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## AFFIDAVIT

I, the undersigned,

**NHLAMULO MVELASE**

do hereby make oath and say that:

1. I am an adult male with a South African Identity Number 890803 5998 083.
2. I am a junior attorney in the employ of Corruption Watch (RF) NPC.
3. My office is situated at 87 De Korte Street, Braamfontein, Johannesburg, 2017.
4. My contact telephone number is 011 242 3900 and my mobile telephone number is 082 928 1657.
5. Save where I have stated otherwise or where it appears contrary from the context, all facts herein fall within my personal knowledge or have been obtained from records of the Company to which I have had access and are to the best of my knowledge both true and correct.

## SCOPE OF THE AFFIDAVIT

6. The affidavit provides the background into allegations of corruption against Mr Tom Moyane, ("Moyane") the CEO and Commissioner of the South African Revenue Services ("SARS").
7. We strongly suspect Moyane of failing to report corruption concerning two SARS employees, Mr Jonas Makwakwa and Ms Kelly-Ann Elskie, a failure which is a criminal offence in terms of Section 34 of the *Prevention and Combatting of Corrupt Activities Act* 12 of 2004 ("PRECCA").
8. The allegations of corruption against Makwakwa and Elskie emanate primarily from an article published by the amaBhungane Centre for Investigative Journalism in the *Sunday Times* on 11 September 2016, a copy of which is attached as Annexure "A".

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A further article by Marianne Tham appeared in the *Daily Maverick* also on 11 September 2016 and attached as Annexure "B".

9. We also suspect Mr Moyane of having breached certain provisions of the Financial Intelligence Centre Act, 38 of 2001("FICA"), breaches which carry criminal sanctions.
10. The details of suspected criminal conduct by Mr Moyane is set out in more detail below.

## **ALLEGATIONS**

### **PRECCA Violation**

11. On 17 May 2016, Moyane received a report from the Financial Intelligence Centre ("FIC") detailing fraud and corruption on the part of Mr Makwakwa and Ms Elskie, both SARS employees. The FIC indicated in this report that the allegations should be investigated in order for appropriate criminal justice action to be instituted.
12. Moyane did not report the matter to the police or the Directorate for Priority Crime Investigation ("Hawks"), in breach of Section 34 of PRECCA. We wrote to Moyane enquiring about his failure to report the incidents of corruption, which amounted to well over the R100 000 threshold in PRECCA. A copy of our letter and all annexures are attached marked "C".
13. Our suspicions about Moyane's criminal conduct in failing to report the incidents of corruption to the Hawks were informed by the fact that the spokesperson for the Hawks had confirmed in October 2016, that the Hawks were not investigating the matter. An extract of an article written by Marianne Tham in the *Daily Maverick* on 13 October reads as follows:

"...while both Commissioner Moyane as well as the Hawks, through its spokesperson have denied that the matter has been reported to the Directorate for

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Priority Crime Investigation (Daily Maverick has twice asked the Hawks), the SARS reply seems to indicate otherwise.

SARS is aware, based on correspondence received from the DPCI dated 15 September 2016 that the matter has been referred to the DPCI.

Daily Maverick is in possession of a docket number, CAS 3/6/2016 which purportedly relates to the Makwakwa investigation and which we learnt was being handled by Colonel Herbert Heap.

**Brigadier Hangwani Mulaudzi, Hawks spokesperson responded to our question this week saying, "there is no case and Colonel Herbert Heap is not the investigative officer. We still maintain our previous stance. [That it is a SARS internal matter]"**

14. Moyane responded to our letter to say that he did not report the incidents of corruption to the Hawks because the Hawks had instructed him not to do so. A copy of Moyane's response is attached marked "D".
15. We subsequently wrote to Lieutenant-General Berning Ntlemeza in order to confirm the veracity of Moyane's assertions. Although we received an undertaking from Hawks spokesperson, Brigadier Mulaudzi that a response would be provided by the Hawks, no response was provided. A copy of our letter to the Hawks is attached marked "E".
16. In the circumstances and without confirmation from the Hawks that they had told Moyane not to report the incidents of corruption to the Hawks, we remain with the strong suspicion Moyane has failed to report to the incidents of corruption to the Hawks and is therefore in breach of Section 34 of PRECCA.
17. We have written to Moyane to indicate that we will lodge criminal charges against him in respect of these allegations. A copy of our letter dated 25 November 2016 is attached marked "F".

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## **FICA Violation**

18. In the correspondence marked "C" and "D", we also submitted that Moyane had breached certain provisions of FICA.
19. In this regard, sections 60(1), 60(2) and 29 (4) prohibit the disclosure of confidential information obtained from the FIC except in authorized circumstances and criminal penalties are imposed for the unauthorized disclosure of confidential information. On his own version, Moyane has confirmed that he disclosed the confidential information obtained from the FIC to Makwakwa and Elskie but in Annexure "D", claims to have been authorized to do so.
20. I confirm that this is a factual position which needs be investigated by the police in order to establish whether or not Moyane breached sections 60(1), 60(2) or 29(4) of FICA.

## **THE CRIMINAL COMPLAINT**

I hereby request the South African Police Service to conduct an investigation into this matter as soon as possible.

In summary, the investigation should be into whether Moyane:

- 1.1 breached Section 34 of PRECCA by failing to report incidents of corruption which were brought to his attend to the Hawks;
- 1.2. breached Sections 29(4), 60(1) and 60(2) of FICA by disclosing confidential information obtained from the FIC to Makwakwa and Elskie.

The personal particulars of **Tom Moyane** are:

Identity number: 530131 5708 088

Residential address: 38 Hyacinth Street, Weltevredenpark, 1709

Residential telephone number: 011 478 5917 / 0116463904 / 011 476 2236

Work telephone number: 012 307 2053


*N.M.*

Mobile telephone number: 082 940 2471 / 082 340 2471

  
NHLAMULO MVELASE

I certify that:

- I. the Deponent acknowledged to me that:
  - A. he knows and understands the contents of this declaration;
  - B. he has no objection to taking the prescribed oath;
  - C. he considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at **BRAAMFONTEIN** on  
8 December 2016.

  
COMMISSIONER OF OATHS

**Liesl Hella Muller**  
LLB (UP)  
Ex-officio Commissioner Of Oaths  
Lawyers for Human Rights  
4th Floor Heerengracht Building  
87 De Korte Street, Braamfontein  
Johannesburg 2001  
Tel: 011 339 1960 Fax: 011 339 2665

"A"

12/5/2016

SUNDAY TIMES - Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits

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FROM 13 NOVEMBER 2016

SUNDAY TIMES NEWS BY SUSAN COMRIE, SAM SOLE AND CRAIG MCKUNE, 2016-09-11

## Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits



SARS branch. File photo.  
Image: Gallo Images/Foto24/Theana Calitz

he second-in-command at the South African Revenue Service has been flagged for "suspicious and unusual" cash payments into his bank account, with a report recommending an investigation to determine if the payments are "proceeds of crime arising from

N.M. 12/9

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The report, compiled by a banking regulator, has been handed over to SARS commissioner Tom Moyane.

