

Alleged SAPS interference with IPID investigations: SAPS & IPID briefing

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Police

16 May 2017

Chairperson: Mr F Beukman (ANC)

Meeting Summary

The Committee convened a meeting to hear from the Independent Police Investigative Directorate (IPID), and its Executive Director, Mr Robert McBride, and the Acting National Commissioner of Police, Lt. Gen. Khomotso Phahlane, in light of the public tension between the two following allegations of interference in the IPID investigation by Gen. Phahlane, who is also the subject of the IPID investigation. The meeting followed as a result of a number of issues raised during the 2017/18 Budget Hearing of the IPID, two weeks ago, where Members heard about interference, counter-investigations and the countering of IPID's power due to this particular investigation – the investigation centered around complaints of corrupt relationships with service providers. The Committee, at the budget hearing, endeavoured to meet with the two bodies to get to the bottom of what was being played out in the media.

IPID began proceedings by presenting its case of interference by the SAPS, Gen. Phahlane himself and a special SAPS team from the North West sent to counter-investigate IPID and make its working conditions difficult. The IPID presentation called for Gen. Phahlane to be put on special leave pending the outcome of its investigation and prevent further interference. The presentation made reference to death threats received by Mr McBride and other threats of intimidation to IPID investigators and witnesses in the particular investigation. IPID presented that Gen. Phahlane compiled a special team to counter-investigate IPID – this team, according to IPID, was comprised of SAPS members with allegations of murder and torture levelled against them by IPID itself. The Directorate further argued such action impeded the investigation and was detrimental to the independence of IPID.

SAPS, and Gen. Phahlane, then presented on how a threat assessment was conducted as the life of the Acting National Commissioner was deemed to be in danger. This threat assessment led to an investigation team - its terms of reference and mandate were outlined to Members. The Committee was also taken through a detailed summary of investigations conducted by the team and what witnesses revealed. The central point was that IPID was not independent and was instead “captured” by exterior forces – Gen. Phahlane said IPID should be called “OPIID” for “O’Sullivan’s Police Investigative Directorate” because of the close links between IPID and private investigator, Mr Paul O’Sullivan. Members were made aware of extracts from emails and SMS communication between Mr McBride and Mr O’Sullivan, which showed the lack of independence of the Directorate, and the threats levelled against Gen. Phahlane by Mr O’Sullivan. The special SAPS investigating team uncovered that Mr O’Sullivan took the lead in the investigation against Gen. Phahlane and intimidated witnesses in the presence of IPID investigators. Mr O’Sullivan, furthermore, as revealed in the emails and SMSs, had access to high-level and private documents used in the investigation. This was further confirmed by a string of 49 threatening and intimidating emails the Acting National Commissioner received from Mr O’Sullivan. Gen. Phahlane took umbrage with the fact that Mr O’Sullivan was allowed to take the lead and interfere in the IPID investigation which resulted in a biased investigation.

The Committee was initially not pleased that presentations made were not delivered to the Committee before hand – this was the protocol of the meeting, allowed for Members to become au fait with issues ahead of the meeting and anticipated irrelevant issues being raised. The Committee appealed for this procedure to be adhered to in future. Some Members were concerned that SAPS, and Gen. Phahlane, were

generally providing counter-allegations instead of directly responding to allegations of interference as made by IPID – whether IPID was independent or not was not the core issue, according to these Members. The Committee noted that it was not an arm of the judiciary and therefore could not, and did not have the capacity, to deal with much of the detailed evidence presented to it such as email extracts and intercepted SMSs. Members felt the Committee was treading on dangerous ground by turning the matter into a witch hunt about the independence, or lack thereof, of IPID – IPID’s independence was not the issue on the agenda. Questions were raised about whether the matter was taken up with the Executive Authority and, if so, what the feedback was – related to this, it was raised that the situation was precipitated by the former Minister who allowed the public questioning of the independence and integrity of IPID. Members also questioned whether it was best for Gen. Phahlane to recuse himself while the investigation was ongoing. Members were depressed, alarmed, shocked, horrified and disturbed by the revelations made before it in such a public forum.

The Committee questioned the nature of the so-called “North West team”, if it was put together under the instruction of Gen. Phahlane and its interest in the IPID investigation into the Acting National Commissioner. Members were concerned by the involvement in Mr O’Sullivan in the IPID investigation, if IPID could work with private investigators, why an IPID investigator was driving the car of Mr O’Sullivan when Gen. Phahlane’s home was raided, why links between Mr O’Sullivan and Mr McBride were so close if IPID was independent, how Mr O’Sullivan had access to highly-classified personal information relating to the IPID investigation into Gen. Phahlane and who Mr O’Sullivan was exactly. Throughout the meeting, the Committee called on itself to remain objective, balanced and focused on the matter at hand so that action taken was best for the policing environment of SA and to get to the truth – Members were concerned that the matter took the focus off fighting crime in SA. It was said that the aspiration of men and women in blue were carried on the shoulders of their leadership.

Members were concerned about the media involvement in the investigation. It was highlighted that both SAPS and IPID were creatures of law and were to be protected. There was also concern that some of the statements of Gen. Phahlane could be seen as him not wanting to cooperate with IPID and that this set a dangerous precedent for the rest of the Service especially at a time when violent and organised crime was rising. Members said if the matter concerned the head of IPID, this did not mean the rest of the institution should be poisoned.

The Committee highlighted the critical importance of adhering to the independence of IPID – the Committee required that SAPS provide the institution with the necessary assistance. Similarly, the relevant legislation in the policing environment should be adhered to. It reiterated the salience of providing presentations to the Committee beforehand. There was to be no interference in the work of the oversight institution – if there was a difference in approach, the courts were there as a matter of recourse. It was important that SAPS and IPID cooperated. The Committee would monitor this to ensure there was public trust in both institutions – this was paramount. The Committee called on both institutions to reflect on the matters at hand and endeavour to meet with the Executive Authority to resolve the challenges experienced.

Meeting report

Chairperson Opening Comments

The Chairperson outlined reason for the meeting stemmed from an Annual Performance Plan (APP) and 2017/18 budget hearing of the Independent Police Investigative Directorate (IPID) to the Committee on 4 May 2017. In the meeting it was said “Mr McBride noted that IPID investigators, involved in the Gen. Phahlane case, yesterday were counter-investigated and given warning statements by the North West unit. There was no need to make IPID investigators suspects because they were investigating a senior official but this was what happened and continued to happen. These were the conditions under which IPID worked. In essence, IPID’s independence was being compromised by the very suspect on top instructing people to counter-investigate the Directorate.

Mr Sesoko added that this was a critical area for Committee assistance especially in light of amendment of the IPID Act– when senior SAPS

officials were being investigated, it could not happen that they in return initiated investigations against IPID and witnesses simply to counter the IPID investigation. This defeated the whole purpose of the creation of IPID because state power was being used to deflect the investigations. This kind of problem was not experienced when junior members were investigated.

Mr Ramatlakane was very concerned about these insights and felt the Committee needed to act on it immediately. There was a need for further urgent discussion on it to get to the bottom of what was occurring. His greatest fear was that people were reminded of what happened yesteryear. These tendencies needed to be nipped in the bud because he could only imagine what occurred at night. These occurrences could not reoccur”.

The Committee then decided to call all the affected parties before it. Principally, it was critical the independence of IPID was adhered to. With IPID investigations, the SA Police Service (SAPS), and all its management, must give the necessary assistance – the Committee required this assurance from SAPS in today’s meeting. He emphasised the Committee wanted to hear about the alleged interference, as raised during the budget briefing, and not other cases which were before court or in the public domain.

