

WEBBER WENTZEL

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Attention:

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and

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Copy to:

Advocate Shaun Abrahams
National Director of Public Prosecutions
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Your reference

Our reference
Moray Hathorn
3022897

Date
23 March 2018

Dear Sirs

Progress of Investigation of alleged contravention of section 34 of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 and related charges: Brooklyn CAS 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.

Summary of relevant facts

3. On 17 May 2016 the then Commissioner and CEO of the South African Revenue Service ("SARS"), Mr Tom Moyane ("Moyane"), received a report from the Financial Intelligence

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Centre ("FIC") detailing the fraud and corruption on the part of Mr Mashudu Jonas Makwakwa ("Makwakwa") and Ms Kelly Ann Elskie ("Elskie"), both SARS employees.

4. The FIC report reflected a total of 75 suspicious transactions engaged in between 1 March 2010 and 31 January 2016 by Makwakwa and Elskie, R785 130.00 linked to Makwakwa and R450 200.00 linked to Elskie.
5. The FIC report alleged that Makwakwa and Elskie have committed crimes in terms of the Prevention and Combating of Corrupt Activities Act ("PRECCA"), the Financial Intelligence Centre Act ("FICA") and the Prevention of Organised Crime Act ("PROCA").
6. At that time, these matters had not been reported to the Directorate of Priority Crime Investigation ("DPCI") in order to enable further investigation.
7. Moyane and SARS' purported handling of the matter is apparent from its response to a question posed by Democratic Alliance MP, Mr D Maynier to the Minister of Finance on 12 October 2016 (NW1894), wherein SARS stated that:¹

The report was not referred to further investigation at that stage. SARS had adopted a two-pronged approach towards handling this matter. The first part entailed affording Mr Jonas Mashudu Makwakwa and Ms Kelly-Ann Elskie an opportunity to respond in writing to the allegations against them. This was part of the internal investigative process that SARS undertook. The second part involved engaging the [FIC] for purposes of seeking technical guidance, co-operation and assistance in relation to this matter, as per Section 4 of the FICA.

(a) SARS has appointed the law firm; Hogan Lovells to investigate this matter, and to conduct disciplinary proceedings against the two employees on behalf of SARS. The matter was referred to Hogan Lovells on 15 September 2016.

(b) SARS is aware, based on correspondence received from Directorate of Priority Crime Investigation ("DPCI") dated 15 September 2016, that the matter has been reported to the ("DPCI")...

3(b) Mr Makwakwa has been suspended... Mr Makwakwa has been suspended pending the investigation into the allegations contained in the report referred to above."

8. On 25 October 2016, our Client informed Moyane of its intention to lodge criminal charges against Makwakwa and Elskie. Our Client further made allegations regarding the

¹ Question NW1894 to the Minister of Finance: Whether the SA Revenue Service received a report concerning alleged suspicious and unusual payments to a certain person (Jonas Makwakwa). If not, why not. If so, (a) which organ of state produced the specified report; and (b) when was the specified report received; 2) whether the specified report was referred for further investigation; if not, why not; if so (a) when was the specified report referred for further investigation and (b) to which organ of state was the specified report referred to; 3) whether the specified person was suspended; if not, why not; if so (a) when was he suspended and (b) why was he suspended; 4) whether he will make a statement on the matter. See <https://pmg.org.za/committee-question/3869/>

unauthorized disclosure of certain information under FICA and the duty to report suspicious or corrupt transactions to the DPCI for Moyane to answer.²

9. On 27 October 2016, Moyane responded that:³
 - 9.1 he is aware of his legal obligation to refer this matter to the South Africa Police Service ("SAPS"), however, that he had been advised by the DPCI that the matter had been already referred to SAPS for criminal investigation into corruption, racketeering and money laundering;
 - 9.2 he denies the allegation that he is in breach of section 34 of PRECCA;
 - 9.3 he has instructed SARS' Human Resources department to investigate the allegations surrounding Elskie's promotion and academic qualifications;
 - 9.4 on 23 May 2016 he informed Makwakwa and Elskie about the allegations in the report and that he intends to conduct an investigation as directed by the FIC;
 - 9.5 he took a two-pronged approach in dealing with the matter entailing giving Makwakwa and Elskie the opportunity to respond in writing to the allegations made in the report and engaging the FIC for the purposes of seeking guidance, cooperation and assistance in accordance with section 4 of the FICA;
 - 9.6 the decision to institute the misconduct investigation was part of the execution of his responsibility to maintain discipline in terms of section 9 (2) of the SARS Act of 1997;
 - 9.7 in terms of section 84 of the Public Finance Management Act, ("PFMA") he is obligated to investigate allegations of financial misconduct;
 - 9.8 in disclosing the report to Makwakwa and Elskie he acted in accordance with the provisions of section 29(4) of FICA; and
 - 9.9 his actions do not amount to a breach of section 53 of FICA.
10. Our client wrote a letter dated 31 October 2016⁴ to the Director of FIC requesting that FIC indicate whether it regards the disclosure of the report as an authorised disclosure in terms of section 29(4) of the FICA.
11. On 1
12. 6 November 2016,⁵ FIC responded to the above letter stating that any referral of financial intelligence to a law enforcement agency or other entity prescribed by the FICA, places a responsibility on the agency to conduct an investigation in line with that agency's national

² The letter from CW to Moyane, copying former Minister of Finance, Mr Pravin Gordhan is attached marked "A"

³ Annexure "B"

⁴ Annexure "C"

⁵ Annexure "E"

investigative mandate. The FIC indicates the nature of matters that may be investigated; it does not instruct agencies to investigate any particular matter. Consequently, SARS is required to investigate in terms of the SARS Act, the PFMA and the Tax Administration Act.

13. Our client wrote a letter to the head of the DPCI on 31 October 2016,⁶ questioning the contradictory statements which were being made by SARS and the DPCI on the issue of whether or not the matter was reported by Moyane to the DPCI. Our client also requested the DPCI to indicate whether they had absolved Moyane from his statutory duty to report the allegations against the two employees in terms of section 34 of PRECCA together with any written correspondence to support the claim made by Moyane, as well as information on the nature and status of any investigation against the two employees. The DPCI did not respond to our correspondence.
14. On 25 November 2016, our client wrote to SARS in respect of the response from FIC as well as the contradictory statements made by the DPCI and SARS on the nature and status of the criminal investigation.⁷ Having received no further response from SARS or the DPCI on the nature and status of the investigation, our client proceeded to lodge criminal charges against Makwakwa⁸ and Elskie⁹ on the basis of the FIC report and against Moyane¹⁰ for failing to report the matter to the DPCI in terms of section 34 of PRECCA as well as for providing the FIC report to Makwakwa and Elskie in criminal breach of sections 29(4) and 60(2) of FICA.
15. Our client addressed a letter to the head of the DPCI on 30 January 2017 following up on the investigation and reminding the DPCI as a unit within the police of their duties to investigate priority crimes and keep complainants informed of the status of investigations.¹¹
16. On 21 February 2017, subsequent to a meeting our client had with Brigadier R M Makinyane on 8 February 2017, our client followed up with Brigadier Makinyane on the status of the investigations but received no response.¹²
17. On 29 March 2017, our client reported the inaction of the DPCI to the Independent Police Investigative Directorate ("IPID") and requested IPID to investigate the failure of the DPCI to act on these priority crime matters.¹³ We did not receive a response.
18. On 30 October 2017, having received no further information on the investigation and there being no developments in the matter, our client wrote a further letter to the head of the

⁶ Annexure "D"

⁷ Annexure "D1"

⁸ "Annexure "G"

⁹ Annexure "H"

¹⁰ Annexure "F"

¹¹ Annexure "H1"

¹² Annexure "I"

¹³ Annexure "I2"

DPCI requesting an update on the investigations and received no response.¹⁴ Our client also addressed a letter on the same day to the National Director of Public Prosecutions on the status on any prosecution in the matters¹⁵ and to SARS to request information on the internal investigations.¹⁶

19. 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 NPA for a decision and that the NPA had declined to prosecute.¹⁷ No mention is made of any investigation into the alleged contraventions of FICA.
20. On 25 January 2018, our client again wrote to the Standing Committee on Finance to establish any further developments regarding their oversight in respect of the matter.¹⁸ An official response from Parliament was received on 7 February 2018.¹⁹
21. Also on 25 January 2018, our client sent a letter to the NDPP requesting reasons for the NPA declining to prosecute Moyane as well for a certificate *nolle prosequi* to be issued.²⁰ We have not received a response to these requests.

Criminal Charges

22. As explained above, our client laid criminal charges against Moyane for violations of PRECCA and FICA, and Makwakwa and Elskie in respect of FICA offences.
23. The DPCI has indicated that the NPA is not proceeding with the prosecution of Moyane and our client has written to the NPA requesting reasons for their decision and for a certificate *nolle prosequi* to be issued.
24. From public reports, the DPCI's investigation of Makwakwa and Elskie is ongoing.
25. In the circumstances we make the following demands:
 - 25.1 That a certificate of *nolle prosequi* in respect of the charges laid against Moyane, under PRECCA and FICA, be issued to our client within 2 weeks of date of this letter;

Alternatively, if the DCPI has not investigated the charges under FICA –

- 25.2 That a certificate of *nolle prosequi* be issued to our client within 2 weeks of date of this letter in respect of the charges under PRECCA; and

¹⁴ Annexure "J"

¹⁵ Annexure "K"

¹⁶ Annexure "L"

¹⁷ Annexure "N"

¹⁸ Annexure "O"

¹⁹ Annexure "O2"

²⁰ Annexure "P"

25.3 That the DPCI be ordered to investigate and the National Director of Public Prosecutions issue its decision whether or not to prosecute in respect of the charges under FICA within a period of 4 weeks from date of this letter.

and

25.4 Confirmation from the NPA whether the DPCI has referred the case dockets in respect of its investigations into Makwakwa and Elskie for decision. If so, full details of any decision taken and/or progress of the matter is requested.

Our client's rights are strictly reserved.

Yours faithfully



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A

25 October 2016

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 Commissioner Moyane

Corruption Watch Enquiry: Financial Intelligence Centre Findings on Mr Makwakwa

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.

5. In compiling our enquiry, we have had regard for the following:
 - 5.1. Minutes from a meeting in Parliament before the Standing Committee on Public Accounts dated 14 September 2016;
 - 5.2. Minutes from a meeting in Parliament before the Standing Committee on Finance dated 12 October 2016;
 - 5.3. Official Questions put to the Minister of Finance by Member of Parliament, Mr David Maynier and replies by the Minister of Finance, SARS and the FIC all dated 12 October 2016; and
 - 5.4. Media reports.

Summary of matter

6. We note the following:
 - 6.1. That you, as the Commissioner and CEO of the South African Revenue Services ("SARS") received a report from the Financial Intelligence Centre ("FIC") on 17 May 2016 detailing fraud and corruption on the part of Mr Makwakwa and Ms Elskie, both SARS employees, matters which were never reported to the Directorate of Priority Crime Investigation ("DPCI") in order to enable further investigation;
 - 6.2. We understand that there were a total of 75 suspicious transactions done between 1 March 2010 and the 31 January 2016 by Mr Makwakwa and Ms Elskie, R785 130.00 linked to Mr Makwakwa and R450 200.00 linked to Ms Elskie;
 - 6.3. It is our understanding that in terms of the FIC report, Mr Makwakwa and Ms Elskie were alleged to have committed crimes in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004, ("PRECCA"), FICA and the Prevention of Organised Crime Act, 121 of 1998 ("POCA").
 - 6.4. In due regard for the SARS collective agreement on the code of conduct, you first contacted your head of Human Resources about the matter;

- 6.5. Then, during June 2016, and as part of an internal investigative process, you wrote a letter to Mr Makwakwa and his partner, Ms Elskie informing them about the FIC report and affording them an opportunity to respond in writing to the allegations against them.
- 6.6. Also, during June 2016, you sought technical guidance, co-operation and assistance from the FIC in relation to the matter in terms of section 4 of the Financial Intelligence Centre Act, 38 of 2001 ("FICA");
- 6.7. On 15 September 2016, you briefed a law firm in order for the matter to be investigated and in order for the firm to conduct disciplinary proceedings against the two employees on behalf of SARS;
- 6.8. Mr Makwakwa was suspended on 15 September 2016 pending the outcome of the internal investigative process as well as disciplinary proceedings against him;
- 6.9. Ms Elskie has not been suspended due to the fact that she is on maternity leave and SARS is seeking legal advice on whether an employer has the lawful authority to suspend and/or institute disciplinary proceedings against an employee who is on maternity leave.
- 6.10. There is no investigation being conducted by the Directorate of Priority Crime Investigation ("DPCI") into this matter. In this regard, the DPCI has denied the existence of an investigation into this matter and your office has also repeatedly denied the existence of such an investigation. Curiously, and in SARS' reply to MP Maynier's question to the Minister of Finance, it is stated that "according to correspondence received from the dated 15 September 2016, this matter has been reported to the DPCI".

Investigation and Sanctions against Mr Makwakwa and Ms Elskie

7. We confirm that internal disciplinary proceedings and investigations by a private law firm do not replace the requirement for this matter to be investigated by DPCI and neither will any findings of innocence by the internal investigation negate such requirement.

8. In the circumstances, we confirm our intention to lodge criminal complaints against Mr Makwakwa and Ms Elskie.
9. We also confirm that recent media reports have reflected what appear to be copies of authentic internal SARS documents, suggesting that Mr Makwakwa advanced the career of Ms Elskie by way of a promotion to another department. These reports question the legality and procedural validity of the promotion, as well as the academic qualifications Ms Elskie presented at the time. Kindly indicate what steps have been taken against Mr Makwakwa and Ms Elskie in regard to these allegations.

