

PRESENTATION TO THE PORTFOLIO COMMITTEE ON POLICE

Mr Nkosinathi Phiwayinkosi Thamsanqa Nhleko
Minister Of Police
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PC POLICE
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Background

- Upon assuming duty I was inundated with files of alleged misconduct, corruption and atrocities within the South African Police Service.
- As the Minister of Police, and with my oversight role over the South African Police Service and the DPCI derived from the Constitution, I felt duty bound that I could not ignore the allegations.
- In October 2014, I established a Reference Group to look into these allegations and to provide me with a report that will enable me to act from an informed base. The Reference Group provided me with their first draft report in December 2014.



Background continued

- Amongst the issues brought before me were allegations of the renditions or illegal arrest and unlawful deportation of Zimbabwean nationals, which had occurred in November 2010.
- Two Zimbabwean nationals who were unlawfully handed- over were subsequently murdered allegedly by the Zimbabwean police.
- It worried me that if it were true that the members of the DPCI were involved in “smuggling out” from the Republic, human beings, whether South Africans or not, in order for them to be tortured and killed outside the Republic, then our constitutional democracy is in danger and the rule of law subverted.



Background continued

- I was reminded of the apartheid era cross border raids in which freedom fighters were abducted, kidnapped and killed without a trace.(Lupara Bianca).
- Allegations made in witness statements in the IPID report as well as other documents, which cannot at this stage be disclosed, place members of the DPCI and its Head at the centre of this alleged illegal rendition.
- A return to that vile past would sadly be doomsday for our constitutional democracy and the rule of law, especially if perpetrated by members of an agency such as the DPCI, which is established by statute specifically to uphold the Constitution and protect our freedom.



Suspension

- In order to further assess the merits of the allegations, particularly against the Head of the DPCI, I needed to conduct preliminary enquiries to consider whether the allegations were substantive enough to bring the matter before Parliament, whose powers should only be invoked if the intention is to remove.
- Such enquiries needed to be conducted given the IPID report that had been referred to the NDPP for further investigation.



Suspension continued

- Clarity also needed to be attained as to why the DPCI did not deem it necessary to place such a priority crime at the top of their investigation list, taking into account that the South African government's standing and obligations, and role in terms of SADC protocol were at stake.
 - **Article 5(j) of the SADC protocol provides that extradition may be refused if the offence for which the extradition is requested carries a death penalty.**
- Whereas there is no extradition treaty between Zimbabwe and South Africa, an application could have been made in accordance with the statutory law of Zimbabwe, but it was not done, hence it was illegal.



Suspension continued

- South Africa is party to the following international instruments:
 - **1947 Geneva Convention.**
 - **1951 Convention and Protection Relating to the Status of Refugees.**
 - **1969 Organisation of African Unity, Convention Governing the Specific Aspects of Refugees problems in Africa.**
 - **1984 Convention against Torture and other Cruel, inhuman, degrading treatment and punishment, which incorporates the principle of “Extradite or Prosecute”.** This principle requires signatories to this convention to either extradite or prosecute.



Suspension continued

- I regard accountability as the hallmark of a constitutional democracy, especially from a high office such as the DPCI.
- Similarly, I regard myself as accountable within the parameters of my statutory powers, and I am therefore compelled to act against such heinous crimes.
- To me it does not matter whether the victims are of Zimbabwean origin or South African. Life is life and must be valued equally irrespective of one's social status, origin, colour, sex or creed.



Suspension continued

- For these reasons, I deemed it important that the allegations be examined further and I proceeded to suspend Lieutenant General Anwar Dramat with full pay and benefits on 23 December 2014. (Expansion).
- In terms of section 3 of the Public Service Act I am the employer in the Public Service within the Department to which I am the executive authority. Lt General Dramat is a senior management employee and the SMS handbook is applicable unless excluded by legislation.



Suspension continued

- The Labour Relations Act does not exclude him from its application. As an employee he is subject to the ordinary discipline that an employer is entitled to mete-out on an employee, subject to the safeguards the Constitutional Court has already alluded to in its judgement of the 27th November 2014.
- I contend that I have acted within my powers and the law when I placed the Head of the DPCI on precautionary suspension with full pay.
- My right to suspend was challenged by the Helen Suzman Foundation on 9 January 2015, and this matter is currently before court.
- The South African public expects the unit to combat priority crimes; and yet it is it and its members who are implicated in commission of such crimes. I acted within the law. I followed a fair process to suspend the Head of the DPCI.



Human Rights, Institutional Arrangements and Political Partisanship

- Since this issue arose, a lot has been said
 - One angle suggested, is that political partisanship were the real motivation behind the steps being taken.
 - Another is that the Minister is in contempt of court. How can I could have been in contempt of court when I did not use the deleted section in the SAPS Act?
- Let me assure Honourable Members that neither of the above are true.



