



"LOA"

OFFICE OF THE DPCI JUDGE  
REPUBLIC OF SOUTH AFRICA

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**STAKEHOLDERS' ENGAGEMENT SESSION ON 07 JUNE 2018 AT ILEMBE  
BOARDROOM, DEPARTMENT OF PUBLIC WORKS, MAYVILLE, DURBAN:  
PRESENTATION BY FORMER DPCI JUDGE: THUMBA PILLAY**

**DIRECTORATE OF PRIORITY CRIMES INVESTIGATION (DPCI):**

**HISTORICAL OVERVIEW: PRESENTATION AS FORMER HEAD:**

The Programme Director, the Heads of the DPCI, the IPID, the MEC of Transport, Community Safety & Liaison, the Provincial Heads of SAPS and the Hawks, the Head of PSiRA and other Directorates, the Hawks family, members of the media (the Fourth Estate) and friends, good morning.

1. Let me commence by recording that I am appreciative of my Brother Judge Frans Kgomo's gesture in requesting me to present an historical overview of my tenure as the first appointee to the position of the judge designated to investigate complaints under the Complaints Mechanism provided for under Section 17L of the South African Police Services Act No 57 of 2008.
2. I must however place on record that I only assumed office on the 15th May of 2010, about a year and half after the DPCI was placed on the Statute Book, following the controversial demise of the DSO (the Scorpions).
3. I can understand my Learned Colleague's initiative in convening this "stakeholder" engagement. It is vitally important in the current climate

- of escalating crime, especially organized crime involving corruption, to understand the responsibilities and the role we all have to play in combating what has become a scourge on the democratic order, the rule of law and good governance.
4. Without giving the request much thought, I agreed to make a contribution although somewhat weighed down by the wear and tear of advancing years. Memory, which those 80 plus will confirm, is better long term than short term. So, having held the Office some eight years ago and relying mostly on memory and some basic documentation from a personal file, I will do the best I can in the circumstances.
  5. Tasked with presenting an historical overview, has for me personally, some limitations. I have no knowledge of the experience of my successor or successors in- office. I am aware only that the Late Moosa J held the office after my retirement. I am not sure if any other retired judge held Office before the appointment of **Kgomo J**. And importantly, I have not been privy to any report that may have been submitted to Parliament.
  6. As with all institutions of this nature to be rendered operational for the first time, the setting up of the Complaint's Mechanism created by Section 17L proved something of a challenge and a nightmare as well, so much so, that at the end of my tenure, little if any of the teething problems or challenges were resolved, which basically was the reason which led me to respectfully refuse re-appointment. They were not just simply "teething" problems from a logistical and infrastructure point of view, but institutional as well, characterized by indifference on the part of ground personnel entrusted with setting up the office, and in relation to my investigative functions lack of co-operation and in some cases outright indifference and disrespect for the Office of the Retired Judge. But more of this later.
  7. The logistics of setting up the office, its infrastructure, staffing and funding was not resolved even on my departure from office a year later.

I will detail just a few of the challenges and shortcomings before I go on to the more important aspect on the efficacy and functioning of the Complaints Mechanism.

8. Upon taking Office I was advised by the head of Legal Services, Major General Philip Jacobs that all my procurement requirements in terms of office space, staff and equipment necessary for the proper functioning of the Complaints Mechanism would be the responsibility of the DPCI in KZN. The Office was to be sited at the place of residence of the Retired Judge. Major General Jacobs's lone efforts in the establishment of the office, I must concede, stands out as exemplary. The disadvantage was that he was stationed in Pretoria.
9. Within days of my appointment, a team from the SAPS enthusiastically descended upon me to consult with a view to securing suitable office space, engaging staff etc, as well as equipping the office with stationery, filing cabinets, computers, telephone lines, cell- phones, transport and so on --- all the paraphernalia required for the proper and efficient functioning of a modern day office. To cut a long story short, although not quite germane to this "stakeholders" meeting, by the end of my tenure a year later, I enumerate from memory:
  - 9.1 No lease was concluded with the owners of the offices identified as suitable. The reason being, and I heard this only via the grapevine, that a moratorium had been placed on the signing of new lease agreements. This resulted in my having to "camp" in my former Chambers at the High Court in Durban, by kind courtesy of the late Judge President **Herbert Msimang JP** with whom I enjoyed a very special relationship;
  - 9.2 The lady who served as my Registrar during my judgeship, whom I requested be seconded to SAPS to serve as my secretary, remained in the employ of the Department of Justice throughout the period of my tenure and paid by them, again by kind courtesy of the Justice Department. The secondment never took place. Importantly, I did not have the luxury of investigators to assist me. I did all the

investigating, interviewing and writing up of reports without any assistance – a throwback to my early days as an attorney, but even then I had the luxury of articulated clerks!

