IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO:

In the matter between:

CAPE TOWN PEACE CENTRE NPO

Applicant

(“CTPC**”)**

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

and

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA Second Respondent

and

THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE Third Respondent

and

THE MINISTER OF POLICE Fourth Respondent

and

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES Fifth Respondent

and

THE MINISTER OF PLANNING, MONITORING AND EVALUATION Sixth Respondent

and

THE NATIONAL HEAD OF THE DPCI Seventh Respondent

and

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Eighth Respondent

and

THE SPEAKER OF THE NATIONAL ASSEMBLY Ninth Respondent

and

THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES Tenth Respondent

and

THE SOUTH AFRICAN HUMAN

RIGHTS COMMISSION Eleventh Respondent

and

THE PUBLIC PROTECTOR Twelfth

Respondent

and

THE AUDITOR GENERAL Thirteenth

Respondent

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FOUNDING AFFIDAVIT

I, the undersigned

ROMMEL ROBERTS

do hereby make oath and say that:

1. I am an adult male human rights activist and hold the position of Secretary of the Cape Town Peace Centre (“CTPC”) which conducts its business at and from 3 Rye Road, Mowbray, Cape Town.

2. I am duly authorized to depose to this affidavit on behalf of the CTPC in terms of the resolution of the Board of the CTPC, a copy of which is annexed marked “”RR1”.

3. The facts herein deposed to are within my personal knowledge unless it appears from the context, or is specifically stated to the contrary.

4. To the extent that I refer to the law, or make legal submissions, I do so in reliance on the advice of the CTPCs’ legal representatives, which I believe to be sound and correct. I have endeavoured in what follows to confine myself to the facts and circumstances germane to the legal argument that will be presented at the appropriate time.

THE PARTIES

5. The Applicant (The CTPC) is **CAPE TOWN PEACE CENTRE**, a non-profit organization registered as such in terms of the Non-profit Organisations Act, 1997, (the Act) under registration number NPO 011-790 NPO, of 3 Rye Road, Mowbray, Cape Town.

6. The first respondent is the President is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** of Union Buildings, Government Avenue, Pretoria, of care of the State Attorney Long Street, Cape Town. The first respondent is sued both in his capacity as head of state and as Head of the National Executive.

7. The second respondent is the **GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA** (“the Government”), Union Buildings, Government Avenue, Pretoria, of care of the State Attorney, Long Street, Cape Town.

8. The third respondent is the **NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE**, Wachthuis Building 231 Pretorius Street Pretoria, of care of the State Attorney, Long Street, Cape Town.

9. The fourth respondent is the **MINISTER OF POLICE**, Wachthuis Building 231 Pretorius Street Pretoria, of care of the State Attorney, Long Street, Cape Town.

10. The fifth respondent is the **MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**, Union Buildings, Government Avenue, Pretoria, of care of the State Attorney, Long Street, Cape Town.

11. The sixth respondent is the **MINISTER OF PLANNING, MONITORING AND EVALUATION,** Union Buildings, Government Avenue, of care of the State Attorney, Long Street, Cape Town**.**

12. The seventh respondent is the **HEAD OF THE DIRECTORATE OF PRIORITY CRIME INVESTIGATION**, A5 Promat Building, 1 Cresswell Street, Silverton, Pretoria, of care of the State Attorney, Long Street, Cape Town.

13. The eighth respondent is the **NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**, Victoria and Griffiths Mxenge Building, 123 Westlake Avenue, Weaving Park, Silverton, Pretoria, of care of the State Attorney, Long Street, Cape Town.

14. The ninth respondent is the **SPEAKER OF THE NATIONAL ASSEMBLY**, Houses of Parliament, Parliament Street, Cape Town City Centre, of care of the State Attorney, Long Street, Cape Town.

15. The tenth respondent is the **CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES,** Houses of Parliament, Parliament Street, Cape Town City Centre, of care of the State Attorney, Long Street, Cape Town.

16. The eleventh respondent is the **SOUTH AFRICAN HUMAN RIGHTS COMMISSION**, of Braampark Forum 3, 33 Hoofd Street, Braamfontein.

17. The twelfth respondent is the **PUBLIC PROTECTOR**, of Hillcrest Office Park, 175 Lunnon Street, Pretoria.

18. The thirteenth respondent is the **AUDITOR-GENERAL**, of 300 Middel Street, New Muckleneuk, Pretoria.

19. No relief is sought against the fifth, sixth, eighth, eleventh, twelfth and thirteenth respondents who are joined in this application by reason of their legal interest in the relief sought.

LOCUS STANDI OF THE CTPC

20. The CTPC approaches this Court in terms of sections 38(a) and (d) of the Constitution, acting in its own interest and in the public interest. The CTPC, like all citizens, has an interest in the proper implementation of the rule of law through open, accountable and responsive governance in the form of multi-party constitutional democracy contemplated in section 1 of the Constitution of the Republic of South Africa (hereafter "C1"). The CTPC contends that urgent steps are necessary to address the lack of effective and efficient anti-corruption machinery of state capable of containing and eradicating corruption and maladministration in the country and able to seize, freeze and recover public funds from those who are benefitting from the abuse of our public coffers.

21. Success in this application would ensure that the respondents in the executive and the legislature, as constitutional beings or entities, are held to account in relation to their constitutional duties, obligations and responsibilities to uphold, defend and respect the Constitution as the supreme law of the Republic and as further contained in the judgments of this Court in

relation to the obligation to keep efficient and effective anti-corruption machinery of state as set out in the judgments in:

a. *Glenister v the President of the Republic of South Africa and others* 2011 (3) SA 347 (CC) (*Glenister II*) and

b. *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) (*Glenister III*)which were handed down in March 2011 and November 2014 respectively.

c. The dicta handed down in para [166] in *Glenister II* and para [1-2] in *HSF/ Glenister III* are particularly apposite.

> *'[166] There can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law, and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence, and imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption*

and organised crime flourish, sustainable "development and economic growth are stunted…'

'[1] All South Africans across the racial, religious, class and political divide are in broad agreement that corruption is rife in this country and that stringent measures are required to contain this malady before it graduates into something terminal.

[2] We are in one accord that South Africa needs an agency dedicated to the containment and eventual eradication of the scourge of corruption. We also agree that that entity must enjoy adequate structural and operational independence to deliver effectively and efficiently on its core mandate. And this in a way is the issue that lies at the heart of this matter. Does the South African Police Service Act (SAPS Act), as amended again, comply with the constitutional obligation to establish an adequately independent anti-corruption agency?'

22. In the absence of this application, there is no other reasonable, efficient or effective basis on which the said respondents can be held to account properly in the open and responsive manner contemplated by section 1(d) of the Constitution read with section 195(1)(b).

23. The CTPC has taken note of the review proceedings instituted in the Gauteng North Division of the High Court by the Helen Suzman Foundation and another against Eskom Holdings

SOC Ltd. and 72 other respondents. These review proceedings are aimed at reviewing and setting aside a variety of irregular and corrupt transactions that are tainted by corruption, procurement irregularities and other malfeasance.

24. While these proceedings are welcomed by the CTPC, it is respectfully pointed out that the former President is a respondent in the proceedings both in his official and personal capacities.

25. The former President has a penchant for protracting legal proceedings of the kind instituted, as is best illustrated by his “Stalingrad strategy” in the judicial review proceedings instituted by the Democratic Alliance against the Acting NDPP. In that matter the Democratic Alliance (DA) sought an order reviewing and setting aside a single decision not to prosecute the former President on 18 counts of corruption, fraud, money laundering and racketeering. The matter was commenced in April 2008 and the final judgment of the SCA in the matter, from which no appeal lies in view of concessions made by the former President and National Director of Public Prosecutions (NDPP) during the hearing, was eventually handed down on 13th October, 2017.

26. The Eskom review is a far more complex, multi-faceted and multi-party application in which at least two appeals are possible and predictable. It addresses symptoms of corruption and state capture but does not address the fundamental cause of the culture of corruption with impunity which has arisen and is rife in South Africa (SA) on an accelerating scale in recent years.

27. It is reasonable to anticipate that the symptomatic approach in the Eskom review will take more time than is reasonably available to save SA from the comprehensive downgrade to economic junk status and the risk of becoming a failed state to the detriment of the welfare of the poor and in circumstances that will put secure peace, sustainable progress and equality in prosperity in jeopardy.

28. It is for these reasons that this application has been launched by the CTPC in an effort to address the cause of corruption with impunity, namely the failure to investigate and prosecute the corrupt, especially those well connected politically.

29. In November 2014 this Court found in *HSF/Glenister III* [para 1] that *"corruption is rife"* in South Africa. The prospect that this malady will graduate into something terminal is currently unfolding

with credible (but as yet untested) allegations of state capture, an advanced form of high level corruption, emerging on a daily basis in the media and in a veritable cottage industry of works of non-fiction on the topic, which are referred to in greater detail below.

30. The risk that state capture and rampant corruption will continue unabated to the detriment of all inhabitants of South Africa, thus ultimately impacting directly or indirectly on the rights guaranteed in the Bill of Rights because valuable and scarce state resources are misdirected, lost and irregularly dealt with instead of being used to respect, protect, promote and fulfil human rights in the manner contemplated by C 7(2) and with due compliance with the values and principles set out in C 195(1) .

31. The downgrades to the various levels of economic junk status, for so long as they continue, will limit access to investor capital, both local and foreign; this setback will occur both in the public and private sectors thus prejudicing human dignity, the promotion of the achievement of equality and the enjoyment of human rights and freedoms as expected in C 1 through the strangulation of sustainable economic development in the country.

32. Politicians complain frequently that there is an “investment strike” in SA and point to the cash reserves of approximately R1.5 trillion on the balance sheets of publicly quoted companies in SA. It is a tragedy that the business sector has neither the trust nor the confidence in governance in SA to take the risks involved in investing these funds in job creating ventures that will alleviate poverty and reduce inequality through the stimulation of the economy.

33. The CTPC as a peace loving institution (formerly called the Quaker Peace Centre) is concerned that the state is not attending, as it should, to most of the allegations of corruption and state capture set out below in greater detail, in a manner that is constitutionally compliant. Its conduct is consequently invalid in terms of C 2 read with C 195(1) and C 237.

34. The relief sought in this application is, in essence, based upon the proper interpretation of, and the constitutionally compliant implementation of, the two judgments referred to above with two qualifications.

35. Firstly, the CTPC respectfully requests that this Court revisits its decision to exclude and indeed strike out, with costs, the expert

evidence of Professor Gavin Woods of the University of Stellenbosch and that of Gareth Newham of the Institute for Security Studies. Their evidence, with the benefit of hindsight, predicted what has transpired in relation to corruption and state dysfunction in the criminal justice administration in the years since 2014. That expert material, if now admitted in evidence, together with the contents of this affidavit, will be relied upon by the CTPC in claiming the relief sought.

36. Secondly, the CTPC respectfully requests that this Court revisits its decision that it is still legally acceptable, in the circumstances now current in SA, to locate the Directorate of Priority Investigations (DPCI) within the South African Police Services (SAPS). The CTPC notes with alarm that the then Deputy Chief Justice and Justice Cameron, who co-wrote the seminal majority judgment in *Glenister II*, were unable in *HSF/ Glenister III* to agree on the meaning of the judgment in material respects that are thoroughly traversed in the majority and some of the minority judgments in *HSF/ Glenister III.* The CTPC respectfully submits that its request that the issue be revisited by this court (no other court can properly do so) would enhance the standard of

jurisprudence, for which this court is famous, and the interests of justice.

37. The current circumstances in South Africa are such that it is constitutionally impermissible to locate the single, dedicated and specialized anti-corruption entity (ANTI-CORRUPTION ENTITY), envisaged by this court in G II, within the SAPS as the dysfunction and corruption within SAPS is not conducive to the independent, efficient and effective functioning of the ANTI-CORRUPTION ENTITY in a manner which complies with the criteria laid down by this court, the requirements of the relevant legislation and the values and principles of C195(1).

38. The DPCI ("Hawks") has failed to comply with the standards and criteria expected of it as laid down in binding terms in *G I* and G *II*. The Hawks are not a specialized ANTI-CORRUPTION ENTITY, their training for the specialized functions of an ANTI-CORRUPTION ENTITY is lacking and their independence is conspicuously absent. The Hawks are not adequately resourced and the leadership of the Hawks has been decimated due to executive malfeasance that comes down to lack of respect for the security of tenure of office of the personnel who have been hounded out of the Hawks, only to be replaced by deployed cadres

of the ANC's "national democratic revolution" to the detriment of its constitutionally compliant functioning. These criteria of specialization, training, independence, resourcing and security of tenure of office will be called "the STIRS criteria" for convenience in this affidavit.

NATURE OF RELIEF SOUGHT

39. The principal relief sought in this application is an order of this Court:

a. Declaring that the legislation which locates the Directorate of Priority Crime Investigation within the South African Police Service is, in the circumstances currently prevailing in South Africa, inconsistent with the Constitution and invalid.

b. Directing the legislature and executive to take such remedial legislative measures as are necessary to rectify the invalid location of the DPCI within the South African Police Service ("SAPS") within a period of one year from the date of the granting of this order

c. Declaring that the conduct of the state in its purported implementation of the orders in *Glenister II* and *HSF/Glenister III* is inconsistent with the Constitution and invalid in that:

   i. The structure and operations of the DPCI are insufficiently specialised

   ii. The mandate of the DPCI is insufficiently specialised

   iii. The personnel within the DPCI are insufficiently specialised and inadequately trained

   iv. The structure and operations of the DPCI are inadequately independent of the executive

   v. The resourcing of the DPCI is lacking.

   vi. The security of tenure of office of members of the DPCI, particularly those in leadership positions, is inadequate.

d. Declaring the creation of and persistence with the Anti-Corruption Task Team ("ACTT") after *HSF/Glenister III* unconstitutional for want of compliance with the constitutional requirement that there be a single entity to combat corruption.

e. Directing the respondents in the executive to disband the ACTT and to take other remedial steps, including interim steps, to address the unconstitutional conduct set out in paragraph (d) above.

f. Directing the respondents in the executive and legislature to report to this Court at three monthly intervals, commencing three months from the date of this order, on the progress made in the formulation and passage of remedial legislation and in the implementation of both interim and final remedial steps taken to give effect to the orders made in this application.

40. For the purpose of this application, it is neither necessary nor proper for this Court to determine the veracity or otherwise of the allegations of state capture or a silent coup, or indeed of the increase in the levels of corruption already noted by the Court in *HSF/Glenister III* [para 1]. The CTPC seeks relief aimed at the failure of the state to respond to the challenges posed by corruption, state capture and the silent coup in a manner that is constitutionally compliant.

41. To the extent that the CTPC relies on hearsay in this application, it is respectfully submitted that it is in the interests of justice that the hearsay evidence be admitted not for the truth of its contents, but because it is in the public domain and by its nature is undermining the constitutional project due to the failure of the State to respond appropriately to the allegations of corruption and State Capture that enter the public domain on a daily basis due to investigative journalism including the so-called #GuptaLeaks. These leaks are reports derived from the hard drives of computers used in the business empire of the Gupta brothers of Saxonwold who are, according to former president Jacob Zuma, his friends.

42. As this is public interest litigation, and the nature of the evidence is effectively undisputed, well-documented in the #GuptaLeaks and the subject of several works of non-fiction as well as academic and faith-based study, the hearsay here tendered should be admitted as evidence in this application.

43. It is obviously impossible for the CTPC to ask the Guptas and the politicians involved in State Capture to depose to affidavits confirming their malfeasance and misfeasance.

44. As this application is aimed at the structural adjustment of the ANTI-CORRUPTION ENTITY and not at those involved in corruption and other malfeasance there is no prejudice to any party to this application, save to the extent that the party concerned may be involved in corruption. If any objection of prejudice is raised on this basis, the CTPC will deal in reply with such objection with all of the equanimity it can muster.

45. In essence, it is the overwhelming public interest nature of all of the relief claimed in this matter that justifies the invocation by this Court of section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988.

46. The CTPC, then known as the Quaker Peace Centre, together with the FW de Klerk Foundation and Afriforum, has applied to this Court for relief in connection with the appointment of a Commission of Inquiry into state capture under case number CCT 339/17. Direct access was declined in the interests of justice in that matter. This Court did however draw the attention of the applicants in case number 339/17 to other litigation concerning the appointment of a Commission of Inquiry.

47. The joint application was made on 6th June 2017, at a time when the full nature and extent of the so called #GuptaLeaks was not yet publicly known. Indeed, the #GuptaLeaks had only just begun.

