Tuesday, 21 May 2024]

No 77—2024] SIXTH SESSION, SIXTH PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 21 MAY 2024

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National Assembly and National Council of Provinces

ANNOUNCEMENTS

National Assembly

The Acting Speaker

1. Referral to Committees of papers tabled

(1) The following papers are referred to the **Portfolio Committee on International Relations and Cooperation**:

(a) Memorandum of Understanding between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria on Political Consultations (signed 30 November 2022), tabled in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996.

(b) Memorandum of Understanding on the Establishment of Mechanism for Bilateral Consultations between the Government of the Republic of South Africa and the Government of the State of Qatar (signed 15 November 2023), tabled in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996.

(2) The following paper is referred to the **Portfolio Committee on Public Service and Administration** for consideration and report:

(a) Annual Performance Plan of The Presidency for 2024/2025.

(3) The following papers are referred to the **Joint Standing Committee on Defence** and **Portfolio Committee on Defence and Military Veterans** for consideration:

(a) Letter from the President of the Republic, informing the Assembly of the extension of the employment of the South African National Defence Force (SANDF) for service in cooperation with the South African Police Service for the prevention and combating of crime and maintenance and preservation of law and order in the Republic of South Africa under Operation Prosper.

(b) Letter from the President of the Republic, informing the Assembly of the extension of the employment of the South African National Defence Force (SANDF) for service in cooperation with the South African Police Service for the prevention and combating of crime and maintenance and preservation of law and order in the Republic of South Africa under OPERATION PROSPER ESKOM POWER STATIONS.

TABLINGS

National Assembly and National Council of Provinces

1. The Minister of Communications and Digital Technologies

(a) Corporate Plan of the South African Broadcasting Corporation for 2024/25 – 2026/27.

National Council of Provinces

1. The Chairperson

(a) Letter from the President of the Republic of South Africa to the Chairperson of the National Council of Provinces, informing of the extension of employment 2300 members of the South African National Defence Force for service in cooperation with the South African Police Service for prevention and combating of crime and maintenance and preservation of law and order in the Republic of South Africa under OPERATION PROSPER

...15...May 2024

Dear Chairperson,

EXTENSION OF THE EMPLOYMENT OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE FOR SERVICE IN COOPERATION WITH THE SOUTH AFRICAN POLICE SERVICE TO PREVENT AND COMBAT CRIME AND MAINTAIN AND PRESERVE LAW AND ORDER IN THE REPUBLIC OF SOUTH AFRICA.

This serves to inform the National Council of Provinces that I have extended the employment of two thousand three hundred (2 300) members of the South African National Defence Force (SANDF) for service in cooperation with the South African Police Service (SAPS) for the prevention and combating of crime and maintenance and preservation of law and order in the Republic of South Africa under OPERATION PROSPER.

Members of the SANDF employed will, in cooperation with the SAPS, continue to prevent and combat illegal mining activities in and around the Republic of South Africa under Operation PROSPER over the period of 29 April 2024 until 31 October 2024.

This employment is authorised in accordance with the provisions of section 201(2) (a) of the Constitution of the Republic of South Africa, 1996.

The expenditure expected to be incurred for this deployment amounts to R 349 907 616.

I will communicate this report to the Chairperson of the National Assembly. I kindly request that you bring the contents of this letter to the attention of Members of the National Council of Provinces.

Yours sincerely,

Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa

Mr Amos Masondo, MP
Chairperson of the National Council of Provinces
Parliament of the Republic of South Africa
P.O. Box 15
CAPE TOWN
8000

Referred to the **Joint Standing Committee on Defence** for consideration.

(b) Letter from the President of the Republic of South Africa to the Chairperson of the National Council of Provinces, informing of the extension of employment 746 members of the South African National Defence Force for service in cooperation with the South African Police Service for prevention and combating of crime and maintenance and preservation of law and order in the Republic of South Africa under OPERATION PROSPER ESKOM POWER STATIONS.

THE PRESIDENT
REPUBLIC OF SOUTH AFRICA

15 May 2024

Dear Hon Chairperson,

EXTENSION OF THE EMPLOYMENT OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE FOR SERVICE IN COOPERATION WITH THE SOUTH AFRICAN POLICE SERVICE TO PREVENT AND COMBAT CRIME AND MAINTAIN AND PRESERVE LAW AND ORDER IN THE REPUBLIC OF SOUTH AFRICA.

This serves to inform the National Council of Provinces that I have extended the employment of seven hundred and forty-six (746) members of the South African National Defence Force (SANDF) for the prevention and combating of crime and maintenance and preservation of law and order in the Republic of South Africa under OPERATION PROSPER ESKOM POWER STATIONS.

Members of the SANDF will, in cooperation with the SAPS, continue to protect and safeguard National Keys Points and critical infrastructure in the energy sector (ESKOM Power Stations) under Operation PROSPER over the period of 01 April 2024 until 31 March 2025.

This employment is authorised in accordance with the provisions of Section 201(2)(a) of the Constitution of the Republic of South Africa, 1996 read with section 19 of the Defence Act, 2002 (Act No.42 of 2002).

The expenditure expected to be incurred for this deployment amounts to R 203 900 827 (Two-Hundred and Three-Million, Nine-Hundred Thousand, Eight-Hundred and Twenty-Seven Rand Only).

I will communicate this report to the Acting Speaker of the National Assembly. I kindly request that you bring the contents of this letter to the attention of Members of the National Council of Provinces.

Yours sincerely,

Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa

Mr Amos Masondo, MP
Chairperson of the National Council of Provinces
Parliament of the Republic of South Africa
PO Box 15
CAPE TOWN
8000

Referred to the **Joint Standing Committee on Defence** for consideration.

COMMITTEE REPORTS

National Assembly and National Council of Provinces

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PO BOX 15 Cape Town 8000

Republic of South Africa

www.parliament.gov.za

ANNUAL REPORT OF THE JOINT STANDING COMMITTEE ON INTELLIGENCE FOR THE FINANCIAL YEAR ENDING 31 MARCH 2024, INCLUDING THE PERIOD UP TO MAY 2024

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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 the 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) for the period ending 31 March 2024 including the period up to May 2024 to the Parliament of the Republic of South Africa in accordance with section 6 of the Act. This is the last AR of the Sixth Parliament JSCI.

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)
Mr D Stock	NA (ANC)
Ms DE Dlakude	NA (ANC)
Mr BM Hadebe	NA (ANC)
Mr G Magwanishe	NA (ANC)
Ms Makhubela-Mashele	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)

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 IN THE REPORTING PERIOD: 1 APRIL 2023 TO 31 MARCH 2024

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

4.1 Overview of Committee Meetings

The Committee convened 30 meetings on various matters during the reporting period as shown in Annexure E. The meetings ranged from Committee meetings to those with the intelligence services and related entities. These meetings exclude those of the two Ad Hoc Committees on the General Laws Amendment Bill (GILAB). The Ad Hoc Committee in the NA held 11 meetings, while the one in the NCOP held 5 meetings to process GILAB.

4.2. Annual Performance Plans and Budget

4.2.1 Annual Performance Plan and Budget for State Security Agency for 2023/2024

On 3 May 2023, the Committee was briefed by the SSA on its APP for the 2023/2024 financial year.

On 9 May 2023, the SSA returned to brief the Committee on the APP and Budget. The SSA ensured that targets were mostly Specific, Measurable, Achievable, Relevant or Time-bound (SMART), and the APP had been streamlined with a noticeable decrease in targets. Of significance was that the APP demonstrated effort to align planned activities with government priorities. Having carefully considered the APP, the Committee noted that the SSA had adopted a prioritisation method regarding planned activities. This was done in order to achieve maximum results with minimum resources. The strategy had potential for success if implemented accordingly.

The major changes in the SSA’s APP illustrated the importance of Parliament’s work as the custodian of oversight and accountability. It was through the JSCI’s critical and robust engagements in the previous year that the SSA submitted both the APP and budget which were compliant with all relevant national planning prescripts; cognisant of MTSF priorities and the National Development Plan (NDP), cognisant of the implementation of the recommendations of the High Level Review Panel (HLRP), cognisant of the changing national and global security environment and the associated threats, and cognisant of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (State Capture Commission) findings and recommendations. The SSA was working on implementing the recommendations and the JSCI was overseeing that process.

The JSCI noted with concern the illegal relocation of the Office for Interception Centres (OIC) (a spending centre of the SSA which reports to the Minister) as a unit within National Communication (NC). The Committee informed the SSA that the new reporting line was not provided for in Chapter 6 of RICA. Furthermore, the OIC provided lawful interceptions to South Africa’s law enforcement agencies (LEAs) and intelligence services in terms of RICA. As such the SSA was a client of the OIC and not a business unit within the SSA. In contrast the NC conducted bulk interceptions which was not legislated, hence the AmaBhungane Constitutional Court judgement. The SSA was further informed that placing the OIC under the control of the NC may create a blurring of lines between the two functions.

The JSCI requested that the APP be revised to address the aforementioned. The SSA was informed that the Committee would only engage with the revised submission. The SSA submitted the revised APP and budget.

4.2.2 Annual Performance Plan and Budget for South African Police Service-Crime Intelligence for 2023/2024

On 09 May 2023, the Committee was briefed on the APP and budget of SAPS-CI for the financial year 2023/2024. The APP was significantly different from previous submissions marked by great improvement in drafting and compliance to prescripts. As the improvements in the APP were as a result of the Committee’s critical oversight and ensuing that SAPS-CI is compliant with all national prescripts.

The JSCI found that the APP complied with all relevant national planning prescripts of MTSF priorities and the NDP integrated into the plan. The APP was crafted in the backdrop of the implementation of the recommendations of the HLRP Report as well as those of the State Capture Commission.

A critical finding in the HLRP was that there was a need to refine the mandates of the intelligence services, particularly DI and SAPS-CI to ensure minimum duplication and maximum coordination amongst the intelligence services. In seeking to give effect to the aforementioned, the Committee noted that SAPS-CI was poorly regulated. Of concern was that the Division was not prioritising legislation and regulatory amendments in its APP. The identified problem was that there was no regulatory framework to govern intelligence activities within SAPS-CI.

The Committee raised serious concerns around the legislative lacunae, lack of regulations and poor policy formulation within SAPS-CI. The JSCI, through its Constitutional responsibility, sought to ensure that SAPS-CI was adequately regulated to ensure compliance with the rule of law. SAPS-CI employs intrusive techniques that must be precisely defined and regulated. The Committee informed the Minister of Police that SAPS-CI needed to prioritise the drafting of regulations to ensure full compliance with the law. To this end, SAPS-CI was requested to revise the APP and present the amended version to the Committee. SAPS-CI revised the APP and resubmitted with the relevant changes effected, specifically the drafting of regulations and policies. On 16 May 2023, SAPS-CI returned to brief the Committee on its APP and Budget.

4.2.3 Annual Performance Plan and Budget for Defence Intelligence for 2023/2024

On 10 May 2023, the Committee was briefed on the APP and budget for DI for the 2023/2024 financial year. The Committee was concerned with the continued reduction of the SANDF budget, and DI in particular. During the Sixth Parliamentary term, a stagnation in the defence allocation was observed, resulting in a real percentage reduction in the defence allocation. In contrast, the critical role of DI in support of all deployments continued. As a first line of defence, DI provides accurate, timeous, and relevant knowledge about the deployment and the surrounding environment to support decision-making. The continued budget cuts compromised its capability.

The APP of DI indicated a dire situation with regard to underfunding. DI had been severely impacted by the continuous cost-containment measures imposed by National Treasury. The financial and resource challenges adversely affected DI's ability to execute its mandate. It bears noting that DI played a critical role in protecting South Africa's territorial integrity and sovereignty. Thus the cost containment measures had a direct impact on the Republic's ability to protect its sovereignty and national security.

4.2.4 Annual Performance Plan of the Office of the Inspector-General of Intelligence for 2022/2023

Following the departure of the then IGI, and the delays in the appointment of the incumbent which was only finalised on 1 November 2022, no APP of the IGI was presented to the Committee. The Act establishes the IGI not the OIGI, and there was no Deputy IGI as legislation lacked such provision. The Seventh JSCI should look into this matter.

4.3 Auditor-General of South Africa

On 18 October 2023, the AGSA presented the financial statements of the SSA, SAPS-CI and DI for the financial year ending 31 March 2023.

4.3.1 Audit Report on the Financial Statements of the State Security Agency for 2022/2023

The SSA received a qualified opinion for the financial year 2022/2023 due to the nature of the business as there were sensitive areas that could not be audited, irregular expenditure, and property and equipment. This was similar to previous years (see Annexure B).

The AGSA indicated that not all irregular expenditure was included in note 31 of the financial statements, as required by section 40(3)(i) of the PFMA. Expenditure incurred in contravention of supply chain management requirements, was due to the SSA not having adequate internal control systems to identify, record and appropriately disclose the instances of irregular expenditure relating to special operations in the financial statements. Consequently, the AGSA was unable to determine the full extent of the understatement of irregular expenditure.

With regard to property and equipment, the revaluation of the land and buildings was not performed by the SSA after a specific period at the reporting date in accordance with GRAP 17, property, plant and equipment. As a result, land and buildings with a carrying amount as disclosed in note 18 were misstated. The AGSA was unable to determine the impact on the net carrying amount of assets as it was impractical to do so.

In terms of Performance planning and reporting, material misstatements were identified in the AR. Adequate supporting evidence was not provided for some sub-targets where material differences between actual and reported achievements.

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 Public Finance Management Act 1 of 1999 (PFMA).

Material misstatements identified by the auditors in the submitted financial statements were not adequately corrected and the supporting records could not be provided, which resulted in the financial statements receiving a qualified opinion. 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.

Effective steps were not taken to prevent fruitless and wasteful expenditure as disclosed in note 31 to the annual financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1.

Some of the bid documentation/invitation to tender for procurement of commodities designated for local content and production, did not stipulate the minimum threshold for local production and content as required by the 2017 Procurement Regulation 8(2).

The SSA did not have a process that consistently ensured compliance with a revised framework for Strategic Plans and APPs. As a result, not all output indicators/targets were measurable. Furthermore, the SSA did not have a comprehensive technical description indicator (see Annexure B).

4.3.2 Audit Report on the Financial Statements of South African Police Service-Crime Intelligence for 2022/2023

For the 2022/23 financial year, SAPS-CI received a qualified opinion. The basis for the qualified opinion was due to the inherited risk due to the nature of the environment and irregular expenditure.

The nature of the business 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 procurement processes did not comply with legislation and Supply Chain Management (SCM) prescripts.

Irregular expenditure was not accounted for as required by section 40(3)(i) of the PFMA. Material misstatement was identified in the annual report as it relates to performance.

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 majority of the irregular expenditure disclosed in the financial statements was caused by non-compliance with Treasury Regulation 16A8.4 and paragraph 4.1.2 of Practice Note 7 of 2009/2010.

Payments were made before good were received, in contravention of Treasury Regulation 15.10.2(c). There was insufficient audit evidence that disciplinary steps (investigations) were taken against officials who had incurred irregular expenditure as required by section 38(1)(h)(iii) of the PFMA.

Quotations were accepted from prospective suppliers who did not submit a declaration on whether they were employed by the state or connected to any person employed by the state, as required by Treasury Regulations 16A8.4 and Paragraph 7.2 of NTI 03 of 2021/22. Similar non-compliance occurred during the prior year.

The procurement point system was not applied during the procurement of some goods and services as required by section 2(a) of the PPPFA and Treasury Regulation 16A6 (b).

Contracts were extended or modified without the approval of a properly delegated official as required by section 44 of the PFMA and Treasury Regulations 8.2.1 and 8.2.2. Similar non-compliance was recorded the prior year (see Annexure C).

4.3.3 Audit Report on the Financial Statements of Defence Intelligence for 2022/2023

For the 2022/2023 financial year, DI received a qualified audit opinion. The nature of the business and the related inherent risk had limited AGSA's ability to confirm the assets, under property and equipment, computer equipment, and computer software, which were used in sensitive projects.

The AGSA was unable to complete an accurate audit report on DI as such could not express an opinion on the full extent of irregular expenditure. However, there were deficiencies in the internal control environment, which needed to be strengthened to ensure full compliance with applicable legislation as required by section 38 of the PFMA.

During this reporting period, there was insufficient evidence that adequate steps were taken to effect consequence management. No evidence of disciplinary steps taken against officials who had incurred irregular expenditure as required by section 38 (1) (h) (ii) of the PMFA as investigations into irregular expenditure were not conducted.

There were delays in investigations into the irregular expenditure identified in the prior financial years. For investigations finalised, the sanctions/recommendations were not implemented.

There were deficiencies with procurement and contract management, and tax matters not confirmed for some of the awards made. Quotations were accepted from suppliers and contracts awarded to bidders who did not submit declarations. Preferential procurement regulations were not followed when procuring goods and services (see Annexure D).

4.4 Annual Reports of the Services and the Inspector-General of Intelligence for 2022/2023

4.4.1 Annual Report of the State Security Agency

On 17 October 2023, the Committee was briefed on the AR of the SSA for the financial year 2022/2023. There was a noticeable increase in the achievement rate in the reporting year. During the period in review, the SSA focused on implementing the recommendations of the HLRP through a specified implementation plan which was monitored by the SSA's top management. Although significant progress was made the remainder of the recommendations, it was stated, depended on the finalisation of the General Intelligence Laws Amendments Bill (GILAB).

The Committee found that the quality and reliability of the performance management report remained a challenge as the reported information had material misstatements in the audit report. The material findings were found on output indicators and targets that were not measurable. Reported information in the AR was also not supported by valid portfolio evidence for some programmes. Key issues identified in the programme related to the inconsistency in reporting, non-alignment between planned targets and reasons/mitigation and consistency in non-achieving of some performance targets. The Committee noted that in order to address the root cause of the matter, the SSA should engage the Department of Monitoring and Evaluation (DPME) on how to resolve the matter.

The Committee noted that the performance of some programmes was extremely concerning. The adverse failure to achieve set performance targets in the realm of cybersecurity was a cause for grave concern. In an age where digital threats continue to evolve at an alarming pace, it was imperative for intelligence services to maintain a strong defence against cyberattacks. These failures could result in data breaches, service disruptions, or even more sinister consequences, with potential implications for national security. These highlighted the urgency for governments to develop a robust cybersecurity legislative framework, and create measures and comprehensive strategies.

NC had key targets in the MTSF 2019-2024 which were at risk of not being achieved. It bears noting this failure would be a government national failure as the commitments were made as part of the government's planning as a means to achieve national development goals in the sixth administration. The targets included design plan for the Integrated Cybersecurity Centre, draft regulations for the identification and protection of the National Critical Information Infrastructure by the National Cybersecurity Centre, the implementation of the National Cybersecurity training and public awareness programmes, the National Cybersecurity Research and Development Strategy finalised, Integrated National Cybersecurity Strategy approved, and Review the Cybersecurity Bill and submit to Cabinet.

4.4.2 Annual Report of South African Police Service-Crime Intelligence

On 24 October 2023, SAPS-CI presented its AR for the financial year 2022/2023 to the Committee. There was a noticeable increase in the achievement rate in the reporting year. On SAPS-CI's own admission, the achievement in the 2022/2023 financial year resulted from proper planning and implementing effective mitigation and project management measures. SAPS-CI had proven that implementing SMART principles in planning and effectively managing public funds was critical to give effect to the legislative prescribes of good and effective financial management. The leadership of SAPS-CI should be commended for the good work, particularly with regard to the Secret Services Account. There was a vast improvement compared to the achievement in the 2021/22 financial year.

SAPS-CI had been without a permanently appointed Divisional Commissioner for a prolonged period. Lieutenant General Dumisani Khumalo was appointed as the Divisional Commissioner on 1 December 2022, which brought stability to SAPS-CI. This was evidenced by the measures put in place to ensure intelligence-led policing and the re-capacitation of SAPS-CI. In this regard a new organisational structure was developed to bring stability to the Division.

The Committee noted that the Division's mandate, duties and powers were set out in the National Strategic Intelligence Act 39 of 1994 (NSIA). The crafters of the legislation had envisioned that SAPS-CI would draft regulations to give effect to the provisions set out in the principal Act. This had not happened, and was concerning because SAPS-CI employs intrusive techniques that must be regulated. Internal rules were important but did not qualify as an adequate legislative framework. Regulations should specify operational guidelines in addition to the powers and duties. Poorly regulated intelligence services pose a substantive risk to human rights and to the democratic rule of law because they allow for abuse in the absence of clear laws and robust oversight.

To this end, the AGSA recommended that SAPS-CI review all policies to the extent that they were outdated or misaligned to legislation and National Treasury regulations. The AGSA specified that the policy on the allocation of operational vehicles must be created and that all policies including SOPs be reviewed and updated. Similarly, urgent legislative amendments and controls were required for the Secret Services Account used to finance covert operations.

4.4.3 Annual Report of Defence Intelligence

On 25 October 2023, DI presented its AR for the 2022/2023 financial year to the Committee. Section 92(2) of the Constitution of the Republic of South Africa states that Members of the Cabinet were accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. One such function would be the submission of the AR which is a key reporting instrument for departments to report performance targets against budgets. It is meant to be a retrospective document, focusing on performance and expenditure in the previous financial year.

Sections 40(1)(d) and 55 (1)(d) of the PFMA require departments and public entities to submit annual reports, financial statements, and audit reports (our emphasis) within five months of the end of a financial year to the Executive Authority responsible for the department or the public entity. Section 65 of the PFMA requires that the Minister (our emphasis) table to Parliament the annual reports for the departments and public entities for which they were responsible thus giving effect to Section 92(2) of the Constitution.

