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**PARLIAMENT**

**OF THE**

**REPUBLIC OF SOUTH AFRICA**

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**ANNOUNCEMENTS,  
TABLINGS AND  
COMMITTEE REPORTS**

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MONDAY, 13 SEPTEMBER 2021

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**TABLINGS**

**National Assembly and National Council of Provinces**

**1. The Speaker and the Chairperson**

- (a) Annual Report of the Joint Standing Committee on Intelligence (JSCI) for the Financial Year ending 31 March 2020, including the period up to December 2020.



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

PO BOX 15 Cape Town 8000

Republic of South Africa

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**ANNUAL REPORT OF THE JOINT STANDING  
COMMITTEE ON INTELLIGENCE FOR THE FINANCIAL  
YEAR ENDING 31 MARCH 2020 INCLUDING THE  
PERIOD UP TO DECEMBER 2020**

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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 Crime Intelligence (CI) Division of the South African Police Service (SAPS).

The Committee hereby table its first Annual Report (AR) to the Parliament of the Republic of South Africa in accordance with section 6 of the Act, which states that:

The Committee shall, within five months after its first appointment, and thereafter within two months after 31 March in each year, table in Parliament a report on the activities of the Committee during the preceding year, together with the findings made by it and the recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service.

For the Sixth Parliament, the Committee was constituted on 30 October 2019 after the process of undergoing vetting for Top Secret security clearance which is a statutory requirement. Prior to the establishment of the Committee, an Ad Hoc Committee was established to process the Strategic Plans, Annual Performance Plans (APPs) and budgets of the intelligence services. The five months report was published on 11 November 2020 due to the impact of Covid-19. Similarly, the AR was also impacted by Covid-19.

## **2. APPOINTMENT OF AN AD HOC COMMITTEE TO ALLOW MEMBERS OF THE NATIONAL ASSEMBLY TO BE BRIEFED PRIOR TO THE DEBATE ON VOTE NO 7: NATIONAL TREASURY (STATE SECURITY)**

The Act requires members of the JSCI to undergo vetting in order to be granted security clearances. On 10 July 2019, the National Assembly (NA) noting the pending appointment of the JSCI upon the finalisation of all legal prescripts, resolved to establish an Ad Hoc Committee to allow members of the NA to be briefed prior to the debate on Vote No 7:

National Treasury (State Security). The Ad Hoc Committee consisted of 11 members with Top Secret security clearance from the African National Congress (ANC) 6, Democratic Alliance (DA) 2, Economic Freedom Fighters (EFF) 1, Al Jama-Ah and Inkatha Freedom Party (1). The membership was as follows:

- Ms D E Dlakude (Chairperson) (ANC)
- Ms MC Dikgale (ANC)
- Dr SM Dhlomo (ANC)
- Ms NL Hermans (ANC)
- Mr BG Magwanishe (ANC)
- Ms JM Mofokeng (ANC)
- Ms D Kohler Barnard (DA)
- Dr M Gondwe (DA)
- Inkosi RN Cebekhulu (IFP)
- Dr MQ Ndlozi (EFF)
- Mr MGE Hendricks (AL Jama-ah)

### **3. COMPOSITION OF THE COMMITTEE**

It is pertinent to note that the legal processes of finalising the appointment of the Committee were delayed. Consequently, the Committee was appointed, in terms of the Act, on 30 October 2019. Subsequently, the first meeting of the Committee took place on 13 November 2019 following the swearing-in of members. In accordance with the Act and the rules of the JSCI, members of the Committee must take an oath or affirmation of secrecy before commencing with their functions.

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:           9 seats
- DA:            3 seats



- EFF: 1 seat

For the reporting period, the membership of the JSCI was composed of the following:

<b>Name</b>	<b>Political party</b>
Mr JJ Maake	NA (ANC): Chairperson
Ms LC Bebee	NCOP (ANC)
Ms MC Dikgale	NA (ANC)
Ms DE Diakude	NA (ANC)
Ms NL Hermans	NA (ANC)
Mr G Magwanishe	NA (ANC)
Ms JM Mofokeng	NA (ANC)
Mr MK Mmoiemang	NCOP (ANC)
Ms ZV Ncitha	NCOP (ANC)
Dr MM Gondwe	NA (DA)
Ms D Kohler Barnard	NA (DA)
Ms C Labuschagne	NCOP (DA)
Dr MQ Ndlozi	NA (EFF)

With the exception of Hon DE Diakude and Hon MQ Ndlozi who served in the JSCI of the Fifth Parliament, and Hon JJ Maake who served in the JSCI of the Fourth Parliament, the rest of the members were new to the Committee. Hon Hadebe was appointed to fill the vacancy created by the passing of Hon NL Hermans on 18 January 2021.

#### **4. 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 and to consider the financial statements of the services;
- Obtain reports from the Evaluation Committee;
- Obtain reports from the designated judge as defined in the Regulation of Interception of Communications and Provision of Communication Related Information Act, 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 the Inspector-General;
- 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, rationalization 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 Inspector-General 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 Standing 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.

## **5. ACTIVITIES OF THE JSCI IN THE REPORTING YEAR**

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

### **5.1 Orientation of Members of the JSCI**

The Act provides for the establishment of the JSCI to perform oversight functions related to intelligence and counter-intelligence functions as mentioned and report thereon to Parliament. After the Committee has been established, following the awarding of Top Secret security clearance certificates, members must undergo intensive training or orientation in the field of intelligence. Section 5 of the Act clearly stipulates that “the Committee shall conduct its functions in a manner consistent with the protection of national security”. Furthermore, “no person shall disclose any intelligence, information or document the publication of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of this Act”. In order to adhere to the Act, intensive induction and training is provided to members.

For the Sixth Parliament, orientation for members took place from 18 to 22 November 2019. It enabled members to understand the nature of the environment coupled with the complexities of the Fourth Industrial Revolution and its implications to intelligence and national security; how to handle secrecy; and responding to public enquires on sensitive issues and related matters. The orientation prepared the Committee to function optimally, and to ensure the safety and security of information. More importantly, the newly established Committee was briefed on the functions and roles of the services and their entities. Additionally, the Committee received an overview of pertinent issues within the intelligence services namely; the SSA, CI, and DI. The Office of the Inspector-General of Intelligence (OIGI) also inducted members in order for them to understand the functions of the Inspector-General of Intelligence (IGI) as stipulated in Section 7(7) of the Act.

### **5.1.1 State Security Agency**

On 19 November 2019, the Committee interacted with the SSA. It was welcomed by the acting Director-General (DG) of the SSA and senior management. The presentation touched on the current status, challenges and recommendations on improving the Agency. The acting DG clarified the illegality of the establishment of the SSA, which came into existence in 2009 after Proclamation 59 of 2009 where several entities were amalgamated. Those included the National Intelligence Agency (NIA) that functioned as domestic intelligence with the mandate of gathering intelligence and counter-intelligence, the South African Secret Services (SASS) which gathered intelligence outside the borders, and other entities such as the National Communications Centre (NCC), which also gathered intelligence outside the borders on targeted people through bulk interception.

The Office of the Interception Centres (OIC), which is an entity of the SSA and functioning under the auspices of the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA), No. 70 of 2002, may only intercept under the authority of a Designated Judge for Interception. The proclamation and amalgamation process was illegal as it was not legislated. The proclamation was announced in July 2009 but only approved in October 2010. The legislation that amended the changes was

only approved later in the form of the General Intelligence Laws Amendment Act, No. 11 of 2013.

The gap between 2010 and 2013 resulted in serious concerns and illegal functioning of the SSA. The new structure created a powerful DG with powers concentrated on a single individual. The amalgamation also enabled some members of the executive to issue illegal instructions to members of the SSA. These instructions amounted to executive overreach.

The acting Deputy Director-General (DDG) Domestic Intelligence briefed the JSCI on the challenges that included human resources, acting positions, patriarchy, personnel retention and inadequate budget allocation. The acting DDG: Counter Intelligence informed the Committee that the counter intelligence programme had been paralysed by the previous notorious leadership. The Committee heard of illegal appointments and irregular temporary advances given to people who were not producing any results.

The acting Director Foreign Branch provided a synopsis of the mandate, functions and posture of the Foreign Branch. Some of the challenges included the instability at management level and personnel shortage. The JSCI raised concerns about vacancies. It was recommended that acting positions be filled.

The acting General Manager at the National Communications (NC) outlined the mandate and functions, and the roles of the three entities; Signals Intelligence (SIGINT), ICT Security and the Office of Interception Centres (OIC). It was indicated that some of the challenges included human resources and obsolete equipment. Despite the challenges, several successes were highlighted. The JSCI raised concerns about vacancies. It was recommended that additional resources be allocated to ensure that the equipment was up to date.

The acting Head presented on the Intelligence Academy (IA) and outlined challenges which included inadequate staff, a lack of clear training philosophy and capacity for effective training delivery. It was also recommended that the IA should be resourced. The JSCI also undertook to conduct an oversight visit to the IA Mafikeng Campus.

The Chief Financial Officer (CFO) of the SSA, made a presentation to the JSCI with regard to allocation for the period 2020/2021 to 2022/23. It was indicated that there had been a decrease in budget, and restructuring back to NIA and SASS may result in a rise of compensation of employees due to the filling of statutory posts. The Committee recommended that adequate funds be allocated to the SSA.

### **5.1.2 National Intelligence Co-ordinating Committee (NICOC)**

The Coordinator of the National Intelligence Co-ordinating Committee (NICOC) and the team reported that the entity had been experiencing negative impact of acting positions at the senior management level. Other challenges included numerous legislative challenges. However, it was hoped that the recommendations of the High-Level Review Panel (HLRP) report would resolve most of the challenges once implemented. To resolve some of the challenges with regard to sharing of information, the JSCI recommended that the National Security Council be revived, which subsequently took place in December 2019.

### **5.1.3 Audit and Risk Committee**

The Chairperson of the Audit and Risk Committee (ARC) led the presentation and indicated that the function of the ARC is to oversee the effectiveness of governance processes, risk management processes, internal control environment and performance management. The main concern was the continuous and automatic audit qualifications based on to the nature of the business. It was proposed that quarterly and annual standing meetings be convened between ARC and the JSCI to present audit findings.

### **5.1.4 High-Level Review Panel Report Implementation Task Team**

Representatives of the team provided a presentation on the HLRP report. In 2016, the Strategic Development Plan (SDP) was established, which tampered with the structures. The JSCI in the Fifth Parliament objected to the establishment of the SDP and the former Minister stopped its implementation. In 2018, the structures reverted back to the one approved in 2010 which resulted in the displacement of people. During the same year, President Cyril Ramaphosa appointed a HLRP to review the SSA and determine whether

it had capacity to discharge its constitutional mandate both in human and material resources, and to optimally use the budget allocation.

The panel thoroughly investigated the SSA and related structures, and came up with recommendations. A team of experts was put together to devise ways of implementing the recommendations which were endorsed by the President. The team indicated that implementation would be executed using a two-phased approach. The first phase focused on the amendment of pieces of legislation such as Intelligence Services Act (No.38 of 1994), Intelligence Services Oversight Act (No. 40 of 1994) and National Strategic Intelligence Act (No. 39 of 1994). The second phase would focus on the review of the White Paper on Intelligence (1994) and other fundamental changes. It was expected that migration would be done to implement the new structure and a new National Security Strategy would be drafted, the White Paper on Intelligence reviewed and a Council provided for by the Secret Service Act would be established.

