



**VIEWS OF THE UNITED DEMOCRATIC MOVEMENT
ON THE FUTURE OF THE
DIRECTORATE OF SPECIAL OPERATIONS (SCORPIONS)**

Presented to the Parliamentary Committees considering the matter

By Bantu Holomisa, MP

1 September 2008

The designated UDM MP (Mr Madikiza) to the Safety & Security Portfolio Committee recently had a bereavement in the family, and could therefore not provide the UDM's views on this topic earlier. Please accept our apologies. Herewith the UDM's views on the future of the Directorate of Special Operations (Scorpions).

What is the motivation behind the decision to destroy the Scorpions? Let us make no mistake; the publicly-stated and often-repeated intention of the ruling party and its alliance partners is to destroy the Scorpions at all costs.

Take the recent Sowetan (1 September 2008) report; Cosatu's KwaZulu-Natal secretary general Zet Luzipho is quoted as saying:

"If the Scorpions bite the wrong people we will kill them. Like a dog when it starts biting relatives at your home. You get rid of it. We will do the same to the Scorpions."

Once-off colourful language by a provincial junior in the ruling party's alliance partner? We think not. It is just the latest in a long and sustained campaign to demonise the Scorpions, which started many years ago but has reached a deafening crescendo since the Polokwane Conference of the ANC in December 2007.

At this event the ruling party resolved to disband the Scorpions and to do so before the middle of 2008 – coincidentally just prior to the August court trial date of the Polokwane-elected President of the ANC, Mr Jacob Zuma.



A mere two months later the President of the country, Mr Thabo Mbeki, announced in Parliament that a general reform of the criminal justice system would be undertaken.

But less than a week later the Minister of Safety and Security stood up in Parliament and baldly stated that the Scorpions would be no more; that their demise was a *fait accompli*.

"The Scorpions ... will be dissolved", he said.

No leeway, no doubt, no Scorpions; and to hell with constitutional niceties like rational government action or parliamentary processes.

Up until then no rational reason had been advanced for the destruction of the Scorpions. Even now, the only consistent (if not coherent) message from ANC leaders has been an overwhelming dislike of the Scorpions which they have characterised as an enemy of the ANC. It is not a rational or reasonable motivation for Government and Parliament to destroy an institution of the democratic state because it's existence irks the newly-elected leadership of the ANC.

"The only thing the DA and the Scorpions have in common is their persistent hatred of the ANC," ANC secretary general Gwede Mantashe said. (News24, 15/04/2008)

But still the ANC would have us believe when these Parliamentary Committees deliberate on this legislation that the Polokwane resolution, coupled with their persistent public demonising of the Scorpions has nothing to do with the disbandment of Scorpions.

Why this unseemly haste to implement this legislation to disband the Scorpions; setting deadlines for Parliament? Indeed, the same haste has found expression in the combination of National Assembly and National Council of Provinces (NCOP) public hearings, thereby denying the NCOP it's right and obligation to consider this matter in-depth and independently from the National Assembly.

A half-hearted attempt is being made to paint a veneer of governmental and parliamentary respectability over this scheme – perhaps because the ANC has realised that the entire process is wide open to constitutional challenge.



Pity that the ANC's senior leadership keep letting their real motivation slip. Take for instance Polokwane-elected ANC senior leader, Mr Sipiwe Nyanda who said to the ISS Conference in April this year:

"The DSO [Directorate of Special Operations, the Scorpions] was used to pursue a political agenda and to target certain people in the ANC to the benefit of sectarian and foreign interests."

Yet the "issues of the DSO" are not "totally divorced" from the state's investigation and prosecution of Zuma. "It [the ANC's resolution] was informed by the view of how the DSO conducted itself in relation to Jacob Zuma." (Mail & Guardian, 4 April 2008)

There it is, the unpalatable motivation: The ANC insists on having a certain individual as their organisation's leader (which is their democratic right), whom they would like to install as the President of the country (which is also their democratic right if they receive an electoral majority and Parliament chooses to elect their candidate), but they want the criminal investigation and prosecution of this person to evaporate, which means that the investigators and prosecutors (the Scorpions) need to be destroyed (*this* is not the ANC's democratic right). Electoral majority does not entitle the ruling party to abuse its power and act in profoundly undemocratic ways under the guise of "the people voted for us"; that is not the meaning of democracy and I dare say it is certainly not the meaning of the democracy that the ANC of Sisulu, Tambo and Mandela fought for.