It is worth noting that the Minister of Defence and Military Veterans did not submit the AR in respect of DI to Parliament. The AR was submitted by the Chief of DI. The Committee informed DI that the AR must be submitted in compliance with the prescripts. DI revised the AR and resubmitted to the Committee.

The mandate, duties and powers of DI were set out in NSIA. The crafters of the legislation had envisioned that the Minister responsible for DI would draft regulations to give effect to the provisions set out in the principal Act. DI employs intrusive techniques that must be defined and regulated. Internal policies, although proactive and important, do not qualify as an adequate regulatory framework. Regulations should specify DI's operational guidelines in addition to its powers and duties. Poorly regulated intelligence services pose a substantive risk to human rights and to the democratic rule of law because this allows for abuse in the absence of clear laws and robust oversight.

It was noted in the AR that DI had initiated a number of policy reviews that had occurred during the year under review. The policies that were reviewed included the conduct of vetting in the deference community; the conduct and management of geospatial information in the DOD; the management collection, processing and dissemination of intelligence in the DOD; responsibilities, processes and procedures that will serve the minimum standard for the establishment, management and conduct of counter intelligence and security activities in DOD.

It must be noted that Section 6 of NSIA stipulates that the functions should be regulated. As such the Minister responsible for DI should draft regulations to give effect to the vetting investigations; and responsibilities, processes and procedures that will serve the minimum standard for the establishment, management and conduct of counter intelligence and security activities in DOD.

With regard to Audit Report on the Financial Statements, DI received a qualified opinion for the financial year 2022/2023. The AGSA expressed that due to the nature of the business, there were sensitive areas that could not be audited. Furthermore, the AGSA raised a concern that when conducting the audit there was a limitation to access the information regarding processes followed to collate and report on indicators under programme 7 (vetting) as well as information in support of the achievements reported against the indicators listed in the APP for Programme 7. This limitation of scope on the audit and the ability to confirm the credibility and processes followed to report on the performance achievements (see Annexure D).

4.4.4 Annual Report of the Inspector-General of Intelligence

Following the end of term of office of the then IGI, and the appointment of the incumbent which was only finalised on 1 November 2022, no AR of the IGI was compiled. The incumbent was only appointed during the last quarter of the 2022/2023 financial year.

4.5 Annual Report of the Financial Intelligence Centre

On 14 November 2023, the FIC presented its AR for the 2022/2023 financial year. The AR was presented by Adv Pieter Smit, Acting Director of the FIC, following the departure of Adv Xolisile Khanyile who was the Director from January 2018 until August 2023.

The FIC's role and functions included identifying the proceeds of crime and assisting in combating money laundering, terrorist financing and proliferation financing. They also included raising levels of compliance among businesses and sectors listed in the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) and interpreting and analysing regulatory and other information provided by these businesses in developing financial intelligence and disseminate financial intelligence to law enforcement, prosecutorial authorities and other competent authorities for their use in investigations, prosecutions and applications for forfeiture of assets. It was indicated that the FIC did not conduct investigations.

In terms of performance, the FIC exceeded eight and achieved eight of its 19 annual performance targets in 2022/2023. The FIC’s operational work and achievements included the blocking of funds to the value of R92.2 million, and the recovery of R5.82 billion in criminal proceeds, and the establishment of a new division – Shared Forensic Capability. The FIC registered 45 392 institutions and produced Cash Threshold Report (CTRs), 558 348 Suspicious and Unusual Reports (STRs), and 503 062 International Funds Reports (IFTRs). It also entered into 100 memoranda of understanding with foreign financial intelligence units at year-end.

It was stated that between 30 August 2023 and 31 October 2023, the SAPS and SAPS-CI submitted 20 requests to the FIC for Terrorist Financing (TF) related information. In addition, the FIC received a further 30 TF-related requests from other agencies. The 154 requests made in the past ten months (an average of more than 15 per month) represented a significant increase on the average, compared to (an average of 6 per month) the reported statistics in the MER for the 2014 to 2019 period.

The Fusion Centre was a collaborative partnership made up of the National Prosecuting Authority (NPA), Asset Forfeiture Unit (AFU), Special Investigating Unit (SIU), South African Revenue Services (SARS), Directorate for Priority Crime Investigation (DPCI), SAPS Detective and SAPS-CI, National Intelligence Coordinating Committee (NICOC) and SSA. It allows for the free flow of strategic and operational financial intelligence into the Fusion Centre and all collaborators work within their jurisdictions and mandates.

For the reporting period, the FIC obtained an unqualified audit opinion with no material findings. The AGSA found that the annual financial statements in all material respects, presented the financial position as of 31 March 2023 and financial performance and cash flow for the year under review. The AGSA did not identify any material findings on reported performance information, non-compliance with the requirements of relevant legislation and any significant internal control deficiencies within the FIC.

Due to legislative developments unfolding and South Africa's greylisting, the FIC had experienced elevated workloads and high pressure consistently during the past two years. A high number of employee resignations further exacerbated this situation during the year under review. Necessary capacity was urgently being added to the FIC, thanks to the additional funds allocated by the Minister. Recruiting new employees equipped with the requisite combinations of technical astuteness and scarce skills, however, remained a challenge.

The FIC had been allocated an additional budget to grow its resource capacity and capability. In February 2023, the Minister of Finance announced the additional allocation of R265.3 million. With that allocation, the FIC increased its human resources and general capacity as required. On 31 March 2023, the FIC's workforce stood at 197 employees. Recruitment of new positions and build-up towards funded staff establishment continued.

4.6 Annual Report of the Designated Judge of Interception of Communications

On 1 November 2023, the JSCI held a meeting with Justice Nkabinde, the Designated Judge of Interception of Communication (hereafter the Judge), on the AR. The Judge indicated the AR was presented in terms of section 3(a)(iii) of the Act, which mandated the Designated Judge of Interception to provide a report regarding the functions performed together with any comments or recommendations which may be appropriate.

The Judge explained that she would not discuss the AR in depth but would rather address the important points to elevate those to the Committee. The Judge commenced by explaining that there had been confusion regarding the Constitutional Court Judgement on bulk interception, specifically regarding the suspension of certain aspects and the read-in provisions. It was clarified that the order was made on 4 February 2021 and that Parliament was given three years to cure any legislative deficiencies. The three years ended on 4 February 2024 and Parliament had to work in hast to ensure it complied with the deadline.

Justice Nkabinde indicated that a discussion was needed regarding the proposed amendments on interception. The Judge highlighted the fact that post-surveillance notification presented a challenge, as suspects who often were criminals or terrorists would be informed that they were intercepted. This would be counterintuitive and compromise the work of LEAs.

It was explained that instead of post notification, the courts should allow for legal redress and allow individuals to approach the courts. The Judge further explained that the courts used foreign jurisprudence to make decisions, and the lived experiences in South Africa were not the same; thus, certain read-in provisions were problematic.

Justice Nkabinde mentioned that the courts do not make legislation they only interprete. It remained Parliament’s mandate to craft legislation that would enable the work of LEAs. The Judge further explained that the read-in provisions by the Constitutional Court judgement had impacted the work of LEAs, as demonstrated by the decreased applications. There were only 146 applications during the period in review, in contrast to 600 applications in the previous two years.

The Justice explained that historically the SSA had been mischievous by adding numbers to the applications that were not part of an ongoing investigation. This was in contrast to the SAPS who compiled neat, compliant and detailed applications. The Judge further indicated that DI and the FIC did not submit applications during the period in review.

The Justice also highlighted that the office faced three main challenges. Firstly, the office was insufficiently staffed and poorly located, and both matters needed to be addressed. Secondly, the OIC equipment was outdated and unable to intercept applications such as WhatsApp, Telegram, or the Internet, which were the main communication methods. Lastly, unregistered SIM cards presented a challenge with the application process, as one of the requirements was for the SIM card to be registered before it could be intercepted.

Justice Nkabine indicated that her term of office would end in August 2024; however, the Minister of Justice and Constitutional Development had asked the Judge to remain in office until the amendment to RICA was finalised.

4.7 Certificates of Activities of the Services by the Inspector-General of Intelligence for 2022/2023

One of the functions of the JSCI is to consider and make recommendations on the report and certificate transmitted to it in terms of section 7(7)(d) of the Act.

4.7.1 State Security Agency

On 21 November 2023, the Committee received a presentation on the Certificate by the IGI in respect of the SSA for the period 2022/2023. It was indicated that the scope of work included Governance of Intelligence, Core Intelligence Activities, SSA Domestic Branch (DB) Core Intelligence Activities, SSA Foreign Branch Core Intelligence Activities, the National Communications Core Intelligence Activities, complaints and other important compliance matters.

In accordance with section 7(11)(c) of the Act, the IGI expressed opinion on the activities. It was indicated that management did not submit a Report on the Activities for a period of 12 months as contemplated in the Act. The absence of a regulatory guideline and reporting standard prescribing the nature and content of such ‘Report on the Activities’ of the Agency, must also be recognised as a contributory factor for the omission. The AR and Financial Statements prepared in accordance with Treasury Guidelines were submitted. The IGI was unable to express an opinion as contemplated in terms of section 7(11)(c) of the Oversight Act. It was further indicated that the IGI had no cause to believe that activities had been conducted outside of statutory and policy mandates in support of the SSA, National Intelligence Priorities (NIPs), and the Strategic Priorities of the Sixth Administration.

With regard to opinion on lawful conduct, the IGI noted the following unlawful activities and contraventions, failure to make full and proper disclosure on docking of Lady R in contravention of the Oversight Act, Continued suspension of a senior manager beyond the stipulated allowable period of 18 months without charge, in violation of the Intelligence Service Regulations, failure to provide post-surveillance notification to targets of lawful interceptions, in transgression of court ruling and read-in provisions, and unlawful intelligence activity related to a registered undercover project.

The IGI found that the establishment of SSA affected the ability of the Foreign Branch to adequately regulate foreign intelligence collection. RICA regulated interception of communication; other objects, powers, and functions for instance surveillance and targeting were not regulated through legislation or Ministerial regulation.

The IGI found that the Constitutional Court order on post-surveillance notification had a chilling effect, which in legal context implies discouraging the SSA's desire to perform certain duties due to the need to adhere to RICA. The SSA viewed post-surveillance notification order as highly problematic due to operational projects being conducted covertly and the need-to-know principle was sacrosanct in the SSA's tradecraft. Concerns were raised that notifying the target may result in litigation. The IGI found that the unregistered SIM cards render interceptions null and void, compromising covert collection operations. The IGI found that the vetting and screening backlog dated back to 2011 and was increasing. There was an absence of cooperation agreements pertaining to access to fingerprints.

The IGI found that NC switched off its SIGINT information systems to comply with the Constitutional Court order. The order had a detrimental effect on the production of early warning intelligence. A business case was compiled to bring the NC SIGINT activities on a sound legislative footing.

4.7.2 South African Police Service-Crime Intelligence

On 21 November 2023, the JSCI received a presentation on the Certificate by the IGI in respect of SAPS-CI for the period 2022/2023. It was indicated that the scope of work included the regulatory framework governing SAPS-CI activities, the regularity and employment of collection methods and techniques – surveillance, RICA and covert collection platforms. The remedial measures of the Expert Panel Report into the July 2021 unrest, the State Capture Commission and the effectiveness and capability of SAPS-CI activities.

In terms of opinion of activities, the IGI found that management did not submit a ‘Report on the Activities’ for a period of 12 months as contemplated in the Act. A contributory factor for this omission was the absence of a regulatory guideline and reporting standard prescribing nature and content of such ‘Report on the Activities’ of the SAPS-CI. The Financial Statements and AR of the Secret Services Account were submitted and prepared in accordance with the relevant Treasury Guidelines. The IGI was unable to express opinion as contemplated in section 7(11)(c) of the Act. There was no cause to believe that activities have been conducted outside of statutory and policy mandates in support of the SAPS, National Intelligence Priorities (NIPs), and the Strategic Priorities of the Sixth Administration.

With regard to opinion on lawful conduct, the IGI noted unlawful activities and contraventions such as failure to provide post-surveillance notification to targets of lawful interceptions in transgression of Constitutional Court ruling; *prima facie* evidence of unlawful and criminal conduct in operations of undercover units; collusion among certain senior SAPS-CI members; abuse of the Agent Management Programme and Secret Services Account in a unit in KwaZulu-Natal; possession of listed devices such as grabbers without Certificate of Exemption as contemplated in RICA; and poorly developed regulatory framework and system of checks and balances.

It was indicated that SAPS-CI activities were not adequately regulated, and the internal operational policies were outdated and had not been reviewed since 2015. The policy instruments were in draft format and the Division was guided by organisational culture and practices.

The IGI found that SAPS-CI viewed post-surveillance notification order as problematic, resulting in non-compliance. It was recommended that SAPS-CI immediately remedy their non-compliance with the Constitutional Court order concerning post-surveillance notification.

The IGI found that unregistered SIM cards rendered many interceptions null and void, compromising covert collection operations. It was recommended that the Services escalate the matter to Cabinet and the LEAs for better enforcement of the provisions.

It was stated that SAPS-CI failed to implement the organisational structure that was approved in 2018. The IGI found that the reporting lines of certain functions were bypassed and there was no fixed post-establishment.

The IGI raised a concern about the capacity of SAPS-CI to collect covert intelligence to address organised crime and corruption, and the failure to address strategic priorities. It was found that the threats against energy security and the emergence of serious and organised crime were not decisively addressed.

It was indicated that there were delays in the finalisation of various disciplinary cases some emanating from the previous financial year. It was stated that there were delays in finalising vetting investigations.

4.7.3 Defence Intelligence

On 21 November 2023, the JSCI received a presentation on the Certificate by the IGI in respect of DI for the period 2022/2023. It was indicated that management submitted an Activity Report of DI for a period of 12 months. The fair presentation thereof cannot be assessed in the absence of regulatory guidelines and reporting standards prescribing the nature and content thereof.

The IGI indicated that it was unable to express opinion as contemplated in terms of section 7(11)(c) of the Act. It was further indicated that there was no cause, however, to believe that activities have been conducted outside of statutory and policy mandates in support of the South African National Defence Force (SANDF), NIPs and the Strategic Priorities of the Sixth Administration. Noted unlawful activities and contraventions included the absence of an enabling regulatory framework, the conduct of Bulk Signals Interceptions in contravention of RICA, failure to make full and proper disclosure in relation to an inquiry on the docking of a vessel at Simon's Town Naval base in contravention of provisions of the Act and failure to disclose an intelligence failure in terms of the Act. Except for the mentioned instances, there was no cause to believe that anything done by DI was unlawful, contravenes Ministerial directions or involves an unreasonable or unnecessary exercise of any of its powers.

4.8 Oversight Visits

The JSCI embarked on a four-day oversight visit to Kosi Bay Port of Entry (POE), Richards Bay Harbour, Durban Harbour and the SSA and SAPS-CI Provincial Offices in KwaZulu-Natal (KZN) from 18 to 21 April 2023. The JSCI received briefings during the oversight from the Border Management Authority (BMA), SAPS-CI, SSA and DI.

The purpose of the visit was to conduct a border intelligence-focused oversight. The Committee had previously observed that the ineffectiveness of intelligence services at the POEs contributed to the total breakdown of security reinforcement along the borderline and had requested Services to prioritise the matter.

4.8.1 Engagement with the Border Management Agency

On 18 April 2024, the Deputy Commissioner of the BMA, Major General (rtd) Chilembe, gave a detailed presentation on the operations of the BMA at the Richards Bay Harbour. He explained that the BMA was a Schedule 3(A) Public Entity as of 1 April 2023 and was mandated to strengthen coordination and cooperation with local and international stakeholders within the border management environment.

It was explained that sister departments that previously worked at POEs were integrated into the BMA. These included, the Department of Home Affairs for the Immigration function, the Department of Health for the port health function, and the Department of Forestry, Fisheries and Environment for the agriculture functions.

Maj Gen Chilembe explained that the integration process was challenging. It was explained that the administrative and on boarding process had been difficult. The BMA faced challenges within the border access control environment because the SAPS officers were doing the same functions as the Border Guards employed by the BMA.

Maj Gen Chilembe indicated that the issue was that the police function at POEs was meant to be integrated into the BMA along with the financial allocation from the National Treasury. However, this did not happen and created a duplication of functions. Consequently, the National Treasury would not appropriate funds for the Border Guards' function within the BMA as the funding was already given to the SAPS. The BMA indicated that the police border control function needed to be transferred into the BMA as per the legislation and all staff be trained on the new law enforcement approach.

4.8.2 Engagement with South Africa Police Service-Crime Intelligence

On 18 April 2023, the Committee received a presentation from SAPS-CI, which started by providing a background on Richards Bay Harbour. It was explained that Richards Bay Harbour was the largest export coal terminal in the world, where 65 million tons were loaded every year. It has wide range of facilities including the two Multi-Purpose Terminals with a Dry Bulk Terminal in the centre, and the coal Terminal, which was privately owned and received coal by train. It was explained that there was a wide range of commodities such as chrome and magnetite, that were imported and exported from the harbour.

Furthermore, it was explained that the Ukraine and Russia conflict had an impact on the demand for coal leading to an increase in coal exports. The increase had resulted in an influx of trucks to the harbour. The influx resulted in traffic congestion, road accidents and criminal incidents.

It was explained that the threats at the Richards Bay Harbour included the hijacking of trucks and theft of precious metals from trucks going to the harbour. The poor physical security and infrastructure weaknesses, competing dynamics of interest groups, traffic congestion, and protests also contributed to the threats and vulnerabilities at the harbour.

SAPS-CI explained that there were operational and infrastructure challenges which affected security negatively, namely the influx of road motor transport, poor condition of roads, limited checkpoints, fences, and gates dust problems. The hotspot areas had been identified with the following interventions, highlighted and recommended to the BMA, namely the need for additional cameras, electrical fencing and clearing the overgrown bushes.

It was detailed that an identified threat was the anti-foreigner sentiments, and one association that had been actively protesting and disrupting operations at the harbour, lamenting the ongoing employment of foreign truck drivers. The association's modus operandi was to stop and search truck drivers en route or leaving the harbour to check if they had necessary compliance documents. These exercises recorded violent incidents in which foreign truck drivers were forcefully removed from trucks.

It was indicated that previously, there were 250 trucks a day offloading coal; however, this had increased to 1200 trucks a day, which caused a backlog and traffic congestion. There was often congestion on the N2 Highway and R34 (John Ross Highway) due to trucks transporting coal to Richards Bay Harbour. This posed a risk of road accidents along the N2, and the backlog of coal being transported had also spurred community protests against high volumes of coal being exported whilst the country was experiencing load shedding.

It was explained that the Richards Bay Harbour had no cases related to human smuggling or trafficking and no incidents identified relating to illicit trade. SAPS-CI provided early warnings regarding protest actions, planned disruptions and instability issues, which impacted on the effective functioning of the harbour. Counter Intelligence was addressing the corrupt activities of SAPS members stationed at the harbour; there was a project in place to deal with the matter.

The National Joint Operational and Intelligence Structure (NATJOINTS) instruction 31 of 2016 established Project Phakisa, an enhanced and coordinated compliance and enforcement programme securing South African waters and coastal environment through a multi-dimensional approach. Project Phakisa focused on the protection of illegal harvesting of maritime resources and the identification and protection of sensitive and unique maritime habitats and species. SAPS-CI participated by providing proactive intelligence with regard to identified threats to marine resources; however, along the KZN coastline, the threats were limited to illegal fishing activities.

4.8.3 Engagement with the State Security Agency

On 18 April 2023, the Committee received a briefing on Border Intelligence operations from the SSA. It was indicated that the mandate and functions of SSA at the POE as provided for in various legislative prescripts was to gather, collate, evaluate and analyse domestic intelligence; conduct and coordinate counter intelligence responsibility; liaise departmental intelligence; conduct vetting of persons employed, provide services or designated to provide services to organs of state and champion cyber security for all critical information infrastructure.

The functions of the SSA within the border context were explained as a combination of a defensive and offensive approach, which included the enhancement of the integrity and sovereignty of the POE, small ports, land and coastal borderlines; identification of non-compliance to legislative and regulatory framework; identification of abuse and manipulation of border processes and the identification of subversive activities undermining the authority of the state.

It was explained that the border integrity of the province continued to be breached as a result of systemic and structural management problems in government departments and border stakeholders responsible for border management and control in the province. It was stated that although the SSA worked closely with the BMA, it did not delegate any of its functions to the BMA. The SSA had no personnel stationed at the borders due to budget constraints.

It was explained that maritime security was not only limited to physical security implications but also included socio-economic developments, the flow of maritime trade, port security and the protection of marine resources. The security of South Africa's maritime zones was not only subjected to the stability and integrity of its own waters but also to neighbouring state waters.

It was explained that in 2016, Operation Phakisa Initiative 5, led by the Department of Forestry Fisheries and the Environment (DFFE) and supported by the NATJOINTS, was established as a multi-disciplinary approach to maritime enforcement and compliance. As a result of the positive impact on maritime crime and non-compliance incidents, Phakisa 5 was constituted as the Marine and Ocean Crime Priority Committee (MOC PC) of NATJOINTS in 2020. The MOC PC was not responsible for the day-to-day enforcement and compliance but conducted planned and reactive intelligence-driven operations in which the SSA was involved. The SSA Chaired the Intelligence for Operations Sub Task Team of the MOC PC. It participated in the drafting and formulation of the National Abalone Strategy and Action Plan. The SSA was the tactical liaison for intelligence-driven reactive operations.

