

the Prosecutors and to suspend them pending the outcome of such disciplinary proceedings. These decisions are largely of a legal nature, which are well suited to the Court's institutional competence. Moreover, as this is a rule 53 review, the full record of decision will be placed before this Honourable Court.

171. When these findings of impropriety are viewed through the lens of the power conferred on the President and the fact that the offices occupied by the Prosecutors are of paramount constitutional and public importance, there is only one lawful decision which may be made in the circumstances, and/or in any case, no other conclusion that a rational decision maker could reach.

172. Furthermore, the facts of the matter have been publically available for many months now. All of the facts, including the Submissions by the Prosecutors, much correspondence and an urgent application, were before the President when he made his Decisions. Yet the President has stated unequivocally that he believes there is no evidence of misconduct, fitness or impropriety whatsoever and that the Prosecutors were "*beyond reproach*". Respectfully, it appears that the President simply incorrect, and does not appreciate the gravity of the misconduct by the Prosecutors. Referring the matter back to the President would have no value. Moreover, the unreasonable delay in the exercise of the President's powers (which the President originally promised to exercise by 21 November 2016, and yet only exercised more than three months after this date) has been highly prejudicial to the integrity of the NPA and the offices occupied by the Prosecutors. Further delay would, for the reasons set out at 155 to 165 above, visit considerable further violence on the NPA, public confidence and the rule of law.



173. It also appears that the President had unlawfully prejudged the matter and closed his mind even before the Representations were received. As stated above, the President indicated in his answering affidavit filed in the Urgent Application that he had not seen any evidence which militated in favour of the exercise of his powers under section 12(6) of the NPA Act. It is thus unclear what the purpose of requesting the Representations was in the first place, as the President had already indicated under oath that he did not believe the NPA officers to have a case to answer. What is clear, is that even before he had received their Representations the President had already formed the view that the Prosecutors were to be exonerated. Based on the President's assertions he has adopted an unlawfully rigid and protective stance and has effectively disabled himself from making a lawful and rational decision that is free from bias and his own subjective commitment to preserving the positions of the Prosecutors.

174. Finally, the President himself has correctly pointed out that it is not up to him to make a final decision with respect to the fitness and propriety of the Prosecutors or any misconduct attributed to them. He need only consider whether there are allegations which warrant enquiry. It is respectfully submitted that it is simply not open to the President, in light of the *prima facie* evidence of a lack of fitness and impropriety, not to initiate the enquiries and suspensions. Indeed, it is objectively incorrect, and in any case grossly irrational, for the President to consider that there was absolutely no evidence which requires answer from the Prosecutors, or that the Prosecutors' conduct in respect of the charges was "*beyond reproach*".

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175. For these reasons, the applicants submit that there are compelling grounds for this Honourable Court to grant the substituted relief prayed for in the notice of motion to which this affidavit is attached.

CONCLUSIONS

176. In light of the above, it is clear that the President has acted irrationally and unlawfully by failing to institute enquiries against the Prosecutors and to suspend them pending the outcome of such enquiries.

WHEREFORE, the applicants pray for the relief set forth in the notice of motion to which this affidavit is attached.


FRANCIS ANTONIE

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at Rosebank on 31 August 2017, the regulations contained in Government Notice no R1258 of 21 July 1972, as amended, and Government Notice no R1648 of 19 August 1977, as amended, having been complied with.




04785916 W/O
JM MLAHLEKI

COMMISSIONER OF OATHS

Full names: Jacques Mlahleki

Address: 15 Sturdee Ave

Capacity: Rosebank



[Print this page \(#\)](#)

Pretoria mass protests to go ahead, despite dropping of Gordhan charges

Nov 1, 2016 | TMG Digital

If National Director of Public Prosecutions Shaun Abrahams was hoping his decision to withdraw charges against Finance Minister Pravin Gordhan would stave off mass protests planned for Wednesday, he's in for a bitter disappointment.



In the case of the EFF, Abrahams' u-turn may even have helped bump him up to centre stage in proceedings, with a demand for his resignation now one of three points listed as "burning issues" for its #DayofAction march. File photo

Photograph by: Gallo Images / Beeld / Lisa Hnatowicz

"

"

While the South African Communist Party announced on Monday that it had cancelled a picket planned for Pretoria on the day Gordhan was due to appear in the city's magistrate court, the Economic Freedom Fighters and business groups have vowed to go ahead with their protest actions.

In the case of the EFF, Abrahams' u-turn may even have helped bump him up to centre stage in proceedings, with a demand for his resignation now one of three points listed as "burning issues" for its #DayofAction march.

The other two are that free tertiary education be given the urgent attention it deserves and that President Jacob Zuma resigns for failing to uphold his oath of office.

"These demands are in no way affected by Shaun Abrahams spurious decision to withdraw the charges against Gordhan. In fact, this decision has further emphasized the need for this incompetent head of the NPA to step down," a statement from the party said.

Business Unity South Africa, Business Leadership South Africa and the CEO Initiative are also going ahead with their combined activities planned for Wednesday, saying it was their "collective duty and paramount responsibility as citizens" to protect state institutions and "fight to maintain our investment grade rating".

"The decision to drop charges will therefore not alter the decision of business leaders and organised business to be in Pretoria on Wednesday... for a historic event: the first time in the 22-year history of our democracy that civil society, faith-based organisations, labour, business and thousands of citizens will join together to express what we stand for and what binds us together, namely the belief in our Constitution and a future for our society that it envisages."



/SAVINGS & INVESTMENTS/LOANS/INSURANCE



TSHWANE BUSINESS OWNERS LEFT REELING AFTER LOOTERS STRIKE DURING EFF MARCH

A business owner says the demonstrators broke into his bar, threatened staff and assaulted customers during an EFF march in Pretoria yesterday



A Spitz shop in Pretoria's CBD after being looted during an EFF march. Picture: Thomas Holder, EWN

Jacob Zuma (<http://ewn.co.za/Topic/Jacob-Zuma>) State Capture (<http://ewn.co.za/Topic/State-Capture>)
Hickani Marwedze (<http://ewn.co.za/Contributors/hickani-marwedze>) & Clement Manyathela (<http://ewn.co.za/Contributors/clement-manyathela>) | 10 months ago (301 days ago)

JOHANNESBURG - After a day of clashes between police and Economic Freedom Fighters (<http://ewn.co.za/Topic/Economic-Freedom-Fighters>) (EFF) supporters in the Pretoria CBD, business owners say nothing can justify the looting by some members of the red berets yesterday.

EFF leader Julius Malema (<http://ewn.co.za/Topic/Julius-Malema>) led a march through the capital.

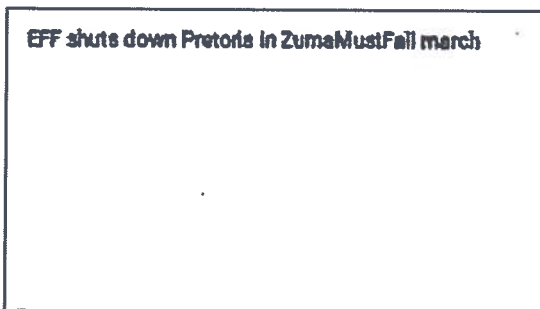
Shop owners claim his supporters damaged property and stole stock.

One business owner says the demonstrators broke into his bar, threatened staff and assaulted customers.

"They also set the place alight in two places, which we luckily managed to extinguish. We were thrown with bottles. I have a cut on my arm. My father was hurt and some of the other staff were hurt. Whenever you try to see whether the masses have passed, they throw stones again."

EFF supporters also clashed with police, who used stun grenades, rubber bullets and water cannons - to disperse the supporters after they apparently tried to force their way onto the lawns of the Union Buildings.

WATCH: EFF Shuts down Pretoria in #ZumaMustFall march



There were chaotic scenes outside the seat of government as EFF supporters wanted to access what they called "their property".

After being denied access, Malema then addressed supporters on the State of Capture report. (<http://ewn.co.za/2016/11/02/must-read-the-full-state-capture-report>)

"She (Thuli Madonsela) makes points about (Des) van Rooyen, she makes points about (Mosebenzi) Zwane and she makes points about Eskom. The evidence that she came across is very worrying evidence.

Malema says the report is also clear that Zuma is deep into the pockets of the Gupta family.

The EFF has vowed to return to the Union Buildings in another protest for Zuma to leave office.

CAS: BROOKLYN
429/05/2015

FA 2 73

J175 (81/810713)



REPUBLIC OF SOUTH AFRICA

Summons No. 574/16

COPY: To be handed to accused

Case No.

SUMMONS IN CRIMINAL CASE

Magistrate's Court

District Pretoria		Regional division Tshwane District	
Held at Pretoria	Court 16	Date of trial 02-November-2016	

TO THE ACCUSED

- You are hereby summoned to appear in person before the above-mentioned court at 08:30 on the above-mentioned date and place in connection with the charge(s) of which the particulars is/are mentioned above and to remain in attendance.
- An admission of guilt fine of may be made on or before to the Clerk of the above-mentioned Magistrate's Court or at any police station within the area of jurisdiction of the said Court.

Name Pravin Gordhan															
Address 93 Frans Oerder street Groenkloof															
Gender	Male	Occupation	Member of Parliament												
Age	67	Id No.	4	9	0	4	1	2	5	1	3	0	0	8	7

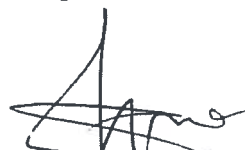
Particulars of charge(s):

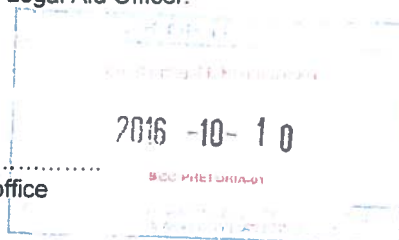
Accused is/are guilty of the offence of fraud

in that upon or about the 18 day of October in the year 2010 and at or near BROOKLYN

the accused did wrongfully SEE ATTACHED ANNEXURES A-E

- Warning:** (i) Should any change in above-mentioned address take place before the proceedings are finally disposed of you are compelled to inform the official who served this summons upon you thereof.
(ii) Failure to comply with either the above-mentioned warning or this summons renders you liable to a fine or a term of imprisonment not exceeding three months
- Should you decide to dispute the charge(s) against you, and you wish to make use of legal practitioner, you may, if you cannot afford a legal practitioner, apply for legal aid at the local Legal Aid Officer.


Date stamp of issuing office



ADMISSION OF GUILT UNDER SECTION 57 OF ACT 51 OF 1977

I do hereby acknowledge that I am guilty of the offence(s) set out in this summons.

Signature

Identity number [] [] [] [] [] [] [] [] [] [] [] [] [] [] [] [] []

The amount of R deposited this day of in the year of

Licence/Receipt No Dated
for the amount of R produced.

IMPORTANT

- 1. Should you intend making use of the post the documents must be posted on a date which will be early enough to ensure that it will reach those formerly mentioned on or before the mentioned payment date.
- 2. Only cash, a money order, a postal order or a cheque guaranteed by a bank, will be accepted.
- 3. The summons, signed by you, must accompany the fine.

[Handwritten Signature]
2
[Handwritten Mark]

ANNEXURE "A"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

COUNT 1

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 18 October 2010 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Nic Coetzee and/or Susan Visser and/or Khethang Mokoena and/or the South African Revenue Service (SARS) and/or the National Treasury that SARS was liable to pay a sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11 to the Government Employees Pension Fund on behalf of Ivan Pillay which amount was a penalty payable by Pillay to the Government Employees Pension Fund for taking early retirement for his own personal reasons, by requesting, recommending and approving that SARS should pay the said amount through a memorandum dated 18 October 2010,



AND did there and then and by means of the said false pretences induce Nic Coetzee and/or Susanna Visser and/or Khethang Mokoena and/or the South African Revenue Services or the National Treasury to their/its actual prejudice to pay the sum of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11 to the Government Employees Pension Fund on behalf of Ivan Pillay;

WHEREAS when the accused so gave out and pretended they well knew that in truth the South African Revenue Service (SARS) was not liable to pay the amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11 to the Government Employees Pension Fund on behalf of Ivan Pillay thereby committing fraud.

A handwritten signature in black ink, consisting of several vertical strokes and a horizontal line at the bottom, located in the bottom right corner of the page.

ANNEXURE "B"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Alternative to count 1

That the accused are guilty of Theft read with sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977, further read with sections 51(2) of Act 105 of 1997

IN THAT upon or about 18th October 2010 and at or near Pretoria in the Regional Division of Gauteng, the accused did unlawfully and intentionally steal an amount of One Million one hundred and forty one thousand one hundred and seventy eight rands and eleven cents R1 141 178.11, the property or in the lawful possession of Nic Coetzee and/or Susanna Visser and/or Khethang Mokoena and/or the South African Revenue Services (SARS).



ANNEXURE "C"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

COUNT 2

THAT the accused are guilty of contravention of Section 86 read with section 1, 38, 39 and 45 of the Public Finance Management Act, Act 1 of 1999 and further read with Sections 1, 92(2), 250, 256 and 257 of Act 51 of 1977

IN THAT upon or about the date and place mentioned in count 1, accused 1 whilst being an Accounting officer for The South African Revenue Services (SARS), acting in concurrence with accused 2 and 3 wilfully and in a grossly negligent way, caused SARS to incur or failed to prevent irregular, fruitless and wasteful and unauthorised expenditure and thereby contravening the said sections of the Act.

Handwritten signatures in black ink, consisting of two distinct scribbled marks, one above the other.

ANNEXURE "D"

Case no:

/2016

THE STATE

VERSUS

OUPA MAGASHULA

ACCUSED 1

IVAN PILLAY

ACCUSED 2

Count 3

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 7th February 2011 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS that SARS was authorised to enter into an employment contract with Mr Visvanathan Pillay for a period of five (5) years commencing on 1 January 2011 and terminating on 31 December 2015;

AND did there and then by means of the said false pretences induce Chrisna Susanna Visser and of Human Resources of SARS and/or SARS to her /its prejudice to a remuneration package for a period of five (5) years instead of a remuneration package of three (3) years



WHEREAS when the accused so gave out and pretended, they well knew that in truth the South African Revenue Service (SARS) was only authorised to conclude a three (3) year contract with effect from 1 August 2010 with Mr Visvanathan Pillay and thereby committing fraud

A handwritten signature in black ink, appearing to be 'M. Pillay', located in the bottom right corner of the page.