It alleges that Jonas Makwakwa, the chief officer: business and individual taxes, received unexplained cash deposits and bank transfers into his FNB account totalling R1.2-million between 2010 and January this year.

Investigators also pointed to three cash deposits, totalling R450,200, to Makwakwa's girlfriend's Absa account just before Christmas 2015.

The report, which is only preliminary, relies on bank records for 11 different bank accounts as well as camera footage from banks where the cash deposits were made.

SARS spokesman Sandile Memela declined to comment, but sources said that although the report had been given to Moyane in May, Makwakwa and his girlfriend, Kelly-Ann Elskie, who is also a SARS employee, had remained in their positions.

When contacted on Friday, Makwakwa and Elskie both said the matter was "sub judice" and declined to comment.

Makwakwa has become a powerful figure at SARS. A taxman for 20 years, he shot to prominence after Moyane became a commissioner in late 2014.

Since then, Makwakwa has acted as commissioner when Moyane was away, and has been put in charge of SARS's key revenue-generating unit, the Large Business Centre, which has oversight of large corporations and wealthy individuals.

It is not clear what triggered the investigation into Makwakwa and Elskie, but it is understood that banking regulators became suspicious because of the frequent deposits of large amounts of cash.

When investigators delved into Makwakwa's FNB bank account they identified cash deposits of R785,130 made between 2010 and 2016, most of these - 48 deposits totalling R726,400 - made between 2014 and 2015.

On one occasion Makwakwa was allegedly filmed depositing R68,000 in cash into his own account: in another 34 instances (totalling R606,200) investigators said: "information suggests that [Makwakwa] conducted these cash deposits in person".

There is also a question mark about a September 2014 credit of R147,850.65 on Makwakwa's account after he exchanged \$13,500.

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FROM 13 NOVEMBER 2016

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by [Makwakwa]".

Although the investigation is still at an early stage, the trail of payments appears to have also led investigators to an Absa account, a car and a property in Elskie's name.

She is believed to be Makwakwa's common-law wife and the mother of two of his children.

In particular, investigators raised questions about three large cash deposits - two of R160,000 each and one of R130,200 - that appeared to be inconsistent with Elskie's profile as a mid-level employee in SARS's legal department.

The deposits were made on December 22, 23 and 24 last year at different banks in a 10km radius. Cameras are said to have filmed Elskie making two of the deposits.

Neither Makwakwa nor Elskie has given an explanation for these payments - the report merely records them as "suspicious and unusual" and recommends that further investigation be done.

Investigators also raised concerns about R480,000 that was transferred via EFT into Makwakwa's bank account in three tranches in April and May last year - almost half of which appears to have been used to buy a Mercedes for Elskie.

Through a complex network of bank accounts and companies, investigators traced these payments back to a February 2015 payment of R17.87-million by the Department of Water and Sanitation in favour of a debt-collection company called New Integrated Credit Solutions.

It is not clear what the connection is between a chain of six different companies that have been identified in the report, which include several debt-collection companies and a company called Biz Fire Worx, where Makwakwa was once a director. It sells fire safety equipment.

In most instances, as soon as payments arrived in one bank account, the money was immediately transferred to the next, with a slice being deducted by each company in the chain. On the day after New Integrated Credit Solutions received its payment from the department, it transferred precisely 25% - R4,468,239.28 - to a company called Mahube Payment Solutions.

Asked about this, New Integrated Credit Solutions chairman Baker Maseko said the payment would most likely have been as part of its subcontracting arrangement with Mahube to do data analysis on debt data. He said although SARS was a former client, it had not done business with the tax entity for four or five years.

Mahube has an indirect link with SARS through the company's sole director, Patrick Monyeke, who is said to be a close friend of Moyane.

Monyeki, an information technology veteran, has garnered controversy in relation to two major government IT contracts.

In 2013, it was reported that Monyeke, as a technical adviser, had allegedly played a crucial role in the decision to award a lucrative contract for the distribution of South African Social Security Agency grants to a company called Cash Paymaster Services. At the time, the bid committee was chaired by Moyane. Monyeke did not respond to the claims when they

N.M. 12/5



More recently it emerged that Monyeki has an interest in the company that was awarded a controversial R378-million contract to supply an "inmate management system" to the Department of Correctional Services.

The contract, with Integritron Integrated Solutions, is the subject of litigation and wrangling with the National Treasury, which wants it cancelled.

Monyeki's attorney, Donovan Reddy of BBM Law, responded to questions: "Your enquiries relate to transactions that occurred almost 18 months ago. Our client does not readily have this information to hand. The timeframe imposed on our client to reply is wholly insufficient ... Furthermore, our client is also not able to respond fully and fruitfully until a proper disclosure of the documents you mention and rely on, has been made."

Several other companies were involved in the chain of payments. The final payment in the chain, of R600,000, appears to have been made to Biz Fire Worx. In the two months after Biz Fire Worx received this payment, the company made three large payments into Makwakwa's FNB account, totalling R480,000. One of the company's directors, Lokisane Molea, confirmed receiving a R600,000 payment, but said this was a loan.

Asked about the R480,000 on-payment to Makwakwa, Molea claimed he had used this new loan to repay a series of old loans he had taken from Makwakwa, starting in 2009.

Less than a week after receiving this payment, in May 2015, Makwakwa appears to have used R200,000 to buy a Mercedes-Benz C220 for Elskie.

In February, amaBhungane reported that SARS insiders were concerned that Moyane and Makwakwa had overly-centralised influence over tax settlement negotiations worth billions of rands. Moyane, Makwakwa and SARS denied this and launched a R4-million defamation suit which amaBhungane is defending.



*The amaBhungane Centre for Investigative Journalism, an independent non-profit, produced this story.*