It was explained that there was a myriad of security risks at the POEs one of which was the limited cargo scanning equipment. It was mentioned that South Africa had only two cargo scanners in the Ports of Durban and Cape Town. The estimated scanning capacity was between one and two per cent of the containers scheduled for import and export at the Ports. The container scanning was done using a risk-based approach developed by the South African Revenue Services (SARS); the containers in transit were not subjected to Customs tariffs or routine inspections. Due to the limitation of the machinery, only the contents close to the door of the containers were inspected; thus, illicit cargo at the rear of the container would not be seen, which presented risks of smuggling. The access control at the Maritime Port of Entry (MPOE) was inadequate and resulted in unauthorised access into the restricted areas of the Ports and associated illegal activities. The non-transponder vessels posed a risk, the transponders for vessels were critical for tracking both from a security and safety perspective. South Africa’s limited off-shore patrol capacity contributed to the incomplete maritime picture along the sea borderline. The electronic monitoring of ports remained a challenge due to inadequate CCTV coverage or the camera being non-operational.

4.8.4 Visit to Umhlabauyalingana and Kosi Bay

On 19 April 2023, the JSCI engaged with SAPS-CI and the SSA at the uMhlabauyalingana municipality before heading to the Kosi Bay POE the two gates serving informal entry into South Africa along the border line known as Gate 6 and Gate 8.

Briefing by the SSA prior to visit to Gates 6 and 8, and Kosi Bay

The SSA informed the Committee about the situation at Kosi Bay and the borderline between South Africa and Mozambique. It was explained that South Africa had one POE at Kosi Bay and two informal entries, which also served as trading markets. However, it was mentioned that there was a myriad of informal crossings along the borderline between the two countries.

It was indicated that the historical migration patterns in Southern Africa had contributed to the cultural homogeneity of communities along the borderline. The new border demarcations caused difficulties as families were separated. Several risks were highlighted which included the lack of or inadequate fencing – the fence along the borderline served as a loophole for criminal elements and those with nefarious intentions to cross the borderline illegally; informal dwellings built very close to the land border line, which made it difficult for law enforcement to detect illegal activities;

smuggling of humans, vehicles, endangered wildlife, narcotics, and cigarettes; the corruption and collusion from officials at both sides of the POE in relation to the facilitation of the illegal movement of people, vehicles and goods through the POE and land borderlines; and Gates 6 and 8 where both Mozambican and South African nationals freely crossed the borderline without having their documents checked, amongst others.

Briefing by the SAPS-CI prior to visit to Gates 6 and 8, and Kosi Bay

SAPS-CI presented its assessment of the threats, crime intelligence initiatives, challenges and recommendations at the Kosi Bay Borderline. It was indicated that the attacks on vehicles coming from Mozambique increased the dangers to national security and the level of instability in the area because of the high number of crimes, including home invasions.

SAPS-CI indicated that several suspects arrested for violating the Immigration Act were undocumented. It was noted that the suspects would cross over the fence from Mozambique to Emanguzi to commit crimes. It was explained that the majority of illegal crossings took place at the vicinity of Gate 6 and Kosi Bay POE as numerous security breaches and fence cuttings were recorded.

4.8.5 Visit to Durban Harbour

On Thursday, 20 April 2023, the Committee visited the Durban Harbour. The JSCI received a presentation from DI prior to the tour of the Harbour.

Briefing from Defence Intelligence

The Committee was briefed on DI’s mandate on the domestic issues impacting national security, Maritime Security Strategy, Border Safeguarding, Border Safeguarding Optimisation Plan and the Illicit Trade and Impact on the South African Economy.

It was explained that South African borders remained exploited due to the poor state of borderline infrastructure. In some cases, the physical borderline did not exist as there were no border fences and a lack of surveillance sensors for the security of the land, air and maritime domains. This resulted in weak border security and exacerbated illegal migration and cross-border crimes.

DI explained that the most significant threat in the maritime domain was the illegal movement of people, and goods and the exploitation of natural maritime resources. DI managed the Shipping Information and Display Analysis System (SIDAS), which comprised the Coastal Radar (COASTRAD) sensor and the Shipping Information System (SIS) database for strategic maritime intelligence and support to maritime operations.

The majority of the COASTRAD sensors belonged to other government departments. It was explained that the current sensor capability had no capacity to detect warships, especially long-range within the exclusive economic zone (EEZ). The EEZ is an area of the ocean, generally extending 200 nautical miles beyond a nation's territorial sea, within which a coastal nation has jurisdiction over both living and non-living resources. The coastal warship’s detection was limited to areas where there was radar coverage.

It was explained that at the Richards Bay Harbour, criminal activities included the illegal fishing and poaching of marine resources. The naval island was prone to smuggling activities, and small boats were exchanging goods with large vessels.

It was indicated that the heavy rains damaged the road infrastructure leading into the Port of Durban, affecting access to the terminals. The drug trafficking continued unabated. The transnational organised crime syndicates targeted officials for illicit trade and human trafficking.

It was explained that the Kosi Bay Border POE was rife with undocumented crossings, school children and patients crossing on foot at various points. The taxis were also involved in transporting persons to their destinations after they had crossed.

It was explained that the efforts exerted by the deployed SANDF soldiers were not enough to independently neutralise the threat without a national integrated governmental approach coupled with effective and sufficient resources.

Viewing of the Durban Harbour

The JSCI was taken on a walkabout at the Durban Harbour, and shown the process of arrival and departure that cruise liners undergo at the Nelson Mandela Durban Harbour terminal. The terminal had scanners to check for illicit goods, including alcohol and weapons, as well as sniffer dogs. The scanners were able to identify illicit objects according to shape and colour. When items have been identified, they would then be set aside for inspection. Upon arrival, the passenger would have to start at the immigration counter.

The JSCI was taken for a tour of the harbour and shown the different vessels at the port by boat, such as vessels that imported and exported cars, and vessels that imported petrol and diesel that would be distributed to other provinces, as well as vessels that transported containers. It was mentioned that the harbour operated 24 hours a day and that the SAPS would inspect the containers for human trafficking and check if there were any illicit goods brought into the country through the port.

4.8.6 Visit to the State Security Agency and South African Police Service-Crime Intelligence KwaZulu-Natal Provincial Offices

On Friday, 21 April 2023, the JSCI visited the SSA KZN Provincial Office and the SAPS-CI KZN Provincial Office. The Committee received presentations followed by a viewing of the offices. At the SSA KZN Provincial Office, the JSCI received a presentation on the Provincial Office's strategic overview, resources, capabilities, and challenges, as well as issues arising from the Expert Panel Report on July 2021. After the presentation, the Committee viewed office space.

After the visit to the SSA Provincial Office, the JSCI visited SAPS-CI Provincial Office. The Committee received a presentation from the SAPS-CI on its mandate at the Durban Harbour and the strategic overview of the Provincial Office. SAPS-CI detailed the threats at POEs. The Durban Harbour threats included traffic congestion and the long queues of trucks standing and the risk of road accidents along the routes to the Harbour; the anti-foreigner sentiments and business forum activity demanding contracts; and illicit cigarettes, smuggling of undocumented persons, stowaways of counterfeit goods and drugs, amongst others. After the presentation, the Committee viewed office space.

4.9 Implementation of the High-Level Review Panel Recommendations

The previous AR of the JSCI outlined how the Committee had been following up on the implementation of the recommendations of the HLRP into the SSA. Briefings took place on quarterly basis as per the recommendation of the previous report, but progress had been slow. The Committee continued overseeing the implementation of the HLRP during the reporting period. One of the recommendations as indicated previously, was the legislation to enable the separation of the SSA into domestic and foreign services.

4.10 General Intelligence Laws Amendment Bill 2023

The Committee continued with its oversight to ensure the amendment of various intelligence legislations for the fulfilment of the implementation of the recommendations of the HLRP and the State Capture Commission.

4.10.1 Establishment of the Ad Hoc Committee on the General Intelligence Laws Amendment Bill in the National Assembly

Section 3(c) of the Act empowers the JSCI "to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities". However, during the reporting period, Parliament lacked rules for Joint Committees to process legislation, even though it is provided for in the Constitution, 1996. To this end, the JSCI empowered by section 2(6)(b) which states that "(t)he Committee may initiate and recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the functions and activities of the Committee", tasked its Office Manager and Legal Advisor to make several recommendations to the Joint Rules Committee (JRC). These included, the rules for the JSCI to process legislation, amongst others. The proposals were presented to the JRC for its decision.

The lack of rules for the JSCI to process legislation has resulted in the NA resolving, on 12 October 2023, to establish an Ad Hoc Committee on GILAB to process the Bill, once introduced by the Minister in the Presidency. The members of the Ad Hoc Committee of the NA were Hon JJ Maake (Chairperson), Hon DE Dlakude, Hon G Magwanishe, Hon BM Hadebe, Hon DM Stock, Hon LS Makhubela-Mashele, Hon VC Xaba (Alternate), Mr TN Mmutle (Alternate), Hon D Kohler, Hon DJ Stubbe, Hon T Loate, and Hon MGE Hendricks. On 12 October 2023, the Committee received a briefing from its Legal Advisor on the process and timeline of GILAB.

4.10.2 Introduction and Purpose of the Bill

On 17 November 2023, GILAB (B40-2023) was formally introduced in Parliament by the Minister in The Presidency, and referred to the Committee. The Bill sought to amend the National Strategic Intelligence Act, 39 of 1994, the Intelligence Services Act, 65 of 2002, and the Intelligence Services Oversight Act, 40 of 1994, to undo the establishment of the SSA, in line with the recommendations of the HLRP; to establish the South African Intelligence Agency, which will have a domestic focus and be responsible for counter-intelligence and intelligence gathering functions; to establish a South African Intelligence Service responsible for foreign intelligence gathering; to clarify the mandate of the two intelligence services that are to be established; to re-establish the South African National Academy of Intelligence (SANAI), which is responsible for intelligence training; to provide a legislative mandate for bulk interception, in compliance with the Constitutional Court judgement; to provide a regulatory framework for compliance monitoring, coordination, and alignment of intelligence activities; to provide for the regulation of cybersecurity, protection of information and intelligence; to enable the Minister to prescribe issues of accountability and control of intelligence services in line with Section 209 of the Constitution; and to provide for matters related to former members of the intelligence services.

4.10.3 Process followed in the National Assembly

After the Bill was formally introduced in Parliament by the Minister in The Presidency, and referred to the Committee on 17 November 2023, the Committee held the meeting to consider and adopt its programme to process the Bill, and to deliberate on the advertisement of the Bill for public comments on 23 November 2023. The Committee was briefed by the Minister in the Presidency on the Bill on 29 November 2023. The Committee was briefed by the NICOC, SAPS-CI, and IGI on their input into the Bill on 5 and 7 December 2023. The Bill was published for public comments in local and national newspapers in mid-December 2023 and the deadline for public submissions was Wednesday, 31 January 2024. Following several requests for an extension by individuals and various groups interested in contributing to the Bill, the Committee extended the deadline for written submissions on 22 January 2024 from 31 January to 15 February 2024.

In line with its mandate of processing legislation, the Committee conducted Provincial Public Hearings on the Bill from 22 January to 18 February 2024 in 5 provinces, namely; Limpopo, Gauteng, Western Cape, KwaZulu-Natal, and Mpumalanga. The Report of the Ad Hoc Committee on the General Intelligence Laws Amendment Bill on the Public Participation Process, dated 8 March 2024, was published in ATC No. 33-2024.

The Committee held National Public Hearings at Parliament and virtual platform from 20 to 21 February 2024 with interested stakeholders and individuals, namely the FW de Klerk Foundation, the Association of Christian Media, AfriForum, the Congress of South African Trade Unions (COSATU), Prof (Dr) Setlhomamaru Dintwe, Freedom of Religion South Africa (FOR SA), Dear South Africa, Intel Watch, and Prof Jane Duncan.

The Constitutional obligation on the NA to facilitate public participation in the legislative process in terms of section 59(2) of the Constitution of the Republic of South Africa, 1996, resulted in the Committee applying for an extension to the Speaker of the NA to report on the Bill on 22 March 2024 instead of 1 March 2024 as per the resolution. The extension was granted by the NA on 27 February 2024.

The Committee considered its Public Participation Report on 06 March 2024. Following public participation, the Minister in The Presidency and the SSA, were invited on 07 March 2024, to provide responses on the public submissions. The Committee held its deliberations on 8, 11 and 13 March 2024. The Committee considered the Bill in its entirety and made proposals for new clauses not covered in the Bill as introduced.

The Committee in the NA sought permission for additional provisions that were not included in the Bill as introduced. These include the appointment of the Deputy Chairperson of the JSCI; biannual meetings between the JSCI and the President on intelligence-related matters; the alignment of the annual reporting of the JSCI with parliamentary reporting requirements; the appointment of the Deputy IGI; empowering the JSCI to designate the IGI to provide a specific oversight function; strengthening compliance by the executive with the recommendations of the IGI; and amending the Secret Services Act 56 of 1978 to provide for the establishment of the Evaluation Committee within 12 months after the Act is passed.

At its sitting on 19 March 2024, the NA resolved to refer the interim report back to the Committee for further consideration. The Committee held the clause-by-clause deliberations on 19 March 2024, and resolved to omit the aspects of the legislation that were not covered in the Bill as introduced, of which permission sought on 15 March 2024, in terms of the NA Rule 286(4)(b) and 286(4)(c) as mentioned, was not granted by the NA. There was general agreement and support for the Bill by the Committee. On 26 March 2024, the NA passed GILAB [B40B-2023] and referred it to the NCOP.

4.10.4 Establishment of the Ad Hoc Committee on the General Intelligence Laws Amendment Bill in the National Council of Provinces

On 27 March 2024, the NCOP established the Ad Hoc Committee on GILAB to consider and report on GILAB [B40B- 2023] by 21 May 2024. The membership of the Committee included Hon KM Mmoiemang (Chairperson), Hon S Shaik, Hon TSC Dodovu, Hon ZV Ncitha, Hon LC Bebee, Hon C Labuschagne, Hon FJ Badenhorst, Hon M Dlamini, and Hon F Du Toit.

4.10.5 Process followed in the National Council of Provinces

On 28 March 2024, the first meeting was held where the programme of the Committee was considered. The Committee resolved to conduct public hearings in the four provinces not covered by the NA Committee, namely; Northwest, Northern Cape, Free State and Eastern Cape.

On 4 April 2024, the Committee was briefed by the department on the objects of the bill. The bill was also sent to provinces for consideration and public participation as per the rules in the NCOP. On 12 April 2024, GILAB [B40B-2023] was advertised for written submissions with the closing date of 12 May 2024.

On 13 April 2024, the Committee held a public hearing at the Holy Family Combined School (Mogwase), Moses Kotane Local Municipality, Bojanala Platinum District, North West. This was followed by another public hearing at Recreation Hall, Galeshewe, Kimberley, Sol Plaatjie Local Municipality, Frances Baard District, Northern Cape, held on 19 April 2024.

On 23 April 2024, the Committee held National Public Hearings at Parliament and virtual platform with interested stakeholders and individuals, namely the Congress of South African Trade Unions (COSATU), the FW de Klerk Foundation, Intel Watch, Freedom of Religion South Africa (FOR SA), Mr Bavesh Padayachy (Stellenbosch Law Faculty student), Prof Jane Duncan (University of Glasgow) and Mr Kgosu Motasi, a community member and a student.

On 25 April 2024, the Committee held a public hearing at the Samson Sefuthi Hall, Botshabelo, Mangaung Metropolitan Municipality, Free State. This was followed by the last public hearing held at the Buffalo City Town Hall, East London, Buffalo City Metropolitan Municipality, Eastern Cape on 28 April 2024.

On 13 May 2024, the Committee received responses by the Minister in the Presidency and the State Security Agency on the public participation submissions. It also considered the public participation report inclusive of inputs emanating from written, oral and public hearings, including those received from provinces.

On 14 May 2024, the Committee continued with deliberations on the Bill. Having been advised on the process that would have to be followed to effect amendments related to matters that would extend the subject of the Bill, the Committee reached consensus on referring the below-listed matters to the Seventh Parliament for processing.

a) Amending the Secret Services Act 56 of 1978 to provide for the establishment of the Evaluation Committee within 12 months.

b) Appointment of the Deputy Chairperson of the Joint Standing Committee on Intelligence(JSCI).

c) Bi-annual meetings between the JSCI and the President on intelligence-related matters.

d) The alignment of the JSCI's annual reporting with parliamentary reporting requirements.

e) Appointment of the Deputy Inspector-General of Intelligence (DIGI).

f) Empowering the JSCI to designate the IGI to provide a specific oversight function.

On 16 May 2024, the NCOP passed GILAB with 43 delegates in favour and two against.

4.11 Implementation of the Report of Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including organs of State

As detailed in the previous AR, the JSCI had been implementing and overseeing the implementation of the recommendations of the State Capture Commission. This continued during this reporting period.

When the Speaker of NA referred *Parliament's Implementation Plan to give effect to the Recommendations in the Report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State*, to various Committees including the JSCI for consideration and reporting, the Committee had already started the process.

Four main recommendations were included for the JSCI. The first was that the State Capture Commission recommended that GILAB be initiated to disestablish the SSA and establish domestic and foreign intelligence services. This had been considered by the Committee as indicated.

The second was the strengthening the oversight role of the IGI and AGSA. This had already been considered by the Committee. The JSCI undertook a study tour to the United Kingdom and Canada as reported in the previous period, to engage its counterparts in overseeing the philosophical doctrine of intelligence services to ensure ideals were aligned with the supreme law; best practices for conducting oversight of reforming intelligence services; insight on how to enact legislation to provide effective financial oversight of covert structures; best practices for overseeing the effective functioning of intelligence services to ensure legality and propriety of activities (particularly covert structures); strengthening the OIGI and its functions; insight and best practices on how to support the role of auditing bodies similar to the AGSA; knowledge of how to enact legislation to provide effective bulk surveillance and the appropriate oversight (ensuring that civil liberties were respected); and understanding how to foster better cooperation and coordination between the various intelligence services.

Valuable best practices learnt were incorporated into GILAB as indicated in the proposed amendments, of which some were referred to the Seventh Parliament, such as the need to for a Deputy Chairperson for the JSCI, Deputy IGI, establishing the Secret Services Evaluation Committee within a set time period to ensure effective oversight of covert operations and their financial expenditure; autonomy of the IGI and Coordinator for Intelligence, provision for bulk surveillance and safeguards, and the strengthening of NICOC and the OIGI.

The third was the drafting of a new National Security Policy and Strategy. The JSCI held several engagements with NICOC in this regard (see Annexure E).

The fourth was for the JSCI to determine whether legislative changes were required to strengthen its reporting obligations. The State Capture Commission recommended that:

> Parliament should consider amending section 6(1) of the Intelligence Services Oversight Act 40 of 1994, to ensure that, before an election, the outgoing Joint Standing Committee on Intelligence is required to report to Parliament on as much as possible of the period preceding the election. It was noted that all Committees of Parliament are required to prepare a Legacy Report at the end of a five-year term of Parliament, which is handed over to the next Parliament for consideration, and follow through, mainly on the work of committees of the previous term of Parliament.

In February 2023, the Committee sought legal advice from its Legal Advisor on whether legislative changes were required to strengthen the JSCI's reporting obligations. The Committee was advised that this was already provided for in section 6(2) of the Act. Based on this, the JSCI resolved not to amend section 6(1) of the Act. This was included in the progress report of Parliament in June 2023, which indicated that:

> The JSCI has considered the recommendation of amending section 6(1) of the Oversight Act and resolved that there was no need to amend section 6(1) as section 6(2) already made provision for reporting. Joint rule 1(2)(l) read with joint rule 8(5) in Schedule B of the Rules of the JSCI provide for special reporting of the JSCI. It defines the "special report" as a report that is prepared

by the Committee at the request of Parliament, the President or the Minister responsible for each Service, or when the Committee deems it necessary, and tabled or submitted as provided for in section 6(2) of the Act. In terms of this defined special report, the Committee may report to Parliament, through the special report mechanism, at any given time as and when the Committee deems it necessary.

On 01 June 2023, the House Chairperson: Committees, Oversight and ICT, Hon CT Frolick, wrote to the Chairperson of the JSCI, Hon JJ Maake, indicating that the due date for the first quarterly report was 15 June 2023. The JSCI submitted quarterly reports as required. This was later done through submission of updates from the Office of the JSCI to Committee Section Report for consolidation and submission to Office of the House Chairperson.

4.12 Certificate of Exemption in terms of Section 46(3) of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002

It was reported in the previous AR that approval was required from the NA before the Certificate of Exemption was issued. On 19 May 2023, the Minister of Justice and Correctional Services, acting in terms of section 46 of RICA and in consultation with the Cabinet members responsible for communications, defence, state security and policing, tabled the Certificate of Exemption.

5. ACTIVITIES OF THE JSCI OUTSIDE THE REPORTING PERIOD UP TO MAY 2024

Only one meeting was held outside the reporting period up to the end of the Sixth Parliament in May 2024. On 16 April 2024, the JSCI considered outstanding minutes and reports as indicated in Annexure E. The other meetings held during this period were those of the Ad Hoc Committee on GILAB in the NCOP as already indicated.

6. FINDINGS OF THE JSCI

The following were findings for the reporting period:

6.1 Implementation of the High-Level Review Panel Recommendations

- 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 delayed by the late introduction of the Bill to Parliament. The Bill was only introduced on 17 November 2023.

6.2 Proposed Committee Bill (General Intelligence Laws Amendment Bill)

- The Committee found that the Committee Bill would be the fastest way to ensure the speedy implementation of the HLRP.
- Following the introduction of GILAB, an Ad Hoc Committee on GILAB was established in the NA, followed by that in the NCOP as indicated in this report.

