

Office of the DPCI Judge



OFFICE OF THE

DPCI JUDGE

Directorate for Priority
Crime Investigation Judge

Zero-tolerance for the culture of impunity

2019/2020

Annual Report

Private Bag X 102 Pretoria 0001, 246 Paul Kruger Street, 1st Floor Protea Towers Building, Pretoria

Tel: (012) 324 8417 Fax: (012) 324 7435,

Website: www.dpcijudge.gov.za

Email address: Complaints@dpcijudge.gov.za



Zero-tolerance for the culture of impunity

Private Bag X 102 Pretoria 0001, 246 Paul Kruger Street, 1st Floor Protea Towers Building, Pretoria
 Tel: (012) 324 7435/8417 Fax: (012) 324 7435, Website: www.dpcijudge.gov.za
 Email address: Complaints@dpcijudge.gov.za

TABLE OF CONTENTS

	PAGES
List of abbreviations/acronyms/definitions	3-4
Foreword by the Minister of Police	5-6
Preface by the Judge	7-9
Introduction	10
Legislative mandate of the Office of the DPCI Judge	10-11
National Development Plan (NDP)	11
Functions of the Directorate for Priority Crime investigation (DPCI)	11-12
Founding Charter and Powers of the DPCI Judge	12-13
Chapter 9 Institutions and Key Stakeholders	14
Capacity (strengthening) of the Office of the DPCI Judge	15
Reporting	16
Strategic overview: Vision, Mission and Objectives of the Office	16-17
Values and Principles	18
Corporate Identity	18
Office of the DPCI Structure	19
Risk Management	20
Securing Office Accommodation	20-21
Post Establishment	21-22
Annual Operational Budget	22-24
Public Awareness Campaign	24-31
Performance Overview of the Office in terms of the Annual Performance Targets	
Program 1: Administration	31
Sub-Programme 1.1: Office Management	31-33

Sub-Programme 1.2: Finance	33
Sub-Programme 1.3: Marketing of the Office	33
Programme 2: Investigation	34
Sub-Programme 1.1 Case Management System	34
Complaints Received	34-37
Sub-Programme 1.2: Investigated Complaints	38
Investigated Complaints received falling within scope and mandate	38
Pending complaints falling within mandate	38
Complaints Falling Within Mandate Finalised By Investigators But Not Yet Signed Off By The DPCI Judge	38
Pending Complaints Falling Within Mandate	38
Complaints Outside Mandate Finalised And Signed Off By The DPCI Judge	38
Complaints Outside Mandate Finalised By Investigators But Not Yet Signed Off By The DPCI Judge	38
Pending Complaints Falling Within Mandate	39
Complaints referred to other institutions	39-41
Referrals of complaints from the previous financial year	39-41
Operational Challenges	41
Report of Few High Profile Cases	41-62
The issue of Referrals	62-66

LIST OF ABBREVIATIONS AND ACRONYMS

AG	: The Auditor General
APP	: Annual Performance Plan
BID	: Bid Adjudicating Committee
C/DMC	: Central/Departmental Moderating Committee
CAPT	: Captain
CEO	: Chief Executive Officer
CFO	: Chief Financial Officer
CGE	: The Commission for Gender Equality
CJ	: Chief Justice
CMC	: Central Moderating Committee
CMS	: Case Management System
Col	: Colonel
Con-Court	: Constitutional Court
CSPS	: Civilian Secretariat for Police Services
CST	: Constable
CT	: Cape Town
DPCI	: Directorate for Priority Crime Investigation (the Hawks)
DPP	: Director of Public Prosecutions
DPW	: The Department of Public Works
HR	: Human Resource
IEC	: The Independent Electoral Commission
IPID	: Independent Police Investigative Directorate
JICS	: Judicial Inspectorate of Correctional Services
Lt Gen	: Lieutenant General
Maj Gen	: Major General
MEC	: Member of the Executive Council

MPTA	: Mpumalanga Tourism and Parks Agency
NDP	: National Development Plan
NPA	: National Prosecuting Authority
O/DPCI/J	: Office of the Directorate for Priority Crime Investigation (Hawks Ombud)
OCJ	: Office of Chief Justice
PA	: Personal Assistant / Executive Assistant
PFMA	: Public Finance Management Act
PMDS	: Performance Management Development System
PP	: Public Protector
PSIRA	: Private Security Industry Regulatory Authority
PTA	: Pretoria
SACP	: South African Communist Party
SAHRC	: The South African Human Rights Commission
SAPS	: South African Police Service
SAPS/DR	: South African Police Service Discipline Regulations
SARS	: South African Revenue Service
SCM	: Supply Chain Management
SGT	: Sergeant
UMC	: Unit Moderation Committee
W/O	: Warrant Officer
YCLSA	: Young Communist League of South African



Zero-tolerance for the culture of impunity

Private Bag X102 PRETORIA 0001, 246 Paul Kruger Street, 1st Floor, Protea Towers Building, PRETORIA.
Tel: (012) 324 7435/ 8417, Fax (012) 324 7435 Website: www.dpcijudge.gov.za,
Email address: Complaints@dpcijudge.gov.za



Foreword by the Minister

This Annual Report gives an account of the performance of the Office of the DPCI Judge (O/DPCI/J or Hawks Ombud) in accordance with its legislative mandate which is circumscribed in section 17L of the South African Police Service Act, 68 of 1995.

The civilian oversight that is exercised by this Office over the Hawks is key in giving effect to the rights which are entrenched in the Constitution of the Republic of South Africa, 108 of 1996. The Office of the DPCI Judge has ensured that the rights of aggrieved ordinary members of the public and equally members of the Hawks are protected through fair, transparent but uncompromising investigation and adjudication of complaints.

The Ministry of Police is enjoined by the South African Police Service Act (section 17L(12)) to ensure that the DPCI Judge has adequate resources to perform his or/ her functions. The Minister will continue to support the Office. This Report reflects some of the challenges that the Office experienced in the pursuit of its legislative mandate but they are by no means insurmountable.

The resources allocated to the DPCI Judge Office were fruitfully utilised in accordance with the Public Finance Management Act (PFMA) in conjunction with the Civilian

Secretariat for Police Service which contributed in the Department of Civilian Secretariat for Police Service attaining an unqualified audit.

I would like to express my sincere gratitude to the DPCI Judge and his functionaries for their gallant effort in serving the people of South Africa, particularly the less privileged, in the spirit of Batho Pele.

It is my pleasure to table the Office of the DPCI Judge's Annual Report for 2019/2020.



Hon. Minister B Cele

Minister of Police

Date:

29/09/2020



Zero-tolerance for the culture of impunity

Private Bag X 102, PRETORIA, 0001, Paul Kruger Street, 1st Floor, Protea Towers Building, PRETORIA.
Tel: (012) 324 8417, Fax (012) 324 7435, Website: www.dpcijudge.gov.za,
Email address: Complaints@dpcijudge.gov.za

PREFACE TO THE 2019/2020 ANNUAL REPORT



PURPOSE AND MANDATE

1. The purpose of this Report is to give an account to Parliament, in the form of this honourable body, the Portfolio Committee on Police, in terms of section 17L(9) of the South African Police Service Act, Act 68 of 1995.
2. During the year under review, spurred on by its mantra: "Zero tolerance for the culture of impunity", the Office of the DPCI Judge continued to deliver to the best of its capability on its legislative mandate, a complaints mechanism institution, which is succinctly captured in s 17L(4) in these terms:
"(4) The retired judge may receive complaints in the prescribed form and manner from:
(a) any member of the public who can provide evidence of a serious and or unlawful infringement of his or her rights caused by an investigation by the Directorate [the Hawks]; or

- (b) any member of the Directorate [the Hawks] who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation."

OPERATIONAL CHALLENGES

3. The Secretary for Police has not complied with the letter and spirit of s 17L(13) of SAPS Act when it pertains to budgeting matters. This sections provides that:
"(13) An annual operational budget shall be prepared by the Secretary in consultation with the retired judge and provided for under the budget for the Secretariat for the specific and exclusive use of the official duties of the retired judge and may not be used for any other purpose."
4. At no stage has the Chief Financial Officer (CFO) or even someone in his office at the level of Director consulted with the O/DPCI/J on this budgetary prescripts. Junior officers would present the Office with a fait accompli (a fixed amount) budget within which to allocate amounts for various heads of expenditure. If the O/DPCI/J in its inputs exceeds the predetermined amount the Secretary would disallows or ignore it.
5. Section 17L(7A) of the SAPS Act provides that:
"The retired judge may request information from any member of the Service for purposes of any investigation by that judge and the refusal to comply with such request shall be a criminal offence" with certain sanctions. On occasion when we sought "information" from "the Service" it was erroneously construed as seeking advice or an opinion from SAPS (or the Service). The O/DPCI/J does not regard such a response as a "refusal" to cooperate but as a misdirection. Looking at the organogram of our Office it will be observed that we have no legal advisor or researcher nor Human Resource officer to assist to source the information. On at least two such occasions the O/DPCI/J's own research revealed that the requisitioned information was located within SAPS, and at their fingertips. The point made is no more than to say that the lack of capacity delays the completion of Reports to the prejudice of the people we serve. The O/DPCI/J does not have to be reduced to the status of beggars.

THE OFFICE ACCOMMODATION ISSUE


6. The tribulations with the office accommodation of the O/DPCI/J both in Pretoria and Cape Town has been elaborately documented previously. However, we have an obligation to report, briefly, that the situation has not changed. We are entangled in red tape because the Department of Public Works (DPW) keep on shifting the goalposts:
 - 6.1 In Cape Town we were evicted from our leased premises in Pinnacle Building on 31 December 2019. Since then we have been squatting in Custom House (Regional Offices of DPW) since 21 January 2019. We are using two offices for three employees. The second office is also used to store our office furniture and other equipment, brought from the Pinnacle Building.

6.2 In Pretoria we have four offices and a small boardroom now converted into an office for the PA and an investigator. With eight of us this is a nightmare as we also require storage space for our files. This straightforward issue of acquiring additional office space contiguous to ours has dragged on from December 2017.

CAPACITY CONSTRAINTS

7. The critical lack of personnel capacity is common knowledge and will not burden this Report. On an encouraging note, however we feel relieved to report that the following appointments were made after more than two years of trying:
 - 7.1 A Director, who acts as a CEO, Adv Tshepo Paul Boikanyo, on 01 April 2020.
 - 7.2 An Executive Assistant (PA), Mr Collen Madimetja Latakgomo, on 01 May 2020; and
 - 7.3 Mr Masibulele Zwelithini Mkuzo, an Assistant Director Investigations, for the Cape Town office, on 01 April 2020.
8. The appointment of the Director and the PA has to a large extent freed the DPCI Judge from administrative duties to concentrate/focus on the adjudication of the complaints mechanism, his core function. The investigator's appointment has obviated the needless travel and expense from Pretoria to Cape Town for investigations. The immediate spin-off of the appointments is that the backlog is being whittled down and Complaint Reports are completed more expeditiously.
9. Honourable Chairperson may I take this opportunity to convey my appreciation to the functionaries of the Office of the DPCI Judge (and marketing section of the Secretariat) for their unstinting all-rounder roles they had to play and complement each other to compensate for the lack of personnel capacity.

May I humbly present the Annual Report for 2019/2020 to this august House.


Judge F Diale Kgomo
Head: O/DPCI/J
Date: 17/09/2020



Zero-tolerance for the culture of impunity

Private Bag X 102, PRETORIA, 0001, Paul Kruger Street, 1st Floor, Protea Towers Building, PRETORIA.
Tel: (012) 324 8417, Fax (012) 324 7435, Website: www.dpcijudge.gov.za,
Email address: Complaints@dpcijudge.gov.za

ANNUAL REPORT FOR THE PERIOD 01 APRIL 2019 TO 31 MARCH 2020

INTRODUCTION

1. This is the Eight Annual Report of the Office of the Directorate for Priority Crime Investigation Judge (DPCI Judge or O/DPCI/J/Hawks Ombud) covering the period 01 April 2019 to 31 March 2020. The Seventh Annual Report which covered the period 01 April 2018 to 31 March 2019 and the Sixth Annual Report for 01 April 2017 to 31 March 2018 were prepared by the present incumbent namely, Judge F. Diale Kgomo, who was appointed on the 06 October 2017.
2. The Annual Report covers the following areas of performance of the O/DPCI/J: Administration; Finance Management; Marketing of the Office (Public Awareness Campaigns) and the investigation of specific complaints reported to the Office and preparing reports in respect of completed investigations and the processing of referrals in respect of complaints over which the Office has no mandate or jurisdiction.
3. The devised Annual Performance Plan sets out the performance targets to be achieved pertaining to the abovementioned areas in order to gauge the level of performance of the Office.

LEGISLATIVE MANDATE OF THE O/DPCI/J

4. The mandate of the O/DPCI/J is to investigate complaints from members of the public in respect of serious and unlawful infringement of their rights caused by an

investigation conducted by the Hawks in terms of sub-section 17L(4)(a) of the South African Police Act (SAPS Act); and to investigate complaints by members of the Hawks in respect of improper influence or interference with their investigation emanating from their colleagues or of a political nature or other kind, in terms of sub-section 17L(4)(b) of the SAPS Act. The DPCI Judge is therefore, in common parlance, a Hawks Ombud.

5. Our strategic outcome goal which is summarised in our Vision and Mission is to ensure a transparent and human rights oriented approach to investigations done by the Hawks and an independent, effective and competent Hawks Directorate that is capable of executing its mandate without infringing the rights of members of the public and without them (the Hawks) being subjected to any undue influence or interference in their investigations. See also in this regard **Glenister v/s President of the Republic of South Africa (Glenister II) 2011 (3) SA 347 (CC)** at para 147 (pronouncement by Ngcobo CJ) and paras 246 and 247 (the pronouncement by Moseneke DCJ and Cameron J).

NATIONAL DEVELOPMENT PLAN (NDP)

6. The Office of the DPCI Judge subscribes fully to the salutary introductory pronouncements in Chapter 14 (P446) of the National Development Plan (NDP) dealing with "Fighting Corruption". It proclaims loudly:
"Poor governance can critically undermine national development. For a more effective state, there must be accountability. Accountability refers to institutionalised practices of giving account of how assigned responsibilities are carried out and public resources used. In a democracy it is crucial for political leaders and public officials to account to the citizens for their actions. This is achieved through a system of institutional checks and balances including Parliament, oversight institutions and the judiciary. The Constitution calls for public servant to maintain a high standard of professional ethics. Political leaders and public officials should conduct themselves at all times in a manner that would bear the closest public scrutiny. Building integrity is an essential component of achieving good governance."

FUNCTIONS OF THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (HAWKS)

7. The Directorate for Priority Crime Investigation (DPCI or the Hawks) is established in terms of Section 17C of the SAPS Act; as amended. Its functions are best described

in **Helen Suzman Foundation v/s President of the Republic of South Africa & others 2015 (2) SA 1 (CC)** at paras 46 and 95 where Mogoeng CJ pronounced:

"(46) Members of the DPCI must always prove to be above reproach men and women of integrity. And this underscores the need for integrity-testing to obviate the abuse of power and victimisation of innocent citizens by members of the DPCI. While it is quite fitting to be on high alert about the possible manipulation and abuse of the system by anybody, including political executives, it is equally important that the public and even senior politicians themselves be protected from the possible abuse, blackmailing and victimisation by or through the DPCI or its individual members".

