

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO. 21521/20**

In the matter between:

**KHOSA, MPHEPHU** **First Applicant**

**MONTSHA, NOMSA** **Second Applicant**

**MUVHANGO, THABISO** **Third Applicant**

and

**MINISTER OF DEFENCE AND MILITARY VETERANS** **First Respondent**

**SECRETARY FOR DEFENCE** **Second Respondent**

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE** **Third Respondent**

**MINISTER OF POLICE** **Fourth Respondent**

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE** **Fifth Respondent**

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT** **Sixth Respondent**

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT** **Seventh Respondent**

**OFFICE OF THE MILITARY OMBUD** **Eighth Respondent**

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE** **Ninth Respondent**

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** **Tenth Respondent**

---

**INDEX – VOLUME 1**

---

ITEM	DESCRIPTION	PAGE
------	-------------	------

1	Notice of Motion	1 - 13
2	Founding Affidavit – Nomsa Montsha	14 - 69
3	Annexure “A” – Risk-adjusted strategy for economic activity	70 - 96
4	Annexure “B” – Confirmatory affidavit: Mphephu Khosa	97 - 98
5	Annexure “C” – Confirmatory affidavit: Thabiso Muvhango	99 - 101
6	Annexure “D” – Confirmatory affidavit: Ivonny Muvhango	102 - 104
7	Annexure “E” – Confirmatory affidavit: Tebogo Mothabela	105 - 108
8	Annexure “F” – Confirmatory affidavit: Glenda Phaladi	109 - 113
9	Annexure “G” – Confirmatory affidavit: Noel Bongela	114 - 117
10	Annexure “H” – Notice of Death	118
11	Annexure “I” – Letter of demand from Ian Levitt Attorneys – 14 April 2020	119 - 124
12	Annexure “J” – Letter from State Attorney – 16 April 2020	125 - 126
13	Annexure “K”- Letter from the President to the Co-Chairperson of the Joint Standing Committee on Defence – 21 April 2020	127
14	Annexure “L” – IPID Annual performance plan 2019/2020	128 - 171
15	Notice to Oppose – 1 <sup>st</sup> to 5 <sup>th</sup> Respondents	172 - 175
16	Notice to Oppose – 6 <sup>th</sup> Respondent	176 - 182
17	Notice to Oppose – 7 <sup>th</sup> Respondent	183 - 189
18	Notice to Abide – 8 <sup>th</sup> and 9 <sup>th</sup> Respondent	190 - 193
19	Notice of Set Down	194 - 200

DATED AT **JOHANNESBURG** ON THIS THE    DAY OF **APRIL 2020**

---

**IAN LEVITT ATTORNEYS**

Attorneys for Applicants

19<sup>th</sup> Floor, Sandton City Office Towers

Cnr Rivonia and 5<sup>th</sup> Street

Johannesburg

Po Box 783244

Sandton, 2146

Tel: 011 784 3310

Cell: 083 959 4610

E-mail: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

**REF: W STEYL/MAT3055**

**TO:** THE REGISTRAR

**ABOVE HONOURABLE COURT**

**AND TO: MINISTER OF DEFENCE AND MILITARY VETERANS**

First Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

Ltshivhase@justice.gov.za

Lufuno.Funie18@gmail.com

**REF: L TSHIVHASE/Z73**

**AND TO: SECRETARY FOR DEFENCE**

Second Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: TiPillay@justice.gov.za

Ltshivhase@justice.gov.za

Lufuno.Funie18@gmail.com

**REF: L TSHIVHASE/Z73**

**AND TO: CHIEF OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE**

Third Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: TiPillay@justice.gov.za

Ltshivhase@justice.gov.za

Lufuno.Funie18@gmail.com

**REF: L TSHIVHASE/Z73**

**AND TO: MINISTER OF POLICE**

Fourth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: TiPillay@justice.gov.za

Ltshivhase@justice.gov.za

Lufuno.Funie18@gmail.com

**REF: L TSHIVHASE/Z73**

**AND TO: NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Fifth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: TiPillay@justice.gov.za

Ltshivhase@justice.gov.za

Lufuno.Funie18@gmail.com

**REF: L TSHIVHASE/Z73**

**AND TO: MADLANGA & PARTNERS INC. ATTORNEYS**

Attorneys for the Sixth Respondent

The Hyde Park Offices

1<sup>st</sup> Floor, Block A

Strouthos Place, Hyde Park

Johannesburg

Tel: 011 447 0345/3720

E-mail: [gugulethu@mpiattorneys.co.za](mailto:gugulethu@mpiattorneys.co.za)

[sinazosmadlanga@gmail.com](mailto:sinazosmadlanga@gmail.com)

**AND TO: MAJANG INC ATTORNEYS**

Attorneys for Seventh Respondent

9 Felstead Avenue

Fancourt Office Park, Building 12

Northriding

Johannesburg

Tel: 011 704 0348/2649

Cell: 071 648 6858 / 061 409 2779

E-mail: [majang@majanginc.co.za](mailto:majang@majanginc.co.za)

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za)

REF: EKU102/20/MAT181

**AND TO: OFFICE OF THE MILITARY OMBUD**

Eighth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

Ninth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL  
AFFAIRS**

Tenth Respondent

**c/o STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. 21521/20

In the matter between:

**KHOSA, MPHEPHU** First Applicant

**MONTSHA, NOMSA** Second Applicant

**MUVHANGO, THABISO** Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS** First Respondent

**SECRETARY FOR DEFENCE** Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE** Third Respondent

**MINISTER OF POLICE** Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE** Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT** Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT** Seventh Respondent

**OFFICE OF THE MILITARY OMBUD** Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE** Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Tenth Respondent

---

NOTICE OF URGENT APPLICATION UNDER RULE 6(12)

---

**TAKE NOTICE THAT** the applicants intend to make application to the above Honourable Court on **TUESDAY, 28 APRIL 2020** at **10h00** or so soon thereafter as counsel may be heard, for an order in the following terms (as reflected in the draft order annexed marked "**X**"):

1. This application is heard as one of urgency in terms of Rule 6(12), the ordinary requirements of the Rules in respect of notice, service and time periods being dispensed with, and the applicants' departure therefrom being condoned.
2. It is declared that, during and notwithstanding the declaration of the State of Disaster and the Lockdown under the Disaster Management Act 57 of 2002:
  - 2.1. all persons present within the territory of the Republic of South Africa are entitled to (among others) the following rights, which are non-derogable even during states of emergency:
    - 2.1.1. the right to human dignity (section 10 of the Constitution);
    - 2.1.2. the right to life (section 11 of the Constitution);
    - 2.1.3. the right not to be tortured in any way (section 12(1)(d) of the Constitution);
    - 2.1.4. the right not to be treated or punished in a cruel, inhuman or degrading way (section 12(1)(e) of the Constitution);
  - 2.2. under section 199(5) of the Constitution, the South African security services, which include the South African National Defence Force ("**SANDF**"), the South African Police Service ("**SAPS**"), and any Metropolitan Police Department ("**MPD**"), must act, and must instruct their

members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic;

2.3. as organs of state, the first to eighth respondents, the SANDF, the SAPS and any MPD are obliged, under section 7(2) of the Constitution, to respect, protect, promote and fulfil the rights in the Bill of Rights, including those enumerated above;

2.4. members of the SANDF, the SAPS and any MPD remain bound by section 13(3)(b) of the South African Police Service Act 68 of 1995 (read with section 20(1)(a) of the Defence Act 42 of 2002), to use only the minimum force that is reasonable to perform an official duty;

2.5. members of the SANDF, the SAPS and any MPD, as well as their commanders or superiors, including each of the first to eighth respondents, are bound by the provisions of the Prevention and Combating of Torture of Persons Act 13 of 2013, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

3. Pending the outcome of any investigation and/or disciplinary procedures, the first to seventh respondents, within their respective areas of authority, shall:

3.1. within one hour, and until at least the conclusion of the State of Disaster, render off duty and disarm all members of the SANDF, SAPS and JMPD who were present at or adjacent to 3885 Moeketsi Street, Far East Bank, Alexandra, Johannesburg, between 17h00 and 18h00 on 10 April 2020;

- 3.2. within three hours, command all members of the SANDF, SAPS and any MPD to adhere to the absolute prohibition on torture and cruel, inhuman or degrading treatment or punishment, and to apply only the minimum force that is reasonable to enforce the law;
- 3.3. within three hours, warn all members of the SANDF, the SAPS and any MPD, as well as their entire chains of command, that any failure to report, repress and prevent acts of torture or cruel, inhuman or degrading treatment or punishment shall expose them each individually to criminal, civil and/or disciplinary sanctions;
- 3.4. within twenty-four hours, lodge affidavits with this Court confirming that the above has been done.
4. The first and fourth respondents shall, before 1 May 2020:
  - 4.1. develop and publish a code of conduct and operational procedures, regulating the conduct of members of the SANDF, SAPS and MPDs in giving effect to the declaration of the State of Disaster.
  - 4.2. widely publish the following, in newspapers of national and provincial circulation; electronic platforms available to the government such as WhatsApp, Facebook and Twitter, and national and provincial radio stations:
    - 4.2.1. guidelines about the circumstances when the use of force may be used in strict compliance with section 49 of the Criminal Procedure Act 51 of 1977;

- 4.2.2. guidelines about the enforcement of the Lockdown Regulations and any other Regulations issued during the State of Disaster;
  - 4.2.3. guidelines about enforcing social distancing and the restriction of movement and other activities, at each of the different Stages of Alert during the State of Disaster;
  - 4.2.4. guidelines about when a person may be arrested and alternative means of securing their attendance at trial;
  - 4.2.5. information regarding where members of the public may lodge complaints against members of the SANDF, the SAPS and other any enforcement agency/officer.
- 4.3. lodge affidavits with this Court confirming that the above has been done.
5. The first to seventh respondents shall, within three days:
- 5.1. establish a freely accessible mechanism for civilians to report allegations of torture or cruel, inhuman or degrading treatment or punishment, committed by members of the SANDF, the SAPS or any MPD for the duration of State of Disaster;
  - 5.2. widely publicise such mechanism throughout South Africa via television, radio and digital media in all eleven official languages;
  - 5.3. appoint and adequately provide resources to a team of at least twenty appropriately qualified persons, who may be seconded from the Independent Police Investigative Directorate and the Office of the Military Ombud, to:

- 5.3.1. review all reports made via such mechanism, and recommend appropriate action to the relevant respondents, which may include that any members credibly implicated in committing or condoning acts of torture or cruel, inhuman or degrading treatment or punishment should be rendered off duty and disarmed until the conclusion of the State of Disaster;
- 5.3.2. refer all credible reports to the investigative team described in paragraph 7 below;
- 5.4. lodge affidavits with this Court confirming that the above has been done.
6. The first and fourth respondents shall, within five days:
  - 6.1. institute a special investigation, led by a retired judge, into acts of torture or cruel, inhuman or degrading treatment or punishment, allegedly committed by members of the SANDF, the SAPS or any MPD for the duration of the State of Disaster;
  - 6.2. instruct the investigative team to include in their investigation at least the following incidents:
    - 6.2.1. the treatment of Mr Collins Khosa on 10 April 2020;
    - 6.2.2. the treatment of any other person whose rights may have been infringed during the State of Disaster at the hands of members of the SANDF, the SAPS and/or any MPD.

6.3. instruct the investigative team to produce interim reports every five court days, and a final report within thirty court days of the conclusion of the State of Disaster;

6.4. immediately lodge each such report with this Court.

7. The first to seventh respondents, should they oppose this application, shall, jointly and severally, bear the costs of this application, including the costs of two counsel.

**TAKE NOTICE FURTHER** that the accompanying affidavits of **NOMSA MONTSHA** will be used in support of this application.

**TAKE NOTICE FURTHER** that the applicants have appointed **IAN LEVITT ATTORNEYS** as their attorneys of record in this matter, and will accept notice and service of all documents in these proceedings at the addresses (including the email address) set out below.

**TAKE NOTICE** that, if you intend opposing this application:

- (a) you must, by 20h00 on Sunday, 26 April 2020, deliver notice of such intention, as well as your answering affidavit(s);
- (b) the applicants shall then, by 15h00 on Monday, 27 April 2020, deliver their replying affidavit.

DATED AT **JOHANNESBURG** ON THIS THE **25th** DAY OF **APRIL 2020**




---

8

**IAN LEVITT ATTORNEYS**

Attorneys for Applicants

19<sup>th</sup> Floor, Sandton City Office Towers

Cnr Rivonia and 5<sup>th</sup> Street

Johannesburg

Po Box 783244

Sandton, 2146

Tel: 011 784 3310

Cell: 083 959 4610

E-mail: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

**REF: W STEYL/MAT3055**

**TO: THE REGISTRAR**

**ABOVE HONOURABLE COURT**

**AND TO: MINISTER OF DEFENCE AND MILITARY VETERANS**

First Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**



**AND TO: SECRETARY FOR DEFENCE**

Second Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: CHIEF OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE**

Third Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MINISTER OF POLICE**

Fourth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Fifth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MADLANGA & PARTNERS INC. ATTORNEYS**

Attorneys for the Sixth Respondent

The Hyde Park Offices

1<sup>st</sup> Floor, Block A

Strouthos Place, Hyde Park

Johannesburg

Tel: 011 447 0345/3720

E-mail: [gugulethu@mpiattorneys.co.za](mailto:gugulethu@mpiattorneys.co.za)

[sinazosmadlanga@gmail.com](mailto:sinazosmadlanga@gmail.com)

**AND TO: MAJANG INC ATTORNEYS**

Attorneys for Seventh Respondent

9 Felstead Avenue

Fancourt Office Park, Building 12

Northriding

Johannesburg

Tel: 011 704 0348/2649

Cell: 071 648 6858 / 061 409 2779

E-mail: [majang@majanginc.co.za](mailto:majang@majanginc.co.za)

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za)

REF: EKU102/20/MAT181

**AND TO: OFFICE OF THE MILITARY OMBUD**

Eighth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

Ninth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

Tenth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

## Wikus Steyl

---

**From:** Wikus Steyl  
**Sent:** Saturday, 25 April 2020 15:28  
**To:** nadiaolyn@gmail.com  
**Cc:** TiPillay@justice.gov.za; Tshivhase Lufuno; Lufuno.Funie18@gmail.com; sinazosmadlanga@gmail.com; gugulethu@mpiattorneys.co.za; Tsietsi Majang; magoshi@majanginc.co.za  
**Subject:** RE: KHOSA & 2 OTHERS // MINISTER OF DEFENCE AND MILITARY VETERANS AND 10 OTHERS  
**Attachments:** Khosa & 2 others v Minister of Defence and Military Veterans and 9 others - 21521-20.pdf  
**Importance:** High

Dear All,

I refer to my e-mail below.

I attach hereto my clients' Notice of Motion, Founding Affidavit and Annexures served electronically. Same has been issued in the Pretoria High Court under case number 21521/20.

Your urgent attention and response is required.

**WIKUS STEYL**

**ATTORNEY**



**IAN LEVITT ATTORNEYS**

**19<sup>TH</sup> FLOOR SANDTON OFFICE TOWERS**

**SANDTON CITY**

**CNR RIVONIA & 5<sup>TH</sup> STREET**

**SANDTON**

**2146**

**DX 54 SANDTON SQUARE**

**TEL: 011 784 3310**

**FAX : 011 784 3309**

**Cell : 083 959 4610**

**[www.ianlevitt.co.za](http://www.ianlevitt.co.za)**

## Wikus Steyl

---

**From:** Wikus Steyl  
**Sent:** Sunday, 26 April 2020 12:45  
**To:** hazelm@cogta.gov.za  
**Cc:** Lufuno.Funie18@gmail.com; Tshivhase Lufuno  
**Subject:** KHOSA & 2 OTHERS // MINISTER OF DEFENCE AND MILITARY VETERANS AND 10 OTHERS  
**Attachments:** RE: KHOSA & 2 OTHERS // MINISTER OF DEFENCE AND MILITARY VETERANS AND 10 OTHERS; RE: KHOSA & 2 OTHERS // MINISTER OF DEFENCE AND MILITARY VETERANS AND 10 OTHERS  
**Importance:** High

Dear Hazel,

The above-mentioned matter and your e-mail of 24 April 2020 refers.

I attach hereto our urgent High Court application which was issued and served on all parties yesterday.

I have now been informed by the State Attorney that she has not yet received instructions from the Minister.

**WIKUS STEYL**

**ATTORNEY**



**IAN LEVITT ATTORNEYS**

**19<sup>TH</sup> FLOOR SANDTON OFFICE TOWERS**

**SANDTON CITY**

**CORNER RIVONIA & 5<sup>TH</sup> STREET**

**SANDTON**

**2146**

**DX 54 SANDTON SQUARE**

**TEL: 011 784 3310**

**FAX : 011 784 3309**

**Cell : 083 959 4610**

**[www.ianlevitt.co.za](http://www.ianlevitt.co.za)**

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. 21521/20

In the matter between:

<b>KHOSA, MPHEPHU</b>	<b>First Applicant</b>
<b>MONTSHA, NOMSA</b>	<b>Second Applicant</b>
<b>MUVHANGO, THABISO</b>	<b>Third Applicant</b>
and	

<b>MINISTER OF DEFENCE AND MILITARY VETERANS</b>	<b>First Respondent</b>
<b>SECRETARY FOR DEFENCE</b>	<b>Second Respondent</b>
<b>CHIEF OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE</b>	<b>Third Respondent</b>
<b>MINISTER OF POLICE</b>	<b>Fourth Respondent</b>
<b>NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE</b>	<b>Fifth Respondent</b>
<b>ACTING CHIEF OF THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT</b>	<b>Sixth Respondent</b>
<b>CHIEF OF THE EKURHULENI METROPOLITAN POLICE DEPARTMENT</b>	<b>Seventh Respondent</b>
<b>OFFICE OF THE MILITARY OMBUD</b>	<b>Eighth Respondent</b>
<b>INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE</b>	<b>Ninth Respondent</b>
<b>MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	<b>Tenth Respondent</b>

---

**FOUNDING AFFIDAVIT**

---

**TABLE OF CONTENTS**

S.H  
SDL



WHAT THE APPLICATION IS ABOUT ..... 3

WHY THE APPLICATION IS BROUGHT ..... 5

PARTIES ..... 10

    Applicants ..... 10

    Respondents ..... 11

FACTS ..... 14

    The Lockdown ..... 14

    The torture and murder of Mr Collins Khosa ..... 15

    Other reported incidents ..... 19

    Commanding officers' response ..... 22

    Prelude to this application ..... 26

STANDING ..... 28

CONSTITUTIONAL AND LEGAL FRAMEWORK ..... 28

    (a) The Constitution ..... 28

    (b) International law and the prohibition on torture ..... 30

    (c) Domestic law and the limits on the use of force ..... 35

REQUIREMENTS FOR A FINAL INTERDICT ..... 37

    (a) A clear right ..... 38

    (b) An injury actually committed or reasonably apprehended ..... 39

    (c) The lack of an adequate alternative remedy ..... 42

URGENCY ..... 49

    The imminent reinforcements and curfew ..... 52

    The truncated timelines ..... 53

CONCLUSION ..... 55

I, the undersigned,

**NOMSA MONTSHA**

do hereby make oath and state that:

1. I am a 30 year old adult female, employed by Accelerate Service as a cleaner, and residing at 3885, Moeketsi Street, Far East Bank, Alexandra, Johannesburg.
2. The facts contained in this affidavit are within my personal knowledge, save where otherwise stated or where the converse appears from the context, and are, to the best of my belief, both true and correct.
3. Where facts are beyond my direct knowledge, I make reference to the relevant confirmatory affidavits.
4. Where I make legal submissions, I do so based on the advice of the applicants' legal representatives, which advice I accept to be correct.