48. The evidence given thus far before the Zondo Commission of Inquiry and the extent of the #GuptaLeaks, made public since 6th June 2017, has caused the CTPC to reconsider its position and to launch this application as one of urgency. This step has been taken in view of the fact that the convening of a commission of inquiry, necessary as it may be, may have the unintended consequence of unnecessarily delaying the proper investigation and prosecution of criminal proceedings in respect of known malfeasance by a constitutionally STIRS compliant ANTI-CORRUPTION ENTITY working together with the National Prosecuting Authority.

49. The former Public Protector, Professor Thuli Madonsela, has correctly pointed out in public that the subject matter of state capture is already becoming what she called “a cold case”. The CTPC respectfully submits that in a functioning constitutional democracy under the rule of law there should be machinery of state in place to limit the number of cold cases to the barest

minimum. This standard is not being achieved in SA at present, as is evidenced by the SIU complaint that the NPA does not act on matters referred to it by the SIU.

50. In order to achieve success in the investigation and prosecution of those involved in serious corruption and state capture it will be necessary to have in place constitutionally compliant anti-corruption machinery of state.

DIRECT ACCESS

51. To the extent that the CTPC is not entitled, as of right, to direct access to this Court, I submit that there are grounds supporting this application for direct access.

52. The relief sought in this application, as set out in the Notice of Application and summarized above, would not require the hearing of oral evidence and relevant disputes of fact are unlikely to eventuate. The failure of the state properly to investigate and timeously to prosecute the plethora of allegations of malfeasance in high places is the nub of the complaint of the CTPC in this application. The said failure ought to be common cause.

53. While urgent steps are taken to investigate and prosecute some of the whistle-blowing authors when those accused of malfeasance roam free and untroubled, then it is time, with submission, for all freedom-loving South Africans to turn to this Court to act in its role as protector of the Constitution.

54. Should this application become opposed, any dispute arising is likely to be limited to the proper interpretation and implementation of the STIRS criteria set by this Court for effective and adequate independent anti-corruption machinery of state in the two judgments referred to above and to the nature of "the circumstances" (see *Glenister II* [191] and *Rail Commuters Action Group* [86]) which require relocation of the ANTI-CORRUPTION ENTITY outside of SAPS. The nub of the CTPC's case is that there has been a sustained and prolonged failure to prevent, combat, investigate and prosecute serious corruption, particularly corruption in high places involving state capture and the misappropriation of funds of state-owned enterprises (see *HSF and another v Eskom and others*).

INTERESTS OF JUSTICE – IN RELATION TO DIRECT ACCESS

55. The issues for decision in this matter are of legal and nationwide significance and undoubtedly these issues are the very essence of a constitutional matter that can only be finally resolved by this Court. Thus there is no need, and no time available, for litigation in this matter to commence in the High Court and then by way of appeal or confirmation hearing, eventually and after the lapse of considerable time, come before this Court. Indeed the delays inherent in the appeals processes could prove fatal to the continuation of constitutional democracy in SA.

56. The CTPC respectfully submits that it would not, in any event, be appropriate that any other court second guess the findings of this Court in the antecedent litigation which culminated in the two judgments mentioned above and which the CTPC respectfully requests this Court to revisit.

57. Indeed, it would be invidious for any other court to sit in judgment upon the issues which arise out of the proper implementation and interpretation of the said two judgments and out of the revisiting of the rationale for locating the ANTI-CORRUPTION ENTITY within SAPS and for striking out the

material the CTPC wishes to introduce again in the hearing of this matter.

58. It is respectfully contended that it is only this Court that has the necessary jurisdiction and standing to grant the relief claimed in this application. Legal argument will be addressed to this issue.

59. The failure of the state to respond appropriately to the alleged endemic high level corruption involved in state capture has become a matter of significant public interest, stress and concern not least given the negative consequences of the economic rating downgrades already imposed and those that are threatened to be imposed. These developments and the current technical recession will have a deleterious effect on the public at large in terms of impaired service delivery and impoverished governance. The law requires, and the general public is entitled to expect, proper compliance by the state with the orders made in the two judgments of this Court in the antecedent Glenister litigation.

60. The respondents do not appear to be sufficiently concerned about the high rate of corrupt activities to do anything constructive and constitutionally compliant about urgently rectifying the deteriorating situation which, in the words of the Chief Justice in

November 2014, is a malady that is in danger of "*graduating into something terminal"* (*HSF/Glenister III*) [1]).

61. A single example suffices to illustrate this point. Eskom is teetering on the brink of insolvency due to the looting of its coffers and general mismanagement.

62. Eskom seeks a tariff increase of 19.9% at a time when energy consumption is considerably lower than it has been in the past. The poor will be prejudiced if the increase is granted and the looting of the coffers of Eskom will continue in the absence of any constitutionally compliant ANTI-CORRUPTION ENTITY to investigate the corrupt activities at Eskom unearthed by the Public Protector in her State of Capture report and complained of in the review proceedings in *HSF and another v Eskom and others*.

63. The CTPC respectfully submits that this application is necessary in order to ensure that the rule of law is respected, that violations of the Constitution, if any, are identified and dealt with by constitutionally compliant anti-corruption machinery of state, and that the actions of those allegedly involved under the broad rubrics of "rife corruption", of "state capture" and of a "silent coup" are fully investigated in a way that exacts accountability properly and

timeously as is required by C1(d), C195(1) and C237 read with the relevant legislation governing the DPCI in the form in which it finally emerged from *HSF/Glenister III*.

64. The values of economy, efficiency and effectiveness enshrined in C195(1)(b) require that the anti-corruption machinery of state measures up to the criteria laid down by this Court in the antecedent litigation. The CTPC contends, having regard to the track record of the Hawks, that this is not at present the case, hence the urgent need for this application.

65. A single illustration serves to highlight this point: When the DPCI was formed to replace the DSO, the number of new investigations fell by 85% while the value of contraband seized plummeted by a staggering 99.1%. These facts are recorded in the annual report of the NPA for 2008/2009, where it appears that goods seized fell from over R4 billion in 2007/2008 to a mere R35 million in 2008/2009. The most recent NPA annual report reflects the value of goods seized at approximately ¾ of a billion.

66. I am advised in order for this matter to be accorded priority on the roll for hearing, it is necessary for me to advance grounds for urgency.

67. I have further been advised that it is unnecessary to remind the Court of its *dicta* in the *Glenister* II at [166] and *HSF/Glenister* III at [1] and [2] as well as [130].

68. I respectfully submit that it is self-evident that it is urgent that proper criminal investigations into allegations of serious corruption and of state capture be held as soon as possible with a view to restoring South Africa to its rightful place as a sovereign state in the family of nations (as aspired to in the preamble of the Constitution), rather than becoming what has already been described as a 'mafia state'.

69. Even if the allegations of state capture are baseless, it is nevertheless urgent that this be cogently and reliably ascertained so that ratings agencies and investors, who rely on ratings agencies, can be better informed as to the economic prospects in South Africa and can adjust ratings and investment decisions accordingly to the ultimate benefit of the public in general and the poor in particular. The initial market responses to the election of Cyril Ramaphosa as ANC president would be considerably amplified by the implementation of the relief sought in this application to the benefit of the poor, the unemployed and the country as a whole. Ramaphosa’s subsequent elevation to the

presidency of the country brought with it changes to the composition of the national cabinet.

70. The most relevant of these changes to the present application is the appointment of former disgraced National Commissioner of Police Bheki Cele as the new Minister of Police. The Public Protector has found Cele to be incompetent and dishonest in her “Against the Rules” and “Against the Rules Too” Reports into irregular procurement by him of leases in respect of police headquarters in Pretoria and Durban. The Moloi Board of Inquiry, which was given no powers to subpoena witnesses, confirmed these findings and recommended that Cele be investigated for corruption by the “appropriate authorities”. No such investigation has taken place nor have review proceedings instituted by Cele been argued in court. In these circumstances Cele is a grossly inappropriate appointee to any political office but in particular to the office he now holds.

71. Cele was and remains responsible for the remilitarisation of the police service, turning it back into a “force” instead of it being the “service” contemplated the Constitution.

72. Both the National Development Plan and the Farlam Commision into the police shootings at Marikana in August 2012 have recommended that the police be demilitarised. The Farlam Commission's recommendation that this be done urgently was accepted by government but has not been acted on.

73. It is self-evident that an unavoidable consequence of state capture is that resources are stolen from the poor and inequality is exacerbated. In a state that has foundational values aimed at promoting human dignity, the achievement of equality and the advancement of human rights and freedoms, this is intolerable.

74. The undesirability of the DPCI's current location within SAPS finds expression in the recent Parliamentary proceedings brought against IPID (Independent Police Investigative Directorate) Head Robert McBride. This development is document by the Daily Maverick in a report entitled "General Council of the Bar heads to concourt to appeal SCA Jiba Mrwebi decision" (https://www.dailymaverick.co.za/article/2018-07-18-general-council-of-the-bar-heads-to-concourt-to-appeal-scas-jiba-mrwebi-decision/) dated 18 July 2018. The report, from which the extracts in paragraphs a-f are taken, is annexed and marked RR2.

a. The proceedings were initiated by the newly appointed Minister of Police, Bheki Cele, by way of a letter the Minister sent to the Police Portfolio Committee regarding “charges of unethical conduct”.

b. In response, IPID issued a statement that said it assumed the charges referred to in the letter “are the same ones made by one of our investigators, Cedrick Nkabinde, who was offered a senior post by the SAPS in return for falsely implicating the Head of Investigations, Mr Matthews Sesoko, Task Team Leader, Innocent Khuba and IPID Executive Director, Robert McBride in wrongdoing”.

c. The initiation of parliamentary proceedings occurred despite the fact that McBride convened with Cele to discuss the initial complaints made by Nkabinde. At the meeting, McBride informed the Minister that all the investigators in the task team confirmed the falsity of Nkabinde’s allegations. According to McBride, he was not asked for a further response to the allegations, nor was he asked to make representations on his perspective of the matter.

d. McBride, commenting on the selective undertaking of proceedings by the Ministerial office, stated further that: “I have on numerous occasions brought to the attention of the PCP and the Minister various acts of misconduct and criminality by senior police officers. It is trite that no enquiry into them has been held. Nonetheless, I will co-operate fully with any enquiry. I have stated before that these allegations are nothing more than an attempt to shield senior police officers from investigation and to scupper such investigations. The IPID has documents and recordings to refute any such allegations.”

e. The Daily Maverick reports that in “May 2018 IPID issued confirmation that two of its investigators had been offered senior positions by SAPS members, in return for implicating McBride and other IPID investigators in wrongdoing. This information was also presented to both the PCP and the Standing Committee on Public Accounts (Scopa) earlier in 2018. In June 2018, the IPID obtained a court order in the North Gauteng High Court prohibiting members of the SAPS from conducting counter-investigations against IPID

investigators who are investigating them. The members of the SAPS against whom the court order was obtained are the same ones implicated in opening false cases against IPID investigators and the Executive Director. These are the same people offering inducements to the two investigators in return for them making false statements to implicate McBride and others in wrongdoing".

f. It is clear from the information reported on in the preceding paragraphs that McBride is in danger of joining the ranks of those who have become casualties of their own professional standards and commitment to severing corrupt elements within law enforcement. Placing the Hawks within SAPS, in light of the suppressive environment it has become, exposes their anti-corruption efforts and independence to severe interference of the nature delineated in the preceding paragraphs.

75. I accordingly and respectfully request that this matter be accorded top priority on the roll.

BACKGROUND FACTS

76. For the purposes of this application, corruption allegations, (through no fault of the CTPC, as yet not properly and officially investigated or prosecuted), made in the following sources are relevant, not for the truth of their contents, but because they are present in the public domain and have not received the type of urgent and effective official attention from the criminal justice administration so necessary to preserve and maintain public trust in governance and constitutional democracy, via the Hawks and NPA, they ought to receive if due compliance with *Glenister II* is exacted, as it should be:

a. The report of the Office of the Public Protector ("OPP") titled 'State of Capture' (Report No 6 of 2016/2017 and published on 14 October 2016) ("the OPP Report");

b. The report by the South African Council of Churches ("SACC") to the Church Public on the Unburdening Panel process and published on 18 May 2017, ("the SACC Report") a copy of which is annexed marked "RR3";

c. The report of the State Capacity Research Project titled 'Betrayal of the Promise: How South Africa has been Stolen' convened by Professor Mark Swilling, published on 25 May 2017 a copy of which is annexed marked "RR4";

d. The publication titled ‘The Republic of Gupta: A Story of State Capture’ authored by Pieter-Louis Myburgh;

e. The publication titled The President’s Keepers – Those Keeping Zuma in power and out of prison by Jacques Pauw (“The President’s Keepers”);

f. The publication titled “Enemy of the People – How Jacob Zuma stole South Africa and how the people fought back” by Adriaan Basson and Pieter du Toit.The ten #GuptaLeaks as identified in “Enemy of the People” pages 268 et seq, being Transnet and the Locomotive Bribes; the Capture of Duduzane Zuma,(son of the former president) Bell Pottinger and Fake News; How the Free State Government Paid for the Sun City Gupta Family Wedding; Whites Only and Black Monkeys; Multinational Kickbacks; a Captured Presidency; All the President’s Men and Women; The Gupta Intelligence Agency and All Roads Lead to Dubai.

g. The publication entitled How to Steal a City by Crispian Olver, subtitled The Battle for Nelson Mandela Bay - An Inside Account (“How to Steal a City”).

h. The allegations of corruption on the part of the mayor of Cape Town and senior city officials as reported in the press by News24 on 15 December 2017 as “IN DEPTH: Unravelling the City of Cape Town’s Looming Implosion” a copy of which is annexed marked RR5.

i. The official Discussion Document entitled *Towards a National Anti-Corruption Strategy for South Africa - Stop Corruption Together* (the “Discussion Document”), published in May 2016, a copy of which is annexed marked RR6.

j. Robin Renwick, the British diplomat’s book, entitled *How to Steal a Country*, which is on the same theme as the Olver book expanded to the national stage.

k. Professor Swilling’s follow up report to the “Silent Coup Report” in which the process of state capture in SASSA is further analysed. A copy of that report is annexed marked RR7.

l. Swilling’s subsequent book “Shadow State” with co-author Professor Ivor Chipkin.

INTRODUCTION TO THE DISCUSSION OF THE BACKGROUND FACTS

77. In September 2018, the CTPC's attorneys addressed a letter of demand to the State Attorney as representative of the authorities sued. A copy of the letter of demand is annexed marked RR8. The Chapter 9 institutions joined in this application were given courtesy copies of the demand as were the other respondents.

78. The articles referred to in the letter of demand by way of hyperlink are annexed marked RR9 and RR10 in the order in which they are referred to in the letter of demand.

79. The purpose of the letter of demand was to demand that urgent steps be taken to address the failure of the state to implement the judgments of this court in the various respects set out in the letter;

80. Such responses as are received to date will be placed before the Court.

THE RELEVANCE OF THE STATE OF CAPTURE REPORT

81. The OPP Report runs to some 355 pages and to avoid unnecessarily burdening this application, a copy of the entire OPP Report has not been annexed. A copy of the OPP Report will be made available to the Court at or before the hearing of this

application as necessary or if requested. I will however annex relevant extracts from the OPP's Report as necessary.

82. I pause to stress that the OPP Report, the SACC Report, the SCRP Report and the various publications are referred to, annexed or to be provided to the Court are not tendered as proof of truth of the contents thereof, but rather are provided as proof that the allegations contained therein are in the public domain and warrant urgent attention from the Hawks in their role as SA's ANTI-CORRUPTION ENTITY, as legislated for in the SAPS Amendment Act of 2012 and as adjusted in the judgment of this Court in *HSF/Glenister III*, operating and structured in accordance with the "STIRS" criteria of *Glenister II.*

83. Each of the OPP Report, the SACC Report, the SCRP Report and the Publications identify issues which indicate the real possibility of currently ongoing state capture and that corruption is increasingly rife, but has not been countered by the state in any meaningful way.

84. The former President appeared to be content to litigate at a leisurely pace with the main opposition political parties and with the OPP, regarding the need to investigate state capture at some distant and unspecified date after lengthy review litigation and his customary resort to appeals, as he did in the matter of his illegal

removal from office of Mxolisi Nxasana as National Director of Public Prosecutions. This approach is intolerable. The OPP is significantly under-resourced to the extent that the OPP is unlikely to be in a position to initiate and complete any meaningful and conclusive investigation within a reasonable time frame, if at all. Furthermore the OPP is constitutionally mandated to investigate maladministration, not the type of malfeasance and misfeasance which accompanies capture of the state and is alleged to be present on an industrial scale in the country at present. The Public Protector does not have prosecutorial powers.