The main objectives of reorganising the SSA included decentralisation of intelligence services, the optimal use of resources, greater focus on professionalism, and enhanced operational effectiveness. The Committee raised concerns that legislation could take long due to processes and would have suggested a possibility of either repealing the proclamation and the General Intelligence Laws Amendment Act of 2013. The acting DG informed the Committee that the Bill would be technical in nature for splitting the current Agency into two separate agencies. The intention was not to invent anything new. It was also stated that the actual Bill was expected in 2022.

The Committee was informed of other challenges such as vacancies in both the Domestic and Foreign Branches, corruption, the flouting of Human Resources Policies in relation to the recruitment of some members of the Special Operations Unit, illegal protective services, a parallel vetting structure that issued fake Top Secret clearance certificates, and sniper training for non SSA members. The Committee recommended that a detailed presentation be made in the presence of the Minister.

### **5.1.5 Office of the Inspector-General of Intelligence**

Accompanied by the Principal Oversight Officers and the Legal Adviser, the IGI outlined that the office's functional responsibility was to report to the JSCI. In terms of challenges, the lack of regulations was cited as a major challenge. Other challenges included inadequate budget, lack of implementation of recommendations, intelligence failures and threat to the independence of the OIGI. It was recommended that the OIGI provide the JSCI with recommended solutions to the challenges.

### **5.1.6 South African Police Service: Crime Intelligence**

The Divisional Commissioner: CI outlined the various clusters. One of the major challenges mentioned was the inadequate budget, which was a huge hindrance in terms of optimal functioning. Other challenges mentioned included the difficulty to combat crime in the country without maintenance of CI capability which includes the recruitment, infiltration, handling and support of informants, police agents, co-workers and contacts.

### **5.1.7 South African National Defence Force: Defence Intelligence**

The Chief of DI, and the management team made a presentation on the Strategic Plan, APP and Budget Allocation for 2020/21. It covered the mandate, vision and mission, structure and personnel, performance delivery environment and performance indicators. The personnel strength for uniformed members, approved posts, and vacant posts were outlined. In addition, civilian posts including approved and staffed posts were outlined, as well as vacancies.

In terms of performance indicators, no major challenges were presented. Over-achievement was recorded in some targets. The allocated budget, as well as the shortfall were indicated. This was followed by the outline of risks such as human resources, budget allocation, DI support maintenance of facilities, and the relocation of DI Headquarters.

## **5.2 Committee Meetings**

Following the orientation of members which took place from 18 to 22 November 2019, the JSCI commenced with its meetings. More than ten meetings were held commencing on 13 November 2019 until the emergence of Covid-19 as indicated in Annexure E.



## **6. IMPACT OF THE COVID-19 PANDEMIC ON THE JSCI**

Covid-19, which resulted in the national lockdown, had an impact on the work of Parliament. The Presiding Officers suspended the business of the Houses of Parliament. The NA suspended its business from 18 March, while the National Council of Provinces (NCOP) from 19 March 2020. Similar to other institutions, Parliament embarked on exploring effective means for conducting virtual Parliament work using available technologies. This resulted in successful virtual Parliamentary committee meetings conducted over MS Teams and Zoom platforms. Since then, virtual and hybrid sittings of the Houses of Parliament have occurred. Due to the nature of its operation, the JSCI was unable to hold meetings because of cyber security concerns concomitant with MS Teams and Zoom. Consequently, the backlog compounded by the fact that the Committee was only constituted in November 2019, continued. Subsequently, several attempts were made for approval to hold meetings in Pretoria to deal with urgent matters and other outstanding matters. Approval was granted for the JSCI to convene in Pretoria for special meetings with intelligence services and the OIGI. The outstanding matters formed part of the JSCI programme that would have been concluded in the first five months. Consequently, Covid-19 delayed the finalisation and tabling of the report of the Committee five months after its first appointment which would have ended in March/April 2020. Subsequently, the five months report was tabled on 11 November 2020.

## **7. ACTIVITIES OF THE JSCI OUTSIDE THE REPORTING PERIOD UP TO DECEMBER 2020**

### **7.1 Committee Meetings**

For the period up to December 2020, more than 14 meetings were held. In some of the dates, the Committee met more than once, especially during meetings in Pretoria and some meetings at Parliament as indicated in Annexure E.

### **7.2 Special Meetings in Pretoria, 25 August to 04 September 2020**

From 25 August to 04 September 2020, the Committee held special meetings with the OIGI, the SSA, DI, CI, ARC of the SSA and the Staff Council of the SSA. The main purpose of the special meetings was to receive briefings on developing matters such as

the insurgency in the Cabo Delgado Province in Mozambique and other matters of national security. The Committee also received an update on the legislation that would separate the SSA into two entities. It also dealt with outstanding matters that were in the Committee programme for the second term such as Strategic Plans, APPs and Budget Allocation of the services.

These matters would have been completed within the first five months after the Committee was appointed. Other matters included the engagement on complaints from members and former members of the SSA, the filling of senior management vacancies, the ARC, the Staff Council, and updates on the implementation of the HLRP Report.

### **7.2.1 Interactions with the Office of the Inspector-General of Intelligence**

The meeting with the OIGI included Strategic Plan, APP, and Budget Allocation for 2020/21; update on cooperation with the Independent Police Inspectorate Directorate (IPID); and update in investigations completed; and other urgent matters.

The Strategic Plan of the OIGI was approved in 2017 for the years 2017 – 2022. The OIGI indicated that not all posts would be filled. In terms of functioning, it was indicated that the OIGI produced a quarterly risk report for office use. It was also indicated that the Certificates of the IGI are presented in the third quarter of the financial year. The IGI also receives tasking from the Executive e.g. the President and three Ministers had tasked the IGI in the past. The task took the form of a complaint. The JSCI may also refer complaints. Self-tasking also occurs and the office had several in progress.

Further discussions around the budget took place. The total budget allocated was not different from the previous year. No international travelling took place in the financial year due to Covid-19. The budget for domestic travelling had also been reduced significantly.

The Committee was informed that the implementation rate of IGI's recommendations was two per cent and in some cases zero per cent. This oversight challenge need to be escalated to the JSCI. The IGI clarified that he was allowed to move funds when needed.

### **7.2.2 State Security Agency Strategic Plan 2020-2025, Annual Performance Plan 2020/21**

The presentation was divided into four parts, mandate, strategic focus, measuring performance and annual targets. It was indicated that the planning was impacted by the recommendations of the HLRP on the SSA, which called for a significant review of policy prescripts of civilian intelligence. The HLRP was adopted by the President.

The HLRP recommended for the urgent development of a National Security Strategy (NSS) to be an overriding basis for redefining the concepts, values, policies, practices and architecture involved in South Africa's approach to national security. The White Paper on Intelligence would also have to be reviewed and aligned with the NSS. In terms of the institutional policies and strategies related to the five year planning period, the Ministry would include the recommendations of the HLRP and also focus on critical work such as Cyber security; ICT security; Cyber-crime; Review of Vetting strategy; Protection of State Information Bill; Secret Services Act and the Minimum Information Security Standards, which lacks enforceability.

In terms of relevant court rulings, the Committee was informed that due to the Judgement of last year, some of the RICA sections were deemed unlawful. The judgement prohibits bulk interception and surveillance and make recommendations that must be implemented. The Act falls under the Department of Justice and Correctional Services.

It was noted that the country's current economic trajectory was unsustainable, economic growth had declined, unemployment was rising, and inequality remained high. In terms of technological advances, the SSA had a key role to play in cyber space protection, policy development and implementation. The presentation also outlined the SSA's response to the Covid-19 pandemic. This included the capacitation of the economic intelligence unit to be able to play a key role in economic development, foreign direct investment and economic diplomacy. Others included combating organised crime, corruption and illicit economic activities. It was reported that there were people without security clearances. The vetting backlog was not only for the SSA members but also external officials. The Ministry was engaging with former members to assist.

### **7.2.3 Briefing on the threats posed by the insurgency in Cabo Delgado in Mozambique**

The Committee was briefed on the insurgency in Cabo Delgado by the Ministers of Defence and Military Veterans, and State Security, supported by senior management from the SSA, DI and CI. The presentation was prepared by the counter-intelligence functional committee of the Justice, Crime Prevention and Security (JCPS) cluster.

The Committee was fully briefed on the history and current situation in Cabo Delgado. The presentation scope included terror threat to South Africa; terror trends in Southern Africa; terror links between South Africa and the rest of the region; challenges in addressing evolving terror in the Southern African Development Community; countering mechanisms; South Africa's Constitutional and legal challenges, recommendations to address challenges and conclusion. This was followed by comments from the heads of intelligence services.

### **7.2.4 Presentation by the Audit and Risk Committee**

The Chairperson of the ARC of the SSA reported that the function of the committee was to oversee the effectiveness of governance processes, risk management processes, internal control environment and performance management which was an unfunded mandate. The main concern was the continuous and automatic audit qualifications based on to the nature of the business. It was reiterated that quarterly and annual standing meetings between ARC and the JSCI to present audit findings were required.

### **7.2.5 Update on Project Veza**

The Committee was first briefed on Project Veza during the orientation in November 2019. During the special meetings from 25 August to 04 September 2020, the Committee received an update. It was reported that the SSA was infiltrated by criminal elements during different times. Some of the findings of Project Veza included an illegal vetting structure that was established; the presidential support service which consumed most resources due to extensive travelling without bringing back any intelligence; and the establishment of a toxicology unit reporting to the then president, to name a few. In terms of progress report, four pillars were identified, namely communication, administrative

action, criminal action and asset recovery. It was reported that the first pillar was completed and progress made with regard to pillars two, three and four. It was also reported that members of the team received threats and that their lives were in danger. It was also reported that there has been some interference from senior management which was seen as anti-counter projects. The Committee was also informed that the acting DG was subpoenaed to give evidence at the Judicial Commission of Inquiry into the Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State.

#### **7.2.6 Meeting with the Staff Council**

The Committee received a briefing from the Staff Council. The scope of the presentation covered regulatory framework, challenges and member issues in the SSA. Several issues that transpired included a lack of adherence to policy prescripts and regulations by the SSA, lack of consultation by management, lack of bargaining mechanism and dispute resolution, outdated regulation directives, poor governance, maladministration, lack of consequence management for senior managers, low staff morale, nepotism and people acting in positions not knowing if they would be appointed in those positions.

#### **7.2.7 Briefing by Crime Intelligence**

The Committee received a briefing from CI. It was reported that there was a planned expansion of lifestyle auditing. Several planned interventions to fight crime such as cash in transit, gangsterism, kidnappings, terrorism, and those crimes taking place at Eskom, Prasa and Transnet were outlined. Other interventions included focusing on extortions (construction sites), public servants doing business with the state, illegal land invasion, illegal smuggling of cigarettes which increased dramatically during the Covid-19 lockdown.

The presentation also included threat picture and threat management system; strategic risks in mismanagement of Secret Services Account; security breaches in the leakage of classified information and exposure of covert methodology.

### **7.2.8 Meeting with Defence Intelligence**

The Chief of DI, and his team made a presentation on the Strategic Plan, APP and Budget for 2020/21. The presentation covered the mandate, vision and mission, structure and personnel, performance delivery environment and performance indicators.