**WHAT THE APPLICATION IS ABOUT**

5. This case is about civilians being murdered, tortured and subjected to other cruel, inhuman and degrading treatment, during the nationwide Lockdown, which was instituted under the Disaster Management Act 57 of 2002, with effect from 23h59 on 26 March 2020, and which is still underway ("**the Lockdown**").
6. The above brutality ("**Lockdown brutality**") has been and is being committed, across the country, by members of the South African National Defence Force ("**SANDF**"), the South African Police Service ("**SAPS**") and Metropolitan Police Departments ("**MPDs**") (collectively, "**security forces**"), who have been tasked

to enforce the Lockdown and the State of Disaster declared by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27 of the Disaster Management Act 57 of 2002 ("**State of Disaster**").

7. The applicants have lost a loved one to this Lockdown brutality and, considering the numerous public reports of other incidents of Lockdown brutality, including at least eight other deaths, the applicants anticipate that more civilians will suffer the same fate, if nothing is done to curb this unbridled brutality by members of the security forces.
8. The aim of this application is, urgently, to obtain an order:
  - 8.1. declaring that we as civilians are still entitled to have our fundamental rights respected and protected by the security forces during the Lockdown and the State of Disaster; and
  - 8.2. compelling the officials in command of the security forces to do only what is necessary, reasonable and proportional to repress and prevent the prevailing Lockdown brutality, by:
    - 8.2.1. immediately disarming and rendering off duty those members of the security forces who were present during the torture and murder of our loved one, Mr Collins Khosa;
    - 8.2.2. commanding the security forces to adhere to the prohibition on torture during the Lockdown and State of Disaster, and warning them of the consequences of their failure to do so;

- 8.2.3. developing a code of conduct and operational procedures, as required by section 19(1)(c) of the Defence Act 42 of 2002, for the security forces to observe during the State of Disaster;
- 8.2.4. developing guidelines informing the public of what the security forces may legitimately do to enforce the Lockdown and State of Disaster.
- 8.2.5. establishing an effective complaints mechanism which can enable the relevant commanders to do take swift and appropriate steps in respect of security forces members involved in other incidents of Lockdown brutality; and
- 8.2.6. instituting a prompt and impartial investigation into reported cases of Lockdown brutality, to help keep the security forces in check while the Lockdown and State of Disaster is still underway.

**WHY THE APPLICATION IS BROUGHT**

- 9. As noted above, the purpose of this application is to enforce compliance with the Bill of Rights. There are extraordinary circumstances that justify an urgent hearing in this Court.
- 10. In the first instance, following the address of the President to the nation on Thursday, 23 April 2020, on his Cabinet's plan to reinstate economic activity into the country, there is no clear indication when the Lockdown may end. Instead, the President announced a "phased" easing of the Lockdown, but restrictions on gatherings and movement of people will remain in place indefinitely.

SDL

S. M

11. Moreover, the President has notified Parliament that, in addition to the 2,820 SANDF members already deployed to enforce the Lockdown and State of Disaster, an additional 73,180 more will be deployed from this Friday, 1 May 2020.

12. It is also necessary to recall that although the Lockdown is expected to last until 30 April, the State of Disaster continues for three months after it was declared. The President's report to Parliament (attached as I) states that the SANDF will be deployed to assist SAPS until 26 June 2020. It remains, therefore necessary for this Court to hear and determine the application because the SANDF and the SAPS shall remain deployed until 26 June 2020. Their conduct must be regulated by the Constitution, unlike what has happened until now where some of the soldiers have conducted themselves as if they are above the Constitution.

13. In circumstances of so much uncertainty in the country, it is of utmost importance that the Bill of Rights should be the guiding light on how that the State deals with citizens.

14. Our attorneys addressed a substantial letter of demand to the Government, seeking various undertakings. Of particular relevance to this application were the following specific demands:

14.1. Section 19 of the Defence Act, 2002 provides for the employment of the SANDF in co-operation with the SAPS. Section 19(3)(c) states that this must occur in accordance with a Code of Conduct and operational procedures approved by the Minister of Defence. The letter from our

SDL

S. 17

attorneys specifically requested copies of the Code of Conduct and the operational procedures. This was not responded to at all.

14.2. The letter of demand also asked for an account of steps that will be taken at least until the end of the present Lockdown to ensure that there is no abuse of power by members of the security forces. There has been no response to this request.

15. Instead, the letter of response on behalf of the Minister of Defence simply states that the matter is under investigation. There are significant concerns with this cryptic reply:

15.1. No specific details are provided about the nature and scope of the investigation, the time it will take to finalise it, and the independence of the persons conducting the said investigation.

15.2. Particularly, given the lack of jurisdiction by the Independent Police Investigation Directorate ("IPID") to investigate members of the SANDF, and equally the lack of jurisdiction of the Military Ombud to investigate the SAPS, no indication is given as to how this will be handled.

15.3. It is necessary to highlight that IPID has itself publicly stated that its investigations are hampered by (i) counter-investigations by the SAPS; (ii) infiltration by SAPS; (iii) political meddling; and (iv) lack of resources. IPID has also publicly stated that because of these factors its investigations may lack the necessary operational and institutional independence.

15.4. Thus there is a real, *bona fide* and genuine fear that no credible investigation is in fact taking place. If there is an investigation taking place,

there are real concerns about its transparency, independence, speed and effectiveness.

16. It is therefore crucial that an order is given by this Court for a proper, constitutionally compliant and credible investigation to take place, overseen, not by the Defence Minister, who is an implicated party, but by the courts.
17. For avoidance of doubt, we support the aims of the Lockdown. We believe, however, that the conduct of the members of the security forces in this instance undermine the goals of the Lockdown, by undermining public confidence and trust in the security forces and the government as a whole, at a time when such confidence and trust is desperately needed. An order such as that set out in the Notice of Motion will not undermine vindicate the goals of the national Lockdown.
18. What underlies the extraordinary nature of this application is that since 1994 the country has never witnessed such restrictions to the Bill of Rights – which we have no difficulty with, in principle. The Constitution does contemplate the suspension of rights in certain circumstances, including under a State of Emergency. But certain fundamental rights cannot be curtailed. The right to life cannot be taken away in a State of Emergency. The right to dignity as well as the rights against torture cannot be taken away in a State of Emergency. We do not contend that the Government should have declared a State of Emergency. We simply illustrate that the most drastic constitutionally allowed invasion of rights is usually in a State of Emergency, and even then it does not extend to the abused currently being inflicted by the security forces.

19. The nature of the enforcement in Stage 4 is important to highlight to illustrate the magnitude of the problem. The government has issued a "summary of alert levels", which is attached hereto marked "A". It states in relation to Stage 4:

19.1 People are required to stay at home except to go to work, necessary shopping, or seek medical care. There will be no inter-provincial transport or movement, except to return home.

19.2 Most disturbingly it provides that there will be a "curfew in place between 7pm and 5am". There is no allowance in relation to the curfew for people to move for work, shopping or medical care. It is apparent that there will be blunt enforcement of the curfew.

19.3 Gatherings: *"All public gatherings are prohibited"*.

20. If the government is planning a curfew, it cannot do so without clearly communicating this to the public, setting out the terms of the behaviour of the government police or soldiers, and explaining what the exceptions would be in case a person is at work during the period of the curfew.

21. We will begin by identifying the parties and setting out the facts, thereafter this affidavit will address the following:

21.1. the applicants' standing (*locus standi*) to seek the above relief;

21.2. the constitutional and legal framework governing the rights of civilians and the duties of members of the security forces and their commanding officers;

21.3. the legal requirements for a final interdict; and



21.4. grounds for urgency.

## **PARTIES**

### ***Applicants***

22. I am the second applicant. I was the life partner of the late Mr **COLLINS KHOSA**, who died on Friday, 10 April 2020, after being tortured by members of the SANDF accompanied by members of the Johannesburg Metropolitan Police Department ("**JMPD**").
23. The late Mr Khosa was a 40 year old adult male, employed at Chipkins Bakery. He was the father to three minor children; Wiseman (13 years); Loveness (12 years) and Gift (10 years). Until his death, we had been living together as a family for over two years, at 3885 Moeketsi Street, Far East Bank, Alexandra, Johannesburg ("**our home**").
24. I was also a victim of brutality by members of the SANDF on the same occasion, as described in more detail below.
25. The first applicant is Ms **MPHEPHU KHOSA**, a 68 year old pensioner, residing in Tzaneen, Limpopo. She is the biological mother of the late Mr Khosa, and is now the custodian of his three minor children.
26. The third applicant is Mr **THABISO MUVHANGO**, a 33 year old adult male, employed at Dischem DC as an Inbound Supervisor. He lives at our home with his wife pregnant wife, Mrs Ivonny Muvhango (the late Mr Khosa's sister), and their two minor children. He too was a victim of brutality at the hands of members of SANDF, as shall be described in detail below.

27. I am authorised to depose to this affidavit on behalf of the other two applicants in this matter, as appears from the confirmatory affidavits attached hereto as annexures "B" and "C".

**Respondents**

28. The first respondent is the **MINISTER OF DEFENCE AND MILITARY VETERANS** ("Defence Minister"), currently Ms Nosiviwe Mapisa-Nqakula MP. The Defence Minister is the Cabinet member responsible for the SANDF in terms of section 201(1) of the Constitution of the Republic of South Africa, 1996 ("the Constitution").
29. The second respondent is the **SECRETARY FOR DEFENCE**, currently Dr Sam Makhudu Gulube, appointed in terms of section 7 of the Defence Act 42 of 2002 ("Defence Act"), and responsible inter alia for advising the Defence Minister on defence policy matters and for monitoring compliance with policies and directions issued to the Chief of the SANDF by the Defence Minister.
30. The third respondent is the **CHIEF OF THE SOUTH AFRICA NATIONAL DEFENCE FORCE**, currently General Solly Zacharia Shoke, appointed in terms of section 13 of the Defence Act, and responsible inter alia for formulating and issuing military policy and doctrines, training SANDF members "*to act in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic*".
31. The fourth respondent is the **MINISTER OF POLICE** ("Police Minister"), currently Mr Bekokwakhe "Bheki" Hamilton Cele MP. The Police Minister is the

Cabinet member responsible for the police service (the SAPS and MPDs) in terms of section 206(1) of the Constitution.

32. The fifth respondent is the **NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE** (“**SAPS Commissioner**”), currently Lieutenant General Khehla John Sitole. The SAPS Commissioner is appointed in terms of section 207 of the Constitution to exercise control over and manage the police service (the SAPS and MPDs).
33. The first to fifth respondents’ official address for the purpose of this application is SALU Building, 28th Floor, 316 Thabo Sehume Street (corner of Thabo Sehume and Francis Baard Streets), Pretoria. This application shall be served on these respondents care of the State Attorney, Pretoria at the following email address:  
[TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za); [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za) and  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com).
34. The sixth respondent is the **CHIEF OF THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT**, currently Mr Sipho Dlepu (acting). The JMPD is a municipal police service established in terms of section 64A of the South African Police Service Act 68 of 1995 (“**SAPS Act**”), for the City of Johannesburg Metropolitan Municipality. The sixth respondent is in command of the JMPD’s members. The sixth respondent is represented by Madlanga and Partners Attorneys and this application will be served at the following e-mail addresses: [sinazosmadlanga@gmail.com](mailto:sinazosmadlanga@gmail.com) and [guqulethu@mpiattorneys.co.za](mailto:guqulethu@mpiattorneys.co.za).
35. The seventh respondent is the **CHIEF OF THE EKURHULENI METROPOLITAN POLICE DEPARTMENT**, currently Mr Jabulani Isaac Mapiyeye. The Ekurhuleni Metropolitan Police Department is a municipal police service established in terms

of section 64A of the SAPS Act, for the Ekurhuleni Metropolitan Municipality. The eighth respondent is in command of its members. The seventh respondent is represented by Majang Incorporated Attorneys and this application will be served at the following e-mail addresses: [majang@majanginc.co.za](mailto:majang@majanginc.co.za) and [magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za).

36. The first to seventh respondents shall be referred to collectively as the **“commanding officers”**.
37. The eighth respondent is the **OFFICE OF THE MILITARY OMBUD (“OMO”)**, currently headed by Lieutenant General (Retired) Vusumuzi Masondo as the Military Ombud. The OMO is an office established by the Military Ombud Act 4 of 2012 to investigate complaints by members of the SANDF regarding their working conditions and complaints by members of the public about the “official conduct” of the SANDF. We seek no relief against the Ombud, including a costs order. If anything, this application is intended to support the purpose of the OMO and ensure a proper investigation which will be credible and independent.
38. The ninth respondent is the **INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (“IPID”)**. The Acting Executive Director of IPID is Mr Patrick Setshedi. The IPID is an investigative body established by Independent Police Investigative Directorate Act 1 of 2011 mandated to investigate police misconduct and offences. No relief is sought against IPID. The applicants seek to ensure that any investigation is credible and independent.
39. The tenth respondent is the **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**, currently Dr Nkosazana Dlamini Zuma MP. The Minister is the Cabinet member responsible for the Disaster Management Act.

We seek no relief against the Minister, but she has been cited for her potential interest in the matter as the Minister who declared the State of Disaster.

40. The eighth to tenth respondents' official address for the purpose of this application is SALU Building, 28th Floor, 316 Thabo Sehume Street (corner of Thabo Sehume and Francis Baard Streets), Pretoria. This application shall be served on these respondents care of the State Attorney, Pretoria at the following email address: [TPillay@justice.gov.za](mailto:TPillay@justice.gov.za); [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za) and [Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com).

## FACTS

### *The Lockdown*

41. On 31 December 2019, a novel pneumonia of unknown cause was detected in Wuhan, China. This virus, now known as the COVID-19 Coronavirus, a highly communicable and infectious disease, was declared to be Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation.
42. On 15 March 2020, the President of the Republic of South Africa, Matamela Cyril Ramaphosa, declared a state of national disaster and announced measures to combat the spread of COVID-19.
43. On 25 March 2020, the Minister of Cooperative Governance and Traditional Affairs, acting in terms of section 3 of the Disaster Management Act 57 of 2002, issued regulations implementing measures where movement would be severely restricted through "a lockdown" ("**Lockdown Regulations**"). This was as result

of concerns about the growing spread of COVID-19 infections in South Africa since the first notification of a positive case.

44. The President announced that the SANDF would be deployed to assist the SAPS to enforce the Lockdown Regulations.

***The torture and murder of Mr Collins Khosa***

45. During the Lockdown, on Good Friday, 10 April 2020, at about 17h00, I was at home with Mr Khosa, Mr Muvhango and his wife, Mrs Yvonny Muvhango, when two uniformed female members of the SANDF entered our home carrying sjamboks (whips).
46. Before entering the house, the said members met with Mr Muvhango just outside the house but inside the yard. The two members of the SANDF asked him about an unattended camping chair and half-full cup of alcohol in the yard. Before he could answer, they ordered him inside the house and announced that they would confiscate any alcohol in the house.
47. When the two SANDF members came inside, I had just finished dishing up dinner for Mr Khosa who was by then busy eating. Mr Muvhango's pregnant wife was also inside the house with her two children.
48. The two SANDF members accused Mr Khosa and Mr Muvhango of violating the Lockdown Regulations. They inquired about the camping chair and half-full cup of alcohol in the yard. Mr Khosa informed them that even if he had been drinking, that would not be an offence as it was inside his yard. The SANDF members did not take kindly to Mr Khosa's response and they were agitated by his response.

49. It is at that point that the SANDF proceeded to raid the house. They confiscated one beer from Mr Muvhango's fridge and then one beer from Mr Khosa's fridge. They ordered Mr Khosa and Mr Muvhango to follow them outside to the street as they wanted to "prove a point" to them.
50. On their way out, a member of the SANDF damaged Mr Khosa's car, which was parked inside the yard, by smashing the metal gate against. Mr. Khosa protested this act of vandalism. This further agitated the members of the SANDF.
51. Ms Ivonny Muvhango and I followed them outside. I asked the SANDF members why they took the alcohol outside the yard creating an impression that Mr Khosa and Mr Muvhango violated the regulations by drinking outside the yard. This question was also repeated by Mr. Muvhango and Mr Khosa. We did not receive any response.
52. Mr Khosa and Mr Muvhango were made to stand outside the yard with the two beers on the ground, while members of the SANDF waited for back-up. Shortly, a number of vehicles arrived from both the SANDF and the JMPD, with armed personnel.
53. At this stage, about three further SANDF members approached the scene and were "briefed" about the incident by the two SANDF members who had entered our home. Without making any enquiries of Mr Khosa or anybody else, these three SANDF members manhandled and assaulted Mr Khosa in the following manner:
- 53.1. they poured beer on top of his head and on his body;

- 53.2. one member of the SANDF held his hands behind his back, while the other choked him;
- 53.3. they slammed him against the cement wall;
- 53.4. they hit him with the butt of a machine gun;
- 53.5. they kicked, slapped and punched him on his face, stomach and ribs; and
- 53.6. they slammed him against the steel gate.
54. During the entire incident, I kept shouting that they must stop hurting Mr Khosa as they were going to kill him. My plea was ignored.
55. During this time, Mr Muvhango was also manhandled by a member of the SANDF and beer was also poured all over his body.
56. While Mr Khosa was being brutalised, two female SANDF members approached me and Mrs Muvhango. Mr Muvhango shouted that these SANDF members should not touch his wife as she is pregnant.
57. As they approached me, I ran inside the house and closed the door. The SANDF members came after me and kicked the door open. They ordered me to come outside, and one member started whipping me with a sjambok over my body and my face. I was in a state of shock as I was being whipped. I could not defend myself from the SANDF nor could I run away.
58. The confirmatory affidavits of Mrs Muvhango are attached to this affidavit as "D".
59. The incident was witnessed by some members of the Alexandra community. In addition, part of the above incident was caught on cellphone video which was



circulated on the news and social media. Regrettably, some of the witnesses whom we consulted with, informed me that, while they recorded the incident on their cell phones, their phones were taken by the SANDF and the video recordings were deleted. These potential eyewitnesses were also threatened with violence by the SANDF and they have been afraid to assist us in the investigation of the matter.

60. Mr Tebogo Mothabela is one of our neighbours who witnessed the assault on Mr Khosa, he attempted recording the incident with his phone however, he was instructed by the SANDF to stop recording. Thereafter, members of the SANDF approached him and took his phone and deleted the recordings. Mr. Mothabela's confirmatory affidavit is attached as annexure "E".
61. Similarly, one of the community members, Ms Glenda Phaladi recorded the assault on Mr. Khosa on her cellphone, however, her phone was also confiscated by members of SANDF and they deleted the recording. Ms Phaladi's confirmatory affidavit is attached as annexure "F". In addition, Mr Noel Bongela lives in the same yard as us, he had spent his day with Mr Khosa before his death and also witnessed the assault on Mr Khosa later that day. Mr Bongela's confirmatory affidavit is attached as annexure "G"
62. After the SANDF and JMPD members left, I took Mr Khosa inside our house. He later started vomiting, losing his speech and consciousness, and progressively, he lost his ability to walk. I rested him on the bed. I sat on the side of the bed trying to comfort him. However, about three hours after the SANDF members had left, while holding my hand, I noticed that he was not moving. I quickly called

Mr Muvhango and his wife who then called Emergency Services. Upon their arrival, the Emergency Services declared Mr Khosa dead on arrival.