85. Any delay in the institution of a proper independent criminal investigation into allegations of state capture simply allows the process and conduct involved to continue. Evidence is destroyed, witnesses become unavailable and cases “go cold” in the absence of the urgent level of attention they manifestly require. Recovery of misappropriated state assets and funds is prejudiced by delays as the opportunity to dissipate and conceal is available.

86. In the absence of a properly resourced, specialized and independent criminal investigation of all the allegations of malfeasance and misfeasance referred to above, state capture and corruption are likely to continue unabated to the detriment of the economy and society.

87. In the OPP Report, the erstwhile Public Protector investigated alleged improper and unethical conduct by the former President and other functionaries of state concerning alleged improper relationships with and the involvement of the Gupta family in the appointment and removal of members of the Cabinet and directors of state owned enterprises resulting in the improper and potentially corrupt awarding of state and other contracts for the benefit of the Gupta family, their businesses and other persons.

88. The OPP Report additionally makes reference to the former President's pliability in that the Gupta family, which is in business with his son Duduzane, allegedly influenced the former President in his decision to remove Cabinet members and appoint Cabinet members at their behest. An extract from the OPP Report in this regard is annexed marked "RR11".

89. The observations of the Public Protector in her State of Capture Report have been considerably fortified by the content of the founding affidavit in the review application referred to above, called the *HSF and another v Eskom and others* case.

90. The remedial action set out in paragraph 8.4 of the OPP Report, requires that the (former) President "…*appoint, within 30*

days, a commission of inquiry headed by a judge solely selected by the Chief Justice who shall provide one name to the President."

91. I am advised that this application has nothing to do with the appointment of a commission of inquiry into state capture, but is instead directed at bringing about a situation in governance in which the Hawks are properly located and capacitated to do their necessary work without delay. I am advised that commissions of inquiry do not enjoy criminal investigative and prosecutorial powers save in respect of matters relating to contempt of commissions. This application is, so CTPC contends, too urgent to await the outcome of the Zondo Commission for the reasons set out in paragraph 85 above.

THE UNBURDENING PANEL REPORT

92. The 'Unburdening Panel' comprised SACC President, Reverend Ziphozihle Siwa, Grace Bible Church Pastor, Mosa Sono, social activist Brigalia Bam and Justice Yvonne Magoro.

93. The Unburdening Report, released on 18 May 2017, identifies, on page 4 thereof, seven ways the former President's power elite undermined the state and provides seemingly authoritative and credible evidence on how this has been achieved.

94. Trends were identified of inappropriate control of state systems through a power-elite that was pivoted around the former President that systematically siphoned the assets of the state by securing:

a. Control over state wealth, through the capture of state-owned companies by chronically weakening their governance and operational structures;

b. Control over the public service by weeding out skilled professionals;

c. Access to rent-seeking opportunities by shaking down regulators to their advantage, and to the disadvantage of South Africans;

d. Control over the country's fiscal sovereignty;

e. Control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes;

f. A loyal intelligence and security apparatus; and

g. Parallel governance and decision-making structures that undermine the executive.

THE SCRP REPORT

95. The SCRP Report, released on 25 May 2017, is an academic appraisal of the “system” or “virus” that has been employed to extract rents from the state, with the former President as the key facilitator.

96. The authors of the report, all leading academics, save for one seasoned investigative journalist, argue that a silent coup had taken place in that decisions relating to the functioning and administration of the government were being taken without the consent of the governing party.

97. One of the key thrusts of the SCRP Report is the analysis of how state institutions have been “repurposed” to reward a political elite, referred to as the “power elite”.

98. The authors identify that the former President sat at the head of the table, and his role had been to centralise the illegal rent-seeking and undertake a number of activities that strengthened the relationship between the constitutional state and the shadow state where groupings like the Gupta family featured prominently, along with other factions.

99. It is plain from a reading of the State Capacity Research Project that it corroborates the work of the Public Protector as set out in the OPP report.

THE REPUBLIC OF GUPTA

100. The publication, "*The Republic of Gupta*", written by award-winning investigative journalist, Pieter-Louis Myburgh, identifies the depth and reach of the influence, enjoyed by Gupta family, over the former President; the connections, relationships and associations with the former President and his family, and the involvement and influence of the Gupta family in state activity, including procurement and contracting, and decisions of the former President as both head of state and head of the national executive.

101. Even if only some of the serious allegations made and documented in this publication are accurate, the urgent need for a criminal investigation is obvious. Indeed, the CTPC contends that even if all of the allegations in the said book, many of which mirror the observations contained in the OPP Report, are not true then the need for a criminal investigation is self-evident in order to establish that no state capture as alleged, exists or existed. That is, finality on the question of whether state capture has or had taken place is essential.

102. It is apparent from the “Republic of Gupta” that the research for the book is corroborated by all of the observations made in the OPP State of Capture Report.

THE PRESIDENT’S KEEPERS

103. Although the investigative journalism practised by Jacques Pauw has generally withstood factual scrutiny, it is not the CTPC’s intention to present the allegations contained in *The President’s Keepers* as fact. However, there are many instances referred to in the book that constitute a *prima facie* case of corruption, tax evasion, misappropriation of state funds and other malfeasance all of which warrant investigation.

104. *The President’s Keepers* is referenced here to illustrate the fact that despite these valid and alarming allegations of serious corruption, there has been no investigation carried out by the relevant law enforcement unit tasked with that mandate.

105. *The President’s Keepers* documents the 3-year looting spree occurring within the Principal Agent Network (PAN), a programme conducted by the State Security Agency (the SSA), which cost tax-payers over R1billion rand.

106. Upon being audited, it was found that the programme was riddled with corruption and wasteful squandering of public funds. Cases and investigations instituted against Arthur Fraser, former Director-General of the agency, were consistently suppressed due to his close relationship with the former President. He has been controversially transferred to Correctional Services by President Ramaphosa and that transfer has been taken on judicial review by the Democratic Alliance. The review proceedings are still pending.

107. The close relationship relates back to the unlawful acquisition of the so-called “Spy Tapes” by Michael Hulley, who at the time was the attorney for the former President in the pending criminal proceedings against him, allegedly from Fraser.

108. The matter of the formation of PAN was reported to the then State Security Minister Siyabonga Cwele who did institute desultory investigations.

109. The investigators reported to the then Minister of Justice and Correctional services, Jeff Radebe, who agreed that a *prima facie* case existed and should be pursued.

110. When presented with the evidence, DPCI head at the time Lieutenant-General Anwa Dramat referred the information to Major-General Hans Meiring (then head of the commercial crimes unit) who concluded that they lacked the expertise and capacity to investigate further.

111. Eventually a multidisciplinary task team was appointed.

112. Upon its final PAN report being concluded and handed back to Minister Cwele, the report was then given over to the Inspector General of Intelligence (IGI) Faith Radebe for further investigation. This step made no sense since her office was in a state of dismal incompetence and was under resourced.

113. IGI legal adviser adv. Jay Govender admitted that the IGI's office was only operational "to a certain extent".

114. After 3 years, Minister Radebe finally handed the report over to the new State Security Minister David Mahlobo who astonishingly concluded that the report exonerated those implicated in the PAN scandal.

115. *The President's Keepers* also reveals that the former President has a track record of serial tax evasion, and that he lived unlawfully tax-free for the first 5 years after assuming office.

116. It also shows that the former President was employed by a private security company and earned R1 million as a monthly salary, which is illegal whilst occupying the Presidential office.

117. That this malfeasance has allegedly occurred with impunity is truly baffling. The fact that SARS has sued Pauw for breaching taxpayer confidentiality suggests that his allegations are true.

118. Pauw also documents the capturing of SARS, which was once one of our country's most treasured and proud institutions. The book shows how Tom Moyane, who was appointed Commissioner of SARS but has subsequently been suspended, continued to suppress high-level investigations into "fraudsters, cigarette smugglers and gangsters", and produces evidence linking Edward Zuma, son of the former President, with Azeem Amodcaram (allegedly a big player in the cigarette smuggling game), whereby he received payments made for 'Nthanthla', a code word for Nkandla as Amodcaram reveals.

119. Suspended SARS Commissioner Moyane dismantled investigative units that were high-functioning and brought in large amounts of revenue that would otherwise never have entered the fiscus, and was also complicit in disgracing and hounding out effective senior officials right up to cabinet level through scandalous, vexatious and false allegations.

120. Suspended Commissioner Moyane also instructed Johan van Loggerenberg to remove files from his safe that purportedly contained damning evidence regarding the Nkandla matter, amongst others.

121. Other complete and solid investigations (into the Guptas, Robert Huang, Mark Lifman to name a few) were also suppressed by the new administration. Following suspended Commissioner Moyane's appointment, SARS experienced its first R30 billion shortfall since the global recession in 2009.

122. Pauw documents the way in which our law enforcement departments have become surrogates for implementing the corrupt agendas of those high up in the executive arm.

123. Pauw documents the irrational and irresponsible refusal, given by former NPA managers Jiba and Mrwebi, to go through with the prosecution of former Crime Intelligence head Richard Mdluli on charges of assault and kidnapping of Oupa Ramogibe, as well as defrauding the crime intelligence unit's secret slush fund. Both advocates Jiba and Mrwebi have been struck off the roll by a full bench of the Gauteng High Court. This decision was reversed on appeal by the SCA by a majority of 3-2 judges. The General Council of the Bar is in the process of applying for leave to appeal to this court as the majority in the SCA found, a novel approach, that personal benefit to an advocate is a relevant consideration in a striking off application. I am advised that it is likely that the issues in the matter will be ventilated in this court as all of the judges who have up to now considered the matter question the competence of Jiba and Mrwebi. For the purposes of this application it is sufficient to submit that it would appear that whether they are incompetent or just captured they are not appropriate persons to hold high office in the NPA.

124. In 2013, in the High Court, Judge John Murphy ruled that Mrwebi's decision to withdraw the corruption charges were "illegal,

irrational" and "so unreasonable that no reasonable prosecutor could have taken it" (267).

125. Jiba was given a similar verbal lashing. This stands in stark contrast to Jiba's bases for pursuing criminal charges against top prosecutor, Glynnis Breytenbach, which Judge Murphy described as "frankly disingenuous and unconvincing". The ruling in the High Court was to the effect that the charges against Mdluli should be reinstated. Jiba has subsequently been placed on special leave but no further action has voluntarily been taken against her by the NPA.

126. It has fallen to former prosecutor Gerrie Nel to institute a private prosecution against Jiba on grounds of fraud and perjury relating to her malicious and unlawful targeting of Kwazulu-Natal Hawks head General Johan Booysen shortly after he started investigating a close business associate of the former President (Thoshan Panday). This appears from an online Mail and Guardian report, "Afriforum to prosecute Nombgcobo Jiba for fraud and perjury" that is dated 16 November 2017 (https://mg.co.za/article/2017-11-16-afriforum-to-prosecute-

nomgcobo-jiba-for-fraud-and-perjury) a copy of which is annexed and marked RR12.

127. Booysen had assembled damning evidence against Panday and his police accomplice Navin Moedhoe. However, when the time came for prosecution, Moipone Noko (a known underling of Jiba's) stated in 2014 that the evidence was insufficient despite appearing not to have read the documents for the 2 years that she had them in her possession.

128. Furthermore, Pauw's book reveals evidence of highly irregular and potentially unlawful conduct pertaining to air travel tickets bought for Adv. Jiba (linked to her agent number) using funds from the secret crime intelligence account.

129. Since Jiba is a supposedly independent member of the NPA, and the fact that this information is in the public domain, this would usually warrant an investigation. However, instead of being the subject of investigation, Jiba had the initial fraud and perjury charges instituted by former NDPP Nxasana dropped (courtesy of then new NDPP Shaun Abrahams), and was promoted in the NPA

by Abrahams, then NDPP, to what is effectively the position just below NDPP.

130. This dropping of charges and the subsequent promotion of Jiba occurred despite her conduct being heavily criticized by “12 separate judges on 4 different benches in 3 high-profile cases”, as well as her decision to prosecute Booysen being described as “arbitrary” and offensive to the principle of legality and unconstitutional (269). The disarray in the NPA sketched in the preceding paragraphs is not conducive to the proper administration of criminal justice and does not assist the efficacy of the Hawks.

131. The fate of former DPCI head Lieutenant-General Anwa Dramat was sealed the moment he opened a murder, kidnapping and assault investigation into Richard Mdluli, the former head of police crime intelligence. In conjunction with Gauteng Hawks commander Major-General Shadrack Sibiya, the former DCPI head was slammed with malicious newspaper headlines in October 2011 that contained allegations of illegal ‘renditions’ whereby Zimbabwean murder suspects were deported before at least one of them was killed by the Zimbabwean police.

132. An affidavit filed by Hawks Colonel Kobus Roelofse (one of the Mdluli investigators) stated that he overheard conversations involving Major-General Solly Lazarus (financial head of crime intelligence) discussing the planting of the article. Police Minister at the time, Nathi Mthethwa ordered an investigation into the renditions, which was undertaken by IPID.

133. The investigation was interfered with from the start, when executive director of IPID (Koekie Mbeki) ordered the investigating officer (Humbulani Innocent Khuba) to share every bit of information with Crime Intelligence, which is highly irregular.

134. Eventually Robert McBride reviewed the available evidence and concluded that there was no case against either of the Hawks officers, however this only occurred 2 weeks after former Minister of Police Nathi Nhleko suspended Dramat.

135. Despite the seriousness of these charges, no prosecution was initiated prior to the agreed termination of Dramat's services, ostensibly due to the lack of any evidence.

136. Worse yet, Dramat was awarded a golden handshake and a lifelong pension of R60 000 per month. This is a startling manner in which to treat a suspect in a serious criminal investigation.

137. Dramat's response to his suspension makes interesting reading and is annexed marked RR13. The original is also annexed and marked RR13.1

138. The final decision to suspend Dramat as the head of the DPCI came only 2 days after he called for certain dockets pertaining to the Nkandla Investigation to be made available to the Hawks. These dockets, one opened in December 2013 and two in March 2014 have been kept from the DPCI and retained by detective services at the instance of top management in the SAPS for the apparent purpose of ensuring that no progress is made with their investigation and prosecution. This stratagem has been successful.

139. The resignation of Dramat paved the way for General Berning Ntlemeza to enter as the new head of the Hawks, whose first action was to suspend Shadrack Sibiya for his involvement in the alleged renditions.

140. This decision was roundly condemned by High Court judge Elias Matojane as biased and dishonest, and he concluded that Ntlemeza made false statements under oath.

141. Ntlemeza subsequently began rearranging investigative units and consigning senior and experienced police officers to relative oblivion and placing other more malleable officers in their stead. As reported by Marianne Thamm in the Daily Maverick on 4 September 2018 “Ntlemeza quickly went about capturing the Hawks, making 20 appointments. Ntlemeza’s career has ended ignominiously in a blaze of litigation assailing the rationality of his appointment and failed appeals on his part. The integrity and probity of those he has appointed has been publicly criticized by Paul “O’Sullivan of Forensics for Justice in an article published by biznews.com on 6 September 2018.

RECENT DEVELOPMENTS REGARDING JIBA AND MRWEBI

142. The preceding section goes to illustrate the severe leadership issues faced by the NPA whilst under the executive control of former President Jacob Zuma.

143. Although former President Zuma is no longer at the helm of the executive, the recently elected President Ramaphosa has assured the public, in his first State of the Nation Address in February, that the NPA's "leadership issues" will be "stabilised" and that it would be "able to perform its mandate unhindered". A copy of the address (https://www.gov.za/speeches/president-cyril-ramaphosa-2018-state-nation-address-16-feb-2018-0000) is annexed and marked RR14. However, it is the view of the CTPC that these words have yet to leave the realm of political rhetoric, and thus the situation under President Ramaphosa has gone unchanged and in fact is worsening. He has known since at least December 2017 that he may need to appoint a new NDPP, but thus far has not identified anyone for this critical role, instead making an acting appointment.

144. The SCA decision in *Jiba & another v The General Council of the Bar of South Africa and Mrwebi v The General Council of the Bar of South Africa (141/17 and 180/17) [2018] ZASCA 103 (10 July 2018)* presents a serious impediment to the realisation of effectively rekindling the integrity of the NPA's leadership. This judgement overturned the High Court decision that struck Jiba and

Mrwebi off the roll, allowing for their unhindered return to the NPA. As indicated above, it is now on appeal to this Court.

