

Faction fight behind purge at South African tax-collection agency

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Following an internal probe into a South African Revenue Service (SARS) investigative unit that allegedly acted illegally, the Labour Court has set aside the suspension of Deputy Commissioner Ivan Pillay. The revenue service intends to reinstate the original December 5 suspension of Pillay on the grounds that the Labour Court judgment was based purely on legal and procedural blunders on the part of SARS.

Pillay, the second most senior SARS officer, was suspended simultaneously with Strategic Planning Executive Peter Richer, who, along with Pillay, was involved in setting up the covert investigative unit known as the National Research Group (NRG), which was later managed by Johann Van Loggerenberg.

Announcing the suspensions, SARS head Commissioner Tom Moyane said that a panel investigating allegations of a “rogue” unit had found that Pillay and Richer were linked to a covert unit, which had been established unlawfully and without the requisite statutory authority. He claimed that the unit had created a climate of intrigue, fear and subterfuge within the organisation. Ironically, Pillay himself had approved the panel investigation into the NRG as an extension of a prior investigation of Van Loggerenberg that began during Pillay’s tenure as acting commissioner.

A report in the *Mail & Guardian* alleged that the NRG spied on senior politicians, including President Jacob Zuma. The surveillance of Zuma supposedly happened during an investigation of the tax implications of spending on Nkandla, the private compound of the president on which more than R240 million (US\$20.72 million) of public funds have been unlawfully spent. A *Sunday Times* report claims that the unit planted a listening device in the Forest Town, Johannesburg home of Zuma.

Pillay holds that the intention behind setting up a SARS intelligence-gathering unit in partnership with the National Intelligence Agency (NIA) to probe economic crimes was above board, and sanctioned by the government in 2007. He added that though it never happened, the cooperation between the tax agency and the intelligence agency was meant to regularise intelligence gathering.

Then Finance Minister Trevor Manuel approved the original NRG proposal, which “explicitly stated” that SARS did not have the capacity for surveillance or for intercepting or monitoring communications. The proposal said the unit would be “ring-fenced” by the NIA, which would provide dedicated support to SARS.

Pillay maintains that former Special Forces operative Mike Peega was employed as a specialist in the NRG in March 2007. Peega was dismissed after being arrested for rhino poaching, while the unit barely survived for two years before being disbanded in 2009.

After his dismissal, Peega allegedly prepared a document suggesting that the NRG was created by a former SARS commissioner for “sinister purposes.” When SARS became aware of the “slandorous content” in the document, it reported the matter to various law enforcement agencies including the police. While according to Pillay SARS availed itself of an investigation by the State Security Agency (SSA), the revenue service has never been informed of its outcome despite numerous requests.

The report into NRG activities has been handed to Finance Minister Nhlanhla Nene. Parliament’s portfolio committee on finance will receive it early in 2015, according to its chairman, Yunus Carrim.

The instability at the top of SARS intensified when Commissioner Moyane dissolved his eight-member executive team soon after he started the job in late

September. Van Loggerenberg, the revenue agency's head of tax and customs investigations, was suspended when allegations first surfaced in the media of the "rogue" intelligence unit. Van Loggerenberg is now undergoing a formal disciplinary process, in accordance with the Labour Relations Act.

A December 2 SARS announcement said that Chief Operations Officer Barry Hore—who is accused of racism—would leave his post at the end of 2014 to pursue other interests. The latest senior officer to resign or be suspended is Jerome Frey, head of modernisation and strategy. Oupa Magashula, the SARS commissioner before Moyane, left under a cloud of suspicion.

Pillay has written a 34-page response to the final report of the investigative panel he established under advocate Muzi Sikhakhane. He argues strongly that the allegations of a "rogue" unit were given spurious credibility by Sikhakhane.

The panel was originally set up before Moyane's arrival to look into allegations against Van Loggerenberg by his estranged lover, lawyer and former SSA agent Belinda Walter. Walter alleged that Van Loggerenberg conducted illegal surveillance of her and others and disclosed confidential taxpayer information.

City Press reported that the relationship allegedly soured in May when Van Loggerenberg discovered that Walter was acting as a lawyer for alleged tobacco smugglers who were under investigation by SARS. Walter is supposed to have confessed to Van Loggerenberg that the SSA unit she worked for was investigating the same tobacco smugglers that SARS was probing for tax evasion, fraud and money laundering.

A series of text messages published in the *Sunday Times* and *Business Day* show that Van Loggerenberg gathered evidence for SARS against cigarette giant British American Tobacco (BAT). SARS's interest in the matter arose from the fact that BAT hired a network of agents to spy on rivals. "Payments to these agents were allegedly made using Travelex cards given to agents in different countries, including South Africa—a method of transferring cash across borders that some experts suspect broke money-laundering laws," according to the *Sunday Times*.

A text sent from Van Loggerenberg to Walter in

November last year reads: "We are going for BAT. I am speaking to HMRC [Her Majesty's Revenue and Customs in the UK] now to start investigating on that end."

In another, Van Loggerenberg added, "What [BAT] are doing is illegal. There and here."

Payments made to at least eight informants were allegedly recorded in BAT's "anti-illicit [tobacco] intelligence unit" expense account, so as to seem "like expenses in production and deducted for tax purposes." At the time of Van Loggerenberg's investigation, SARS aimed to claim up to R1 billion from the South African arm of BAT.

Tobacco junior Carnilinx in August initiated a High Court action against BAT in which it accused BAT of "industrial espionage." Carnilinx accuses BAT of having infiltrated Walter into the industry body representing independent producers, the Fair Trade Independent Tobacco Association, to spy on them. Indications are that BAT prefers to settle the matter out of court, with the *Sunday Times* citing "people close to the case" as saying BAT "is manoeuvring to reach a settlement that will allow it to avoid answering the claims altogether."



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