- 63. Medical advice received suggested blunt force trauma to Mr Khosa's head and torso, which could have severely damaged his internal organs, including his brain. Consistent with this advice, the death notice describes cause of death as a blunt force head injury. I attach a copy of the death notice as annexure "H".
- 64. The manner in which Mr Khosa was killed has left me, his children, his mother (the first applicant), his sister, and his brother-in-law (the third applicant) in a state of absolute shock and trauma. We are emotionally obliterated and have lost complete faith in the security forces, and the SANDF in particular.

***Other reported incidents***

- 65. I am aware of several other incidents of Lockdown brutality which have occurred throughout various parts of South Africa as reported in the media. As of 3 April 2020, eight people have died as a consequence of security force action during the Lockdown. This is an extraordinarily high number for such a short period of time in the context where the commander in chief of the SANDF, Mr Cyril Ramaphosa announced publicly that soldiers must respect the rights of civilians.
- 66. I set out the reported incidents below. These are not exhaustive. Basically on day one of the Lockdown police brutality began.
  - 66.1. On 27 March 2020, a Khayelitsha man was reportedly beaten by a police officer with a sjambok;

- 66.2. On 28 March 2020, a member of the SANDF was captured in a video slapping and kicking a member of the public for apparently drinking in public and not obeying the restriction on movement imposed on by the Lockdown;
- 66.3. On 28 March 2020, members of the SANDF and SAPS reportedly used rubber bullets on hundreds of shoppers who had gathered outside Shoprite Supermarket in Yeoville, Johannesburg;
- 66.4. On 30 March 2020, an EMPD officer was arrested for shooting and killing a Vosloorus man identified as Sibusiso Amos and injuring four children between the ages of 4 and 11 who were caught in the crossfire;
- 66.5. On 30 March 2020, just four days after the start of Lockdown, members of the SANDF and SAPS were captured in a video punishing Soweto residents by making them do squats, push-ups and rolling on the ground;
- 66.6. On 30 March 2020, Petrus Miggels, from Ravensmead in Cape Town, died after being beaten with a hammer and taser by police;
- 66.7. On 31 March 2020, IPID was reported to be investigating three cases of murder against law enforcement officers (one in Gauteng and two in Western Cape);
- 66.8. On 31 March 2020, police reported to have shot two nurses at the Bongani Regional Hospital in Welkom;
- 66.9. On 31 March 2020, Hillbrow police reportedly assaulted community members with sjamboks and shot at them with rubber bullets;

- 66.10. On 2 April 2020, members of the SANDF reportedly assaulted a man and his daughter in Eerste Rivier in Cape Town. They held the children at gunpoint and shoved a gun in the man's mouth. A neighbour was also beaten to the ground;
- 66.11. By 30 March, IPID had received 21 complaints specifically related to Lockdown police brutality. In Gauteng, IPID is investigating six cases of discharging a firearm, three cases of assault and one of corruption. In addition, IPID is investigating two cases of assault in the Free State, one case of assault in Kwa-Zulu Natal, one case of assault in Mpumalanga, one case of corruption in Mpumalanga, one case of discharging a firearm in the Eastern Cape and one case of discharging a firearm in Mpumalanga.
- 66.12. A record of the above incidences have been collated and stored on the following dropbox link and shall be available for the Court to view at the hearing of this matter:  
<https://www.dropbox.com/sh/l7wrpuclnzzzo1/AADPGT0Z5fFFoTHq60I96LmQa?dl=0>
67. If the commanding officers had responded promptly and effectively to the incidents of Lockdown brutality described in the preceding paragraphs, which were widely reported on in the two weeks before 10 April 2020 – for example, by promptly developing a code of conduct, placing off duty the implicated members of the security forces, or by reminding the security forces of their legal obligations – my life partner might still be alive, and his children might not be orphans.
68. I have already set out the circumstances of the death of my partner above.

### **Commanding officers' response**

69. The Minister of Police and the Minister of Defence have executive authority over the security forces. They have thus far failed to take effective steps to stop the illegal actions of the security forces. Their statements, as illustrated below, appear to defend and downplay, if not encourage, the use of force. Even after the death of Mr Khosa, the Minister of Defence stated that the public should not “*provoke*” the soldiers.
70. On the Wednesday preceding the start of the nationwide lockdown (25 March 2020), the Defence Minister while addressing the media on the role of the SANDF during the lockdown, stated that there would be no *skop, skiet and donder* of civilians by the SANDF unless necessary to do so. “It will only be *skop, skiet and donder* when circumstances determine that. For now we’re a constitutional democracy”<sup>1</sup> she said.
71. These statements do not unconditionally condemn police and military brutality or promote the spirit and purport of the Bill of Rights and the Constitution in general. They imply that South Africa is a constitutional democracy only “*for now*” – that is, conditional upon members of the public not “*provoking*” security forces. In effect what the Defence Minister states is that there will be circumstances where force is ‘deserved’. This is akin to allowing soldiers powers of punishment which they do not have. These powers are to be reserved for courts only.

---

<sup>1</sup> Times Live Online Publication, 25 March 2020: <https://www.timeslive.co.za/politics/2020-03-25-no-skop-skiet-en-donder-from-sandf-during-lockdown-unless-they-have-to/>

72. On 7 April 2020, during a national address by the Police Minister, held at Secunda, he encouraged police officers enforcing the lockdown to “*push South African’s back to their homes if they refuse*”.<sup>2</sup> In his statement, the Police Minister made the following remarks:

*“I hear them (people) crying that cops and soldiers are brutal. Not listening to us is brutality.”*

*“It’s our duty. If you don’t want to protect yourself and the rest of us, we must start by protecting you ... so we need to push a little bit”<sup>3</sup>*

73. In a similar vein, the now suspended Executive Mayor of Matjhabeng Local Municipality, Nkosinjani Speelman, endorsed lockdown brutality on 8 April 2010 during a rallying call to local members of the SANDF in the Free State, “*to not hesitate to skop and donder*”<sup>4</sup> citizens and foreign nationals when enforcing the Lockdown.

74. On 12 April 2020, the Police Minister warned that police officers will confiscate liquor that is being sold illegally and will “*destroy the infrastructure where the liquor is being sold*”.<sup>5</sup>

75. The Lockdown Regulations do not authorise law enforcement officials to cause damage to the property owned and/or occupied by civilians, contrary to the

---

<sup>2</sup> Times Live Online Publication, 8 April 2020: <https://www.timeslive.co.za/news/south-africa/2020-04-08-in-quotes-bheki-cele-on-lockdown-extension-uolipe-brutality-and-no-kissing/>

<sup>3</sup> Id.

<sup>4</sup> The South African Online News Publication, 8 April 2020; <https://www.thesouthafrican.com/news/ofibeat/watch-matjhabeng-mayor-sandf-speech-skop-donder-video/>

<sup>5</sup> The Daily Maverick Online Publication, 16 April 2020: <https://www.dailymaverick.co.za/opinionista/2020-04-16-bheki-cele-should-be-taken-to-task-for-encouraging-criminality/>

Minister of Police's statement. This is clearly an act of undermining the Regulations. In this regard, Regulation 11E which provides that "*No person is entitled to compensation for any loss or damage arising out of any act or omission by an enforcement officer under these regulations*", offers wholesale indemnity for law enforcement officials. This serves only to add onto the already lacklustre response by the commanding officers to the increasing spate of Lockdown brutality.

76. On 16 April 2020, after Mr Khosa's death described above, the Minister of Defence addressed the media. She mentioned the matter is under investigation. Yet, as reported by News24.com,<sup>6</sup> however, she had this chilling message for the civilian population:

*Mapisa-Nqakula said people should not venture out of their homes to check what soldiers and law enforcement were doing, "or even to provoke them".*

*"We are not taking these steps because we are a mean government, or we are being insensitive. We have taken these decisions because it has become necessary for us to do so. Young people, you have nothing to lose but your life. If you go out, you do it at your own peril," she said, adding that going out would only lead to further infections."*

77. Quite clearly the Defence Minister blames civilians for "provoking" the soldiers. She is unable or unwilling to make unequivocal statements condemning violence.
78. In a subsequent radio interview on 702, on 22 April 2020, the Defence Minister seemed to lay the blame squarely at the feet of civilians stating that they should

not “*provoke*” the military.<sup>7</sup> The Defence Minister did not condemn the Lockdown brutality. This was after we had launched proceedings before the Constitutional Court on terms similar to the present.

79. We are advised that under the Constitution, Parliament should exercise oversight over the SANDF and SAPS. The reality, however, is that parliamentary processes are not designed to prevent ongoing violence at the hands of the security forces, especially during a State of Disaster. While the matter may be reported to the oversight bodies, these will take time and will unlikely be designed to address the problem that is currently being faced right now.
80. In any event, the attitude of the SANDF to the Parliamentary process has been alarming. On 22 April 2020, the Defence Minister, the Chief of Staff of the SANDF, Lieutenant-General Lindile Yam and the Chief of Joint Operations, Lieutenant-General Rudzani Maphwanya, appeared before Parliament’s Joint Standing Committee on Defence.
81. When the SANDF was questioned on the alleged cases of brutality and torture, Lieutenant-General Yam is reported to have said to the parliamentarians:
- “You’re not our clients. We are not the police. We take instructions from the commander in chief.”*<sup>8</sup>
82. No steps, to our knowledge, have been taken against the SANDF for these statements and the contempt they have shown for Parliament.

---

<sup>7</sup> <https://mnyfm/shows/mid-morning-show-703/minister-of-defense-explains-why-more-sandf-member> on 22 April 2020 with Eusebius McKaiser.

<sup>8</sup> <https://www.dailymaverick.co.za/article/2020-04-23-the-path-of-ramaphosa-s-letter-for-major-sandf-deployment-raises-serious-concerns-around-separation-of-powers/> last accessed on 24 April 2020.



83. The attitude of the Chief of Staff of the SANDF points to the concern of the applicants about the general view of the SANDF to the law and the fact that their power must be regulated. The SANDF should not be left unaccountable and its use of force must be regulated. That is the point of this application.

***Prelude to this application***

84. On 14 April 2020, the applicants' attorneys sent a letter to the Defence Minister, a copy of which is attached hereto as annexure "1". In it, we demanded that:

84.1. The SANDF and the JMPD provide us with their full account of the incident, including the names of the members who were present and also involved in the assault;

84.2. The President, the Defence Minister and the Chief of the JMPD publicly condemn the conduct of their members;

84.3. A report on what steps have been taken by the SANDF and JMPD in disciplining their members involved in the incident;

84.4. A confirmation that such members be immediately removed from the public and placed on suspension pending the finalisation of the investigation;

84.5. In respect of Mr Khosa's minor children, an undertaking of financial compensation for loss of support, trauma, shock, psychological assistance and any medical expenses that they have to incur during this period;

84.6. The Parliamentary report on the employment of the SANDF required by section 201 of the Constitution;

- 84.7. The code of conduct and operational procedures governing the SANDF during the joint operation, in terms of section 19(3)(c)(i) of the Defence Act.
- 85. On 16 April 2020, the State Attorney sent a terse response on behalf of the President and Defence Minister, a copy of which is attached as annexure "J". The Defence Minister affectively fobbed us off, baldly denying any wrongdoing, failing to give any meaningful answers, and failing to deliver any of the documents requested.
- 86. On 19 April 2020, the State Attorney provided the Parliamentary report requested in my attorney's letter of 14 April 2020. The response from the State Attorney was still silent on the other demands made, including the Code of Conduct for the SANDF.
- 87. Notably, even after the second letter from the State Attorney, there has been no substantive replies from the Government.
- 88. On Monday 20 April 2020, the applicants instituted an urgent application for direct access to the Constitutional Court, seeking the same relief and on essentially the same facts as this application.
- 89. On Friday 24 April 2020, the Constitutional Court refused direct access. It did not engage with urgency or the merits. It ruled simply that no case had been made for approaching the Court directly. Hence, this application. The urgency of the application remains and is even stronger at this stage.

**STANDING**

- 90. This application is brought in terms of **section 38 of the Constitution**, which states that *"anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights"*.
- 91. In terms of **section 38(a) of the Constitution**, I and the third applicant are acting in our own interest, as direct victims of brutality by members of the SANDF.
- 92. In terms of **section 38(b) of the Constitution**, I am also acting on behalf of the late Mr Khosa, my life partner, who cannot act in his own name.
- 93. Also in terms of **section 38(b) of the Constitution**, Mr Khosa's mother, the second applicant, is acting on behalf of Mr Khosa's orphaned minor children, who are in her care and are unable to act in their own name
- 94. In terms of **section 38(d) of the Constitution**, the applicants are also acting in the public interest. Lockdown brutality affects the public in general, and the relief we seek will be to the benefit of the whole South African public.

**CONSTITUTIONAL AND LEGAL FRAMEWORK**

**(a) The Constitution**

- 95. South Africa comes from brutal past where apartheid (a crime against humanity) was enforced through use of force and violence against members of the public by the state's official security forces. I am advised that part of the transformative

purpose of the Constitution was to place greater restraints on the use of force by the security forces of South Africa.

96. I am also advised that under the Constitution, the power of punishment for crimes resides with the courts. The security forces do not have the power to impose sentences and to execute them. Since the Constitution is the fundamental law of the country, I start by setting out the relevant provisions of the Bill of Rights, which is a “cornerstone” of democracy:

96.1. **Section 10 of the Constitution** states that everyone has inherent human dignity and the right to have their dignity respected and protected.

96.2. **Section 11** guarantees – to everyone – the right to life.

96.3. **Section 12(1)(d) and (e)** guarantees – again, to everyone – the right not to be tortured in any way, and not to be treated or punished in a cruel, inhuman or degrading way.

97. These three rights together can be said to form a guarantee of freedom from violence by functionaries of state. Indeed, **section 12(1)(c)** guarantees the right of everyone to be free from all forms of violence from either public or private sources. These rights (sections 10, 11, 12(1)(d) and (e)) are so imperative that, by virtue of **section 37** of the Constitution, they cannot be derogated from even in a state of emergency (which, for the record, the Lockdown is not).

98. The security officers and their commanding officers are all organs of state, who are obliged by **section 7(2) of the Constitution** to respect, protect, promote and fulfil the rights in the Bill of Rights. This obviously includes the rights enshrined in sections 10, 11 and 12(1)(c), (d) and (e).

99. **Chapter 11** of the Constitution (governing security services) places more specific obligations of these particular organs of state.

99.1. **Section 198** of the Constitution provides inter alia as follows (with emphasis added):

(a) *National security must reflect the resolve of South Africa, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.*

(c) *National security must be pursued in compliance with the law, including international law.*

100. **Section 199(5)** states (with emphasis added):

*The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.*

101. **Section 200(2)** obliges the SANDF to “*defend and protect the Republic... and its people in accordance with the Constitution and the principles of international law regulating the use of force*”.

102. **Section 205(3)** similarly obliges the police service (the SAPS and MPDs) inter alia to “*protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law*”.

**(b) International law and the prohibition on torture**

103. **Section 39(1)(b)** of the Constitution provides that, when interpreting the Bill of Rights, a court must consider international law. The rights guaranteeing freedom from state brutality, indeed, have deep roots in international law:

103.1. The **Universal Declaration of Human Rights, 1948**, states that everyone has the right to life, liberty and security of person (**article 3**) and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (**article 5**).

103.2. The **International Covenant on Civil and Political Rights, 1976**, a treaty which South Africa has ratified (and which is thus part of South African law), also provides that no one shall be arbitrarily deprived of his life (**article 6**), and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (**article 7**).

104. The **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984** ("**Torture Convention**"), which South Africa has ratified and domesticated through the **Prevention and Combating of Torture of Persons Act 13 of 2013** ("**Torture Act**") fleshes out the meaning and practical import of these prohibitions:

104.1. **Article 1** defines "**torture**" as –

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

104.2. **Article 2(2)** emphasises that "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any

SDL

other public emergency, may be invoked as a justification of torture” (emphasis added).

- 104.3. **Article 2(1)** obliges states to “take effective legislative, administrative, judicial or other measures to prevent acts of torture” in their territories.
- 104.4. **Article 10** requires states to ensure that the prohibition on torture must be fully taught to, and must be included in the rules and instructions regarding the duties and functions of, all law enforcement officers and other officials “who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”.
- 104.5. Importantly, **article 12** requires South Africa to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed” (emphasis added).
- 104.6. As a corollary, **article 13** requires South Africa to “ensure that any individual who alleges he has been subjected to torture ... has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities” (emphasis added). It also obliges the state to “ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given”.
- 104.7. **Article 16** then obliges the state “to prevent ... other acts of cruel, inhuman or degrading treatment or punishment ... committed by or at the instigation

of or with the consent or acquiescence of a public official". It makes articles 10, 12 and 13 applicable to such acts as well.

105. **Article 4** also required South Africa to criminalise all participation and complicity in torture, and penalise it appropriately in light of its "grave nature". South Africa thus enacted the **Torture Act**:

105.1. **Section 3** defines torture in the same way as the Torture Convention.

105.2. **Section 4** criminalises any participation in torture (including attempting, inciting, instigating, commanding, procuring, conspiring or aiding), and makes it punishable by life imprisonment.

105.3. Not unlike the Torture Convention, **section 4(4)** states that "[n]o exceptional circumstances whatsoever, including but not limited to, a state of war, threat of war, internal political instability, national security or any state of emergency may be invoked as a justification for torture" (emphasis added).

105.4. **Section 10** gives the state "a duty to promote awareness of the prohibition against torture, aimed at the prevention and combating of torture", including by:

105.4.1. training public officials on the prohibition, prevention and combating of torture;

105.4.2. importantly, ensuring that "all public officials who may be involved in the custody, interrogation or treatment of a person subjected to any form of arrest, detention or imprisonment, are educated and informed of the prohibition against torture";



- 105.4.3. conducting education and information campaigns; and
- 105.4.4. providing assistance and advice to any person who wants to lodge a complaint of torture.
106. The Torture Act does not address other "*cruel, inhuman or degrading treatment or punishment*", leaving section 12(1)(e) of the Constitution as the only provision in South African domestic law that expressly deals with this.
107. It is clear from **section 12(1)(c), (d) and (e) of the Constitution**, interpreted in light of international law, especially the Torture Convention, as well as the Torture Act, that state brutality is juridically regarded an especially egregious form of harm.
108. State brutality – when it takes the form of torture or cruel, inhuman or degrading treatment or punishment – is legally distinctive for two definitional reasons:
- 108.1. first, it is committed by "*public officials*", people clothed with public authority, in whom the public are entitled and expected to repose their trust (see ***F v Minister of Safety and Security [2011] ZACC 37; 2012 (1) SA 536 (CC)***, at para 78: "*Once we accept that our Constitution assures the public that it is safe to repose their trust in the police, we must also accept that that constitutional aspiration is undermined when that trust is breached.*")
- 108.2. second, it is committed for "*purposes*" ulterior to legitimate law enforcement, such as to "*punish*" people, who have not been afforded a fair trial before a competent and independent tribunal, or indeed any trial at all.