The Chairperson highlighted his displeasure with the fact that presentations to be made today were not submitted to the Committee before hand, as was protocol. He emphasised that presentations to be made to the Committee must be delivered before hand.

Ms A Molebatsi (ANC) too was not pleased that Members were only seeing the presentation this morning – it was imperative that documents were submitted to the Committee prior to being presented. This was procedure. It allowed for Members to be informed and know exactly what was on the table for the meeting.

Ms M Mmola (ANC) echoed the sentiments of Ms Molebatsi.

IPID presentation on Interference of IPID Investigation

Mr Robert McBride, IPID Executive Director, outlined the IPID team present at the meeting were being investigated by Maj. Gen. Ntebo “Jan” Mabula (SAPS Deputy Provincial Commissioner: Crime Detection) as instructed by Lt. Gen. Khomotso Phahlane (Acting National Police Commissioner). He noted that the presentation was not sent earlier because it contained investigative information which IPID did not want in the public before it presented on it. The presentation would cover key points around investigation and who was involved.

IPID was a constitutionally-imperative created body but was being counter-investigated on spurious of grounds – this was the main thrust of the presentation. It would stick to the directive of the Committee. IPID was a constitutional body and could not be counter-investigated with state resources to protect a suspect. The current situation was that state resources were being used for two parallel processes i.e. civil litigation and a criminal case which was to come – both involved the use of state resources.

Mr Matthews Sesoko, IPID Head: Programme Two: Investigation and Information Management, began the presentation by way of background – IPID received a complaint from the Police and Prisons Civil Rights Union (POPCRU) and Mr Paul O’Sullivan. The complaint contained allegations of:

- irregularity relating to procurement at the Forensic Division and the oversupply of equipment
- centralisation of delivery of equipment
- detective equipment supplied
- questions about delivery of equipment by the same service provider to provinces
- corrupt relationship with service provider
- inappropriate social relationship with the service provider

-members raising concerns relating to the above allegations were removed from their posts by Gen. Phahlane

Ms L Mabija (ANC) interrupted the presentation as she was lost. She thought the presentation would deal with the allegations of interference but now she was hearing about service providers. She did not understand the gist of what was to be presented today.

Mr Z Mbhele (DA) appealed for Members to allow the presentation to unfold – the picture at hand would become clear through the presentation once the background was laid out. This was not the first time the Committee did not receive a presentation before hand so it was not a train smash. This was a very serious matter on which Members were to apply their minds with clarity and coherence. The presentation should not be impeded with continuous interruptions.

Mr P Groenewald (FF+) was not pleased that Members did not have paper copies of the presentation – he felt it a distraction to repeatedly look at the presentation on the screen. It was not acceptable. If the presentation was so sensitive it should have been in a suitcase.

Ms Mmola said that Members were allowed to ask questions of clarity if they so wished even if the presentation was not yet complete.

Mr Sesoko said the hardcopies would be arriving soon. Continuing with the presentation, and looking at interference, IPID received the complaint on 25 February 2016 and Gen. Phahlane was then informed about the complaint in writing on 18 March 2016 by the then Acting Executive Director, Mr Israel Kgamanyane. This was acknowledged by Gen. Phahlane on 9 May 2016. There was seemingly no investigation or movement relating to investigation during the period Mr Kgamanyane was Acting Executive Director. The complainants approached the Executive Director and raised concerns about lack of progress made on the investigation. The Executive Director then appointed a team, led by Mr Mandla Mahlangu, to investigate the allegation on 1 November 2016. Upon establishment of the team, witnesses were identified and interviewed and statements obtained.

Soon after the investigative team started its investigation, the investigating officer, the complainant, as well as the Executive Director, started receiving death threats by means of text messages. The investigation established that on the first threat, the phone used to send the message was linked to a police officer based at OR Tambo International Airport. The investigation also established the second threat was made from a phone that received reception from “3G_SAPS_Intel_HQ_MN1_NGA” – the phone was linked to the SAPS headquarters. When Gen. Phahlane became aware of IPID’s approach to witnesses, he contacted witnesses and instructed witnesses not to cooperate with IPID investigators. IPID then opened a case of Defeating the Ends of Justice case in November 2016 as per Kameeldrift CAS 123/11/2016.

Gen. Phahlane then made public statements on several media platforms that he was going to establish a team to ostensibly investigate security breaches. Instead of approaching SAPS Protection Services for alleged security breaches, Gen. Phahlane appointed a team from North West under Gen. Mabula to investigate the so-called security breach. The team he appointed was under investigation by IPID for various offences including murder, torture, assault and Defeating the Ends of Justice. The Director for Public Prosecutions (DPP) already decided to prosecute the North West team on the cases of torture dating back to 2010 and warrants of arrest were issued. IPID was awaiting the DPP decision on centralisation of all the above matters.

Mr Sesoko said Mr O’Sullivan and his assistant, Ms Sarah-Jane Trent, were charged for, amongst other cases, impersonating an IPID investigator in terms of the IPID Act. The Mabula team then started interfering with the IPID investigations by interviewing IPID witnesses which already deposed statements to IPID relating to the Gen. Phahlane investigation. The Mabula team also unlawfully arrested one of the complainants, Mr O’Sullivan (Adv. Mashuga issued the warrant of arrest). The Mabula team obtained a search warrant against the complainant, Mr O’Sullivan. The investigating officer, Brig. Ncube, in the application for the search warrant, indicated threats from O’Sullivan started on 2 February 2016, however the case of intimidation and other charges were only opened in January 2017.

It would appear there was a never concern about threats or the IPID investigation on Gen. Phahlane until the Executive Director appointed the IPID investigating team and the investigation against Gen. Phahlane began. Gen. Phahlane instituted civil action against IPID and a Magistrate issued a search warrant for Gen. Phahlane’s property even though no items were seized from the property. This civil action was at state expense – this resulted in IPID having difficulty getting legal representation from the state attorneys because of a conflict of interest. Gen. Phahlane unlawfully obtained Section 205 applications by IPID from the Magistrate’s court file, which was not related to the search, and

to which he was not entitled. It was a shocking abuse of power that Gen. Phahlane now had access to IPID investigative information and could compromise the investigation as the details of those subpoenaed, in terms of Section 205 of the Criminal Procedure Act, was now known to him.

It was possible, just as IPID members received death threats, witnesses may be intimidated, or have their lives threatened, to ensure they did not cooperate with the IPID investigation. The Mabula team charged IPID investigators, Mr Mahlangu and Mr Temane Binang, on charges related to their investigation of Gen. Phahlane. IPID had since learnt a case of intimidation against the Executive Director as per Pretoria Central 284/05/2017. The Mabula team came to Gauteng with the sole purpose of countering the investigation against Gen. Phahlane. IPID received information, from reliable sources, the Mabula team was now actively involved in countering investigations related to murder and torture cases. IPID had since opened another case of Defeating the Ends of Justice as per Pretoria Central CAS/534/05/2017.

In conclusion, Mr Sesoko outlined IPID viewed the interference with its investigations by Gen. Phahlane and Gen. Mabula's team as detrimental to IPID's independence and offended the legislature's objective about IPID Act No. 1 of 2011 as provided for in Section Two of the IPID Act. Any investigation by any SAPS member against IPID investigators, because they were being investigated by IPID, defeated the whole purpose of independent oversight by SAPS as provided for in Section 206 (6) of the Constitution and which was confirmed as per the Constitutional Court judgement and was a clear conflict of interest. Officers who were the subject of IPID investigation should not be allowed to investigate IPID as they were conflicted. The actions of Gen. Phahlane and Gen. Mabula's team were in conflict with the stated intention of Parliament and the legislature in creating IPID – this conduct was criminal and undermined Parliament. The will of the people of SA, as represented by Parliament, was also undermined.

