

Thursday, 16 May 2024]

No 74—2024] SIXTH SESSION, SIXTH PARLIAMENT

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
 TABLINGS AND
 COMMITTEE REPORTS**

THURSDAY, 16 MAY 2024

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ANNOUNCEMENTS

National Assembly and National Council of Provinces

The Acting Speaker and the Chairperson

1. Assent by President in respect of Bills

- (1) **National Health Insurance Bill [B11B–2019]** – Act No 20 of 2023 (assented to and signed by President on 15 May 2024) (*Wet op Nasionale Gesondheidsversekering (Afrikaans)*).

2. Bills passed by Houses – to be submitted to President for assent

- (1) Bills passed by National Assembly on 16 May 2024:
 - (a) **Basic Education Laws Amendment Bill [B2D–2022]** (National Assembly – sec 76).
 - (b) **Public Procurement Bill [B18D–2023]** (National Assembly – sec 76).
 - (c) **Statistics Amendment Bill [B31D–2023]** (National Assembly – sec 75).
 - (d) **Pension Funds Amendment Bill [B3D–2024]** (National Assembly – sec 75).
- (2) Bills passed by National Council of Provinces on 16 May 2024:
 - (a) **Plant Health (Phytosanitary) Bill [B14B–2021]** (National Assembly – sec 76)
 - (b) **Marine Pollution (Prevention of Pollution from Ships) Amendment Bill [B5–2022]** (National Assembly – sec 76).
 - (c) **Electricity Regulation Amendment Bill [B23B–2023]** (National Assembly – sec 76).
 - (d) **South African National Water Resources Infrastructure SOC Ltd Bill [B24B–2023]** (National Assembly – sec 75).
 - (e) **General Intelligence Laws Amendment Bill [B40B–2023]** (National Assembly – sec 75)

National Assembly

The Acting Speaker

1. Bills passed by Council and returned to Assembly for concurrence

- (1) Bill amended by Council and returned for concurrence on 16 May 2024:

- (a) **Transport Appeal Tribunal Amendment Bill** [B8D–2020] (National Assembly – sec 76).

The Bill has been referred to the **Portfolio Committee on Transport** of the National Assembly.

COMMITTEE REPORTS

National Assembly and National Council of Provinces



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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**ANNUAL REPORT OF THE JOINT STANDING COMMITTEE ON INTELLIGENCE
FOR THE FINANCIAL YEAR ENDING 31 MARCH 2022 INCLUDING THE PERIOD
(JANUARY TO FEBRUARY 2021)**

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1. INTRODUCTION

The Joint Standing Committee on Intelligence (JSCI) is established in terms of section 2 of the Intelligence Services Oversight Act 1994, (Act No. 40 of 1994), hereafter referred to as the Act. The primary mandate of the JSCI is to perform oversight over the intelligence and counter-intelligence functions of the Services, which include the State Security Agency (SSA), Defence Intelligence (DI) Division of the South African National Defence Force (SANDF) and South African Police Service-Crime Intelligence (SAPS-CI).

The JSCI is also responsible for the nomination of the Inspector-General of Intelligence (IGI), which must be approved by the National Assembly (NA) by a resolution supported by at least two thirds of its members for appointment by the President. The Committee also hold accountable the IGI for the overall functioning of the Office of the IGI (OIGI), and shall report on his or her activities and the performance of his or her functions to the Committee at least once a year.

The Committee hereby tables its Annual Report (AR) to the Parliament of the Republic of South Africa in accordance with section 6 of the Act. It must be noted that although the previous AR covered the financial year ending 31 March 2020 including the period up to December 2020. Accordingly, the first three quarters of the financial year ending on 31 March 2021 was already covered. The remaining quarter of the financial year 2020/2021 is covered in this report.

2. COMPOSITION OF THE COMMITTEE

The Committee consists of members of Parliament appointed on the basis of proportional representation determined according to the formula set out in the Act. The Chairperson is appointed separately in terms of section 2(4) of the Act. Accordingly, the following seats were allocated to various political parties following the 2019 elections:

- ANC: 8 seats
- DA: 3 seats
- EFF: 1 seat

The membership of the JSCI for the period under review was composed of the following:

Name	Political party
Mr JJ Maake	NA (ANC): Chairperson
Ms LC Bebee	NCOP (ANC)
Ms MC Dikgale	NA (ANC)
Ms DE Dlakude	NA (ANC)
Mr BM Hadebe	NA (ANC)
Mr G Magwanishe	NA (ANC)
Ms JM Mofokeng	NA (ANC)
Mr MK Mmoiemang	NCOP (ANC)
Ms ZV Ncitha	NCOP (ANC)
Mr DJ Stubbe	NA (DA)
Ms D Kohler-Barnard	NA (DA)
Ms C Labuschagne	NCOP (DA)
Dr MQ Ndlozi	NA (EFF)

Mr DJ Stubbe, who served in the JSCI of the Fourth and Fifth Parliament, was appointed to the Committee on 9 September 2021 to replace Dr MM Gondwe.

3. LEGISLATIVE MANDATE

Section 2 of the Constitution of the Republic of South Africa, 1996, provides that the Constitution is the supreme law of the Republic, all law or conduct that is inconsistent with the Constitution is invalid and obligations which are imposed by the Constitution must be fulfilled.

Section 199(8) of the Constitution provides that to give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.

Section 3 of the Act provides that the Committee, in exercising its oversight responsibility, performs inter alia, the following functions:

- Obtain audit and other reports from the Auditor-General of South Africa (AGSA) and to consider the financial statements of the services;
- Obtain reports from the Secret Services Evaluation Committee;
- Obtain reports from the designated judge as defined in the Regulation of Interception of Communications and Provision of Communication Related Information Act (RICA), 2002 (Act No. 70 of 2002);
- Obtain reports from the Ministers responsible for the Services;
- Consider and make recommendations on the report and certificates issued by IGI;
- Consider and make recommendations on all proposed legislation and regulation relating to any Service or any other intelligence or intelligence related activity;
- Review and make recommendations about co-operation, rationalisation and demarcation of intelligence functions performed by the Services;
- Order investigation by and to receive a report from the Head of a Service or the IGI regarding any complaint received by the Committee from any member of the public provided such complaint is not trivial, vexatious or made in bad faith;
- Refer any matter in relation to an intelligence activity which the Committee regards as relevant to the promotion and respect of the Bill of Rights to the South African Human Rights Commission;
- Consider and make recommendations on matters falling within the purview of the Act and referred to the Committee by the President or a Minister responsible for any Service or Parliament;
- To request relevant officials to explain any aspect of reports furnished to the Committee;

- To hold hearings and subpoena witnesses on any matter relating to intelligence and national security; and to
- To consult with any member of Cabinet in relation to any function performed by the Committee in terms of the Oversight Act.

Chapter 3, Joint Rule 120 and schedule B of the Joint Rules of Parliament also set out the establishment, powers and functions of the JSCI. The Constitution, the Act and the Joint Rules provide the bedrock of the mandate of the JSCI which must be strictly fulfilled.

4. ACTIVITIES OF THE JSCI FROM 1 JANUARY TO 31 MARCH 2021

As previously indicated, most of the activities of the 2020/2021 reporting period were included in the AR which covered the period 1 April 2019 to 31 December 2020. From January 2020 to 31 March 2021, over ten meetings and special meetings were held with intelligence services and other stake holders in Parliament and Pretoria as indicated in Annexure E. Meetings in Parliament dealt with matters such as complaints amongst others. The special meetings in Pretoria, which took place from 15 to 19 March 2021, were held when there were serious matters of national security which could not be deferred for when the intelligence services appeared in Parliament. The JSCI made arrangements to meet with intelligence services for engagements on those matters.

4.1 Special Meetings with Intelligence Services in Pretoria, 15 to 19 March 2021

In March 2021, the Committee held special meetings with the SSA, SAPS-CI, DI, OIGI, the Designated Judge of Interception, and the Office for Interception Centres (OIC). The main purpose of the special meetings was to engage on urgent and other outstanding matters including visiting the facilities of the services.

4.1.1 State Security Agency

On 15 March 2021, the Committee received a briefing from the Acting DG regarding the stand-off between the National Prosecuting Authority (NPA) Investigating Directorate (ID) together with the OIGI and the SSA at Musanda. The Committee was

informed that the members of the OIGI attempted to raid the SSA Headquarters in relation to testimonies presented to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, hereafter State Capture Commission.

The Acting DG indicated that there were several investigations on a whole range of issues that started small and later expanded into complex investigations. Several matters were referred for the attention of the Directorate for Priority Crime Investigation (Hawks), the South African Revenue Service (SARS), the Independent Police Investigative Directorate (IPID) and ID of the NPA. It was indicated that the ID came into the picture due to testimonies at the State Capture Commission of unrest. There were collaborations between several of the entities on the investigations. The Minister had been briefed on the investigations. It was reported that the State Capture Commission had requested information from the SSA.

The Acting DG indicated that he received a summons, which when scrutinised, appeared in order. In his opinion, he indicated that the only way to stop a summons was to lodge an application through the court. Other than that, the ID could not be denied access to the SSA Headquarters. Members were also informed that the Director of the Domestic Branch, at the time, was responsible for denying the ID access to Musanda.

The Members indicated that when the Acting DG became aware that the Director of the Domestic Branch was not cooperating with the summons, he had a duty to clarify that the summons granted the ID access. It seemed as if there was deliberate sabotage to deny the ID access to information. The reasons for the unwillingness to challenge the summons were indicated by the Acting DG. However, the Director of the Domestic Branch indicated that there was a reason why documents were classified. It was further stated that the summons was not immediate; the protocol of safekeeping was there for a reason.

4.1.2 South African Police Service-Crime Intelligence

On 16 March 2021, the National Commissioner of Police, at the time, with his team briefed the JSCI on the report of the IGI on the alleged misconduct by SAPS-CI with regard to Personal Protective Equipment (PPE) procurement. It was reported that on

9 November 2020 the office of the National Commissioner received a report from the IGI on allegations of abuse of the Secret Services Account funds. Documentary evidence submitted to the office of the National Commissioner indicated proof of wrongdoing (alleged misconduct) by employees attached to SAPS-CI, ranging from middle management to senior management level. The SAPS held a reasonable suspicion that the alleged misconduct had been committed. The nature of the misconduct was regarded as serious under Regulation 5(4) of the Regulations governing SAPS.

The report emanated from a complaint requesting the National Commissioner to investigate the alleged misconduct by the employees. Upon scrutinising the written complaint, the National Commissioner was persuaded that the alleged misconduct required a departmental investigation. In accordance with Section 40 of the SAPS Act read with the SAPS Disciplinary Regulations, 2016, the National Commissioner was obligated to authorise an investigation into the matter.

When Covid-19 started, the SAPS employees were exposed to higher risk and did not have PPE. During that time the National Commissioner authorised and allocated funds for the purchase of PPE. No deviation was thus authorised for SAPS-CI to get PPE on its own.

Due to the IGI's investigation, which was not yet finalised, the officials could not be placed in the same environment where they were prior to their suspensions. The suspensions were with salaries as the prescripts did not allow for suspensions without salaries. Those acting in positions were remunerated as per acting policy.

The National Commissioner advised that the internal disciplinary process had been concluded. However, the suspended officials could not be reinstated in their old positions pending the finalisation of the investigation by the IGI.

Subsequent to the suspension of the personnel, the National Commissioner instructed the Deputy National Commissioner: Crime Detection to appoint personnel in an acting capacity to ensure that the mandate of SAPS-CI is fulfilled.

4.1.3 Designated Judge of Interception

On 17 March 2021, the presentation by the Designated Judge of Interception mainly focused on the decision of the constitutional court related to RICA. The report included the challenges of the OIC. Parliament had been given 36 months from February 2021 to cure the defect and it had been referred to the Portfolio Committee on Justice and Correctional Services. It was indicated that RICA was a very complex piece of legislation.

It was reported that there were unlawful interceptions taking place as people's private lives were being invaded without consent. In terms of applications, the report from SAPS-CI was very brief (see Annexure A). It highlighted offences that were detected such as drug trafficking and terrorism which were investigated by the SSA and SAPS-CI. It was indicated that the services needed to collaborate on various investigations.

With regard to the process to grant warrants, it was indicated that when a request was received, the office checks if there was sufficient ground to investigate. Some requests processed related to money laundering and human trafficking. Once the judge was satisfied with the report, the request would be signed and submitted to the OIC. All cases ought to be investigated within three months and if the period lapsed a person would reapply.

Sometimes amendments were made within three months if it was discovered that the number of the target had changed. For instance, syndicates involved in high jacking, robberies, and car theft, especially during the Covid-19 pandemic, changed their numbers. Syndicates also used numbers that did not belong to them. An oral application was also allowed according to RICA when there was time urgency such as a threat to life.

4.1.4 Office for Interception Centres

On 17 March 2021, the Minister of State Security introduced the presentation and covered the mandate of the OIC. It was indicated that the OIC could not keep up with the growing technology with the machines used. It was further indicated that some of the officials were not skilled and trained while others resigned because they felt they

were not using their skills effectively due to outdated technology, and low morale in the OIC.

In terms of reporting, the OIC submits quarterly reports to the Judge. It was reported that advanced technology was needed to prevent serious crimes and heists. The Committee was informed that the process for the OIC to be independent from the SSA was underway. Once completed and approved, the structure would be independent and not managed by the SSA.

4.1.5 Defence Intelligence

On 18 March 2021, the JSCI visited DI Headquarters for a tour of the building, which included presentations of equipment. Members were shown the various equipment that DI was using. More importantly, members were shown the building and informed that it has been condemned due to its state. It was also indicated that DI has been trying to move from the building for a long time.

4.1.6 Office of the Inspector-General of Intelligence

On 19 March 2021, the JSCI received a briefing from the IGI on the investigation into the qualifications of the Director of the Domestic Branch. The allegation, which was widely reported in the media, was that Director of the Domestic Branch did not possess legal qualifications. The IGI indicated that the investigation was 95 percent completed, and depended on other sources for its completion. It was reported that the investigation revealed that the qualifications were authentic. The Director of the Domestic Branch qualified at UNISA and went through the admission process and was granted a certificate to practice. It was indicated that the database had loopholes, and the OIGI was waiting for him to appear on the system. In his opinion, the IGI indicated that he had a strong feeling that the complaint was political.

5. ACTIVITIES OF THE JSCI IN THE REPORTING PERIOD: 1 APRIL 2021 TO 31 MARCH 2022

For the following reporting, the following activities were undertaken by the Committee.

5.1 Overview of Committee Meetings

The Committee convened over 42 meetings including special meetings on various matters during the reporting period. The meetings ranged from Committee meetings to those with the intelligence services and related entities, as shown in Annexure E.

5.2. Annual Performance Plans and Budget

5.2.1 Annual Performance Plan and Budget for State Security Agency for 2021/2022

On 12 May 2021, the Committee was briefed by the SSA on its APP for the 2021/2022 financial year. The Committee was informed that planned outcomes, indicators, targets and outputs were aligned to incorporate the recommendation of the High-Level Review Panel (HLRP) and that provisions were made with respect to Covid-19 workforce adjustments.

The JSCI found that there were fundamental gaps with the APP as it failed to align and integrate the planning, budgeting, implementation, reporting and evaluation methodology central to the results-based approach espoused in the Revised Framework for Strategic Plans and APPs as prescribed by the Department of Planning, Monitoring and Evaluation (DPME) in order to contribute to the relevant national priority outcomes.

The Committee found that the SSA had failed to satisfy the minimum planning requirements as prescribed in the Revised Framework as planned targets were not Specific, Measurable, Achievable, Relevant or Time-bound (SMART). Furthermore, the SSA failed to submit a detailed corresponding budget with its APP. The Committee expressed its dissatisfaction with the poorly crafted APP and budget and resolved that it be revised and resubmitted for further scrutiny. The Committee explained that the SSA's failure to adhere to the DPME Revised Framework was against the principles of transparency and accountability. The APP submitted was not fully compliant with the Revised Framework.

The Committee found that the SSA did not submit a breakdown of the budget accompanying the APP. The budget did not have sufficient detail for the Committee to examine particularly as it relates to previous trends and expenditures. It was found

that the failure of such a budget was unacceptable and needed to be addressed. The APP was later resubmitted and the challenges were addressed.

5.2.2 Annual Performance Plan and Budget for South African Police Service-Crime Intelligence for 2021/2022

The Committee was briefed on SAPS-CI APP and budget. The presentation specified that outcomes and sub-outcomes had been aligned with the requirements of the National Intelligence Estimates and that in the medium-term SAPS-CI would focus on the effective use of intelligence to support policing initiatives. It was found that SAPS-CI's outcomes, indicators and targets needed to be SMART in order to ensure that plans can be implementable. The Committee found that SAPS-CI had failed to demonstrate that it had addressed the financial discrepancies identified by the AGSA. This concerned the Committee as it was not given the assurance that the same trends and patterns would not be repeated.

5.2.3 Annual Performance Plan and Budget for Defence Intelligence for 2021/2022

The Committee was briefed on DI APP and budget. It was indicated that DI aimed to provide intelligence and counter-intelligence in pursuit of national security objectives. The main focus of the DI's APP was the implementation of the milestones of the Defence Review 2015 and other imperatives. In this regard, progress was made in some of the milestones. The Committee was informed that Covid-19 impacted DI's work, as a result it adjusted the annual targets. Furthermore, DI's budget constraints impacted its work.

5.2.4 Annual Performance Plan of the Office of the Inspector-General of Intelligence

The Committee was informed that the OIGI's planned activities were aligned with the legislation requirements. These activities were underpinned by two outcomes namely, to achieve a capable and compliant OIGI and ensure compliance by the intelligence services with the Constitution and applicable laws. As such the OIGI detailed its focus areas as approval of internal policies and adherence to governance prescripts, submission of oversight reports and Certificates, provision of cooperate service support and submission of strategic documents, risk and performance reports.

5.3 Auditor-General of South Africa

On 1 March 2022, the AGSA presented the financial statements of the SSA, SAPS-CI and DI.

5.3.1 Audit Report on the Financial Statements of the State Security Agency 2020/2021

The SSA received a qualified finding for the financial year 2020/2021 due to the nature of the business, there were sensitive areas that could not be audited. The qualification areas included accounts for non-sensitive and sensitive project expenditure and assets incurred in connection with the performance of the function and duty of the intelligence services as defined in Section 1 of the Intelligence Services Act 65 of 2002.

The nature of the business of the SSA and the related inherent risk had limited the AGSA's ability to confirm the assets, under property and equipment, computer equipment, and computer software, which were used in sensitive projects. The AGSA indicated that property and equipment did not comply with legislation and supply chain management (SCM) prescripts. Residual values and useful lives were not reassessed by the SSA as required by the accounting prescripts. The AGSA was unable to confirm the completeness of assets disclosed in the financial records that were used in sensitive projects.

Irregular expenditure identified was related to the communication services contracts in which deviations were not approved by National Treasury. The balance of the irregular expenditure included the extensions of the original contract for pest control, hygiene, and specialised cleaning services. There were payments that were not approved by the correct delegated official for repairs and maintenance expenditure. A significantly low number of irregular expenditures had been investigated, while the balance had been referred to the admin board for further investigations.

There was fruitless and wasteful expenditure identified in relation to unplaced and suspended members for a period exceeding 18 months and the interest and penalties due to late payments of invoices, see Annexure B.

5.3.2 Audit Report on the Financial Statements of South African Police Service-Crime Intelligence for 2020/2021

For the 2020/21 financial year, SAPS-CI received a qualified audit finding. The AGSA indicated that due to the nature of the business there were sensitive areas that could not be audited. SAPS-CI operates in a covert environment and it accounts for sensitive operational expenditure and assets incurred while carrying out its mandate.