Other Legislative Breaches and Offences

10. As indicated above, it is public knowledge that you informed Mr Makwakwa and Ms Elskie of the content of the FIC report and sought their comment and response to the report. We wish to draw your attention to section 29(4) of FICA which prohibits the disclosure of suspicious and unusual transaction to certain persons, specifically those implicated in such reports. Section 53 of FICA renders the unauthorized disclosure of such information an offence and one which carries a fine of R10 000 000 and imprisonment for a period not exceeding 15 years.
11. Secondly, as CEO and Commissioner of SARS, you are well aware of the duty to report knowledge or suspicious of corrupt transactions over R100 000 to the DPCI for investigation in terms of section 34 of PRECCA. You will also be aware of the fact that it is an offence to not report such transactions, which offence may carry a fine or imprisonment not exceeding 10 years. In the circumstances, our view is that you are in breach of Section 34 of PRECCA for failing in your duty to report this matter to the DPCI.
12. We regard your stance on this issue, which is that it is an internal one which does not require reporting to the DPCI as being unlawful and we intend lodging a criminal complaint against you for the stated offences.
13. In order to afford you a fair opportunity to respond to or explain any of the issues we have raised in this letter, we afford you the opportunity to respond by no later than close of business on 1 November 2016.

14. Finally, please 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]

Office of the
Commissioner



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Dear Mr Lewis

**CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE
FINDINGS ON MR. MAKWAKWA**

1. I refer to the above matter and acknowledge receipt of your letter dated 25 October 2016. Firstly, I highly appreciate the mandate and work being done by Corruption Watch, particularly in exposing corruption and abuse of public funds. It is in the context of being appreciative of your organisation's mandate that I intend to fully respond to all issues raised in your letter. In doing so, I intend to structure my response in the chronological order set out hereunder:
 - 1.1. The criminal investigation against Mr. Mashudu Jonas Makwakwa ("Jonas") and Ms. Kelly-Ann Elskie ("Kelly");
 - 1.2. Allegations surrounding Kelly's promotion and academic qualifications;
 - 1.3. A chronological summary of my version of events since 17 May 2016; and
 - 1.4. The disciplinary investigation against Jonas and Kelly.
2. **The criminal investigation against Jonas and Kelly**
 - 2.1. I am aware of my legal obligation to refer this matter to the South African Police Service ("SAPS") for criminal investigation, as required by Section 34 of the Prevention and Combating of Corrupt Activities

CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE FINDINGS ON MR. MAKWAKWA

Act 12 of 2004 ("PRECCA"). However, upon an 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 the SAPS for investigation during early June 2016.

- 2.2. 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. I was specifically advised by the Hawks that all issues relating to the criminal investigation must be addressed directly to their offices and that the SARS is expected to co-operate fully with the criminal investigation.
- 2.3. To date, my office has received a request for information from the Hawks and my office is taking all measures to provide the requested information.
- 2.4. In light of the above, I deny your allegation contained at paragraph 11 of your letter that I am in breach of Section 34 of PRECCA. I was advised by the Hawks through a 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.
- 2.5. Lastly and although not part of your letter, I wish to inform you that I have duly taken note of the newspaper article: "Tax Money Diversion", which appeared in the New Age newspaper dated 24 October 2016, alleging fraudulent tax settlement of approximately R60 million. Consequently and on the 25th of October 2016, I dispatched a letter to

the Hawks requesting that this matter be included in their current criminal investigation against Mr. Makwakwa.

3. Allegations surrounding Kelly's promotion and academic qualifications

3.1. I have instructed the SARS Human Resource to investigate allegations surrounding Kelly's promotion and academic qualifications. I am currently awaiting a report from the Human Resource. Upon receipt of same, I will duly respond.

4. A chronological summary of my version of events since 17 May 2016

4.1. In my letter dated 20 May 2016, I acknowledged receipt of the Report from the Financial Intelligence Centre ("FIC") and unequivocally stated the seriousness and sensitivity of this matter. I further confirmed SARS' commitment to conduct an investigation.

4.2. On 23 May 2016, I informed the two employees about the allegations contained in the Report. I further informed the said employees of my intention to conduct an investigation as directed by the FIC. I instituted a misconduct investigation into allegations of impropriety, tax evasion, corruption, contravention of the Public Finance Management Act 1 of 1999 ("PFMA") and money laundering against the two SARS' employees.

4.3. I adopted a two- pronged approach in dealing with this matter. Firstly, I afforded Jonas and Kelly an opportunity to respond to the allegations in writing. This was part of the SARS internal investigation into the allegations contained in the Report. Secondly, and as fully explored hereunder, I engaged the FIC for the purposes of seeking guidance, co- operation and assistance in accordance with Section 4 of the FIC Act.



CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE FINDINGS ON MR. MAKWAKWA

- 4.4. In instituting the misconduct investigation against the said employees, I was executing my responsibility to maintain discipline in terms of Section 9 (2) of the SARS Act 34 of 1997 ("SARS Act"), as the Chief Executive Officer for the SARS. Furthermore, as an Accounting Authority for the SARS, I am responsible to ensure the proper and diligent implementation of the PFMA. I am particularly obligated by Section 84 of the PFMA to investigate allegations of financial misconduct.
- 4.5. In disclosing the Report to the aforesaid employees, I acted in accordance with the provisions of Section 29(4)(a) of the Financial Intelligence Centre Act, 38 of 2001 ("FIC Act"). In so doing, I acted within the scope of my powers and duties in terms of the aforementioned provisions of the SARS Act and the PFMA.
- 4.6. My decision to release the Report to the aforementioned employees does not amount to breach of Section 53 of the FIC Act. It is glaring that Section 53(2) of the FIC Act does not attach any criminal liability to information disclosed in accordance with Section 29(4) (a) of the FIC Act. As a result, your allegation with regard to act of criminality against my office under section 53 of the FIC Act is unfounded.
- 4.7. On 30 May 2016, I received a letter from the employees' legal representative who denied the allegations contained in the Report and further requested information from the SARS.
- 4.8. On 15 June 2016, I had a meeting with the Director of the FIC ("Director"), wherein I strongly indicated that I take the allegations against the employees seriously and that any allegation of impropriety and criminal conduct, real or perceived, needs to be dealt with in a speedy manner to protect the reputation of SARS. I also indicated that the SARS will be highly indebted to the FIC's guidance in conducting the required investigation.

4.9. In my letter dated 21 June 2016 and in accordance with Section 4(b) of the FIC Act, I formally requested the FIC's co-operation and guidance on how the investigation should take shape. Further, I requested the FIC to furnish the SARS' investigative team with details of the transgressions. In the said letter, I requested a further meeting with the Director. I made it clear that this matter be accorded the urgency it deserves because I could not have a member of my executive team with a cloud of criminality, tax evasion, corrupt activities or non-compliance with the PFMA, hanging over his head.

4.10. In a letter dated 13 July 2016, the Director stated that he is unaware of steps the SARS may have taken since the above matter was handed over for investigation and that a detailed reply will assist him in defining the nature of support by the FIC. However, the Director ignored my request for a meeting.

4.11. In my letter dated 21 July 2016, I duly informed the Director of the steps and/or progress undertaken by the SARS. In this regard, the Director failed to respond, particularly in defining the nature of support by the FIC.

4.12. In my letter dated 22 August 2016, I informed the Director about the request for information by the employees' legal representative. As a result of the Director's failure to respond, I made a follow up with his office on 7 September 2016 and 13 September 2016.

4.13. In my letter dated 7 September 2016, I duly informed the Director about the progress, particularly the employees' request for an extension to submit their responses to the allegations. To this date, the Director has failed to define the nature of support by the FIC.

4.14. On 14 September 2016, I received the Director's letter making spurious allegations against the SARS with regard to the handling of the Report. On 16 September 2016, I responded to the Director's letter

CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE FINDINGS ON MR. MAKWAKWA

wherein I denied his allegations as baseless and lacking any legal foundation. Further, and in light of real and/or perceived lack of guidance and co-operation by the FIC, I reminded the Director that Section 4 of the FIC Act imposes a mandatory obligation on the FIC to advise and co-operate with the SARS.

4.15. The FIC's lack of co-operation is disturbing taking into account that it has been investigating this matter since 2010 and there is no iota of evidence to suggest that at any point ever since 2010, it either submitted a report to any of the previous SARS Commissioners and/or any of the previous Ministers of Finance.

5. The disciplinary investigation against the two SARS employees

5.1. Jonas was suspended on 15 September 2016. Upon receipt of a legal opinion dated 09 October 2016 advising me to suspend Kelly regardless of her maternity leave, I proceeded to effect Kelly's suspension on 10 October 2016.

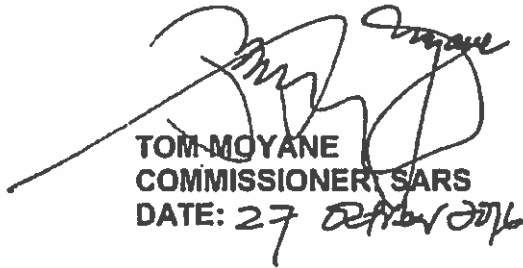
5.2. I confirm that Hogan Lovells (South Africa) Inc ("the firm") has been appointed to conduct an investigation into allegations of impropriety, tax evasion and other contraventions of the Tax Administration Act 28 of 2011, breach of the PFMA and SARS internal policies. Further, the firm is instructed to investigate allegations of impropriety on the part of Jonas in relation to settlements concluded from the time he was appointed as an acting Chief Operating Officer (COO) and subsequently as Chief Officer for Business and Individual Taxes ("BAIT"); until the date of his suspension on 15 September 2016.

5.3. After the investigation, the firm is instructed to initiate disciplinary proceedings against the aforementioned two employees.

CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE FINDINGS ON MR. MAKWAKWA

5.4. I will be in a position to make a public statement and/or announcement once both the investigation and disciplinary proceedings have been completed.

Yours faithfully



TOM MOYANE
COMMISSIONER SARS
DATE: 27 October 2016

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31 October 2016

Mr Murray Michell
Director
Financial Intelligence Centre

C/o Panna Kassan
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Financial Intelligence Centre
Per email: panna.kassan@fic.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 Panna

Corruption Watch Enquiry: Financial Intelligence Centre Findings on Mr Makwakwa

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 action and he responded on 28 October 2016. We would like to raise aspects of our letter and his response with the Financial Intelligence Centre ("FIC"). For ease of reference, a copy of our letter and his response are attached.
6. In respect of Mr Moyane's alleged legislative breaches and/or offences, we understand that in May 2017, the FIC provided SARS with a copy of a report detailing alleged tax evasion, money-laundering, fraud and corruption by two SARS employees, Mr Makwakwa and Ms Elskie, involving a total amount of over R1,2 million.
7. According to Mr Moyane, he proceeded to disclose the report to Mr Makwakwa and Ms Elskie in order to seek comment from them. It is our view is that such disclosure may well amount to a breach of section 29(4) of FICA. However, Mr Moyane in his response to our letter, indicates that he did not breach FICA because according to him, he was acting in terms of section 29(4)(a) of the Act and within the scope of his powers and duties in terms of section 9(2) of the South African Revenue Services Act, 34 of 1997 ("SARS Act") and section 84 of the Public Finance Management Act, 1 of 1999 (the "PFMA").

8. It is our view that the disclosure of the FIC report and its contents to Mr Makwakwa and Ms Elskie has had the effect of undermining the purport and objects of section 29(4) of FICA and such disclosure could potentially undermine any investigation being conducted by the Hawks, the FIC or any other state law enforcement agencies as well as any future FIC initiated cases
9. Therefore, please indicate whether the FIC regards the disclosure of the report as an authorised disclosure in terms of section 29(4) of the FICA.
10. Secondly, Mr Moyane has made a number of statements about the FIC's failure to provide him with advice and guidance. Given the constitutional imperative of cooperative governance between state departments, combined with the seriousness of the allegations and the impact of any alleged failure on institutions which face difficulties in complying with FICA, we would like to give the FIC an opportunity to respond to these allegations. The allegations are set out in paragraphs 4.8 – 4.15 of Mr Moyane's letter however in summary he alleges that:
 - 10.1. He met with the Director of the FIC ("the Director") on 15 June 2016, and indicated to the Director that he takes the FIC report very seriously and that he would be highly indebted to the FIC for guidance in conducting the required investigation;
 - 10.2. On 21 June 2016, in accordance with section 4(b) of FICA he formally requested co-operation and guidance on how the investigation should proceed and also requested further information on the two employees' transgressions. He urgently requested a follow-up meeting with the Director of the FIC;
 - 10.3. On 13 July 2016, he received a letter from the Director of the FIC which ignored his request for a meeting but which stated that the Director is unaware of any steps taken by SARS to further the investigation into Mr Makwakwa and Ms Elskie. In this letter, the Director requested a detailed reply in order to determine or define the nature of support which the FIC could render to SARS;
 - 10.4. On 21 July, he responded to the Director providing information on the steps taken by SARS but the Director failed to respond with advice on the nature of support which the FIC could provide to SARS;

- 10.5. On 22 August, he informed the Director about a request for information by the employees' legal representative and received no response despite follow ups on 7 and 13 September respectively;
- 10.6. On 14 September 2016, he received a letter from the Director of the FIC who made "spurious" allegations about the handling of the FIC report to which he responded by denying such allegations as baseless and lacking any legal foundation and reminding the Director of his obligation in terms of section 4 of FICA to advise and co-operate with SARS;
- 10.7. Finally, that the FIC's lack of co-operation is disturbing since it has been investigating this matter since 2010 and has provided no evidence to show that it submitted a report to previous SARS Commissioners or Ministers of Finance.
11. We reiterate the need for the FIC to respond to the above and to indicate the nature and extent of support it provides to institutions such as SARS in dealing with reports by the FIC. In this regard, please elaborate on all the steps which the FIC required SARS to take in response to its report.
12. 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]

Private Bag X177, Centurion, 0046
T +27(0)12 641 6000
Xolile.Majija@fic.gov.za
Xolile Majija, Corporate Legal Services, Risk,
Governance & Compliance
Ref : 14/8/1 – Corruption Watch
16 November 2016



Mr. David Lewis
Executive Director
Corruption Watch
8th Floor Heetengracht Building
87 De Korte Street
Braamfontein
Johannesburg

By e-mail: DavidL@corruptionwatch.org.za
leanneg@corruptionwatch.org.za

Dear Mr. Lewis

**RE: CORRUPTION WATCH ENQUIRY: FINANCIAL INTELLIGENCE CENTRE
FINDINGS ON MR MAKWAKWA**

The above matter and your letter dated 31 October 2016 bears reference. We have carefully studied all the points raised in the correspondence and the accompanying documents.

