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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

And to: Mr Tom Moyane
Commissioner
South African Revenue Services
Per email: 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 / 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.

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 Makwaka and Ms Elsie 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]