence and a company trading as I-View Integrated Systems, with a combined value of R106 million. Through one of these investigations, IPID prevented SAPS Crime Intelligence from implementing the fraudulent procurement of a cellphone grabber device at a grossly inflated price. IPID believes the R45m extracted through the procurement was to be used to buy votes at the ANC national elective conference in December 2017.
- 23.5. I also refer the PCP to the presentation attached to the founding affidavit in the urgent application (as annexures RM3 and RM4) in the pending matter which contains a list of 24 systemic corruption investigations currently being investigated by the IPID NSIP.



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24. Under my tenure, IPID's overall progress in its investigation strategy and output is manifest. I draw attention in particular to the following:
- 24.1. IPID established the National Specialized Investigative Team, which has spearheaded the high-profile corruption investigations referred to above. The investigations of this Task Team currently concern more than ten SAPS Generals in about 25 separate investigations;
- 24.2. Since 2016, IPID has implemented a policy decision to prioritise investigation of rape cases. This has resulted in a marked decrease in the number of cases of rape in custody and rape by a police officer.
- 24.3. In the 2012/2013 financial year, the year immediately before I became the Executive Director, there were 545 referrals to the Director of Public Prosecutions. Since then there has been a marked overall improvement in the quality of investigations, which has resulted in an increased number of decision-ready cases. This has resulted in the following:
- 24.3.1. An increased number of referrals made to the Director of Public Prosecutions: from 1 140 in 2016/2017 financial year, to 1 428 in the 2017/2018 financial year;
- 24.3.2. An increased number of disciplinary recommendations made to SAPS management: from 1 238 in 2016/2017 financial year to 1 823 in the 2017/2018 financial year;



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- 24.3.3. An increased number of criminal convictions: from 45 in the 2016/2017 financial year to 99 (including 5 life sentences) in the 2017/2018 financial year
  - 24.3.4. Over the past two financial years, over 587 police officers have been convicted in disciplinary matters emanating from IPID investigations. In the 2017/2018 financial year alone, 99 police officers were arrested by IPID for various offences.
25. IPID's successful investigation of corruption in SAPS procurement has also resulted in the SAPS developing a new contract management policy, which is now being implemented.
26. In addition, over the past five years, IPID has built important structures and working relationships with other State agencies.
- 26.1. IPID established the consultative forum involving the Civilian Secretariat of Police, in line with its obligations in terms of the IPID Act;
  - 26.2. IPID signed a Memorandum of Understanding with the Inspector General of Intelligence in July 2017. Collaboration with the Inspector General has resulted in three investigations where looting of crime intelligence funds through a company called I-View.
  - 26.3. IPID has established a closer working relationship with the DPCI, resulting in collaboration in the investigation of cases.
  - 26.4. IPID has also established a closer working relationship with the JMPD, resulting in increased arrests for corruption of JMPD officers.





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27. During my tenure, IPID has also managed to secure an independent budget. This has had a significant effect on IPID's independence and ensuring that the purse strings of IPID are not subject to any political influence.
28. I have also overseen the improvement of IPID's financial systems, which resulted in an unqualified audit by the Auditor General in 2017/2018 financial year.
29. In addition to the above, I have led IPID in litigation directed at promoting and protecting IPID's independence and its effectiveness. These include:
  - 29.1. *McBride v Minister of Police and Another* [2016] ZACC 30: This landmark judgment entrenched IPID's independence and has assisted in shielding IPID from undue political interference, particularly from the Minister of Police. The judgment has subsequently led to a parliamentary process of reviewing the IPID Act in order to remedy the various defects in the legislation.
  - 29.2. *IPID and three others v Lt. General Johannes Khomotso Phahlane & 5 others (case numbers 35894/17 and 77594/17)*: This is an important judgment that addresses 'retaliatory investigations' by members of the SAPS against IPID officers charged with complaints against them. The court upheld IPID's case and held that "no member of the SAPS may oversee or conduct an investigation, or render assistance with an investigation, in respect of a matter concerning a member of the IPID in which he or she has a personal interest or a financial interest or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner".
  - 29.3. *V N Vuma & 3 others v The Executive Directorate (case no. 49791/ 18)*: This matter (which is pending in the High Court, Pretoria) concerns three IPID investigations of procurement fraud and corruption involving SAPS Crime