ANNEXURE "E"

Case no: /2016

THE STATE

VERSUS

IVAN PILLAY

ACCUSED 2

PRAVIN GORDHAN

ACCUSED 3

Count 4

THAT the accused are guilty of the crime of FRAUD read with sections 1, 103, 250, 256 and 257 of Act 51 of 1977 and further read with section 51(2) of Act 105 of 1997.

IN THAT upon or about 1st April 2014 and at or near PRETORIA in the Regional Division of Gauteng the accused, did unlawfully, falsely and with the intent to defraud give out and pretend to Chrisna Susanna Visser and/or Human Resources of SARS and/or SARS that SARS was authorised to enter into an employment contract with Mr Visvananthan Pillay as Deputy Commissioner for a period of four (4) years commencing on 1 April 2014 and terminating on 31 December 2018;

AND did there and then by means of the said false pretences induce Chrisna Susanna Visser and of Human Resources of SARS and/or SARS to her /its prejudice to an annual remuneration package of One million nine Hundred and eighty nine thousands five Hundred and eighty



nine rands and fifty two cents for a period of four (4) years when there was no approved internal memo or letter authorising same.

WHEREAS when the accused so gave out and pretended, they well knew that in truth the South African Revenue Service (SARS) was under no obligation to enter into a new employment contract or extend the employment contract entered into on 7 February 2011 with Mr Visvanathan Pillay as it still had a period of a year to run to conclusion and thereby committing fraud.

A handwritten signature in black ink, appearing to be 'M. Pillay', located in the bottom right corner of the page.

TRANSCRIPT

HELD AT: Pretoria

MATTER NO: 3012607

DATE:

NPA MEDIA BRIEFING

PERSONS PRESENT

1. Adv Shaun Abrahams
2. Media

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of several vertical strokes followed by a horizontal line and a small flourish.

ADV SHAUN ABRAHAMS: On the progress of the investigations by the hoax into the lawfulness of the high risk investigation unit in the South African Revenue Services, which unit the media have largely doubt the SARS role unit and of course along with the lawfulness of the units activities as a result I would like to provide the public with an update on these investigations, much has been said in recent times over the hoax investigations into the SARS high risk investigation unit, as recent as last week it was widely publicised in both print and electronic media that Minister Pravin Gordhan was in the United States of America during an interview with Bloomberg Television New York called the investigation "*no more than a bitter political mischief which every country will have*", as you have come to learn there can be nothing further from the truth, section 22(1) of the National Prosecuting Authority Act endures the National Director as Head of the Prosecuting Authority to have authority over all the exercising of powers and the performance of all the duties and functions conferred or imposed on/assigned to any member of the Prosecuting Authority, section 22(2)(b) further endures the National Director to intervene in any prosecution process when policy directives are not being complied with, no evidence and/or information has been placed before me as of date to cause my intervention in this matter, section 179(5)(d) of the Constitution which is replicated in section 22(2)(c) of the National Prosecuting Authority Act further endures the National Director of Public Prosecutions to reveal a decision to prosecute or not to prosecute after consulting the relevant director and after having taken representations within a specified period that's specified by the National



Director representations being taken from the accused person, the complainant and any other person or party whom the National Director considers to be relevant, in the event that I am requested to invoke the aforementioned reviewing provisions persons with the requisite *locus standi* are merely required to formally request me to review a decision to prosecute or not to prosecute to which I will certainly oblige. In terms of the provisions of both the Constitution and the NPA Act the power to institute criminal proceedings on behalf of the state to carry out any necessary functions incidental thereto and to discontinue criminal proceedings vest solely in the National Prosecuting Authority, the independence and impartiality of the prosecuting authority and prosecutors generally is legally and Constitutionally entrenched the NPA in this regard *inter alia* provides that a member of a prosecuting authority shall serve impartially and exercise, carry out or form his or the powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law, in *state vs Yengeni* in Pretoria High Court in reference to the oath formation and impartiality and esteem of the office of the prosecutor held as follows, *ad paragraph 51 "the Constitution guarantees the professional independence of the National Director of Public Prosecutions and every professional member of his staff with the obvious aim of ensuring their freedom from any interference in the functions by the powerful, the well collected, the rich and the peddlers of political influence", ad paragraph 52 "the untrammelled exercise of their powers in a spirit of professional independence is vital to the functioning of the legal system, the independence of the judiciary is directly related*



thereto and depends upon the independence of the National Director of Public Prosecutions, undermining this freedom from outside influence who would lead to the entire legal process being held hostage to those interests that might be threatened by fearless committed and independent search for the truth", similarly the Constitutionally entrenched judicial authority is vested in the courts and so true is the independence of the courts which is subject only to the Constitution and the law which must be applied impartially without fear, favour or prejudice as in the case of the prosecutor and prosecutors in general no person may interfere with the functioning of our courts, prosecutor's independence must be understood in such a way that political, personal and private consideration must be set aside so far as the exercise of the specially powers is inherent in the office of the prosecutor, no matter how much pressure is put on him due to the **helius** nature of an offence, the surrounding publicity or the parties involved, the prosecutor must retain an inward stance of impartiality and display outward objectivity. Insofar as the investigation into the establishment of the SARS high risk unit is concerned I have *inter alia* been advised of the following, the need to create a unit which would penetrate the illicit market to investigate the loses of revenue that SARS was suffering in that area and purportedly been identified as far back as 1999, such a unit had to be located within the intelligent services although it had focus on SARS' work, in this regard numerous meetings and various interactions between SARS and the various intelligence agencies namely the National Intelligence Agency as it was known at the time, the South African Secret Service as it was known at the time, the Defence



Intelligence and Police Intelligence to place between the periods 1999 and 2007, on 2 February 2007 Mr Ivan Pillay who at that stage held the position of General Manager of the Enforcement and Risk Unit at SARS directed a memorandum to the Minister of Finance, Mr Trevor Manuel who was the minister at the time, this memorandum was titled to fund an intelligence capability within the National Intelligence Agency in support of SARS, in this memorandum Mr Pillay sought Mr Manuel's approval to fund a special capability within the National Intelligence Agency to supply SARS and law enforcement with the necessary information to address the illicit economy, this specialised capability was ostensibly required to enable SARS to understand the illicit trade industries which purportedly was responsible for SARS losing income in respect of the collection of vast amount of revenue required to fund government's priorities, the areas which the purported unit or the proposed unit would focus on *inter alia* included the following. I must apologise for that, you know everything that happens in the NPA I am ultimately held accountable, this *inter alia* included the importation of counterfeit goods, the smuggling of cigarettes, the importation and/or exportation of drugs and the illegal harvesting of abalone, in this regard the unit would be required to penetrate and intercept the activities of organised crimes syndicates with the assistance of the National Intelligence Agency in order to unearth the operations of organised crime groups, this memorandum *inter alia* emphasised that correcting tactical intelligence in variably means penetrating and intercepting organised crime syndicates, this memorandum significantly acknowledged that this is an activity for which SARS did not have the



capability including the legislative mandate to manage clandestine activity, the memorandum further alludes the discussions which were taking place with the National Intelligence Agency to supplement SARS' intelligence capability, the memorandum further critically informed Mr Manuel that the National Intelligence Agency was willing to create a ringfence capability on the proviso that funds are made available to cover personal costs as all other costs will be covered by the National Intelligence Agency to this end Mr Manuel was further advised in a memorandum that the National Intelligence Agency was willing to formalise the above mentioned arrangements into a memorandum of understanding, no memorandum of understanding in this regard was ever entered into between SARS and the National Intelligence Agency nor between Mr Trevor Manuel and Mr Ronny Kasrils who was the Minister of Intelligence at the time, nor between the Director General of the National Intelligence Agency and the Commissioner of SARS, neither was a ringfence capability created within the National Intelligence Agency, the aforementioned memorandum further requested Mr Manuel to increase the budget of the National Intelligence Agency to fund the creating of this specialist capability, it further sets out the estimated personal costs for the period 2007 to 8, 2008 to 9 and 2009 to 10, for purposes of this briefing I will not elude you to the amounts of money that was estimated at the time, there is no evidence remotely that the National Intelligence Agency's budget was increased to fund this specialist capability, Minister Gordhan who was the SARS commissioner and the SARS accounting officer at the time in approval of the request by Mr Pillay signed this memorandum on the 8th of



February 2007, whilst the Deputy Minister of Finance at the time Mr Jabu Moleketi approved the request as per the content of the memorandum on 22 February 2007 in approving this memorandum Deputy Minister Jabu Moleketi remarked as follows in a handwritten note *"supported however this is a strange way of executing what I require to be an economic mandate of NIA"* and I pause to state that in reference to the National Intelligence Agency I continue, it seems as though it's an add-on rather than part of NIA's mandate", Mr Manuel reconciled himself with this handwritten comment of his erstwhile Deputy Minister and approved the memorandum thereafter, investigations have further revealed that members of the unit were recruited to SARS prior to the authorisation of Mr Manuel being obtained and prior to any memorandum of understanding being entered into, there was of course as you would know now no memorandum of understanding ever entered into, investigations have further revealed that the high risk investigation unit had been in existence in SARS and had been operating long before Mr Manuel's authorisation had been obtained, this unit *inter alia* conducted its affairs in a very strange and covert manner in that members of this unit were recruited outside of normal SARS recruitment processes, members of the unit were sourced from structures such as the South African Police Services, the National Intelligence Agency, the direct fit of special operations, the former Scorpions, the South African National Defence Force, the South African Revenue Services and of course the private sector, unlike other South African Revenue Services employees members of this unit did not operate from SARS' office instead they operated from their houses, boots of cars



single police service and any intelligence services established in terms of our Constitution, sub-section 4 makes peremptory for security services to be structured and regulated by national legislation and subsection 5 obligates security services to act and to teach to require their members to act in accordance with the Constitution and the law, section 209 of the Constitution enjoins and I wish to emphasise this the President of the Republic as head of the national executive as the only one who may establish any intelligent service other than any intelligence division of the defence force or the police service, the president may however only exercise such power in terms of National legislation, section 210 of the Constitution provides for the regulation of the powers and functioning of intelligent services along with the monitoring thereof, in this regard section 210 of our Constitution reads as follows "*national legislation must regulate the objects, powers and functions of the intelligent services including any intelligence division of the defence force and police service and must provide for (a) the coordination of all intelligence services and (b) surveillance monitoring of the activities of those services by an inspector appointed by the president as head of the national executive*", this of course is in reference to the inspector general of intelligence, there is no evidence remotely that former President Mbeki invoked section 209 of the Constitution to establish intelligence capability within the South African Revenue Services, had such a decision been made by former President Mbeki such decision would have amounted to an executive decision, section 101(1) of the Constitution makes it obligatory for a decision by the President to be in writing where such decision is taken in



terms of legislation and/or where such decision has legal consequences, sub-section 2 requires the written decision by the President to be countersigned by another cabinet member, where the decision concerns a function specifically assigned to that cabinet minister, in this regard there is no evidence remotely that President Mbeki or President Zuma when the latter assumed the position of President of the Republic had taken such a decision nor was such a decision countersigned by Mr Ronny Cashrolls, Minister Siyabonga Cwele or Minister David Mahlobo during their turners as minsters of intelligence and ministers of state security respectively, nor by Mr Trevor Manuel, Minister Pravin Gordhan nor Mr Nhlanhla Nene during their respective turners as minsters of finance, chapter 11 of our Constitution further makes no provision remotely for SARS to fall within the category of security services and/or and intelligence structure, the National Strategic Intelligence Act 39 of 1994 *inter alia* defines the functions of members of the National Intelligence Structures in this regard section 1 of the National Strategic Intelligence Act does not include SARS as a national intelligent structure, this section further provides that relevant members of the national intelligent structures mean (a) the intelligence division of the national defence force, (b) the intelligence division of the South African Police Service, (c) the National Intelligent Service and (d) the South African Secret Service, section 2 of the National Strategic Intelligence Act sets out the functions relating to intelligence insofar as the relevant members of the National intelligent structures are concerned, it is clear from the above that SARS is not included as a relevant member of the intelligence structure, section 3 of the same act provides for the



functions of other departments of state with reference to national security intelligence to this end section 3(1) reads as follows *"if any law expressly or by implication requires any department of state other than the agency with the service to perform any function with regard to the security of the Republic or the combatting of any threat to the security of the Republic, such law shall be deemed to empower such department to gather departmental intelligence and to evaluate, correlate and interpret such intelligence for the purpose of discharging such function provided that such department of state shall not gather departmental intelligence within the Republic in a covert manner, my emphasis"*, section 1 of the National Strategic Intelligence Act defines departmental intelligence as meaning intelligence about any threat or potential threat to the national security and stability of the Republic which falls within the functions of the department of state and includes intelligence needed by such department in order to neutralise such a threat, it is hence indicative an instructive to note that section 3(1) of the National Strategic Intelligence Act finds no authority and/or applicability in justifying the clandestine and the covert functions and a conduct in both the creation of the high risk investigation unit in SARS along with the operations of the said unit and its members, the persons to whom the member reported to and the authorities authorised its establishment continued existence and subsequent operations, the aforementioned section clearly finds no authority and/or applicability in the functions and/or conduct of SARS. From the above, no other conclusion can be deduced other than that the creation of the SARS high risk investigation unit is both in conflict with and in violation of the legal



mandate of SARS in terms of the SARS Act, the National Strategic Intelligence Act and chapter 11 of our Constitution. Similarly the clandestine and the covert operations of the said unit and its members, the persons to whom the members reported, the authorities who authorised the unit's establishment, the authorities who maintain its continued existence and subsequent operations were too in conflict with and in violation of the legal mandate of SARS in terms of the SARS Act, the National Strategic Intelligence Act and chapter 11 of our Constitution. That being said, then litigation into the creation and subsequent operation of the SARS High Risk Investigation Unit is at an advanced stage but at this stage, remains incomplete and is ongoing. You would do well to be reminded that numerous related investigations were conducted which resulted in, *inter alia*, findings and recommendations being made. Some of these recommendations *inter alia* included criminal investigations into the creation and clandestine operations of the High Risk Investigation Unit in SARS and its members. For purposes of this briefing, I am deliberately not going to go into the merits and/or demerits of the alleged clandestine activities of this unit. I however do call on the public to allow the authorities to conclude their investigations. Of course, we will make an announcement on the outcome of these investigations once same has been concluded.