145. The judgment also conceptually allowed for Jiba to deputise for Shaun Abrahams, the then NDPP, whose occupation of that title has recently ended by order of this Court.

146. Former President Jacob Zuma is facing reinstated charges of corruption, and the questionable relationship between these individuals (Jiba has been seen to be part of former President Zuma's patronage network, her husband having been given a controversial pardon by Zuma after he stole trust money) indicates that the NPA is ill equipped to execute its mandate unhindered.

147. The lack of confidence in Jiba emanates from the court finding that she lied under oath during proceedings in the Richard Mdluli matter.

148. Jiba was also less than forthcoming in the matter before the SCA. This issue was glossed over by the majority in the judgment mentioned in paragraph 142, but was given attention by van der Merwe JA, writing for the minority, who wrote in para 56 of the

judgment: ‘In our system of justice the courts should be able to rely absolutely on the word of practitioners, and for that reason there is a serious objection to allowing a practitioner who is untruthful, and deceives or attempts to deceive a court, to continue in practice. What is also relevant, but was not taken into account by the court *a quo*, is that Ms Jiba has persisted throughout these proceedings with a denial under oath of misconduct on her part. This shows a lack of insight into what she did wrong. In itself it is an important factor which refers adversely on her character, and is a weighty consideration in militating against any lesser stricture than her removal from the roll.’

THE SPECTRE OF THE ZUMA ADMINISTRATION

149. Despite the strong anti-corruption rhetoric uttered by President Ramaphosa, the zeitgeist of the Zuma years appears to linger on in the ruling party’s highest ranks.

150. Recent appointments made within Luthuli House, head office of the governing party, stand in sharp contrast to the promises (made by the President) of reforming the political culture within government.

151. Quite apart from the dark clouds of suspicion of criminality hanging over the heads of the Secretary General (Ace Magashule) and Deputy President (DD Mabuza), there is the appointment of Tony Yengeni (convicted in 2003 on a charge of defrauding Parliament, which was confirmed when an appeal against the conviction was dismissed in *S v Yengeni* 2006 (1) SACR 405 (T)) as head of crime and corruption within Luthuli House. Subsequent to the conviction, it is reported by the Mail & Guardian on 13 August 2013 ("Tony Yengeni- Struggle leader to flawed politician", https://mg.co.za/article/2013-08-13-tony-yengeni-struggle-veteran-to-flawed-politician) that Yengeni has also failed to disclose his conviction to the registration office (as required by s69(8)(iv) of the Companies Act) and was forced to resign from his directorship of 6 companies after charges were laid by the Democratic Alliance. A copy of this news report is annexed and marked RR15.

152. This selection of a serial fraudster to lead the charge against crime and corruption militates against the prospects of systemic changes aimed at reforming the culture of governance towards an ethical and fiercely anti-corruption oriented disposition.

153. The appointment of Ace Magashule as ANC Secretary General is another example of the antithesis that exists between the President's luminary utterances and the action taken in reality. Magashule is the subject of a probe initiated by Public Protector Busisiwe Mkhwebane, which aims to uncover his involvement as former Free State Premier in the Estina Dairy Project, a project already under criminal investigation.

154. In light of the traction that allegations of state capture have now gained in the criminal justice system (it can no longer be said to be mere media speculation), the appointment of a suspect in such allegations to a senior position in the ANC seems to undermine the notion of a reinvigorated political will to sever corrupt elements from government.

155. Within the ANC itself, no use has been of its internal disciplinary available to suspend investigate, charge and discipline all NEC members including those in government, with allegations in their past, convictions involving dishonesty and connections to the attempted capture of the state whether in cahoots with the Guptas or via their own patronage networks.

156. Instead, the mirror image of the course of action noted in the preceding paragraph has been implemented, whereby individuals with blighted reputations have been elevated to positions of authority within the government and the ANC.

157. As will be addressed later on in this affidavit, the executive has continued with a profoundly unconstitutional ANTI-CORRUPTION ENTITY called the ACTT (Anti-Corruption Task Team), which is tasked with the investigation and subsequent prosecution of serious corruption. The unlawfulness of this fragmented multi-agency entity is fully addressed below. This entity has been slammed in Parliament for its severe lack of efficiency and ought to be disbanded in favour of responsive, effective and constitutionally compliant anti-corruption machinery. Instead, it remains to be the desultory and unlawful executive answer to this court's judgment in *Glenister II.*

ENEMY OF THE PEOPLE AND #GUPTALEAKS

158. For the purposes of this application it is not necessary to dwell on the content of the *Enemy of the People*, save as regards its treatment of the massive #GuptaLeaks.

159. The identity of the sources of the #Guptaleaks is not known to me, indeed it is not publicly known as journalists jealously protect their sources. Two unidentifiable persons appeared at the Daily Maverick “Gathering” in August 2018 to confirm that the data in the leaks is from the computers used by businesses in the companies in the Gupta family empire.

160. The voluminous extent of the leaks and the external corroboration thereof by the reactions to them of KPMG, Bell Pottinger, SAP, Trillion, McKinsey and others would suggest that they are all genuine documents that have been hacked by an expert in information technology.

161. The Chief Operations Officer in the Zuma Presidency, Laleka Kaunda, has publicly confirmed that the emails in the #Guptaleaks that relate to her are genuine.

162. I respectfully repeat that, whether or not the many allegations of malfeasance in the #Guptaleaks are true, they all warrant pro-active criminal investigation of a kind not yet seen.

163. Indeed the main interest of the Hawks and the SAPS has been, as widely reported in the press, in urgently badgering Jacques Pauw and Pieter-Louis Myburgh, but, strangely, not Adriaan Basson or Pieter du Toit. The cessation of the investigation of the two journalists after the suspension of Tom Moyane as SARS Commissioner is no coincidence.

164. I turn now to deal briefly with a selection of the #GuptaLeaks detailed in *Enemy of the People.*

165. **Transnet and the Locomotives**: This leak is of emails that document the 'advisory fee' paid by China South Rail (which secured the lion's share of the Transnet tender to supply 359 locomotives) to the Hong Kong based company (owned by Gupta associated Salim Essa) Tequesta. The contractual agreement was such that Essa's company would receive 21% of the amount paid for the locomotives for its familiarity with the political and regulatory conditions in South Africa without providing any proof of services rendered.

166. **The Capture of Duduzane Zuma**: Emails illustrate how Duduzane, son of the former president, brokered meetings

between the chairman of Russian investment firm Sistema and the former President (for which he was thanked via email and rewarded with an offer for various deals between Sistema and South African Government). Duduzane Zuma (in conjunction with the Gupta brothers) also appears to have acted as a recruitment service ensuring that appropriately pliable people are placed in resource-strategic ministerial positions. Richard Seleka and Mosebenzi Zwane were both given positions as director general of public enterprises and mining minister respectively, shortly after sending their CVs to Duduzane Zuma via the alias “Business Man” and directly via Tony Gupta.

167. **Bell Pottinger and Fake News**: These emails illustrate the extent to which the interests of the Zuma family (particularly the former President) have become amalgamated with the affairs of the Guptas. Following the public ire emanating from the dismissal of then Minister of Finance Nhlanhla Nene in 2015, Bell Pottinger was contracted to influence public opinion by fabricating the ‘white monopoly capital’ rhetoric and disseminating this narrative through speeches made by former President Zuma linked ANCYL and MKMVA leaders. Bell Pottinger was reprimanded severely by the UK Public Relations and Communications Association. The

rhetoric that the Guptas solicited from the firm is particularly incriminating when viewed in contrast to the Whites Only Black Monkeys leak, since those emails depict a vile attitude towards black people that cement the idea that 'white monopoly capital' is not intended to serve the previously and continuously disadvantaged.

168. **How the Free State Government paid for the Sun City Wedding**: These emails depict how in 2013 a staggering R200 million was handed over to Gupta controlled company, Estina, to fund a dairy farm near Vrede. This project was designed to fail since only a fraction of the investment ever reached its intended destination, and was instead (as the emails show) laundered through Dubai. The money only interacted with the South African economy again in the form of a lavish Gupta family wedding in Sun City in April of that year, into which R30 million of taxpayers' money was injected. KPMG audit firm's South African arm was found, after an internal investigation by KPMG International, to be complicit in lowering its standards in the interests of the Guptas.

a. **Multinational Kickbacks:**

i. These emails reveal how software company SAP paid just short of R100 million to a Gupta front company

called CAD House, which is involved in selling 3D printers. However, these payments were paid as a commission fee for the acquisition of Transnet tenders. Financial records show how these payments were subsequently distributed to other Gupta owned entities.

ii. Liebherr-International and Shangh-ai Zhenhua Heavy Industries both injected R55 million each into Gupta owned companies in the UAE, after securing contracts to supply South African ports with billions of rand's worth of cranes.

iii. Other emails show that Software AG and Global Softech Solutions (which the Guptas were in the process of purchasing) constructed kickback agreements with the intention of securing tenders from Transnet, Sasol, Multichoice, the Department of Correctional Services and Mangaung Municipality.

169. **A Captured Presidency:** The emails evince that a minimum of four senior officials with close ties to the former President benefitted or interacted with the Guptas. These four are the head of the former President's protection service and long-time bodyguard, Major-General Mxolisi Dladla and his then wife (who

occupied a position as a Presidency official) Mogotladi Mogano; the former President's prior private secretary (now director of events and protocol in the Presidency); and Mogano's husband, Justice Piitso (previously leader of the SACP) is a pro-Gupta lobbyist.

170. **All the President's Men and Women:** The leaks illustrate ties between a minimum of six of the former President's cabinet members and the Guptas. Malusi Gigaba (former finance minister and former minister of public enterprises who is now serving a second stint as minister of home affairs) is implicated in dispatching home affairs officials to assist the Guptas in obtaining and fast tracking visas from India and the UAE.

a. Mosebenzi Zwane's appointment as mining minister was brokered through the Gupta-Duduzane recruitment agency, and he was also the person who approved the payment of R200 million to Estina, the doomed from the start dairy farm mentioned above.

b. Former Communications Minister Faith Muthambi may be open to criminal prosecution on account of sending confidential policy choices made in Cabinet to Tony Gupta and Chawla.

c. Former Minister of Home Affairs Ayanda Dlodlo is implicated in the emails, the details of which are included in *Enemy of the People*.

171. **Gupta Intelligence Agency:** An excel spreadsheet found in the emails incriminates the Guptas in acts of criminal breaches of privacy in that flight records and ID numbers of various anti-Gupta individuals were kept and monitored. It is clear that this information came from a source in home affairs.

172. **All Roads Lead to Dubai:** The emails show an extensive degree of Gupta investment and involvement in Dubai. However, the truly damning aspects are the letters ostensibly authored by the former President where he describes his desire to eventually relocate to Dubai and also contains the solicitation of the patronage from the Prime Minister and vice president of Dubai.

173. The leaks depict the way in which Dubai based companies are used to launder money illegally obtained in South Africa, and also show a cluster of concentrated travel of politicians and state officials, especially contiguous with the appointment of Des van Rooyen as Minister of Finance in December 2015. A long list of state officials is provided in *Enemy of the People* who were all booked into the Oberoi and chauffeured to the Gupta mansion in Dubai.

THE FUMBLING OF CRIMINAL PROCEEDINGS REGARDING ESTINA DAIRY PROJECT

174. Despite the attempts made by NDPP Shaun Abrahams and former Acting Head of the DPCI Lieutenant General Yolisa Matakata to evade responsibility or place blame on each other, it is clear that the investigation and prosecution of those involved in the matter was, at best, fumbled.

175. Matakata revealed before Parliament that the Estina/Vrede State Capture Docket was prepared in November 2017, which the NPA sat on until February 2018, when it authorised arrests of those implicated in it. This appears from a report ("The Age of Abrahams: as the Guptas fled SA, investigating team went on holiday") published by the Daily Maverick on 7 March 2018 (https://www.dailymaverick.co.za/article/2018-03-07-the-age-of-abrahams-as-the-guptas-fled-sa-investigating-team-went-on-holiday/), which is annexed and marked RR16. By that time, the Guptas had successfully fled the country.

176. The reason for the delay given by the NDPP was that the investigative team took a vacation during December, allowing for the speedy departure of suspects in the matter.

177. Diane Kohler Barnard MP noted that the suspects fled the country at approximately the same time that the docket was handed to the NPA.

178. As the article reports, the NDPP's incompetence, or reluctance to perform his duties, was highlighted by Glynnis Breytenbach MP's sobering reminder that special circumstances permit the issuing of arrest warrants in the event that suspects pose a serious flight risk: "These people are prime suspects. The Guptas, Jacob Zuma and his son Duduzane. They are widely known to have considerable assets abroad, homes abroad, private planes, and travel frequently. If they are not considered special cases and a flight risk then in my 26 years as a prosecutor I do not know what was. These are the types of people you would most certainly arrest. You would post huge bail. It is bizarre… nothing was done to prevent them from travelling. They are all gone."

179. It should not be forgotten, in keeping with the tenor of this affidavit, that the Estina Dairy Project had been exposed in the media as far back as 2013, and no action was taken until late 2017.

180. Further, neither the NPA nor the Hawks took any action until after the ANC's elective conference in December.

181. The NDPP then placed blame on to the Hawks for their inability to provide enough evidence to make a *prima facie* case, which resulted in the delays.

182. It seems, then, that a combination of incompetence and inertia within the NPA and the Hawks allowed for the prime suspects in the Estina Dairy Project successfully to evade the administration of justice.

HOW TO STEAL A CITY

183. A further 2017 publication titled “How to Steal a City – The Battle for Nelson Mandela Bay – An Inside Account” by Crispian Olver provides a local government level perspective on the problems of malfeasance in the Port Elizabeth municipal area. There are numerous allegations of corruption, nepotism, cronyism, bribery, the fixing of tenders, factionalism and the capture of the city by elements in the ANC in the book.

184. Of significance in this application is that the author, a loyal cadre of the ANC, deployed to the ANC’s Regional Task Team intended to turn around the parlous state of affairs in PE, and employed by COGTA via then minister Pravin Gordhan to do so, (apparently blithely unaware of the illegality of cadre deployment in the public administration) has occasion to refer to the Hawks only

on one irrelevant and five relevant times insofar as this application is concerned.

185. The author, Crispian Olver, as a loyal cadre of the ANC, appears to be a reliable source who “spills the beans” about his own party. Given the source, the circumstances and the unlikelihood of fabrication on his part, it is respectfully requested that the extracts from the book quoted below be admitted as evidence in this application despite their hearsay nature, in the interests of justice and given the public interest nature of this application.

186. On page 66 Olver refers to a threat he made during his interrogation of an attorney involved in shady dealings with the municipality: “Third, we intend to contact the Hawks and open a criminal case.” The threat was made in the context of negotiating a “deal”.

187. On pages 72 -3 the following appears: “I was also troubled by the limited cooperation we were getting from certain state agencies, such as the Hawks, the South African Revenue Service and National Treasury’s forensic unit … I met with members of the Hawks on a few occasions … As fighting corruption and organised crime falls squarely within the mandate of the Hawks, I assumed that we could collaborate on some investigations, or, at the very

least, that I would refer some cases to them. Since our intervention had only administrative tools at its disposal, we had to pass the baton for any criminal prosecution. We handed over large quantities of information, neatly sorted and catalogued. We even prepared some files and detailed statements, basically offering them a paint-by-numbers exercise that allowed them to charge people without doing much work. Yet we never received any reports on progress, and by the time I left PE not a single arrest had taken place. The response of the Hawks was so slow that I wondered whether some of them were working for the people we were chasing. Long after I left PE for good, our investigations eventually resulted in a few criminal cases."

188. On page 112: "Unfortunately, we did not have the authority to initiate criminal cases; this had to come from the police, including the Hawks, or from the NPA.

189. On page 128: "Although we spoon-fed the Hawks with all the information they needed, very little happened. They have concluded only one case so far, that of Songezile 'Sox' Nkanjeni … After 50 court appearances, he was eventually convicted of fraud in March 2017."

190. On page 181: "The person who had gotten me involved [in PE politics] in the first place, Pravin Gordhan, was no longer

around to give me protection … the Hawks had served a set of questions on Pravin just before his budget speech … In mid-April 2016 I had supper with my friend Pam Yako. After I unburdened myself to her, she asked me a simple question: 'Who is providing you with political cover?' I had to admit that no one was. 'Then you are too exposed,' she said. 'You must think about getting out.'

