

SACP PRESENTATION TO THE PUBLIC HEARING ON THE NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL AND THE SOUTH AFRICAN POLICE SERVICE AMMENDMENT BILL.

1. Introduction

The SACP welcomes the opportunity to make submissions to the committee on the two bills in front of this house for consideration.

The SACP reaffirms its complete support for the disbanding of the Directorate of Special Operations (DSO), the Scorpions, and its incorporation into the South African Police Service (SAPS) as a legitimate and necessary political and legal decision to streamline and strengthen the capacity of government to fight crime. As the SACP we are no less convinced that this will weaken our resolve as society to combat crime and criminality and root out corruption in our society.

2. Our resolve to fight crime

Contrary to what our detractors believe and have been propagating, it is incorrect that those of us who support the dissolution are opposed to the work that the scorpions have been doing in so far as fighting corruption is concerned and ultimately their dubious role in the matters outstanding before our courts of law as it relates to the ANC President, Cde Jacob Zuma.

The story of the DSO is self-telling.

Established to fight and combat specialised crime, from the onset the DSO was resourced in a manner that it was going to be able to perform its task relatively better than the South African Police Services. There was an acknowledgment that you needed to recruit the best in the field for a successful fight against organised crime.

The logic above is strangely not applied to launching a dedicated fight against crimes like murder, rape, domestic violence, hijacks, robbery and many other forms of crime that dominates the daily experience of the majority of South Africans.

The SAPS continues to be underresourced, understaffed, and the morale of the uniformed officers remains at its lowest. We have had the experience as the SACP of dealing with problems faced by the SAPS reservist who continue to do a great job in our communities but are subjected to worst working conditions. These are young men and women who have been trained and

equipped with the requisite skills but cannot be absorbed into an already dilapidated police service.

From the onset, even when we established the Scorpions, the thrust of what their mandate was to be was very problematic. We began to adopt measures and pieces of legislation in which organised crime, if truth were told, was to be defined narrowly in terms of the public sector or civil service. Increasingly, the role of the Scorpions therefore, had to be playing a watchdog over a public and civil sector, which it is already concluded, is corrupt.

The new laws by definition assumed that the new leadership of the country is inherently corrupt and therefore we need to create a specialised unit to watch over it. These are particularly disturbing trends of how liberation movements have been brought down on their knees by forces of counterrevolution.

Granted the SACP acknowledges that we need watch over this trend creeping into our own public service and thus threatening our democracy.

It is for this reason that even from inception, the Scorpions were deliberately set up in such a way that there is little public oversight on their task. The catch has always been, "they are corrupt" and we will get them. This is why when the debate is about the effectiveness of the scorpions in so far as crime fighting is concerned; the counter public offensive is that the ANC and the so-called supporters of Jacob Zuma are moving for the disbandment of the Scorpions to protect Jacob Zuma.

3. The downward Spiral

This led to very problematic conduct by the Scorpions. Let us briefly look at what Khampepe said about their intelligence gathering activities:

"The national mandate for the co-ordination of crime intelligence rests with the crime intelligence division of the SAPS... In the light of the Constitutional provisions, the National Strategic Intelligence Act, and the mandate given to the (SAPS) Crime Intelligence division of the SAPS, the DSO is not empowered to gather crime intelligence as intended in the National Strategic Intelligence Act... Upon the DSO's establishment, it [the DSO] was suppose to make use of the existing intelligence structures, something that did not happen".

Furthermore the Khampepe Commission is even more scathing about what is clearly illegal gathering of political intelligence by the DSO:

"There was evidence pointing to the fact that the DSO has liaisons with the foreign law enforcement and intelligence structures. If nothing else, this illustrates the dangers that lie in the conduct of the DSO stretching its 'information gathering' mandate to include 'intelligence'".

In addition not only did KC found that the DSO did not share its intelligence with the national co-ordinating intelligence gathering structure (NICOC), but does not even share this information with the SAPS and, further, that "It is

both perplexing and perturbing that the DSO views its dependence on the intelligence agencies as a **hindrance** as opposed to an opportunity at greater collaboration and collective effort ... Co-ordination and co-operation between the NIA and DSO on criminal intelligence is practically non-existent".

This illegal gathering of both crime and political intelligence, and maintenance of relations with foreign intelligence agencies, without any oversight from properly established intelligence oversight structures constitutes one of the most serious illegal activities of the DSO and practically undermines the security of the state.

Further, the Joint Standing Committee on Intelligence (JSCI) found that the so-called Special Browse Mole Report was illegally produced by the DSO, and this has never been disputed or denied by the DSO. Instead we were promised action by Cabinet. To date we are patiently waiting for such action.

The other point we have consistently made in relation to the operations of the DSO is that it has operated in a manner that can, and actually may have, violated the constitutional rights of people under investigation. The KC finds, amongst others, that:

"The improper media sensation associated with the investigation and/or arrest of some individuals resulting from the leaks in the DSO may open a practice that is inconsistent with the right to a fair trial guaranteed under section 35 of the constitution...

"Furthermore, I find that there is merit in the concern raised in evidence relating to the alleged abuse by the DSO with the regard to the manner in which it publicises its work in the media. This alleged conduct has attracted public criticism against the DSO of being 'FBI style', meaning that the DSO conducts its operations as though it were a law unto itself. There is indeed merit to this complaint".