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Intelligence and a company called Brainwave Projects 1323CC, trading as I-View Integrated Systems (I-View). IPID attempted unsuccessfully to obtain classified information and documents from SAPS Crime Intelligence and the SAPS National Commissioner for the purpose of its investigations. IPID seeks an order declaring that the SAPS officials concerned breached their duties under sections 4(2) and 29(2) of the IPID Act – to assist IPID to perform its functions effectively and to provide full cooperation in its investigations – by failing to furnish IPID with the information and documents it requested. IPID also seeks an order declassifying the documents (mostly procurement records) that it requested, on the basis that they were unlawfully classified to cover up the commission of crimes.

30. I have included IPID's annual reports in the accompanying bundle of documents. The performance indicators in these reports, as well as the aforesaid, clearly demonstrates that my tenure has been a success.

### **The risk of a change in leadership in IPID at this stage**

31. IPID is currently investigating several high-profile and politically sensitive investigations. In particular, these include the 'I-View II' investigation, which implicates people in some of the highest posts in government.
32. Given the political interests in these ongoing investigations, it is not surprising that the Minister has sought to ensure that I vacate the office of Executive Director on 28 February 2019. The institutional and historical knowledge that I have of IPID's ongoing high-profile investigations is pivotal in bringing these matters to finalisation. Moreover, I have proven my determination and capacity as Executive Director to ensure that IPID's investigations are thorough and effective. If pursued in this manner, the above-



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mentioned investigations would, in all probability, expose some of the Minister's political allies.

33. If the Committee were to confirm the Minister's recommendation, and my contract is not be renewed, there is undoubtedly a risk that these investigations would be impeded or obstructed. It appears that, should I not be reappointed, a vacancy would arise that the Minister (acting under s 6(5) of the IPID Act) would fill with a candidate entirely of his own choosing. The Minister may appoint an individual that is sympathetic to his own political interests and that of his allies. Even if this were not the case, there is no guarantee that the new appointee would have the institutional knowledge, determination and, frankly, the courage, to persist in these investigations.
34. These are real risks that I urge the Committee to take into consideration.

### **THE CURRENT POLITICAL CONTEXT**

35. In considering my submissions, it is important that they are properly appreciated in the present political context. I have already alluded above to the fact that the Minister's determination not to renew my appointment is based on political considerations.
36. It is also important to appreciate that this matter has been conducted in the climate of no less than three commissions of enquiry that are ongoing, and which directly relate to fraud and corruption, including very significant fraud and corruption involving the SAPS.
37. As the Committee is no doubt aware, I have been requested to give testimony at the Commission of Enquiry into State Capture ("the Zondo Commission"). My affidavits have been prepared for submission to the Zondo Commission but have not been



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included in the bundle. The Committee is invited to contact the Zondo Commission for it to furnish the Committee with my submissions.

38. In these affidavits, I have provided details of the high-profile matters IPID is investigating, which evidence the workings and impact of State capture. I ask the Committee to have regard to these affidavits, and to the importance of seeing these investigations to finality and protecting IPID's work in fighting corruption in the SAPS.

### **THE PROCEDURE BEING FOLLOWED BY THE COMMITTEE**

39. I only received the Minister's complete reasons shortly before 17h00 on 19 February 2019, nearly 1 full day after they were supposed to be given to me in terms of the Committee's programme. My attorneys recorded the concerns that arose as a result of the Minister's failure to comply with the Committee's timetable in correspondence which appears in the bundle of supporting documents.
40. I have consistently maintained that in the current circumstances my right to be heard includes a right to be given an oral hearing. The Committee has not included an opportunity for an oral hearing in its programme.
41. I believe, with respect, that the information and documentation contained in this submission show the Minister's "reasons" to be flawed and unsubstantiated. The Committee could (and should) come to this conclusion without giving me an oral hearing.
42. It is furthermore apparent from the information and documentation that is before the Committee that renewing my appointment is in the best interests of IPID and would serve to promote the independence of IPID and its effectiveness. The Committee could (and should) come to this conclusion without giving me an oral hearing.



