

*Submission for
Parliamentary Hearings
By Business Against Crime South Africa*

*Dissolution of the
Directorate of Special Operations (DSO)
and establishment of the Directorate of
Priority Crime Investigations (DPCI)*

28 July 2008

1. Introduction

Business Against Crime South Africa was formed in 1996 in response to a call by the then President Nelson Mandela for business to assist Government in the fight against crime. In the years since its establishment, Business Against Crime South Africa has actively mobilised business resources for crime reduction initiatives through a constructive, supportive relationship with Government.

Business Against Crime South Africa is a Section 21 Company funded by the business community. At present, Business Against Crime South Africa is led by the CEO, Mr Siphiwe Nzimande and governed by a Board of Directors, chaired by Mr Mark Lamberti and comprising 25 business leaders representing industry, commerce and the public sector, including members, executives and office bearers from Business Unity South Africa (BUSA), Business Leadership South Africa (BLSA) and the Big Business Working Group (BBWG).

Business Against Crime South Africa's most recent commitment to crime reduction has been manifest in the collaborative Step Change partnership with Government, established two years ago when a meeting between President Mbeki and the BBWG identified the reduction of organized crime and corruption as a national priority, and established the Anti-Crime Leadership Forum (ACLF).

It is important to emphasise that Business Against Crime South Africa is, and will continue to be supportive of any and all efforts by Government to reduce crime, including the retention and implementation of those strategies, structures, resources, processes and practices that have previously proven to be successful in combating organized crime.

Business Against Crime South Africa holds the view that certain attributes are fundamental to the fight against organised crime and corruption. These attributes, which are supported by local and international precedent and best practices, are:

- The necessary legal framework and structure;
- An intelligence-driven approach;
- The integration of crime information and intelligence gathering investigative and prosecutorial functions;
- A "task team" approach, which draws on a range of complementary competencies from other Government departments and law enforcement agencies;
- Adequate financial resourcing;
- The attraction and retention of high level skills;
- Independence; and
- Appropriate oversight.

Given the national imperative to reduce corruption and organized crime, Business Against Crime South Africa has followed developments surrounding the proposed dissolution of the Directorate for Special Operations (DSO) and the planned establishment of the Directorate for Priority Crime Investigations (DPCI).

In a spirit of partnership, Business Against Crime South Africa requested the Minister of Safety and Security and the Acting National Commissioner of SAPS to share the Government's rationale regarding the proposed changes. On Tuesday, 22 July 2008, Acting National Commissioner Tim Williams and his team shared their perspectives on the proposed legislation with Business Against Crime South Africa.

This submission is therefore based on three sources of information, namely the National Prosecuting Authority Amendment Bill [B23-2008] published in Government Gazette No. 31037 of 8 May 2008, the South African Police Service Amendment Bill [B 30-2008] published in Government Gazette No. 31016 of 9 May 2008 and a debriefing by Acting National Commissioner Tim Williams on 22 July 2008.

2. Crime in a Transforming Society

Since 1994, the transformation of South Africa has been manifest in many dimensions of societal change. One dimension has been the substitution of repressive laws and their draconian racial implementation, with a constitutionally based criminal justice system oriented towards the respect and upholding of human rights and dignity. While this was essential to the normalisation of our society, some crime trends suggest that it unfortunately reduced the barriers to crime. Moreover, the impact of apartheid on the majority of South Africans has resulted in the equalisation of rights not being matched by the equalisation of opportunity. Unemployment and poverty are found in close proximity to wealth and, prompted by necessity or greed, many South Africans turn to crime.

Two things are clear. The first is that much of the criminal behaviour – particularly that of a more aberrant nature – is attributable to deep seated sociopathic issues which have root in disrupted and dislocated childhood experiences. It is clear that apartheid destroyed the fabric of our society, particularly the family structure and the education facilities of the majority of our citizens, and the suggestion that the dysfunctional consequences of this could be redressed in 14 years is naïve. The parents of today's teenagers were victims of the 70's and 80's, when their education, self esteem and employment opportunities were clearly undermined by the previous regime.