The Financial Intelligence Centre (the FIC) acknowledges the important efforts of Corruption Watch ("CW") to seek and expose corruption in our society. Indeed, we believe that CW is an important mechanism in holding both the private and public sectors accountable for their actions.

In your letter to the FIC you inquired about the actions of Commissioner Tomas Moyane of the South African Revenue Service (SARS) and whether his conduct is in breach of the Financial Intelligence Centre Act (the FIC Act). As a matter of principle the FIC does not give legal advice or opinion on the interpretation of the FIC Act in instances where the FIC may be a party to the merits of the matter.

Thus while the FIC may hold a view on the interpretation and application of the FIC Act arising therefrom, we therefore choose to reserve our legal opinion and rights in this regard.

The FIC suggests that CW apply its mind to additional sections of the FIC Act other than sections 29(4) and include section 60(1) and (2) when evaluating how FIC information can or cannot be used.

With regards to your question on co-operation and support to SARS, the FIC has provided an extensive reply to the Minister of Finance and Parliament. Our reply is now a matter of public and parliamentary record and the FIC has nothing new or additional to tender in this regard.

On the matter relating to the steps that the FIC required SARS to undertake in response to the report mentioned in your letter of 31 October 2016, any referral of financial intelligence to a law enforcement agency or any other entity prescribed in the FIC Act, places a responsibility on the agency to conduct an investigation in line with that agency's national investigative mandate. While the FIC indicates the nature of matters that may be investigated, it does not instruct agencies to investigate any particular matter.

Consequently, SARS is required to investigate in terms of the South African Revenue Service Act No. 34 of 1997 ("SARS" Act), the Public Finance Management Act No. 1 of 1999 ("PFMA") and the Tax Administration Act No. 28 of 2011 ("TAA") and in doing so also take into account other national legislation that may have a bearing on its investigation such as Prevention of Organised Crime Act No. 121 of 1998 (POCA), the Financial Intelligence Centre Act No. 38 of 2001 (the FIC Act) and Prevention and Combating of Corrupt Activities Act No. 12 of 2004 (RECCA).

The issues relating to corruption and money laundering transcend the mandate of SARS. Moreover, it is expected that any person and/or entity dealing with such information should be cognisant of how to handle such information, as this may fall under the primary legislative mandate of another agency.

We trust you find the above in order.

Yours sincerely



MURRAY MICHELL
DIRECTOR

Corruption Watch (RF) NPC
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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: Mulaudzi@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.

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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 Makwaka 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 Elskle 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]

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corruption
watch



D1
"F"

25 November 2016

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 Commissioner Moyane

Corruption Watch Enquiry: Financial Intelligence Centre Findings on Mr Makwakwa

1. We refer to the above matter. We also refer to our letter dated 25 October 2016 and your response dated 27 October 2016.
2. We confirm that we considered your response carefully and proceeded to write to the Director of the FIC, Mr Murray Michel as well as to the Head of the Hawks, Lieutenant-General Bering Ntlemeza, in order to seek confirmation and clarity on certain aspects of your response. Copies of our letters are attached for ease of reference as "A1" and "A2" respectively.
3. We received a response from the FIC on 16 November 2016, which is attached as annexure "A3" but have not received a response from Lieutenant-General Ntlemeza.

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Investigation and Sanctions against Mr Makwakwa and Ms Elskie

4. In your response dated 27 October 2016, you indicated that the Hawks have commenced with a criminal investigation into racketeering and money laundering against Mr Makwakwa and Ms Elskie and that the investigation is being administered by the Hawks' Anti-Corruption Investigation Unit under DPCI enquiry 03/06/2016.
5. Your averments are contrary to information provided by Hawks Spokesperson, Brigadier Mulaudzi to the *Daily Maverick* during October 2016 in terms of which he stated on no uncertain terms that there was no case being investigated by the Hawks as the matter is internal to SARS.
6. In light of the contradictory statements made by yourself and the spokesperson for the Hawks and in absence of any evidence to confirm that the Hawks are investigating Mr Makwakwa and Ms Elskie, we have no option but to proceed with lodging criminal proceedings against them.

Other Legislative Breaches and Offences

7. In response to our allegations that you have breached section 29(4) of FICA, you indicated that your actions were authorized by the legislation, however your disclosure of the report to Mr Makwakwa and Ms Elskie has undermined the objects and purport of FICA and potentially prejudiced the investigation of these matters by the relevant authorities. In the circumstances, we will proceed to lodge criminal proceedings against you in terms of sections 60(1), 60 (2) and 29(4) of FICA and confirm that the relevant authorities will have to investigate and take steps towards prosecution ultimately enabling an appropriate court to determine whether or not you have committed offences in terms of FICA.
8. Finally, we confirm that in your response dated 27 October 2016, you indicated that you are aware of your obligation to report offences of corruption to the SAPS and the Hawks in terms of section 34 of PRECCA. You confirmed that you did not report the matters to the Hawks because they had advised you in writing that they had already

commenced an investigation into the matters and that you were therefore not required to do so.

9. We have written to the Hawks in order to confirm their advice to you and to request copies of the correspondence sent to you. We have not received a response from the Hawks and are therefore unable to establish the veracity of your statements.
10. In the circumstances and in absence of any evidence to confirm your averments, we have no option but to proceed with lodging criminal complaints against you for failing to report these matters to the Hawks in terms of section 34 of PRECCA.
11. Please 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]

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AFFIDAVIT

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I, the undersigned,

NHLAMULO MVELASE

do hereby make oath and say that:

1. I am an adult male with a South African Identity Number 890803 5998 083.
2. I am a junior attorney in the employ of Corruption Watch (RF) NPC.
3. My office is situated at 87 De Korte Street, Braamfontein, Johannesburg, 2017.
4. My contact telephone number is 011 242 3900 and my mobile telephone number is 082 928 1657.
5. Save where I have stated otherwise or where it appears contrary from the context, all facts herein fall within my personal knowledge or have been obtained from records of the Company to which I have had access and are to the best of my knowledge both true and correct.

SCOPE OF THE AFFIDAVIT

6. The affidavit provides the background into allegations of corruption which were made against an employee of the South African Revenue Services ("SARS"), Mr Jonas Makwakwa who was employed as Executive and Chief Officer: Business and Individual Taxes.
7. The allegations of corruption against Makwakwa emanate primarily from an article published by the amaBhungane Centre for Investigative journalism in the Sunday Times on 11 September 2016, a copy of which is attached as Annexure "A". A further article by Marianne Tham appeared in the Daily Maverick also on 11 September 2016 and attached as Annexure "B".

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8. Both articles refer to a report produced by the Financial Intelligence Centre ("FIC") which should be obtained from the FIC or from SARS in order to further this investigation.
9. In this regard, according to media reports it was alleged that Makwakwa was involved in or facilitated corrupt activities and that suspicious and unusual cash deposits into his account require investigation to determine if these cash deposits and payments are proceeds of crime and/or money laundering in order to institute appropriate criminal justice action.
10. It was found that Makwakwa's personal bank account was the primary account used to receive and disburse funds and that credits into the account increased yearly from R1 358 817.01 in 2010 to R3 418 825.43 in 2015. This is an increase of approximately 152%. The FIC report noted that Makwakwa's payments also grew over the same period, creating a dependency on suspicious cash deposits and payments in order to maintain his standard of living. The payments and cash deposits were of concern to the FIC because they originated from unknown sources and for undetermined legal purposes.
11. This affidavit aims to set out the scope of the allegations as best as possible in reference to the attached media articles.

ALLEGATIONS

12. Firstly, between 1 March 2010 and 21 January 2016, seventy-five cash deposits amounting to R785 130.00 were deposited into Makwakwa's personal bank account.
13. The FIC has found the volume and value of the cash deposits to be highly unusual given that Makwakwa was permanently employed and indicated that the cash deposits should be investigated to determine whether the funds which he received constituted payments of the proceeds of crime arising from corrupt activity as defined in the *Prevention and Combatting of Corrupt Activities Act 12 of 2004*. The FIC found that this had to be seen in light of his position of influence at SARS.
14. Secondly, on 25 September 2014, Makwakwa exchanged foreign currency (US\$ 13 500.00) into South African rands equal to R147 850.65, which amount was

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credited to his personal bank account. The source of the foreign currency is unknown. The FIC indicated that the exchange of foreign currency should be investigated to establish if there were any exchange control contraventions in this transaction.

15. Thirdly, irregular and ad hoc payments from SARS were also noted. These payments were credited into Makwakwa's personal bank account and amounted to R334 459.05 for 2014 and 2015 compared to the amount of R82 635.30 for 2012 and 2013. The FIC found that the payments should be investigated to determine whether there were any misrepresentations or fraud on the part of Makwakwa that resulted in SARS making these payments.
16. Fourthly, other suspicious and unusual transactions related to the receipt and transfer of monies which could be the proceeds of crime as well the concealment and disguising of the true source of the funds which could amount to money laundering in terms of the Prevention of Organised Crime Act 121 of 1998.
17. According to Annexure "A", a payment of R480 000.00 to Makwakwa was linked to a complex network of bank accounts and companies. This payment could be traced to a February 2017 payment of R17,87 million by the Department of Water and Sanitation ("the Department") in favor of a debt collection company called New Integrated Credit Solutions. In most instances as soon as payments arrived in one bank account, the money was immediately transferred to the next, with a slice being deducted by each company in the chain. On the day after New Integrated Solutions received its payment from the Department, it transferred precisely 25%, an amount of R4 468 239.28 to a company called Mahube Payment Solutions.
18. Several other companies were involved in the chain of payments. The final payment in the chain, of R600 000, appears to have been made to Biz Fire Worx. In the two months after Biz Fire Worx received this payment, the company made three large payments into Makwakwa's FNB account, totalling R480 000.
19. The FIC found that the above payments should be investigated to determine:
 - 19.1. Whether the funds received constituted payments of proceeds of crime arising from corrupt activities on the part of Makwakwa and other individuals and entities involved in these transactions; and

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- 19.2. Whether the aforementioned conduct concealment and disguising if the true source of these funds constitute acts of money laundering as defined in Section 1 of the *Prevention of Organised Crime Act 21 of 1999*.

THE CRIMINAL COMPLAINT

I hereby request the South African Police Service to conduct an investigation into this matter as soon as possible. This matter is very urgent as several individuals and companies implicated in this matter could hide or destroy evidence which is vital to this investigation.

Internal disciplinary enquiries into Mr Makwakwa have been initiated by SARS however this does not prevent a concurrent investigation into the allegations of criminal conduct by Makwakwa.

In summary, the investigation should be into whether:

- 1.1. The funds which Makwakwa received constituted payments of the proceeds of crime arising from corrupt activity on the part of Makwakwa and other individuals and entities involved in the transactions and accordingly whether Makwakwa and other individuals have committed the crime of corruption as defined in the *Prevention and Combatting of Corrupt Activities Act 12 of 2004*;
- 1.2. Certain conduct by Makwakwa and other individuals and entities in concealing and disguising the the true source of some of the funds paid to Makwakwa constitute acts of money laundering as defined in Section 1 of the *Prevention of Organised Crime Act 21 of 1999*.
- 1.3. Mr Makwakwa's exchange of foreign currency establishes any breaches of exchange control regulations and whether such breaches attract criminal sanctions;
- 1.4. The payments made by SARS to Makwakwa were the result of misrepresentations or fraud on the part of Makwakwa;


N.M.

The personal particulars of Jonas Makwakwa are:

Identity number: 6901066129084

Residential address: 986 Mossie Street, Silverton, 0184

Residential telephone number: 012 661 0632

Work telephone number: 012 422 4000

Mobile telephone number: 083 555 4694 / 083 355 5469 / 083 555 4695



NHLAMULO MVELASE

I certify that:

- I. the Deponent acknowledged to me that:
 - A. he knows and understands the contents of this declaration;
 - B. he has no objection to taking the prescribed oath;
 - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at **BRAMFONTEIN** on **8 December 2016**.



COMMISSIONER OF OATHS

Liesl Heila Muller
LLB (UP)
Ex-officio Commissioner Of Oaths
Lawyers for Human Rights
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"A"

12/5/2018

SUNDAY TIMES - Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits

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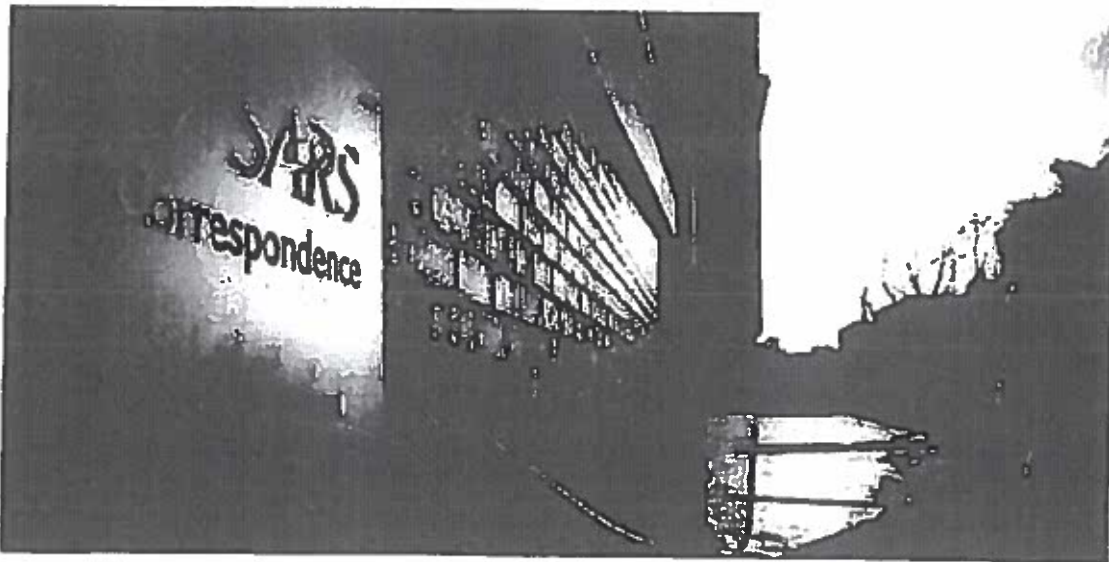
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with more juice every Sunday.

