

strictly in accordance with my statutory powers. I admit that I was aware that both Sibiya and Mdluli were on suspension, however, this knowledge did not interfere with the execution of my duties as the head of IPID.

61.4 On 13 February 2015, I was called to the Minister's office in Cape Town. The purpose of the meeting was to discuss Data Box 6, and the circumstances in which it came into my possession. After the Minister reprimanded me over what he referred to as "*the raid*", in front of a third person who, at that stage was unknown to me and who, at my insistence, was subsequently introduced to me as General Ntlemeza. I furnished the Minister with the explanation as set out in the paragraphs above and the Minister accepted same. I also offered to hand over Data Box 6 to General Ntlemeza however, after discussion, it was agreed that it should stay in my possession and that General Ntlemeza and I would liaise with each other in respect thereof if the need arose.

61.5 No basis is provided for the allegation that I tampered with evidence that was potentially incriminating to Sibiya and / or Dramat and / or me. If there is an implied allegation that my confiscation of data line 6 impacted on IPID's final report, this is naturally dismissed by the fact that the IPID's final report had, at that stage, already been in the possession of the NPA (from the time when it was handed over in April 2014).



61.6 Furthermore, there is no logic in the Minister's allegations. It is obviously farfetched to suggest Sibiya would request me to remove allegedly incriminating evidence. If Sibiya wanted to remove the device before or after his suspension, whether personally or with the assistance of his PA, he had all the time in the world to do so. He obviously did not for the reasons set out above.

62 Finally, I point out that no details of any allegations against me in the media (referred to in paragraph 2 of the Suspension Notice) have been provided and would, in any event, not form a legitimate basis for my suspension.

63 The Minister's decision to initiate suspension proceedings against me is accordingly without any rational or lawful basis whatsoever. It is thus reviewable under the principle of legality and under s 6(2)(f)(ii) and 6(2)(h) of PAJA.

Declaratory relief in respect of certain legislative provisions

64 In Part B of the application, I also seek an order declaring the following provisions to be unconstitutional and unlawful to the extent that they purport to authorise the Minister to suspend or remove the Executive Director of IPID, in contravention of s 206(6) of the Constitution:

64.1 section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 ("the IPID Act");

64.2 section 17(1) and 17(2) of the Public Service Act, 1994; and

64.3 paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.

65 The unconstitutionality of the Minister's power to suspend me applies with even greater force to the Minister's purported power under these provisions to remove me from office. This is made clear in the abovementioned Constitutional Court judgments matters and will be addressed further in argument.

THE INTERIM RELIEF UNDER PART A

66 I am advised that in order to be granted an interim interdict, the applicants must demonstrate that:

66.1 They have at least *prima facie* right to the relief sought in the main application (in this case, the review in Part B);

66.2 The balance of convenience favours the applicants;

66.3 They will suffer irreparable harm if the relief is not granted; and

66.4 They have no alternative remedy other than interim relief.

67 I proceed to deal with each of these requirements in turn.

A prima facie right

68 I have set out above the grounds of review upon which Part B of the notice of motion is based. I ask that those paragraphs be read as if incorporated herein in support of the interim relief.

69 Based on what has been said in respect of the review above, I submit that I have established a strong entitlement (let alone a *prima facie* right) to the relief sought in Part B of the notice of motion. Indeed this matter involves the clearest of cases for an interim interdict, particularly given the breaches of the Constitution that would result were the interdict not to be granted.

Balance of convenience and irreparable harm

70 The balance of convenience strongly favours granting the interim interdict. Not only will I suffer prejudice if the interim relief is not granted as I will be removed from office for up to 60 days, but there is a real risk that the operations and functioning of IPID will be seriously and irreparably compromised.

71 Should the Minister succeed in his machinations, through my suspension and the suppression of the IPID Investigations Report, this could have very serious repercussions for Dramat and Sibiya, and ultimately, the independent and effective functioning of the DPCI.



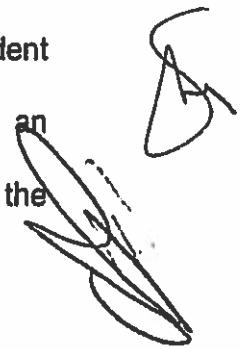
Indeed, the independence of both IPID and the DPCI is threatened by the Minister's impugned conduct in this matter.

- 72 On the other hand, the Minister will suffer no prejudice whatsoever should the interim interdict be granted, and the review of the lawfulness of the Minister's decision to initiate a suspension process against me be allowed to take its course.

No alternative remedy

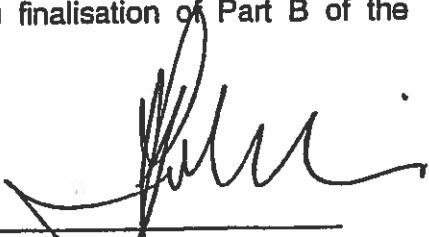
- 73 I respectfully submit that I have no suitable remedy available to me other than an interim interdict. While I have made written representations to the Minister in respect of the proposed suspension, this does not provide me with any security. Given the bad faith conduct of the Minister, I do not have any confidence that my representations will be fairly considered and successful.

- 74 Furthermore, it is not merely me being suspended that would have the deleterious effects set out above. The mere fact that I am required to justify my conduct under threat of suspension and removal by the Minister gives rise to the harm that I have set out in this affidavit. These harms affect not only me, but also the ability of IPID to function effectively as well as the public's faith in IPID as an independent institution. The Minister's threatened conduct constitutes an unconstitutional, political interference in IPID. Protecting the independent functioning of IPID requires a court interdict.



CONCLUSION

75 In the light of what has been set out above, I pray for the relief set out in Part A of the Notice of Motion pending finalisation of Part B of the application.



ROBERT MCBRIDE

THIS DONE SIGNED AND SWORN TO BEFORE ME AT *Pretoria*
THIS THE 12TH DAY OF *MARCH* 2015 AT

THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO SWEARING THE PRESCRIBED OATH AND THAT SAME IS BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

CAPACITY SHABNAM HASSIM
SAIT Ex officio - TT (SA)
Commissioner of Oaths
4 Daventry Street, Lennoxwood Manor

AREA



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X403 PRETORIA 0001, Tel: (012) 383 2800, Fax: (012) 393 2819/20 • Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

**To: Mr Robert McBride
Executive Director
Independent Police Investigative Directorate**

Dear Mr McBride

**Re: NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY
SUSPENSION WITH FULL PAY**

1. This notice serves to inform you that I intend placing you on precautionary suspension with full pay and benefits for a period not exceeding 60 calendar days.
2. There are serious allegations which have been made against you, some in the media, prima facie alluding to possible acts of serious misconduct by yourself as the Head of the Independent Police Investigative Directorate ("IPID").
3. On 8 March 2014, you were appointed as the Executive Director of IPID in terms of section 6 of the Independent Police Investigative Directorate Act 1 of 2011 ("the Act").
4. In terms of the Act, you are required to perform your responsibilities set out in section 7 of the Act with a level of independence and impartiality, and to do so without any fear, favour or prejudice.
5. During or about January 2015, you are alleged to have breached your statutory responsibility to act with independence and impartiality in that you

informed Lieutenant-General Dramat and Major-General Sibiya through their legal representatives in writing that they had been cleared by the IPID investigation regarding IPID's investigation into the illegal rendition of ~~Zimbabwean-nationals-by-the-officers-employed-in-the-Directorate-for-Priority~~ Crime Investigation ("DPCI").

6. When you did so, you allegedly knew very well that IPID did not clear Lieutenant-General Dramat and Major-General Sibiya because you had in your possession the original report by IPID dated 22 January 2014 which recommended that Lieutenant-General Dramat and Major-General Sibiya be criminally charged with kidnapping and defeating the ends of justice.
7. When I invited you to explain your conduct regarding the aforesaid, you failed to disclose to me that there were two IPID reports the conclusions of which were contradicting each other.
8. When the Sunday Times broke the story about the existence of the two IPID reports in the Sunday Times of 1 March 2015, you addressed a letter to the Parliamentary Portfolio Committee on Police requesting them to convene an urgent Portfolio Committee meeting in order for you to explain to them the existence of the two IPID reports. When you addressed a letter to the Portfolio Committee aforesaid; you knew that I had already commissioned Werksmans Attorneys to conduct an investigation on the existence of the aforesaid two IPID reports, and your conduct was designed to undermine my authority and oversight responsibility as the Minister of Police. Further, that such actions from your side, put the commissioned investigation in jeopardy.
9. You are also alleged to have interfered with the investigation I have commissioned by failing to grant Mr Innocent Khuba permission to meet with the investigators to assist them in shedding light on the existence of the two conflicting IPID reports, both of which were signed by him. You also instructed lawyers to inform the investigators that Mr Khuba will not meet with them. When you conducted yourself in the aforesaid manner, you had the intention to interfere with the investigation given the fact that you were already

conflicted because the second IPID report dated March 2014 was also co-signed by you.

- ~~10. During the week of the 15th of February 2014, you visited the Provincial offices of DPCI in Gauteng, and removed from Major-General Sibiyi's office a device the description of which is yet unknown from the safe where Major-General Sibiyi had kept it under locks. At the time you removed the said device from the safe, you knew that Major-General Sibiyi was on suspension and the plausible reason for your conduct was to temper with evidence that might be incriminating to Major-General Sibiyi; yourself and/or Lieutenant General Dramat.~~
11. Because of the seriousness of these allegations, given the most senior position you occupy at IPID, the possible interference with the investigation and the tempering with evidentiary material, I intend placing you on precautionary suspension with full pay for a period not exceeding 60 calendar days, pending an investigation into the above mentioned allegations and possible disciplinary enquiry against you.
12. I therefore give you an opportunity to make written representations as to why I should not place you on suspension aforesaid.
13. Your written representations should reach my office by no later than close of business on Thursday, 12 March 2015.