The second is that the efficiency of the Criminal Justice System is simply too low to be an effective deterrent to the desperate opportunist or the sophisticated organised crime boss. The low probability of a criminal being investigated, arrested, charged, prosecuted and sentenced is evident in the national statistics for the year to March 2007, which showed that only 13.4% of all reported crimes, 12.6% of contact crimes and 7.3% of property crimes resulted in a fine or imprisonment. Criminal's lack of fear is matched only by victim's lack of confidence – many crimes are not reported. While there is substantial anecdotal evidence to support this, a victim survey conducted in 2003 showed that only 21% of robberies, 34% of housebreakings, 53% of assaults, 69% of car thefts and most surprisingly 85% of murders, were reported to the police.

Notwithstanding the social causes of crime, the case for an emphasis on stronger deterrence has been proven by the dramatic reduction of crime (oftentimes by 80%) in those areas where community driven information gathering, intelligent analysis and a rapid armed response has been used to take back control of public areas.

Crime in South Africa is pervasive, complex, mobile, violent and frequently very sophisticated. It is clear however that both longer term social interventions are required to normalise the families, schools and neighbourhoods of our fractured society and short term interventions are required to improve the efficiency in the criminal justice system.

Against this background Business Against Crime South Africa holds the strong view that three inter-dependent interventions are necessary:

- Longer term social development programmes to imbue individuals and communities with the education, skills, competence and confidence to facilitate a law abiding ethos
- The improvement of the entire criminal justice system, from the competence of everyday policing, through the efficiency of the judicial system to the appropriate sentencing and rehabilitation of criminals
- A targeted attack on corruption and the frequently violent organized crime, which threatens the social, economic and political stability of our country

As a young democracy and regional economic hub, South Africa remains vulnerable to high levels of corruption, white collar crime and sophisticated organised crime. We share the views of the Khampepe Commission that a dedicated and focused response to complex and or sophisticated organised crime remains absolutely necessary and we concur with Cabinet that '*there is a need to address organised crime in a more comprehensive fashion*'.

3. Key Success Factors in the Fight Against Organized Crime and Corruption

Local and international experience has revealed three consistent trends in organised crime and corruption. The first is that organised crime and its associated syndicates are becoming better resourced, more technologically networked and increasingly more sophisticated and complex. Secondly, white collar fraud against businesses and the state is most frequently being perpetrated by educated, intelligent, officials and executives. Thirdly the propensity to influence all manner of local and national Government decisions through bribery in cash or kind is increasing in frequency and magnitude, with officials succumbing easily to the large amounts involved.

These trends pose significant challenges to law enforcement agencies and the criminal justice system which, of necessity, must become better resourced and more sophisticated in their response.

Factors that are proven to ensure success in the fight against organized crime and corruption include:

- a lead agency capable of effectively and comprehensively integrating intelligence, investigative and prosecutorial skills;
- an ability of this lead agency to establish effective task teams by drawing from an array of additional capabilities in other Government departments (i.e. AFU, SIU, SARS, Home Affairs, NIA, Auditor General, Financial Intelligence Centre, and others);
- a strong intelligence-driven approach;
- appropriate remuneration, specialist training and adequate resources;
- legislation guaranteeing appropriate multi-agency collaboration, oversight and independence from interference;
- a separate, unique brand that gives the lead agency and members identity and meaning;
- publicly acknowledged superior results that instil confidence, thereby leading to the attraction and retention of talent and skills.

4. The Establishment of the Directorate for Priority Crime Investigations

In the Government Gazette No 31016 dated 9 May 2008, the following key points are made regarding the establishment of the Directorate of Priority Crime Investigations (DPCI):

