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ZT Ngcakani
Inspector General of Intelligence

Per e-mail

05th May 2009

Dear Sir,

Your Reference: OIG/IG10/1/2/5/2

De-Classification of unlawful Wire-Taps

Thank you for your letter of 21st April, 2009, which for ease of reference, is appended hereto, as **Annexure 'A'**.

In addition, I have appended, as **Annexure 'B'**, my e-mail of 29th April 2009, which is self explanatory. For the avoidance of doubt, I have formally requested an investigation, not only into the criminal aspects of this matter, but also into the patently irregular activities of the SAPS' Crime Intelligence division, which has clearly been used by Selebi and his cronies to mount a rear-guard action in order to prevent his imminent arrest on serious criminal charges. A more blatant abuse of power is hard to imagine, especially when same is coupled with clear breaches of a South African citizen's Constitutional rights.

I need to remind you that Jackie Selebi has committed serious criminal offences and has used the resources at his disposal, to unlawfully spy on private citizens and employees of other State entities. In so doing, the senior police officers involved, have committed flagrant violations of Human Rights. In addition, the unlawful conduct amounts to a very serious breach of Section 40 & 41 of Act 108 of 1996, The Constitution of the Republic of South Africa.

It is common cause, that South Africa has, for some considerable time now, been suffering from unacceptable levels of serious crime, that eat away at the very fabric of society. It is my submission that the parlous state the country now faces is solely as a result of the fact that Jackie Selebi (and his fellow Gangster-in-Uniform), have eroded the establishment of the SAPS, thereby leaving the service divested of any semblance of decent management. It is for this reason, that many citizens are now afraid to report serious crime, as they are not sure, firstly, that it will be properly investigated and, secondly, which of the police officers were themselves involved in the crime.

Essentially, SAPS Crime Intelligence has now become another weapon in the arsenal of criminals and is being used for criminal purposes. What is needed is a full investigation, into how these unacceptable events have come about. That **IS** your function.

To illustrate how desperate the situation has become, let me refer to the now so-called *Mbeki-Gate Tapes*. Whilst I have illustrated, what I considered to be the problem, in my affidavit of 01st April 2009, this was before the public announcement of the dropping of charges by the NPA against President-elect Jacob Zuma.

For the avoidance of doubt, I repeat that I have no interest in the NPA v Zuma matter, other than to state the obvious, that it serves as an illustration as to what can happen when evil people come into power. I think there is no doubt, in the minds of all right-thinking people that Thabo Mbeki used and abused the State's Criminal Justice System for political purposes. In the matter of Jacob Zuma, to persecute him and, in the matter of Jackie Selebi, to let him slip through the CJS without facing charges for his criminal-conduct. Mbeki could not, and did not, have that right.

As stated in my affidavit of 01st April 2009, it is my submission that the *Mbeki-Gate Tapes* were not made by the NIA or the Secret Service, but same were a by-product of illegal wire-taps, carried out by Selebi's cronies. These wire-taps were carried out, as a desperate attempt by Selebi and his henchmen, to ward off any possible (lawful) arrest by the NPA. In order to curry favour with the new-order of the ANC, Selebi, or one his side-kicks, decided that the tapes relating to the discussions between McCarthy (the erstwhile National Director of The Directorate of Special Operations) and others, or at least a selective cross section of same, should find their way into the hands of the legal-team of Jacob Zuma. The rest, as they say, is history.

What perturbs me more, however, and should perturb all right-thinking South Africans, is what took place in the High Court of South Africa yesterday. For clarity, I am referring to the matter of The State versus Jacob Sello Selebi, in court 2B of The High Court, Gauteng South. The matter was on the role to allow argument by both sides, to determine a trial date for the matter. I was in court at all material times.

I was astounded to learn that, upon a formal request by Selebi's legal team, the Acting Commissioner of Police, Tim Williams, acting in concert with another, unilaterally decided to 'de-classify' the tapes, transcripts and other electronic interceptions, and make same available to Selebi, in order that same might be of use to him in his criminal trial. In my opinion, that conduct also amounts to a serious criminal offence, as well as an abuse of process. Having illegally made the tapes in the first place, every use of same is illegal.