In terms of personnel strength for uniformed members, approved posts were indicated as well as vacant posts. The same was reported for civilian posts. In terms of performance indicators, no major challenges were presented. Over-achievement was recorded for some targets. The budget allocated was also indicated as well as the shortfall.

### **7.3 Auditor-General of South Africa**

The Auditor-General of South Africa presented the financial statements of the SSA, CI and DI.

#### **7.3.1 Audit Report on the Financial Statements for State Security Agency**

An overview of the four year audits of the SSA was presented to the Committee. For the period under review, the SSA received a qualified report. Previously, the AGSA had to deal with property and equipment challenges and irregularities on operational expenditure whereby an issue was raised with management. It was found that the property and equipment challenge had not been resolved and remained an inherent qualification. For 2018/19, four programmes were audited. For the reporting period, only the Domestic Branch was audited due to Covid-19. Outdated information systems which were not serviced were identified as a serious issue.

The SSA managed to resolve the accrual for leave entitlement. In terms of credible performance reporting, the targets were not specific and measurable. The AGSA had issues with targets that could not be measured and the lack of intended performance. In reported achievements, some were achieved and others not. The SSA was unable to produce sufficient evidence to support reported achievement. In terms of compliance, the SSA failed to produce and submit quarterly reports to the executive to allow the Minister to conduct oversight. Additionally, internal control deficiencies were reported, for instance no consequence management took place. It was reported that a discussion was needed

between the SSA and the National Treasury to prevent irregular expenditure. Reasonable steps should have been taken to prevent fruitless and wasteful expenditure and the National Treasury should have been contacted to comply with supply chain management policies (See Annexure B).

### **7.3.2 Audit Report on the Financial Statements for Crime Intelligence**

For the period under review, the Committee was informed that investigations conducted resulted in the inability to obtain sufficient evidence to support reported achievements. The entity received a qualified report because of the inherent risk due to the nature of environment. When audited in moveable intangible assets, the records were not updated; they were either lost or unusable. There was no reconciliation on cash and cash equivalents. Some of the irregular expenditure on sensitive projects could have been avoided. The goods and services were overstated. It was reported that wrong calculations on operating lease commitments were identified.

In terms of credible performance reporting, it was found that measures were not clearly defined as planned targets were not specific in identifying the nature and required level of performance. Achievements reported were inconsistent with the planned targets in the APP. In terms of compliance with legislation, the extension of contracts was not approved or communicated with the National Treasury amongst others. Supply Chain Management was not complied with as the deviation for procurement above R500 000 was not approved by the National Treasury.

Instead Supply Chain Management policies were not aligned to regulations but changed to suit the circumstances. Some officials did not have the necessary skills, knowledge and qualifications required for financial management and reporting. The AGSA recommended some actions to be taken (See Annexure C).

### **7.3.3 Audit Report on the Financial Statements for Defence Intelligence**

The Committee was informed that DI had been treated as a special entity previously by the Department of Defence until 2017 whereby the audit report was contained in the Department's audit report as from 2018/19 financial year. It had been qualified for the last four years as a standard due to the nature of the functions of DI.

The qualification was as a result of irregularities such as non-compliance with legislation and supply chain management. Goods and services procurement did not follow competitive bid process resulting in irregular expenditure, and fruitless and wasteful expenditure. Internal control deficiencies were identified where the department was to develop, implement and actively monitor action plans to address challenges. It was clarified that when non-compliance was identified it meant that DI did not comply with the National Treasury policy nor aligned with the new policy of the National Treasury. The audit team requested that DI should rectify internal controls by complying with PFMA regulations (See Annexure D).

## **7.4 Annual Reports of the Services and the Inspector-General of Intelligence**

### **7.4.1 Annual Report of the State Security Agency**

The Committee was briefed on the AR of the SSA. The AR was divided into three parts, i.e. performance highlights, financial performance overview and the audit outcome. It was stated that the SSA received a qualification due to the high inherent risk because of the nature of its environment. The SSA had a workshop to work out a remedy to the situation and came out with a framework that would be presented to the National Treasury.

The ARC emphasised the need to address governance issues with critical positions. In addition, concern was raised with regard to lack of internal control mechanisms and the slow implementation of the HLRP recommendations. The ARC would work with the AGSA to ensure that the management of the SSA addresses the issues identified. The JSCI was requested to monitor the situation and escalate the matters accordingly in order to fix the organisation.

### **7.4.2 Annual Report of Crime Intelligence**

The Committee was briefed on the AR of CI. Some of the findings of the AGSA were highlighted. Over and under expenditures were indicated and reasons explained. Some of the achievements were highlighted as well as the challenges. The Committee was informed that lifestyle audits for all SAPS members was underway. In terms of performance, some targets were achieved and others under achieved. However, there were significant successes recorded.



### **7.4.3 Annual Report of Defence Intelligence**

The Committee was briefed on the AR of DI. The presentation highlighted some of the comments by the AGSA. It also indicated some of the activities undertaken such as support to the Western Cape Province in an effort to suppress gang related violence. Some of the achievements included the appointment of Military University Educators for the DI Bachelor of Military Science degree that commenced in January 2021 at the South African Military Academy. It was also reported that the soldiers were deployed during lockdown to curb the spread of the Covid-19 pandemic. Some of the challenges identified included vetting as the target was not achieved, as well as human resource challenges.

### **7.4.4 Annual Report of the Office of the Inspector-General of Intelligence**

The IGI gave an overview and comments on the AR. It was indicated that the OIGI is audited by the AGSA under the SSA as a spending centre. There were no qualifications identified by the AGSA. The process of scheduling of the OIGI had not been finalised. In terms of performance, the OIGI had reviewed and monitored CI, DI and the SSA. The Certificates had been compiled and presented as per the legislation. The budget was ring-fenced which lead to a more controlled output. The outstanding matters were oversight framework, policies and SOPs; finalisation of Intelligence Oversight Regulations; amendments to the oversight legislation; scheduling of the OIGI and filling of critical vacant posts.

The OIGI could not visit some stations in foreign countries where oversight engagements were planned before the lockdown. There were budgetary and operational constraints reported by the IGI. Investigations conducted and cases finalised were outlined.

## **7.5 Certificates of Activities of the Services by the OIGI**

### **7.5.1 State Security Agency**

Before presenting on the certificate for the SSA, the IGI informed the Committee that the OIGI received input from the Minister not related to the certificates but about procedures. The procedures the Minister referred to was Section 7(11) (b) of the Intelligence Oversight Services Act (No. 40 of 1994), which provides that “the Minister responsible for the

Service in question shall, subject to section (4) (2), cause the report and certificate to be transmitted to the Committee”. This issue was discussed with the previous Committee during the Fifth Parliament to determine the meaning of transmission versus presentation of certificates. It was indicated that the IGI was following its mandate as stipulated under Section 7 (7) of the Act.

The Committee resolved that the IGI should present the certificates since they were prepared by the OIGI. However, each Service should have an input in the compiled certificates and be present when the IGI present in preparation for responses to the Committee on findings and recommendations. Subsequently, the Minister responsible for the relevant Service would present responses to the findings and recommendations on the certificate of activities. The Committee undertook to communicate the resolution to each relevant Minister to respond to the concerns raised during the certification process.

In his opinion, the IGI stated that the IA did not achieve a fair presentation of its activities for the period under review. The OIGI did not get what was expected. Some of the findings were that the SSA failed to comply with Section 23 of the Constitution regarding collective bargaining. There was no collective bargaining mechanism for the staff. In other instance, the High Court judgement rendered the National Communications activities on bulk interception and monitoring of foreign signals collection unlawful and invalid. The IGI thoroughly explained the dangers of non-compliance in that regard. The judgement was unfortunately not appealable. The HLRP also made a finding on the issue.

The IGI had found that security breaches indicated intelligence failure and were not reported in accordance with the Act. In this regard, the IGI identified a loophole in the legislation as the Act states that “significant intelligence failure” must be reported. The IGI argued that the use of the term “significant” is problematic. More importantly, there is no provision in the Act making it an offence not to report intelligence failures. Other instances of intelligence failures used as examples by the IGI included the burning of schools in Vuwani and the protests in the North West. Additionally, the SSA was found to have been involved in matters outside its mandate. An example used was the involvement in the matter of the Public Protector pertaining to the mandate of the Reserve Bank.

The absence of amendments to legislation and regulations on collection of signal intelligence negatively affected the full use of bulk interception. There were many irregular acting capacity appointments that had destabilising effect on the organisation which could affect the management of claims with backdates on acting allowances. The absence of amended legislation and regulations affected the functioning of the Agency. There was serious instability at senior management.

### **7.5.2 Crime Intelligence**

The Committee was briefed on the certificate of CI. Previously, there were no remedies on challenges such as staff turnover, capacity regarding vetting analysis and training intervention at CI which was a matter of great concern. When dealing with auditing the interest was always on whether proposals were implemented or not e.g. from PFMA the expectation is to override, recover or institute disciplinary hearings. Some of those were not implemented by CI in the reporting period.

Other findings included the lack of provision of salary advices for general workers for them to acquire credit at the banks or open accounts. It was also reported that in 2016, there was a procurement of services without contract, but payment was made without rendering the service. It was also found that cost effective mechanisms were not implemented. It was found difficult to investigate some the projects that CI predicted to be done such as “Fees must fall”. It was found that there was abuse of the Secret Services Account, and some senior officers were implicated but protected by management.

### **7.5.3 Defence Intelligence**

The court judgement of amaBhungane versus the Minister of Justice and Correctional Services identified unlawfulness and invalidity of bulk interception conducted by DI. Other findings by the OIGI included the backlog on vetting which showed that the majority of the top management of DI did not have a Top Secret security clearance. Inadequate budget and resources which impact negatively on intelligence operations were identified. The borrowing of posts amongst DI structures was identified as a serious concern as it destabilised the whole structure. The OIGI recommended that DI discontinued with the practice of borrowing of posts and proposed a DI subcommittee on the Personnel

Selection Board. Regarding the procurement of sensitive operational equipment or services, the OIGI found that there were sufficient safeguards in Treasury Regulations to deviate from the requirement of competitive bids or three quotations in the interest of national security or involving urgent or emergency cases. The OIGI recommended that DI should consider following those provisions.

## **7.6 Financial Intelligence Centre**

The Committee was briefed by the Financial Intelligence Centre (FIC), which was established in 2001 to administer the Financial Intelligence Centre Act but operated formally since 2003. The FIC is the only entity authorised to analyse suspicious transaction reports with an advantage of consulting other countries and getting information from its counterparts as long as those countries are part of Egmont Group.

The FIC is intended for gathering of transaction data and provision of financial intelligence. It is funded by the National Treasury, reports to the Minister of Finance and is accountable to Parliament. The FIC received an unqualified audit report from the AGSA. Its mandate is not to prosecute but to assist using the information from the banks. It also checks on open sources and report to Law Enforcement Agencies to take action. The Protection of Constitutional Democracy Against Terrorist and Related Activity Act of 2004 (No. 33 of 2004), is the only Act that addresses terrorist activities and offences of terrorism.