6.3 Implementation of the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including organs of State

- The JSCI had been implementing recommendations of the State Capture Commission.
- The Committee had also been overseeing the implementation of the recommendations made on the SSA and SAPS-CI as indicated by various meetings held, see Annexure E.

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

- The services must implement the findings of the IGI. The JSCI of the Seventh Parliament to make follow-ups.

6.5 State Security Agency

6.5.1 *Annual Performance Plan and Budget for State Security Agency for 2023/2024*

- After being requested to resubmit its APP for 2023/2024, the SSA ensured that most targets were SMART.
- The APP and budget submitted by the SSA were compliant with national planning prescripts, MTSF priorities, the NDP, and the recommendations of the State Capture Commission.
- The JSCI's critical engagements in the previous year influenced the SSA's submissions, reflecting a commitment to oversight, accountability, and responsiveness to national and global security challenges.
- The Committee noted with concern the relocation of the OIC within the NC, raising issues about legislative compliance and potential functional conflicts.

6.5.2 *Audit Report on the Financial Statements of the State Security Agency for 2022/2023*

- Due to the sensitive nature of the SSA's business, certain areas could not be audited.
- Not all irregular expenditure was included in note 31 to the financial statements, leading to an understatement.
- The revaluation of land and buildings was not performed as per GRAP 17, leading to a misstatement was concerning.
- Financial statements were not prepared in accordance with the prescribed framework.
- Similar to the previous year, irregular expenditure was incurred.
- Significant compliance issues with key legislation were identified, including financial reporting framework non-compliance, and inadequate steps to prevent irregular expenditure.

6.5.3 *Annual Report of the State Security Agency*

- The SSA noted that the implementation of the remainder of the recommendations depended on the finalisation of GILAB. This was very concerning as the SSA during that reporting period did not table GILAB to

Parliament. The previous AR of the JSCI provided details with regard to Committee Bill/GILAB. It also detailed meetings held in this regard by the Committee after realising that the SSA was not tabling the Bill in Parliament. The continuous reference to the non-achievement on account of the finalisation of the GILAB in the AR was disingenuous. It must be noted that the SSA had 5 years to complete the legislative process and introduce the Bill. The failure to introduce the Bill in Parliament could only be attributed to the SSA as the first two Ministers during the Sixth Parliament failed to table the Bill. The failure to introduce GILAB was thoroughly ventilated with the SSA and the unintended effects of those delays discussed as shown in the various reports of the JSCI. GILAB was introduced in Parliament on 17 November 2023 during the 2023/2024 financial year, which was 6 months before the end of the Sixth Parliament. It usually takes more than six months for Parliament to process a Bill.

- The SSA demonstrated focused efforts in implementing recommendations from the HLRP through a specified plan monitored by top management. However, the finalisation of GILAB remained a critical dependency for the completion of certain recommendations.
- The Committee noted challenges in the quality and reliability of the performance management report, including material misstatements in audit reports. Issues were identified in output indicators and measurable targets, with reported information lacking valid portfolio evidence for some programmes.
- The performance of specific programmes, notably NC, raised concerns. Failures in achieving cybersecurity targets were particularly alarming, considering the evolving digital threats and potential implications for national security.
- Compliance with legislation and regulations within finance remained a challenge, leading to irregular expenditure, missed asset verifications, and irregularities in contracts and procurement processes.

6.6 South African Police Service-Crime Intelligence

6.6.1 *Annual Performance Plan and Budget for South African Police Service-Crime Intelligence for 2023/2024*

- The 2023/2024 APP showed improvement in drafting and compliance with national prescripts.
- The positive changes were attributed to the critical oversight provided by the Committee, ensuring SAPS-CI's alignment with all relevant national planning prescripts, including the MTSF priorities and the NDP.
- The APP considered important planning documents as well as the State Capture Commission recommendations.
- SAPS-CI was poorly regulated, with a lack of prioritisation of legislation and regulatory amendments in its APP.
- The absence of a regulatory framework governing intelligence activities within SAPS-CI raised serious concerns about legislative gaps, lack of regulations, and poor policy formulation.

6.6.2 *Audit Report on the Financial Statements of South African Police Service-Crime Intelligence for 2022/2023*

- The nature of the business of SAPS-CI and the related inherent risk resulted in a qualified qualification from the AGSA. This was a repeat finding.
- There were weak internal controls.
- There was inadequate audit evidence.
- Payment were made before goods were received.
- Quotations were made without a declaration on whether the suppliers were employed by the state or connected to any person employed by the state.
- Contracts were extended or modified without the approval of a properly delegated official.
- Effective and appropriate steps were not taken to prevent irregular expenditure

6.6.3 *Annual Report of South African Police Service-Crime Intelligence*

- The notable achievements in the 2022/2023 financial year were a result of proper planning and the implementation of effective mitigation and project management measures. The adherence to SMART principles in planning and the prudent management of public funds were emphasised as critical elements contributing to success.

- The appointment of a permanent Divisional Commissioner in the reporting year brought the much-needed stability to SAPS-CI. This leadership change was instrumental in implementing intelligence-led policing and the re-capacitation of SAPS-CI, evident in the development of a new organizational structure to enhance overall Divisional stability.
- The Committee identified a critical concern regarding the absence of drafted regulations to operationalise the mandate, duties, and powers of SAPS-CI as outlined in the National Strategic Intelligence Act 39 of 1994. This legislative gap was concerning due to the intrusive nature of SAPS-CI's techniques, necessitating regulations.
- Poorly regulated intelligence services pose a substantive risk to human rights and democratic rule of law. The absence of clear laws and robust oversight allows for potential abuse, underscoring the urgency for SAPS-CI to establish comprehensive regulations governing its operational guidelines, powers, and duties.

6.7 Defence Intelligence

6.7.1 *Annual Performance Plan and Budget for Defence Intelligence for 2023/2024*

- The SANDF, and DI in particular, were seriously underfunded while the responsibilities continued to grow.
- The reduction in budget severely impacted DI's ability to execute its mandate, affecting its capacity to provide accurate, timely, and relevant intelligence for decision-making.

6.7.2 *Audit Report on the Financial Statements of Defence Intelligence for 2022/2023*

- The nature of DI's business and associated inherent risks limited AGSA's ability to confirm assets used in sensitive projects.
- The AGSA could not express an opinion on the full extent of irregular expenditure since a full audit could not be conducted.
- There were deficiencies in the internal control environment, requiring strengthening for full legislative compliance.

- There was insufficient evidence of adequate steps for consequence management.
- There was a lack of disciplinary measures against officials incurring irregular expenditure.
- There were delays in investigations and lack of implementation of sanctions/recommendations for concluded cases.
- Tax matters were not confirmed for some awards.
- Quotations were accepted from suppliers without the required declarations.
- There was non-adherence to preferential procurement regulations.

6.7.3 *Annual Report of Defence Intelligence*

- The Minister of Defence did not submit the AR for DI in accordance with the PFMA.
- Various policies of DI on vetting, geospatial information management, intelligence collection, and responsibilities, processes and procedures that serve as the minimum standard for the establishment, management and conduct of counter intelligence and security activities in DOD were not regulations.
- There was a lack of regulations on vetting investigations; and responsibilities, processes and procedures that will serve the minimum standard for the establishment, management and conduct of counter intelligence and security activities in DOD.

6.8 Financial Intelligence Centre

- The FIC achieved all its targets.
- The FIC recorded several operational achievements.
- The greylisting of the country resulted in an increased workload for the FIC. The additional funding would allow the increase in the capacity of staff as reported in the previous AR.
- Several resignations occurred during the year under review.
- Additional allocation was received from the Minister of Finance.
- The FIC obtained an unqualified audit with no material findings.
- The FIC was losing staff to private businesses.

6.9 Designated Judge of Interception of Communications

- The amendment of RICA was crucial to ensure lawful interception of communications was crucial. The three years ended on 4 February 2024.
- There was a need for legislative review of all legislation dealing with interceptions to allow for all main communication methods.
- The Judge's term of office would end in August 2024.
- The office was insufficiently staffed and poorly located.
- The OIC equipment was outdated and unable to intercept applications such as WhatsApp, Telegram, or the Internet, which were the main communication methods.
- Unregistered SIM cards presented a challenge with the application process, as one of the requirements was for the SIM card to be registered before it could be intercepted.

6.10 Oversight Visit Umhlabauyalingana and Kosi Bay

- South African borders remained exploited by criminal syndicates due to the poor state of borderline infrastructure leading to porous borders.
- There was a lack of surveillance sensors for the security of the land, air and maritime domains. This resulted in weak border security, which exacerbated illegal migration and cross-border crimes.
- The most significant threat in the maritime domain was the illegal movement of people and goods and the exploitation of natural maritime resources.
- Intelligence services at POEs had an integrated and coordinated approach, which produced good intelligence.
- Intelligence services provided departments with recommendations regarding risks to national security, and those were not implemented.
- The Kosi Bay area was rife with undocumented crossings, school children and patients crossing on foot at various points.
- The efforts exerted by the deployed SANDF were not enough to independently neutralise the threat without a national integrated governmental approach coupled with effective and sufficient resources.
- DPWI was not servicing the infrastructure at some POEs.

- The demarcation of roles and responsibilities at POEs remained a challenge, particularly between the SAPS, DI and BMA.
- The lack of adequate fencing at the borderline posed a serious security risk. Not only were people using gates 6 and 8 without passport verification, but also the criminality that occur as a result of the porous borderline
- The lack of SARS customs equipment posed a risk at some POEs. There were inadequate container scanners at POEs.

7. GENERAL RECOMMENDATIONS

7.1 Implementation of the High-Level Review Panel Recommendations

It is recommended that the Seventh Parliament JSCI continue overseeing the implementation of the recommendations of the HLRP. At the end of the Sixth Parliament, there were still many recommendations not fully implemented.

7.2 General Intelligence Laws Amendment Bill

GILAB was one of the major recommendations of the HLRP which should have been introduced at the beginning of the Sixth Parliament. However, it was only introduced towards the end in November 2023. The Ad Hoc Committee on GILAB in the NCOP finalised the bill on 14 May 2024. On 16 May 2024, the NCOP passed GILAB without amendments marking it the end of the Parliamentary process. The Seventh Parliament JSCI to monitor the implementation once signed into law. The Legacy Report of the Sixth Parliament JSCI to be used to guide the Seventh Parliament JSCI with regard to the implementation once GILAB was signed into law. The new JSCI must consider the matters referred from the Sixth Parliament GILAB process.

7.3 Implementation of the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including organs of State

At the end of the term, many of the State Capture Commission recommendations were still being implemented. The JSCI to continue providing oversight to prevent the reoccurrence of the transgressions. It must be noted that, the JSCI of the Fifth Parliament was found to have failed in the performance of its duties. The continuation of the vigilance and momentum of the Sixth Parliament JSCI will be required. Quarterly reports to be provided.

7.4 The establishment of the Secret Services Evaluation Committee

The JSCI to consider amending the Secret Services Account Act, through GILAB to ensure that the Secret Services Evaluation Committee was established within 12 month of the passing of GILAB. This matter to be handed over to the Seventh Parliament JSCI to ensure that the report of the Evaluation Committee was submitted. The JSCI to consider engaging with the President on the matter since he or she is responsible for the appointment of the members of the Evaluation Committee.

7.5 Appointment of the Deputy Chairperson of the Joint Standing Committee on Intelligence

The Rules of the JSCI provides for the appointment of the Deputy Chairperson. However, the Act does not have such a provision. During the Fifth Parliament, there were months when the JSCI could not convene meetings in the absence of the appointed Chairperson in terms of the Act. Having a Deputy Chairperson will ensure that the Committee is able to convene in the absence of the Chairperson. The new JSCI to consider this while amending the Act. This matter was included during the GILAB process, but due to time, it was referred to the Seventh Parliament for consideration.

7.6 Alignment of the Joint Standing Committee on Intelligence Annual Report to other Annual Reports

During the previous terms, it emerged that the AR of the JSCI was not aligned to other annual reporting of the services. As a result, the reports were published late. The amendments must be made in the Act to allow the JSCI to publish its report after the submission of the ARs by the Services, the Designated Judge, and the FIC, and the Certificates of the IGI. This matter was included during the GILAB process, but was referred to the Seventh Parliament for consideration.

7.7 Bi-annual meetings between the Joint Standing Committee on Intelligence and the President on intelligence-related matters

Section 3(k) of the Act states that one of the functions of the JSCI is “to consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act”. During the Sixth

Parliament, the JSCI did not meet with the President on intelligence related matters. It was noted that there was no specific provision that indicates that such meetings must take place. The JSCI has noted that a provision was needed to enable such meetings. This matter was included during the GILAB process, but was referred to the Seventh Parliament for consideration.

7.8 Appointment of the Deputy Inspector-General of Intelligence

The Act only provides for the appointment of the IGI. History has shown that there was a need for the Deputy IGI. Before the appointment of the previous IGI, Dr Dintwe, there was a vacancy for almost two years. During that time, there was no IGI to perform the duties as indicated in section 7(7) of the Act. The JSCI resolved that the appointment of a Deputy IGI would ensure continuity. This matter was included during the GILAB process, but was referred to the Seventh Parliament for consideration.

7.9 Empowering the Joint Standing Committee on Intelligence to designate the Inspector-General of Intelligence to provide a specific oversight function

Section 7(6) of the Act states that “the Inspector-General shall be accountable to the Committee for the overall functioning of his or her office, 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 JSCI recognised that there was no specific section empowering the Committee to designate specific oversight functions to the IGI. This matter was included during the GILAB process, but was referred to the Seventh Parliament for consideration.

8. SPECIFIC RECOMMENDATIONS

8.1 State Security Agency

8.1.1 *Annual Performance Plan and Budget for State Security Agency for 2023/2024*

- The APP demonstrated a strategic effort to streamline activities with a noticeable decrease in targets, emphasizing a prioritization method for optimal resource utilisation. The SSA was commended for this achievement since this has been a serious challenge over the past few years.

- The JSCI requested a revision of the APP to address the improper relocation, and informed the SSA that the Committee would only engage with the revised submission. After a resubmission was made, the Committee was satisfied with the changes.
- On 16 May 2023, 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 NA for consideration.

8.1.2 *Audit Report on the Financial Statements of the State Security Agency for 2022/2023*

- The development of strategies to enhance transparency without compromising national security was needed to allow for a more comprehensive audit. Progress report to be given quarterly to the JSCI of the Seventh Parliament.
- The JSCI of the Seventh Parliament to ensure that the Evaluation Committee in terms of the Secret Services Account Act was established in order for its report to be tabled in the JSCI.
- There was a need to strengthen internal control systems to ensure accurate identification, recording, and disclosure of irregular expenditure.
- The SSA to conduct timely revaluations in accordance with accounting standards to ensure accurate carrying amounts.
- There was a need to strengthen evidence-gathering processes to ensure accuracy in reporting achievements and prevent material misstatements.
- The SSA to implement corrective measures to address identified compliance gaps, ensuring adherence to legislative requirements.
- The ARC to check for compliance in advance before the auditing period.
- The JSCI of the Seventh Parliament to continue monitoring the SSA with regard to addressing audit findings as most were recurring.
- The JSCI of the Seventh Parliament to request quarterly briefings from the ARC of the SSA on monitoring the implementation of audit findings.

8.1.3 *Annual Report of the State Security Agency*

- The SSA should expedite efforts to ensure that dependencies were completed on time to ensure the achievement of targets. In its AR, it noted that the completion of GILAB would ensure the achievement of the implementation of the recommendations of the HLRP. Going forward, the SSA must ensure the timeous completion and introduction to Parliament of legislation and regulations. The JSCI of the Seventh Parliament to continue monitoring the SSA with regard to targets with dependencies.

- The SSA must improve the quality and reliability of the performance management report by addressing material misstatements, ensuring measurable targets, and providing valid portfolio evidence. The SSA must engage the DPME for expert assistance.
- Recognising the critical importance of cybersecurity, the SSA must ensure a well-equipped personnel strength to counter evolving cyber threats. This is crucial for safeguarding the nation's critical assets.
- The SSA must address programme-specific concerns, especially in NC, by implementing corrective measures to achieve MTSF targets. This may involve reviewing operational strategies and enhancing collaboration with relevant stakeholders.
- The SSA to prioritise compliance with legislation and regulations within finance to address irregularities, prevent irregular expenditures, and ensure proper controls during procurement processes. The SSA must engage DPME for guidance on drafting measurable targets and indicators.
- The ARC of the SSA must assist in ensuring that audit findings were addressed.

8.2 South African Police Service-Crime Intelligence

8.2.1 *Annual Performance Plan and Budget for South African Police Service-Crime Intelligence for 2023/2024*

- SAPS-CI was commended for the improvements made in the 2023/2024 APP.
- SAPS-CI must continue improvement in drafting and compliance with national prescripts.
- SAPS-CI to be adequately regulated, especially considering the intrusive nature of its techniques.
- The Minister of Police to prioritise the drafting of regulations for full compliance with the law. The JSCI of the Seventh Parliament to focus on legislation for SAPS-CI and regulations.

8.2.2. *Audit Report on the Financial Statements of South African Police Service-Crime Intelligence for 2023/2024*

- The development of strategies to enhance transparency without compromising national security was needed to allow for a more comprehensive audit. Progress report to be given quarterly to the JSCI of the Seventh Parliament.
- There was a need to strengthen internal control systems to ensure accurate identification, recording, and disclosure of irregular expenditure.
- There was a need to implement measures to enhance accuracy in performance reporting, to ensure alignment with predetermined objectives. Progress report to be given quarterly to the JSCI of the Seventh Parliament.
- SAPS-CI to implement corrective actions to address compliance gaps, reinforcing adherence to legislative and regulatory requirements. Progress report to be given quarterly to the JSCI of the Seventh Parliament.
- The JSCI of the Seventh Parliament to continue monitoring SAPS-CI with regard to addressing audit findings as most were recurring.
- The JSCI of the Seventh Parliament to request quarterly briefings from the ARC of SAPS-CI on monitoring the implementation of audit findings.

8.2.3 *Annual Report of South African Police Service-Crime Intelligence*

- To address the recommendations of the AGSA, SAPS-CI must conduct a thorough review of all policies, ensuring alignment with current legislation and National Treasury regulations. Particular attention should be given to creating a policy on the allocation of operational vehicles and updating all policies, including SOPs.
- Recognising the importance of the Secret Services Account in financing covert operations, SAPS-CI must initiate urgent legislative amendments and controls for this account. Clear regulations were needed to ensure transparency, accountability, and adherence to legal and financial standards. Progress report to be given quarterly to the JSCI of the Seventh Parliament.
- In line with legislative requirements, SAPS-CI should expedite the drafting of comprehensive regulations that precisely define and regulate its operational techniques. This will provide a necessary legal framework for intelligence

activities, mitigating risks and ensuring accountability. Progress report to be given quarterly to the JSCI of the Seventh Parliament.

8.3 Defence Intelligence

8.3.1 *Annual Performance Plan and Budget for Defence Intelligence for 2023/2024*

- The JSCI resolved to have a joint meeting with the Portfolio Committee on Defence and Military Veterans to address the budgetary challenges faced by the SANDF and DI. The meeting took place on 17 May 2023.
- Following the joint meeting, a resolution was made to write to the President, notifying him of the dire situation and seeking intervention. The letter was sent on 17 May 2023.
- On 18 May 2023, the President responded to the letter, acknowledging the concerns raised by the Committees. The President stated that “Following many years of decline in the Defence Budget, we have started a budgetary process of reversing the decreased trend and hope to continue to do so”. The Seventh Parliament JSCI to continue monitoring the budget allocation and engaging with the President on adequate funding for the DOD.

8.3.2 *Audit Report on the Financial Statements of Defence Intelligence for 2022/2023*

- DI to develop strategies to enhance auditability in sensitive areas without compromising operational security, improving asset confirmation processes.
- Internal controls must be strengthened to address deficiencies to ensure compliance with legislation, and enhance transparency in expenditure reporting.
- DI must implement robust consequence management processes, conduct timely investigations, and ensure swift implementation of sanctions.
- DI must strengthen procurement controls, confirm tax matters for all awards, ensure compliance with declarations, and adhere to preferential procurement regulations. Progress report must be given quarterly to the JSCI of the Seventh Parliament.

8.3.3 *Annual Report of Defence Intelligence*

- The Seventh Parliament JSCI to ensure strict compliance with constitutional and legislative requirements for submitting annual reports to Parliament. The Minister of Defence must fulfil the responsibility for tabling DI's AR in Parliament. The JSCI to monitor the submission in the next term.
- It must be noted that Section 6 of NSIA stipulates the functions should be regulated and some of the afore mentioned functions were affected by the stipulations in mentioned section. As such the Minister responsible for DI should draft regulations to give effect to the vetting investigations; and responsibilities, processes and procedures that will serve the minimum standard for the establishment, management and conduct of counter intelligence and security activities in DOD.
- The various policies of DI must be aligned with the regulations, and those not regulated to be properly regulated. The JSCI of the Seventh Parliament to request DI to submit regulations within the first five months of the establishment of the Committee.

8.4 Financial Intelligence Centre

- The FIC must be commended for achieving all its targets.
- The FIC must be commended for operational achievements as indicated in its AR.
- More staff to be appointed for the FIC.
- The FIC must be commended for an unqualified audit with no material findings during the reporting period.

