

Media Statement



Tel: +27 12 845 6000

Email:
media@npa.gov.za

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

www.npa.gov.za

TO: ALL MEDIA

DATE: 07 FEBRUARY 2020

**RE: NDPP TO WITHDRAW CHARGES IN THE MATTER OF THE STATE
VERSUS IVAN PILLAY AND TWO OTHERS FOLLOWING A REVIEW PROCESS**

The National Director of Public Prosecutions, Adv Shamila Batohi has decided to withdraw charges against Ivan Pillay (Pillay), Andries Janse Van Rensburg (Van Rensburg) and Johan Van Loggerenberg (Van Loggerenberg) (collectively "the accused"). The NDPP has informed relevant prosecutors and the lawyers representing the accused (the "Defence") of this decision.

Pillay and Van Rensburg are charged with the alleged contravention of Section 49(1) of the Regulation of Interception of Communication and Provision of Communication Related Information Act, No 70 of 2002 (Count 1). The essential allegations are that Pillay and Van Rensburg authorised the installation of surveillance equipment at offices of the Directorate of Special Operations (DSO) in the National Prosecuting Authority (NPA), and the interception of communication at those offices, without an interception direction.

Pillay and Van Loggerenberg are charged with the alleged contravention of Section 10 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (Count 2). In the alternative, they are charged with contravening section 3 of the said Act. The essential allegations are that Pillay and Van Loggerenberg, whilst in the employ of SARS gave, or agreed to give, to a certain individual (name withheld) an unauthorised gratification of approximately R100 000 in cash, in relation to the exercise or performance of the said individual's powers duties and functions within the scope of his employment relationship. In the alternate charge, Pillay and Van Loggerenberg are alleged to have given, or agreed to give to the said individual, an illegal gratification. This matter has since been the subject of protracted litigation and communication between the Defence and the NPA.

Following the Defence submitting representations to the NDPP in support of a request to have the decision to prosecute reviewed, the NDPP appointed a Review Panel to consider the matter, and to provide her with an opinion and recommendations. The Panel comprised Director of Public Prosecutions, Mr. Barry Madolo, Acting Director of Public Prosecutions, Adv. Indra Goberdan, and Deputy Director of Public Prosecutions, Adv. Adrian Mopp.

The Panel finalised its work and submitted a report with recommendations to the NDPP. After a careful assessment of the evidence and other relevant material, the unanimous conclusion of the Panel in respect of all counts, is that there are no reasonable prospects of a successful prosecution. The Panel recommends that all charges against the accused be withdrawn.

When instituting or maintaining criminal proceedings, a prosecutor should proceed only when a case is well founded, upon evidence contained in the police case docket reasonably believed to be reliable and admissible, and should not continue such proceedings in the absence of such evidence, that is, if there is no *prima facie* case.

In terms of the *Prosecution Policy* of the NPA, a prosecutor, in deciding whether to institute criminal proceedings against an accused person, must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution, otherwise, the prosecution should not be commenced or continued. The *Prosecution Policy* provides further that the test of a reasonable prospect must be applied objectively after careful deliberation, to avoid an unjustified prosecution. The *Prosecution Policy* states that various factors are to be considered when the prosecutor evaluates evidence, notably (i) the strength of the case for the State, (ii) the availability of evidence, (iii) whether the State witnesses are likely to be credible, (iv) the admissibility of evidence, (v) the reliability of evidence, and (vi) the strength of the case for the defence.

Exercising prosecutorial discretion requires prosecutors to assess the evidence and the substantive criminal law, and to follow necessary precepts and prescribed prosecutorial directives or guidelines, in order to determine whether and how to bring a criminal case forward. Prosecutorial discretion must be exercised in good faith, based on an impartial, independent, honest assessment of the evidence, the law and the public interest, and in a manner consistent with the *Constitution*, the *NPA Act*, the *Code of Conduct for Members of the NPA* and the *Prosecution Policy* directives and guidelines.

In line with the above, the NDPP has carefully considered the Panel's report, the evidence and other relevant material, and held discussions with the panel. The NDPP

agrees with the Panel that there are no reasonable prospects of a successful prosecution in this matter. As a result, the NDPP has decided that charges against all the accused will be withdrawn.

Ms Bulelwa Makeke

Head of Communications

National Prosecuting Authority of South Africa

+27 84 702 5617 / media@npa.gov.za