I have further been advised by the acting special director and head of the Priority Crime Investigation Unit in my office Dr Torie Pretorius SC of a decision made in consultation with the Director of Public Prosecutions for North Gauteng, Advocate Sibongile Mzinyathi on the recommendations of



prosecutors in the Priority Crime Investigation Unit in respect of an early retirement penalty that SARS had paid on behalf of Mr Ivan Pillay. Parliament's Standing Committee on Public Accounts, commonly referred to as SCOPA has, as recent as September this year *inter alia* called on the dire need to root out corrupt activities, financial mismanagement and maladministration in state departments and SOEs. SCOPA has further called on tough action to be taken in respect of alleged contraventions of the Public Financial Management Act. In this regard, in respect of an early retirement penalty that SARS had paid on behalf of Mr Ivan Pillay, I have *inter alia* been advised of the following: during 2009 Mr Pillay's application to purchase pensionable service for the period 28 February 1980 to 27 April 1994 to enhance his retirement benefits, was approved by the Government Employment Pension Fund. During August 2010 Mr Pillay, who was a SARS deputy commissioner at the time, and I think he was fifty-six years old, he was fifty-six years old at the time, submitted an internal memorandum to the Commissioner of SARS who was Mr Oupa Magashula at the time. This memorandum *inter alia* informed Mr Magashula that Mr Pillay's decision to retire early. It further explained that the decision to retire early is largely informed by his deteriorating medical condition and family responsibilities which had suffered as a result of his dedication to his job at SARS. Mr Pillay further requested to be reappointed in SARS in a different capacity on contract after having taken early retirement. Mr Pillay further requested Mr Magashula to recommend to the Minister of Finance, who was Mr Gordhan to approve his early retirement subject to the provision of section 16(6)(d) of the Public Service



Act in terms of which the Minister approves that the penalty imposed on his pension benefits as envisaged by Rule 14.3.3(b) of the Government Employment Pension Fund rules, be paid by SARS to the Government Employment Pension Fund on his behalf. In this regard, section 16(6)(d) of the Public Service Act, does not exist. It is clear that regard was had to section 16(6)(a) and (b) of the said Act which reads as follows: "*(a) an executive authority may at the request of an employee allow him or her to retire from the public service before reaching the age of sixty years if sufficient reasons exist for retirement; (b) if an employee is allowed to so retire, he or she shall, notwithstanding anything to the contrary contained in sub-section 4, be deemed to have retired in terms of that sub-section and he or she shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the public service in terms of that sub-section*". Rule 14.3.3(b) of the Government Employment Pension Fund rules *inter alia* reads "*a member who retires on account of a reason mentioned in rules 14.3.1(d) or (e) and who has at least ten years' pensionable service to his or her credit, shall be paid the benefits referred to in rule (a) above provided that such benefits shall be reduced by one-third of one percent for each complete month between the member's actual date of retirement and his or her pensionable retirement date*". In a memorandum dated 12 August 2010 title "*Early Retirement of Deputy Commissioner Ivan Pillay with full retirement benefits*" Mr Magashula requested Mr Gordhan's approval for the early retirement of Mr Pillay with full benefits with effect from 1 September 2010 whereby SARS pays the penalty to the Government Employment Pension Fund. Mr Magashula




further requested Mr Gordhan to retain Mr Pillay as Deputy Commissioner of SARS on a three year contract with effect from 1 September 2010. This memorandum further informed Mr Gordhan that Mr Pillay, who was fifty-six years' old at the time has decided to take early retirement for personal reasons. It motivates that the Government Employment Pension Fund had approved, in excess of three thousand requests for early retirement from various government departments for staff members to retire before the age of sixty with full benefits and that the former minister of finance, this is in reference to Mr Trevor Manuel and Mr Gordhan had himself approved at least five such requests over the past two years. It further informs Mr Gordhan that advice was sought from the Acting Director General of the Department of Public Service and administration, that is the DPSA, who will confirm that there is no restriction on the appointment to the public service or the same department of a person who has retired on an employee initiated severance package. It further advises Mr Gordhan that the financial implications to SARS would be an amount of R1 141 178.11 which SARS will be liable to pay to the Government Employment Pension Fund. The erstwhile Acting Director General, DPSA, has since provided an affidavit to the investigating officer after having been subpoenaed in terms of section 205 of the Criminal Procedure Act. In this regard, he was informally approached by Mr Magashula who sought information and/or clarification in relation to the employee initiated severance package applicable to the public service. It was explained to Mr Magashula that the employee initiated severance package was introduced in the public service for a determination issued by the Minister



of the DPSA to enable employees to exit the service voluntarily where such employees were affected by transformation or restructuring within their respective departments and that such a severance package would include pension benefits without scaling down of pension benefits in terms of the pension benefit rules severance pay, amounting to two weeks salary for every full year of service, leave pay (inclusive of CAP leave, compensation for medical benefits and services bonuses etcetera. The employee initiated severance package, was clearly not applicable in Mr Pillay's case. In respect of Mr Magashula's inquiry, with the employees exiting the public service on an employee initiated severance package as to whether such a person can be re-employed into the public service, Mr Magashula was advised that there was no [indistinct 00:41:56 to 00:41:02] Mr Magashula was further advised that in the event that the employee concerned left on a voluntary severance package, the employee concerned would only be permitted to be reappointed if the relevant department was unable to recruit suitable candidates and that the reappointment of such former employee, would only be on a fixed term contract limited to a maximum period of three years.

Mr Magashula, at no stage referred to Mr Pillay nor any specific SARS individual. In this regard, Mr Pillay's name was never mentioned to the Acting Director General of the DPSA who has clearly stated that he did not provide any advice to Mr Magashula on the specific early retirement of Mr Pillay nor on Mr Pillay's retention in SARS on a contractual basis. whilst the memorandum is not signed by the erstwhile Deputy Minister of Finance Mr Nhlanhla Nene, Mr Gordhan's approval is only obtained on

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18 October 2010. Mr Nene provided an affidavit to the investigating officer after also being subpoenaed in terms of section 205 of the Criminal Procedure Act. Mr Nene explained that as a deputy minister, he did not have any power to exercise executive functions including those in respect of the memorandum concerned. Mr Nene was of the view that such an explanation would be speculative under the circumstances. Mr Nene further had no recollection as to whether this specific memorandum had served before him for comment and of course was unable to explain how he would have dealt with the memorandum had same been presented to him. As a result Mr Pillay's early retirement, with full benefits, as approved by Mr Gordhan was implemented with effect from 31 December 2010. In this regard, Mr Pillay also entered into a five year employment contract with SARS as the Deputy Commissioner of SARS with effect from 1 January 2011 to 31 December 2015 instead of on a three year contract as approved by Mr Gordhan and instead of in a different capacity. In addition, on 1 April 2014 a new employment contract was entered into between Mr Pillay and Mr Gordhan whereby Mr Pillay would act as a Commissioner for SARS for a period of five years. In this regard, section 7 of the SARS Act provides for an acting commissioner to be appointed for no longer than a period of ninety days only Mr Gordhan was offered an opportunity to provide his version to the Hawks which version is subsequently submitted through his lawyers and in which Mr Gordhan stated that he approved Mr Pillay's early retirement with full benefit on the strength of the recommendation by the then Commissioner of SARS Mr Oupa Magashula. Mr Gordhan is further recorded to have approved

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Mr Pillay's early retirement with full benefits, being mindful that Mr Pillay wanted to gain access to his pension fund to finance the education of his children and that he believed it to be entirely above board and because he thought it appropriate to recognise the invaluable work Mr Pillay had done the transformation of SARS since 1995. On the recommendation of the prosecutor and having perused the evidence and in consultation with the Director of Public Prosecution for Gauteng Advocate Sibongile Mzinyathi, the Acting Special Director of Public Prosecutions and head of the Priority Crime Investigation Unit Dr Torie Pretorius SC, has decided that Mr Pillay, Mr Magashula and Mr Gordhan must be prosecuted and arraigned on *inter alia* the following crimes: count one - fraud in respect of the R1 141 178.11 whereby the aforementioned persons had misrepresented to the Government Employment Pension Fund and to SARS that Mr Pillay was entitled to full pensionable benefits in terms of the employee initiated severance package which was implemented for transformation initiatives whereas in fact the aforementioned persons knew well that the employee initiated severance package was not applicable to Mr Pillay; count two - only in respect of Mr Magashula, a contravention of the Public Finance Management Act in that Mr Magashula as the accounting officer had caused SARS to incur irregular, fruitless, wasteful and unauthorised expenditure in the amount of R1 141 178.11; count three - in respect, only in respect of Mr Pillay and Mr Magashula a charge of fraud in relation to the employment contract for a duration of five years; count four - in respect of Mr Pillay and Mr Gordhan in relation to the extension of the employment contract. The three accused have today been informed of the decision to



prosecute them and they have been served with J175 summonses, listing the charges and in terms of which they are required to appear in the Pretoria Regional Court on 2 November 2016. As I sit before you today, I reassure you of my commitment to my oath of office to uphold, protect and defend the Constitution and the fundamental rights entrenched therein and to enforce the law of the Republic of South Africa vigorously without fear, without favour or prejudice and as the circumstances of any particular case may require in accordance with our Constitution and our laws. I thank you.

MR LUVUYO: Thank you National Director for the comprehensive address, the leadership will take questions and members of the media you know [indistinct 00:49:07] reminded, we don't take questions from members of the NPA. I will take here, I will take first five hands, a show of hands I noted you, Karen, Judith you will be next and Edward, you'll be fourth. Let's start with Karen.

MEDIA - KARYN ENCA: Thank you very much Karyn Maughan from ENCA. Have you ever prosecuted anyone for approving early retirement because that is the basis on which you are charging the Finance Minister and given that the Rand is just attacked in the wake of your announcement, if this case fails to succeed in getting a conviction, will you resign given the level of damage that is going to be done towards the country, particularly in the wake of the economic implications of your announcement? Thank you.

MR LUVUYO: Yes Sir.

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MEDIA - WILLIAMS - NN7 Television: Well [indistinct 00:50:09] My name is Monty Williams from NN7 Television, Minister Gordhan has questioned timing of this announcement and of course just wondering in terms of you know when you presented your case before me I would want to know a motive why this time for example. So he keeps questioning the timing and all and also because we know that it is short, it is just before the meeting budget announcement and of course we know that in a few more weeks the rating agencies will be returning back to this country to review our ratings and we know that the Gordhan issue has been quite central to their considerations. So the whole questioning of the timing about this announcement.

MEDIA - ELTON SIBIYA - SABC TV News: Good morning, Elton Sibiya from SABC TV News. Mr Abrahams with regard to the decision that has now been taken to prosecute Mr Gordhan specifically considering that he is a member of the executive, have you been in consultation with the President? Does the President know about this and the final question is with regards to the start of your unit have you been able to establish as a matter of fact, I know that Mr Gordhan said that he has no knowledge of any wrong-doing being done by the SARS so-called Rogue Unit and have you been able to establish whether there is a *prime facie* case against him?

UNKNOWN MALE: Let's deal with the five questions.

MR LUVUYO: Yes.

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MEDIA - SIPHO MABENA - Times Newspaper: Thank you, Sipho Mabena for the Times Newspaper and Advocate last week the Constitutional Court dismissed NPA's leave to appeal the so-called spy tapes judgment that [indistinct 00:52:03] against President Jacob Zuma was irrational. Have you made a decision in that regard and what is the decision? Thank you.

MEDIA - REUTERS: [indistinct 00:52:18] from Reuters. Have you encountered any political interference during your time investigating this and will you be investigating whether there has been any political interference into the investigations into Mr Gordhan?

MR LUVUYO: Thank you, National Director.

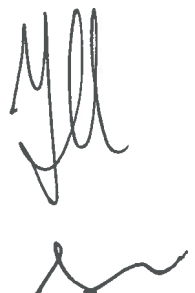
ADV SHAUN ABRAHAMS: Thank you so much. I think in respect of the first question by Karyn Maughan, as to whether there has been any previous prosecutions in respect of early retirement, I cannot comment on that off the cuff. Of course there have been many prosecutions in respect of various frauds in the history of this country. So off the cuff, I cannot comment, I certainly cannot comment on that at this stage. I think in respect of your question around the financial crisis, will I resign? I, this decision has been made by the Special Director of Public Prosecutions in consultation with the Director of Public Prosecutions for Pretoria. They have applied their minds to the facts of the matter, to the evidence and the recommendations of the prosecutors. They considered all factors in respect of this matter. The difficulty that one is faced with is and we are probably going to touch on the issue of the timing, you know of the prosecution simultaneously. You would be very mindful of the current

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matter where President Zuma has appealed or filed a petition with the President of the Supreme Court of Appeal and the issue in that particular matter relates to the egregious or alleged egregious conduct of members of the NPA in the timing of the prosecution. Now the prosecutors in this matter find themselves in a very difficult situation. A decision has been made. Do we hold back on announcing this decision and announce this decision at some other particular point in time? I think the ramifications thereof for this institution can be dire and no, I won't resign, under any circumstances. This decision was made within the confines of the rule of law and the Constitution. I think it relies in the opening address I touch on the powers of the National Prosecuting Authority, the powers of Judges and how these powers must be respected and I would appreciate if you respect it the same way. The question of whether the President has been consulted and whether the President is aware of this matter. Immediately after I had been briefed by the Acting Special Director of Public Prosecutions and the Director of Public Prosecutions for North Gauteng in respect of this matter, I sought audience with the Minister of Justice and Correctional Services who in terms of the Constitution and the National Prosecuting Authority Act, has final responsibility over the National Prosecuting Authority. I apprised the Minister of Justice of the decision by the Special Director which was taken in consultation with the Director of Public Prosecutions. I want to emphasise, I did not ask the Minister's permission for a prosecution to be instituted. I informed the Minister of a decision that had been made because this matter affects a sitting cabinet minister, and relates to a former commissioner of SARS and a former

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acting commissioner of SARS, I deemed it absolutely prudent for the minister to inform the President of this. The question in respect of the Constitutional Court's, the Constitutional Court order that it is not prepared to hear the appeal by the National Prosecuting Authority at this stage and I emphasise at this stage, no, I have not made a decision as yet. We have consulted with Senior Counsel who represented myself and the NPA in respect of this matter. We have met as the leadership of the institution to discuss the matter. We have not made a decision on the way forward as yet. We are very mindful that the Constitutional Court, when passing the ruling or making the order was very mindful of the proceedings in the Supreme Court of Appeal, in which President Zuma had petitioned the Supreme Court of Appeal. The question around political interference I can ensure you there has been no political interference in this matter, there has been no political interference in the decision making, the decision made by the Special Director of Public Prosecutions in consultation with the Director of Public Prosecutions. If there is any political interference I am applaud you to bring that to my attention and I would consider that, if there is any political interference I applaud you to bring it to my attention so that I can cause same to be investigated. If any person tries to interfere with me, my work, the work of members of this institution I can assure you we will hold them before the courts, we will cause them to be investigated. I will not allow any political interference in the work of this institution so I applaud to bring that to my attention. Any further questions? We only going to take one more round of questions. Thank you.

