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**SAPU SUBMISSION TO THE PORTFOLIO COMMITTEE OF POLICE**

**2 MAY 2017**

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| **MPHO KWINIKA** |
| **PRESIDENT** |

 **SUBMISSION BY THE SOUTH AFRICAN POLICING UNION (SAPU)**

**2017/2018**

**INTRODUCTION**

Honourable Chairperson and members of the Committee,

I greet you in the name of the South African Policing Union (**SAPU**).

Let me start by appreciating the invitation to appear before this august house and make our submission on the budget debate concerning the South African Police Service (**SAPS**).

Once more, our principle is that, where there are challenges, we raise them with the relevant authorities. We strive to constructively engage the authorities on the issues that require their attention in order to elicits the necessary corrections.

Honourable Chairperson, our submission touches on four programmes but will also focus on. Amongst others, the following:

1. Amendment of the South African Police Service Act 68 of 1995 (**Police Act**).
2. Compliance with Regulation 8 of the South African Police Service Regulations, 1964 (**Police Regulations**) regarding ranks in the SAPS.
3. Implementation of the National Development Plan (**NDP**): Vision 2030.
4. Filling of critical vacant and funded posts.
5. Corruption cases against the members of the SAPS.
6. Directorate for Priority Crime Investigation (**DPCI**).

**AMENDMENT OF THE SOUTH AFRICAN POLICE SERVICE ACT 68 OF 1995:**

For some time, there has been submissions to this august house that the Police Act is wanting because it precedes the Constitution. Promises have been tabled before this house to overhaul the Act but were not fulfilled. We are aware that at some stage task teams were put in place by the SAPS to review the law but was interrupted and did not complete its assignment. The Act has been amended in piecemeal fashion on specific sections. We are not in any better position today. Our view is that the Act should be revisited in its entirety and not only visit it when the lacuna has already caused some damage. We appreciate the fact that the Act is lined up for consideration this financial year.

One of the provisions that needs to be corrected, is the appointment of the National Commissioner, both in an acting and permanent capacity. May I emphasise that the gap was diagnosed by the National Planning Commission (**NPC**) which inserted it in Chapter 12 of the NDP. It is regrettable that, since the adoption of the NDP in **September 2012**, nothing tangible has been done to correct the law. The NDP remains nothing more than a mere plan. We call on the new leadership to see this commitment through. It can no longer be an excuse to argue that the Act precede our Constitution. As a law maker, the power is invested in your hands.

May we use this opportunity to commend the current Minister who, in correcting the anomaly regarding the post of National Head of the DPCI, observed the provisions of section 17CA(12)(a) of the Police Act. This section provides as follows:

“*Whenever the National Head of the Directorate is absent or unable to perform his or her functions, the Minister shall appoint the Deputy National Head of the Directorate as the acting National Head of the Directorate*:”

It is worth recalling that section 6(4) of the IPID Act 1 of 2011 provides an equally effective provision which reads:

*“(4) When the Executive Director is unable to perform the functions of office, or during a vacancy in the Directorate, the Minister may designate another person to act as Executive Director until the Executive Director returns to perform the functions of office or the vacancy is filled.”*

Unfortunately, the Police Act is silent about the appointment of the acting National Commissioner. Section 6(1) of the Police Act provides that:

“*There shall be a National Commissioner of the Service who shall be appointed in accordance with section 207(1) of the Constitution of the Republic of South Africa, 1996*.”

Section 7(1) of the Constitution of the Republic of South Africa, 1996 provides that:

*“The President as head of the national executive must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service”’*

How this power is to be exercised, is not specified. To overcome the challenge created by this silence, Chapter 12 of the NDP recommended as follows:

“*The National Commissioner of Police and Deputies should be appointed by the President on a competitive basis. A selection panel, established by the President, should select and interview candidates for these posts against objective criteria. The President should appoint the National Commissioner and Deputies from recommendations and reports received from this selection panel. This would enhance the incumbents’ standing in the eyes of the community and increase the respect accorded them by their peers and subordinates”*

There is no better time to action the spirit of NDP than now. The competitive element of the vision can only happen if the posts are advertised and interested candidates given an opportunity to compete with others. The time to advertise the National Commissioners post is now.

The absence of the law to guide our actions has inculcated confusion and unintended disregard of protocol advocated by the Standing Orders and Regulations in the Service. We have seen a Major General being appointed to act as the National Commissioner above twenty-nine of his seniors. He had to be irregularly promoted to a rank that did not exist to enable him to command his seniors. We have seen Divisional Commissioners acting as National Commissioner above their seniors which are Deputy National Commissioners. You can imagine as to who must salute as the protocol dictates that subordinates must salute and take orders from their superiors. If the seniors salute and take orders from their subordinates, they shall have violated the oath that comes with Commission conferred by the President. If they refuse to take orders from a subordinate, they may be viewed by those who did the appointment as undermining their authority. We have seen such acting subordinates appointing their seniors and thereafter reverting to their junior positions and start taking instructions from their appointees. This undermines discipline invested in the Service.