Yours faithfully


Nkosinathi Phiwayinkosi Thamsanqa Nhleko
Minister of Police

10 MARCH 2015



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel: (012) 399 0070 Fax: (012) 399 0144

RM 2. "RM 2"

47

Honourable Minister NTP Nhleko, MP
MINISTER OF POLICE
WACHTHUIS
Pretoria
0001

By Hand

12 March 2015

Dear Honourable Minister,

RE: URGENT APPLICATION TO THE NORTH GAUTENG HIGH COURT

1. I refer to your "Notice to place me on precautionary suspension with full pay", dated 10 March 2015, which notice I received on 11 March 2015 at approximately 7h30.
2. I have deposed to an affidavit setting out comprehensively the grounds why I should not be suspended and a copy of this affidavit is attached hereto, for your attention.
3. Without detracting from the specificity in the affidavit and for your ease of reference, I summarise the reasons below:
 - 3.1. No particularity of the alleged serious allegations in the media against me is provided. I cannot reasonably be expected to respond to such a vague allegation and, in any event, such allegations cannot properly form the basis for my suspension. I do, however, confirm that I have not committed any wrongdoing;
 - 3.2. I have never breached my responsibility to act with independence and impartiality. As more fully set out in the affidavit, any communications with the legal representatives of Lieutenant General Dramat and Major General Sibiya were reasonable and entirely in keeping with my responsibilities. There is no basis for the allegations that have been made in this regard;
 - 3.3. The Minister was at all relevant times fully aware of the existence of preliminary and final IPID reports. As more fully set out in the affidavit, the Minister has chosen to rely on recommendations contained in a preliminary report. I remain available to address any concerns that the Minister may have in relation to the preliminary and final reports;



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3.4. I have not undermined the Minister's authority on oversight responsibility. As more fully set out in the affidavit, I remain committed to report fully to the Minister and Parliament. The Minister's investigation into IPID (and the NPA) is, however, impeding on IPID (and the NPA's) independence and expertise and I have acted responsibly in this regard by refusing to grant my permission for IPID's officials to be interviewed by the appointed investigators. I remain willing to engage with the Minister in respect of the investigation, and, specifically to ensure that there are sufficient safeguards to protect IPID;

3.5. As more fully set out in the affidavit, there is no factual basis for the allegation that I tampered with evidence. I, at all relevant times, acted in accordance with my statutory mandate.

4. For these reasons, I am firmly of the belief that my suspension is, notwithstanding the aforesaid grounds, a foregone conclusion.
5. I also believe that my suspension would not be in the best interest of IPID, of which I am the head and for which I am responsible.
6. I have, accordingly, instructed IPID's attorneys to launch an urgent application out of the North Gauteng High Court for appropriate relief, including interdicting you from suspending me.
7. I confirm that the application is in the process of being issued and will be served on the State Attorney shortly.

Yours faithfully,

Mr RJ MCBRIDE
EXECUTIVE DIRECTOR
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

DATE: _____



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**Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA**

Rm 3

Private Bag X9525, Polokwane, 0700, 66 A Market Street, Fernic Building, 2nd Floor, Polokwane
Tel.: (015) 291 9800 Fax: (015) 295 3409

Enq: I H Khuba
Date: 2014/01/22

Enq: I H Khuba
Date: 2013/09/04

Case Investigative Report

1. COMPLAINT IDENTIFICATION

1.1 CCN	2013030375
1.2 Incident Description Code	312
1.3 Type of Report	Criminal Prosecution
1.4 Report Date	22 January 2014
1.5 Date of Last Report	09 November 2012
1.6 Complaint Category	Section 28(1)(f) and 28(1)(h)
1.7 Complainant	Shepard Chuma and others
1.8 Date of Complaint	10 October 2012
1.9 SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
1.10 Suspect identification	Lt Gen. Dramat and others
1.11 Investigator	Task Team
1.12 Assignment	investigations
1.13 Reporting Staff Member	innocent Khuba

SD

article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

- 2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maiuleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.
- 2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

- 3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.
- 3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short

while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorspruit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maghawe Sibanda A2: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Bongani Henry Yende A4: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in

connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Pritchard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndoke and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Pritchard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects

were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiyi being involved in the operation but that there was a person who was always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiyi.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiyi. On 2010/11/05 Gen. Sibiyi arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.

The suspects were assaulted by General Sibiyi, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Provincial DPCI head, Gauteng Major General Sibiyi to report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time they detained Prichard Chuma whom he does not know whether is related to Shepard Chuma. He will further state that he witness an assault on 2010/11/05 on Zimbabwean Nationals carried out by Captain Maluleke, W/O Makoe and Constable Leburu. He will further state that on 2010/11/05 and 22 to 23/11/2010 when they carried out the operation, there would be a figure seated in a black BMW whom Warrant Officer Makoe referred as Major General Sibiyi.

Andrew Mark Sampson A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maqhawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda A20: He will state that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/11/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in-law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhekisisa Nyoni A23: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

Brigadier Mthokozeiwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal immigrant, Home Affairs official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Beit Bridge.

Thomas Pixane Setagane A26: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

Padile Abrina Papo A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

Nolwandle Qaba 29: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

Peter Ndwandwe A28: He will state that he is an Assistant Director with the Department of Home Affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a Police Officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any

signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.

He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by Immigration Officer.

Job Jackson A33: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potlswa Skosana A31: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Eiberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.

He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.

In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.

For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.

When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.

Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered. Captain Maluleke told him that what happened is top secret and people must not know about it.

In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.

Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dovhani Sharon Radzilani A54: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect

Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot. While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices. They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

Not in final report

① **Johannes Mpati Moatshi A61:** He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captlain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captlain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captlain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

② **Sello John Phaswana A64:** His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

③ **Tshatoa Jacob Seletela A63:** His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

④ **Matsobane Sllas Mokoatlo A78:** His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

⑤ **Andries Nxumalo A65:** will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer. He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation. He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

Captain Ernest Nkosi A77: He will state that on 22/11/2013 after the operation which was carried out at Diepsloot he was requested by Lt Col Maluleke from DPCI Head office to take suspect Prichard Chuma to Alexandra Police station for detention but without the case number. He detained the suspect at Alexandra Police Station free of any injuries. He will further state that he wrote the cell number of Lt Col Maluleke in the Occurrence Book.

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling

requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.

Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

Warrant officer Giyani John Sambo A59: He will state that on 23/11/2010 he was officially on duty at Silverton Police station when Detective Warrant Officer Selepe brought a black male Prichard Chuma. The prisoner was booked in as a transit without body receipt. He will further state that W/O Selepe was with an unknown African male. On 24/11/2010 W/O Selepe came and book out the prisoner Prichard Chuma from Silverton Police station to Beit Bridge under Bulawayo Case number 1337/11/2010. The same prisoner was received by the African male who was with W/O Selepe the previous day and he signed the Occurrence Book as a Captain.

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that

he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibilya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads 'HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED'. He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maghawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibilya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers.

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices where they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organizes with his contact to look for Gordon Dube. It took two weeks to find a wanted suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa they managed to see the suspect and when he moved they pursued until they arrested him in Diepsloot. They found the suspect in possession of an unlicensed firearm. He saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from ballistic testing. The suspect was taken to Wierdabrug to detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his contact to arrest John Nyoni. When he arrived the contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was searched but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their contact/informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

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In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done. He will further state that Lt General Dramat was wearing a white shirt and a red tie.

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntente from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntente to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Atteridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the

Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as "illegal immigrants". The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The Investigation at Alexandra Police Station uncovered the following:

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The Investigation at Silverton Police Station uncovered the following:

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The Investigation at Pretoria Moot Police station uncovered the following:

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

The Investigation at Wierdabrug Police Station uncovered the following:

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Olievenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession of in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeti area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

-Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT:MOST WANTED FUGITIVE:WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

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

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. Paragraph "1" of the report states that the Zimbabwean Police visited the office of the Divisional National Commissioner regarding Zimbabwean Nationals who were hiding in South Africa. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

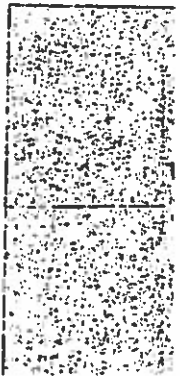
Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A89).

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime



Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist. It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required. The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

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

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of

received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga's statement.

Cellphone records of Lt Colonel Neethling (0827787624): He was directly reporting to Major General Sibiyi. He contacted General Sibiyi telephonically and in his statement he stated that he believed he reported the operation to Major General Sibiyi.

Cell Phone records of Lt Col Madilonga: He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. He contacted Lt General Dramat when he well come the Zimbabwean police the first time. His cellphone records shows his interaction with Captain Maluleke in line with his statement.

5.6

STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

Lt General Mkhwanazi: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Hadebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiyi has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

Innocent Humbulani Khuba A100: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitall, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on

10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Beil Bridge and obtained a statement of Peter Eiberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton. During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were

also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nthlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.

On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coln for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and

logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligence Pretoria Central, Col Ntenteni requesting interview with his members who are mentioned in success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interviewed Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 Arch file.