Some of the expenditure and assets were not supported by adequate audit evidence and/or the supporting evidence could not be corroborated (e.g. with third parties) for validity due to the covert nature of the department's activities/business. This (covert nature) meant that there was a high inherent risk compared to other audits, resulting in the audit opinion being modified as there were no other alternative procedures that can be performed to address or reduce that risk to an acceptable level.

Some of the qualification areas included the provision of cash for conducting some activities required to carry out its mandate; without adequate reconciliation of expenditure incurred, which resulted in the identification of misstatement (overstatement) of cash and cash equivalent. Attempts were made to correct the misstatement; however, they were not successful due to the action plan being developed and implemented late in the 2021/2022 financial year.

During the audit, instances of non-compliance with SCM regulations that resulted in irregular expenditure were identified; however, the irregular expenditure was not disclosed in the annual financial statements, resulting in an understatement of irregular expenditure. Material misstatements due to incorrect calculations were identified, which resulted in the overstatement of operating lease commitments.

Salaries for general workers were incorrectly classified and disclosed as goods and services instead of compensation for employees. The qualification in the 2020/2021 financial year was on comparative figures only (misstatement relating to the prior year) see Annexure C.

5.3.3 Audit Report on the Financial Statements of Defence Intelligence for 2020/2021

For the 2020/2021 financial year, DI received a qualified audit finding. The AGSA indicated that due to the nature of the business there are sensitive areas that could not be audited. Areas of qualifications included goods and services and investments in the Special Defence Account (SDA), which was a repeat finding, the department accounted for non-sensitive and sensitive project expenditure in connection with special defence activities. During the audit, the AGSA could not obtain appropriate supporting audit evidence on sensitive project expenditure and related investments due to the sensitivity of the environment and the circumstances under which the related transactions were incurred and recorded. This resulted in a material limitation of scope.

Irregular expenditure in the SDA and overall department (repeat finding) was identified due to non-compliance with procurement legislation. The department was requested to revisit the entire population and adjust the disclosure of irregular expenditure. However, the department did not revisit the population to effect the required adjustments, as a result, the AGSA could not confirm the completeness of irregular expenditure disclosed in the notes to the financial statements. In addition, the accounting officer did not disclose some cases of irregular expenditure identified by the auditors. This resulted in a recurring qualification on irregular expenditure disclosed in the financial statements, as the same finding was reported in the last two financial years, see Annexure D.

5.4 Special Meetings in Pretoria, 15 to 16 July 2021

On 15 and 16 July 2021, the JSCI convened special meetings with the Intelligence Services in Pretoria following the widespread looting, rioting and violence that emerged in the province of KwaZulu-Natal (KZN) from 9 July 2021, and spread to Gauteng and other provinces.

The main purpose of the special meetings was for the JSCI to receive briefings from DI, the SSA and SAPS-CI on the security situation in South Africa which started in KZN and spread to other provinces, mainly Gauteng. Although the three ministers responsible for the intelligence services were not in attendance since they were

engaged in KZN, the Committee received full briefings on the developments regarding the unrest.

5.4.1 Engagement with Defence Intelligence

On 15 July 2021, the JSCI engaged with DI at the South African National Defence Intelligence College (SANDIC) in Pretoria. The scope of the presentation included an overview, areas where activities took place, and the deployment of the SANDF at various places for various tasks including the ports of entry and borderline, shortage of fuel and food, threats against the power grid, influx of trauma cases on hospitals and holding facilities that were unable to cope and vigilantism.

The presentation indicated the areas where the activities took place in KZN, Gauteng, Eastern Cape, Free State, Western Cape, North West, and Mpumalanga. The most affected provinces were KZN and Gauteng, whereas isolated cases were reported in the rest of the provinces mentioned.

An outline of the deployment of the SANDF was given. It was indicated that most ports of entry were unaffected; however, the Mozambique border at Manguzi in northern KwaZulu-Natal was closed due to looting activities in the area.

It was also indicated that if the looting continued, there would be shortages in terms of fuel and food. The main routes were secured and plans in place to protect the convoys of trucks to ensure adequate fuel and food supply. It was also indicated that the SANDF was deployed to protect the power grid and other critical infrastructure.

Several recommendations were offered to deal with the unrest such as the use of intelligence to drive operations, an aggressive communication campaign, various means for information gathering on any planned illegal activity, escorting trucks carrying fuel, food and medical supplies, and the use of municipal CCTVs and drones, amongst others.

5.4.2 Engagement with South African Police Service-Crime Intelligence

On 16 July 2021, the Committee met with SAPS-CI led by the now retired National Police Commissioner. The Committee was briefed on the instability the country was facing. It was indicated that most of the incidents were criminal activities resulting from

the Constitutional Court ruling on 26 June 2021. It was stated that some people began mobilising. The protests action erupted on 9 July 2021 with the blocking of roads and the targeting of trucks along the N3 and later spreading to Gauteng.

The National Joint Operations and Intelligence Structure (NATJOINTS) established a National Joint Operational Committee (NATCOM) to deal with the outbreak of violence in a coordinated approach. Provincial intelligence capacities were tasked on an ongoing basis to provide information of mobilisation and climate measurement nationally. The then National Police Commissioner indicated that intelligence assets were deployed. The SAPS recovered some of the stolen goods. It seemed that people were used to cause the unrest and looting by certain individuals. Traditional leaders were asked to assist to stop the looting. Private security companies also assisted in stopping the looting.

The technology that was required to assist the intelligence environment was crippled. The Committee was informed that there would be an investigation on what happened and consequence management for those who might have received the warnings but not act on them. A task team was set up looking at the footages, trying to identify the people involved in those criminal activities. SAPS-CI was working with private security companies to gather information. It was indicated that the magnitude of the outcome was never expected, as the signs were underestimated.

5.4.3 Engagement with the State Security Agency

In the afternoon of 16 July 2021, the Committee met with the SSA. A background was provided on what led to the unrest. The SSA indicated that it was part of NATJOINTS, where joint intelligence reports were provided. The SSA also participated in the meetings and provided intelligence and the forewarning on movement in early July 2021. These colour coded alerts were provided to NATJOINTS, which included 8 Orange Alerts and 1 Red Alert.

It was reported that the SSA had identified few key individuals who were funding and fuelling some of the criminal acts of vandalism, treason, sabotage and subversion. Some arrests were made by law enforcement.

It was reported that some of the people involved had connections to intelligence services, either as employees, former employees, or intelligence veterans from armed wings of political parties. Investigations were continuing in this regard. Some in the SSA management were adamant that early warnings were provided to other law enforcement agencies, while others indicated that they did not see early warnings that were directly sent to various law enforcement agencies.

5.5 Annual Reports of the Services and the Inspector-General of Intelligence for 2020/2021

5.5.1 Annual Report of the State Security Agency

On 2 March 2022, the SSA presented its AR to the Committee. The SSA indicated that the financial year 2020/2021 was a very challenging year to almost all the programmes and sub – programmes mainly due to Covid-19. The conduct of intelligence operations was severely limited, and training could not be conducted. The SSA instituted a rotation system and process where staff complement could not exceed 50 percent.

Despite the challenges, the SSA had concerted efforts to ensure that the commitments made in the APP were achieved. A level of success was recorded and most of the targets were achieved. Most positions occupied by acting appointments at a senior management level were advertised and filled. However, the position of DG was not filled.

It was also indicated that there was improvement in the level of compliance with the regulatory framework. The SSA was closely working with oversight bodies such as Audit Risk Committee (ARC) and the AGSA, and Internal Audit provided management information to the relevant oversight body on a regular basis.

It was indicated that reasonable progress was made on implementation of the recommendations of the HLRP, and 27 of those recommendations had been implemented. The key recommendation was the separation of the SSA into Foreign and Domestic Service. It was indicated that the finalisation of draft General Intelligence Laws Amendment Bill (GILAB) had taken place and was undergoing the necessary processes before introduction to Parliament.

With regard to audit outcome, the SSA reported that in the financial year 2020/2021 it received a qualified audit opinion due to the nature of the environment.

5.5.2 Annual Report of South African Police Service-Crime Intelligence

On 2 March 2022, SAPS-CI presented its AR to the Committee. In the presentation, it was indicated that some of the targets were achieved, while others were underachieved. In terms of underspent funds on compensation of employees, an application was made to National Treasury for a rollover.

SAPS-CI addressed various matters which were raised by the AGSA previously. For 2020/2021, SAPS-CI received a qualified audit opinion. The areas of qualification were indicated in Annexure C. To address some of the challenges, SAPS-CI convened more than ten meetings with the Audit and Risk Committee (ARC).

Some of the issues raised during these meetings include policies not aligned to laws and regulations, lack of consequence management for non-compliance and poor quality of financial and performance reporting, shortage of skills and qualifications for financial and performance reporting as well as SCM, and inadequate corrective measures for previous shortcomings identified by various assurance providers. It was also reported that there were vacancies at SAPS-CI.

5.5.3 Annual Report of Defence Intelligence

On 2 March 2022, DI presented its AR for 2020/2021 to the Committee. In the presentation of the AR, DI indicated that the Covid-19 pandemic had impacted its environment both in terms of resources and operations. As a result, it impacted on achievement of DI's performance indicators. It was further indicated that DI participated in operations pertaining to the deployment of personnel in assistance of the SAPS to ensure adherence to Covid-19 lockdown regulations. DI continued to deploy resources in line with the South Africa's national interest and to meet the country's foreign policy objectives through the deployment of Defence Attaches and through Multilateral and Bilateral Engagements.

On achievements, DI finalised the roll-out of the DI Bachelor of Military Science (BMil) degree which commenced during January 2021 at the Faculty of Military Science, Stellenbosch University, located at the Military Academy in Saldanha. Some of the

targets, including foreign engagements, were not fully achieved due to Covid-19 restrictions which prevented world-wide traveling. Despite some achievements, DI worked under trying and challenging conditions. The major challenge remained the relocation to new DI Headquarters.

5.5.4 Annual Report of the Inspector-General of Intelligence

On 2 March 2022, the IGI presented the AR of the OIGI to the Committee. It was indicated that the Medium Term Strategic Framework (MTSF) of the OIGI was guided by the targeted oversight work conducted to ensure the integrity in the services and the promotion of safety and security. This was done to determine intelligence efforts, to enhance regional integration, global governance and enhance Africa agenda and sustainable development, to enhance service delivery through the creation of trusted, easy access for the citizenry and accountability within the Intelligence Services.

The OIGI indicated that a number of investigations and complaints for the year under review were conducted. The AR included a total number of cases investigated, those cases carried over from the previous financial year, and new cases mostly received during Covid-19 lockdown. It also included the number of the finalised cases.

In terms of Section 7(7)(c) of the Act which provides that the IGI may perform tasks designated by the President or Ministers. The IGI indicated that there were no tasks received during the reporting period. He further indicated that there was no significant intelligence failure or unlawful intelligence activities within the Services reported by the Heads of Services to the IGI during the reporting period.

He then indicated the following legal matters for the year under review:

- *The Amabhungane application on RICA*. The Amabhungane application challenged certain provisions of the RICA to the extent that RICA failed to provide adequate safeguards to protect the right to privacy. The OIGI chose to abide by the decision of the Court. The court ordered that bulk surveillance activities and foreign signals interception undertaken by the National Communications (NC) were unlawful and invalid.

- *Johan van Loggerenberg v Inspector-General of Intelligence*. On 4 December 2019, the OIGI was served with a court application for the review of a report entitled *Report on Investigation into Media Allegations against the Special Operations Unit and/or other Branches of the State Security Agency dated 31 October 2014*. The OIGI opposed the application, based on advice from the State Attorney. Following the settlement engagements, on 8 June 2020, the Court granted an order that the said report is reviewed and set aside.
- *South African Police Union and Others v Minister of Police and Others*. On 22 December 2020, the IGI as third respondent was served with an application to set aside the suspensions of Lieutenant-General Jacobs and others from SAPS-CI, whilst the then National Commissioner, General Sitole, suspended Lieutenant-General Jacobs and others. The reason advanced in the court papers for the citing of the IGI was that the suspensions were based in a report by the OIGI. The IGI opposed the application and utilised the same Counsel appointed for the National Commissioner. On 8 January 2021, the Court handed down judgement and dismissed the application. The Court stated that all the legal prescripts had been met for the lawful suspensions of the Applicants, and in law the National Commissioner is not only entitled to act but is obliged to do so.
- *The Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State*. The then IGI, Dr Dintwe, was invited by the Secretary of the State Capture Commission of inquiry to give evidence. The State Capture Commission identified matters in respect of which evidence was sought from the IGI. The OIGI had apparently been mentioned by a number of witnesses who appeared before the State Capture Commission. These witnesses included Messrs Mzuvukile Maqetuka, Riaz Moe Shaik and Gibson Njenje. The IGI commenced with the consultation process in accordance with the Act pertaining to his appearance before the State Capture Commission. Following various engagements between President Ramaphosa, the IGI and the Ministers responsible for the Intelligence Services, the consultation process was concluded in December 2020. However, during the said process, the Ministers responsible for the Intelligence Services lodged complaints with the President, which were referred to the JSCI for advise to the President on the allegations levelled against the IGI.

The IGI provided a detailed response to the JSCI and all relevant parties in December 2020.

The IGI highlighted several challenges facing the OIGI. The major challenge indicated was the lack of independence for the OIGI. Other challenges included the filling of vacancies, which was beyond the OIGI since it was dependent on the SSA and the Ministry.

5.6 Certificates of Activities of the Services by the Inspector-General of Intelligence

One of the functions of the JSCI is to consider and make recommendations on the report and certificate transmitted to it by each of the Ministers responsible for the intelligence services in terms of section 7(7)(d) of the Act.

5.6.1 State Security Agency

On 22 February 2022, the outgoing IGI presented the Certificate of activities of the SSA. The IGI expressed dissatisfaction with the AR or Activity Report submitted by the SSA. The IGI thought that the AR was not a fair representation of activities that occurred in the year under review. The IGI expressed that the SSA neglected to supply information in respect of NC and ICT Security and thus could not provide an opinion on the work of the NC and ICT Security respectively.

The IGI indicated that the agency had failed to comply with Sections 23 and 36 of the Constitution which gives the right for the establishment of collective bargaining in all workplaces in South Africa. The IGI noted that the absence of such a mechanism was in contravention of the Constitution. The IGI explained that two people were recruited by the former Deputy Minister for the Cadet programme. Of concern was that the recruitment of those individuals was not done in accordance with the prescribed SSA / Cadet programme recruitment policies.

The IGI also indicated that he investigated the appointment of the 26 managers by the Minister after a complaint was lodged. The IGI stated that Regulation 8 (3) of Chapter V of the Intelligence Services Regulations empowered the Minister to make appointments; however, the appointments were not in line with the provisions.

The IGI noted with concern the slow implementation of the recommendations in the HLRP. The IGI indicated that there were too many acting appointments at senior management positions throughout the SSA. Those acting positions may have affected decision-making in the organisation and organisational stability.

The IGI explained the implication of the Amabhungane court judgment, as it declared the conduct of the SIGINT gathering unlawful. The consequence was that there was a significant decline in the total number of SIGINT products.

The IGI indicated that the learning programmes at the Intelligence Academy (IA) were not aligned with Safety and Security, Sector Education and Training Authority (SASSETA). A training strategy had not been developed as the IA Philosophical Framework and Directives had not been approved.

5.6.2 South African Police Service-Crime Intelligence

On 22 February 2022, the IGI presented the Certificate of activities of the SAPS-CI. The IGI explained that the review and monitoring of the SAPS-CI was affected by the Covid-19 pandemic. The IGI indicated that he did not receive the AR from SAPS-CI, as such he could not give an opinion on the year under review.

The IGI noted that SAPS-CI organisational structure was not finalised; however, he was informed that the approval of the National and Provincial organisational structure (2020/2021-2023/2024) had taken place on 30 November 2020. This would impact on the oversight function of the IGI.

More concerning was the finding that there were SAPS-CI members and senior officials who were employed without security clearances. There was a high backlog in the finalisation and issuing of security clearances, and the vetting section lost valuable skills as members left. There was no action taken to prevent the appointment of senior personnel to critical posts without security clearances. Some generals and senior managers in various provinces were appointed without security clearances.

The IGI conducted an oversight to one of the provinces and found casual workers that were employed on short-term contracts for almost two decades. Those employees were excluded from mandatory employee benefits.

The IGI also raised concerns on the leaking of classified information to the media. The unauthorised disclosure of classified information constituted serious misconduct. This practice was a serious intelligence failure on the part of SAPS-CI. It was reported that there was a cover name that was leaked to the media and the IGI recommended the immediate termination of the utilisation of the name and cover structure to prevent intelligence failure and protect the identities of the operatives.

The IGI also reported that the Secret Services Account was used to procure PPE from a company owned by former members of SAPS-CI. There were allegations that the procurement was in contravention of several legal prescripts, including section 2(3)(b) of Act 56 of 1978, PFMA, and National Treasury Regulations about SCM.

The IGI also conducted an investigation on the procurement of grabbers. It was reported that Divisional Management allegedly committed misrepresentations in the application submitted to National Treasury to favour the company that supplied the grabbers. The procurement of grabbers allegedly contravened section 45 (1) of RICA.

5.6.3 Defence Intelligence

On 22 February 2022, the IGI presented the Certificate of activities of DI. The IGI reported that there were budget constraints in the Department of Defence, which also affected DI. He reported that the OIGI and DI had good working relations. DI had an Activity Report that indicated activities and time frames and would make a follow-up if further clarity was required. The IGI monitored all the directorates of DI and followed up on previous recommendations. The IGI was concerned about the location of the DI Headquarters.

5.7 Appointment of the Inspector-General of Intelligence

Section 7(1) of the Act, mandates the JSCI to nominate a candidate to the NA for approval by at least two thirds of its members to be appointed as an IGI by the President. Cognisant that the position of the IGI would become vacant on 15 March 2022, the Committee resolved to advertise the position of the IGI on 2 June 2021. Accordingly, this commenced the process to appoint the next IGI, which was done openly to allow for public participation in line with the mandate of Parliament.

5.7.1 Advertisement

Following the resolution of the Committee, advertisements for the IGI position in all official languages were published in national and local newspapers with the closing date of 30 July 2021 at 16:00. On 31 August 2021, the Committee noted the number of inquiries received after the closing (See Annexure E). Cognisant of the importance of the position and the inquiries received from the public, the Committee resolved to extend the closing date to enable those who may have missed the advertisement an opportunity to apply for the position. Advertisement ran through Parliament website, social media platforms and media statement on 2 September 2021 with a new closing date of 30 September 2021. A total of 25 CVs were received.

5.7.2 Background Screening

Background screening was requested for all candidates on 20 October 2021. Feedback was received on 27 October 2021. It was found that all candidates had no negative information of national security relevance; had positive credits records; and all were confirmed South African citizens, which is a requirement in terms of the Section 7(1)(2) of the Act.

5.7.3 Shortlisting of the candidates

The shortlisting of candidates took place on 01 December 2021. The 12 candidates shortlisted were Rev Frank Chikane, Dr Setlhomamaru Isaac Dintwe, Ms Nomsa Evelyn Dlamini, Mr Imtiaz Ahmed Fazel, Brigadier General Phumzile Fongoqa, Adv Jayashree Govender, Mr Smanga Phillip Jele, Ms Faith Mosa Makhobotloane, Dr Nakampe Michael Masiapato, Adv Mahlodi Sam Muofhe, Mr Mampogoane Petrus Nchabaleng and Dr Nyelisani Clarence Tshitereke. Two of the shortlisted candidates, Adv Mahlodi Sam Muofhe and Dr Nakampe Michael Masiapato officially withdrew from the process of the appointment of the IGI for various reasons. The other ten candidates proceeded to the interviews stage.

