

08 DSO 100

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SUBMISSION OF MKMVA ON THE SOUTH AFRICAN POLICE SERVICE AMENDMENT BILL
AS WELL AS THE NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL

INTRODUCTION

We premise our submission to the Joint Parliamentary Standing Committees from a Constitutional point of view. It is not our intention to challenge the Constitutionality or otherwise of the South African Police Service Act, 1995, (Act No 16 of 1995) as well as the National Prosecuting Authority Act, 1998, (Act No 32 of 1998) in their current form. We however assert and aver that the Act is still based on the Interim Constitution since it precedes the Constitution of the Republic of South Africa Act 1996 (Act No 116 of 1996). We do not purport to insinuate that the Act is so out of sync with the Constitution that it needs to be repealed. Our view is that the Act conforms to a large content to the provisions of the Constitution and that the best way to provide a proper legal basis for the transformation of the SAPS is by effecting amendments to bring it totally in line with the Constitution.

Quite a lot of criticism has been leveled against the Bills relating to the proposed establishment of a single police service. Most of these are based on skepticism and fears that this move is inherently informed by a desperate attempt by those in power to prevent law enforcement agencies from investigating their perceived corrupt activities and that certain investigations are intended to be swept under the carpet. This point of view cannot have been carefully thought through. Most of the criticism leveled against these Bills are based on speculation. The proposed enactments will not, in our considered view, have the effect of dissolving these investigations. If there are any, same will merely be channeled through to the envisaged structures. There has to be faith in the Police Services and the Department of Justice and Constitutional Development to jointly ensure that those matters currently under investigation and future matters will be handled with integrity.

The media hype and sensationalisation on these proposed amendments to the two Acts also seem to suggest that these proposals are conceived last year, in the run up to, during and post the 52nd Conference of the ruling party. However, we only need to refer to the resolutions of the 51st Conference of the ANC on Safety and Security to really prove that this is indeed not the case. The Bills before you Honorable members of the Joint Committees, are a product of a well-thought exercise intended at ensuring that the Constitutional imperatives are addressed adequately. Nowhere else in the world do parallel structures dealing with matters of crime combating exist. Some commentators attempt to create the impression that the DSO's role is to provide oversight functions to what is otherwise perceived as an inherently corrupt police service. Fact is that this is indeed not the case. Section 210 of the Constitution, read together with Section 195, provides sufficiently for this.

We accordingly welcome the proposed amendments to the Act and the opportunity to engage with the Joint Committees on the Bill before you. We confirm that we are an interested party in the matter since a large section of our constituency/members are either deployed in the Security Services or have an inherent interest in deployment there.

DISCUSSION/CONTENT

Chapter 11 of the Constitution deals with the Security Services of the Republic. These services are defined as follows in Section 199 (1): "The security services of the Republic consist of a single defense force, a **Single Police Service** (our emphasis) and any intelligence services established in terms of the Constitution". The principle of a single police service is, and cannot,

keeping with the Doctrine of Trias Politica. Thus, the alleged fears and insecurities to the effect that some members of the DSO shall find no home in either the SAPS or the National Prosecuting Authority hold no water. It is only those members, who by their own choice and in writing, shall decline to be transferred either way that shall not have a home in the new dispensation envisaged by the Bills.

We have perused, with great interest, an article by the Institute for Security Studies dated 3 June 2008 and titled "Concerns about South Africa's Proposed Directorate for Priority Crime Investigations". These "concerns" allude to:

- (a) the express usage of the wording "selected" members, of the DSO as well as "selected" members of the police's Organized Crime Unit and the Commercial Branch;
- (b) Uncertainty with regard to whether the envisaged DPCI would take over all current responsibilities of the Organized Crime Unit and the Commercial Branch.
- (c) The question of oversight given the weaknesses of the ICD. (According to the ISS)
- (d) The role of those members of the DSO who have been doing prosecutorial work, and
- (e) The fact that the National Commissioner is being given the "all powerful position" created by the Bill.

Much, if not all of these concerns are, in our view, being addressed in the two Bills, Bill. The bottom-line is that no person shall be left outside except by their own choice, political oversight is clearly spelt out, prosecutors shall revert to the NPA and of course the National Commissioner has always had a powerful position with regard to matters relating to SAPS and if the new DPCI would reside in the SAPS, surely he or she would exercise authority over it. The only probable concern would be for the Bill (SAPS) to expressly clarify what is meant by "selected" members. The inference that can be drawn from the letter and spirit of the Bill (SAPS) is that this "selection" shall be based on "vetting" in terms of the National Strategic Intelligence Act, 1994 (Act No 39 of 1994).

CONCLUSION

We are more than convinced that the Bills addresses the disjuncture that is currently bedeviling the work of preventing, combating and investigating crime as well as maintaining public order, protecting and securing the citizenry and property as well as enforcing the law. Those that are charged with this responsibility need to work in a properly co-ordinated fashion. We accordingly express our unwavering support to the Bills. Further oral submissions, dealing systematically with the amendments shall be provided at the sitting of the Joint Committees. Those submissions shall be in the chronological order in which the Bills are organized. We are merely providing our general understanding of the intention of the Legislator in this regard and not the technical ramifications of the Bills. This we shall deal with Section by Section to avoid being too technical in approach Bill.

REFERENCES

1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT, 1996 (ACT No: 108 OF 1996)
2. THE SOUTH AFRICAN POLICE SERVICE ACT, 1995 (ACT No: 68 OF 1995)
3. THE NATIONAL PROSECUTING AUTHORITY ACT, 1998 (ACT No: 32 OF 1998)

- 4. RESOLUTIONS OF THE 51st CONFERENCE OF THE ANC (STELLENBOSCH)
<http://www.anc.org.za>
- 5. RESOLUTIONS OF THE 52nd CONFERENCE OF THE ANC (POLOKWANE)
<http://www.anc.org.za>
- 6. ARTICLES BY THE INSTITUTE FOR SECURITY STUDIES- <http://www.issafrica.org>

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yours

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CONCLUSION

We are now in a position to... the work of preventing, combating and investigating crime as well as maintaining public order... charged with the responsibility to work in a properly co-ordinated fashion... with the amendments... provisions... technical... technical to amend...

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- 1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT 1996 (ACT NO. 108 OF 1996)
- 2. THE SOUTH AFRICAN POLICE SERVICE ACT 1995 (ACT NO. 68 OF 1995)
- 3. THE NATIONAL PROSECUTING AUTHORITY ACT 1996 (ACT NO. 32 OF 1996)