



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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7 February 2018

Hon Y I Carrim, MP
Chairperson, Standing Committee on Finance
National Assembly

Per e-mail: ylcarrim12@gmail.com

Dear Mr Carrim

Re: Advice on the correspondence from Corruption Watch

Our telephone conversation yesterday concerning the abovementioned topic refers.

Correspondence from Corruption Watch dated 1 November 2017 indicates that the matter of Mr M Jonas Makwakwa and Ms Kelly Ann Elskie concerns them. In the correspondence Corruption Watch requests that the SCoF "urgently inquire into the process followed by SARS ... which have resulted in Makwakwa being cleared of all wrong doing and him being allowed to return to work." Corruption Watch also requests that the SCoF look into the conduct of the SARS Commissioner, Mr T Moyane, concerning his disclosure of the FIC report to Mr Makwakwa and Ms Elskie. Lastly, Corruption Watch indicates that it would like to the SCoF to engage the relevant parliamentary committees to ascertain the delay of action by the Hawks and the NPA.

On 5 December 2017 the Standing Committee on Finance (SCoF), once again, considered the disciplinary action taken by SARS against Mr Makwakwa and Ms Elskie by SARS. This meeting also received input from representatives from Hogan Lovells, the firm of attorneys that conducted the disciplinary enquiry.

This meeting followed normal parliamentary procedure as set out in the NA rules 167, 227 and 232, which set out the general and specific powers and functions of the SCoF. Committees are empowered to determine their own working arrangements. During the meeting of 5 December, Members were allowed to question both representatives from SARS, including the Commissioner, and from Hogan Lovells, which members did to ascertain the reasons for Mr Makwakwa and Ms Elskie return to work. This meeting was open and anybody could attend to follow the procedure.

In short, the representative from Hogan Lovells indicated that they only dealt with charges relating to non-compliance with the internal policies of SARS. The SCoF considered the



terms of reference of Hogan Lovells. Offences in terms of the Income Tax Act were left to the Hawks or SAPS. This was a result of the statutory classification of the report from the Financial Intelligence Centre (FIC report) into cash transactions of Mr Makwakwa and Ms Elskie.

As you are aware, the challenge has always been whether the confidential FIC report may be disclosed either to Hogan Lovells or the SCoF. In this regard the FIC report is classified and neither Hogan Lovells nor the SCoF is permitted official access to the document, although the FIC report is in the public domain. In fact, part of the criminal complaint by Corruption Watch against Mr Moyane is that he unlawfully disclosed the FIC report to Mr Makwakwa and Ms Elskie.

The Commissioner of SARS suggested that legal representatives from SARS, National Treasury, the Financial Intelligence Centre and Parliament decide on briefing a senior counsel to advise on whether the FIC report and the report on the disciplinary hearing, or any part thereof, may be disclosed to the SCoF. We are in the process of briefing counsel in this regard, and are waiting for the proper authorisation to procure this opinion.

I note in the letter from Corruption Watch that they urge the SCoF to confer with other committees to ascertain the reason for the delay in the criminal investigations. Nothing prevents the SCoF from doing so, but this information can be obtained from the SARS Commissioner, who indicated that the Hawks advised him that a case against Mr Makwakwa has been opened. Alternatively the SCoF may enquire directly from the Hawks about the progress into the various criminal complaints against Mr Makwakwa and Ms Elskie, and Mr Moyane.

I hope the above is of some assistance.

Yours sincerely

Adv F S Jenkins
Senior Parliamentary Legal Adviser