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LAW SOCIETY COUNCIL COMMENT ON DISBANDMENT OF 'SCORPIONS' AND RELATED EVENTS

In his State of the Nation address, President Thabo Mbeki noted that South Africans, as law-abiding citizens, should be “inspired by the principles of the Rule of Law, respect for our Judiciary and pursuit of human rights, which our Constitution enjoins us to observe in our daily lives and pronouncements.” The President added that there is concern about the capacity of South Africans to defend their democratic rights and the Constitution, which were born out of enormous sacrifice.

We share President Mbeki’s sentiments. Recent developments in South Africa create the perception that the principles of the Rule of Law are under threat.

When the National Director of Public Prosecutions was suspended in September last year, we called for a speedy enquiry into the matter since the suspension of such a key figure, allegedly based on a breakdown of communication between him and the Minister of Justice and Constitutional Development, could have a serious impact on the administration of justice. It is now five months down the line and the enquiry is still pending. The time frames proposed by the Department of Justice and Constitutional Development for the filing of its submissions were not complied with, without any cogent explanation. The delay in resolving the matter is unacceptable. We do not comment on whether the suspension was justified or not – that is for the Commission to decide. We are, however, concerned at the length of time it is taking to resolve the matter. This delay, together with other developments relating to the fate of the Directorate of Special Operations (DSO or Scorpions), can create the impression that the delay in resolving the matter might not be inadvertent.

For the past few months, South Africans were exposed to an unhealthy standoff between the South African Police Service (SAPS) and the DSO. The DSO’s Gerrie Nel

was arrested at a roadblock which was specially set up near his house. His arrest by a contingent of SAPS officers and his handcuffing in front of his minor children on his way back from vacation made for chilling reading. What added a great deal of intrigue was the fact that there was reportedly an agreement between SAPS and the DSO that Nel would voluntarily hand himself over to the police when they were ready to charge him. Such an arrangement is not uncommon and is the same arrangement which the National Commissioner of Police and the DSO concluded with regard to the charges the National Commissioner is facing. It is also pertinent to note that the arrest of Nel occurred barely two days before the launch of an urgent application in which relief was sought in respect of the very matters which Nel was investigating. These events, culminating in the spectacular withdrawal of charges against Nel, cannot but create the impression that the institutions of law and order and of justice were being misused.

Whereas it is the prerogative of the ruling political party to resolve that the DSO should be incorporated into SAPS, we are concerned that various Cabinet Ministers have stated this to be a *fait accompli*. Cabinet Ministers and other members of Parliament have unfortunately created the impression that Parliament operates on the basis of the ruling party's say-so as opposed to operating in the transparent, democratic and accountable manner provided for in our Constitution. These Cabinet Ministers and members of Parliament must assure South Africans that the fate of the DSO will be decided only after proper public participation, including public hearings. Without such due process, Parliament's role is likely to be relegated to nothing more than that of rubber-stamping the ruling party's resolutions.

This impression and the timing of the resolution (in the context of the charges faced by Messrs Zuma and Selebi) creates the further dangerous impression that the call for the disbanding of the DSO is not based solely on what is best for the administration of justice and for the investigation into organised crime, which ought to be the only considerations in determining the future of the DSO. The deadlines set are unrealistic and unacceptable, and the apparent haste to implement the incorporation is difficult to understand, especially where other pressing issues remain unresolved.

We firmly believe that South Africa requires a dedicated and specialised crime-fighting unit such as the DSO. Whether such unit is to be accountable to the Minister of Safety and Security or not is a decision that can only be made after a proper enquiry by Parliament in the prescribed manner. This is not a matter on which we comment at this stage. We do however welcome President Mbeki's recent statements that a specialised unit is necessary for the effective fight against crime.

In the midst of the above developments came the completely unwarranted attack on Deputy Chief Justice Moseneke in respect of the comments he made at his birthday party. These comments served only to underscore Justice Moseneke's commitment to an independent and impartial Judiciary and to his commitment to achieving justice and a better life for all South Africans. Although the criticisms of Justice Moseneke was retracted later, this did not help to cure the impression that certain players in the political arena are less than sanguine about members of our judiciary asserting their independence.

Each of the above incidents, viewed on its own, is sufficient cause for concern for the impression it creates in the minds of ordinary South Africans. Viewed cumulatively and in the context of the relationship which these events bear to one another, South Africans might well come to the conclusion that there is a deliberate and sustained attack on important institutions involved in upholding the Rule of Law and in protecting the administration of justice. We do not necessarily say that such impressions or conclusions are justified. We do, however, believe that it is our duty to draw attention to them and to call on all stakeholders to act calmly and rationally, to uphold the Constitution and the Rule of Law, and to protect and preserve the independence of the judiciary. To do otherwise would be sounding the death knell to our hard-won democracy, and would be a betrayal of all those who struggled so valiantly for this democracy.

***ISSUED ON BEHALF OF THE COUNCIL OF THE
LAW SOCIETY OF SOUTH AFRICA***

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Editor's note:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 17 800 attorneys and 4 300 candidate attorneys.

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