This unhealthy state of affairs can be remedied by amending section 6 of the Police Act to make similar provisions as section 17CA(12)(a)- (e) that guides appointment in the DPCI.

**COMPLIANCE WITH REGULATION 8 OF THE SOUTH AFRICAN POLICE SERVICE REGULATIONS, 1964 REGARDING RANKS IN THE SAPS:**

The ranks in the SAPS are governed by the South African Police Service Regulations, 1964. These Police Regulations were amended several times in the past. Some ranks were created, abolished or recreated. It is important to know at any given time as to what the ranks are.

Currently, we have an unpleasant state of affairs where some senior managers are called by the ranks that do not exist. We specifically refer to a rank of **Lieutenant General**. It existed in the **1990[[1]](#footnote-1)** amendment as a rank **below** the Deputy National Commissioner and was abolished in **1995**. Police leadership have agreed in the labour court cases of the two recently discharged Deputy National Commissioners that the such rank does not exist.[[2]](#footnote-2) This is a judgement that must be applied to all other ranks that are still called as such.

The current **general staff** ranks, **in order of precedence**, as approved by the Honourable Minister Nhleko in the Regulations as amended in 2016 are the following:

* *General (appointed as National Commissioner)*
* *Lieutenant General (appointed as Deputy National Commissioner).*
* *Lieutenant General (appointed as Divisional Commissioner).*
* *Lieutenant General (appointed as Regional Commissioner).*
* *Lieutenant General (appointed as Provincial Commissioner).*
* *Major General*[[3]](#footnote-3)

Members of this august house will recall concerns raised about the previous Head of Communications, Solomon Makgale, who was called Lieutenant General. Until April this year, we had the National Head of DPCI and Deputy National Head of DPCI who answered to the rank of **Lieutenant General**. As the Honourable members will observe and appreciate, such ranks do not exist. It creates some problems in understanding seniority. There is neither a rank of Lieutenant General (appointed as National Head of DPCI) nor a Lieutenant General (appointed as Deputy National Head of DPCI). The questions to be answered are, is the National Head of DPCI senior to the Deputy National Commissioner, Regional Commissioner, Divisional Commissioner or Provincial Commissioner? Precisely where does it fit in terms of seniority? These questions cannot be answered by the regulations.

Although Regulation 8(2) can have some remedy for the National Commissioner in finding a home for a rank that does not exist, the same provision does not extend to the Minister which complicates the situation in the DPCI.

If there is a need to have a rank not listed in the list of ranks, the Minister should simply amend the Regulations. The Minister can equally extend Regulation 8(2) to include the Minister in respect of the DPCI. Until that is done, no one should be called a **Lieutenant General** other than what is listed in the Regulations.

Honourable Chair and members, the ranks should never be taken for granted. In the case of the relieved National Head of the DPCI, he was a Major General all the time until he was addressed Lieutenant General after the appointment. Strangely, when the post was advertised, the rank associated with the position was never stated. With the declaration of nullity which means “**as you were**”, the officer resumes the rank of Major General with its package, with no additional benefit brought by the putative appointment.

How did the complications of the rank of National Head and Deputy come to bear with the same rank that was never complicated in the era of Anwa Dramat? The Honourable members will recall that section 17C(2)(a) of the Police Act as amended by the South African Police Service Amendment Act 57 of 2008 **provided** that:

“*The Directorate comprises- the Head of the Directorate who shall be a Deputy National Commissioner appointed by the Minister in concurrence with Cabinet*.”

Section 17CA(1) of the Police Act as amended by the South African Police Service Amendment Act 10 of 2012 **provides** that:

“*The Minister, with the concurrence of cabinet, shall appoint a person who is- (a) a South African citizen, and (b) a fit and proper person with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as the National Head of the Directorate for a non-renewable fixed period of not shorter than seven years and not exceeding ten years*.”

This current provision is silent about the rank. When Dramat who was a Deputy National Commissioner (DNC) in terms of the 2008 version was relieved of his duties, the post was advertised without a rank coupled to it. When the appointment came, the incumbent is donning non-existent rank. The Police Act must state the ranks to be carried by the incumbent which must be one of those approved by way of Regulations. The ranks can probably be DNC and Divisional Commissioner (DC) respectively. If these ranks are not intended, then the regulations must be amended to make provisions for such ranks.

Before the post is to be filled, a regulated rank must be stated upfront in an advertisement. Our submission in respect of the National Head applies *mutatis mutandis* in respect of section 17CA(4) relating to Deputy National Head.

 **IMPLEMENTATION OF THE NATIONAL DEVELOPMENT PLAN (NDP):**

The NDP was adopted in South Africa in September 2012. It was after the appointment of the current National Commissioner. Her term is expiring in June 2017. The question is, “is the spirit of the NDP going to be realised in selecting the next National Commissioner? If that is not so, where must the fingers be pointed?” We are of the view that this august house should guide the process and avoid misdirection.

The failure to have a mechanism is not restricted to the National Commissioner but Deputies too. This august house is aware that a post of Deputy National Commissioner, Crime Detection has been vacant since **2015**. It is a critical vacant and funded post. The plan speaks of filling critical and vacant post within six months after advertisement. This one has exceeded the time frame. We submit that the period should not even exceed three months as the delay affect service delivery.

