

# Taxman's turmoil bodes ill for SARS

Over the past few weeks, SARS has been rocked by claims of a rogue unit, a brothel and a series of suspensions and resignations...



Commissioner Mbyane's suspensions of both Richer and Pillay have been overturned. (Image: Jonund, via Wikimedia Commons)

The litany of issues surrounding what was once viewed as one of the shining lights of governance in SA has tarnished the organisation's image.

Herewith a range of reports covering events over recent weeks at the South African Revenue Service:

## **Latest SARS suspension fuels talk of a crisis**

Natasha Marrian

The apparent purge at the South African Revenue Service (SARS) continued this week as Democratic Alliance leader Helen Zille warned of dire consequences should ordinary taxpayers lose confidence in the tax-collection agency.

On Monday, suspended Deputy Commissioner Ivan Pillay's adviser, Yolisa Pokie, was suspended pending the outcome of a disciplinary hearing.

The tumult at the tax agency has seen resignations, suspensions or disciplinary action involving six senior employees - with most occurring in the past two weeks.

And sources said yesterday that there were likely to more suspensions this week.

Ahead of the suspension, new SARS Commissioner Tom Moyane dissolved his eight-member executive team.

There are concerns over the damaging effects of perceptions of a crisis at SARS, that could potentially harm the relationship between taxpayers and the agency, which has to be seen to be above reproach.

## **Range of charges**

It is understood that Pikié was suspended and is set to face a range of charges.

These include theft, conflict of interest, malicious damage to property, dishonesty and bringing SARS into disrepute.

Pikié declined to comment yesterday.

SARS spokesperson Marika Muller yesterday reiterated that the agency was not prepared to discuss employee relations in the public domain as these were confidential.

Pikié's suspension follows charges brought against anti-corruption and safety head Clifford Collings and the resignation of head of modernisation and strategy Jerome Frey.

The suspensions of Pillay and the executive for strategic planning and risk, Pete Richer, were announced on December 5.

SARS investigator Johann van Loggerenberg was placed on special leave by Pillay in September, after Pillay instituted an investigation into his conduct over allegations by Belinda Walter, a Pretoria-based lawyer for the tobacco industry.

On 2 December, SARS chief operating officer Barry Hore resigned after nine years in the job. It emerged this week that, despite this, he is set to face a disciplinary charge for racism.

Pillay and Richer approached the courts earlier this week to have their suspensions set aside.

It is understood that they will argue that the procedure SARS used to suspend them was flawed.

It is also understood that the matter has been referred to the Commission for Conciliation, Mediation and Arbitration.

Writing in her newsletter yesterday, Zille called for the release of the panel report by advocate Muzi Sikhakhane, which Moyane had relied on to suspend Pillay and Richer.

## **Zuma to blame**

Zille described the conflict at SARS as a "crisis" and put the blame on President Jacob Zuma.

"If it is true (as I believe it is) that this conflict is the result of yet another attempt by Jacob Zuma to 'capture' a state institution in order to protect himself and the African National Congress (ANC) from paying taxes, then it will be a watershed for SA's democracy," she said.

"President Zuma and the ANC had better wake up right now to one unavoidable reality that other analysts have identified before - SA has an Achilles heel," Zille said.

In a statement released last night in reaction to Zille's newsletter, the Presidency said it took "strong exception to the allegations ... linking the president to the suspension of some staff members in SARS".

"We have noted attempts in some newspapers as well to drag the president into the same matter," presidential spokesperson Mac Maharaj said in the statement.

"The president has nothing to do with any of the allegations levelled against the staff members of SARS and linking him to

this matter is pure mischief."

Source: *BDpro*, via I-Net Bridge

### **Revelations about SARS pose more questions than answers**

Numerous leaks about the misdemeanours of an alleged covert unit within the South African Revenue Service (SARS), and the recent suspensions, resignations and disciplinary action against senior officials, point to another state institution in crisis.

But though new SARS Commissioner Tom Moyane appears to be cleaning house, the motives behind the purge remain unclear. What is apparent, though, is that there are several contradictions and, as more revelations are made, more questions arise.

They include:

- Was the unit, dubbed the National Research Group, and over which Deputy Commissioner Ivan Pillay was suspended, above board?
- Are disgruntled employees and organised crime syndicates at the centre of an attempt to smear SARS and its officials?
- Were officials corrupt; did SARS offer business to contractors benefiting from state business but with links to staff; does SARS remain untransformed; and was it plagued by severe governance problems?