109. It follows that these constitutionally exceptional crimes need to be prevented and remedied in a radically different, more stringent and more urgent manner than 'ordinary' crimes.

**(c) Domestic law and the limits on the use of force**

110. The constitutional guarantee of freedom from state brutality is also given effect to by provisions of the **Defence Act**, the **SAPS Act**, and the **Criminal Procedure Act 51 of 1977** ("**Criminal Procedure Act**").

111. The **SAPS Act** is the principal legislation that governs the SAPS and MPDs, and places limits on the exercise of their powers and functions:

111.1. **Section 13(1)** provides that they must exercise their powers and functions "*[s]ubject to the Constitution and with due regard to the fundamental rights of every person*".

111.2. **Section 13(3)(a)** requires them to perform their duties "*in a manner that is reasonable in the circumstances*".

111.3. Importantly, **section 13(3)(b)** provides that where a member is authorised by law to use force, he or she "*may use only the minimum force which is reasonable in the circumstances*".

112. The **Criminal Procedure Act** is more detailed:

112.1. **Section 49(2)** provides that police officials may use force only –

112.1.1. to effect an arrest of a "*suspect*" (a person reasonably suspected of committing or having committed an offence);

112.1.2. even then, only when the suspect cannot be arrested without the use of force; and

112.1.3. to the extent force is used, that it is reasonably necessary and proportional in the circumstances to overcome resistance or to prevent the suspect from fleeing.

112.2. It further provides that "*deadly force*" (likely to cause serious bodily harm or death) may be used only if the suspect –

112.2.1. poses a threat of serious violence to the arrestor or any other person;  
or

112.2.2. is reasonably suspected of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting arrest.

113. Other than in that specific instance (to arrest a person and to secure their attendance at trial), the SAPS Act does not give police officers a general license to use force in the execution of their duties.

114. SANDF members are not exempt from these limitations on the use of force. On the contrary, the **Defence Act** provides that, when the SANDF is "*employed in cooperation with the [SAPS] in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and maintenance and preservation of law and order within the Republic*", several conditions will apply, including:

114.1. **Section 20(1)** subjects SANDF members equally to the strict limitations on the use of force set out in the SAPS Act and the Criminal Procedure Act.

114.2. **Section 19(3)(c)(i)** requires that their functions "*must be performed in accordance with ... a code of conduct and operational procedures approved by the [Defence] Minister*".

114.3. **Section 20(11)** provides that they "*must receive appropriate training prior to such employment*".

115. It is obvious why such a code of conduct and prior training are required: soldiers are trained to use force, not refrain from it. When deployed within the Republic, to engage with allied civilians rather than enemy combatants, SANDF members must be re-educated or re-orientated to act in a non-military fashion, which includes adhering to the statutory limits on the use of force.

116. In sum,

116.1. In general, members of the SAPS and the SANDF may not use force. However, where force is necessary to use, it may only be minimum force.

116.2. If the intention is to secure the arrest of an accused, force may only be used where it is reasonably necessary and proportional. Where deadly force may be used, this can only occur where there is a threat to life.

116.3. Other than in those strict circumstances, there is no general license for the SANDF or the SAPS to use force.

## REQUIREMENTS FOR A FINAL INTERDICT

117. The requirements of a final interdict are trite:

- (a) a clear right;

- (b) an injury actually committed or reasonably apprehended; and
- (c) the lack of an adequate alternative remedy.

118. I address each of these requirements in turn.

**(a) A clear right**

119. **Sections 10, 11 and 12(1)(d)-(e) of the Constitution** (as described in detail above) – are non-derogable rights even during states of emergency. **Section 12(1)(c)** protects the right of everyone to be free from all forms of violence, both public and private.

120. We understand that, in terms of **section 36(1) of the Constitution**, these rights may be limited in terms of law of general application in a manner that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

121. But beyond the permission to use minimum force to effect arrests, in terms of the SAPS Act and the Criminal Procedure Act, these rights have not been limited by any further law of general application for the purposes of the Lockdown or the State of Disaster.

122. Indeed, there is nothing in the Lockdown Regulations that even purports to limit the rights in sections 10, 11 and 12(1)(c)-(e) of the Constitution.

123. The corollary of these clear rights is the state's duty to respect, protect, promote and fulfil them in terms of **section 7(2) of the Constitution**. The primary means for the security forces and their commanding officers to discharge that duty is to

comply with their statutory obligations under the Torture Act, Defence Act, SAPS Act and Criminal Procedure Act.

124. Thus, "everyone", including the applicants, has a clear right to have those statutory obligations honoured and enforced. This means that the applicants and all other civilians have a clear right to have the security forces appropriately trained and restrained in respect of the prohibition on torture and other legal limits on the use of force.

**(b) An injury actually committed or reasonably apprehended**

125. Mr Khosa's treatment constituted torture in the following respects:

- 125.1. one member of the SANDF held his hands behind his back, while the other choked him;
- 125.2. they slammed him against the cement wall;
- 125.3. they hit him with the butt of a machine gun;
- 125.4. they kicked, slapped and punched him on his face, stomach and ribs; and
- 125.5. they slammed him against the steel gate.

126. These acts were all done with the intention to clearly inflict severe pain or suffering for the purposes of punishing him (or in their words, "teaching him a lesson", for the alleged contraventions of Lockdown Regulation or, more likely, for disputed any such contraventions. For the avoidance of doubt, it is not a crime under the Lockdown Regulations to consume alcohol nor is it a crime to consume alcohol in your home.

127. The section 10, 11 and 12(c)-(e) rights of all civilians in South Africa are being continuously infringed by the commanding officers' persisting failure to train and restrain the security forces in accordance with their statutory obligations. This includes the failure to develop and disseminate the required code of conduct and operational plan for SANDF members employed in co-operation with the SAPS.
128. The SANDF, the SAPS and several MPDs have become a law unto themselves. The killing of my partner and the treatment of Mr Muvhango are symptomatic of a wider problem of police brutality and violence that has been reported through several newspapers and videos shared on social media.
129. At present, it is unknown to members of the public how the SANDF is to co-operate with the SAPS. In our attorney's letter of 14 April 2020, we requested the Minister of Defence to provide us with the operational plan and code of conduct required under the Defence Act. The Minister has failed and/or refused to furnish us with those documents. My attorneys have also scoured several government websites and the government gazettes for the code of conduct—none seems to exist.
130. The failure of the Defence Minister (as well as the Defence Secretary and SANDF Chief) even to develop this vital code of conduct and operational plan – let alone to ensure that it is read, understood, accepted and adhered to by all deployed members of the SANDF – is an egregious infringement of the clear rights identified above. It places every civilian in South Africa at grave risk of the excessive use of force by members of the SANDF.
131. It is clear that the harm will not be addressed without the intervention of this Court. The Defence Minister is now plainly in deliberate and defiant breach of

her obligation to develop the code of conduct and operational plan required by section 19(3)(c) of the Defence Act:

- 131.1. She should have discharged this unambiguous obligation before the first 2,820 SANDF members were set loose on civilians in March 2020.
  - 131.2. On 14 April 2020, she was alerted to this obligation in our attorneys' letter. Still, she failed to honour it.
  - 131.3. On 20 April 2020, she received an urgent application to the Constitutional Court, seeking an order directing her to discharge this obligation. And still, she has failed to do so.
  - 131.4. Now, she is preparing to deploy 73,180 more SANDF members from Friday 1 May 2020. And, yet, she has given no indication of any steps having been taken to develop the required code of conduct or the operational procedures.
132. The Defence Minister's wilful abrogation of this simple, yet vital, statutory obligation shows sheer contempt for the applicants, our late loved one, and the South African public as a whole. What is more, it undermines public confidence and trust in the security forces and the government, and thus undermines the aims of the Lockdown itself.
133. The 'injury' requirement for a final interdict is clearly satisfied, in several respects:
- 133.1. The Defence Minister has already infringed civilians' human rights by failing to develop the required code of conduct and operational plan, and this infringement is continuing.



- 133.2. The most unfathomable injury has already been committed in respect of Mr Khosa. He was tortured and murdered. His rights under sections 10, 11 and 12(c)-(e) of the Constitution were stripped from him completely.
- 133.3. Mr Muvhango and I were also tortured. Our section 10 and 12(c)-(e) rights were also injured.
- 133.4. Then, there are the many reported cases of deaths and improper treatment at the hands of the security forces across the country. These injuries have also already been committed.
- 133.5. Beyond all of that, there is the real and credible anticipation that further injury will follow – the security forces will continue to infringe these rights if no court order is put in place to restrain them. This anticipation is reinforced by the nonchalant and defiant responses of the commanding officers to the reported cases of brutality.

**(c) *The lack of an adequate alternative remedy***

134. The relief sought in this application is not of a retributive or compensatory nature – that relief will be sought from the criminal and civil courts in due course. Rather, the relief sought in this application serves a protective and preventative function. It consists of a declaratory order and a structural interdict.
135. A declaratory order is necessary, urgently, to affirm that the introduction of the Lockdown has not negated the non-derogable rights of all civilians – specifically the rights to dignity, life, and freedom from torture or other cruel, inhuman or degrading treatment or punishment – and has also not diluted the security

services' duty to respect and protect those rights, including by using only the minimum force that is reasonably necessary to enforce the Lockdown.

136. The facts set out in this founding affidavit, and the confirmatory affidavits filed herewith, demonstrate overwhelmingly that a significant number of members of the security forces consider the Lockdown to afford them a licence to use more force than would ordinarily be regarded as the minimum, and to 'punish' civilians for perceived insolence or indolence. The declaratory order is necessary to send a strong message that there is no such licence, and that such conduct is unlawful and unconstitutional, notwithstanding the Lockdown.
137. Moreover, in light of the fact that the SANDF has been deployed until 26 June 2020, as appears from a letter received from the Presidency attached hereto marked "K" (a period which may well be extended), the remedy sought, if granted, will be effective. The structural interdict sought has three elements.
138. First, it is to compel the Minister of Defence to develop and publish a code of conduct for the SANDF in enforcing the Lockdown Regulation and the State of Disaster. In particular, about when the SANDF may use force, how to enforce social distancing and restriction of movement, how to secure the attendance of a suspect to attend trial for alleged Lockdown Regulation infractions. This obligation is not onerous – it has always been placed on the Minister of Defence in terms of section 19(3)(c)(i) of the Defence Act.
139. Second, the first to eighth respondents (the commanding officers) must, within three days, establish a special complaints mechanism for civilians to report alleged acts of torture or cruel, inhuman or degrading treatment or punishment

at the hands of members of the SANDF, the SAPS or any MPD during the Lockdown or State of Disaster.

- 139.1. This must be freely accessible to the public, who must be allowed to remain anonymous. The complaints must be reviewed daily by appropriately qualified personnel. Because of the nature of the complaints, it is only sensible that these personnel should be seconded from IPID and the OMO, as they will have the requisite expertise and experience to assess the complaints. This will also ensure that the mechanism does not burden the fiscus with a higher wage bill.
- 139.2. The function of the mechanism is to suss out credible complaints (i.e. those substantiated by some corroborating evidence), for a twofold purpose: (a) to recommend immediate steps to protect the public and prevent further harm, such as disarming and rendering off duty the members implicated in such complaints; and (b) to forward the credible complaints and supporting evidence to the special investigative team described below.
- 139.3. It is not desirable to prescribe to the first to eighth respondents what precise form this mechanism must take, but it could, for example, include charge-free telephonic or electronic hotlines. This would entail relatively miniscule cost and difficulty for the first to eighth respondents to implement at short notice, yet would offer an effective way for allegations of torture and other serious abuses to be brought to the attention of the commanding officers without delay, miscommunication or misdirection.

140. Third, the institution of a special investigation, led by a retired judge, into the reported cases of torture or cruel, inhuman or degrading treatment or punishment.

140.1. Owing to the egregious nature of such human rights violations, which South Africa is expressly obliged under international law to investigate promptly and impartially (per article 12 of the Torture Convention), such an investigation cannot wait until after the Lockdown or State of Disaster. The investigative team must be performing its work, and be seen to be performing its work, as a contemporaneous check against abuse by the security forces. It presents the only effective remedy to nip in the bud the culture of impunity that is apparently taking root during the State of Disaster.

140.2. For these reasons, it is necessary for the investigative team to produce reports regularly, every five days, to ensure that the commanding officers are aware of any abuses and of what they need to do to prevent and repress them (which they are obliged to do under both constitutional and international law).

141. The purposes of the above special complaints mechanism and special investigation cannot be effectively achieved by any presently existing mechanism or body. IPID does not have the competence to deal with complaints against members of the SANDF, and OMO does not have the competence to deal with complaints against members of the SAPS and MPDs. Moreover, there is nothing in the institutional design of those bodies that ensures that they would, or even could, complete any meaningful work while the Lockdown is still

SDL

underway. Finally, the fact that these existing mechanisms have not, as yet, had any perceptible inhibiting effect on the excessive use of force during the Lockdown, strongly suggests that further special mechanisms are urgently needed to bring about such results.

142. This much is apparent from IPID's own records.

143. In the Annual Performance Plan for 2019/2020, IPID (attached hereto marked "L") repeatedly mentions budget, resource and operational constraints that it faces, making it difficult to conduct genuine independent, effective and timeous investigations. I refer to these below.

143.1. At page 7 the report states that its resources "*were extremely constrained*" thus affecting its operations. It also states that because of constrained financial resources IPID "*was unable to provide a conducive working environment for the investigators who are responsible for driving [IPID's] core mandate*".

143.2. At page 8 the report states that because of inadequate resources its effectiveness is compromised. It is therefore unable to execute its constitutional and legislative mandate and thus to realize one of the visions of the National Development Plan which is that people living in South Africa should feel safe and should have no fear of crime.

143.3. There is also reference to the operational independence of IPID. The report alludes to this and states that IPID needs to have its own capacity to fully investigate cases including technical support, forensic and ballistic experts. It notes that because of limited resources, it relies on the SAPS and other

SDL

organs for its expertise which has the potential to *"compromise integrity of investigations."*

143.4. I am advised that in a case like the current, operational independence is vital. This is why the notice of motion specifically asks for extra capacity and institutional guarantees of operational independence. If this case is simply assigned to IPID, without more, there is a real risk that the independence of the investigation will be compromised on the simple basis that IPID sometimes relies on the same SAPS for its own investigations.

143.5. One of the risks faced by IPID are counter investigations by the SAPS. At page 36 of the 2019/2020 report IPID states that *"cases might not be finalized as per the said objectives due to the counter investigations that sets to interfere with the investigations by IPID."* Furthermore, IPID complains about the infiltration of IPID investigations by SAPS. It notes the *"possible infiltration by SAPS Officials in the investigations conducted by IPID to derail the process poses a risk on the IPID ability to achieve its mandate."*

143.6. Furthermore, IPID points to political interference and notes that the constitutional mandate of IPID *"may be affected by external political environment to achieve its proper implementation of its objectives."*

143.7. One of the contributing factors here is the inadequate reporting and accounting lines. This area of political interference is regarded as an extreme risk as IPID hopes to incorporate amendments to the Act in accordance with the judgment of the Constitutional Court on this issue (see **McBride v Minister of Police and Another** [2016] ZACC 30; 2016 (2)

SACR 585 (CC); 2016 (11) BCLR 1398 (CC)). Political interference, as specifically mentioned by IPID is also a risk that this Court should take into account in the determination of whether or not IPID should simply be allowed, without judicial supervision to conduct the investigation by itself. It is also notable that IPID is yet to give effect to Constitutional Court judgments guaranteeing its independence by effecting same to its own statute.

143.8. Another area of high risk identified at page 36 are inadequate resources. IPID complains that not only is its budget limited but it is continuously being reduced, thus resulting in unfunded operational activities.

143.9. IPID points to the inability to investigate and finalize its cases timeously. It states that this is caused by reduced accessibility to clients, lack of capacity on specialized investigation, resource constraints, and delays in obtaining technical reports. This area is also regarded as a high risk area.

144. It is therefore clear that IPID faces external and internal pressures which make it difficult for it to exercise its own institutional and operational independence. It also faces the risk of external political interference. The relief sought in the notice of motion is partly based on this factual reality. It is to be emphasized that the failure to translate Constitutional Court judgments into legislative amendments has partly contributed to the risks posed by factors such as political interference to IPID's operational independence.

145. Any investigation by IPID, in these circumstances, will likely delay, lack credibility, be constrained, and may be interfered with. It is not enough to rely

SDL

merely on undertakings by politicians. What is necessary are clear structural guarantees of independence, as mentioned in the notice of motion.

146. The Torture Convention obliges member states to design complaints handling mechanisms for civilians. The Torture Act does not provide a mechanism for laying complaints. The Lockdown Regulations are equally silent on this front. There is no law enforcement agency or body that is currently in place to deal effectively with civilian complaints about torture or security forces brutality during the State of Disaster. This is the primary function of this application—to ensure complaints about degrading and inhuman punishment and torture by the security forces are properly investigated and more importantly, to ensure that members of the public have a mechanism to lay complaints.

147. The remedy sought in this case is within the powers of this Court. It is also just and equitable and effective. It will not intrude unduly into the terrain of the Executive. Most importantly, the remedy will vindicate the Bill of Rights.

## **URGENCY**

148. The facts of this case clearly demonstrate that urgent relief is necessary, scores of members of the public have been subjected to intimidation and torture at the hands of the security forces, and several have been killed. The SANDF has been employed to police civilians without any code of conduct or operational plan on how they are to use force and how they may enforce the Lockdown Regulations.

149. Members of the public have no recourse against their brutality. If a member of the public wants to lay a complaint against the security forces, there is no body



that is mandated or designed to deal with those cases—in flagrant violation of international law.

150. A civil suit for wrongful death at a later stage will simply not deal with the unfolding brutality and torture that I have demonstrated in this application. The failure to issue a code of conduct and operational plan to regulate the use of force cannot be ameliorated with substantial relief at a later stage, nor can the absence of a complaints mechanism be fixed by a civil suit for damages. In short, there is simply no substantial relief at a later stage for the lawlessness that has already taken place and will continue to take place, lest this Court grants the relief sought.
151. This matter raises constitutional rights of manifest importance—it is about stopping torture, degrading punishment and violence at the hands of the security forces.
152. The right to life, the right to be free from cruel, inhuman and degrading punishment as well as the right to not be tortured are non-derogable rights, even in a State of Emergency. We submit that any case of infringement of these rights, especially by security forces, is inherently urgent.
153. The importance of safeguarding and vindicating these rights cannot be understated. The pressing public need to bring an end to the torture and to guide the hands of the security forces through this State of Disaster is invariably urgent.
154. My life partner is now deceased as a result of the actions of the SANDF. I was assaulted and whipped by the SANDF in my own home. Mr Muvhango was also subjected to degrading treatment and severely assaulted by members of the

SANDF. I have pointed to many other cases of reported abuse, torture and assault by the security forces from around the country.