IPID instructed its legal team to issue of letters of demand to Gen. Phahlane and Gen. Mabula's team to desist from interfering with IPID investigation. Failure to comply will result in IPID approaching the High Court to interdict them from interfering with the investigation of the Directorate. IPID had written to the National Director of Public Prosecutions (NDPP) raising concern about the summons against its investigators on charges related to its investigation of Gen. Phahlane and perceived collusion by some prosecutors in assisting the Mabula team to interfere with the IPID investigation - the NDPP had since asked the head of National Prosecuting Services to meet with IPID on the matter especially with witnesses approached while the investigation was ongoing. IPID was convinced it will be in the interests of justice for Gen. Phahlane to be suspended, or put on special leave, while the investigation was ongoing to allow IPID to continue with its investigation without any interference - Gen. Phahlane was still acting in the position so therefore it was the view of IPID that another individual could be put into an acting position whilst the IPID investigation was ongoing. Amendment of the IPID Act must also address this issue to discourage any future interference.

Response by the Acting National Commissioner

Lt. Gen. Khomotso Phahlane, speaking in his capacity as Acting National Commissioner and personally as a suspect, said it was an insult to have SAPS members referred to as torturers and murderers while they did not have a single conviction against their names. Gen. Mabula served SAPS for the past 33 years with not even one disciplinary or criminal case against him. To hear him referred to as a murderer and torturer, hurt – this applied to all other SAPS members as IPID alleged. Gen. Phahlane himself who, after 32 years in the Service, did not carry a criminal or disciplinary record – he wanted this to be on the record.

He referred to a letter dated 22 March 2016 which IPID used to say Gen. Phahlane knew of its investigation. The letter was addressed to himself as Acting National Commissioner and said "Dear Lt. General Phahlane. Kindly be informed that we have received a complaint from Mr Paul O'Sullivan regarding allegations of tender irregularities and irregular appointments". This letter did not state that there was a direct complaint against Gen. Phahlane. The letter went on to say "IPID in Gauteng has been tasked to conduct investigations regarding the above cases. You are requested to arrange a suitable date for IPID investigators to meet with you to discuss these allegations". On 9 May 2016, Gen. Phahlane instructed his Personal Assistant to arrange the meeting as requested – to date, this meeting had not yet took place. He challenged IPID to provide proof of the minutes of this meeting which outlined that Gen. Phahlane was officially informed. He remembered

the question from Mr Mbhele if Gen. Phahlane lied to Parliament – he reiterated that he would not lie to Parliament under any circumstances. If there was an element of integrity in IPID, it should then withdraw the statement that Gen. Phahlane was informed of an investigation directly against him. Gen. Phahlane was on record to say that the first time he knew about the allegations was when someone asked to meet with him. Before that meeting, in the morning after he finished his gym session, there was a call and message from Pieter-Lois Myburgh, an investigative journalist from News24. Myburgh asked Gen. Phahlane for his comment on the warning statement. Gen. Phahlane then immediately thought he had done something seriously wrong but when he heard about investigation of corruption only then did he remember the string of emails from Mr O'Sullivan.

Gen. Phahlane was on record to say he would comply with a competent authority tasked with conducting investigations – statements were also issued in this regard. He tried his best to comply with an illegal investigation conducted against him and he had at no stage interfered with such investigation. Mr McBride continued to say he was approached by Mr O'Sullivan with the complaint but this could not be true because the two had a close relationship, as would be demonstrated in the presentation. Gen. Phahlane felt it natural that he had a relationship with service providers as he needed to engage all stakeholders – it would be unlawful for any service providers in the environment to do anything for Gen. Phahlane as a favour. He did not need favours as he was employed by the Service for the past 32 years and between him and his employed wife, R2.5 million was generated a year – he did not need favours.

Where was the IPID investigation against those Mr O'Sullivan said were corrupt because they did not suspend Gen. Vinesh Moonoo (former SAPS Divisional Commissioner: Detective Services)? This was the basis of the attack against Gen. Phahlane and it would be demonstrated in the presentation. Mr McBride disposed of a sworn statement to decorate Mr O'Sullivan – this statement referred to violent, criminal cases opened by either the Independent Complaints Directorate or its successor, IPID. He was shocked to read that there could be no doubt the conviction and 15-year prison sentence of the late Gen. Jackie Selebi (former National Commissioner of Police) was the end result of many years of hard work, doggedness and determination of Mr O'Sullivan and the pivotal role he played. This was said in a case of corruption and extortion where Mr O'Sullivan was a suspect. As soon as trouble was near, cases were withdrawn including one against Gen. Moonoo where Mr O'Sullivan alleged Gen. Moonoo was involved in various corrupt activities in respect of certain questionable characters that had strong connections with the underworld. Despite numerous requests from IPID, Gen. Moonoo refused to cooperate with the Directorate and hand over dockets from his office. Gen. Moonoo, by doing so, effectively silenced the investigation. This issue was raised with both Gen. Riah Phiyega (former National Commissioner) and Lt. Gen. Khehla John Sithole (former head of SAPS Visible Policing, now head of SAPS Protection and Security Services). A section 205 subpoena was then resorted to compel Gen. Moonoo to hand over the dockets in question – these were all statements by Mr McBride while he was under suspension in support of Mr O'Sullivan. Where was the independence of IPID in this regard?

If mention was made of Gen. Phiyega and Gen. Sitole who did not cooperate, what would then become of Gen. Phahlane? Why would he not be treated in the same way? The independence of IPID was out of the window. Mr McBride was in possession of a crime intelligence report conducted in the case against Gen. Phahlane. This report was handed to Ms Trent – how did Mr McBride acquire this report? Why was the report in the hands of private individuals? Mr O'Sullivan was allowed access to building plans of Gen. Phahlane's house and accounts/banking statements for analysis – where was the independence of IPID? Ms Theresa Both (working as a data analyst for IPID) was a private individual working for Fidelity Security Company – she too had access to personal information of Gen. Phahlane. Gen. Phahlane asked how he was supposed to remain quiet in the face of this.

Gen. Phahlane said IPID made many allegations to the Committee, as well as to the media. The Directorate should provide proof of the R8 million house of Gen. Phahlane.

Mr McBride urged the Committee to note that the presentation of IPID spoke only to interference – the Directorate refrained from speaking of other matters, cases and litigation in compliance with the directive of the Committee. It seemed as if that directive was no longer upheld because Gen. Phahlane waxed lyrical about everything except allegations of interference against him.

Mr Groenewald said the process did not work that way – IPID had the opportunity to present and the Acting National Commissioner should

be awarded the same opportunity while discussion would ensue thereafter. It was not fair that there was interaction from IPID at this moment.

The Chairperson pointed out that ample opportunity would be afforded to all. He agreed that the core issues be adhered to and reference should not be made to other issues which were not before the Committee.

Gen. Phahlane reminded the Committee that this was the first opportunity he was afforded to talk – IPID had been before the Committee and the media talking about him while he decided to remain silent. This was now his opportunity to respond to IPID to interference and related issues. He did not understand why every SAPS member investigating Mr O’Sullivan was then investigated by IPID.

The Chairperson appealed for everyone to adhere to the directive of the Committee as outlined in the beginning of the meeting – this was the issue of interference by SAPS in the case of Gen. Phahlane.

IPID Allegations against Acting National Commissioner JK Phahlane

Gen. Mabula began the presentation by stating that it was incorrect for Mr McBride to allege that he and his team were being investigated by a North West unit – this was simply not true. The team from North West was comprised of five members of whom only one member had allegations levelled against him. The member appeared in court and the case was struck off the roll. No one from IPID had ever approached Gen. Mabula to inform him that he was a suspect in a case.