191. The CTPC respectfully submits that it is exceedingly worrisome that in a book devoted to narrating the recent chronology of municipal level corrupt activities in PE, the author has so few references to the Hawks and so little that is good to reveal concerning their role in combating corruption there.

192. The above mentioned reports and publications are in the public domain and suggest, at a minimum, that there are serious allegations of malfeasance and misfeasance which involve serious corruption and have led to possible state capture or a silent coup which appears to have escaped the urgent attention necessary from the criminal justice administration. The erstwhile Public Protector's spectre of criminal cases "going cold" raises its ugly head.

193. The mere existence of the allegations, whether or not true, negatively impacts on the survival of our democratic constitutional project, on economic confidence in the country and the welfare of

the people of the country, the inescapable conclusion being that, whether the allegations are true or not, a proper constitutionally compliant criminal investigation of each of them is required urgently but has not been undertaken either as it should long since have been, or at all. Indeed, the warnings sounded in *Glenister II* [166] have been ignored by the state.

THE INSIDIOUS AND EMBEDDED DEGREE OF CORRUPTION AT HIGH LEVELS

194. It is necessary to note the extent of corruption that occurs at the upper echelons of the SAPS.

195. In a SCOPA hearing, reported on by the Daily Maverick on 30th November 2017 "Analysis: Sita/SAPS Capture – Scopa hearing marks a turning point as massive fraud uncovered" (https://www.dailymaverick.co.za/article/2017-11-30-analysis-sitasaps-capture-scopa-hearing-marks-a-turning-point-as-massive-fraud-uncovered/) concerning the SAPS's "irregular and wasteful expenditure", the level of industrial-scale corruption (to use the Daily Maverick's words) corroding the institutions of the SAPS and the State Information Technology Agency (SITA) was revealed. Mention of this article has been made earlier in this affidavit, and a copy of this article is annexed and is marked RR10.

196. The bulk of the potential irregular procurements emanates from the supply of Rofin forensic lights by Keith Keating's Forensic Data Analysts (FDA) to SITA at the cost of R9 million per month.

197. Not a single procurement document pertaining to the 3, 573 items which SITA had serviced for SAPS was capable of being produced.

198. Members of the delegation were also unable to account for the trip which SAPS Supply Chain Management members undertook to the UK in October 2011, under the auspices of attending a Radio Frequency Identification Process conference.

199. Regarding the trip, no account was offered for where money came from to fund the travel, expenses and entertainment (including an alleged visit to a brothel in Vienna called Babylon).

200. The Democratic Alliance's Tim Brauteseth MP then produced 2 two enlarged photographs. One of these depicted two SAPS members posing with Keith Keating and Jerenique Bayard (project director at Unisys, which has supplied millions of rands worth of cameras to SAPS) in the trophy room of Old Trafford, whilst the other showed them strolling outside Old Trafford.

201. This excursion occurred "six months after an order for equipment had been placed by FDA for millions of rand worth of forensic cameras and other equipment."

202. Further points of major concern highlighted by SCOPA members were:

203. Keating was appointed as sole supplier of various goods and services to SAPS and SITA from 2010-2017, amounting to R6.1 billion.

204. The Public Finance Management Act explicitly states that compelling reasons are required for the contracting of sole suppliers.

205. The absence of any competitive bidding for any of the products and services that the FDA offered SAPS and SITA.

206. Keating also rendered services on the entirety of the SAPS IT infrastructure.

207. Viewed in the context of the Auditor General's revelation regarding the conspicuous absence of the SAPS intangible asset register, this information is cause for grave concern since, as was conceded by National Police Commissioner Khehla Sitole, this poses a threat to national security.

208. The Hawks were conspicuously absent at the meeting, and had not initiated any form of investigation into these matters despite IPID having taken the lead, and as such it is clearly not possible that the Hawks were ignorant of these matters. A call from

a SCOPA member sums this up: “Why aren’t the Hawks here? This love of money is criminal, it is an embarrassment to our country”.

209. Another news report by the Mail and Guardian dated 9 November 2017 (“SITA admits there was irregularity in SAPS tender allegedly linked to Phahlane”, https://mg.co.za/article/2017-11-09-sita-admits-there-was-irregularity-in-saps-tender-allegedly-linked-to-phahlane) notes that IPID had discovered that Keating had paid a car dealer for vehicles given to Phahlane, his wife and sister. A copy of this article is annexed and is marked RR17.

210. It subsequently emerged, as reported on 6th December 2017 by News24 in the article: “IPID, Hawks raid 7 properties in case against Phahlane, SAPS contractor” (https://www.news24.com/SouthAfrica/News/ipid-hawks-raid-7-properties-in-case-against-phahlane-saps-contractor-20171206), that another individual (Colonel Potgieter, from the SAPS unit known as TMS) also benefited from this arrangement. The car dealer involved in the matter has been identified as Durand Snyman. A copy of this report is annexed and marked RR18.

211. The deal occurred under the fake name John Doe, allegedly an alias for Keating, who deposited money into Snyman’s account.

212. Also noted in the article: “R1bn was forked out for the supply and maintenance of the specialist forensic lights to the SAPS through the SAPS' information technology services, which is where Phahlane's wife, Brigadier Beauty Phahlane, works. The report said the contract was "evergreen" and had rolled over since 2010.”

213. Also reported in the News24 report on the 6th of December (RR18), a joint operation between IPID and the Hawks involved 7 properties belonging to Keating and Phahlane being raided. The fruits of these raids included:

214. “SAPS’s LCRC (Local Criminal Record Centre) equipment was found at Keating’s offices; and a bakkie load of documents was seized from Keating’s house and offices.”

a. "RFID (radio-frequency identification) tags, which the SAPS paid R374m for were found hidden at a construction site and never used," as was revealed by one source.

b. “Documents which allegedly show Phahlane’s involvement in the cases against IPID investigators and IPID head Robert McBride were found at Phahlane’s house.”

215. It is important to note here that the Hawks were only mobilized following the SCOPA meeting mentioned above. Only once SCOPA had publicly shamed the Hawks for their lack of

involvement did they spring to action. This also strengthens the argument in favour of parliamentary oversight over the Hawks, as opposed to ministerial oversight, in order to ensure accountability to the public. The criminal proceedings against Phahlane, his wife and his associate have not been investigated diligently and without delay as a consequence of which the criminal proceedings against them have been struck off the roll.

216. Then there is the matter of Ria Phiyega, former National Police Commissioner, a post she was appointed to in June of 2012. Phiyega was appointed despite not having had any prior police experience.

217. Not long after Phiyega's appointment, the massacre of 34 miners protesting for improved conditions of employment occurred at the hands of police. Following this, the Marikana Commission of Inquiry (dubbed the 'Farlam Commission')was set up and found that: "The leadership of the police, on the highest level, appears to have taken the decision not to give the true version of how it came about that the 'tactical option' was implemented on the afternoon of 16 August and to conceal the fact that the plan to be implemented was hastily put together without Public Order Policing inputs or evaluation,".

218. The Daily Maverick reported on 05 December 2016 (“Riah Phiyega finally on the ropes – what about the others?”, https://www.dailymaverick.co.za/article/2016-12-05-riah-phiyega-finally-on-the-ropes-what-about-the-others/) that: “She misled the country after the killings about what happened, about police acting in self-defence, and then called it the “best of responsible policing”. A copy of this report is annexed and is marked RR19.

219. The same article also reports that: “:She misled the country after the killings about what happened, about police acting in self-defence, and then called it the “best of responsible policing”.” The Claassen Board of Inquiry, which investigated Phiyega’s fitness to hold office, found the following: “ (…) Phiyega is not fit to hold office and should be dismissed.” It also found that she should be held responsible for deaths of the 34 miners and that she had decided on the "tactical" option, which led to police opening fire on the strikers.

220. As reported by the Rand Daily Mail on 2015/11/12 (Police commissioner Riah Phiyega: Liar, fraud and bully”, https://web.archive.org/web/20160304130253/http://www.rdm.co.za/politics/2015/11/12/police-commissioner-riah-phiyega-liar-fraud-and-bully) a copy of which is annexed and marked RR20:

221. A ministerial reference group, appointed by then Police Minister Nathi Nhleko, made the following findings:

222. “Found guilty of fraud for backdating a performance agreement signed between her and former acting national commissioner Nhlanhla Mkhwanazi claiming he had performed well at work when he was, in fact, at home;

223. Found guilty of perjury for having lied to the court in the high-profile Richard Mdluli case. The reference group found that Phiyega had lied to parliament about the starting date of the Mdluli disciplinary matter and that she obstructed its start. Mdluli has been at home on full pay for two years; and;

224. Should have had neutral people investigate whether two high-ranking officers had matric certificates. Phiyega instituted this investigation after the two opened a case of defeating the ends of justice against her for tipping off Western Cape police commissioner Arno Lamoer that he was to be investigated.”

A BRIEF HISTORY OF THE LEGISLATION RELATING TO ANTI-CORRUPTION MACHINERY OF STATE (1994-2017)

225. In the Constitution itself there is no express reference to corruption nor to anti-corruption machinery of state other than an oblique reference to the “establishment by national legislation” of

an independent police complaints body which “must investigate any alleged misconduct of or offence committed by a member of the police service...”.

226. This body is today called IPID, the successor to the former Independent Complaints Directorate.

227. In its initial incarnation, IPID was made independent of the police but not properly independent of the executive branch of government.

228. Litigation ensued and the independence of IPID has been secured by the success of that litigation in this Court in September 2016.

229. The objects of the police service “to prevent, combat and investigate crime” as detailed in C205 and the SAPS legislation were initially regarded as adequate to contain the scourge of corruption.

230. However, during the terms of office Minister of Justice Penuell Maduna and NDPP Bulelani Ngcuka, the legislation for the NPA was amended to introduce the Directorate of Special Operations (the Scorpions) to operate within the NPA on the ‘troika’ principle of prosecution led investigations of serious corruption.

231. The DSO was so successful in its investigations of corruption on the part of highly placed politicians and their friends in business that the ANC Polokwane Conference held in December 2007 resolved that the DSO be urgently dissolved and that its investigative personnel be transferred to the SAPS. The then Secretary General of the ANC, Gwede Mantashe justified this resolution with four reasons, one of which was that the DSO continued investigation of Jacob Zuma was an abuse of power. Another reason was that the ANC wanted the DSO disbanded because they were “prosecuting ANC leaders.”

232. Despite the public outcry and an unsuccessful attempt to challenge the rationality, legality and constitutionality of the scheme of the amending legislation in *Glenister I ,* Parliament passed amendments to the NPA and SAPS legislation, the former dissolving the DSO and the latter creating the DPCI.

233. This legislation was impugned in *Glenister II* without success in so far as the DSO is concerned, but successfully as regards the DPCI, to the extent that this Court regarded the first incarnation of the DPCI to be inadequately independent to be an effective ANTI-CORRUPTION ENTITY. Without being prescriptive, it gave Parliament 18 months as from March 2011 to take remedial steps that would be “reasonable in the circumstances”.

234. In September 2012, the remedial legislation, which essentially involved the tweaking of the structure and operations of the DPCI (which remained within the SAPS) was passed into law.

235. Acting separately, Glenister and the HSF sought direct access to this Court for the purpose of impugning the constitutionality of the remedial legislation. Both raised a host of detailed technical points and Glenister contended in addition that it was constitutionally inappropriate in the circumstances then prevailing for the DPCI to be located within the SAPS.

236. This Court refused direct access in the interests of justice in both applications.

237. Still acting separately, Glenister and the HSF applied to the Western Cape High Court, with mixed success, to impugn the constitutionality of the remedial legislation which created the second incarnation of the DPCI.

238. On appeal and by way of confirmation hearing, in respect of the successes of the HSF, this Court gave judgment in November 2014 in *HSF/Glenister III* adjusting the remedial legislation to render it constitutionally compliant and allowing the DPCI to remain located within the SAPS.

239. The judgment of this Court in *HSF/ Glenister III* has effectively been ignored by the executive branch of government.

240. Instead, the executive has persisted with its establishment and development of an Anti-Corruption Task Team (ACTT) which is based upon a multi-agency approach to the combating of corruption.

241. This approach is incompatible with the notion of a single, dedicated and STIRS compliant ANTI-CORRUPTION ENTITY All of these features of an ANTI-CORRUPTION ENTITY are requirements of this Court's interpretation of the law which are binding on the state.

THE EXECUTIVE TAKES CONTROL OF ANTI-CORRUPTION MACHINERY OF STATE IN 2010

242. The "Discussion Document", a copy of which is annexed and marked RR6, provides policy recommendations and outlines the proposed National Anti-Corruption Strategy. A perusal of the whole document reveals the thinking of the executive regarding the combating of corruption in a manner that is not consonant with the judgments of this Court.

243. The document states that in 2010, the Justice, Crime Prevention and Security Cluster was given the task of establishing a "task team to fast track investigations and prosecutions" (8).

244. This led to the creation of the Anti-Corruption Task Team (ACTT) in October 2010, which adopted a “multi-disciplinary and integrated operational approach based on the mandate of the South African Police Service Directorate for Priority Crime Investigation” (8).

245. The ACTT is given “strategic direction for operational activities” from the Anti-Corruption Inter-Ministerial Committee (ACIM), which was established in June 2014 and whose mandate it is to “coordinate and oversee the work of state organs aimed at combating corruption in the public and private sectors”.

246. In May 2016, the ACIM consisted of the Minister for Planning, Monitoring and Evaluation in the Presidency (who convenes and chairs the committee); the Ministers of Justice and Correctional Services, State Security, Police, Co-operative Governance and Traditional Affairs, Public Service and Administration, Finance, Home Affairs and Social Development.

247. The ACTT is the “central body mandated to give effect to Government’s anti-corruption agenda”.

248. The Discussion Document acknowledges in passing the STIRS criteria referred to previously in this affidavit, but seems to cherry pick those that suit the structure of the ACTT and ignores the criterion of specialization, It further makes a mockery of the

criterion of independence that clashes with it. If anything, the ACTT is no better structurally and operationally than the first (unconstitutional) form of the DPCI.

249. On p. 15, the Discussion Document fleetingly mentions the judgments handed down by this Court regarding the unconstitutionality of the previous manifestations of the DPCI's legislative framework. The reference to the judgments is no more than a passing observation, they are not accorded the status to which they are in law entitled and which the state is obliged to give them as it is bound by them.

250. The Discussion Document acknowledges the lack of adequate independence and insulation from political interference and the lack of sufficient budget and appropriately trained and experienced staff.

251. It is further acknowledged that inter-agency communication and coordination between state agencies involved in the ACTT is needed, and mentions specifically the issue of representatives of these state agencies prioritizing their own agency work over cross-agency collaboration.

252. The above discussion occupies about half a page of the 45 page document. (See pages 15 and 16)

253. The discussion of the STIRS criteria reads like mere lip service, and treats the criteria less like binding legal requirements that should be complied with, and more like vague and optional guidelines.

254. Indeed, the Discussion Document on page 16 replaces the notion “specialized” with “coordinated” when listing the criteria for detection and enforcement.

255. The policy recommendations made on p. 39 of the Discussion Document suggests the implementation of a lead organisation, located in the Presidency that is mandated to “support implementation coordination and monitoring of the National Anti-Corruption Strategy”.

256. Under this proposed organizational structure, which is subject to ministerial oversight, there is a body whose mandate it would be to ensure the “operational cooperation on law enforcement and intelligence gathering”. (page 39)

FAILURE OF THE GOVERNMENT TO IMPLEMENT THE STIRS CRITERIA PROPERLY IN BREACH OF THE LEGISLATION AND THE CONSTITUTION AND WITHOUT DUE REGARD TO THE JUDGMENTS OF THIS COURT

257. I am advised that it is not necessary for me to set out the relevant law in this affidavit in any greater detail than set out above. It suffices to say that the original legislation establishing the Hawks was successfully impugned for want of compliance with the Constitution in *Glenister II* and that the remedial legislation passed in an attempt to comply with the order of this Court in *Glenister II* was also successfully impugned because it too did not comply with the requirements of the Constitution as explained in detail in Glenister II.

258. Instead of referring the matter back to the legislature for a second time, this Court severed the offending parts of the remedial legislation for the purpose of rendering it constitutionally compliant.

259. It is the duty and obligation of the state to comply with the law in relation to the structure and operations of the Hawks as set out in the legislation as corrected by this Court.