155. At present, members of the public live in fear that they will be subjected to degrading and cruel punishment and at worst, death, at the hands of the SANDF and the SAPS.

156. The necessity of this application is to ensure that no more human lives are lost or ruined, and that the violent, unconstitutional and unlawful behaviour of the security forces does not continue unabated, as human life is at stake.

157. Members of the security forces cannot be left on their own and continue to act without a clear code of conduct, proper oversight and concomitant punishment when they are found to have violated human rights.

158. The need to regulate the conduct of the SANDF has become even more pressing because the "phased" easing of the Lockdown, announced by the President on Thursday evening, 23 April 2020, presents grey lines about what is permissible and impermissible. Whilst some parts of the country will be under a "stage 5 hard lockdown", others will be in an eased lockdown under stage 4, or lower. It is in this climate of a lack of clear-cut rules that a code of conduct is absolutely, and urgently, necessary.

159. The circumstances of this case are exceptional. There were already eight deaths reported at the hands of the security forces during the State of Disaster, before Mr Khosa's became the ninth. The SANDF is currently enforcing the Lockdown Regulations in the absence of a code of conduct on how they are to engage with civilians—at present, they are a law unto themselves. Civilians have no effective

means or channels to lay complaints about torture or other maltreatment at the hands of the security forces.

160. The relief sought is designed to mitigate any further losses of life and to minimise the risk of torture and cruel, degrading, inhuman punishment at the hands of the security forces. The crisis is currently ongoing, and civilians cannot wait for relief after the fact—the measure must be put in place now and in fact, ought to have been in place prior to the implementation of the Lockdown.

161. The responses of the Ministers, the Chief of Joint Operations and the Chief of Staff of the SANDF, have not been reassuring at all. Instead, their public declarations have reinforced the belief that they consider the SANDF to operate outside of the Constitution, are accountable to nobody, and they cannot be regulated by law.

162. It is a matter of national importance that the torture and degrading punishment is immediately stopped and regulated by law.

***The imminent reinforcements and curfew***

163. As stated above, in addition to the 2,820 SANDF members currently policing civilians, 73,180 more will be deployed from this Friday, 1 May 2020. This is a 26-fold increase. The real anticipated threat to civilian life and limb is thus increased 26-fold from Friday, 1 May 2020.

164. Those 73,180 armed soldiers simply cannot be unleashed on a civilian population without, at the very least, a code of conduct and operational plan telling them how to behave – especially, when they may use force and how much.

This also cannot be done without reinforcing the importance of the Bill of Rights in their conduct and behaviour, hence the declaratory relief. More soldiers cannot be deployed in circumstances where the SANDF brazenly tells Parliament that it does not report to it, but takes orders from the President.

165. The “easing” of the Lockdown also introduces a curfew between 7pm and 5am. It is notable that the curfew will be enforced without any regulations or law authorising it. It will also be introduced without any standard operating procedures and code of conduct regulating the joint operations with the police and army. This is why it is necessary that the application is heard before the reinforcements and the curfew come into operation.

166. The relief sought in this application has always been urgent and necessary. This is why the applicants approached the Constitutional Court for urgent relief (discussed below). However, the employment of additional forces bolsters the need to grant the relief before the additional forces are deployed.

***The truncated timelines***

167. The notice of motion requires the respondents to file an answering affidavit by 20h00 on Sunday, 26 April 2020. On a proper consideration of all the facts, we were justified in truncating the timelines in the manner that we have on the following grounds:

167.1. First, the respondents have known about the relief claimed by the applicants for some time. All of the parties cited in this application were respondents in an urgent application for direct access to the Constitutional Court. The application in that Court was launched on Monday, 20 April

SPL

67

2020. It was dismissed on Friday, 24 April 2020 on the basis that there are “insufficient grounds for direct access in this Court”. By the time the Constitutional Court handed down its order, the respondents had a week to file their answering affidavit, and they still had not filed.

167.2. Second, immediately after it came to our attention that the Constitutional Court had dismissed our direct access application, we instructed our attorneys to address a letter to the respondents alerting them to the fact that we will be bringing this application in this Court.

167.3. Third, the factual averments and the relief sought in this application are exactly the same as those before the Constitutional Court.

167.4. Fourth, the Minister has always been under a duty to ensure that there is a specific code of conduct to regulate the conduct of the soldiers during a joint operation with the SAPS. The imminent reinforcements will also work on the same basis – in terms of section 19 of the Defence Act. Yet as far as we are aware, the Minister is in breach of these duties.

168. In short, this application should not come as a surprise to any of the respondents. The respondents have had a week to mount a defence to this application. They should not be afforded more time than that set out in the notice of motion.

169. It is also simply not possible to give them more time. This application has been prepared within hours of the Constitutional Court’s order, with all available haste. The relief we seek is of such a nature that the application cannot be heard later than Tuesday 28 April 2020, as an order granted in our favour on that day would give the Defence Minister just three days to develop the code of conduct and

operational plan required by the Defence Act, before the deployment of the additional 73,180 SANDF members commences. It is critical that the order is not only effective, but is capable of being implemented effectively by the respondents before it is too late.

170. In respect of the applicants' deviation from the Practice Directive that requires that urgent applications are set down the Thursday before the Tuesday hearing—the urgency of this matter and the need to arrest the ongoing torture and brutality could simply not wait any longer, especially in light of the imminent additional SANDF deployment. Any further delays present a greater risk of civilians being subjected to inhuman, degrading and cruel punishment at the hands of the security forces. More importantly, the harm that will be done to the Constitution itself if the matter is not dealt with urgently means that any further delays simply cannot be countenanced.

**CONCLUSION**

171. In the above circumstances, we respectfully submit that a proper case has been made out for both the declaratory and interdictory relief set out in this application.

**WHEREFORE** I pray for the order as set out in the notice of motion.

  
\_\_\_\_\_  
**DEPONENT**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before SANDTON on this the

25 day of APRIL 2020, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



\_\_\_\_\_  
COMMISSIONER OF OATHS (RSA)  
Sereku Daisy Lebepe CA (SA)  
1st Floor Marsh Building,  
Cnr 5th Street and Fredman Drive,  
Sandton, 2196

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:



## Risk-adjusted strategy for economic activity

### What we know now

There is early evidence that the full national lockdown imposed since 26 March 2020 has successfully limited the spread of the coronavirus. However, there are serious risks associated with lifting lockdown restrictions too soon, or in an unsystematic and disorderly manner.

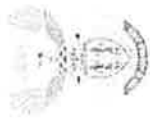


S.17

SDL

A 70





## Risk-adjusted strategy for economic activity

The balance between "lives" and "livelihoods"

---

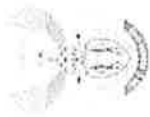
Evidence from the Spanish Influenza pandemic of 1918 shows that the long-run economic consequences for cities experiencing a rapid infection rate and high cumulative infections were significantly worse than those for cities enduring temporary restrictions on economic activity.

"On the one hand, NPIs constrain social interactions while they are in place, and thus necessarily depress any type of economic activity that relies on such interactions. On the other hand, because the pandemic itself has severe economic consequences, by reducing the severity of the pandemic, NPIs can mitigate the most severe economic disruptions. While an interruption of economic activity may be inevitable, this interruption can be shorter-lived and less extensive with NPIs in place that solve coordination problems." (p. 17)

S. F. SDC

Pandemics Depress the Economy, Public Health Interventions Do Not: Evidence from the 1918 Flu

Sergio Correia, Stephan Luck, and Emil Verner\*



## Risk-adjusted strategy for economic activity

An alert system with levels of restriction

---

Restrictions on economic activity need to be adapted to epidemiological trends, and may need to be relaxed and tightened in different periods. An alert system should be created with clearly defined levels of restriction that can be imposed by the National Command Council as necessary.

- If lockdown regulations are amended to allow some economic activity to resume, it is possible that the infection rate will accelerate and that the virus will resurge. In this scenario, it would be necessary to quickly revert to more stringent restrictions in order to arrest further transmission.
- An "alert system" with four to five levels would allow for flexibility and responsiveness, and would reduce the need to amend regulations in future.
- At each level restrictions would be more or less severe, and sectors and companies would know what activity is permitted depending on the level imposed at any time.
- Government would be able to switch between levels with far greater speed, and could use mass communications platforms (such as an SMS notification system) to signal this to the public.
- Different levels could be imposed in specific provinces and areas based on the risk of transmission.
- **NB: A gradual transition between alert levels can be implemented where necessary.**
- Detailed health protocols should be imposed at all levels of alert.

S. Z  
SP



## Risk-adjusted strategy for economic activity

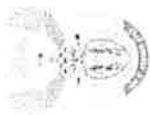
An alert system with levels of restriction

Ongoing feedback loop informs decision to remain at a particular level, relax restrictions further, or return to a higher level of restriction.

S.M

SPL

<b>Level 1</b>	Low virus spread, high health system readiness
<b>Level 2</b>	Moderate virus spread, with high readiness
<b>Level 3</b>	Moderate virus spread, with moderate readiness
<b>Level 4</b>	Moderate to high virus spread, with low to moderate readiness
<b>Level 5</b>	High virus spread, and/or low readiness



## Risk-adjusted strategy for economic activity

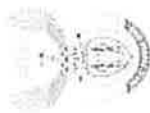
An alert system with levels of restriction



Different levels of alert can be declared in specific provinces and districts based on epidemiological trends and the risk of infection.

S.N

SDC



## Risk-adjusted strategy for economic activity

Criteria for return to activity

To determine which sectors should be allowed gradually to resume activity, three criteria should be used:

1. Risk of transmission (including the ease of implementing mitigation measures)
2. Expected impact on the sector of continued lockdown (including prior vulnerability)
3. Value of the sector to the economy (e.g. contribution to GDP, multiplier effects, export earnings)

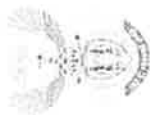
S, N

Sectors that have a low risk of transmission (or where this risk can easily be mitigated), that would suffer most acutely from a continued lockdown in terms of retrenchments, company failures, or loss of productive capacity and international market share, and that have a high value to the economy should be prioritised.

SDC

**These criteria should themselves be subject to an ordinal ranking of priority.** Thus, sectors with a high risk of transmission should not be allowed to resume activity until this risk is reduced, regardless of the potential impact on their sector or their value to the economy. Among those sectors with a low or manageable risk of transmission, considerations of impact and value can be used to attribute priority.

**Low transmission risk AND severe impact OR high value**



# Risk-adjusted strategy for economic activity

Criteria for return to activity

## 1. Economic value at risk

- Sectoral contribution to GDP
- Employment
- Export earnings (fx)
- Prevalence of SMEs and informal sector
- Linkages to the rest of the economy
- Is it an enabling industry?

## 2. Transmission risks

- Nature of work
- Profile of workforce
- Geographic location of workforce
- Practical mitigation measures
- Feasibility of mitigation measures

## Main

## considerations

## 3. Economic stress

- Not presently operating
- Facing imminent retrenchment
- Facing imminent firm closures
- Facing permanent and irreversible damage
- Jobs at stake

## Industries that return to work first should:

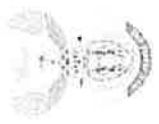
1. Have acceptably low transmission risk (or be able to attain this through mitigation measures) and
2. Be of critical value to the economy or
3. Be under severe near-term economic stress

S.M

sa

# Risk-adjusted strategy for economic activity

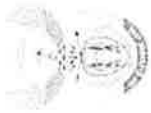
## Economic value of sector



Sectors	GDP contribution (%)	Employment contribution (%)	MSME intensity	Economic linkage intensity	Export exposure	By geographical
Other manufacturing	11.1%	7.4%	Medium	Medium	Medium	
Wine and spirits	7.9%	10.8%	High	High	Low	
Food and beverages	7.6%	4.4%	Medium	High	Medium	
Mining	6.9%	7%	Low	High	High	
Transport	6.2%	4.6%	Medium	High	Medium	Unknown
Financial intermediation	5.5%	6.9%	Low	Low	Low	
Construction (includes electrical & plumbing services)	5.0%	3.1%	Medium	High	Low	Unknown
Professional services	4.8%	5.6%	Medium	High	Low	
Real estate	4.7%	0.8%	Low	Medium	Medium	
Automotive	4.0%	6.1%	Medium	Low	Low	
Post & telecommunications	2.5%	1.5%	Low	Medium	Low	
Electricity	2.3%	1.6%	Medium	High	Low	Unknown
Insurance	2.2%	1.9%	Low	Low	Low	
Petroleum refineries	1.9%	2.6%	Low	Low	Medium	
Chemicals	1.6%	1.3%	Low	Low	Low	
Textiles & apparel	1.3%	1%	Medium	Medium	Low	
Wholesale & retail trade	1.0%	0.9%	Medium	Medium	High	
Water	0.8%	0.8%	Low	Medium	Medium	Unknown
Recreation, cultural & sporting	0.5%	0.4%	High	High	Low	
Forestry	0.2%	0.5%	Medium	Medium	Low	
Radio, TV, communication equipment & apparatus	0.2%	0.2%	High	Medium	Medium	Unknown
Printing	0.1%	0.1%	Low	Medium	Medium	
Other non-classified	0.09%	0.09%	Medium	Medium	Medium	Unknown

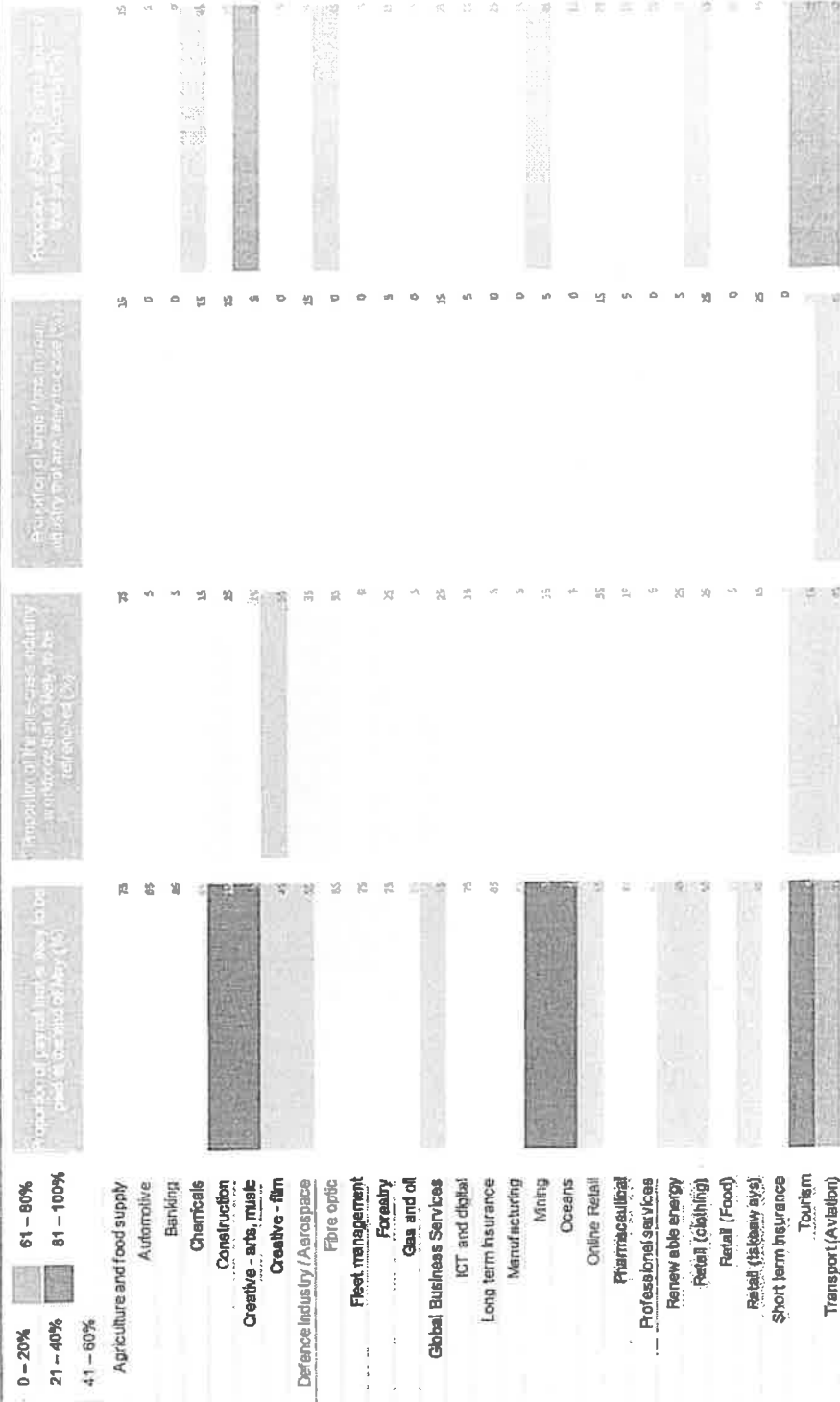
1 GDP output at basic prices  
 StatsSA, Supply and Use  
 Table, 2017, 2, StatsSA,  
 Quarterly Labour Force Survey,  
 2017, 3, IFC, 2018, The  
 Unseen Sector: A Report on  
 the MSME Opportunity in  
 South Africa (PPGI Industry  
 Survey 4 - StatsSA, Supply and  
 Use Table, 2017, 5 - Self reported  
 data from PPGI Industry  
 survey, 6 ILO, Accessed from  
<https://www.ilo.org/austli/ilo/id/7161502>  
 Published by StatsSA, 2018, 2018, 2018,  
 domestic work

S.M 50L



# Risk-adjusted strategy for economic activity

## Expected impact of continued lockdown



Source: Self-reported data from PWS Industry survey, Genesis Analytics 2020

S.M  
SDL



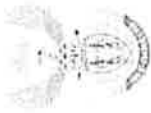


# Risk-adjusted strategy for economic activity

## Risk of transmission: matrix rationale

Risk matrix for businesses	Risk Level			Explanatory notes
	High	Medium	Low	
<b>General Guiding Criteria</b>	<b>Exclusion</b>			
1. Nature of business requires dense public congregation of customers				Certain non-essential congregation activities (mass gathering in cinemas, stadium events, large functions) per se excluded
1.1 General density of interaction (inside and outside workspace)	<2 m <sup>2</sup> per person	2-6 m <sup>2</sup> per person	>6 m <sup>2</sup> per person	
2. Geography of workplace(s)	High risk province & urban/metro area	High risk province OR urban/metro area OR crossing borders	Low risk province & rural area & within provincial boundaries	
3. Employees can work remotely	Less than 30%	30-60%	60-100%	All workers who can continue to work remotely must do so
<b>For % of the workforce who cannot work remotely:</b>				
4. Travel risk of employees	60%+ use public transport OR 20%+ crossing borders	30-60% use public transport OR 10-20% crossing borders	<30% use public transport AND <10% crossing borders	
5. Ability to separate vulnerable employees / customers	Isolation for pensioners and immuno-compromised > 50 years (especially Male)	30 - 50 years	<30 years old	Most vulnerable population groups should not enter the workspace at all (both employee and customer). Instead, treated separately and/or remotely
6. Resources & capacity to implement risk mitigation measures at work	Cannot implement all mitigation measures	All those relevant, but not immediately	All those relevant, immediately	See general measures (where?)