8.5 Designated Judge of Interception of Communications

- The JSCI liaised with the Portfolio Committee on Justice and Correctional Services on the amendment of RICA, since the three years ended on 4 February 2024. The amendment of RICA was passed by the NA on 14 November 2023 and the NCOP on 6 December 2023.
- The JSCI to consider the legislative review of all legislation dealing with interceptions to allow for all main communication methods. The Seventh JSCI

to make a follow-up with the Minister in the Presidency with regard to the Bill on the interception of communications to be introduced.

- The JSCI to engage with the services and the Minister of Justice and Correctional Services must sufficiently staff the office of the Designated Judge.
- The OIC equipment must be updated to intercept communications such as WhatsApp, Telegram, or the Internet. The JSCI must make follow-ups in the new term.
- The JSCI to engage with the relevant minister to deal with the issue of unregistered SIM cards which present a challenge with the application process, as one of the requirements was for the SIM card to be registered before it could be intercepted. The Sixth JSCI had noted this as a challenge and engaged the services. The matter to be carried through by the next JSCI.

8.6 Oversight Visit Umhlabauyalingana and Kosi Bay

- Relevant Ministers must be made aware of the issues relating to national security at POEs.
- There was a need to erect a stable and effective fence along the borderline to help curb illegal crossing and criminality.
- Government must develop an integrated approach to monitor Gates 6 and 8 and include the BMA at these gates.
- Mitigation between South Africa and Mozambique needed to be closely monitored through effective bilateral agreements.
- The JSCI must engage the Minister of Police about reinstating the bilateral agreement with Mozambique regarding the Salamanga bridge to assist in combating vehicle thefts.
- It was recommended that additional scanners be provided for the Durban and Richards Bay POEs.
- The JSCI to engage other affected Committees on matters of mutual interest.

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: October 2022 to October 2023

Chairperson: Mr JJ Maake MP

<u>Joint Standing Committee on Intelligence: Parliament</u>

By Justice B E Nkabinde

Designated Judge

Date: 01 November 2023

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A. Introduction

[1] This report is submitted in terms of section 3(a)(iii) of the Intelligence Services Oversight Act[1] (ISOA), read with the relevant provisions of the Regulation of Interception of Communication and Provision of Communication-Related Information Act[2] (RICA or Act).

[2] The report covers the period spanning October 2022 to October 2023. Following the extension of my tenure as an Interception Judge, I have executed my functions and hereby, as I am obliged enjoined by law to report to you, Chairperson and members of your Joint Standing Committee on Intelligence (Parliament) - in your constitutional oversight role on these important matters of national interest.

[3] As I previously reported to you and your Committee, Chairperson, the number of applications lodged in my Office has continued to decline. Supposedly, and this is also the view held by the OIC, that is attributable to the declaratory orders concerning the constitutionality of the RICA. Also, the impact of the Covid 19 Pandemic is still, somewhat, noticeable.

B. Overview of the constitutional and legal framework

[4] The overhaul of the pre-1994 interception legislation (the Interception and Monitoring Prohibition Act[3]) was heedful of the technological developments in the electronic communications. It brought about RICA. There can be no doubt that interception of communication in terms of the current legislation serves important government purpose.[4] This is explicit from the provisions of the RICA itself, in section 16 (5) when "a serious offence has been or is being or will probably be committed. **To that end, investigation and gathering of information concerning the actual or potential threat to public health or safety, national security or compelling national economic interest becomes crucial.** Also, the gathering of information concerning property that is or potentially an instrumentality of serious offence or constitutes or is potentially the proceed of unlawful activities, is vital.

[5] Interception of any communication is prohibited in section 2, "subject to this Act".[5] 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

[1] 40 of 1994.
[2] 70 of 2002.
[3] 127 of 1992.
[4] Section 16 makes this abundantly clear.
[5] 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."

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 specifying the grounds[6] 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.

[6] 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.

[7] Section 16(7)(a) of RICA, couched in peremptory terms, disallows notification to the subject of the interception direction. Certain provisions of RICA, for example sections 42, also prohibit disclosure of information obtained in the performance of duties in terms of that Act.

[8] All forms of interception and monitoring of information should be legally permissible. i.e. if there is interception direction (lasting for three (3) months unless duly amended by way of an extension on good cause shown. This is so because interception of communication is undoubtedly privacy-intrusive, by nature. The right to privacy, entrenched in section 14 of the Constitution,[7] embraces the right to be free from intrusions and interferences by the state and others in the 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.[8]

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[6] Set out in section 16 (5).

[7] 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;
(c) their possessions seized; or
(d) the privacy of their communications infringed."

[8] Section 36 of the Constitution provides:

"Limitation of rights

[9] The right to freedom of expression entrenched in section 16 of the Constitution[9] may, in certain circumstances, be implicated. Further rights which may be 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 34[10] and 35(3)[11] of the Constitution.

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.

[9] 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."

[10] 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."
[11] 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 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."

[10] State intrusions into individuals' privacy may occur in various ways. Here, we are concerned with the surveillance of individuals through interception of private communications as regulated under RICA.[12] This may take place, for example, under an interception direction,[13] with the consent of a party to communication,[14] or an indirect communication in connection with carrying on of business,[15] to prevent serious bodily harm,[16] for purposes of determining location in case of emergency[17] and if authorised by other Acts.[18]

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

[11] 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.

[12] As in the previous report, the main focal point here is to provide some insight, albeit succinctly, concerning the pronouncement on the constitutionality of RICA in the *Amabhunghane* matter. The judgment, as you will remember, reveals a deep and better understanding of the intrusive nature of that Act. If I may recap, understanding your role in curing the deficiencies specified in the judgment,[19] the order of the Constitutional Court in that matter reads as follows, in relevant parts:

> "...
>
> 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*;

[12] 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.
[13] Section 3 of RICA.
[14] Section 5 of RICA.
[15] Section 6 of RICA.
[16] Section 7 of RICA.
[17] Section 8 of RICA.
[18] Section 9 of RICA.
[19] The order of constitutional invalidity was suspended for three years to enable Parliament to cure the defects. The three (3) year period comes to an end by 3 February 2024 because the matter was decided on 4 February 2021.

(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 or 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 of 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 <u>without jeopardising the purpose of the surveillance</u>, 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.'

D. <u>Chart (selected relevant parts - considering the order in *Amabhunghane*)</u>

D. Chart (selected relevant parts - considering the order in *Amabhunghane)*

[13] Mindful of the significance of your legislative role particularly as you tackle the deficiencies in RICA in line with the judgment, I have prepared a chart (below) to provide a summary of what I consider to be relevant for our purpose, especially in relation to the status of the current legislation and the Court's pronouncement in *Amabhunghane.*

[14] Apart from the fact that the declaratory relief in *Amabhunghane* impacts directly on the chain of interception of communication, it also serves, in my view, 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 Court.

Chart

[A] RICA-Current position	**[B] *Amabhunghane* decision**	**[C] Proposed amendment bill**
1. **Appointment of the Judge** -Section 1 (definition section) **of RICA, (Act no 70 of 2002)**, defines the designated judge as any judge of the High Court discharged from active service under section 3(2) of the **Judge's Remuneration and Conditions of Employment Act 2001(Act 47 of 2001)**, or any retired judge, who is designated by the **Minister** to perform the function of the designated judge for the purpose of the Act. The judge's service is regulated in terms of section 7 of the above Act. -There is no provision regarding the appointment process of the judge in RICA -no term of office	• **The appointment to be included in the Act.** - Section 1 of RICA declared unconstitutional as it fails to provide sufficient safeguards to ensure the independence of the designated judge. - the court was concerned about the lack of structural, operational and independence of the designated judge regarding the process to appoint. - the court ordered the appointment to be done by the Minister in consultation with the Chief Justice, by notice in the Gazette. - the term of office to be provided for in the Act. (2 years, renewable.	• **Appointment of a Judge and additional judge(s)** - Section 15A of the Bill makes provision in subsection (1)(a)(b) - stating what is in the definition of RICA - In terms of section 15A (2)- the Minister must designate a judge as contemplated in subsection (1) in consultation with the Chief Justice, by a Gazette. - In terms of section 15A (3), A designated judge must perform all the functions conferred upon him or her by this Act, independently and without fear, favour or prejudice. - Section 15A (4) The designated judge has all the

		terms of sections 16, 17, 18, 19, 20, 21 or 22, within five days of a decision to issue an order, judgment, direction, entry warrant, deferral order, declaratory order, subpoena, notice or other process, refer the information or documentation considered in arriving at his or her decision together with a copy of the decision to the review judge. - Section 15A (6) The designated judge must, in respect of an application in terms of section 23— *(a)* immediately after issuing a direction or entry warrant under section 23(3), refer a copy of his or her decision to the review judge; or *(b)* immediately after issuing an oral direction or an oral entry warrant under section 23(7), refer his or her decision to the review judge and in terms of section 23(10)*(b)*, immediately refer a copy of the written confirmation of the decision to the review judge; and *(c)* immediately after a decision under section 23(11) to confirm, vary or cancel a direction, entry warrant, oral direction or oral entry warrant, refer the written application and any information or documentation

		(c) immediately after a decision under section 23(11) to confirm, vary or cancel a direction, entry warrant, oral direction or oral entry warrant, refer the written application and any information or documentation in terms of section 23(4)*(b)* together with a copy of the decision to the review judge. - Section 15A (7) Any decision made by the designated judge may be executed immediately upon receipt thereof by the applicant, pending the review thereof by the review judge in terms of section 15C (1)."

2. **<u>Review Judge</u>** • There is no provision for review of a designated judge's direction/order OR appointment of a **Review Judge** neither does RICA postulate writing of judgment by a designated judge.	• The Court raises a number of concerns including the Ministerial power to appoint in the absence of a substantive provision in the Act which may lead to reasonable perception of lack of independence. However, it remarked that this is a matter Parliament may address with relative ease. • The further matter concerns the issuance of directions by one the judge whose decision is not reviewed. However, the said that there was no reason for **automatic review for the directions issued by the judge** since they don't know how **many directions** are issued by the judge and the **resources** which will be needed for the appointment of other judges to conduct review.	**<u>Section 15B – establishes a review judge</u>** <u>- **Section 15B.** (1) Any judge of a High Court— *(a)* discharged from active service under section 3(2) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001); or</u> <u>*(b)* who is retired, may, subject to subsection (c), be designated as a review judge for purposes of this Act.</u> (2) <u>The Minister must designate a judge as contemplated in subsection (1) in consultation with the Chief Justice, by notice in the *Gazette*.</u> (3) <u>A review judge must perform all the functions conferred upon him or her by this Act, independently and without fear, favour or prejudice."</u> **<u>Section 15 C – Powers and functions of the review Judge</u>** <u>**Section 15C**(1)- The review judge must consider and either confirm, vary or set aside any decision made by the designated judge in terms of this Act and in respect of an application in terms of section 16, 17, 18, 19, 20, 21 or 22, do so within five days of receipt of the information or documentation considered</u>

		<u>by the designated judge and the copy of the decision of the designated judge.</u> (2)<u> The review judge must consider and either confirm, vary or set aside any decision made by the designated judge in terms of this Act and in respect of an application in terms of section 23, do so immediately or as soon as practicable upon receipt of a decision by the designated judge in terms of section 15A(6).</u> (3)<u> Any decision contemplated in subsection (1) must be served</u> or <u>delivered in the manner provided for in this Act or as directed by the review judge to the designated judge, who must inform the applicant of the decision of the review judge.</u> (4)<u> Any decision by the review judge must be executed immediately upon receipt thereof by the applicant</u>. (5) <u>The review judge must keep record of</u>— *(a)*<u> the exercise of any power; and</u> *(b)* <u>the performance of any function</u>.''

3. <u>Term of office</u> • RICA is silent on this. As it happens, the Minister extends the terms when a request I made and a Judge is available.	• The Court ordered that the designate judge must be appointed for a non-renewable period of 5 years. • It addressed the issue of automatic review and left the summary nature and the effectiveness of the review process to Parliament. • In its view, LEAs know that most South Africans cannot challenge their surveillance. That, it said, is an incentive to continued abuse which is a shocking reality.	<u>**Section 15 D Term of the designated judge and the review judge**</u> (1) <u>The tenure of a designated and review judge is for a non-renewable period not exceeding seven years.</u> (2) <u>The designation of a judge contemplated in sections 15A and 15B comes to an end upon the</u> — *(a)* <u>completion of the period contemplated in subsection (1);</u> *(b)* <u>acceptance by the Minister, in consultation with the Chief Justice, of a request to resign; or</u> *(c)* <u>death of the judge.''.</u>

4.Notice **Section 16 (7)** *(a)* an application must be considered and an interception direction issued without any notice to the person or customer to whom the application applies and without hearing such person or customer.	• The Court's concern appears to be the *ex parte* nature of the application and issuance of the directions - without the party under surveillance knowing and being given audience to hear their side of the matter – in violation of the Constitution. • The court suggested the public advocate to safeguard the interest of the targets as a solution *for ex parte* applications, • The court ordered that RICA is unconstitutional as it fails to put sufficient safeguards for the application *ex parte*.	**Section 16** (7)*(a)*an application must be considered and an interception direction issued without any notice to the person or customer to whom the application applies and without hearing such person or customer**[.]**: Provided that a review panel may review, amend, vary or set aside any order, judgment, direction, entry warrant, deferral order, declaratory order, oral direction, oral entry warrant, subpoena, notice or other process issued or made by the designated judge as contemplated in section **15D(3)***(d)*of this Act: Provided further that the person who was the subject of a direction must be informed thereof as provided for in terms of section 25A of this Act.".

5.Protection for Lawyers and Journalists • There is no such protection to Lawyers and Journalists under RICA.	**Section 23A was inserted/read-in to give protection to lawyers and journalists** The Court's reasons for isolating Lawyers and journalists include the fact that the confidentiality of lawyer-client communication (the legal privilege under the common law) and journalists' sources is particularly significant in our constitutional dispensation (when regard is had to the possible intrusion into privacy of individuals and its impact on other rights, e.g. the right to freedom of expression that includes freedom of the press and other media; freedom to receive or impart information or ideas and academic freedom (s16(1) of the Constitution); Access to courts: the right to have any dispute resolved by application of the law decided in a fair public hearing before a court or another independent and impartial tribunal or forum (s 34 of the Constitution) and the section 35 rights.	**Section 23A. (1)** Where the person in respect of whom a direction, extension of a direction or entry warrant is sought in terms of sections 16, 17, 18, 19, 20, 21, 22 or 23, whichever is applicable, is a journalist or practising lawyer, the application 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 contemplated 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.

6. Post-surveillance notification • There is no post-surveillance notification to the subjects of surveillance under RICA • In fact, sections 42(1) and 51 prohibit and criminalise disclosure of the issuance of a direction.	• The Court's concern is that interception directions under RICA are sought, granted and implemented in complete secrecy. • The lack of notification, the Court considered, incentivises or facilitates the abuse. • Having compared and borrowed from foreign jurisprudence including the USA, Canada, Denmark and Germany, the Court found that post-surveillance notification is necessary for those who may desire to seek legal redress for the violation of their rights. The notification, the Court held, would eradicate the sense of impunity that is extant. It held that notification after the termination of surveillance should be the default position (which in the USA and Canada is to give 90 days notice after the surveillance, if it is safe or (as is the position in Germany and Denmark) if the notification does not undermine the purpose of the investigation or (in terms of the jurisprudence of the European Court of Human Rights) does not jeopardise the purpose of the surveillance after its termination.	**Post-surveillance notification** **25A.(1)** Within 90 days of the date of expiry of a direction or extension thereof issued in terms of section 7, 8, 16, 17, 18, 19, 20, 21 or 23, whichever is applicable, the applicant that obtained the direction or, if not available, 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 a High Court, Regional Court Magistrate or Magistrate that the person has been so notified. (2) If the notification contemplated in subsection (1) *(a)* cannot be given without jeopardising the purpose of the surveillance, the designated judge, Judge of a 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 must not exceed 90 days at a time or two years in aggregate or *(b)* has the potential to impact negatively on national security, the designated judge may, upon application by a law enforcement officer, direct that the giving of notification be withheld for such period as may be determined by the designated judge."

E. Statistics (as compiled by the Director: Interception Office)

Crime Intelligence Division of the South African Police Services (SAPS)

[15] A total number of 146 applications were received from (SAPS). These comprise of:

92: New applications.

24: Re-applications after the period of the previously issued direction lapses or when (after the lapsing of the direction some of the targets are inactive. circumstances giving rise to a direction cease to exist therefore necessitating extensions and/or amendments because of additions and cancellations.

31: Amendments: when, during the subsistence of a direction, some of the targets cease to be active thus necessitating amendment for cancellation of those targets and/or when new target are identified during such investigative period thus necessitating addition of new targets and extensions.

[16] The above-mentioned applications are spread across provinces as follows:

- Gauteng-52 applications.
- Interprovincial-34 applications.
- Eastern Cape-19 applications
- Western Cape-16 applications
- Limpopo-9 applications
- KZN-6 applications.
- Mpumalanga-5 applications.
- Northern Cape-2 applications.
- Free State-1 application.
- North West-2 application.

[17] Of the said one hundred and forty-six (146) applications received from SAPS, a total of one hundred and twenty-three (123) 84.24% relates to crimes threatening national security and national economic interest. Of this (123), Gauteng leads with 45 applications at 36,5%; Interprovincial-33 applications that involve collaboration of suspects across provinces stands at 26,4%: Western Cape 13(10.5%), Eastern Cape 13(10,5%), Limpopo 8(6.5%). KZN 6(4.87%), Mpumalanga 3(2.43%), North West 2(1.6%), Northern Cape 2(1.6%) and Free State 1(0.008%).

[18] The remaining 23(15.75%) applications is spread among other crimes. These twenty-three (23) are spread as follows: Gauteng 7(30.43%); Eastern Cape 6(26,09%); Western Cape 3(13.04%); Mpumalanga 3(13.04%); Northern Cape 2(8.70%); Limpopo 1(4.35%) and lastly Interprovincial 1 (4.35%).

State Security Agency (SSA)

[19] A total of seventeen (17) applications were received from SSA. These comprises of:

- 8: New applications.
- 5: Re-applications.
- 4: Amendments / Entry Warrants

F. Reports

[20] The LEAs involved in the chain of interception of communication include Crime Intelligence (SAPS), SSA, SANDF and FIC. They are enjoined to report to the Interception Judge on the effectiveness of the directions issued following applications by them. The reporting, below, by OIC on the effectiveness of that Office and its implementation of the authorised directions is in terms of section 24 of the RICA read with section 3 of the Intelligence Oversight Act[20] and so is the reporting by the SAPS and SSA.

OIC

[21] The insightful input by the Director of the OIC involved in the chain of interception of communication, for which I am thankful, has been considered in the preparation of this report. The report deals with compliance with applicable laws and processes, statistics for the period 01 September 2022 to 30 September 2023 regarding the processed directions, the effectiveness of the OIC and challenges.

[22] As will be remembered, the OIC previous reported on the measures put in place in the form of Standard Operating Procedures (SOP) to be followed by all employees when dealing with interception directions. Mention was made, *inter alia,* of the security measures on the interception data. In this report, the OIC states that the SOP is aimed at providing procedures that ensures

[20] 127 of 1994.

operational effectiveness, provide guidelines to technical members on the maintenance procedure of the Monitoring Centre (MC) and ensuring compliance with RICA.

[23] The report provides data analysis which shows a decline in the number of directions received. Mention is made that the mode of communication has changed as targets mostly communicate via internet protocols in respect of which it has no capacity. The report also refers to requests for interception Products for Court purposes and effectiveness of the monitoring centre the OIC in the past few years. The OIC is of the view that the SSA's directions has slightly increased seemingly due to the Court decision in *Amabhunghane* compelling post-surveillance notification.

[24] Correctly, the OIC mentions that the SAPS has been granted an exemption with respect to the listed equipment which it will itself use for the interception of communication. However, the OIC mentions that the usage of such equipment by the SAPS has not been noticed at the Centre. The OIC anticipates that the number of directions during the festive period might escalate.

SAPS

[25] The informative report by the Divisional Commissioner: Crime Intelligence, dated 26 October 2023, sheds light on the effectiveness of the monitoring process following the issuance of directions. As evidenced by the report, the prevalent serious crimes mainly to matters of national security and economic interests, corruption and life threatening crimes. As to challenges, the Commissioner reports that the outdated technology at the OIC led to the loss of information when the Centre's machines were dysfunctional. This may explain why the exemption to acquire listed equipment was granted to SAPS. The Commissioner states that the inability by the OIC to intercept WhatsApp communication, emails, etc. remains a challenge.

SSA

[26] The SSA belatedly filed the requested report for the current year, dated 30 October 2023. The report deals, among other things, with challenges encountered by the agency in implementing the authorised directions and the effectiveness thereof.

G. Comments/ Concluding remarks

[27] Analysis of the statistics for the reporting period has, in comparison to the previous years, declined c/f the 622 applications for the period ending 2022 spread among serious crimes threatening national security, national economic interests, life and Corruption. Although the number of applications has decreased, most of these crimes remain prevalent.

[28] The review of RICA in compliance with the Court decision in *Amabhungahane* is, commendably, underway. The comprehensive judgment in *Amabhungahane* reveals several deficiencies in the RICA. That, coupled with the limitations of the OIC structures and its outdated machinery and other considerations mentioned in the previous reports, seem to necessitate an overhaul of the surveillance legislation, perhaps somewhat comparably to developments in comparative foreign jurisdictions.

[29] On matters of administration, the support staff remain the same, as previously reported. Because of the location of the Interception Office, the issue of security of all personnel in my office remains worrisome. 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 their contribution in the preparation of this report).