A practice of giving some officers **salary scales** of personnel in the next salary level circumvent the idea of reducing a top-heavy structure. It takes the resources that can ensure the appointments of junior officers into the pockets of senior managers. We are concerned about Brigadiers getting salaries of Major Generals. We are also worried about the appointments in terms of **Regulation 45** as it creates an element of allegiance to individuals. A *whatsapp* group that was designed by senior members was a repetition of the very same mistake that was advocating the **support** of General Phiyega.

**DETECTIVE SERVICES PROGRAMME**

We have observed that the Detective Service has removed the trial-ready measurement but the DPCI continue to measure it. We are not convinced as to why there must be disparities within the same programme.

What the measurements are not exhibiting, is the extent of the inability to detect suspects and withdrawal of cases after tracing of the suspects. This measurement is necessary to the setbacks in detection of crime. The SAPS 6 can be of assistance.

The lack of feedback to complainants is still a concern. The Crime Administration System (CAS) has not been designed to assist in this regard.

**DPCI**

The DPCI should not be allowed to become irrelevant. Last year it achieved a dismal 9% on organised crime whose target was 48%. This year, the achievement is below 23% mark even with a reduced target of 41%. There is no capacity to deal with organised crime. It has also failed to reach its target on corruption. This is exacerbated by the lack of capacity at Crime Intelligence. A resuscitation plan is needed for the HAWKS to become itself.

While acknowledging that the **SANEB** has been established in the gap created by the closure of **SANAB**, the focus on clandestine laboratories is not going to make real impact. The removal of quantity from the measurement of confiscated drugs will underplay the challenge and obscure financial impact of the scourge. The same applies to the removal of quantity in the measurement of liquor.

The lack of formal training in cybercrime will surely weaken our ability to respond effectively.

**ATTACKS ON MEMBERS OF THE SAPS**

The attacks on police officers remains a concern. Although there has been a decrease from **79** in 2015/2016 to **57** in 2016/2017, the number of police officials killed is still too high. There is a need to do more to reduce this figure.

**CORRUPTION CASES:**

Last year, we reported to this august house that there are 15 cases that have been swept under the carpet. The cases relate to 15 convicts who misrepresented their criminal convictions and got appointed in the SAPS or positions. This is fraud, perjury and contravention of section 68(2) of the Police Act. Instead of discharging them for this dishonesty, management condoned criminal convictions and kept them. In condoning the behaviour, management stated:

“*Condonation is recommended as these members were enlisted on the dates as indicated next to their names and it was only determined that they have previous convictions after enlistment. It is however recommended that CI should first determine and follow the correct procedures before enlisting covert employees*”

This precedent should not be allowed to prevail. This anomaly is now captured in a broadly publicised book by Major General Booysens. We regret to repeat this statement as the matter remains under the carpet. We have 15 convicts that are not redressed. They have committed deeds of dishonesty. We expected that when senior management detected their dishonesty, they will not unlawfully condone their criminality.

Regardless of condonations that allowed convicts to remain in the police, the criminal cases that were already opened cannot be swept under the carpet by the SAPS leadership. We believe that IPID should take these cases and process them as the SAPS has not shown interest since January 2011. It may also be proper to visit those who may have attempted to defeat the ends of justice. These cases cannot be in the hands of a captain who is not being supported and on the other-hand they are, falsely reported to this august house as having been closed. We call upon this august house to ensure that the IPID takes over that responsibility. May we remind this august house that an answer to Parliamentary question number **NW 111 dated 29 February 2016** is a misrepresentation of the truth. Those cases were not closed as false as insinuated in the answer. IPID can easily interview the investigator and obtain the dockets.

Finally, there are unreasonable delays in finalising cases against senior officers. Most of them are closer to retirement and it would appear that the cases are deliberately delayed, allowing the retirement to set in. In this regard, there are cases of Generals Phiyega, Mbekela, Mdluli and Makgale that are moving at a snail pace. Junior members are treated harsher as compared to senior managers.

**CONCLUSION**

Honourable Chair and members, let me conclude by saying that our organisation shall continue to constructively engage and support management to ensure that the SAPS does not fail in its constitutional obligation of fighting crime.

**I thank you**

1. The Regulations as amended by the then Honourable Minister Andriaan Vlok read: Regulation 8(1):

“*The ranks in the* ***Force****, in order of precedence, are as follows:*

*-The Commissioner of the South African Police: General*

*-The Deputy Commissioner: Lieutenant General*

*-****Lieutenant General***

*-Major General…….”* [↑](#footnote-ref-1)
2. That referred to the 2010 amendment which did not have an uncoupled Lieutenant General. [↑](#footnote-ref-2)
3. Regulation 8(1): “*The ranks in the Service, in order of precedence are as follows:*

*-General (appointed as National Commissioner)*

*-Lieutenant General (appointed as Deputy National Commissioner, Divisional Commissioner, Regional Commissioner or Provincial Commissioner)*

*-Major General”* [↑](#footnote-ref-3)