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Attention:

Lieutenant General Yolisa Matakata
National Head (Acting)
Directorate for Priority Crime Investigation
sonandziT@saps.gov.za

Brigadier SM Lewele
Gauteng Provincial Head
Directorate for Priority Crime Investigation
LewelwS@saps.gov.za

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Copy to:

Colonel SP Magobosha
Acting Section Head: Serious Economic Offences Unit
Directorate for Priority Crime Investigation
Fax: 012 338 7502

Brigadier Hangwani Mulaudzi
Spokesperson
Directorate for Priority Crime Investigation
Per email: MulaudziH@saps.gov.za

Your reference

Our reference
Moray Halthom
3022891

Date

23 March 2018

Dear Lieutenant-General Matakata

Progress of investigation into Mr Jonas Makwakwa, Ms Kelly-Ann Elskie, and Mr Tom Moyane – CAS 217/12/2016, 218/12/2016, and 222/12/2016

1. We refer to the above matter.
2. We act for Corruption Watch (RF) NPC ("our Client"), the complainant in the above matter on a pro bono basis.
3. Our client has, since October 2016, made various attempts to engage with the Directorate for Priority Crime Investigation ("DPCI") regarding the crimes alleged to have been committed by Mr Tom Moyane, Mr Jonas Makwakwa and Ms Kelly-Ann Elskie. The alleged crimes are in respect of contraventions of the Prevention and Combatting of

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Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp OA Ampofo-Anti RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair DHL Booysen AR Bowley JL Brintk S Browne MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland JJ Daniels JH Davies PM Daya L de Bruyn PU Dela JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson KH Eiser AE Esterhuizen MJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gaul KL Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Hofheid PM Holloway HF Human AV Ismail ME Jarvis CH Jonker S Jooste LA Kahn M Kennedy A Keyser M Kyle J Lamb A Manie L Marais S McCafferty MC McIntosh SJ McKenzie SI Meitzer CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu S Mogale M Moloi LE Mostert VM Movshovich RA Nelson ZH Ntshona AN Nyatsumba L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane TC Phala NA Phillips D Ramjettan GI Rapson Z Rawoot K Rew G Richards-Smith HJA Robb DC Rudman S Rugan WJ Rysbergen M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit NP Spalding PS Stein MW Straeuli LJ Swaine JM Swanepoel Z Swanepoel A Thakor TK Thekiso A Toefy ZJ Truscott PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmingtton J Watson AWR Westwood KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer:** SA Boyd

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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").

4. The attempts to engage with the DPCI, and to which no response has been received, include:
 - 4.1 An enquiry, on 31 October 2016, whether the DPCI was investigating the crimes alleged to have been committed by Moyane, Makwakwa and Elskie;
 - 4.2 A written request for information and progress of the investigations, on 30 January 2017, following the criminal charges lodged on 8 December 2016; and
 - 4.3 A subsequent written request for information on the status of the investigations as well as reasons for the delay in the investigations, on 30 October 2017.
5. On 14 December 2017, our client received a letter from Colonel Magobosha from the DPCI to say that Moyane's alleged contravention of section 34 of PRECCA was investigated and referred to the Specialised Commercial Crimes Unit of the National Prosecuting Authority ("NPA") for a decision and that the NPA had declined to prosecute. No mention is made of any investigation into the alleged contraventions of FICA.
6. Thereafter, our client has written to the NPA requesting reasons for their decision not to prosecute Moyane and for a certificate *nolle prosequi* to be issued. A copy of all correspondence is attached and marked as Annexures CW1 – CW5.
7. Based on the limited information publicly available it appears that the DPCI's investigation into Makwakwa and Elskie is ongoing.
8. We wish to place on record that despite the various requests for information and attempts to engage the DPCI, our client has not been provided with a single update on the status of the investigations. Fifteen months have passed since the criminal charges were lodged by our client. As the complainant in this matter, our client is entitled to regular updates on the status of and progress in the investigations.
9. In the circumstances we demand that the DPCI provide a comprehensive written report detailing the progress and status of the investigations referred to herein, to our client, on or before Friday, 6 April 2018.
10. Our client's rights are strictly reserved.

Yours faithfully



WEBBER WENTZEL

Moray Hathorn
Partner

WEBBER WENTZEL

in alliance with > Linklaters

Page 3

Direct tel: +27 11 530 5539

Direct fax: +27115306539

Email: moray.hathorn@webberwentzel.com

LW1
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Corruption Watch (RF) NPC
Reg. No. K2011/118829/08
8th Floor Heerengracht Building, 87 De Korte Street
Braamfontein 2001 Johannesburg
P O Box 30630 Braamfontein 2017
T +27 (0)11 242 3900 F (0)11 403 2392
info@corruptionwatch.org.za www.corruptionwatch.org.za



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 Makwakwa and Ms Elskie 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]

Corruption Watch (RF) NPC
 Reg. No. K2011/118629/08
 8th Floor Heerengracht Building, 87 De Korte Street
 Braamfontein 2001 Johannesburg
 P O Box 30630 Braamfontein 2017
 T +27 (0)11 242 3900 F (0)11 403 2392
info@corruptionwatch.org.za www.corruptionwatch.org.za



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, Makwaka 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]

Corruption Watch (RF) NPC
 Reg No. K2011/118829/08
 8th Floor Heerengracht Building, 87 De Korte Street
 Braamfontein 2001 Johannesburg
 P O Box 30630 Braamfontein 2017
 T +27 (0)11 242 3900 F (0)11 403 2392
info@corruptionwatch.org.za www.corruptionwatch.org.za



30 October 2017

Lieutenant-General Yolisa Matakata
 National Head (Acting)
 Directorate for Priority Crime Investigation ("Hawks")
Per email: SonandziT@saps.gov.za

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 Matakata

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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 Lt-Gen Ntlemeza 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.
10. We wrote to Lt-Gen Ntlemeza on 30 January 2017 and followed up via email but no response has been forthcoming. For ease of reference a copy of our correspondence is attached marked "L5".