The allegations against senior SARS officials gained traction after a report in the *Sunday Times* on 12 October. It has been cited by the agency when justifying the action taken against senior officials in recent weeks.

The report claims SARS had bugged President Jacob Zuma in the chaotic period ahead of the African National Congress's elective conference in Polokwane in December 2007, at which he was elected party president.

### **Who's 'Skollie'?**

It also alleges that a former "spymaster" named "Skollie" was the head of the covert unit known then as the Special Projects Unit, but later renamed the National Research Group.

The unit was reportedly set up when Co-operative Governance and Traditional Affairs Minister Pravin Gordhan was the Commissioner of SARS and it aimed to infiltrate crime syndicates that smuggled cigarettes, drugs, rhino horn and ivory.

The newspaper also alleged that the unit ran a brothel, used fake identity documents and illegally intercepted and monitored communications.

The allegations prompted Pillay - then the acting Commissioner - to institute an investigation. He set up a panel headed by Muzi Sikhakhane SC to lead an external committee of investigation into complaints of impropriety against Johann van Loggerenberg, a senior SARS official. Van Loggerenberg, reported the *Sunday Times*, was involved in an illicit relationship with lawyer Belinda Walters, who had previously headed the Fair-Trade Independent Tobacco Association, which reportedly had run-ins with SARS.

### **Complaints**

Walters had laid complaints with the police and SARS, alleging that Van Loggerenberg had revealed confidential taxpayers details to her, which was a criminal offence.

The panel set up by Pillay was tasked with investigating these claims and whether there was any conflict of interest in the relationship, but its terms of reference broadened the investigation to include whether Van Loggerenberg had illegally

intercepted information, and whether there were any breaches of SARS policies and acts of impropriety.

The terms of reference did not explicitly state that the investigation would include the existence and workings of the covert unit. Its findings and recommendations, however, on the existence of the unit have been used to suspend Pillay and Peter Richer, SARS group executive of strategic planning and risk. Since then, ructions have deepened with more suspensions, resignations and disciplinary action against senior officials.

Pillay's submission to the panel says that the existence of the unit was above board, was sanctioned by the government and was signed off in 2007 by then Finance Minister Trevor Manuel and Gordhan. It is unclear whether Manuel and Gordhan were interviewed by the panel.

## **It's illegal, or is it?**

SARS is legally not allowed to conduct covert activities, which fall within the ambit of intelligence. Pillay contends that the unit never took off after "it became clear" that the National Intelligence Agency (NIA) was not prepared to accommodate its existence. It had not functioned as intended.

Richer claims that the unit was neither covert nor illegal and he was not employed by SARS when it was set up. The panel, through its attorney, Imran Mohammed, says no finding was made against either Pillay or Richer.

Letters from SARS attorneys to the pair, seen by *Business Day*, however, indicate that both have a case to answer.

Reasons provided for Richer's suspension include that he was responsible for the establishment of the covert unit in 2007, without having the requisite authority. SARS said Richer had headhunted "Skollie", or Andries van Rensburg, from the NIA.

SARS also alleges that Richer "misled the panel" into thinking the unit was above board. But the panel found that evidence showed a "narrative rarely exposed to the public".

## **Allegations**

"It exposed minority activity of idiosyncratic and egocentric personalities, deception, intrigue and plain falsity," its letter reads. The panel describes the covert unit as an "ill-conceived idea" to deal with the real challenge of organised crime.

A letter from SARS attorneys to Pillay makes similar allegations, indicating that he was "primarily responsible" for the establishment of the unit without the requisite authority.

It says that the unit could undermine the work of state agencies tasked with investigating organised crime and collecting intelligence, and that the unit may have included "rogue behaviour", that Pillay had emphatically denied the existence of a covert unit, or one resembling such a unit, and that he misled the panel.

There are competing views of the work of the covert unit and about how the probe into it has led to a "purge" of officials. The full truth is yet to emerge.

Source: *Business Day*, via I-Net Bridge

## **SARS in court battle over 'rogue unit' move**

Natasha Marrian

Operations at the South African Revenue Services (SARS) will not founder in the absence of suspended Deputy Commissioner Ivan Pillay, and Commissioner Tom Moyane must decide whether his services can be "dispensed with", the Labour Court in Johannesburg heard on Wednesday.

