

Corruption Watch (RF) NPC
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31 October 2017

Adv. Shaun Abrahams
National Director
National Prosecuting Authority ("NPA")
Per email: ndpp@npa.gov.za

And to: Mr Luvuyo Mfaku
Spokesperson
National Prosecuting Authority
Per email: communication@npa.gov.za

Dear Adv. Abrahams,

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 17 May 2016, the Financial Intelligence Centre (“FIC”) sent Mr Tom Moyane, Commissioner and CEO of the South African Revenue Services (“SARS”), a report detailing fraud and corruption on the part of Mr Jonas Makwakwa and Ms Kelly-Ann Elskie, both SARS employees. We understand that they were alleged to have committed crimes in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, (“PRECCA”), the Financial Intelligence Centre Act, 38 of 2001 (“FICA”) and the Prevention of Organised Crime Act, 121 of 1998 (“POCA”).
6. We wrote to Moyane on 25 October 2016 in order to find out what steps he was taking against the employees, as well as to find out more about his unlawful disclosure of the FIC report to the employees and his failure to report the corrupt activities to the Hawks, both in violation of PRECCA.
7. We indicated that we would lodge criminal complaints against the employees in respect of the allegations contained in the FIC report and against him in respect of his own unlawful actions. A copy of our letter is attached marked “A”. Moyane responded to our letter on 27 October 2016, a copy of which is attached marked “B”.
8. In this regard, we also wrote to the Director of the FIC, Mr Murray Michel and to the Head of the Hawks, Lieutenant-General Berning Ntlemeza. Our letters are attached “C” and “D” respectively. We received a response from the FIC, attached “E” but did not receive a response from the Hawks.
9. Having received unsatisfactory responses from SARS and the HAWKS as to the nature and status of any investigations into the matters, we proceeded to lodge criminal complaints against Moyane, Makwakwa and Elskie at the Brooklyn Police Station on 8 December 2016. Attached as annexures “F”, “G” and “H” are copies of the criminal complaints under case numbers; **217/12/2016**, **218/12/2016**, and **222/12/2016** respectively.
10. On Tuesday, 3 January 2017 we received a message that Captain RD Mosuma would be investigating all three cases. However, we did not receive any further communication until the end of January 2017 when Captain Mosuma contacted us to arrange a meeting. We met with him on Monday, 8 February 2017, and we were

advised that the Hawks were handling an “inquiry” in respect of the FIC report against Makwakwa and Elskie. Although we raised pertinent questions about the nature and scope of this “inquiry” as opposed to a proper investigation, we were not provided with further information. We were also not informed as to what was being done in respect of the criminal complaint against Moyane.

11. We subsequently addressed a letter to Brigadier Makinyane on 21 February 2017 in order to find out more about the “inquiries” which were being conducted by the Hawks. A copy of this letter is attached marked “I” and we confirm that to date, we have not received a response.

Corruption Watch Enquiry

12. Although we are aware of an ongoing investigation by the Hawks, we are unaware of the nature and status of such investigation, nor of any steps taken by the NPA in regard to this investigation and necessary prosecution of clear and unlawful conduct. Given that it is almost a year since we lodged criminal complaints against the three SARS employees, we require your office to indicate whether or not the NPA has decided to prosecute Makwakwa, Elskie and Moyane.
13. If the NPA has declined to prosecute in respect of these matters, please provide us with detailed reasons for declining to prosecute. Please also indicate whether a certificate *nolle prosequi* could be provided to us and if not, detailed reasons for such decision.
14. Kindly provide us with a response by Monday, 6 November 2017. In addition, 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]