On 16/07/2013, he received a Laptop Dell Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 arch file.

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects should have emanated from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials. The letter dated 2010/07/29 addressed to Commissioner Chibage of Zimbabwe by Lt General Dramat request a meeting on 05/08/2010 to discuss operational matter but limited to fugitive of serious crime like robberies, cash in transit and extradition.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
 - The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to see him. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of Lt General Dramat and Beit bridge Telekom records

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(Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the country was to arrest Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- Evaluation of the above findings: In the entire cellphone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.
- o He held a meeting on 05/11/2010 with Zimbabwean police planning the operation. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
 - Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police were at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report.
- o He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed

overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

- Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.
- o He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
 - Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.
- o He received communication regarding successes and photos of the operation through his Personal Assistance Phumla: According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- o He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals: The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- o Report to parliament in response to the allegation: A copy of the letter sent by Zimbabwean authority to Col Ntleni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was a joint operation between South African Police and Zimbabwean police to trace and arrest the suspects.
- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and

General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;

- Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
 - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
 - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
 - There is also no evidence that suggest that Lt General Toka, Lt General Lebeya and Major General Hlatshwayo was involved except that they received communication regarding this matter.
 - The Involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
 - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal

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Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

There is a duty roster used by Immigration Officers at Beit Bridge, which confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on the 7th and 8th of November 2010.

- o The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Beit Bridge.
- o On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- o The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period, but also that there was ulterior motive way above deportation on the basis of being illegal Immigrants.
- o The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order to handover the suspect to the Zimbabwean police. The suspects was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that

Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.

- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Beit Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011 (Silverton Cas 566/01/2011), the same day in which Johnson Nyoni and Gordon Dube were transported to Beit Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is Shadrack Wisley Kebini, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for to go on wild chase, following the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.
- The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.
- The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean Nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cell record towers recordings.

The following members' involvements were found limited to two incidents which took place on 05/11/2010 and 20-22/11/2010; Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe. They were involved in the assault of Zimbabwean Nationals during arrest.

RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Siblya (provided his warning statements is submitted), Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for;

- Kidnapping
- Defeating the ends of justice,

CB

- Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)

_____ signed
Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenti from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenti to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Atteridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.



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Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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RECOMMENDATIONS

TO

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Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Recommendation to NDPP
Report Date	18 March 2014
Date of Last Report	18 March 2014
Complaint Category	Section 28(1) (f) and 28(1) (h)
Complainant	Shepard Tshuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
Suspect Identification	Lt Col M Maluleke
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

- 2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal Immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.
- 2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

- 3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.
- 3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malaljie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mithelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained

and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorstspuit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maghawe Sibanda A2: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Bongani Henry Yende A4: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also

introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndobe and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Pritchard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiya being involved in the operation but that there was a person who was

always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.

The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Gauteng Provincial DPCI Head, Major General Sibiya to report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time they detained Prichard Chuma whom he does not know whether is related to Shepard Chuma. He will further state that he witnessed an assault on 2010/11/05 on Zimbabwean Nationals carried out by Captain Maluleke, W/O Makoe and Constable Leburu. He will further state that on 2010/11/05 and 22 to 23/11/2010 when they carried out the operation, there would be a figure seated in a black BMW whom Warrant Officer Makoe referred as Major General Sibiya.

Andrew Mark Sampson A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maqhawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda A20: He will state that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/01/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in-law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhakisisa Nyoni A23: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the

Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal Immigrant, Home Affairs official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Beit Bridge.

Thomas Pixane Setagane A26: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

Padile Abrina Papo A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

Nolwandle Qaba 29: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

Peter Ndwandwe A28: He will state that he is an Assistant Director with the Department of Home Affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a Police Officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.

He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by Immigration Officer.

Job Jackson A33: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potiswa Skosana A31: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Eiberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.

He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.

In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is

Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.

When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.

Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.

Captain Maluleke told him that what happened is top secret and people must not know about it.

In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.

Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members

posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dovhani Sharon Radzilani A54: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.

He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot

remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation. He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

Captain Ernest Nkosi A77: He will state that on 22/11/2013 after the operation which was carried out at Diepsloot he was requested by Lt Col Maluleke from DPCI Head office to take suspect Prichard Chuma to Alexandra Police station for detention but without the case number. He detained the suspect at Alexandra Police Station free of any injuries. He will further state that he wrote the cell number of Lt Col Maluleke in the Occurrence Book.

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.

Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

Warrant officer Giyani John Sambo A59: He will state that on 23/11/2010 he was officially on duty at Silverton Police station when Detective Warrant Officer Selepe brought a black male Prichard Chuma. The prisoner was booked in as a transit without body receipt. He will further state that W/O Selepe was with an unknown African male. On 24/11/2010 W/O Selepe came and book out the prisoner Prichard Chuma from Silverton Police station to Beit Bridge under Bulawayo Case number 1337/11/2010. The same prisoner was received by the African male who was with W/O Selepe the previous day and he signed the Occurrence Book as a Captain.

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads' "HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED". He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maqhawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.

While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.

They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

Johannes Mpati Moatshi A61: He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

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Sello John Phaswana A64: His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

Tshatoa Jacob Seletela A63: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

Matsobane Silas Mokoatlo A78: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

Andries Nxumalo A65: will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices where they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organized with his contacts to look for Gordon Dube. It took two weeks for the contact to trace the suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be

coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa and they managed to spot the suspect. When he moved they pursued him until they arrested him in Diepsloot. They found the suspect in possession of an unlicensed firearm. He saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from the ballistics. The suspect was taken to Wierdabrug to be held for detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was searched but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected an arrest on Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

Superintendent Ncube from Zimbabwe who was wearing a black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Plantinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. **DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS**

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following:

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The investigation at Silverton Police Station uncovered the following:

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following:

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

The investigation at Wierdabrug Police Station uncovered the following:

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Olievenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession of in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeli area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A87).

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

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

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

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

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter he states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They

then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being released he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist. It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required. The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.

CELLPHONE RECORD OF MAJOR GENERAL SIBIYA (0725953168) AND (0724798484)	
Reason for 205 application	Findings
To test the version of the witnesses who alleged to have seen Major General Sibiya at the crime scene	Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence.

CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)	
Reason for 205 application	Findings
To verify whether he had interaction with the Zimbabwean Authority regarding the arrests of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe	The entire cellphone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence.

CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)	
Reason for 205 application	Findings
To test the version that Captain Maluleke was reporting direct to Major General Hlatshwayo regarding cross border issues. During the interview with the said General she denied having known about the Zimbabwean police and requested us to do apply for 205 in order to clear her name.	Her interaction with Captain Maluleke confirms her version that she did not know anything about the arrest and deportations of Zimbabwean Nationals. She was never at the scene or at Fourways Shopping center where the alleged planning took place.

CELLPHONE RECORD OF LT GENERAL LEBEYA (0825751899)	
Reason for 205 application	Findings
To verify the automated SMS send by Major General Sibiya and whether when he signed on one of the success report he had more information about the operation.	The evidence shows that he did not know anything about the operation that led to the arrest of the Zimbabwean Nationals.

CELLPHONE RECORD OF CAPTAIN MALULEKE (082 7729518)	
Reason for 205 application	Findings
To test the version of the witnesses who alleged that Captain Maluleke led the operations that led to the arrest of Zimbabwean Nationals	There is prima facie case against Captain Maluleke.

CELLPHONE RECORD OF CAPTAIN NKOSI, W/O MAKOE AND CONSTABLE RADEBE (0834373227), (0723050697), (0824198303) AND (0737313808).

Reason for 205 application	Findings
To test the version of the witnesses who alleged that they were at the crime scenes and they took money and assaulted the Zimbabwean Nationals.	The record confirms that they were at the scene even though the allegation of theft is not corroborated

CELLPHONE RECORD OF LT COL MADILONGA (078 520 9741) AND (0713550548)

Reason for 205 application	Findings
To test his version in which he alleged that he received a call from Captain Maluleke on 08/11/2010 regarding the deportation of Zimbabwean Nationals	Their interaction confirms the version of Madilonga.

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

Lt General Mkhwanazi A99: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Radebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya A97: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiyi has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

Ms. Jennifer Irish-Qhobosheane A100: She will state that she is the Head of the Civilian Secretariat and the Secretary of Police. She became aware of the allegations

of renditions on 22/10/2011 when she saw an article in a Sunday Times newspaper entitled, "journey to death in an unmarked car". The Minister requested a detailed response from the DPCI to be submitted to him in writing. She received two official responses in a form of information notes to the Minister. Based on the different information supplied to the Minister of Police, the Minister felt that the matter needed further inquiry to establish whether there is any evidence that the SAPS might have violated international laws and procedures and/or South African laws.

Warning Statement of Lt General Dramat A94/1: He will state that he is the Deputy National Commissioner of the South African Police Services. He unequivocally point out that at no stage during his correct role as the National Head of the DPCI did he ever personally authorize the unlawful and intentional depriving of a person liberty, or movement, and/or his custodians of control on any basis whatsoever. He will further state that never authorized anyone or sanctioned the kidnapping any of the Zimbabwean Nationals. He knows of no action that he took or authorize which was aimed at defeating the administration of Justice.

Warning Statement of Major General Sibiya A101: He will state that he was never appointed as the head of TOMS. However he received reports from his members regarding successes as routine. He was never part of the operation that arrested the Zimbabwean National who was wanted in connection with the murder of Zimbabwean Colonel in Zimbabwe.