As for this sham of parliamentary deliberation, that was exposed by one of the Parliamentary Committee's chairpersons (the hon. Sotyus) at a media briefing before the public hearings had even commenced:

"The Scorpions are going to dissolve. Ours as Parliament is to implement the policies of the ruling party. A decision has been taken in Limpopo, in Polokwane, in December that we should dissolve the Scorpions." (City Press, 2 August 2008)

The criminal justice reform mooted by President Mbeki during his State of the Nation address is nowhere in sight. This vindicates our concerns and confirms what the ANC leaders quoted above have all been saying: The Scorpions will go because the ANC can't



stomach the fact that some of their leaders have acted in ways that justifies legitimate investigation and prosecution.

Criminal justice reform is indeed an urgent priority and should be preceded by a White Paper process (at the very least) so that we can debate the entire topic properly. Nothing that has been said by the ANC about the Scorpions indicates a real concern about criminal justice reform.

As the UDM stated in response President Mbeki during the State of the Nation debate:

“One thing that we have noted is that this concept of combining investigation and prosecution has delivered results. For some people to now advance the academic argument that such a combination cannot be allowed is misguided. Any attempt to blackmail this House – and I dare say your Government – to bend backwards and forwards to accommodate the funders and campaigners for the disbandment of the Scorpions will be resisted at all costs, including resorting to legal action. Perhaps we should be looking at creating an over-arching Ministry of Crime Prevention for the entire criminal justice system, covering the SAPS, Justice, Correctional Services, Home Affairs and Intelligence.”

We still maintain that such a Ministry could help to better coordinate the country’s crime-fighting resources and alleviate unnecessary tension between various security departments and units. Specialized units, such as the Scorpions, would be accountable to this Ministry, but would retain their independence.

During the State of the Nation debate the UDM also posed a question to President Mbeki:

“Mr President you have referred to somebody who suggested a quote to you. Would such a nameless "somebody" looking into this House from outside not think that this preoccupation with disbanding or dissolving the Scorpions was sheer foolishness, given the other major challenges facing the nation? Especially since the people who funded and drove this campaign against the Scorpions were wanted by the law themselves. It is still fresh in our memories how easily this country spent R13 million on the Hefer Commission in order to deal with the allegations of one journalist who was part of this campaign against the Scorpions and its leaders. All of the witnesses



– whose evidence was later discredited – were either under investigation or related to people under investigation for a range of crimes.”

Up until now the ANC has not advanced a single legitimate reason for disbanding the Scorpions, nor have they shown how anything in this legislation is an improvement to the criminal justice system. And neither have they, despite the continuous public statements to this effect, provided a single shred of evidence to show that the DSO in its totality is flawed/compromised and the matter cannot be addressed without disbanding the entire structure. Repetition of falsehoods and wild accusations will not make them true, nor can the isolated errors and misconduct of one or two members justify the destruction of an entire unit and the policy that underpins it.

How many millions of Rands are the SAPS sued for every year? How many people die in police detention? How many people die in the course of police action? How many members of the SAPS have been convicted of serious and violent crimes; and how many of those continue to serve in the SAPS? What is the standing of the recently-‘retired’ National Police Commissioner, Mr Selebi? How many crimes are investigated and how many criminals arrested? Shall we consider the track record of the Department of Justice? What is the conviction rate for serious and violent crimes? How many dockets go missing? How many awaiting-trial prisoners escape from custody at courts? Shall we ask about levels of corruption in Correctional Services and the number of escapes? On the ANC’s purported reasoning (as far as the Scorpions is concerned) there would grounds to disband the SAPS, retrench the entire Department of Justice and lock all the staff of Correctional Services in their own prisons...and then create new policies and structures to replace these old structures which have clearly failed. Preposterous? Yes, and yet that is exactly what the ANC is suggesting doing with the Scorpions.

What is being done by the ANC now stands in stark contrast with what President Mbeki said so eloquently during his State of the Nation address this year. We conclude with this quote from that speech to the nation:

”When we reflected on the issue of crime at last year’s Joint Sitting of Parliament, we all expressed grave concern not only at the high rates of crime, but also at the indication that things seemed to be turning for the worse especially in respect of murder - bucking the trend of the improvement since the attainment of democracy.



Accordingly, last year we engaged in systematic interaction with business and other sectors of the population, to develop a holistic approach towards revamping the criminal justice system in its totality.