FROM 18 OCTOBER 2018

SUNDAY TIMES NEWS BY SUSAN COMRIE, SAM SOLE AND CRAIG MCKUNE, 2016-09-11

Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits



SARS branch. File photo.
Image: Gallo Images/Foto24/Theana Calitz

The second-in-command at the South African Revenue Service has been flagged for "suspicious and unusual" cash payments into his bank account, with a report recommending an investigation to determine if the payments are "proceeds of crime arising from

N.M.

TIMES LIVE

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The report, compiled by a banking regulator, has been handed over to SARS commissioner Tom Moyane.

It alleges that Jonas Makwakwa, the chief officer: business and individual taxes, received unexplained cash deposits and bank transfers into his FNB account totalling R1.2-million between 2010 and January this year.

Investigators also pointed to three cash deposits, totalling R450,200, to Makwakwa's girlfriend's Absa account just before Christmas 2015.

The report, which is only preliminary, relies on bank records for 11 different bank accounts as well as camera footage from banks where the cash deposits were made.

SARS spokesman Sandile Memela declined to comment, but sources said that although the report had been given to Moyane in May, Makwakwa and his girlfriend, Kelly-Ann Elskie, who is also a SARS employee, had remained in their positions.

When contacted on Friday, Makwakwa and Elskie both said the matter was "sub judice" and declined to comment.

Makwakwa has become a powerful figure at SARS. A taxman for 20 years, he shot to prominence after Moyane became a commissioner in late 2014.

Since then, Makwakwa has acted as commissioner when Moyane was away, and has been put in charge of SARS's key revenue-generating unit, the Large Business Centre, which has oversight of large corporations and wealthy individuals.

It is not clear what triggered the investigation into Makwakwa and Elskie, but it is understood that banking regulators became suspicious because of the frequent deposits of large amounts of cash.

When investigators delved into Makwakwa's FNB bank account they identified cash deposits of R785,130 made between 2010 and 2016, most of these - 48 deposits totalling R726,400 - made between 2014 and 2015.

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FROM 12 NOVEMBER 2018

by [Makwakwa]

Although the investigation is still at an early stage, the trail of payments appears to have also led investigators to an Absa account, a car and a property in Elskie's name.

She is believed to be Makwakwa's common-law wife and the mother of two of his children.

In particular, investigators raised questions about three large cash deposits - two of R160,000 each and one of R130,200 - that appeared to be inconsistent with Elskie's profile as a mid-level employee in SARS's legal department.

The deposits were made on December 22, 23 and 24 last year at different banks in a 10km radius. Cameras are said to have filmed Elskie making two of the deposits.

Neither Makwakwa nor Elskie has given an explanation for these payments - the report merely records them as "suspicious and unusual" and recommends that further investigation be done.

Investigators also raised concerns about R480,000 that was transferred via EFT into Makwakwa's bank account in three tranches in April and May last year - almost half of which appears to have been used to buy a Mercedes for Elskie.

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In most instances, as soon as payments arrived in one bank account, the money was immediately transferred to the next, with a slice being deducted by each company in the chain. On the day after New Integrated Credit Solutions received its payment from the department, it transferred precisely 25% - R4,468,239.28 - to a company called Mahube Payment Solutions.

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Mahube has an indirect link with SARS through the company's sole director, Patrick Monyeki, who is said to be a close friend of Moyane.

Monyeki, an information technology veteran, has garnered controversy in relation to two major government IT contracts.

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Several other companies were involved in the chain of payments. The final payment in the chain, of R600,000, appears to have been made to Biz Fire Worx. In the two months after Biz Fire Worx received this payment, the company made three large payments into Makwakwa's FNB account, totalling R480,000. One of the company's directors, Loksane Molea, confirmed receiving a R600,000 payment, but said this was a loan.

Asked about the R480,000 on-payment to Makwakwa, Molea claimed he had used this new loan to repay a series of old loans he had taken from Makwakwa, starting in 2009.

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The amaBhungane Centre for Investigative Journalism, an independent non-profit, produced this story.

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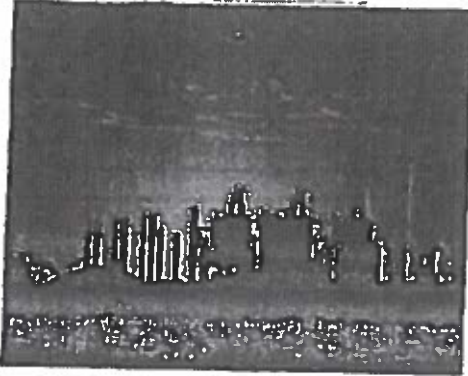
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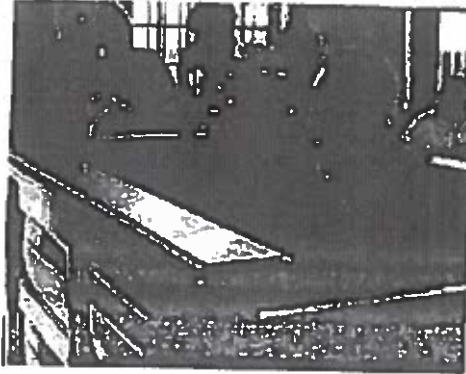
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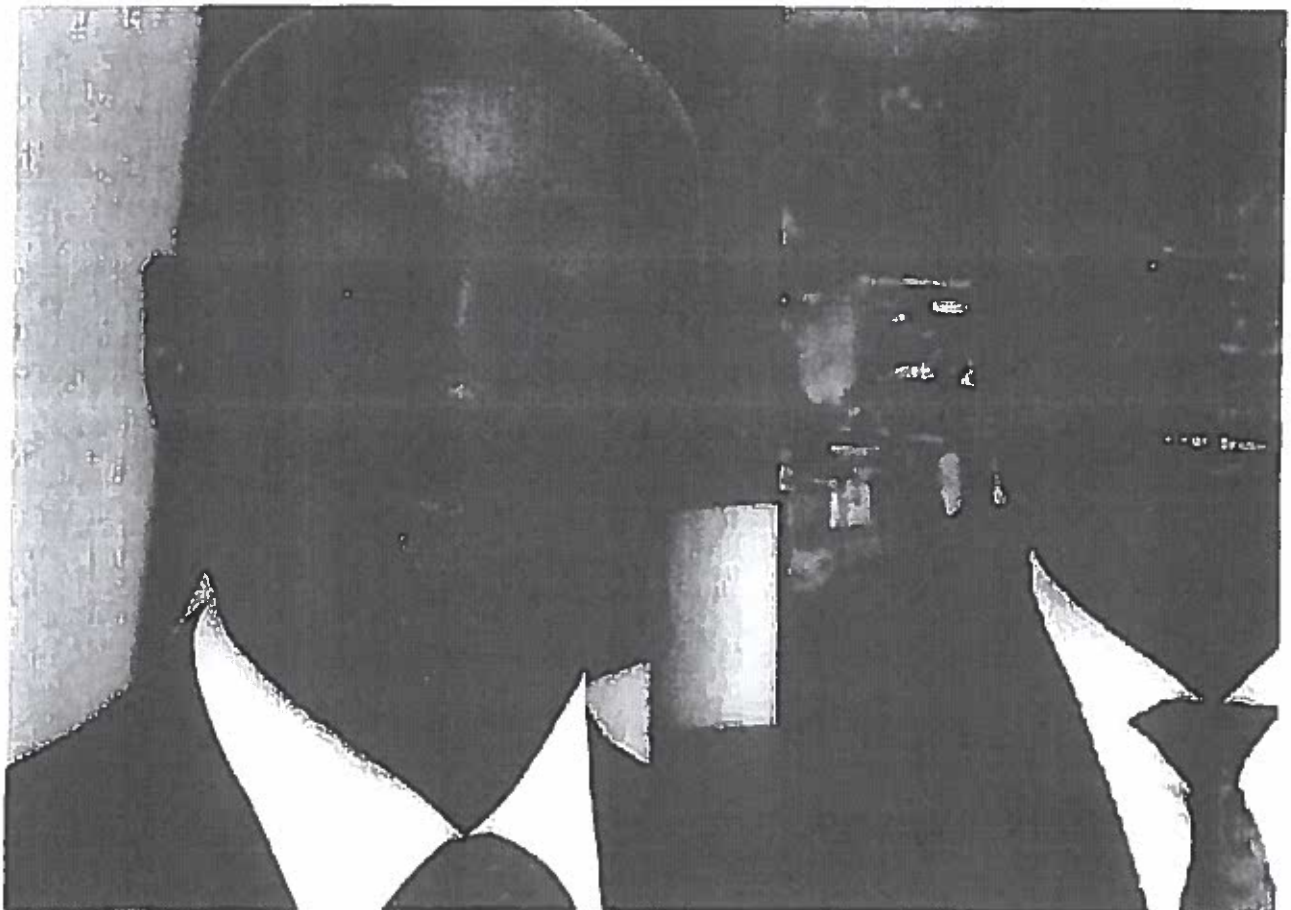
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DAILY MAVERICK

SOUTH AFRICA

House of Cards: SARS's 9/11 as pack comes tumbling down in probe of suspicious deposits

- MARIANNE THAMM
SOUTH AFRICA
11 SEP 2016 06:22 (SOUTH AFRICA)



SARS Commissioner Tom Moyane and Hawks head Lieutenant-General Mthandazo Ntlembeza have known for more than three months about the alleged

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criminal behaviour of Jonas Makwakwa, the second most senior member of the SARS executive, who has reportedly been caught by ATM cameras feeding wads of cash into his personal account as well as receiving other deposits amounting to at least R1.2-million. Daily Maverick is in possession of a report by a banking regulator that suggests these "suspicious and unusual cash deposits" into the personal accounts of Makwakwa and his girlfriend Kelly-Ann Elskie be investigated. Yet the Hawks claim this is an "internal matter" at SARS. By MARIANNE THAMM.

The confidential report states that Makwakwa and his girlfriend Elskie, the mother of at least two of his children and also a SARS employee, might be involved in or facilitating corrupt activities and may be guilty of living off the proceeds of crime or be involved in money laundering and that this be investigated "in order to institute appropriate criminal justice action".

Makwakwa, Moyane's perceived "hatchet man" at SARS, had been placed in control of the Large Business Centre – a key revenue division of SARS that deals with high-net worth individuals and corporate tax – as part of the commissioner's move to restructure the revenue service. It is a mission Treasury and Finance Minister Pravin Gordhan have repeatedly asked Moyane to freeze, instructions which he has repeatedly ignored.

However, revelations in the report that Makwakwa is linked to several suspicious and possibly highly illegal financial transactions might just prove to be Moyane's personal 9/11.

The bombshell hit on 11 September when the amaBhungane centre for Investigative Journalism revealed in a report in the *Sunday Times* that a banking regulator had picked up, some time ago, several suspicious bank transactions related to Makwakwa and Elskie.

In a memo marked "confidential" the regulator suggested that these transactions – 75 deposits between 1 March 2010 and 31 January 2016 and totalling R785,130.00, were made into Makwakwa's account, of which 48 were cash deposits amounting to R726,400.00 and deposited between 2014 and 2015.

"The volume and value of cash deposits are highly unusual as MJM [Makwakwa] is permanently employed. These aforementioned cash deposits should be investigated to

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determine whether these funds ... received by this SARS employee constitute payments of proceeds of crime arising from corrupt activities as defined in the Prevention and Combatting of Corrupt Activities Act 12 of 2004, in light of the position of authority held by MJM. The exchange of foreign currency should be investigated to establish if there were exchange control contraventions in this transaction," the statement from the banking regulator reads.

SUSPICIOUS AND UNUSUAL CASH DEPOSITS AND PAYMENTS INTO MJM'S ACCOUNT

MJM's personal bank account⁴ is the primary account used to receive and disburse funds. Credits into this account have increased yearly⁵ from R1,358,817.01 in 2010 to R3,418,925.43 in 2015 (approximately 152%). Likewise, MJM's payments have grown over this period, creating a dependency on suspicious cash deposits and payments to maintain his current standard of living. These payments and cash deposits are of concern as they originate from unknown sources and undetermined legal purpose.

"MJM's [Mashudu Jonas Makwakwa's] personal bank account is the primary account used to receive and disburse funds. Credits into this account have increased yearly from R1,358,817,01 in 2010 to R3,418,925.24 in 2015 (approximately 15 %). Likewise, MJM's payments have grown over this period, creating a dependency on suspicious cash deposits and payments to maintain his current standard of living. These payments and cash deposits are of concern as they originate from unknown sources and undetermined legal purpose," reads the report.

It is clear from the report that while the Hawks were hounding Gordhan in a very high profile and public manner, Ntlemeza was more than aware of the evidence against Makwakwa and Elskie that had been collected – and did nothing. Some of the evidence was from cameras installed at various ATMs.

Moyane is believed to have signed for the receipt of the full report on Makwakwa on 17 May. Moyane is also believed to have met with Ntlemeza on 29 August 2016. On 31

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August Makwakwa was presented with a written notice of SARS's intention to suspend him. He was given seven days to present reasons why he should not be suspended. He still remains in his position and is the second most powerful individual at SARS.

Insiders say the fact that Makwakwa has not yet been suspended presents the danger that "he can easily interfere with any investigation into his affairs" and is "the only official on the SARS Exco with some knowledge of tax or the institution itself".

Hawks spokesman Brigadier Hangwani Mulaudzi on Sunday told *Daily Maverick* that "we are not investigating the matter. I assume it is an internal matter and for further details please contact SARS".

SARS had not responded to questions from the *Daily Maverick* at the time of writing.


DA Shadow Minister of Finance, David Maynier, said Moyane had been questioned during a parliamentary standing committee on finance meeting on 23 August about the Makwakwa matter but had been "evasive and simply stated that he would not 'comment on ongoing investigations'".

Follow-up questions, said Maynier, had been referred to senior revenue service officials who "were equally evasive" and repeated that they had no "comment to make on current investigations into individuals or companies".

The banking regulator noted that other "irregular and ad hoc payments from SARS were credited to MJM's personal bank account. The value of these payments for the past two (2) financial years (2014-2015) amounted to R334,459.05 as compared to R83,635.30 between 2012 and 2013."

These payments, said the regulator, "should be investigated to determine whether there were any misrepresentations or fraud on the part of MJM that resulted in SARS making these payments".