Warning statement of Lt Col Mahlanqu Maluleke A88: He exercised his right to remain silent.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

Innocent Humbulani Khuba A102: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitali, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary

question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Beit Bridge and obtained a statement of Peter Eiberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton.

During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nthlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.

On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenti requesting interview with his members who are mentioned in success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interviewed Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained

in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 (arch file).

On 16/07/2013, he received a Dell Laptop from Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 (arch file).

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramal. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramal is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Qhobosheane and is filed as

per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madilonga's statement analysis from Precision Forensics.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crimes fugitives. In this responsibility he mends the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonstra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- *The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma on 05/11/2010.*

The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

also confirms, backed by the cellphone records of Captain Maluleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiya were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Maluleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Maluleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Maluleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Maluleke new that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maghawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiya alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiya which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiya was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

while they were aware of the presence of Zimbabwean police at the scene, Major General Sibiya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Maluleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of Lt Col Ndanduleni Madifonga and his cellphone records confirms that he received a call from Captain Maluleke when he was approaching Musina on 08/11/2010. According to Lt Colonel Madifonga (A51) he assisted Captain Maluleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Maluleke as four warrants of detentions and four notices of deportations. The documents which the Captain Maluleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Maluleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maqhawe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

Potiswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Maluleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. According to Peter Eiberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlahlo (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlahlo was off duty. The stamp could have been easily duplicated.

The letter retrieved from Captain Maluleke's laptop provides a vital clue that his engagement in the operation did not receive the blessing of his superior. The letter was addressed to the Director General of Home Affairs requesting assistance in

the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

- **The arrest of Prichard Chuma on 23/11/2010**

On 23/11/2010 an operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Neethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiyi was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibiyi. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiyi into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiyi" and "I heard that General Sibiyi was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibiyi, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

With specific reference to OB entry dated 23/11/2010 (A57/2) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Neethling to assist Captain Maluleke. Lt Col Neethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Beil Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and itineraries of Captain Maluleke.

• *The arrest of Gordon Dube and Johnson Nyoni on 11/01/2011 and 26/01/2011.*

The arrest of Gordon Dube and John Nyoni started when Constable Rikotso (A67) went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived, he found Constable Sombhane who gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. At that time the name of Captain Maluleke had not yet surfaced and members of Crime Intelligence were just carrying out the daily duties. Constable Rikotso is corroborated by Constable Sombhane and Constable Plantinah Mokgobu who stated that the information about the wanted Zimbabwean National initially surfaced when he visited CIAC office at Wierdabrug.

Gordon Dube was arrested on 11/01/2011 and was found in possession of an unlicensed firearm. Constable Rikotso later saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from ballistics. It is also clear that the suspect Gordon Dube was facing many charges in South Africa including murder and robbery. Most of the cases against Gordon Dube were investigated by Constable Meyer except Diepsloot Cas 93/01/2011 which was investigated by Warrant Officer Dlamini. According to Constable Meyer the following cases were against Gordon Dube, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Gordon Dube was also wanted in Zimbabwe. According to Constable Meyer, Captain Maluleke informed him that Gordon Dube was also wanted for murder as per Bulawayo CR 438/09/2010. He stated that he booked out suspect Gordon Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels. The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order to handover the suspect to the Zimbabwean police. The suspect was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Constable Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm to Zimbabwean Police. In January 2011 members of Crime Intelligence received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect murdered a police officer in Zimbabwe. The request to arrest John Nyoni was after a successful operation that led to the arrest of Gordon Dube. According to members of TRT, they received a call via two ways radio from the commander to go to Diepsloot police station. When they arrived they found the Station Commander of Diepsloot Police station who introduced them to Captain

Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Moot Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.

The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.


The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

7. FINDINGS

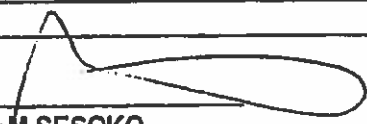
- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maqhawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal Imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hlatshwayo were involved.

8. RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.

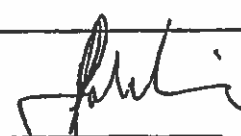

Mr. Hl KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

~~Recommended/not recommended~~



Mr. M SESOKO
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT
IPID: NATIONAL OFFICE
DATE: 18/03/2014

~~Approved/Disapproved~~


MR. RJ MCBRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 09/04/2014

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case no:

In the matter between:

THE HELEN SUZMAN FOUNDATION

Applicant

and

MINISTER OF POLICE

First Respondent

LIEUTENANT GENERAL ANWA DRAMAT

Second Respondent

MAJOR-GENERAL BERNING NTLEMEZA

Third Respondent

NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE

Fourth Respondent

FOUNDING AFFIDAVIT


I, the undersigned

FRANCIS ANTONIE

do hereby make oath and say that:

INTRODUCTION

1. I am an adult male director of the Helen Suzman Foundation ("HSF") situated at 2 Sherborne Road, Parktown, Johannesburg.
2. The facts contained in this affidavit fall within my personal knowledge, unless it appears otherwise from the context, and are both true and correct.

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3. All legal submissions are made on the advice of HSF's legal representatives.
4. I am duly authorised to depose to this affidavit on behalf of HSF.

NATURE OF THIS APPLICATION

5. This is an urgent application in terms of Rules 11, 12 and 18 of the Rules of this Court:

5.1 to grant the applicant direct access to this Court so that this matter may be urgently and finally settled;

5.2 to review and set aside the decisions of the Minister of Police, the Honourable Mr Nkosinathi Nhleko, ("the Minister"), in December 2014:

5.2.1 to suspend Lieutenant General Anwa Dramat, the National Head of the Directorate for Priority Crime Investigation ("DPCI") ("the National Head" or "Lt Gen Dramat") ("the suspension decision"); and

5.2.2 to appoint Major-General Berning Ntlemeza as the Acting National Head of the DPCI ("the Acting National Head" or "Maj-Gen Ntlemeza") ("the appointment decision"); and

5.3 to declare that the Minister cannot suspend the National Head other than by way of the mechanism provided in sections 17DA(3) and (4) (read with section 17DA(5)).

6. The Minister's decisions are clearly unlawful. The Minister does not have the power to suspend the National Head in the manner in which he has purported to do. This is particularly so taking account of the recent Constitutional Court decision in *Helen Suzman Foundation v President of the*

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Republic of South Africa and Others; Glenister v President of the Republic of South Africa and others (CCT 07/14, CCT 09/14) [2014] ZACC 32 (27 November 2014) ("the 2014 Judgment") which, *inter alia*, declared section 17DA(2) of the South African Police Service Act, 1995 (as amended) ("the SAPS Act") unconstitutional and deleted same from that Act as from the date of the order handed down on 27 November 2014. The power of the Minister to suspend the National Head is thus now limited under the SAPS Act to suspension in accordance with section 17DA(5), the requirements of which have clearly not been met in this instance as will be discussed below. This was confirmed by the judgment of the Honourable Mr Justice Prinsloo in the High Court of South Africa, Gauteng Division, Pretoria on 23 January 2015 ("the High Court Judgment"), annexed marked "FA1", in which the same relief as sought in this application was granted. The High Court Judgment was delivered pursuant to an urgent application instituted by HSF on 9 January 2015 ("the High Court application").

7. The High Court Judgment is comprehensive and provides no room for doubt as to the legal position. The Minister and the third respondent have, however, sought leave to appeal against the High Court Judgment to the Supreme Court of Appeal. The leave to appeal application dated 23 January 2015 is annexed marked "FA2". Even if the leave to appeal application is dismissed within a matter of a week or two, the Minister may still approach the Supreme Court of Appeal with a petition for special leave to appeal, which could take months to resolve. If leave is granted at any time on any point, this would delay matters by many months. Even if leave is refused or any appeal is dismissed, the Minister would then no doubt attempt to approach the Constitutional Court. The delay in having the matter finally

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adjudicated through the ordinary appeal process is highly prejudicial to the institution and the work of the DPCI and may cause irreparable harm not only to the DPCI itself, but the public's confidence in it. This would be an intolerable state of affairs for our constitutional democracy, particularly having regard to the centrality of the DPCI's mandate in fighting corruption and organised crime at the highest levels.

8. The need for legal certainty in the particular circumstances of this case cannot be overstated. This Court took the extraordinary step in the 2014 Judgment to sever unlawful legislative provisions (provisions upon which the first respondent nevertheless relied when he unlawfully suspended Lt Gen Dramat) in view of the *"need and urgency to put an end to the uncertainty surrounding the DPCI"* (para [108]). The Minister's unlawful conduct has now precipitated the need for reassertion of that certainty which is invaluable to the protection of the rule of law and to avoid further political interference and infractions on the DPCI's independence. For these reasons and other grounds set forth in this application, it is imperative that this Court finally resolves the dispute in this matter without any further delay.

THE PARTIES

9. The Applicant in this application is HSF. HSF was established in 1993, and is a non-governmental organisation that's objectives are *"to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights"*.
10. HSF approaches this Court, firstly, in its own interest. It is an organisation that is primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law. These are all implicated by the

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unlawful decisions of the Minister to suspend Lt Gen Dramat and to appoint Maj Gen Ntlemeza. The Minister has acted unlawfully and, moreover, has failed in his constitutional duty to protect the independence of the DPCI and uphold the rule of law in South Africa.