5.7.4 Interviews

The interviews took place on 8 and 9 February 2022, and five candidates were interviewed each day (see Annexure E). Interviews were broadcasted live on Parliament TV and other media platforms. The candidates were interviewed on

relevant areas regarding the role and functions of the IGI, based on the Constitution, the Act, and other relevant legislation and other matters such as the HLRP report.

5.8 Oversight Visits

Except during special meetings in Pretoria from 15 to 19 March 2021, and 15 and 16 July 2021, the Committee did not conduct any oversight visits during the period under review. However, special meetings in March 2021 included site visits at the various premises of the SSA, DI and SAPS-CI.

5.9 International Trips/Study Tours

For the period under review, the Committee resolved to undertake a study tour to review its functioning in an effort to strengthen its oversight of the intelligence services in line with the findings of the HLRP Report. The culmination of the HLRP identified four overarching challenges, namely; the politicisation of intelligence service marked by a doctrinal shift away from Constitutional prescripts; poor legislative oversight; disproportionate application of secrecy which in some instances was used to circumvent oversight; and the weakening of financial and governance controls which enabled the abuse of resources.

The HLRP found that the identified challenges were a result of uneven and inadequate parliamentary oversight and recommended a review of the functioning of the JSCI. In order to address some of the challenges, the JSCI conducted research on similar structures worldwide in order to learn best practices, share experiences, discuss challenges, successes and possible areas for future collaboration. The study tour would be a strategic intervention to support oversight and assist in the reform of intelligence services. The study tour would be undertaken in the new financial year to countries identified once the research had been completed.

5.10 Implementation of the High-Level Review Panel Recommendations

Since its establishment in 2019, the Sixth Parliament JSCI has been following up on the implementation of the recommendations of the HLRP into the SSA. This commenced during the orientation of Members of the JSCI in November 2019 as reported in the *Report of the Joint Standing Committee on Intelligence on Activities of the Committee After Five Months of Establishment, as stipulated in the Intelligence*

Services Oversight Act, No. 40 of 1994, Dated 27 October 2020 published by Parliament on Wednesday, 11 November 2020.

The JSCI met with the Task Team on the HLRP on several occasions. Updates were given on progress with the implementation. In the *Annual Report of the Joint Standing Committee on Intelligence for the Financial Year Ending 31 March 2020 including the Period up to December 2020*, the Committee had requested that detailed presentation be made in the presence of the minister. It was also recommended that the Committee be briefed on a quarterly basis on the progress made.

Briefings took place on quarterly basis, but progress had been slow. The first phase, which was reported in JSCI which ended in December 2020, focusing on the amendment of pieces of legislation such as Intelligence Services Act (Act No.38 of 1994), Intelligence Services Oversight Act (Act No. 40 of 1994) and National Strategic Intelligence Act (No. 39 of 1994), had not taken place. The acting DG at the time indicated the Bill was expected in 2022. It must be noted that the Bill was one of the major recommendations of the HLRP which would resolve most of the issues identified by the panel.

5.11 Proposed Committee Bill (General Intelligence Laws Amendment Bill)

Given the observations that the Bill was not introduced at Parliament, the Committee began considering introducing a Committee Bill (to be known as GILAB). Several meetings were held in this regard beginning in mid-2021. On 2 June 2021, the Committee received a briefing on the Proposed Committee Bill with regard to the separation of the SSA. On 25 August 2021, the Committee received a briefing by the Parliamentary Legal Advisors on the drafting of the Bill (see Annexure E).

5.12 Following up on evidence during the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including organs of state

Since its establishment, the JSCI of the Sixth Parliament has been following the evidence, as it relates to the intelligence services, provided by various witnesses at the State Capture Commission, hereafter State Capture Commission.

Some of the matters revealed at the State Capture Commission were already being overseen by the JSCI. Most of those were the issues raised in the HLRP report. The Committee has been overseeing the implementation of those directives as indicated. Thus, most of the revelations of some of the witnesses such as the acting DG of the SSA, Mr Loyiso Jafta, Ms K and then IGI, Dr Isaac Dintwe, and those with regard to SAPS-CI were not new to the Committee.

In its previous AR, the Committee reported on matters such as Project Veza and the need for the introduction of GILAB, and some of the legacy challenges in SAPS-CI, amongst others. The Committee followed up with quarterly requests for briefings which were provided by both the SSA and SAPS-CI. When Project Veza ceased to exist, the Committee continued requesting for updates with regard to the investigations.

The Committee was informed that law firm Bowmans was appointed to continue with the work that commenced with Project Veza, and updates would be provided. Surprisingly, the Committee was notified in April 2021 that the law firm withdrew from the forensic investigation. Another forensic firm, Ligwa Advisory Services was only appointed on 02 November 2021 and its work was delayed by the vetting of its personnel. The updates would be provided in the next reporting period.

6. GENERIC FINDINGS

There were findings that applied to various services and those which could be restricted to each service or entity. For the purposes of this report, the former has been termed generic findings, while the latter is known as specific findings.

6.1 Implementation of the High-Level Review Panel Recommendations

- During its AR presentation on 02 March 2022, the SSA reported that 27 recommendations of had been implemented.
- The Committee found that the implementation of the HLRP directives had been slow.
- The major recommendation of separating the SSA into domestic and foreign services was being delayed by the lack of the introduction of the GILAB by the Minister responsible for the SSA.

6.2 Proposed Committee Bill (General Intelligence Laws Amendment Bill)

- The Committee found that the Committee Bill will be the fastest way to ensure the speedy implementation of the HLRP.
- Parliamentary Legal Advisors indicated that the drafting of the Bill could be completed timeously.

6.3 Following up on evidence during the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including organs of state

- Various witnesses testified on matters related to intelligence services.
- Most of the matters revealed were also raised by the HLRP.
- The JSCI engaged the SSA and SAPS-CI regarding matters as raised in the State Capture Commission.

6.4 Special Meetings in Pretoria, 15 to 16 July 2021

- It was found that the presentations reflected what was already known from the media.
- The Committee found that the riots and looting of malls seemed well coordinated.
- There was a lack of communication from law enforcement.
- Reports indicated that intelligence had failed and was weak.
- It was found that the security cluster was working in silos.
- The security cluster was reactionary rather than proactively dealing with the unrest as it unfolded.
- There was a lack of coordinated intelligence work by the services, which is the main task of the National Intelligence Coordinating Committee (NICOC).
- There seemed to be intelligence failures within the services.
- Consequence management was needed for those who received the threat warnings and did not act.
- The Committee found that there were no adequate measures to prevent the unrest from happening as the threats were even circulated on social media.

- It was found that at the time of the unrest, 80 percent of law enforcement was already deployed for Covid-19.
- The Committee found that no stand-alone early warning report was received from the SSA at the National Commissioner level.
- There was a report from NICOC through the platform given to NATJOINTS, which was done collectively by for all intelligence services.
- At the SSA, there was a contradiction at the senior management level with regard to whether early warnings were provided to the SAPS or not.

7. SPECIFIC FINDINGS

7.1 State Security Agency

7.1.1 Standoff between the State Security Agency security and the Investigative Directorate of the National Prosecuting Authority

- It was found that there were challenges between the ID of the NPA and the SSA with regard to information required in connection to the revelations at the State Capture Commission.

7.1.2 Project Veza/Bowmans/Ligwa Advisory Services

- It was found that progress on Project Veza was slow.
- Project Veza was replaced by Bowmans law firm to continue with the forensic investigation.
- Bowmans law firm was also replaced by Ligwa Advisory Services to continue with the forensic investigation.

7.1.3 Implementation of the High-Level Review Panel Report

- The JSCI was concerned with the slow implementation of the HLRP recommendations.

7.1.4 Annual Performance Plan and Budget for State Security Agency for 2021/2022

- It was found that the APP was not done in accordance with the Framework for Strategic Plans and APPs as prescribed by the DPME.

- Budget was not aligned to planned targets. The APP had fundamental gaps as it failed to align and integrate the planning, budgeting, implementation, reporting and evaluation.
- The budget lacked sufficient detail for the Committee to examine particularly as it relates to previous trends and expenditures.

7.1.5 Gauteng Provincial Office

- It was found that provincial offices had challenges with regard to owning their buildings.
- There were also challenges with regard to leases.

7.1.6 Audit Report on the Financial Statements of the State Security Agency 2020/2021

- The nature of the business of the SSA and the related inherent risk resulted in a qualified qualification from the AGSA.
- Irregular expenditure was incurred.
- Fruitless and wasteful expenditure was recorded due to unplaced and suspended members for a period exceeding 18 months.

7.1.7 Annual Report of the State Security Agency

- The impact of Covid-19 was severe for the SSA in terms of its mandate as intelligence could not be gathered while most people worked from home.
- Appointments at senior management were welcomed.
- Position of DG remained vacant with an acting DG in place.
- There was some progress with the implementation of the HLRP directives; but the major one of GILAB was progressing slow.
- There were still areas for improvement for better auditing results.

7.1.8 Certificates of Activities of the Services by the Inspector-General of Intelligence for 2020/2021

- There was lack of implementation of recommendations made by the IGI.
- There were no criminal charges against services in instances where the IGI found corruption or maladministration.

- The Committee found that some members of the OIGI were present when the ID of the NPA was prevented from entering the SSA's head office, Musanda Complex, in Pretoria.
- The Committee was concerned about the irregular appointment of the 26 managers who also received a 5% salary increase.

7.2 South African Police Service-Crime Intelligence

7.2.1 Annual Performance Plan and Budget for South African Police Service-Crime Intelligence for 2021/2022

- It was found that targets were not SMART.
- There was no indication that financial discrepancies identified by the AGSA were addressed.
- Non-compliance with SCM regulations that resulted in irregular expenditure was identified.
- Material misstatements due to incorrect calculations which resulted in the overstatement of operating lease commitments.
- The AGSA indicated that it was difficult to conduct an audit of the financial statements, as budgets of projects could not be located.
- The department had been qualified for irregular expenditure.

7.2.2 Annual Report of South African Police Service-Crime Intelligence

- Based on the challenges observed, Internal Audit was not functioning optimally.
- There was a lack of personnel with the required skills for technical positions.
- There were many vacant positions at various levels which was hampering the ability of SAPS-CI to provide intelligence for intelligence-led policing.

7.2.3 Agent Management Programme

- Challenges such as lack of regulations and inadequate skills for the personnel were identified.

7.2.4 *IMSI-catcher/Grabber*

- The Committee found that the grabbers were irregularly procured few years ago.
- The grabbers were not in operation since the Certificate of Exemption was not issued in accordance with RICA.

7.2.5 *Audit Report on the Financial Statements of South African Police Service-Crime Intelligence for 2020/2021*

- The nature of the business of SAPS-CI and the related inherent risk resulted in a qualified qualification from the AGSA.
- There was inadequate audit evidence.
- Cash and cash equivalent incurred was inadequately reconciled.
- Irregular expenditure was incurred.
- Material misstatements due to incorrect calculations were identified.
- Improper classification of salaries for general workers as good and services.

7.2.6 *Certificates of Activities of the Services by the Inspector-General of Intelligence for 2020/2021*

- The Committee found that there were serious cases as reported which warrant investigation by law enforcement.
- Although there was no legislation prohibiting former employees from doing business with SAPS-CI, the Committee found it unethical.
- The Committee found that some generals refused to be vetted.
- Some generals and senior managers were appointed without the required security clearances.
- The use of casual workers poses a security risk as they have access to offices that contain classified information.

7.3 Defence Intelligence

7.3.1 *Annual Performance Plan and Budget for Defence Intelligence for 2021/2022*

- It was found that DI was inadequately funded.

- Funding was inconsistent with the ordered commitment both internally and externally.
- The Committee found that DI's budget constraints impacted its work and that intervention was needed in this regard.

7.3.2 *Annual Report of Defence Intelligence*

- Covid-19 impacted on the performance of DI.
- The introduction of BMil Degree for DI members was instrumental in preparing intelligence officers.
- The location of DI Headquarters was a challenge as well as the building itself.

7.3.3 *Certificates of Activities of Defence Intelligence by the Inspector-General of Intelligence for 2020/2021*

- The Committee found that the issue of the location of DI Headquarters was an ongoing concern to many stakeholders.
- The Committee was pleased with the good working relationship between DI and the IGI.

7.4 **Inspector-General of Intelligence**

7.4.1 *Annual Report of the Inspector-General of Intelligence*

- Covid-19 impacted on the performance of the OIGI.
- The lack of independence of the OIGI was hampering its functioning.

7.5 **Office for Interception Centres**

- Legislative amendment of RICA was hampering the functioning of the OIC.
- There was a need for the OIC to be independent.
- It was found that there is a need for new technology as one in used was outdated.
- There was a challenge of private security companies performing interceptions without authorisation from the Judge.

7.6 Financial Intelligence Centre

- The greylisting of the country would be detrimental to the country.
- The inadequate funding, retention and recruitment of specialist skills and employees in critical positions were detrimental to the functioning of the FIC.

8. GENERAL RECOMMENDATIONS

8.1 Implementation of the High-Level Review Panel Recommendations

- The Minister and the SSA were requested to include the implementation of the HLRP directives on the quarterly reports provided to the JSCI.
- The Committee indicated that various programmes of the APP of the SSA must include the implementation of the HLRP directives.
- The Committee informed the department that it was considering a Committee Bill due to the delays in the introduction of the GILAB.

8.2 Proposed Committee Bill (General Intelligence Laws Amendment Bill)

- Regular reports to be provided by the department on the introduction of the Bill.
- The Committee resolved to introduce the Bill in the new financial year (2022/2023) should the department fail to do so.

8.3 Following up on evidence during the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including organs of state

- The Committee to continue following up on matters as raised at the State Capture Commission.
- The Committee to devise an implementation plan as soon as the report is produced by the State Capture Commission. Progress to be reported to Parliament by the JSCI.

8.4 Special Meetings in Pretoria, 15 to 16 July 2021

- Intelligence services to establish better ways of communication.
- Intelligence services to coordinate through the various channels that exists.

- It was recommended that the security cluster be proactive on its approach rather than reactionary in dealing with the unrest as it unfolded.
- Intelligence failures within the services to be addressed with immediate effect.
- Consequence management to be effected on those found to have not performed their functions, and progress reports to be provided to the JSCI quarterly.
- Following the various meetings held with the SSA, DI and SAPS-CI, the Committee resolved to seek approval to conduct an inquiry into the events of July 2021 before the end of 2021/2022 financial year. This was based on the observation that the presentations clearly indicated serious lapses in intelligence with regard to the unrest. There were contradictions in terms of reports generated, and given or not given, to the relevant authorities. The presentations made it clear that the SSA, SAPS-CI, and other structures were not prepared for the unrest that unfolded. The inquiry would address most of the lapses experienced and make concrete recommendations to ensure that such events were prevented in future.

9. SPECIFIC RECOMMENDATIONS

9.1 State Security Agency

9.1.1 Standoff between the State Security Agency security and the Investigative Directorate of the National Prosecuting Authority

- The JSCI requested an update on the matter concerning the ID of the NPA with regard to the State Capture Commission.
- The JSCI resolved that matters with regard to the access to documents by the ID must be handled so that the required information is made available.

9.1.2 Project Veza/Bowmans/Ligwa Advisory Services

- Quarterly updates to be provided on the investigation by Ligwa Advisory Services.

9.1.3 *Implementation of the High-Level Review Panel Report*

- The Minister was requested to submit information on the implementation plan of the HLRP report recommendations.

9.1.4 *Gauteng Provincial Office*

- The SSA to liaise with the National Department of Public Works and Infrastructure with regard to office space. Report to be provided quarterly.
- The SSA to liaise with other government stakeholders with regard to leases in their premises.

9.1.5 *Annual Performance Plan and Budget for State Security Agency for 2021/2022*

- It was recommended that, going forward, all APPs must be done in accordance with the Framework for Strategic Plans and APPs as prescribed by the DPME.
- Budget to be aligned to planned targets.
- Detailed budget per programme and subprogrammes to be included to assist with oversight during the tabling of each APP and Budget going forward.
- On 26 May 2021, the Committee, having considered Budget Vote 8: National Treasury (State Security), and the Annual Performance Plan of the SSA and its spending entities, submitted its report to the National Assembly for consideration.

9.1.6 *Audit Report on the Financial Statements of the State Security Agency 2020/2021*

- Improvements on auditing of the SSA were needed to improve the auditing results, the SSA should report quarterly on progress made.
- Irregular expenditure incurred should be eradicated. Quarterly reports to the JSCI should include updates on irregular expenditure.
- The SSA to finalised processes timeously to prevent fruitless and wasteful expenditure recorded due to unplaced and suspended members for a period exceeding 18 months. Updates to be provided quarterly to the JSCI.

9.1.7 *Annual Report of the State Security Agency*

- The SSA to put plans in action to recover from the impact of Covid-19.
- The Committee to engage with the Minister and the President on the appointment of a permanent DG to ensure stability.
- Improvement was needed in the implementation of the HLRP directives.
- The Committee was concerned that the major one of GILAB was progressing slow.
- The Committee to introduce the Bill (GILAB) in the new financial year.

9.1.8 *Certificates of Activities of the State Security Agency by the Inspector-General of Intelligence for 2020/2021*

- The Committee to look at ways to ensure the implementation of recommendations made by the IGI.
- The independence of the IGI to be considered when the Act is amended through GILAB.
- The Committee recommended that plans be made to ensure that there is consequence management including criminal charges against those involved in corruption or maladministration.
- The SSA to ensure that the ID is granted access to conduct its investigation in Musanda without compromising national security.
- The Minister to brief the Committee on the irregular appointment of the 26 managers without delay.

9.2 **South African Police Service-Crime Intelligence**

9.2.1 *Investigation into Personal Protective Equipment*

- The JSCI resolved to request the report on the investigation from the IGI as soon as that investigation was finalised.

9.2.2 *IMSI-catcher/Grabber*

- It was recommended that the relevant ministers, as stipulated in RICA, should convene a meeting to ensure that the Certificate of Exemption was issued.

- The JSCI to lead the initiative in order for SAPS-CI to utilise its equipment before the end of the next financial year.

9.2.3 Annual Performance Plan and Budget for South African Police Service-Crime Intelligence for 2021/2022

- The Committee resolved that, within two weeks, another presentation be made with SMART. Another presentation was made with SMART targets.
- The Committee informed SAPS-CI to address the financial discrepancies identified by the AGSA and report quarterly on progress made.

9.2.4 Audit Report on the Financial Statements of South African Police Service-Crime Intelligence for 2020/2021

- Improvements on auditing of SAPS-CI were needed to improve the auditing results. Quarterly reports must be provided on progress made.
- Adequate audit evidence must be provided during audits by the AGSA.
- Expenditure incurred cash and cash equivalent to be adequately reconciled.
- Efforts to be made to prevent irregular expenditure. SAPS-CI to report quarterly in this matter.
- Material misstatements due to incorrect calculations identified to be eradicated. SAPS-CI to report quarterly in this matter.
- Salaries for general workers to be recorded as Compensation for Employees as recommended by the AGSA.

9.2.5 Annual Report of South African Police Service-Crime Intelligence

- Internal Audit to be staffed with the required personnel with adequate skills. Report to be provided quarterly.
- Technical positions to be staffed with the required personnel with adequate skills. Report to be provided quarterly.
- Vacant positions to be filled to ensure that SAPS-CI provided intelligence for intelligence-led policing. Report to be provided quarterly.

9.2.6 *Certificates of Activities of South African Police Service-Crime Intelligence by the IGI for 2020/2021*

- The Committee recommended that the SAPS-CI consider instituting charges or referring serious cases as reported for investigation by other law enforcement.
- The Committee recommended that all generals and those having access to classified information be vetted.
- The Minister and SAPS-CI to ensure vetting be completed prior to appointment of generals and senior managers in positions where a security clearance was required.
- The Committee recommended that SAPS-CI consider better ways to avoid having casual workers for longer periods which poses a security risk as they have access to offices that contain classified information. Updates to be provided quarterly.
- Measures to be taken to ensure that classified structures were not compromised.