According to the regulator, Elskie made three cash deposits between 22 and 24 December 2015 totalling R450,200.00. The deposits were structured into two payments of R160,000 each and one of R130,200.


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"The deposits were made over three consecutive days into three different branches of the same bank, all located within an approximate 10km radius."

The sources of these funds were unknown and the value "suspicious and unusual considering the financial profile of KE".

She allegedly used these proceeds as well as the proceeds from another property to buy new property. The transactions should be investigated, said the banking regulator, to determine "whether the aforementioned conduct, concealment and disguising of the true source of these funds constitute acts of money laundering".

The banking regulator also uncovered a series of transactions it has labelled "suspicious and unusual payments" and relating to the Department of Water Affairs and Forestry and a deposit of R17,872,957.13 into the account of a company, New Integrated Credit Solutions – a debt collection company formerly contracted to SARS.

This total was then moved in a series of payments to five different companies, Mafube Payment Solutions, Arvomark, Street Talk Trading 181, Biz Fire Worx (where Makwakwa was a previous director) and to Mercedes Benz Financial Services. The last payment is believed to have been for a Mercedes Benz C220 BLUETEC for Kelly-Ann Elskie.

New Integrated Credit Solutions had been subcontracted with Mafube to analyse debt data for SARS.

The sensational revelations come after Gordhan's statement that President Jacob Zuma's close friends and associates, the Gupta family, should turn to the country's courts if they felt they had been treated unfairly by the country's banks which had refused to do business with them. It is believed the country's big four banks had been "uncomfortable" with some of the transactions in accounts held by entities linked to the family and that they (the banks) were required to report suspicious and unusual transactions to the Financial Intelligence Centre.

It is has not been confirmed at this stage whether the alert to the funds in Makwakwa and his girlfriend's accounts have any link with the Gupta family.

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It was Tom Moyane who in March 2015 lodged a complaint with the Hawks about an apparent "rogue unit" and that has led to the very public hounding of the Minister of Finance as well as several other former members of the SARS executive including Deputy Commissioner Ivan Pillay and group executive, Johann van Loggerenberg. The former SARS members, as well as Gordhan, were recently all ordered to present themselves for "warning statements" at the Hawks headquarters in Pretoria. News that the Hawks were still hounding Gordhan sent the rand into yet another tailspin from which it has not yet quite recovered.

In December 2014 the entire former SARS Exco was driven out of the revenue service after untested allegations emerged in a series of *Sunday Times* stories about an illegal "rogue unit" that had operated at SARS and that had been established during Gordhan's tenure as commissioner.

With regard to the complaint Moyane had lodged, Gordhan said that the question everyone should ask was "why?".

"Since then we have had a newspaper [the *Sunday Times*] that carried out an 18-month campaign against certain individuals. At the end of the 18-month period that newspaper had apologised for what it had done because it didn't have proof for some of the stuff that it was accusing people of. As we sit today, what is the problem? Who is accused of what? What motivates it?"

The revelations by the banking regulator of Makwakwa's alleged criminal behaviour could be a tipping point that results in the collapse of the entire House of Cards that has been constructed around SARS, with a ripple effect on the Hawks, the National Prosecuting Authority and ultimately Zuma. It is only a matter of time before the edifice must crumble and those behind it be exposed. **DM**

Photo: SARS commissioner Tom Moyane (GCIS), Jonas Makwakwa, the second most senior member of the SARS executive (SARS)

- MARIANNE THAMM
- SOUTH AFRICA


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AFFIDAVIT

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I, the undersigned,

NHLAMULO MVELASE

do hereby make oath and say that:

1. I am an adult male with a South African Identity Number 890803 5998 083.
2. I am a junior attorney in the employ of Corruption Watch (RF) NPC.
3. My office is situated at 87 De Korte Street, Braamfontein, Johannesburg, 2017.
4. My contact telephone number is 011 242 3900 and my mobile telephone number is 082 928 1657.
5. Save where I have stated otherwise or where it appears contrary from the context, all facts herein fall within my personal knowledge or have been obtained from records of the Company to which I have had access and are to the best of my knowledge both true and correct.

SCOPE OF THE AFFIDAVIT

6. The affidavit provides the background into allegations of corruption which were made against an employee of the South African Revenue Services ("SARS"), Ms Kelly-Ann Elskie ("Elskie") who is the girlfriend of Mr Jonas Makwakwa, another employee of SARS who has been accused by the FIC of corruption, fraud and money laundering.
7. The allegations of corruption against Elskie emanate primarily from an article published by the amaBhungane centre for investigative journalism in the *Sunday Times* on 11 September 2016, a copy of which is attached as Annexure "A". A further article by Marianne Tham appeared in the *Daily Maverick* also on 11 September 2016 and attached as Annexure "B".

8. Both articles refer to a report produced by the Financial Intelligence Centre (the "FIC") which should be obtained from the FIC or from SARS in order to further this investigation.
9. In this regard, according to media reports it was alleged that Elskie was involved in or facilitated corrupt activities and that suspicious and unusual cash deposits into her account require investigation to determine if these cash deposits and payments are proceeds of crime and/or money laundering in order to institute appropriate criminal justice action.
10. This affidavit aims to set out the scope of the allegations as best as possible in reference to the attached media articles.

ALLEGATIONS

11. Between 22 and 24 December 2015, three cash deposits totaling R450 200.00 were deposited into Elskie's personal bank account.
12. The cash deposits were structured into two payments of R160 000.00 each and one payment of R130 200.00. The deposits were made over three consecutive days into three different branches of the same bank, all located within an approximate 10km radius. Elskie was the depositor for two of the three cash deposits.
13. Elskie used these funds together with funds from the sale of a previously owned property to purchase a new property.
14. The FIC found that the source of the funds was unknown and that the value of the cash deposits was suspicious and unusual considering the financial profile of Elskie.
15. The FIC therefore indicated that the above payments should be investigated to determine:

- 15.1. Whether the funds received constituted payments of the proceeds of crime arising from corrupt activities by Elskie;
- 15.2. The implication of those corrupt activities on SARS; and
- 15.3. Whether the aforementioned conduct, concealment and disguising of the true source of these funds constitute acts of money laundering as defined in Section 1 of the *Prevention of Organized Crime Act* 121 of 1998.

THE CRIMINAL COMPLAINT

I hereby request the South African Police Service to conduct an investigation into this matter as soon as possible. This matter is very urgent as several individuals and companies implicated in this matter could hide or destroy evidence which is vital to this investigation.

Internal disciplinary enquiries into Elskie have been initiated by SARS however this does not prevent a concurrent investigation into the allegations of criminal conduct by Elskie.

In summary, the investigation should be into whether:

- 1.1. The funds which Elskie received constituted payments of the proceeds of crime arising from corrupt activity on the part of Elskie and other individuals and entities involved in the transactions and accordingly whether Elskie and other individuals have committed the crime of corruption as defined in the *Prevention and Combatting of Corrupt Activities Act*, 12 of 2004;
- 1.2. Certain conduct by Elskie and other individuals and entities in concealing and disguising the true source of some of the funds paid to Elskie constitute acts of money laundering as defined in Section 1 of the *Prevention of Organised Crime Act* 21 of 1999.

The personal particulars of Kelly-Ann Elskde are:

Identity number: 8805160057083

Residential address: 986 Mossie Street, Silverton, 0184

Residential telephone number: 012 331 2632

Work telephone number: 012 422 6289

Mobile telephone number: 082 952 2508

NHLAMULO MVELASE

I certify that:

- I. the Deponent acknowledged to me that:
 - A. he knows and understands the contents of this declaration;
 - B. he has no objection to taking the prescribed oath;
 - C. he considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at on
8 December 2016.

COMMISSIONER OF OATHS

"A"

12/5/2016

SUNDAY TIMES - Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits

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SUNDAY TIMES NEWS BY SUSAN COMRIE, SAM SOLE AND CRAIG MCKUNE, 2016-09-11

Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits



SARS branch File photo.
Image Gallo Images/Foto24/Theana Calitz

he second-in-command at the South African Revenue Service has been flagged for "suspicious and unusual" cash payments into his bank account, with a report recommending an investigation to determine if the payments are "proceeds of crime arising from

<http://www.bmealive.co.za/sundaytimes/news/2016/09/11/Revenue-service%E2%80%99s-No-2-probed-for-R1.2m-in-%E2%80%99suspicious%E2%80%99...> 1/5

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The report, compiled by a banking regulator, has been handed over to SARS commissioner Tom Moyane.

It alleges that Jonas Makwakwa, the chief officer: business and individual taxes, received unexplained cash deposits and bank transfers into his FNB account totalling R1.2-million between 2010 and January this year.

Investigators also pointed to three cash deposits, totalling R450,200, to Makwakwa's girlfriend's Absa account just before Christmas 2015.

The report, which is only preliminary, relies on bank records for 11 different bank accounts as well as camera footage from banks where the cash deposits were made.

SARS spokesman Sandile Mamele declined to comment, but sources said that although the report had been given to Moyane in May, Makwakwa and his girlfriend, Kelly-Ann Elskie, who is also a SARS employee, had remained in their positions.

When contacted on Friday, Makwakwa and Elskie both said the matter was "sub judice" and declined to comment.

Makwakwa has become a powerful figure at SARS. A taxman for 20 years, he shot to prominence after Moyane became a commissioner in late 2014.

Since then, Makwakwa has acted as commissioner when Moyane was away, and has been put in charge of SARS's key revenue-generating unit, the Large Business Centre, which has oversight of large corporations and wealthy individuals.

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by [Makwakwa]

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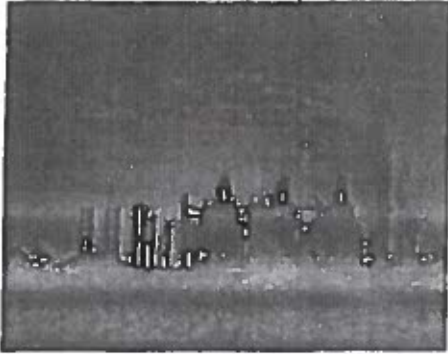
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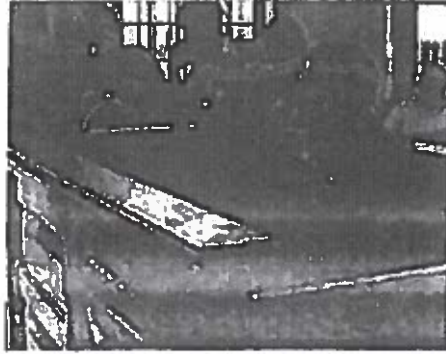
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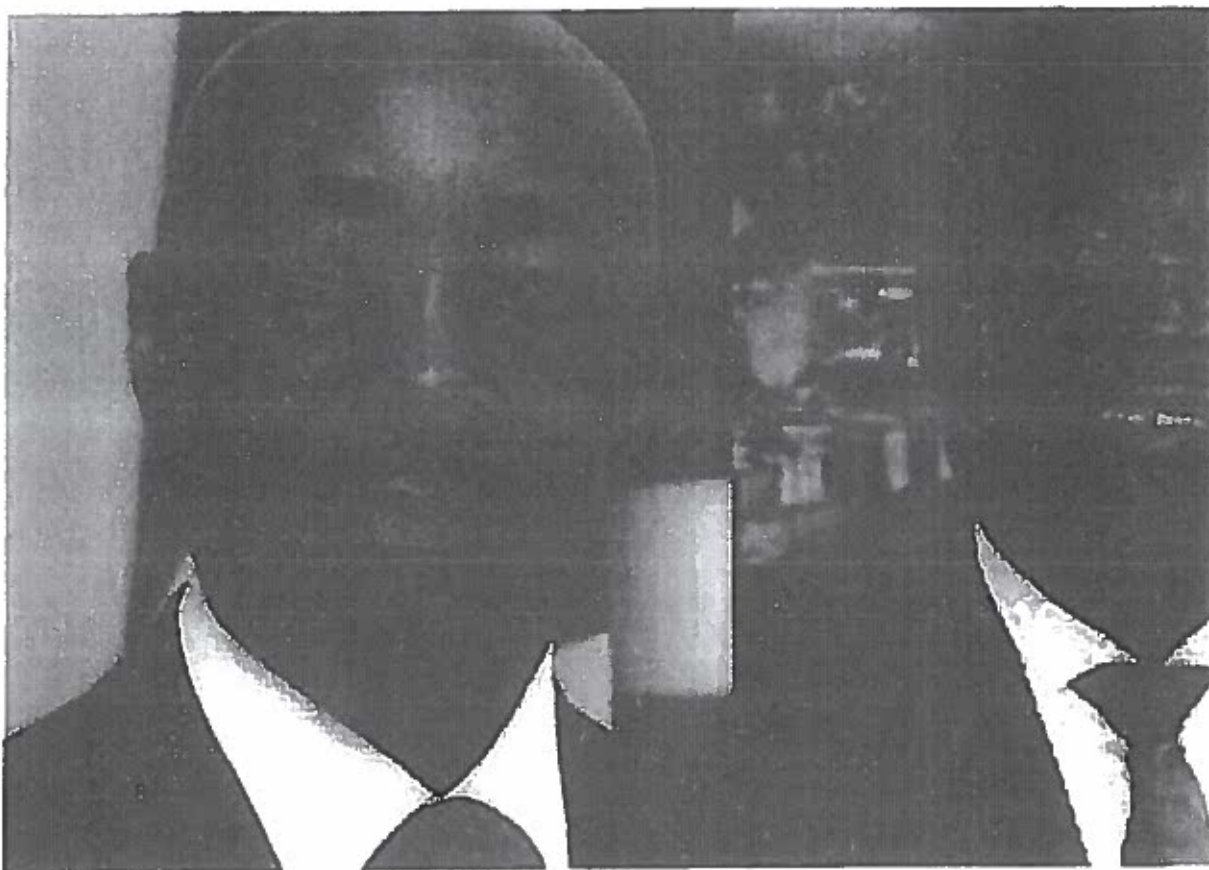
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DAILY MAVERICK

SOUTH AFRICA

House of Cards: SARS's 9/11 as pack comes tumbling down in probe of suspicious deposits

- MARIANNE THAMM
SOUTH AFRICA
11 SEP 2016 08:22 (SOUTH AFRICA)



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The confidential report states that Makwakwa and his girlfriend Elskie, the mother of at least two of his children and also a SARS employee, might be involved in or facilitating corrupt activities and may be guilty of living off the proceeds of crime or be involved in money laundering and that this be investigated "in order to institute appropriate criminal justice action".