The Director emphasised on having efficient and effective systems in order to analyse data. Currently the FIC has offices in Centurion and a small one in Cape Town but servicing all provinces. It has strategic organisational outcomes, and one of them is its role in combatting financial crimes. A reported amount had been recovered with its assistance. It shares information with other organs of the state such as the Office of the Public Protector. However, information should be used correctly or payment of a fine is required if misused. It was reported that a very good relationship existed with the Asset Forfeiture Unit (AFU). The AFU is able to freeze accounts and assets once the FIC has reported suspicious activities. It was reported that the source of income for a Non-Profit Organisations (NPOs) must be known. There were few cases of terrorism and money laundering, which often involve non state actors such as NPOs. The FIC is also part of

NICOC and contributes towards National Intelligence Estimates by sharing information with the SSA and CI.

## **7.7 Office of the Designated Judge for Interception of Communications**

Due to Covid-19, the Committee was unable to meet with the Designated Judge for Interception, Justice BE Nkabinde, for the presentation of the Annual Report on Interception of Private Communications. In November 2020 when the Committee convened following the reduced alert levels, Justice Nkabinde was engaged in matters that needed urgent finalisation and could not present the report. It was only presented at the special meetings held in Pretoria from 15 to 19 March 2021 (see Annexure A).

## **8. FINDINGS OF THE JSCI**

### **8.1 State Security Agency**

#### *8.1.1 High-Level Review Panel Report Implementation*

- It was found that the implementation of the HLRP report has been slow.

#### *8.1.2 Certificate of Intelligence*

- Financial irregularities have occurred.
- Challenges were experienced in some provincial offices.
- The OIGI found that no collective bargaining mechanism for the staff.
- The Committee was concerned about security breaches which may indicate intelligence failures.
- There were loopholes identified with regard to reporting significant intelligence failures.
- There was serious instability at senior management.
- There was uncertainty on the procedure of the presentation of the certificates to the JSCI in terms of the Act.

#### *8.1.3 Legislation and Policy*

- The White Paper on Intelligence had not been reviewed since 1995.

- No time-frame was provided on the process relating to the President's instruction on the separation of the SSA.

#### 8.1.4 *Instability, vacancies and vetting of senior management*

- It was found that higher positions at the SSA were occupied by acting appointments. Since 2018, no permanent DG was appointed for the SSA. In addition, most senior management positions were on an acting basis.
- There were acting appointments at provincial offices.
- There were vacancies at various levels.
- Vetting backlog was a challenge.

#### 8.1.5 *Project Veza*

- Threats were made against officials involved in the investigation.
- Protection was needed for officials involved in the investigation.
- It was found that serious financial irregularities have taken place.

#### 8.1.6 *Staff Council*

- The Staff Council raised concerns on dispute resolution mechanism.
- The Staff Council indicated that some Regulations and Directives were outdated.
- Staff Council needed the Committee to assist on various issues affecting the staff.

#### 8.1.7 *Audited Financial Statements*

- There were challenges in financial statements of the SSA.
- Some of the targets were not in accordance with the SMART principle of the National Treasury.<sup>1</sup>
- Sufficient evidence was not provided for achieved targets.
- The SSA did not produce and submit quarterly reports to the executive to allow the Minister to conduct oversight.

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<sup>1</sup> SMART means that Performance targets are to be specific, measurable, achievable, relevant and time-bound.

### 8.1.8 *Annual Report*

- It was found that there were governance challenges at the SSA.
- There was instability at senior management due to acting positions and vacant posts.
- There was a lack of consequence management.
- Several concerns were raised by the ARC.
- There was friction between the ARC and the management of the SSA.

## 8.2 **Crime Intelligence**

### 8.2.1 *Audited Financial Statements*

- Sufficient evidence was not provided for achieved targets.
- CI did not ensure that irregular expenditure on sensitive projects was avoided.
- Targets were not specific and measurable as per the National Treasury Regulations.
- Compliance with legislation was not ensured.
- Some deviations were not approved by the National Treasury.
- Supply Chain Management policies were not aligned with regulations.

### 8.2.2 *Annual Report*

- The Committee was pleased that lifestyle audits were underway.
- There was a backlog in vetting.
- Some senior managers were not vetted.
- Over and under expenditure were reported.

### 8.2.3 *Certificate of Activities*

- The OIGI reported that there was looting of funds from the Secret Services Account by the officials.
- There were lack of operational directives.

### **8.3 Defence Intelligence**

#### **8.3.1 Audited Financial Statements**

- Irregularities such as non-compliance with legislation and supply chain management were not addressed to avoid a qualification from the AGSA.
- Competitive bid processes were not followed for procurement of goods and services.
- There was lack of compliance with the National Treasury policy.
- There were weak internal controls.

#### **8.3.2 Annual Report**

- Vetting challenges were identified.
- Human resource challenges were identified.
- The location of DI headquarters has been a serious challenge for the past few years.

#### **8.3.3 Certificate of Activities**

- The RICA judgement impact on DI with regard to bulk surveillance.
- There was a vetting backlog and some generals and senior managers were not vetted.
- DI has a shortage of personnel and some posts were not filled.

### **8.4 Office of the Inspector-General of Intelligence**

#### **Annual Report**

- The AGSA commended the OIGI for the unqualified audit.
- There were human resource challenges identified.



## **9. GENERIC RECOMMENDATIONS**

### **9.1 Certificates of Activities**

- The Committee resolved to inform the Ministers of State Security, Police, and Defence and Military Veterans of its resolution with regard to the Certificates of Activities by the IGI as follows:

9.1.1 In accordance with section 7(7)(d) of the Act, the Minister responsible for the each of the services as mentioned above, shall transmit the certificate to the Committee.

9.1.2 In accordance with section 7(6) of the Act, which states that the IGI 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 IGI shall present/brief the Committee on the certificate submitted to each Minister.

9.1.3 The relevant Minister and/or the service shall be present, for the purposes of observation, when the IGI presents the certificate of the particular service.

9.1.4 The relevant Minister and/or the service shall respond to the concerns raised in certificates in a separate engagement after the IGI had presented the certificate to the Committee.

### **9.2 Institution of Consequence Management**

- The Committee recommended that consequence management be instituted across the services.
- Updates to be provided quarterly to the Committee.

### **9.3 Implementation of the Recommendations of the OIGI**

- The Committee recommended that the implementation rate of the findings and recommendations of the IGI be improved.

- All three ministers and their services were urged to ensure that findings and recommendations of the IGI were implemented. The JSCI to be given updates during quarterly reporting by the services.
- The OIGI to provide regular feedback to the Committee on the implementation of recommendations by the ministers and services.
- The Committee to explore ways of ensuring that recommendations of the OIGI were enforceable.

#### **9.4 The Review of RICA**

- It was recommended that all services be involved in the review of RICA in terms of the judgement pertaining to bulk surveillance.
- The JSCI to liaise with the Portfolio Committee on Justice and Correctional Services regarding the review and amendment of RICA.

#### **9.5 Insurgency in Cabo Delgado in Mozambique**

- It was recommended that the services continue monitoring the situation, offering support and advice to decision makers with regard to developments in Mozambique.
- The Committee to be briefed on developments when necessary.

#### **9.6 Vetting for Senior Managers and Members of the services**

- It was recommended that all senior managers for all services be vetted as a matter of urgency.
- All vetting backlog to be eradicated as soon as possible.

### **10. SPECIFIC RECOMMENDATIONS**

#### **10.1 State Security Agency**

##### *10.1.1 High-Level Review Panel Report Implementation*

- It was recommended that the HLRP report be implemented without delays. The Committee to be briefed on a quarterly basis on the progress made.

### 10.1.2 *Certificate of Activities*

- The Committee recommended that the Head of the Service should report intelligence failures to the IGI. The IGI to monitor and report to the JSCI quarterly.
- The JSCI has recommended that those implicated in financial irregularities be reported to law enforcement agencies. The Committee has also recommended that consequence management be effected.
- Due to concerns regarding inefficiencies, the Committee would undertake an oversight visit to KwaZulu-Natal provincial office before the end of the financial year 2021/2022.
- The Staff Council to ensure that there must be collective bargaining mechanism for the staff.
- Security breaches must be addressed and report provided to the Committee before the end of 2021/22 financial year.
- The loopholes identified in legislation with regard to reporting significant intelligence failures must be addressed when legislation is reviewed.

### 10.1.3 *Legislation and Policy*

- The Committee raised some concerns regarding the lack of the review of the White Paper on Intelligence since 1995. This should be done when the legislation is reviewed.
- Clear time-frame on the process relating to the President's instruction on the separation of the SSA into NIA and SASS was needed. The SSA to include information on its quarterly reports to the Committee.
- Regular feedback to be provided quarterly on the introduction of the General Intelligence Laws Amendment Bill.

### 10.1.4 *Instability, vacancies and vetting of senior management*

- It was recommended that permanent appointments be made at senior management, including provincial offices, as soon as possible.
- It was recommended that the filling of vacancies be fast tracked and progress be provided on a regular basis.

- It was recommended that the vetting of all senior officials be fast tracked and time-frames provided in the quarterly reports to the JSCI.

#### 10.1.5 *Project Veza*

- The Committee recommended that security be provided for those involved in the investigations since threats were made.
- The Committee recommended that those implicated in any wrong doing be reported to law enforcement for further investigation and prosecution.
- Project Veza team to report to the JSCI quarterly.

#### 10.1.6 *Staff Council*

- The Staff Council to provide suggestions on dispute resolution mechanism to the Committee.
- The Staff Council to advise the Committee on which Regulations and Directives are outdated.
- The Staff Council to indicate how the Committee can assist.
- The Staff Council to ensure that a collective bargaining mechanism exist for the staff.

#### 10.1.7 *Audited Financial Statements*

- The SSA must work closely with the AGSA to ensure auditable financial statements.
- The financial statements must be prepared in accordance with the prescribed financial reporting framework and supported by full records as per the Public Finance Management Act (PFMA), No.1 of 1999.
- Effective steps must be taken to prevent irregular, fruitless and wasteful expenditure.
- There must be consequence management for those who incurred irregular, fruitless and wasteful expenditure.
- Disciplinary actions must be initiated for those involved in financial misconduct.

- The SSA must ensure that the targets were specific and measurable as per the National Treasury Regulations.
- Sufficient evidence must be provided for achieved targets.
- The SSA must produce and submit quarterly reports timeously to the executive to allow the Minister to conduct oversight.

#### 10.1.8 *Annual Report*

- The SSA must address the governance challenges and report to the JSCI during the presentation of the AR for 2020/21.
- Stability was required at senior management by the appointment of permanent members to occupy the acting positions and vacant posts.
- Consequence management must be introduced and enforced.
- All concerns raised by the ARC must be addressed in order to improve the audit outcome by the AGSA.
- The friction between the ARC and the SSA must be resolved.

### 10.2 **Crime Intelligence**

#### 10.2.1 *Audited Financial Statements*

- Sufficient evidence must be provided for achieved targets.
- CI must ensure that irregular expenditure on sensitive projects was avoided.
- Targets must be specific and measurable as per the National Treasury Regulations.
- Compliance with legislation must be ensured.
- All deviations must be approved by the National Treasury.
- Supply Chain Management policies must be aligned with regulations.

#### 10.2.2 *Annual Report*

- The Committee must be briefed on the outcome of the lifestyle audit and updated regularly.
- The vetting backlog must be eradicated. CI to provide a time-frame and report during quarterly reporting.

- Effective controls are needed to avoid over and under expenditure reported.

### 10.2.3 *Certificate of Activities*

- CI must consider recovering looted money from the Secret Service Account.
- The OIGI and CI should consider a workshop on minimum reporting standards to ensure cooperation.

