



30 January 2017

Lieutenant-General Berning Ntlemeza
National Head: Directorate for Priority Crime Investigation (“Hawks”)

c/o Brigadier Hangwani Mulaudzi
Spokesperson
Directorate for Priority Crime Investigation
Per email: Mulaudzih@saps.gov.za

And to: Brigadier SM Lewele
Gauteng Provincial Head
Directorate for Priority Crime Investigation
Per email: CorruptionReportsGP@saps.gov.za

Dear Lieutenant-General Ntlemeza

Corruption Watch Enquiry: Investigation into 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.
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.

Background

5. On Monday, 31 October 2016, we wrote to your office to find out whether or not the Hawks were investigating crimes alleged to have been committed by Mr Tom Moyane, Mr Jonas Makwakwa and Ms Kelly-Ann Elskie, all in respect of contraventions of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (“PRECCA”), the Financial Intelligence Centre Act 38 of 2001 (“FICA”) and the Prevention of Organised Crimes Act 121 of 1998 (“POCA”). For ease of reference, a copy of our letter is attached marked “L1”.
6. On 2 November 2016, Brigadier Muluadzi emailed me to confirm that our correspondence had been brought to your attention and that we would receive a response shortly. No response was forthcoming.
7. In the absence of a response from your office and in light of contradictory statements previously made by Brigadier Muluadzi and Mr Moyane on whether or not the Hawks were investigating these matters, we were left with no option but to proceed with lodging criminal complaints against the three employees.
8. We lodged these complaints at the Brooklyn Police Station on Thursday, 8 December 2016. We attach the criminal complaints against Moyane, Makwakwa and Elskie as annexures “L2”, “L3” and “L4” respectively and confirm that the respective criminal complaints were allocated case numbers 217/12/2016, 218/12/2016, and 222/12/2016.
9. We confirm further that on Tuesday, 3 January 2017 we received a text message indicating that Captain RD Mosuma would be investigating all three cases. We received no further communication about the actual progress of the investigation.

Corruption Watch Request

10. In terms of section 17D (a) and (aA) of the South African Police Services Act, 68 of 1995 (“SAPS Act”) the functions of the Hawks are to prevent, combat and investigate national priority offences as well as select offences which include but are not limited to offences in PRECCA.

11. The National Priority Offences which are relevant to our enquiry are contained in sections 16(2)(b), (g) and (iA) which state that crimes which require national prevention or investigation include:
 - 11.1. crimes by a person in a position of trust or making use of specialised or exclusive knowledge in respect of the revenue or expenditure of the national government;
 - 11.2. crimes in respect of which the prevention or investigation requires the application of specialised skills and where expedience require that it be prevented or investigated at national level; and
 - 11.3. crimes in respect of the commission of any alleged offence mentioned in the schedule. (The schedule refers to offences in terms of both POCA and PRECCA.)
12. It is abundantly clear that the offences alleged to have been committed by Moyane, Makwakwa and Elskie fall squarely within the mandate of the Hawks and moreover constitute national priority offences in terms of section 16D of the SAPS Act. We therefore request that the Hawks exercise and act upon their legislative mandate by taking over the SAPS investigation into the matters under case numbers 217/12/2016, 218/12/2016, and 222/12/2016.
13. As the complainant in these matters, we request that you provide us with a response to the above request and that we be kept informed of the progress of the Hawks' investigation, failing which we will pursue remedies available to complainants in terms of the SAPS Act.
14. Kindly provide us with a response by no later than **Friday, 3 February 2017** and please note that in the interests of transparency, we may publish this correspondence and any response thereto.

Yours faithfully,

Leanne Govindsamy
Head, Legal and Investigations

Corruption Watch

[Unsigned due to electronic transmission]