Makwakwa, Moyane's perceived "hatchet man" at SARS, had been placed in control of the Large Business Centre – a key revenue division of SARS that deals with high-net worth individuals and corporate tax – as part of the commissioner's move to restructure the revenue service. It is a mission Treasury and Finance Minister Pravin Gordhan have repeatedly asked Moyane to freeze, instructions which he has repeatedly ignored.

However, revelations in the report that Makwakwa is linked to several suspicious and possibly highly illegal financial transactions might just prove to be Moyane's personal 9/11.

The bombshell hit on 11 September when the amaBhungane centre for Investigative Journalism revealed in a report in the *Sunday Times* that a banking regulator had picked up, some time ago, several suspicious bank transactions related to Makwakwa and Elskie.

In a memo marked "confidential" the regulator suggested that these transactions – 75 deposits between 1 March 2010 and 31 January 2016 and totalling R785,130.00, were made into Makwakwa's account, of which 48 were cash deposits amounting to R726,400.00 and deposited between 2014 and 2015.

"The volume and value of cash deposits are highly unusual as MJM [Makwakwa] is permanently employed. These aforementioned cash deposits should be investigated to

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determine whether these funds ... received by this SARS employee constitute payments of proceeds of crime arising from corrupt activities as defined in the Prevention and Combatting of Corrupt Activities Act 12 of 2004, in light of the position of authority held by MJM. The exchange of foreign currency should be investigated to establish if there were exchange control contraventions in this transaction," the statement from the banking regulator reads.

SUSPICIOUS AND UNUSUAL CASH DEPOSITS AND PAYMENTS INTO MJM'S ACCOUNT

MJM's personal bank account⁴ is the primary account used to receive and disburse funds. Credits into this account have increased yearly⁵ from R1,358,817.01 in 2010 to R3,418,925.43 in 2015 (approximately 152%). Likewise, MJM's payments have grown over this period, creating a dependency on suspicious cash deposits and payments to maintain his current standard of living. These payments and cash deposits are of concern as they originate from unknown sources and undetermined legal purpose.

"MJM's [Mashudu Jonas Makwakwa's] personal bank account is the primary account used to receive and disburse funds. Credits into this account have increased yearly from R1,358,817.01 in 2010 to R3,418,925.24 in 2015 (approximately 152%). Likewise, MJM's payments have grown over this period, creating a dependency on suspicious cash deposits and payments to maintain his current standard of living. These payments and cash deposits are of concern as they originate from unknown sources and undetermined legal purpose," reads the report.

It is clear from the report that while the Hawks were hounding Gordhan in a very high profile and public manner, Ntlemeza was more than aware of the evidence against Makwakwa and Elskie that had been collected -- and did nothing. Some of the evidence was from cameras installed at various ATMs.

Moyane is believed to have signed for the receipt of the full report on Makwakwa on 17 May. Moyane is also believed to have met with Ntlemeza on 29 August 2016. On 31

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August Makwakwa was presented with a written notice of SARS's intention to suspend him. He was given seven days to present reasons why he should not be suspended. He still remains in his position and is the second most powerful individual at SARS.

Insiders say the fact that Makwakwa has not yet been suspended presents the danger that "he can easily interfere with any investigation into his affairs" and is "the only official on the SARS Exco with some knowledge of tax or the institution itself".

Hawks spokesman Brigadier Hangwani Mulaudzi on Sunday told *Daily Maverick* that "we are not investigating the matter. I assume it is an internal matter and for further details please contact SARS".

SARS had not responded to questions from the *Daily Maverick* at the time of writing.

DA Shadow Minister of Finance, David Maynier, said Moyane had been questioned during a parliamentary standing committee on finance meeting on 23 August about the Makwakwa matter but had been "evasive and simply stated that he would not 'comment on ongoing investigations'".

Follow-up questions, said Maynier, had been referred to senior revenue service officials who "were equally evasive" and repeated that they had no "comment to make on current investigations into individuals or companies".

The banking regulator noted that other "irregular and ad hoc payments from SARS were credited to MJM's personal bank account. The value of these payments for the past two (2) financial years (2014-2015) amounted to R334,459.05 as compared to R83,635.30 between 2012 and 2013."

These payments, said the regulator, "should be investigated to determine whether there were any misrepresentations or fraud on the part of MJM that resulted in SARS making these payments".

According to the regulator, Elskie made three cash deposits between 22 and 24 December 2015 totalling R450,200.00. The deposits were structured into two payments of R160,000 each and one of R130,200.

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"The deposits were made over three consecutive days into three different branches of the same bank, all located within an approximate 10km radius."

The sources of these funds were unknown and the value "suspicious and unusual considering the financial profile of KB".

She allegedly used these proceeds as well as the proceeds from another property to buy new property. The transactions should be investigated, said the banking regulator, to determine "whether the aforementioned conduct, concealment and disguising of the true source of these funds constitute acts of money laundering".

The banking regulator also uncovered a series of transactions it has labelled "suspicious and unusual payments" and relating to the Department of Water Affairs and Forestry and a deposit of R17,872,957.13 into the account of a company, New Integrated Credit Solutions – a debt collection company formerly contracted to SARS.

This total was then moved in a series of payments to five different companies, Mafube Payment Solutions, Arvomark, Street Talk Trading 181, Biz Fire Worx (where Makwakwa was a previous director) and to Mercedes Benz Financial Services. The last payment is believed to have been for a Mercedes Benz C220 BLUETEC for Kelly-Ann Elskie.

New Integrated Credit Solutions had been subcontracted with Mafube to analyse debt data for SARS.

The sensational revelations come after Gordhan's statement that President Jacob Zuma's close friends and associates, the Gupta family, should turn to the country's courts if they felt they had been treated unfairly by the country's banks which had refused to do business with them. It is believed the country's big four banks had been "uncomfortable" with some of the transactions in accounts held by entities linked to the family and that they (the banks) were required to report suspicious and unusual transactions to the Financial Intelligence Centre.

It has not been confirmed at this stage whether the alert to the funds in Makwakwa and his girlfriend's accounts have any link with the Gupta family.

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It was Tom Moyane who in March 2015 lodged a complaint with the Hawks about an apparent "rogue unit" and that has led to the very public hounding of the Minister of Finance as well as several other former members of the SARS executive including Deputy Commissioner Ivan Pillay and group executive, Johann van Loggerenberg. The former SARS members, as well as Gordhan, were recently all ordered to present themselves for "warning statements" at the Hawks headquarters in Pretoria. News that the Hawks were still hounding Gordhan sent the rand into yet another tailspin from which it has not yet quite recovered.

In December 2014 the entire former SARS Exco was driven out of the revenue service after untested allegations emerged in a series of *Sunday Times* stories about an illegal "rogue unit" that had operated at SARS and that had been established during Gordhan's tenure as commissioner.

With regard to the complaint Moyane had lodged, Gordhan said that the question everyone should ask was "why?".

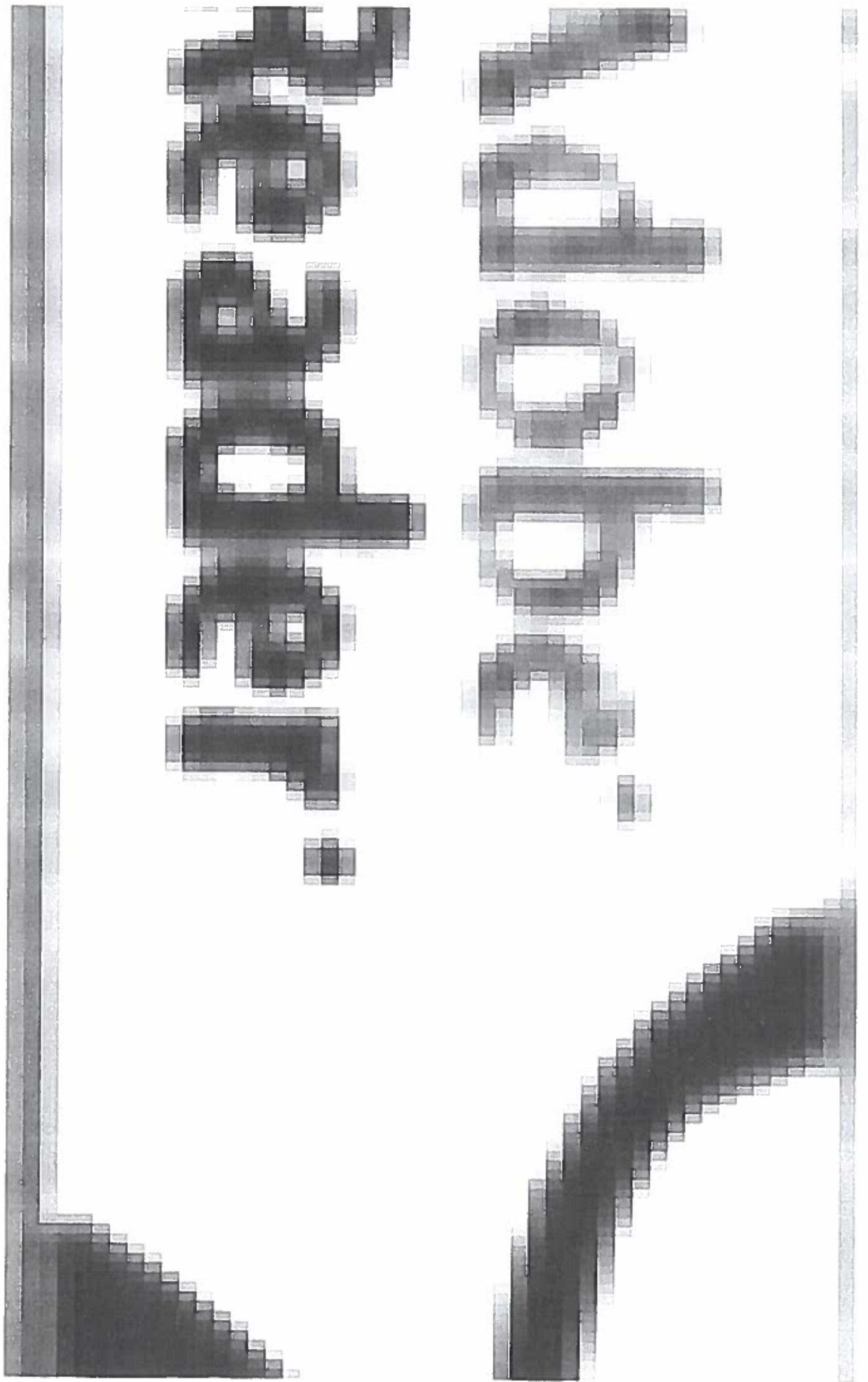
"Since then we have had a newspaper [the *Sunday Times*] that carried out an 18-month campaign against certain individuals. At the end of the 18-month period that newspaper had apologised for what it had done because it didn't have proof for some of the stuff that it was accusing people of. As we sit today, what is the problem? Who is accused of what? What motivates it?"

The revelations by the banking regulator of Makwakwa's alleged criminal behaviour could be a tipping point that results in the collapse of the entire House of Cards that has been constructed around SARS, with a ripple effect on the Hawks, the National Prosecuting Authority and ultimately Zuma. It is only a matter of time before the edifice must crumble and those behind it be exposed. DM

Photo: SARS commissioner Tom Moyane (GCIS), Jonas Makwakwa, the second most senior member of the SARS executive (SARS)

- MARIANNE THAMM
- SOUTH AFRICA


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AFFIDAVIT

I, the undersigned,


NHLAMULO MVELASE

do hereby make oath and say that:

1. I am an adult male with a South African Identity Number 890803 5998 083.
2. I am a junior attorney in the employ of Corruption Watch (RF) NPC.
3. My office is situated at 87 De Korte Street, Braamfontein, Johannesburg, 2017.
4. My contact telephone number is 011 242 3900 and my mobile telephone number is 082 928 1657.
5. Save where I have stated otherwise or where it appears contrary from the context, all facts herein fall within my personal knowledge or have been obtained from records of the Company to which I have had access and are to the best of my knowledge both true and correct.

SCOPE OF THE AFFIDAVIT

6. The affidavit provides the background into allegations of corruption against Mr Tom Moyane, ("Moyane") the CEO and Commissioner of the South African Revenue Services ("SARS").
7. We strongly suspect Moyane of failing to report corruption concerning two SARS employees, Mr Jonas Makwakwa and Ms Kelly-Ann Elskie, a failure which is a criminal offence in terms of Section 34 of the *Prevention and Combatting of Corrupt Activities Act 12 of 2004* ("PRECCA").
8. The allegations of corruption against Makwakwa and Elskie emanate primarily from an article published by the amaBhungane Centre for Investigative Journalism in the *Sunday Times* on 11 September 2016, a copy of which is attached as Annexure "A".


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A further article by Marianne Tham appeared in the *Daily Maverick* also on 11 September 2016 and attached as Annexure "B".

9. We also suspect Mr Moyane of having breached certain provisions of the Financial Intelligence Centre Act, 38 of 2001("FICA"), breaches which carry criminal sanctions.
10. The details of suspected criminal conduct by Mr Moyane is set out in more detail below.