There are several aspects of this that deserve thorough investigation and deliberation:

1. Firstly, how the tapes came into being in the first place. ie A full scrutiny of the unlawful abuse of process in obtaining them. For the avoidance of doubt, I do not accept that a criminally obtained warrant, in terms of Section 205 of the Criminal Procedures Act, can legitimise, that which is patently unlawful, however dressed up the warrant was in the first place.

2. How selective parts of same, were released (either de-classified or not) to persons outside of the CJS, to wit, Michael Hulley. And to Richard Mdluli, to unlawfully use same in a civil matter, before the Labour Court.
3. The SAPS bold refusal to release same to the NPA, despite a formal request to do so.
4. The decision by Williams and another to de-classify, simply because their 'boss' wanted to use same in his criminal trial. There has been speculation that Selebi has had the tapes all along, and simply wants to legitimise the possession, as his lawyers want to use same. This, if true, is very worrying and further demonstrates massive abuse of process.
5. The fact that Williams and another are State Witnesses in the State versus Selebi, and are engaged in protecting Selebi and unlawfully declassifying unlawfully obtained tapes, has to be a cause for serious concern and needs to not only be investigated, but to stopped forthwith!

Accordingly, as is patent from the reading of my below appended e-mails, I do not accept that you can fob me off with a simple letter stating that your mandate does not include criminal investigations.

Nor do I accept that this matter is something which can possibly await a 'business as usual' review of the body in question.

Indeed, due to inability and unwillingness of any of the senior management of the SAPS to investigate themselves, I have already commenced my own criminal investigation and require you to carry out those aspects of the investigation, for which you are mandated. Namely, as set out in the first, second and fourth bullet points of your letter to me under reply.

What is needed now, without any further delay, is an in-depth and transparent investigation of all the salient facts.

I look forward to your confirmation, by return, that such an investigation will be carried out and reserve my rights to take whatever action I deem fit, should you not respond in a positive manner.

As I have been pursuing this matter for more than seven years now, I ask you to please not make the mistake made by the ICD and the Public Protector, of thinking that if they ignore me, I will eventually go away. That is not an option for me.

I look forward to hearing from you very soon.

Yours faithfully,



Paul O'Sullivan

Annexure 'A' Reply from OIGI



intelligence

Office of the Inspector-General of Intelligence
REPUBLIC OF SOUTH AFRICA

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OIG/IG10/1/2/5/2
*Dir 1557

21 April 2009

MR PAUL OSULLIVAN
E-mail Address: "Paul Osullivan"<flyhigh@mweb.co.za>
FAX: +27 86 689 2315

Dear Mr OSULLIVAN

YOUR REQUEST FOR CRIMINAL INVESTIGATION AND PROSECUTION

We acknowledge receipt of your e-mail transmission of 2 April 2009 together with the attached affidavit, the contents of which have been noted.

In reply thereto kindly be advised as follows:

We are mandated in terms of section 7(7) of the Intelligence Services Oversight Act 40 of 1994 (hereinafter referred to as the Act) to:

- Monitor compliance by any of the designated Intelligence Services with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence.
- To review the intelligence and counter-intelligence activities of the designated Services.
- To perform all functions designated to us by the President or any Ministers responsible for the designated Services.

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Ikhovisi Lomkheli Jikelele Wezobunhlozi • Kantoro ya Motlharakedimogolo wa tea Matlhalale • Hofisi ya Mulavisisi-Jenerali wa Vunhlorhi • Kantoor van die Inspekteur-generaal van Intelligensiedienste • I ofisi yomkheli omkhulu wezobunhlozi • Ofisi ya Mohlahloli Kakaretso wa Bohlwela • Ofisi ya Mutoli-Dzhenerala wa Vhusevhi • Ofisi ya Mohlahloli-pharephare ya Bohlodi • I-Ofisi yoMhlozi-Jikelele wobuNtola • Lithovisi leMhlozi-Jikelele we Tabunhlozi

21 April 2009

- To receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies on intelligence and counter-intelligence, the commission of certain offences in terms of the Prevention and Combating of Corrupt Practices Act, 2004, improper enrichment of any person through an act or omission of any member.