"(95) National priority offences are defined as 'organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in s 16 (1)'. Section 16 lists a series of offences, including corruption, which constitute national priority offences. A concern was raised that some of those national priority offences do not deserve the attention of an anticorruption agency if that agency were to pay adequate attention to its core mandate. This is not correct. The DPCI has the primary duty to prevent, combat and investigate those national priority offences that are intimate to its core business like corruption, crimes against humanity, organised crime or serious commercial crime 'which in the opinion of the national head of the Directorate need to be addressed by the Directorate'. It is the directorate itself that has to ensure that its primary responsibilities are by no means compromised. Barring other considerations, this guarantees the operational independence of the DPCI".

FOUNDING CHARTER AND POWERS OF THE DPCI JUDGE

8. Section 17L(1)(a) of the SAPS Act provides that the Minister of Police shall, in consultation with the Minister of Justice and the Chief Justice, appoint a retired Judge to investigate complaints referred to in sub-sections 4 (a) and (b) of the Act. The DPCI Judge is accorded the following powers in terms of sections 17(L)(7),(7A) and (8) of the SAPS Act:

"(7) The retired judge may request and obtain information from the National Director of Public Prosecutions in so far as it may be necessary for the judge to conduct an investigation.

(7A) The retired judge may request information from any member of the Service for purposes of any investigation by that judge and the refusal to comply with such a request shall be a criminal offence for which a person, upon conviction, may be

sentenced to a fine or imprisonment or to both a fine and imprisonment of two years.

(8) To the extent that it is reasonably necessary for the performance of the functions of the retired judge, he or she-

(a) may obtain information and documents under the control of the Service;

(b) may enter any building or premises under the control of the Service in order to obtain such information and documents; and

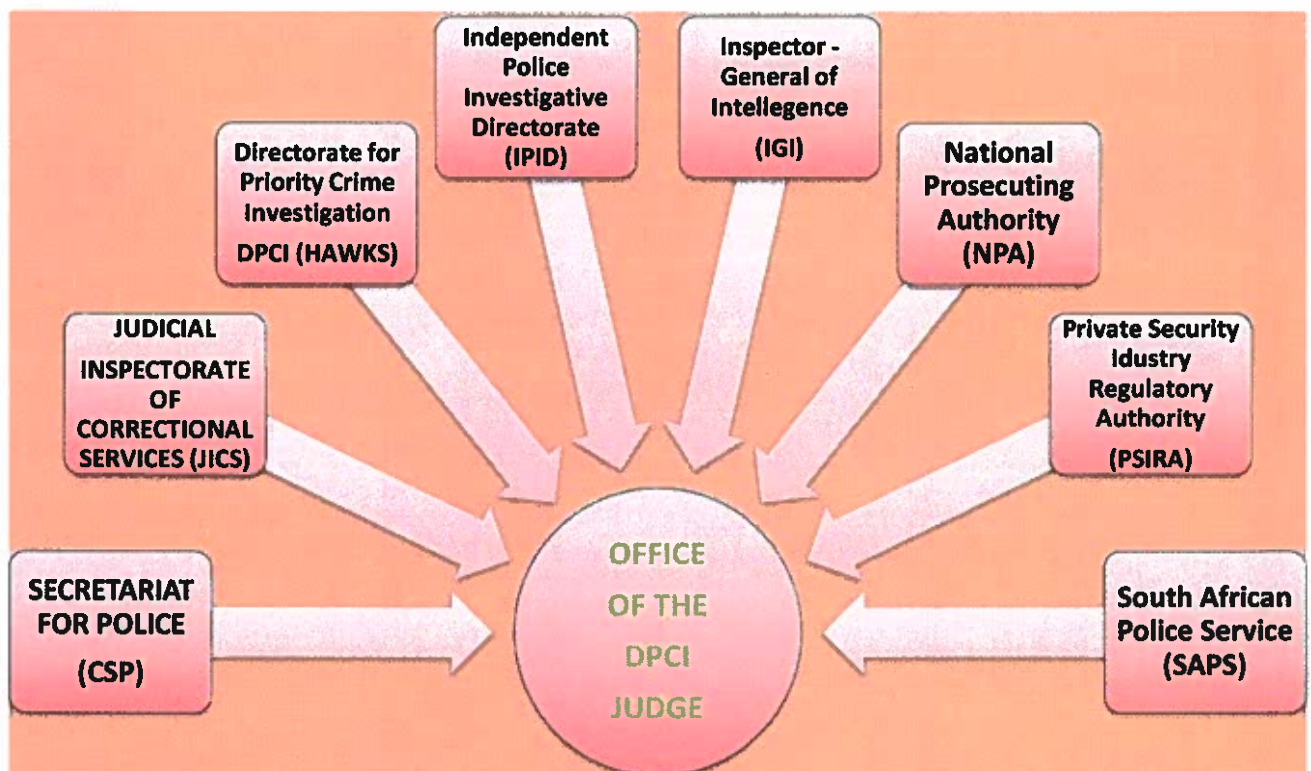
(c) shall be entitled to all reasonable assistance by a member."

9. The Judge refers those complaints in respect of which he/she lacks jurisdiction or could be appropriately dealt with by, amongst others, the: (i) Civilian Secretariat for Police Service; (ii) Independent Police Investigative Directorate (IPID); (iii) Head of the DPCI; (iv) National or Provincial Commissioners; Inspector-General of Intelligence, the NDPP; and any of the Chapter 9 institutions (depicted graphically below). It will be noted that the referral may be made to the NDPP rather than the NDPP or the various Directors of Public Prosecution (DPPs) as is the case with the National or Provincial Commissioners of Police. However, despite this anomaly or omission the Office of the DPCI Judge has in certain circumstances approached the DPPs directly and copied the NDPP. Perhaps in the spirit of s 41 of the Constitution of the country dealing with Principles of Co-operative government and inter-government (organs of state) relations, there has never been any demur. Otherwise the red tape could result in blockages and undue delays to the detriment of complainants.

Graph 1: Below depicts list of Chapter 9 institutions referred above.



Graph 2: Below depicts our key stakeholders



SANCTIONS FOR FLOUTING THE PROVISIONS

10. The unwarranted or unjustified refusal to comply with a request for information or assistance of the DPCI Judge by any member of SAPS and any interference with the Judge in the performance of his or her functions is a criminal offence for which the offender upon conviction may be sentenced to a fine or imprisonment of two years or both a fine and imprisonment as stipulated in sub-sections 17L(7A) and 17L(16) of the SAPS Act. The DPCI Judge has so far only recommended that one member (who has resigned in the meantime) be charged with contravening s17(L)(7A) of the SAPS Act.

CAPACITATION (STRENGTHENING) OF THE O/DPCI/J

11. The Minister of Police is legislatively duty bound to ensure that the O/DPCI/J has sufficient personnel and resources to fulfil its functions (s17L (12)). As pointed out earlier, the Minister has approved the posts of a Director (who also act as a CEO), an Assistant Director Investigations and an Executive Assistant for the DPCI Judge. The Director and the Investigator were appointed on 01 April 2020 and the PA on 01 May 2020. These appointments have enhanced the efficiency and the rate of productivity significantly in all spheres of our operation. However, we are bemused by the persistent refusal by the Secretariat to advertise the approved and funded post of a driver/messenger for the O/DPCI/J. At present the cleaner runs the errands that are covered on foot and further away the tasks are performed by one of the investigators. Perhaps the Secretariat may wish to explain to the Portfolio Committee in writing why they adopt this stance, which we oppose vehemently. The O/DPCI/J was informed that unless we share the Driver/Messenger with them the post would rather remain vacant or be withdrawn. We won't succumb to blackmail. See our current Organogram at para 18 showing that the post is vacant.
12. The Secretary of Police, in consultation with the O/DPCI/J, prepares an Annual Operational Budget Plan which shall be for the specific and exclusive use of the official duties of the O/DPCI/J and may not be used for any other purpose (s 17L(13)). Put differently, the Budget Allocation to the O/DPCI/J has to be ring-fenced. The Secretary of Police, it may therefore be construed, is the joint-accounting officer for the O/DPCI/J by virtue of s 17L(13) in respect of financial and procurement aspects **only**. As pointed out in para 3 of the Preface the O/DPCI/J is at the mercy of the Secretariat in respect of the day-to-day running of the Office and generally on operational matters too. This needs to be put right.

REPORTING

13. The O/DPCI/J shall report the outcome of any investigation undertaken by it or any referral made to the Minister (s 17L(6)). The Constitutional Court did not find this line of reporting objectionable both in **Glenister II (above) at para 216** and **McBride v/s Minister of Police & Another 2016 (2) SACR 585 (CC) at paras 27 and 28**. The ConCourt was of the view that the measure has been enacted “probably because the Minister, as the political head of the police, bears political responsibility for the police” and “who in turn will place [the reports] before Parliament.” On 29 February 2019 the DPCI Judge wrote to the SAPS Minister requesting him to provide the O/DPCI/J with the name of a designated (dedicated) functionary with whom the Office will deal with or the Reports delivered to as some of them contain sensitive matters. This has not yet happened. Section 17L(6) of the SAPS Act, it will be noticed, is too vague and open-ended. It need to be refined in due course. Some substantive reports (in terms of s 17L(4)) and referrals (ito s 17L(5)) do not deserve the Minister's attention. It is also unclear what the Minister is required to do with the outcomes. This aspect will be dealt with in another forum (revising legislation).
14. The O/DPCI/J shall annually report to Parliament on the performance of its functions (s 17L(9), as we hereby do. This is one of the methods to demonstrate whether or not we are fulfilling our mandate and responsibilities to the people who require redress.

STRATEGIC OVERVIEW: VISION, MISSION AND OBJECTIVES OF THE OFFICE

15. In view thereof that the situation on these subject-matters have remained unchanged it is worth repeating that the vision, mission and objective of the O/DPCI/J is hollow because the Office can neither be perceived to be operationally nor structurally independent. Its budget is located within the SAPS and subsequently transmitted to the Civilian Secretariat for Police Service (CSPS). The latter, concomitantly, controls the finances and the procurement of the tools of trade of the O/DPCI/J. The rental payment is settled from the police (SAPS) budget; the Office cannot decide on its own structure and personnel: the Minister of Police must see to that. The Minister has to comply with s 17L (12) of the SAPS Act. **See Glenister (II) 2011 (3) SA 347 (CC) at paras 188, 189, 207-210** on the independence of the Hawks. As regards the independence of the Independent Police Investigative Directorate (IPID) **see McBride v/s Minister for Police Service and Administration 2016 (2) SACR 585 (CC) at**

paras 24, 30, 31, 37- 44. Thanks to the Concourt both the Hawks and the IPID are by far more independent than the O/DPCI/J, which is a gross anomaly for an Ombud's office. A careful examination of the IPID legislation suggests that the O/DPCI/J legislation, which commends itself to me, ought to mirror it substantially.

16. It is with the foregoing remarks and precedents in mind that we now revert to the vision, mission, objects, values and principles of the O/DPCI/J.

16.1 Vision: The vision of the O/DPCI/J is to:

- Achieve a society which is crime and corruption free through maximising the integrity of the investigations conducted by the Hawks; and
- Ensure that the integrity of the investigations conducted by the Hawks reflect the values enshrined in our Constitution.

16.2 Mission: The mission of the O/DPCI/J is to:

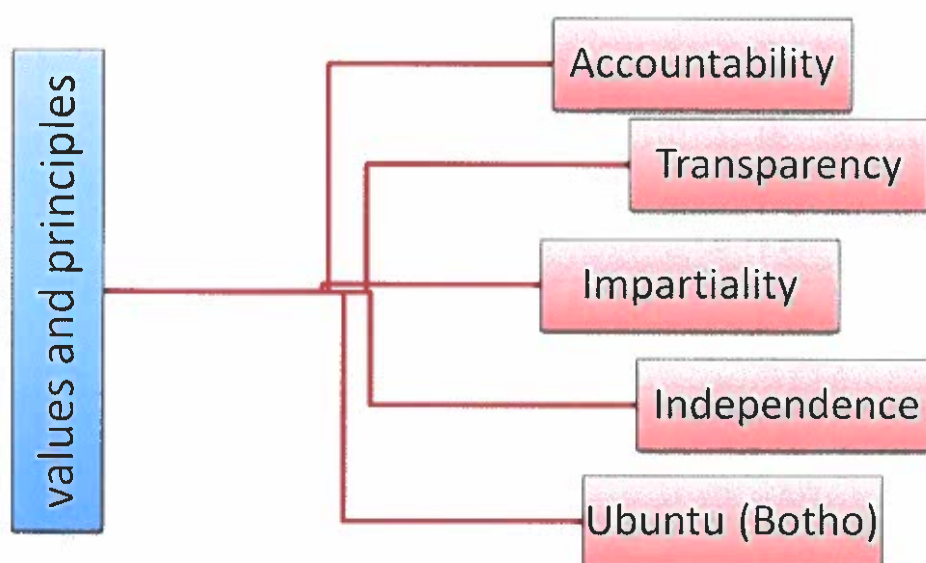
- Execute an oversight role over the investigations conducted by the Hawks in an effective, efficient and expeditious manner to the benefit of the general public.
- Promote and protect the basic human rights of members of the public arising from the investigations conducted by members of the Hawks (s 17L(4)(a).
- Safeguard and secure members of the Hawks against improper influence or interference, whether by the Hawks themselves or politicians (s 17L (4)(b); and
- Create an environment in which members of the Hawks can conduct their investigations without fear, favour or prejudice. If they fail appropriate Remedial Action is taken against them. Where complainants have suffered patrimonial loss, e.g. the loss of seized assets compensation is ordered.

16.3 Objective: The objective of the O/DPCI/J is to:

Maximise the integrity of the investigations conducted by the Hawks and safeguard their independence against improper influence or interference as stated. The Office of the DPCI Judge cannot succeed in its "Vision", "Mission" and "Objective" unless it takes positive steps to secure and assert its own independence: operationally and structurally. It is the Courts that can remedy or eradicate the legislative impediments in section 17L of the SAPS Act.

16.4 Values and Principles

The values and principles which the O/DPCI/J subscribe to are set out in the Constitution, more particularly relating to freedom, equality and human dignity; and the principles of accountability, transparency, impartiality and independence in adjudicating complaints or discharging its mandate stipulated in section 17L of the SAPS Act, notwithstanding its flaws; and last, but by no means least, embrace the principles of Ubuntu (Botho) and Batho-Pele (People First). The indigent (the poor), by far the vast majority, should not be driven to resort to unorthodox methods because of the O/DPCI/J's failure because they cannot afford litigation which is obscenely prohibitive.