## 10.3 **Defence Intelligence**

### 10.3.1 *Audited Financial Statements*

- Irregularities such as non-compliance with legislation and supply chain management must be addressed to avoid a qualification from the AGSA.
- Competitive bid processes must be followed for procurement of goods and services.
- Compliance with the National Treasury policy is required.
- The strengthening of internal controls is required.

### 10.3.2 *Annual Report*

- DI must ensure that vetting challenges are addressed. Time-frame to be provided and progress reported quarterly.
- DI must ensure that human resource challenges are addressed.
- DI must continue working with other stakeholders such as the National Department of Public Works and Infrastructure on relocating its headquarters. A regular update must be given to the Committee.

### 10.3.3 *Certificate of Activities*

- The SANDF, particularly DI must work with the relevant departments on the review of RICA legislation as per the judgement.
- The vetting backlog must be cleared as soon as possible particularly amongst general officers and senior managers.
- DI should recruit its personnel through the Military Skills Development System to ensure all posts are filled.

#### **10.4 Office of the Inspector-General of Intelligence**

- The OIGI must address the human resource challenges identified.
- Briefing to be given to the JSCI quarterly on outstanding matters such as the oversight framework, policies and SOPs.

#### **10.5 Financial Intelligence Centre**

- The Committee requested the SSA to speed up the process of vetting staff of the FIC.

#### **10.6 Audit and Risk Committee**

- Quarterly and annual standing meetings between ARC and the JSCI to be included in the Committee programme.

### **11. ANNEXURES**

- A. Annual Report on Interception of Private Communications, Period: 01 November 2018 to 28 February 2021
- B. Report of the Auditor-General to Parliament on the State Security Agency
- C. Report of the Auditor-General to Parliament on the South African Police Service - Crime Intelligence: Secret Service Account
- D. Report of the Auditor-General to Parliament on Vote No. 19 Department of Defence
- E. Programme for the Financial Year 2019/2020 including period up to December 2020
- F. Glossary of Acronyms

**ANNUAL REPORT ON INTERCEPTION  
OF**

**PRIVATE COMMUNICATIONS**

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

**Period: 01 November 2018 to 28 February 2021**

To: Chairperson: Hon. JJ Maake, MP

Joint Standing Committee on Intelligence: Parliament

**By Justice B E Nkabinde**

**Designated Judge**

**Date: 17<sup>th</sup> March 2021**



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A. Introduction

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

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<sup>1</sup> 40 of 1994.

<sup>2</sup> 70 of 2002.

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

B. Overview of the constitutional and legal framework

- [8] The right to privacy, which is entrenched in section 14 of the Constitution<sup>3</sup> embraces the right to be free from intrusions and interferences by the state and others in the

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<sup>3</sup> Section 14 of the Constitution reads:

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

personal life of the citizenry. This right, like any other, is not absolute. However, the limitation of the right to privacy must be reasonable and justifiable.<sup>4</sup> The right to freedom of expression entrenched in section 16 of the Constitution<sup>5</sup> is also relevant for the purpose of this report. Further rights which are implicated but not as self-standing as the privacy right in the implementation of RICA include the rights to a fair hearing and trial, respectively, as guaranteed in terms of sections 34<sup>6</sup> and 35(3)<sup>7</sup> of the Constitution.

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

<sup>4</sup> Section 36 of the Constitution provides:

**“Limitation of rights**

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

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

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

<sup>5</sup> 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.”

<sup>6</sup> 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.”

<sup>7</sup> Section 35(3) of the Constitution provides:

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

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

[9] State intrusions into individuals' privacy may occur in various ways. Here, are concerned with the surveillance of individuals through interception of private communications as regulated under RICA.<sup>8</sup> This may take place, for example, under an interception direction,<sup>9</sup> with the consent of a party to communication,<sup>10</sup> of an indirect communication in connection with carrying on of business,<sup>11</sup> to prevent serious bodily harm,<sup>12</sup> for purposes of determining location in case of emergency<sup>13</sup> and if authorised by other Acts.<sup>14</sup>

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

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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."

<sup>8</sup> 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.

<sup>9</sup> Section 3 of RICA.

<sup>10</sup> Section 5 of RICA.

<sup>11</sup> Section 6 of RICA.

<sup>12</sup> Section 7 of RICA.

<sup>13</sup> Section 8 of RICA.

<sup>14</sup> Section 9 of RICA.

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

specifying the grounds<sup>16</sup> on which the application is made; setting all the facts and circumstances alleged by the applicant and, if applicable, indicating whether conventional methods have been exhausted as well as whether any previous applications have been made.

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

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

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

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<sup>16</sup> Set out in section 16 (5).

“ . . . .

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

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

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

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

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

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

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

**'Section 25A Post-surveillance notification**

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

....”

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



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

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

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<sup>17</sup> Paragraphs 32 and 33 of the Constitutional Court judgment.

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

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

[24] The next example related to the report by the Inspector-General on the surveillance that had been conducted by the NIA operatives on a prominent South African businessman, Mr Sakumzi Macozoma (Macozoma). Seemingly, the Inspector-General had been requested to look into the matter of Macozoma by the Minister of Intelligence Services in terms of section 7 (7) (c) of the ISOA.<sup>18</sup> Macozoma was alleged to have been linked to a foreign intelligence services inimical to national security<sup>19</sup> and his emails, allegedly revealing various conspiracies, had been intercepted. That, in turn, resulted in the electronic and physical surveillance of certain individuals and political parties. In the report's conclusion, the judgment reveals, that the emails had been fabricated by the NIA team.

[25] After giving these examples the Court remarked:

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

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

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<sup>18</sup> See fn 1 above.

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

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

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

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

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

<sup>20</sup> Paragraphs 40 -1 of the Constitutional Court judgment.

<sup>21</sup> Paragraph 39 of the Constitutional Court judgment.

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

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<sup>22</sup> Paragraph 49 of the Constitutional Court judgment.

<sup>23</sup> See for example paragraph 79 of the Constitutional Court judgment.

<sup>24</sup> Para 159 of the Constitutional Court judgment (Minority).

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

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

[33] With regard to the *ex parte* nature of the application<sup>26</sup> for directions the Court mentioned that the applicants did not challenge the section permitting this. It remarked that the rationale for the *ex parte* process is obvious: the surveillance would be futile if the subject were to be aware of it.<sup>27</sup>

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

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

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

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<sup>26</sup> In terms of section 16(7)(a) of RICA.

<sup>27</sup> Paragraph 95 of the Constitutional Court judgment.

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

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

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

#### D. OIC Report

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

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<sup>28</sup> Paragraph 107 of the Constitutional Court judgment.

<sup>29</sup> Paragraph 119 of the Constitutional Court judgment.

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

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

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

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

E. Law Enforcement Agencies' reports

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

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



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

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

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

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

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

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

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

NEW-350

RE-APPLICATION-88

EXTENSION-30

EXTENSION AND AMENDMEND-119

AMENDMEND-26

ORAL-2

DECLINED-7

**TOTAL-622**

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

NEW-8

RE-APPLICATION-24

AMENDMEND-8

EXTENSION AND AMENDMEND-5

ORAL-1

SECTION 11-5

EXTENSION-3

DECLINED-7

**TOTAL-61**

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

NEW-3

EXTENSION AND AMENDMEND-1

#### G. Comments on the statistics

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

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

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

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

#### H. Observations

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

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

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

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

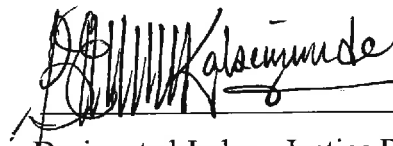
- [57] It bears mentioning that there are many instances when I decline to grant directions, for example, when numbers do not tally. I would direct queries to the relevant agency to explain or rectify the whatever errors that might have been detected. It follows that the issues raised by Ms Karrim and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

I. Concluding remarks

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

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

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

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

Designated Judge: Justice BE Nkabinde

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

### Report on the audit of the financial statements

#### Qualified opinion

1. I have audited the financial statements of the State Security Agency set out on pages ... to ..., which comprise statement of financial position as at 31 March 2020, statement of financial performance, statement of changes in net assets appropriation statement and cash flow statement for the year then ended, as well as the 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 State Security Agency as at 31 March 2020, and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA).

#### Basis for qualified opinion

##### High inherent risk due to nature of environment

3. The State Security Agency accounts for non-sensitive and sensitive project expenditure and assets incurred in connection with the performance of the function and the duty of the intelligence services, as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002). The level of assurance that can be given by my audit on expenditure and assets relating to sensitive projects, included in notes 7 and 18 to the financial statements respectively, is lower than in the case of other audits due to the significant inherent risk relating to the sensitivity of the environment in which they are incurred and the manner in which they are recorded.
4. The accounting officer has commenced with a process to implement the recommendations of the review panel that was appointed by the President. This has resulted in a greater level of transparency related to the expenditure on special projects and the following matters are therefore qualified:
  - 4.1 The nature of the business of the agency poses significant challenges to follow the legislated supply chain processes related to the procurement of operational equipment as well as goods and services used in sensitive projects. Even as controls are being implemented by the accounting officer, practical challenges to comply are faced. The balance between the nature and mandate of the agency and open and transparent procurement process necessitate an exemption from the minister of finance to deviate on supply chain processes. This is resulting in irregular expenditure. The full extent of the misstatement could not be quantified and I was unable to confirm the amount of the irregular expenditure to be disclosed by alternative means.



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4.2 The nature of the business and the related inherent risk have also limited my ability to confirm the assets, under property and equipment and computer software, which are used in sensitive projects. As such, I was unable to confirm whether property and equipment, depreciation, computer software, amortisation and operational expenditure were fairly presented in the financial statements.

### Property and Equipment

5. The Agency did not review the residual values and useful lives of property and equipment at each reporting date in accordance with GRAP 17. Consequently, I was unable to confirm property and equipment recognised at [REDACTED] (2019: [REDACTED]) in note 18 to the annual financial statements. In addition, I was unable to confirm the depreciation recognised at [REDACTED] (2019: [REDACTED]) in note 8 to the financial statements. Therefore, I was unable to determine whether any adjustments were necessary to the assets' value disclosed in the financial statements, the surplus for the period and the accumulated surplus.

### Context for the opinion

6. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
7. I am independent of the agency in accordance with sections 290 and 291 of the *Code of Ethics for Professional Accountants* and parts 1 and 3 of the *International Code of Ethics for Professional Accountants (including International Independence Standards)* of the International Ethics Standards Board for Accountants (IESBA codes) as well as the 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 codes.
8. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

### Emphasis of matter

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

### Restatement of corresponding figures

11. As disclosed in note 28 to the financial statements, the corresponding figures for 31 March 2019 have been restated as a result of an error in the 2018-19 financial statements which was identified during the 2019-20 financial year.

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## Other matters

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

### Use of internal auditors

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

## Responsibilities of the accounting officer for the financial statements

14. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with 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.
15. In preparing the financial statements, the accounting officer is responsible for assessing the 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 agency or to cease operations, or has no realistic alternative but to do so.

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

16. 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.
17. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

## Report on the audit of the annual performance report

### Introduction and scope

18. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected programme presented in the annual performance report. Due to the nature of the environment I was not able to test the completeness of the performance information reported. I performed procedures to identify material findings but not to gather evidence to express assurance.