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UNKNOWN: Sure, with regards to the SARS' (indistinct) I understand that you say that the investigations are still continuing and Pravin Gordhan has already indicated that he has no knowledge of any wrong doing, what I want to find out from the evidence that you have so far are you able to establish whether there is a *prima facie* case against the Minister?

ADV SHAUN ABRAHAMS: I think we must allow this process to unfold and the investigation to continue, the purpose of my briefing was specifically to set out the lawfulness around the creation of this unit and some of the work that this unit had done, you would be very mindful that not because conduct is unlawful does that mean that all conducts that's unlawful must be subjected to a prosecution, so I am not going to comment on the unlawfulness of it, I have commented on the constitutionality thereof of it which automatically makes it unlawful but I am not going to go into the merits of the matter, I think we must allow this investigation to proceed and to be concluded and then we can look at accountability.

MR LUVUYO: Thank you NDPP, we will take 5, last round, those who have not raised issues, I will start with you, and you Sir (indistinct)

MEDIA - AVIWE - CNBC AFRICA: Hi I am Aviwe from CNBC Africa, the Minister has in fact replied to the summons, asking, challenging more South African to question what the Hoax stands for and who they actually report to, I would like to hear a response in this regard and why has it taken such a long time to bring forth these summons because considering that they relate back to 2009 when he was SARS commissioner, I just want to know why it has taken so long for them to come through?



ADV SHAUN ABRAHAMS: I cannot talk on behalf of the, you know of the Hoax and I am certainly not prepared to speak on behalf of the Hoax, the investigation had been concluded, the prosecutors have made a decision, why should they hold back on their decision, if the decision was to decline to prosecute would you the public have wanted me to hold that back, would you the public have wanted me to not to communicate that to the nation, next question?

MEDIA - MPHOTO: Hi, my name is Mpho (indistinct) I am coming out from (indistinct) News, and Mr Abrahams congratulations on such a decision that you managed to put yourself in a very tricky position, your colleagues and many people in the sphere went to parliament as part of the anti-corruption task team where they said they found no corruption complaints with regards to the COEs we have, will you please explain to me how you find it proper to go this route (indistinct) that there have been very few cases in South Africa where people in senior positions have been charged under the PFMA, do you know how many people have been charged under such circumstances, I am asking this question because there is a strong citation of political interference in this case hence I congratulate you because you are one of the few people who believe that there is no political interference, you state that (indistinct) for South Africa economically and politically and you are not going to resign (indistinct) decision that the NPA once again managed to plant South Africa in white type synopses.

ADV SHAUN ABRAHAMS: I would like to answer that immediately, a tricky situation, I certainly have not found myself in a tricky situation, the



prosecutors who made this decision, they had found themselves in a tricky situation, the prosecutor that's got to prosecute this case, he is in a tricky situation, now I want to pose the following question to you in every like-minded person like you what if this decision was made by a judge, what if this decision was made by the Public Protector, would your reaction have been the same, the days of disrespecting decisions of the National Prosecuting Authority are over, the days of looking at the National Prosecuting Authority in such a light are over, the days of none accountability and not holding senior government officials accountable are over, I hope your question has been answered, next question please?

UNKNOWN MALE: (Indistinct) again Sir and I would just like to, I am just wondering whether this is something you've seen before?

ADV SHAUN ABRAHAMS: Well I think, let me stop you there, I think let's first give other people opportunity that have not asked questions, there are 3 questions left, so if the 3 people that have not asked questions, give them an opportunity, if there aren't any such people then please afford other people an opportunity.

MR LUVUYO: There is none, it's only the 2 of them.

ADV SHAUN ABRAHAMS: 2 questions, yours and hers, thank you.

MEDIA -UNKNOWN MALE: Mr Abrahams, Advocate, Minister Pravin Gordhan said before I think that something to the effect that there has been a general, I remember in the NBA about the establishment of the units, the high risk units which later has you know has become the Roque Unit and I wonder if something like this has been taken into account by



you in your investigation, apart from that also I think he did say that such an idea or agreement was detailed by Polokwane around 2009 and I wonder if something like that should be taken into account as the NPA of course not you personally Sir.

ADV SHAUN ABRAHAMS: I am aware of memoranda of understanding that has been entered into between the NPA and SARS with regards to cooperation, working together, respecting the various areas of responsibilities and constitutional mandates and laws, managing both institutions, that I am certainly aware of, now Minister Gordhan previously wrote to me and he sought an audience with me, I directed that to the special director who heads up priority crime instigation unit because that's where the decision making process you know takes place, now Mr Gordhan if he is dissatisfied with this decision or there's information he wishes to bring to our attention, he is more, he just needs to write to me, his lawyers need to write to me and ask me to review this decision but remember this decision that has been made to prosecute Mr Gordhan has nothing to do with the Rogue Unit, these are 2 separate matters, so let's look at this 2 separate matters, let's allow the so-called Rogue Unit investigation to be concluded and let's allow this other process you know to proceed and if any of the 3 accused are dissatisfied with this decision and there's information they wish to bring to the NPA's attention and they feel that this decision made by the special director in consultation with the director of public prosecution is incorrect, I am the point of final arbitral in the NPA and they must ask me to review the decision, I trust I have answered your question, Karen.



UNKNOWN FEMALE: If you had any evidence that Minister Pravin Gordhan benefited financially from approving early retirement for Allen Pillay because I don't know there doesn't seem to be an indication whether there was actually any financial benefit with that, and I hear you are (indistinct) but you can understand that the members of the public in a situation where there is 783 central charges against the President and you have a higher court and several other courts reinforcing a filing that the decision in 2009 by the NPA not to prosecute the President was completely irrational and the NPA has never disputed the fact that it actually had a very strong case against the President (indistinct) evidence of corruption but your decision to go after the Finance Minister for approving a 1.1 early retirement for a SARS official in the light of a country where such early retirement is regularly granted throughout government and as I understand there is no record of any previous instances of such prosecution being made against any individual, it's going to be very hard for the South African public to accept your assertion that this is not politically motivated.

ADV SHAUN ABRAHAMS: Mr Pravin Gordhan is not being prosecuted for corruption, there is no need to prove that he received a benefit.

UNKNOWN FEMALE: So there is no money in other words?

ADV SHAUN ABRAHAMS: Nevertheless allow this process to unfold, the evidence will come out in court and that will determine whether he received the benefit or not.



UNKNOWN FEMALE: What is the crime then if he didn't get any benefit,
what is the crime.

MR LUVUYO: Ladies and gentlemen, I don't want to entertain everything,
you were last, it's the end of the press, you are excused.

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STATEMENT BY GILDENHUYS MALATJI ON BEHALF OF MINISTER PRAVIN GORDHAN.

We have received the attached summons directed to Minister Pravin Gordhan to appear in the Regional Division, Pretoria Court 16 on 2 November 2016. The summons was received by Minister Gordhan's office in circumstances where we had expected that the National Director of Public Prosecutions ("NDPP") will interact with us in light of the correspondence exchanged between our office and the NDPP dating back to 18 May 2016. We had repeatedly requested that the NDPP afford Minister Gordhan the opportunity to make written and/or oral representations before making a decision on whether to prosecute or not. In particular, the NDPP, Adv. S. K. Abrahams, advised us on 25 August 2016 that he will only consider our request to make representations to him on whether to initiate a prosecution or not once the investigation has been concluded and a docket has been submitted to the National Prosecuting Authority. It is surprising that we have only received a letter dated 4 October 2016 but only sent to our office this morning advising that Minister Gordhan is an accused person. The correspondence exchanged between our office and that of the National Prosecuting Authority is attached.

The other difficult matter for Minister Pravin Gordhan to appreciate is the nature of the charges. We were firstly advised that he is not a suspect during May 2016. In August 2016, Minister Pravin Gordhan was advised that he should give a warning statement which by its very nature meant that he is now considered to be a suspect in relation to very clearly defined charges. It was contemplated by the HAWKS that he has contravened the provisions of Sections 1, 34 and 81(2) of the Public Finance Management Act, 1 of 1999, that he was guilty of corruption in terms of Section 3, 4 and/or 10 of the Prevention of Corrupt Activities Act, 12 of 2004 as well as Section 3 of the National Strategic Intelligence Act, 39 of 1994. These related to the establishment of an investigative unit at SARS and the early retirement of Mr Ivan Pillay as SARS Deputy Commissioner.

The charges now preferred against Minister Pravin Gordhan are charges of fraud alternatively theft insofar as it relates to Mr Pillay's early retirement. Fraud is defined as "the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another". In order to succeed with proving the crime of fraud, the State must establish the elements of the crime which are defined as first, a misrepresentation, second, prejudice or potential prejudice to another, third, unlawfulness and lastly an intention to so prejudice.

The Minister is taking counsel on all available legal avenues to bring this matter to an expedited end

Tebogo Malatji
Gildenhuys Malatji Inc
11 October 2016

All the documents mentioned in this statement are available here

Official audio clip by Tebogo Malatji discussing above statement, please click here to download

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Gordhan's fraud charges may be reviewed: Prosecutor

Wednesday 12 October 2016 21:50

SABC



Finance Minister, Pravin Gordhan was issued with formal summons on Tuesday to appear in court on November 2 over fraud charges.(SABC)

TAGS

National Prosecuting Authority NPA
Pravin Gordhan Fraud Rand Shaun Abrahams
Spy tapes

Just barely a day after serving fraud charges against Finance Minister Pravin Gordhan, National Director of Public Prosecutions Shaun Abrahams says he won't hesitate to review the charges should Gordhan himself make a review application for such determination.

Following the announcement on Tuesday by Abrahams that Gordhan was being served with fraud charges and also summoned to appear in court in November, the rand dropped with high speed by more than 3%.

Again, just immediately after Abrahams's remarks before the Portfolio Committee on Justice that chances of reviewing the decision to charge the minister are very much possible, the rand recovered for the second time.

"I am more than willing to review any matter if somebody applies to me to review that matter. Now, Minister Pravin Gordhan, if he can submit

submission to me with regard this matter and I will certainly look into the matter," says Abrahams.

Fending off the barrage of questions from members of the Portfolio Committee on Justice in Parliament, Abrahams was at pain telling MPs that it was not his decision to lay charges against Gordhan and two former South African Revenue Services (SARS) officials Ivan Pillay and Oupa Magashule.

"Firstly the decision to prosecute was made on the recommendation of prosecutors by the Special Director who heads the Priority Crimes Investigation Unit in consultation with the Director of Public Prosecutions of North Gauteng. Now, the NPA Act Section 179 of the Constitution and Section 22 Sub-section 2 of the National Prosecuting Act enjoins me as the National Director to review a matter."

The NPA will consider its approach and make a decision at a later stage regarding the so-called spy tapes

Abrahams gave parliament his assurance that similar charges like that issued against the finance minister in future will be made to anyone who dares contravene the Public Finance Management Act (PFMA).

"We certainly are. And I give this committee my assurance that this is not the first, nor the last prosecution in respect of contravention of the PFMA Act."

Earlier in the day, just before Abrahams could even begin presenting the annual report, he recorded his objection for the presence of the DA MP and former NPA Senior Prosecutor Glynnis Breytanbach.

The matter was taken up to the Speaker of the National Assembly Baleka Mbete to look at it, or a possible submission of the substantive motion for future engagement between Breytanbach and the NPA while she is still under criminal investigation.

Meanwhile, the NPA will consider its approach and make a decision at a later stage regarding the so-called spy tapes.

The Constitutional Court has issued an order that it is not in the interests of justice to hear the NPA at this stage.

Abrahams says he is consulting with senior council on the matter. He says they have not yet had a chance to make a decision following the Supreme Court of Appeal's ruling that President Jacob Zuma's lawyers must argue why he should be granted leave to appeal against a High Court ruling that he should face corruption charges.

NPA chief backtracks over Gordhan charges

Abrahams says he did not take decision and is willing to review it Finance minister explores his legal options

Business Day · 13 Oct 2016 · 1 · Natasha Marrian, Genevieve Quintal and Khulekani Magubane

National Prosecuting Authority (NPA) boss Shaun Abrahams may have been too hasty in summoning Finance Minister Pravin Gordhan to court to face fraud charges.



On Tuesday, Abrahams said he was part of the collective that decided to charge Gordhan and two former South African Revenue Service (SARS) officials, Oupa Magashula and Ivan Pillay.

Hardly a day later, Abrahams took a step back in Parliament, saying he did not take the decision and that he was willing to review it.

The announcement by Abrahams that Gordhan was summoned to appear in court on November 2 on fraud charges relating to his authorisation of early retirement for Pillay, sent shock waves through the economy and raised fears of a Cabinet reshuffle.

It has also emerged that early retirement, such as Pillay's, is a common occurrence in the public service and was provided for by the Government Employees Pension Fund (GEPF).

Addressing the portfolio committee on justice and correctional services on the matter after briefing it on the NPA's annual report, Abrahams said the decision to charge Gordhan was a result of work by his team of prosecutors.

"Section 22 (2) of the NPA act enjoins me to review a matter and invite representation from the accused and complainant."

But on Tuesday, Gordhan's attorney Tebogo Malatji intimated that Abrahams had acted in bad faith for failing to allow the minister an opportunity to make representations.

He revealed that Abrahams had given a written undertaking to consider a request for the minister to make representations once a docket from the Hawks was received. However, Abrahams failed to do this and Malatji received a letter dated October 4 on Tuesday, shortly before the announcement of the summons, indicating that Gordhan was an accused person.

Gordhan said he was exploring his legal options.

There are three possible options in this regard — one is a stay of prosecution, the second is to simply face the charges and the third is to ask Abrahams to review the decision in terms of Section 179 of the Constitution.

Abrahams said this section provided that the national director of public prosecutions may intervene in the prosecution process when policy directives are not being complied with and review a decision on whether to prosecute.