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43. Should the Committee, notwithstanding what is set out in this submission and contained in the documentation before it, be inclined to take a decision not to renew my contract, I respectfully submit that it cannot do so without giving me an oral hearing. My rights in this regard remain reserved.

### **CONCLUDING REMARKS**

44. The citizens of this country are rightly alarmed and concerned about the level of corruption that is plaguing our country. This concern will be exacerbated should this Committee take an unjustified decision on the renewal of my appointment – particularly if the Committee places reliance on submissions from the Minister that are based on refuted or withdrawn allegations, and that are informed by political motive.
45. It is extremely important that the functioning and independence of corruption-fighting that institutions such as IPID are not compromised at such a pivotal moment.
46. It is evident that the state of corruption in our country is severe, and that the current political climate is unique. Many extremely powerful individuals have been implicated in testimonies which have been made to the various commissions. It is therefore especially important at this time, that oversight institutions are protected from interference and that IPID's investigations are not compromised.
47. Based on my record, the Committee – and the public at large – can have confidence that, under my leadership, IPID would remain an effective, independent and fearless oversight and investigative body. It would maintain and build on the positive reputation it has gained over the last few years. I have to the best of my ability, and in difficult and trying circumstances, protected IPID's independence and ensured that IPID's investigators perform their functions fearlessly, without favour or bias and in accordance with IPID's mandate. If reappointed, I would continue to do so.



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48. In conclusion, I am available to meet with the Committee to provide any further clarity or information the Committee may require. I trust that the Committee will consider this submission and the supporting documents and make a justified and lawful decision.

Yours faithfully,

**MR RJ McBRIDE**  
**IPID: EXECUTIVE DIRECTOR**

DATE: 21/02/2019

**TABLE OF COMPARISON: COMPLAINT TO THE PUBLIC PROTECTOR OF 6 SEPTEMBER 2018 AND COMPLAINT TO THE PUBLIC SERVICE COMMISSION OF 1 FEBRUARY 2018**

ALLEGATIONS IN COMPLAINT TO THE PUBLIC PROTECTOR	ALLEGATIONS IN COMPLAINT TO THE PUBLIC SERVICE COMMISSION
Mr McBride paid himself an amount of R100,000 for unused leave credits for the year 2015/16, without the Minister's approval	Mr McBride made an irregular leave payment to himself in the amount of R100,000.
Mr McBride paid himself an HOD allowance for the period he was on suspension without the Minister's approval.	Mr McBride irregularly paid himself an HOD allowance without the Minister's approval.
Mr McBride granted himself a salary progression without following the Performance Management Policy and without conducting a Performance Assessment.	Mr McBride irregularly paid himself a salary progression without his performance being assessed by the Minister.
Mr McBride irregularly approved the salary progression of certain members of IPID, namely: Mr Sesoko, Mr Dlamini, Mr Maoka, Ms Netsianda, Ms Mphago and Ms Ntshangase.	Mr McBride granted irregular salary progressions to Ms Netsianda, Mr Dlamini, Mr Maoka, Mr Sesoka and Ms Ntshangase
The employees listed in paragraph 3.1.4 above also received leave pay-outs for unused leave credits while on suspension contrary to the advice of Department of Public Services and Administration (DPSA) and legal prescripts.	Ms Netsianda, Mr Dlamini, Mr Maoka, Mr Sesoka, Ms Mphago and Ms Ntshangase received leave payments for unused leave credits while on suspension contrary to prescripts and advice from the Department of Public Service and Administration.
<p><i>* Mr McBride side-lined the Chief Financial Officer (CFO) for refusing to approve the above-mentioned payments and instead appointed Ms Netsianda, Head of Corporate Services (Mr Netsianda), to approve the payments despite it being the function of the CFO.</i></p>	
Ms Tshiamo Mahibila (Ms Mahibila) was irregularly appointed to the position of personal assistant to Mr McBride as she was promoted from salary level 6 to salary level 9 without following recruitment procedures. Ms Mahibila does not meet the requirements of the position as it requires a 3 year qualification of an NQF level 6.	Mr McBride irregularly promoted Ms Mahibila from salary level 6 to salary level 9 whilst Ms Mahibila does not meet the requirements for the post.
Mr Robert Mamabolo (Mr Mamabolo) was promoted from the post of Assistant Director	Mr McBride irregularly promoted Mr Mamabolo to the post of Deputy Director.