CORPORATE IDENTITY

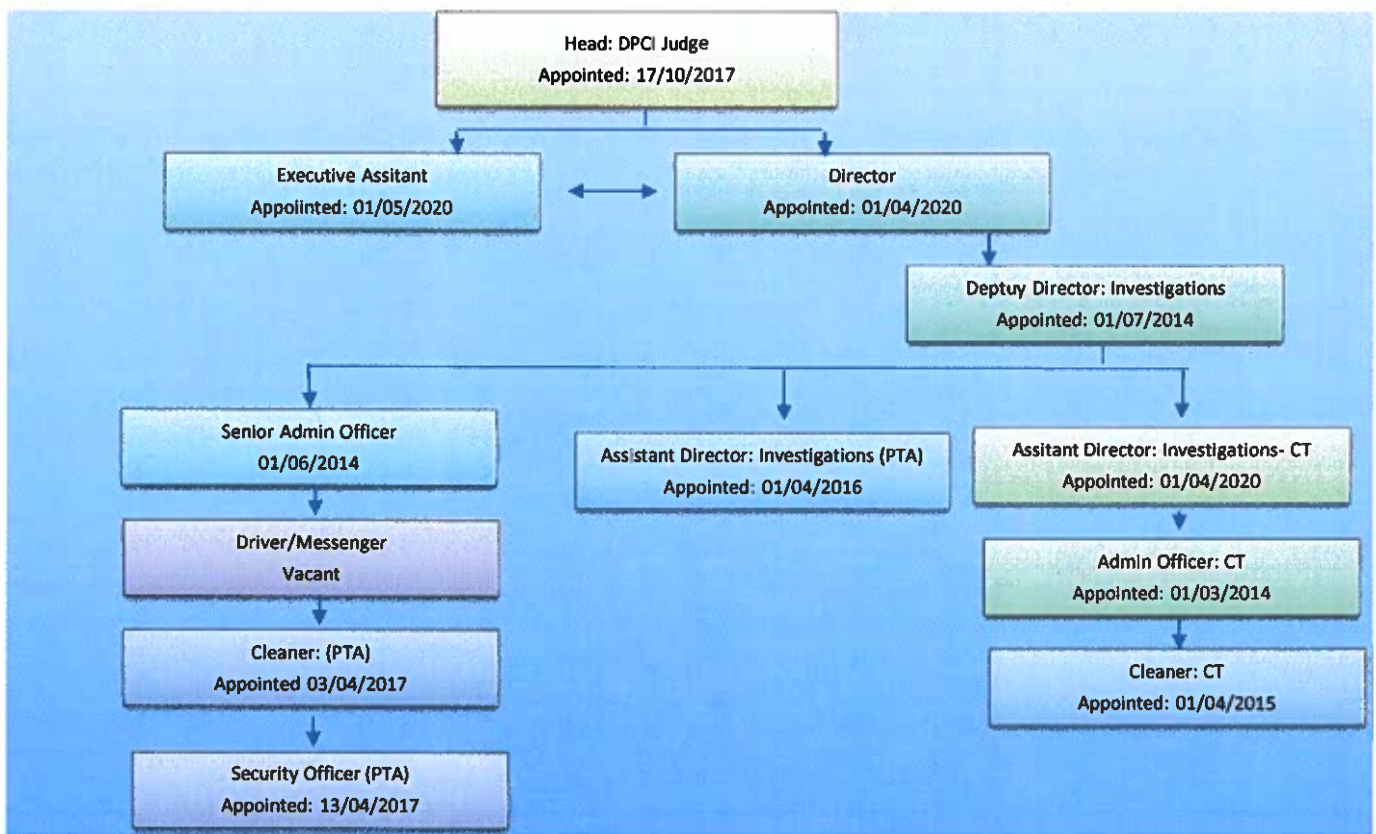
17. The O/DPCI/J developed and designed its logo for corporate identity two years back. The office's motto is "**Zero tolerance for the culture of impunity**". This is the guiding principle to members of the Hawks that they must be women and men of integrity; that their conduct should be beyond reproach and must demonstrate ethical behaviour and leadership. These qualities apply with even more resonance to the DPCI Judge and his functionaries. The logo is integral to our letterhead (above at the Preface and cover Page) as well as depicted immediately below.



18. Office of the DPCI structure

The office of the DPCI Judge is legislatively established in terms of s 17(L) of the SAPS Act 68 of 1995, as a complaints mechanism through the SAPS Amendment Act 57 of 2008. Its establishment/organogram does not pass administrative, Human Resource, Labour Law and, importantly, constitutional muster because it outsources the DPCI Judge's responsibilities.

Current Organogram Office of the DPCI Judge



19. Risk Management

A number of risks were identified in the 2018/2019 year under review. The lack of a proper or structured Case Management System (CMS) was identified as one of the risks. Action plans were put in place in order to mitigate the risks to ensure that the office sustains a comprehensive risk management approach and strategy to meet its legislative and best practice requirements. The delay in procuring goods and services or appropriate items by the Civilian Secretariat for Police (such as a reliable case flow management system) has impacted negatively on the mitigation strategy of the office. Though, it must be added, the lack of capacity and suitably qualified personnel to operate the system has been the draw back. With the intake of cases growing exponentially the need would become more pressing from around January 2022.

20. SECURING OFFICE ACCOMODATION

20.1 On 15 May 2015 the O/DPCI/J Head Office secured its offices at Protea Towers Building, First Floor, Cnr Pretorius and Bank Lane Streets, Pretoria, which we are still in occupation of.

20.2 On 10 October 2019 we had a meeting with the Director-General of the Public Works, Adv Sam Vukela, and two senior officials of his office with the aim of fast tracking the process of the renewal of the contract and securing the five adjacent vacant offices equipped with a walk-in safe/storeroom for our files and valuable equipment. The landlord afforded us a six months indulgence to secure them. When we defaulted he leased them out, as he was entitled to. As depicted above and illustrated below, the O/DPCI/J, Pretoria, has expanded by the employment of a Director and a PA since 01 April 2020. The boardroom is now utilized by the PA and the Assistant Director Investigations, the latter having vacated his office to accommodate the Director. Missing out on the walk-in safe/storeroom has caused our offices to be cluttered with files.

20.3 Consequently, the DPCI Judge had no option but to sign the recommendation of the extension of the lease agreement for five years for the five offices that we are currently occupying to stave off eviction. It must be understood that the DPCI Judge can only "recommend" but the approval vests with the Department of Public Works (DPW), which has left us in the lurch. The O/DPCI/J lease expired on 30 April 2017. Eversince 01 May 2017 we have been on a month-to-month (unwritten) lease with Centpret Properties (Pty) Ltd because the DPW has not

played its part or come to our rescue. No explanation for the default is forthcoming. The honourable Police Portfolio Committee was fully made aware in Addendum O/DPCI/J (A) of the 2018/2019 Annual Report (PP 55 to 62) of the quandary we find ourselves in, which is not repeated here.

20.4 In respect of our Cape Town Office: On 31 December 2018 the landlord issued a notice of non-renewal of the lease agreement of our office in Cape Town purportedly due to future developments on the Pinnacle Building. Our staff and office equipment are temporarily sheltered at the Regional Office of the Department of Public Works (DPW), Custom House, Cape Town. We have asked SAPS and the DPW to procure alternative accommodation for the O/DPCI/J in Cape Town. The tender process was completed and a preferred building, Norton Rose House, was identified with the concurrence of the DPCI Judge. However, the Bid Adjudicating Committee (BAC) of the DPW based on fatally flawed grounds did not approve it and ordered that a fresh process to be embarked upon. The O/DPCI/J disputes their reasoning and are engaging them on the matter and hope to reach an amicable solution.

POST ESTABLISHMENT

21. The O/DPCI/J currently has 12 approved and funded posts on its fixed establishment; inclusive of the position of the DPCI Judge, who is paid from the budget of the Office of the Chief Justice (OCJ) in terms of the Judges' Remuneration and Conditions of Employment Act, No 47 of 2001. These posts have been filled, with the exception of the post of a driver/messenger which should have been filled by now but for the unlawful conduct of the Secretariat who are irregularly attempting to deprive the O/DPCI/J thereof. The Secretariat, as always, is inward looking. We have been advised by word of mouth that Treasury is threatening to stop the funding of this post, which has been vacant for a considerable period, unless it is filled soon.

Table 1: Overview of post establishment of the O/DPCI/J

Post	No of posts	Salary level
DPCI Judge	1	Judge's salary
Director	1	13
Deputy Director Investigations	1	11

Assistant Directors Investigations	2	10
Executive Assistant to DPCI Judge	1	9
Senior Administrative Officer	1	8
Administrative Officer	1	7
General Workers	2	3
Security Officer	1	4
Driver/Messenger	1	4
	12	

The O/DPCI/J's approved structure is located in two cities. The Pretoria Office is the Head Office and the Cape Town Office is subsidiary. The Pretoria Office provides strategic direction. The Cape Town Office's personnel consists of an Assistant Director Investigation, an Administration Officer and a General Worker. The rest are based in Pretoria. Their terms and conditions of employment are governed by the Public Service Act No103 of 1994, as amended.

ANNUAL OPERATIONAL BUDGET

22. The total budget allocation of the office was **R5, 843.000.00**. The budget was split as follows, salaries and wages **R 4,207,000.00**; goods and services **R1, 525,000.00**; transfers (municipalities) **R2, 000.00**; and machinery and equipment **R109, 000.00**.

The operational budget expenditure was as follows: salaries and wages was **R2,710,754**, with a saving of **R1,496,245.45**; goods and services expenditure was **R1,488,817,00** (with a commitment of **R19,296.01**) with a saving of **R16,886.15**; transfers was **R1,272.00** with a saving of **R728.00** and capital (machinery and equipment) is **R63,826.80** with a saving of **R45,173.20**.

The total saving inclusive of compensation of employees, goods and services, transfers, machinery and equipment is **R1, 559,032.80**.

The saving on the compensation (salaries) resulted from the protracted quibbling by the Secretariat to fill the vacancies of the Director, the PA, and the Investigator after

they were already funded, as well as the post of a driver/messenger that still remains vacant. The saving on equipment is largely due to the vehicle for the Investigator which could not be procured until he/she was appointed.

The main cost drivers of the operational budget were as follows: payments for travel and subsistence which cost **R580, 211.46**; computer services **R264, 604.69**; fleet services **R232, 969.47**; communication **R165, 183.19**; legal services **R68, 320.00**; machinery and equipments **R63, 826.80**; venues and facilities **R40, 028.66**; catering: Institution's activities **R37, 361.69**; contractors: **R33, 266.16**; printing and office equipments **R25, 377.97** and others.

23. The above mentioned expenditure was necessary for the Office to deliver on its mandate and in compliance with the statutory obligations in terms of s17L of the SAPS Act and the achievement of performance targets set out in the Annual Performance Plan.

Graph 3: Below depicts the financial budget expenditure

Description	Expenses	Budget	Savings	Commitment
Compensation of employees				
Salaries and wages	2,710,754.55	4,207,000.00	1,496,245.45	
Goods and Services	R1,488,817.84	R1,525,000.00	R16,886.15	
Administrative Fees: Payments	5,558.04	6,000.00	441.96	
Advertising	0.00	10,000.00	10 000.00	
Minor Assets	9,147.05	27,000.00	17,852.95	
Catering: Departmental Activities	37,361.69	38,000.00	638.31	
Communication	165,183.19	166,000.00	816.81	
Computer services	264,604.69	265,000.00	395.31	
Consult: Business & Advisory	8,117.00	9,000.00	883.00	
Legal services	68,320.00	69,000.00	680.00	
Contractors	33,266.16	34,000.00	733.84	
Fleet services	232,969.41	233,000.00	30.53	
Cons: Supplies	9,132.27	10,000.00	867.78	

Cons: Sta.Printing:Off: Supplies	25,377.97	26,000.00	622.03	
Travel and Subsistence	580,211.46	581,000.00	788.54	
Operating Payments	9,540.24	10,000.00	18,836.25	R19,296.01
Venue and Facilities	40,028.66	41,000.00	971.34	
Goods and Services	1,488,817.84	1,525,000.00	16,886.15	
Provincial and local government				
Transfers and Subsidies: Municipalities	1,272.00	2,000.00	728.00	
Other Machinery & Equipment	63,826.80	109,000.00	45,173.20	
Office of the DPCI Judge	4,264,671.19	5,843,000.00	1,559,032.80	

THE PUBLIC AWARENESS CAMPAIGNS (STAKEHOLDER ENGAGEMENT SESSIONS) IN ZWELITSHA, BUFFALO MUNICIPALITY, EASTERN CAPE PROVINCE, ON 27 NOVEMBER 2019.

24. Section 17L (15) of the SAPS Act contemplates that the Secretary, in consultation with the retired Judge, shall develop and implement a plan to promote awareness amongst the public and members of the Directorate (the Hawks) on the functions and the role of the complaints mechanism of the O/DPCI/J. This Office conducted intensive marketing campaigns in previous years during which we visited all provinces to raise awareness of the mandate of the Office amongst the Hawks only. However, on the subsequent public awareness campaigns (outreach programmes) we involved our partners, mainly the entities that report to the Ministry of Police, such as Independent Police Investigative Directorate (IPID); the Directorate for Priority Crime Investigation (DPCI or the Hawks); the Civilian Secretariat for Police Services (CSPS); South African Police Service (SAPS); Private Security Industry Regulatory Authority (PSIRA) and the Firearm Appeal Board. We also invited the National Prosecuting Authority (NPA/DPP), the Judges President, the Premiers as well as the local civic formations and members of the media.

25. On 27 November 2019 the O/DPPCI/J hosted its awareness campaign at Zwelitsha, Buffalo Municipality, in the Eastern Cape. The abovementioned Institutions/Directorates/ Organs of State made interventions concerning their respective mandates. The DPCI Judge delivered the keynote address. The theme thereof is fundamentally poignant by virtue of recent debates in fighting crime. A leader was recently quoted in a newspaper as having said an incumbent was reinstated in employment because **"we subscribe to the notion of innocent until proven guilty, as enshrined in our justice system"**. First, the principle of **"innocent until proven guilty"** is not a mere **"notion in our justice system"**. It is a constitutional injunction. Fortunately, Prof Thuli Madonsela, former Public Protector, and Chairperson Social Justice (Law Trust Chair in Social Justice) at Stellenbosch University recently cast that legal principle in its proper perspective is a webinar. Prof Pierre De Vos dispelled and decried the invocation of the principle out of context or the abuse thereof.

26. I abstract a few excerpts from the East London outreach programme presentation of 27 November 2019 that the DPCI Judge made from para 7 (without comment):

"(7) Deon Rossouw, the CEO of the Ethics Institute, advises insightfully as follows in the Business Day of Thursday, 29 November 2018:

"Legal v/s Ethical: Being legally compliant does not provide automatic moral standing. Sticking to the rule book and the law is often a technique used to bypass more important ethical dimensions. Respect for the law is a cornerstone for a just and safe society. Societies that flout legal standards tend to be unsafe, prone to corruption and moral decay. And yet while legal compliance is essential to a good society it is not sufficient.

More is needed and that 'more' is morality-----.

Legal compliance is important but it also needs to pass ethical muster. If legality does not coincide with morality, even legal decisions might still be regarded as morally wrong. And there is the inverse category as well, where the ethical course of action may fall outside of the law."

"(8) The Legal v/s Ethical" engagement by Rossouw intersects squarely with the often misused and much abused principle: **"Innocent until proven guilty"**.

THE SOUTH AFRICAN APPROACH

"Society very often overlooks section 195 of the Constitution which deals with "Basic values and principles governing public administration". It stipulates in s 195 (1): "Public administration must be governed by the **democratic values and principles** enshrined in the Constitution, including the following principles:

- (a) A high standard of **professional ethics** must be promoted and maintained.....
- (f) Public administration must be **accountable**.
- (g) **Transparency** must be fostered by providing the public with timely, **accessible and accurate information**".

(9) Society, public administrators, the police and politicians cannot combat crime effectively and comprehensively if the principle of "Innocent until Proven Guilty" is misapplied or abused. In "**CONSTITUTIONALLY SPEAKING: INNOCENT UNTILL PROVEN GUILTY**"; Prof Pierre De Vos on 30 November 2006 (13 years ago) stated: "Why is it that I get so irritated every time a politician or some other powerful Brett Kebble-type deploys a phrase such as 'political conspiracy', 'smear campaign', and, my favourite, 'innocent until proven guilty'? I suppose the problem is that these phrases are often used to avoid talking about the substance of a specific allegation in an attempt to portray an accused as the victim rather than as the one who needs to answer questions. It's an abdication of responsibility without which the democracy cannot function properly.