260. The purpose of this law as finally enunciated by this Court is to establish adequately independent anti-corruption machinery of

state that is effective and efficient. This aim is best measured by assessing and examining compliance of the state with the various criteria and requirements spelt out for it in the judgments in the two decided cases as captured in the corrected version of the legislation that has been in place since delivery of the latter judgment in November 2014.

261. Unfortunately, the state has, in effect, ignored the judgment. The versions of the legislation that are available in cyberspace from SAPS and the GCIS are all in the form in which the legislation was before it was corrected by the judgment of the Chief Justice in *HSF/Glenister III.*

262. Even Jutastat, which should know better, has treated the severing of the wording of the legislation by this Court as a matter for footnotes rather than corrections of the text in accordance with the binding orders made in the litigation.

263. I am advised that the values and principles that apply to the public administration as set out in C 195(1) are applicable and specifically draw attention to the requirements in relation to ethics, efficient, effective and economic use of resources and to the cultivation of sound human resource management practices. I will demonstrate that these requirements have been honoured in the

breach by the Hawks, the SAPS and the relevant member of the executive, being the minister of police.

264. On 11 September 2015 the then minister of police, Nathi Ntleko, answered a written question (number 3522) in the National Assembly and revealed by way of written reply reference number (36/1/4/1/201500295) that:

a. In 2010/11 the Hawks effected 14793 arrests and secured 7037 convictions
b. In 2011/12 the same figures were 13146 and 6538
c. In 2012/13 they dropped to 7620 and 4694
d. In 2013/14 the figures were 6257 arrests and 4043 convictions
e. In 2014/15 the same statistics dropped to 5847 and 1176
f. Between 1/4/2015 and 11 September 2015 there were a total of 1038 arrests and only 288 convictions.
g. A copy of this written answer is annexed and marked RR21.

265. I have been unable to source more recent statistics, but, given the rate at which corrupt activities of all kinds continue, I am concerned that the ever downward trend of the productivity of the Hawks has continued, particularly on the ill-fated watch of its previous short-lived permanent head General Berning Ntlemeza.

266. The ongoing and accelerating decline in productivity of the Hawks amounts to conduct inconsistent with the duties imposed on them in terms of the legislation as it stands since this Court's judgment in November 2014 and is inconsistent with the Constitution itself, as it has been interpreted by this Court in the two cases brought by Glenister that are antecedent to this matter.

267. I am advised that the distinguishing criteria of the Hawks as spelt out by this Court, have not emerged in their operations; partially because of their location and structure and partially for non-compliance with what has become known as the STIRS criteria.

268. The first point I make in this regard is that this Court contemplates the establishment of a single, specialised and dedicated anti-corruption entity.

269. The Hawks are nothing of the kind. Their mandate is far broader than combating corruption as can be seen from the latest annual report of the SAPS in which the mandate is set out in paragraph 299 below.

270. International best practice shows that countries in which there is a single dedicated and specialised anti-corruption entities are more successful in eradicating and combating corruption than those in which a multiplicity of bodies exist.

271. Instead of implementing the findings of this Court and following the law in its current form, as it is obliged to do, the executive has instead required the development of a National Anti-Corruption Strategy and has published a discussion document called “Towards a National Anti-Corruption Strategy for South Africa” a copy of which is attached marked RR6.

272. This Court will search in vain in this discussion document for any reliance by the executive on the principles and criteria the Court has established in the cauldron of the antecedent litigation initiated by Glenister.

273. Instead, the thrust of the discussion (and fortunately it is only a discussion document) is towards dispersing responsibility among the members of an “Anti-Corruption Task Team” (ACTT) drawn from a multitude of government agencies in a manner that is the antithesis of the findings of this Court that “*We are in one accord that South Africa needs an agency dedicated to the containment and the eventual eradication of the scourge of corruption” [Glenister III para 2]*

274. The executive appears to have lost sight of the constitutional obligation to establish an adequately independent anti-corruption agency that was created by the findings of this Court in *Glenister II* and seems to be aiming at addressing the manifest dysfunction of

its existing ACTT instead of implementing the judgments and legislation properly.

275. Because there is such a diversity of priority crimes on the plate of the Hawks, the dedicated attention to corruption which is required is not happening. Indeed the statistics provided by the minister of police suggest that the Hawks do less productive work each succeeding year.

276. I have caused a search to be made through the annual reports of the SAPS with a view to ascertaining whether any training of the kind given to the Scorpions has been put in place for the Hawks. Recruits to the Scorpions were sent to the FBI in the USA and to Scotland Yard, where the Serious Fraud Office gave suitable training. This has not happened for the Hawks, as far as I can tell, probably because, given the goings on in high political places, there is very little political will to get the Hawks to function as they should. The newly appointed head of the Hawks, General Godfrey Lebede has, in a frank interview with the Carte Blanche television programme, conceded that there is something wrong with the Hawks and he intends to find out what that is. Subsequently, on 15 August 2018 he submitted to the parliamentary police portfolio committee that the Hawks are

lacking in resources, short of skills and have insufficient capacity to deal with serious corruption cases.

277. The independence necessary to enable the Hawks to operate without fear, favour or prejudice has also been conspicuously absent since 2014. I have already related the undermining of the independence of Anwa Dramat and the rise and fall of the grossly unsuitable Berning Ntlemeza. The treatment of Shadrack Sibiya is similar to the fate of Dramat and the persecution of General Johann Booysen is the subject of much litigation that can best be dealt with in argument.

278. The sorry state of affairs in the criminal justice administration is succinctly summed up by Justice Johann Kriegler in his forward to Johann van Loggerenberg book “Rogue- The inside story of SARS’ Elite Crime Busting Unit” at page xvi: “*For, however opaque and perverted this Kafkaesque tale, there was a discernible pattern- discernible across a number of public institutions- where key individuals, experienced, reputable and independent-minded public servants, have been cynically shunted aside or out. Typically, the process starts with some or other alleged transgression, relatively trivial and/or outdated. That then triggers well-publicised suspension and disciplinary proceedings with concomitant humiliation, harassment and, ultimately, dismissal,*

constructive or actual. Then, with breathtaking speed, a hand-picked successor steps in and cleans out senior management; and when you look again there's a brand-new crop of compliant and grateful faces. In the process honourable women and men have been ground down, ignominiously kicked out, their reputations ruined and their life savings exhausted. Often even the most feisty individual has been driven to exhaustion, physical, emotional and, of course, financial. Examples of broadly the same pattern of administrative abuse are found in a whole range of parastatals: think, for instance of South African Airways, Denel, Eskom and the SABC. And of numerous senior public servants - Vusi Pikoli, Mxolisi Nxasana, Glynnis Breytenbach, Anwa Dramat, Shadrack Sibiya, Johan Booysen and Robert McBride, to speak only of the criminal-justice sector - who've been hounded out of office."

279. The inability or unwillingness of the Hawks to deal with allegations of corruption in high political places is indicative of its operational lack of independence. Two examples will suffice.

280. Following the publication of the Public Protector's "Secure in Comfort" report about the security enhancements at Nkandla, charges were laid by various entities against the former President and others. Charges were first laid in December 2013 by Accountability Now in Cape Town, and in March 2014 the EFF laid

charges in Pretoria and the DA followed suit in Nkandla. Initially, despite the nature of the charges falling within the mandate of the Hawks, the dockets were kept from the Hawks and given to detective services in Pretoria under the leadership of now retired General Moonoo. No progress was made with the investigations by the end of 2014.

281. When the powers of the Head of the Hawks were enhanced by the judgment of this court in November 2014, General Anwa Dramat called for the dockets regarding the criminal investigations concerning the public expenditure made at Nkandla.

282. Instead of the dockets, he received an illegal notice of suspension from the then minister of police which was subsequently set aside by the High Court. When an appeal emerged the HSF applied for direct access to this Court and the minister was ordered to file opposing papers in two days. Instead, the appeal was abandoned and Dramat was placed under so much pressure that he feared for his life and that of his family. His letter to the minister recording his position is in the public domain and is annexed marked RR13 as evidence of the undermining of his independence as Head of the Hawks.

283. Dramat bowed to the pressure and took a handsome package of R60,000 per month for life and a gratuity of R 3 million,

This deal was negotiated at a time when the state was aware of allegations of kidnapping against him (which were being used as leverage). In other words, a suspect in a supposedly serious criminal case, was given a golden handshake. The criminal case like the related matter against Robert McBride, has now, belatedly been withdrawn.

284. In this way the security of tenure of office he was supposed to enjoy was destroyed by the executive, using a strategy that treats with contempt the legislation as corrected by this Court.

285. As regards the resourcing of the Hawks, it would appear that insufficient resources are made available to enable them to function with the necessary esprit de corps and in an effective and efficient manner. Symptomatic of this approach by those who vote on budgets is the complaint of the Inspecting Judge to the DPCI made to the police portfolio committee of parliament. The complaint is succinctly summarized in a Legalbrief report dated 6 September 2018 as follows: *"Judge Frans Kgomo, who heads the Hawks watchdog, is threatening to take the government to court to get the necessary support for his office after a year in office,* ***Die Burger*** *reports. Kgomo told Parliament's Police Committee yesterday that due to a litany of problems his office had so far been able to focus only on administrative issues. He still doesn't*

have a personal assistant, chief executive, director, financial officer or chief investigation officer, Kgomo said. The judge also doesn't have a laptop or official car, notes the report. 'I get absolutely no assistance from the civil police secretariat. ***It is hard to comprehend how it is expected of a necessary and so-called independent civil oversight institution to perform its democratic mandate.'*** *Kgomo said he was obtaining legal advice about the matter and will meet Police Minister Bheki Cele next week. 'If nothing happens, we must perhaps go to court. It cannot continue this way.' Committee chairperson Francois Beukman said it was concerning to hear Kgomo's complaints, especially in the light of the testimony about the Hawks at the Zondo state capture inquiry. The committee decided to call Cele as a matter of urgency to explain the situation"*

286. On 8 December 2017 the termination of the services of Mxolisi Nxasana was declared unlawful by the High Court and this was confirmed by this Court in civil proceedings impugning the legality of the settlement agreement in terms of which Nxasana's term of office ended.

287. When his services were terminated in terms of a settlement agreement entered into with the former President and the Minister

of Justice, the agreement had been made an order of court and came into the public domain.

288. The agreement has also been characterised by Accountability Now, acting on the advice of two senior counsel who are members of the Cape Bar, as a corrupt activity as contemplated by section 9 of PRECCA.

289. In July 2015 charges of corruption and defeating the ends of justice were laid by Accountability Now. A draft charge sheet was supplied with the affidavit supporting the complaint.

290. The Hawks are still investigating the matter. They appear to have no will or skill to extract documents the prosecutor wants from the department of justice despite the wide ranging powers to compel production of the documents. The facts are of limited nature, the agreement itself is short and prima facie evidence of corruption, yet no progress on so simple and straightforward a matter has been made in two and a half years of investigation.

GROUNDS FOR CLAIMING THE RELIEF SOUGHT:

NON-COMPLIANCE WITH STIRS CRITERIA

291. This court found in ***Glenister II*** that the legislative provisions birthing the DPCI must conform to the standard of conduct that a

"reasonable decision maker in the circumstances may adopt" [191].

292. The same benchmark is expected of any other entity that is formed to carry out the mandate ascribed to an adequately independent and effective ANTI-CORRUPTION ENTITY.

293. Constitutive of the circumstances that now prevail (and which existed at the time of subsequent litigation in *Glenister III* but were not taken cognizance of at that time) is an endemic and insidious state of executive interference with the proper functioning of the ANTI-CORRUPTION ENTITY, as well as with other state institutions, as has been delineated in this affidavit.

294. The STIRS criteria form the legally binding benchmark that this Court has established in *Glenister II* and to which any ANTI-CORRUPTION ENTITY must conform.

295. The reasonable decision maker must countenance and comply with these criteria in formulating his/her conduct (that is to say, the policy and budgeting choices made in forming any ANTI-CORRUPTION ENTITY), lest it be rendered unconstitutional. The following analysis offers evidence as to areas in which the Hawks (DPCI) and other bodies mandated with implementing anti-corruption efforts fail to meet the constitutional standard.

SPECIALIZATION

296. The first point to be made in relation to the STIRS criteria is that the Court envisages a single entity for the ANTI-CORRUPTION ENTITY's structure and operations. This is apparent from *HSF/G III* [1 &2].

297. Currently, the executive has created and persisted with a plethora of bodies that are involved in combating, preventing and investigating corruption.

298. The first STIRS criterion for the ANTI-CORRUPTION ENTITY is that it be specialized, which may be seen in conjunction with the point noted above.

DPCI MANDATE:

299. As is clear from the "Briefing: Mandate and Activities Directorate for Priority Crimes Investigation 17 September 2014" (a copy of which annexed and marked RR22): The DPCI itself has a broad mandate (Narcotics; Human Trafficking; Rhino Poaching; Illicit Mining; Non Ferrous Metals; Specific Violent Crimes; Vehicles Crimes; Illicit Cigarettes; Economic Crimes), and thus does not function as a specialized ANTI-CORRUPTION ENTITY.

300. The personnel within the DPCI mandated to investigate corruption is the component Serious Corruption (SC), whose task it is to combat and investigate serious fraud and corruption within the

JCPS cluster, other governmental departments and private sectors. The component Serious Commercial Crime (SCC) also investigates procurement related corruption at local government level.

301. The component SC is the only entity within the DPCI that has been given a specialized mandate to investigate corruption, whilst the SCC is partially mandated to do so.

302. It follows then that one must consider this particular unit in light of the STIRS criteria handed down by *GII*, and not the DPCI as a whole. The implications of this will be addressed under separate headings within this affidavit.

303. As a final point, to highlight the lack of focused resource allocation that emanates from the DPCI's multi-faceted mandate: From An article sourced from www.chinese-embassy.org.za/eng/znjl/t1189483.htm which is dated 2014/09/09 (a copy of which is annexed and is marked RR23) it is clear that a portion of the already insubstantial financial resources (as well as time) allocated to the DPCI is spent on learning Mandarin and spending time doing so in China is something that general police ought to be involved in, and not a specialized ANTI-CORRUPTION ENTITY. This dilution of resources (both in terms of time and finances, since members of the component Serious Corruption

also receive such training) comes as a result of a lack of specialization.

STRUCTURE:

304. The organisational chart in the SAPS Annual Reports for 2015/2016 (a copy of which is annexed and marked RR24) clearly shows that the head of the DPCI reports to the Minister of Police, demonstrating a lack of independence from political oversight.

305. The DPCI is firmly embedded in the SAPS organisational structure, no different to any of the other structures within SAPS save that the DPCI does not answer to the Police Commissioner.

306. The DPCI is a sub-section of the Detective branch, and serious corruption is a sub-section of the DPCI. Corruption is therefore a sub-sub-sub section of the SAPS programmes. Clearly, considering the scope of its mandate, the DPCI can NOT be described as a dedicated anti-corruption independent machinery of state, but a common or garden department of the SAPS dealing with crime in general and serious crime in particular, since its duties cover any crime defined as a “national priority offence”.

THE ACTT:

307. **USURPATION OF MANDATE:** It, however, is clear that the ACE provided by the executive actually comes in the form of an

"Anti-Corruption Task Team" (ACTT), which has been described by the Presidency in an official press statement (http://www.thepresidency.gov.za/content/anti-corruption-task-team-fully-operational) dated 25 January 2015 as "the central body mandated to give effect to government anti-corruption agenda" (a copy of this statement is annexed and marked RR25). The ACTT was created to investigate serious fraud and corruption where the value exceeds R5 million.

308. Whilst the DPCI retains its involvement in cases where over R5 million will be seized (the head of the DPCI co-chairs the ACTT), it still is the case that the supposedly specialized mandate to combat serious corruption is diluted between various state departments that are incorporated into the ACTT.

309. As noted in the SCOPA meeting of 14 June 2017 (https://pmg.org.za/committee-meeting/24612/), entitled Anti-Corruption Task Team (ACTT): Pending Cases and Criminal Asset Recovery Account (CARA) (a copy of which is annexed and marked RR26), all the state-departments mentioned previously become a part of the investigation once the R5 million threshold is met. The specialized mandate of the DPCI SC unit has thus been usurped and redistributed to state departments that generally are

tasked with very different responsibilities, ultimately undermining the very purpose of implementing a specialized unit.

310. As such, the component Serious Corruption within the DPCI is not the ANTI-CORRUPTION ENTITY contemplated by the *GII* and *GIII* judgments since their investigative mandate is circumscribed to what is truly a negligible pecuniary amount (R5 million) when viewed in the context of serious corruption.

