

Presentation by the Minister of Police to Parliament



police

Department:
Police
REPUBLIC OF SOUTH AFRICA

Mr NPT Nhleko.

Purpose

To inform Parliament about the work done by the MRG with specific regard to;

1. Introduction
2. Synopsis of cases that were submitted
3. Recommendations
4. The way-forward
5. Challenges
6. Conclusion

Introduction

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- In July and August 2014, immediately after the start of a new term, the Minister visited all Provinces holding talks with the different provincial management structures.
- A number of managers raised complaints and concerns to the Minister. Some of them were so serious such that they had to be probed further as they impacted on service delivery.
- The Ministerial Reference Group was then appointed by the Minister of Police in September 2014 to consider the following matters:



Introduction Cont...

- Their primary responsibility was to:-
 - 1) Consider complaints and concerns raised by managers in the South African Police Services,
 - 2) Obtain statements and evidence from the affected officers and officials,
 - 3) Conduct an evaluation, analyses and impact of each complaint
 - 4) Compile a report with recommendations for the Minister

Terms of Reference

- To consider promotions and suspension of senior members.
- To consider the status of senior members who are not placed in relevant posts.
- To consider and advise the Minister on the status of former Non Statutory Force (NSF) members.
- To evaluate the challenges facing Crime Intelligence Division.
- To review the case involving the rendition of the Zimbabwean nationals by DPCI officers.
- To evaluate allegations pertaining to human resources, disciplinary and performance management for all officers and officials concerned.

Matters Considered by the MRG

- Individual complaints
- Crime intelligence division
- Former Non Statutory Force members
- Supply Chain matters
- Renditions
- Recommendations of the NDPP/ IPID & DPP
- Minister as appeals authority.

Individual Complaints

- The following senior members Lt General Lebeya and Lt General Mofome were removed from their post as Deputy National Commissioners without being consulted.
 - Given post of even lower ranks (Major General), then the ranks they held.
 - Were declared redundant after they did not accept demotion.
 - They were summarily dismissed by National Commissioner.

Finding

The National Commissioner did not follow the SAPS and Labour relations Act prescripts.

- She caused the SAPS to suffer reputational and,
- She treated members with prejudice and discrimination,
- The members suffered loss of income and a reduced pension,
- She caused the SAPS to suffer financial loss through avoidable litigation

Recommendation

The National Commissioner committed a misconduct.

Individual Complaints Cont...⁴⁸²

- Lt General Mkhwanazi, after he had been acting National Commissioner was not given specific responsibility and had no performance contract.
- He had no office allocated to him or people to manage and was made to stay at home for more than a year.
- He was later given a component facility management, which is a responsibility of an officer (Major General) less than his rank to manage.
- He was later made to sign a backdated performance agreement and was scored as having performed well during the period he was at home.

FINDING

- The member was treated with prejudice and malice.
- There was wasteful and fruitless expenditure when members is at home on full pay for no reason.
- The criminal offence of fraud was committed by the construction of backdated performance record, when member was not at work.

RECOMMENDATION

- A criminal offence of fraud was committed by the National Commissioner and department misconduct with regard to PFMA was committed by the National Commissioner

Individual Complaints Cont...

- Lt General Molefe and Lt Gen Mgwenya were demoted from being Deputy National Commissioners without any consultation. Lt Gen Molefe stayed as Divisional Commissioner legal service
- Lt Gen Mgwenya was given a post of auxiliary services which is a Component normally managed by an officer with a lower rank (Major General) than her. She refused to be demoted and the National Commissioner had given her notice of departmental charges.

Finding

- The National Commissioner did not follow the SAPS and Labour relations Act prescripts.
- she treated members with prejudice and discrimination although there was no loss of income.

RECOMMENDATION

The National Commissioner committed a misconduct.



Individual Complaints Cont...

- Major General Ngcobo and Brig Tiyo the two officers who opened a case of defeating the ends of justice against the National Commissioner, were thereafter questioned for their lack of matric.
- Major General Ngcobo was charged and Brig Tiyo is off sick.

Finding

- Such individuals could not have had their cases administered by the National Commissioner or her subordinates, as she had already been conflicted.

Recommendation

- External and neutral persons had to be appointed to investigate and administer such matters.