Human Rights, Institutional Arrangements and Political Partisanship

- The Charter of the United Nations adopted on 26 June 1945 in San Francisco binds humanity to promote and reaffirm its faith in:
 - Fundamental human rights and freedoms for all without distinction as to race, sex, language or religion.
 - The dignity and worth of the human person.
 - The equal rights of men and women.



Dehumanisation of Blacks in general and Africans in particular

- Further it obliges humanity to:
 - Establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
 - Promote social progress and better standards of life.
- The 1910 Act of the Union established the principle of racism as the founding basis for South African law.



Dehumanisation of Blacks in general and Africans in particular

- Three years later this was accompanied by the Native Land Act of 1913, placing the seal of state and law on the military conquest and dispossession of our people.
- Over 200 years of wars of conquest destroyed African societies, building in their place, a thriving capitalist system based on mining, commercial farming and secondary industry, controlled and dominated by a class drawn from the white minority.



Dehumanisation of Blacks in general and Africans in particular

- The state institutions of the time, laws and apartheid practices were simply devices developed to ensure capital accumulation through the exploitation of the black majority as a source of cheap labour.
- Through this process, Africans lost their freedom, land, means of livelihood, much of their skills and their dignity. They became wanderers and beggars in their land. In the eyes of some among the coloniser, the African became so less human, that they would shoot her, and state that they saw a baboon. That is how deep the scorn of hatred and prejudice against the African can be.



Dehumanisation of Blacks in general and Africans in particular continued

- Having taken into consideration our history, I am convinced that because the lives at stake are those of Black people, and therefore, all what the erstwhile colonial forces can do is prop-up the debate about the institutional arrangements of the Hawks. Had the lives involved been those of white people, the debate and headlines would have been about human rights.
- This is the sad reality we must fight and defeat, for our immediate aim as a country remains the creation in practice, of a truly just and democratic society, that is able to sweep away the centuries-old legacy of colonial conquest and white domination. We must ensure that apartheid ideas and practices are not permitted to reappear in new or old forms.



In defence of human rights

“ I stand for simple justice, equal opportunity and human rights. The indispensable elements in a democratic society – and well worth fighting for” - Helen Suzman

- Helen Suzman would have spoken on the side of the victims and I believe she would have upheld the observance of fundamental human rights regardless of the victim’s skin colour.
- It is no accident that when the issue is about fundamental human rights, neo-colonialist apologists and some of their media sympathisers elect to frame the matter as if it is about institutional arrangements and political partisanship.



In defence of human rights continued

- They have no history of real commitment to human rights. Their racial prejudices and partisanship blinds them from comprehending and appreciating the essence of processes, leaving them to see only the appearance of phenomena.
- They benefitted from crimes against humanity, and for that they are not going to apologise. They are not ashamed of having been beneficiaries of a deeply shameful past. Their lack of participation in real efforts aimed at eradicating the legacy of oppression and exploitation, coupled with their half-hearted commitment to building a better future for all, deforms their perspective.



In defence of human rights continued

- In 1989 the African National Congress produced a document titled, Constitutional Guidelines for a Democratic South Africa. The document states among others that, “the Constitution must give firm protection to the fundamental human rights of all citizens.”
- Despite all the political and legal obstacles that are being placed on our path, we shall discover the truth. We shall certainly dig deep.
- I am certain that none among us, is fooled by the wolf in sheep’s skin. And fortunately for us, the majority of our people knows the truth, and we are on the march to realise, in lived reality, the noble aspirations embodied in our Bill of Rights.



Conclusion

- It is important that as South Africans we should begin to confront many of our ills in society, among which are the following:
 - The method of grading functions in order of importance is fraught with contradictions, unscientific, sectarian driven and short termist.
 - It is based on unscientific assumptions and based on beliefs in beings that have super natural powers; and negates the historically proven fact that the people are their own liberators.
 - It makes a mockery of the principle of accountability, and reduces the concept and practice of democracy to state institutions. It, completely, kills the sovereignty of the people, under the pretext of the so-called best practices.



Conclusion

- As society, we are confronted by a bastion, well resourced and well educated in colonial culture and values. A culture deeply rooted in exclusivism, clothed in the so-called protection of minority interests. A bastion hell bent to undermine the will of the people to protect its ill gotten immense wealth.
- As Ernest Barker puts it; **“We shall accordingly hold that if law is to have value as well as validity- value all round, and not some single ‘broken arc’ of value called by the name of solidarity or by some such other name- it must satisfy, in the last resort, the demands of the general moral conscience, issuing and expressed in a general all- round notion of what is just and right in the conduct of human relations”**.
- This land, South Africa, is the land of our forefathers; therefore, we all have an obligation to rise-up and fight an incursion of wild-life morality into our society. **Certainly, not in our name.**