11. HSF also approaches this Court in the public interest. All South Africans have an interest in the rule of law, the requirements for a properly functioning constitutional democracy, and, in particular, the urgent steps necessary to root out corruption in our nascent democracy. This Court has held in *Glenister v the President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) at para [166] ("*Glenister*") that *"corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the state to fulfill its obligations to respect, protect, promote and fulfill all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk."*
12. This Court has held in the 2014 Judgment that *"[o]ur ability as a nation to eradicate corruption depends on the institutional capacities of the machinery created to that end"* (para [106]) and that the *"agency dedicated to the containment and eventual eradication of the scourge of corruption"* (para [2]) is the DPCI, which thus requires substantial constitutional protections to ensure its functional and operational independence.

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13. The above cases emphasise that adequate independence of the DPCI is critical to its constitutional project. It is imperative that the DPCI is not subject to or seen to be subject to undue executive interference, especially following the High Court Judgment which confirmed that there was indeed unlawful action by the executive in this matter.
14. The First Respondent is the Minister, acting in his official capacity. The First Respondent's office is located at the Department of Police at 231 Pretorius Street, 756-7th floor Wachthuis Building, Pretoria, and these papers will be served on the State Attorney at 10th Floor, North State Building, Corner of Market and Kruis Streets, 95 Market Street, Johannesburg. The First Respondent is cited in his official capacity as the member of the National Executive responsible for the administration of the SAPS Act and as the official who took the suspension and appointment decisions.
15. The Second Respondent is Lieutenant General Anwa Dramat, both in his private capacity and in his official capacity as the National Head of the DPCI. These papers will be served on Lt Gen Dramat's attorneys, Riley Incorporated located at 212 Rosmead Avenue, Wynberg 7800.
16. The Third Respondent is Major-General Bering Ntlemeza both in his personal capacity and in his official capacity as the Acting National Head of the DPCI. The Third Respondent's office is located at 1 Promat Building, Creswell Street, Silverton, Pretoria.
17. The Fourth Respondent is the National Commissioner of the South African Police Service acting in her official capacity. The Fourth Respondent's office is located at Wachthuis, 229 Pretorius Street, 7th Floor, Pretoria.

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FACTUAL BACKGROUND

18. On 10 December 2014, Lt Gen Dramat was informed in a notice from the Minister that the latter contemplated Lt Gen Dramat's suspension ("notice of suspension"). Importantly, the notice of suspension invoked sections 17DA(2)(a)(i) and (iv) of the SAPS Act as the sole basis of the proposed suspension. The notice gave Lt Gen Dramat five days to furnish reasons as to why the Minister should not provisionally suspend him pending an internal investigation. This notice is attached marked "FA3".
19. Lt Gen Dramat's attorneys, Riley Incorporated, replied to the Minister by way of a letter dated 12 December 2014 ("the 12 December 2014 letter") attached marked "FA4", stating that it was clear from the notice of suspension that the Minister was exercising powers in terms of section 17DA(2)(a)(i) and (iv) of the SAPS Act and that, as a result of the 2014 Judgment, the reference to "(2)" in section 17DA(1) and the whole of section 17DA(2) were deleted from the SAPS Act. The 12 December 2014 letter stressed that any threatened suspension on the basis of those sections was unlawful.
20. The letter concluded by informing the Minister that he did not in the circumstances have the power to suspend the Head of the DPCI. The letter also refuted the factual allegations against Lt Gen Dramat.
21. On 23 December 2014, the Minister nevertheless decided to place Lt Gen Dramat on a precautionary suspension for 60 days during which an enquiry (of an unknown scope) would apparently be conducted. The purported suspension was effected by way of a letter from the Minister to Lt Gen Dramat dated 23 December 2014 and attached marked "FA5". The Minister

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stated that he had considered the representations contained in the 12 December 2014 letter as well as those contained in both of Lt Gen Dramat's sworn statements.

22. The Minister further stated that he had considered the objection to his authority to suspend Lt Gen Dramat based on the decision in the 2014 Judgment and particularly the deletion of section 17DA(2). He asserted that the deletion of this section did not preclude him from suspending the National Head as he *"found nothing in the judgment which precludes [him] from exercising [his] powers as [Lt Gen Dramat's] employer to place [him] on precautionary suspension."*
23. The Minister now acknowledged that subsection 17DA(2) (on which the 10 December 2014 letter was premised) has indeed been struck down and could not be used as a basis for the suspension. He also readily admitted that he has not sought to suspend Lt Gen Dramat under sections 17DA(4) and (5) of the SAPS Act. As no proceedings of a committee of the National Assembly had commenced as at 23 December 2014 or to date, sections 17DA(4) and (5) were indeed applicable. The Minister instead averred that in the absence of section 17DA(2), the applicable provisions available in law are to be found in the Public Service Act, 1994 ("Public Service Act"), the Public Service Regulations and the Senior Management Services Handbook ("SMS Handbook") ("alternative provisions"). He asserted that these alternative provisions empowered him to place the National Head on precautionary suspension and grounded the suspension decision.
24. As will be discussed more fully below, this understanding of the Minister's powers to suspend the National Head is clearly incorrect. Section 17DA(1) makes it plain that *"[t]he National Head of the Directorate shall not be*

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suspended or removed from office except in accordance with the provisions of subsections (3) and (4)." It is clear that the provisions of this section were designed, in accordance with the objects of Chapter 6A of the Act and the constitutional imperative of structural and operational independence, to protect the DPCI from undue political interference by limiting the circumstances in which the Minister could suspend the National Head.

25. The Minister is thus clearly bound by the provisions of these sections when it comes to the suspension of the National Head and it is not open to him to suspend under the alternative provisions as he has purported to do here.
26. Lt Gen Dramat responded to the Minister by way of a letter dated 24 December 2014 ("the 24 December 2014 letter"), which pointed out the unlawfulness of the suspension decision and set forth numerous facts which aggravated the illegality, annexed marked "FA6".
27. On 30 December 2014, the HSF's legal representatives wrote to the Minister requesting reasons for, and various information pertaining to, the suspension and basis for the suspension and appointment decisions ("the 30 December 2014 letter"). We attach this letter hereto marked "FA7".
28. The Minister has not replied to the 30 December 2014 letter as at the date of deposing to this affidavit.
29. It is clear from the reasons given by the Minister that he was purportedly acting under the alternative provisions when taking the suspension decision. Yet, it is clear from section 17DA(1) that no suspension may take place other than by way of sections 17DA(3) and (4). That is really the end of the matter.

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URGENCY

30. The HSF approaches this Honourable Court on an urgent basis.
31. It is clear that the appointment of a new Acting National Head in circumstances where the suspension of Lt Gen Dramat was unlawful (and plainly inconsistent with the pronouncements of this Court in the 2014 Judgment) must urgently be overturned, Lt Gen Dramat must be restored to his position and the declaratory relief to prevent further unlawful Ministerial interference should be finally decided without delay.
32. The Minister himself recognises the urgency associated with the need for certainty in respect of the relief sought in this application. The Minister acknowledged the extreme urgency of this case in the High Court application, as did the Honourable Mr Justice Prinsloo in the High Court Judgment. So much so that the matter was heard just over a week after the launch of the proceedings, at 8am on 19 January 2015, and judgment rendered on 23 January 2015.
33. As recognised by this Court in the 2014 Judgment, the DPCI is an indispensable investigative organ which must be given substantial protections to carry out its mandate. The need to insulate the DPCI from political interference is attributable in part to the fact that at the core of its mandate is the requirement to investigate high-level and high-profile corruption and organised crime cases, including those which implicate important political figures.
34. Moreover, any uncertainty in relation to the scope of executive power over the functioning of the DPCI must be removed without delay not only to preserve the operations of the DPCI, but to restore public confidence in the

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DPCI as an institution. Members of the DPCI must also not operate under a cloud of potential executive interference: the very threat of interference has the real potential to impede their execution of their constitutional mandate.

35. The importance of the fight against corruption, as emphasised in *Glenister* and the 2014 Judgment, make it imperative that any threat to the efficacy and operation of the DPCI and any opportunity for further political interference in the functioning of the DPCI be addressed as a matter of urgency. The suspension of Lt Gen Dramat in the circumstances and in the manner which it has been effected here by the National Executive (the very organ against whose interference the Courts have cautioned), must be addressed without delay. This matter is not about a defence of Lt Gen Dramat specifically. This case entails the core constitutional question: do we live in a society where our government can, by effectively bypassing the requirements laid down by law for the lawful suspension of the National Head of the DPCI, control who is to lead one of South Africa's most important crime-fighting units? If the answer is no – and it must be no – then the protection of the rule of law requires prompt and clear action from the Court.
36. The urgency in this matter cannot be overstated. The DPCI is an indispensable investigative organ, whose reach extends to the highest offices in South Africa, which must be given substantial protections to carry out its mandate to combat corruption and organised crime.
37. The National Head occupies the central role in the corruption and organised crime scheme of the DPCI and his protection from political interference is thus paramount. Under the SAPS Act, it is the National Head who, *inter alia*:

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- 37.1 manages and directs the DPCI, including its members and the conduct of investigations under the DPCI's auspices (sections 17C(2)(a) and (3) of the SAPS Act);
- 37.2 is in control of the DPCI's funds and expenditure (section 17H(6) of the SAPS Act);
- 37.3 appoints the staff of the DPCI (sections 17C(2)(b) and 17DB(b) of the SAPS Act);
- 37.4 determines the number and grading of posts in the DPCI (section 17DB(a) of the SAPS Act);
- 37.5 has a veto power on the transfer or dismissal of any Deputy National Head, Provincial Head or administrative staff of the DPCI (section 17CA(20) of the SAPS Act) - any disciplinary steps against members of the DPCI are, in any event, to be finalised under the auspices of the National Head within the DPCI's structures (section 17CA(19) of the SAPS Act);
- 37.6 determines which national priority offences (and other crimes) are to be addressed by the DPCI (section 17D(1)(a) of the SAPS Act, after its amendment by the 2014 Judgment, as well as section 17D(2) of the SAPS Act);
- 37.7 determines under whose mandate (the DPCI or other parts of the SAPS) a particular crime falls and designates who is to investigate that crime (sections 16(3) and (4)(c) of the SAPS Act); and
- 37.8 heads the Operational Committee established under section 17J of the SAPS Act.

