

## Growing Threat to the Rule of Law in South Africa

Two months after Jacob Zuma was sworn in as president of South Africa on 9 May 2009, Richard Mdluli, was appointed as the national Head of the SAPS Crime Intelligence Division in the post of a Lieutenant-General. This placed him in one of the most powerful positions in the SAPS allowing him to oversee and direct the state's capacity to gather both real-time and historical information on virtually any individual in the country. It then emerged that Mdluli's appointment had been irregular as it was the result of inappropriate political interference. The SAPS Act of 1995 (chapter 4, section 6) requires that the National Commissioner appoint the deputy national and divisional commissioners. However, then Acting National Commissioner at the time, Lieutenant-General Tim Williams, revealed that Mdluli, was appointed by a panel consisting solely of four cabinet members without any police officials or experts on crime intelligence being present.

The Mail and Guardian has reported that Mdluli was appointed to this position because he assisted President Jacob Zuma escape various criminal charges. In particular, Mdluli was alleged to have played a key role in the illegal leaking of confidential crime intelligence tape recordings to Zuma's criminal defence lawyers. The tapes purported to be of the then NPA's Head of the Directorate of Special operations (also known as the Scorpions) Leonard McCarthy allegedly discussing when to reinstate charges of corruption, money laundering, fraud and racketeering against Zuma with the ex-head of the NPA Bulelani Nguka. These tapes were made while Mdluli was the head of SAPS Crime Intelligence in the Gauteng Province and was allegedly paying a leading role in a police campaign to derail the corruption investigation and prosecution against then SAPS National Commissioner, Jackie Selebi.

The tapes were later used by then acting National Director of Public Prosecutions (NDPP) Mokotedi Mpshe to controversially withdraw 783 criminal charges against Zuma paving his way to assume the position of President of the Republic of South Africa. Zuma, through his spokesperson has denied that he had anything to do with the appointment of Mdluli.

During September of 2011, Mdluli was investigated by the elite Directorate of Priority Crime Investigations (also known as the Hawks) and charged with separate cases of murder and corruption. During his bail hearing Mdluli argued that the charges against him were motivated by a political conspiracy against him because he was seen as close to Zuma. To support this claim, he handed as evidence before the court a 'ground intelligence report', providing details about various senior ANC politicians. The report claimed that these leaders had held a meeting to discuss removing Zuma as party president at the upcoming 2012 ANC National Conference. Mdluli also handed to the court a letter he had written to Zuma requesting his assistance dated 11 November 2011, claiming that the criminal charges were as a result of a conspiracy against him by junior intelligence officers who had been aligned to previous president Thabo Mbeki.

The evidence before the court in Mdluli's bail hearing, raises the concern that either most powerful SAPS Divisional Head or other officers were abusing their official police position and state resources with regards to internal matters of the ruling political party. A month after President Zuma received Mdluli's letter, the NPA controversially withdrew the criminal charges against Mdluli and forwarded the docket to the Inspector General of Intelligence, Faith Radebe.

What made this a particularly controversial decision is that the NPA had commissioned an independent legal opinion, which found that there was sufficient evidence to criminally prosecute Mdluli. Moreover, the Mail and Guardian reported on a letter written by Radebe, on 19 March 2012 that stated, "We are of the opinion that the reasons advanced by the NPA in support of the withdrawal of the criminal charges are inaccurate and legally flawed. We therefore recommend that this matter be referred back to the NPA for the institution of criminal charges."

The NPA refused to recharge Mdluli, stating that in their opinion there was insufficient evidence to charge him. This in spite of various recommendations to the contrary. Unfortunately, the NPA is already under a cloud following a range of controversial appointments to the senior echelons of the agency. The Supreme Court of Appeal unanimously ruled that President Zuma's appointment of Menzi Simelane as the NDPP, was "irrational" considering the substantial evidence available that he was not a fit and proper person for this important position. Nevertheless, Zuma then appointed another tainted individual as the acting NDPP, Advocate Nomgcobo Jiba. Jiba's credibility had been severely undermined following her suspension from the NPA pending a disciplinary hearing on charges of unprofessional conduct, dishonesty, fraud and bringing the NPA into disrepute in December 2007. This was in relation to her role in assisting the police obtain a warrant of arrest against Advocate Gerrie Nel, the lead prosecutor in the Selebi corruption case.

This attempt to interfere in the Selebi case was slammed by the High Court. Although suspended, Jiba had managed stay the disciplinary hearing against her by launching various court applications. During one of these legal challenges, Mdluli had testified as a character witness on her behalf. Eventually, those leading the charges against her left the NPA and she was allowed to keep her job in a settlement in which she paid the NPAs costs. Current concerns about the credibility of the acting NDPP are that Jiba may feel a substantial degree of indebtedness to Zuma. Not only had Zuma overlooked Jiba's chequered past when he appointed her to head the NPA, but he also used his presidential authority to expunge her husband's, 2005 criminal conviction for stealing R193 000 from a clients trust while he was a practicing attorney.

In addition to the criminal charges against Mdluli, a subsequent separate internal SAPS Crime Intelligence investigation found evidence alleging that he was directly implicated in widespread theft and corruption involving the SAPS Secret Services Account. Allegations in the report included that Mdluli had irregularly employed at least 23 family members and friends, misused state vehicles, safe houses and state funds for his own benefit in addition to a range of other corrupt activities. Many were surprised when it was reported that the head of the Hawks, Lieutenant-General Anwar Dramat, had suddenly halted all criminal investigations into Mdluli and other members of the SAPS Crime Intelligence Division, allegedly on instruction from the current Acting National Commissioner, General Nhlanhla Mkhwanazi.

The City Press then published a report alleging that Mkhwanazi had received an instruction from the Minister of Police Nathi Mthethwa, to cease all investigations into Mdluli and to reinstate him to the SAPS National Head of Crime Intelligence. This past weekend, the City Press reported that that the Minister of Police himself is alleged to have illegally benefited from the Secret Service Account which was used to pay for R195 500 worth of renovations to the Ministers private residence. The Minister has publicly denied all allegations and stated that he would be requesting that the Auditor-General investigate these allegations.

Richard Mdluli is now back in his post with a large number of serious allegations hanging over his head, and the heads of the NDPP and the Minister of Police. All processes to examine any evidence supporting the allegations in an open and accountable manner have been halted without adequate explanation. The only official statement from the SAPS is that this is an internal matter and no further comment will be forthcoming.

The many honest, hard working police men and women who place their lives on the line fighting crime need to trust that those leading them are beyond reproach. Similarly, those who take to the courts each day to prosecute criminals in the interest of justice need to feel pride in their institution and what it represents. The only way to sort through the various allegations affecting those that are meant to lead the criminal justice system is for an independent judicial commission of inquiry to test the evidence behind the allegations in a transparent and fair manner. In this way, those that may have abused their positions can be identified and measures taken to prevent reoccurrence. This will restore faith in the criminal justice system.

However, if these allegations are left unchallenged it will severely damage public trust in those in charge of the criminal justice system, and then without a doubt, the principle of the rule of law in South Africa is in deep trouble.

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