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19. My procedures address the usefulness and reliability of the reported performance information, which must be based on the approved performance planning documents of the agency. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the agency enabled service delivery. My procedures also do not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
20. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programme presented in the annual performance report of the agency for the year ended 31 March 2020:

Programme	Pages in the annual performance report
Programme 2: ██████████	x – x

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

**Programme 2 – ██████████**

**Counter Intelligence: Identification and effective response to intelligence requirements which contribute towards national security**

23. Adequate systems and processes were not established for the target 'Review and update the Minimum Information Security Standard (MISS)' to enable consistent measurement and reliable reporting of performance against the predetermined indicator definitions relating to the target in question.
24. Adequate systems and processes were not established for the target 'Prioritise the fast tracking of vetting and advising in order to eliminate the backlog' to enable consistent measurement and reliable reporting of performance against the predetermined indicator definitions relating to the target in question.

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25. I was unable to obtain sufficient appropriate audit evidence for the achievement of the actual reported performance against the target 'conduct and coordinate counter-intelligence operations in line with national intelligence priorities' in the annual performance report as reflected in the table below; this was due to a lack of accurate and complete records. I was unable to confirm the reported achievement by alternative means. Consequently, I was unable to determine whether any adjustments were required to the reported achievement.

Target	Reported achievement
[REDACTED]	<ul style="list-style-type: none"> <li>[REDACTED]</li> </ul>

26. The achievement of the below performance was reported against the target 'conduct and coordinate counter intelligence operations in line with national intelligence priorities' in the annual performance report. However, due to deficiencies in the supporting schedules submitted for the audit, I was not able to determine the accuracy of the reported information. The supporting evidence provided differed materially from the reported achievement.

Target	Reported achievement	Audited Value
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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Target	Reported achievement	Audited Value
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

**Other matters**

27. I draw attention to the matters below.

**Achievement of planned targets**

28. Refer to the annual performance report on page(s) xx to xx for information on the achievement of planned targets for the year and explanations provided for the underachievement of a significant number of targets. This information should be considered in the context of the material findings on the usefulness and reliability of the reported performance information in paragraphs 23 to 26 of this report.

**Adjustment of material misstatements**

29. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were on the reported performance information of Domestic Branch. As management subsequently corrected only some of the misstatements, I raised material findings on the usefulness and reliability of the reported performance information. Those that were not corrected are included as material findings.

**Report on the audit of compliance with legislation**

**Introduction and scope**

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

31. The material findings on compliance with specific matters in key legislations are as follows:

### Annual financial statements

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

### Expenditure management

34. Effective and appropriate steps were not taken to prevent irregular expenditure amounting to [REDACTED], incurred in the 2019-20 financial year as disclosed in note 34 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 was caused by non-compliance with SCM regulations.
35. Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R16 261 000, as disclosed in note 33 to the annual financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1.

### Consequence Management

36. I was unable to obtain sufficient appropriate audit evidence during the 2019-20 audit process that disciplinary steps, including the initiation of investigations, were taken against all officials who had incurred irregular expenditure as well as fruitless and wasteful expenditure incurred during the 2018-19 financial year, as required by section 38(1)(h)(iii) of the PFMA.
37. Notwithstanding pending investigations, disciplinary hearings were not always held for confirmed cases of financial misconduct committed by some of the officials, as required by treasury regulation 4.1.1.

### Procurement and contract management

38. Some of the contracts were extended or modified without the approval of National Treasury as required by section 44 of the PFMA and treasury regulations 8.1 and 8.2.

### Strategic planning and performance management

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

### Other information

40. The accounting officer is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and the selected programme presented in the annual performance report that has been specifically reported in this auditor's report.

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41. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
42. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
43. If, based on the work I have performed on the other information that I obtained prior to the date of this auditor's report, I conclude that there is a material misstatement in this other information, I am required to report that fact.
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, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion, the findings on the annual performance report and the findings on compliance with legislation included in this report.
46. The agency's financial information systems need urgent attention; some key applications are outdated and are, therefore, unsupported by service providers. This has resulted in other systems and applications not being updated to newer versions so that the system, as a whole, is still able to interface. The ability of the agency to invest in these systems is limited by the impending split of the department. For the interim management needs to ensure that compensating controls are in place to support these systems.
47. Inherent limitations in the internal controls relating to the keeping of valid, accurate and complete financial records as well as compliance with supply chain management legislation for sensitive projects are noted.
48. The agency has a number of senior acting positions; this has created instability in different structures, which may be detrimental to creating a culture of accountability.
49. There were inadequate review processes, which resulted in material misstatements in the annual financial statements. Management has still not yet finalised assessing the useful lives of the all the assets due to finance staffing constraints.
50. The agency did not have approved standard operating procedures to guide collection, collation, verification, storing and reporting of performance information, which resulted in scope limitations.

51. There were inadequate corrective ~~measures put in place~~ to address the causes of prior year findings, relating to material misstatements in the annual financial statements and annual performance report which are not related to the inherent limitations within the environment.
52. Some policies and procedures are outdated and do not incorporate the changes in the Agency's operating environment as well as changes in the applicable laws and regulations.

### Other reports

53. I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the agency's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.
54. The agency is currently considering and/or implementing recommendations relating to investigations relating to the temporary advances of [REDACTED] that have been concluded. These investigations were conducted in collaboration with other relevant law enforcement agencies.
55. In June 2018, President Cyril Ramaphosa appointed a review panel to assess the mandate, capacity and organisational integrity of the agency. These proceedings were concluded and a report was released to the public in December 2018. An implementation task team has been set up to oversee the implementation of the recommendations in the review panel's report. Furthermore, there are numerous internal investigations underway as result of matters raised in the report.
56. The Office of the Inspector General on Intelligence are in the process of investigating numerous complaints received, which are at various stages of completion.

*T-Auditor-General*

Pretoria

27 October 2020



AUDITOR-GENERAL  
SOUTH AFRICA

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## Annexure – Auditor-general's responsibility for the audit

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

### Financial statements

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

### Communication with those charged with governance

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

## Report of the auditor-general to Parliament on the South African Police Services – 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 Services – 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 2020, statement of financial performance, statement of changes in net assets, and cash flow statement for the year then ended, as well as the 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 Services – Crime Intelligence: Secret Services Account as at 31 March 2020 and 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 of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

#### Basis for qualified opinion

##### High inherent risk due to the nature of the environment

3. The South African Police Service – Crime Intelligence: Secret Services Account accounts for sensitive and non-sensitive project expenditure incurred in connection with the performance of the function and the duty of the Secret Services as defined in section 1 of the Secret Services Act of South Africa, 1978 (Act No. 56 of 1978). The level of assurance that can be given by my audit on sensitive projects expenditure and assets included in notes 3, 6 and 24 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.

##### Goods and services

4. The department did not classify salary payments made to general workers as compensation of employees, in accordance with Modified Cash Standard chapter 8, Expenditure in the financial statements. The department has a contractual relationship with these employees that requires separate disclosure from goods and services as compensation of employees. Consequently, goods and services are overstated and compensation of employees is understated by R11,7 million and corresponding figure for compensation of employees is understated by R9,9 million.

##### Cash and cash equivalents

5. In the prior years the department overstated cash and cash equivalents by approximately R6,2 million. The department is still in the process of reconciling the transactions in order to finalise

the adjustments that need to be made to the financial statements in order to correct the misstatement. Consequently, the misstatement of approximately R6,2 million, included in the comparative figures of note 7 to the financial statements, remains unresolved.

#### Lease commitments

6. The department did not correctly calculate operating leases in accordance with the Modified Cash Standard (MCS) chapter 13, Leases. Consequently, operating leases in note 18.1 are overstated by approximately R8,4 million.

#### Irregular expenditure

7. The nature of the business of the department pose significant challenges to follow proper supply chain processes related to the procurement of operational equipment and goods & services. Even as controls are being implemented by senior management, practical challenges to comply are faced. This is resulting in irregular expenditure. The balance between the nature and mandate of the agency and open and transparent procurement process necessitate an exemption from the minister of finance to deviate on supply chain processes. This resulted in the irregular expenditure disclosure being understated. The full extent of the misstatement identified could not be quantified and I was unable to confirm the amount of irregular expenditure to be disclosed by alternative means. Consequently, I was unable to determine whether any further adjustments were necessary to the irregular expenditure disclosure stated at R65,1 million (2019: R65,1 million) in note 19 to the financial statements.

#### Movable tangible capital assets

8. I was unable to obtain the sufficient appropriate audit evidence for movable tangible assets to the value of approximately R10,3 million (2019: R9,4 million), due to the asset register not being updated for known losses in the movable assets which identified during asset counts. I was unable to confirm these assets by alternative means. Consequently, I was unable to determine whether any adjustment was necessary to movable tangible assets stated at R1 046 million in note 24 to the financial statements.

#### Context for the opinion

9. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
10. I am independent of the department in accordance with sections 290 and 291 of the *Code of ethics for professional accountants* and parts 1 and 3 of the *International Code of Ethics for Professional Accountants (including International Independence Standards)* of the International Ethics Standards Board for Accountants (IESBA codes) as well as the 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 codes.
11. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

## **Responsibilities of the accounting officer for the financial statements**

12. 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.
13. In preparing the financial statements, the accounting officer is responsible for assessing the department's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the department or to cease operations, or has no realistic alternative but to do so.

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

14. 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.
15. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

## **Report on the audit of the annual performance report**

### **Introduction and scope**

16. In accordance with the Public Audit Act of South Africa 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
17. My procedures address the usefulness and reliability of the reported performance information, which must be based on the approved performance planning documents of the department. I have not evaluated the completeness and appropriateness of the performance indicators / measures included in the planning documents. My procedures do not examine whether the actions taken by the department enabled service delivery. My procedures also do not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
18. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programmes presented in the annual performance report of the department for the year ended 31 march 2020:

Programme	Pages in the annual performance report
Secret Services of the SAPS (Crime Intelligence)	x – x

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

### Secret Services Account of the SAPS (Crime Intelligence)

#### Various indicators

21. The planned targets for the indicators below were not specific in clearly identifying the nature and required level of performance.

Indicator	Target
Number of undercover operations successfully terminated per annum	(100%) 65
Percentage of network operations successfully terminated per annum	65% (570)

#### Various indicators

22. The reported achievements were not consistent with the planned target as approved in the annual performance plan for the indicators below. Furthermore, I was unable to obtain sufficient appropriate evidence for the reported achievement. This was due to the inadequate record management, i.e. profiles and communication analysis generated not properly referenced and maintained. I was unable to confirm the reported achievement by alternative means. Consequently, I was unable to determine whether any adjustments were required to the achievement as reported in the annual performance report.

Indicator	Planned target	Reported achievement
Number of profiles generated per pre and undercover per annum	A minimum of 2 profiles generated per pre and undercover operation per annum	20 from a baseline of 330 (6.06%)

Number of communication analysis generated per pre- and undercover per annum	1 communication analysis report generated per pre and undercover operation per annum	18 from baseline 165 (10.91%)
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### Various indicators

23. The reported achievement in the annual performance report did not agree to the supporting evidence provided for the indicators listed below. The supporting evidence provided indicated that the achievements of these indicators were as follows:

Indicator	Reported performance	Audited value
Number of undercover operations successfully terminated	124	73
Percentage of physical surveillance requests finalised, in relation to total requests received annually.	97.31%	79.00%

### Other matter

24. I draw attention to the matter below.

### Achievement of planned targets

25. Refer to the annual performance report on pages **XX to XX** for information on the achievement of planned targets for the year and explanations provided for the under achievement of a significant number of targets. This information should be considered in the context of the material findings on the usefulness and reliability of the reported performance information in paragraphs 21 to 23 of this report.