STRUCTURE

311. The ACTT, according to the "Discussion Document" is comprised of the following state departments: NPA representatives; the Asset Forfeiture Unit; the DPCI; the SIU; SARS; Office of the Accountant-General and the Chief Procurement Officer in the National Treasury; Financial Intelligence Centre; National Intelligence Coordinating Committee; the State Security Agency; the Presidency; the Department of Justice and Constitutional Development; the Department of Public Service and Administration and the Government Communication and Information System.

312. However, the list of entities as provided by General Ntlemeza at a SCOPA meeting in September 2016 (Anti-Corruption Task Team & South African Revenue Service: Hearing)(https://pmg.org.za/committee-meeting/23269/) listed the

entities as: National Treasury; Development Bank of South Africa; State Security Agency; Special Investigations Unit; South African Revenue Service; Financial Intelligence Centre; National Prosecuting Authority; the DPCI; South African Police Service; Department of Justice and Constitutional Development; Government Communication and Information System; National Intelligence Co-ordinating Committee; Department of Performance Monitoring and Evaluation. A copy of the minutes of this meeting is annexed and is marked RR27.

313. The ACTT is not structured as a single or dedicated entity, as is required by the Court's dicta in para 1-2 of GIII. The ACTT exists as a fractured mosaic of personnel drawn from various state departments with different mandates and varying degrees of insulation from executive (and thus political) oversight. This fragmented network does not live up to its purported mandate to serve as central body for the fight against corruption.

314. The disparities between these lists indicate that there is uncertainty as to which state departments even form part of the ACTT.

STRUCTURALLY INDUCED INCHOATENESS

315. The implications of this lack of specialization are not limited to mere logistical lack of coordination between the multiplicity of entities (well documented in meetings held with the ACTT's Parliamentary oversight body SCOPA), but also severely undermines the independence of the ANTI-CORRUPTION ENTITY which will be dealt with under that heading.

316. The lack of a specialized unit results in the kind of logistical problems that the ACTT chairs have conceded to exist. Problems include the lack of co-ordination between the investigative aspect and the prosecutorial aspect, whereby investigations are not sufficiently guided by prosecutors:

OVER-PREVALENCE OF PLEA BARGAINING:

317. In a statement issued by Parliamentary Communication Services (https://www.parliament.gov.za/press-releases/scopa-shocked-and-disappointed-anti-corruption-task-team-settling-all-cases-through-plea-bargaining), on behalf of SCOPA chairperson Mr Themba Godi,: "The Standing Committee on Public Accounts

(Scopa) is shocked and disappointed to find that of all the finalised cases prosecuted by the Anti-Corruption Task Team (ACTT), all of them were settled through plea bargaining. None of the cases were fully prosecuted through convictions, meaning that all of them are outcomes where corrupt people have negotiated their way out of prison, which largely defeats the objective of using sentencing as a deterrent against corruption." A copy of this statement is annexed and marked RR28.

318. At the 14 June 2017 meeting between SCOPA and ACTT, Ms Nomvula Mokhatla, Deputy National Director of Public Prosecutions, "informed the Committee that 42 cases had been received and 41 cases had been finalised through plea bargains. One matter had been withdrawn as the main accused had mental health issues. There had been 12 cases of asset forfeiture. There had been no appeals as all the cases had been resolved via plea bargaining."

319. At the same meeting: "Lt General Matakata stated that ACTT had not discussed sentencing at a strategic level but it might have been discussed in bilaterals at operational levels. ACTT would put it on the agenda of the principals."

320. It is clear that the lack of strategic discussion with regards to plea bargains is another factor in this regard. This is attributable to

a lack of structural cohesion between the myriad agencies and state departments involved in the ACTT.

STRUCTURALLY INDUCED LACK OF COMMUNICATION AND CO-ORDINATION:

321. **Also at the meeting held on the 14 June 2017: "**The Hawks Commercial Crime Unit presented its cases within local, provincial and national government as well as state-owned entities and municipal-owned entities. The presentation left highly dissatisfied Committee members who were shocked by the slow pace of case finalization and the largely inappropriate sentences handed out as a result of plea bargaining and negotiated settlements. Cases had been initiated as far back as 2009 and no cases had gone to open court. At the time 67% of the cases were awaiting decision by public prosecutors. The Chairperson expressed his shock and disappointment as he had had high hopes for ACTT. Discussions focused on possible ways to make ACTT more effective and efficient."

322. "In response, Maj Gen Khana informed the Committee that they had some delays and in some provinces prosecutors took

longer than in others. His Unit dealt with the Specialised Crime Unit, a specialised team of prosecutors who reported directly to the Special Director under the National Prosecuting Authority. The smaller provinces did not have such courts and they relied on the bigger provinces and that was where the delays lay. There were cases that were delayed by the NPA. He did not know why some cases were delayed for a long time."

323. "The Chairperson suggested that the Hawks should have had an interest in why there was a delay after they had put so much effort into the cases. He had understood that the investigations were guided by the prosecutors, so why did prosecutors take so long to take action? Or was it that the investigators did not provide sufficient evidence for prosecutors?"

324. "ACTT met as principals and the meeting was called by the Head of DPCI as convenor and held once a month. The attendees were the Heads of Departments. Directors General should attend or a representative not below the rank of Chief Director. Minutes were kept and the secretariat resided in the Office of DPCI. Operational level meetings took place and cases were given PC numbers as soon as they met the criteria, such as three cases above R5 million, and then case plans were developed. Minutes

were kept but they did not report to the principals unless they required guidance or direction."

325. "ACTT had debated whether they needed another structure but through discussions it had emerged that they just needed to strengthen the structures that they currently had. There was a lack of gel between the institutions. Even though they had the ACTT team, the NPA had other responsibilities and they had challenges around the right personnel and the budget. They also needed to rely on other institutions as the enabling legislation could only take them to a certain point. Budget issues related to personnel but it was also about the appetite to take on the situations. She promised to go back and review the situation".

326. As can be inferred from the statistics and excerpts provided, the lack of specialization severely impacts on the task-team's ability to work effectively and to co-ordinate their operations within the multi-agency structure. The point of creating the ACTT was to expedite investigations. The result has been a solipsistic many headed hydra, the heads of which only collaborate once a month as opposed to working as a dedicated team with a specific mandate.

327. The question quoted in 306, and the response to it, summarizes the lack of co-ordination quite succinctly - there is no

concerted synergy between the prosecutors and investigators whereby the nature of evidence required is known. Furthermore, investigators wash their hands of cases once they are handed over and no follow-up is taken to ascertain the outcome of what they hand over to the NPA.

328. A meeting that only occurs once a month (as noted in paragraph 324) does not paint a picture of a dedicated anti-corruption entity if that is the only point of contact that occurs.

329. Furthermore, principals are only informed of investigations if those involved in operation level meetings require guidance.

330. The passages quoted above do not convey the idea of a specialized anti-corruption entity, but comes across as a lackluster collaboration between totally separate departments that have other duties and responsibilities (as conceded in 308) that sometimes collaborate and share information without any real co-operation (or follow-up) aimed at addressing its mandate of tackling serious corruption.

TRAINING

331. **No Appointment Criteria for DPCI head: S17CA** does not require the DPCI head to have any specific skills or attributes in

order to be appointed. Knowledge and experience in the field over which vital decisions are being is crucial in order for the unit to be adequately specialized.

332. **Deficit within the ACTT illustrated by Dismal Performance: From the 14 June 2017 SCOPA and ACTT meeting: "**The situation in government showed 350 cases under investigation, including court cases. As far as SOEs and MOEs were concerned, 77 cases were on hand, i.e. 13 court cases, 43 under investigation and 21 had been referred to the public prosecutors for their decision. One of the most widespread investigations was into the South African Social Services Agency (SASSA) with 24 cases in the Eastern Cape, six in the Free State and three in KwaZulu-Natal. Challenges experienced included managers who were reluctant to be the complainant, the non-availability of relevant evidential documentation and the fact that some crimes were not reported, but leaked to the media."

333. "For municipalities, Maj Gen Khana reported that there were 248 cases on hand, of which 88 were in court, 101 were under investigation and 59 were awaiting decisions by the public prosecutors. The Eastern Cape had the most with 50 cases. Challenges were similar to those experienced with SOEs and MOEs but it was also found that municipal audits did not provide

sufficient evidence for criminal investigations and the re-shuffling of municipal officials or their political positions caused them to be uncooperative. Maj Gen Khana stated that he was not happy with the pace of investigation. They were looking at the performance of members of the Commercial Crimes Unit."

334. The 14 September 2016 meeting displayed equally dismal results: "Since its inception in October 2010, the total number of cases dealt with is 189 and the number of finalised cases is 68. The number of cases under investigation is 77 and serious corruption cases on the court roll number 44. Total number of people convicted of corruption involving R5 million and above now stands at 128 made up of 63 people for the years 2010 to 2014, 23 people for the year 2014/15, 34 for 2015/16 and 8 persons have been convicted in 2016/17. Government officials convicted of corruption (not necessarily of R5 million or above) since 2010 stands at 931 (399 of those since 2014). The case spread show that Local Government (39 cases) and Department of Public Works (28) had the highest number of corruption cases. The total of cases involving public and private entities is 37 while foreign bribery cases number 11."

NO BENCHMARK FOR TRAINING

335. On page 4 of the SAPS Annual Report of 2008/2009 (a copy of which is annexed and is marked RR29) which introduced the DPCI seemed to indicate the only training was a “two-week Basic Crime Investigation Practice Learning Programme”.

336. Various instance of ad hoc training are mentioned in reports but not in respect of specialised training in fighting corruption generally, or corruption of politically connected persons in particular.

337. The 17 September 2014 Meeting (Directorate for Priority Crime Investigation (DPCI): Mandate and Activities) provides the only account for the type of training received by the SC unit: “Gen Dramat said, in relation to training, that last year, all personnel of the DPCI were exposed to anti-corruption training. In addition, there had also been supply chain corruption training, to assist personnel in that specific regard.”

338. There apparently is no information on any specialized or accredited training program required by the DPCI (at least not that is publicly available), other than what can be taken from the statement in 3.1.3.5, which does not provide any insight as to the quality and rigor of the training programs: The DSO were given

training dedicated to their fields and received input from Scotland Yard and the FBI.

339. This lack of specific training has a direct impact on the rate of conviction, which was conceded by DPCI head Yolisa Matakata in the following statement she made to Parliament, quoted from the Sunday Times article "Law Enforcement Agencies Slammed For Laxity Over Illicit Cash Flows" (https://www.timeslive.co.za/news/south-africa/2017-08-30-law-enforcement-agencies-slammed-for-laxity-over-illicit-financial-flows/), a copy of which is annexed and marked as RR30): "part of their problem was that there was not adequate forensic capacity within the priority crimes unit to deal with complex crimes such as the illegal flow of money from within the country."

340. It was also conceded by ACTT principals in the 14 June 2017 Parliamentary meeting that: "Challenges included a lack of capacity in detectives, lack of courts and lack of capacity in prosecutors as they left the NPA as soon as they had been trained and matured in the environment and the NPA had to start training people again."

341. In the same meeting, Mr. Ross stated: **"**PRASA had R14 to 24 billion irregular expenditure and 142 cases under investigation and they did not see consequences from NPA or ACTT. There was

no positive conviction and sentencing and consequence management."

342. The reduction in the number of criminal charges […] as well as for corruption and fraud, was sustained into the 2015/2016 financial year (SAPS annual report).

343. In the 14 September SCOPA and ACTT meeting of 2016 it was noted that: "Mr V Smith (ANC) referred to the number of convictions achieved and was very disappointed at this figure. He told the ACTT chairperson the conviction rate of 28% was very unimpressive. He pointed out that "a student can't even pass matric if they get below 30%. He told Gen Ntlemeza he feels ACTT has failed in its role as an anti-corruption agency."

344. The conviction rate has declined severely, sitting at 28% in 2016 (SCOPA and ACTT Meeting of 14 September 2016), indicating a lack of expertise in the field.

345. EWN reporting on a statement made by Corruption Watch in an article (dated 27 October 2017) entitled "SAP's Decision on Gupta Saga Show Hawks Not Taken Seriously" (https://ewn.co.za/2017/10/27/corruption-watch-sap-s-decision-on-gupta-saga-show-hawks-not-taken-seriously): "SAP has admitted payments of up to R100 million were paid to a Gupta-linked company that assisted with contracts with Eskom and Transnet. It

says it has disclosed these contracts to the US authorities for further investigation and that it has taken action against three employees. SAP says it's not working with South African authorities at this stage but has reported itself to the US authorities for allegations of wrongdoing." A copy of this article is attached and marked RR31. The fact that SAP has refused to work with South African authorities indicates how they are perceived by wrongdoers - as inept and incapable.

346. Clearly the requirement that the personnel within the anti-corruption are adequately trained has not been complied with. Investigators (as can be seen in the section dealing with specialization) are incapable of putting together sufficient evidence, and prosecutors are also inept and incapable of finalizing so called 'slam-dunk' cases.

INDEPENDENCE

STRUCTURAL LACK OF INDEPENDENCE:

347. As can be ascertained from a statement of the presidency released on its website, the ACTT is "the central body mandated to give effect to government anti-corruption agenda", and exists at the behest of the executive branch, which means that it may be disbanded at the discretion of the executive branch of government.

348. The Anti-Corruption Strategy Discussion Document states that the ACTT was created by the Justice Crime Prevention and Security Cluster in July 2010, but is guided by the Anti-Corruption Inter-Ministerial Committee, together with the Anti-Corruption Task Team Executive Committee (ACTTE), which “co-ordinates and oversees the work” of the ACTT and issues “strategic direction”.

349. This in effect re-establishes the provisions that the Court severed from the SAPS Amendment Act in GIII (on grounds of constitutional invalidity), as the ACTT functions under the policy guidelines issued by the ACIM and the ACTTE.

350. In the 2014 SCOPA and ACTT meeting, Gen Dramat said that the focus of the DPCI was, in terms of the Act, on serious corruption. However, this term was not defined in the Act and had been supplemented by guidelines on applying the Act, and it was those guidelines that came up with a financial threshold to quantify serious corruption, for instance, the mention of the R5 million.

351. In the same meeting, Diane. Kohler-Barnard MP stated that: “The whole point of the HAWKS was that it should not report to the Commissioner, but should be independent. Furthermore, if the HAWKS used the Crime Intelligence Unit (CIU) of SAPS, the CIU would also report on the actions of HAWKS to the Commissioner, and this was another possibility of creating room for interference

with the duties of the HAWKS. Although DPCI was forced to use the CIU, this was a huge problem affecting their efficiency. Another huge problem was that the Head of the HAWKS did not have full control over the budget. It was of concern that the DPCI was not a completely separate entity from SAPS, as this would have ensured that there was a clear differentiation of roles and functions."

352. In fact the SAPS is listed as part of the ACTT, thereby gaining inside information into investigations.

353. The ACIMC too has inside perspective into investigations and in fact guides and co-ordinates the ACTT. This is clearly inimical to any semblance of independence.

354. "Gen Dramat: […] the SAPS Amendment Act of 2008 required that the DPCI personnel must pass through security clearance. This clearance was not done by the DPCI, but by the division crime intelligence."

355. It is unclear precisely what is meant by "division"; however it is clear that the DPCI are not in control of their security clearance procedures when recruitment occurs. This is fatal to the proper independent functioning of an ANTI-CORRUPTION ENTITY since there is internal validation of the veracity of the security credentials of those that are recruited.

356. The ACTT includes entities that answer directly to the Presidency (such as the SIU).

APPOINTMENT CRITERIA AND PROCESS

357. **S17CA:** This provision is insufficiently transparent, and prescribes a vague set of criteria ("with due regard to experience, consciousness and integrity") that remains within the unfettered discretion of the Minister of Police and Cabinet. This merely has to be reported to Parliament, but no provision is made for the decision to be vetoed by a democratically elected body.

358. IPID spokesman Moses Dlamini released a statement in which he stated: "It is alleged that the head of the Directorate for Priority Crime Investigation (DPCI), Lt-Gen Mthandazo Ntlemeza, gave instructions that serious cases of corruption reported to the DPCI by the City of Joburg not be investigated." This statement is reported in the BusinessLive article (https://www.businesslive.co.za/bd/national/2017-04-13-ipid-is-gathering-a-team-to-investigate-corruption-claims-against-ntlemeza/): "IPID is Gathering a Team to Investigate Corruption Claims Against Ntlemeza", (dated 13 April 2017), a copy of which is annexed and marked RR32.