Individual complaints Cont...

- Major General Zuma: Demotion in Rank to Major General and was removed as Provincial Commissioner.

Finding:

- Labour Relations Act and SAPS prescripts were not followed.

Recommendations:

- Reinstatement of Lt Gen rank
- New posting to be renegotiated as the position has already been filled.

Individual cases Cont...

- Major General Booysen lodged a grievance that the disciplinary charges against him were trumped up and his suspension was unfair.

Finding:

- Adv Nazeer Cassim found that the National Commissioner was evasive and had no facts on the matter she testified on. He also found that the supervisor to Gen Booysen had serious allegations to answer which he was investigating.

Recommendation:

- Provincial Commissioner needs to answer to the allegations by the DPCI/IPID and that the suspension of Gen Booysen was unfair and that he must be reinstated.

Individual Complaints Cont...

- Maj General Matshatshe lodged a grievance that he was moved from Crime Intelligence under the pretext that he was investigated.

Finding:

- The initial reason given for his transfer from Crime Intelligence was not clearly outlined.

Recommendation:

- Maj General Matshatshe must be given a fair hearing and must be allowed sufficient time to go through a security clearance process.

Individual Complaints Cont... 488

- Lt General Mkhwanazi lodged a grievance against the National Commissioner for lodging false affidavits in court regarding Lt General Mdluli's case. Contrary to the National Commissioners affidavit, Lt General Mkhwanazi alleges that he was not consulted by the National Commissioner to submit confirmatory affidavit in the case of Lt Gen Mdluli and Freedom Under Law.
- Lt Gen Mkhwanazi had informed the National Commissioner about the initiation of disciplinary steps against Lt Gen Mdluli, however to his surprise, the National Commissioner told Court such steps were not initiated by him and the Court found that there was a dereliction of duty by Lt General Mkhwanazi.

FINDING

- The national commissioner informed the Court wrongly with regard to Lt General Mkhwanazi actions on Mdluli matter as well as his availability for submitting to Court confirmatory affidavit.
- The National Commissioner could have been truthful to Court and could have taken appropriate action.

RECOMMENDATION

- The National Commissioner committed a criminal act of perjury and misconduct by bringing the SAPS into disrepute.

Individual Complaints Cont...⁴⁸⁹

- Lt Gen Mdluli lodged a grievance that he was suspended and disciplinary steps were to be taken and concluded speedily as prescribed.
- General Mdluli does not know why no steps are taken and he is in limbo, being at home for more than two years on full pay. He feels he can be vindicated should the departmental case start.

FINDINGS

- The National Commissioner delayed the disciplinary process that was initiated by Lt General Mkhwanazi while Acting in the position of National Commissioner.
- The member was treated with prejudice and malice and that there is wasteful and fruitless expenditure when a member is at home on full pay for over two years.
- The National Commissioner had informed Parliament that the misconduct charges were placed against the General in 2014, which was not the case.

RECOMMENDATION

- The wasteful and fruitless expenditure could be avoided by conducting a hearing as directed by the Court.
- The National Commissioner committed a misconduct in terms of the PFMA .
- The National Commissioner misled Parliament with regard to Mdluli charges.

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Individual Cases Cont...

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- Major Gen Hankel lodged a grievance that he was removed from Crime Intelligence for failing to obtain a security clearance and for fraudulently obtaining a security clearance.

FINDINGS

- He was charged for misconduct and this case never resumed.

RECOMMENDATION

- He must be given reasons for why the clearance was declined.
- His disciplinary matter must be concluded as soon as possible.
- Major General Lazarus also alleged that he was declined a security clearance and transferred out of Crime Intelligence.

Finding:

- He was charged and dismissed from SAPS

Recommendation

- Criminal charges against him must be finalised as soon as possible.

Individual Complaints Cont...

- Brig Shitlabane lodged a grievance that he was appointed to act in a position and later another Brigadier was appointed to act in the same position without the latter being relieved of his acting capacity.

Finding:

- The two officers acted in the same position performing the same functions while receiving acting allowances.

Recommendation:

- Abuse of authority, fruitless and wasteful expenditure investigation against Lt Gen Sitole

Individual Complaints Cont...