Pillay applied to the court to have his 30-day suspension lifted pending the resolution of his dispute with SARS before the Commission for Conciliation, Mediation and Arbitration.

He was suspended on 5 December after the recommendations and findings of a probe by Muzi Sikhakhane SC into an alleged covert unit at the tax agency which, among other things, was reported to have spied on President Jacob Zuma and allegedly ran a brothel.

SARS has been hit by a spate of suspensions and resignations in recent weeks linked to the covert unit and other governance issues cited by Moyane, who was appointed to the post by President Jacob Zuma less than three months ago.

## **A win for Richer**

On Wednesday, an out-of-court settlement saw SARS conceding that it would lift the suspension of Peter Richer, executive for strategic planning and risk. This settlement was made a draft order of the court and SARS was ordered to pay Richer's costs.

Nazeer Cassim SC, representing Pillay, told the court that it was common cause and that it was not denied by Moyane that he had elected not to read a submission by Pillay to Adv Sekhukhune's panel.

Adv Cassim said Moyane had also not denied or disputed that he had already taken a decision to suspend Pillay when he informed his deputy of his suspension on 4 December.

Adv Cassim argued that Pillay was not afforded an opportunity to be heard or to make representations before he was suspended and that Moyane had already typed the letter of suspension to Pillay ahead of informing him of the action.

Moyane had also never discussed the existence of the covert unit with Pillay or sought to engage him about its existence, Adv Cassim told the court.

## **Moyane's actions 'against public interest'**

The dispute between SARS and Pillay, he argued, "undermined the functioning" of, and "destabilised", the institution.

"It is against the public interest ... for the Commissioner to behave the way he had behaved," Adv Cassim said.

Martin Brassey SC, representing SARS, told the court that the covert unit was illegal and that the tax agency was not competent to behave in a "sleuth-like manner". The "rogue unit", which had been established by Pillay, was replete with agents committing "nefarious" acts, he said.

There was "little doubt" that Pillay had made a significant contribution at SARS, but at the same time the organisation would not "flounder" if he were not immediately returned to his post, Adv Brassey argued.

"It is for the Commissioner to decide to what extent Pillay's services could be dispensed with," Adv Brassey said.

## **Pillay accused of dishonesty**

In an affidavit Moyane said he had considered the "possible negative impact" of Pillay's suspension but "having regard to the gravity of the situation, it was nevertheless necessary to suspend" him.

Adv Brassey added that there was "no basis" for the court to intervene in the matter and dismissed Pillay's application as "grandstanding" and a "public relations campaign".

Should the suspension be lifted on a "technicality" - Moyane's alleged failure to allow Pillay to explain why he should not be

suspended - the "world at large" would view Pillay as "clean as snow" and SARS would suffer reputational damage.

Moyane said in his affidavit that Pillay had concealed the existence of the covert unit and accused him of dishonesty.

Pillay had made a submission to the panel and conceded that the unit existed, but said that it was above board and sanctioned by then SARS Commissioner Pravin Gordhan and then finance minister Trevor Manuel.

Moyane said he was endeavouring to secure the memorandum that approved the unit from Manuel.

Judgment in the matter of Pillay's suspension will be handed down on Thursday.

Source: *BDpro*, via I-Net Bridge

### **Labour Court overturns SARS Deputy Commissioner Ivan Pillay's suspension**

Natasha Marrian

The suspension of South African Revenue Service (SARS) Deputy Commissioner Ivan Pillay has been lifted and he is free to return to work, the Labour Court ruled on Thursday.

Judge Annelie Basson read out the brief order shortly after 10am. She ruled that the suspension of Pillay by SARS was unlawful and constituted a breach of contract, and ordered SARS to pay costs.

Pillay was not in court on Thursday.

His counsel, Nazeer Cassim, yesterday argued that Pillay was not afforded an opportunity to present reasons he should not be expelled.

Some six staffers have resigned or have been suspended and disciplined by SARS over recent weeks in what has been described as a "purge" of top officials.

It follows the appointment of new SARS Commissioner Tom Moyane and allegations reported in the media that SARS had set up a covert unit that, among other things, had reportedly spied on President Jacob Zuma and had run a brothel.

Source: *BDpro*, via I-Net Bridge

And now, new doubts have been cast on the decision by South African Revenue Service (SARS) boss Tom Moyane, recently appointed by President Jacob Zuma, to suspend his deputy, Ivan Pillay, and another key official [are under scrutiny](#) reports *Mail & Guardian*.

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