S.17 SDL



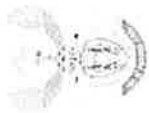
# Risk-adjusted strategy for economic activity

## Risk of transmission

	Agriculture, food, beverages & tobacco	Automotive	Chemicals	Coke oven & petroleum refineries	Construction	Electricity	Financial intermediation	Fishing	Forestry	Hotels and restaurants-tourism
% of employees can work remotely	0	0	0	0	0	0	0	1	0	0
% of workforce that is older than 50	0	0	0	1	0	0	1	1	0	0
% of workforce in geographies with high transmission (GP, KZN, WC)	0	0	0	0	1	0	0	1	0	0
Ability to enforce social distancing of 2m at work	0	0	0	0	1	0	0	1	0	0
Ability to provide masks to employees	1	0	0	0	1	0	0	1	0	0
Ability to screen all employees	0	0	0	0	1	0	0	1	0	0
Ability to isolate all employees	0	0	0	0	1	0	0	1	0	0
% of employees who use public transport	0	1	1	0	1	2	1	0	1	0
% of employees who must cross provincial border to start work	0	0	0	0	2	7	0	1	0	0
<b>SCORE</b>	<b>7</b>	<b>3</b>	<b>3</b>	<b>13</b>	<b>9</b>	<b>6</b>	<b>3</b>	<b>11</b>	<b>5</b>	<b>18</b>

S.M

SDL



# Risk-adjusted strategy for economic activity

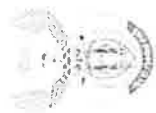
## Risk of transmission

	Hotels and restaurants-retail takeaways	Insurance-long-term	Insurance-short term	Mining	Other manufacturing-defence industry	Other manufacturing-manufacturing	Pharmaceuticals	Post and telecommunication-optic	Post and telecommunication-ICT and Digital	Professional services
% of employees can work remotely	1	1	2	2	1	2	2	0	0	0
% of workforce that is older than 50	2	2	1	1	1	2	1	0	0	0
% of workforce in geographies with high transmission (GP, KZN, WC)	1	0	0	0	2	1	2	1	1	1
Ability to enforce social distancing of 2m at work	0	0	0	0	0	2	0	2	0	0
Ability to provide masks to employees	0	2	2	0	0	2	1	0	1	0
Ability to screen all employees	0	2	2	0	1	2	2	0	2	0
Ability to isolate all employees	0	0	0	0	0	0	0	0	0	0
% of employees who use public transport	0	1	2	2	0	2	1	0	0	0
% of employees who must cross provincial borders to start work	0	0	2	2	0	0	1	2	1	1
<b>SCORE</b>	<b>18</b>	<b>4</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>11</b>	<b>10</b>	<b>5</b>	<b>5</b>	<b>2</b>

S. I

SDL

81



# Risk-adjusted strategy for economic activity

## Risk of transmission

	Professional services - Global Business Services	Radio, television, communication equipment and apparatus	Real estate activities	Recreational, cultural and sporting activities	Transport - fleet management	Transport - Aviation	Wholesale & retail - Clothing	Wholesale & retail - Food	Wholesale & retail - Online Food delivery
% of employees can work remotely	1	1	1	2	1	3	2	2	
% of workforce that is older than 50	0	1	2	3	2	2	1	0	
% of workforce in geographies with high transmission (GP, KZN, WC)	2	1	1	2	0	2	1	0	
Ability to enforce social distancing of 2m at work	0	2	0	3	2	2	0	1	
Ability to provide masks to employees	0	1	0	1	1	2	0	1	
Ability to screen all employees	0	1	1	2	2	2	2	1	
Ability to isolate all employees	0	1	1	2	1	2	1	1	
% of employees who use public transport	2	1	1	2	1	2	2	2	
% of employees who must cross provincial border to start work	1	0	1	3	0	2	0	0	
<b>SCORE</b>	<b>6</b>	<b>10</b>	<b>10</b>	<b>18</b>	<b>10</b>	<b>18</b>	<b>10</b>	<b>10</b>	<b>8</b>

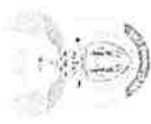
S.N

SDL

# Risk-adjusted strategy for economic activity

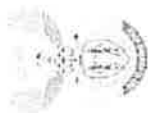
## Risk of transmission

Transport - Aviation	18
Recreational, cultural and sporting activities	18
Hotels and restaurants - retail takeaways	18
Hotels and restaurants - tourism	18
Cafe, oven & petroleum refineries	13
Other manufacturing manufacturing	11
Fishing	11
Chemicals	11
Wholesale & retail - Food	10
Wholesale & retail - Clothing	10
Transport - fleet management	10
Real estate activities	10
Radio, television, communication equipment and apparatus	10
Pharmaceuticals	10
Construction	9
Wholesale & retail - Online Food delivery	8
Insurance - short term	8
Wine	7
Wine	7
Agriculture, food, beverages & tobacco	6
Professional services - Global Business Services	6
Other manufacturing - defence industry	6
Electricity	6
Post and telecommunication - ICT and Digital	5
Post and telecommunication - fibre optic	5
Forestry	5
Insurance - long term	4
Financial intermediation	3
Automotive	3
Professional services - Professional Services	2
	0
	2
	4
	6
	8
	10
	12
	14
	16
	18
	20



5.14

SDL



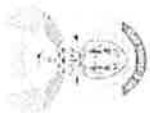
## Risk-adjusted strategy for economic activity

Considerations for first phase of easing restrictions

Consideration	Description
Low transmission risk	Economic activity can resume with low transmission risk or Economic activity can resume under conditions whereby transmission risks can be effectively managed
Regulated and organised	Precedent of good compliance and enforcement of regulations in sector and/or Industry bodies / unions / lead firms can support coordination of sector response
Localised / low movement of people	Economic activity can resume with no/minimal movement across provincial borders and between rural and urban areas, and movement is limited to low risk geographies
Enabling of other sectors or essential services	Resumption of economic activity is crucial for the effective functioning of a sector that produces, distributes or sells goods / services designated as essential or other sectors prioritised for opening

S.M

SDC



## Risk-adjusted strategy for economic activity

### Post-lockdown: General exclusions

---

The following restrictions will remain in place after the national lockdown, and regardless of the level of alert at any given time:

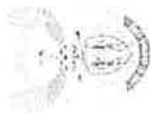
- Sit-in restaurants and hotels
- Bars and shebeens
- Conference and convention centres
- Entertainment venues, including cinemas, theatres, and concerts
- Sporting events
- Religious, cultural and social gatherings

No gatherings of more than 10 people outside of a workplace will be permitted.

Passengers on all modes of transport must wear a cloth mask to be allowed entry into the vehicle. Hand sanitisers must be made available, and all passengers must sanitise their hands before entering. Public transport vehicles must be sanitised on a daily basis.

S. N

SPL



## **Risk-adjusted strategy for economic activity**

Rules applicable across all levels

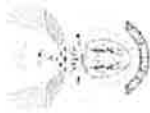
---

**The following rules will be imposed across all sectors and alert levels:**

- Industries are encouraged to adopt a work-from-home strategy where possible, and all staff who can work remotely must be allowed to do so.
- Workers above the age of 60, as well as workers with comorbidities identified by the Department of Health should be offered a work-from-home option or allowed to remain on leave with full pay.
- There should be workplace protocols in place that would include disease surveillance and prevention of the spread of infection.
- All employers to screen staff on a daily basis for symptoms of COVID-19, including a symptom check as well as temperature assessment.
- All employees to use a cloth mask especially where social distancing is not possible.
- Work environment to have sanitisers available or hand washing facilities with soap.
- Stringent social distancing measures should be implemented in the workplace.

**The Department of Health will issue a comprehensive guidance note stipulating health and safety practices for returning to work.**





## Risk-adjusted strategy for economic activity

Additional rules pertaining to sectors and firms

---

**Before any sector resumes activity, the following conditions must be in place:**

- In addition to generally applicable health and safety protocols, each sector must agree upon a COVID-19 prevention and mitigation plan with the Minister of Employment and Labour, the Minister of Health and any other Minister relevant to the sector.
- Individual businesses or workplaces must have COVID-19 risk assessments and plans in place, and must conduct worker education on COVID-19 and protection measures:
  - Identification and protection of vulnerable employees
  - Safe transport of employees
  - Screening of employees on entering the workplace
  - Prevention of viral spread in the workplace:
  - Cleaning of surfaces and shared equipment
  - Good ventilation
  - Managing sick employees
- Monitoring systems must be in place to (1) ensure compliance with safety protocols and (2) identify infections among employees

7.5

SDL

# Risk-adjusted strategy for economic activity

## Governance framework

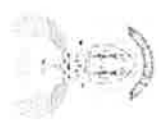
- Levels of alert (1-5) will be determined by the National Command Council at each meeting, upon a recommendation from the Minister of Health and the Minister of Trade and Industry. **A single national alert level may be determined, or an alert level may be determined for each province.**
- The highest burden of the disease is currently concentrated in Gauteng, Western Cape, KwaZulu-Natal and Eastern Cape. The remaining provinces have a limited number of cases.
- Within the provinces the infection is concentrated largely in the metro areas.
- Given the disproportionate distribution of infections there is an opportunity to have a differentiated approach to the lockdown based on the geographic distribution.
- The initial plan is to determine alert levels at a provincial level based on the number of cases in each province.
- Premiers may thereafter determine an alert level for specific districts, with the approval of the Minister of Health. Those districts with lower risk levels could in this way embark on increased levels of economic activity.
- **Individual Ministers, upon consultation with and approval from the Minister of Health, may provide for exceptions and additional directions in sectors within their domain.**
- A working committee should be established comprising officials from the Department of Health and the Department of Trade and Industry to consider changes to the sector restrictions as they are required.

S.7

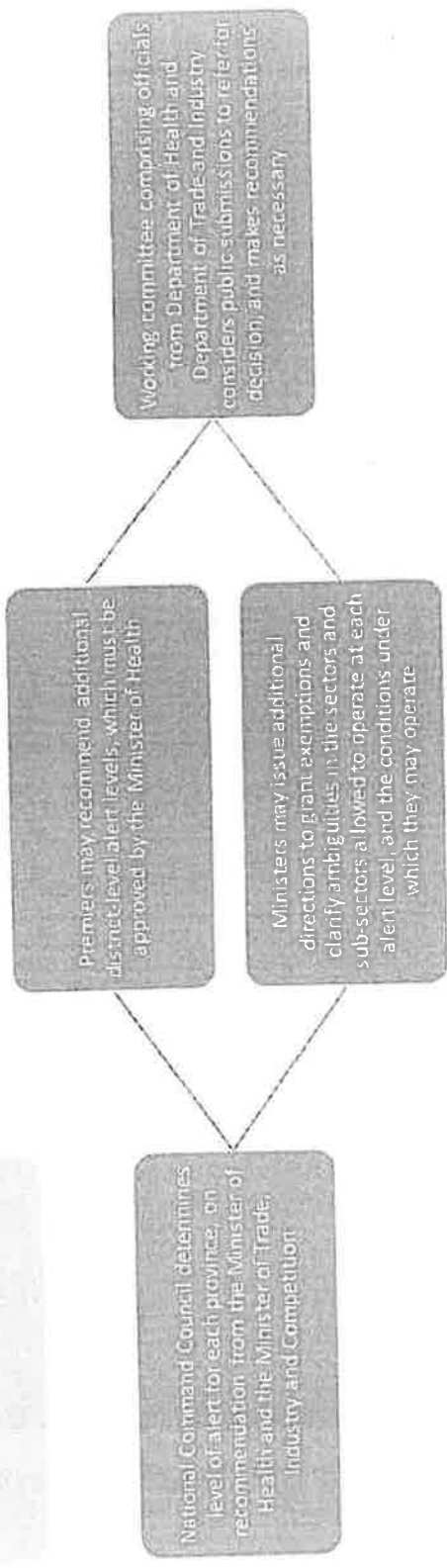
SDL

# Risk-adjusted strategy for economic activity

## Governance framework



The framework should remain responsive to epidemiological trends as well as to problems and areas of ambiguity as they emerge. It is likely that specific sub-sectors will require exemptions and/or additional directions which cannot be foreseen. An adaptive governance structure is therefore required.



S.M

SDL

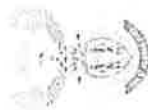
# Risk-adjusted strategy for economic activity

Alert system: Level 5

Sectors permitted	Transport restrictions	Movement restrictions
Level 5: High virus spread, and/or low health system readiness	Bus services, taxi services, e-hailing and private motor vehicles may operate at restricted times, with limitations on vehicle capacity and stringent hygiene requirements	No inter-provincial movement of people, except for transportation of goods and exceptional circumstances (e.g. funerals)

S.M

SOL



# Risk-adjusted strategy for economic activity

Alert system: Level 4

	Sectors permitted	Transport restrictions	Movement restrictions
<p><b>Level 4: Moderate to high virus spread, with moderate readiness</b></p>	<p><i>All essential services, plus:</i></p> <p>Food retail stores already permitted to be open permitted may sell full line of products within existing stock</p> <p>All agriculture (horticulture, export agriculture including wool and wine, floriculture and horticulture, and related processing)</p> <p>Forestry, pulp and paper</p> <p>Mining (<i>open cast mines at 100% capacity, all other mines at 50%</i>)</p> <p>All financial and professional services</p> <p>Global business services for export markets</p> <p>Postal and telecommunications services</p> <p>Fibre optic and IT services</p> <p>Formal waste recycling (glass, plastic, paper and metal)</p>	<p>Bus services, taxi services, e-hailing and private motor vehicles may operate at all times of the day, with limitations on vehicle capacity and stringent hygiene requirements</p>	<p>No inter-provincial movement of people, except for transportation of goods and exceptional circumstances (e.g. funerals)</p>

S. H

SOL



# Risk-adjusted strategy for economic activity

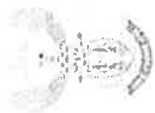
Alert system: Level 3

S. 14

Level 3: Moderate virus spread, with moderate readiness

SPL

	Sectors permitted	Transport restrictions	Movement restrictions
<p>Licensing and permitting services, deeds offices and other government services designated by the Minister of Public Service and Administration</p> <p>Take-away restaurants and online food delivery</p> <p>Liquor retail within restricted hours</p> <p>Clothing retail</p> <p>Hardware stores</p> <p>Stationery, personal electronics and office equipment production and retail</p> <p>Books and educational products</p> <p>E-commerce and delivery services</p> <p>Clothing and textiles manufacturing (at 50% capacity)</p> <p>Automotive manufacturing</p> <p>Chemicals</p> <p>Bottling</p> <p>Cement and steel</p> <p>Machinery and equipment</p> <p>Global Business Services</p> <p>SANRAL construction and maintenance</p> <p>Transnet at 100%</p>	<p>Bus services, taxi services, e-hailing and private motor vehicles may operate at all times of the day, with limitations on vehicle capacity and stringent hygiene requirements</p> <p>Limited passenger rail restored, with stringent hygiene conditions in place</p> <p>Limited domestic air travel, with a restriction on the number of flights per day and authorisation based on the reason for travel</p>	<p>No inter-provincial movement of people, except for transportation of goods and exceptional circumstances (e.g. funerals)</p>	



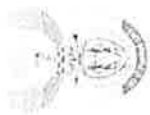
## Risk-adjusted strategy for economic activity

Alert system: Level 2

	<b>Sectors permitted</b>	<b>Transport restrictions</b>	<b>Movement restrictions</b>
<b>Level 2: Moderate virus spread, with high readiness</b>	Construction All other retail All other manufacturing Mining ( <i>all mines at 100% capacity</i> ) All government services Installation, repairs and maintenance Domestic work and cleaning services Informal waste-pickers	Domestic air travel restored Car rental services restored	Movement between provinces at Level 1 and 2 restrictions

S. I

SDL



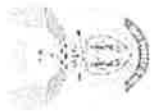
## Risk-adjusted strategy for economic activity

Alert system: Level 1

	Sectors permitted	Transport restrictions	Movement restrictions
Level 1: Low virus spread, high health system readiness	All sectors	All modes of transport, with stringent hygiene conditions in place	Interprovincial movement allowed, with restrictions on international travel

S.M. SA





## Proposal for phased economic recovery Recommendations

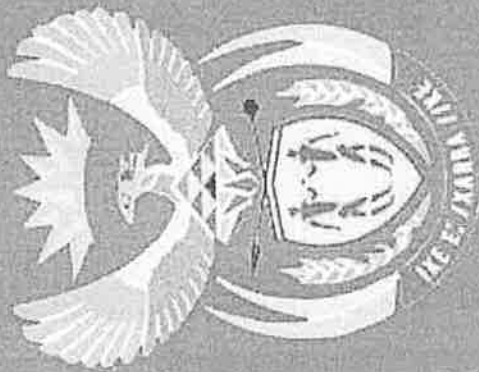
---

- A system of “alert levels” should be adopted, and further work done to determine which sectors (and under what conditions) may operate at each level. The Department of Trade and Industry and the Department of Health should collaborate to develop this system.
- To make the determination of which sectors should be allowed to resume activity at each level of alert, three criteria should be considered:
  - Risk of transmission (including the ease of implementing mitigation measures)
  - Expected impact on the sector of continued lockdown (including prior vulnerability)
  - Value of the sector to the economy (e.g. contribution to GDP, multiplier effects, export earnings)
- A decision about whether to institute a lower alert level should be made by the National Command Council based on evidence gathered during this week about the spread of the virus.

5.7

SD

Thank you



S.N 502

B  
97

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. 21521/20

In the matter between:

**KHOSA, MPHEPHU** First Applicant

**MONTSHA, NOMSA** Second Applicant

**MUVHANGO, THABISO** Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS** First Respondent

**SECRETARY FOR DEFENCE** Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE** Third Respondent

**MINISTER OF POLICE** Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE** Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT** Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT** Seventh Respondent

**OFFICE OF THE MILITARY OMBUD** Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE** Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Tenth Respondent

---

CONFIRMATORY AFFIDAVIT

---

I, the undersigned,

**MPHEPHU KHOSA**

do hereby make an oath and state that –

1. I am a 68-year-old woman pensioner, residing at Mawa Village, Tzanene in Limpopo. I am biological the mother to the late Collins Khosa. I am the first applicant in this matter.
  
2. The facts and allegations herein are all within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge and belief, they are true and correct in all respects.
  
3. I have read the affidavit of **NOMSA MONTSHA** and confirm its contents insofar as they relate to me.

---

**DEPONENT**

The Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at \_\_\_\_\_ on this \_\_\_\_\_ the day of April 2020, The regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

---

**COMMISSIONER OF OATHS**

C  
99

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. 21521/20

In the matter between:

**KHOSA, MPHEPHU** First Applicant

**MONTSHA, NOMSA** Second Applicant

**MUVHANGO, THABISO** Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS** First Respondent

**SECRETARY FOR DEFENCE** Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE** Third Respondent

**MINISTER OF POLICE** Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE** Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT** Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT** Seventh Respondent

**OFFICE OF THE MILITARY OMBUD** Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE** Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Tenth Respondent

---

CONFIRMATORY AFFIDAVIT

---

T.N.SDL

I, the undersigned,

**THABISO MUVHANGO**

do hereby make an oath and state that –

1. I am a 36-year-old adult man employed at Dischem DC as an Inbound Supervisor and residing with my wife, Ivonny Muvhango and our children at Far Eastbank, 3885, Moeketsi Street, Alexandra.
2. I reside in the same yard with the late Mr. Collin Khosa at the abovementioned property. The late Mr Khosa is also my brother-in-law as I am married to his younger sister.
3. I was assaulted by the soldiers on Friday, 10 April 2020, accordingly I am the third applicant in this matter.
4. The facts and allegations herein are all within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge and belief, they are true and correct in all respects.
5. I have read the affidavit of **NOMSA MONTSHA** and confirm its contents insofar as they relate to me.

