

# **PRESENTATION TO PCP ON INTERFERENCE OF IPID INVESTIGATION**

**Date: 16 May 2017**

**Venue: Parliament, Cape Town**

**Time: 9:00**



## Outline of the Presentation

1. BACKGROUND
2. INTERFERENCE
3. CONCLUSION



## **BACKGROUND:**

- Complaint by POPCRU members and Paul O'Sullivan
- The allegations are the following:
  - Irregularity relating to procurement at the Forensic Division and the over supply of equipment,
  - Centralisation of delivery of equipment,
  - Defective equipment supplied,
  - Questions about delivery of equipment by the same service provider to provinces,
  - Corrupt relationship with the service provider,
  - Inappropriate social relationship with the service provider
- Members raising concerns relating to the above were removed from their posts by General Phlahlane.



## **INTERFERENCE:**

- IPID received the complaint on the 25<sup>th</sup> of February 2016 and General Phahlane was informed about the complaint in writing on the 18<sup>th</sup> of March 2016 by the then Acting Head of the IPID and was acknowledged by General Phahlane on 9 May 2016.
- There was seemingly no investigation or movement relating to the investigation during the period whilst Mr Kgamanyane was Acting as the Executive Director.
- The complainants approached the Executive Director and raised concerns about the lack of progress made on the investigation.
- The Executive Director then appointed a team led by Mr Mandla Mahlangu to investigate the allegation on 1 November 2016.
- Upon the establishment of the team, witnesses were identified and interviewed and statements obtained.

## INTERFERENCE:

- Soon after the investigative team started their investigation, the investigating officer, the complainant as well as the Executive Director started receiving death threats by means of text messages.
- The investigation established that on the first threat the phone used to send the text message was linked to a police officer based at ORTIA.
- The investigation also established that the second threat was made from a phone that received reception from "3G\_SAPS\_Intel\_HQ\_MN1\_NGA" tower.
- When General Phahlane became aware of IPID's approach to witnesses, he contacted witnesses and instructed the witnesses not to cooperate with the IPID investigators .
- IPID then opened a Defeating the Ends of Justice case in November 2016 as per Kameeldrift CAS 123/11/2016.



## **INTERFERENCE:**

- General Phahlane then made public statements on several media platforms that he is going to establish a team to ostensibly investigate security breaches.
- Instead of approaching SAPS Protection Services for the alleged security breaches, General Phahlane appoints a team from North West under General Mabula to investigate the so called security breach.
- The team he appointed, is a team that is under investigation by IPID for various offences including:
  - Murder
  - Torture
  - Assault
  - Defeating the Ends of Justice.
- The DPP has already decided to prosecute them on the torture cases dating back to 2010 and warrants of arrest were issued.
- IPID is awaiting the DPP decision on centralisation of all the above matters.

## **INTERFERENCE:**

- Mr Paul O'Sullivan and his assistant, Ms Sarah-Jane Trent, were charged for amongst other charges impersonating an IPID investigator in terms of the IPID Act.
- The Mabula team then started interfering with IPID investigations by interviewing IPID witnesses which had already deposed statements to IPID relating to the General Phahlane investigation.
- The Mabula team also unlawfully arrested one of the complainants, Mr Paul O'Sullivan. (Adv. Mashuga issued the warrant of arrest)
- The Mabula team obtained a search warrant against the complainant, Mr Paul O'Sullivan.
- The investigating officer, Brig Ncube, in the application for the search warrant indicated that the threats from Mr Paul O'Sullivan started on 12 February 2016, however the case of intimidation and other charges was only opened in January 2017.



## INTERFERENCE:

- It would appear that there was never a concern about the threats or the IPID investigation on General Phahlane, until the Executive Director appointed the IPID investigation team and the investigation against General Phahlane started in earnest.
- General Phahlane instituted a civil action against IPID and the Magistrate who issued a search warrant ( not seizure) to General Phahlane's property.
- This civil action is at state expense.
- General Phahlane unlawfully obtained Section 205 applications by IPID from the Magistrate court file, which was not related to the search and to which he was not entitled to.
- It is a shocking abuse of power that General Phahlane now has access to the IPID investigative information and could compromise the investigation as the details of those subpoenaed in terms of Section 205 of the Criminal Procedure Act is now known to him.

## **INTERFERENCE:**

- It is possible, just as IPID members have received death threats, that these witnesses may be intimidated or have their lives threatened to ensure that they do not co-operate with the IPID investigation.
- The Mabula team charged IPID investigators, Mr Mandla Mahlangu and Temane Binang on charges related to their investigation of General Phahlane.
- We have since learned that they have now opened a case of Intimidation against the Executive Director as per Pretoria Central 284/05/2017
- This Mabula team come to Gauteng with the sole purpose of countering the investigation against General Phahlane.
- We have received information from reliable sources that the Mabula team is now actively involved in countering investigations against them related to murder and torture cases.
- We have since opened another defeating the ends of justice as per per Pretoria Central CAS 534/05/2017



## **CONCLUSION:**

- IPID views this interference with its investigation by General Phahlane and General Mabula's team as detrimental to IPID's independence and offends the legislatures objective about IPID Act No. 1 of 2011 as provided for in Section 2 of the IPID Act.
- Any investigation by any member of the SAPS against IPID investigators, because they are being investigated by IPID defeats the whole purpose of independent oversight of the SAPS as provided for in Section 206(6) of the Constitution and which was confirmed as per the Constitutional Court judgement and is a clear conflict of interest.
- Officers who are subject of IPID investigation should be allowed to investigate IPID as they are conflicted
- The actions of General Phahlane and General Mabula's team are in conflict with the stated intention of Parliament and the legislature in creating IPID, this conduct is criminal and undermines parliament.
- The will of the people of South Africa as represented by parliament is also undermined.

## **CONCLUSION:**

- IPID has instructed its legal team to issue letters of demand to General Phahlane and General Mabula team desist from interfering with IPID investigation.
- Failure to comply will result in IPID approaching the High Court to interdict them from interfering with IPID's investigation.
- We have written to the NDPD raising concern about the summons against our investigators on charges related to their investigation of General Phahlane and perceived collusion by some prosecutors in assisting the Mabula team to interfere with IPID investigation.
- IPID is convinced that it will be in the interest of justice for General Phahlane to be suspended or put on special leave to allow IPID to continue with investigation without any interference.
- The amendment to IPID Act must also address this issue to discourage any future interference.



Mafuso