9.3 **Defence Intelligence**

9.3.1 *Defence Headquarters*

- The JSCI resolved to schedule a meeting with the Ministers of Defence and Military Veterans, and Public Works and Infrastructure before the end of the financial year. The Committee held a meeting on 23 March 2022 with the Chief of Logistics of the SANDF and the Department of Public Works and Infrastructure. The officials were requested to come up with plans to procure or lease a building to be used as Headquarters for DI. They were given a week, and reported on 31 March 2022 on the progress (see Annexure E). The Committee requested that plans be finalised in the new financial year.
- It was also recommended that the matter of underfunding and budgets cuts of the SANDF be tabled for discussion in Parliament. In addition, the Committee resolved to engage the President regarding the underfunding of the SANDF.

9.3.2 *Annual Performance Plan and Budget for Defence Intelligence for 2021/2022*

- The Committee resolved to write to Defence Committees to have a joint meeting on the funding of the SANDF since its impact on DI as one of the divisions.
- Following a meeting with Defence Committees, a letter was written to the President requesting a meeting on the funding of the SANDF.

9.3.3 *Annual Report of Defence Intelligence*

- It was recommended that plans be put in place to achieve those targets underachieved due to Covid-19. Progress report be given quarterly.
- It was recommended that the BMil Degree be opened for all DI members especially the new recruits to prepare them as intelligence officers.
- The Committee to arrange a meeting on the location of DI Headquarters.

9.3.4 *Certificates of Activities of Defence Intelligence by the Inspector-General of Intelligence for 2020/2021*

- As indicated, the Committee would address the location of DI Headquarters with the relevant ministers.

9.4 **Office of the Inspector-General of Intelligence**

9.4.1 *Investigation into the qualifications of the Head of Domestic Branch*

- The JSCI requested an update once the investigation was fully completed.
- It also cautioned that officials should refrain from speaking to the media before ascertaining all the facts as the information may cause harm to the individual which could not be undone once the individual is vindicated.

9.4.2 *Annual Report of the Inspector-General of Intelligence*

- The IGI to make a presentation to the Committee on options to ensure the independence of the OIGI.
- The JSCI to consider the independence of the IGI during the processing of GILAB.

9.5 Designated Judge of Interception

- The JSCI resolved to engage with the PC on Justice and Correctional Services with regard to the amendment of RICA.

9.6 Office for Interception Centres

- The OIC to continue with efforts to procure new technologies to ensure optimum functionality.
- The OIC to provide a full briefing to the JSCI with regard to its independence.
- The OIC to liaise with the Portfolio Committee on Justice and Correctional Services.
- The OIC to liaise with the Private Security Industry Regulatory Authority (PSIRA) to ensure compliance of the private security companies to RICA.

9.7 Financial Intelligence Centre

- The FIC to continue working with the relevant stakeholders to prevent the greylisting of the country by February 2023.
- Adequate funding, retention and recruitment of specialist skills and employees in critical positions required to ensure the optimal functioning of the FIC.

**ANNUAL REPORT ON INTERCEPTION
OF**

PRIVATE COMMUNICATIONS

(In terms of the Regulation of Interception of Communication and Provision of
Communication-Related Information Act 70 of 2002, RICA)

Period: 01 November 2018 to 28 February 2021

To: Chairperson: Hon. JJ Maake, MP

Joint Standing Committee on Intelligence: Parliament

By Justice B E Nkabinde

Designated Judge

Date: 17th March 2021

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A. Introduction

- [1] This report is submitted in terms of section 3(a)(iii) of the Intelligence Services Oversight Act¹ (ISOA), read with the relevant provisions of the Regulation of Interception of Communication and Provision of Communication-Related Information Act² (RICA or Act). As explained below, the report covers the period from 01 November 2018 to 28 February 2021.
- [2] The term of office of the erstwhile designated Judge, Justice H M T Musi, came to an end during August 2019. My appointment took effect from 10 September 2019. Ordinarily, this report should cover a period from the date of my appointment. However, for expediency and completeness, I considered it appropriate also to gather information and report over the period in respect of which there was no reporting. The last report, according to the records in my office, was submitted on 31 October 2018. The 2019 report was supposed to be presented beginning of 2020. It was during this period that the hard lock down came into effect. The delayed reporting is regretted.
- [3] The insightful input by the Director of the Office of Interception Centre (OIC) involved in the chain of interception of communication, for which I remain thankful, has been considered in the preparation of this report. I deal later with the IOC report. The report by the Crime Intelligence Division of the South African Police Services (SAPS) was filed on 12 March 2012. Neither the State Security Agency (SSA) nor the Financial Intelligence Centre (FIC), which are also involved in the chain of such interception have submitted reports.
- [4] The report of the former designated Judge dealt with the legal framework applicable in respect of applications for the issuance of directions and entry warrants. For brevity, I will not replicate the legal framework in detail, particularly in the light of the recent judgment of the Constitutional Court declaring RICA unconstitutional.

¹ 40 of 1994.

² 70 of 2002.

- [5] It goes without saying that the year 2020 was marked by worldwide disruptions occasioned by the COVID scourge. The work of this office was not spared by such concomitant disruptions. The repairs including restoration of air-conditioning in our office during 2020 also contributed to the interruption of work in the interception chain.
- [6] The better part of 2019 was marked, among other things, by litigation in which the validity of RICA was impugned in the High Court and later the Constitutional Court. As will be noticed, I dedicate much of the reporting below – under the rubric of “[D]eclaration of constitutional invalidity of RICA” – on the judgment of the Constitutional Court which is focal point of this report to provide insight into the pronouncement of the Court on RICA. This is so because the judgment reveals a deep and better understanding of the intrusive nature of that Act.
- [7] On my assumption of office I was presented with the judgment of the High Court (Pretoria) in the matter of *AmaBhungane Centre for Investigative Journalism NPC and Another v Minister for Justice and Correctional Services and Others (Amabhungane)* in which the court declared RICA unconstitutional and made certain consequential relief, including a relief by reading-in a substantive provision for post surveillance notification subject to exceptional circumstances. I deal, in a short while, with the judgment of the Constitutional Court in the confirmatory proceedings. Apart from the fact that the decision of the Court impacts directly on the chain of interception of communication, it also serves as a point of reference for Parliament (and possibly for the draftsmen and draftswomen in the Department of Justice) on the legislative role and review function of RICA, respectively, when correcting the deficiencies identified by the Courts in the impugned Act.

B. Overview of the constitutional and legal framework

- [8] The right to privacy, which is entrenched in section 14 of the Constitution³ embraces the right to be free from intrusions and interferences by the state and others in the

³ Section 14 of the Constitution reads:

“Everyone has the right to privacy, which includes the right not to have—
(a) their person or home searched;
(b) their property searched;

personal life of the citizenry. This right, like any other, is not absolute. However, the limitation of the right to privacy must be reasonable and justifiable.⁴ The right to freedom of expression entrenched in section 16 of the Constitution⁵ is also relevant for the purpose of this report. Further rights which are implicated but not as self-standing as the privacy right in the implementation of RICA include the rights to a fair hearing and trial, respectively, as guaranteed in terms of sections 34⁶ and 35(3)⁷ of the Constitution.

-
- (c) their possessions seized; or
 (d) the privacy of their communications infringed.”

⁴ Section 36 of the Constitution provides:

“Limitation of rights

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

- a. the nature of the right;
- b. the importance of the purpose of the limitation;
- c. the nature and extent of the limitation;
- d. the relation between the limitation and its purpose; and
- e. less restrictive means to achieve the purpose.

2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

⁵ Section 16 of the Constitution reads:

“Everyone has the right to freedom of expression, which includes—

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.”

⁶ Section 34 of the Constitution reads:

“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

⁷ Section 35(3) of the Constitution provides:

“Every accused person has a right to a fair trial, which includes the right—

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the state and

[9] State intrusions into individuals' privacy may occur in various ways. Here, are concerned with the surveillance of individuals through interception of private communications as regulated under RICA.⁸ This may take place, for example, under an interception direction,⁹ with the consent of a party to communication,¹⁰ of an indirect communication in connection with carrying on of business,¹¹ to prevent serious bodily harm,¹² for purposes of determining location in case of emergency¹³ and if authorised by other Acts.¹⁴

[10] Interception of any communication is prohibited in section 2, "subject to this Act".¹⁵ Section 16 of RICA makes provision for the procedure to be followed when an interception direction is sought: An applicant may apply in writing (ordinarily by way of affidavit) to a designated Judge for the issuance of an interception direction, indicating the identity of the applicant and the law enforcement officer who will execute the interception direction; the identity of person/customer (if known) whose communication is required to be intercepted and the postal service provider or telecommunication service provider to whom the direction must be addressed and

at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

(h) to be presumed innocent, to remain silent, and not to testify during the proceedings;

(i) to adduce and challenge evidence;

(j) not to be compelled to give self-incriminating evidence;

(k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;

(l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;

(m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

(o) of appeal to, or review by, a higher court."

⁸ The Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (Interchangeably referred to as RICA or Act). This Act replaces the Interception and Monitoring Act.

⁹ Section 3 of RICA.

¹⁰ Section 5 of RICA.

¹¹ Section 6 of RICA.

¹² Section 7 of RICA.

¹³ Section 8 of RICA.

¹⁴ Section 9 of RICA.

¹⁵ Section 2 provides that: "Subject to this Act, no person may intentionally intercept or attempt to intercept, or authorise or procure any other person to intercept or attempt to intercept, at any place in the Republic, any communication in the course of its occurrence or transmission."

specifying the grounds¹⁶ on which the application is made; setting all the facts and circumstances alleged by the applicant and, if applicable, indicating whether conventional methods have been exhausted as well as whether any previous applications have been made.

- [11] In terms of section 16(5) an interception direction may only be issued if an interception Judge is satisfied, on the facts alleged under oath by an enforcement official, that (and I paraphrase) there are reasonable grounds to believe, among other things, that a serious offence has been or is being or will probably be committed; the gathering of information concerns an actual threat to the public health or safety, national security or compelling national economic interest of the Republic is necessary and – where organised crime is involved or any offence relating to terrorism or gathering of information relating to organised crime or terrorism or the gathering of information concerning property which is or could probably be an instrumentality of serious offence, is being or is likely to be committed.
- [12] Section 16(7)(a) of RICA, couched in peremptory terms, disallows notification to the subject of the interception direction.
- [13] Certain provisions of RICA, for example sections 42, also prohibit disclosure of information obtained in the performance of duties in terms of that Act.

C. Declaration of constitutional invalidity of RICA (*Amabhunghane*)

- [14] The judgment and order in *Amabhunghane* is important and, as mentioned earlier, is instructive for the ultimate legislative amendment of the Act and the implementation thereof. Although the declaration of invalidity has no immediate effect it does have an impact on the work of the agencies and my function as an interception Judge. The Constitutional Court order is detailed. I mentioned relevant parts thereof for this purpose. It reads:

¹⁶ Set out in section 16 (5).

“

6. The declaration of unconstitutionality by the High Court is confirmed only to the extent that the [RICA] fails to –

- (a) provide for safeguards to ensure that a Judge designated in terms of section 1 is sufficiently independent;
- (b) provide for notifying the subject of surveillance of the fact of her or his surveillance as soon as notification can be given without jeopardising the purpose of surveillance after surveillance has been terminated;
- (c) adequately provide safeguards to address the fact that interception direction are sought and obtained *ex parte*;
- (d) adequately prescribe procedures to ensure that data obtained pursuant to the interception of communication is managed lawfully and not used or interfered with unlawfully, including prescribing procedures to be followed for examining, copying, sharing, sorting through, using, storing or destroying the data; and
- (e) provide safeguards where the subject of surveillance is a practising lawyer or journalist.

7. The declaration of unconstitutionality in paragraph 6 takes effect from the date of this judgment and is suspended for 36 months to afford Parliament an opportunity to cure the defect causing the invalidity.

8. During the period of suspension referred to in paragraph 7, RICA shall be deemed to include the following additional sections:

‘Section 23A Disclosure that the person in respect of whom a direction, extension of a direction or entry warrant is sought is a journalist or practising lawyer

- (1) Where the person in respect of whom a direction, extension of a direction or entry warrant is sought in terms of section 16, 17, 18, 20, 21, 22 or 23, whichever is applicable, is a journalist or a practising lawyer, the applicant must disclose to the designated Judge the fact that the intended subject of the direction, extension of a direction or entry warrant is a journalist or practising lawyer.
- (2) The designated Judge must grant the direction, extension of a direction or entry warrant referred to in subsection (1) only if satisfied that it is necessary to do so, notwithstanding the fact that the subject is a journalist or practising lawyer.

- (3) If the designated Judge issues the direction, extension of a direction or entry warrant, she or he may do so subject to such conditions as may be necessary, in the case of a journalist, to protect the confidentiality of her or his sources, or, in the case of a practising lawyer, to protect the legal professional privilege enjoyed by her or his clients.'

'Section 25A Post-surveillance notification

- (1) Within 90 days of the date of expiry of a direction or extension thereof issued in terms of sections 16, 17, 18, 20, 21 or 23, whichever is applicable, the applicant that obtained the direction or, if not applicable, any other law enforcement officer within the law enforcement agency concerned *must* notify in writing the person who was the subject of the direction and, within 15 days of doing so certify in writing to the designated Judge, Judge of the High Court, Regional Court Magistrate or Magistrate that the person has been so notified.
- (2) If the notification referred to in subsection (1) cannot be given without jeopardising the purpose of the surveillance, the designated Judge, Judge of the High Court, Regional Court Magistrate or Magistrate may, upon application by a law enforcement officer, direct that the giving of notification in that subsection be withheld for a period which shall not exceed 90 days at a time or two years in aggregate.'

...."

- [16] RICA is declared unconstitutional and the declaration is suspended for 36 months to enable Parliament to cure the defects.
- [17] The factual matrix were said not to be central to the issues before the Court, i.e. whether (a) RICA unreasonably and unjustifiably fails to protect the right to privacy and is thus unconstitutional to the extent of that failure and (b) there was a legal basis for the state to conduct bulk surveillance.
- [18] The facts, briefly stated, were that a certain Mr Sole narrated his first-hand experience of the abuse of RICA by state authorities. He suspected that his communications were being monitored and intercepted. He took steps to obtain disclosure of the details relating to the monitoring and interception of his communication from the office of the Inspector-General of Intelligence but his efforts were in vain as he was told in a letter that the Inspector-General had found no wrongdoing by NIA and SAPS

Intelligence Division. He was further told that RICA prohibits disclosure of information relating to surveillance. It later transpired, as is evident from the judgment, that a communication between him and a state prosecutor, Mr Downer, had been intercepted.

- [19] Proceedings were launched in the High Court challenging the constitutionality of RICA on various grounds including that it failed to provide adequate safeguards to protect the right to privacy, ensure the independence of the designated judge and that the subject of surveillance is not protected in the *ex parte* application process (for the issuance of an interception direction by the designated judge).
- [20] In the High Court there was no evidence to gainsay the allegation that the surveillance limited the privacy rights of all concerned. The Court thus focussed on whether the limitation was justifiable in terms of section 36(1) of the Constitution. In holding that it was, the Court declared RICA invalid to the extent of its inconsistency with the Constitution. The declaration of invalidity was suspended for two years and certain interim provisions/words, which are to apply in the interim before the defects are cured by Parliament, were read-in into the Act.
- [21] In confirming the declaration of invalidity the Constitutional Court stressed that the invasion of individual's privacy infringes his/her cognate right to dignity. As the Ministers for Justice and Police had submitted, the Court recognised the need for the state to secure the nation, ensure that the public is safe and to prevent crime but remarked that some of the communications do not, in the least have anything to do with the reason for the surveillance and that some communication with the subject of surveillance are collateral victims. It found that whilst RICA serves an important purpose, it does not do enough to reduce the risk of unnecessary intrusion, i.e. to ensure that the interceptions and surveillance are generally within constitutionally compliant limits.¹⁷
- [22] The Court referred to two examples of journalists whose communications had been intercepted. The first related to journalists who investigated the alleged corruption

¹⁷ Paragraphs 32 and 33 of the Constitutional Court judgment.

scandals in the SAPS. It appears that a police official had, in the affidavit supporting the application for an interception directive, misrepresented information to the designated Judge. He lied that the phone numbers to be tapped were those of suspected ATM bombers.

[23] The real-time interception of the calls, text messages and metadata of the said journalists was directed by the interception Judge. Undisputed evidence was before Court that in certain instances the agencies can obtain fictional intelligence report about an individual. They would produce a report of that nature even where they have conducted surveillance that did not yield the desired result.

[24] The next example related to the report by the Inspector-General on the surveillance that had been conducted by the NIA operatives on a prominent South African businessman, Mr Sakumzi Macozoma (Macozoma). Seemingly, the Inspector-General had been requested to look into the matter of Macozoma by the Minister of Intelligence Services in terms of section 7 (7) (c) of the ISOA.¹⁸ Macozoma was alleged to have been linked to a foreign intelligence services inimical to national security¹⁹ and his emails, allegedly revealing various conspiracies, had been intercepted. That, in turn, resulted in the electronic and physical surveillance of certain individuals and political parties. In the report's conclusion, the judgment reveals, that the emails had been fabricated by the NIA team.

[25] After giving these examples the Court remarked:

“It would be naive to think that these examples are odd ones out and that in all other instances state agencies responsible for surveillance have always acted lawfully. The fact that it is now said that the document on the basis of which Mr Sole was subjected to surveillance cannot be found is quite curious ...I deliberately put it no higher.

The last examples show us that blatant mendacity may be the basis of an approach to the designated Judge . . . [who] has no means meaningfully to verify the information placed before

¹⁸ See fn 1 above.

¹⁹ Apparent from the reading of the Constitutional Court judgment this was in terms of the “Executive Summary of the Final Report on the findings of an Investigation into the Legality of the Surveillance Operations Carried Out by NIA on Mr S Macozoma” Media Briefing, 23 March 2006.

her or him. As a result, she or he is left none the wiser. Also, by its very nature – in particular because it takes place in complete secrecy [because section 16 (7) (a) of RICA expressly forbids disclosure of any kind to the subject of the surveillance] on the understanding that the subject of surveillance who is best placed to identify an abuse will never know – surveillance under RICA is susceptible to abuse. A key factor which likely emboldens those who conduct surveillance to abuse the process is thus a sense of impunity. The question then is whether lesser restriction on secrecy in the form of notification would thwart the realisation of what RICA interceptions are meant to achieve.”²⁰

[26] The Court also referred to sections 42(1) and 51 of RICA that respectively prohibit and criminalise the disclosure of the fact that an interception direction, granted and implemented in secrecy unlike the search and seizure warrant which do come to the notice of the subject even if sought and granted in secrecy, was issued. It said that an individual, whose privacy has been violated in the most intrusive, egregious and unconstitutional manner, never becomes aware of this and is thus denied an opportunity to seek legal redress for the violation of her or his right to privacy. The right in section 38, the Court remarked, then becomes illusory.

[27] Before concluding that post-surveillance notification should be the default position which should be departed from only where, on the facts of each case, the state organ persuades the designated Judge that such departure is justified, the Court mentioned that:

“...[P]ost-surveillance notification will go a long way towards eradicating the sense of impunity which certainly exists. The concomitant will be a reduction in the numbers of unmeritorious intrusions into the privacy of individuals. ...In a sense, post-surveillance notification functions as less restrictive ... less intrusive means and serves at least two purposes. First, the subject of surveillance is afforded an opportunity to assess whether the interception direction applied for and issued is in accordance with the Constitution and RICA. If need be she or he may seek an effective remedy for the unlawful violation of privacy. Second, because there will be challenges to illegality sought and obtained interception directions, that will help disincentivise abuse of the process and reduce violations of the privacy of individuals...”²¹

²⁰ Paragraphs 40 -1 of the Constitutional Court judgment.