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

1. I have audited the financial statements of the State Security Agency set out on pages xx to xx, which comprise the statement of financial position as at 31 March 2023, 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 effect of the matters described in the basis of qualified opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the State Security Agency as at 31 March 2023, and its financial performance and cash flows for the year then ended in accordance with the Standards of General Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act, 199(Act No 1 of 1999) (PMFA).

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 relating to the performance of the function and the duty of the intelligence services as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002). The level of assurance 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.

Irregular expenditure

4. Not all irregular expenditure was included in note 31 to the financial statements, as required by section 40(3)(i) of the PFMA. Expenditure incurred in contravention of supply chain management requirements, was due to the agency not having adequate internal control systems to identify, record and appropriately disclose the instances of irregular expenditure relating to special operations in the financial statements. Consequently, I was unable to determine the full extent of the understatement of irregular expenditure, stated at [redacted] in note 31 to the financial statements, as it was impracticable to do so.

Property and equipment

5. The revaluation of the land and buildings was not performed by the Agency after a specific period at reporting date in accordance with GRAP 17, Property, plant and equipment. As a result, land and buildings with a carrying amount of amount of [redacted] is disclosed in note 18 is misstated. I was unable to determine the impact on the net carrying amount of land and buildings assets as it was impracticable to do so.

Context for 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 responsibilities of the auditor-general for the audit of the financial statements section of my report.

7. I am independent of the State Security Agency 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 agency

10. As disclosed in note 31 to the financial statements, the agency is a defendant in a number of claims instituted against it. The ultimate outcome of these matters cannot currently be determined and no provisions for any liabilities that may result was made in the financial statements.

Restatement of corresponding figures

11. As disclosed in note 27 of the annual financial statements, the corresponding figures for 31 March 2022, were restated as a result of an error in the financial statement of the agency at, and for the year ended 31 March 2023.

Unaudited supplementary schedules

12. 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 this schedule and accordingly, I do not express an opinion on it.

Other matter

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

National Treasury Instruction Note No. 4 of 2022-23: PFMA Compliance and Reporting Framework

14. On 23 December 2022 National Treasury issued Instruction Note No. 4: PFMA Compliance and Reporting Framework of 2022-23 in terms of section 76(1)(b), (e) and (f), 2(e) and (4)(a) and (c) of the PFMA, which came into effect on 3 January 2023. The PFMA Compliance and Reporting Framework also addresses the disclosure of unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure. Among the effects of this framework is that irregular and fruitless and wasteful expenditure incurred in previous financial years and not addressed is no longer disclosed in the disclosure notes of the annual financial statements, only the current year and prior year figures are disclosed in note 31 to the financial statements. The movements in respect of irregular expenditure and fruitless and wasteful expenditure are no longer disclosed in the notes to the annual financial statements of State Security Agency. The disclosure of these movements (e.g. condoned, recoverable, removed, written off, under assessment, under determination and under investigation) are now required to be included as part of other information in the annual report of the auditees.

15. I do not express an opinion on the disclosure of irregular expenditure and fruitless and wasteful expenditure in the annual report.

Responsibilities of the accounting officer for the financial statements

16. 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.

17. In preparing the financial statements, the accounting officer is responsible for assessing the State Security Agency'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 State Security Agency or to cease operations, or has no realistic alternative but to do so.

Responsibilities of the auditor-general for the audit of the financial statements

18. 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.

19. 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

20. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I must audit and report on the usefulness and reliability of the reported performance against predetermined objectives for selected programmes presented in the annual performance report. The accounting officer is responsible for the preparation of the annual performance report.

21. I selected the following programmes presented in the annual performance report for the year ended 31 March 2023 for auditing. I selected programmes that measures the State Security Agency's performance on its primary mandated functions and that are of significant national, community or public interest.

Programme	Page numbers	Purpose
Domestic branch	XX	[redacted]
Foreign branch	XX	

22. I evaluated the reported performance information for the selected programmes against the criteria developed from the performance management and reporting framework, as defined in the general notice. When an annual performance report is prepared using these criteria, it provides useful and reliable information and insights to users on the State Security Agency's planning and delivery on its mandate and objectives.

23. I performed procedures to test whether:

- the indicators used for planning and reporting on performance can be linked directly to the State Security Agency's mandate and the achievement of its planned objectives
- the indicators are well defined and verifiable to ensure that they are easy to understand and apply consistently and that I can confirm the methods and processes to be used for measuring achievements
- the targets can be linked directly to the achievement of the indicators and are specific, time bound and measurable to ensure that it is easy to understand what should be delivered and by when, the required level of performance as well as how performance will be evaluated

- the indicators and targets reported on in the annual performance report are the same as what was committed to in the approved initial or revised planning documents
- the reported performance information is presented in the annual performance report in the prescribed manner
- there are adequate supporting evidence for the achievements reported and for the reasons provided for any over- or underachievement of targets.

24. I performed the procedures for the purpose of reporting material findings only; and not to express an assurance opinion.

25. The material findings on the performance information of the selected programme are as follows:

Domestic Branch

[redacted]

26. [redacted] support this achievement. I could not determine the actual achievement, but I estimated it to be materially less than reported. Consequently, it is likely that the achievement against the target was lower than reported.

[redacted]

27. I could not determine if the predetermined nature and required level of performance and method of calculation to be used when measuring the achievement of the various sub-targets [redacted]

Target	Sub Target	Actual achievement
[redacted]		

Target	Sub Target	Actual achievement
[redacted]		

28. Adequate supporting evidence was not provided for some sub-targets, where it was, I identified material differences between the actual and reported achievements.

Target	Sub-target	Target value	Actual achievement
[redacted]			

Target	Sub-target	Target value	Actual achievement
[redacted]			

Other matters

29. I draw attention to the matters below.

Achievement of planned targets

30. The annual performance report includes information on reported achievements against planned targets and provides explanations for over- and under achievements. This information should be considered in the context of the material findings on the reported performance information.

Material misstatements

31. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of Domestic Branch programme. Management did not correct all of the misstatements and I reported material findings in this regard.

Report on compliance with legislation

32. In accordance with the PAA and the general notice issued in terms thereof, I must audit and report on compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting officer is responsible for the State Security Agency's compliance with legislation.

33. I performed procedures to test compliance with selected requirements in key legislation in accordance with the findings engagement methodology of the Auditor-General of South Africa (AGSA). This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

34. Through an established AGSA process, I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the State Security Agency, clear to allow consistent measurement and evaluation, while also sufficiently detailed and readily available to report in an understandable manner. The selected legislative requirements are included in the annexure to this auditor's report.

35. The material findings on compliance with the selected legislative requirements, presented per compliance theme, are as follows:

Annual financial statements

36. 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.

37. Material misstatements identified by the auditors in the submitted financial statements were not adequately corrected and the supporting records could not be provided subsequently, which resulted in the financial statements receiving a qualified opinion.

Expenditure management

38. 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 [redacted]n note 31 of the financial statements does not reflect the full extent of the irregular expenditure incurred. The majority of the irregular expenditure was caused by non-compliance with SCM regulations.

39. Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to [redacted]as disclosed in note 31 to the annual financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1.

Procurement and contract management

40. Some of the bid documentation/invitation to tender for procurement of commodities designated for local content and production, did not stipulate the minimum threshold for local production and content as required by the 2017 Procurement Regulation 8(2).

Other information in the annual report

41. The accounting officer is responsible for the other information included in the annual report. The other information referred to 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 on in this auditor's report.

42. My opinion on the financial statements, the report on the audit of the annual performance report and the report on compliance with legislation, do not cover the other information included in the annual report and I do not express an audit opinion or any form of assurance conclusion on it.

43. My responsibility is to read this other information and, in doing so, consider whether it 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.

44. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, 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

45. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with applicable legislation; however, my objective was not to express any form of assurance on it.

46. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion and, the material findings on the annual performance report and the material findings on compliance with legislation included in this report.

47. The agency does not have a process that consistently ensures compliance with revised framework for strategic plans and annual performance plans, as a result not all output indicators/targets are measurable. Furthermore, the agency doesn't not have a comprehensive technical description indicator.

48. Management did not adequately monitor compliance with laws and regulations relating financial and performance reporting.

49. There were inadequate review processes which resulted in material misstatements in the annual financial statements. In addition, key requirements in asset management policy requirements are not monitored and adhered to.

Annexure to the auditor's report

The annexure includes the following:

- the auditor-general's responsibility for the audit
- the selected legislative requirements for compliance testing.

Auditor-general's responsibility for the audit

Professional judgement and professional scepticism

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 State Security Agency's compliance with selected requirements in key legislation.

Financial statements

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 State Security Agency's internal control
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made
- conclude on the appropriateness of the 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 State Security Agency 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 State Security Agency 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

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.

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.

Compliance with legislation – selected legislative requirements

The selected legislative requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act No.1 of 1999 (PFMA)	Section 1 Section 38(1)(a)(iv); 38(1)(b); PFMA 38(1)(c); 38(1)(c)(ii); 38(1)(d); 38(1)(h)(iii); Section 39(1)(a); 39(2)(a); Section 40(1)(a); 40(1)(b); 40(1)(c)(i) Section 43(4); 44; 44 (1) and (2) ; 45(b); Section 50(3); 50(3)(a)
Treasury Regulations for departments, trading entities, constitutional institutions and public entities (TR)	Treasury Regulation 4.1.1; 4.1.3 Treasury Regulation 5.1.1; 5.2.1; 5.2.3(a); 5.2.3(d); 5.3.1 Treasury Regulation 6.3.1(a); 6.3.1(b); 6.3.1(c'); 6.3.1(d); 6.4.1(b) Treasury Regulation 7.2.1 Treasury Regulation 8.1.1; 8.2.1; 8.2.2; 8.2.3; 8.4.1 Treasury Regulation 9.1.1; 9.1.4 Treasury Regulation 10.1.1(a); 10.1.2 Treasury Regulation 11.4.1; 11.4.2; 11.5.1 Treasury Regulation 12.5.1 Treasury Regulation 15.10.1.2(c') Treasury Regulation 16A3.1 ; 16A 3.2; 16A 3.2(a); 16A 6.1; 16A6.2(a) ,(b) & (e) ; 16A 6.3(a); 16A 6.3(a)(i);16A 6.3(b); 16A 6.3(c);16A6.3(d) ; 16A 6.3(e); 16A 6.4; 16A 6.5; 16A 6.6; 16A7.1; 16A.7.3; 16A.7.6; 16A.7.7;TR 16A8.2 (1) and (2); 16A 8.3 16A8.3 (d); 16A 8.4; 16A 9; 16A 9.1; 16A9.1(b)(ii);16A9.1 (c); 16A 9.1(d); 16A 9.1(e); 116A9.2; 16A9.2(a)(ii) &(iii); 16A9.1(f). Treasury Regulation 17.1.1 Treasury Regulation 18.2 Treasury Regulation 19.8.4
Prevention and Combating of Corrupt Activities Act No.12 of 2004 (PRECCA)	Section 29 Section 34(1)
PPPFA	Section 1(i); 2.1(a); 2.1(b); 2.1(f)
PPR 2017	Paragraph 4.1; 4.2 Paragraph 5.1; 5.3; 5.6; 5.7 Paragraph 6.1; 6.2; 6.3; 6.5; 6.6; 6.8 Paragraph 7.1; 7.2; 7.3; 7.5; 7.6; 7.8 Paragraph 8.2; 8.5 Paragraph 9.1; 9.2 Paragraph 10.1; 10.2 Paragraph 11.1; 11.2 Paragraph 12.1 and 12.2
SITA ACT	Section 7(3) Section 7(6)(b) Section 20(1)(a)(I)
SITA regulations	Regulation 8.1.1 (b); 8.1.4; 8.1.7 Regulation 9.6; 9.4

Legislation	Sections or regulations
	Regulation 12.3 Regulation 13.1 (a) Regulation 14.1; 14.2
PFMA SCM Instruction no. 09 of 2022/2023	Paragraph 3.1; 3.3 (b); 3.3 (c); 3.3 (e); 3.6
National Treasury Instruction No.1 of 2015/16	Paragraph 3.1; 4.1; 4.2
NT SCM Instruction Note 03 2021/22	Paragraph 4.1; 4.2 (b); 4.3; 4.4; 4.4(a); 4.4(c) -(d); 4.6 Paragraph 5.4 Paragraph 7.2; 7.6
NT SCM Instruction 4A of 2016/17	Paragraph 6
NT SCM Instruction Note 03 2019/20	Par 5.5.1(vi); Paragraph 5.5.1(x);
NT SCM Instruction Note 11 2020/21	Paragraph 3.1; 3.4 (a) and (b); 3.9; 6.1;6.2;6.7
NT SCM Instruction note 2 of 2021/22	Paragraph 3.2.1; 3.2.2; 3.2.4(a) and (b) ; 3.3.1; 3.2.2 Paragraph 4.1
PFMA SCM Instruction 04 of 2022/23	Paragraph 4(1); 4(2); 4(4)
Practice Note 5 of 2009/10	Paragraph 3.3
PFMA SCM instruction 08 of 2022/23	Paragraph 3.2 Paragraph 4.3.2 and 4.3.3
NT instruction note 4 of 2015/16	Paragraph 3.4
NT instruction 3 of 2019/20 - Annexure A	Section 5.5.1 (iv) and (x)
Second amendment of NTI 05 of 2020/21	Paragraph 4.8; 4.9 ; 5.1 ; 5.3
Erratum NTI 5 of 202/21	Paragraph 1
Erratum NTI 5 of 202/21	Paragraph 2
Practice note 7 of 2009/10	Paragraph 4.1.2
Practice note 11 of 2008/9	Paragraph 3.1 Paragraph 3.1 (b)
NT instruction note 1 of 2021/22	Paragraph 4.1

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 2023, 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 2023, and its financial performance and cash flows for the year then ended in accordance with the Modified Cash Standards (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 Service Account accounts for sensitive and non-sensitive project expenditure incurred in connection with the performance of functions 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 operating and capital expenditure and tangible assets included in notes 4, 7 and 24 to the financial statements is lower than in the case of other audits due to the significant inherent risks relating to the sensitivity of the environment in which the expenditure is incurred and the manner in which the assets are recorded.

Irregular expenditure

4. During 2022, irregular expenditure was not accounted for as required by section 40(3)(i) of the PFMA act. Expenditure that did not meet the definition of irregular expenditure in accordance with PFMA act, were recognized in the irregular expenditure note. Consequently, the corresponding figure of irregular expenditure disclosed in note 20 to the financial statements was [redacted] My opinion on the current year financial statements is modified because of the possible effect of this matter on the comparability of the irregular expenditure for the current year.

Context for opinion

5. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the responsibilities of the auditor-general for the audit of the financial statements section of my report.

6. 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.

7. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Emphasis of matter

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

Restatement of corresponding figures

9. As disclosed in note 27 to the financial statements, the corresponding figures for 31 March 2022 were restated as a result of an error in the financial statements of the department at, and for the year ended, 31 March 2023.

Other matters

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

National Treasury Instruction Note No. 4 of 2022-23: PFMA Compliance and Reporting Framework

11. On 23 December 2022 National Treasury issued Instruction Note No. 4: PFMA Compliance and Reporting Framework of 2022-23 in terms of section 76(1)(b), (e) and (f), 2(e) and (4)(a) and (c) of the PFMA, which came into effect on 3 January 2023. The PFMA Compliance and Reporting Framework also addresses the disclosure of unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure. Among the effects of this framework is that irregular and fruitless and wasteful expenditure incurred in previous financial years and not addressed is no longer disclosed in the disclosure notes of the annual financial statements, only the current year and prior year figures are disclosed in note 20 to the financial statements. The movements in respect of irregular expenditure and fruitless and wasteful expenditure are no longer disclosed in the notes to the annual financial statements of South African Police Service – Crime Intelligence: Secret Services Account. The disclosure of these movements (e.g. condoned, recoverable, removed, written off, under assessment, under determination and under investigation) are now required to be included as part of other information in the annual report of the auditees.

12. I do not express an opinion on the disclosure of irregular expenditure and fruitless and wasteful expenditure in the annual report.

Responsibilities of the accounting officer for the financial statements

13. 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.

14. 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.

Responsibilities of the auditor-general for the audit of the financial statements

15. 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.

16. 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

17. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I must audit and report on the usefulness and reliability of the reported performance against predetermined objectives for selected programme presented in the annual performance report. The accounting officer is responsible for the preparation of the annual performance report.

18. I selected the following programme presented in the annual performance report for the year ended 31 March 2023 for auditing. I selected a programme that measure the department's performance on its primary mandated functions and that are of significant national, community or public interest.

Programme	Page numbers	Purpose
Secret Service of the SAPS (Crime Intelligence)	XX	[redacted]

19. I evaluated the reported performance information for the selected programme against the criteria developed from the performance management and reporting framework, as defined in the general notice. When an annual performance report is prepared using these criteria, it provides useful and reliable information and insights to users on the department's planning and delivery on its mandate and objectives.

20. I performed procedures to test whether:

- the indicators used for planning and reporting on performance can be linked directly to the department's mandate and the achievement of its planned objectives.
- the indicators are well defined and verifiable to ensure that they are easy to understand and apply consistently and that I can confirm the methods and processes to be used for measuring achievements.
- the targets can be linked directly to the achievement of the indicators and are specific, time bound and measurable to ensure that it is easy to understand what should be delivered and by when, the required level of performance as well as how performance will be evaluated.
- the indicators and targets reported on in the annual performance report are the same as what was committed to in the approved initial or revised planning documents.
- the reported performance information is presented in the annual performance report in the prescribed manner.
- there are adequate supporting evidence for the achievements reported and for the reasons provided for any over- or underachievement of targets.

21. I performed the procedures for the purpose of reporting material findings only; and not to express an assurance opinion.

22. The material findings on the performance information of the selected programme are as follows:

Secret Service of the SAPS (Crime Intelligence)

[redacted]

23. An achievement of [redacted] was reported against a target of [redacted] However, the audit evidence did not support this achievement. I could not determine the actual achievement, but I estimated it to be materially less than reported. Consequently, it is likely that the achievement against the target was lower than reported.

Other matters

24. I draw attention to the matters below.

Achievement of planned targets

25. The annual performance report includes information on reported achievements against planned targets and provides explanations for over- and underachievement's. This information should be considered in the context of the material findings on the reported performance information.

Material misstatements

26. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of Secret Service of the SAPS. Management did not correct the misstatement and I reported a material finding in this regard.

Report on compliance with legislation

27. In accordance with the PAA and the general notice issued in terms thereof, I must audit and report on compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting officer is responsible for the department's compliance with legislation.

28. I performed procedures to test compliance with selected requirements in key legislation in accordance with the findings engagement methodology of the Auditor-General of South Africa (AGSA). This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

29. Through an established AGSA process, I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the department, clear to allow consistent measurement and evaluation, while also sufficiently detailed and readily available to report in an understandable manner. The selected legislative requirements are included in the annexure to this auditor's report.

30. The material findings on compliance with the selected legislative requirements, presented per compliance theme, are as follows:

Expenditure management

31. Effective and appropriate steps were not taken to prevent irregular expenditure as disclosed in note 20 to the annual 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 Treasury Regulation 16A8.4 and paragraph 4.1.2 of Practice Note 7 of 2009/2010.

32. Payments were made before goods were received, in contravention of treasury regulation 15.10.1.2(c).

Consequence management

33. 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 irregular expenditure were not performed.

Procurement and contract management

34. Quotations were accepted from prospective suppliers who did not submit a declaration on whether they are employed by the state or connected to any person employed by the state, as required by Treasury Regulation 16A8.4 and Par 7.2 of NTI 03 of 2021/22. Similar non-compliance was also reported in the prior year.

35. Procurement by other means was not provided in the SCM policy of the institution and did not cover at least the minimum requirements as required by PFMA Instruction Note 3 of 2021/22 par. 4.3 and 4.4.

36. The preference point system was not applied during the procurement of some goods and services as required by section 2(a) of the PPPFA and Treasury Regulation 16A6.3(b).

37. I was unable to obtain sufficient appropriate audit evidence that a material number of bid documentation for 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). Similar limitation was also reported in the prior year.

38. Some of the contracts were extended or modified without the approval of a properly delegated official as required by section 44 of the PFMA and Treasury Regulations 8.2.1 and 8.2.2. Similar non-compliance was also reported in the prior year.

Other information in the annual report

39. The accounting officer is responsible for the other information included in the annual report. The other information referred to 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 on in this auditor's report.

40. My opinion on the financial statements, the report on the audit of the annual performance report and the report on compliance with legislation, do not cover the other information included in the annual report and I do not express an audit opinion or any form of assurance conclusion on it.

41. My responsibility is to read this other information and, in doing so, consider whether it 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.

42. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, 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

43. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with applicable legislation; however, my objective was not to express any form of assurance on it.

44. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion, the material findings on the annual performance report and the material findings on compliance with legislation included in this report.

45. Management did not sufficiently review the reported performance against the supporting evidence due to inadequate supervision over the role players who are responsible for preparing and compiling the performs information.

46. Supply chain management (SCM) policy is not aligned with SCM regulations which resulted in instances of non-compliance being reported on deviations. Management also did not implement measures or methods to monitor contract performance to ensure effective contract management.

47. Leadership did not finalise the request for exemption to comply with certain SCM prescripts relating to procurement process. Due to the nature of the business this resulted in material non compliances being reported.

48. Management did not plan appropriately to ensure timeous procurement of goods and service during the financial year. This caused prepayments to be made without ensuring valid contracts were in place.

Other reports

49. I draw attention to the following engagements conducted by various parties. 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.