Corruption Watch Request

11. We confirm that as the complainant in these matters, we are entitled to information on the status of the investigations into these matters. It is almost a year since we lodged criminal complaints against the three SARS employees and we have received no information on the progress of the investigation.
12. We are very concerned about the manner in which these matters are being handled. In this regard, we have been informed that Makwakwa returned to work on 27 October and that Elskie was due to return to work today. We have written to SARS to establish the veracity of the information provided to us.
13. We confirm that the Hawks' delay in finalising investigations into Makwakwa, Elskie and Moyane has resulted in the alleged criminals either continuing to or now occupying significant positions of trust and fiduciary responsibility at SARS, posing a real risk to our revenue services.
14. We therefore require a response from your office on the status of the investigations into the allegations against Makwakwa, Elskie and Moyane as well as reasons for the delay in these investigations, as we are also concerned about interference in the investigations of these matters by senior Hawks officials.
15. Kindly provide us with a response by no later than **Monday, 6 November 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]

CWA

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X1500, SILVERTON, 0127

Verwysing Reference	26/18/2 (537)
Navrae Enquiries	Colonel SP Magobosha
Telefoon Telephone	012 338 7500/082 778 2823
Faksnommer Fax number	012 338 7502

ACTING SECTION HEAD: SERIOUS
ECONOMIC OFFENCES UNIT
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
ARCADIA
0001

The Director
Corruption Watch (RF) NPC
87 De Korte Street
Braamfontein
JOHANNESBURG

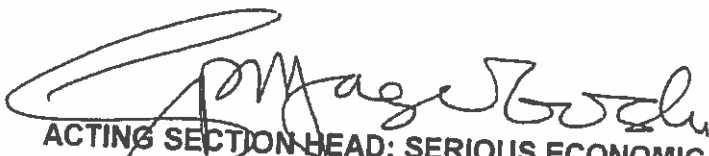
PROGRESS OF THE INVESTIGATION OF AN ALLEGED CONTRAVENTION OF SECTION 34 OF THE PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004: BROOKLYN CAS 222-12-2016.

Your complaint made at the Brooklyn police station on the 8th December 2016 regarding the above mention case docket and Colonel Magobosha's telephonic conversation with Mr Lucky Menoe from your office on the 14th December 2017 bears reference.

The purpose of this letter is to inform your office that above mentioned case was investigated by this office.

After finalising the investigation, the case docket was referred to the Specialized Commercial Crime Unit of the National Prosecutions Authority (NPA) for decision.

The Senior State Advocate has declined to prosecute on the matter.
The docket has been closed and filed at the police station.


COLONEL
ACTING SECTION HEAD: SERIOUS ECONOMIC OFFENCES UNIT
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SP MAGOBOSHA

Date: 2017-12-14.



Corruption Watch (RF) NPC
Reg No K2011/118829/08
8th Floor Heerengracht Building 87 De Korte Street
Braamfontein 2001 Johannesburg
P O Box 30630 Braamfontein 2017
T +27 (0)11 242 3900 F (0)11 403 2392
info@corruptionwatch.org.za www.corruptionwatch.org.za



25 January 2018

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 and to our letter dated 31 October 2017, to which we not had the courtesy of a response. A copy of our letter is attached for ease of reference.

Criminal Charges against Makwakwa and Elskie

2. We confirm that on 8 December 2016, we lodged charges against Mr Makwakwa and Ms Elskie in respect of their alleged criminal acts 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"). These allegations arose from a report prepared by the Financial Intelligence Centre ("FIC") and provided to SARS Commissioner, Tom Moyane on 17 May 2016.
3. Despite having followed up on several occasions with the Directorate for Priority Crime Investigation ("Hawks") on the status of the investigation into Makwakwa and Elskie, we received no response until end October 2017, when Colonel Hebert Heap

contacted our offices for assistance in relation to the investigation. He indicated, at the time, that the arrests of Makwakwa, Elskie and Moyane were imminent. We attempted to follow up with him on this and were unable to reach him.

4. In a turn of events, we were contacted on 14 December 2017 by Colonel Magobosha who indicated that the investigation against Makwakwa and Elskie were ongoing. We are currently uncertain as to the status of the investigation and any steps being taken to prosecute Makwakwa and Elskie. We do however, understand that investigations of this nature are led by prosecutors and would appreciate an update on the status of the investigation and progress made by the NPA towards prosecuting Makwakwa and Elskie.

Criminal charges against Moyane

5. In respect of the charges we laid against Mr Moyane, under case number 222-12-2016, Colonel Magobosha informed us in a letter dated 14 December 2017 that the investigation was finalised and was referred to the Specialised Commercial Crime Unit of the National Prosecuting Authority for decision. He indicated that the senior state advocate declined to prosecute the matter.
6. Please provide us with detailed reasons for the NPA declining to prosecute Moyane in respect of alleged breaches of PRECCA and FICA. Please also indicate whether a certificate *nolle prosequi* could be provided to us and if not, detailed reasons for refusing to provide us with such a certificate.
7. Kindly provide us with a response by Tuesday, 30 January 2018. 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]