²¹ Paragraph 39 of the Constitutional Court judgment.

- [28] The Court also remarked about the possibility of a process of automatic review, if Parliament so decides, to cater for the vast majority of people who cannot, as a result of financial want, afford to litigate when they have suffered the infringement of their rights at the hands of the state. Properly understood, this will impact directly of the work of the designated Judge if Parliament finds favour with the proposed automatic review process. The Court said that this could be in the form of automatic review by a designated Judge in an informal, mainly paper-based non-court process where a designated Judge may call for whatever information she or he might require from whomsoever to yield a summary but effective process.²² This will reduce abuse which, as the examples demonstrate, is a shocking reality.
- [29] Regarding the independence of a designated Judge, in relation to the safeguards on the appointment and the Ministerial power to designate, the Court – using the definition section as an interpretive tool – concluded that the Minister does have the power to designate. The Minority held otherwise.²³ It held that there is no substantive provision in the entire RICA that empowers the Minister to designate a Judge for the purposes of determining applications for authorisation to intercept private communications and perform other functions.²⁴
- [30] Although this is a matter that falls entirely within the province of the legislative authority of Parliament, I think that it will be instructive, to obviate any doubt in the future, to include a substantive provision in the Act that deals with the Ministerial power to designate.
- [31] The Majority judgment dealt, in relation to the question of independence, with a number of protective processes when a Judge is appointed and remarked that none of those processes and structures are in place for the designated Judge under RICA.²⁵
- [32] Additionally, the Court said that the lack of specificity on the manner of appointment and extensions of terms raises independence concerns. The lack of structural

²² Paragraph 49 of the Constitutional Court judgment.

²³ See for example paragraph 79 of the Constitutional Court judgment.

²⁴ Para 159 of the Constitutional Court judgment (Minority).

²⁵ Paragraphs 91 and 92 of the Constitutional Court judgment are instructive in this regard.

independence in the RICA, the Court remarked, may also lead to a reasonable perception of lack of independence. That, it was said, is something Parliament may address with relative ease.

[33] With regard to the *ex parte* nature of the application²⁶ for directions the Court mentioned that the applicants did not challenge the section permitting this. It remarked that the rationale for the *ex parte* process is obvious: the surveillance would be futile if the subject were to be aware of it.²⁷

[34] The Court was, however, not oblivious to the risks of abuse of the *ex parte* process which highlights the general deficiencies in RICA. It did not comment on the suggestion by the applicant regarding the involvement of the “public advocate” as one such safeguards but left it to Parliament to address the inadequacies resulting from the *ex parte*-nature of the process under RICA.

[35] The issue regarding the management of the information by the IOC was also considered by the Constitutional Court. Section 35(1)(g) of RICA enjoins the Director of the OIC to prescribe which information and the manner in which such information will be kept. The Court said that whether the important information will be part of what is prescribed to be kept is left to the unbound discretion of the Director. It said that there ought to be clear parameters on the exercise of such discretion.

[36] Further, the Court said that the sections do not give clarity and detail on: what must be stored; how and where it must be stored; the security of such storage; precautions around to the stored data (who may have access and who may not; the purposes of accessing and how and at what point the data may be destroyed. The Court held that there is a real risk of the private information landing in wrong hands and, even if in the rights hands, may end up being used for purposes other than those envisaged in RICA thus exacerbating the risk of unnecessary intrusions into the privacy of

²⁶ In terms of section 16(7)(a) of RICA.

²⁷ Paragraph 95 of the Constitutional Court judgment.

individuals. All of these brought to question the safeguards put in place by the Centre to guarantee lesser invasion of privacy.²⁸

[37] Regarding the rights to freedom of expression, fair hearing and trial which were raised not as distinct constitutional challenges but rather to be considered within the scope of the section 36 limitation enquiry (that the limitation of the right to privacy was not reasonable and justifiable) the Court made it clear that it cannot be suggested that journalists and practising lawyers who may claim client – attorney privileged information cannot be subjected to surveillance which includes the interception of their information as they, like other members of the society, are not immune from being monitored. It said that there may be reasonable grounds for suspecting them of being involved in serious criminality or of conduct that places the security of the Republic at serious risk.

[38] However, the Court said, the confidentiality of lawyer-client communication and journalists' sources is significant in our constitutional dispensation. It found that RICA is unconstitutional to the extent that it fails to provide for additional safeguards calculated at minimising the risk of infringement of the confidentiality of practising lawyers and client communication and journalists' sources.²⁹

D. OIC Report

[39] This report (annexed hereto as **annexure "A"**) gives account on the effectiveness of the lawful interception chain and success of the implementation of RICA. It highlights safeguards put in place to ensure compliance. It also seeks to highlight some of the successes in the combating of crime through lawful interception. Correctly, the Director mentions that reporting by all role players in the lawful interception value chain is important because such reports provide a complete picture on the efficacy of the RICA processes.

²⁸ Paragraph 107 of the Constitutional Court judgment.

²⁹ Paragraph 119 of the Constitutional Court judgment.

[40] The Director reports that the Centre has put in place measures in the form of Standard Operating Procedures (SOP) to be followed by all employees when dealing with interception directions. He mentions, among other things, the security measures on the interception data. Apart from documenting the statistics for the relevant period and assessment of impact he refers, more importantly in my view, to the following challenges experienced by the OIC:

- Not receiving all interception directions issued by the Interception Judge resulting in failure to reconcile figures reported to be received and provisioned by the OIC and those from the interception judge's office. The answer provided by the staff of the Interception Judge is that there are other law enforcement agencies (LEAs) that apply for interception directions but not using the OIC services: All Interception Directions issued by the designated Judge are forwarded to the OIC save for those issued under Section 22 (entry warrant). Such directions are forwarded to the relevant Law enforcement agency for execution. Statistics from my office covers the period from the last reporting date to the current reporting date which is different from that of the OIC.
- The manual application and lack of electronic or automated capacity in the Interception Judge's office thus resulting in errors in identifying whether a number in the application is new or existing. The staff in my office explained that this is occasioned by the fact that the classification from the Office of the Designated Judge is not based on specific numbers intercepted as is the case in the OIC. A number that already exist on the OIC records may still be registered as a new application received, The suspect may be under investigation for several unrelated cases. The OIC will pick up that number as an existing number whereas in the office of the designated Judge it will be recorded as a new application depending on the case to which it relates.
- The assessment of the truthfulness of the affidavits presented to the designated Judge by the LEAs. Indeed, the mendacity of most of the deponents to the affidavits submitted in support of the interception direction are, as we have

seen from the matter of Macozoma), a matter of serious concern as the interception Judge is unable to verify the truthfulness of the statements made.

- Development of standards and processes for the implementation of data protection measures between various entities such as service providers, LEAs, OIC and the designated Judge's office to promote confidentiality and integrity of the interception value chain.
- The director mentions, correctly in my view, that the interconnectedness of the various stakeholders in the interception process calls is necessary.
- The Director refers to the pronouncements of the Constitutional Court regarding the importance of adequate procedures to secure data received including procedures used for examining, copying, sharing, sorting through, using, storing or destroying the data. These are some of the matters to be taken into account when RICA is reviewed by Parliament.

E. Law Enforcement Agencies' reports

[41] The report by the acting Divisional Commissioner: Crime Intelligence, Lieutenant General Y Mokgabudi, dated 12 March 2021, was send to my office on Friday 12 March 2021. The report deals with the status of certain directions but does not comprehensively elaborate on the status of matters referred to in the summary of applications and extensions. The report also mentions challenges encountered in the implementation of directions. It is not clear whether the challenges are in relation to all directions issued or in relation to specific ones. I can do no better than recapping what is stated in the report:

“The OIC system is outdated, regularly collapses resulting in the loss of interception communication products;

The fact that interception at OIC is limited to Voice and SMS data means that approximately 99% of the target's communication is lost;

Inability of the OIC to intercept other forms of communication like WhatsApp including WhatsApp voice calls, skype, emails, facebook and other social media platforms;

Inability of OIC systems to provide images, GIS and GPS; and

Lack of decentralised connectivity (Provincial OIC's) affects the implementation of Directions especially hot monitoring.”

- [42] Mention of the loss of intercepted communication and targets' communication support the view that there are no safeguards in place to minimise intrusions into the privacy of the targeted individuals. The SSA, and FIC did not submit the reports. This is regrettable because the agencies' reports are, as mentioned by the OIC Director, important as they provide a complete picture on the efficacy (supposedly, including the inadequacies) of the RICA processes.

F. Statistics as compiled by the Office of the designated Judge

[43] (a) **SAPS Applications**

NEW-350

RE-APPLICATION-88

EXTENSION-30

EXTENSION AND AMENDMEND-119

AMENDMEND-26

ORAL-2

DECLINED-7

TOTAL-622

[44] (b) **SSA Applications**

NEW-8

RE-APPLICATION-24

AMENDMEND-8

EXTENSION AND AMENDMEND-5

ORAL-1

SECTION 11-5

EXTENSION-3

DECLINED-7

TOTAL-61

[45] (c) FIC (under FICA) Applications

NEW-3

EXTENSION AND AMENDMEND-1

G. Comments on the statistics

[46] Analysis of the statistics for the reporting period has revealed the following: Of the 622 applications received from SAPS for this reporting period, 208 are cases relating to drugs and drug trafficking, an indication of how much the scourge has permeated our societies. Gauteng is leading at 32.7% followed by the Western Cape at 31.7%, Eastern Cape 13.94%, Southern Cape 8.65%, KZN 4.8%, Limpopo 4.8%, Northern Cape 1.92% and lastly NW standing at 1.44%. 63 applications were received in relation to Cash in Transit Heist. Western Cape is at 29.3%, KZN 25.39%, Gauteng 20.63%, Eastern Cape 15.87%, Mpumalanga 6.35%, Northern Cape 1.58%.

The remaining percentage of applications is spread between other crimes such as Corruption, Carjacking, Murder, Smuggling of Motor Vehicles, ATM bombings, Rhino horn smuggling, Rape murder, kidnapping and armed Robbery.

[47] SSA has submitted sixty one (61) applications of which seven (7) was declined. Their applications are mostly for terrorism, espionage and other related crimes such as information peddling.

[48] FIC submits applications in terms of the Financial Intelligence Centre Act, Act 38 of 2001. Their applications are mostly more financial monitoring to combat illegal activities such as money laundering and detect proceeds from unlawful activities.

H. Observations

[49] During October 2020 I visited the OIC. The Director mentioned technical deficiencies. Mention was made of the outdated infrastructure and budgetary constraints. Mentions was also made of the fact that the Centre has not been invited to make input in the process of reviewing RICA and the delay in the review which impacts on the Centre's efficiency and effectiveness. These ongoing challenges or some of them seem to have been reported to the previous designated Judge. In his report, the Judge said:

“The infrastructure needs to be upgraded as since the current version is no longer supported and hardware infrastructure has already reached its end of life. The technical capacity of the system continues to decline amid the developments and infrastructure upgrades from the service providers that are creating technical challenges with the OIC.”

- [50] It is important for the optimal efficacy of the interception processes in terms of the Constitution and RICA to ensure that all infrastructure is up-to-date for the Centre to function efficiently and effectively.
- [51] The Director made mention of the need for the Centre to be independent and to change the reporting lines to Parliament. He suggested that a comparable study to this effect may be done to determine the efficacy of the proposed model. The Director raised the issue of the safety of the OIC personnel. In my view, this matter should be prioritised.
- [52] I suggested that the OIC should identify areas in respect of which the Judge’s staff could assist in simplifying the work between the OIC and LEAs. I also suggested that a mechanism be defined to demonstrate value derived from the interception done by the OIC. Furthermore, because of alleged failures by the OIC allegedly because of the technical deficiencies alleged by certain LEA, I adopted a system whereby applicants should motivate their allegations and support same with confirmatory sworn statements from OCI. This would minimise hearsay. Additionally, I proposed that frequent meetings should take place between my Office and the OIC to discuss areas of common concern.
- [53] This office has received enquiries, one from the office of the Minister of State Security, complaining that her private communication has been unlawfully intercepted. The Office confirmed that no lawful interception direction was issued in relation to the Minister. I thus requested my office to advise that a complaint be formalised to enable my office to make a follow up but no formal complaint was received.

- [54] Recently, I was copied a letter which addressed to Lt-Gen Mokgabudi by Willem de Klerk Attorneys and subsequently sent by an Instigative Journalist, Ms Karrim regarding the alleged surveillance of News24 Journalists – specifically the editor-in-chief of News24, Mr Adriaan Basson – by the Crime Intelligence division of SAPS in that their communications are intercepted with the use of the so-called “grabber devise”. The letter is attached as **annexure “B”**. I undertook to respond after verifying with the staff in my office whether any lawful direction permitting any such interception has been issued. The Office checked and responded in the negative. The letters attached and marked **annexure C1 and C2** were then addressed to Ms Karrim and De Klerk Attorneys. My office was also copied of the response by Major General F Khan of the Divisional Commissioner Crime Intelligence (Head Office) Pretoria. His letter is annexed **as annexure D**.
- [55] Sadly, the Ms Karrim has since sent a message (sms directly to my mobile phone) that her team asked her to alert me “to the possibility that their colleague’s number could have been slipped into legitimate applications and could have been included among legitimate numbers – a trick used sometimes.” This emboldens the Constitutional Court’s remarks about the mendacity of some of the applicants seeking interception directions from the interception Judge.
- [56] It needs to be stressed that there is no interception that is conducted unlawfully by my office unless undetected underhand methods are used to hide information using other people’s numbers. This is so because my office conduct a thorough check of information provided before directions are issued. The observation deducted is that if the interception has been done lawfully, it is rear that the number can pass by the Judge’s table unnoticed, those numbers are checked thoroughly before the direction is issued bearing in mind the intrusive nature of interception methods. The challenge, however, is with RICA itself. Where information is sought regarding ownership of the cell phone number, we are often told that the number belongs, for instance, to A but is being used by B for criminal activities or we find a rare combination of the owner’s details which make no sense at all. In some instances, the service provider does not change the details if the number is being used by a new user. It may be helpful to take these considerations into account during the review processes.

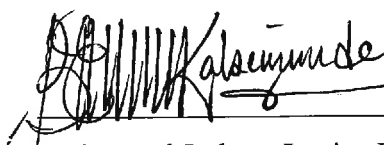
- [57] It bears mentioning that there are many instances when I decline to grant directions, for example, when numbers do not tally. I would direct queries to the relevant agency to explain or rectify the whatever errors that might have been detected. It follows that the issues raised by Ms Karrim and Attorney De Klerk are not far-fetched.
- [58] It is indeed matter of great concern that there seem to be unceasing unlawful interception of communication of private and public officials. These matters are, in the light of the constitutional imperatives and the rule of law, most disturbing and cannot be left unchecked by the relevant Ministry/Department of agency implicated. Lying under oath is a criminal offence. Appropriate steps need to be taken against officers with such proclivity whose conduct result in violation of the privacy right of others without reasonable justification, whatsoever.
- [59] I was advised by the Official in the Department of Justice, Mr Sarel Robberts, that the review of RICA, which is extensive, is underway. The ongoing review might include a complete overhaul of the legislation especially following the comprehensive judgment by the Constitutional Court in *Amabhungane*.
- [60] On matters of administration, the support staff remain the same as previously reported. The office is suitably furnished and, following the maintenance that took place over several months in 2020, air conditioned.

I. Concluding remarks

- [61] The pronouncement of Constitutional Court highlighting inadequacies in RICA that manifestly gave rise to disconcerting invasions in the privacy of individuals mentioned and possibly many others will greatly, it is expected, transmute the manner in which all concerned, including the affected Members of the Executive, law enforcement agencies, FIC, OIC and the designate Judge, will perform their functions when Parliament has considered the judgment and cured the deficiencies in RICA as identified by the Constitutional Court in *Amabhungane*. I am hopeful that within the

next 36 months the defects in RICA would be cured to minimise the invasions currently experienced through its unconstitutionality.

[62] I am thankful to the Department of Justice for providing the support staff and additional assistance to me. I am thankful also to the Senior Official (Ms Juanita Lugela and her Team for the assistance and support throughout the said period and in the preparation of this report. The report by the Director of OIC, for which I am thankful, has also been useful.

A handwritten signature in black ink, appearing to read 'Kalsenyunde', written over a horizontal line.

Designated Judge: Justice BE Nkabinde

Report of the auditor-general to Parliament on the State Security Agency

Report on the audit of the financial statements

Qualified opinion

- 1 I have audited the financial statements of the State Security Agency (SSA) set out on pages ... to ..., which comprise the statement of financial position as at 31 March 2021, statement of financial performance, statement of changes in net assets, appropriation statement and cash flow statement for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
- 2 In my opinion, except for the effects of the matters described in the basis for qualified opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the SSA as at 31 March 2021, and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act 1 of 1999 (PFMA).

Basis for qualified opinion

High inherent risk due to nature of environment

- 3 The SSA accounts for non-sensitive and sensitive project expenditure and assets incurred in connection with the performance of the function and the duty of the intelligence services as defined in section 1 of the Intelligence Services Act 65 of 2002. The level of assurance that can be given by my audit on sensitive projects expenditure and assets included in notes 7 and 18 to the financial statements, respectively, is lower than in the case of other audits due to the significant inherent risk relating to the sensitivity of the environment in which they are incurred and the manner in which they are recorded.
- 4 The accounting officer has commenced with a process to implement the recommendations of the review panel that was appointed by President. This has resulted in a greater level of focus on special project expenditure and the following matters are therefore qualified:
 - 4.1 The nature of the business of the SSA and the related inherent risk has limited my ability to confirm the assets, under property and equipment, computer equipment and computer software, which are used in sensitive projects. As such, I was unable to confirm whether property and equipment, depreciation, computer software, amortisation and operational expenditure recognised were fairly presented in the financial statements.

4.2 The nature of the business of the SSA poses significant challenges to follow proper supply chain processes related to the procurement of operational equipment and goods and services used in sensitive projects. Even as controls are being implemented by the accounting officer, practical challenges to comply are faced. The balance between the nature and mandate of the SSA and an open and transparent procurement process necessitates an exemption from the finance minister to deviate in supply chain processes. These matters are resulting in irregular expenditure being incurred. The full extent of the misstatement could not be quantified and I was unable to confirm the amount of the irregular expenditure to be disclosed in note 33 by alternative means.

Property and equipment

5 The SSA did not review the residual values and useful lives of property and equipment at each reporting date in accordance with GRAP 17. Consequently, I was unable to confirm property and equipment recognised at [REDACTED] in note 18 to the financial statements. In addition, I was unable to confirm the depreciation recognised at [REDACTED] in note 8 to the financial statements. Therefore, I was unable to determine whether any adjustments were necessary to the value of assets disclosed in the financial statements, the surplus for the period and the accumulated surplus.

Context for the opinion

- 6 I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
- 7 I am independent of the SSA in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
- 8 I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Emphasis of matters

9 I draw attention to the matters below. My opinion is not modified in respect of these matters:

Claims against the SSA

10 As disclosed in note 31 to the financial statements, the SSA is the defendant in a number of claims instituted against it. The SSA is opposing the claims as it believes the claims to be invalid and/or overstated. The ultimate outcome of these matters cannot currently be determined and no provisions for any liabilities have been made in the financial statements.

Restatement of corresponding figures

- 11 As disclosed in note 27 to the financial statements, the corresponding figures for 31 March 2020 have been restated because of an error in the financial statements of the SSA at, and for the year ended, 31 March 2021.