50. The Independent Policy Investigative Directorate is still investigating allegations of misuse and abuse of departments funds, covering the various financial periods. These proceedings were in progress at the date of this auditor's report.

Auditor-General

Pretoria

31 July 2023

AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure to the auditor's report

The annexure includes the following:

- the auditor-general's responsibility for the audit
- the selected legislative requirements for compliance testing.

Auditor-general's responsibility for the audit

Professional judgement and professional scepticism

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 selected requirements in key legislation.

Financial statements

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.
- conclude on the appropriateness of the 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.

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.

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.

Compliance with legislation – selected legislative requirements.

The selected legislative requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act No.1 of 1999 (PFMA)	Section 1 Section 38(1)(a)(iv); 38(1)(b); PFMA 38(1)(c); 38(1)(c)(i); 38(1)(c)(ii); 38(1)(d); 38(1)(h)(iii). Section 39(1)(a); 39(2)(a). Section 40(1)(a); 40(1)(b); 40(1)(c)(i) Section 43(4); 44; 44 (1) and (2); 45(b); Section 50(3); 50(3)(a)
Treasury Regulations for departments, trading entities, constitutional institutions, and public entities (TR)	Treasury Regulation 4.1.1; 4.1.3 Treasury Regulation 5.1.1; 5.2.1; 5.2.3(a); 5.2.3(d); 5.3.1 Treasury Regulation 6.3.1(a); 6.3.1(b); 6.3.1(c'); 6.3.1(d); 6.4.1(b) Treasury Regulation 7.2.1 Treasury Regulation 8.1.1; 8.2.1; 8.2.2; 8.2.3; 8.4.1 Treasury Regulation 9.1.1; 9.1.4 Treasury Regulation 10.1.1(a); 10.1.2 Treasury Regulation 11.4.1; 11.4.2; 11.5.1 Treasury Regulation 12.5.1 Treasury Regulation 15.10.1.2(c') Treasury Regulation 16A3.1 ; 16A 3.2; 16A 3.2(a); 16A 6.1; 16A6.2(a) ,(b) & (e) ; 16A 6.3(a); 16A 6.3(a)(i);16A 6.3(b); 16A 6.3(c);16A6.3(d) ; 16A 6.3(e); 16A 6.4; 16A 6.5; 16A 6.6; 16A7.1; 16A.7.3; 16A.7.6; 16A.7.7;TR 16A8.2 (1) and (2); 16A 8.3 16A8.3 (d); 16A 8.4; 16A 9; 16A 9.1; 16A9.1(b)(ii);16A9.1 (c); 16A 9.1(d); 16A 9.1(e); 116A9.2; 16A9.2(a)(ii) &(iii); 16A9.1(f). Treasury Regulation 17.1.1 Treasury Regulation 18.2 Treasury Regulation 19.8.4
Public service regulation	Public service regulation 13(c);18; 18 (1) and (2); 25(1)(e)(i); 25(1)(e)(iii)
Prevention and Combating of Corrupt Activities Act No.12 of 2004 (PRECCA)	Section 29 Section 34(1)
Construction Industry Development Board Act No.38 of 2000 (CIDB)	Section 18(1)
Construction Industry Development Board Regulations	CIDB regulation 17; 25(1); 25 (5) & 25(7A)
PPPFA	Section 1(i); 2.1(a); 2.1(b); 2.1(f)

Legislation	Sections or regulations
PPR 2017	Paragraph 4.1; 4.2 Paragraph 5.1; 5.3; 5.6; 5.7 Paragraph 6.1; 6.2; 6.3; 6.5; 6.6; 6.8 Paragraph 7.1; 7.2; 7.3; 7.5; 7.6; 7.8 Paragraph 8.2; 8.5 Paragraph 9.1; 9.2 Paragraph 10.1; 10.2 Paragraph 11.1; 11.2 Paragraph 12.1 and 12.2
PPR 2022	Paragraph 3.1 Paragraph 4.1; 4.2; 4.3; 4.4 Paragraph 5.1; 5.2; 5.3; 5.4
SITA ACT	Section 7(3) Section 7(6)(b) Section 20(1)(a)(I)
SITA regulations	Regulation 8.1.1 (b); 8.1.4; 8.1.7 Regulation 9.6; 9.4 Regulation 12.3 Regulation 13.1 (a) Regulation 14.1; 14.2
PFMA SCM Instruction no. 09 of 2022/2023	Paragraph 3.1; 3.3 (b); 3.3 (c); 3.3 (e); 3.6
National Treasury Instruction No.1 of 2015/16	Paragraph 3.1; 4.1; 4.2
NT SCM Instruction Note 03 2021/22	Paragraph 4.1; 4.2 (b); 4.3; 4.4; 4.4(a); 4.4(c) -(d); 4.6 Paragraph 5.4 Paragraph 7.2; 7.6
NT SCM Instruction 4A of 2016/17	Paragraph 6
NT SCM Instruction Note 03 2019/20	Par 5.5.1(vi); Paragraph 5.5.1(x);
NT SCM Instruction Note 11 2020/21	Paragraph 3.1; 3.4 (a) and (b); 3.9; 6.1;6.2;6.7
NT SCM Instruction note 2 of 2021/22	Paragraph 3.2.1; 3.2.2; 3.2.4(a) and (b); 3.3.1; 3.2.2 Paragraph 4.1
PFMA SCM Instruction 04 of 2022/23	Paragraph 4(1); 4(2); 4(4)
Practice Note 5 of 2009/10	Paragraph 3.3
PFMA SCM instruction 08 of 2022/23	Paragraph 3.2 Paragraph 4.3.2 and 4.3.3
Competition Act	Section 4(1)(b)(ii)
NT instruction note 4 of 2015/16	Paragraph 3.4
NT instruction 3 of 2019/20 - Annexure A	Section 5.5.1 (iv) and (x)
Second amendment of NTI 05 of 2020/21	Paragraph 4.8; 4.9 ; 5.1 ; 5.3

Legislation	Sections or regulations
Erratum NTI 5 of 202/21	Paragraph 1
Erratum NTI 5 of 202/21	Paragraph 2
Practice note 7 of 2009/10	Par a graph 4.1.2
Practice note 11 of 2008/9	Paragraph 3.1 Paragraph 3.1 (b)
NT instruction note 1 of 2021/22	Paragraph 4.1
Public Service Act	Section 30 (1)
Employment of Educators Act	Section 33 (1)

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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 201 to 272, which comprise the appropriation statement, statement of financial position as at 31 March 2023, 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 2023, 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

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. I was unable to confirm goods and services and investments by alternative means. Consequently, I was unable to determine whether any adjustments were necessary to sensitive projects expenditure included in the expenditure of R14,21 billion (2022: R12,83 billion), as per note 4 to the financial statements, and investments for special defence activities included in the investment amount of R179,16 million (2022: R179,16 million), as per note 11 to the financial statements.

Movable tangible capital assets

4. 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 relating to the existence 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 R66,78 billion (2022: R64,32 billion) in note 29 to the financial statements.

5. The department did not recognise all items of movable tangible capital assets in accordance with *MCS chapter 11, Capital assets*. I identified items of movable tangible capital assets belonging to the department that were not included in the underlying accounting records. Consequently, I was unable to determine the full extent of the understatement of movable tangible capital assets, stated at R66,78 billion (2022: R64,32 billion) in note 29 to the financial statements, as it was impracticable to do so.
6. The department did not comply with the modified cash standard in ensuring that all movable tangible capital assets remain at historical cost in accordance with *MCS Chapter 11, Capital assets*. I identified value adjustments to the historical cost of certain movable tangible capital assets amounting to R919,27 million processed and included as part of the current year additions. This is in contravention with the MCS which prohibits cost adjustments for appreciation and devaluation. In addition, I was unable to obtain sufficient appropriate audit evidence for these adjustments as the supporting information was not provided. I was unable to confirm these adjustments by alternative means. Consequently, I was unable to determine whether any adjustments were necessary to movable tangible capital assets additions stated at R2,98 billion (2022: R479,66 million) in note 29 to the financial statements.
7. The department did not comply with the modified cash standard in ensuring that all movable tangible capital assets remain at historical cost in accordance with MCS *Chapter 11, Capital assets*. I identified cost adjustments to the historical cost of certain movable tangible capital assets amounting to R486,73 million processed and included as part of the current year disposals. This is in contravention with the MCS which prohibits cost adjustments for appreciation and devaluation. In addition, I was unable to obtain sufficient appropriate audit evidence for these adjustments as the supporting information was not provided. I was unable to confirm these adjustments by alternative means Consequently, I was unable to determine whether any adjustments were necessary to movable tangible capital assets disposals stated at R524,26 million in note 29 to the financial statements.
8. I was unable to obtain sufficient appropriate audit evidence that management had properly accounted for movable tangible capital assets accounted for outside the normal asset management system, due to non-submission of registers in support of these assets. I was unable to confirm these assets by alternative means. Consequently, I was unable to determine whether any adjustments were necessary to movable tangible capital assets stated at R66,78 billion in note 29 to the financial statements
9. The department did not recognise all movable tangible capital assets at cost in accordance with *MCS chapter 11, Capital assets*. I identified a significant number of assets acquired after 1 April 2002 which were recorded at R1. This is in contravention of the MCS which allows R1 values to be assigned only to those assets acquired prior to 1 April 2002 and where documentation to establish the cost is not available. Consequently, I was unable to determine the full extent of the understatement of movable tangible capital assets stated at R66,78 billion (2022: R64,32 billion) in note 29 to the financial statements as it was impracticable to do so.

Irregular expenditure

10. 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 of irregular expenditure, stated at R553,94 million (2022: R4,10 billion) in note 24 to the financial statements, as it was impracticable to do so.

Context for opinion

11. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the responsibilities of the auditor-general for the audit of the financial statements section of my report.

12. 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.

13. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Emphasis of matters

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

Contingent Liabilities

15. With reference to contingent liabilities of R8,26 billion as disclosed in note 18.1 to the financial statements, the department is the defendant in various lawsuits. The department is opposing the lawsuits. The ultimate outcome of these matters cannot presently be determined and therefore no provision for any liability that may result has been made in the financial statements.

Unauthorised expenditure

16. As disclosed in note 24 to the financial statements, the department incurred unauthorised expenditure of R2,99 billion due to overspending of the main vote.

Other matters

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

Unaudited supplementary schedules.

18. The supplementary information set out on pages 273 to 294 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 on them.

National Treasury Instruction No.4 of 2022-23: PFMA Compliance and reporting framework

19. On 23 December 2022, the National Treasury issued Instruction No. 4 of 2022-23, which came into effect on 3 January 2023, in terms of section 76(1)(b), (e) and (f), 2(e) and (4)(a) and (c) of the PFMA. The instruction note deals with the PFMA compliance and reporting framework and addresses, amongst others, the disclosure of unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure. Irregular expenditure and fruitless and wasteful expenditure incurred in prior financial years and not yet addressed no longer need to be disclosed in either the annual report or the disclosure notes to the annual financial statements. Only the current year and prior year figures are disclosed in note 24 to the financial statements of the Department of Defence. Movements in respect of irregular expenditure and fruitless and wasteful expenditure also no longer need to be disclosed in the notes to the annual financial statements. The disclosure of these movements (e.g. condoned, recoverable, removed, written off, under assessment, under determination and under investigation) is now included as part of the other information in the annual report of the Department of Defence.

20. I do not express an opinion on the disclosure of irregular expenditure and fruitless and wasteful expenditure in the annual report.

Responsibilities of the accounting officer for the financial statements

21. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the Modified Cash Standard and the requirements of the Public Finance Management Act 1 of 1999 (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.

22. 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.

Responsibilities of the auditor-general for the audit of the financial statements

23. 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.

24. 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

25. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I must audit and report on the usefulness and reliability of the reported performance against predetermined objectives for selected programmes presented in the annual performance report. The accounting officer is responsible for the preparation of the annual performance report.

26. I selected the following programmes presented in the annual performance report for the year ended 31 March 2023 for auditing. I selected programmes that measure the department's performance on its primary mandated functions and that are of significant national, community or public interest.

Programme	Page numbers	Purpose
Force employment	54	The purpose of the force employment programme is to provide and employ defence capabilities, including an operational capability, to successfully conduct operations, as well as joint, interdepartmental, interagency and multinational military (JIIM) exercises.
Defence intelligence	71	The purpose of the Defence intelligence programme is to provide defence intelligence and counter-intelligence capabilities.

27. I evaluated the reported performance information for the selected programmes against the criteria developed from the performance management and reporting framework, as defined in the general notice. When an annual performance report is prepared using these criteria, it provides useful and reliable information and insights to users on the department's planning and delivery on its mandate and objectives.

28. I performed procedures to test whether:

- the indicators used for planning and reporting on performance can be linked directly to the department's mandate and the achievement of its planned objectives.
- the indicators are well defined and verifiable to ensure that they are easy to understand and apply consistently and that I can confirm the methods and processes to be used for measuring achievements.
- the targets can be linked directly to the achievement of the indicators and are specific, time bound and measurable to ensure that it is easy to understand what should be delivered and by when, the required level of performance as well as how performance will be evaluated.
- the indicators and targets reported on in the annual performance report are the same as what was committed to in the approved initial or revised planning documents.

- the reported performance information is presented in the annual performance report in the prescribed manner.
- there are adequate supporting evidence for the achievements reported and for the reasons provided for any over- or underachievement of targets.

29. I performed the procedures for the purpose of reporting material findings only; and not to express an assurance opinion.

30. The material findings on the performance information of the selected programmes are as follows:

Defence intelligence

Number of vetting decisions taken in accordance with requirements

31. I could not determine whether the achievement of 5 111 reported against a target of 5 500 was correct, as information regarding the processes to consistently measure and report on achievements against planned indicators was not provided. Adequate supporting evidence was also not provided for auditing. Consequently, the reported achievement might be more or less than reported.

Other matters

32. I draw attention to the matters below.

Achievement of planned targets

33. The annual performance report includes information on reported achievements against planned targets and provides explanations for over and underachievements. This information should be considered in the context of the material findings on the reported performance information.

Material misstatements

34. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were in the reported performance information of programme 2: force employment and Programme 7: defence Intelligence. Management subsequently corrected material misstatements relating to force employment only. I reported material findings on defence intelligence.

Report on compliance with legislation

35. In accordance with the PAA and the general notice issued in terms thereof, I must audit and report on compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting officer is responsible for the department's compliance with legislation.

36. I performed procedures to test compliance with selected requirements in key legislation in accordance with the findings engagement methodology of the Auditor-General of South Africa (AGSA). This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.

37. Through an established AGSA process, I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the department, clear to allow consistent measurement and evaluation, while also sufficiently detailed and readily available to report in an understandable manner. The selected legislative requirements are included in the annexure to this auditor's report.

Implementation of consequence management by the Secretary for Defence

38. According to chapter 2, section 8(a) of the Defence Act, the Secretary for Defence (SecDef) is the accounting officer of the Department of Defence as contemplated in section 36 of the PFMA. While both acts recognise the SecDef as the accounting officer of the department, there are certain stipulations in the Defence Act that place limitations on the powers of the SecDef with regards to taking disciplinary steps against members of the South African National Defence Force. These limitations have resulted in delays in the implementation of consequence management particularly in relation to material irregularities that I have identified and reported on in the section on material irregularities.

39. The material findings on compliance with the selected legislative requirements, presented per compliance theme, are as follows:

Annual financial statements

40. The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework and/or supported by full and proper records as required by section 40(1)(a) and (b) of the PFMA. Material misstatements identified by the auditors in the submitted financial statements were not adequately corrected and the supporting records could not be provided subsequently, which resulted in the financial statements receiving a qualified opinion.

Asset management

41. I was unable to obtain sufficient appropriate audit evidence that the disposal of movable assets was done in a manner most advantageous to the state, as required by treasury regulation 16A.7.1.

42. I was unable to obtain sufficient appropriate audit evidence that proper control systems were in place at the department to ensure the safeguarding of assets, as required by section 38(1)(d) of the PFMA.

43. Preventative mechanisms were not in place to eliminate the theft and loss of assets, as required by treasury regulation 10.1.1 (a).

Expenditure management

44. 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 R553,94 million as disclosed in note 24 of 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 non-compliance with SCM laws and regulations.

45. Resources of the department were not utilised economically, as required by section 45(b) of the PFMA. This was due to medical equipment that was not utilised at 2 Military hospital. The non-compliance resulted in a material irregularity to the department.

46. 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.

Consequence management

47. 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.

48. 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.

49. I was unable to obtain sufficient appropriate audit evidence that investigations were conducted into all allegations of financial misconduct committed by officials as required by treasury regulation 4.1.1.

Procurement and contract management

50. I was unable to obtain sufficient appropriate audit evidence that all contracts were awarded in accordance with the legislative requirements as department did not have proper record keeping in place. Similar limitations were also reported in the prior year.

51. Some of the goods and services were procured without obtaining at least three written price quotations in accordance with Treasury Regulation 16A6.1 and paragraph 3.2.1 of SCM instruction note 2 of 2021-22. Similar non-compliance was also reported in the prior year.

52. Some of the contracts were awarded to bidders who did not submit a declaration on whether they are employed by the state or connected to any person employed by the state, which is prescribed in order to comply with Treasury Regulation 16A8.3. Similar non-compliance was also reported in the prior year.

53. Procurement by other means was not provided in the SCM policy of the institution or did not cover at least the minimum requirements as required by PFMA Instruction Note 3 of 2021-22 par. 4.3 and 4.4.

54. Deviations and procurement by other means were not provided for in the SCM policy and/or were not in line with the circumstances provided in the SCM policy under which the procurement can occur as required by PFMA instruction note no.3 of 2021-22 par. 4.3 and 4.4 (c) .

55. Some of the quotations were awarded to bidders based on preference points that were not allocated and/or calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and preferential procurement regulation (PPR) 2017 and/or 2022. Similar non-compliance was also reported in the prior year.

56. Some of the construction contracts were awarded to contractors that were not registered with the Construction Industry Development Board and/or did not qualify for the contract in accordance with section 18(1) of the CIDB Act and Construction Industry Development Board Regulations 17 and/or 25(7A). Similar non-compliance was also reported in the prior year.

57. The bid documentation/ invitation to tender for procurement of commodities designated for local content and production, did not stipulate the minimum threshold for local production and content as required by the 2017 Procurement Regulation 8(2). Similar non-compliance was also reported in the prior year.

58. I was unable to obtain sufficient appropriate audit evidence that persons in service of the department who had a private or business interest in contracts awarded by the department disclosed such interest, as required by Treasury Regulation 16A8.4 and the Public Service Regulations 18(1).

Other information in the annual report

59. The accounting officer is responsible for the other information included in the annual report. The other information referred to 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 on in this auditor's report.

60. My opinion on the financial statements, the report on the audit of the annual performance report and the report on compliance with legislation, do not cover the other information included in the annual report and I do not express an audit opinion or any form of assurance conclusion on it.

61. My responsibility is to read this other information and, in doing so, consider whether it 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.

62. 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

63. I considered internal control relevant to my audit of the financial statements, annual performance report 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 material findings on the annual performance report and the material findings on compliance with legislation included in this report:

64. Leadership did not exercise sufficient oversight over financial and performance reporting, compliance with laws and regulations and related internal controls. The action plans developed to address prior year audit matters were not adequate, and they were also not effectively implemented and monitored, resulting in recurring audit findings.

65. Consequence management was not implemented to create a culture of compliance with policies and legislation and to deter further irregularities. The lack of consequence management due to the limitations placed on the powers of the accounting officer in taking disciplinary actions against military command officials also caused significant delays in addressing material irregularities as reported in the next section dealing with material irregularities previously reported.

66. 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 lack of proper record management systems and 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

67. 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 as previously reported in the auditor's report.

Material irregularities identified during the audit

68. The material irregularities identified are as follows:

Medical equipment at 2 Military Hospital not utilised

69. Medical equipment procured as part of the turn-key project at 2 Military Hospital were not utilised. This includes the cardiovascular theatre unit of R13 702 800, procured and installed in 2018 and six renal dialysis units of R2 328 114, procured and installed in 2019.

70. The non-utilisation of these material public resources could have been avoided with proper planning and processes to ensure effective and efficient use of the department's resources as required by section 45(b) of the PFMA.

71. The accounting officer was notified of the material irregularity on 3 April 2023 and invited to make a written submission on the actions taken and that will be taken to address the matter. The accounting officer confirmed that the medical equipment has been put into use effective from 2 June 2023. I visited the premises on 28 June 2023 and confirmed that the six (6) units of renal dialysis had been put into use, however the cardiovascular theatre unit remained unutilised.

72. I recommended that the accounting officer should take the following further actions to address the material irregularity, which should be implemented by 4 March 2024:

    - Reasonable steps should be taken to prevent further non-utilisation of the cardiovascular theatre as required by Treasury Regulation 10.1.1(a).

73. I requested the accounting officer to provide a progress report on the implementation of the recommendation by 31 October 2023.

74. I will follow up on the implementation of this recommendation after the due date.

75. I am also in the process of determining additional actions available to take.

Material irregularities in progress

76. I identified other material irregularities during the audit and notified the accounting officer of these, as required by material irregularity regulation 3(2). By the date of this auditor's report, the response of the accounting officer was not yet due for one material irregularity, while I had not yet completed the process of evaluating the response for the remaining one. These material irregularities will be included in next year's auditor's report.

Status of previously reported material irregularities

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

77. 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 in the project cost. The contract came to an end during the 2021-22 financial year, the department spent a total of R616,90 million on the contract.

78. 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.

79. 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 who the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and 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.