Looking at the threat assessment brief, on 31 November 2016, Maj. Gen. Mabula, was summoned to the office of the Acting Divisional Commissioner: Crime Intelligence for a briefing on a potential threat against the life of the Acting National Commissioner. The briefing was pursuant to a threat assessment conducted by the Security Intelligence Unit, functioning within the Division: Crime Intelligence.

The briefing revealed that the life of Gen. Phahlane was in danger based on the following reasons

- on 9 November 2016, a Ford Kuga, with registration number CK35XSGP, tried to access a residential estate, namely, the Sable-Hills Waterfront Estate, through the service delivery entrance, by posing as a police official

- the Acting National Commissioner resides in the same estate

- the individuals were stopped by estate security and, during an interview with occupants of the vehicle, it was discovered they were not police officials but in fact IPID members

- upon requesting the purpose of their visit, they declined to provide reasons

- the individuals requested to meet with the estate manager and were escorted accordingly. The IPID members interviewed the estate manager in the presence of the security manager and demanded copies of the building plans which belonged to the Gen. Phahlane.

Gen. Mabula then outlined the terms of reference for the investigation team. In order not to impede on the mandate of IPID, it was requested by Maj. Gen. Mabula that specific and clear terms of reference be drafted in order to commence with the investigation on the alleged threat. The mandate of the investigation was to focus only on the threat against the life of Gen. Phahlane. The investigation team was led by Gen. Mabula with members from the North West province. Progress reports were sent to the Acting Divisional Commissioner of Crime Intelligence. The investigation commenced at Sable-Hills Waterfront Estate and it was uncovered witnesses were either threatened or intimidated to depose statements.

The Committee was then taken through a synopsis of statements obtained (names of witnesses were withheld as the matter was *sub-judice*):

Witness One:

- deposed an affidavit (under oath) that from all members, all alleged to be from IPID, only one produced a business card of IPID (not an

appointment card). One introduced himself as Paul and another female identified herself as an attorney

-they demanded building plans of Gen. Phahlane and all documents relevant to the construction of the house

-no search and seizure warrant was produced allowing them access to such documents, instead the witness was threatened with imprisonment if he failed to hand over such documents

-a file was retrieved and both Mr O'Sullivan and Mr Mahlangu took pictures of the building plans

Witness Two:

-deposed an affidavit under oath that he met with persons driving the Ford Kuga with reg. number Ck35XSGP at the main gate and escorted the persons to the office of witness one

-witness two was then requested to take them to the house of Gen. Phahlane and was also questioned about the security personnel who were responsible for the protection of Gen. Phahlane

-Mr O'Sullivan questioned the witnesses about security details of the Acting National Commissioner, including, how many protectors were deployed at the house, whether the protectors were static or mobile, what firearms they were carrying and how many vehicles they were utilising

Witness Three:

-deposed an affidavit under oath that he stopped the white Ford Kuga at the service delivery entrance and was informed by the driver (Mr Mahlangu) that they were from SAPS and demanded entry to the estate

-after communicating with the main control room, the witness directed them to the main entrance

Witness Four:

- deposed an affidavit under oath confirming the registration number CK35XSGP was a Ford Kuga, white in colour, belonging to a private individual, Mr P R O'Sullivan, Identity Number 5508265700085, residing at 7 Janine Road, Sandowne, Johannesburg

Witness Five:

- deposed an affidavit under oath that Mr P R O'Sullivan had a registered firearm on his name which was a CZ 9mm pistol, serial number 56771

Witness Six:

- deposed an affidavit under oath confirming he was contacted by witness one and was informed that people from IPID were at their offices to demand building plans and other documents of the house of Gen. Phahlane

-the witness enquired if the IPID members were in possession of a valid search warrant or other valid documents, allowing them the power to seize the aforesaid items and was informed by witness one they did not produce the same

-Witness One informed him of the threat of arrest and he advised witness one against handing over documents without proper search warrants

The Chairperson interrupted Gen. Mabula to remind him of the focus of the Committee which was that of allegations of interference – he questioned where the presentation was going in terms of time.

Gen. Mabula responded that he wanted to make the information known to the Committee so the House could pass its own judgment in

terms of interference regarding the allegations levelled against the Acting National Commissioner.

Gen. Phahlane said the information was very important because it was alleged there was interference with an IPID investigation. A security threat assessment was conducted following the incident where Gen. Phahlane was attacked in Johannesburg. He was glad to be alive to relay the story. There was a link between this particular incident and the threat assessment so as to respond to the particular issue. People volunteered information and outlined what the plot was – this was the context.

Gen. Mabula continued with looking at the witnesses resuming with witness seven:

- deposed an affidavit under oath that he was responsible for building the house of Gen. Phahlane

-he was approached by four individuals who informed him they were from IPID. He was interviewed by Mr O'Sullivan concerning payments and was requested to furnish bank statements, which Mr O'Sullivan undertook to pay for

-the witness was threatened by Mr O'Sullivan who indicated the witness was not a suspect but a witness but that this could change should he not cooperate

-the witness was also sent SMSs by Ms Trent confirming such allegation and requesting him to avail himself for a meeting at the IPID head office in Pretoria. He refused after receiving advice

Witness Eight:

- deposed an affidavit under oath confirmed that he received a call from witness seven and that he was threatened by Mr O'Sullivan to cooperate with investigations, failing which he will be regarded as a suspect

-he was also informed that Mr O'Sullivan wanted to pay the bank charges in order to obtain the bank statements from witness seven

Witness Nine:

-deposed an affidavit under oath that during the interview by IPID members. He was threatened and intimidated by Mr O'Sullivan

-Mr O'Sullivan indicated the witness must be careful as he could lose his job due to the Acting National Commissioner and with the witness being a white person it would be very difficult for him to find a job should he be fired

Gen. Mabula then presented extract of emails sent from Mr O'Sullivan in a threatening fashion to Gen. Phahlane and others. A total of 49 emails were received. The emails showed Mr O'Sullivan took the lead in the investigation against the Acting National Commissioner and intimidated witnesses in the presence of IPID members. Emails included:

-“dear Acting National Commissioner of police this mail is between you and me. No one else knows that i sent this. Of course, if you share this with any one else, i will share this with everyone you can think of. You fix Moonoo and Krejcir and i will lose interest in you. If you dont, i'll be all over you like a bad fitting suit. If you try any dirty tricks, as your predecessors did, i'll eat you for breakfast and still be hungry afterwards. I mean that Phahlane, so don't think you are above the law. If i don't see positive action by you, before 2016-02-22, i shall start a process aimed solely at bringing you to book and will leave Moonoo alone”

-“Moonoo you are a protected crook, first by Phiyega, now it seems Phahlane...Phahlane...if you fail to turn the tide on Moonoo and Krejcir, i will open a docket against you for defeating...if i take Moonoo down before you i will be calling for your dismissal and imprisonment”

-“...This one is between me and you Phahlane. You know you are corrupt...soon the whole world will know...i am going to “enjoy putting you away and when i'm done with you, i'm doing after you wife”

-“You will not pull it off. You will fail, because i will make sure you fail. If one of your dirty cops comes anywhere near my witness, there will

be blood-shed (and it won't be the witness – I have stepped the detail up to four men with automatic rifles) and, if I can prove you were behind it, things will get bad (really bad) for you...oh, if anything happens to the witness, I will hold both you and Phahlane personally responsible”

Lt. Col. Dawood, then presented SMS correspondence of Mr O'Sullivan – on 13 February 2017, during the arrest of Mr O'Sullivan, a Nokia handset found to be in his possession, was seized and later taken to the technical support unit. Information was downloaded from the handset and a report generated by a forensic expert.