T.M. SDL



---

**DEPONENT**

The Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at SANDTON on this 25<sup>th</sup> day of April 2020, The regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.



---

**COMMISSIONER OF OATHS**

COMMISSIONER OF OATHS (RSA)  
Sereku Daisy Lebepe CA (SA)  
1st Floor Marsh Building,  
Cnr 5th Street and Fredman Drive,  
Sandton, 2196

D  
102

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. \_\_\_\_\_

In the matter between:

- |  |                           |
|--|---------------------------|
| <b>KHOSA, MPHEPHU</b>  | <b>First Applicant</b>    |
| <b>MONTSHA, NOMSA</b>  | <b>Second Applicant</b>   |
| <b>MUVHANGO, THABISO</b>   | <b>Third Applicant</b>    |
| and  |                           |
| <b>MINISTER OF DEFENCE AND MILITARY VETERANS</b>                           | <b>First Respondent</b>   |
| <b>SECRETARY FOR DEFENCE</b>   | <b>Second Respondent</b>  |
| <b>CHIEF OF THE SOUTH AFRICAN<br/>NATIONAL DEFENCE FORCE</b>               | <b>Third Respondent</b>   |
| <b>MINISTER OF POLICE</b>  | <b>Fourth Respondent</b>  |
| <b>NATIONAL COMMISSIONER OF THE<br/>SOUTH AFRICAN POLICE SERVICE</b>       | <b>Fifth Respondent</b>   |
| <b>ACTING CHIEF OF THE JOHANNESBURG<br/>METROPOLITAN POLICE DEPARTMENT</b> | <b>Sixth Respondent</b>   |
| <b>CHIEF OF THE EKURHULENI<br/>METROPOLITAN POLICE DEPARTMENT</b>          | <b>Seventh Respondent</b> |
| <b>OFFICE OF THE MILITARY OMBUD</b>  | <b>Eighth Respondent</b>  |
| <b>INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE</b>                        | <b>Ninth Respondent</b>   |
| <b>MINISTER OF COOPERATIVE GOVERNANCE<br/>AND TRADITIONAL AFFAIRS</b>      | <b>Tenth Respondent</b>   |

---

**CONFIRMATORY AFFIDAVIT**

---

I. m  
SPL



I, the undersigned,

**IVONNY MUVHANGO**

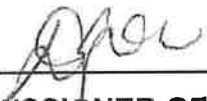
do hereby make an oath and state that –

1. I am a 30-year-old adult woman residing with my husband, Thabiso Muvhango and our minor children at Far Eastbank, 3885, Moeketsi Street, Alexandra. I am approximately four months old.
2. The late Mr Collin Khosa is my older brother and before his death, we resided together at the abovementioned property.
3. The facts and allegations herein are all within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge and belief, they are true and correct in all respects.
4. I was present at all material time when the soldiers came to our house on Friday, 10 April 2020 and I witnessed the assault on Mr Khosa, Mr Muvhango and Ms. Montsha. I suspect that the only reason why I was not assaulted is because my husband kept on telling the soldiers that I am pregnant.
5. To this end, I have read the affidavit of **NOMSA MONTSHA** and confirm its contents insofar as they relate to me.

I.M  
SDL

I. Muvhango  
DEPONENT

The Deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at **SANDTON** on this **23** the day of April 2020, the Regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

  
\_\_\_\_\_  
**COMMISSIONER OF OATHS**

**COMMISSIONER OF OATHS (RSA)**  
Sereku Daisy Lebepe CA (SA)  
1st Floor Marsh Building,  
Cnr 5th Street and Fredman Drive,  
Sandton, 2196

I. m  
SDL

E  
105

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. \_\_\_\_\_

In the matter between:

**KHOSA, MPHEPHU** First Applicant

**MONTSHA, NOMSA** Second Applicant

**MUVHANGO, THABISO** Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS** First Respondent

**SECRETARY FOR DEFENCE** Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE** Third Respondent

**MINISTER OF POLICE** Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE** Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT** Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT** Seventh Respondent

**OFFICE OF THE MILITARY OMBUD** Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE** Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Tenth Respondent

---

CONFIRMATORY AFFIDAVIT

---

M.T. SOL

I, the undersigned,

**TEBOGO MOTHABELA**

do hereby make an oath and state that –

1. I am a 26-year-old adult man and a part-time electrical engineering student at Unisa. I reside at Far Eastbank, 3838 Moeketsi Street, Alexandra, with my parents and siblings. As evident from my address, I am a neighbour to the late Mr. Collin Khosa. I was assaulted and detained by the soldiers on Friday, 10 April 2020, as I explain in detail below.
2. The facts and allegations herein are all within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge and belief, they are true and correct in all respects.
3. I have read the affidavit of **NOMSA MONTSHA** and confirm its contents insofar as they relate to me.
4. In particular, I confirm that on Friday, 10 April 2020, at about 17h00, I was at home in my yard when I saw soldiers enter Mr Khosa's house. I could hear some commotion, but I could not make up what was being said.
5. I waited to see what was happening, a few minutes thereafter, I saw Mr Khosa and Mr Thabiso Muvhango coming outside from the house being escorted by the soldiers. I took out my phone to start recording the incident. Both Mr Khosa

M.T SDL

and Mr Muvhango were made to stand just outside their yard.

6. Shortly thereafter, a marked JMPD Toyota Quantum/ or combi and a marked JMPD sedan vehicles arrived. The soldiers and JMPD members got off the vehicles and after a "brief discussion" with the soldiers who were already there, the soldiers approached Mr Khosa and started assaulting him.
7. Just when I started to record the incident on my phone, a soldier shouted at me and instructed me to stop recording, which I did.
8. I witnessed the assault on Mr Khosa. In particular, the soldiers:
  - a. poured beer on top of his head and on his body;
  - b. one soldier held his hands behind his back, while the other choked him;
  - c. slammed him against the cement wall;
  - d. kicked, slapped him, punched him on his face and on his stomach and ribs; and
  - e. slammed him against the steel gate.
9. While witnessing the assault on Mr Khosa, about three soldiers approached me and asked for my cell phone, of which I gave them. They fiddled with my phone and deleted my pictures and vid. Thereafter they started slapping and kicking me, one also hit me with his helmet and ordered me to go inside the JMPD Quantum, inside I found Ms. Glenda Phaladi, she is one of our neighbors.
10. The Quantum drove away with us to the Alexandra Mall where the soldiers have set up what looked like a mini-operational base. On our way there I was assaulted by the soldiers with open hands and fists. The soldiers kept on saying

M.T SOL

that we must stop recording things as we are not journalists and we risk them losing their jobs.


11. When we arrived at the Alexandra Mall, Ms. Phaladi and I were ordered to get out of the Quantum (combi) and get into a white Casper (commonly known as the "Hippo"). Inside the Hippo the soldiers kept assaulting us further. One soldier suggested that all our contacts on the phone list should also be deleted. The Hippo drove on the N3 south towards Edenvale. The Hippo stopped on the side of the road just before the Linksfield offramp, few minutes later, Ms. Phaladi and I were ordered to get out. Our phones were thrown onto the bushes on the side of the road. We recovered our phones and I called my friend, Nimrod to pick us up.

12. I confirm that I also witnessed the assault on Ms. Phaladi while inside the Quantum and in the Hippo. I was terrified to go to the police station to report the matter and I could not go to the doctor to have my body examined. I just went home. I later discovered that Mr Khosa died after the assault incident.



**DEPONENT**

The Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at SANDTON on this 25<sup>th</sup> the day of April 2020, The regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

  
COMMISSIONER OF OATHS (RSA)  
Sereku Daisy Lebepe CA (SA)  
1st Floor Marsh Building  
Cnr 5th Street and Fredman Drive,  
Sandton, 2196  
**COMMISSIONER OF OATHS**

SDC M.T

F  
109

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. \_\_\_\_\_

In the matter between:

**KHOSA, MPHEPHU**

**First Applicant**

**MONTSHA, NOMSA**

**Second Applicant**

**MUVHANGO, THABISO**

**Third Applicant**

and

**MINISTER OF DEFENCE AND MILITARY VETERANS**

**First Respondent**

**SECRETARY FOR DEFENCE**

**Second Respondent**

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE**

**Third Respondent**

**MINISTER OF POLICE**

**Fourth Respondent**

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE**

**Fifth Respondent**

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT**

**Sixth Respondent**

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT**

**Seventh Respondent**

**OFFICE OF THE MILITARY OMBUD**

**Eighth Respondent**

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

**Ninth Respondent**

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

**Tenth Respondent**

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned,

R.G. SDC

**GLENDAL PHALADI**

do hereby make an oath and state that –

1. I am a 33-year-old adult woman employed as a petrol attendant at Shell Filling Station. I reside with my husband and children at Far Eastbank, 3884, Moeketsi Street, Alexandra, Johannesburg. As evident from my address, I am a next door neighbour to the late Mr. Collin Khosa. I was also assaulted and detained by the soldiers on Friday, 10 April 2020, as I explain in detail below.
2. The facts and allegations herein are all within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge and belief, they are true and correct in all respects.
3. I have read the affidavit of **NOMSA MONTSHA** and confirm its contents insofar as they relate to me.
4. In particular, I confirm that on Friday, 10 April 2020, at about 17h00, I was sitting in my house when one of my children came running inside the house shouting that there are soldiers outside. I came out and saw soldiers enter Mr Khosa's house, I could hear raised voices, but I could not make up what was being said.
5. I waited outside to see what was happening, a few minutes thereafter, I saw Mr Khosa and Mr Thabiso Muvhango coming out from the house escorted by the soldiers. I specifically heard Mr Khosa protest about the vandalism on his car by the soldiers.

R.G. 50L



6. I then ran inside my house to fetch my cellphone so that I could record what I was witnessing. Mr Khosa and Mr Muvhango were made to stand outside their yard on the street by the soldiers. Shortly thereafter, a marked JMPD Toyota Quantum/ ("Combi") and a sedan arrived. The soldiers and JMPD members alighted from the vehicles and after a brief interaction with the soldiers who were already there, the soldiers approached Mr Khosa and they started assaulting him. In particular, one soldier choked him, another kicked and punched him.
  
7. While I was recording the incident from my yard, one of the soldiers approached me and instructed me to stop recording the incident. He then ordered me to enter the JMPD Quantum. While sitting inside the Quantum I was slapped by another soldier. Thereafter, I was later joined inside the vehicle by one of our neighbors, Mr. Teboho Mothabela, he told me that he was also arrested for recording the incident. Inside the vehicle we were ordered to unlock our cellphones and soldiers deleted all our pictures and videos and kept they kept our phones.
  
8. Shortly thereafter, the Quantum drove away with us to the Alexandra Mall, where it looked like the soldiers had set up a mini-operational base. On our way there, I was assaulted by the soldiers in the vehicle with open hands and fists. The soldiers kept on saying that we must stop recoding things as we are not journalists and we risk them losing their jobs.

R-G

506

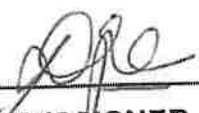
9. When we arrived at the Alexandra Mall, we were ordered to switch vehicles and get into a white Casper (commonly known as the Hippo). When we got into the Hippo, the soldiers kept on slapping Tebogo and I with open hands. I can recall one of the soldiers saying that he should also delete all contacts on the phone lists so that we cannot call anyone for assistance. The Hippo drove on the N3 south towards Edenvale, and eventually stopped on the side of the road just before the Linksfield offramp, after few minutes, we were ordered to get out of the Hippo. Our phones were thrown out on the bushes on the side of the road. We recovered our phones and Tebogo called his friend to pick us up.
10. I was too terrified to go to the police station to report the incident. I also could not see a doctor to have my injuries examined. When I arrived at home, I took painkillers and slept.
11. I later discovered that Mr Khosa had died from his injuries sustained from the incident.
12. I confirm that I also witnessed Mr Tebogo Mothabela being assaulted both in the Quantum and in the Hippo.
13. I also confirm that I am acutely aware that at least three other community members who were close to me and witnessed the assault on Mr Khosa, however, they are terrified to testify by giving an affidavit to that effect.

R.C.

SDC

R.G. Phaladi  
**DEPONENT**

The Deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at SANDTON on this 25<sup>th</sup> the day of April 2020, The regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

  
**COMMISSIONER OF OATHS**  
COMMISSIONER OF OATHS (RSA)  
Sereku Daisy Lebepe CA (SA)  
1st Floor Marsh Building,  
Cnr 5th Street and Fredman Drive,  
Sandton, 2196

G  
144

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. \_\_\_\_\_

In the matter between:

**KHOSA, MPHEPHU** First Applicant

**MONTSHA, NOMSA** Second Applicant

**MUVHANGO, THABISO** Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS** First Respondent

**SECRETARY FOR DEFENCE** Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE** Third Respondent

**MINISTER OF POLICE** Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE** Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT** Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT** Seventh Respondent

**OFFICE OF THE MILITARY OMBUD** Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE** Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Tenth Respondent

---

CONFIRMATORY AFFIDAVIT

---

SDC  
17/02

I, the undersigned,

**NOEL BONGELA**

do hereby make an oath and state that –

1. I am a 31-year-old adult man residing with my wife and children at Far Eastbank, 3885, Moeketsi Street, Alexandra, Johannesburg, where I am renting a backroom.
2. Notably, I live in the same yard with the late Mr. Collin Khosa's family.
3. The facts and allegations herein are all within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge and belief, they are true and correct in all respects.
4. I have read the affidavit of **NOMSA MONTSHA** and confirm its contents insofar as they relate to me.
5. In particular, I confirm that on Friday, 10 April 2020, at about 16h30 I was sitting with Mr. Khosa and Mr. Muvhango in the yard when both of them decided to go inside their house and I then also went into my room.
6. At about 17h00, while in my room, I heard raised voices inside the yard. I decided to come out, I saw Mr. Muvhango and Mr Khosa being directed to go outside the yard by the soldiers. One of the soldiers had two beers with her.

MAN SPL

7. I also saw a soldier vandalize Mr. Khosa's car by smashing a gate against the car. I recall Mr Khosa saying to the soldier "don't scratch my car", and the soldier said that Mr Khosa is not the only one with a car, they too have cars.
8. I followed them outside the yard. Mr Muvhango complained as to why the beers are being taken outside the yard. The said soldier said she had evidence and she wanted to deal with Mr. Khosa and Mr Muvhango because they have an attitude. Mr. Khosa responded by saying that is not correct because the beers were taken from inside his house.
9. Shortly thereafter, a marked JMPD Combi (that looked to me like a Nissan Pendula) and a sedan arrived. The soldiers and JMPD members alighted from the vehicles and after a brief interaction with the soldiers who were already there, the soldiers proceeded to Mr Khosa and assaulted him. In particular, I recall them holding his hands together behind his back. Thereafter, few minutes later, I saw the soldiers pour beer on him and slammed him against the concrete wall.
10. At this stage few soldiers approached the onlookers with sjamboks, and we dispersed. I ran inside my room. Few seconds later, I could hear the soldiers back in the yard and approaching Mr Khosa's house. I then heard Ms. Montsha scream. I tried to record the noises on my phone.
11. After few minutes I could hear that the soldiers have left. I then went to Mr. Khosa' house. I found his wife bleeding on her face. Mr Khosa was inside the house as well. I asked him for his car keys so that I could take his wife to

hospital. He gave me his car keys but then, him and his wife changed their minds and indicated that they would be okay, they don't need to go to the hospital. I then left to my room. This was the last time I saw Mr. Khosa alive.

Ben R. M  
**DEPONENT**

The Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at SANDTON on this 25 the day of APRIL 202, The regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

[Signature]  
**COMMISSIONER OF OATHS**

COMMISSIONER OF OATHS (RSA)  
Sereku Daisy Lebepe CA (SA)  
1st Floor Marsh Building,  
Cnr 5th Street and Fredman Drive,  
Sandton, 2196

*MN SOL*





I 119

# Ian Levitt

## ATTORNEYS & CONVEYANCERS

Writer's Email: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

Our Ref: W STEYL/MAT  
Date: 14 April 2020

To: Honourable President of Republic of South Africa, Mr Cyril Ramaphosa  
[nokukhanya@presidency.gov.za](mailto:nokukhanya@presidency.gov.za)

To: Honourable Minister Nosiviwe Mapisa-Nqakula  
Minister of South African Defence Force  
[siphiwe.dlamini@dod.mil.za](mailto:siphiwe.dlamini@dod.mil.za) ; [joy.peter@dod.mil.za](mailto:joy.peter@dod.mil.za) and [info@dod.mil.za](mailto:info@dod.mil.za)

And To: Chief David Tembe  
Johannesburg Metropolitan Police Department  
Email: [davidte@joburg.org.za](mailto:davidte@joburg.org.za) also [BeryIS@joburg.org.za](mailto:BeryIS@joburg.org.za)

Dear Sir,

RE: KHOSA V MINISTER OF DEFENCE AND MILITARY VETERANS AND THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT ("JMPD")

1. We act on behalf of the following persons:

1.1 Ms. Nomsa Montsha, the life-partner of late Mr. Collin Khosa ("Mr. Khosa")



Ian Levitt B.Com., LLB (Wits), HDip Tax Law (Wits), Michael Strauss BA Law (Stellenbosch) LLB (RAU),  
ASSISTED BY: Jeanne B Strauss LLB LLM, Cert in Medicine & Law (Cum Laude), Wikus Steyl LLB (JP), Sadiyah Samrod B.Com LLB (UJ), Angelike Charalambous B.Com., LLB (UJ)

Tel: +27(11) 784-3310 | Fax: +27 (11) 784-3309 | 19th Floor, Office Towers, Sandton Shopping Centre, Cnr Rivonia & 5th Street, Sandton | PO Box 783244, Sandton, 2146 | DoceX 54, Nelson Mandela Square

B-BBEE Status: Level 4  
CONVEYANCER, IN ASSOCIATION WITH MICHELLE CHAVKIN ATTORNEYS

For service in terms of Rule 4A(1)(c) email copy to: [info@ianlevitt.co.za](mailto:info@ianlevitt.co.za)

SDL  
S.M

1.2 Ms. Mphephu Khosa who is 68 years of age, and is a pensioner, residing in Tzaneen, Limpopo. She is the guardian of and looks after Mr. Khosa's minor children, being Wiseman (13 years); Loveness (12 years) and Gift (10 years).

1.3 Mr. Thabiso Muvhango, who is a brother-in-law to late Mr. Khosa and is a victim of assault, as shall be explained below.

2. Mr. Khoza and Mr. Muvhango were severely assaulted by members of the South African National Defence Force ("SANDF") with the assistance of the Johannesburg Metro Police ("JMPD") on Easter Friday at their home at Far Eastbank, 3885, Moeketsi Street, Alexandra during an apparent enforcement of the Covid-19 related national lockdown regulations.