The 'innocent until proven guilty' phrase is further misused to silence any criticism of a person and to stop people from making a political or ethical judgment about a person unless he or she has been convicted in a court of law.

This leads to an absurdly low standard of ethical discourse. Unless one is proven beyond reasonable doubt to have committed a crime, one can remain – at least amongst some – an angel and a hero of the people".

(10) On 01 June 2017, in "Constitutionally Speaking", Prof De Vos commented: "Prohibiting members of the public to ask any questions about the honesty and integrity of a business executive or a political leader unless that person was convicted of a crime would make it impossible for us to talk about many of the real problems which plague our society: racism; corruption; state capture and much more besides.

So remember: better to leave the ‘innocent until proven guilty’ assumption to magistrates and judges.”

(11) Prof De Vos in “Opinionista” of 02 November 2017 continues:

“No, the Constitution does not guarantee a right to be presumed innocent by everyone until proven guilty”.-----

“It is a myth (much loved and promoted by corrupt politicians and men accused of rape as well as by their supporters and defenders) that everyone has a constitutional right to be presumed innocent by people – even when a reasonably informed person, assessing the available facts, would conclude that the person is indeed guilty of that which he or she was accused.

Section 35(3) (h) of the Bill of Rights guarantees for everyone the right to a fair trial, which includes the right to be presumed innocent at that trial. In **S v Dzukuda and Others; S v Tshilo [2000 (2) SACR 443 (CC) 2000 (4) SA 1078 (CC)]** the Constitutional Court endorsed the principle that the right to a fair trial requires a substantively fair trial:

“At the heart of the right to a fair criminal trial and what infuses its purpose is for justice to be done and also to be seen to be done. But the concept of justice itself is a broad and protean [variable or versatile] concept... **An important aim of the right to a fair criminal trial is to ensure adequately that innocent people are not wrongly convicted, because of the adverse effects which a wrong conviction has on the liberty, and dignity (and possibly other) interests of the accused.**

Section 35(3) (h) thus guarantees for everyone the right to be presumed innocent by those presiding at the trial and does not bind those of us who will not preside at the trial. This makes perfect sense because where a judge or magistrate presumes guilt on the part of the accused, there would be a real danger that they would wrongly convict and sentence an innocent person. But section 35(3) (h) does not apply to ordinary citizens as we do not preside at criminal trials and we do not have the power to convict the accused or to deprive them of their liberty”.

(12) Prof De Vos warns sensibly:

“Journalists and members of the public should therefore take care – both because of the threat of being slapped with a defamation suite and because it is ethically the right thing to do – not to make unwarranted assumptions about people and not to say

something defamatory about that person if there is not a good chance that the statement is true.”

AN AUSTRALIAN PERSPECTIVE

(13) Our jurisprudence and Prof. De Vos's worthy views intersect with some international perspectives. Anthony Morris, QC, a Brisbane, Australian, barister makes the submission in May 2012 in the "Spectator" that: "Legal doctrine stops at the courtroom door..... **Presumption of innocence has nothing to do with what goes on outside the courtroom--.**

Recent political events involving [PS and CT –full names omitted] demonstrate how politicians have appropriated and subverted the legal doctrine of 'presumption of innocence', redefining it for their own benefit.

Recent political version of this presumption is bizarre. When a politician is accused of wrongdoing, everyone must try to imagine the politician is blameless, regardless of the evidence. **Were the entire College of Cardinals present to witness the wicked deed, their voices are silenced. Were there incontrovertible documentary or audio-visual proof, it is suppressed - until law-enforcement investigations are completed, and judicial verdict is recorded. Yet the political version applies, apparently to elected officials.**

The political version of 'presumption of innocence' bears no resemblance to the legal version, which has been well understood since time immemorial. The legal presumption exists only in determining guilt or innocence at a criminal trial. **It has no other application to criminal justice; nor in civil proceedings; nor, in particular, outside a courtroom.**

Outside a courtroom, innocence is seldom presumed. If the police did so, nobody could ever be arrested or charged; no search warrant or listening device warrant could ever be issued; the state based anti-corruption and criminal investigation authorities could never conduct investigative hearings. **Public servants are routinely stood down, with or without pay, on the strength of mere allegations.** People facing unresolved criminal allegations, or allegations of financial impropriety or workplace sexual harassment, are rarely offered jobs. **Even political parties routinely undertake 'due diligence' to 'vet' potential candidates facing allegations which may cause embarrassment.**

The real issue is whether credible evidence of wrongdoing or turpitude — criminal, civil or moral — exists. If so, **those holding constitutional responsibility to protect the national interest cannot abnegate [renounce or reject] their duty by pretending their hands are tied by a ‘presumption of innocence.’**

As with the emperor’s new clothes, nobody is prepared to break the spell by pointing out that the ‘presumption of innocence’ simply does not exist in the political context in which it is sought to be invoked”.

Eusebius McKaiser, ever insightful and cerebral, articulated this principle quite eloquently on Radio 702 one morning in 2018 and again this year [2019] when he said something to the effect (my memory has somewhat faded) that the tendency of leaders/politicians who are called upon to account to the people of South Africa when they are accused of wrongdoing to shield behind the phenomenon of “Innocence until proven guilty” is a stratagem of obfuscation which belongs to the court room.

A PERSPECTIVE FROM ONTARIO, CANADA

(14) Michael Spratt, a partner at the Ottawa Law firm Abergel Goldstein & Partners, had this to say, amongst many other things, as posted on 30 January 2018 on the phenomenon of the **Presumption of Innocence**.

“Let me let you in on a little secret: the presumption of innocence is a legal construct. Yes, the Canadian Charter of Rights and Freedoms says that people are presumed innocent – if they have been charged with an offence.

You see, the presumption of innocence operates in our courts of law to protect people charged with crimes from the power of the state to deprive them of their liberty. It does not operate to immunize political leaders from scrutiny.

In short, the presumption of innocence is a procedural protection to ensure fairness – not a moral imperative. This is why we do not automatically convict and sentence a self-admitted murderer whose crime is clearly captured on video. Even where guilt is plainly obvious, proper procedures must be followed and the prosecution must prove guilt beyond a reasonable doubt. **But the presumption of innocence does not mean someone is factually blameless until proven otherwise.**

To insist on the strict application of the presumption of innocence in everyday life is an absurd and insidious [gradual harmful effect] act of complicity to the realities exposed by the #Me Too movement. In no other aspect of our daily lives do we employ the

presumption of innocence or apply a burden of proof beyond a reasonable doubt. The presumption of innocence should not be used as an excuse to disregard common sense”.

(15) **President Cyril Ramaphosa** at his inaugural State of the Nation Address (dubbed the **Thuma Mina Sona**) on 16 February 2018 stated seminally and more pertinently to the task facing the Hawks and the mandate entrusted to the Office of the DPCI Judge:

(15.1.) “Guided by President Mandela’s example we will use this year [2018] to re-inforce our commitment to **ethical behaviour and ethical leadership**”. (own emphasis)

(15.2.) “We are determined to build a society defined by decency and integrity that does not tolerate the plunder of public resources, nor the theft by corporate criminals of the hard-earned savings of ordinary people”.

(15.3.) “Tough decisions have to be made to close our fiscal gap, stabilize our debt and restore our state owned enterprises to health”.

(15.4.) “This is the year in which we will turn the tide of corruption in our public institutions. The criminal justice institutions have been taking Initiatives that will enable us to deal effectively with corruption”.

(15.5.) In a different context the President continued: “The Commission (**headed by Mr Justice Zondo DCJ**) should not displace the regular work of the country’s law enforcement agencies in investigating and prosecuting any and all acts of corruption.

We must fight corruption, fraud and collusion in the private sector with the same purpose and intensity. We must remember that every time someone receives a bribe there is someone who is prepared to pay it. We will make sure that we deal with both in an effective manner.

(15.6.) **We urge professional bodies and regulatory authorities to take action against members who are found to have acted improperly and unethically.** This requires that we strengthen law enforcement institutions and that we shield them from external interference or manipulations”. (own emphasis)

(20) Finally, and generally, in the words of Chief Justice Mogoeng when swearing in the Deputy President and Cabinet Ministers in February 2018:

“And may the oath or affirmation judge most brutally any of us who is here for a show, or any of us who will betray the constitutional aspirations of the people of South Africa. I’m just saying.... If, after reflection, you consider yourself disqualified, I’m sure the President won’t mind if you pull out”.

In short leaders must be above reproach. (Own emphasis).

The unethical “scrums” that the Chief Justice spoke of at The 17th Nelson Mandela Memorial Lecture on Saturday, 23 November 2019, and the “Push Back” by unscrupulous persons against those who are fighting crime and corruption, recently harped upon by the President, must be smashed (i.e. the push backs and scrums) and those who are guilty must be arrested prosecuted and severely punished.”

PERFORMANCE OVERVIEW OF THE OFFICE IN TERMS ANNUAL PERFORMANCE PLAN TARGETS

Programme 1: Administration

Sub-Programme 1.1: Office Management

27. A performance measurement and reporting system supports management (whoever management between the O/DPCI/J and CSPS may be) decision-making and enables the O/DPCI/J to adhere to and comply with internal and external accountability reporting prerequisites and legislative requirements. In terms thereof Performance Monitoring and Evaluation Reports are compiled with to ensure the achievement of the purported strategic objectives.

Performance Agreements of all staff were signed and submitted to the Human Resource (HR) of the Secretariat as well as the Annual Procurement Demand Plan which was broken down into four Demand Management Plans per quarter, and bi-annual Performance Assessment Reports in compliance with internal prescripts. The Annual Report is timeously tabled in Parliament in compliance with s 17L (9) of the SAPS Act. The compliance rate with internal prescripts is 100% in accordance with the target set in the Annual Performance Plan (APP).

28. The O/DPCI/J records that it is an anomaly that it has, ineluctably, to account to the Civilian Secretariat for Police Service (CSPS), established in terms of the CSPS Act, No 2 of 2011, on matters set out in para 27 (above). Failing so to account the O/DPCI/J is held to ransom in accordance with the "Performance Management and Development System Policy (PMDS) established or adopted unilaterally by the CSPS which reads at Clause 5(a) (bullet point 9):

"An employee who does not comply with the above requirements shall not qualify for any performance incentives, i.e. pay progression and performance bonus. **Unless substantive evidence is provided for non-compliance.**"

29. It must be understood that to the highlighted caveat (above) the "substantive evidence" must be provided to the CSPS which exacerbates matters.

29.1 Clause 7 bullet points 4 and 5 record: "Moderation Process":

- "The Unit Moderation Committee [UMC] receives the performance assessment ratings of all employees in the Chief Directorate or Component level to review, compare and validate the ratings.
- If the Unit Moderation [Committee] agrees with the ratings the ratings are then submitted to Central Moderating Committee [CMC]."

29.2 Clause 7: "Central/ Departmental Moderating Committee [C/DMC] provides that:

"This Committee will consist of Chief Directors and Directors representatives from the Units and will be chaired by the Chief Director: Corporate Services."

29.3 Bullet point one (first bullet point) under Clause 7 records:

- "To ensure that the Annual Performance Assessment is done in a realistic, consistent and fair manner, to monitor the performance assessment process by obtaining an overall sense of whether norms and standards are being applied consistently and realistically to employees on the same level and across the Department as a whole."

29.4 Bullet point 4 (fourth bullet point) states:

- "The moderating Committee shall confirm the rating, which is the final rating score for an employee."

30. The "Performance Management and Development System Policy" instrument was signed by the Secretary for Police Service, Mr AP Rapea, on 17 October 2018; after the DPCI Judge's appointment on 06 October 2017. The policy was developed and adopted without any engagement or consultation with the Office of the DPCI Judge. This was a unilateral act which the O/DPCI/J does not blame or begrudge the

Secretariat for because it is their own instrument on policy, which does not apply to the O/DPCI/J. However, the Secretariat made it plain to the O/DPCI/J that a default by this Office to comply with the prescripts will deprive the O/DPCI/J personnel of the benefits set out in para 28 (above).

31. As reflected in the current O/DPCI/J organogram none of its personnel occupies the rank of a Chief Director. The O/DPCI/J therefore has no representation in the bodies and occurrences described in paras 28-30 (above). It is a matter of public record that the Secretary for Police blocked the creation of a post of Chief Executive Officer (CEO) at the level of a Chief Director and the SAPS Minister obliged him. The DPCI Judge would be failing in his duty not to state categorically that both the Unit Moderating Committee (UMC) and the Central/Departmental Moderating Committee (C/DMC) are not familiar with the workings/operations in the O/DPCI/J and in other respects is not expected not be. Only court action can remedy this outrageous imposition.

Sub-programme 1.2: Finance

32. **The financial expenditure of the Office:** The Office has spent its budget in compliance with the Public Finance Management Act (PFMA) and adhered to the procurement processes set out in the Supply Chain Management rules. During the period under review the Office utilised its budget on goods and services as set out in paras 22 and 23 (above). There was no fruitless, wasteful or irregular expenditure. The budget of the office had to be realigned to accommodate its ineluctable growth in operations.

Sub-programme 1.3: Marketing of the Office (Public Awareness Campaigns)

33. Section 17L (15) of SAPS Act requires the Civilian Secretariat for Police Services in consultation with the O/DPCI/J to develop and implement a plan to promote awareness amongst the public as described in paras 24 – 26 (above). Due to capacity constraints the Office was of necessity constrained to reduce the number of public awareness campaigns from two to one per annum. Notwithstanding this difficulty the O/DPCI/J held the aforesaid awareness campaign successfully in accordance with the revised target set in the Annual Performance Plan (at Zwelitsha, Buffalo City Municipality, Eastern Cape).

Programme 2: Investigation

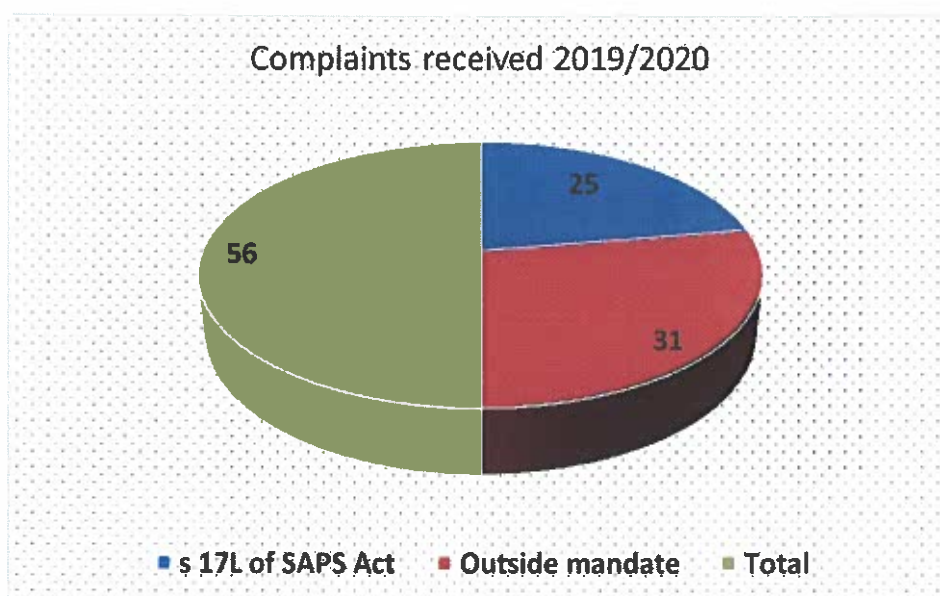
Sub-programme 1.1: Case Management System

Complaints Received

34. During the period under review, the office received a total of fifty-six (56) complaints. Of the 56 complaints 25 fell within the scope of our mandate in terms of s 17L (4) of the SAPS Act, whereas 31 fell outside.

