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01 November 2017

Mr Yunus Carrim
Member of Parliament and Chairperson of the Finance Standing Committee
Per email: ycarrim@parliament.gov.za

Mr Malusi Gigaba,
Minister of Finance
c/o Ms Vuyiswa Monye
Personal Assistant to the Minister
Office of the Minister of Finance
Per email: Vuyiswa.Monye@treasury.gov.za

Dear Mr Carrim

REQUEST FOR PARLIAMENTARY INQUIRY RE SARS FINDING ON MR JONAS MAKWAKWA

1. 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.
2. 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.
3. 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.

4. We note that the Finance Standing Committee ("Finance Committee") exercises oversight in respect of the South African Revenue Services and we wish to bring to your attention, our concerns about recent decisions which have been taken by the SARS Commissioner in relation to Mr Jonas Makwakwa, an individual who is alleged to have committed acts of fraud and corruption while occupying a senior managerial position at SARS.
5. Although you are well aware of this matter, we summarise the background to our complaint as well as our interventions thus far in the paragraphs below.

Background

6. 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").
7. 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.
8. 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".
9. In this regard, we also wrote to the Director of the FIC, Mr Murray Michell 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.

10. 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.
11. 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.
12. 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. We have continued to follow up with the Hawks on this matter but have had no official response thus far. Our most recent correspondence to the Hawks as well as to the National Prosecuting Authority ("NPA") is attached marked "J" and "K".

Corruption Watch Enquiry

13. We now understand through a variety of media reports on this issue that Mr Makwakwa has returned to work and that an internal disciplinary inquiry has cleared him of all wrong doing.
14. We are very concerned about the processes followed in this matter and have written to the SARS Commissioner for clarity on the nature and scope of the disciplinary inquiry as well as information on the reports which were used to clear Mr Makwakwa of wrongdoing. A copy of our letter to the SARS Commissioner is attached marked "L".

15. In light of the Finance Committee's oversight role in respect of SARS, we request the Committee to urgently inquire into the processes followed by SARS, processes which have been shrouded in secrecy and which have resulted in Makwakwa being cleared of all wrong doing and him being allowed to return to work.
16. We also request the Finance Committee to take note of the conduct of Commissioner Moyane in informing the implicated individuals of the FIC report. We submit that his actions amounted to breaches of the FIC Act which attract criminal sanctions. In this regard, Annexure "F", attached hereto contains full details of the criminal charges which we have laid against Commissioner Moyane.
17. Finally, we have detailed above, the inaction of the Hawks and the NPA to investigate the charges laid against Makwakwa, Elskie and Moyane and would like the Committee to engage with the relevant Parliamentary committees to ascertain the cause of these delays.
18. We look forward to the Finance Committee's inquiry into this matter.
19. Please note that in the interests of transparency we may publish this correspondence and any response hereto.

Yours faithfully,

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