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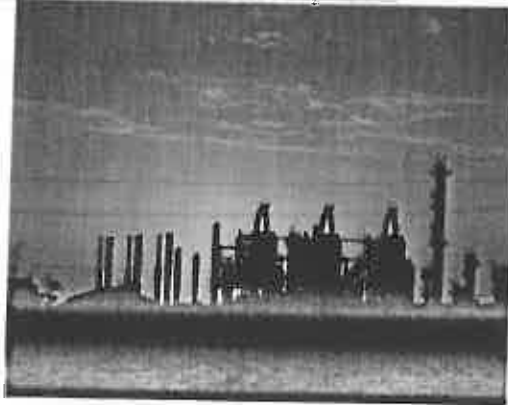
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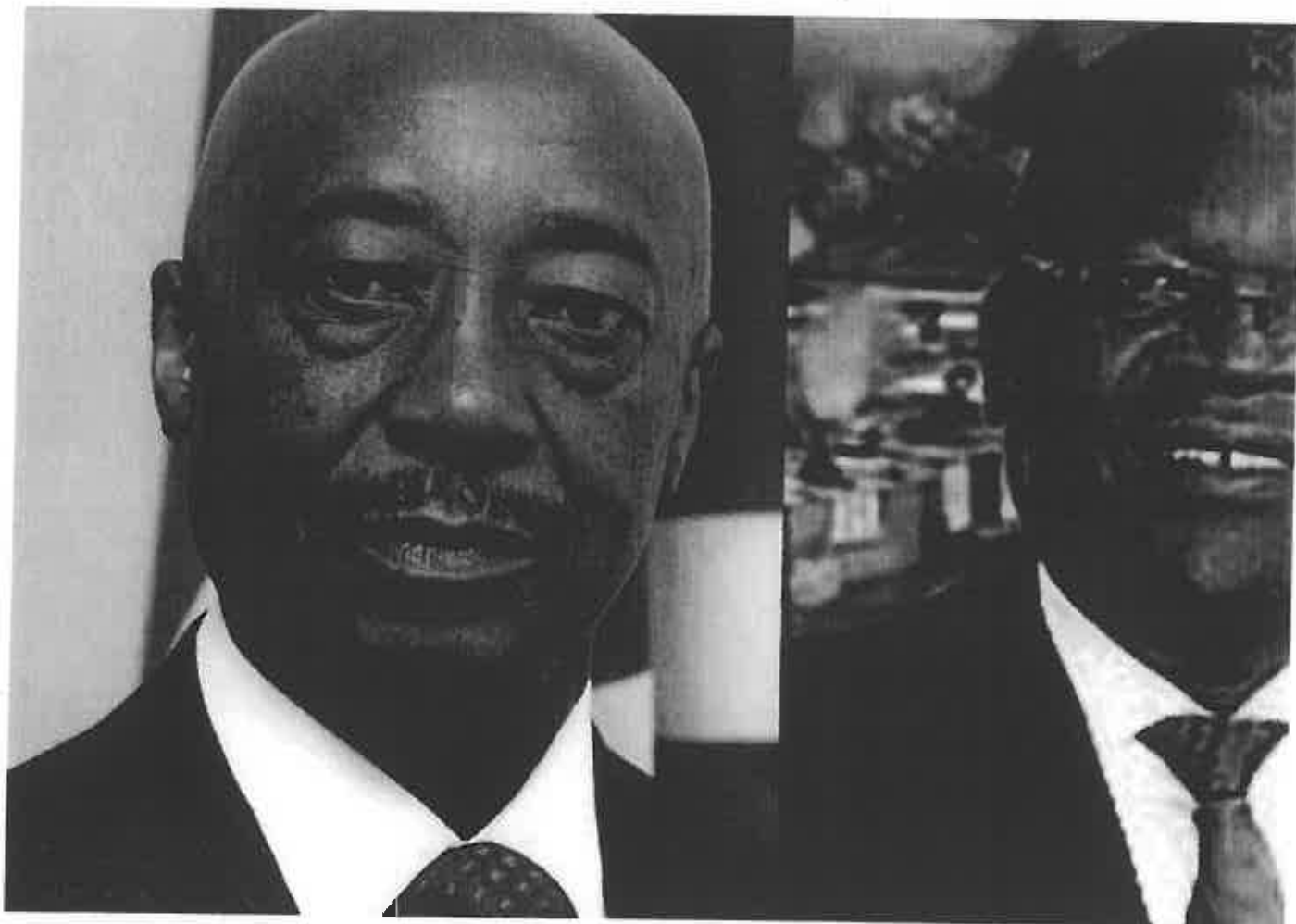
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# DAILY MAVERICK

SOUTH AFRICA

## House of Cards: SARS's 9/11 as pack comes tumbling down in probe of suspicious deposits

- MARIANNE THAMM  
SOUTH AFRICA  
11 SEP 2016 06:22 (SOUTH AFRICA)



**SARS Commissioner Tom Moyane and Hawks head Lieutenant-General Mthandazo Ntlemeza have known for more than three months about the alleged**

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criminal behaviour of Jonas Makwakwa, the second most senior member of the SARS executive, who has reportedly been caught by ATM cameras feeding wads of cash into his personal account as well as receiving other deposits amounting to at least R1.2-million. Daily Maverick is in possession of a report by a banking regulator that suggests these "suspicious and unusual cash deposits" into the personal accounts of Makwakwa and his girlfriend Kelly-Ann Elskie be investigated. Yet the Hawks claim this is an "internal matter" at SARS. By **MARIANNE THAMM.**

The confidential report states that Makwakwa and his girlfriend Elskie, the mother of at least two of his children and also a SARS employee, might be involved in or facilitating corrupt activities and may be guilty of living off the proceeds of crime or be involved in money laundering and that this be investigated "in order to institute appropriate criminal justice action".

Makwakwa, Moyane's perceived "hatchet man" at SARS, had been placed in control of the Large Business Centre – a key revenue division of SARS that deals with high-net worth individuals and corporate tax – as part of the commissioner's move to restructure the revenue service. It is a mission Treasury and Finance Minister Pravin Gordhan have repeatedly asked Moyane to freeze, instructions which he has repeatedly ignored.

However, revelations in the report that Makwakwa is linked to several suspicious and possibly highly illegal financial transactions might just prove to be Moyane's personal 9/11.

The bombshell hit on 11 September when the amaBhungane centre for Investigative Journalism revealed in a report in the *Sunday Times* that a banking regulator had picked up, some time ago, several suspicious bank transactions related to Makwakwa and Elskie.

In a memo marked "confidential" the regulator suggested that these transactions – 75 deposits between 1 March 2010 and 31 January 2016 and totalling R785,130.00, were made into Makwakwa's account, of which 48 were cash deposits amounting to R726,400.00 and deposited between 2014 and 2015.

"The volume and value of cash deposits are highly unusual as MJM [Makwakwa] is permanently employed. These aforementioned cash deposits should be investigated to

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determine whether these funds ... received by this SARS employee constitute payments of proceeds of crime arising from corrupt activities as defined in the Prevention and Combatting of Corrupt Activities Act 12 of 2004, in light of the position of authority held by MJM. The exchange of foreign currency should be investigated to establish if there were exchange control contraventions in this transaction," the statement from the banking regulator reads.


#### **SUSPICIOUS AND UNUSUAL CASH DEPOSITS AND PAYMENTS INTO MJM's ACCOUNT**

MJM's personal bank account<sup>4</sup> is the primary account used to receive and disburse funds. Credits into this account have increased yearly<sup>5</sup> from R1,358,817.01 in 2010 to R3,418,925.43 in 2015 (approximately 152%). Likewise, MJM's payments have grown over this period, creating a dependency on suspicious cash deposits and payments to maintain his current standard of living. These payments and cash deposits are of concern as they originate from unknown sources and undetermined legal purpose.

"MJM's [Mashudu Jonas Makwakwa's] personal bank account is the primary account used to receive and disburse funds. Credits into this account have increased yearly from R1,358,817,01 in 2010 to R3,418,925.24 in 2015 (approximately 15 %). Likewise, MJM's payments have grown over this period, creating a dependency on suspicious cash deposits and payments to maintain his current standard of living. These payments and cash deposits are of concern as they originate from unknown sources and undetermined legal purpose," reads the report.