Fruitless and wasteful expenditure figures

- 12 As disclosed in note 32 to the financial statements, the SSA incurred fruitless and wasteful expenditure of [REDACTED] most of which relates to unplaced members.

Other matter

- 13 I draw attention to the matter below. My opinion is not modified in respect of this matter.

Use of internal auditors

- 14 I was able to obtain assistance from the internal auditors for purposes of auditing sensitive operational expenditure, assets and performance information reported in the annual performance report. Although the inherent limitation referred to in paragraph 3 of this report was not resolved in its entirety, the assistance obtained from the internal auditors reduced the extent of the limitation in comparison to the prior year's audit. This is an arrangement I intend continuing in future audits, in compliance with the ISAs.

Responsibilities of the accounting officer for the financial statements

- 15 The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
- 16 In preparing the financial statements, the accounting officer is responsible for assessing the SSA's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the accounting officer either intends to liquidate the SSA or to cease operations, or has no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the financial statements

- 17 My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

- 18 A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

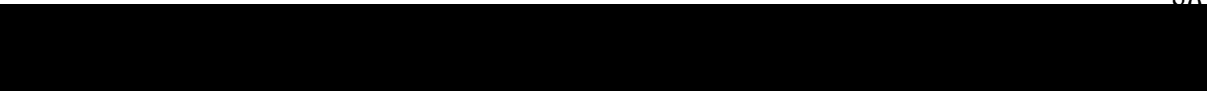
Report on the audit of the annual performance report

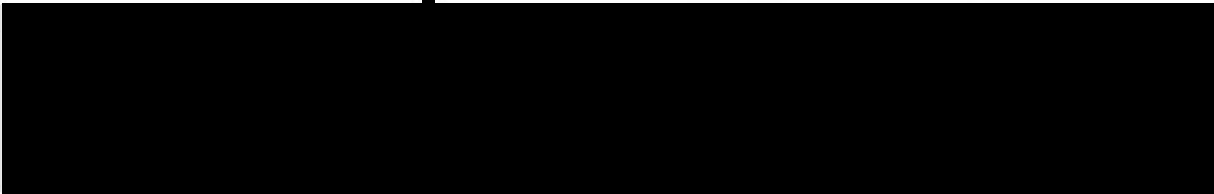
Introduction and scope

- 19 In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
- 20 My procedures address the usefulness and reliability of the reported performance information, which must be based on the SSA's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the SSA enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
- 21 I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programme presented in the SSA's annual performance report for the year ended 31 March 2021:

Programmes	Pages in the annual performance report
Programme 2 – domestic branch	x – x

- 22 I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid and accurate.
- 23 The material findings on the usefulness and reliability of the performance information of the selected programme are as follows:

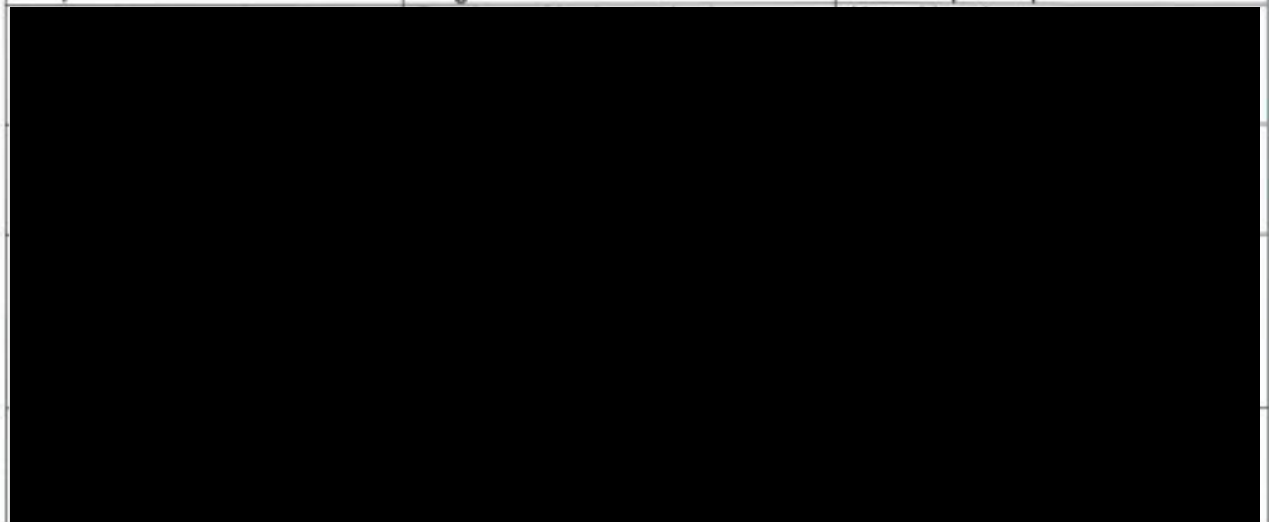


24 

actual achievement is unrelated to the planned indicator and its predetermined measurement processes. As a result, I was unable to audit the reliability of the reported achievement.

Various indicators

25 Adequate systems and processes were not established to enable the consistent measurement and reliable reporting of performance against predetermined indicator definitions in the following instances:

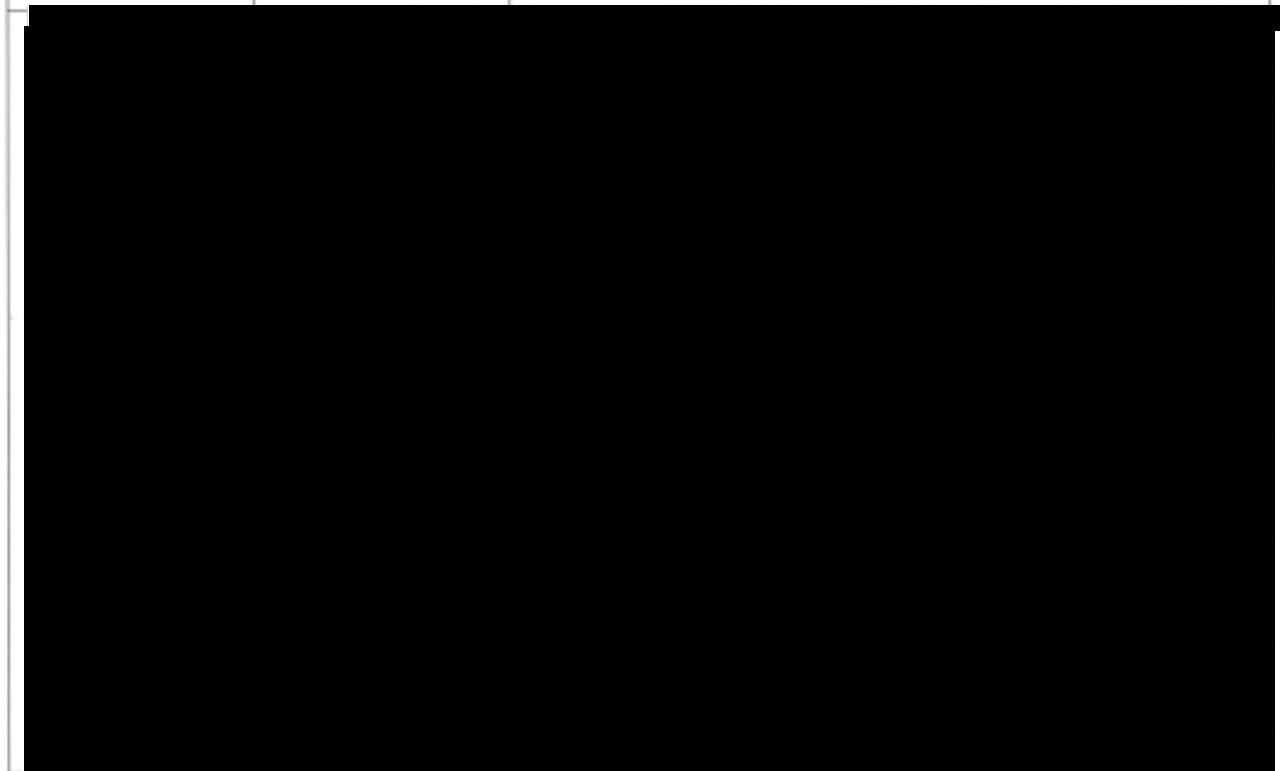
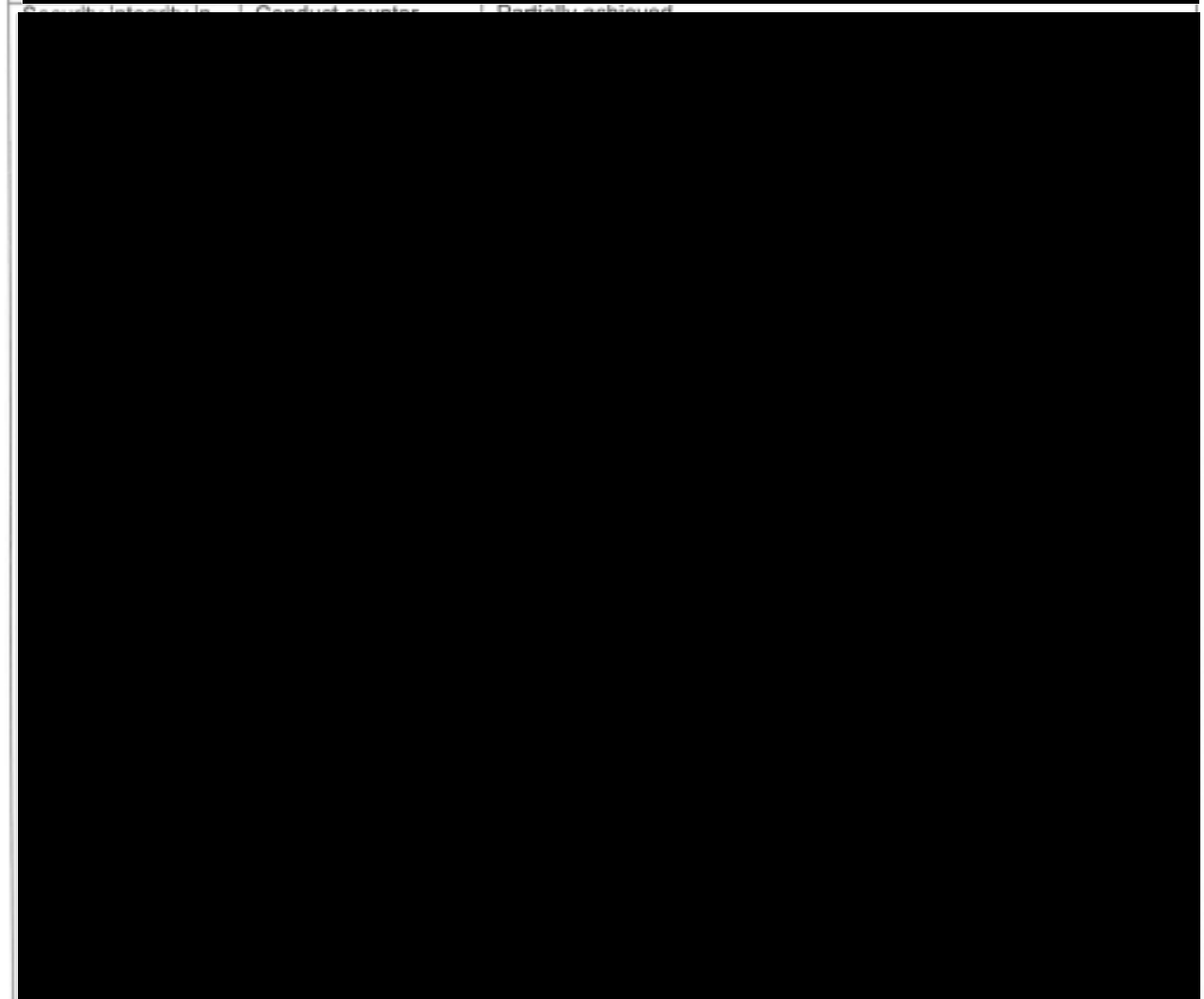
Output indicator	Target	Actual reported performance
		

Various indicators

26 The achievement below was reported against the reported targets in the annual performance report. However, some supporting evidence provided materially differed from the reported achievement, while in other instances I was unable to obtain sufficient appropriate audit evidence. This was due to the lack of accurate and complete records. I was unable to further confirm the reported achievement by alternative means. Consequently, I was unable to determine whether any further adjustments were required to the reported achievement:

Output Indicators	Reported targets	Reported actual achievement per Annual Performance Report
		



Output Indicators	Reported targets	Reported actual achievement per Annual Performance Report
		
		



Output Indicators	Reported targets	Reported actual achievement per Annual Performance Report

Other matters

27 I draw attention to the matters below.

Achievement of planned targets

28 Refer to the annual performance report on pages ... to ... for information on the achievement of planned targets for the year and management's explanations provided for the under-achievement of targets. This information should be considered in the context of the material findings on the usefulness and reliability of the reported performance information in paragraphs 23 to 26 of this report

Adjustment of material misstatements

29 I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of programme 2 – domestic branch. As management subsequently corrected only some of the misstatements, I raised material findings on the usefulness and reliability of the reported performance information. Those that were not corrected are reported above.

Report on the audit of compliance with legislation

Introduction and scope

30 In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the compliance of the SSA with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.

- 31 Included below are material findings on compliance with selected specific requirements of applicable legislation, as set out in the general notice issued in terms of the PAA.

Annual financial statements

- 32 The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework and supported by full and proper records, as required by section 40(1)(a) and (b) of the PFMA.
- 33 Material misstatements of provisions, accrual for leave and commitments identified by the auditors in the submitted financial statements were corrected and the supporting records were provided subsequently, but the uncorrected material misstatements resulted in the financial statements receiving a qualified opinion.

Strategic planning and performance management

- 34 Procedures for the facilitation of effective performance monitoring, evaluation and corrective action through quarterly reports, as required by treasury regulation 5.3.1, were not effective due to the late submission of the quarterly reports to the executive authority.

Expenditure management

- 35 Effective steps were not taken to prevent irregular expenditure amounting to [REDACTED] as disclosed in note 33 to the financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1. The majority of the irregular expenditure disclosed in the financial statements was caused by non-compliance with Supply Chain Management Regulations.
- 36 Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to [REDACTED] as disclosed in note 32 to the financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1.

Consequence management

- 37 I was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who were responsible for fruitless and wasteful expenditure, as required by section 38(1)(h)(iii) of the PFMA.

Procurement and contract management

- 38 Some goods and services with a transaction value above R500 000 were procured without inviting competitive bids, with deviations being approved by the accounting officer although it was practical to invite competitive bids, contrary to treasury regulation 16A6.1 and 16A6.4 and paragraph 3.4.1 of Practice Note 8 of 2007/08.

Other information

- 39 The accounting officer is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and those selected programmes presented in the annual performance report that have been specifically reported in this auditor's report.
- 40 My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
- 41 In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the annual performance report, or my knowledge obtained during the audit, or otherwise appears to be materially misstated.
- 42 If, based on the work I have performed on the other information that I obtained prior to the date of this auditor's report, I conclude that there is a material misstatement in this other information, I am required to report that fact.
- 43 I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, and if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

Internal control deficiencies

- 44 I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion, the findings on the annual performance report and the findings on compliance with legislation included in this report.
- 45 The SSA's financial information systems need urgent attention: some key applications are outdated and are, therefore, unsupported by service providers. This has resulted in other systems and applications not being updated to newer versions so that the system, as a whole, is still able to interface. Management needs to ensure that compensating controls are in place to support these systems.
- 46 Inadequate review processes resulted in material misstatements in the annual financial statements. A complete assessment of the useful lives of all assets was not completed and management is still in the process of assessing all the assets.

- 47 There was inadequate monitoring and implementation of actions plans to address key control deficiencies; some of which resulted in repeat material findings from the prior year. This had a significant impact on the audit of performance information.
- 48 The SSA did not have approved standard operating procedures to guide the collection, collation, verification, storing and reporting of performance information.
- 49 The numerous senior positions filled by acting personnel created instability within the SSA.
- 50 There were inherent limitations in the internal controls relating to the keeping of valid, accurate and complete financial records as well as compliance with supply chain management legislation for sensitive projects.
- 51 During the performance year, multiple output indicators were not included in the annual performance plan without any business process to allow the consistent collection of information and reporting in the annual performance report, due to inadequate planning processes.
- 52 Some policies and procedures were outdated and did not incorporate the changes in the SSA's operating environment as well as changes to applicable laws and regulations.

Other reports

- 53 I draw attention to the following engagements conducted by various parties that have, or could have, an impact on the matters reported in the SSA's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.
- 54 The SSA is currently considering and/or implementing recommendations of investigations relating to the temporary advances [REDACTED]. These investigations were being conducted in collaboration with other relevant law enforcement agencies.
- 55 All cases reported in the last two financial years which were investigated internally, will be handed over to an Independent Forensic investigation company for investigation. The Forensic investigation company has been identified through a competitive bidding process and is currently undergoing a vetting process.
- 56 In June 2018, President Cyril Ramaphosa appointed a review panel to assess the mandate, capacity and organisational integrity of the SSA. These proceedings were concluded and a report was released to the public in December 2018. An implementation task team has been set up to oversee the implementation of the recommendations in the review panel's report. Furthermore, numerous internal investigations are underway as a result of matters raised in the report.

57 The Office of the Inspector-General of Intelligence is in the process of investigating numerous complaints received; these investigations are at various stages of completion.

Auditor-General

Pretoria

8 September 2021



AUDITOR - GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure – Auditor-general’s responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements, and the procedures performed on reported performance information for selected programmes and on the SSA’s compliance with respect to the selected subject matters.

Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor’s report, I also:
 - identify and assess the risks of material misstatement of the financial statements whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control
 - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the SSA’s internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting officer
 - conclude on the appropriateness of the accounting officer’s use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the SSA’s ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor’s report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor’s report. However, future events or conditions may cause an agency to cease continuing as a going concern
 - evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

Communication with those charged with governance

3. I communicate with the accounting officer regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also confirm to the accounting officer that I have complied with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on my independence and, where applicable, related safeguards.

Report of the auditor-general to Parliament on the South African Police Service – Crime Intelligence: Secret Services Account

Report on the audit of the financial statements

Qualified opinion

1. I have audited the financial statements of the South African Police Service – Crime Intelligence: Secret Services Account set out on pages XX to XX, which comprise the appropriation statement, statement of financial position as at 31 March 2021, statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, except for the effects of the matters described in the basis for qualified opinion section of this auditor's report, the financial statements present fairly, in all material respects, the financial position of the South African Police Service – Crime Intelligence: Secret Services Account as at 31 March 2021, and its financial performance and cash flows for the year then ended in accordance with the Modified Cash Standard (MCS) and the requirements of the Public Finance Management Act 1 of 1999 (PFMA).

Basis for qualified opinion

High inherent risk due to the nature of the environment

3. The South African Police Service – Crime Intelligence: Secret Services Account accounts for sensitive and non-sensitive project expenditure incurred in connection with the performance of the function and the duty of the Secret Services as defined in section 1 of the Secret Services Act 56 of 1978. The level of assurance that can be given by my audit on sensitive projects expenditure and assets included in notes 4, 7, 8 and 24 to the financial statements is lower than in the case of other audits due to the significant inherent risk relating to the sensitivity of the environment in which the expenditure is incurred and the manner in which the assets are recorded.

Cash and cash equivalents

4. In prior years, the department overstated cash and cash equivalents by approximately [REDACTED]. The department is still in the process of reconciling the transactions in order to finalise the adjustments that need to be made to the financial statements to correct the misstatement. Consequently, the misstatement of approximately [REDACTED] included in the comparative figures of note 8 to the financial statements, remains unresolved.