to Deputy Director in the Executive Director's office (Deputy Director), without advertising the post of Deputy Director. The above mentioned post had been previously advertised in 2016 and Mr Mamabolo had initially not applied for the position.	
Ms Theresa Botha was appointed as an analyst at the level of senior investigator without having the post advertised, and was "issued with Policing powers card as per instruction of the ED" and without the approval of the Minister. <sup>1</sup>	Mr McBride appointed Ms Theresa Botha to the post of Deputy Director without the requisite skills and qualifications.
Mr McBride irregularly transferred Mr Tiiso Mokoloana (Mr Mokoloana) to the supply Chain Management Unit (SCM) without his consultation and consent.	Mr McBride transferred Mr Tiso Makoloane to the Supply Chain Management Division without consultation and consent.
Mr Walter Mokgalaka (Mr Mokgalaka) was transferred from Pretoria to Limpopo without consultation and his consent. IPID failed to consider the fact that Mr Mokgalaka held a lower post (Security Guard) and would not cope financially with the transfer.	Mr McBride transferred Mr Walter Mokgala from Pretoria to the Limpopo province without consultation and his consent.
Staff who refused to falsely implicate the former Executive Director, Mr Kgomoitso Phahlane, of maladministration were forced to leave IPID. These are listed in the complaint.	Some staff members were forced to leave the IPID since they refused to falsely implicate the former Acting ED in maladministration.
Mr McBride introduced a new logo for IPID without the necessary approvals and registration.	Mr McBride introduced a new logo for IPID without the necessary approval and registration.
<i>* Mr McBride failed to implement the recommendations of the Health Risk manager regarding the incapacity of the Chief Director: Legal Service to hold a managerial position.</i>	
IPID purchased 20 guns (10 semi-automatic and 10 pump action guns) without following procurement processes. The purchase of these firearms amounts to fruitless and wasteful expenditure as they were to be used for crowd control management which is not a competence of IPID.	Mr McBride bought 20 shot guns used for crowd control without following the correct procedure.

<sup>1</sup> This allegation is recorded in Annexure "C" which I understand to be the complaint submitted to the Public Protector. It is not however cited as a matter under investigation in the Public Protector's letter to the Minister.



<p>IPID purchased devices utilised for the copying and monitoring of information from cell phones without obtaining the necessary approval; and IPID is irregularly paying for a licence for these above mentioned devices.</p>	<p>IPID bought devices which are used to copy and monitor information from cell phones which require necessary approval from the Minister and the Judge of the High Court and is paying an annual licence fee in the amount of about R100,000.00.</p>
<p>The employees listed in paragraph 3.1.4 above ( Mr Sesoko, Mr Dlamini, Mr Maoka, Ms Netsianda, Ms Mphago and Ms Ntshangase), were at some stage suspended or faced disciplinary actions, however, the disciplinary actions were withdrawn without reason.</p>	<p>There are a number of disciplinary hearings which were instituted following an investigation by the Public Service Commission (PSC) but the cases were unilaterally withdrawn without reasons.</p>
<p>IPID ignored the recommendations of the Public Service Commission which recommended that action be taken against the Accounting Officer, CFO and the Director: Legal Services for irregular payments of approximately R500 000.00.</p>	<p>The PSC conducted an investigation into a number of irregularities at the IPID relating to amongst other matters an irregular payment of R500 000.00 and made recommendations. However, IPID does not provide the PSC with progress on implementation and recommendations made.</p>
<p>Mr McBride irregularly reinstated Mr Sesoko, Mr Maharaj and Mr Khuba, who had been charged with misconduct and subsequently dismissed by IPID.</p>	<p>Mr Sesoko, Mr Khuba and Mr Maharaj were charged with misconduct and subsequently dismissed. However Mr McBride reinstated them without valid reason.</p>