ANC treasurer-general Zweli Mkhize was the first “top six” leader of the party on Tuesday to criticise the case against Gordhan, describing the charges as “not convincing” and “thin”.

“The issues that are being raised are a bit tricky in the sense that people retire and get brought back. If there was any error in that, it becomes an administrative, internal issue that the Department of Public Service and Administration generally handles,” Mkhize said, adding

EARLY RETIREMENT SUCH AS PILLAY’S IS COMMON IN THE PUBLIC SERVICE
that it was his personal view.

Gordhan will face two counts of fraud. In the first he is accused of misrepresenting to the GEPP and to SARS that Pillay was entitled to full pensionable benefits in terms of the employee-initiated severance package to the tune of R1.1m.

The minister faces another count for the extension of Pillay’s employment contract.

The GEPP on Wednesday said in terms of its rules, members could retire at any time after their 55th birthday and before they turned 60 with written permission from their employer.

“The legislation provides for an executive authority to allow for an employee to go on early retirement and concomitantly the GEPP law requires that actions taken by the employer, which places an additional financial obligation on the fund, must be made good by the employer,” the statement said.

The fund said that it played no role in the decision to approve or disapprove the early retirement of an employee. Three unions working in the public sector said it was common for employees to take early retirement if they required the money and many would then be re-employed on a contract basis.

Mkhize said, fortunately, the matter would be ventilated in court and described the Treasury as “sticklers” on the Public Finance Management Act.

It would therefore be interesting to see how the court interpreted the matter, he said.

“Certainly in a number of those instances it’s not common that an executive authority is the one who is charged, it tends to be the administration that manages a lot of those issues. So it tends to be a very nebulous process to deal with that matter.”



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Shaun Abrahams
National Director of Public Prosecutions
National Prosecuting Authority
Victoria and Griffiths Mxenge Building (Corner Westlake & Hartley)
123 Westlake Avenue
Weavind Park, Silverton
Pretoria
0184

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 11 530 5000
F +27 11 530 5111
www.webberwentzel.com

JP Pretorius SC
Acting Special Director of Public Prosecutions
Priority Crimes Litigation Unit
National Prosecuting Authority
Victoria and Griffiths Mxenge Building (Corner Westlake & Hartley)
123 Westlake Avenue
Weavind Park, Silverton
Pretoria
0184

URGENT

By hand
By email: skabrahams@npa.gov.za; kbenjamin@npa.gov.za
By fax: 012 843 2220

Your reference	Our reference	Date
Summons No 574/16 CAS: Brooklyn 427/05/2015	V Movshovich / P Dela / D Cron / D Rafferty / T Dye 3012607	14 October 2016

Dear Sirs

Summons in criminal case against, *inter alios*, the Honourable Minister of Finance Mr Pravin Gordhan: Summons 574/16; CAS: Brooklyn 427/05/2015

1. We act for Freedom Under Law NPC and the Helen Suzman Foundation, non-governmental organisations concerned with, amongst other things, the promotion of the rule of law and the protection of our constitutional project ("our clients").

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: RB Africa NG Alp OA Ampofo-Anti RL Appelbaum AE Bennett DHL Booysen AR Bowley PG Bradshaw EG Brandt JL Brink S Browne MS Burger RI Carrim T Cassim RS Coelho KL Collier KM Colman KE Coster K Couzyn CR Davidow JH Davies PM Daya L de Bruyn JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt JB Forman KL Gawith MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy A Harley JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway HF Human AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston CJ Kok MD Kota J Lamb L Marais S McCafferty V McFarlane MC McIntosh SJ McKenzie M McLaren SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu J Moolman VM Movshovich M Mtshall SP Naicker RA Nelson BP Ngoepe A Ngubo ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane MA Phillips HK Potgieter S Rajah D Ramjettan GI Rapson NJA Robb DC Rudman M Sader JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpson N Singh P Singh MP Spalding L Stein PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor A Toefy PZ Vanda SE van der Meulen M van der Walt N van Dyk A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken **Chief Operating Officer: SA Boyd**

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2. We address this letter on behalf of our clients acting in their own and in the public interest.
3. On 11 October 2016, summons no. 574/16 was served on, *inter alios*, the Honourable Minister of Finance, Mr Pravin Gordhan, MP. In terms of annexures A, B and E thereto ("**the charge sheet**"), the Honourable Minister is charged with:
 - 3.1 fraud, alternatively theft, in relation to the alleged payment by the South African Revenue Service ("**SARS**") to the Government Employees' Pension Fund ("**the Fund**") of R1,141,178.11 on behalf of Mr Visvanathan Pillay, where such sum was allegedly a penalty payable by Mr Pillay to the Fund (count 1 and the alternative to count 1 of the charge sheet); and
 - 3.2 fraud in relation to the re-hiring of Mr Pillay in or around April 2014 (count 4 of the charge sheet),

(collectively, "**the charges**").
4. As prefaced in our previous correspondence, your conduct in pressing baseless charges against the Minister of Finance has, and continues to have, devastating consequences for the Republic and its economy. This is a matter of paramount public interest and our clients intend to review and set aside your decisions to institute the charges against the Minister of Finance, under the constitutional principle of legality and otherwise, unless you withdraw the decisions or furnish a cogent basis for the actions taken. It has been held in a long line of cases that our clients have standing and an interest to bring such proceedings.
5. The charges, such as they are, are unsustainable in law and fact, and may be actuated by conscious recklessness or ulterior purposes on the part of the National Prosecuting Authority ("**NPA**").
6. In respect of charge 1 (fraud, alternatively theft), we note the following:
 - 6.1 Mr Pillay was clearly entitled under the relevant legislation governing public servants' retirement to retire from the age of 55. This was an integral part of his employment relationship with the South African Revenue Service ("**SARS**").
 - 6.2 In terms of the Rules of the Government Employees Pension Fund ("**GEPF**"), however, a retirement before 60 years of age constitutes retirement prior to the



pension retirement date and a penalty (by way of a deduction) would normally be applicable to the payout on such early retirement.

- 6.3 All the relevant legislation, however, provides for that penalty or deduction to be paid by SARS or the Government of the Republic of South Africa:
- 6.3.1 Rule 20 of the Rules to the Government Employees Pension Fund Law, 1996, ("GEPF") states that **"Compensation to the fund on retirement or discharge of a member prior to attainment of the member's pension retirement date. Without detracting from the generality of section 17(4) of the Law, the Government or the employer or the Government and the employer shall, if a member, except for a reason in rule 14.1.1(a), retires, becomes entitled in terms of Rule 14.8 to the pension benefits in terms of a severance package, referred to in that Rule, or is discharged prior to his or her pension retirement date and at such retirement, entitlement or discharge in terms of the rules becomes entitled to the payment of an annuity or gratuity or both an annuity and a gratuity in terms of the rules, and any of these actions result in an additional financial liability to the Fund, pay to the Fund the additional financial obligations as decided by the Board acting on the advice of the actuary. Such payment to the Fund, with interest to account for any delay in payment, shall be in accordance with a schedule approved by the Board."**
- 6.3.2 Section 17(4) of the Government Employees' Pension Fund Law, 1996, which states that: **"If any action taken by the employer or if any legislation adopted by Parliament places any additional financial obligation on the Fund, the employer or the Government or the employer and the Government, as the case may be shall pay to the Fund an amount which is required to meet such obligation";**
- 6.3.3 Government Employees Pension Fund Members' Guide, page 34, which reads **"Where the employer granted permission for your early retirement, your benefits will not be scaled down. However, your employer will pay an additional liability."**
- 6.4 In light of the above alone, the charges are unsustainable.



- 6.5 The position is simply reinforced by the following contemporaneous documentation related to the retirement of Mr Pillay:
- 6.5.1 The interoffice memorandum dated 27 November 2009 from Mr Pillay to the then Commissioner of SARS (annexed marked "A");
- 6.5.2 The Legal and Policy Division memorandum dated 17 March 2009 (annexed marked "B");
- 6.5.3 The memorandum dated 12 August 2010, and approved by the Minister on 18 October 2010 referred to in count 1 (annexed marked "C").
- 6.6 The above correspondence not only references the relevant legislation, but also:
- 6.6.1 sets out cogent reasons for Mr Pillay's circumstances; and
- 6.6.2 cites the fact that over 3000 government employees have taken early retirement with full benefits.
- 6.7 It is plain from the legislation that the retirement of Mr Pillay did not require the Minister's approval at all: SARS and the government would be liable to pay any early retirement penalty. But to the extent that the Minister gave his approval, it was clearly in line not only with a raft of legislation but also ample precedent.
- 6.8 The allegation that the NPA could ever prove fraud or theft in those circumstances in relation to the payment of the penalty is preposterous.
7. In respect of charge 4 (fraud), we note the following:
- 7.1 The charge is inchoate and incomprehensible.
- 7.2 It is initially alleged that SARS was not authorised to employ Mr Pillay as Deputy Commissioner for a period of four years from 1 April 2014 to 31 December 2018. The alleged issue is thus authority. There is nothing in law or fact, however, which states that SARS was not empowered to hire Mr Pillay as Deputy Commissioner for this period.
- 7.3 Under the relevant legislation, SARS is, in fact, empowered to employ its Deputy Commissioner. Section 5(1)(a) of the SARS Act empowers SARS to "*determine its*



own staff establishment, appoint employees and determine their terms and conditions of employment in accordance with section 18".

- 7.4 In respect of senior management SARS employees, the Minister of Finance is statutorily charged with approving the terms and conditions of their employment (under section 18(3) of the SARS Act).
- 7.5 That is precisely what happened in this case. SARS appointed Mr Pillay and the Minister of Finance approved his terms and conditions. The employment agreement is attached marked "D".
- 7.6 Thus the alleged representation (if it occurred at all) is correct in law and is in no way unlawful.
- 7.7 There is also no basis for the alleged prejudice. Mr Pillay, with a proven track record and years of exemplary service to SARS, would be rendering services as the Deputy Commissioner for the amounts which would be paid to him under the employment agreement. In any event, Mr Pillay's employment with SARS could be cancelled on one month's written notice - accordingly, if SARS ever felt aggrieved or prejudiced by Mr Pillay's employment, this could have been remedied on one month's notice.
- 7.8 The fraudulent intention is allegedly grounded in the fact that the Minister of Finance knew that SARS was under no obligation to enter into a new employment agreement. But the alleged misrepresentation is that the Minister of Finance stated that SARS was empowered (not obliged) to hire Mr Pillay, and so this intention is irrelevant to the alleged fraudulent conduct.
- 7.9 Ultimately, the charge of fraud is nonsensical, is bad in fact and law, and cannot be sustained.
8. In respect of both charges, even if it is assumed (contrary to the dispositive analysis above) that the conduct of the Minister of Finance was not strictly in accordance with the law, there is no basis for imputing a fraudulent or furtive intention to him and none has been suggested.
9. Indeed, in previous correspondence from the Directorate for Priority Crime Investigation, it has never been alleged that Minister Gordhan committed fraud or theft. Rather, the



allegations were breaches of the Prevention and Combating of Corrupt Activities Act, 2004, Public Finance Management Act, 1999 and National Strategic Intelligence Act, 1994.

10. In light of the above, please confirm, in writing and by no later than 16:00, 21 October 2016, that the charges against Minister Gordhan will be withdrawn.
11. Should you refuse or fail to withdraw the charges as set forth above, then, for the purposes of assessing their position and the breaches of your constitutional and statutory obligations, our clients require you to furnish the following information and reasons, by no later than 16:00, 21 October 2016:
 - 11.1 the record of decision in respect of the decision to issue the summons and prefer the charges against Minister Gordhan ("**the Decisions**");
 - 11.2 full written reasons, and substantiating documents, which support the Decisions;
 - 11.3 without derogating from the above, all reasons explaining why, despite the factual matrix in relation to the charges being known (and being in the public realm) for many years, the Decisions were taken now;
 - 11.4 without derogating from the above, the evidence (alternatively a summary thereof) proving:
 - 11.4.1 the unlawful intention required successfully to prosecute the charges;
 - 11.4.2 that Minister Gordhan made any misrepresentation as required for the purposes of establishing fraud and that such misrepresentation induced the persons cited in counts 1 and 4 of the charge sheet to act to their prejudice;
 - 11.4.3 the act of appropriation (or *contrectatio*) attributed to Minister Gordhan in respect of the alternative charge of theft.
 - 11.5 whether any other instances of State employees taking early retirement with full pension (without any penalty payment being paid by the employee) are / have been investigated and are being considered for criminal prosecution on the basis of fraud or theft;



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- 11.6 whether any other instances of State employees being hired after taking early retirement are / have been investigated and are being considered for criminal prosecution on the basis of fraud;
- 11.7 a list of all cases which have been or are being criminally prosecuted, or are being considered for criminal prosecution, which relate to State employees taking early retirement with full pension (and no penalty payment by such employee); and
- 11.8 a list of all cases which have been or are being criminally prosecuted, or are being considered for criminal prosecution, which relate to State employees taking early retirement and being rehired.
12. Should you not unconditionally withdraw the charges against the Minister or furnish the information sought within the time periods set forth above, our clients will assume that no reasons for the Decisions, and no documents other than the documents annexed to this letter, exist in support of the charges.
13. Our clients may then, without further notice, seek to exercise their rights in law on an urgent basis.

Yours faithfully

**WEBBER WENTZEL****V Movshovich**

Direct tel: +27 11 530 5867

Direct fax: +27 11 530 6867

Email: vlad.movshovich@webberwentzel.com



Internal Memorandum

"A"

Dear Oupa

PURPOSE

The purpose of this memorandum is to explain that I have decided to take early retirement as well as to request you to consider to recommend for possible approval by the Minister certain related matters that will flow from my decision to take early retirement.

DISCUSSION

As you know, I have been working in the Public Sector for the past 15 years, 10 years which have been spent with SARS. For the most part of this period, especially my tenure with SARS, I was expected to perform at a very high level accompanied by the accountabilities that go with the performance of such a high level job. This exacted its toll from me in the sense that my health condition is slowly deteriorating. Added to this, my family responsibilities, for a long time, suffered on account of the dedication required by my job. With the aforementioned in mind, although still not easy, I have decided to take early retirement

However, I am still enthusiastic about SARS and the tremendous contribution it makes towards the establishment of an even better South Africa for all its citizens. With a view thereto, I am willing to serve in SARS in a different capacity where the demands of such a job will positively support the reasons why I am in the first instance taking early retirement.

