



## The Independence of South Africa's DPCI under Threat?

### 1. Introduction

Towards the end of 2013, allegations surrounding the illegal rendition of four Zimbabwean nationals by high ranking officials in South Africa's Directorate of Priority Crime Investigation (DPCI, or 'the Hawks') arose, prompting the Minister of Police, Nkosinathi Nhleko, to suspend the institution's head, Lt. Gen. Anwa Dramat, in December 2014. Not long after his suspension, rumours emerged that Lt. Gen. Dramat had asked for the Nkandla docket – concerning allegations that President Zuma benefited unduly from public funds – with a view to the possibility of investigating a case against Mr Zuma; and that it was this interest that resulted in his suspension from the Hawks<sup>1</sup>. Mr Dramat's suspension was followed by the suspension of his colleagues, Maj. Gen. Shadrack Sibiyi and Colonel Leslie Maluleke, also based on the illegal deportation of the Zimbabweans. These three men were also, as it happens, instrumental in investigating former crime intelligence boss Lt. Gen. Richard Mdluli; a man who previously claimed that a political conspiracy had been formed against him from those in the 'Mbeki camp'<sup>2</sup> and who, furthermore, went on to pledge his allegiance to President Zuma and the ANC<sup>3</sup>.

The suspension of officials who were involved in conducting investigations against high-profile political incumbents, civil servants and businessmen, seems very reminiscent of the events that led to the dismantling of the Directorate of Special Operations, or the Scorpions, as the unit was more colloquially known, in 2008. An important consideration that emerged from 2008, and which continues to echo in 2015, is the probability of political influence in supposedly independent investigative units, and the consequences thereof for South Africa's democracy.

### 2. The Scorpions

After South Africa's transition to democracy in 1994, the country faced an array of challenges from organised crime and police corruption<sup>4</sup>. The government decided in 1999 to address the issue by establishing a special, adequately staffed and equipped investigative unit to deal with all national priority crime, including police corruption<sup>5</sup>. Subsequent to President Mbeki's announcement in this regard, the Directorate of Special Operations, or Scorpions, was set up. It is important to note that the institution's existence was largely motivated by government's attempt to boost public confidence in its ability to fight crime and protect its citizens, while simultaneously upholding the rule of law – a fundamental hallmark of any democracy. The Scorpions had a legislative and operational mandate that enabled it to investigate almost any matter and, in terms of Section 7 of the National Prosecuting Authority Act, it was granted powers "...to investigate, gather, keep and analyse information, institute criminal proceedings related to offences committed..."<sup>6</sup>

The Scorpions consisted of some of the best intelligence, forensic and financial experts in South Africa, many of them having received international training from Western countries<sup>7</sup>. Despite tension and conflict that arose between the Scorpions and the South African Police Services (SAPS), the former had an impressive record of solving crime and prosecuting high-profile criminals; a record that instilled trust and respect among opposition parties and civil society organisations which also acted as watchdogs over government<sup>8</sup>. It was, thus, with outrage that individuals and organisations protested against the institution's dismantling in 2008. The Scorpions, which very possibly made many powerful enemies in the political and business realm, met its downfall shortly after it launched an investigation into the infamous Arms Deal

Scandal, involving the now terminally ill Shabir Shaik and, allegedly, President Zuma. Cases that involve popular members of a ruling group often attract strong criticism from that group<sup>9</sup>, and so it was that a resolution was passed at the ANC's 2007 national conference calling for the Scorpions to be dissolved, with its staff returning to the SAPS or to the National Prosecuting Authority. Various reasons were advanced at the time: it was claimed that the Scorpions specifically targeted senior ANC members, and that it was, in effect, interfering in political matters; during its investigation into the Arms Deal, it had allegedly only focused on high-profile ANC members, and not on other players at a lower level who were also involved in questionable aspects of the deal; and it was argued that its legislative framework was too wide, bringing it into constant conflict with the SAPS<sup>10</sup>.

### 3. The Hawks and Conspiracies

The Hawks was established in 2009 and assigned to prevent, combat and investigate national priority offences and any other offences referred to it by the National Commissioner of Police. Shortly after it came into existence, its location within SAPS was challenged in the Constitutional Court, the case centring on a single point: independence. Firstly, the Court found that Chapter 6A of the SAPS Act failed to secure sufficient independence for the Hawks, and that independence was a constitutional requirement;<sup>11</sup> an effective and independent mechanism or body should be established to uphold fundamental democratic norms and uproot corruption. Secondly, the Court found that the Hawks was not adequately isolated from political influence in its organisation and functioning. Ultimately, the Hawks' activities were synchronised by a ministerial committee or the whole Cabinet,<sup>12</sup> and this made the unit vulnerable to political influence and interference.

