



**Submission by African National Congress Youth League
on the amendment of the National Prosecuting Authority
of 1998 and the South African Police Service Act of
1995 relating to the disbandment of the Directorate of
Special Operations (Scorpions)**

The Freedom Charter aptly puts it "All shall be equal before the law...the police force and the army shall be open to all on equal basis and shall be helpers and protectors of the people". These loaded clauses were informed by the injustices meted out to our people by the state machinery of the apartheid Government. State machinery was used, with impunity, to entrench the barbaric policies of separate development and oppression of the African Majority.

The 1994 political breakthrough which paved way for the 1996 Constitution of the Republic of South Africa, enshrines the Bill of Rights. The Bill of rights guarantees all citizens the basic rights and affirms the democratic values of human dignity, equality and freedom. Amongst all these basic rights are the rights to equality before the law (sec 9), equal protection and benefit of the law. The right to be presumed innocent and remain silent until the contrary is proven (sec 35 (3)(h)).

The Youth League was at the fore front then, in fighting state apparatus and institutions against any form of injustice and abuse of power meted out to the defenseless and voiceless who happened to have been the black majority. We will continue to fight any form of injustice and abuse of state power irrespective of who is involved.

The 52nd National Conference of the African National Congress (ANC), under the commission Peace and Stability, correctly took a decision to dissolve the Directorate of Special Operations. The congress noted that defeating crime is in the best interest of the National Democratic Revolution and that community policing is the best form model of policing.

Guided by Section 199 (1) of the Constitution Act, which provides that the security services of the Republic consist of a single defence force, a single police service...the Congress further resolved that this constitutional imperative should be implemented. There is certainly no room for importing any other interpretation of this section other than what the intention of the legislature is.

The African National Congress Youth League (ANCYL) was at the forefront of, firstly conceptualizing this idea and ultimately making sure that it finds its way in the resolutions of the ruling party.

Five reasons why the Scorpions must disband

In addition to what has been articulated above, the Youth League would like to flag five reasons why the Scorpions must dissolve.

1. Separation of powers

It is trite law that those who are charged with investigations may not ultimately have the authority to initiate criminal prosecutions. The separation between officials who investigate crime and those who decide to prosecute is an important

one. It promotes objectivity and provides the criminal justice system with a process in terms of which the results of the police investigation can (to some extent) be evaluated independently before the grave step of instituting a prosecution is taken. The responsibility of the investigating officer is to investigate and gather facts/evidence of an offence. If the investigating officer is also empowered to initiate the criminal prosecution, he/she is bound to be overzealous to a point crossing the fine line of balancing both the right of the state to investigate crime and the right of individuals as contained in our bill of rights.

The responsibility of the prosecutor is to receive evidence gathered by the police, analyze it and present evidence in court for final decision by the court. It is not the ultimate objective of the prosecutor to attain conviction or determine sanction. The duty of the prosecutor is avail evidence to the court for the court to make ultimate call. We are quite aware of the need to have parity of arms between the sophistication of criminals and law enforcement.

In the last six years, we have observed with disgust how this blurring of separation of functions have been used, either deliberately or negligently by the DSO and National Prosecuting Authority to let criminals off the hook in the form plea bargains. i.e the son of Margaret Thatcher, Mark and apartheid Generals who have committed the most heinous and atrocious crimes against our people.

2. Disparity in allocation of resources

There is no doubt that the DSO is disproportionately resourced compared to the SAPS. In addition to these resources, the DSO outsourced almost any function that would bolster their capacity in the form of auditing firms and security companies. The SAPS does not have such luxuries. It is a well known fact that members of DSO are better remunerated compared to members of the SA PS.

Grand media strategy authored by Mr. Bulelani Ngcuka was put in motion to indoctrinate our people and the world over that the Scorpions are performing beyond expectation. As with the truth, you can't paper over cracks, the former head of the DSO, Mr. Leonard McCarthy has told parliament in March 2008 that the perception created that the Scorpions performed better than the police was a fallacy. The so called... "85% success rate was inflated, a consequence of cherry picking the cases with a potential for successful prosecution.

3. Hollywood investigation

The DSO's grandiose strategy and form of media investigation endeared them a temporary fame. This grandiose strategy took many forms that included inviting rolling cameras and journalists. This was a pure form of trial by media in the court of public opinion. The President of the ANC Cde Jacob Zuma and many other

South Africans became the anchor stories of all media houses both nationally and internationally. Media leaks of very sensitive information which was still under investigation became the norm. By the time the accused appears in court, the public including judges have already been convinced that an offence has been committed. A secret media briefing of selected journalist by Mr. Bulelani Ngcuka on the case involving Cde. Jacob Zuma marked the turning point of abuse of state resource to attain narrow, selfish and sponsored aggrandizement.

It is in this secret briefing that Mr. Bulelani Ngcuka amongst others averred that the state does not have a winnable case against the President of ANC. Although his message was very explicit that he has no case against the ANC president, the use of the word winnable was wrong in law. It is not the responsibility of the prosecutor to determine whether a case is winnable or not. Our law has long been settled on this matter. All what the prosecutor has to determine is whether or not there is a reasonable and probable cause for prosecution.

The Youth League has and is steadfast in its commitment to inculcate the culture of human rights. We have been and are very clear that the charges against ANC President are politically motivated and therefore require political intervention not conventional judicial system.

4. Special Browse Mole Report.

The former head of DSO, Mr. Leonard McCathy has admitted to Parliament that the Special Browse Mole Report was authored by the Scorpions. This involved intelligence gathering which is far beyond the Scorpions' mandate. The mandate to gather intelligence resides with the National Intelligence Agency and other designated institutions. The Mole Report made far reaching conclusions about the country and the President of the ANC. Worst of these findings was that the President of ANC intends to overthrow Government with the help of external forces.

The Mole Report has once and for all confirmed that the DSO is indeed infiltrated by foreign agents. This is something that they have denied until mole report was exposed. This was but a final confirmation that the DSO is not serving the interest of our people but Western Imperialists.

5. Use of security personnel without clearance.

The person, property and associates of ANC President and capital of power (UNION BUILDING) were searched by the Scorpions using security companies without security clearance. What other information they came across when they engaged in this fishing expedition and how it will be used it is unknown.

The ANCYL fully supports the bills relocating the capacity of the DSO to the South African Police Services. The SAPS has a unit called the Organized Crime Unit. The bill proposes that in addition to the existing organized crime unit the new unit called Directorate for Priority Crime Investigation (sections 16 A and 16B) be established. The Youth League does not see any logic in having two parallel structures that have the same mandate. Our considered view is that whatever name is given to this new unit, it must be one unit which must be capacitated and resourced to be able to rise up to the challenge of fighting organized crime.

The ANCYL is fully committed to fight and mobilize communities against any form of crime especially organized crime. The Freedom Charter made a clarion call that "There Shall be Houses, security and Comfort". All people shall live where they choose, be decently housed and to bring up their families in comfort and security. The ANCYL will, addition to championing its twin tasks of mobilizing young people behind the banner and vision of the ANC, be at the fore front to jealously guard against the erosion of gains registered thus far in the National Democratic Revolution.

Signed by ANCYL President
Cde Julius Malema