Should you favorably consider my proposal to serve SARS in a different capacity, such service will have to be subject to that I be appointed as a contract employee. This will allow me more flexibility in terms of making a decision to finally part ways with SARS, should I come to such a decision. The second condition will be that my early retirement is approved in terms of the provisions of section 16(6)(a) and (b) of the Public Service Act, meaning that the Minister, in terms of the provisions of the aforementioned section approve that the penalty imposed on my pension benefits per Rule 14.3.3 (b) of the GEPF Rules, be paid by SARS to the GEPF. The GEPF has indicated that the penalty amount on my pension benefits that the employer has to pay on my behalf is R1 292 732.68.




RECOMMENDATION

My recommendations are that you please:

- Take note that I intend to take early retirement
- Consider to approve that I be reappointed in a different capacity in SARS on a contract basis; and
- Consider to recommend to the Minister that he approves that the penalty on my pension benefits be paid on my behalf to the GEPP by the employer.

Regards


Ivan Pillay

27/11/2009





Memorandum	South African Revenue Service Suid-Afrikaanse Inkomstediens Uphiko lwezimali Ezingenayo eNingizimu Afrika Tirelomatlotlo ya Afrika-Borwa
	Legal and Policy Division
	Pretoria Head Office 299 Bronkhorst Street, Nieuw Muckleneuk, 0181 P O Box 402, Pretoria, 0001 Telephone (012) 422-4000 E-mail: vsymington@sars.gov.za

TO	COMMISSIONER		
FROM	Vlok Symington	TEL	• (012) 422-4929
2009 march 17	2009 March 17	FAX	• (012) 422-4952
SUBJECT	EARLY RETIREMENT: MR IVAN PILLAY		

Dear Commissioner,

Background

Mr Ivan Pillay requested me to consider certain elements that form part of his decision to apply for early retirement from the Government Employees Pension Fund (the GEPPF).

These elements are:

1. His application for early retirement from the GEPPF;
2. His application to the Minister of Finance to waive the early retirement penalty; and
3. His request to be appointed on contract after his early retirement from the GEPPF.

The technical position

Approached individually, all three elements are technically possible under the rules of the GEPPF read together with the employment policies of SARS. Mr Pillay has reached the required age for early retirement, he is entitled to request the Minister to "waive" the early retirement penalty, and no technicality prevents SARS from appointing him on a contract after his retirement from the GEPPF.

Financial risk

I am not a registered financial advisor and my views in this document is therefore not intended to be financial advice and should not be construed as such.

Mr Pillay opted for the early retirement package to be paid in the form of a monthly pension and a once-off gratuity. Because of the current global financial turmoil and his personal adversity to risk his choice in favour of a pension and gratuity split is prudent.

However, the financial soundness of his decision to apply for early retirement is dependent on whether the Minister approves the SARS payment of the benefit penalty to the GEPP as well as whether SARS contracts with him for a period of post-retirement employment. This is so because of the relatively young age at which he will be retiring vis-à-vis his projected life expectancy. If the Minister does not approve his request or if SARS does not contract with him after his retirement, the financial risk of his decision will increase substantially and my advice then would be for him to review his application for early retirement and to possibly withdraw it.

Summary

Mr Pillay's application for early retirement should be considered together with his application for the Minister to approve the benefit penalty payment by SARS as well as his request for post retirement contract employment at SARS. If his application is approved as a package the financial risks in the context of his circumstances are probably minimal. However, if the Minister is unable to approve his request relating to the penalty or if SARS is not in a position to contract with him after retirement, then his decision to apply for early retirement should probably altogether be withdrawn.

Kind regards

Vlok Symington



129

"C" AB

Office of the
Commissioner

Office
Pretoria

Enquiries
Tania Kirby

Telephone
(012) 422 5100

Facsimile
(012) 422 5109

Room
Block A2

Reference

Date
12 August 2010



South African Revenue Service

Pretoria Head Office
299 Bronkhorst Street
New Muckleneuk, 0181
Private Bag X923, Pretoria 001
SARS online www.sars.gov.za
Telephone (012) 422 4000

Mr PJ GORDHAN
Minister of Finance

Dear Minister

EARLY RETIREMENT OF DEPUTY COMMISSIONER IVAN PILLAY WITH FULL RETIREMENT BENEFITS

1. PURPOSE

The purpose of this memorandum is to request approval from the Minister for the early retirement of Deputy Commissioner Ivan Pillay with full retirement benefits from the GEPF as contemplated in Rule 14.3.3(b) of the Government Employees Pension Law, 1996, read with section 19 of the SARS Act and section 16(2A)(a) of the Public Service Act, 1994, as amended, with effect from 1 September 2010.

In addition, approval is requested to retain Mr Pillay as Deputy Commissioner of SARS on a three year contract with effect from 1 September 2010.

2. BACKGROUND

Ivan joined the Public Service in January 1995 and has been in the employ of SARS for more than 10 years. For the majority of this period especially during his tenure in SARS, he has held a very senior position with the accompanying accountabilities that go with such a high level job.

A handwritten signature in black ink, appearing to be 'M. Pillay', is located at the bottom right of the page.

Ivan has always excelled at his job and made a significant contribution towards the establishment of SARS as the highly respected organisation it is today.

For personal reasons, he has requested to take early retirement with effect from 1 September 2010. He is currently 56 years old.

Given Ivan's critical skills, experience and leadership, he has agreed to remain in the employ of SARS as Deputy Commissioner after his retirement on a three year contract to assist with the on-going leadership transition.

3. MOTIVATION FOR RETIREMENT WITH FULL BENEFITS

In the light of Ivan's exemplary service and sacrifice in the service of the people of South Africa, it is requested that he be granted early retirement with full retirement benefits as provided for in section 19 of the SARS Act, 1997, read with section 16(2A)(a) of the Public Service Act, 1994.

Over the past 5 years the GEPF has approved over 3000 requests from various government departments for staff members to retire before the age of 60 with full benefits. The statistics are attached to this memorandum as received from the GEPF (Appendix A)

In addition, the former and current Minister of Finance have approved at least five such requests over the past two years (see Appendix B)

4. MOTIVATION FOR REAPPOINTMENT ON A THREE YEAR CONTRACT

Ivan's wealth of knowledge and experience within SARS and his leadership position as Deputy Commissioner is an invaluable asset to the organisation. This is particularly important given the on-going leadership transition within the organisation following the departure of the Minister and the recent restructuring of the top leadership of the organisation as part of the revised Operating Model



Ivan's continued guidance, leadership and knowledge over the next three years will provide critical continuity as well as playing an important mentoring role in developing the next generation of SARS leaders

In addition, it should be noted that there is precedent for the termination of employment and immediate rehiring of the same person under different conditions of employment within the public sector.

In this regard, advice was sought from the Acting Director-General of the Department of Public Service and Administration (DPISA) Mr Kenny Govender regarding the proposed early retirement of Mr Pillay and his retention on a three year contract. He confirmed that there is no restriction on the appointment to the public service or to the same department of a person who has left on an Employee Initiated Severance Package (EISP) and that he was aware of previous such cases.

5. FINANCIAL IMPLICATIONS

The financial implications of early retirement with downscaled benefits for Ivan will be considerable as his lump sum benefit will decrease by R243 605 to R2 121 443 and his monthly pension by R4 740 to R48 563.

The financial implications for SARS, should approval be granted to allow Ivan to take early retirement with full retirement benefits, will be an amount of R1 258 345.99 which SARS will be liable to pay the GEPF in terms of the provisions of section 17 (4) of the GEPF Law, 1996.

Should the Minister approve this submission, the authorisation and allocation for this payment will follow the normal governance process within SARS including engagement with the SARS Human Resources Committee and the SARS EXCO.


[Note: The above figures reflect the costs as at 1 August 2010. These costs reduce each month which elapses]

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end. The number '3' is written below the signature.

6. RECOMMENDATION

It is recommended that the Minister approve Mr Pillay's early retirement from SARS with effect from 1 August 2010 without downscaling of his retirement/pension benefits as provided for in GEPF Rule 14.3.3 as well as section 19 of the SARS Act, 1997, as amended, read with section 16(2)(a) of the Public Service Act, 1994, as amended.

In addition it is recommended that the Minister approve the retention of Mr Pillay as Deputy Commissioner of SARS on a three year contract with effect from 1 August 2010. The remuneration of Mr Pillay in terms of the contract will be at the same cost to company as his current package.

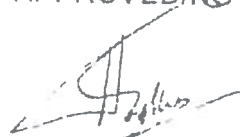


OUPA MAGASHULA
COMMISSIONER: SARS
DATE: 12 August 2010


RECOMMENDED/NOT RECOMMENDED

N NENE
DEPUTY MINISTER OF FINANCE
DATE:

APPROVED/NOT APPROVED/NOTED



PJ GORDHAN
MINISTER OF FINANCE
DATE: 13 October 2010





FIXED TERM EMPLOYMENT CONTRACT

entered into between:

THE SOUTH AFRICAN REVENUE SERVICE
("the Employer")

and

Visvanathan Pillay
Identity number: 5304185734085
("the Employee")

1. APPOINTMENT

1.1 The Employer employs the Employee and the Employee accepts the appointment and shall render services to the Employer in the capacity set out in Employee's offer of employment, or any other similar capacity required by the Employer from time to time.

2. DURATION

2.1 The Employee's employment with the Employer is for a fixed term period.

2.2 This fixed term contract of employment shall commence on 01 April 2014 ("the Commencement Date") and shall continue until 31 December 2018 ("the Termination Date") and shall terminate on completion of the aforesaid period by the effluxion of time.

2.3 In the event that the duration of this contract of employment between the Employer and Employee is linked to the performance and/or completion of a particular task or project, the task or the project concerned will be clearly specified and identified in the Employee's offer of appointment,

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee
Employer

[Signature]
[Signature]

Visvanathan Pillay

which forms part of this contract.

2.4 On the Termination Date this contract and the Employee's employment will expire automatically through the effluxion of time. It is specifically agreed that as termination of this contract of employment is through the effluxion of time, the termination will not constitute a dismissal in terms of the Labour Relations Act, 1995.

2.5 It is specifically agreed and recorded that on the termination of the Employee's employment s/he will have no expectation of continued employment with the Employer and no expectation of being engaged on a further fixed term contract either on the same or similar terms or on less favourable terms.

2.6 Operational requirements may necessitate a reduction of staff levels prior to the effluxion of the fixed term and the Employer reserves the right to act accordingly.

3. FUNCTIONS AND DUTIES OF EMPLOYEE

3.1 The Employee will perform functions and duties in a professional manner and to the best of his/her ability as set out in the job profile contained in offer of employment. Any change in the job profile will be set out in a letter which will replace the Employee's offer of employment.

3.2 In addition to the functions and duties contained in the role profile, the Employee will:

3.2.1 perform such duties as the Employer or its duly authorised representative may from time to time assign to him or her;

3.2.2 perform his or her duties in a timely, professional and responsible manner as the Employer or other authorised representative of the

Employee Witness 1 (Signature)
Employee Witness 2 (Signature)

Employer Witness 1 (Signature)
Employer Witness 2 (Signature)

Employee (Signature)
Employer



(Large handwritten signature)



Visvanathan Pillay

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Employer may direct from time to time;

- 3.2.3 in the discharge of his or her duties, observe and comply with all resolutions, directives, rules, orders, policies and procedures as the Employer may give from time to time;
- 3.2.4 devote all his or her time and attention to his or her duties under this agreement during normal working hours;
- 3.2.5 not communicate, publish or distribute to any person outside the Employer's employ, either during the continuance of his or her employment under this agreement or thereafter, any official documents, reviews, research results, articles and/or publications whether produced by the Employee or not, without the prior written permission of the Employer or other duly authorised representative of the Employer;
- 3.2.6 at such intervals as the Employer may direct, report fully on the results obtained and knowledge acquired by him/her in any research work done by him/her both during and outside working hours;
- 3.2.7 use his or her best endeavours to properly conduct, improve, extend, promote, protect and preserve the interests and reputation of the Employer;
- 3.2.8 not engage in activities that would detract from the proper performance of his or her functions and duties.
- 3.2.9 comply with all the laws of the Republic of South Africa.
- 3.2.10 undertakes to inform the Employer forthwith of any substantive criminal or civil proceedings which may be instituted against him or

Employee Witness 1 
Employee Witness 2 

Employer Witness 1 
Employer Witness 2 

Employee 
Employer



Visvanathan Pillay

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her and the nature thereof.

3.3 The Employer may, after consulting with the Employee, change or amend the Employee's duties and responsibilities from time to time in accordance with the Employer's operational requirements.

4. REMUNERATION

4.1 The Employee will be paid an all-inclusive remuneration.

4.2 The Employee agrees that his/her remuneration package will be reviewed annually in line with the Employer's Pay policy and procedures, as applicable from time to time and copies of which are available to the Employee from the HR department. A key element of this review will be the measurement of the Employee's performance against the standards of performance agreed to with the Employer represented by the Employee's line manager. The Employee will be advised of any increase to his/her remuneration package by means of a letter.

4.3 The Employee is excluded from the Government Employees' Pension Fund Membership in accordance with section 5 (d) of the Government Employees' Pension Law, 1996 (Proclamation 21 of 1996).

4.4 The Employer and the Employee may, by agreement, structure an all-inclusive remuneration package to allow for a medical aid allowance and a car allowance according to the Employer's rules and guidelines as applicable. In the event that the Employee structures a medical aid allowance into his/her package, the Employee may only belong to one of the Employer's accredited medical aid schemes selected from time to time and the Employer will only process the Employee's contributions to such accredited medical aid schemes on behalf of the Employee and at the Employee's request, monthly in arrears, the cost of which shall form part of the Employee's remuneration package reflected in the Offer of employment.

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee [Signature]
Employer [Signature]

[Large handwritten signature]

Visvanathan Pillay

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4.5 The Employee will receive his/her remuneration in twelve equal monthly payments on the 15th of every month. Should the 15th fall on a weekend or public holiday the Employee will be paid on the day immediately preceding such weekend or public holiday.

4.6 The Employer does not provide any post-retirement medical aid benefits.

5. PERFORMANCE MANAGEMENT

5.1 The Employee's performance contract will be agreed to with a person appointed by the Minister. Copies of the performance management policy are available from the HR department and the employee is expected to familiarise him/herself with it.