In 2013, the Independent Police Investigative Directorate (IPID) informed Lt. Gen. Dramat that it was investigating charges relating to the illegal rendition of Zimbabweans in 2010.<sup>13</sup> Mr Dramat, Mr Sibiyi and Mr Maluleke, were subsequently suspended pending an investigation into their involvement in the renditions, all three men having vehemently denied the allegations. The decision to suspend them, taken by Police Minister Nhleko, may well have been invalid, since the Constitutional Court had earlier struck down a section of the SAPS Act which purported to give

the Minister of Police sole discretion in the firing of the head of the Hawks.<sup>14</sup>

On 29<sup>th</sup> January 2015, the Minister appeared before the Parliamentary Police Portfolio Committee to defend his decision to suspend Mr Dramat. The Minister stressed that evidence found in the investigation conducted by IPID placed high-ranking members of the Hawks, Mr Dramat included, at the centre of allegations surrounding the illegal deportation of foreign nationals. The Minister felt compelled to take action "... against such heinous crimes." According to the leading DA member of the portfolio committee, Diane Kohler-Barnard, the Minister had grossly flouted the Constitution and the ruling of the Court by suspending Mr Dramat – a sentiment echoed by the Helen Suzman Foundation (HSF), which went on to challenge the Minister's decision in court.

While Mr Dramat declined to discuss the allegations in media, he sent the Minister a letter stating that he was well aware that his suspension was "pregnant with ulterior motives" and that a decision to remove him permanently from his post had already been made. Dramat noted that "I have recently called for certain dockets involving very influential persons to be brought [to me] ... and this has caused ... resentment towards me."<sup>15</sup> One such docket related to allegations of corruption and impropriety concerning the construction of President Zuma's residence at Nkandla. Mr Dramat claimed, further, that certain dockets of cases that had been investigated by him would either be reallocated or shut down completely.<sup>16</sup>

All of this strongly suggests the compromised integrity of a vital investigative unit that is constitutionally required to be independent and insulated from political influence, and which is needed to uphold the country's rule of law and to uproot corruption, consequently protecting the country's democracy.

### 4. What This Means for Democracy

There are myriad democratic norms and conventions that aid the deepening of a democracy, ensuring its sustainability and functionality. These include: responsiveness, the rule of law, voting equality, participation, free media, and lastly, horizontal and vertical accountability.

Horizontal accountability<sup>17</sup> refers to the capacity of state organs to check abuses by other public

agencies and branches of government. In South Africa, Parliament and the judiciary act as the primary bodies tasked with ensuring horizontal accountability. Vertical accountability<sup>18</sup> refers to the capacity of citizens, media and civil society to enforce standards of good performance on officials. The functioning of a democracy is heavily dependent on the ability of state and civil institutions and organisations to call upon civil servants to account for decisions they have made; and the latter, in turn, have the duty to be responsive to the concerns of those they have pledged to serve.

Accountability is widely perceived as an imperative building block towards a healthy democracy, and instances in which state officials slip through legal or political 'loopholes' reflect negatively on a political system that claims to uphold probity and integrity. It is, therefore, as the Constitution implies, of the utmost importance to have an autonomous and politically insulated mechanism or body that seeks to uproot corruption and to uphold the rights enshrined within the country's Bill of Rights. The Scorpions was intended to be such a body; likewise, the Hawks. However, when the regrettable events set out above are taken into account, the independence of the Hawks must be seen as questionable. Rumours relating to political pressure, corruption and death threats abound, resulting in a sort of nervousness among civil society about how possible it is to hold political incumbents to account. The allegation is that political connections can provide protection from the confines of a jail cell, or from having to repay stolen money; and that, when an independent body or a determined, impartial official begins to ask pressing questions, steps will be taken to undermine or remove them.

While all of this may or may not be fact – none of the allegations have been finally tested in court – it remains imperative for the functioning and deepening of our democracy that South Africa has both a wholly independent crime investigation body and a fully implemented separation of powers doctrine that can, if necessary, bring to account even the most powerful leaders in the country, without being derailed by death threats, demotions or suspensions. Corruption

undermines the rights enshrined in Chapter Two and imperils democracy; to combat it requires an integrated and comprehensive response.

## 5. Conclusion

On 21 April 2015, Police Commissioner Riah Phiyega announced Anwa Dramat's resignation from the Hawks. According to the *Mail and Guardian*, Mr Dramat was offered a R3 million severance package and a monthly stipend of R60 000 until the age of 60 years in return for his resignation<sup>19</sup>. Such an allegation, if it proves to be true, raises an array of concerns: why is he being paid such a large sum of money? Is this a form of bribery, an incentive to go quietly? What do his resignation and his large pay-off mean for South Africa's democracy, especially in relation to the democratic hallmarks of accountability and the rule of law?