ALLEGATIONS

PRECCA Violation

11. On 17 May 2016, Moyane received a report from the Financial Intelligence Centre ("FIC") detailing fraud and corruption on the part of Mr Makwakwa and Ms Elskie, both SARS employees. The FIC indicated in this report that the allegations should be investigated in order for appropriate criminal justice action to be instituted.
12. Moyane did not report the matter to the police or the Directorate for Priority Crime Investigation ("Hawks"), in breach of Section 34 of PRECCA. We wrote to Moyane enquiring about his failure to report the incidents of corruption, which amounted to well over the R100 000 threshold in PRECCA. A copy of our letter and all annexures are attached marked "C".
13. Our suspicions about Moyane's criminal conduct in failing to report the incidents of corruption to the Hawks were informed by the fact that the spokesperson for the Hawks had confirmed in October 2016, that the Hawks were not investigating the matter. An extract of an article written by Marianne Tham in the *Daily Maverick* on 13 October reads as follows:

"...while both Commissioner Moyane as well as the Hawks, through its spokesperson have denied that the matter has been reported to the Directorate for

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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 DPCI dated 15 September 2016 that the matter has been referred 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]"

14. Moyane responded to our letter to say that he did not report the incidents of corruption to the Hawks because the Hawks had instructed him not to do so. A copy of Moyane's response is attached marked "D".
15. We subsequently wrote to Lieutenant-General Berning Ntlemeza in order to confirm the veracity of Moyane's assertions. Although we received an undertaking from Hawks spokesperson, Brigadier Mulaudzi that a response would be provided by the Hawks, no response was provided. A copy of our letter to the Hawks is attached marked "E".
16. In the circumstances and without confirmation from the Hawks that they had told Moyane not to report the incidents of corruption to the Hawks, we remain with the strong suspicion Moyane has failed to report to the incidents of corruption to the Hawks and is therefore in breach of Section 34 of PRECCA.
17. We have written to Moyane to indicate that we will lodge criminal charges against him in respect of these allegations. A copy of our letter dated 25 November 2016 is attached marked "F".

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FICA Violation

18. In the correspondence marked "C" and "D", we also submitted that Moyane had breached certain provisions of FICA.
19. In this regard, sections 60(1), 60(2) and 29 (4) prohibit the disclosure of confidential information obtained from the FIC except in authorized circumstances and criminal penalties are imposed for the unauthorized disclosure of confidential information. On his own version, Moyane has confirmed that he disclosed the confidential information obtained from the FIC to Makwakwa and Elskie but in Annexure "D, claims to have been authorized to do so.
20. I confirm that this is a factual position which needs be investigated by the police in order to establish whether or not Moyane breached sections 60(1), 60(2) or 29(4) of FICA.

THE CRIMINAL COMPLAINT

I hereby request the South African Police Service to conduct an investigation into this matter as soon as possible.

In summary, the investigation should be into whether Moyane:

- 1.1 breached Section 34 of PRECCA by failing to report incidents of corruption which were brought to his attend to the Hawks;
- 1.2 breached Sections 29(4), 60(1) and 60(2) of FICA by disclosing confidential information obtained from the FIC to Makwakwa and Elskie.

The personal particulars of Tom Moyane are:

Identity number: 530131 5708 088

Residential address: 38 Hyacinth Street, Weltevredenpark, 1709

Residential telephone number: 011 478 5917 / 0116463904 / 011 476 2236

Work telephone number: 012 307 2053


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Mobile telephone number: 082 940 2471 / 082 340 2471


NHLAMULO MVELASE

I certify that:

- I. the Deponent acknowledged to me that:
 - A. he knows and understands the contents of this declaration;
 - B. he has no objection to taking the prescribed oath;
 - C. he considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at **BRAAMFONTEIN** on
8 December 2016.


COMMISSIONER OF OATHS

Liesl Hella Muller
LLB (UP)
Ex-officio Commissioner Of Oaths
Lawyers for Human Rights
4th Floor Heerengracht Building
87 De Korfje Street, Braamfontein
Johannesburg 2001
Tel: 011 339 1960 Fax: 011 339 2665

"A"

12/5/2016

SUNDAY TIMES - Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits

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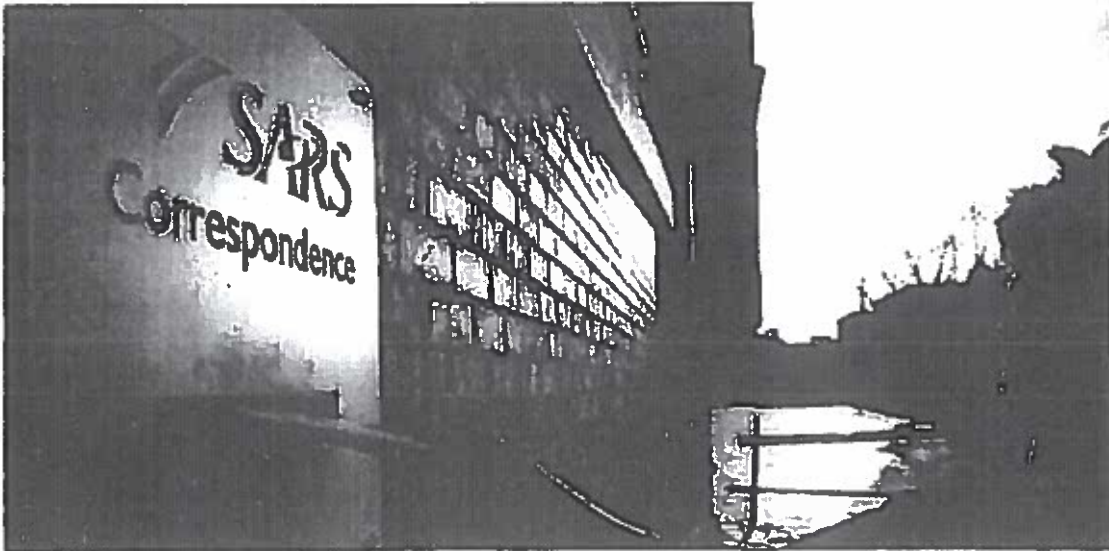
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FROM 13 NOVEMBER 2016

SUNDAY TIMES NEWS BY SUSAN COMRIE, SAM SOLE AND CRAIG MCKUNE, 2016-09-11

Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits



SARS branch. File photo.
Image: Gallo Images/Foto24/Theana Calitz

The second-in-command at the South African Revenue Service has been flagged for "suspicious and unusual" cash payments into his bank account, with a report recommending an investigation to determine if the payments are "proceeds of crime arising from

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12/5/2016

SUNDAY TIMES - Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits

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The report, compiled by a banking regulator, has been handed over to SARS commissioner Tom Moyane.

It alleges that Jonas Makwakwa, the chief officer: business and individual taxes, received unexplained cash deposits and bank transfers into his FNB account totalling R1.2-million between 2010 and January this year.

Investigators also pointed to three cash deposits, totalling R450,200, to Makwakwa's girlfriend's Absa account just before Christmas 2015.

The report, which is only preliminary, relies on bank records for 11 different bank accounts as well as camera footage from banks where the cash deposits were made.

SARS spokesman Sandile Memela declined to comment, but sources said that although the report had been given to Moyane in May, Makwakwa and his girlfriend, Kelly-Ann Elskde, who is also a SARS employee, had remained in their positions.

When contacted on Friday, Makwakwa and Elskde both said the matter was "sub judice" and declined to comment.

Makwakwa has become a powerful figure at SARS. A taxman for 20 years, he shot to prominence after Moyane became a commissioner in late 2014.

Since then, Makwakwa has acted as commissioner when Moyane was away, and has been put in charge of SARS's key revenue-generating unit, the Large Business Centre, which has oversight of large corporations and wealthy individuals.

It is not clear what triggered the investigation into Makwakwa and Elskde, but it is understood that banking regulators became suspicious because of the frequent deposits of large amounts of cash.

When investigators delved into Makwakwa's FNB bank account they identified cash deposits of R785,130 made between 2010 and 2016, most of these - 48 deposits totalling R726,400 - made between 2014 and 2015.

On one occasion Makwakwa was allegedly filmed depositing R68,000 in cash into his own account: In another 34 instances (totalling R606,200) investigators said: "Information suggests that [Makwakwa] conducted these cash deposits in person".

There is also a question mark about a September 2014 credit of R147,850.65 on Makwakwa's account after he exchanged \$13,500.

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FROM 12 NOVEMBER 2016

N.M. 201

12/5/2015

SUNDAY TIMES - Revenue service's No 2 probed for R1.2m in 'suspicious' cash deposits

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by [Makwakwa]".

Although the investigation is still at an early stage, the trail of payments appears to have also led investigators to an Absa account, a car and a property in Elskie's name.

She is believed to be Makwakwa's common-law wife and the mother of two of his children.

In particular, investigators raised questions about three large cash deposits - two of R160,000 each and one of R130,200 - that appeared to be inconsistent with Elskie's profile as a mid-level employee in SARS's legal department.

The deposits were made on December 22, 23 and 24 last year at different banks in a 10km radius. Cameras are said to have filmed Elskie making two of the deposits.

Neither Makwakwa nor Elskie has given an explanation for these payments - the report merely records them as "suspicious and unusual" and recommends that further investigation be done.

Investigators also raised concerns about R480,000 that was transferred via EFT into Makwakwa's bank account in three tranches in April and May last year - almost half of which appears to have been used to buy a Mercedes for Elskie.

Through a complex network of bank accounts and companies, investigators traced these payments back to a February 2015 payment of R17.87-million by the Department of Water and Sanitation in favour of a debt-collection company called New Integrated Credit Solutions.

It is not clear what the connection is between a chain of six different companies that have been identified in the report, which include several debt-collection companies and a company called Biz Fire Worx, where Makwakwa was once a director. It sells fire safety equipment.

In most instances, as soon as payments arrived in one bank account, the money was immediately transferred to the next, with a slice being deducted by each company in the chain. On the day after New Integrated Credit Solutions received its payment from the department, it transferred precisely 25% - R4,468,239.28 - to a company called Mahube Payment Solutions.

Asked about this, New Integrated Credit Solutions chairman Baker Maseko said the payment would most likely have been as part of its subcontracting arrangement with Mahube to do data analysis on debt data. He said although SARS was a former client, it had not done business with the tax entity for four or five years.

Mahube has an indirect link with SARS through the company's sole director, Patrick Monyeki, who is said to be a close friend of Moyane.

Monyeki, an information technology veteran, has garnered controversy in relation to two major government IT contracts.

In 2013, it was reported that Monyeki, as a technical adviser, had allegedly played a crucial role in the decision to award a lucrative contract for the distribution of South African Social Security Agency grants to a company called Cash Paymaster Services. At the time, the bid committee was chaired by Moyane. Monyeki did not respond to the claims when they

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More recently it emerged that Monyeki has an interest in the company that was awarded a controversial R378-million contract to supply an "inmate management system" to the Department of Correctional Services.

The contract, with Integritron Integrated Solutions, is the subject of litigation and wrangling with the National Treasury, which wants it cancelled.

Monyeki's attorney, Donovan Reddy of BBM Law, responded to questions: "Your enquiries relate to transactions that occurred almost 18 months ago. Our client does not readily have this information to hand. The timeframe imposed on our client to reply is wholly insufficient ... Furthermore, our client is also not able to respond fully and fruitfully until a proper disclosure of the documents you mention and rely on, has been made."

Several other companies were involved in the chain of payments. The final payment in the chain, of R600,000, appears to have been made to Biz Fire Worx. In the two months after Biz Fire Worx received this payment, the company made three large payments into Makwakwa's FNB account, totalling R480,000. One of the company's directors, Lokisane Molea, confirmed receiving a R600,000 payment, but said this was a loan.

Asked about the R480,000 on-payment to Makwakwa, Molea claimed he had used this new loan to repay a series of old loans he had taken from Makwakwa, starting in 2009.

Less than a week after receiving this payment, in May 2015, Makwakwa appears to have used R200,000 to buy a Mercedes-Benz C220 for Elskie.

In February, amaBhungane reported that SARS insiders were concerned that Moyane and Makwakwa had overly-centralised influence over tax settlement negotiations worth billions of rands. Moyane, Makwakwa and SARS denied this and launched a R4-million defamation suit which amaBhungane is defending.



The amaBhungane Centre for Investigative Journalism, an independent non-profit, produced this story.

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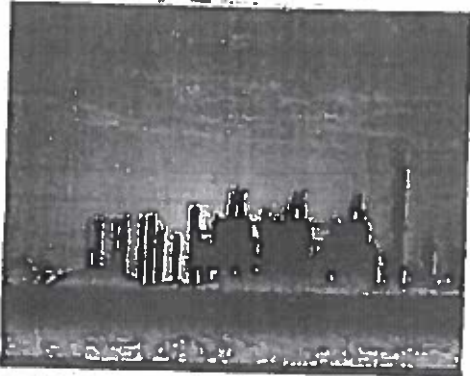
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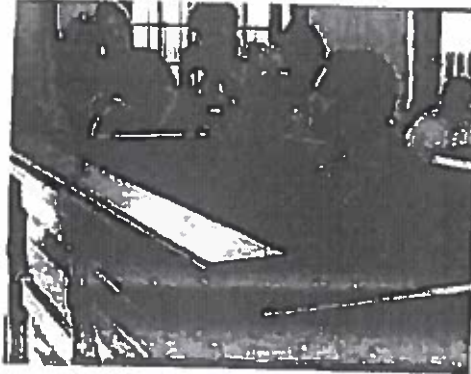
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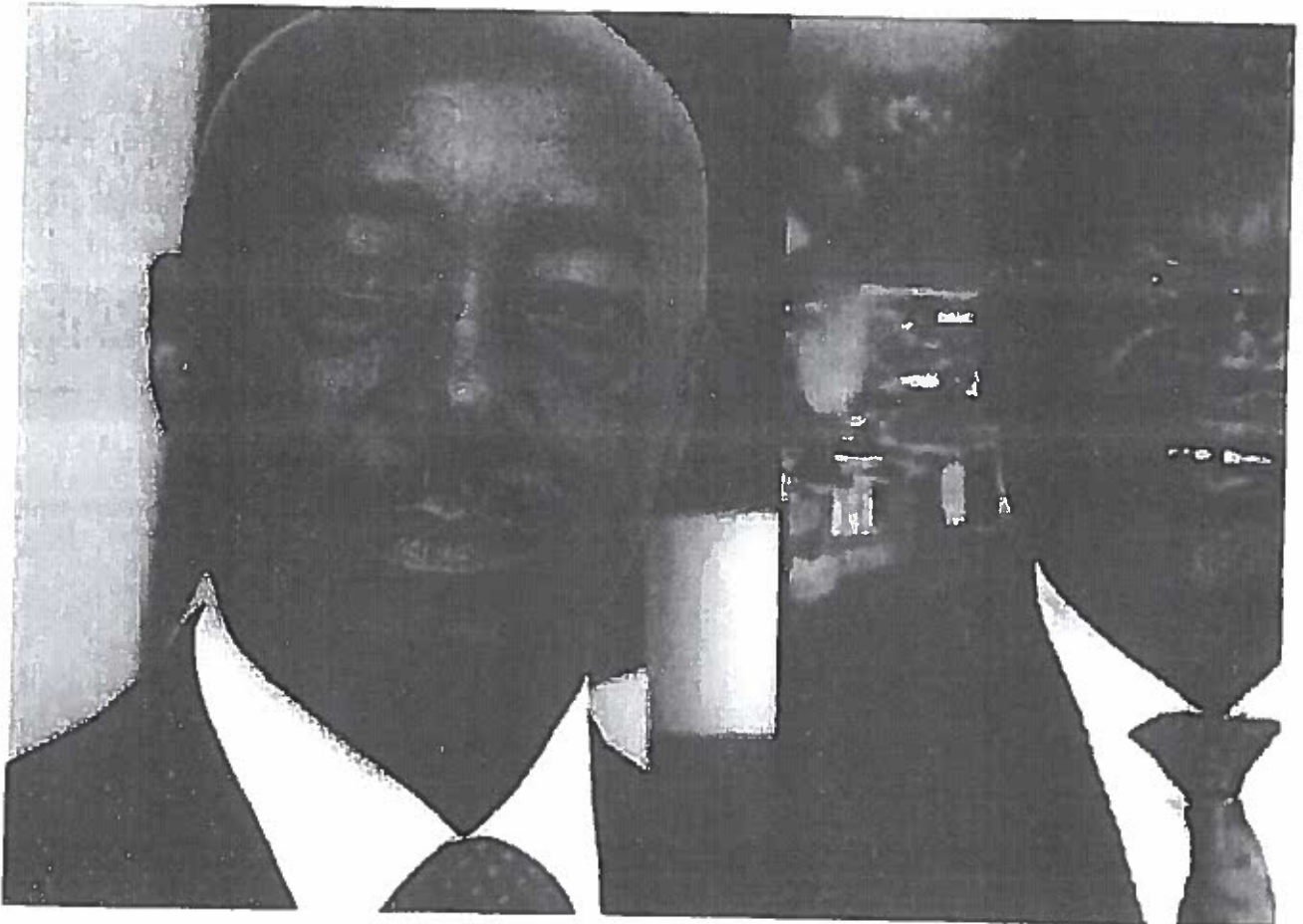
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DAILY MAVERICK