6. PERFORMANCE BONUS

6.1 The terms and conditions of the Employee's participation on the above scheme are set out in more detail on the Employer's Performance Management and/or Incentive Scheme Policies, if applicable from time to time to the Employee, who agrees to access such policies, from the HR department.

7. WORKING HOURS AND OVERTIME

7.1 The Employee's ordinary hours of work are 9 hours per day, inclusive of a 60 minute meal interval. However the Employee will be required to work such additional time as is necessary to properly perform all the functions of the job.

7.2 Overtime is paid only to those employees who are entitled to overtime in terms of the Overtime policy and in accordance with the policy.

Employee Witness 1
Employee Witness 2

Employer Witness 1
Employer Witness 2

Employee
Employer



8. LEAVE

8.1 All leave is regulated by the Employer's Leave Policy, applicable from time to time, a copy of which is available from the HR department.

9. CONFIDENTIALITY

9.1 The Employee agrees not to divulge or discuss his or her remuneration package with colleagues, as the Employer regards such matter as confidential.

9.2 The Employee shall not, either during the term of this agreement or thereafter, use any Employer related information including third party information, for his or her own benefit or otherwise to the detriment or prejudice of the Employer, except in the proper course of his or her duties, divulge to any person any trade secret or any other confidential information concerning the business or affairs of the Employer which may come to the Employee's knowledge during his or her employment.

9.3 In particular, the Employee shall not at any time during or after termination of his or her employment, reveal to any person, firm or corporation, any of the trade secrets, technical know-how and data, drawings, systems, methods, software, processes, lists, programs, marketing and/or financial information, confidential information, or any information concerning the organisation, functions, transactions or affairs of the Employer, and shall not use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to the Employer or may be liable to do so.

9.4 The Employee agrees to sign and execute the Employer's Oath of Secrecy as a precondition to this contract of employment. Failure by the Employee to execute the said Oath will render this agreement null and void

Employee Witness 1 *[Signature]*
Employee Witness 2 *[Signature]*

Employer Witness 1 *[Signature]*
Employer Witness 2 *[Signature]*

Employee
Employer

[Large Handwritten Signature]



10. EMPLOYER RESOURCES

- 10.1 The Employee acknowledges and accepts that the Employee's resources, including but not limited to servers, computers, printers, telefax machines, telephones/fixed lines, mobile phones, postal services, e-mail facilities and internet facilities ("the resources") are for conducting the Employer's business.
- 10.2 The Employee shall have no expectation of privacy in relation to the use of the resources provided by the Employer.
- 10.3 The Employee understands and accepts that the Employer may, at its discretion, monitor the Employee's use of the resources and intercept, acquire, read, view, inspect, record and/or review any and all communications created, stored, transmitted, spoken, sent, received or communicated by the Employee on, over or in the resources or otherwise. The Employee hereby consents to the Employer doing so.
- 10.4 The Employee shall not remove, or cause to be removed by any means including electronic transfer from any of the Employer's premises, any documents, data, material, equipment or property without the written consent of the Employer

11. SECURITY

- 11.1 The Employee agrees to submit his/her personal belongings and office or workstation to a search by any person designated by the Employer whenever the Employer deems it necessary and reasonable.

Employee Witness 1 
 Employee Witness 2 

Employer Witness 1 
 Employer Witness 2 

Employee 
 Employer 



12. EMPLOYER PROPERTY

12.1 All catalogues, correspondence, letters, memoranda, note books, order books, documents, papers, goods, samples, equipment and any other articles of any kind whatsoever that may be made available to or come into the possession of the Employee during the period of his employment under this agreement, shall belong to and remain the property of the Employer, both during the Employee's employment and after termination of his employment, at which time the Employee shall deliver to the Employer all such items in his or her possession with the assurance that no such articles remain in his or her possession.

12.2 Upon the termination of the Employee's employment, s/he must return to the Employer all property, of whatsoever nature, in his or her possession which belongs to the Employer.

12.3 In addition, the Employee must return to the Employer all other material containing information relating to the affairs of the Employer, regardless of whether or not such material was originally supplied by the Employer to the Employee, including but not limited to: records, discs, accounts, letters, notes or memoranda.

13. INTELLECTUAL PROPERTY

13.1 Intellectual property rights include, but are not limited to, trademarks, service marks, trade names, domain names, designs, patents, petty patents, utility models and like rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing, copyright (including, without limitation, rights in computer software and data bases, and moral rights), rights in inventions, designs, know-how, confidential information, trade secrets, other intellectual property rights and all rights or forms of protection having equivalent or

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee [Signature]
Employer [Signature]

[Large Handwritten Signature]

similar effect to any of the foregoing which may subsist in any country in the world.

13.2 Any intellectual property rights of whatsoever nature arising out of the performance by the Employee of his obligations in terms hereof are, to the extent that they do not vest automatically in the Employer, hereby irrevocably ceded and assigned in perpetuity to the Employer, it being further recorded that the Employer shall be entitled to cede and assign all such rights to any other person without limitation.

13.3 The Employer and/or such other person, as the case may be, shall be entitled to dispose of any and all intellectual property rights in their sole discretion, anywhere in the world, without the payment of any additional consideration to the Employee.

13.4 The Employee undertakes to sign all documents and to do all things necessary, at the cost of the Employer, to obtain or to record such intellectual property rights at any intellectual property rights registry in the world.

14. TERMINATION OF EMPLOYMENT

14.1 This fixed term contract of employment shall terminate on the Termination Date by the effluxion of time.

14.2 Notwithstanding 14.1 above, either party may terminate this contract by giving the other party one (1) month's written notice of termination.

14.3 The Employer may also terminate this contract by paying the Employee the amount of salary s/he would have received during the required period of notice in lieu of giving him that period of notice.

Employee Witness 1 *[Signature]*
Employee Witness 2 *[Signature]*

Employer Witness 1 *[Signature]*
Employer Witness 2 *[Signature]*

Employee *[Signature]*
Employer

[Large Handwritten Signature]

14.4 If the Employee is incapable of performing his/her duties under this contract because of mental or physical illness or injury, the Employer may terminate his/her employment for incapacity. To assist the Employer in deciding whether to terminate employment on these grounds the Employer may require the Employee to undergo (at the Employer's expense) a medical examination by a registered medical practitioner. The Employer may rely on any report or recommendations made available to the Employer as a result of that examination, along with any other relevant medical reports or recommendations received.

14.5 Nothing in this contract prevents the Employer from exercising its right to dismiss the Employee without notice at any stage for misconduct, incapacity, poor performance or the operational requirements of the Employer, or for any other reason justified in law and in accordance with the Employer's Disciplinary Code and Procedure.

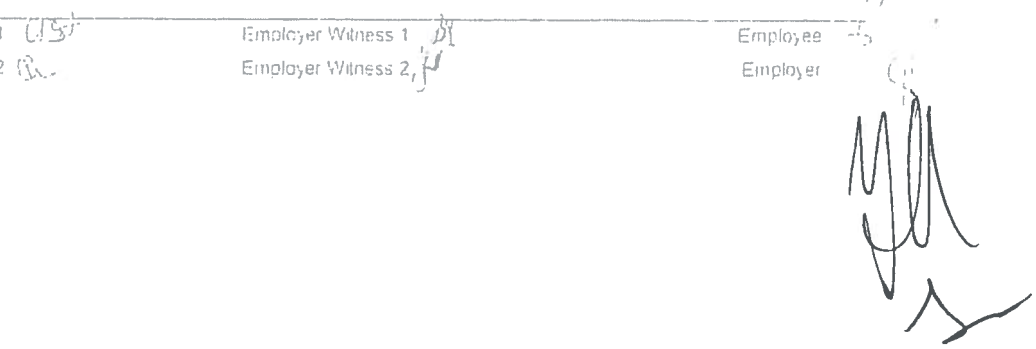
14.6 On termination of employment, the Employee must return all the equipment and property of the Employer in a satisfactory condition before his final remuneration shall be paid.

15. **CONFLICT OF INTEREST**

15.1 Employee is required to ensure at all times that s/he does not put him/herself in a situation where their own personal interests conflict or may potentially conflict with the interest of the Employer.

15.2 Conflicts of interest are regulated by the Employer's Declaration of Private Interests Policy applicable from time to time, a copy of which is available from the HR department.

Employee Witness 1	Employee Witness 1	Employee
Employee Witness 2	Employee Witness 2	Employer






16. EMPLOYER'S POLICIES AND PROCEDURES



- 16.1 All the Employer's policies and procedures as applicable from time to time form part of the terms and conditions of employment. The Employee undertakes and agrees that on signing this agreement, he or she will abide by such policies.
- 16.2 The Employee further agrees and undertakes to comply with Employer's policies, rules, regulations and procedures applicable from time to time. Copies of the Employer's policies and procedures are available from the HR department. It is the Employee's responsibility to familiarise himself/herself therewith.
- 16.3 Transgression or non-compliance with any of the provisions of Employer's policies and procedures may result in disciplinary action being taken against the Employee which may result in termination of the Employee's employment relationship with the Employer.
- 16.4 The Employer reserves the right to amend its policies at its discretion, from time to time.



17. GENERAL

- 17.1 Nothing in this agreement shall be deemed to constitute a partnership between the parties or constitute any party the agent of any other party for any purpose.
- 17.2 This document contains the entire agreement between the parties with regard to the matter dealt with herein and no representations, terms, conditions or warranties not contained in this agreement shall be binding on any of the parties.

Employee Witness 1  Employer Witness 1  Employee 
 Employee Witness 2  Employer Witness 2  Employer 

- 17.3 No latitude, relaxation, indulgence or extension of time which may be allowed to the Contractor or any of its employees by SARS in respect of any performance or breach or any other matter in terms of this contract shall in any circumstances be deemed a waiver by SARS of its rights.
- 17.4 No variation, addition to or cancellation of this agreement and no waiver of any right in terms of this agreement shall be of any force and effect unless reduced to writing and signed by or on behalf of both parties to this agreement.
- 17.5 An expression which denotes any gender includes the other genders, a natural person includes an artificial person and *vice versa* and the singular includes the plural and *vice versa*.
- 17.6 This agreement shall, for all purposes, be construed and governed by the laws of the Republic of South Africa.
- 17.7 Any matter arising from this agreement, which is not specifically provided for herein, shall be dealt with in accordance with the provisions of the South African Revenue Service Act of 1997.

Employee Witness 1 
Employee Witness 2 

Employer Witness 1 
Employer Witness 2 

Employee 
Employer



Visvanathan Pillay

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SIGNED BY THE EMPLOYER AT _____ ON THIS THE ____ DAY OF _____ 2014.

AS WITNESSES:

1. [Signature]
2. [Signature]

[Signature]

For and on behalf of:
The Employer, duly authorised

SIGNED BY THE EMPLOYEE AT PRETORIA ON THIS THE DAY OF 26 MARCH 2014.

AS WITNESSES:

1. [Signature]
2. [Signature]

[Signature]
The Employee

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee
Employer

[Signature]



**OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

Victoria & Griffiths Mxenge Building,
123 Westlake Avenue, Weavind Park Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6758

Email: ndpp@npa.gov.za
www.npa.gov.za

Your ref: V Movshovich / P Dela / D Cron / D Rafferty / T Dye 3012607
Our ref: Summons No 574/16
CAS Brooklyn 427/05/2015

Webber Wentzel
P O Box 61771
MARSHALLTOWN
2107

Dear Sir

Email: vlad.movshovich@webberwentzel.com

**THE STATE VERSUS OUPA MAGASHULA, VISVANATHAN (IVAN) PILLAY
AND PRAVIN GORDHAN**

1. Your letter dated 14 October 2016, the content of which is noted, refers.
2. As you are aware, the decision to prosecute Minister Pravin Gordhan was made by the Acting Special Director of Public Prosecutions and Head: Priority Crimes Litigation Unit, Dr Torie Pretorius SC, in consultation with the Director of Public Prosecutions, North Gauteng, Adv Sibongile Mzinyathi in terms of section 24(3) of the National Prosecuting Authority Act, 32 of 1998 ("the NPA Act").
3. Section 179(5)(d) of the Constitution, which is replicated in s22(2)(c) of the NPA Act, empowers the National Director, if requested to do so, to review a decision to prosecute or not to prosecute, after consulting the relevant Director and after taking representations, within a period specified by the National Director, of the accused persons, the complainant and any other person or party whom the National Director considers relevant.
4. Earlier today Messrs Oupa Magashula and Visvanathan (Ivan) Pillay, through their legal representatives, made representations to me in which they

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Shaun Abrahams
National Director of Public Prosecutions
 National Prosecuting Authority
 Victoria and Griffiths Mxenge Building (Corner Westlake & Hartley)
 123 Westlake Avenue
 Weavind Park, Silverton
 Pretoria
 0184

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

Docex 26 Johannesburg

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

By email: skabrahams@npa.gov.za; hzwart@npa.gov.za

URGENT

Your reference
 Summons No 574/16
 CAS: Brooklyn
 427/05/2015

Our reference
 V Movshovich / P Dela / D Cron /
 D Rafferty / W Timm / T Dye
 3012607

Date
 18 October 2016

Dear Sirs

Summons in criminal case against, *inter alios*, the Honourable Minister of Finance Mr Pravin Gordhan, MP ("Min. Gordhan"): Summons 574/16; CAS: Brooklyn 427/05/2015 ("the Summons")

1. We refer to your letter dated 17 October 2016 ("**your letter**").
2. We note that Min. Gordhan has publicised his intention not to make representations on the basis that he believes you are capable neither of being independent nor of objectively considering his representations concerning the charges put to him in the Summons ("**the Charges**").
3. There is much to be said for Min. Gordhan's position. The conduct of the National Prosecuting Authority, including yours, has not been characterised by anything approximating the necessary objectivity or due care. From the circumstances, it appears that you may well have been the person who took the decision to institute the Summons. In any event, it was you who announced and specifically justified, with much fanfare, the Charges being brought against Min. Gordhan last week. There is no basis to suppose that you are capable of exercising, or may be entrusted to exercise, an independent discretion in this matter.