## Report on the audit of compliance with legislation

### Introduction and scope

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

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

## Annual Financial Statements

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

## Expenditure management

29. As reported in the basis for the qualified opinion the full extent of the irregular expenditure could not be quantified. 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.

## Consequence management

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

## Procurement and contract management

31. Treasury Regulations 16A6.1 requires that goods and services of a transaction value above R500 000 should be procured by inviting competitive bids, as required by. The prior written approval for deviation was requested from National Treasury as required by National Treasury SCM instruction note 3 of 2016/17. National Treasury pre-approved the deviations with conditions however, the department did not meet those conditions due to the sensitive nature of the department's operations.
32. Due to the sensitive nature of the department's operations, some of the contracts were awarded to suppliers whose tax matters had not been confirmed by the South African Revenue Service to be in order as required by Treasury Regulation 16A9.1(d). Similar non-compliance was reported in the prior year.
33. Sufficient appropriate audit evidence could not be obtained that 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). A similar limitation was reported in the prior year.
34. Contracts were extended or modified without the approval of National Treasury as required by section 44 of the PFMA and Treasury Regulations 8.1 and 8.2. Similar non-compliance was reported in the prior year.
35. Some of the suppliers of emergency goods or services procured through quotations in response to National State of Disaster declared on 15 March 2020 were not listed on the Central Supplier Database in accordance with paragraph 3.7.6. (iii) of the National Treasury Instruction no. 08 of 2019/2020.

## Other information

36. The accounting officer is responsible for the other information. The other information comprises the information included in the annual report which includes the audit committee's report. The other information does not include the financial statements, the auditor's report and those selected programmes presented in the annual performance report that have been specifically reported in this auditor's report.
37. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
38. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
39. 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

40. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion, the findings on the annual performance report and the findings on compliance with legislation included in this report.
41. SCM policies are not aligned to laws and regulations, this is as a result of the sensitive nature of the environment which is causing practical implementation challenges.
42. There is a lack of consequence management as the leadership does not always hold staff accountable for non-compliance and poor quality of financial and performance reporting.
43. Some officials do not have the necessary skills, knowledge and qualifications required for financial management and reporting, management of performance information and reporting, supply chain management and performing activities for oversight role within the department. In addition, the appointment of personnel into positions that require specialised technical training (such as accounting, asset management and supply chain management) is not always done considering the requirements of the position.
44. There were inadequate review processes; this resulted in material misstatements on the annual financial statements and the annual performance report as well instances of material non-compliance.



45. The department does not have systems or mechanisms in place to monitor compliance with laws and regulations.
46. The financial information management system is not adequately designed to ensure that all data fields which relate to core business transactions and operations are captured. This would ensure that all information required for management decision-making and for governance and accountability purposes is readily available for internal and external assurance providers.
47. The corrective action plan developed did not adequately address the root causes and deficiencies. In addition, the implementation and adherence to the plan was not adequately monitored at the appropriate level of management.

#### Other reports

48. I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the department's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.
49. Investigations are currently being conducted by the Independent Police Investigative Directorate (IPID) into allegations of misuse and abuse of the department's funds by certain members of the staff.
50. The Office of the Inspector General on Intelligence is in the process of investigating numerous complaints received, which are at various stages of completion.

*Auditor - General*

Pretoria

13 November 2020



AUDITOR - GENERAL  
SOUTH AFRICA

*Auditing to build public confidence*

## Annexure – Auditor-general’s responsibility for the audit

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

### Financial statements

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

### Communication with those charged with governance

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



## Report of the auditor-general to Parliament on vote no. 19: 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 ... to ..., which comprise the appropriation statement, statement of financial position as at 31 March 2020, statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, except for the possible effects of the matters described in the basis for qualified opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the Department of Defence as at 31 March 2020, and its financial performance and cash flows for the year then ended, in accordance with the Modified Cash Standard (MCS) as prescribed by the National Treasury and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 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 of South Africa, 1974 (Act No. 6 of 1974), as amended. I was unable to obtain sufficient appropriate audit evidence regarding sensitive projects expenditure and related investments due to the sensitivity of the environment and the circumstances under which the related transactions were incurred and recorded. Consequently, I was unable to determine whether any adjustments were necessary to sensitive projects expenditure included within the expenditure of R13,96 billion (2019: R12,77 billion), as per note 4 to the financial statements, and investments for special defence activities included in the investment amount of R182,16 million (2019: R182,16 million), as per note 11 to the financial statements.

##### Irregular expenditure

4. The department did not fully record irregular expenditure in the notes to the financial statements, as required by section 40(3)(b)(i) of the PFMA. This was due to inadequate systems to detect, record and appropriately disclose this expenditure in the financial statements. Consequently, I was unable to determine the full extent of the understatement to irregular expenditure, stated at R7,97 billion (2019: R5,13 billion) in note 24 to the financial statements, as it was impracticable to do so.

## Context for the 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 auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
6. I am independent of the department in accordance with sections 290 and 291 of the *Code of ethics for professional accountants* and parts 1 and 3 of the *International Code of Ethics for Professional Accountants (including International Independence Standards)* of the International Ethics Standards Board for Accountants (IESBA codes), as well as the 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 codes.
7. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

## Emphasis of matters

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

### Restatement of corresponding figures

9. As disclosed in note 33 to the financial statements, the corresponding figures for 31 March 2019 have been restated as a result of errors in the department's financial statements at, and for the year ended, 31 March 2020.

### Events after the reporting date

10. I draw attention to note 29 in the financial statements, which deals with subsequent events and specifically the possible effects of the future implications of covid-19 on the department's future prospects and financial performance. The financial impact of the events described in the note cannot be reliably measured at this stage.

### Uncertainty relating to the future outcome of litigation

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

### Payables not recognised

12. As disclosed in note 20 to the financial statements, payables of R114,42 million exceed the payment term of 30 days as required by treasury regulation 8.2.3. This amount, in turn, exceeded the R5,88 million of voted funds to be surrendered by R108,55 million as per the statement of financial performance. The amount of R108,55 million would therefore have constituted unauthorised expenditure had the amounts due been paid on time.

## **Other matter**

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

## **Unaudited supplementary schedules**

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

## **Responsibilities of the accounting officer for the financial statements**

15. The accounting officer is responsible for the preparation and fair presentation of the financial statements in accordance with the MCS and the requirements of the PFMA, and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

16. In preparing the financial statements, the accounting officer is responsible for assessing the department's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the department or to cease operations, or has no realistic alternative but to do so.

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

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

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

## **Report on the audit of the annual performance report**

### **Introduction and scope**

19. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected programmes presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.

20. My procedures address the usefulness and reliability of the reported performance information, which must be based on the approved performance planning documents of the department. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the department enabled service delivery. My procedures also do not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
21. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected programmes presented in the annual performance report of the department for the year ended 31 March 2020:

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

22. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
23. I did not raise any material findings on the usefulness and reliability of the reported performance information for this programme:
- Programme 2: force employment.

### Other matters

24. I draw attention to the matters below.

#### Achievement of planned targets

25. Refer to the annual performance report on pages ... to ... for information on the achievement of planned targets for the year and explanations provided for the under- and overachievement of a significant number of targets.

#### Adjustment of material misstatements

26. I identified material misstatements in the annual performance report submitted for auditing. These material misstatements were on the reported performance information of force employment. As management subsequently corrected the misstatements, I did not raise any material findings on the usefulness and reliability of the reported performance information.

## Report on the audit of compliance with legislation

### Introduction and scope

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

### Annual financial statements

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

### Expenditure management

30. Effective and appropriate steps were not taken to prevent irregular expenditure, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1. As reported in the basis for qualified opinion, the value 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 compensation of employees' budget being exceeded without National Treasury approval, in contravention of treasury regulation 6.3.1(a).
31. Effective steps were not taken to prevent fruitless and wasteful expenditure amounting to R18,87 million as disclosed in note 25 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 fruitless and wasteful expenditure was caused by payments made in terms of an operating lease for unutilised property.
32. The department did not use its resources economically, as required by section 45(b) of the PFMA. The non-compliance resulted in a material irregularity, as reported in the section on material irregularities.
33. Payments were not made within 30 days or an agreed period after receipt of an invoice, as required by treasury regulation 8.2.3 and section 38(1)(f) of the PFMA.

### Procurement and contract management

34. Some of the goods and services with a transaction value below R500 000 were procured without obtaining the required price quotations, as required by treasury regulation 16A6.1. Similar non-compliance was also reported in the prior year.
35. Some of the goods and services of a transaction value above R500 000 were procured without inviting competitive bids and deviations, as required by treasury regulations 16A6.1 and 16A6.4. Similar non-compliance was also reported in the prior year.



36. Some of the quotations were awarded to suppliers whose tax matters had not been declared by the South African Revenue Services to be in order, as required by treasury regulation 16A9.1(d). Similar non-compliance was also reported in the prior year.
37. Some of the contracts were awarded to bidders based on evaluation or adjudication criteria that differed from those stipulated in the original invitation for bidding and quotations, in contravention of treasury regulations 16A6.3(a) and (b).
38. The preference point system was not applied in some of the procurement of goods and services above R30 000, as required by section 2(a) of the the Preferential Procurement Policy Framework Act of South Africa, 2000 (Act No. 5 of 2000) (PPPFA) and treasury regulation 16A6.3(b). Similar non-compliance was also reported in the prior year.
39. Bid documentation for procurement of commodities designated for local content and production did not stipulate the minimum threshold for local production and content, as required by the 2017 preferential procurement regulation 8(2).
40. Some of the prices of emergency goods or services procured through quotations in response to the National State of Disaster declared on 15 March 2020 were above prices negotiated by National Treasury in terms of paragraph 3.7.6(ii) of the National Treasury Instruction Note no. 8 of 2019-20.

### Consequence management

41. 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 due to significant delays in performing investigations relating to these matters.
42. I was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred fruitless and wasteful expenditure, as required by section 38(1)(h)(iii) of the PFMA. This was due to significant delays in performing investigations relating to these matters.
43. Allegations of fraud which exceeded R100 000 were not reported to the South African Police Service, as required by section 34(1) of the Prevention and Combatting of Corrupt Activities Act of South Africa, 2004 (Act No. 12 of 2004).

### Other information

44. The accounting officer is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and those selected programmes presented in the annual performance report that have been specifically reported in this auditor's report.
45. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
46. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected programmes presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

47. If, based on the work I have performed, I conclude that there is a material misstatement in this other information, I am required to report that fact. I have nothing to report in this regard.

### Internal control deficiencies

48. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the basis for the qualified opinion and the findings on compliance with legislation included in this report.
49. Leadership did not exercise sufficient oversight regarding financial reporting, compliance with laws and regulations and related internal controls. Action plans that were developed to address prior year audit matters were not effectively implemented and monitored, resulting in recurring audit findings.
50. Management did not prepare regular, accurate and complete financial 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 did not effectively detect and prevent non-compliance, especially in relation to supply chain management.

### Material irregularities

51. In accordance with the PAA and the Material Irregularity Regulations, I have a responsibility to report on material irregularities identified during the audit.