9.3 Basic stationery and office paraphernalia were all, with a few exceptions, sourced by dipping into DOJ stock;

9.4 Telephone lines when provided for late into my tenure were disconnected at some stage, believe it or not, for non – payment of the account.

10. There are a litany of other shortcomings, which I venture to suggest would have sorely tested the patience, I am proud to say, of a less resilient Retired Judge.

11. I won't burden you with further detail except to say that Lieutenant General Philip Jacobs, head of the SAP legal Services was privy to the difficulties I had encountered, and to be fair, he was sympathetic and as helpful as far as was possible within the ambit of his influence and authority. So was Major General Dramat.

12. Finding myself in a situation of complete hopelessness, and indifference on the part of the Provincial Directorate, I decided to approach the Minister with a view to his direct intervention. I addressed a letter to him calling for a meeting to discuss the shortcomings in the establishment and functioning of the Office.

13. The meeting was held with the Minister at the Royal Hotel in Durban on 4<sup>th</sup> February, 2011. The points which I had raised with him should prove noteworthy and of interest to all stakeholders. They are, inter alia, the following:-

13.1. that although I was appointed on 15<sup>th</sup> May, 2010, the Office became only partially functional 6 months later, due to logistical problems and other difficulties encountered in setting up the office;

13.2 that, regrettably, apart from one or two individuals from the Police hierarchy, I had received little or no co-operation and encountered what I believe to be gross disrespect and discourtesy in not acknowledging or responding to correspondence and telephone calls. This has had the effect of severely handicapping me in the work with which I was tasked to do by the Legislature. I considered the attitude an affront to the dignity of my office and a hindrance to the proper functioning of the Complaints Mechanism."

14. In the letter sent to the Minister before the meeting of the 4<sup>th</sup> February, I also made a reference to a shortcoming in Section 8 of Section 17L of the Act which reads:

"(8) To the extent that it is reasonably necessary for the performance of the functions of the retired Judge, he or she –

- (a) May obtain information and documents under the control of the service;
- (b) May enter any building or premises under the control of the Service in order to obtain such information and documents; and
- (c) Shall be entitled to all reasonable assistance by a member.

15. I will deal with Section 8 later in this presentation. In my letter to the Minister and also at my meeting with him I enumerated some of the other challenges faced by the office, possible solutions, and how they could be addressed. They related to:-

- a. Future appointments to the office;
- b. The desirability of centralizing the office;
- c. Provision of resources to enable the Complaints Mechanism to function optimally;
- d. Making findings which could be a violation of the sub-judice rule;
- e. The importance of impressing upon senior management the need to co-operate and render assistance to the designated judge as envisaged by Section 8, and what sanctions, if any, could be put in place to ensure compliance..

16. The Minister agreed that it was not desirable that the resources for the operation of the Complaints Mechanism should be in the hands of the Directorate and enquired from me in relation to the other points raised, whether I would be prepared to attend an **Inter-Ministerial meeting** after he had consulted with the relevant ministers. I agreed. Such a meeting did not materialize and as far as I am aware, never arranged.
17. It is perhaps pertinent to note here that MOSENEKE DCJ expressed certain misgivings about the MINISTERIAL COMMITTEE in the "Glenister" judgment, to the effect that it compromised the independence of the Directorate by according to senior politicians executive powers to determine policy guidelines. It seems to me that those fears have been satisfactorily addressed in subsequent legislation.

#### MY REPORT TO PARLIAMENT:

18. A copy of my report to Parliament in terms of Section 9 of Section 17L of the Police Act was sent for filing in Parliament. A copy was forwarded to the Minister on the 16<sup>th</sup> May 2011. I received no feedback either from the Minister or the Parliamentary Committee.

Here then are some relevant extracts from my report:

#### THE APPOINTMENT:

19. My appointment was confirmed after consultations with the Chief Justice. It took effect on the 15th May, 2010, to expire on 15<sup>th</sup> May 2011.
20. Upon my appointment, I suggested that the Minister make a media announcement as I considered it important from a public awareness point of view that such an Office was created by an Act of Parliament. No such announcement was made as far as I am aware, and this oversight or omission could possibly account for the relatively few complaints lodged – nearly all from KZN.