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38. It is clear that the National Head is at the very heart of the DPCI's ability to function effectively to fulfil its constitutional mandate. The National Head of the DPCI makes dozens of critical operational, institutional and financial decisions which may have a substantial bearing on on-going sensitive and high profile investigations and pending cases, the rights and expectations of members of the public, and the very structure and operational integrity of the DPCI, which would be difficult or impossible to reverse. All these critical decisions, about the commencement, conduct and termination of investigations, resource allocation, suspension and discipline of staff, and other work of the DPCI, are now being made by the third respondent in his purported capacity as Acting National Head.
39. It is clear from the available evidence that the third respondent has been anything but placid in his new position, a position to which he is in law not entitled. As I now demonstrate, he has zealously already taken numerous far-reaching decisions immediately following Lt Gen Dramat's suspension. It is clear from these activities that irreparable harm is potentially being caused within and to the DPCI and the public, harm which mounts with every day that passes while the uncertainty around the suspension and appointment decisions continues. This situation is particularly untenable in light of the fact that the DPCI now has potentially two heads: one who in his acting capacity is taking a number of material decisions in the space created by Lt Gen Dramat's unlawful suspension; and another who, as the High Court has already confirmed, would otherwise be the Head of the DPCI but for his unlawful suspension and the efforts now by the Minister to prolong that suspension through the appeal process.

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The suspension of Major General Sibiya

40. I, recently came into possession of a copy of the Notice for Intended Precautionary Suspension issued to Major General Shadrack Sibiya dated 5 January 2015 ("the Suspension Notice"). The Suspension Notice was signed by the third respondent in his capacity as Acting National Head of the DPCI. I attach the Suspension Notice to this affidavit marked "FA8".
41. On 14 January 2015, DPCI spokesperson, Brigadier Hangwani Mulaudzi confirmed in newspaper reports that the Suspension Notice was withdrawn on Tuesday 13 January 2015. A copy of the relevant newspaper report is attached marked "FA9".
42. A new Notice of Intended Precautionary Suspension and signed by the third respondent ("the 14 January notice") was, however, issued and delivered to Maj General Sibiya on 14 January 2015. A copy of the 14 January notice is attached marked "FA10". The 14 January notice clearly demonstrates that the third respondent will not be dissuaded from his attempts to suspend Maj Gen Sibiya. Pursuant to the 14 January notice, Maj Gen Sibiya has now been suspended from office with effect from 20 January 2015, as stated by Brigadier Hangwani Mulaudzi, the spokesperson for the DPCI, as reported by News 24 on 21 January 2015, a copy of which is annexed hereto marked "FA11".

Other decisions taken by the third respondent

43. Worryingly, there have been numerous newspaper reports detailing the alarming decisions taken by the third respondent in his first month as Acting National Head of the DPCI. In an article published in *Die Beeld* on 13 January 2015, attached marked "FA12", the third respondent is reported to

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have "demanded that the DPCI structure be presented to him at a meeting at which changes would be considered" and "transferred" members of the DPCI including Colonel Zama Basi (head of integrity) and Colonel Mike Reddy (head of finances). This is indicative of a disturbing state of affairs: if the third respondent continues to change the structure of the DPCI it may irreparably compromise the DPCI as an institution as well as its work.

44. The article further reported that the third respondent has replaced the former DPCI spokesperson, Captain Paul Ramaloko, with the third respondent's own spokesperson from Limpopo, Brigadier Hangwani Mulaudzi. Brigadier Mulaudzi has been quoted in that article as saying that strict action will be taken against those who taint the third respondent's good name with rumours.

45. The *City Press* reported on 11 January 2015 that twelve senior officers and heads of "forums" which deal, *inter alia*, with corruption cases have been replaced by the third respondent from the time that he was appointed in late December 2014 to 11 January 2015. We attach the *City Press* article marked "FA13". The same article reports that the third respondent travelled to Cape Town in the week of 11 January 2015 to collect the docket in relation to the investigation of the former intelligence boss Richard Mdluli which case was previously being overseen by the second respondent.

46. *Die Beeld* further reported in the 13 January article (attached above as "FA12") that the third respondent was on the verge of making the decision to shut down the Tactical Operations Management Section ("TOMS") of the DPCI at the time the article was going to print. This impending decision caused a massive outcry from the private sector (which works closely with the TOMS). Whilst the decision to shut down the TOMS may not, to date,

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have been taken, there is plainly an apprehension of irreparable harm and, in any event, the mere threat of such a drastic decision hamstrings the ability of the TOMS to carry out its mandate.

47. Also, as reported in *Die Beeld* article published on 13 January 2015, is the decision of the third respondent to ban recording devices and cell-phones in all meetings at which he is present and further, to institute disciplinary action against information "leaked" to the press.
48. The National Head's suspension, and the decisions taken by the Acting National Head have an immediate impact on high-profile investigations, which may be difficult or impossible to undo – quite apart from the damage to the reputation, integrity and independence of the DPCI.
49. The Acting National Head is, on a daily basis, taking decisions which inflict substantial and irreparable harm on the DPCI's operations, work and personnel – and even if in due course the Acting National Head were to demonstrate that each of these media reports contains fabrications in every respect, the mere fact of these reports and the growing sense of disquiet that they must be generating within DPCI and beyond, confirms the need for urgent clarity to be provided by this Court in respect of the suspension and appointment decisions. The public interest in such clarity is, with respect, overwhelming.

Undue influence, disruption of existing cases and dysfunctionality within DPCI

50. It is thus imperative that the National Head's functioning is not unlawfully compromised or impeded for another day, and the attempts to do so thus far call for urgent reversal. The National Head must be, and must be perceived

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to be, independent of executive and political influence. If the National Head is unlawfully displaced, then this may disrupt or compromise ongoing investigations, risk disruption and dysfunctionality within the DPCI, and creates a perception among the public and members of the DPCI that the DPCI is vulnerable to executive interference or political influence.

51. The Minister's political interference with the office of the National Head is further illustrated by recent correspondence between the first and second respondent's legal representatives.
52. The correspondence consists in the following. First is a letter which the second respondent's legal representatives sent to the Minister on 16 January 2015, annexed marked "FA14".
53. As is clear from paragraphs 5 and 6 of this letter, the second respondent (in response to a proposal by the Minister to convene a meeting between the first and second respondents on 19 January 2015) states that he does not in any way wish to impede the urgent adjudication of the merits in the main application which, due to a postponement, was being heard on the very day proposed by the Minister. It is also clear from this letter that the State has denied the second respondent funding for the purposes of defending himself in legal fora (including challenging the suspension).
54. On 16 January 2015, the Minister's legal representatives responded to the above letter in which they insisted that the meeting between the first and the second respondents proceed on Monday, 19 January 2015 and that the second respondent should not have any legal representation. It is also clear that the Minister is, under the sword of the suspension, seeking to procure a "*consensus agreement*" with the second respondent to effect the second

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respondent's early retirement, and put in effect permanently what the Minister sought unlawfully to do through the suspension. A copy of the Minister's letter is annexed marked "FA15".

55. On 18 January 2015, the second respondent's legal representatives responded in a fax message sent to the Minister's legal representatives ("the 18 January 2015 letter"). Paragraph 14 of the 18 January 2015 letter states that *"our client will not be forced or intimidated into meeting with the Minister on his own and or without his legal representatives being present."* The 18 January 2015 letter is annexed marked "FA16". It is telling that the second respondent's legal representatives were forced to make the second respondent's position, regarding the proposed meeting, so clear.

56. Moreover, worryingly, as Lt Gen Dramat points out in the 24 December 2014 letter (written in response to the suspension decision), annexed previously as annexure FA6, the suspension decision followed on Lt Gen Dramat calling *"for certain dockets involving very influential people to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me"* (para 6). Further, Lt Gen Dramat states that he is *"also aware that in the next two months there will be a drive to remove certain investigations that fell under [his] "watch", reallocate certain cases and that unfortunately, certain sensitive investigations may even be closed down"* (para 12). He also lists attempts to muzzle him and push him out, as well as the negative impact on the work and morale of the members of the DPC of the continuation of unlawful executive conduct (paras 13 and 14). It is also clear that the undue executive influence placed on Lt Gen Dramat has taken an enormous personal and professional toll on him.