Mr Mbhele interrupted the presenter to determine which allegation from IPID the mountain of detail provided to the Committee was responding to.

Gen. Phahlane said it was linked to the lack of independence of IPID – it should be called “OPID”: O'Sullivan's Police Investigative Directorate.

Mr Mbhele found that SAPS was providing counter allegations and not responses to the allegations from IPID – this was his difficulty and problem with the presentation the Committee was currently hearing. Whether Gen. Phahlane thought IPID was independent or not was not the core item on the agenda – the focus should be responding to allegations from IPID in terms of interference by Gen. Phahlane in the case against him. The Member felt the presentation was really going off tangent.

The Chairperson said Members would be given ample opportunity to interrogate both presentations – Gen. Phahlane had the right to put his points across but opportunity would be afforded to debate this.

Mr P Mhlongo (EFF) understood that emotions were running high because of the nature of the allegations involved and the effect this had on one personally. The Committee however was not an arm of the judiciary which had the capacity to test admissibility of any evidence that was brought before it, in terms of the Criminal Procedure Act, and then find conclusive evidence as to the authenticity of what was being heard. Anyone could generate information for the purpose of mudslinging – the Committee truly needed to think about what could be done. The Committee did not have the capacity to venture into all these details and test admissibility of the particular evidence before it. There were findings by the Constitutional Court which the Committee needed to comply with in terms of ensuring the independence of IPID, as an organ of state. Allegations of interference should be taken to the judiciary where a prima facie case can be established. One needed to avoid pitting the organisations against each other. He could understand why the blood of Mr McBride and Gen. Phahlane were boiling given the amount of allegations levelled against each. The Committee needed to look at and provide a way forward.

Mr L Ramatlakane (ANC) appealed for the presentations to be concluded followed by questions and discussions based on the agenda of the meeting – Members would be able to make up their minds then.

Mr Groenewald felt IPID had many occasions to put its side to the Committee so the same should be allowed for SAPS.

Mr M Redelinghuis (DA) thought the Committee was treading on very dangerous grounds – if there were allegations about the independence of IPID, or about the fitness or propriety of the Executive Director, the matter would eventually have to come to the Committee and there would be hearings. IPID presented its case of interference in high-level investigations while the Acting National Commissioner and his team were treading on very dangerous grounds by turning the meeting into a witch hunt about the independence, or lack thereof of IPID. The Member cautioned SAPS to steer away from talk about the independence, or not, of IPID as it was already the subject of a letter the Committee received from the previous Police Minister to inquire the fitness and propriety of the Executive Director. Independence of IPID would also be the subject of the Amendment Bill as per the Constitutional Court judgement – it was not the appropriate time for the Committee to venture into that direction.

Col. Dawood concluded the presentation by looking at further SMSs of Mr Sullivan which put the independence of IPID in questionable light.

Gen. Phahlane highlighted that, for record purposes, there were also threats of intimidation against the SAPS team investigating the Cator Manor matter by IPID, including Mr Mahlangu and Mr McBride. Lt. Col. C Mangena, a Ballistic Expert from Pretoria, was issued with a

warning statement in this case by an IPID investigator. On 3 May 2017, Brig. Ncube, whilst obtaining the warning statement from members of IPID, was intimidated by Mr McBride and subsequently opened a case of intimidation against Mr McBride. Gen. Phahlane concluded by noting that he did not have the appetite to interfere in the investigations of IPID. He cooperated with the investigation but he had the right to institute civil litigation if he felt his rights were being violated. It was not his problem that IPID spent R900 000 on litigation against the Acting National Commissioner – had it done everything legally and within the spirit of the law, this would not have been an issue. IPID would still have to pay more because of the serious injustice being carried out.

Discussion

The Chairperson found the essence of the presentations heard were allegations of interference and the counter argument of IPID's lack of independence – all other related issues would either go to court or the NDPP. There were two institutions in the peace and stability unit the subject of today's proceedings – did the IPID Executive Director take up the issues with the Executive Authority? What was the feedback on the matter? Would it not be appropriate for Gen. Phahlane to totally withdraw from involvement in the investigation seeing as he was the subject of the investigation and was the Acting National Commissioner until the investigation was complete?

Ms Molebatsi was very depressed by what had been revealed today. She asked the Acting National Commissioner why the so-called North West unit, headed by Gen. Mabula, was established and if he had ever interfered in an investigation of IPID. To IPID, she asked who Mr O'Sullivan was and what type of work he was doing. Was he a South African citizen? Was Mr O'Sullivan working in the IPID investigation of Gen. Phahlane at any stage?

Ms Mmola asked Gen. Phahlane which witnesses were killed and arrested. Who was this Mr O'Sullivan? Did the IPID Act allow for cooperation with private investigators? She then asked Gen. Mabula who sent him to investigate IPID – was he appointed by Gen. Phahlane? The truth was needed because the Committee did not want to hear rumours. What was there to gain from investigating IPID? Was it because the Directorate was investigating Gen. Phahlane?

Ms Mabija wanted to understand who Mr O'Sullivan served and in whose interest was he clinging to the IPID investigation. Why was Mr McBride so closely linked to Mr O'Sullivan when IPID was meant to be independent? She wanted to understand the modus operandi and relationship between IPID and Mr O'Sullivan if IPID claimed to be independent. She said there was still a cloud hanging over the head of Mr McBride regarding the Gen. Dramat issue.

The Chairperson asked the Member not to become personal but to deal with matters at hand.

Ms Mabija withdrew her last point.

Mr Mhlongo said the Committee needed to be very objective and focused when dealing with the security forces. He made it clear the aspirations of men and women in blue were carried on the shoulders of their leadership – it was good this leadership came from within the Service and it was clear the confidence of SAPS members were increased as they were led by one of their own. This was compounded by the evolving SA democracy which sought to affirm black people after a long period of being treated unfairly in the country. When the head of the house was under attack, why did one not see the deputies from the central command headquarters? Instead provincial command was seen in the name of Gen. Mabula. This caused scepticism and made him question what was really happening. The head held the centre – if the head was under attack, the entire house should be up in arms to stand by their own but he did not see this. Why was this the case? The Member had his own reservations of Mr O'Sullivan stemming from the time of the Scorpions. He also questioned whether it was best for Gen. Phahlane to step aside while the investigation was ongoing because the matter affected the country and operations of the police.

Mr Groenewald thought the Committee needed to do what was fair in a balanced manner and what was best for the police services and SA. Having said this, Mr McBride did all he could even approaching the Constitutional Court to defend his rights – it was only fair that Gen. Phahlane also had this right to even go to the highest court to protect his rights. He summed up the matter at hand as follows: the allegation from IPID was that there was interference from the side of SAPS and the Acting National Commissioner. SAPS said there was no independent investigation and proved Mr O'Sullivan was part and parcel of the investigation having access to highly classified, secret documents which

was an impermissible breach of security. SAPS had the right to question breaches in security, as far as documents were concerned, and investigate it. If IPID claimed to want to conduct an independent investigation, as it had the right to, why were occurrences splashed all over the media if the investigation was independent? Why was the raid of Gen. Phahlane's house on television? This was totally irregular. Why were non-IPID members part of the investigation? He too laid complaints with IPID but had never been asked to accompany an investigation because it was not permissible. The moment this was done, independence was brought into question. Why was Mr O'Sullivan, and his associates, always busy with an investigation? The extract of the emails of Mr O'Sullivan showed the attitude he held. IPID could not claim to have an independent investigation if Mr O'Sullivan was involved. IPID was not above the law - who investigated or inspected IPID investigations? He needed clarity on whether the SAPS investigation came about in response to the IPID investigation or because of a security breach. The Acting National Commissioner was entitled to protection if his life was at threat. He appealed to IPID that he did not want to read anything further about this case in the media until it was finalised.