359. In the same article referred to in the previous paragraph, Herman Mashaba is reported to have accused Ntlemeza of

allegedly issuing "an instruction made to all members involved in such investigations to no longer pursue such cases, nor arrest suspects. Further, threats of surveillance and monitoring were made against members who investigate our matters."

360. The same article goes on to state: "The allegations against Gen Ntlemeza are serious and range from defeating the ends of justice to corruption. Such serious allegations warrant investigation."

361. As noted by Gareth Newham in a Corruption Watch article, dated July 5, 2017 (“Top Police Must Be Transparently Appointed on Merit”, https://www.corruptionwatch.org.za/top-police-must-transparently-appointed-merit/): “[…] the Hawks boss will decide which cabinet minister gets investigated, or what powerful business family will or will not be thoroughly investigated using all the resources at the state’s disposal.” A copy of this article is annexed and is marked RR33.

362. The problem with this is clearly displayed in the appointment of Gen. Berning Ntlemeza, former head of the DPCI. The Minister of Police’s failure to take into consideration Ntlemeza’s lack of integrity during his appointment procedure indicates a motivation besides selecting the best candidate for the post, and supports the idea that the head of an ANTI-CORRUPTION ENTITY which is

mandated to investigate politically connected individuals should not be appointed by the executive branch, who (as the recent expose of State Capture shows) are often associated with or are the very subjects of investigation.

363. At the very least, the discretion exercised by the Minister for Police in appointing the DPCI Head should not be as wide as it currently is.

364. So long as s17CA remains in the statue books, the DPCI will be vulnerable to agents of political interference. The ISS concurs in this respect, as they have elucidated in the literature published on their website entitled “Why does SA Elite Corruption Busting Agency Suffer from a Credibility Problem” (https://issafrica.org/iss-today/why-does-sas-elite-corruption-busting-agency-suffer-from-a-credibility-problem). The article is not dated, but a copy has been annexed and is marked RR34.

365. The fact that the head of the DPCI is deployed by the executive branch is ruinous to any notion of operational independence since their job is given to them at the granti-corruption entity of the people they are mandated to investigate. The criteria for appointment as DPCI head are minimal when compared to those that exist in order to be a police constable (which run to 18 points), making it easy to deploy an unscrupulous

individual as head of the ANTI-CORRUPTION ENTITY. Judge Cameron's dictum in para 151 the *GIII* minority judgment is instructive in this regard: "In my view, consolidating the powers to appoint the Head in the Minister and Cabinet erodes the DPCI's independence to a constitutionally impermissible degree. I would confirm the High Court's order declaring section 17CA constitutionally invalid."

LACK OF INSULATION FROM POLITICAL INTERFERENCE

366. As reported in the Mail and Guardian article "Hawks Chief Helped Oust Dramat", as well as in Jacques Pauw's book *The President's Keepers,* previous DPCI head Anwar Dramat was hounded out of office at the hands of former Police Minister Nathi Nhleko (and replaced with Ntlemeza). This is a well-known example of the executive vexing and manipulation suffered by the DPCI.

367. In a Mail and Guardian article dated April 30th 2015 ("Hawks Boss: I was 'set up' to silence corruption investigations", https://mg.co.za/article/2015-04-29-hawks-boss-i-was-set-up), the same nature of harassment was suffered (albeit through the NPA) by KZN Hawks head Johan Booysen, who has faced an onslaught

of malicious prosecution at the hands of former acting NDPP Jiba. In Judge Gorven's judgment, it was held that the decision to prosecute did not pass even "least stringent test for rationality imaginable". A copy of the article is annexed and is marked RR35.

368. In the same article, it is reported that following an internal police investigation, Booysen's reputation was found to be impeccable by the findings made by the chair Nazeer Casssim: "The facts demonstrate an agenda to get rid of Booysen because he was perceived (rightly so, I may add) as a determined, professional, competent and tenacious policeman who would arduously strive to bring wrongdoers to book".

369. Booysen and Dramat displayed a commitment to executing their official mandate. The article reports that Booysen effectively pursued individuals such as the politically connected Thoshan Panday (reported to have been business partners with Jacob Zuma's son), as well as Police Colonel Navin Madhoe. Despite the sting operation into the individuals in question being recorded on video, the charge of bribery (R2 million offered to suppress charges of a lucrative police accommodation scam that operated during the 2010 World Cup) was withdrawn by the head of KZN NPA Moipone Noko.

370. The article continues to report that other investigations into Panday's relationship with KZN provincial Police Commissioner LG Mammonye Ngobeni (culminating in a highly suspicious refusal to provide receipts emanating from Ngobeni's husband's birthday party which it was alleged that Panday had funded) were also not pursued by Noko's office.

371. The charges pertaining to the police accommodation scam were likewise dropped.

372. The case of Booysen illustrates that the Hawks do not enjoy sufficient operational independence without prosecutorial capacities since their efforts have been blocked by the executive branch as it manifests in the NPA, which also calls into question the structuring of the ACTT.

373. As reported in the Sunday Times article (https://www.timeslive.co.za/politics/2017-09-28-npa-accused-of-failing-to-act-against-corruption-in-prasa/) entitled "NPA accused of failing to act against corruption in PRASA" (dated 28 September, 2017), the failure to investigate the suspect tenders entered into by PRASA (such as the R4bn tender awarded to Siyangena Technologies) is attributable to non-compliance with possibly all of the STIRS criteria whether it is the lack of adequate independence, training, resourcing or security of tenure of office. The fundamental

proposition here is that if the DPCI were compliant with STIRS criteria, these tenders (amounting to R7bn) would have been probed. A copy of the article is annexed and is marked RR36.

374. As reported on June 8th 2017 by BusinessLive ("Gupta Leaks and the Law", https://www.businesslive.co.za/fm/features/2017-06-08-the-gupta-leaks-and-the-law/) Duduzane Zuma is implicated in the #GuptaLeaks "for setting up certain meetings or inducing certain behaviour by his father" in return for money as well as an R18 million apartment in Dubai's Burj Khalifa skyscraper. A copy of the article has been annexed and is marked RR37.

375. The same article states that leaked e-mails also implicate former Communications Minister Faith Muthambi (known to be close to former president Zuma) in alerting the Guptas to policy changes before they were even given Presidential imprimatur. Muthambi had "political oversight over the shambolic SABC and the controversial multibillion-rand policy on digital terrestrial migration of television broadcasting, among others."

376. The article goes on to report that the leaked emails show that Des van Rooyen made false statements when he denied that the Guptas funded van Rooyen's trip to Dubai shortly after he was

appointed Minister of Co-operative Governance and Traditional Affairs.

377. The receipt of State Security Agency information by the Guptas has not been investigated.

378. The DPCI have asserted in June 2017 that the emails are being probed, but no further information or details have come to light.

PUBLIC PERCEPTION OF INDEPENDENCE:

379. The Court has acknowledged that public perception of independence is elementary to the requirement of independence (*GIII* para 123):

380. Newham writes that between 2007 and 2011 South Africa fell ten points (from a rating of 5.1 to 4.1) on the Transparency International Corruption Index. Despite a slight increase in our ranking in 2016, our score remains at 4.4.

381. As reported on January 27th 2016, in the News24 article ("SA moves six places on Corruption Perception Index", https://www.news24.com/SouthAfrica/News/sa-moves-five-places-on-corruption-perception-index-20160127), the Global Corruption Barometer (GCB) indicates that 83% of South Africans polled believed that corruption was increasing and 79% believed that

government was doing a poor job of combating corruption. A copy of the article has been annexed and is marked RR38.

382. The same article reports that South Africans surveyed by the GCB saw prominent political and public and private sector leaders at all levels continuing to loot their towns, provinces and national government on a grand scale and getting away with it.

RESOURCING

LACK OF ADEQUATE RESOURCING

383. The budget allocated to the DPCI and the specialization of the mandate they are tasked with are mutually reinforcing, as are all the STIRS criteria.

384. As noted by Newham, the high level SAPS Police Advisory Council report in 2006/7 found that the SAPS had inadequate capacity to investigate corruption. There is nothing to indicate that this deficiency has been ameliorated, p. 22. A copy of this document is annexed and marked RR39.

385. The fact that the Western Cape Hawks branch (housing 250 staff), as reported on December 1st 2016 in News24 article “Cape Town Hawks still working in unsafe, cockroach-infested offices” (https://www.news24.com/SouthAfrica/News/cape-town-hawks-still-working-in-unsafe-cockroach-infested-offices-20161201) is located in an office in Belville that has been declared as unsafe by

the Department of Health, has no functioning security systems and is infested with cockroaches. These unfortunate circumstances are in blatant violation of the requirements laid down by the Courts that the DPCI be adequately resourced. A copy of the article has been annexed and is marked RR40.

386. In the 23 May 2017 SCOPA and ACTT meeting (https://pmg.org.za/committee-meeting/24437/, a copy of the minutes of this meeting is annexed and is marked RR41), Lt. Gen Matakata stated that a major challenge to efficacy was "lack of resources, capacity and budgetary constraints."

387. The lack of adequate resourcing directly manifests in serious blows to the ability to fight organized and serious crime, as is evinced by the burglary and theft of computers containing sensitive and confidential information that occurred at the Hawks head office earlier in 2017, as reported on July 5th 2017 News24 article entitled: "Computers stolen in brazen burglary at Hawks head office" (https://www.news24.com/SouthAfrica/News/computers-stolen-in-brazen-burglary-at-hawks-head-office-20170705). A copy of this article has been annexed and is marked RR42.

388. This is a result of minimal to zero security, but also reflects on the Hawks' lack of training in intelligence storing since none of

the information was encrypted, and it remains unclear as to whether it was backed up.

INADEQUATE REMUNERATION

389. In the 17 September 2014 SCOPA and ACTT meeting, it was noted by Gen. Dramat that “there was some challenge around the training of personnel, as they would, once trained, invariably be poached or recruited by the private sector.”

390. In the same meeting, Mr P Groenewald (FF+) “observed that the integrity of the staff was influenced by how adequately they were compensated. There was an observation that trained staff tended to leave and move to the private sector, and that was indicative of the need for adequate compensation.”

391. In the 14 June 2017 SCOPA and ACTT meeting Major General Khana noted that: “A commercial crime investigator took five years to train as a forensic investigator and as soon as the person was fully trained, the person moved to the private sector.”

392. The following excerpt from the same meeting’s minutes illustrates the lack of resourcing: “Mr Tom Moyane, SARS Commissioner, spoke about the skills challenge and stated that it was a problem across the State. It takes five years to train a public

prosecutor or other specialised person. There was an issue about the State remuneration budget so it was necessary to create a situation where the State was seen as the preferred employer. The ability of the State to discharge its responsibility was based on the quality of work that would come from those that one had employed and entrusted to deal with the matters raised. Did the State have the wherewithal for paying how much they paid in the private sector? Then one would find oneself in the vortex of problems where someone would say that they had been given a higher offer and could they match it. His colleagues around the table experienced similar problems about skilled personnel. They needed to review how they could ensure that civil servants could feel that they were cared for. Corruption also crept in because people felt that they were not paid sufficiently."

393. The ailing condition of the NPA is evinced by a report (entitled "Leadership is not the NPA's only challenge") released by the Institute for Security Studies in February 2018, which analysed the NPA's 2016/2017 Annual Budget (https://issafrica.org/iss-today/leadership-is-not-the-npas-only-challenge). The report reveals that the NPA lost 157 staff members during that financial year, as well as 55 in the first 3 months of this year. At the time the

report was released, 239 important posts stand vacant. A copy of this report is annexed and marked RR43.

394. Furthermore, as noted by study (RR43), the Aspirant Prosecutor Programme has been suspended since 2015, disallowing for the recruitment of legal graduates into the NPA.

BUDGETARY CONTROL

395. In the 17 September 2014 meeting, General Dramat “also informed the committee that the DPCI was a sub programme, and as such the Head of the DPCI does not have full control over the budget. The allocation and budget was done through the Provincial Commissioners.”

396. The National Police Commissioner remains in control of the DPCI’s budget, and is also the Accounting Officer as per the Public Administrations Act. This means that the DPCI is vulnerable to indirect control as the NC assesses performance and functioning of the Directorate in great detail, and so the purse strings can be tightened or cut by executive discretion.

397. The lack of budgetary control is further exemplified in the following conversation between attendees at the 14 June 2017 SCOPA and ACTT meeting: “Mr Booi enquired whether disbursement was decided by the Criminal Asset Recovery

Committee and Cabinet. They decided how to allocate the money but there was no accountability and it did not go to any parliamentary committee.

398. “Mr Madonsela stated that the Inter-Departmental Grants Committee brought together a number of Ministers who made recommendations to Cabinet and Cabinet, which was government, made the decision and allocated the money.”

399. “Mr. Booi asked whether there was any duplication as, for example, SASSA had the largest budget but they had received extra money through the fund.”

400. Mr Booi asked how the system bypassed parliamentary processes. He asked whether the DG accounted to his Portfolio Committee. Did SCOPA have to request the Auditor-General to provide information?

401. Mr Madonsela replied that they could be called to account. He suggested that if the parliamentary committee did not believe that the Auditor-General was sufficiently accountable, other parliamentary procedures could be put in planti-corruption entity. He added that he accounted for the funds in the Annual Report of his Department.

402. A request could not exceed 35% of the budget of the Department making the request. The money was not from the

Revenue Fund. They were funds that had been recovered from the proceeds of crime. When there were funds available, they called for applications. Allocations were not made every year.

403. Jacob Skosana, DoJ&CD Deputy Director General: Court Services, explained that CARC could only allocate amounts that were in the account and that those amounts were dependent on forfeiture of assets. CARC reviewed reports from the institutions that had received funds before an institution could receive further funding.

404. Mr Booi asked if the model was designed for Cabinet members to share out the funds. Why was there no accountability for the funds? How transparent was it? The ordinary person did not know about the funds so it was open to corruption.

405. Mr Madonsela replied that the view was an unfortunate one and the principals would respond to that if necessary. He pointed out that the Integrated Justice System Committee brought together several departments, as did the Inter-Ministerial Committee. Cabinet made the final decisions and Cabinet was government. There had to be a demonstrable need for the funds to be allocated."

406. The excerpts quoted above in 5.4.3 evinces quite clearly that there is a lack of financial independence which makes the DPCI

indirectly vulnerable to political interference since the control lies in the hands of the executive branch, such as National Police Commissioners and cabinet.

CONCLUSION

407. In the premises, the CTPC respectfully requests that the relief set out in the Notice of Application be granted urgently.

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ROMMEL ROBERTS

I CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me on this… day of ……2018 at …….. In administering the oath, the requirements of Regulation R2477 dated 16 November 1984, as amended, have been complied with.

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COMMISSIONER OF OATHS

408. The CTPC resolved unanimously to apply directly to the Constitutional Court for the following relief as a matter of urgency:

409. Declaring that the legislation which locates the Directorate of Priority Crime Investigation within the South African Police Service is, in the circumstances currently prevailing in South Africa, inconsistent with the Constitution and invalid.

410. Directing the legislature and executive to take such remedial legislative measures as are necessary to rectify the invalid location of the DPCI in SAPS within a period of one year from the date of the granting of this order

411. Declaring that the conduct of the state in its purported implementation of the orders in *Glenister II* and *HSF/Glenister III* is inconsistent with the Constitution and invalid in that:

412. The structure and operations of the DPCI are insufficiently specialised

413. The mandate of the DPCI is insufficiently specialised

414. The personnel within the DPCI are insufficiently specialised and inadequately trained

415. The structure and operations of the DPCI are inadequately independent of the executive

416. The resourcing of the DPCI is lacking

417. The security of tenure of office of members of the DPCI, particularly those in leadership positions, is inadequate.

418. Declaring the creation of and persistence with the Anti-Corruption Task Team after *HSF/Glenister III* unconstitutional for want of compliance with the constitutional requirement that there be a single entity to combat corruption.

419. Directing the respondents in the executive to disband the ACTT and to take other remedial steps, including interim steps, to address the unconstitutional conduct set out in paragraph (e) above.

420. Directing the respondents in the executive and legislature to report to this Court at three monthly intervals, commencing three months from the date of this order, on the progress made in the formulation and passage of remedial legislation and in the implementation of both interim and final remedial steps taken to give effect to the orders made in this application

421. The Secretary, Rommel Roberts, is authorized to all things and sign all documents to give effect to this resolution.

422. Certified a true extract from the minutes of the meeting held on xyz December 2017.