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57. What is apparent from this correspondence is that the Head of the DPCI himself perceives his suspension to be a response to the independent discharge by him of his duties in respect of certain high-profile cases. The objective behind his suspension is furthermore perceived by him to be an effort at interference in respect of and/or removal of certain investigations.
58. On 23 January 2015, the second respondent's legal representatives sent a letter to the Minister, annexed marked "FA17" ("the 23 January 2015 letter"). Paragraph 3 of the 23 January 2015 letter states "*The effect of the judgment is that Lt Gen Dramat will resume his duties on Monday 26 January 2015. We assume that Lt Gen Dramat will be allowed to exercise his duties, functions and responsibilities unhindered and without any interference. Lt Gen Dramat will inevitably be entitled to restore structures, procedures and investigations retrospectively from the date of his purported suspension.*"
59. On 24 January 2015, the Minister's legal representatives replied to the 23 January 2015 letter ("the 24 January 2015 letter"), such reply is annexed marked "FA18". Paragraph 3.1 of the 24 January 2015 letter states "*Our client denies your interpretation of the effect of the judgment (by Judge Prinsloo delivered on 23 January 2015), as outlined in paragraph 3 of your [23 January 2015] letter. We in this regard refer you to the order on page 52 of Judge Prinsloo's judgment.*"
60. The Minister's attitude is clear that he does not wish to see the second respondent return to office.
61. In these circumstances, I respectfully submit that the public interest overwhelmingly requires and the interests of justice dictate that the unlawfulness of the suspension and appointment decisions must be finally



resolved as soon as possible. Nothing less than the proper functioning of a constitutionally entrusted office and the public's confidence therein depends on it.

DIRECT ACCESS

62. In light of the above facts and factors, the HSF submits this Court should grant it direct access to seek the relief in the notice of motion and that this Court should hear this matter on an extremely urgent basis. In any event, all other relevant considerations point in favour of granting direct access, as set forth below.

Prospects of success

63. The merits of the HSF's legal challenge are very strong, as is borne out by what is set forth in this affidavit and in the High Court Judgment. The Minister's submissions on the merits are clearly devoid of merit and the attempt at appealing the High Court's decision is transparently an effort to delay the finalisation of this matter.

The action is manifestly unconstitutional

64. As will be discussed below, the Minister's decisions are plainly unlawful and fail to give effect to the 2014 Judgment and undermine the very essence of our constitutional structure.

The case deals with crisp, narrow issues that this Court and other courts have considered previously

65. The crisp legal issue before the Court is whether the Minister is empowered to suspend the National Head without the involvement of Parliament. There are no material disputes of facts which bear on the legal issues and the legal

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issues involve the objective consideration of this Court's own reasons and order in the 2014 Judgment.

66. The answer to the central legal questions is plain from the legislation, read in light of the Constitution, and was considered by this Court in the 2014 Judgment. The Court also has the benefit of another court's extensively reasoned views, in the form of the High Court Judgment.
67. The 2014 Judgment struck down section 17DA(2) which provided for the suspension of the National Head by the Minister and all references to that subsection. A unilateral ministerial power of suspension thus did not exist from the time of the 2014 Judgment.

An impasse that needs to be solved speedily in view of the urgent need for resolution of this matter

68. This blatantly unlawful suspension, together with the uncertainty created, cannot be allowed to continue. Every day that the suspension continues the DPCI is open to threats that could fundamentally jeopardise future operations and the overall effectiveness of the DPCI and the fight against corruption. Furthermore, decisions are taken each day in the space created by the unlawful suspension of Lt Gen Dramat, and these decisions have consequences within and beyond the DPCI which must be arrested immediately.
69. The urgency involved in having the Minister's decisions overturned is clear in this case and supported by both the 2014 Judgment and the High Court Judgment. It is imperative to make all efforts to save this vital institution and to restore the DPCI to its proper operation, which is critical to our constitutional democracy.

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70. The public interest in having these unlawful decisions overturned and the importance to our constitutional democracy of having this matter rectified as soon as possible support this application for direct access to this Honourable Court.

THE ABSENCE OF THE POWER TO SUSPEND

Section 17DA(2) has been excised and the alternative provisions are inapplicable to the National Head

71. The Minister's interpretation of the effect of the 2014 Judgment and his reliance on the alternative provisions are incorrect.

72. The SAPS Act not only established the DPCI, but also regulates the appointment, remuneration and conditions of service of members of the DPCI – including the suspension and/or removal of the National Head of the DPCI. The National Head is a "member of the service" for the purposes of the Public Service Act. Section 2(2) makes it clear that, where the employment of a member of the service, ie a member of the DPCI, is governed by other legislation, such other legislation will apply. The fact that suspension and/or removal of the National Head of the DPCI is expressly governed by the SAPS Act, therefore excludes such extensive and invasive powers from being utilised by the Minister through recourse to the Public Service Act or any regulations or guides published thereunder.

73. It is clear from the above that the SMS Handbook would not be applicable to the suspension and/or removal of the Head of the DPCI as this is governed by the SAPS Act. It is noteworthy, however, that paragraph 2.3 of chapter 7 of the SMS Handbook, upon which the Minister relies and in accordance with which he purportedly acted in suspending Lt Gen Dramat, states "*this Code and Procedure applies to the employer and all members. It does not,*

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however, apply to the employer and members covered by a disciplinary code and procedure contained in legislation or regulations." The disciplinary procedure in the present case, specifically the suspension and/or removal of the National Head of the DPCI, is covered by the SAPS Act and chapter 7 thus does not apply to Lt Gen Dramat.

74. The SMS Handbook merely confirms that which the SAPS Act makes abundantly clear. Section 17DA(1) of the SAPS Act unambiguously provides that the Head of the DCPI shall not be suspended or removed from office except in accordance with the provisions of subsection (3) and (4). The Minister's reliance on any other legislation to justify his actions is thus plainly misplaced.

75. The untrammelled power to suspend and/or remove by the Minister was partly what grounded the Court's concerns in the 2014 Judgment. Moreover, section 17DA was introduced in 2008 and amended in 2012 and thus constitutes specific, later legislation which supersedes any powers granted under the Public Service Act, together with any regulations thereunder.

76. The constitutional requirement of job security for members of the DPCI was articulated in *Glenister* at para 222, and approved at para 89 of the 2014 Judgment:

"At the very least the lack of specially entrenched employment security is not calculated to instil confidence in the members of the DPCI that they can carry out their investigations vigorously and fearlessly. In our view, adequate independence requires special measures entrenching their employment security to enable them to carry out their duties vigorously." (Emphasis added)

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77. Subsections 17DA(3) to (6) deal with the suspension of the National Head by the Minister, flowing from a possible removal process initiated by a Committee of the National Assembly. Thus, although the Minister still has the power to suspend in terms of section 17DA(5)(a), this power of suspension may only be exercised after the start of proceedings of a Committee of the National Assembly for the removal of the person concerned. As the Minister himself tacitly acknowledges and the High Court's judgment confirms, no proceedings by a Committee of the National Assembly have commenced.
78. The Minister therefore did not, at any relevant time, have the power to suspend Lt Gen Dramat under section 17DA(2) and has clearly not done so in accordance with section 17DA(5) of the SAPS Act. Again, it is thus obvious that the suspension is clearly unlawful. The Minister has attempted to bypass the process stipulated in the SAPS Act and which process requires the involvement of Parliament – through proceedings of a Committee of the National Assembly – as a precursor to any suspension decision.
79. The power to suspend set forth in section 17DA(5) is, in substance, precisely the same as the powers of suspension given to the President of the Republic of South Africa in respect of other constitutionally entrenched institutions whose independence is paramount, such as the Public Protector, the Auditor-General, commissioners of the Human Rights Commission, the Independent Electoral Commission and the Commission for Gender Equality (under section 194 of the Constitution).

No competent appointment of the Acting National Head could have been made

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80. It is also clear from section 17CA(12) that the Minister may appoint an Acting National Head in very limited circumstances. Obviously, an Acting National Head cannot be appointed if Lt Gen Dramat was not lawfully suspended. In the circumstances, the appointment decision must suffer the same fate as the suspension decision.

The Minister's justification

81. The absence of the power to suspend means that the suspension decision cannot be upheld, regardless of any factual averments by the Minister. No factual basis has, in any event, been proffered for the suspension decision.
82. The rationale for the suspension and appointment decisions – and the attempt by the Minister to bypass the provisions of the SAPS Act by recourse to the alternative provisions – is all the more concerning having regard to the fact that the Minister has been aware of the allegations against Lt Gen Dramat since at least 2011 (which is the reason that certain questions were posed to Lt Gen Dramat in Parliament, as set forth on page 2 of the suspension notice), the IPID investigation into the allegations was initiated years ago, Lt Gen Dramat has been aware of the IPID investigations since September 2013 (see paragraph 2 of the October 2013 statement) and the Minister was in possession of the IPID report since at the very latest (even on the Minister's version) September 2014 – although I understand that the IPID report was actually already available since March 2014. Yet, it is only in December 2014, many weeks later, on the eve of the annual holidays, that the Minister saw fit to take any of the steps which he has now purported to take. If the allegations and findings were so serious as to require suspension of Lt Gen Dramat in the last moments of 2014, it is unclear why the "investigation" was not launched earlier by the Minister. Most pertinently, it is

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unclear why Lt Gen Dramat needed to be suspended now when inquiries and investigations had taken place over many months and years.

83. The Minister himself admits in his answering affidavit in the High Court application (the relevant parts of which are annexed marked "FA19") that the independent investigation into the second respondent's conduct by the IPID has cleared the second respondent in respect of the Zimbabwe renditions. The Minister blandly asserts in paragraph 21 of his answering affidavit that "*I have noted that it has been mentioned in the media and elsewhere that the second respondent had been exonerated by IPID investigation. These assertions are made without facts or appreciation of why such a conclusion was made by IPID.*"

84. The Minister did not take the High Court or the applicant into his confidence to explain precisely what "*facts or appreciation*" would cast a different light on the recommendations of IPID. The Minister has not attached any of the documents on which he relies to ground the suspension in his answering affidavit: the IPID report itself, the witness statements, relevant documentation and "*file*" ("*the referenced documents*"). Despite being required to do so under a notice in terms of rule 35(12) dated 15 January 2015 (annexed marked "FA20"), sent two hours after the applicant received the Answering Affidavit, the Minister has not produced the referenced documents ("*the Rule 35(12) documents*"). Instead, in a reply to the notice, transmitted in the late afternoon on 16 January 2015 (annexed marked "FA21"), the Minister refused to hand over the Rule 35(12) documents on the basis that:

84.1 the applicant's case is a narrow legal one (para 3 of that reply); and

84.2 the documents should be "*kept confidential*".