- That Cabinet decided that there is a need to address organised crime in a more comprehensive fashion and to amalgamate selected investigation members of the Directorate of Special Operations (DSO) with selected members of SAPS Commercial Crime and SAPS Organised Crime components.
- Members of the DSO will become members of the DPCI component; however, the DPCI will exclude the prosecutors who will remain with the National Prosecutions Authority. Members of the DSO who are involved in intelligence matters will be excluded from DPCI as these members will be redeployed into SAPS Crime Intelligence.
- The DPCI will investigate matters referred to in Section 16 of the SAPS Act whose cases include but are not limited to organised crime. In terms of Section 16, all crime must be investigated by the Provincial Commissioner of SAPS. However, the Provincial Commissioner may request the National Commissioner to co-ordinate a particular matter, or the National Commissioner may decide that a particular case should be co-ordinated nationally. In the event of any difference of opinion, the National Commissioner has the final say on who shall investigate a particular matter.
- The DPCI shall be a Division in the SAPS headed by a Divisional Commissioner, appointed by the National Commissioner, who reports to the Deputy National Commissioner responsible for crime detection and crime intelligence.
- The transfer of the members of the Directorate of Special Operations (DSO) to the SAPS will be done without negatively affecting their conditions of service and remuneration.

5. Recommendations

Business Against Crime South Africa recommends that the following be seriously considered in the strategies, architecture and establishment of the new unit.

5.1 The Need for Functional Integration

In the progression of complex service delivery, the utilisation of fully-integrated “case teams,” is a well-established business practice. Internationally established best practice has proven that self-directed case teams outperform the use of other organisational alternatives, including the traditional bureaucratic, hierarchical and command and control models. We propose that this experience be taken cognisance of in the design of the DPCI.

Further motivations for the retention of the fully-integrated case team model include:

- The approach of using joint investigation, prosecution and crime intelligence/analysis to keep track of and root out organised criminals has been adopted by similar agencies in the UK, New Zealand, India and the USA among others.
- As stated above, the location of the unit within the SAPS should not preclude the integration of prosecution within case teams. Care should be exercised to ensure that the proven case team effectiveness is not lost in the proposed new structure.

- A key to the effectiveness of the integrated case team approach was the trust established with witnesses who drew comfort from the fact that they would not be subjected to cross-organisation handovers in the course of the progression of a case to adjudication.
- The location of DPCI within SAPS should not compromise the support and efficiency of the Witness Protection Unit and the Asset Forfeiture Unit. .
- The joint Government / Business Against Crime South Africa working group responsible for the Review of the Criminal Justice System (as part of the Step Change Initiative) found that a significant contributor to poor rates of conviction was the lack of effective collaboration and coordination between investigating officers (SAPS detectives) and prosecutors. This results in unclear responsibility, diminished accountability, inefficient interchange and sharing of information, and a low rate of successful prosecutions.

It is important to ensure close working relations in joint operations with the NPA units particularly the Asset Forfeiture Unit (AFU) and the Special Investigations Unit (SIU). If this is not managed with care and diligence, the transfer of the DSO functions to SAPS' DPCI could result in a break down of this investigative collaboration and thus compromise the overall effectiveness of all three units.

We recommend that the final legislation establishing the DPCI provides unambiguous clarity on authority and structure, firstly to enable leaders of the various units to collaborate and integrate their efforts, and secondly to obviate potential tensions and conflict between the various constituents of task teams or their departmental or political heads.

Finally, those opposed to the integration of the investigative and prosecutorial functions cite the necessity for their independence as a precondition for the preservation of the rights of the accused. There is no basis in law for this assertion. The rights of the accused are clearly protected by the independence of the judiciary, which can choose to accept or reject the evidence regardless of whether an investigator and prosecutor have collaborated to present it.

5.2 Status and Relative Importance of the DPCI

It appears that the Cabinet intends to create the DPCI as a Division of the SAPS headed by a Divisional Commissioner who will report to the Deputy National Commissioner. Within the National Prosecution Authority, the Head of the DSO reported directly to the National Director of Public Prosecutions who is equal in terms of rank and position to the National Commissioner of SAPS. It therefore appears that in terms of hierarchy, the DPCI is being relegated to a much lower status within the SAPS. We propose that the Head of DPCI be given a senior position, directly reporting to the National Commissioner.