Of the 25 complaints falling within our mandate (called referrals) 23 were received from members of the public in terms of s 17L(4)(a) of the SAPS Act while 2 were received from members of the Hawks in terms of s 17(4)(b) of the SAPS Act.

Graph 5 depicts categories of complaints received



All 56 complaints were registered within the 72-hour period prescribed in the Annual Performance Plan (APP) and also classified according to the relevant categories in terms of s 17L(4) of the SAPS Act. They were allocated to the two investigators for investigation. Acknowledgement letters for receipt thereof were sent to the complainants or interested parties within the stipulated timeframes. The output in this regard was 100% in compliance within the target set out in APP.

Table 3: Breakdown of complaints received per province

Provinces	Within mandate	Outside mandate	Total
Gauteng	10	14	24

Western Cape	7	5	12
Kwa-Zulu Natal	4	4	8
North West	2	0	0
Eastern Cape	1	2	3
Northern Cape	1	0	1
Limpopo	0	3	3
Free State	0	1	1
Mpumalanga	0	1	1
Unknown		2	2
Grand Total	25	31	56

Table 4: Categories of complaints received from members of the public and members of the Hawks

Complaints	Received	Type of complaints
S17L (4)(a) SAPS Act (members of public)	23	Alleged unlawful infringement of rights arising from investigation done by Hawks
S17L (4)(b) SAPS Act (members of Hawks)	2	Alleged improper influence/interference with investigation done by members of the Hawks
Total	25	

Table 5: Nature of complaints received falling within mandate

Table: WITHIN MANDATE RECEIVED CASES 2019/2020				Office of the DPCI Judge complaints – Within mandate received															
Province																			TOTAL
	Complaint of alleged interference with investigation conducted by the HAWKS	Complaint of undue delay to conclude investigation by the HAWKS	Complaint of abuse of power by a HAWKS member	Complaint of harassment and flippant attitude against the HAWKS investigator	Complaint of intimidation, extortion & defeating the ends of justice against HAWKS	Complaint of unlawful seizure of document & equipment during the raid by HAWKS	Refusal to investigate corruption cases by HAWKS against Sol Plaatjie Municipality	Complaint of unlawful arrest by the HAWKS	Complaint of improper investigation by the HAWKS	Political interference with the investigation conducted by HAWKS –Bo Karoo Distr.	Complaint of assault during arrest against the HAWKS	Complaint of false allegations to implicate a colleague by a HAWKS member	Complaint of poor or unsatisfactory investigation against the HAWKS	Complaint of unlawful seizure of motor vehicle during the investigation by the HAWKS	Complaint of undue delay to conclude the investigation and to prosecute the case	Complaint of failure to provide feedback	Complaint of infringement of rights freedom of movement against the HAWKS	Unlawful seizure of cell-phone and infringement of right to privacy against HAWKS	
Gauteng		1			1			1	2		1	1			1		1		9
Western Cape		1	1		1	1			1	1			1			1			8
Eastern Cape				1															1
Mpumalanga																			
anKwa-Zulu Natal	1												2					1	4
Northern Cape							1												1
North West		1												1					2
TOTAL	1	3	1	1	2	1	1	1	3	1	1	1	3	1	1	1	1	1	25

Table 6: Nature of complaints received falling outside mandate

Table: OUTSIDE MANDATE RECEIVED CASES 2019/2020		Office of the DPCI Judge complaints – Outside mandate received																			
Province																					
	Complaint of illegal sale of land	Complaint of unsatisfactory investigation against detective of Kemplon Park SAPS	Complaint of poor service delivery against SAPS members	Complaint to be investigated by HAWKS	Complaint of theft of money/ armed robbery/ theft out of motor vehicle	Complaint of intimidation and death threats	Complaint of fraud/ corruption/ alleged corruption at the Department of Rural Dev.	Complaint of car-hijacking against SAPS members	Complaint of search without search warrant against Khayelitsha SAPS	Complaint of abuse of power	Complaint of assault against Police	Negligence of cases against Ivory Park SAPS by Duduza Community in Tembisa	Complaint of improper conduct against Police	Unsatisfactory investigation of sexual offence case by detectives at Sinovile SAPS	Organised crime, corruption and collusion of tax evasion against a certain business	Complaint of unfair treatment during the Police recruitment process	Complaint of poor investigation and irregular withdrawal of case	Complaint of corruption, irregular recruitment appointment at Ithala Finance Dev	Complaint of Police harassment against Police	Complaint of denial to medical attention while under detention by Giyani SAPS	
Gauteng		1	3		2		2	1				1	2	1	1						14
Western Cape							1		1	2									1		5
Eastern Cape			1								1										2
Mpumalanga					1																1
Kwa-Zulu Natal			1			1												1			3
Limpopo	1																1			1	3
Free State																1					1
Unknown				2																	2
TOTAL	1	1	5	2	3	1	3	1	1	2	1	1	2	1	1	1	1	1	1	1	31

Sub-programme 1.2: Investigated Complaints

35. During the period under review the investigators investigated eleven (11) complaints that were carried over from the previous financial year. The DPCI Judge prepared and signed off six (6) of them. The rest are in various stages of completion.

36. INVESTIGATED COMPLAINTS RECEIVED FALLING WITHIN SCOPE AND MANDATE

During the period under review we received a total of 25 complaints falling within the scope of our mandate. The target set is that 70% of complaints received for a current year ought to be investigated to finality by the investigators. The investigators instigated 18 complaints, some of which would be further investigated if the DPCI Judge requires further and better information. Seven (7) complaints are still to be investigated at all. The output of preliminary investigated cases by the investigators is 72 % exceeding the set target of 70%. Hereunder is the sub-paragraphs depicting the complaints finalised and signed off by the DPCI Judge and also finalised to be signed off by the Judge.

36.1 COMPLAINTS FALLING WITHIN MANDATE FINALISED AND SIGNED OFF BY THE DPCI JUDGE

A total of 8 complaints were finalised and signed by the DPCI Judge.

36.2 COMPLAINTS FALLING WITHIN MANDATE FINALISED BY INVESTIGATORS BUT NOT YET SIGNED OFF BY THE DPCI JUDGE

A total of 10 complaints finalised by the investigators but not yet signed by the DPCI Judge.

36.3 PENDING COMPLAINTS FALLING WITHIN MANDATE

A total of 7 complaints were still pending for further investigation.

36.4 COMPLAINTS OUTSIDE MANDATE FINALISED AND SIGNED OFF BY THE DPCI JUDGE

A total of 21 complaints finalised were signed off by the DPCI Judge

36.5 COMPLAINTS OUTSIDE MANDATE FINALISED BY INVESTIGATORS BUT NOT YET SIGNED OFF BY THE DPCI JUDGE

A total of 5 complaints were finalised by the investigators but not yet signed off by the DPCI Judge.

36.6 PENDING COMPLAINTS FALLING WITHIN MANDATE

A total of 5 complaints were pending for preliminary investigation to ascertain appropriate jurisdiction.

37. COMPLAINTS REFERRED TO OTHER INSTITUTIONS

Section 17L(5) of the SAPS Act provides that even where complaints also fall within the scope and mandate of the O/DPCI/J the DPCI Judge has a discretion to refer them to institutions with concurrent jurisdictions, evidently if the interest of justice will be better served. Nine (9) such complaints were referred to the relevant Provincial Commissioners of SAPS, one (1) to the Office of the Public Protector, one (1) to IPID, two (2) to the National Head of the Hawks and one (1) referred to the National Director of Public Prosecutions.

Referrals of complaints from the previous financial years were as follows:

38. A total of 10 complaints of the previous years (backlog cases) that fell outside the mandate of O/DPCI/J were referred to the relevant institutions that could best deal with them. These are:
- 38.1 A complaint of alleged poor investigation and irregular withdrawal of the case was referred to the Provincial Commissioner of SAPS KZN and also to the National Director of Public Prosecutions;
 - 38.2 A complaint of dereliction of duties by unnamed SAPS and Hawks members was referred to the National Head of the Hawks;
 - 38.3 A complaint of tax evasion against a business owner was referred to SARS Commissioner;
 - 38.4 A complaint of corruption, robbery and theft of live ammunition by police was referred to IPID;
 - 38.5 A complaint of failure by police to assist him to lay a criminal charge was referred to the Provincial Commissioner of SAPS KZN;
 - 38.6 A complaint of fraudulent activities namely running a pyramid scheme being run at Bredasdorp, Mpumalanga, was referred to the National Head of the Hawks;

- 38.7 A complaint of the unlawful removal from her custody of her two children by her estranged husband and another was referred to the Provincial Commissioner of SAPS Western Cape;
- 38.8 A complaint of fraudulent activities taking place at SARS, Durban Branch, was referred to the National Head of the Hawks and SARS Commissioner;
- 38.9 A complaint of corruption (bribery) by police was referred to IPID; and,
- 38.10 A complaint of irregular appointment of Provincial Head of DPCI in Eastern Cape was referred to the Public Protector.

Table 7 depicts backlog complaints of previous financial years referred to other institutions (paras 38 (38.1 – 38.10) above)

	Ref No	Complainant	Nature of complaints	Respondent(s)	Referred to
38.1	O/DPCI/J: 122/04/2017	Mr Thamsanqa Mqathi	Complaint of police corruption (bribery) against police of Putfontein SAPS	Unknown members of Putfontein SAPS	IPID
38.2	227/08/2018	Ms Marelise Nel	Complaint of dereliction of duties by unnamed SAPS and Hawks members	Unnamed SAPS and Hawks members	National Head of the Hawks
38.3	O/DPCI/J: 180/04/2018	Mr Jacobus Johan van Heerden	Complaint of tax evasion against business owner	Owner of filling station	SARS Commissioner
38.4	O/DPCI/J: 204/07/2018	Mr N Nonkasa	Complaint of corruption, robbery theft of live ammunition by police	Unknown police in Jhb	Referred to IPID to investigate
38.5	O/DPCI/J: 248/12/2018	Mr Raichund Ragunanan	Complaint of failure by police to assist him to lay criminal case	Col Colleen Paul of Mountain Rise SAPS	Provincial Commissioner of SAPS KZN
38.6	O/DPCI/J: 258/02/2019	Ms Martha Mathee	Complaint of fraudulent activities namely pyramid scheme being run at Bredasdorp, Mpumalanga	Mr Barend Christian van der Berg of Arete Forex Club	National Head of the Hawks
38.7	O/DPCI/J: 233/09/2018	Ms Theresa Roelofse	Complaint of unlawful removal from her custody of her two children by Cst Adams and estranged husband	Cst Adams of SAPS	Provincial Commissioner of SAPS Western Cape

	Ref No	Complainant	Nature of complaints	Respondent(s)	Referred to
38.8	O/DPCI/J: 253/01/2019	Mr Neville Chetty	Complaint of fraudulent activities taking place at SARS Durban branch	Krish Mewaal (employee of SARS Durban branch)	SARS Commissioner and National Head of the Hawks
38.9	O/DPCI/J: 208/07/2018	Dr R Govender	Complaint of poor investigation and irregular withdrawal of case	Umbilo SAPS	Provincial Commissioner of SAPS to investigate alleged impropriety and NDPP to look into the matter
30.10	O/DPCI/J: 234/09/2018	Brig saul Slingers	Complaint of irregular appointment of Provincial Head DPCI in Eastern Cape: Maj Gen Nongwanya	DPCI Management	Public Protector & National Head of the Hawks

Operational challenges

39. On 07 November 2019 DPCI Judge Kgomo, the Head of the O/DPCI/J, addressed the Portfolio Committee of Police and reported to them the lack of capacity challenges facing his Office. The purpose of the exercise was to prevail upon the Committee to rescue the Office from imminent collapse. Thankfully, the situation has been slightly alleviated with the stated appointments during April 2020 and May 2020. At the request of the Minister at the meeting of 06 August 2019 the O/DPCI/J prepared a proposed organogram, with motivation and/or annotations, which was furnished to the Minister at the beginning of October 2019. We have not heard from the Minister on this aspect.

40. REPORT ON FEW HIGH PROFILE CASES

40.1 Isaac Kgalabi Aphane (Complainant) v/s Maj Gen Simon Leroy Mapyane (Respondent): Ref No: (O/DPCI/J) 229/08/2018.

The essence of this complaint, the Finding and Remedial Action are captured in paras 1, Findings A-F and Remedial Action (1) – (4) appended below:

"1. The genesis of Mr Issac Kgalabi Aphane's complaint can be traced way back to 31 January 2011 when the Respondent, former Maj Gen Simon Leroy Mapyane, then the Provincial Head of the Directorate for Priority Crime Investigation of Mpumalanga (The Mpumalanga DPCI or Hawks Head), attended a National DPCI Strategic meeting in Pretoria. On that occasion Mr Aphane reported to Lt Gen Mothiba, who then occupied

the position of Acting National Commissioner of SAPS, about large scale Buffalo and Rhino (horn) poaching, theft of cycad plants, export of hunted trophies to foreign countries, tender rigging, staged robberies (inside job) of ivory from secure facilities (strong rooms), and corruption taking place in Mpumalanga Tourism and Parks Agency (MTPA), Mbombela."

"Findings

- A. On a conspectus of the evidence that has been dealt with in this report we find that the former Head of the Hawks (DPCI) of Mpumalanga, then Maj Gen Simon Leroy Maphane (the Respondent), had rendered himself guilty of serious dereliction of duty through his failure or refusal to register/open a docket in this matter and has therefore seriously breached the constitutional rights of the complainant, Mr Isaac Kgalabi Aphaane, for which a disciplinary ought to be instituted, but for the fact that he has been dismissed from the South African Police Service (and concomitantly) the Hawks for an unrelated matter.
- B. Consequent upon a disciplinary enquiry conducted against him [in the unrelated inquiry] then Maj Gen Maphane was found guilty of having fraudulently claimed disbursement for expenses he had not incurred on 02 September 2010 (Charge 4) and on 18 July 2012 (Charge 5) and was dismissed from SAPS (and therefore from the DPCI/Hawks) with effect from 25 January 2016.
- C. Mr Maphane was also convicted in the Mbombela Regional Court on 21 February 2019 on five counts of fraud committed between 15 November 2010 and 08 February 2019 and was sentenced during November 2019 to a term of imprisonment with the option of a fine which he has paid.
- D. A perusal of Mr Aphaane's statement to Gen Ntobela dated 14 March 2012 quoted *in extenso* [in] this Report and other circumstantial indicators, satisfied us that then Maj Gen Maphane should have recorded Mr Aphaane's statement and registered/opened a docket for further investigation because, in our view, prima facie evidence was presented to Maphane and/or Gen Ntobela for doing just that and follow (investigate) the leads.
- E. A number of people have been named and implicated by Mr Aphaane as having been complicit in the commission of a number of serious offences. We have refrained from interviewing them or obtaining their statements as we reckon that such a measure would constitute investigating the criminal case itself which is not within our sphere of operation or mandate nor does the Office of the DPCI Judge

(Hawks Ombud) possess the knowhow and capacity to undertake such a mammoth task.

- F. We also have to find and be candid enough that along the entire chain, which is apparent from this Report, which chain need not be repeated, that we (the Office of the DPCI Judge is not to be spared either though we lack capacity) owe Mr Aphane an apology for willy-nilly frustrating his efforts to fight crime and corruption.”