85. The first reason amounts to an admission that the referenced documents on which the Minister places significant reliance in the Answering Affidavit are irrelevant to the issues in these proceedings. If this is the case, then it is difficult to understand why the Minister referred repeatedly to them in his affidavit. In any event, as our courts have held, once a reference to a document is made in an affidavit, it must be produced, and no enquiry into relevance takes place.

86. Confidentiality is also not a defence to disclosure in terms of Court rules. In any event, even if the information is extremely sensitive, disclosure remains mandatory, but an appropriate confidentiality regime may be put in place.

87. Regardless of the insupportable reasons for failure to disclose, the effect of such failure is clear. Rule 35(12) provides that "*[a]ny party failing to comply with such notice shall not, save with the leave of the court, use such document or tape recording in such proceeding*". The Minister did not seek such leave from the High Court and his counsel did not attempt to argue orally with reliance on such documentation before Prinsloo J. In the circumstances, there is no evidence whatsoever from the Minister to gainsay the applicant's averment that the independent investigation into the second respondent's conduct by the IPID has cleared the second respondent in respect of the Zimbabwe renditions.

The constitutional need to limit the scope for undue executive interference

88. The scope for executive action against members of the unit constitutionally mandated with investigation of corruption (which would include corruption by high-profile officials and members of the executive) must clearly be

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interpreted narrowly, as our courts have held, to limit the potential for undue executive interference which could undermine constitutional objectives. Accordingly, any authority in statutory provisions must be interpreted to import less, not more, interference, particularly in areas such as suspension and/or removal, which are obviously prone to abuse. In the present circumstances, moreover, the statutory provisions permit of no ambiguity whatsoever: they expressly and in imperative terms prohibit suspension other than by way of sections 17DA(3) and (4) of the SAPS Act.

RELIEF

89. The suspension and appointment decisions thus plainly offend against the SAPS Act, the principle of legality and the Promotion of Administrative Justice Act, 2000. They must be declared unlawful. The only reasonable remedy is to set aside both decisions *ab initio* with immediate effect, and to declare that the Minister lacks any authority to suspend the National Head in the absence of a parliamentary removal process.

90. The High Court Judgment reiterates the fact that it is vital that the National Head's functioning should not be unlawfully compromised or impeded for a moment longer. The *status quo* cannot continue in the light of serious, on-going threats to the very integrity of the DPCI. Public confidence in the DPCI cannot help but wane, when the effects of conduct which has been found to be plainly unlawful continues to wreak havoc on the structures and investigations of the DPCI, while an appeal with no merit works its way through the system. The point of law in this application is of fundamental importance to the rule of law and our constitutional democracy. Its import goes far beyond the facts of this case and this Court, as the ultimate

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guardian of our Constitution, should, the applicant submits, definitively resolve this matter as expeditiously as possible.

91. The applicant is taking the necessary precaution to oppose the Minister's application for leave to appeal before Prinsloo J, and will seek at the hearing before Prinsloo J for his order to be implemented (in terms of Rule 49 of the Rules of Court) ("the Rule 49 application") pending the outcome of the appeal and/or the direct access application before this Court. It is impossible to know, at this stage, when the Rule 49 application will be heard and how soon thereafter judgment in that application will be handed down. In any event, under section 18 of the Superior Courts Act, 2013, any interim enforcement order is itself automatically appealable and such order is suspended pending the appeal. I point out that the second respondent's suspension was for a period of 60 days and is due to expire in late February. On the Minister's version, however, another suspension may well be imposed thereafter.

92. The applicant furthermore undertakes to keep this Court apprised of any developments in the Rule 49(11) application and the leave to appeal application.

WHEREFORE, the applicant prays that this Court grants the relief sought in its notice of motion.

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[Handwritten Signature]
 FRANCIS ANTONIE

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at ROSEBANK on 25 January 2015, the regulations contained in Government Notice no R1258 of 21 July 1972, as amended, and Government Notice no R1648 of 19 August 1977, as amended, having been complied with.

SOUTH AFRICAN POLICE SERVICE
 CLIENT SERVICE CENTRE
 2015 -01- 25
 CSC
 ROSEBANK
 SUID - AFRYKAANSE POLISDIENST

72032201
[Handwritten Signature]
 COMMISSIONER OF OATHS
 Full names: *KWENA GEORILK MOROBANE*
 Address: *15 STRADEL, AVENUE ROSEBANK*
 Capacity: *POLICE OFFICER*

"FAI"

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IN THE HIGH COURT OF SOUTH AFRICA /ES
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: YES / NO
 (2) OF INTEREST TO OTHER JUDGES: YES / NO
 (3) REVISED ✓
 DATE 22/1/15 SIGNATURE *[Signature]*

CASE NO: 1054/2015

DATE:

IN THE MATTER BETWEEN
 THE HELEN SUZMAN FOUNDATION
 AND
 THE MINISTER OF POLICE
 LIEUTENANT GENERAL ANWA DRAMAT
 MAJOR-GENERAL BERNING NTLEMEZA
 NATIONAL COMMISSIONER OF THE
 SOUTH AFRICAN POLICE SERVICE

APPLICANT
 1ST RESPONDENT
 2ND RESPONDENT
 3RD RESPONDENT
 4TH RESPONDENT

JUDGMENT

PRINSLOO, J

[1] The applicant (also, at times, referred to as "HSF") applies for certain declaratory relief flowing from the suspension by the first respondent ("the Minister"), on

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23 December 2014, of the second respondent (without being disrespectful, but for the sake of brevity, I will refer to him as "Dramat") from his position as the National Head of the Directorate for Priority Crime Investigation ("DPCI").

The applicant also applies for ancillary declaratory relief, *inter alia*, flowing from the appointment by the Minister of the third respondent as Acting National Head of the DPCI following the Minister's suspension of Dramat.

- [2] Before me, Mr Unterhalter SC, assisted by Mr Du Plessis, appeared for the applicant and Mr Mokhari SC, assisted by Ms Seboko, appeared for the first respondent.
- [3] Dramat, although duly cited by the applicant, did not take an active part in the proceedings although he did, through his attorney, file a written notice to abide on 13 January 2015.

Attached to the founding papers, there is also a letter from Dramat's attorney, dated 12 December 2014, written to the Minister in response to the latter's notice of "contemplated provisional suspension" to Dramat dated 9 December 2014. In this letter to the Minister, Dramat's attorney also challenges the lawfulness of the intended suspension of his client.

- [4] The third and fourth respondents did not take part in the proceedings.
- [5] The matter was enrolled before me as an urgent application on Thursday 15 January 2015. On that occasion the question of urgency was challenged on behalf of the

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Minister, not because the latter felt that the case was not urgent, but because of the technical objection that the case was enrolled for a Thursday instead of a Tuesday, in terms of the existing Practice Directive, and insufficient time was given to the Minister to file his opposing affidavit and heads of argument.

During an adjournment, the question of urgency was resolved, and the Minister was afforded an opportunity to file his opposing papers and heads of argument which were given to me over the week-end of 17 and 18 January. The case was postponed until 19 January, when the merits of the case were argued before me.

Brief notes on the chronological sequence of events

- [6] On 9 December 2014, the Minister wrote a letter to Dramat under the following heading:

"Contemplated Provisional Suspension of the National Head of the Directorate for Priority Crime Investigation Lieutenant General Dramat in terms of section 17DA(2)(a)(i) and (iv) of the South African Police Service Act 68 of 1995, SAPS Act.

Subject: Rendition of Zimbabwean nationals in 2010/2011

This serves to advise your good-self that the Minister of Police is considering placing you on provisional suspension in terms of section 17DA(2)(a)(i) and (iv) of the SAPS Act on the following grounds ..."

For reasons which will appear later, the repeated reference by the Minister to the provisions of section 17DA(2) is of some significance.

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[7] The notice of 9 December 2014 (evidently only given to Dramat on 10 December) is a lengthy affair. However, I consider the contents to be, in particular, of importance from the point of view of the Minister, so that it is convenient to quote extracts therefrom:

"The following Zimbabwean nationals were renditioned and/or illegally deported by the Directorate for Priority Crime Investigation in 2010 and 2011 following a joint operation with Zimbabwean police (then follows eight names).

The Zimbabwean nationals ... were allegedly fugitives for a crime of murder and robbery committed in Zimbabwe. They were renditioned from South Africa to Zimbabwe; it is further alleged that two of them were eventually killed by Zimbabwean police. ...

The exchange of criminal suspects between the two law enforcement agencies was allegedly not done in terms of Southern African Development Community's Protocol on Extradition; South Africa's Extradition Act 67 of 1962, as well as national legislation on mutual legal assistance in criminal matters.

According to the Hansard record of parliament of 13th December 2011, your reply dated 25 November 2011, you supposedly responded to a parliamentary question on these acts of renditions, wherein you supposedly misled the Minister and parliament by stating that it was the Department of Home Affairs who deported the Zimbabwean nationals; well-knowing that the Zimbabwean

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