It is clear from the report that while the Hawks were hounding Gordhan in a very high profile and public manner, Ntlemeza was more than aware of the evidence against Makwakwa and Elskie that had been collected – and did nothing. Some of the evidence was from cameras installed at various ATMs.

Moyane is believed to have signed for the receipt of the full report on Makwakwa on 17 May. Moyane is also believed to have met with Ntlemeza on 29 August 2016. On 31

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August Makwakwa was presented with a written notice of SARS's intention to suspend him. He was given seven days to present reasons why he should not be suspended. He still remains in his position and is the second most powerful individual at SARS.

Insiders say the fact that Makwakwa has not yet been suspended presents the danger that "he can easily interfere with any investigation into his affairs" and is "the only official on the SARS Exco with some knowledge of tax or the institution itself".

Hawks spokesman Brigadier Hangwani Mulaudzi on Sunday told *Daily Maverick* that "we are not investigating the matter. I assume it is an internal matter and for further details please contact SARS".

SARS had not responded to questions from the *Daily Maverick* at the time of writing.

DA Shadow Minister of Finance, David Maynier, said Moyane had been questioned during a parliamentary standing committee on finance meeting on 23 August about the Makwakwa matter but had been "evasive and simply stated that he would not 'comment on ongoing investigations'".

Follow-up questions, said Maynier, had been referred to senior revenue service officials who "were equally evasive" and repeated that they had no "comment to make on current investigations into individuals or companies".

The banking regulator noted that other "irregular and ad hoc payments from SARS were credited to MJM's personal bank account. The value of these payments for the past two (2) financial years (2014-2015) amounted to R334,459.05 as compared to R83,635.30 between 2012 and 2013."

These payments, said the regulator, "should be investigated to determine whether there were any misrepresentations or fraud on the part of MJM that resulted in SARS making these payments".

According to the regulator, Elskie made three cash deposits between 22 and 24 December 2015 totalling R450,200.00. The deposits were structured into two payments of R160,000 each and one of R130,200.

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"The deposits were made over three consecutive days into three different branches of the same bank, all located within an approximate 10km radius."

The sources of these funds were unknown and the value "suspicious and unusual considering the financial profile of KE".

She allegedly used these proceeds as well as the proceeds from another property to buy new property. The transactions should be investigated, said the banking regulator, to determine "whether the aforementioned conduct, concealment and disguising of the true source of these funds constitute acts of money laundering".

The banking regulator also uncovered a series of transactions it has labelled "suspicious and unusual payments" and relating to the Department of Water Affairs and Forestry and a deposit of R17,872,957.13 into the account of a company, New Integrated Credit Solutions – a debt collection company formerly contracted to SARS.

This total was then moved in a series of payments to five different companies, Mafube Payment Solutions, Arvomark, Street Talk Trading 181, Biz Fire Worx (where Makwakwa was a previous director) and to Mercedes Benz Financial Services. The last payment is believed to have been for a Mercedes Benz C220 BLUETEC for Kelly-Ann Elskie.

New Integrated Credit Solutions had been subcontracted with Mafube to analyse debt data for SARS.

The sensational revelations come after Gordhan's statement that President Jacob Zuma's close friends and associates, the Gupta family, should turn to the country's courts if they felt they had been treated unfairly by the country's banks which had refused to do business with them. It is believed the country's big four banks had been "uncomfortable" with some of the transactions in accounts held by entities linked to the family and that they (the banks) were required to report suspicious and unusual transactions to the Financial Intelligence Centre.

It has not been confirmed at this stage whether the alert to the funds in Makwakwa and his girlfriend's accounts have any link with the Gupta family.

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It was Tom Moyane who in March 2015 lodged a complaint with the Hawks about an apparent “rogue unit” and that has led to the very public hounding of the Minister of Finance as well as several other former members of the SARS executive including Deputy Commissioner Ivan Pillay and group executive, Johann van Loggerenberg. The former SARS members, as well as Gordhan, were recently all ordered to present themselves for “warning statements” at the Hawks headquarters in Pretoria. News that the Hawks were still hounding Gordhan sent the rand into yet another tailspin from which it has not yet quite recovered.

In December 2014 the entire former SARS Exco was driven out of the revenue service after untested allegations emerged in a series of *Sunday Times* stories about an illegal “rogue unit” that had operated at SARS and that had been established during Gordhan’s tenure as commissioner.

With regard to the complaint Moyane had lodged, Gordhan said that the question everyone should ask was “why?”.

“Since then we have had a newspaper [the *Sunday Times*] that carried out an 18-month campaign against certain individuals. At the end of the 18-month period that newspaper had apologised for what it had done because it didn’t have proof for some of the stuff that it was accusing people of. As we sit today, what is the problem? Who is accused of what? What motivates it?”

The revelations by the banking regulator of Makwaka’s alleged criminal behaviour could be a tipping point that results in the collapse of the entire House of Cards that has been constructed around SARS, with a ripple effect on the Hawks, the National Prosecuting Authority and ultimately Zuma. It is only a matter of time before the edifice must crumble and those behind it be exposed. **DM**

*Photo: SARS commissioner Tom Moyane (GCIS), Jonas Makwaka, the second most senior member of the SARS executive (SARS)*

- MARIANNE THAMM
- SOUTH AFRICA

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Corruption Watch (RF) NPC  
Reg. No. K2011/118829/08  
8<sup>th</sup> Floor Heerengracht Building, 87 De Korte Street  
Braamfontein 2001 Johannesburg  
P O Box 30630 Braamfontein 2017  
T +27 (0)11 242 3900 F (0)11 403 2392  
[info@corruptionwatch.org.za](mailto:info@corruptionwatch.org.za) [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)



25 October 2016

Mr Tom Moyane  
Commissioner  
South African Revenue Services  
**Per email:** [Tmoyane@sars.gov.za](mailto:Tmoyane@sars.gov.za)

And to: Mr Pravin Gordhan  
Minister of Finance

C/o. Ms Blessing Sokhulu  
Personal Assistant to the Minister of Finance  
**Per email:** [minreg@treasury.gov.za](mailto:minreg@treasury.gov.za) / [blessing.sokhulu@treasury.gov.za](mailto:blessing.sokhulu@treasury.gov.za)

Dear Commissioner Moyane

**Corruption Watch Enquiry: Financial Intelligence Centre Findings on Mr Makwakwa**

1. We refer to the above matter.
2. Corruption Watch (CW) is a civil society organisation that opened its doors to the public in January 2012. We are registered as a non-profit company in terms of the Companies Act.
3. Corruption Watch seeks to expose corruption and the abuse of public funds. We aim to expose those who engage in corrupt activities, nepotism and abuse of public funds in both the public and private sector.
4. As part of our mandate, we are committed to strengthening the criminal justice system, including efforts to address financial crime; to the refinement of our planning and procurement systems; and to supporting and strengthening the ability of private and public bodies to better detect and address corruption in their spheres of operation.