South Africa needs strong horizontal and vertical accountability institutions which are insulated from political interference and pressure, and which are not attacked or threatened when conducting investigations into the affairs of high-ranking politicians. Furthermore, there should be more dialogue and co-operation between the various bodies that have been tasked with upholding democratic norms and conventions. Civil society participation and engagement should be encouraged and fostered; it should be able to influence government policy, extract government responsiveness, and ensure government accountability. It was largely civil society activists and organisations that helped lift South Africa from the dark days of apartheid into a democratic era, and the same civil society must now act as a watchdog over government in order to protect the open, free and democratic free society we inhabit.

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- <sup>1</sup> 'Hawks not investigating Nkandla, say police' (2014) [www.mg.co.za/article/2014-11-30-hawks-not-investigating-nkandla-say-police](http://www.mg.co.za/article/2014-11-30-hawks-not-investigating-nkandla-say-police)
- <sup>2</sup> Irvin Kinnes & Gareth Newham (2012) *Freeing the Hawks: why an anti-corruption agency should not be in SAPS* Retrieved: [www.issafrica.org/uploads/kinnes\\_newham.pdf](http://www.issafrica.org/uploads/kinnes_newham.pdf)
- <sup>3</sup> Jacques Pauw & Charl du Plessis (2013) *Richard Mdludli: Comeback Kid* Retrieved: [www.citypress.co.za/politics/mdludli-comeback-kid/](http://www.citypress.co.za/politics/mdludli-comeback-kid/)
- <sup>4</sup> Mark Shaw (1998) *Organised Crime in Post-Apartheid South Africa* Retrieved: [www.issafrica.org/uploads/Paper\\_28.pdf](http://www.issafrica.org/uploads/Paper_28.pdf)
- <sup>5</sup> Joey Berning & Moses Montesh (2012) *Countering Corruption in South Africa: the rise and fall of the Scorpions and Hawks* Retrieved: [www.issafrica.org/uploads/Berning\\_Montesh.pdf](http://www.issafrica.org/uploads/Berning_Montesh.pdf)
- <sup>6</sup> Ibid
- <sup>7</sup> Ibid
- <sup>8</sup> Andrew Faull & Thoko Mtsolongo (2009) *From Stings to Wings: Integrity Management and the Directorate for Priority Crime Investigations* Retrieved: [www.issafrica.org/uploads/STINGSCQ29.PDF](http://www.issafrica.org/uploads/STINGSCQ29.PDF)
- <sup>9</sup> Irvin Kinnes & Gareth Newham (2012) *Freeing the Hawks: why an anti-corruption agency should not be in the SAPS* Retrieved: [www.issafrica.org/uploads/kinnes\\_newham.pdf](http://www.issafrica.org/uploads/kinnes_newham.pdf)
- <sup>10</sup> Andrew Kanyeirire (2008) *Investigating the Investigators: a summary of the Khampepe Commission of Inquiry* Retrieved [www.issafrica.org/uploads/CQ24KANYEGIRIRE.PDF](http://www.issafrica.org/uploads/CQ24KANYEGIRIRE.PDF)
- <sup>11</sup> Joey Berning & Moses Montesh (2012) *Countering Corruption in South Africa: the rise and fall of the Scorpions and Hawks* Retrieved: [www.issafrica.org/uploads/Berning\\_Montesh.pdf](http://www.issafrica.org/uploads/Berning_Montesh.pdf)
- <sup>12</sup> Ibid
- <sup>13</sup> Jacques Pauw & Thanduxolo Jika (2013) *Anwa Dramat on Thin Ice* Retrieved: [www.citypress.co.za/politics/anwa-dramat-thin-ice/](http://www.citypress.co.za/politics/anwa-dramat-thin-ice/)
- <sup>14</sup> Sarah Evans (2015) *Hawks continue to dive into a web of conspiracies* Retrieved [www.mg.co.za/article/2015-01-06-hawks-continue-to-dive-into-a-web-of-conspiracies](http://www.mg.co.za/article/2015-01-06-hawks-continue-to-dive-into-a-web-of-conspiracies)
- <sup>15</sup> Sam Sole (2015) *Is Dramat the latest victim of Zuma's wrecking ball?* Retrieved: [www.mg.co.za/article/2015-01-08-is-dramat-the-latest-victim-of-zumas-wrecking-ball](http://www.mg.co.za/article/2015-01-08-is-dramat-the-latest-victim-of-zumas-wrecking-ball)
- <sup>16</sup> Ibid
- <sup>17</sup> Larry Diamond & Leonardo Morlino (2004) *The Quality of Democracy*. Retrieved: [www.iis-db.stanford.edu/pubs/20729/Diamond-Morlino.QoD.intro\(book\).drft1.pdf](http://www.iis-db.stanford.edu/pubs/20729/Diamond-Morlino.QoD.intro(book).drft1.pdf)
- <sup>18</sup> Ibid
- <sup>19</sup> 'Hawks boss Dramat quits after reaching settlement (2015) [www.mg.co.za/article/2015-04-22-hawks-boss-dramat-quits-after-reaching-settlement](http://www.mg.co.za/article/2015-04-22-hawks-boss-dramat-quits-after-reaching-settlement)

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