REMEDIAL ACTION

- (1) The Head of the DPCI (the Hawks) Lt Gen Godfrey Lebeya, is hereby directed to appoint a senior member of the Hawks, who was not previously involved in this matter, within two months of receipt of this report to lead an investigation into the allegations of criminal malfeasants reported by or complained of by Mr Isaac Kgalabi Aphane and to notify the DPCI Judge within two weeks of such appointment that he has done so.
- (2) Lt Gen Lebeya is further directed to report back on the status of the investigation by not later than 31 May 2020, in very cryptic and peripheral terms, but without jeopardising the investigation, **but nevertheless with sufficient information to enable the DPCI Judge to report back to the SAPS Portfolio Committee, that asked the DPCI Judge to investigate Mr Aphane’s complaint in the first place.** See section 17L(9) of the SAPS Act that stipulates that: “(9) The Judge shall annually report to Parliament on the performance of his or her functions.”
- (3) Invoking the guidance that Regulations 4(i) of the South African Police Service Discipline Regulation, 2016, provides the Head of the DPCI (the Hawks) must ensure that “the employee appointed to investigate the alleged misconduct must be of equal or higher rank than the employee being investigated.” **The situation where a warrant officer (W/O Ntlhamu) of the Integrity Unit of the DPCI investigated a major general (Maj-Gen Mapyane) for alleged unethical conduct or improper behaviour should not be countenanced.** The DPCI is a huge and important crime/corruption busting police institution which should not be relegated or delegitimised. To echo the words of Mogoeng CJ in *Helen Suzman Foundation v/s President of the Republic of South Africa & Others* 2015 (2) SA 1 (CC) at para 46 where he pronounced:
“[46] Members of the DPCI must always prove to be reproach – be men and women of integrity. And this underscores the need for integrity testing to obviate

the abuse of power and victimisation of innocent citizens, by members of the DPCI. While it is quite fitting to be on high alert about the possible manipulation and abuse of the system by anybody including political executives, it is equally important that the public and even senior politicians themselves be protected from the possible abuse, blackmailing and victimisation by or through the DPCI or its individual members."

- (4) This report is provided to the SAPS Minister in terms of s 17L(6) of the SAPS Act, 68 of 1995.

The DPCI Judge is pleased to report that Lt Gen Lebeya has appointed Col Ngwenya to investigate the criminal allegations [as directed].

40.2 Walter Mnisi (and Adv N Virginia Sonqishe (Complainants) v/s Col M William Maake and five Others: Ref No (O/DPCI/J) 189/05/2018.

Paragraphs 2, 3, 4, 18 and 20 read in relevant parts:

"(2) The supposed complainant, the real party who ought to be aggrieved, Adv Sonqishe, a member of National Prosecuting Authority (the NPA), was accused and convicted of the contravention of s 9(1) of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004. The Regional Court Magistrate, Mr T V Ratshibvumo, sitting at the Gauteng Regional Court, Johannesburg, found her (Ms Sonqishe) guilty on 26 September 2017 of having unlawfully and intentionally accepted a gratification in an amount of R7 000. 00 (seven thousand rand) in cash from a Mr Godfrey Mkhabela in order to withdraw certain (serious) charges against Mr Mkhabela himself.

(3) on 29 September 2017 Adv Sonqishe was sentenced as follows:

"Ten (10) years imprisonment of which three years [are] suspended for a period of five (5) years, on condition that the accused is not convicted of contravening section 9 of Act 12 of 2004, committed during the period of suspension."

(4) Adv Sonqishe sought leave to appeal her conviction and sentence from the Regional Magistrate, which was refused on 11 October 2017. She subsequently petitioned the Judge President of the Gauteng Division of the High Court for the same relief but Madam Justices Adams and Mahalelo turned it down on 23 February 2018 as having no reasonable prospects of success.

(18) **Conclusion:** We are satisfied that Mr Walter Mnisi and/or Ms NV Sonqishe is/are manipulating the system and abusing the privilege accorded to them by the law. To have accused the Respondents as they did in the face of deadly

evidence against Ms Sonqishe, a then officer of the Court who failed to uphold the law, her oath of office and act in the interest of the citizens of the country, should not be countenanced. If the tables turn against Mr Mnisi and/or his so called client, Ms Sonqishe, they will only have themselves to blame.

(20) Decision: The complaint is not only devoid of any merit and unsubstantiated but is also not bona fide and is therefore dismissed.

(A) This Report is provided to the SAPS Minister in terms of s 17L (6) of the SAPS Act, 68 of 1995.

(B) A copy of the Report is furnished to both Mr Walter Mnisi and Ms Ntombesihlanu Virginia Sonqishe (who is serving her sentence at the Kroonstad Correctional Facility) as perhaps, joint complainants.

(C) A copy of the Report is further furnished to the National Head of DPCI (the Hawks), Lt Gen Godfrey Lebeya, as the complaint implicated his officers.

(D) A copy of the Report is furnished to the National Director of Public Prosecutions, Adv Shamila Batohi, with particular reference to what a member of National Prosecuting Authority (NPA), then State counsel Ms Ntombesihlalu Sonqishe, was up to and what the Acting NDPP, Adv Silas Ramaite, had decided on 12 December 2018.” **Mr Mnisi has taken our Report on review. We are opposing it.**

40.3 Seymour Carlrado Marais (Complainant) v/s Lt Gen Liziwe Ntshinga and two Others: Ref No (O/DPCI/J): 70/05/2016

Paragraph 20, the Findings at para 21 (21.1 – 21.4) and the Referral (Recommendation) at para 22 (22.1 and 22.2) to the Report are self-evident. The Report in these respects reads:

“(20) Having said what goes before, and mindful that the complainant was clearly mendacious or less than frank at times, it would be remiss of or, perhaps a misdirection, on the part of the DPCI Judge to dismiss out of hand Mr Marais’ allegation that millions of rands were “laundered” through his FNB and ABSA accounts by the respondents. This is so because he furnished [bank details] and urges a forensic investigation.

Finding

(21) In our view what would constitute a serious and unlawful infringement of Mr Seymour Marais’ rights would be his triple claims that:

- (21.1) The R12 000. 00 paid to him was only part payment for the services rendered for a particular project for which he gave material information and that the respondents have failed or refused to pay the balance. The Office of the DPCI Judge cannot find any evidence that the complainant was short-paid; alternatively to second-guess the assessment of the top provincial Hawks management in the face of their compelling evidence that R12 000. 00 was fair compensation for services rendered would be unprincipled.
- (21.2) As regards Mr Marais' claim that the other projects that he provided material or useful information on to the respondents or payment was unjustifiably withheld, we hold that overwhelming evidence was presented to the DPCI Judge that the claims were fabricated.
- (21.3) In respect of the next aspect, relating to the alleged money laundering, we also find that there is no proof that the complainant's rights have been infringed, at least there is no proof at the disposal of the O/DPCI/J to that effect.
- (21.4) In the result we find that the complainant's rights in respect of Findings 21.1, 21.2 and 21.3 were not infringed.

REFERRAL

(22) However, the following allegations by Mr Seymour Marais justify a referral to the Independent Police Investigative Directorate (IPID) in terms of s 17L (5) of the SAPS Act, against:

(22.1) In respect of Col Godfrey Wagter he says:

"I had two personal accounts and the other Hawks laundered money through them. Col Godfrey Wagter of the Organised Crime Unit, Bellville, Cape Town, laundered money into my First National Bank account (Business Cheque Acc No 6209177 **the last four digits omitted by the DPCI Judge**). According to me millions of rands were laundered through the account but the transactions in that account were hidden".

(22.2) In respect of Col (Now Brigadier) Dylan Perumal and Lt Gen Liziwe Evelyn Ntshinga he says:

"Col Perumal and Lt Gen Ntshinga have laundered money into my ABSA flexi account (Acc No 927660) and 929199 (**the last four digits in respect of both accounts also omitted by the DPCI Judge**). A lot of money estimated to millions of rands laundered through my account. A

full forensic investigation will disclose evidence that link the Hawks laundering money through my account.”

(Me Seymour Carlrado Marais’ statement with the full banking details will be delivered separately to IPID)

(23) We furnish this Report to the National Head of the DPCI (the Hawks), Lt Gen Godfrey Lebeya, to take cognizance of the outcome of this investigation by the DPCI Judge; and to the respondents who are entitled to this Report.

REPORT TO THE SAPS MINISTER

(24) We are sending this Report to the Minister in compliance with s 17L (6) of SAPS Act.

DISPOSAL OF THE MATTER

(25) In view of our findings we are closing our file in this matter and complainant will be informed accordingly.”

40.4 An Informer (whose identity is protected) (Complainant) v/s Capt Jacobus Gordon (Respondent): Ref No (O/DPCI/J): 154/11/2017.

At para 1 the Report commences:

(1) “The Office of the Directorate for Priority Crime Investigation Judge (O/DPCI/J) or the Hawks Ombud received a complaint from a registered informer, whose identity we will protect, although in certain quarters the horse may have bolted. He is aggrieved that notwithstanding his yeoman’s efforts that resulted in uncovering the large scale operation of a criminal syndicate that specialised in high-jacking trucks the [cargo] whereof landed in the warehouse of the kingpin, identified as a certain Mr Ebrahim Bakhas, the DPCI (Hawks) have failed or refused to compensate him.”

At paras 13 and 14 the Report states:

(13) The Office of the DPCI Judge (Hawks Ombud) was on the verge of concluding its Report on the complaint of the informer in question, “Mr XX” or “Mike” (a covert nickname), but the Head of the Hawks needed to inform this Office whether the informer’s claim has been settled or not and why. The O/DPCI/J has now been furnished with the Disciplinary Report, of the above

mentioned description, which found the claim fraudulent and fabricated between Mr XX/Mike and Col KG Motlhamme while the latter was still a lieutenant colonel. (14) The DPCI Judge must confess that were it not for the Disciplinary Report the outcome might easily have gone in favour of Mr XX/Mike. This is how convincing or persuasive Lt Col Motlhamme and the complaining informer were; having regard to their foregoing statements. However, their plan came unstruck when their chicanery was uncovered.

Having found Lt Col KG Motlhamme guilty of fraudulent conduct the O/DPCIJ Report continues from para 20 to the end:

(20)On 10 February 2020 the Chairperson imposed the following penalty on Col KG Motlhamme having heard submissions on behalf of both parties.

“Sanction: Suspension without salary for a period of one (1) month in terms of Regulation 12(1)(d) of the South African Police Service Discipline Regulations, 2016;

It is also ordered that the employee be referred to Employee Health Wellness (EHW) for counselling in terms of regulations 12(2) of SAPS Discipline Regulations, 2016”.

REMARKS BY THE DPCI JUDGE (HAWKS OMBUD)

(21)It follows from the result of this enquiry that the informer's claim for compensation was rejected by the Investigating Officer Capt Jacobus Gordon and his seniors who had the authority to approve or reject it.

(22)Concomitantly, the DPCI Judge is satisfied that the informer's claim for compensation cannot succeed. Not only because the Hawks Ombud Judge agrees with the Disciplinary Chairperson's well-reasoned ruling but also because the process was statutorily authorized and the outcome must stand unless set aside on internal Appeal or Reviewed or Set Aside by a Court of Law, which the Hawks Ombud Judge (the DPCI Judge) is not. See: Oudekraal Estates (Pty) Ltd v/s City of Cape Town and Others 2004 (6) SA 222 (SCA) at para 26 where the following pronouncement was made by Howie P et Nugent JA:

“(26) But the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other

words, was the Cape Metropolitan Council entitled to disregard the Administrator's approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view it was not. Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for Judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside".

(23)Put slightly differently, it would be a *brutum fulmen* (worthless order with no legal consequential effect) or even an unlawful order for the DPCI Judge in its Remedial Action to order compensation contrary to what the law allows (the Treasury Instructions, the Public Finance Management Act (PFMA) No 1 of 1999, etc).

(24)Finally, this observation must be made. Col KG Motlhamme has learned this hard lesson: **A moment of madness can cause a lifetime of sorrow**. On the cusp of his retirement he almost threw away 35 years of dedicated service to the people of South Africa. If it were not for his "Lucky Stars", which he must thank, he would be languishing in jail; alongside the informer whom he showed misguided empathy to.

FINDING BY THE DPCI JUDGE

(25)The complaint by Mr XX" or "Mike", the informer, against Capt Jacobus Gordon for having "seriously and unlawfully infringed his rights" in the course of a criminal investigation contemplated in s 17L(4)(a) of the SAPS Act, 68 of 1995, is dismissed as unsubstantial and is in fact fabricated.

(26)The request by Mr XX or Mike that the DPCI Judge recommend to SAPS or IPID that the conduct of Capt Gordon be criminally investigated cannot, therefore, be acceded to.

A. REPORT TO THE NATIONAL HEAD OF THE DPCI

This report is furnished to Lt Gen Godfrey Lebeya to take cognisance of the outcome thereof.

B. REPORT TO SAPS MINISTER

This Report is provided to the SAPS Minister in compliance to s 17L (6) of the SAPS Act.

C. FEEDBACK TO THE COMPLAINANT

A copy of this report is furnished to the complainant for his information and to enable him to weigh up his options, if any.

D. CLOSING OF THE DPCI JUDGE'S FILE

In the circumstances, we are closing our file."

40.5 W/O Lumkani Jali and Others v/s Maj Gen Isaih Jabulani Zikhali: Ref No (O/DPCI/J): 240/12/2018.

Maj Gen Zikhali is the former Provincial Head of the Hawks in KZN and has taken early retirement. The O/DPCI/J Report in para 1 states:

- (1) The Directorate for Priority Crime Investigation (the DPCI), popularly known as the Hawks, of the Eastern Cape Province had embarked on investigating several criminal charges of sexual exploitation and the rape of young girls, some as young as 13 years. The suspect was one Pastor (Ps) Timothy Omotoso who is the head pastor of the Jesus Dominion International Church (JDIC) which has several branches throughout South Africa, and possibly beyond our borders."

In Para 5 the Report reads:

- (5) "Then a number of obstacles were encountered by The Team which prevented the arrest of Ps Omotoso. In its complaint to the Office of the Directorate for Priority Crime Investigation Judge (O/DPCI/J), or the Hawks Ombud, The Team claimed that these obstacles were precipitated by Maj Gen Isaiah Jabulani Zikhali, the Respondent, the Provincial Head of the DPCI (the Hawks), Kwa-Zulu Natal (KZN), whom, we came to establish, had been a member of Ps Omotoso's church (JDIC) for about five years prior to these alleged occurrences in Bloemfontein."

W/O Jali states at paras 22 and 23 of his statement that what led to the “obstacles” mentioned in para 5 are the following utterances made by Maj Gen Zikhali in the pact Bloemfontein City Hall used as a worship venue:

“(22) I am Maj Gen Zikhali in the police. I am the boss of the Hawks in Kwazulu Natal (KZN). I am the extension and the arm of the National Head of the DPCI. I arrived in this ministry (church) about five years ago. There are four Captains from the police who are also part of the ministry and many junior officers and there are also members of the Defence Force who are part of the ministry. **We are going to protect the integrity of the ministry and our spiritual father. There is no case that was reported to the police.**

As I have said I am the boss of the Hawks and many of you know the Hawks.

(23) I would have known if there was a report made to the police. **I was a Brigadier but Daddy prayed for me and I was upgraded to a major general.”** After Gen Zikhali finished his testimony I then went out of the hall. I phoned my colleagues to come pick me up. I then reported to them. Capt Magwangqana then took a decision together with The Team that we must approach Gen Zikhali to assist us to meet with the Pastor. She then sent me and W/O Themba Sephamola to go inside the church and ask Gen Zikhali to come outside and speak to The Team.”