5. In compiling our enquiry, we have had regard for the following:
- 5.1. Minutes from a meeting in Parliament before the Standing Committee on Public Accounts dated 14 September 2016;
  - 5.2. Minutes from a meeting in Parliament before the Standing Committee on Finance dated 12 October 2016;
  - 5.3. Official Questions put to the Minister of Finance by Member of Parliament, Mr David Maynier and replies by the Minister of Finance, SARS and the FIC all dated 12 October 2016; and
  - 5.4. Media reports.

*Summary of matter*

6. We note the following:
- 6.1. That you, as the Commissioner and CEO of the South African Revenue Services ("SARS") received a report from the Financial Intelligence Centre ("FIC") on 17 May 2016 detailing fraud and corruption on the part of Mr Makwakwa and Ms Elskie, both SARS employees, matters which were never reported to the Directorate of Priority Crime Investigation ("DPCI") in order to enable further investigation;
  - 6.2. We understand that there were a total of 75 suspicious transactions done between 1 March 2010 and the 31 January 2016 by Mr Makwakwa and Ms Elskie, R785 130.00 linked to Mr Makwakwa and R450 200.00 linked to Ms Elskie;
  - 6.3. It is our understanding that in terms of the FIC report, Mr Makwakwa and Ms Elskie were alleged to have committed crimes in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, ("PRECCA"), FICA and the Prevention of Organised Crime Act, 121 of 1998 ("POCA").
  - 6.4. In due regard for the SARS collective agreement on the code of conduct, you first contacted your head of Human Resources about the matter;

- 6.5. Then, during June 2016, and as part of an internal investigative process, you wrote a letter to Mr Makwakwa and his partner, Ms Elskie informing them about the FIC report and affording them an opportunity to respond in writing to the allegations against them.
- 6.6. Also, during June 2016, you sought technical guidance, co-operation and assistance from the FIC in relation to the matter in terms of section 4 of the Financial Intelligence Centre Act, 38 of 2001 ("FICA");
- 6.7. On 15 September 2016, you briefed a law firm in order for the matter to be investigated and in order for the firm to conduct disciplinary proceedings against the two employees on behalf of SARS;
- 6.8. Mr Makwakwa was suspended on 15 September 2016 pending the outcome of the internal investigative process as well as disciplinary proceedings against him;
- 6.9. Ms Elskie has not been suspended due to the fact that she is on maternity leave and SARS is seeking legal advice on whether an employer has the lawful authority to suspend and/or institute disciplinary proceedings against an employee who is on maternity leave.
- 6.10. There is no investigation being conducted by the Directorate of Priority Crime Investigation ("DPCI") into this matter. In this regard, the DPCI has denied the existence of an investigation into this matter and your office has also repeatedly denied the existence of such an investigation. Curiously, and in SARS' reply to MP Maynier's question to the Minister of Finance, it is stated that "according to correspondence received from the dated 15 September 2016, this matter has been reported to the DPCI".

*Investigation and Sanctions against Mr Makwakwa and Ms Elskie*

7. We confirm that internal disciplinary proceedings and investigations by a private law firm do not replace the requirement for this matter to be investigated by DPCI and neither will any findings of innocence by the internal investigation negate such requirement.

8. In the circumstances, we confirm our intention to lodge criminal complaints against Mr Makwakwa and Ms Elskie.
9. We also confirm that recent media reports have reflected what appear to be copies of authentic internal SARS documents, suggesting that Mr Makwakwa advanced the career of Ms Elskie by way of a promotion to another department. These reports question the legality and procedural validity of the promotion, as well as the academic qualifications Ms Elskie presented at the time. Kindly indicate what steps have been taken against Mr Makwakwa and Ms Elskie in regard to these allegations.

#### *Other Legislative Breaches and Offences*

10. As indicated above, it is public knowledge that you informed Mr Makwakwa and Ms Elskie of the content of the FIC report and sought their comment and response to the report. We wish to draw your attention to section 29(4) of FICA which prohibits the disclosure of suspicious and unusual transaction to certain persons, specifically those implicated in such reports. Section 53 of FICA renders the unauthorized disclosure of such information an offence and one which carries a fine of R10 000 000 and imprisonment for a period not exceeding 15 years.
11. Secondly, as CEO and Commissioner of SARS, you are well aware of the duty to report knowledge or suspicious of corrupt transactions over R100 000 to the DPCI for investigation in terms of section 34 of PRECCA. You will also be aware of the fact that it is an offence to not report such transactions, which offence may carry a fine or imprisonment not exceeding 10 years. In the circumstances, our view is that you are in breach of Section 34 of PRECCA for failing in your duty to report this matter to the DPCI.
12. We regard your stance on this issue, which is that it is an internal one which does not require reporting to the DPCI as being unlawful and we intend lodging a criminal complaint against you for the stated offences.
13. In order to afford you a fair opportunity to respond to or explain any of the issues we have raised in this letter, we afford you the opportunity to respond by no later than close of business on 1 November 2016.

14. Finally, please note that in the interests of transparency, we may publish this correspondence and any response thereto.

Yours faithfully,

David Lewis  
Executive Director  
Corruption Watch  
*[Unsigned due to electronic transmission]*

**Office of the  
Commissioner**

**Enquiries**  
Mr Teboho Mokoena

**E-mail**  
Tmokoena4@sars.gov.za

**Telephone**  
(012) 422 7481

**Facsimile**  
(012) 452 9676

**Mr David Lewis**  
**Executive Director For Corruption Watch**  
**(RF) NPC**  
**8th Floor Heerengracht Building**  
**87 De Korte Street**  
**Braamfontein**  
**Johannesburg**  
**2001**



*South African Revenue Service*

**Pretoria Head Office**  
**299 Bronkhorst Street,**  
**Nieuw Muckleneuk, 0181**  
**Private Bag X923, Pretoria, 0001**  
**SARS online: [www.sars.gov.za](http://www.sars.gov.za)**  
**Telephone (012) 422 4000**

Dear Mr Lewis

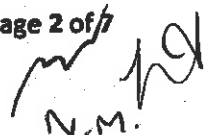
**CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE  
FINDINGS ON MR. MAKWAKWA**

1. I refer to the above matter and acknowledge receipt of your letter dated 25 October 2016. Firstly, I highly appreciate the mandate and work being done by Corruption Watch, particularly in exposing corruption and abuse of public funds. It is in the context of being appreciative of your organisation's mandate that I intend to fully respond to all issues raised in your letter. In doing so, I intend to structure my response in the chronological order set out hereunder:
  - 1.1. The criminal investigation against Mr. Mashudu Jonas Makwakwa ("Jonas") and Ms. Kelly-Ann Elskie ("Kelly");
  - 1.2. Allegations surrounding Kelly's promotion and academic qualifications;
  - 1.3. A chronological summary of my version of events since 17 May 2016; and
  - 1.4. The disciplinary investigation against Jonas and Kelly.
2. **The criminal investigation against Jonas and Kelly**
  - 2.1. I am aware of my legal obligation to refer this matter to the South African Police Service ("SAPS") for criminal investigation, as required by Section 34 of the Prevention and Combating of Corrupt Activities

**CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE FINDINGS ON MR. MAKWAKWA**

Act 12 of 2004 ("PRECCA"). However, upon an enquiry and before I could report this matter to the SAPS, I was advised by the Directorate for Priority Crimes Investigation ("the Hawks") that the matter had already been referred to the SAPS for investigation during early June 2016.