In this regard, in the spirit of Business Unusual, Cabinet has agreed on a set of changes that are required to establish a new, modernised, efficient and transformed criminal justice system. Among other things, this will entail setting up a new co-ordinating and management structure for the system at every level, from national to local, bringing together the judiciary and magistracy, the police, prosecutors, correctional services and the Legal Aid Board, as well as other interventions, including the empowerment of the Community Police Forums.

As the Honourable Members are aware, some of these initiatives are already under way; but we are certain that, if they are all carried out in an integrated and complementary manner, the impact will be that much more effective in our fight against crime. The Ministers of the Justice, Crime Prevention and Security Cluster will elaborate on the details of this and other initiatives during the course of next week.

We shall also, during the course of this year, process the Bills on the transformation of the judiciary in consultation with judges and magistrates, complete the strategy aimed at strengthening border control and security, further give life to the Victims' Charter, pay particular attention to the issue of repeat offenders, and continue the implementation of additional measures deriving from recommendations of the Truth and Reconciliation Commission.

Informed by the imperative to intensify the offensive against organised crime, as well as the recommendations of the Khampepe Judicial Commission on the functioning and location of the Directorate of Special Operations and continuing reflections on this matter, we shall by the end of March this year, interact with Parliament on legislation and other decisive measures required further to enhance our capacity to fight organised crime.



What will continue to inform us as we take this step will be the absolute commitment of government to fight organised crime and improve the management, efficiency and co-ordination of our law-enforcement agencies.

Of great importance, our success in the fight against crime depends on co-operation among all of us as law-abiding citizens, inspired by the principles of rule of law, respect for our judiciary and pursuit of equal human rights, which our Constitution enjoins us to observe in our daily lives and pronouncements.”

On 16 August the UDM wrote to the Speaker in order to raise our concerns regarding the parliamentary process on this matter. She replied that the matter was being referred internally, but that was the last we heard. The issues we raised were:

*“As we witness the public hearing process it has become clear to us that the public hearings need to be extended, because they were conducted in selected areas only and no transport was provided to people outside the city centres where these public hearings were conducted. The vast majority of people in the townships, suburbs and rural areas have not been given an opportunity to speak. Instead we have seen worrying signs that the process was being manipulated and stage-managed – people purporting to speak on behalf of civil society and ordinary citizens made blatant statements like “the decision **we** took in Polokwane”, clearly betraying they were speaking on behalf of the ANC not the public. In other areas we hear that people were intimidated and prevented from speaking freely.*

We are convinced that there is a need for a new methodology on how public consultation should take place.

The Constitutional Court has on previous occasions found that Parliament is guilty of failing to conduct adequate public consultation; what research was conducted by Parliament in the wake of this criticism from the highest court, and what steps were taken as a result by the Presiding Officers in order to improve public consultation during the legislative process? Can the Speaker make this research and the resultant policy/rule changes public?



The two chairpersons of the parliamentary committees already prejudiced the entire process during their press conference before the public hearings had even started by clearly indicating the outcome was a fait accompli and the public hearings would have no bearing on the major thrust of the legislation: namely, to disband the Scorpions. These two individuals need to recuse themselves from the process.

Many of the MPs who will decide on the future of the Scorpions when this legislation comes before the House have been – or still are – the subject of investigation in the Travelgate matter which the Scorpions investigated; this creates a conflict of interest. The Speaker should perhaps use the PWC forensic report to screen them from participation in any deliberation or voting on legislation about the future of the Scorpions.”

Let me state this categorically: the UDM is opposed to any attempt to undermine the effectiveness of the Scorpions, never mind the outright “dissolving” of the unit. In another context, where the entire criminal justice system was revamped and a host of steps taken to protect the efficiency and independence of the unit, we could talk about moving it or amending who it reports to. But in the current context any changes will in our view only serve to undermine the unit, which is patently the desire of those who are calling for the unit’s dissolution or absorption into the SAPS.

In the same vein, we agree with calls for discipline among members of the Scorpions. However, any ill-discipline or unwarranted behaviour by one or two individuals cannot be used as an excuse to punish the entire unit.

We have taken note of the widespread public disapproval of the proposal to disband the Scorpions, be it in radio talk shows, surveys, TV debates or newspaper letter columns. There is no doubt that we need to review the way our democratic system operates, since accountability and transparency aren’t always achieved. Too often it seems that a certain elite will pursue their own agenda at the expense of the majority in this country, because the proportional representation system allows them to abuse their power.

In fact, as far as the Scorpions are concerned, some of the complaints about where the unit should be located, and that they are abusing their power, led to the appointment of the



Khampepe Commission. And as far as we know the main recommendation was that the unit should be retained in its current form.