80. The accounting officer submitted a written response and supporting evidence on the implementation of the recommendations on 30 November 2020. Based on the assessment of the written response and supporting evidence submitted, I concluded that the recommendations had not been adequately implemented.

81. The accounting officer was notified of the outcome of the assessment on 6 April 2021 and given an extension until 30 April 2021 to implement those recommendations. Although an investigation was conducted, the accounting officer in her response 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 had not been adequately implemented, particularly as they relate to non-military personnel in respect of whom the accounting officer has no limitations.

82. 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.

83. In addition, I notified the accounting officer of the following remedial actions to address the material irregularity, which should have been 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 treasury regulation 9.1.3.

    b) Appropriate action must be taken to determine whether the responsible civilian official(s) is 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 (SANDF) 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 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 SANDF 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.

84. On 8 November 2021, the accounting officer submitted a written response which was assessed to be incomplete. The accounting officer was therefore requested to provide a revised response that clearly indicated the progress that was made with the actions and the timelines for completing the actions. The supplementary response was received on 23 November 2021.

85. On 26 January 2022, I informed the accounting officer that I was not satisfied with the progress on implementation of the directive and remedial actions. A further submission by the accounting officer on 1 June 2022 confirmed the lack of progress in implementation of consequence management for both civilian and military command officials.

86. Since June 2022, I have pursued various interventions including engaging the accountability ecosystem role players on the challenges in implementation of consequence management regarding this matter (refer to par. 38 above). These interventions have not yielded positive results.

87. I am in the process of determining the most suitable action to take.

Lease payments made for unoccupied office buildings

88. The department made lease payments in the financial years 2015-16 to 2019-20 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 24 to the financial statements.

89. 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.

90. I did not receive any response from the accounting officer on the implementation of the planned actions and the outcomes thereof and concluded that appropriate action was not being taken.

91. I recommended that the accounting officer take the following actions to address the material irregularity, which should have been implemented by 11 November 2021:

- 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;

- 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 treasury regulation 9.1.3;
- 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 treasury regulation 9.1.3; and
- 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.

92. On 8 November 2021, the accounting officer submitted a written response that did not appropriately address all the required actions to address the matter. I requested additional information to enable me to conclude on appropriateness of the actions being taken. The supplementary response was received on 23 November 2021. I assessed the accounting officer's revised response and concluded that adequate progress was not made with the implementation of the recommendations.

93. On 1 June 2022, the accounting officer provided a further written submission which acknowledged the financial loss but stated that the board of inquiry did not find anyone liable for the loss and therefore no disciplinary action could be taken against anyone.

94. I assessed the outcome of the board of inquiry and concluded that its conclusion was not appropriate, and that appropriate action was not taken to implement the AGSA's recommendations.

95. Since June 2022, I have pursued various interventions including engaging the accountability ecosystem role players on the implementation of consequence management regarding this matter (refer to par. 38 above). These interventions have not yielded positive results.

96. I am in the process of determining the most suitable action to take.

Unfair award for the supply of fuel

97. 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.

98. 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.

99. On 27 November 2020, the accounting officer completed the investigation into this material irregularity and disagreed that there was non-compliance with legislation in awarding the contract.

100. I referred the material irregularity to the Directorate for Priority Crime Investigations (DPCI) on 15 November 2021 for investigation as provided for in section 5(1A) of the PAA. The referral was accepted by the DPCI on 6 December 2021.

101. I followed up with the DPCI regarding progress of the investigation during the current year and I was informed that, the investigation was still in progress.

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

102. 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. 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.

103. I notified the accounting officer of the material irregularity on 15 July 2021. 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 planned to complete its investigation on or before 20 September 2021.

104. On 7 October 2021 and 17 May 2022, respectively, I submitted a request for information on the progress made in addressing the material irregularity. The accounting officer provided feedback on 30 May 2022 indicating that the board of inquiry had to be reconvened due to the shortcomings identified regarding the first inquiry.

105. The Special Investigating Unit (SIU) investigated procurement of PPE by the department as part of Proclamation no. R23 of 2020 and identified several irregularities in relation to contracts awarded by the department between March 2020 and April 2022. During December 2021, the SIU issued recommendations for disciplinary action and made criminal referrals against officials found to be responsible for the irregularities relating to PPE awards. The responsible officials have been criminally charged and legal proceedings are taking place through the civilian and military courts.

106. I have noted the progress made based on the SIU referrals which serve the purpose of assigning consequences for similar transgressions that informed this material irregularity. I have concluded that this material irregularity on PPE procurement will not be pursued further by me and is therefore resolved in the records of the AGSA.

Importation of unregistered drugs without approval from regulating authority

107. The department imported an unregistered drug Heberon® Alfa R (Heberon) into the country between 27 April 2020 and 17 August 2020 without approval from the South African Health Products Regulatory Authority (Sahpra). This resulted in non-compliance with the General Regulations (R859 of 2017) to the Medicines and Controlled substances Act 101 of 1965 which states that a person shall only import a medicine or scheduled substance if such person in the case of unregistered medicines, is authorised by the authority to import such unregistered medicines. The department procured 970 695 vials of Heberon at a cost of US$15 048 872,50 (approximately R260,59 million). The department paid a total amount of R33,5 million to the supplier for the Heberon drugs as at 31 March 2022. This non-compliance was likely to result in a material financial loss of R260 342 813 for the Department of Defence, as Sahpra had authorised the department to use only 10 of the 970 695 vials imported.

108. I notified the accounting officer of the material irregularity on 13 August 2021. On 28 September 2021, the accounting officer provided a written response indicating the measures that were to be implemented to address the material irregularity. The response did not appropriately indicate all the required actions to address the matter and I requested additional information to enable me to conclude on appropriateness of the actions being taken.

109. The Ministerial Task Team (MTT) was commissioned to investigate the procurement of Heberon drugs. They concluded their investigation during October 2021 and submitted the report to the executive authority. The MTT made certain recommendations on this matter which included the return of some Heberon drugs as requested by the Cuban authorities and taking disciplinary actions against officers who caused the irregularity.

110. At the instruction of Sahpra dated 3 November 2021, the department repatriated all the Heberon drugs to Cuba. The Cuban representatives acknowledged receipt of the two Heberon shipments on 20 January 2022 and 17 February 2022, respectively.

111. I did not receive any further response from the accounting officer on actions taken to resolve the material irregularity, including the R33,5 million paid.

112. On 30 September 2022, the Acting Public Protector, issued a report titled "Report on an investigation into allegations of maladministration and irregularities associated with the procurement of unauthorised medicines from Cuba by the Department of Defence". The acting public protector made remedial actions against various role players which I believe are adequate for the purpose of assigning consequences for the transgressions that informed this material irregularity.

113. Due to the complexity of the department's accountability structure, the accounting officer referred certain remedial actions from the acting public protector to the Special Investigation Unit (SIU) on 30 October 2022, to assist with implementation. On 4 July 2023, the SIU advised me that the investigation into this matter has commenced and that should the investigation identify any losses that have been incurred, these will be recovered through the civil litigation proceedings in the special tribunal for the appropriate relief.

114. I have noted the progress made in addressing this matter and I have concluded that this material irregularity on the importation of unregistered drugs, will not be pursued further by me and is therefore resolved in the records of the AGSA.

Material irregularities - Defence intelligence

115. I identified two (2) material irregularities relating to the Defence Intelligence division for which specific confidentiality clauses apply, in line with section 22(1)(a) of the Public Audit Act. As such, I do not provide detail on these material irregularities.

116. The accounting officer is taking appropriate actions to resolve one of the material irregularities. As at the date of this report I had not completed the process of evaluating the response of the accounting officer for the other material irregularity.

Other reports

117. In addition to the investigations relating to material irregularities, I draw attention to the following engagement conducted by an institution. This report did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

118. The department conducted a forensic audit on the refurbishment and repairs and maintenance project at 1 Military Hospital. The investigation, which was completed in December 2020, has been referred by the department to the Directorate for Priority Crime Investigation (the Hawks) for further investigation (DPCIHQ Inquiry no. 2021/09/02). At the date of this report, the investigation was still in progress.

Auditor General

Pretoria

1 August 2023

AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure to the auditor's report

1. The annexure includes the following:
   - The auditor-general's responsibility for the audit.
   - The selected legislative requirements for compliance testing.

Auditor-general's responsibility for the audit

Professional judgement and professional scepticism

2. 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 selected requirements in key legislation.

Financial statements

3. 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.
   - Conclude on the appropriateness of the 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

4. 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.
5. 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.

Compliance with legislation – selected legislative requirements.

The selected legislative requirements are as follows:

Legislation	Section or regulations
Public Finance Management Act No.1 of 1999 (PFMA)	Section 1 Section 38(1)(a)(iv); 38(1)(b); PFMA 38(1)(c); 38(1)(c)(i); 38(1)(c)(ii); 38(1)(d); 38(1)(h)(iii); Section 39(1)(a); 39(2)(a); Section 40(1)(a); 40(1)(b); 40(1)(c)(i) Section 43(4); 44; 44 (1) and (2) ; 45(b);
Treasury Regulations for departments, trading entities, constitutional institutions and public entities (TR)	Treasury Regulation 4.1.1; 4.1.3 Treasury Regulation 5.1.1; 5.2.1; 5.2.3(a); 5.2.3(d); 5.3.1 Treasury Regulation 6.3.1(a); 6.3.1(b); 6.3.1(c'); 6.3.1(d); 6.4.1(b) Treasury Regulation 7.2.1 Treasury Regulation 8.1.1; 8.2.1; 8.2.2; 8.2.3; 8.4.1 Treasury Regulation 9.1.1; 9.1.4 Treasury Regulation 10.1.1(a); 10.1.2 Treasury Regulation 11.4.1; 11.4.2; 11.5.1 Treasury Regulation 12.5.1 Treasury Regulation 15.10.1.2(c') Treasury Regulation 16A 6.1; 16A6.2(a) ,(b) ; 16A 6.3(a);16A 6.3(b); 16A 6.3(c) ; 16A 6.3(e); 16A 6.4; 16A 6.5; 16A 6.6; 16A7.1; 16A.7.3; 16A.7.6; 16A.7.7;TR 16A8.2 (1) and (2); 16A 8.3 16A8.3 (d); 16A 8.4; 16A 9.1(d); 16A 9.1(e); 16A9.2(a)(ii) Treasury Regulation 17.1.1 Treasury Regulation 18.2 Treasury Regulation 19.8.4
Division of Revenue Act No. 5 of 2022	Section 16(1)
Public service regulation	Public service regulation 18; 18 (1) and (2); 25(1)(e)(i); 25(1)(e)(iii)
Prevention and Combating of Corrupt Activities Act No.12 of 2004 (PRECCA)	Section 34(1)
Construction Industry Development Board Act No.38 of 2000 (CIDB)	Section 18(1)
Construction Industry Development Board Regulations	CIDB regulation 17: & 25(7A)

PPPFA	Section 2.1(a); 2.1(b); 2.1(f)
PPR 2017	Paragraph 4.1; 4.2 Paragraph 5.1; 5.3; 5.6; 5.7 Paragraph 6.8 Paragraph 7.8 Paragraph 8.2; 8.5 Paragraph 9.1;10.1;10.2 Paragraph 11.1
PPR 2022	Paragraph 4.1; 4.2; 4.3; 4.4 Paragraph 5.1; 5.2; 5.3; 5.4
SITA ACT	Section 7(3)
National Treasury Instruction No.1 of 2015/16	Paragraph 3.1; 4.1; 4.2
NT SCM Instruction Note 03 2021/22	Paragraph 4.1; 4.2 (b); 4.3; 4.4; 4.4 (a);4.4 (c) - (d); Paragraph 5.4 Paragraph 7.2
NT SCM Instruction Note 11 2020/21	Paragraph 3.1; and (b); 3.9
NT SCM Instruction note 2 of 2021/22	Paragraph 3.2.1; 3.2.4(a) and 3.3.1;
NT instruction note 4 of 2015/16	Paragraph 3.4
Second amendment of NTI 05 of 2020/21	Paragraph 4.8; 4.9 ; 5.3
Erratum NTI 5 of 202/21	Paragraph 1
Erratum NTI 5 of 202/21	Paragraph 2
Practice note 7 of 2009/10	Paragraph 4.1.2
NT instruction note 1 of 2021/22	Paragraph 4.1
Practice Note 5 of 2009/10	Paragraph 3.3

ANNEXURE E

PROGRAMME FOR THE FINANCIAL YEAR 2023/2024

DATE	AGENDA
18 - 21 April 2023	• Oversight visit to KwaZulu-Natal
Tuesday, 18 April 2023	o Oversight Visit of the Richards Bay Harbour (Border Intelligence Units) o Tour of the Harbour
Wednesday, 19 April 2023	o Kosi Bay Border Oversight Visit o Tour of the Border
Thursday, 20 April 2023	o Tour of the Harbour o Oversight Visit of the Durban Harbour (Border Intelligence Units)
Friday, 21 April 2023	o Oversight Visit: SSA Provincial Office o Tour of the SSA Provincial Office
Wednesday, 3 May 2023	• Presentation by the Content Advisor on the Analysis of the Budget and Annual Performance Plan of State Security Agency (SSA) for 2023/2024 • Presentation by the Legal Advisor and Content Advisor on the Powers of the Committee to request assistance from the IGI as per Section 7 Subsection 6 of the Intelligence Services Act 40 of 1994. • Briefing by SSA on the Annual Performance Plan and Budget for 2023/2024. • Engagement with the IGI regarding the Powers of the Committee to request assistance from the IGI as per Section 7 Subsection 6 of the Intelligence Services Act 40 of 1994. • Consideration and adoption of outstanding minutes.
Tuesday, 9 May 2023	• Presentation by the Content Advisor on the following: - Analysis of the Annual Performance Plan and Budget SAPS-CI. - Analysis of the Annual Performance Plan and Budget of the SSA. • Briefing by SAPS-CI on the Annual Performance Plan and Budget for 2023/2024. • Briefing by SSA on the Annual Performance Plan and Budget for 2023/2024.
Wednesday, 10 May 2023	• Presentation by the Content Advisor on the Analysis of the Annual Performance Plan and Budget of DI.

DATE	AGENDA
	• Briefing by DI on the Annual Performance Plan and Budget for 2023/2024.
Tuesday, 16 May 2023	• Briefing by SAPS-CI on the Annual Performance Plan and Budget for 2023/2024. • Briefing by NICOC on the Draft Regulations for the production of intelligence products.
Wednesday, 17 May 2023	• Presentation by the SSA on the following: - Terrorist activities identified in South Africa and the impact on national security. - Root causes and drivers of conflict in Africa and the Rest of the World. • Meeting with the Portfolio Committee on Defence and Military Veterans
Wednesday, 30 May 2023	• Presentation by the SSA on the following: - The negative foreign interference by state and non-state actors in South Africa - The global and regional geographical contestations targeting South Africa or continental states and the implications for South Africa - The contestations within the African Union Peace and Security Council (AUPSC) undermining the Republic of South Africa's foreign policy objectives - On its role in supporting South Africa's interests at the United Nations Security Council (UNSC)
Tuesday, 6 June 2023	• Presentation by NICOC on the following: - The National Intelligence Estimate – Annual Review - The global and regional geographical contestations targeting South Africa or continental states with implications for South Africa - The assessment/threat picture with specific reference to the changing geopolitical dynamics.
Tuesday, 13 June 2023	• Presentation by SAPS-CI on its proposed organisational structure, including the cost analysis

DATE	AGENDA
Wednesday, 14 June 2023	• Presentation by the FIC on the funding methods used by terrorist groups in South Africa and the impact on national security and the economy
27 – 29 June 2023	• OIGI workshop in Gauteng
Tuesday, 5 September 2023	• Summary by Legal Advisor and Content Advisor on the complaint received on the maladministration in the SSA
Friday, 8 September 2023	• Engagement with the complainant on the submission made to the JSCI.
Tuesday, 12 September 2023	• Briefing by the Content Advisor on the analysis of SAPS-CI 2022/2023 4th Quarter Report and 2023/2024 1st Quarter Report • Briefing by SAPS-CI on the following: - 2022/2023 4th quarter Report - 2023/2024 1st quarter report - Update on Regulations.
Wednesday, 13 September 2023	• Briefing by DI on the 2022/2023 4th Quarter Report and 2023/2024 1st Quarter Report • Briefing by the SSA 2022/2023 4th Quarter Report and 2023/2024 1st Quarter Report
Tuesday, 17 October 2023	• Presentation by the ARC on the SAPS-CI 2022/2023 Annual Report • Presentation by the ARC on the SSA 2022/2023 Annual Report • Consideration and adoption of the draft fourth term programme • Update on the Ad Hoc Committee on the General Intelligence Laws Amendment Bill • Briefing by the Legal Advisor on the process and timeline of the General Intelligence Laws Amendment Bill
Wednesday, 18 October 2023	• Consideration and adoption of the draft fourth term programme • Consideration and adoption of outstanding minutes • Presentation by AGSA on the 2022/2023 audit reports of the SSA, SAPS-CI and DI.
Tuesday, 24 October 2023	• Presentation by the Content Advisor on Analysis of the SAPS-CI 2022/2023 Annual Report • Briefing by SAPS-CI on the 2022/2023 Annual Report
Wednesday, 25 October 2023	• Presentation by the Content Advisor on Analysis of DI 2022/2023 Annual Report

DATE	AGENDA
	• Briefing by DI on the 2022/2023 Annual Report • Briefing by the Minister in the Presidency on a Complaint
Tuesday, 31 October 2023	• Presentation by the Content Advisor on the Analysis of the SSA 2022/2023 Annual Report. • Briefing by SSA on the 2022/2023 Annual Report.
Wednesday, 01 November 2023	• Presentation on the Annual Report by the Designated Judge of Interception
Tuesday, 07 November 2023	• Presentation on the Certificate by the IGI in respect of SAPS-CI for the period 2022/2023 • Presentation on the Certificate by the IGI in respect of DI for the period 2022/2023
Wednesday, 08 November 2023	• Briefing by the IGI on the assessment report covering the provincial and foreign stations.
Tuesday, 14 November 2023	• Response by SAPS-CI on the Certificate of the IGI for the period 2022/2023 • Briefing by FIC on the 2022/2023 Annual Report
Wednesday, 15 November 2023	• Response by DI on the Certificate of the IGI for the period 2022/2023 • Briefing by DI on the 2022/2023 Annual Report
Tuesday, 21 November 2023	• Presentation on the Certificate by the IGI in respect of SSA for the period 2022/2023 • Briefing by the SSA on its e-Vetting strategy.
Wednesday, 22 November 2023	• Briefing by NICOC on the National Security Strategy (update). • Engagement with the SSA Staff Council
Tuesday, 28 November 2023	• Response by SSA on the Certificate of the IGI for the period 2022/2023
Tuesday, 05 March 2024	• Briefing by the State Security Agency on the Evolving International Terrorism Threat and Mitigation Challenges
Tuesday, 16 April 2024	• Consideration and adoption of outstanding minutes • Consideration and adoption of reports o Study tour 8 – 19 November 2022 o Oversight Report 18 – 21 April 2023

DATE	AGENDA
	• Engagement with NICOC regarding the regulations for National Intelligence Coordination in terms of the National Strategic Act, No 39 of 1994. • Consideration and adoption of Annual reports 2021/2022; 2022/2023 and 2023/2024 • Consideration and adoption of Sixth Parliament Legacy 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
CTRs:	Cash Threshold Report
COASTRAD:	Coastal Radar
DA:	Democratic Alliance
DFFE:	Department of Forestry Fisheries and the Environment
DI:	Defence Intelligence
DPCI:	Directorate for Priority Crime Investigation
DPME:	Department of Monitoring and Evaluation
EEZ:	Exclusive Economic Zone
EFF:	Economic Freedom Fighters
FIC:	Financial Intelligence Centre
GILAB:	General Intelligence Laws Amendment Bill
HLRP:	High-Level Review Panel
IA:	Intelligence Academy
IC:	Intelligence Commissioner
ICT:	Information Communications Technology
ID:	Investigating Directorate
IFTRs:	International Funds Reports
IGI:	Inspector-General of Intelligence
IMSI:	International Mobile Subscriber Identity
IPID:	Independent Police Investigative Directorate
JCPS:	Justice, Crime Prevention and Security
JICS:	Judicial Inspectorate for Correctional Services

JSCI:	Joint Standing Committee on Intelligence
LEAs:	Law Enforcement Agencies
MOC PC	Marine and Ocean Crime Priority Committee
MTSF:	Medium Term Strategic Framework
NA:	National Assembly
NATJOINTS:	National Joint Operations and Intelligence Structure
NC:	National Communications
NCOP:	National Council of Provinces
NDP:	National Development Plan
NICOC:	National Intelligence Co-ordinating Committee
NIP:	National Intelligence Priorities
NPA:	National Prosecuting Authority
OIC:	Office for Interception Centres
OIGI:	Office of the Inspector-General of Intelligence
POE:	Port of Entry
RICA:	Regulation of Interception of Communications and Provision of Communication-related Information Act
SANAI:	South African National Academy of Intelligence
SAPS:	South African Police Service
SAPS-CI:	South African Police Service-Crime Intelligence
SARS:	South African Revenue Service
SCM:	Supply Chain Management
SDP:	Strategic Development Plan
SIDAS:	Shipping Information and Display Analysis System
SIGINT:	Signals Intelligence
SIS:	Shipping Information System
SIU:	Special Investigating Unit
SMART:	Specific, Measurable, Achievable, Relevant or Time-bound
SOP:	Standard Operating Procedures
SSA:	State Security Agency
STRs:	Suspicious and Unusual Reports

TF: Terrorist Financing