Lease commitments

5. I was unable to obtain sufficient appropriate audit evidence for operating leases due to the status of accounting records and was unable to confirm these operating leases by alternative means. Consequently, I was unable to determine whether any adjustment was necessary to commitments stated at [REDACTED] in note 18.1 to the financial statements.
6. In the prior year the department did not correctly calculate operating leases in accordance with the MCS, chapter 13, *Leases*. Consequently, operating leases in note 18.1 to the financial statements was overstated by approximately [REDACTED]

Irregular expenditure

7. The nature of the business of the department poses significant challenges to follow proper supply chain processes related to the procurement of operational equipment as well as goods and services. Even as controls are being implemented by senior management, practical challenges to comply are faced. This is resulting in irregular expenditure. The balance between the nature and mandate of the department and an open and transparent procurement process necessitates an exemption from the finance minister to deviate on supply chain processes. This resulted in the irregular expenditure disclosure being understated. The full extent of the misstatement identified could not be quantified and I was unable to confirm the amount of irregular expenditure to be disclosed by alternative means. Consequently, I was unable to determine whether any further adjustments were necessary to the irregular expenditure disclosure stated at [REDACTED] in note 19 to the financial statements.

Movable tangible capital assets

8. During 2020, I was unable to obtain sufficient appropriate audit evidence for movable tangible assets to the value of approximately [REDACTED] due to the asset register not being adequately maintained and updated. I was unable to confirm these assets by alternative means. Consequently, I was unable to determine whether any adjustment was necessary to movable tangible assets stated at [REDACTED] in note 24 and the prior period error note 27 to the financial statements. My audit opinion on the financial statements for the period ended 31 March 2020 was modified accordingly. My opinion on the current year financial statements is also modified because of the effect of this matter on the comparability of the moveable tangible capital assets for the current period.

Goods and services

9. During 2020, the department did not classify salary payments to general workers as compensation of employees in the financial statements, in accordance with the MCS, chapter 8, *Expenditure*. The department has a contractual relationship with these employees that requires separate disclosure from goods and services as compensation of employees. Consequently, the corresponding figures for goods and services are overstated and compensation of employees is understated by [REDACTED]

Context for the opinion

10. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of my report.
11. I am independent of the department in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
12. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Emphasis of matter

13. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Restatement of corresponding figures

14. As disclosed in note 27 to the financial statements, the corresponding figures for 31 March 2020 have been restated because of an error in the financial statements of the SSA at, and for the year ended, 31 March 2021.

Responsibilities of the accounting officer for the financial statements

15. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the MCS and the requirements of the PFMA, and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
16. In preparing the financial statements, the accounting officer is responsible for assessing the department's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the department or to cease operations, or has no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the financial statements

17. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

18. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

Report on the audit of the annual performance report

Introduction and scope

19. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
20. My procedures address the usefulness and reliability of the reported performance information, which must be based on the department's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the department enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
21. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programme presented in the department's annual performance report for the year ended 31 March 2021:

Programmes	Pages in the annual performance report
Secret Services of the SAPS (Crime Intelligence)	x - x

22. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
23. The material findings on the usefulness and reliability of the performance information of the selected programme are as follows:

Secret Services of the SAPS (Crime Intelligence)

- [REDACTED]
24. The planned target were [REDACTED] but the reported achievement referred to was [REDACTED]. The planned target for this indicator was also not specific in clearly identifying the nature and required level of performance, as planned operations is not clearly defined and the supporting evidence provided for the achievement materially differed from the reported achievement.

- [REDACTED]
25. The planned target were [REDACTED] but the reported achievement referred to was [REDACTED]. The planned target for this indicator was also not specific in clearly identifying the nature and required level of performance, as the planned operations is not clearly defined.

- [REDACTED]
26. The achievement of [REDACTED] was reported against target [REDACTED] in the annual performance report. However, the supporting evidence provided materially differed from the reported achievement.

Other matter

27. I draw attention to the matter below.

Achievement of planned targets

28. Refer to the annual performance report on pages XX to XX for information on the achievement of planned targets for the year and management's explanations provided for the over-achievement of targets. This information should be considered in the context of the material findings on the usefulness and reliability of the reported performance information in paragraphs 24 to 26 of this report.

Adjustment of material misstatements

29. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of Secret Services of the SAPS (Crime Intelligence). As management subsequently corrected only some of the misstatements, I raised material findings on the usefulness and reliability of the reported performance information. Those that were not corrected are reported above.

Report on the audit of compliance with legislation

Introduction and scope

30. In accordance with the PAA and the general notices issued in terms thereof, I have a responsibility to report material findings on the department's compliance with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.
31. The material findings on compliance with specific matters in key legislation are as follows:

Annual financial statements

32. The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework as required by section 40(1)(a) of the PFMA. Material misstatements of the finance lease commitment disclosure identified by the auditors in the submitted financial statements were corrected, but the uncorrected material misstatements resulted in the financial statements receiving a qualified opinion.

Expenditure management

33. Effective and appropriate steps were not taken to prevent irregular expenditure, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1. The value, as disclosed in note 19 to the financial statements, is not complete as management was still in the process of quantifying the full extent of the irregular expenditure.

Asset management

34. Proper control systems were not in place to ensure the maintenance of assets, as required by treasury regulation 10.1.1(a).

Consequence management

35. I was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred irregular and fruitless and wasteful expenditure as required by section 38(1)(h)(iii) of the PFMA. This was because investigations into irregular and fruitless and wasteful expenditure were not performed.

Procurement and contract management

36. The preference point system was not applied in some of the procurement of goods and services above R30 000, as required by section 2(a) of the Preferential Procurement Policy Framework Act 5 of 2000 and treasury regulation 16A6.3(b).
37. I was unable to obtain sufficient appropriate audit evidence that some of the bid documentation for the procurement of commodities designated for local content and production stipulated the minimum threshold for local production and content, as required by the 2017 preferential procurement regulation 8(2). A similar limitation was also reported in the prior year.

38. Contracts were extended or modified without the approval of a properly delegated official, as required by section 44 of the PFMA and treasury regulation 8.2.1 and 8.2.2. Similar non-compliance was also reported in the prior year.
39. In some instances, the suppliers of covid-19 personal protective equipment items bought through quotations were not registered on the Central Supplier Database, as required by paragraph 4.6 of National Treasury Instruction Note 5 of 2020/21.

Strategic planning and performance management

40. The strategic plan for 2020 to 2025 was not submitted for approval by the executive authority, as required by treasury regulation 5.1.1.
41. Quarterly reports were not prepared by accounting officer, as required by treasury regulation 5.3.1.
42. Quarterly reports were not submitted to the executive authority, as required by treasury regulation 5.3.1.

Other information

43. The accounting officer is responsible for the other information. The other information comprises the information included in the annual report, which includes the audit committee's report. The other information does not include the financial statements, the auditor's report and those selected programmes presented in the annual performance report that have been specifically reported in this auditor's report.
44. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion on it.
45. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
46. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, and if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

Internal control deficiencies

47. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the

significant internal control deficiencies that resulted in the basis for the qualified opinion, the findings on the annual performance report and the findings on compliance with legislation included in this report.

48. Instability in key management and leadership positions led to the development, implementation and monitoring of controls to prevent, detect and correct misstatements and non-compliance not being ensured.
49. Some officials did not have the necessary skills, knowledge and qualifications for financial management and reporting, the management of performance information and reporting, supply chain management and oversight activities within the department. In addition, the appointment of personnel into positions that required specialised technical training (such as accounting, asset management and supply chain management) was not always done considering the requirements of the position.
50. Targets set in the corrective active action plan did not adequately take into account the available time and resources that would be required for the achievement thereof. Furthermore, the corrective action plan was aimed mostly at correcting the qualification, without adequately considering preventative actions required beyond correcting.
51. There was a lack of coordination between the various units responsible for processing and reconciling information for financial reporting and performance information required for the compilation of financial statements and the performance report.
52. The financial information management system was not adequately designed to ensure that all data fields relating to core business transactions and operations were captured. It was thus not ensured that all information required for decision-making by management and for governance and accountability purposes was readily available for internal and external assurance providers.
53. Inadequate review processes resulted in material misstatements in the annual financial statements and annual performance report as well instances of material non-compliance.
54. Supply chain management policies were not aligned to laws and regulations, as a result of the sensitive nature of the environment which caused practical implementation challenges.
55. The department did not have systems or mechanisms in place to monitor compliance with laws and regulations.

Other reports

56. I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the department's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

57. Investigations are currently being conducted by the Independent Police Investigative Directorate into allegations of the misuse and abuse of the department's funds by certain members of staff.
58. The Office of the Inspector-General on Intelligence is in the process of investigating numerous complaints received these investigations are at various stages of completion.

Auditor-General

Pretoria

08 November 2021



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure – Auditor-general’s responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements and the procedures performed on reported performance information for selected programme and on the department’s compliance with respect to the selected subject matters.

Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor’s report, I also:
 - Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
 - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the department’s internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting officer
 - conclude on the appropriateness of the accounting officer’s use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the department to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor’s report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor’s report. However, future events or conditions may cause a department to cease operating as a going concern
 - evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

Communication with those charged with governance

3. I communicate with the accounting officer regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also provide the accounting officer with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

Report of the auditor-general to Parliament on vote no. 23: Department of Defence

Report on the audit of the financial statements

Qualified opinion

1. I have audited the financial statements of the Department of Defence set out on pages xx to xx, which comprise the appropriation statement, statement of financial position as at 31 March 2021, the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, except for the effects and possible effects of the matters described in the basis for qualified opinion section of this auditor's report, the financial statements present fairly, in all material respects, the financial position of the Department of Defence as at 31 March 2021, and its financial performance and cash flows for the year then ended, in accordance with the Modified Cash Standard (MCS) as prescribed by the National Treasury and the requirements of the Public Finance Management Act 1 of 1999 (PFMA).

Basis for qualified opinion

Goods and services and investments

3. The department accounts for non-sensitive and sensitive projects expenditure in connection with special defence activities as per section 2(2)(a) of the Defence Special Account Act 6 of 1974, as amended. I was unable to obtain sufficient appropriate audit evidence on sensitive projects expenditure and related investments due to the sensitivity of the environment and the circumstances under which the related transactions were incurred and recorded. Consequently, I was unable to determine whether any adjustments were necessary to sensitive projects expenditure included within the expenditure of R14,26 billion (2020: R13,96 billion), as per note 4 to the financial statements, and investments for special defence activities included in the investment amount of R182,16 million (2020: R182,16 million), as per note 11 to the financial statements.

Irregular expenditure

4. The department did not fully record irregular expenditure in the notes to the financial statements, as required by section 40(3)(b)(i) of the PFMA. This was due to inadequate systems to detect, record and appropriately disclose this expenditure in the financial statements. Consequently, I was unable to determine the full extent of the understatement to irregular expenditure, stated at R10,40 billion (2020: R8,13 billion) in note 24 to the financial statements, as it was impracticable to do so.

Movable tangible capital assets

5. I was unable to obtain sufficient appropriate audit evidence for movable tangible capital assets as the department could not indicate where these assets are located or provide other information in support of these assets. I was unable to confirm or verify these assets by alternative means. Consequently, I was unable to determine whether any adjustments were necessary to movable tangible capital assets, stated at R63,52 billion in note 30 to the financial statements.

Employee benefits

6. The department did not establish adequate internal controls to monitor leave processing. As a result, not all leave transactions were captured, which resulted in the leave balance and the provision being overstated. I was unable to confirm these employee benefits by alternative means. Consequently, I was unable to determine whether any further adjustments were necessary to employee benefits balance stated at R3,56 billion in note 21 to the financial statements.

Context for the opinion

7. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of my report.
8. I am independent of the department in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
9. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Emphasis of matters

10. I draw attention to the matters below. My opinion is not modified in respect of these matters.

Uncertainty relating to the future outcome of litigation

11. With reference to note 18 to the financial statements, the department is the defendant in various lawsuits. The ultimate outcome of these matters cannot presently be determined and no provision for any liability that may result has been made in the financial statements.

Payables not recognised

12. As disclosed in note 20 to the financial statements, payables of R276,07 million exceed the payment term of 30 days, in contravention of treasury regulation 8.2.3. This amount, in turn, exceeded the R115,09 million of voted funds to be surrendered by R160,97 million as per note 12 to the financial statements. The amount of R160,97 million would therefore have constituted unauthorised expenditure had the amounts due been paid on time.

Other matter

13. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Unaudited supplementary schedules

14. The supplementary information set out on pages xx to xx does not form part of the financial statements and is presented as additional information. I have not audited these schedules and, accordingly, I do not express an opinion thereon.

Responsibilities of the accounting officer for the financial statements

15. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the MCS and the requirements of the PFMA, and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
16. In preparing the financial statements, the accounting officer is responsible for assessing the department's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the department or to cease operations, or has no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the financial statements

17. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.
18. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

Report on the audit of the annual performance report

Introduction and scope

19. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
20. My procedures address the usefulness and reliability of the reported performance information, which must be based on the department's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the department enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
21. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programmes presented in the department's annual performance report for the year ended 31 March 2021:

Programmes	Pages in the annual performance report
Programme 2– force employment	x – x

22. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.

23. The material findings on the usefulness and reliability of the performance information of the selected programme are as follows:

Programme 2 – force employment

Percentage compliance with capabilities required to support national efforts in mitigating and combating the spread of covid-19

24. The achievement of 100% was reported against a target of 100% in the annual performance report. However, some supporting evidence provided materially differed from the reported achievement, while in other instances I was unable to obtain sufficient appropriate audit evidence to substantiate the reported achievement. This was mainly due to a delay in the roll-out of clear guidelines for reporting, which resulted in a lack of relevant and sufficient evidence to confirm the validity, accuracy, and completeness of the reported number of capabilities and members deployed. I was unable to confirm the reported achievement by alternative means. Consequently, I was unable to determine whether any further adjustments were required to the reported achievement.

Other matter

25. I draw attention to the matter below.

Achievement of planned targets

26. Refer to the annual performance report on pages xx to xx for information on the achievement of planned targets for the year and management's explanations provided for the under-/over-achievement of targets. This information should be considered in the context of the material findings on the usefulness and reliability of the reported performance information in paragraph 24 of this report.

Report on the audit of compliance with legislation

Introduction and scope

27. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the department's compliance with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.

28. The material findings on compliance with specific matters in key legislation are as follows:

Annual financial statements, performance and annual report

29. The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework, as required by section 40(1)(b) of the PFMA. Material misstatements relating to capital work in progress, capital commitments and provisions identified by the auditors in the submitted financial statements were subsequently corrected, but the uncorrected material misstatements resulted in the financial statements receiving a qualified opinion.

Expenditure management

30. Effective and appropriate steps were not taken to prevent irregular expenditure, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1. As reported in the basis for qualified opinion, the value of R2,18 billion as disclosed in note 24 to the financial statements does not reflect the full extent of the irregular expenditure incurred. The majority of the irregular expenditure disclosed in the financial statements was caused by compensation of employee budget being exceeded without approval from the minister of Finance, in contravention of section 5(1)(b) of the Adjustments Appropriation Act 11 of 2020.
31. In some instances payments were not made within 30 days or an agreed period after receipt of an invoice, as required by treasury regulation 8.2.3.
32. Payments were made before goods or services were received, in contravention of treasury regulation 15.10.1.2(c).

Asset management

33. Proper control systems were not in place at the department to ensure the safeguarding of assets, as required by treasury regulation 10.1.1(a).

Procurement and contract management

34. Some of the goods and services with a transaction value below R500 000 were procured without obtaining the required price quotations, as required by treasury regulation 16A6.1 and paragraph 3.3.1 of Practice Note 8 of 2007/08. Similar non-compliance was also reported in the prior year.
35. Some of the goods and services of a transaction value above R500 000 were procured without inviting competitive bids, as required by treasury regulation 16A6.1 and paragraph 3.4.1 of Practice Note 8 of 2007-08 and treasury regulation 16A6.4. Similar non-compliance was also reported in the prior year.
36. Some of the contracts and quotations were awarded to bidders based on preference points that were not in accordance with the requirements of the PPPFA and Preferential Procurement Regulations.
37. Some of the construction contracts were awarded to contractors that were not registered with the Construction Industry Development Board (CIDB) and/or did not qualify for the contract in accordance with section 18(1) of the CIDB Act 38 of 2000.
38. Bid documentation for procurement of commodities designated for local content and production did not stipulate the minimum threshold for local production and content, as required by 2017 preferential procurement regulation 8(2). Similar non-compliance was also reported in the prior year.

39. Some of the IT-related goods and services, classified as mandatory, were not procured through the State Information Technology Agency (SITA), as required by treasury regulation 16A6.3(e) and section 7(3) of the SITA Act 88 of 1998.
40. In some instances the prices of covid-19 personal protective equipment (PPE) items were higher than prices prescribed on annexure A of National Treasury Instruction Note 8 of 2019-20 in contravention of paragraph 3.7.6 of the same instruction note. The non-compliance resulted in a material irregularity as reported in the section on material irregularities.
41. In some instances, the prices of covid-19 PPE items were higher than the prescribed prices included in annexure A of National Treasury Instruction Note 5 of 2020-21, in contravention of paragraph 4.3 of the same instruction note.
42. In some instances, the covid-19 PPE items procured through the quotations exceeded the prices included in annexure A, in contravention of paragraph 4.6 of National Treasury Instruction Note 5 of 2020-21.

Consequence management

43. I was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred irregular expenditure as required by section 38(1)(h)(iii) of the PFMA. This was because investigations into some irregular expenditure were not performed.
44. Disciplinary steps were not taken against some of the officials who permitted irregular expenditure, as required by section 38(1)(h)(iii) of the PFMA.
45. I was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred fruitless and wasteful expenditure as required by section 38(1)(h)(iii) of the PFMA. This was because investigations into some fruitless and wasteful expenditure were not performed.
46. Disciplinary steps were not taken against some of the officials who permitted fruitless and wasteful expenditure, as required by section 38(1)(h)(iii) of the PFMA.

Other information

47. The accounting officer is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and those selected programmes presented in the annual performance report that have been specifically reported in this auditor's report.
48. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion on it.
49. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
50. If, based on the work I have performed, I conclude that there is a material misstatement included in this other information, I am required to report that fact. I have nothing to report in this regard.

Internal control deficiencies

51. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion, the findings on the annual performance report and the findings on compliance with legislation included in this report.
52. Leadership did not exercise sufficient oversight over financial and performance reporting, compliance with laws and regulations, and related internal controls. Action plans developed to address prior year audit matters were not effectively implemented and monitored, resulting in recurring audit findings.
53. Management did not prepare regular, accurate and complete financial and performance reports that were always supported and evidenced by reliable information. This was mainly due to a lack of proper record management systems and to insufficient controls over daily and monthly processing and reconciling of transactions. Additionally, reviewing and monitoring controls over compliance with laws and regulations were not effective to detect and prevent non-compliance.

Material irregularities

54. In accordance with the PAA and the Material Irregularity Regulations, I have a responsibility to report on material irregularities identified during the audit and on the status of material irregularities reported in the previous year's auditor's report.

Material irregularities identified during the audit

55. The material irregularities identified are as follows:

Personal protective equipment (PPE) not procured in cost-effective manner

56. On 14 April 2020, the department procured 1 000 infra-red (IR) thermometers at a price of R3 984,75 each, spending a total of R3 984 750 on this transaction. The price paid was above the recommended price of R2 727,86 per IR thermometer, as indicated in National Treasury Instruction Note 8 of 2019-20 (annexure A, table 2), issued on 19 March 2020. The procurement of IR thermometers at a higher price resulted in non-compliance with paragraph 3.7.6(ii) of the same instruction note.

57. This non-compliance is likely to result in a material financial loss for the department, as PPE items were procured at prices that were excessive.