5.3 Clarity of Scope of Work and Powers of the New and Need for Effective Oversight

The powers to investigate all matters in section 16 of the SAPS act vests with the Provincial Commissioners and the National Commissioner. There appears insufficient clarity regarding the specific scope and powers of the DPCI. We propose that the scope and powers be clarified in the Bill such that the inherent probability for confusion and the potential for infighting and friction are removed. The need to keep referring matters to the National Commissioner for a decision is unproductive and could jeopardise the speed and professional conduct of investigations.

We believe that the Bills as presented provide for an excessive concentration of powers in the hands of the National Commissioner. We have not been able to establish the extent to which the exercise of this power will be guided and regulated by principles, values, or guidelines. The approach thus provides for a framework that dictates "who" rather than "what" is right. A concentration of power in one person, without checks and balances, is a danger. The SAPS Amendment Bill must be altered to obviate this by providing for effective Cabinet oversight to regulate and limit the concentration of power. The credibility of the DCPI could be further enhanced by the establishment of an oversight body, totally independent of political involvement.

5.4 Transfer of DSO to SAPS

It is laudable that Government intends transferring the members of the DSO without any loss to their remuneration and benefits. However, it is common cause that remuneration is only one of many factors that contribute to a productive and motivational working environment. Business Against Crime South Africa believes that the following factors could enhance effectiveness and should be taken into account in the design of the new unit:

- Unambiguous support and defence of the new unit by the political leadership (particularly by the Cabinet, the President and by the ruling political party)
- Day to day oversight and support by the executive leadership – the Director-Generals.
- The establishment of rules, regulations and a code of conduct that would ensure behaviour compliant with the letter and spirit of the constitution and society's highest expectations.
- Performance through a winning formula. In our view, the Troika approach encompassing the integration of prosecutorial oversight and the focus on collecting court-directed information and evidence will provide the basis for a highly motivational performance oriented culture in the DPCI.
- Adequate budget and resources to carry out the work
- Retention of the independence to take action. While the unit must operate with the bounds of its authority and be held accountable for its performance and actions by its executive leaders, it must be free of operational interference by oversight non-executives.

5.5 Retention of skills

There is a strong possibility that some if not most of the high level skills currently in the DSO will move to the private sector if the status and independence of the new unit is lost. Such an outcome will undermine the improvement of the Criminal Justice System agreed by Cabinet in November 2007 and presented as one of the key national priorities in the President's State of the Nation Address in February 2008. Every possible effort must therefore be applied to the retention of high level skills.

5.6 Effective Communication of Performance

There is a pressing need to build public confidence in the country's law enforcement agencies. This can be achieved through regular and direct communication of performance (without sensationalism or spin) by the Government Leaders – the President, the relevant Minister and the Director of the DPCI.

6. The Way Forward

Business Against Crime South Africa believes that there should be no tolerance for corruption, white collar crime and sophisticated organized crime in our country. Furthermore, we believe that a new unit (DPCI) should be established, at the very least, to retain those attributes that ensure success in the fight against organized crime and corruption.

In this regard, objective answers to the following questions should be provided in the affirmative to test whether or not the new unit under the SAPS is capable of responding to and combating the scourge of organized crime and corruption facing South Africa.:

Will the new investigations unit:

- Have the required status and legislative backing to achieve its mandate?
- Attract and retain the range of skills (information gathering and intelligence, investigative and prosecutorial), which are core to its success?
- Be intelligence-driven to enable it to respond adequately to the growing sophistication of organized crime syndicates and corrupt practices;
- Harness the task team approach by drawing a range of diverse skills from other Government departments and law enforcement agencies?
- Operating as a Division of SAPS, and thus dependent on SAPS authority, have the mandate and the flexibility to marshal the resources it requires to succeed?
- Have the independence, capacity and support required to investigate corruption and crime in every echelon of society, business and Government, even at the most senior influential levels?

7. Conclusion

This input is constructed with the sole objective of assisting our Government and Parliament in the development and establishment of an effective bastion against the forces of corruption and crime.

Business Against Crime South Africa is motivated to make this submission in the sincere belief that the continued escalation in the levels of corruption and organized crime pose a grave threat to our hard won democracy and the physical and economic well being of all our citizens.

Submitted on behalf of the Board of Business Against Crime South Africa



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