- Lt General Mothiba lodged a grievance about allegations of nepotism relating to 448 covert appointments that were made at Crime Intelligence.
- **Finding:**

All appointments were done in line with the HR processes.
- **Recommendation:**

There allegations were found to be unsubstantiated as all appointments were made in line with the prescripts.

Individual Complaints Cont...

Lt General Molefe lodged a grievance against the National Commissioner for ignoring sound legal advice.

- Finding: The advice was indeed not followed and legal counsel was appointed without going through proper procedures.
- **Recommendation:** The processes that relate to the sourcing of legal advice need to be reviewed and for Lt General Molefe to be engaged to defuse the impasse.

Recommendations by the NDPP/IPID

- The national Commissioner was intercepted by the Crime Intelligence on the telephone tipping Lt General Lamoer about the investigation against him. A case of defeating the ends of justice was open against her.

Finding

- NDPP and DPP western Cape, IPID and two independent legal experts found that a criminal case may not be winnable but,
- A departmental case of gross misconduct was committed and the Minister as her supervisor was advised to take disciplinary action against her.

Recommendations

- Disciplinary steps should be considered against her as recommended

Allegations Against the Generals in Crime Intelligence ⁴⁹⁵

CRIME INTELLIGENCE

- There are Generals that were transferred from crime intelligence based on the recommendations contained in a report by Lt Gen Mothiba. The basis for transfer amongst others were allegations for the failure by them to obtain security clearances or obtaining illegal clearances.

Findings

- The Minister needs to have mechanism to facilitate such appeals
Security clearance granting or refusal may be used by those responsible as a tool to frustrate others or to assist others who may or may not be deserving.

Recommendation

- Setting up of an appeals mechanism at the Ministers office to advise and assist on appeal cases relating to the finalisation of applications for security clearances.

Matters Relating to TMS and SCM⁴⁹⁶

- These matters needs to be separated from this report and be dealt with separately as they will need a lot of time and resources.
- Request that the Portfolio Committee allow the Minister extra time.

Matters for Further Processing⁴⁹⁷

LEGAL SERVICE

- Investigate the complaint from Divisional Commissioner Legal services where external Legal Counsel were appointed without following procedure (going through State Attorney) par 16.1.13 page 38, and alleged collusions with law firms to defraud the state.

RENDITIONS OF ZIMBABWEANS

- The matter of renditions (page 30-34; par 13) of Zimbabweans to be brought to its logical conclusion departmentally and criminally.

Former Non-Statutory Forces⁴⁹⁸

- The former NSF members interest is being attended to by a committee led by the Deputy Minister of police.
 - the matter of service recognition
 - pension allocation
 - education grants for members and bursary for children
 - and consideration of ranks versus experience and training are matter the Deputy Minister is busy with.
- It is now 21 years after 1994 amalgamation of Police agencies, a point has to be reached where all matters of concern raised needs to be concluded.

Way-forward

- Where circumstances of unfair labour practice are pointed out, and negotiations or renegotiations recommended, the Department of Police shall use correct prescripts and laws.
- The Department should use internal expertise that would be directed by the Police Minister and guided by the NatCom or his/her delegate person to negotiate an amicable and legal outcome with affected parties, notwithstanding whether the affected party wishes to remain or to leave the service.

Challenges

- The first challenge was a lack of cooperation by the office of the National Commissioner.
- Due to lack of cooperation some documents that the MRG needed could not be obtained.
- Allegations against the National Commissioner and some other top Generals, could not be subjected to the *audi alteram partem* rule, due to non cooperation.
- Some members were informed by their supervisors not to cooperate with the MRG. Irrespective of the initial intention to cooperate vide email that was sent to all SAPS e-mail users and despite the fact that the entire National Management of SAPS was informed of the MRG and had pledged to co-operate.

- Three specific teams are necessitated, one team led by the National Commissioner to look at placement and redress of Generals who are not posted, or negotiate/ renegotiate exit packages where applicable. This team must further look at mechanism to empower the Minister as appellate executive on security clearances.
- The second team led by a retired Judge or a Senior Advocate, should look at formulating charges and having a disciplinary inquiry as recommended by National Director of Public Prosecution.
- The last group should be led by a commercial crimes investigator for possible crimes of wasteful expenditure in terms of PFMA, wasteful cancellation of tenders etc