Mr Ramatlakane acknowledged there was now many issues before the Committee which were not necessary in terms of the central directive of the Committee, some of which it may not have the competency to deal with and would have to be dealt with at a different level. His fear from when this issue was initially raised was now confirmed by the presentations received from both sides - his fear was losing the focus of fighting crime. SA had been there before and had now come full circle. If these kinds of battles were being fought, when would the true focus on fighting crime return? In response to IPID's allegation of interference by SAPS in its investigation of the Acting National Commissioner, the response of SAPS was that IPID was no longer independent, had been captured, worked for other forces and therefore was no longer recognised. Both SAPS and IPID were creatures of law and this law must be respected otherwise there would be problems. There was a thread which ran through the SAPS presentation where the narrative was that IPID had something to do with the threat against the life of the Acting National Commissioner and there was a chain of communication presented which supported this narrative. If this was the case, should there not be an investigation on the threat, and action taken against it, in terms of the law? While much mention was made of Mr O'Sullivan, he could not run the security of the country. IPID would need to explain its exact role in the investigation. The Member was worried that the SAPS counter-investigation could be misconstrued as interference? If not interference, it could be seen as intimidation of those investigating. If so, SAPS could be seen to be in the middle of the problem. He did not understand how the witnesses of IPID could then be counter-interviewed by SAPS - this was an obvious problem because witnesses would then have to give statements on both sides. Was the viewpoint of the Acting National Commissioner on the "non-existence" of IPID communicated to the Executive Authority? The danger was that this view, as it is held at the top, infiltrated through the ranks and there would then be a free for all - this was where SA had been before. The focus needed to be on what was best for policing in the country - was it then the IPID head that was a problem? If so, this should not affect the institution because the Directorate must be protected and strengthened as a constitutional creature of law. The same applied to the Acting National Commissioner and SAPS - the entire environment should not be poisoned by the things that happened at the top. He was concerned about the link between Mr O'Sullivan, Gen. Moonoo and Mr Krejcir which represented some checkmate game of threats - what was the central matter here to be dealt with? Was this something to be concerned about? In summary, both institutions needed to be protected before they were left unrecognisable. The Member strongly recommended the matter required the urgent attention of the Executive Authority, if this was not done already.

The Chairperson noted the proposal to invite the Minister of Police to the Committee for a hearing on the matter at hand.

Mr Mbhele was concerned by the situation before the Committee, one which could not be afforded in the police portfolio in light of the trend of rising violent and organised crime and especially against the backdrop of a hijacking outside OR Tambo International Airport yesterday. He hoped the meeting today was to get as close as possible to the truth - the Committee was not a court of law and could not deliver any kind of verdict but it needed to get as close to the truth as possible to assist as best it can. Roping in the Minister would be one of the key actions. The Member was of the opinion that the current situation was precipitated by the former Minister of Police, Mr Nkosinathi Nhleko, politically enabling the questioning of the independence and integrity of IPID - this should not be forgotten. The SAPS presentation contained mainly counter allegations against IPID and not a direct response to the IPID investigation - the only direct response was on the team led by Gen. Mabula. The Member had difficulty assessing where the two testimonials converged, diverged and overlapped. Committee Members obsessed with Mr O'Sullivan should invite him to answer their questions.

Ms Molebatsi thought Mr Mbhele was out of order with his last point.

Ms Mabija agreed this was not a fair statement – Members had the right to ask their questions. Mr Mbhele himself was obsessed with Mr O'Sullivan and was projected it to Members.

The Chairperson appealed for Members to remain on track with the matter at hand especially as time was of the essence.

Mr Mbhele took the point of the Members. He then asked Gen. Phahlane if the so-called counterintelligence unit in the SAPS, whose establishment was announced last year in press conference by the Acting National Commissioner, was in any way involved in allegations heard from IPID and, if so, why. What was the nature and purpose of the team led by Gen. Mabula? He then asked IPID if there was proof of the allegations of torture as levelled against Gen. Mabula and others and proof that these individuals were aware of the allegations. To SAPS, he asked who the suspects were in the investigation by the Gen. Mabula team. To Gen. Phahlane he asked what the rationale and purpose behind the Section 205 application was to access the dockets given that he was the subject of the investigation – surely this was conflict of interest? He agreed the correction action would be for Gen. Phahlane to recuse himself while the investigation was ongoing. When the letter was received from IPID informing the Acting National Commissioner of the investigation, Gen. Phahlane indicated the letter did not say the investigation was against him personally but if this was so, why would IPID want to meet with Gen. Phahlane if he was not the subject of the investigation? What would the alternative explanation be for IPID wanting to meet with Gen. Phahlane? Did IPID have evidence that this follow up meeting with the Acting National Commissioner took place? Had IPID opened Section 23 charges against members of the SAPS they allege were interfering in the investigation?

Mr M Redelinghuis (DA) thought the situation between IPID and the Acting National Commissioner was absurd, unprecedented and shockingly revealed in such a public forum. To have two very important constitutionally-mandated bodies literally at one another's throats publically was shocking – how did they get to this point? While the Member had revealed his thoughts on Mr O'Sullivan many times in Committee to say he did not hold him in high regard and thought his reputation preceded him, the Member questioned the authority of SAPS to seize the phone of Mr O'Sullivan when he was arrested. Was there a warrant to seize the phone or appropriate authorisation to view its contents? When one was arrested, possessions would be kept aside but not intercepted – how was the additional authority to do so acquired? If there was no such authorisation, the evidence would not be admissible in court. What was the purpose of showing this information to the Committee? Was anyone in the lawful employment of IPID under investigated by SAPS and/or charged or arrested by SAPS? The Member did not hear the Acting National Commissioner, or SAPS, explain how he did not interfere in the IPID investigation – all he heard was a long list of reasons why it was permissible for SAPS to interfere and get involved. He was concerned by the words of Gen. Phahlane that he no longer recognised IPID – this was not the attitude of someone cooperating with an investigation. Such words also went against the constitutional duty of a National Commissioner and were especially worrying when all SAPS members eventually reported to the National Commissioner.

Mr Redelinghuis felt the case was personalised from the beginning. The best action would have been for Gen. Phahlane to recuse himself – it was not in line with due process and good governance for the Acting National Commissioner to be anywhere near SAPS while the investigation was ongoing. This was in line with basic public administrative principles and common sense. The IPID Executive Director also had a constitutional duty. The Member sought a written response to each point of IPID's allegation of interference instead of counter-allegations about the independence of IPID. Additionally, if the Acting National Commissioner was willing to cooperate with IPID, why did he only respond to the initial notice of the investigation in May 2016 when the letter was received in March 2016? Why was there a two month gap?

Ms Mmola asked if it was true that Mr Mahlangu was driving Mr O'Sullivan's car when he arrived at the property of Gen. Phahlane.

The Chairperson noted the firm proposal from Mr Redelinghuis that the Committee receive some direct responses in writing. Additional presentations could also be considered by the Committee along with additional responses.

Mr McBride, in response to the two month delay in the Acting National Commissioner responding to the initial IPID notice of investigation,

explained some IPID personnel, initially involved in the investigation, left the Directorate for SAPS in February/March 2016. There were clear attempts to initially derail the IPID investigation. Mr McBride revealed, for the first time on the record, that he met with Gen. Phahlane while the investigation was ongoing (meeting organised by Gen. Sibiyi) in which Gen. Phahlane attempted to ask Mr McBride about the investigation – Mr McBride refused to be drawn into talking about the investigation. Gen. Phahlane received a bravery award for a so-called attack on him in 2016 – different people who saw the Youtube video would come to different conclusions.