The designated intelligence Services for which we have oversight jurisdiction are the National Intelligence Agency (NIA), the South African Secret Services (SASS), Defence Intelligence (DI) and Crime Intelligence (CI). We do not have oversight jurisdiction over the rest of the South African Police Services, DSO and NPA. The Act does not mandate us to conduct criminal investigations, prefer charges against any person suspected of the commission of any crime nor to refer matters for prosecution in the criminal court.

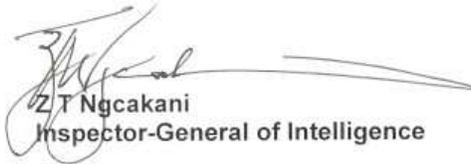
We note that you have also lodged the original of the attached affidavit with the police. We note further that some of the matters referred to in your affidavit are also *sub judice* in a court of law.

With regard to crime intelligence division of the SAPS, we advise that it is our duty to conduct monitoring and review of their intelligence activities as a matter of routine.

We are accordingly unable to conduct the requested criminal investigations and to refer your allegations for prosecution.

Thank you for approaching us for assistance in this regard.

Yours sincerely


Z T Ngcakani
Inspector-General of Intelligence

Annexure 'B' e-mail of 2009-04-29

----- Original Message -----

From: Paul OSullivan
Sent: Wednesday, April 29, 2009 18:18
To: MNchabeleng@Oigi.gov.za
Subject: RE: IGI reply to your letter

I thank you for your letter, of even date.

It is pretty much the same as the last communication, which I have already understood and responded to.

To avoid any mis-understanding, I need to repeat that, although I am also searching for a criminal investigation, which is clearly required, as serious offences have been committed over here, I am **also** looking for a proper investigation, as is set out in my e-mail of 21st April 2009, which is repeated as follows:

QUOTE :

----- Original Message -----

From: Paul OSullivan
Sent: Tuesday, April 21, 2009 15:36
To: ZNgubane@Oigi.gov.za;
Subject: RE: Re: FW: Illegal Wire Taps

Thank you for your letter received today.

Please advise if you intend to carry out any investigation, particularly with regard to:

1. Abuse of power.
2. Maladministration.
3. Transgressions of the Constitution, laws and policies on intelligence.

I look forward to hearing from you.

UNQUOTE

I am particularly concerned that this matter **must** be properly investigated, especially as Adv Mpshe has gone on record as having stated that *"The national intelligence agency confirmed that it legally obtained recordings of many of the same conversations....in the course of its investigation into the browse mole report. NIA indicated it was able to share these legally."* He says 'many' not 'all'. I record that he has said this **after** I made my affidavit, which therefore further corroborates what I have said in my affidavit, albeit unwittingly.

Accordingly, what we need to establish is this:-

1. What tapes did the NIA **also** have?
2. What tapes did they not have?
3. Who is this so-called Luciano?
4. Where did the tapes come from that the NIA did not also have?
5. How did Richard Mdluli of the SAPS come to be in possession of such tapes?
6. Why do we have records of people texting about dealing '*decisively with the O'Sullivan factor*', which clearly indicates that my rights are being violated, as well as a serious breach of the Criminal Procedures Act, yet not one of these people at NIA (who claim to be in possession of this stuff) bother to get in touch with me to advise me of such?

I'm going to make the assumption, for now, that your agency will carry out its mandate and do a proper investigation. However, I reserve the right to refer this matter for a judicial review, in the event of you not carrying out a proper investigation.

I have had my constitutional rights abused for over seven years now, and am not about to let up the pressure, just because Selebi is now fighting a (criminal) rear-guard action. Furthermore, he is using State resources and State employees to carry out these criminal acts.

Selebi started these things, I intend to see that justice is obtained, one way or another. I have no doubt that Selebi authorised certain wire-taps, including those of McCarthy and (although yet to be seen in the cold light of day) also of myself.

I am looking to you to protect my constitutional rights against such massive illicit abuse of power, by carrying out a proper investigation.

I look forward to hearing from you again soon.

Best wishes,

Paul O'Sullivan