In paras 36 and 37 the DPCI Judge remarked and concluded as follows:

“(36) Even more in point as affecting what is expected of a (Provincial) Head of the Hawks appears in **Ntlemeza v/s Helen Suzman Foundation and Another [2017] ZASCA 93** Navsa JA pronouncement at para 45:

“The proper functioning of the foremost corruption busting and crime fighting unit in our country dictates that it should be free of taint. It is a matter of great importance. The adverse prior crucial judicial pronouncements and the place that the South African Police Service maintains in the constitutional scheme as well as the vital role of the National Head of the DPCI and the public interests at play, are all factors that weighed with the court in its conclusion that there were exceptional circumstances in this case”.

(37) The fact that [Maj Gen Zikhali's] spiritual conviction was that he attained his promotion to be a Major General through the prayers of Pastor Timothy Omotoso (the devine intervention) is no justification for the stance that he took. **As Mr Justice Madlanga puts it in Corruption Watch NPC v/s**

President of the Republic of South Africa and Others (the Nxasana Case): "I do not think that is the reaction expected of the holder of so high and important an office; an office the holder of which - if she or he is truly independent - is required to display utmost fortitude and resilience".

In light of the guilty finding brought out against Maj Gen Zikhali the DPCI Judge issued the following Remedial Action from para 42 of the Report:

"REMEDIAL ACTION

(42.) Emanating from the evidence dealt with above the Remedial Action directed in this Report should not be construed or regarded as charges which have been formulated against Maj Gen Isaiah Jabulani Zikhali, but the Remedial Action circumscribes broadly what the major general rendered himself guilty of. It is accordingly directed that the National Head of the DPCI (the Hawks), Lt Gen Godfrey Lebeya, institute disciplinary proceedings against Maj Gen Zikhali in terms of section 40 of the South African Police Service Act 68 of 1995, as amended and/or any applicable provisions or legislation, **within two months from the date of this Report**, for:

- (42.1) Abuse of power; as Maj Gen Zikhali was not executing official duties when he escorted Ps Timothy Omotoso, a private citizen, when he engaged a blue intermittently-flashing light reserved for escorting designated dignitaries or officials. He did so in contravention of Regulation 176(3) of the Traffic Regulations;
- (42.2) Abuse of State Resources; as Maj Gen Zikhali used the blue lights when he was not on duty;
- (42.3) Aiding and abetting a criminal suspect, Pastor Timothy Omotoso, to evade arrest;
- (42.4) Interference in the investigation conducted by members of the DPCI (the Hawks) which is criminal conduct and also prohibited by s 17L(4)(b) of the SAPS Act.
- (42.5) He intimidated and/or victimised the Investigating Team led by Capt Brenda Magwangqana which is a contravention of Regulation 5(3)(w) of

the “The South African Police Service Discipline Regulations” (SAPS/DR);

(42.6) He gave a “false statement or evidence in the execution of his duties” in contravention of Regulation 5(3)(aa) of the SAPS/DR in that, inter alia, he falsely stated that he did not know the whereabouts of Ps Omotoso and lied to Maj Gen Mokoena and Brig Posholi that he was assisting the Investigating Team to apprehend Ps Omotoso [when the converse was true].

(42.7) He “neglected his duty or performed his functions in an improper manner” in contravention of Regulation 5(3)(gg) of the SAPS/DR in that he shirked his responsibilities by referring the Investigating Team to the Secretary General of the Jesus Dominion International Church (JDIC), Sister Bunmi Ajayi, to locate Pas Omotoso; secondly, he cowardly decamped to Durban leaving the Investigating Team in the lurch.

FEEDBACK TO THE COMPLAINANTS AND RESPONDENT AND MINISTER OF POLICE

- (A.) This Report is furnished to the SAPS Minister in compliance with s 17L (6) of the SAPS Act which required that:
“The retired Judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister”.
- (B.) The outcome will be conveyed to the Respondent, Maj Gen Zikhali.
- (C.) The Investigation Team, the complainants, will be informed accordingly.
- (D.) Lt Gen Lebeya, the National Head of the Hawks, must report back to the DPCI Judge by 31 October 2020 concerning the status of the implementation of the Remedial Action.”

The O/DPCI/J was subsequently informed by the National Head of the Hawks that Maj Gen Zikhali took early retirement on 31 December 2019, unknown to us.

His “sins” nevertheless must follow him wherever he goes, the saying goes.

40.6 Mluleki Dlelenga (and Solomon Mapaila) v/s Lt Gen Ntlemeza: Ref No (O/DPCI/J): 72/05/2016

Para 1 of the O/DPCI/J Report introduces this complaint with:

"(1) Mr Mluleki Dlelenga was the National Secretary of the Young Communist League of South Africa (YCLSA) when he lodged a complaint against the now retired National Head of the Directorate for Priority Crime Investigation (DPCI) or the Hawks, Lt Gen Mthandazo Berning Ntlemeza, on 30 May 2016 with the former DPCI Judge, Judge Issa Moosa, which he unfortunately never signed off on before his demise in February 2017."

In para 23 of his statement (para 6 of the O/DPCI/J Report) Mr Dlelenga states:

"(23) The following was said by Lt Gen Ntlemeza:

- (23.1) That the reason of his travel to East London was to attend a funeral.'
- (23.2) That on his previous trip to the area he "nearly knocked down a drunk pedestrian near Cofimvaba.
- (23.3) That part of his 'mandate is to embarrass the SACP by getting any wrong doing by its leaders deployed in government.'
- (23.4) That amongst those SACP leaders, he 'is to arrest the MEC in the North West Province of South Africa, Mr Madoda Sambatha – because, out of the information gathered there could be an imminent arrest of the MEC who is linked to corruption."

At para 15 of the Report the DPCI Judge observes:

(15) "One view that the DPCI Judge can pronounce upon without any equivocation, though, is that any member of the Hawks who targets any member of a political party or embarrass him or her, simply by virtue of his/her constitutional political choice would fall foul of the following provisions:

- (15.1) Section 199(7)(a) and (b) of the Constitution of the Republic enjoins that:
 - "(7) Neither the security services, nor any of their members, may, in the performance of their function –
 - (a) prejudice a political party interest that is legitimate in terms of the Constitution; or
 - (b) further, in partisan manner, any interest of a political party."
- (15.2) In terms of the South African Police Service Discipline Regulations (SAPS/DR): NO. R. 1361 of the 2016 Regulation 5(3)(h) a member of the police will be guilty of misconduct if he or she: "misuses his or her position in the Service to promote or to prejudice the interest of any political party."

From para 21 to the end the Report records:

THE CONCLUSION AND FINDINGS

(21) Maj Gen Mthandazo Berning Ntlemeza did not cover himself in glory. He was evasive. His evidence is contradictory and unreliable. It is rejected merely on the papers as they stand. The DPCI Judge is, of course, mindful of the

principle enunciated in *Plascon-Evans Paints Ltd v/s Van Riebeeck Paints (pty) Ltd* 1984 (3) SA 623 (A) at 643E-635C.

(22) MEC Weziwe Tikana was lukewarm and unreliable. Her evidence is spat out.

(23) **The Complainant, Mr Mluleki Dlelanga, faired impressively and credibly. His complaint is substantiated.**

REFERRALS

(A) The "Report of Finding" is furnished to the Minister of SAPS in compliance with s 17L(6) of the SAPS Act.

(B) The "Report of Finding" is provided to the National Head of DPCI (Hawks) to take note of some of the remarks and observations of the DPCI Judge.

(C) The "Report of Finding" is also furnished to the Complainant, Mr Mluleki Dlelanga, and Mr Kgabele Solomon Mapaila, in the latter's representative capacity for the South African Communist Party (SACP) in this complaint.

(D) The "Report of Finding" is further furnished to the Respondent, Lt Gen Ntlemeza (retired), to note the outcome. The delay which is embarrassing and hard to explain is regretted.

(E) On a conspectus of all the facts and circumstances there is no need to direct that Remedial Action be taken, principally by virtue thereof that Maj Gen Ntlemeza has been on retirement since 17 September 2017. There is therefore no contractual or labour relationship in existence between him and his former Employer.

(F) Whereas no Remedial Action is prescribed against the Respondent, Maj Gen Ntlemeza, this Report does serve a purpose: most eloquently described in *Helen Suzman Foundation v/s President of the of the Republic of South Africa & others* 2015 (2) SA 1(CC) at para 46 by Chief Justice Mogoeng in these terms:

"46 Members of the DPCI must always prove to be above reproach – men and women of integrity. And this underscores the need for integrity testing to obviate the abuse of power and victimisation of innocent citizens by members of the DPCI. While it is quite fitting to be on high alert about the possible manipulation and abuse of the system by anybody, including political executives, it is equally important that the public and even senior politicians themselves be protected from the possible abuse, blackmailing and victimisation by or through the DPCI or its individual members."

(G) The Office of the DPCI Judge is accordingly closing its file."

40.7 Wesley Jason Schouw v/a Capt Jacobus Anthony Beukes and Others: Ref No (O/DPCI/J) 256/02/2019.

The Complainant was charged with certain criminal offences which were later withdrawn in court. A disposal order was made that the seized exhibits seized during his arrest, excluding those that he cannot legally possess, be restored to

him. Para 16 and onwards of the DPCI Judge's Report encapsulates the finding and the Remedial Action issued by the DPCI Judge:

- (16) "It is common cause that the assets listed at para (3) of the complainant's statement are lost. It is not for the Office of the DPCI Judge to determine whether a member or members of the Hawks or a member or members of the public stole the exhibits. The fact of the matter is that the assets were entrusted to the custody of the Hawks (DPCI) who had the responsibility to safeguard and to restore them to the owner in good condition (not worse than when they were seized).

FINDING

- (17) In the premises the DPCI Judge is satisfied that the members of the Directorate for Priority Crime Investigation seriously and unlawfully infringed the rights of the complainant, Mr Wesley Jason Schouw, in the cause of investigating a criminal offence in that his assets listed in the remedial action below were lost by them or got missing while in their custody and under their control.

REMEDIAL ACTION

- (A) It is directed that the Directorate for Priority Crime Investigation (the Hawks) compensate the complainant, Mr Wesley Jason Schouw, the value of the assets determined as at the time that they were seized as exhibits on 14 August 2014. The catalogue of the assets is as follows:

1. CASE DETAILS			
DF LAB REFERENCE		STATION & CAS	
NAME OF DFI IN CHARGE OF SCENE			
2. DETAILS OF PERSON HANDING IN OR FROM WHOM EXHIBITS WERE SEIZED			
Name		Representative Name	
Address		Contact Details	
Date		Time	
3. EXHIBITS			
QUANTITY	DESCRIPTION	SERIAL NUMBER	FSL BAG NUMBER
1	APPE COMPUTER	NONE	SEALED IN WRAP
1	TELKOM MODEM	IM81:3556190525822143	PA6002891124
1	BB BOLD (BLACK AND SILVER	IMEI:331504.05.588997.7	PA6002891140
2	FLASH DRIVES		PA6002891139
1	VODAFONE MODEM	IMEI* UNCERAL	PA6002891139
1	HD; SAMSUNG 80GB	(SIN: SOAJJ169288061)	PA6002891138

	S/N: SOOJJ10YC 88061		
1	EXT: SAMSUNG 1TB (WITH CABLE	EZIVJ102217252	PA4000543167
1	E SERVER (HDP) 73.5 GB	E6X9265E	PA600281137
1	USB DOCK		PA4000064578K
1	APPLE KEYBOARD		PA4000064578K
1	APPLE MOUSE		PA600281136
1	MTN SIM CARD		PA600281135
1	A70M INTEL (CABLE)	TLQBOG00514300170NT	PA4000543163
	PABWED: RØ3LFØ!!	535 – OHOW – BAE – QB	
All assignments and instructions were performed within the guidelines as set out in the search warrant or as prescribed in Chapter 2 (section 19 – 36) of the Criminal Procedure Act, Act 51 of 1977			
THE EXHIBITS ARE RECEIVED BY:			
Signature		Capt Riaan Morris	
THE EXHIBITS ARE HANDED OVER			
Signature		Mr Wesley Jason Schouw	

- (B) By virtue of the fact that public money is involved it is requested that the Head of Treasury delegate a suitably qualified functionary to assist to determine the value of the assets set out in Remedial Action A (above). See: Economic Freedom Fighters and others v/s Speaker of the National Assembly and others 2016(3) SA 580(CC) at para 10 and Court Order para 105(5), (6) and (7).
- (C) The panel to determine the approximate/reasonable value of the assets listed in A (above) will consist of the following:
- C.1 Treasury Official: Chairperson;
 - C.2 Adv Tshepo Boikanyo: Director and Acting CEO: Office of the DPCI Judge;
 - C.3 Relevant member of the DPCI (Hawks) delegated by the National Head of the DPCI, Lt Gen Lebeya;
 - C.4 The complainant, Mr Wesley Jason Schouw, and/or his legal representative.
 - C.5 The panel has the power to co-opt only one functionary (a 5th panel member) whose assistance is indispensable.
- (D) The above determination should be made within 60 days of date of this Report and its outcome submitted to the DPCI Judge within 10 days of the determination for the Judge's signification of the approval of the determination.
- (E) It is directed that the National Head of the DPCI (the Hawks) Lt Gen Lebeya institute an inquiry as regards who was responsible for the lapse that resulted in the failure to register the exhibits listed in Remedial Action A (above) in the

SAP13 Register and/or why it occurred. Such a measure is also aimed at avoiding a recurrence.

- (F) Whereas criminal conduct by a member of the Directorate for Priority Crime Investigation (DPCI or Hawks) would ordinarily be investigated by the Independent Police Investigative Directorate (IPID), where, however, a member of the Hawks might potentially investigate his or her senior the Commander of the Community Service Centre (the Charge Office) must ensure, as far as possible, that the investigating officer ought to be of equal or higher rank. In this matter a constable (Cst Pokama) potentially investigated a captain (Capt Jacobus Anthony Beukes), the 2nd Respondent, or even the highest ranking of the Respondents, Lt Col Mark Purchase (5th Respondent).

REPORT OF OUTCOME TO THE MINISTER OF SAPS

- (G) This Report of outcome is referred to the Minister of SAPS ito s 17L(6) of the SAPS Act which provides:
"The retired judge shall report the outcome of any investigation undertaken by him or her or referral to the Minister."

FEEDBACK TO COMPLAINANT AND DISPOSAL

- (H) A copy of this report is furnished to the complainant."

The Panel described in Remedial action C has made the following determination:

That the Complainant, Mr Wesley Jason Schouw, be paid an amount of R35 841. 00 (Thirty-Five Thousand Eight Hundred and Forty One Rand) by the Directorate for Priority Crime Investigation (the Hawks). The DPCI Judge has accepted the Panel's Report and determination and has ordered that payment be made on or before 31 October 2020.

40.8 The last but by no means, least, case presented for present purposes is:

Rutendo Matinyarare and Another v/s Capt Sussana Jacoba Muller and Another: Ref No: (O/DPCI/J): 295/09/2019.

Para 13 and the Finding in paras 14 (14.1 -14.10) and 15 and the Remedial Action at A to C as well as the Referrals at D to G, sufficiently distils the essence of the inquiry. They are in these terms:

- (13) Ms Bekani laid a charge of assault as per Sophiatown CAS 181/07/2019. The two complainants also informed the O/DPCI/J investigators that they reported the assaults and related infractions by Capt Muller to the Independent Police Investigative Directorate (IPID). The O/DPCI/J is therefore not required to make any Referral to IPID in terms of s 17L(5) of the SAPS Act. See the Referral at para D below concerning Mr R Tony Naidoo and Capt Muller to the

Provincial Commissioner of Police. Care must be taken, though, that Capt Muller should not be charged twice for the same misdemeanour.