58. I notified the accounting officer of the material irregularity on 15 July 2021 and invited the accounting officer to make a written submission on the actions that will be taken to address the matter. The accounting officer convened a board of inquiry on 16 August 2021 to investigate and report on the circumstances that led to the material irregularity. The board of inquiry is planned to complete its investigation on or before 20 September 2021. The accounting officer plans to take action against the person/s found responsible and to initiate steps to recover the financial loss based on the outcome of the investigation.

59. I will follow up on this investigation and the implementation of planned actions during my next audit.

Material irregularities in progress

60. I identified another material irregularity during the audit and notified the accounting officer thereof, as required by material irregularity regulation 3(2). By the date of this auditor's report, I had not yet completed the process of evaluating the response from the accounting officer. This material irregularity will be included in the next year's auditor's report.

Status of previously reported material irregularities

Inventory and asset management contract not awarded to only the bidder that scored the highest points in evaluation process

61. In February 2017, the department awarded a contract for services relating to inventory and asset verification for a period of five years, commencing from 1 March 2017. The department did not comply with the requirements of paragraph 2(1)(f) of the PPPFA in awarding this contract because it did not award the entire contract to the bidder that scored the highest points in the evaluation process. The non-compliance is likely to result in a material financial loss as the contract was awarded to two bidders on a 50/50 basis at an increased price of R922 million for the same scope of work. This resulted in an increase of R250,56 million to the project cost. As at the end of the 2020-21 financial year, the department had spent R556,92 million on the contract.

62. The accounting officer was notified of the material irregularity on 18 July 2019. The accounting officer responded by disagreeing that there was non-compliance with legislation in awarding the contract. This resulted in the further review and investigation of the matter by the National Treasury, which confirmed on 28 February 2020 that legislation had been contravened in the awarding of this contract.
63. I recommended that the accounting officer take the following actions to address the material irregularity by 30 November 2020:
- a) The accounting officer should investigate the irregular expenditure and quantify the amount of the financial loss incurred, in accordance with the applicable instruction note(s) issued by the National Treasury dealing with irregular expenditure.
 - b) Effective and appropriate disciplinary steps must be taken against any official that the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and in accordance with treasury regulation 9.1.3.
 - c) Appropriate action must be taken to determine whether the responsible official is liable by law for the losses suffered by the department for the purpose of recovery, as required by treasury regulations 9.1.4 and 12.7.1.
64. The accounting officer submitted a written response and supporting evidence on the implementation of the recommendations on 30 November 2020. Based on my assessment of the written response and supporting evidence submitted, I concluded that the recommendations had not been adequately implemented.
65. The accounting officer was notified of the outcome of the assessment on 6 April 2021, and given an extension to 30 April 2021 to implement those recommendations. Although the accounting officer conducted an investigation, in their response, the accounting officer cited limitations in terms of the Defence Act 42 of 2002, in so far as it relates to taking disciplinary action against military command members. I concluded that the recommendations have not been adequately implemented, particularly those relating to non-military personnel over which the accounting officer has no limitations.
66. On 18 August 2021, I issued a directive to the accounting officer in terms of section 5A(3) of the PAA to determine the amount of the financial loss and recover such loss or make progress with the recovery of the loss from the responsible person by 18 November 2021.
67. In addition, I notified the accounting officer of the following remedial actions to address the material irregularity, which should be implemented by the same date:
- a) Effective and appropriate disciplinary steps must be taken against any civilian official whom the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and in accordance with treasury regulation 9.1.3.
 - b) Appropriate action must be taken to determine whether the responsible civilian official/s is/are liable for the losses suffered by the department for the purpose of recovery, as required by treasury regulations 9.1.4 and 12.7.1.
 - c) Steps must be taken to ensure that the chief of the South African National Defence Force takes:

- i. effective and appropriate disciplinary action against any military command official whom the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and in accordance with treasury regulation 9.1.3
 - ii. appropriate action to determine whether the responsible military command official/s is/are liable for the losses suffered by the department for the purpose of recovery, as envisaged by treasury regulations 9.1.4 and 12.7.1.
- d) If the chief of the South African National Defence Force fails to take effective and appropriate disciplinary action against military command official/s, and/or fails to take appropriate steps to determine whether the responsible command official/s is/are liable for the losses suffered by the department for the purposes of recovery, the accounting officer must promptly, and before the expiry of the three-month period envisaged in the notification of remedial action, notify the executive authority of such failure.

Lease payments made for unoccupied office buildings

68. The department made lease payments from the 2015-16 to the 2019-20 financial years for unoccupied office buildings, in contravention of section 45(b) of the PFMA, which requires the effective, efficient, economical and transparent use of the department's financial resources. The non-compliance resulted in a financial loss of R108,3 million, which forms part of the closing balance of fruitless and wasteful expenditure disclosed in note 25 to the financial statements.
69. The accounting officer was notified of the material irregularity on 11 August 2020. On 8 September 2020, the accounting officer issued an instruction to investigate this material irregularity and conclude on it by 30 October 2020.
70. On 20 April 2021, I submitted a request for information on the progress made in addressing the material irregularity and invited the accounting officer to submit a written response and substantiating documents on the implementation of the planned actions and the outcomes of the actions taken within seven working days of the receipt of that letter.
71. I did not receive any response from the accounting officer on the implementation of the planned actions and the outcomes thereof. I concluded that appropriate action is not being taken.
72. I recommend that the accounting officer take the following actions to address the material irregularity, which should be implemented by 11 November 2021:
- a) The financial loss should be quantified and the officials responsible for the financial loss identified, in accordance with the applicable instruction note(s) issued by the National Treasury dealing with fruitless and wasteful expenditure.
 - b) Effective and appropriate disciplinary steps should commence against any civilian official whom the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and in accordance with treasury regulation 9.1.3.
 - c) Effective and appropriate disciplinary steps should commence against any military command official whom the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and in accordance with treasury regulation 9.1.3.
 - d) Appropriate action must be taken to determine whether the responsible official(s) is/are liable by law for the losses suffered by the department for the purpose of recovery, as required by treasury regulations 9.1.4 and 12.7.1.

73. I will follow up on the implementation of the recommendations after the due date.

Unfair award for supply of fuel

74. In July 2019, the department awarded a contract worth R13,9 million for the supply and delivery of fuel to a supplier using evaluation criteria that differed from those stipulated in the original request for quotations. The original request for quotations stipulated that the award would be made to a bidder with a lower price, but the department used the rotation of suppliers as the criterion to award this contract. The mode of transport was also changed after the award, which resulted in a further price increase. The awarding of the contract using different criteria resulted in non-compliance with treasury regulation 16A.3.2(a), which requires that the supply chain management process be fair, transparent, competitive and cost-effective. The non-compliance caused a material financial loss of R2,57 million due to a higher price being paid for the fuel.
75. The accounting officer was notified of the material irregularity on 11 August 2020. On 8 September 2020, the accounting officer issued an instruction to investigate this material irregularity and conclude on it by 30 October 2020.
76. On 27 November 2020, the accounting officer completed the investigation on this material irregularity and disagreed that there was non-compliance with legislation in awarding this contract. I am in the process of referring the material irregularity to a public body for investigation, as provided for in section 5(1A) of the PAA.

Other reports

77. In addition to the investigations relating to material irregularities, I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the department's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

Investigations

78. The Special Investigating Unit conducted an investigation covering the 2018-19 period into allegations of procurement irregularities on information and communication technology (ICT) services and licences. The investigation, which is being conducted in terms of Proclamation No. R.41 of 2019, dated 25 June 2019, was still in progress at the date of this auditor's report.
79. The Special Investigating Unit conducted investigations into Covid-19 PPE procurement by state institutions. The investigation, which is being conducted in terms of Proclamation No. R23 of 2020, was still in progress at the date of this auditor's report.

80. The department conducted a forensic audit on the refurbishment of the One Military Hospital and on the contract with a service provider for the asset management contract. I had not yet received these reports at the date of this auditors' report.

Auditor - General

Auditor-General

Pretoria

17 September 2021



AUDITOR - GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure – Auditor-general’s responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements and the procedures performed on reported performance information for selected programmes and on the department's compliance with respect to the selected subject matters.

Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:
 - identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
 - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the department's internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting officer
 - conclude on the appropriateness of the accounting officer's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the Department of Defence to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a department to cease operating as a going concern
 - evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

Communication with those charged with governance

3. I communicate with the accounting officer regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also provide the accounting officer with a statement that I have complied with relevant ethical requirements regarding independence, and communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

PROGRAMME FOR THE FINANCIAL YEAR 2021/2022

DATE	AGENDA
Wednesday, 24 February 2021	<ul style="list-style-type: none"> • Consideration and adoption of minutes • Consideration and adoption of the First Term Draft Programme
Wednesday, 3 March 2021	<ul style="list-style-type: none"> • Deliberations on outstanding matters • Consideration and adoption of the Draft First Term Programme • Consideration and adoption of minutes: 24 February 2021
Wednesday, 10 March 2021	<ul style="list-style-type: none"> • Amendment of First Term programme. • Consideration and adoption of Draft programme for meetings in Pretoria 15 – 19 March 2021 • Consideration and adoption of minutes • Presentation by the Legal Advisor on the Complaints
15 – 19 March 2021	<ul style="list-style-type: none"> • Special meetings with Intelligence Services in Pretoria
Monday, 15 March 2021	<ul style="list-style-type: none"> ○ Introduction by the Minister of State Security ○ Presentation regarding the standoff between the SSA and the Investigative Directorate of the National Prosecuting Authority ○ Briefing by Acting DG on revelations to the Zondo Commission ○ Declassifying of the Financial Statements ○ Presentation by Acting DG on the media presence in Musanda
Tuesday, 16 March 2021	<ul style="list-style-type: none"> ○ Briefing by SAPS-CI on Strategic Plan, Annual Performance Plan and Budget Allocation for 2021/2022 ○ Feedback on the suspension of the CI Members including the Divisional Commissioner ○ The alleged illegal surveillance of Lt General PA Jacobs
Wednesday, 17 March 2021	<ul style="list-style-type: none"> ○ Presentation by the Designated Judge of Interception ○ Presentation by the Office of Interception Centres
Thursday, 18 March 2021	<ul style="list-style-type: none"> ○ Tour of Defence Intelligence HQ Building ○ Presentation by DI on Strategic Plan, Annual Performance Plan and Budget Allocation for 2021/2022
Friday, 19 March 2021	<ul style="list-style-type: none"> ○ Presentation on Adv Muofhe investigation ○ Presentation by OIG on APP, Strategic Plan and Budget allocation for 2021/2022

DATE	AGENDA
Monday, 29 March 2021	<ul style="list-style-type: none"> • Presentation on Annual Performance Plan by the State Security Agency (SSA) for 2021/22
Tuesday, 30 March 2021	<ul style="list-style-type: none"> • Deliberations on issues to be raised with the President of South Africa • Briefing by Legal Advisor on Complaints from members of the SSA • Briefing by Legal Advisor on Amabhungane Judgement
Wednesday, 12 May 2021	<ul style="list-style-type: none"> • Briefing by SSA on its Strategic Plan, Annual Performance Plan and Budget for 2021/2022
Wednesday, 26 May 2021	<ul style="list-style-type: none"> • Consideration and adoption of Report of the Joint Standing Committee on Intelligence (JSCI) on Budget Vote No 8: National Treasury (State Security) • Consideration and adoption of Annual Report • Consideration and adoption of Report on Special meetings of the JSCI with Intelligence Services in Pretoria, Gauteng from 15 – 19 March 2021 • Consideration and adoption of draft Minutes: 10, 29, 30 March 2021 and 12 May 2021
Wednesday, 2 June 2021	<ul style="list-style-type: none"> • The Appointment of the new Inspector-General of Intelligence (IGI) • Briefing on the steps for the Inquiry by the Sub Committee • Proposed Committee Bill with regard to the separation of the SSA • Consideration and adoption of Report on Special meetings of the JSCI with Intelligence Services in Pretoria, Gauteng from 15 – 19 March 2021 • Consideration and adoption of draft Minutes: 10, 29, 30 March 2021 and 12 and 26 May 2021
15 – 16 July 2021 (Gauteng)	<ul style="list-style-type: none"> • Special meetings with Intelligence Services in Gauteng
15 July 2021	<ul style="list-style-type: none"> ○ Briefing by DI on the security situation in South Africa
16 July 2021	<ul style="list-style-type: none"> ○ Briefing by SAPS-CI on the security situation in South Africa ○ Briefing by SSA on the current security situation in South Africa ○ The unfolding political situation in the Kingdom of eSwatini ○ The suspension of the Director Foreign Branch as reported in the media

DATE	AGENDA
Tuesday, 24 August 2021	<ul style="list-style-type: none"> • Complaint: Contravention of the Joint Rule of Parliament by member of the JSCI • Security Clearance for the Secretary for Defence: Ambassador S Kudjoe • Consideration and adoption of the draft third term programme • Consideration and adoption of outstanding draft minutes: 26 & 28 February 2020, 4, 11 & 13 March 2020
Wednesday, 25 August 2021	<ul style="list-style-type: none"> • Briefing by the Legal Advisors on the drafting of the Bill • CV's of counsels for the inquiry on the unrest • Filling of IGI vacancy • Consideration and Adoption of outstanding minutes: 26 & 28 February 2020 and 04, 11 and 13 March 2020
Tuesday, 31 August 2021	<ul style="list-style-type: none"> • Adoption of the Agenda (additional items) • Preparation on the filling of the IGI vacancy: <ul style="list-style-type: none"> - Extension of the application of the IGI appointment - Proposed questions relating to the Intelligence Services Oversight Act No.40 of 1994 • Consideration and Adoption of the draft Third Term Programme • Consideration and Adoption of minutes: 24 and 25 August 2021
Tuesday, 7 September 2021	<ul style="list-style-type: none"> • Presentation of SSA certificates of activities by the Office of the IGI • Consideration and adoption of minutes of 31 August 2021
Wednesday, 10 November 2021	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Consideration and adoption of draft Fourth Term Programme • Applications for the position of the IGI • Consideration and adoption of outstanding minutes: 31 August & 7 September 2021
Wednesday, 1 December 2021	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Final discussion and adoption of the shortlist for the appointment of IGI • Consideration and adoption of extended Fourth Term Programme • Consideration and adoption of outstanding minutes: 31 August, 7 September & 10 November 2021
Monday, 7 February 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items)

DATE	AGENDA
	<ul style="list-style-type: none"> • Consideration and adoption of the Draft First Term Programme • Preparations for the interviews of IGI • Consideration and adoption of outstanding minutes: 1 December 2021
Tuesday, 8 February 2022	<ul style="list-style-type: none"> • Interviews for the Inspector-General of Intelligence (IGI)
Wednesday, 9 February 2022	<ul style="list-style-type: none"> • Interviews for the Inspector-General of Intelligence (IGI)
Tuesday, 15 February 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Deliberations on the interviews for IGI • Consideration and adoption of outstanding minutes: 7,8 and 9 February 2022
Tuesday, 22 February 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Presentation on the Certificate on activities of the State Security Agency (SSA) • Presentation on the Certificate on activities of the South African Police Service Crime Intelligence (SAPS-CI) • Presentation on the Certificate on activities of the Defence Intelligence (DI) • Consideration and adoption of outstanding minutes: 15 February 2022
Wednesday, 23 February 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Responses on the Certificate on activities of the SSA • Responses on the Certificate on activities of the SAPS-CI • Responses on the Certificate on activities of the DI • Consideration and adoption of outstanding minutes: 15 February 2022
Tuesday, 1 March 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Presentation by Auditor-General on Financial Statements of the Intelligence Services • Presentation of the Report of the Audit and Risk Committee (ARC) • Presentation of the Annual Report of the Office of the Inspector-General of Intelligence (OIGI) for 2020/2021 • Consideration and adoption of outstanding minutes: 15 & 22 February 2022

DATE	AGENDA
Wednesday, 2 March 2022	<ul style="list-style-type: none"> • Presentation on Annual Report of SSA 2020/2021 • Presentation on Annual Report of DI for 2020/2021 • Responses on the Certificate on activities for 2019/2020 by SAPS-CI • Presentation on Annual Report of SAPS-CI for 2020/2021
Wednesday, 9 March 2022	<ul style="list-style-type: none"> • Briefing by Legal Advisor on the expert panel report into the July 2021 Civil unrest • Position on inquiry • Consideration and adoption of the Report on Special meetings of JSCI in Gauteng 15 & 16 July 2021 • Consideration of adoption of outstanding minutes: 15 & 22 February 2022
Tuesday, 15 March 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Presentation on the Certificates of activities of SSA for 2020/2021 • Presentation on the Certificates of activities of SAPS-CI for 2020/2021 • Presentation on the Certificates of activities of DI for 2020/2021
Thursday, 17 March 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Responses on the Certificate of activities for 2020/2021 by DI • Consideration and adoption of outstanding minutes and report
Tuesday, 22 March 2022	<ul style="list-style-type: none"> • Responses on the Certificate activities for 2019/2020 by SAPS-CI • Responses on the Certificate activities for 2020/2021 by SAPS-CI • Consideration and adoption of outstanding minutes and report
Wednesday, 23 March 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Presentation on office space of the DI Headquarters by the Department of Public Works and the Infrastructure and the Chief of Logistics South African Defence Force (SANDF) • Consideration and adoption of outstanding minutes and report
Tuesday, 29 March 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items) • Responses on the Certificate of activities for 2020/2021 by SSA • Consideration and adoption of outstanding minutes and report
Thursday, 31 March 2022	<ul style="list-style-type: none"> • Adoption of the agenda (additional items)

DATE	AGENDA
	<ul style="list-style-type: none">• Feedback on the engagement between DPWI and Chief of Logistics SANDF concerning the DI Headquarters• Presentation on the Study Tour• Consideration and adoption of outstanding minutes and report

GLOSSARY OF ACRONYMS

AFU:	Asset Forfeiture Unit
AGSA:	Auditor-General of South Africa
APP:	Annual Performance Plans
ANC:	African National Congress
AR:	Annual Report
ARC:	Audit and Risk Committee
BMil:	Bachelor of Military Science
CFO:	Chief Financial Officer
DA:	Democratic Alliance
DDG:	Deputy Director-General
DG:	Director-General
DI:	Defence Intelligence
DPME:	Department of Planning, Monitoring and Evaluation
EFF:	Economic Freedom Fighters
FIC:	Financial Intelligence Centre
GILAB:	General Intelligence Laws Amendment Bill
HLRP:	High-Level Review Panel
IA:	Intelligence Academy
ID:	Investigating Directorate
IGI:	Inspector-General of Intelligence
IMSI:	International Mobile Subscriber Identity
IPID:	Independent Police Investigative Directorate
JCPS:	Justice, Crime Prevention and Security
JSCI:	Joint Standing Committee on Intelligence
MTSF:	Medium Term Strategic Framework
NA:	National Assembly
NATCOM:	National Joint Operational Committee
NATJOINTS:	National Joint Operations and Intelligence Structure

NC:	National Communications
NCOP:	National Council of Provinces
NIA:	National Intelligence Agency
NICOC:	National Intelligence Co-ordinating Committee
NPA:	National Prosecuting Authority
NSS:	National Security Strategy
OIC:	Office of the Interception Centres
OIGI:	Office of the Inspector-General of Intelligence
PPE:	Personal Protective Equipment
RICA:	Regulation of Interception of Communications and Provision of Communication-related Information Act
SARS:	South African Revenue Service
SAPS:	South African Police Service
SAPS-CI:	South African Police Service-Crime Intelligence
SASSETA:	Safety and Security, Sector Education and Training Authority
SASS:	South African Secret Services
SCM:	Supply Chain Management
SDA:	Special Defence Account
SDP:	Strategic Development Plan
SIGINT:	Signals Intelligence
SMART:	Specific, Measurable, Achievable, Relevant or Time-bound
SSA:	State Security Agency