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: RB Africa NG Alp OA Ampofo-Anti RL Appelbaum AE Bennett DHL Booysen AR Bowley EG Brandt JL Brink S Browne MS Burger RI Carrim T Cassim RS Coelho KL Collier KM Colman KE Coster K Couzyn CR Davidow JH Davies PM Daya L de Bruyn JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen MJR Evans AA Felekis GA Fichardt JB Forman CP Gaul KL Gawith MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy A Harley JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Holfeld PM Holloway HF Human AV Ismail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston CJ Kok J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie RA McLaren SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu S Mogale J Moolman VM Movshovich M Mtshali SP Naicker RA Nelson BP Ngoepe A Ngubo ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane MA Phillips S Rajah D Ramjettan GI Rapson NJA Robb DC Rudman M Sader JW Scholtz KE Shepherd DMJ Simaan AJ Simpson N Singh P Singh MP Spalding L Stein PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor A Toefy PZ Vanda SE van der Meulen A van Niekerk JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken Chief Operating Officer: SA Boyd

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Page 2

4. We point out that section 179 of the Constitution and section 22(2)(c) of the National Prosecuting Authority Act, 1998 ("the Act") contemplate representations by "*any other person or party whom the National Director considers to be relevant.*" Without in any way acknowledging that you have not disabled yourself from making an unbiased and legitimate decision and without prejudice to any review grounds to be pursued by our clients, our clients have made submissions to you in our letter dated 14 October 2016 as to why the Charges are insupportable and must be withdrawn ("**our 14 October letter**"). We accordingly assume that they will be considered by you alongside the other representations, which in paragraph 7 of your letter you indicate you will be considering.
5. Should we not receive your decision to withdraw the Charges by 16h00 on Friday, 21 October 2016, our clients may, without further notice, seek to exercise their rights in law on an urgent basis. We also remind you of the need to furnish our clients with the information set forth in our 14 October letter, should the Charges not be withdrawn. For ease of reference, we reiterate that the information sought is the following:
 - 5.1 the record of decision in respect of the decision to issue the summons and prefer the charges against Minister Gordhan ("**the Decisions**");
 - 5.2 full written reasons, and substantiating documents, which support the Decisions;
 - 5.3 without derogating from the above, all reasons explaining why, despite the factual matrix in relation to the charges being known (and being in the public realm) for many years, the Decisions were taken now;
 - 5.4 without derogating from the above, the evidence (alternatively a summary thereof) proving:
 - 5.4.1 the unlawful intention required successfully to prosecute the charges;
 - 5.4.2 that Minister Gordhan made any misrepresentation as required for the purposes of establishing fraud and that such misrepresentation induced the persons cited in counts 1 and 4 of the charge sheet to act to their prejudice;
 - 5.4.3 the act of appropriation (or *contrectatio*) attributed to Minister Gordhan in respect of the alternative charge of theft.
 - 5.5 whether any other instances of State employees taking early retirement with full pension (without any penalty payment being paid by the employee) are / have been



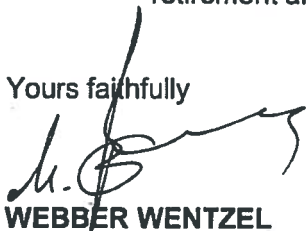
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investigated and are being considered for criminal prosecution on the basis of fraud or theft;

- 5.6 whether any other instances of State employees being hired after taking early retirement are / have been investigated and are being considered for criminal prosecution on the basis of fraud;
- 5.7 a list of all cases which have been or are being criminally prosecuted, or are being considered for criminal prosecution, which relate to State employees taking early retirement with full pension (and no penalty payment by such employee); and
- 5.8 a list of all cases which have been or are being criminally prosecuted, or are being considered for criminal prosecution, which relate to State employees taking early retirement and being rehired.

Yours faithfully



WEBBER WENTZEL

V Movshovich

Direct tel: +27 11 530 5867

Direct fax: +27 11 530 6867

Email: vlad.movshovich@webberwentzel.com

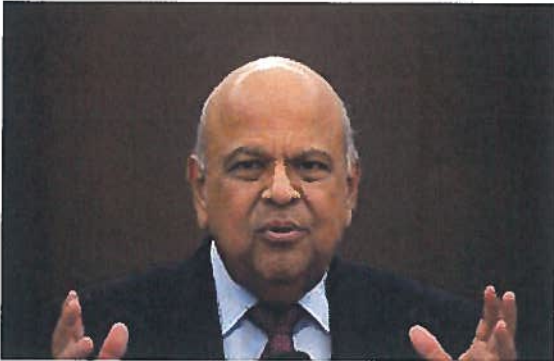


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'Shaun Abrahams won't give me a fair hearing' - Pravin Gordhan

Oct 14, 2016 | TMG Digital

Finance Minister Pravin Gordhan does not have any confidence in the National Director of Public Prosecutions's ability or willingness to afford him a fair hearing.



South African Finance Minister Pravin Gordhan. File photo.

Photograph by: Siphwe Sibeko

"

Finance Minister Pravin Gordhan does not have any confidence in the National Director of Public Prosecutions's ability or willingness to afford him a fair hearing. This is according to his lawyer Tebogo Malatji.

"

This is according to his lawyer Tebogo Malatji.

- [Corruption buster Willie Hofmeyr aligns himself with Gordhan](http://www.timeslive.co.za/politics/2016/10/14/Corruption-buster-Willie-Hofmeyr-aligns-himself-with-Gordhan)
(<http://www.timeslive.co.za/politics/2016/10/14/Corruption-buster-Willie-Hofmeyr-aligns-himself-with-Gordhan>)

National Director of Public Prosecutions Shaun Abrahams announced on Tuesday that Gordhan, former SARS commissioner Oupa Magashula and former deputy commissioner of SARS Ivan Pillay will be charged with fraud.

- [NPA faces legal challenge over Gordhan charges](http://www.timeslive.co.za/politics/2016/10/14/NPA-faces-legal-challenge-over-Gordhan-charges) (<http://www.timeslive.co.za/politics/2016/10/14/NPA-faces-legal-challenge-over-Gordhan-charges>)

The charges relate to Pillay's early retirement from SARS and of entering into a new employment contract with Pillay for a period of four years from April 1 2014 and terminating on December 31 2018. Gordhan is due to appear in court early next month.

Abrahams told the Parliamentary Portfolio Committee on Justice and Correctional Services on Wednesday that Gordhan is welcome to approach him to make representations regarding the charges that have been preferred against him.

Rejecting this, Gordhan's lawyer said in a statement on Friday: "Minister Gordhan has taken legal advice on the matter and decided not to make representations to the NDPP."

"The main reason for his decision is that he does not have any confidence in the NDPP's ability or willingness to afford him a fair hearing.

"First, we repeatedly asked the NPA to afford the Minister an opportunity to make representations to them before they decided whether to prosecute the Minister but they spurned our requests.

"Second, the NDPP's conduct at his press conference announcing the decision to charge the Minister made clear his commitment to the prosecution.

"Third, having now had an opportunity to study the charges against the Minister, it is also clear to us that they manifest a resolute and not well founded determination to prosecute the Minister at all costs. Any representations to the NDPP would accordingly be pointless."

"Minister Pravin Gordhan continues to take legal counsel in regard to ways and means to bring the matter to an expedited finality."

Malatji said eminent lawyer Advocate Wim Trengove SC as well as advocates Hamilton Maenetje SC and Ziyaad Navsa will be assisting the minister's defence team.

~ o O o ~



URGENT:

POLICE REFERENCE: CAS BROOKLYN 427/05/2015

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA HELD AT PRETORIA

SUBPOENA IN TERMS OF SECTION 205 ACT 51/1977

A.TO: CEO Mr Krishen Sukdev (Full names)

(Company and Address) Government Pensions Administration Agency, 34 Hamilton Street, Arcadia, Pretoria

1. Whereas it appears to me that you are the person who can furnish material or relevant information to wit :(Nature of the information required) See annexure A

2. You are hereby required to appear in person before me or any other Magistrate in Court A at the Pretoria Magistrates Court, Cnr Sophie De Bruyn and Francis Baard Streets on the 10 day of November 2016 at 08H30 to be examined by the Public Prosecutor duly authorized thereto and to testify about all that you know about the alleged offence to wit suspected to have been committed the offence of Contravening of Regulation of Interception of Communication Act, 2002, Contravention of the National Strategic Intelligence Act, 1994, Corruption Act 12 of 2004, and Contravention of Public Finance Management Act 1 of 1999.

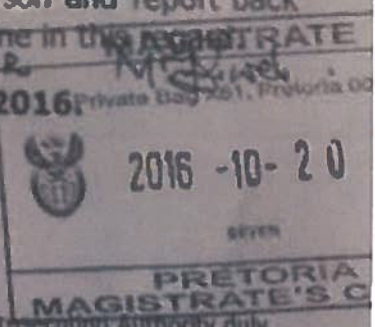
3. Provided that if you have furnished the required information to the satisfaction of the Public Prosecutor or Investigating Officer to wit Captain Magezi Freddy Sewele with contact particulars 071 481 2406 on or before 21/10/2016 prior to the date on which you are required to appear before me or another Magistrate, you shall be under no further obligation to appear before me or another Magistrate.

4. **WARNING: Failure to comply with this subpoena may result in a warrant for your arrest being issued. Such failure may also constitute an offence in terms of Section 188(1) read with sections 170(2), 189 and Section 205 of the Criminal Procedure Act 51 of 1977.**

B. To the authorised official: Serve this subpoena on the named person and report back to the authorised Senior/Control/Public Prosecutor on what you have done in this

SIGNED BY ME AT PRETORIA ON THIS 20 DAY OF ~~AUGUST~~ OCTOBER 2016

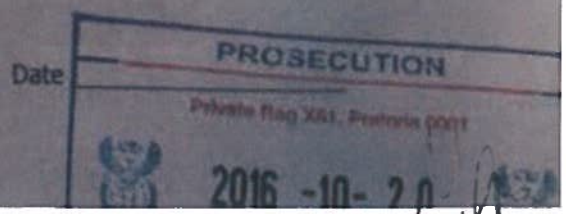
JR TSATSI MAGISTRATE: PRETORIA



Livert ro Senior/Control/Public Prosecutor with the National Prosecuting Authority duly

authorised in writing by the National Director/ Director of Public Prosecutions to request a Magistrate to issue subpoenas in terms of the provisions of S205 of the Criminal Procedure Act 51/1977, confirm that I have submitted a formal request for the above subpoena on a separate document that now forms part of the record of proceedings in respect of this application.

Signature: Authorised Prosecutor [Signature]



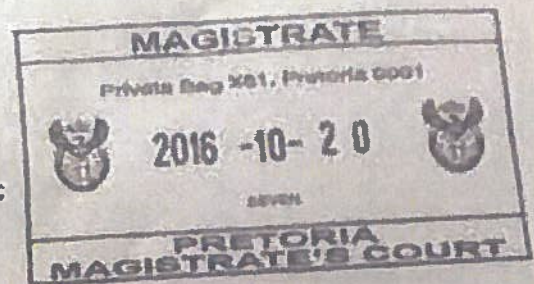
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BROOKLYN CAS 427/05/2015: INVESTIGATING OFFICER: CAPTAIN MF SEWELE:0714812406

URGENT!

ANNEXURE A

KINDLY SUPPLY US WITH THE FOLLOWING INFORMATION:



1. Copies of the statistics (Appendix A) attached to the South African Revenue Service memorandum dated 12 August 2010 in respect of the early retirement of Deputy Commissioner Mr Ivan Pillay with full benefits as well as an affidavit explaining the approval of 3000 requests from various government departments for staff members who retired before the age of 60 with full benefits for period between 12 August 2005 and 12 August 2010.
2. Copies of Appendix B for five requests of staff members who retired before the age of 60 with full benefits as approved by the Finance Ministers for period between 12 August 2008 and 12 August 2010.
3. In the affidavit the following must be clarified:
 - 3.1 Whether GEPP approves requests from various departments for staff members who retire before the age of 60 with full benefits.

Mf Sewele

MR LUVUYO: I introduced them last week or two weeks' ago but as a matter of formality I will introduce them. Far right to the National Director is Dr Torie Pretorius SC, the acting head of PCLU. Next to him is Advocate Majokweni who is acting as a Deputy National Director and Head of NPS. I've already introduced the National Director, Dr Silas Ramaite SC who is the Head for Administration and Office of Witness Protection. I won't waste any time, I will hand over to the National Director to address you. Over to you.

ADV SHAUN ABRAHAMS: Thank you Luvuyo. Good morning. I would like to acknowledge the presence of my Deputy National Director of Public Prosecutions, Dr Silas Ramaite SC, as well as the Acting Deputy National Director of Public Prosecutions, Advocate Thoko Majokweni. I further would like to acknowledge the presence of Dr Torie Pretorius SC who is the Acting Special Director and Head of the Priority Crimes Litigation Unit. I would like to acknowledge my spokesperson and my Head of Communications who is also present, members of the media, ladies and gentlemen, good morning.

This morning's announcement relates to the review of the decision to prosecute Mr Oupa Magashula, Mr Ivan Pillay and Minister Pravin Gordhan. On 11 October 2016 I announced the decision of the Acting Special Director of Public Prosecutions and Head Priority Crimes Litigation Unit mainly in consultation with the Director of Public Prosecutions North Gauteng, that Mr Pillay, Mr Magashula and Mr Gordhan must be prosecuted on various charges. At the outset of the [indistinct 00:02:12] according to section [00:02:17] 5, sub-section (d) of the Constitution



[00:02:21] empowers me, as the National Director [indistinct 00:02:25] requested to review a decision to prosecute or not to prosecute. After having consulted the relevant director and after taking representations within a period as specified by me from the accused persons, the complainant and any other person or party whom I consider relevant. When I made this announcement I extended an invitation to Mr Magashula, Mr Pillay and Minister Gordhan to make representations to me as the National Director. This is in line with the provisions of section 179(5)(d) of the Constitution read with section 22(2)(c) of the National Prosecuting Authority Act to review a decision to prosecute and not, and to decide whether to continue or discontinue a prosecution. The receipt of representations and requests to review decisions is a daily occurrence, the NPA receives representations from accused persons and/or their legal representatives in respect of matters in both the lower and high courts which are submitted to the control prosecutors, senior public prosecutors, chief prosecutors, the directors of public prosecutors as well as to the special directors of public prosecutors. This serves as checks and balances in the criminal justice system, so too do my Constitutionally enshrined powers of review. Since my appointment in June 2015, I have reviewed numerous cases in giving effect to my Constitutionally entrenched review powers, I have overruled the original decisions of directors of public prosecutions and of special directors of public prosecutions to prosecute or to discontinue prosecutions in numerous instances. I have also agreed with the original decisions of directors of public prosecutions and special directors of public

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