( I note however that the appointment of my successors and in particular that of my brother Kgomo J received print , radio and television coverage, which is , I hope , an outcome of the suggestion I made in my report to Parliament.)

### ESTABLISHMENT OF THE OFFICE AND LOCATION:

21. Frustrated by the lack of progress in the securing of office space, staff and all the paraphernalia and equipment that goes with the running of an office of such moment, and faced with the prospect of having to run the office virtually from the boot of my car for over 5 months, I reported to Parliament that I had approached the Late Judge President of KZN, **Herbert Msimang JP** for permission to operate for the duration of my tenure from my former chambers in the High Court in Durban, rent free, with my Registrar standing in as my Secretary, whose salary, for good measure, was met by the DOJ. In addition I had free use of the telephone lines until the installation of dedicated DPCI lines only in December 2010, 7 months after my appointment.

### ACCESS TO RESOURCES:

22. I repeated my Report to Parliament as I had done in my meeting with the Minister that I was unhappy with the obvious flouting of Sub Section 12 of Section 17L which places the duty on the Minister to ensure that the Retired Judge has sufficient personnel and resources to fulfill his or her functions. I placed on record once again my extreme frustration at the lack of co-operation from the Provincial DPCI in helping set up the office. I also reaffirmed in my report to Parliament that which I had conveyed to the Minister, viz the undesirability of entrusting the responsibility for the provision of resources for the proper implementation of Section 17L on the Directorate as this compromised the independence of the Office of the Complaints Mechanism.
23. I do not wish to burden you with further details right now but refer you to just one relating to the lack of resources. I drew Parliaments attention to the simple fact that for the greater part of my tenure expenses on items such as postage, binding costs of reports, file covers, lever arch files and other petties were all borne by me as out of pocket expenses for which I made no claim. Quite clearly an unsatisfactory state of affairs.

In the concluding paragraphs of my Report to Parliament I also highlighted certain problem areas which I had earlier communicated to the Minister in my one-off meeting with him on the 4<sup>th</sup> February 2011.

I think it desirable I deal with them for current purposes.

**PROBLEM AREAS:**

24. I pointed out that it is totally impractical to have the office located in the usual place of residence of the Retired Judge. What it in effect means is that upon each appointment, the whole process of setting up the office must start anew, suitable office identified, leases entered into for the duration of the appointment, equipment needs to be acquired and staff recruited. This process will have to be repeated each time an appointment is made if the office is to be at the seat of residence of the Retired Judge. This is a waste of resources and compromises staff continuity and expertise. There has to be some permanency in the office especially in terms of staff and location. I would suggest that the office be centrally located. This however carried with it the propensity of persuading a retired judge to re-locate – not easily attainable I believe.
25. I further pointed out as desirable that resources or funding should come from sources other than the Directorate for obvious reasons. At a very basic level it is undesirable to rely on functionality and efficiency from the very source one could sometimes be investigating. All sorts of pressures could be brought on the Complaints Mechanism by the simple expedient of making it dysfunctional. The “Glenister” judgment goes some way towards addressing the need for independence of the DPCI. Lack of independence during my tenure was stark at the level of the practical operation of the Complaints Mechanism.

I then go on to point out further in my Report to Parliament the obvious lack of any sanctions for the flouting of the provisions set out in Sub-Section 8 of Section 17L.

I referred to Sub-Section 8 earlier in this presentation.



26. I pointed out that Subsection © of Section 8 is unenforceable. Experience had shown that even at the level of Senior Management, requests for assistance in many instances were simply ignored and if I may say so, in one particular case, with contemptuous disregard and disrespect for the office of the Retired Judge. Correspondence, telephone calls and emails were dismissively ignored, which had the inevitable result that an investigation could be thwarted with impunity or delayed. There is no sanction for non-observance of the sub-section. I had the distinct impression that the Complaints Mechanism was at some levels viewed as an irritant.
27. My concerns are best dealt with by quoting one or two extracts from the majority judgment in "GLENISTER" in so far as it relates to the independence of the DPCI
- Moseneke DCJ** noted that in disbanding the DSO (the Scorpions) Parliament has actually created an entity (the DPCI) which ...**"in signal ways is less independent than the DSO...."**. He went on to say that while the defunct DSO did not represent an inviolable standard, **"comparison with it shows how markedly short of independence the DPCI falls."**
28. Following the "GLENISTER" judgment of the 1st March, 2011, a number of amendments were made to the original Act by Act No 10 of 2012 which included Parliamentary oversight of the Ministerial Committee which enjoyed untrammelled powers enjoyed in the original Act . Importantly, satisfying also my own reservations about the efficacy of Sub-Section 8, an amendment in the form of new Section 7A to the Act was enacted which reads as follows:
- "The retired Judge may request information from any member of the Service for purposes of any investigation by that judge and the refusal to comply with such a request shall be a criminal offence for which a person upon conviction may be sentenced to a fine or imprisonment or to both a fine and imprisonment of two years."**
- I do believe that the amendment was in part due to my report to Parliament in 2011 where I point out the absence of any punitive action