Indeed we have consistently said that the DSO does operate as a 'law unto itself', not accountable to any of the oversight mechanisms in relation to its work. This alone, makes the DSO a threat to the safety, security and constitutional rights of South Africans, especially those who happen to be under investigation. The KC is even more scathing of these practices of the DSO:

"There was, in my view, no plausible reason furnished for this invidious conduct on the part of the DSO, which is to be frowned upon.

"I venture to opine that **I find such conduct to be out of kilter with our constitution, reprehensible, unprofessional and corroding the public's confidence in the law enforcement agencies"**

4. What is crime

One of the weaknesses of those who propagate for our constitutional order is that their campaign and agitation has continued to be clearly class bias. Crime is a social ill that we all have to combat.

According to Dutch criminologist, Willem Bonger, there is a causal link between crime and economic and social conditions. William Bonger asserted that crime is social in origin and a normal response to prevailing cultural conditions. In more primitive societies, he contended that survival requires more selfless altruism within the community. But once agricultural technology improved and a surplus of food was generated, systems of exchange and barter began offered the opportunity for selfishness. As capitalism emerged, there were social forces of competition and wealth, resulting in an unequal distribution of resources, avarice and individualism. Once self interest and more egoistic impulses assert themselves, crime emerges. The poor would commit crime out of need or out of a sense of injustice. Hence, those with power exercise control and impose punishment, equating the definition of crime with harm or threat of harm to the property and business interests of the powerful

The constitution of the country for example secures certain basic right for our people. The right to food, and housing and human dignity, etc.

On a daily basis in our country, monopoly capital has continued to undermine these rights and the so-called champions of our constitutional order have been quite.

Recently we have seen judgements passed at the Competition Commission into collusive behaviour of monopolies on basic things such as bread. That is not defined as crime in our society. When we call for legislation to safeguard the constitutional right of our people to food, we are threatening growth in the economy, we are told.

Millions of farm workers have been displaced and evicted from farms and this is not a crime. Majority of people continue to subjects of eviction orders in other instances at the initiation of our own government, thus their constitutional right to decent housing undermined.

This clearly demonstrates a skewed and class bias of crime. The real criminals are walking large!

The ruling class can manipulate the definition of what is considered criminal. Only working class/lumpen proletariat crime is considered criminal. When they commit such crimes as fraud, tax evasion, members of privileged groups often escape punishment, or suffer less severe punishment. Acts committed by companies to increase profits e.g. breaking health and safety laws/dumping waste to avoid proper health measures.

Maintain the DSO we are told, in order to allow for independence – the argument presupposes that there is nothing that could be done to the SAPS and that we right it off as an important institutions in our fight against crime, for it is inherently corrupt. To do that is to give up on the only resource that most people have access to and still has the major responsibility to deal with a crime at a scale that no other agency has to. There is no commitment to fight corruption and bad elements for example, within the Police Service. Why

did we set up an institution like the ICD if we still need another independent body like the scorpions to investigate the police? Was it not our intention that the ICD should be able to assure us that the police can carry out the activities without any fear and favour and that we could root out corruption in the SAPS?

5. Has the scorpions been successful?

Much has been said about the success rate of the scorpions in our fight against crime. Without going into the detail of the arguments, what more can we argue when the Head of Scorpions has the following to say:

"85 percent success rate is really taken much too far in the public domain. It is not really a success indicator if you look at it in isolation, because the DSO has the ability to select its cases. I must also add that probably 25% of our cases are disposed of through plea-bargaining" (Sunday Independent, 2 March 2008).

Fivaz and Njenje wrote in the Sunday Times that the unit "Has not done the job that was its reason for existence. It has underperformed, and it has left organised criminals as powerful as they were in 1999 – if not better able to resist policing efforts, and better resourced."

6. What is to be done

Going forward, we would advise that there are proper steps taken to ensure that as we incorporated the best talent from the DSO to the SAPS new unit we do make sure that we indeed strengthen our resolve to fight crime:

- 6.1. We need to properly set up the new unit accompanied by a review of the current detective unit of the SAPS in order to address the imbalances in terms of resourcing, capacity and increasing morale. We dare not create another elite unit at the expense of our general offensive against crime.
- 6.2. Equally the SACP cannot support initiatives that are aimed at necessarily addressing the issue of conditions of service of civil servants in a piece meal way. This integration allows us space for a complete review of remuneration levels of all our officers so as to "attract, recruit and retain highly skilled personnel" in the SAPS in the first instance and in the new unit secondly, not vice versa.
- 6.3. This should be equally supported by measures to steep up better policing in our communities.
- 6.4. We need action as promised by Cabinet on the unscrupulous individuals who were involved in the authoring of the Special Browse Mole Report.

- 6.5. Strengthening the ICD as a safeguard institution to be able to properly monitor and hold the SAPS members accountable to their constitutional mandate.

7. Conclusion.

We would like to thank the committee for the opportunity granted to the SACP. We hope that all of us would realise that we have a mammoth task to overcome crime and corruption in our country and we act in a responsible manner, rather than oppositional manner, to do what is best for the country.

SACP Submissions by Malesela Maleka