- 2.2. Further, I was advised that the Hawks have commenced with a criminal investigation into corruption, racketeering and money laundering against the two SARS employees. The criminal investigation is being administered by the Hawks' Anti-Corruption Investigation Unit under DPCI enquiry: 03/06/2016. The SARS is fully co-operating with the SAPS in respect of the criminal investigation against the two employees. I was specifically advised by the Hawks that all issues relating to the criminal investigation must be addressed directly to their offices and that the SARS is expected to co-operate fully with the criminal investigation.
- 2.3. To date, my office has received a request for information from the Hawks and my office is taking all measures to provide the requested information.
- 2.4. In light of the above, I deny your allegation contained at paragraph 11 of your letter that I am in breach of Section 34 of PRECCA. I was advised by the Hawks through a written correspondence that there is no need to open a criminal case on a matter that is already under investigation by the Hawks. I have accepted the advice and continue to co-operate with the Hawks in respect of the criminal investigation against the two SARS employees.
- 2.5. Lastly and although not part of your letter, I wish to inform you that I have duly taken note of the newspaper article: "Tax Money Diversion", which appeared in the New Age newspaper dated 24 October 2016, alleging fraudulent tax settlement of approximately R60 million. Consequently and on the 25<sup>th</sup> of October 2016, I dispatched a letter to

  
N.M.

the Hawks requesting that this matter be included in their current criminal investigation against Mr. Makwakwa.

**3. Allegations surrounding Kelly's promotion and academic qualifications**

3.1. I have instructed the SARS Human Resource to investigate allegations surrounding Kelly's promotion and academic qualifications. I am currently awaiting a report from the Human Resource. Upon receipt of same, I will duly respond.

**4. A chronological summary of my version of events since 17 May 2016**

4.1. In my letter dated 20 May 2016, I acknowledged receipt of the Report from the Financial Intelligence Centre ("FIC") and unequivocally stated the seriousness and sensitivity of this matter. I further confirmed SARS' commitment to conduct an investigation.

4.2. On 23 May 2016, I informed the two employees about the allegations contained in the Report. I further informed the said employees of my intention to conduct an investigation as directed by the FIC. I instituted a misconduct investigation into allegations of impropriety, tax evasion, corruption, contravention of the Public Finance Management Act 1 of 1999 ("PFMA") and money laundering against the two SARS' employees.

4.3. I adopted a two- pronged approach in dealing with this matter. Firstly, I afforded Jonas and Kelly an opportunity to respond to the allegations in writing. This was part of the SARS internal investigation into the allegations contained in the Report. Secondly, and as fully explored hereunder, I engaged the FIC for the purposes of seeking guidance, co- operation and assistance in accordance with Section 4 of the FIC Act.



- 4.4. In instituting the misconduct investigation against the said employees, I was executing my responsibility to maintain discipline in terms of Section 9 (2) of the SARS Act 34 of 1997 ("SARS Act"), as the Chief Executive Officer for the SARS. Furthermore, as an Accounting Authority for the SARS, I am responsible to ensure the proper and diligent implementation of the PFMA. I am particularly obligated by Section 84 of the PFMA to investigate allegations of financial misconduct.
- 4.5. In disclosing the Report to the aforesaid employees, I acted in accordance with the provisions of Section 29(4)(a) of the Financial Intelligence Centre Act, 38 of 2001 ("FIC Act"). In so doing, I acted within the scope of my powers and duties in terms of the aforementioned provisions of the SARS Act and the PFMA.
- 4.6. My decision to release the Report to the aforementioned employees does not amount to breach of Section 53 of the FIC Act. It is glaring that Section 53(2) of the FIC Act does not attach any criminal liability to information disclosed in accordance with Section 29(4) (a) of the FIC Act. As a result, your allegation with regard to act of criminality against my office under section 53 of the FIC Act is unfounded.
- 4.7. On 30 May 2016, I received a letter from the employees' legal representative who denied the allegations contained in the Report and further requested information from the SARS.
- 4.8. On 15 June 2016, I had a meeting with the Director of the FIC ("Director"), wherein I strongly indicated that I take the allegations against the employees seriously and that any allegation of impropriety and criminal conduct, real or perceived, needs to be dealt with in a speedy manner to protect the reputation of SARS. I also indicated that the SARS will be highly indebted to the FIC's guidance in conducting the required investigation.

4.9. In my letter dated 21 June 2016 and in accordance with Section 4(b) of the FIC Act, I formally requested the FIC's co-operation and guidance on how the investigation should take shape. Further, I requested the FIC to furnish the SARS' investigative team with details of the transgressions. In the said letter, I requested a further meeting with the Director. I made it clear that this matter be accorded the urgency it deserves because I could not have a member of my executive team with a cloud of criminality, tax evasion, corrupt activities or non-compliance with the PFMA, hanging over his head.

4.10. In a letter dated 13 July 2016, the Director stated that he is unaware of steps the SARS may have taken since the above matter was handed over for investigation and that a detailed reply will assist him in defining the nature of support by the FIC. However, the Director ignored my request for a meeting.

4.11. In my letter dated 21 July 2016, I duly informed the Director of the steps and/or progress undertaken by the SARS. In this regard, the Director failed to respond, particularly in defining the nature of support by the FIC.

4.12. In my letter dated 22 August 2016, I informed the Director about the request for information by the employees' legal representative. As a result of the Director's failure to respond, I made a follow up with his office on 7 September 2016 and 13 September 2016.

4.13. In my letter dated 7 September 2016, I duly informed the Director about the progress, particularly the employees' request for an extension to submit their responses to the allegations. To this date, the Director has failed to define the nature of support by the FIC.

4.14. On 14 September 2016, I received the Director's letter making spurious allegations against the SARS with regard to the handling of the Report. On 16 September 2016, I responded to the Director's letter

wherein I denied his allegations as baseless and lacking any legal foundation. Further, and in light of real and/or perceived lack of guidance and co-operation by the FIC, I reminded the Director that Section 4 of the FIC Act imposes a mandatory obligation on the FIC to advise and co-operate with the SARS.

4.15. The FIC's lack of co-operation is disturbing taking into account that it has been investigating this matter since 2010 and there is no iota of evidence to suggest that at any point ever since 2010, it either submitted a report to any of the previous SARS Commissioners and/or any of the previous Ministers of Finance.