SOUTH AFRICA

House of Cards: SARS's 9/11 as pack comes tumbling down in probe of suspicious deposits

- MARIANNE THAMM
SOUTH AFRICA
11 SEP 2018 06:22 (SOUTH AFRICA)



SARS Commissioner Tom Moyane and Hawks head Lieutenant-General Mthandazo Ntlemeza have known for more than three months about the alleged

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criminal behaviour of Jonas Makwakwa, the second most senior member of the SARS executive, who has reportedly been caught by ATM cameras feeding wads of cash into his personal account as well as receiving other deposits amounting to at least R1.2-million. Dally Maverick is in possession of a report by a banking regulator that suggests these "suspicious and unusual cash deposits" into the personal accounts of Makwakwa and his girlfriend Kelly-Ann Elskie be investigated. Yet the Hawks claim this is an "internal matter" at SARS. By MARIANNE THAMM.

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However, revelations in the report that Makwakwa is linked to several suspicious and possibly highly illegal financial transactions might just prove to be Moyane's personal 9/11.

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"The volume and value of cash deposits are highly unusual as MJM [Makwakwa] is permanently employed. These aforementioned cash deposits should be investigated to

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Insiders say the fact that Makwakwa has not yet been suspended presents the danger that "he can easily interfere with any investigation into his affairs" and is "the only official on the SARS Exco with some knowledge of tax or the institution itself".

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The banking regulator noted that other "irregular and ad hoc payments from SARS were credited to MJM's personal bank account. The value of these payments for the past two (2) financial years (2014-2015) amounted to R334,459.05 as compared to R83,635.30 between 2012 and 2013."

These payments, said the regulator, "should be investigated to determine whether there were any misrepresentations or fraud on the part of MJM that resulted in SARS making these payments".

According to the regulator, Elskie made three cash deposits between 22 and 24 December 2015 totalling R450,200.00. The deposits were structured into two payments of R160,000 each and one of R130,200.

N.M. 

"The deposits were made over three consecutive days into three different branches of the same bank, all located within an approximate 10km radius."

The sources of these funds were unknown and the value "suspicious and unusual considering the financial profile of KE".

She allegedly used these proceeds as well as the proceeds from another property to buy new property. The transactions should be investigated, said the banking regulator, to determine "whether the aforementioned conduct, concealment and disguising of the true source of these funds constitute acts of money laundering".

The banking regulator also uncovered a series of transactions it has labelled "suspicious and unusual payments" and relating to the Department of Water Affairs and Forestry and a deposit of R17,872,957.13 into the account of a company, New Integrated Credit Solutions – a debt collection company formerly contracted to SARS.

This total was then moved in a series of payments to five different companies, Mafube Payment Solutions, Arvomark, Street Talk Trading 181, Biz Fire Worx (where Makwakwa was a previous director) and to Mercedes Benz Financial Services. The last payment is believed to have been for a Mercedes Benz C220 BLUETEC for Kelly-Ann Elskie.

New Integrated Credit Solutions had been subcontracted with Mafube to analyse debt data for SARS.

The sensational revelations come after Gordhan's statement that President Jacob Zuma's close friends and associates, the Gupta family, should turn to the country's courts if they felt they had been treated unfairly by the country's banks which had refused to do business with them. It is believed the country's big four banks had been "uncomfortable" with some of the transactions in accounts held by entities linked to the family and that they (the banks) were required to report suspicious and unusual transactions to the Financial Intelligence Centre.

It has not been confirmed at this stage whether the alert to the funds in Makwakwa and his girlfriend's accounts have any link with the Gupta family.

N.M.
10

It was Tom Moyane who in March 2015 lodged a complaint with the Hawks about an apparent "rogue unit" and that has led to the very public hounding of the Minister of Finance as well as several other former members of the SARS executive including Deputy Commissioner Ivan Pillay and group executive, Johann van Loggerenberg. The former SARS members, as well as Gordhan, were recently all ordered to present themselves for "warning statements" at the Hawks headquarters in Pretoria. News that the Hawks were still hounding Gordhan sent the rand into yet another tailspin from which it has not yet quite recovered.

In December 2014 the entire former SARS Exco was driven out of the revenue service after untested allegations emerged in a series of *Sunday Times* stories about an illegal "rogue unit" that had operated at SARS and that had been established during Gordhan's tenure as commissioner.


With regard to the complaint Moyane had lodged, Gordhan said that the question everyone should ask was "why?".

"Since then we have had a newspaper [the *Sunday Times*] that carried out an 18-month campaign against certain individuals. At the end of the 18-month period that newspaper had apologised for what it had done because it didn't have proof for some of the stuff that it was accusing people of. As we sit today, what is the problem? Who is accused of what? What motivates it?"

The revelations by the banking regulator of Makwaka's alleged criminal behaviour could be a tipping point that results in the collapse of the entire House of Cards that has been constructed around SARS, with a ripple effect on the Hawks, the National Prosecuting Authority and ultimately Zuma. It is only a matter of time before the edifice must crumble and those behind it be exposed. DM

Photo: SARS commissioner Tom Moyane (GCIS), Jonas Makwaka, the second most senior member of the SARS executive (SARS)

- MARIANNE THAMM
- SOUTH AFRICA

N.M. 

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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, Makwakwa 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]

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21 February 2017

Brigadier R M Makinyane
Section Head: Serious Economic Offences Unit
Directorate for Priority Crime Investigation (Hawks)
Per email: makinyaneM@saps.gov.za

Dear Brigadier R M Makinyane

Corruption Watch Enquiry: Investigations against 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.
5. On Monday, 8 February 2017, we met with you at your offices regarding the three criminal complaints under the following case numbers; 217/12/2016, 218/12/2016, and 222/12/2016.

6. At this meeting you advised that the Hawks were handling an inquiry reported by the Financial Intelligence Centre (FIC) against the Mr Jonas Makwakwa and Ms Kelly-Ann Elskie.
7. Furthermore, at the meeting you indicated that following the inquiries it will then be determined by the Hawks what the steps to take moving forward.
8. Please kindly provide us with any further developments that have occurred in this matter following our meeting on 8 February 2017.
9. Please let us have your feedback on or before Friday, 24 February 2017. Kindly note that in the interests of transparency, we may publish this correspondence and any response thereto.
10. We hope you find the above in order.

Yours faithfully,

Nhlamulo Mvelase
**Attorney: Legal and Investigations
Corruption Watch**
[Unsigned due to electronic transmission]

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29 March 2017

Robert McBride
Executive Director
Independent Police Investigative Directorate ("IPID")
Per email: rmcbride@ipid.gov.za

And to: Tshiamo Mahibila
Personal Assistant to Mr McBride
Per email: tmahibila@ipid.gov.za

And to: Berning Ntlemeza
National Head: Directorate for Priority Crime Investigation (Hawks)

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

Dear Sirs/ Madam,

Corruption Watch Enquiry: Investigations against 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.
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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 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 Makwakwa and Ms 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. Corruption Watch is concerned about the manner in which the Hawks are handling the FIC report which was referred to them in May 2016 as well as the criminal complaints which we lodged in December 2016.
13. We understand that an "inquiry" is being made into the allegations of corruption against Makwakwa and Elskie despite the FIC having compiled all the evidence relating to the corrupt activities in its May 2016 report. In regard to our criminal complaint against Moyane, we are uncertain about what steps are being taken, if any, to investigate our complaint.
14. It is evident from PRECCA that the Hawks are mandated and obliged to investigate corruption and any failure by a head of an institution to report corrupt activities. Sections 16 (1) and (2) and 17 of the South African Police Services Act 68 of 1995 (as amended) ("SAPS Act") also reinforce such mandate.
15. We are therefore very concerned about the failure of the Hawks to conduct an investigation into Makwakwa, Elskie and Moyane. As complainants in the criminal

complaints against them, we are entitled to request and receive information about investigations into these matters; however, we have been provided with little or no information.

16. As the institution responsible for oversight over the South African Police Service, which in terms of section 5(1)(d) of the SAPS Act, includes the Hawks, we request IPID to enquire into the failure of the Hawks to properly investigate Makwakwa, Elskie and Moyane as well as their failure to provide us with information relating to any steps they have or have not taken in respect of our criminal complaints.
17. We note that the key objectives of the Independent Police Investigative Directorate Act 1 of 2011 ("IPID Act") are to ensure independent oversight of the SAPS and to enhance accountability and transparency by the SAPS in accordance with the principles of the Constitution. We therefore hope that IPID will consider our request and obtain and share information about whether or not the Hawks are investigating the FIC Report and our related criminal complaints.
18. Kindly provide us with a response by Friday, 7 April 2017. In addition, please note that in the interests of transparency, we may publish this correspondence and any response thereto.
19. We trust that you find the above in order.

Yours faithfully,

Leanne Govindsamy / Nhlamulo Mvelase
Corruption Watch
[Unsigned due to electronic transmission]

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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

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 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]

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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.
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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]

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30 October 2017

Mr Tom Moyane
Commissioner
South African Revenue Services
Per email: Tmoyane@sars.gov.za

And to: Mr Malusi Gigaba,
Minister of Finance

C/o. Ms Vuyiswa Monye
Personal Assistant to the Minister of Finance
Per email: Vuyiswa.Monye@treasury.gov.za

Dear Commissioner Moyane

Corruption Watch Enquiry: Mr Makwakwa and Ms Elskie

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.
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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.

5. We confirm that we wrote to you on 25 October 2016 in order to obtain clarity about your conduct in relation to the Financial Intelligence Centre ("FIC") report dated 17 May 2016, in which two SARS employees, Mr Makwakwa and Ms Elskie were implicated. For ease of reference our correspondence is attached marked "A".
6. We confirm that you responded to us on 27 October 2016 in order to explain your conduct in relation to the handling of the FIC report and to indicate what steps were being taken in relation to the two employees. We attach this correspondence as annexure "B".
7. In your response, you stated that Makwakwa was suspended on 15 September 2016 and Elskie on 10 October 2016. You indicated further that Hogan Lovells (South Africa) was appointed to investigate the allegations against Makwakwa and Elskie and that disciplinary proceedings would be initiated against the two employees once the investigation was complete.
8. To date, we have not received further information about the investigation or the disciplinary proceedings. We have however, been informed that Makwakwa has returned to work and that Elskie is due to return to work today.
9. In the circumstances, please respond to the following:
 - 9.1. Has the suspension against Makwakwa and Elskie been lifted and have they returned to work as employees of SARS?
 - 9.2. If so, has the investigation by Hogan Lovells and internal disciplinary proceedings against the two employees been completed and what was the outcome of both the investigation and internal disciplinary proceedings?
10. We confirm that we will also be following up with the Hawks and the National Prosecuting Authority on the status of the criminal investigation and prosecution of matters relating to Makwakwa, Elskie and yourself.
11. Finally, please 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]

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
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25 January 2018

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 RESPONSE RE PARLIAMENTARY INQUIRY INTO SARS

1. We refer to our letter dated 1 November 2017, a copy of which is attached for ease of reference.
2. We confirm that we have not received a response to our letter and kindly request that paragraphs 15, 16 and 17 be considered in particular and that the Committee indicate the outcome of any inquiry and/or recommended sanctions in relation to:
 - 2.1. Processes followed by SARS and Hogan Lovells which have resulted in Makwakwa being cleared of all wrong doing and being allowed to return to work;
 - 2.2. The delays by the Hawks and the NPA in investigating and prosecuting Makwakwa and Elskie.

2.3. Criminal charges which we laid against Mr Moyane, which the NPA has declined to prosecute. We attach in this regard, a copy of a letter which we have sent to the NPA dated 25 January 2018.

3. We look forward to the Committee's response.
4. 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]



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

LEGAL SERVICES

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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

A handwritten signature in black ink, appearing to read 'F S Jenkins', written over a circular stamp or seal.

Adv F S Jenkins
Senior Parliamentary Legal Adviser

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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]