It is our considered view that three key features of the DSO have enabled its success. First, the investigative and prosecutorial functions are combined in a single law-enforcement unit, facilitating the collaboration from the ground up, that is indispensable to the combating of complex crime. Second, the DSO's political, institutional and operational independence, which has allowed it to pursue public corruption in a manner that might have been otherwise impossible. Third, the fact that the DSO is a relatively small, well-trained and highly paid unit of specialists, many with interdisciplinary skills, has afforded a focus, cohesion and esprit de corp.

The UDM has obtained legal opinion regarding the possible judicial remedies we can pursue should we deem parliamentary processes insufficient to prevent the ANC's despicable scheme. The UDM NEC resolved that we will not hesitate to seek redress through the courts if it is necessary. As we did with the floor-crossing, when we took the matter to the highest court in the land and exposed the ANC's expediency. We warned then of the dire consequences and were subsequently proven right, as even the ANC now acknowledges the folly of floor-crossing. Similarly, we will not shy away from our duty as democrats and representatives of the voters to prevent the ANC's abuse of power in this thuggish attack upon the most successful crime-fighting weapon in the state's arsenal.

The history of the Scorpions is worth remembering. I recall the UDM Manifesto for the 1999 election, in which we suggested that the country needed an elite unit to investigate organised crime and corruption. We were therefore delighted when the ANC announced shortly thereafter the establishment of the Scorpions. It was a good idea.

Initial reservations from some of us about the ambit and accountability of the Scorpions were strongly defended by the ANC Government, who assured the nation that such a unit was absolutely necessary. Indeed as the Scorpions began to work on major problem areas such as organised crime, taxi violence and urban terrorism in the Western Cape, the detractors of the Scorpions disappeared. The nation watched with admiration and a growing sense of justice as a string of crime bosses were arrested and their assets



forfeited to the state. It became clear that the concept of prosecution-led investigation was a massive success.

But it seems that the Scorpions' efficiency would be a problem for some. Starting as early as 2001 the Scorpions became the target of a political campaign from within the ANC. Tony Yengeni was the first to accuse the Scorpions of being 'too white' and harbouring political motives, when he was first questioned about his ill-gotten vehicles. He proclaimed innocence whilst launching his verbal attacks upon the Scorpions.

Of course later Mr Yengeni would plead guilty and his crime would be exposed to the public, but those who supported him and shared his disdain for the Scorpions, would conveniently forget this little detail. He became the first in a long line of ANC bigwigs to badmouth the Scorpions only to later be exposed for one crime or another. It is obvious that those with their fingers in the cookie-jar would fear an efficient investigative unit that showed no fear or favour, who weren't easily bribed, who didn't 'lose' dockets or failed to prosecute.

The NPA Director - and ultimate head of the Scorpions - was a trusted and respected member of the ANC. But Mr Ngcuka soon found himself the target of poisonous public and private speculation from ANC members who were stung by the Scorpions or knew that they had things to hide. Thus eventually Mo Shaik – brother to Schabir – and Mac Maharaj – former Minister of Transport – conspired to have Mr Ngcuka 'exposed' as a traitor to the ANC who was an informant of the Apartheid regime. This tale was sold to Ranjeni Munsamy – then a journalist with the Sunday Times. When her editor refused to publish such a blatantly dubious story, she simply took the matter to another newspaper.

The country had to waste R13 million to pay for the Hefer Commission which soon exposed the unsubstantiated and unreasonable allegations. Later Mo Shaik's brother, Schabir, would be successfully prosecuted for a string of offences. Mac Maharaj it was later shown was the recipient of expensive gifts as Minister. And Ranjeni Munusamy would resurface as Jacob Zuma's spin-doctor.



Brett Kebble bankrolled the ANC Youth League and others within the ANC and made similar claims about the Scorpions. Later he would be exposed for massive fraud and the Scorpions' suspicions about him were vindicated.

The Minister of Safety & Security and the National Police Commissioner testified against the Scorpions before the Khampepe Commission. But guess what, the National Commissioner was exposed for having dubious relationships with drug lords and organised criminals.

Most of the critics of the Scorpions have been prosecuted, face prosecution or are aligned to such people.

To the UDM it is a blatant conflict of interest that an ANC leadership riddled with people who have been prosecuted or face prosecution by the Scorpions, should now rule on the future of that unit. There is an obvious conflict of interest. For them to proceed with this course of action would be the grossest abuse of power.