FINDINGS

(14) Having regard to the evidence presented to the Office of the DPCI Judge the following findings are made:

- (14.1) It was pre-arranged between Mr R Tony Naidoo, Mr Stephen Enslin and Mr Cecil Benade, that the first Complainant, Mr Rutendo Matinyarare, in particular, must be evicted from his flat/residence at Carlis Flats, Montgomery Park, Newlands, Johannesburg, on 11 July 2019. Whether this was effected with a court order or not is immaterial for purposes of this adjudication.
- (14.2) It is evident from the statement of all the witnesses, inclusive of the Respondents, that the eviction was a massive operation which required the assistance, not only of Mr Enslin and Mr Benade, but also of several unnamed manpower to remove Mr Matinyarare's assets from the rented flat. Hence even a furniture removal was arranged. Mr Naidoo's statement that: "I was on my way to point out possible hideouts of wanted suspects" to Capt Muller is inconsistent with the objective facts and is accordingly misleading.
- (14.3) Based on the analysis made in paras 14.1 and 14.2 (above), insofar as Capt Muller is concerned, two conflictual situations present themselves. Capt Muller says: "My unregistered informer requested to point out possible addresses of suspects [to me]. Whilst on his way he informed me that he had a quick work that he had to attend to immediately and as soon as it is done we could continue with our pointing out. I agreed to this." Either Capt Muller and Mr Naidoo conspired to lie in their identical statements in this regard or Mr Naidoo told her a blue lie and thereby misled her. Both can't be correct.
- (14.4) Where Capt Muller painted herself into a corner she cannot escape from is that if Mr Naidoo hoodwinked her initially she could not have been unaware of the cantankerous incidents unfolding right before her eyes. To name some: Mr Matinyarare resisting eviction which culminated in him being handcuffed by Mr Naidoo. This has been testified to by Mr Matinyarare himself; his girlfriend (second Complainant) Ms Nozipho (Nozi) Bekani. Sgt Kgatte and his colleague Cst Mmamuroa were sent on an SOS mission to intervene. Sgt Kgatte add that Capt Muller "handcuffed the boyfriend of Nosipho" when they left for Sophiatown Police Station.
- (14.5) Ms Bekani, I am satisfied, was viciously assaulted and her cellphone smashed by Mr Naidoo in the presence of Capt Muller who is said to have threatened to strike Ms Bekani with a broomstick. She even bled from her mouth.
- (14.6) If Capt Muller may initially have been tricked by Mr Naidoo, which the objective facts dispel, she subsequently fully associated herself with the

unruly and strongarm conduct of Mr Naidoo. In fact, she revelled in the situation. She waved her DPCI (Hawks) appointment card to all comers as the statements demonstrate. She verbally identified herself as such. She expressly stated that she had come to arrest Mr Matinyarare, and handcuffed he was.

- (14.7) It must be borne in mind that a senior police officer, Lt Col Aboobaker Buckus, made this averment:

"(6) Capt Muller stated that she was busy with a police matter at the address where Mr Matinyarare was assaulted and threatened her."

This also broadly accords with the statements of other witnesses.

- (14.8) What betrays Capt Muller even further is that, as a law enforcement officer serving the public in an august organisation and Directorate, the Hawks, she did not get angry with Mr Naidoo for purportedly betraying her and arrest him for contravening the law, for that matter. This does not only amount to dereliction of duty but prima facie constitutes an offence.

- (14.9) Mr Matinyarare was of the firm conviction that Capt Muller may have been moonlighting. His belief was not farfetched because he overheard her impressing upon some of her colleagues over the phone that if anyone of them enquires about her whereabouts they should be told not come to Mr Matinyarare's "complex because she was having an operation in the area." This statement is somehow borne out by what Capt Muller conveyed to Lt Col Buckus that she "was busy with a police matter at the address where Mr Matinyarare assaulted her." The question may therefore be legitimately asked: What was indeed in it for her to go to such length to protect Mr Naidoo?

- (14.10) The semi facsimile (replica) statements between Capt Muller and Mr Naidoo perpetuates the conspiracy between the two to mislead. This point intersects with the multiple points of identity in their statements addressed in para 12 (12.1 – 12.10) of this Report and must be read in conjunction. In **S v/s Phallo and Others** 1999(2) SACR 558 (SCA) at para 33 the Supreme Court of Appeal (per Olivier JA: Zucman JA and Farlam AJA concurring) quoted with approval the following passage in **R v/s Victor and Another** 1965(1) SA 249(RA) where Beadle CJ said at 253 A-C:

"Both appellants made warned-and-cautioned statements to the police, giving detailed accounts of their movements on the day before and on the night on which the crimes were committed. The statements are almost identical and false in particulars which show conclusively that the appellants must have conspired together to tell the same story to the police ... I am satisfied in comparing the appellants' statements to the police, that these could have been made only after they had carefully discussed the matter with each other and had decided that they would tell the police an almost identical, false story. This conspiracy could have been intended only to assist not only each appellant himself but also his co-appellant. The making

of a false statement to police in order to assist a guilty man to escape punishment seems to me to be as much an act of aiding and abetting a criminal as to help him escape punishment by assisting him conceal his crime as, for example, helping a murderer to dispose of the body of the deceased. Both are positive acts which are designed to assist the criminal in his criminal conduct."

This pronouncement applies with equal force to the Respondents in this matter.

- (15) Anchored on the foregoing facts, factors, circumstances, analysis and findings the DPCI Judge is satisfied that the complainants, Mr Rutendo Matinyarare and Ms Nosipho Bekani, have substantiated their complaint against Capt Sussana J Muller, a member of the DPCI (the Hawks) that Capt Muller has indeed infringed or violated their rights in a "serious and unlawful" manner caused by the investigation against Mr Matinyarare.

REMEDIAL ACTION

- A. It is directed that the National Head of the Directorate for Priority Crime Investigation (the DPCI or Hawks), Lt Gen Godfrey Lebeya, institute disciplinary proceedings against Capt Sussana J Muller, a member of the DPCI, in terms of Section 40 of the South African Police Service Act, 68 of 1995, as amended, read with the applicable Regulations in terms of the South African Police Discipline Regulations, based on the evidence and findings of this Report.
- B. The charges must be drawn up and served on Capt Sussana J Muller within two months of the date of this Report, with a Report Back to the Office of the DPCI Judge within a further two weeks thereafter that the Remedial Action has been carried out.
- C. No deadline is placed on when the disciplinary inquiry should be concluded but the outcome thereof should be transmitted to the Office of the DPCI Judge for record purposes.

REFERRAL ITO S 17L(5) OF THE SAPS ACT

- D. Due the fact that the DPCI Judge does not have any jurisdiction over Mr Ravichandarn Tony Naidoo this Report is referred to the Provincial Commissioner of Police, Lt Gen Elias Mawela, to consider whether or not to investigate any charges against Mr Naidoo emanating from this Report.

The DPCI Judge does not and cannot preclude the Provincial Commissioner from investigating Capt Sussana J Muller as well.

The contact details of the parties are available on request. See DPCI Judge's Letterhead.

E. REPORT TO THE MINISTER OF POLICE

"Report of Findings" is furnished to the Minister of SAPS in compliance with s 17L(6) of the SAPS Act.

F. REPORT TO THE COMPLAINANTS AND THE RESPONDENTS

This Report is also furnished to the Complainants, Mr Rutendo Matinyarare and Ms Nosipho Bekani, to note the outcome.

G. Except for the implementation of the Remedial Action in A to C, the Office of the DPCI Judge is closing its file."

THE ISSUE OF THE REFERRALS

41. It is necessary to explain briefly how Referrals (Complaints falling beyond the mandate of the DPCI Judge) are dealt with. These are grievances alluded to in s 17L(5) of the SAPS Act. The DPCI Judge can only adjudicate grievances on the merits of cases investigated by the Hawks (s 17L(4)(a) and (b) of the SAPS Act). With regard to the vast majority of these cases the complainants would be unaware of the provisions of s 17L(4) of the SAPS Act. The investigators are then duty bound to try and establish who the alleged miscreants are and whether they are members of the Hawks.
42. If we lack jurisdiction the O/DPCI/J still has to determine which of the Institutions/Directorates or Chapter 9 Institutions listed in s 17L(5) of the SAPS Act the complainants must be referred to. Finally, the complainants are given reasons why the O/DPCI/J cannot come to their aid and where to go to seek relief. Importantly, the recipient of the Referral is furnished with the contact details of the aggrieved person to get in touch with him or her. Whereas some complaints are run-of- the mill type others are bulky and take a bit of time to dispose of.
43. We deal with only one typical Referral Report. **Brig Saul M Slingers v/s the 2013 SAPS Commissioner of Police and Lt Gen Ntlemeza**, former National Head of the Hawks: Ref O/DPCI/J: 234/09/2018, alluded to in para 38.10 and listed number 38.10 of Table 7.
The Office of the O/DPCI/J Report in para 1 -5 reads:
 - (1) "The complainant, Brig Saul M Slingers, was the Provincial Commander: Operational Legal Support: Legal and Policy Services: Western Cape Province, when he lodged his complaint with the Office of the Directorate for Priority Crime Investigation Judge (DPCI Judge) or Hawks Ombud.
 - (2) His grievance is that during 2012, after he had been a brigadier for the past 12 years, he applied for the vacant post of Provincial Head: Legal Services: Mpumalanga Province (Post No11/06/2352) ,but was unfairly and for no valid reason not shortlisted for an interview. Brig Slingers claims that his exclusion was arbitrary and constituted an unfair labour practice by his employer (the South African Police Service (SAPS) and/or the Head of the DPCI Unit (the Hawks).
 - (3) This report will be succinct because, from the onset, it is evident that the complaint falls outside the purview of the Office of the Directorate for Priority Crime

Investigations Judge (DPCI Judge or Hawks Ombud) as contemplated in s 17 L(4) of the South African Police Service Act, 68 of 1995 (SAPS Act) which stipulates:

"(4) The retired judge may receive complaints in the prescribed form and manner from—

(a) any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate; or

(b) any member of the Directorate who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation."

(4) In the premises this complaint is dealt with as a referral matter in terms of s 17L (5) of the SAPS Act which provides:

"(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent Complaints Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in [chapter 9 of the Constitution](#) of the Republic of South Africa, 1996."

(5) Nevertheless, the complainant is entitled to know on what basis was it decided that his complaint falls outside the sphere of competency of the Office of the DPCI Judge and also the reasons for the referral to the applicable body, as we hereby do."

Para 7 records relevantly in part:

(7) "Coincidentally, but significantly, Brig De Beer had a grievance that related to the fact that she was not properly assessed as a result of some prejudices or bias against her, the merits or demerits of which are beyond the scope of this enquiry. Her grievance served before Arbitrator, Public Safety and Security Sector, Mr Jacques F.M Verhoef, who came to the following conclusion (made this award) on 24 July 2015:

(102) I have however concluded that the 2nd Respondent [Nogwanya] could not have been, based on the reason provided for the promotion by the employer, namely equity, have been the most suitable candidate at the time. I am therefore of the view that his appointment should be set aside and that the employer is ordered to consider the appointment to the post of Provincial Head: Legal Services (at the level of Major General) Mpumalanga, afresh".

AWARD

(103) I have found that the employer has committed an unfair labour practice relating to promotion against the employee. I therefore make the following award:

(a) The promotion of the 2nd Respondent, Maj Gen MN Nogwanya, is set aside with immediate effect; and

(b) The employer, SAPS, is ordered to consider the appointment to the post of Provincial Head: Legal Services (at the level of Major General), Mpumalanga Province afresh.

From para 8 the Report continues:

(8) "Brig Slingers is making the following disturbing accusation of favouritism perhaps bordering on corruption, which ought to be looked into, if not already:

'(13) My complaint in this document is not about my pending cases, but about the reluctance or refusal of the SAPS or the DPCI to apply the Award of the Bargaining Council and continue to pay Major General MN Nogwanya a salary and benefits at the level of Major General.

(14) The reluctance of SAPS/DPCI to act against Major General MN Nogwanya is not understandable, because he cannot successfully review the Order of the Arbiter and he will anyhow be late to review the Award of the Arbiter.

(15) The question is, who is preventing the action against Major General MN Nogwanya and why is the case of Major General MN Nogwanya an exception in the SAPS and DPCI, when the Court Ordered that his appointment was irregular, he was retrospectively dismissed from the DPCI and the result would have been that, all the overpayments to him be deducted from his pension. In another matter, when it came to light that the Section Commander: Litigation and Administration: Northern Cape Province, Brigadier SR Mogapi, was allegedly irregularly assisted through the appointment process, a case of corruption was registered against the suspect and Brigadier SR Mogapi was dismissed from the Service.

(16) In the case of Major General MN Nogwanya of the DPCI, with the full knowledge of the SAPS Legal Services that his demotion stands, because it was not reviewed by him or SAPS, is allowed to since 2012 to date earn a salary and benefits at the rank of Major General, while SAPS Legal Services since 2012 opposed my request for a promotion in regards to my grievance".

(9) Brig Slingers also makes the allegation that the former head of the Hawks, Lt Gen Ntlemenza, (who is now retired) moved Mr Nogwanya from Mpumalanga to head the

Office of the Hawks in the Eastern Cape Province notwithstanding the reversal of his rank (apparently) to brigadier but with the retention of his salary of major general, which measure in the view of Slingers, was improper and irregular.

(10) In light thereof that the Office of the DPCI Judge cannot investigate the merits of this complaint the following recommendations are made:

(10.1) In terms of s 17L (6) of the SAPS Act this report is furnished to the SAPS Minister. The subsection provides:

"(6) The retired judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister."

(10.2) This report is referred to the National Commissioner of Police in terms of s17L (5) of the SAPS Act quoted below at para 10.3, and for the further reason that Brig Slingers implicated members of SAPS and/or the then National Commissioner of 2012 in the alleged over-reached payment of Brig Nogwanya at the salary level of a major general.

(10.3) This report is also referred to the Public Protector, Adv Busisiwe Mkhwebane, to consider, in her discretion, whether the issues, broadly speaking, that Brig Slingers complains of falls within the PP'S purview or not and whether to investigate the complaint or not. Section 17 L (5) of the SAPS Act reads: *"The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent Complaints Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in [chapter 9](#) of [the Constitution](#) of the Republic of South Africa, 1996."*

In terms of s 182 of the Constitution the Office of the Public Protector is one of the Chapter 9 Institutions.

(10.4) This report is further furnished to the current Head of the Hawks, Lt Gen (Dr) Godfrey Lebeya, as his Directorate has an interest in this matter.

(10.5) The report is in addition furnished to Brig SM Slingers who complains that the process instituted in making the appointment of Brig MN Nogwanya to major general was fatally flawed and seriously violated his constitutional right and /or besides, MN Nogwanya was improperly moved to the Eastern Cape Province and irregularly or wrongfully paid the salary of a major general whereas his

promotion to that rank had been reversed through a due process on 24 July 2015."

44. This Referral exposition is in response to some questions raised by the Honourable members on this subject matter at a previous reading.

IN CONCLUSION

45. We respectfully beg to present the Annual Report for the 2019/2020 to the Honourable House for consideration.



MR EDWARD RASIWELA

DD: INVESTIGATIONS

DATE: 17/09/2020



F DIALE KGOMO

HEAD: O/DPCI/J

DATE: 17/09/2020