**5. The disciplinary investigation against the two SARS employees**

5.1. Jonas was suspended on 15 September 2016. Upon receipt of a legal opinion dated 09 October 2016 advising me to suspend Kelly regardless of her maternity leave, I proceeded to effect Kelly's suspension on 10 October 2016.

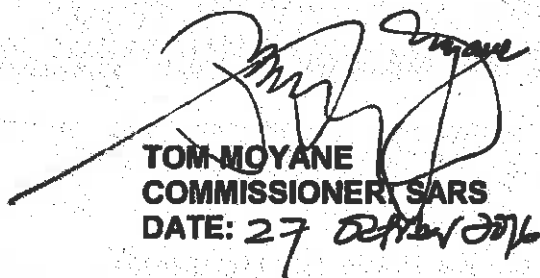
5.2. I confirm that Hogan Lovells (South Africa) Inc ("the firm") has been appointed to conduct an investigation into allegations of impropriety, tax evasion and other contraventions of the Tax Administration Act 28 of 2011, breach of the PFMA and SARS internal policies. Further, the firm is instructed to investigate allegations of impropriety on the part of Jonas in relation to settlements concluded from the time he was appointed as an acting Chief Operating Officer (COO) and subsequently as Chief Officer for Business and Individual Taxes ("BAIT"); until the date of his suspension on 15 September 2016.

5.3. After the investigation, the firm is instructed to initiate disciplinary proceedings against the aforementioned two employees.

**CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE FINDINGS ON MR. MAKWAKWA**

5.4. I will be in a position to make a public statement and/or announcement once both the investigation and disciplinary proceedings have been completed.

Yours faithfully



**TOM MOYANE**  
**COMMISSIONER SARS**  
**DATE: 27 October 2016**

"E"

Corruption Watch (RF) NPC  
Reg. No. K2011/118829/08  
8<sup>th</sup> Floor Heerengracht Building, 87 De Korte Street  
Braamfontein 2001 Johannesburg  
P O Box 30630 Braamfontein 2017  
T +27 (0)11 242 3900 F (0)11 403 2392  
[info@corruptionwatch.org.za](mailto:info@corruptionwatch.org.za) [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)



31 October 2016

Lieutenant-General Berning Ntlemeza  
National Head: Directorate for Priority Crime Investigation

C/o Brigadier Hangwani Mulaudzi  
Spokesperson  
Directorate for Priority Crime Investigation  
Per email: [Mulaudzih@saps.gov.za](mailto:Mulaudzih@saps.gov.za)

And to: Mr Tom Moyane  
Commissioner  
South African Revenue Services  
**Per email:** [Tmoyane@sars.gov.za](mailto:Tmoyane@sars.gov.za)

And to: Mr Pravin Gordhan  
Minister of Finance

C/o. Ms Blessing Sokhulu  
Personal Assistant to the Minister of Finance  
**Per email:** [minreg@treasury.gov.za](mailto:minreg@treasury.gov.za) / [blessing.sokhulu@treasury.gov.za](mailto:blessing.sokhulu@treasury.gov.za)

Dear Lieutenant-General Ntlemeza

**Corruption Watch Enquiry: Financial Intelligence Centre Report on SARS employees**

1. We refer to the above matter.
2. Corruption Watch (CW) is a civil society organisation that opened its doors to the public in January 2012. We are registered as a non-profit company in terms of the Companies Act.

N.M. [Signature]

3. Corruption Watch seeks to expose corruption and the abuse of public funds. We aim to expose those who engage in corrupt activities, nepotism and abuse of public funds in both the public and private sector.
4. As part of our mandate, we are committed to strengthening the criminal justice system, including efforts to address financial crime; to the refinement of our planning and procurement systems; and to supporting and strengthening the ability of private and public bodies to better detect and address corruption in their spheres of operation.

### Enquiry

5. On Tuesday, 25 October 2016, we wrote to SARS Commissioner, Tom Moyane to inform him of our intention to lodge criminal complaints against him in respect of breaches of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 ("PRECCA") and the Financial Intelligence Centre Act, 38 of 2001 ("FICA"). We afforded him an opportunity to respond to our intended actions and he responded on 28 October 2016. We would like to raise aspects of our letter and his response with you so for ease of reference, a copy of our letter and his response are attached.
6. In respect of Mr Moyane's alleged breach of section 34 of PRECCA, we understand that the FIC provided him with a copy of a report detailing alleged fraud, money-laundering, tax evasion and corruption by two SARS employees, namely Mr Makwakwa and Ms Elskie, involving a total amount of at least R1,2 million spanning the periods 2010 onwards. In this regard, Mr Moyane conceded that he did not report the matter to the Hawks as required in terms of section 34 of PRECCA but instead took steps to have the report addressed and investigated internally within SARS.
7. The circumstances which under which Mr Moyane confirmed that he did not report the matter to the Hawks were set out in his response to our letter dated 28 October 2016. In his response, he stated:

*"...upon enquiry and before I could report this matter to the SAPS, I was advised by the Directorate for Priority Crimes Investigation ("the Hawks") that the matter had already been referred to SAPS for investigation during early June 2016.*

*Further, I was advised that the Hawks have commenced with a criminal investigation into corruption, racketeering and money laundering against the two SARS employees. The criminal investigation is being administered by the Hawks' Anti-Corruption Investigation Unit under DPCI enquiry: 03/06/2016. The SARS is fully co-operating with the SAPS in respect of the criminal investigation against the two employees.*

*In light of the above, I deny your allegation contained in paragraph 11 of your letter that I am in breach of section 34 of PRECCA. I was advised by the Hawks through written correspondence that there is no need to open a criminal case on a matter that is already under investigation by the Hawks. I have accepted the advice and continue to co-operate with the Hawks in respect of the criminal investigation against the two SARS employees."*

8. We confirm that the above statements are contradictory to what was reported by Marianne Thamm in the *Daily Maverick* on 13 October 2016 which reads as follows:

*"...while both Commissioner Moyane as well as the Hawks, through its spokesperson have denied that the matter had been reported to the Directorate for Priority Crime Investigation (Daily Maverick has twice asked the Hawks), the SARS reply seems to indicate otherwise.*

*"SARS is aware, based on correspondence received from the Directorate of Priority Crime Investigation ("DPCI") dated 15 September 2016 that the matter has been reported to the ("DPCI")."*

*Daily Maverick is in possession of a docket number, CAS 3/6/2016, which purportedly relates to the Makwakwa investigation and which we learnt was being handled by Colonel Herbert Heap.*

*Brigadier Hangwani Mulaudzi, Hawks spokesperson responded to our question this week, saying, "There is no case and Colonel Herbert Heap is not the Investigative Officer. We still maintain our previous stance. [That it is a SARS internal matter]"*

9. We are perplexed by the contradictory statements being made by SARS and the Hawks respectively. In order to understand the correct factual position for purposes of assessing whether or not to lodge a criminal complaint against Mr Moyane in

respect of his alleged breach of Section 34 of PRECCA, please respond to the following:

- 9.1. Please explain the statement made by spokesperson Mulaudzi to Ms Thamm of the *Daily Maverick* and indicate whether or not it is correct;
- 9.2. Did an external party report the alleged fraud and corruption against Mr Makwakwa and Ms Elskie to the Hawks and/or the SAPS, if so please provide the details of this person or organisation as well as the date on which the complaint/s was/were lodged;
- 9.3. Did the Hawks advise Mr Moyane in early June 2016 that there was already an investigation into Mr Makwakwa and Ms Elskie based on the FIC report;
- 9.4. Is there separate correspondence dated 15 September 2016 in terms of which the Hawks advised Mr Moyane of their investigation into Mr Makwakwa and Ms Elskie, if so, please provide us with a copy thereof;
- 9.5. Please confirm whether the Hawks have commenced with a criminal investigation into corruption, racketeering and money laundering against Mr Makwakwa and Ms Elskie under DPCI enquiry or case docket number 03/06/2016;
  - 9.5.1. In this regard we also seek clarity in respect of what Mr Moyane refers to as an "enquiry" as opposed to what the media has reported as a "CAS". By this we understand that where a "CAS" number is allocated to a case by the police, such case contains a complainant affidavit and is formally registered as a docket on the police database, as opposed to an "enquiry" which does not carry equal weight from an investigative perspective;
- 9.6. Is an investigation being administered by the Hawks' Anti-Corruption Investigation Unit and if so, please provide us with the Investigating Officer's name and contact details;
- 9.7. Did the Hawks advise Mr Moyane that he was absolved from his statutory duty to comply with Section 34 of PRECCA, and if so, what statutory provision did the Hawks rely on;



- 9.8. In this regard, kindly indicate whether there is written correspondence which the Hawks sent to Mr Moyane informing him that there is no need to open a criminal case on a matter that is already under investigation by the Hawks and if so, please provide us with a copy thereof; and
- 9.9. We are advised that Section 34 of PRECCA imposes a positive obligation on Mr Moyane to report the fraud and corruption by Mr Makwakwa and Ms Elskie to the Hawks. PRECCA makes no provisions for any form of "agreement" between the Hawks and a person contemplated in Section 34 of PRECCA to be exempt from this obligation. The reporting format and other requirements are set out on your website and the regulations under Government Gazette No. 35949/2012, a copy of which is attached. Kindly indicate whether:
- 9.9.1. There are provisions in PRECCA or regulations thereto which exempt a person contemplated in section 34 of PRECCA from making a report and if so, the grounds for such exemption;
- 9.9.2. The Hawks' formal legal and policy is to allow deviations section 34 of PRECCA and the justification for allowing such deviations.
10. Please provide us with a response by no later than close of business on Wednesday, 2 November 2016. Kindly note that in the interests of transparency, we may publish this correspondence and any response thereto.

Yours faithfully,

David Lewis  
Executive Director  
Corruption Watch  
*[Unsigned due to electronic transmission]*

Corruption Watch (RF) NPC  
Reg. No. K2011/118829/08  
8<sup>th</sup> Floor Heerengracht Building, 87 De Korte Street  
Braamfontein 2001 Johannesburg  
P O Box 30630 Braamfontein 2017  
T +27 (0)11 242 3900 F (0)11 403 2392  
[info@corruptionwatch.org.za](mailto:info@corruptionwatch.org.za) [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)



25 November 2016

Mr Tom Moyane  
Commissioner  
South African Revenue Services  
**Per email:** [Tmoyane@sars.gov.za](mailto:Tmoyane@sars.gov.za)

And to: Mr Pravin Gordhan  
Minister of Finance

C/o. Ms Blessing Sokhulu  
Personal Assistant to the Minister of Finance  
**Per email:** [minreg@treasury.gov.za](mailto:minreg@treasury.gov.za) / [blessing.sokhulu@treasury.gov.za](mailto:blessing.sokhulu@treasury.gov.za)

Dear Commissioner Moyane

**Corruption Watch Enquiry: Financial Intelligence Centre Findings on Mr Makwakwa**

1. We refer to the above matter. We also refer to our letter dated 25 October 2016 and your response dated 27 October 2016.
2. We confirm that we considered your response carefully and proceeded to write to the Director of the FIC, Mr Murray Michel as well as to the Head of the Hawks, Lieutenant-General Berning Ntlemeza, in order to seek confirmation and clarity on certain aspects of your response. Copies of our letters are attached for ease of reference as "A1" and "A2" respectively.
3. We received a response from the FIC on 16 November 2016, which is attached as annexure "A3" but have not received a response from Lieutenant-General Ntlemeza.

#### *Investigation and Sanctions against Mr Makwakwa and Ms Elskie*

4. In your response dated 27 October 2016, you indicated that the Hawks have commenced with a criminal investigation into racketeering and money laundering against Mr Makwakwa and Ms Elskie and that the investigation is being administered by the Hawks' Anti-Corruption Investigation Unit under DPCI enquiry 03/06/2016.
5. Your averments are contrary to information provided by Hawks Spokesperson, Brigadier Mulaudzi to the *Daily Maverick* during October 2016 in terms of which he stated on no uncertain terms that there was no case being investigated by the Hawks as the matter is internal to SARS.
6. In light of the contradictory statements made by yourself and the spokesperson for the Hawks and in absence of any evidence to confirm that the Hawks are investigating Mr Makwakwa and Ms Elskie, we have no option but to proceed with lodging criminal proceedings against them.

#### *Other Legislative Breaches and Offences*

7. In response to our allegations that you have breached section 29(4) of FICA, you indicated that your actions were authorized by the legislation, however your disclosure of the report to Mr Makwakwa and Ms Elskie has undermined the objects and purport of FICA and potentially prejudiced the investigation of these matters by the relevant authorities. In the circumstances, we will proceed to lodge criminal proceedings against you in terms of sections 60(1), 60 (2) and 29(4) of FICA and confirm that the relevant authorities will have to investigate and take steps towards prosecution ultimately enabling an appropriate court to determine whether or not you have committed offences in terms of FICA.
8. Finally, we confirm that in your response dated 27 October 2016, you indicated that you are aware of your obligation to report offences of corruption to the SAPS and the Hawks in terms of section 34 of PRECCA. You confirmed that you did not report the matters to the Hawks because they had advised you in writing that they had already

commenced an investigation into the matters and that you were therefore not required to do so.

9. We have written to the Hawks in order to confirm their advice to you and to request copies of the correspondence sent to you. We have not received a response from the Hawks and are therefore unable to establish the veracity of your statements.
10. In the circumstances and in absence of any evidence to confirm your averments, we have no option but to proceed with lodging criminal complaints against you for failing to report these matters to the Hawks in terms of section 34 of PRECCA.
11. Please note that in the interests of transparency, we may publish this correspondence and any response thereto.

Yours faithfully,

David Lewis  
Executive Director  
Corruption Watch  
*[Unsigned due to electronic transmission]*