Mr Groenewald objected to the use of personal remarks – that point was totally irrelevant. It was this kind of attitude that led to the current situation. This was Parliament where people were looking for the issue to be solved.

The Chairperson agreed with this approach.

Mr Mhlongo found it strange that Members also appeared to be taking sides. If one side made accusations, it could not be expected that the other side not respond. However, the matter should not escalate to an attack on personalities. The recommendations of Mr Ramatlakane had some credence. It was also important not to have lame duck state organs which were useless. The Constitutional Court said the independence of IPID was fully guaranteed but further steps needed to be taken and rules of engagement ironed out to ensure there was no clash of mandates. He asked why other senior SAPS Generals from the headquarters were not present to support Gen. Phahlane. Was it because if Gen. Phahlane was suspended those Generals would vie for the position? Was there such conflict in the central policing command? If so, it would defeat their entire existence of fighting crime.

The Chairperson asked Members, IPID and SAPS to deal with the core issues.

Mr McBride said the point he was attempting to make, which Mr Groenewald took offence, was very valid and relevant.

Mr Groenewald again objected saying Mr McBride must understand there was no room in this meeting for personal remarks as they were irrelevant. Mr McBride was answering to the House.

Mr McBride said he was attempting to answer if he was just given a chance. During the incident he referred to (the meeting between him and Gen. Phahlane), there was no Gen. Mabula team appointed as there was no real concern about a threat. The concern of the threat only came when IPID started investigating – this was the key point. Letters were written to the Executive Authorities – former Minister Nhleko was written to twice, Minister Mbalula once and President Zuma once. It must be remembered that Gen. Phahlane was still an acting National Commissioner – sometimes when he was outside of the country, another General would be acting. Gen. Phahlane then could step aside as he was not the permanent appointed National Commissioner. For much less allegations, National Commissioners had been suspended and removed from their posts. Currently there was an ongoing matter and Mr McBride could not stop the media from writing stories because the media was free in SA.

Mr Groenewald knew the media were free to report on what it wanted but his specific question was on why the media were always present at certain events like the arrival of investigators at the property of Gen. Phahlane – the media must have been informed in this case.

Mr McBride said the so-called threat or breach of security was not reported to SAPS protection services but was reported to the team of Gen. Mabula – this was not the standard operating procedure. This threat was being used to delegitimise the IPID investigation – why could the investigation not be carried out? Why must it be nipped in the bud? Mr McBride was now being charged because he asked who gave the North West team to come from that province to Gauteng to question IPID investigators – the lack of answers indicated sinister motives. Why would a senior General come to another province where he was not deployed? Why would it be necessary?

Mr McBride said Mr O'Sullivan was a South African citizen with dual, or maybe more, citizenship. He provided IPID with information on a number of issues some of which were agreed with while others were not. Yes, Mr O'Sullivan did assist with some of the statements – of the 67 statements in the Gen. Phahlane investigation, Mr O'Sullivan assisted with drafting three of the statements. The assistance then of Mr O'Sullivan was miniscule. He reminded the Committee that POPCRU brought the complaint to IPID – POPCRU was still being victimised by the Acting National Commissioner after the complaint was laid about defective forensic equipment.

In the early hours of the morning of June 2006, a body was brought to hospital. This person was alive just 24 hours prior when he was picked up from his home without any injuries. The doctor on duty refused to take the body because rigor mortise had already set in which meant he had been dead for two to three hours already. This person was in the custody of Gen. Mabula. According to the post mortem report, the injuries included to the mouth, hands tied and death by asphyxiation – this was consistent with torture. There were a number of similar such cases. There was a decision to prosecute in this case but it was struck off the roll. This same unit was used to arrest Adv Gerrie Nel (previous prosecutor with the National Prosecuting Authority) and Gen. Johan Booysen (former KZN Hawks head) – this same unit was conducting surveillance on IPID but the Directorate did not mind because it had nothing to hide.

IPID was not above the law – when Mr McBride and Mr Sesoko were charged, they faced the process head on. Similarly, there was no real case and evidence yet warrants of arrest were issued – there was no cloud hanging over the head of Mr McBride in this regard. For the record, Gen. Dramat was removed unfairly and unprocedurally.

Ms Mmola interjected to note the Chairperson ruled other matters, such as the removal of Gen. Dramat, should not be brought up by Members so Mr McBride should also refrain from doing so.

Mr Sesoko highlighted the crux of the issue was whether there was interference with the IPID investigation or not. Parliament passed the law which said IPID must investigate and oversee SAPS members. When IPID started investigated, SAPS members then in turn investigated IPID – this could never be the norm. This was also not to say IPID and its investigators were above the law but it simply could not happen that when IPID investigated SAPS members, those members in turn formed teams to counter-investigate IPID where even some members of the team were already under investigation by IPID. A reasonable person will see there can never be any objectivity in such an investigation because the intention was clear i.e. to thwart what IPID wanted to achieve. This offended the work Parliament had done in passing the IPID Act. As long as police officers were allowed to investigate IPID members or interfere with an investigation, IPID would never be able to conduct an investigation independently. If there was concern about the security of the National Commissioner, why did Gen. Phahlane not approach Protection Services? The necessary investigation could then be done from the side of that Division. When IPID investigations were complete, it was sent to the NPA to decide on prosecution. If the prosecutors were of the view that IPID conducted an illegal investigation, the NPA would make that call – it was not for the suspect in the case to make this judgement. This was at the core of what IPID was raising.

The Directorate wrote to the former Minister on the issue because of concern of interference with its investigation and to inform the President of these issues and to consider placing Gen. Phahlane on special leave so that IPID could conclude its investigation –this was not to say that Gen. Phahlane was guilty of any offence but was to say the investigation should run its course without being impeded so that the prosecuting authority could make its decision at the end of the day. If not, the work of IPID would never take place as it would continue to face interference and the IPID Act would be defeated. Prior to IPID, there was the Independent Complaints Directorate (ICD) but the ICD Act was ineffective. Such interference of an IPID investigation was unprecedented and had never happened before and this was why the matter was before the Committee today. How could someone already under investigation by IPID be expected to conduct an objective investigation against IPID members? This could never be and was at the core of the issue.

Mr Mahlangu said it was true that he drove the car of Mr O'Sullivan. The reason he did this was because his bakkie only had two seats and he was with his colleague. Mr O'Sullivan's vehicle was bigger. As the complainant, Mr O'Sullivan said he had evidence to show the IPID investigating team – Mr Mahlangu had a duty to listen to all complainants whether he was a foreigner or not.

Ms Mmola asked where the other IPID vehicles were. Were all the other IPID vehicles two-seaters? Why did Mr Mahlangu not go back to the office to collect another vehicle?

The Chairperson cautioned Members about the lack of time as another meeting was due to take place in the venue.

Mr Mahlangu replied that he was already at Sable-Hills Estate – he could not leave there and return to the office to fetch another vehicle as it was about a 40 minute drive. As far as he knew, there was no crime or offence in using a complainant's car.

Ms Mmola asked why the two did not then follow each other.

The Chairperson, in the interests of time, asked that further responses be supplied to the Committee in writing.

Mr Groenewald noted he asked a specific, pertinent question on the media as to who informed them of all the operations so that they could arrive with cameras, which was unanswered.

Mr McBride did not know who informed the media. He understood that when the decision to go to Sable-Hills was taken, Gen. Phahlane was informed in his office via telephone. There were many people around at the time.

Gen. Phahlane said the media was convened in the IPID offices the morning of the raid of his house. This was why investigators were seemingly very impatient. Gen. Phahlane was at the NPA for another engagement at the time, for the record.

Mr Groenewald asked if this meant Mr McBride had just lied to the Committee.