available to the retired Judge for someone ignoring the provisions of sub-Section 8 of Section 17L.

29. A sub-section 16 was also added: It reads as follows:

“Any interference with the retired judge in the performance of his or her duties shall be a criminal offence for which a person upon conviction may be sentenced to a fine or imprisonment of two years or to both such fine or imprisonment.”

**CONCLUSION:**

30. In my one year term, brief as it was, I detected a somewhat unhealthy atmosphere in the Provincial Directorate here in KZN characterized by factionalism, petty rivalry, nepotism, uncertainty of tenure and allegations of interference in investigations. This had become apparent to me especially during my investigation into complaints of interference lodged by certain officers in the DPCI entrusted with the investigation of corruption in the administration of a certain Police Station here in KZN. That there was instability in the DPCI in this regional division was obvious to me. What it was like in the rest of the country, I cannot say. However, it is common knowledge that there has been some instability nationally and my assessment is vindicated if one has read certain press statements issued over the past week or so, the one emanating from the South African Police Union (SAPU) and the other from **Francois Beukman** who heads the Parliamentary Oversight Committee on Safety and Security. Both relate to the appointment of General **Godfrey Lebeya** as the new head of the Hawks.

31. The one from SAPU welcomes the appointment and congratulating the new Minister for making the appointment. I quote from the statement:-

“The appointment of **General Lebeya** will not only bring stability to the Hawks, he comes with his wealth of experience in detective policing. We would like to salute Minister Cele who has shown through actions that he means business. **His latest appointment shows us that the days of mediocrity and patronage networks in the SAPS are over..... that he means business.....**”

The appointment will also go a long way in boosting the morale of officers within the Hawks..... there is a new dawn in our country. ....

We felt very bad when **General Lebeya** was lost in the SAPS because of petty jealousy and selfishness by those who felt threatened by his leadership capacity. .... It is hard luck to those who thought they will capture the Hawks as it will be them who will be captured now."

That is a telling a statement on the instability, straight from the horse's mouth.

32. Then there is the comment from **Francois Beukman** himself who states that the General (referring to Lebeya) has the necessary qualifications and experience "to lead the Hawks in a new era where corruption busting will be the number one priority."

**Beukman**, in an interview with a reporter of last weekend's newspaper, acknowledges also that **stability** within the police environment is critical to effective policing.

33. Finally, as Stakeholders here present, we need to be mindful, if we are true and faithful to the Constitution, as was so eloquently stated by **Moseneke** DCJ in "GLENISTER", that (I quote) "... there can be no gainsaying that corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard won constitutional order."

For that reason he goes on to say, that the Constitution imposes an obligation on the State to maintain an independent body to combat corruption and organized crime. This was recognized by the establishment of the DSO (the Scorpions) which met a controversial demise.

The majority in GLENISTER also agreed that the legislation creating the DPCI did not pass Constitutional muster. I believe that Act No. 10 of 2012 following GLENISTER did to some extent address the shortcomings in the original legislation establishing the DPCI.

34. As a parting shot, I repeat what I said at the outset of this presentation - that it is vitally important that as STAKEHOLDERS, in the current climate of escalating crime, especially crimes of violence and organized crime involving corruption, that we understand the responsibilities and the role we all have to play in what has become a scourge on the democratic order, the rule of law and good governance.

I do believe that things have changed since my days as the Judge in charge through successive corrective and amending legislation. It is obvious from the very fact that this Stakeholder meeting is at all possible, shows that resources have now been made available to ensure delivery by the COMPLAINTS MECHANISM. From that point of view my brother **Kgomo J** appears to be in far more fortunate position than I had ever been. I wish him all strength in the task he faces.

I thank you.

JUDGE (B) THUMBA PILLAY.

7<sup>th</sup> June, 2018.