#### Material irregularities identified during the audit

52. The material irregularities identified are as follows:

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

53. In February 2017, the department awarded a contract for services relating to inventory and asset verification for a period 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 the department did not award the entire contract to the bidder that scored the highest points in the evaluation process. The non-compliance is likely to result in a material financial loss as the contract was awarded to two bidders on a 50/50 basis at an increased price of R922 million for the same scope of work. This resulted in an increase of R250,56 million to the project cost. As at the end of the 2019-20 financial year, the department had spent R451,90 million on the contract.

54. I notified the accounting officer of the material irregularity on 18 July 2019 and invited them to make a written submission on the actions that will be taken to address the matter. 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 National Treasury. It was confirmed on 28 February 2020 that there was transgression of legislation in the award of this contract.
55. The accounting officer has not taken any action in response to being notified of this material irregularity. On 29 May 2020, I issued a notification to the accounting officer advising them of the following recommended actions that they should implement by 30 November 2020 to address the material irregularity:
- 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.
  - The department should take effective and appropriate disciplinary steps against any official that the investigation found to be responsible, as required by section 38(1)(h) of the PFMA and in accordance with treasury regulation 9.1.3.
  - The department should take appropriate action 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.

#### Lease payments made for unoccupied office buildings

56. The department made lease payments from 2015-16 to the 2019-20 financial year for unoccupied office buildings. The continued payments for unoccupied buildings were 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 fruitless and wasteful expenditure disclosed in note 25 to the financial statements.
57. I notified the accounting officer of the material irregularity on 11 August 2020 and invited them to make a written submission on the actions that will be taken to address the matter. On 8 September 2020, the accounting officer issued an instruction to investigate this material irregularity and conclude on it by 30 October 2020. At the date of this report, this investigation was still in progress as it had been delayed due to unforeseen challenges encountered during the course of the investigation.
58. The accounting officer plans to take action against the officials found to be responsible and to initiate steps to recover the financial loss based on the outcome of the investigation. I will follow-up on this investigation and the implementation of planned actions during my next audit.

### Unfair award for the supply of fuel

59. 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 will 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.
60. I notified the accounting officer of the material irregularity on 11 August 2020 and invited them to make a written submission on the actions that will be taken to address the matter. On 8 September 2020, the accounting officer issued an instruction to investigate this material irregularity and conclude on it by 30 October 2020. At the date of this report, this investigation was still in progress as it had been delayed due to unforeseen challenges encountered during the course of the investigation.
61. The accounting officer plans to take action against the officials found to be responsible and to initiate steps to recover the financial loss based on the outcome of the investigation. I will follow-up on this investigation and the implementation of planned actions during my next audit.

### Other reports

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

### Investigations

63. The special investigating unit is conducting an investigation covering the 2018-19 period into allegations of procurement irregularities on ICT services and licences. The investigation is being conducted in terms of Proclamation No. R. 41 of 2019, dated 25 June 2019 and was still in progress at the date of this auditor's report.

## Special audits

64. At the request of the president, a proactive interim audit was performed on the covid-19 pandemic relief response measures on the defence frontline work. The audit covers the period 1 April 2020 to 31 August 2020. The first special report on the financial management of government's covid-19 initiatives was issued on 2 September 2020.

*Auditor-General*

Pretoria

12 November 2020



**AUDITOR-GENERAL  
SOUTH AFRICA**

*Auditing to build public confidence*

## Annexure – Auditor-general’s responsibility for the audit

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

### Financial statements

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

### Communication with those charged with governance

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

**PROGRAMME FOR THE FINANCIAL YEAR 2019/20 INCLUDING PERIOD UP TO  
DECEMBER 2020**

DATE	AGENDA
Thursday, 18 July 2019	<ul style="list-style-type: none"> <li>• Election of the Chairperson</li> <li>• Briefing on the 2019/20 Annual Performance Plans (APP) and Budget by State Security Agency (SSA)</li> <li>• Consideration and deliberations on the Budget Vote 7 (State Security)</li> <li>• Adoption of the Report of the <i>Ad Hoc</i> Committee to allow members of the National Assembly to be briefed prior to the debate on Vote No 7: National Treasury (State Security), dated 18 July 2019</li> </ul>
Friday, 19 July 2019	<ul style="list-style-type: none"> <li>• Election of the Chairperson</li> <li>• Consideration and deliberations on the Budget and APP of Crime Intelligence (CI)</li> <li>• Consideration and deliberations on the Budget and APP of Defence Intelligence (DI)</li> <li>• Adoption of the Report of the <i>Ad hoc</i> Committee to allow members of the National Assembly to be briefed prior to the debate on Vote 7: National Treasury (State Security), dated 19 July 2019</li> </ul>
Wednesday, 13 November 2019	<ul style="list-style-type: none"> <li>• Swearing in of Members of the JSCI</li> <li>• Consideration and deliberations on the programme for Orientation of JSCI Members</li> </ul>
Wednesday, 27 November 2019	<ul style="list-style-type: none"> <li>• Consideration and adoption of draft Committee Programme</li> <li>• Consideration and adoption of minutes of 13 November 2019</li> <li>• Deliberations on the establishment of subcommittees</li> </ul>
Friday, 29 November 2019	<ul style="list-style-type: none"> <li>• Orientation on functions and role of DI</li> <li>• Consideration and adoption of minutes of 27 November 2021</li> </ul>
Tuesday, 03 December 2019	<ul style="list-style-type: none"> <li>• Briefing by CI</li> </ul>

DATE	AGENDA
Wednesday, 05 February 2020	<ul style="list-style-type: none"> <li>• Consideration and adoption of minutes of 29 November and 3 December 2020</li> <li>• Consideration and adoption of draft Committee Programme</li> <li>• Consideration and adoption of draft report on induction of JSCI members</li> <li>• Deliberations on establishment of subcommittees</li> </ul>
Wednesday, 12 February 2020	<ul style="list-style-type: none"> <li>• Consideration and Adoption of Minutes of 29 November 2019, 3 December 2019 and 5 February 2020</li> <li>• Adoption of Committee Programme</li> <li>• Adoption of report on orientation of JSCI members</li> <li>• Response by the Office of the Inspector General Intelligence (OIGI) on allegations laid by CI</li> </ul>
Wednesday, 26 February 2020	<ul style="list-style-type: none"> <li>• Consideration and adoption of minutes of 12 February 2020</li> <li>• Presentation of certificates of Intelligence Services by the OIGI</li> </ul>
Friday, 28 February 2020	<ul style="list-style-type: none"> <li>• Presentation on security breach in the SSA by the Minister and question 192 by a Member of Parliament to the Minister</li> </ul>
Wednesday, 04 March 2020	<ul style="list-style-type: none"> <li>• Presentation of the SSA certificates of activities by the OIGI</li> </ul>
Wednesday, 11 March 2020	<ul style="list-style-type: none"> <li>• Presentation of CI certificates of activities by the OIGI</li> </ul>
Friday, 13 March 2020	<ul style="list-style-type: none"> <li>• Briefing by State Security Implementing Task Team on recommendations of the HLRP report</li> </ul>
Tuesday, 25 August 2020	<ul style="list-style-type: none"> <li>• Presentation by the OIGI on the Strategic Plan, APP, and Budget allocation for 2020/21</li> <li>• Update on cooperation with Independent Police Investigative Directorate and update in investigations completed; and Other urgent matters.</li> </ul>
Wednesday, 26 August 2020	<ul style="list-style-type: none"> <li>• Presentation by the SSA on its Strategic Plan, APP and Budget for 2020/21, and update on the legislation governing intelligence (General Intelligence Laws Amendment Act).</li> </ul>



DATE	AGENDA
Friday, 28 August 2020	<ul style="list-style-type: none"> <li>• Presentation by the SSA, DI and CI on the threats posed by the insurgency in Cabo Delgado in Mozambique.</li> </ul>
Tuesday, 01 September 2020	<ul style="list-style-type: none"> <li>• Briefing by the SSA on an update on the implementation of the Recommendations of the HLRP report on the SSA</li> <li>• Briefing on the filling of senior management vacancies</li> </ul>
Wednesday, 02 September 2020	<ul style="list-style-type: none"> <li>• JSCI Committee Business</li> <li>• Briefing by the SSA on complaints from members and former members of the SSA</li> <li>• Presentation by the Audit and Risk Committee (ARC)</li> <li>• Updates on Project Veza</li> </ul>
Thursday, 03 September 2020	<ul style="list-style-type: none"> <li>• Briefing by Director Domestic Branch and the Staff Council</li> </ul>
Friday, 04 September 2020	<ul style="list-style-type: none"> <li>• Presentation by CI on its Strategic Plans, APP and Budget for 2020/21.</li> <li>• Presentation by DI on their Strategic Plans, APP and Budget for 2020/21.</li> </ul>
Tuesday, 27 October 2020	<ul style="list-style-type: none"> <li>• Consideration of the letter referred by the President on alleged conduct of the IGI</li> <li>• Consideration and Adoption of Committee Report</li> </ul>
Tuesday, 24 November 2020	<ul style="list-style-type: none"> <li>• Consideration and adoption of draft JSCI programme</li> <li>• Meeting on complaint by the OIGI Legal Adviser against the IGI</li> </ul>
Wednesday, 25 November 2020	<ul style="list-style-type: none"> <li>• Briefing by the Financial Intelligence Centre (FIC) on the nature of financial crimes</li> </ul>
Friday, 27 November 2020	<ul style="list-style-type: none"> <li>• Presentation by the Office of AGSA on Intelligence Services Audit Statements</li> <li>• Hearings of complaints from the SSA officials against the Minister of State Security</li> </ul>
Tuesday, 1 December 2020	<ul style="list-style-type: none"> <li>• Presentation of AR of the SSA</li> </ul>

DATE	AGENDA
Wednesday, 2 December 2020	<ul style="list-style-type: none"> <li>• Presentation of AR of the SAPS-CI</li> <li>• Briefing on the emergence of extortionists violent gangs such as Boko Haram, Guptas, and others in Cape Town townships of Gugulethu, Khayelitsha, Lower Crossroads and Philippi</li> <li>• Presentation on the Leakage of information to the media</li> <li>• Briefing by NICOC on Security threats to the State</li> <li>• Presentation of AR by DI</li> </ul>
Thursday, 3 December 2020	<ul style="list-style-type: none"> <li>• Presentation of AR by the OIGI</li> <li>• Presentation on the Media leakages</li> </ul>

## 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
CFO:	Chief Financial Officer
CI:	Crime Intelligence
DA:	Democratic Alliance
DDG:	Deputy Director-General
DG:	Director-General
DI:	Defence Intelligence
EFF:	Economic Freedom Fighters
FIC:	Financial Intelligence Centre
HLRP:	High-Level Review Panel
IA:	Intelligence Academy
IGI:	Inspector-General of Intelligence
JCPS:	Justice, Crime Prevention and Security
JSCI:	Joint Standing Committee on Intelligence
NA:	National Assembly
NC:	National Communications
NCOP:	National Council of Provinces
NIA:	National Intelligence Agency
NICOC:	National Intelligence Co-ordinating Committee
NSS:	National Security Strategy
OIC:	Office of the Interception Centre
OIGI:	Office of the Inspector-General of Intelligence

RICA:	Regulation of Interception of Communications and Provision of Communication-related Information Act
SAPS:	South African Police Service
SASS:	South African Secret Services
SDP:	Strategic Development Plan
SIGINT:	Signals Intelligence
SSA:	State Security Agency