The Chairperson asked Members to refrain from making inferences.

Gen. Phahlane highlighted that he did not appoint himself as Acting National Commissioner – he was appointed by the President. For three years he did not have leave because of the focus on the work he was doing. He was not glued to the chair of Acting National Commissioner and he possessed what could not be taken away from him. If it was in the interests of the country and there was good reason why he should be at home, he would have taken the liberty to do so. This investigation was directed at Gen. Phahlane personally. To bring in POPCRU was actually a cover up – the investigation was in the main sanctioned by Mr O’Sullivan. The issue involving POPCRU was already discussed with the Committee. Gen. Phahlane already undertook civil litigation and the matters were before the court. It was interesting that IPID could not tender any evidence to support their baseless allegations which were already found to be baseless.

Gen. Phahlane would not dignify some of the statements made. IPID knew very little about SAPS because if there was a threat assessment Protection and Security Services only provided protection while Crime Intelligence conducted the threat assessment the outcome of which was provided to Protection and Security Services. He did not understand the Standard Operating Procedure referred to – perhaps it was from “OPID”.

Gen. Phahlane made it clear he was not leading any investigation – Gen. Mabula made it clear in the presentation that he was summoned by the Acting Divisional Commissioner: Crime Intelligence following the threat assessment conducted. The Acting Divisional Commissioner: Crime Intelligence wrote to the Provincial Commissioner to ask for people to deal with this particular threat picked up in the assessment. The task team was not put in place after the IPID investigation began. Gen. Phahlane was attacked on 5 June 2016 and in July the work had started. To suggest to Parliament that the team was put together for the IPID investigation was farfetched. SAPS were a national competency and the Acting National Commissioner could draw resources from anywhere else in the country if he needed capacity. For example, it was not only the Limpopo police who dealt with the situation in Vuwani – resources were drawn from other provinces, if available, to bolster capacity. Gen. Phahlane did not need IPID’s mandate to deploy – this was the prerogative of the National Commissioner. IPID too drew resources from other provinces to deal with its investigation. The Acting Divisional Commissioner: Crime Intelligence had the mandate to secure services from around the country. The Deputy National Commissioners were not present today as they were busy in other provinces as the work of SAPS continued.

On 14 November 2016, Gen. Phahlane was in Mpumalanga launching the Safer Festive Season campaign. At around 15h00, he was called and informed that Mr O’Sullivan wanted access to his home. Gen. Phahlane then made contact with the estate manager to ask why he allowed access to the home of Gen. Phahlane, which was a security estate, without his knowledge as was standard procedure in an estate. This was turned around to say Gen. Phahlane had been interfering with witnesses when he in fact never spoke to the security manager. There could not then have been interference. The reason for the two month delay in responding to the letter was because Gen. Phahlane waited for IPID. He finally responded to arrange a meeting because he was sick and tired of the string of emails, 49 in total, directed to him. There was no reason for Gen. Phahlane to not have met with IPID but he reiterated that to date, he was yet to meet with the IPID investigators.

In SAPS there was no North West unit because the Service did not operate in a federalist way – Gen. Mabula was a member of a national competency i.e. the SAPS. He was appointed by the Acting Divisional Commissioner: Crime Intelligence to pursue this investigation. Just as IPID were empowered to investigate the SAPS, the Service itself was empowered to investigate – it would not be a spectator if there were allegations against it. Gen. Phahlane put it on record that each and every member of the Service who investigated Mr O’Sullivan was in turn investigated by IPID – this included asking members for dockets including from one of the members present in the meeting.

Gen. Phahlane did not know of any witnesses who had been killed. There were a number of allegations made by IPID which still had not been substantiated such as the R8 million paid for the house of Gen. Phahlane and R80 000 for a sound system. Gen. Phahlane would continue to cooperate with a competent authority in terms of the law – despite everything already mentioned, Gen. Phahlane continued to cooperate with IPID. He even allowed the investigators to interview his 11 year old daughter - despite the fact that she is a minor, the insensitivity of IPID called for the interview to go ahead. Gen. Phahlane did not withhold anything because he had nothing to hide. All his information was relayed in the media such as his house and vehicles. It was unfortunate that people viewed the team, headed by Gen. Mabula, as a counter-investigating team – the establishment of this team was informed by a security threat assessment flowing from the attack Gen. Phahlane was confronted with. People may joke about it but there was a direct link between this threat and Mr O’Sullivan. If Gen. Phahlane was killed on that day some people may have celebrated but he was thankful that God was great on that day and that he came out alive – he was grateful for his wife and the woman at the spa for their help.

The IPID Act would be respected as it was a law of the country but this law should be applied to the letter – it should not be used selectively. Despite what IPID was dishing out to SAPS members, including harassment, there would be cooperation with the Directorate to ensure the IPID Act was implemented. Somewhere SAPS and IPID would find a point of convergence and sense would prevail.

In terms of the Gen. Moonoo matter, Gen. Phahlane was supposed to take instructions from Mr O’Sullivan, out of nowhere, to suspend, dismiss and send Gen. Moonoo to jail. Gen. Phahlane refused to do be captured in such a way – this capturing was a serious problem. SAPS did not have a counterintelligence unit but had a counterintelligence component which was detached from the Crime Intelligence environment and made a Division – the mandate of the component was clear in that it was not a component informed by an investigation into the Acting National Commissioner. It was unfortunate that Mr O’Sullivan had access to the classified security threat through Mr McBride – security threat assessments were not supposed to be pedalled in the public domain. The team led by Gen. Mabula were comprised of senior, seasoned investigators – Gen. Mabula was a detective, including in the Hawks environment. Through feedback from the Acting Divisional Commissioner: Crime Intelligence, Gen. Phahlane was pleased to hear the team had confined itself to its mandate as determined in the terms of reference when the team was appointed.

Gen. Phahlane said his privacy had been invaded for far too long – personal information, like bank statements and building plans, were already in the hands of Mr O’Sullivan. There was no longer a reason for Gen. Phahlane to launch a Section 205 application. The lawyers of Gen. Phahlane had launched a separate process to gain access to the documents, after they were denied access, but this was between the court and the lawyers.

Gen. Mabula confirmed him and his team were appointed by the Acting Divisional Commissioner: Crime Intelligence – the team provided feedback to her. He did not have any interest in the matter being investigated by IPID – when witnesses were interviewed, they were told the process was not a duplication of IPID’s as the team was confined to the threats levelled against the Acting National Commissioner. In terms of individuals already charged in the matter, Mr O’Sullivan, Ms Trent and Mr Mahlangu were served with summons – the matter of Mr O’Sullivan and Ms Trent were postponed. There were conditions and the two were granted bail.

The Chairperson, in closing, again requested that institutions appearing before the Committee provide it with presentations ahead of the meeting because then the Committee could have anticipated the irrelevant issues instead of sitting through it. It was also important to maintain a certain level of conduct when appearing before the Committee. It was critical to call the Minister before the Committee. Any further clarifications and/or submissions, in addition to today’s presentations, could be made to the Committee within 10 days for it to be processed. The Committee appealed for there to be adherence to the relevant legislation, in terms of both the IPID and SAPS Act. There

should be no interference in the work of oversight institutions – if there was a difference in the approach taken, the courts, and other constitutional mechanisms, can be used as recourse. There must be cooperation. Public confidence in IPID and SAPS was critical – the Committee would monitor this very closely as it was empowered to look into any matter of concern within the policing portfolio. The two institutions should reflect on the matter on hand because it was vital there was confidence in the institutions, that they acted within the law and acted within the relevant standard operating procedures. The Chairperson reiterated the importance of meeting with the Executive Authority to deal with the issue in that way.

Meeting adjourned.