3. Mr. Khosa died shortly after the assault. A murder charge has been laid. Preliminary medical opinion is that the cause of death is directly related to the assault by the members of the SANDF.

4. In particular we are informed that:

4.1 On Friday, 10 April 2020, at about 17h00, during the alleged enforcement of the lockdown regulations, Mr. Khosa was at his home with his family, when female members of the SANDF ("members") carrying a sjamboks entered his yard and went inside the house;

4.2 The SANDF members accused Mr. Khosa and Mr. Muvhango of violating national lockdown regulations – this is after the said members had noticed an unattended camping chair and half-full cup of alcohol in the yard. To wit, Mr. Khosa informed them that even if he had been drinking, that would not be an offence as it was inside his yard. It would appear that the said SANDF members did not take kindly to Mr. Khosa's response and were agitated by such a response and proceeded to raid the house and confiscated two beers

SAL

S.M

from the fridge. They ordered Mr. Khosa and Mr. Muvhango to follow them outside to the street as they wanted to "prove a point" to them.

4.3 On their way out, a member of the SANDF damaged Mr. Khosa's car which was parked inside the yard next to the gate by smashing the gate against the car. Mr. Khosa protested this act of vandalism. This further agitated the members of the SANDF. They then called for back-up enforcement which included a number of vehicles from both SANDF and the JMPD, with armed personnel.

4.4 We are further informed that, it is at this stage about three members of the SANDF arrived and were "briefed" about the incident by the two members of the SANDF who were at the scene. Without investigating the matter or enquiring from him what had transpired, they manhandled and assaulted Mr. Khosa in the following manner. In particular, they:

4.4.1 poured beer on top of his head and on his body;

4.4.2 one member of the SANDF held his hands behind his back, while the other choked him;

4.4.3 slammed him against the cement wall;

4.4.4 hit him with the butt of the machinegun;

4.4.5 kicked, slapped him, punched him on his face and on his stomach and ribs; and

4.4.6 slammed him against the steel gate.

5. The incident was witnessed by some members of the Alexandra community. In addition, part of the above incident was caught on cellphone video which was circulated on the news and social media. Regrettably, some of the witnesses whom we consulted with, informed us that, while they recorded the incident on their cell phones, their phones were taken by the SANDF and the video recordings were deleted. These onlookers were also threatened with violence by

S.M

SDL

the SANDF and have been afraid to assist the family in the investigation of the matter.

6. Notably, during the entire incident, the members of the SANDF also assaulted Ms. Nomsa Montsha and Thabiso Muvhango who live in the same house as Mr. Khosa. Mr. Khosa's door was also kicked down by a member of SANDF in order to gain forced entry and assault Ms. Montsha.
7. We are informed that, after the SANDF and JMPD left, Mr. Khosa was taken to his house. He later presented with certain signs such as vomiting, losing speech and consciousness and progressively lost his ability to walk and had to be rested in bed. We are made to understand that when the Emergency Services arrived, Mr. Khosa was declared dead on arrival. Preliminary medical advice received suggests blunt trauma which could have severely damaged internal organs and caused severe injury to the brain. The precise cause of death will be examined during a postmortem.
8. As a result of the above incident a murder case has been open against SANDF by the Khosa family.
9. In our submission there is no justification of the actions by SANDF and JMPD in assaulting Mr. Khosa and others.
10. The conduct of the SANDF is an infringement of the Constitution.
  - a. It is a violation of the right to life of Mr. Khosa which is protected by section 11 of the Constitution.
  - b. It is also a violation of the rights to dignity, protected by section 10, in respect of Ms. Montsha.
  - c. Finally, the conduct violates section 12(1)(c) and (d) of the Constitution.
11. Despite the national lockdown every South African enjoys these rights. As per the provisions of section 37 of the Constitution, these rights are so fundamental that they may not be derogated from, even during a state of emergency. In failing to advise the soldiers of their duty to respect the rights of South Africans during the lockdown, and failing to take action against them when they have violated these

rights, the Minister of Defence is also directly responsible for the violation of the rights mentioned above.

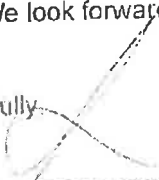
12. We do not know the legal basis for the employment of the army during the lockdown. We ask that you should please advise us of the legal basis for the decision to employ the army.
13. However, what has been mentioned publicly is that the army shall be assisting the South African Police Service to enforce law and order during the lockdown. Section 201 of the Constitution entrusts the President with the power to employ the army in co-operation with the Police. But it also requires Parliament to be informed of such employment, or where Parliament is not sitting, the appropriate oversight committee. We are also concerned that the conduct of the members of the army is not subject to any parliamentary scrutiny and oversight. In this regard, please furnish us with the reports which the President is required by section 201 of the Constitution to furnish to Parliament.
14. We also refer you to the provisions of section 19(3)(c)(i) of the Defence Act, 2002. In terms of this Act, any employment of the defence force, in co-operation with the SAPS must be undertaken in accordance with a code of conduct and defined operational procedures. Please urgently furnish us with the code of conduct and the operational procedures which are being used by the members of the defence force during this lockdown period.
15. Wherefore, we are instructed to demand in addition as follows, as we hereby do that:
  - a. SANDF and JMPD provide us with their full account of the alleged incident, this includes names of the members who were present and also involved in the assault,
  - b. An undertaking that the SANDF and JMPD shall publicly condemn the conduct of their members;

S.M

SAL

- c. A report on what steps have been taken by the SANDF and JMPD in disciplining members who were involved in the incident;
  - d. A confirmation that such members be immediately removed from the public and be placed on suspension pending the finalization of the investigation;
  - e. We understand that the conduct of the members of the SANDF has drawn widespread criticism. However, this incident shows that members of the Defence Force believe that they can act with impunity towards vulnerable and poor South Africans. We ask that you explain what steps will be taken to ensure that there is no abuse of power by the SANDF during the lockdown. It is crucial that we receive the information urgently in view of the fact that the President has extended the lockdown until the end of April; and
  - f. In respect of the minor children, Ms. Khosa and Ms. Montsha, we demand an undertaking of financial compensation for loss of support, trauma, shock, psychological assistance and any medical expenses that they have to incur during this period.
16. We expect a favorable response to the above within five (5) working days of this letter, failing which we hold instructions to take legal action in vindication of Mr. Khosa's rights and that of his family members. This will include but not limited to approaching the High Court for an appropriate urgent relief.
17. We look forward to your urgent response.

Yours Faithfully

  
IAN LEVITT ATTORNEYS  
PER: WIKUS STEYL  
SENT ELECTRONICALLY AND THEREFORE UNSIGNED

S.M

SOL

J 125



## Office of the State Attorney Pretoria

Private Bag X 91  
PRETORIA  
0001

316 Salu Building  
Francis Baard & Thabo Sehume Street  
Ground floor

Tel: (Switchboard): (012) 309 1500  
(Direct Line): (012) 309 1697  
(Secretary): (012) 309 1515

Fax (General) (012) 309 49/50

16 APRIL 2020

Enquires: MS LB TSHIVHASE

My ref: L TSHIVHASE/Z73

Email: [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za)  
& [lufuno.lunie18@gmail.com](mailto:lufuno.lunie18@gmail.com)

Your ref: W STEYL/MAT

**TO: IAN LEVITT ATTORNEYS  
19<sup>TH</sup> FLOOR, OFFICE TOWERS  
SANDTON SHOPPING CENTER  
CNR RIVONIA & 5<sup>TH</sup> STREET  
SANDTON**

**BY EMAIL: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)**

**RE: KHOSA V MINISTER OF DEFENCE AND MILITARY VETERANS AND THE  
JOHANNESBURG METROPOLITAN POLICE DEPARTMENT ("JMPD")**

1. The above matter refers.
2. We confirm that we act on behalf of the Honourable President of the Republic of South Africa, Mr Cyril Ramaphosa and the Minister of the South African National Defence Force, Minister Nosiviwe Mapisa-Nqakula.
3. We acknowledge receipt of your letters with reference: W STEYL/MAT, dated 14<sup>th</sup> April 2020. The contents of these letters are noted. We wish to respond as follows:

S.M

SDL

- a. At this stage we are unable to admit or deny any allegations, as we do not have all the facts regarding the incident. It is also for this reason that we are in no position to make any commitments.
  - b. The finalisation of a formal investigation into the alleged incident is awaited.
  - c. On the issue of employment, the employment of the South African National Defence Force was authorised by the President in terms of section 201 (2) (a) of the Constitution, 1996 and section 18 (1) of the Defence Act, 2002 (Act No. 42 of 2002), for service in assistance of other State Departments and border line control in combating the spread of COVID-19. The proper procedures in this regard were followed.
4. We trust you will find the above in order

**MS L TSHIVHASE**

**FOR: STATE ATTORNEY (PRETORIA)**

*(Not signed due to electronic transmission)*

S.M

SOL



K 127



21 April 2020

Dear Co-Chairperson,

**EMPLOYMENT OF ADDITIONAL MEMBERS OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE FOR SERVICE IN COOPERATION WITH THE SOUTH AFRICAN POLICE SERVICE**

On 25 March 2020 I authorised the employment of 2820 members of the South Africa National Defence Force (SANDF) for a service in cooperation with the South African Police Service in order to maintain law and order, support other State Departments and to control our border line to combat the spread of COVID-19 in all nine provinces.

The outbreak of COVID-19 continues to increase with reported cases across the Republic of South Africa.

As a result, I have decided, in terms of Section 201(2) (a) of the Constitution of the Republic of South, 1996 and Section 18 (1) of the Defence Act, 2002 (Act 42 of 2002), to employ an additional 73180 members of the SANDF, consisting of the Regular Force, Reserve Force and Auxiliary Force.

The employment of the additional members of the SANDF is for the period 2 April 2020 to 26 June 2020.

The revised expenditure expected to be incurred for the employment of members of the SANDF is R 4,590,393,940.00.

I will communicate this report to members of the National Assembly and the National Council of Provinces and wish to request that you bring the contents hereof to the attention of the Joint Standing Committee on Defence.

Yours sincerely,

**Mr Matamela Cyril Ramaphosa**  
President of the Republic of South Africa

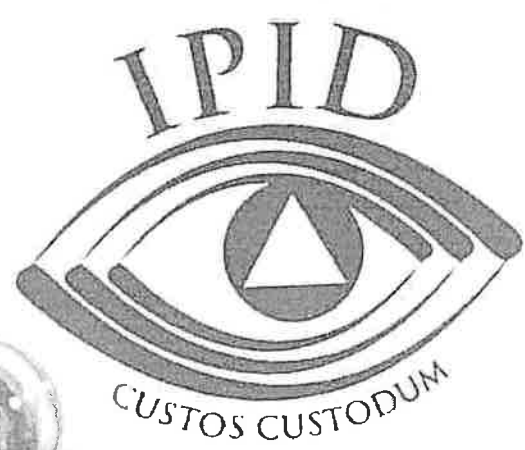
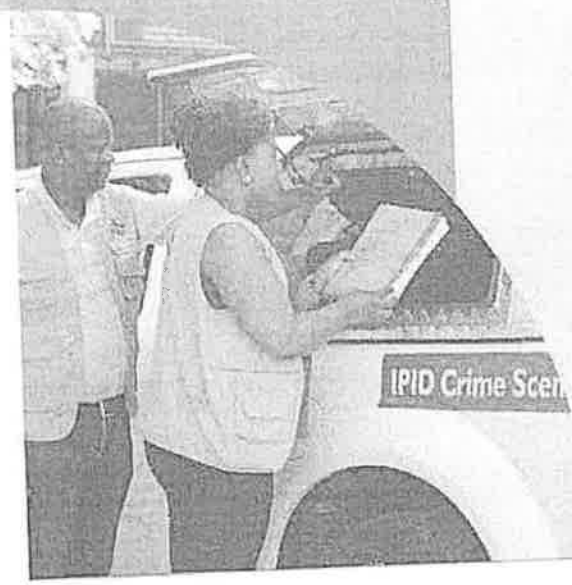
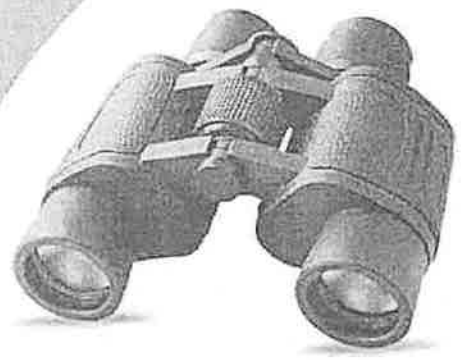
Mr Cyril Xaba, MP  
Co-Chairperson of the Joint Standing Committee on Defence  
Parliament of the Republic of South Africa  
P.O. Box 15  
**CAPE TOWN**  
8000

S.M SA

128

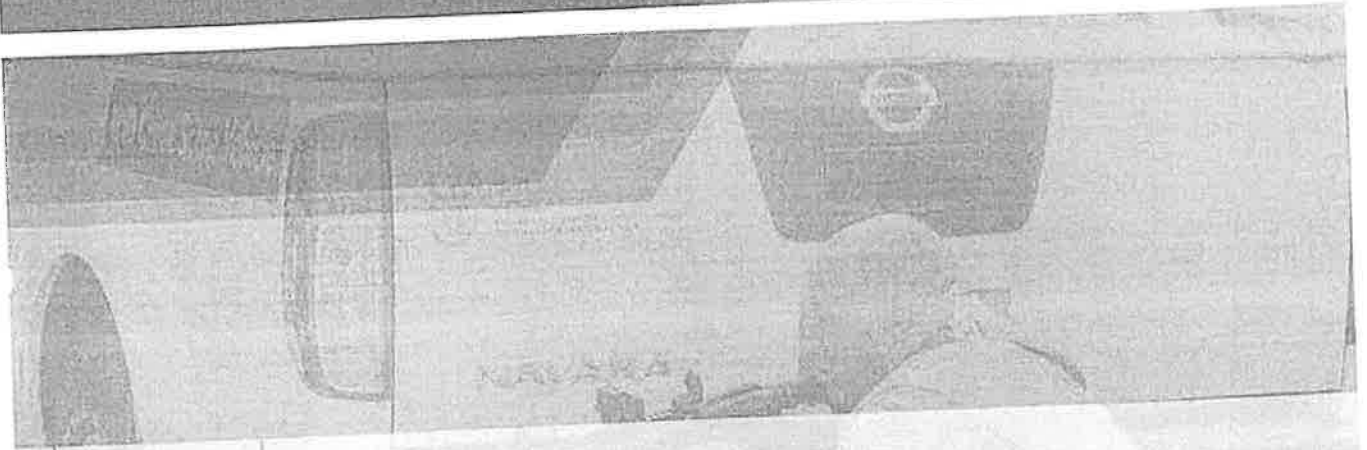
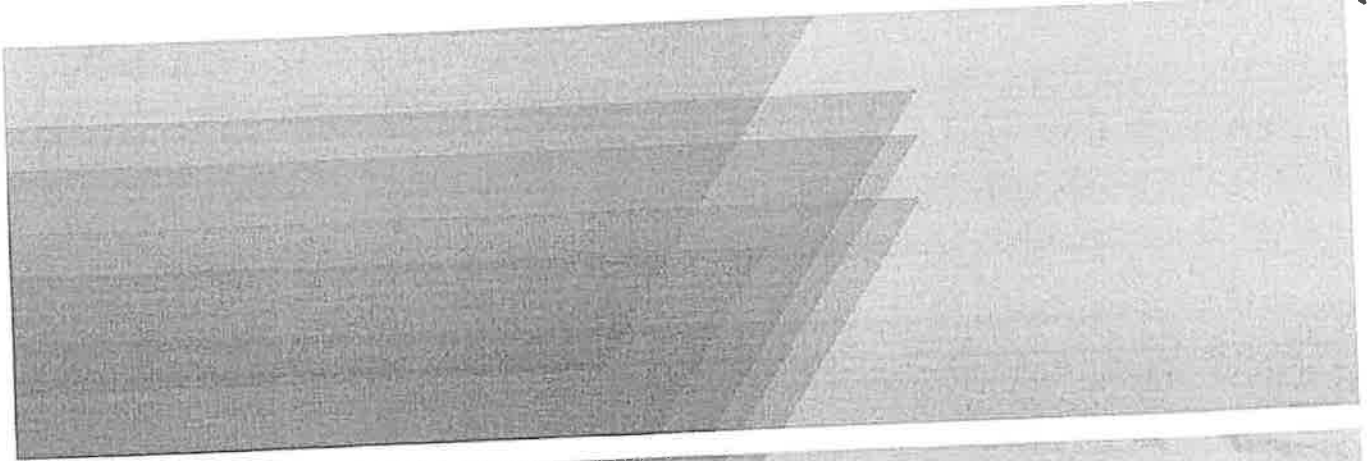
L

# ANNUAL PERFORMANCE PLAN 2019/2020

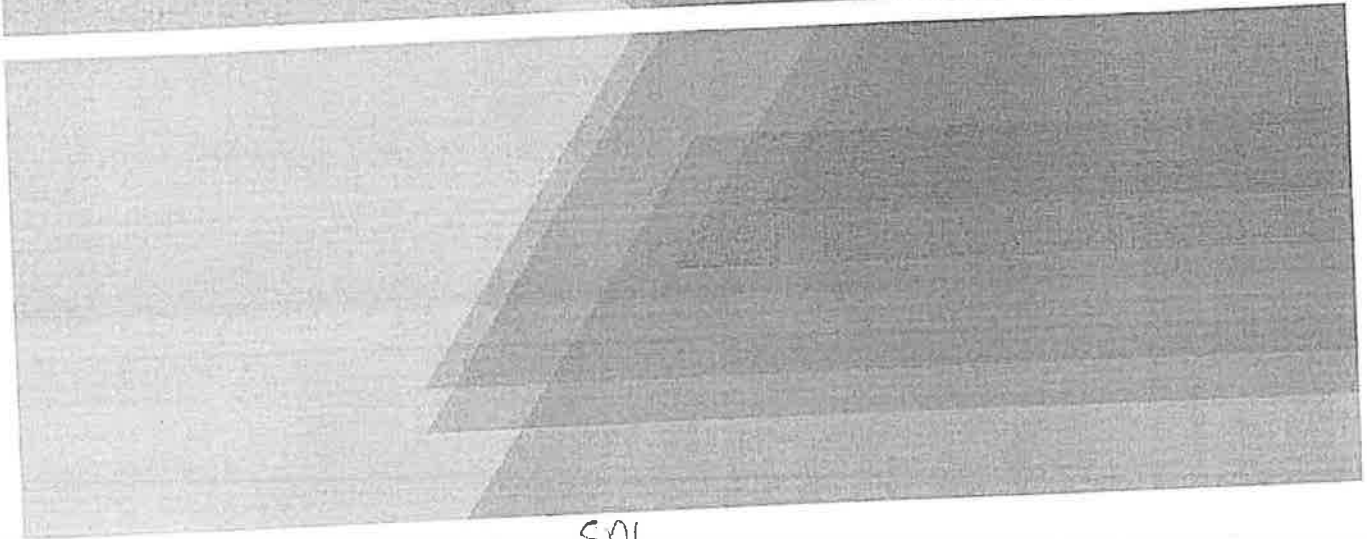
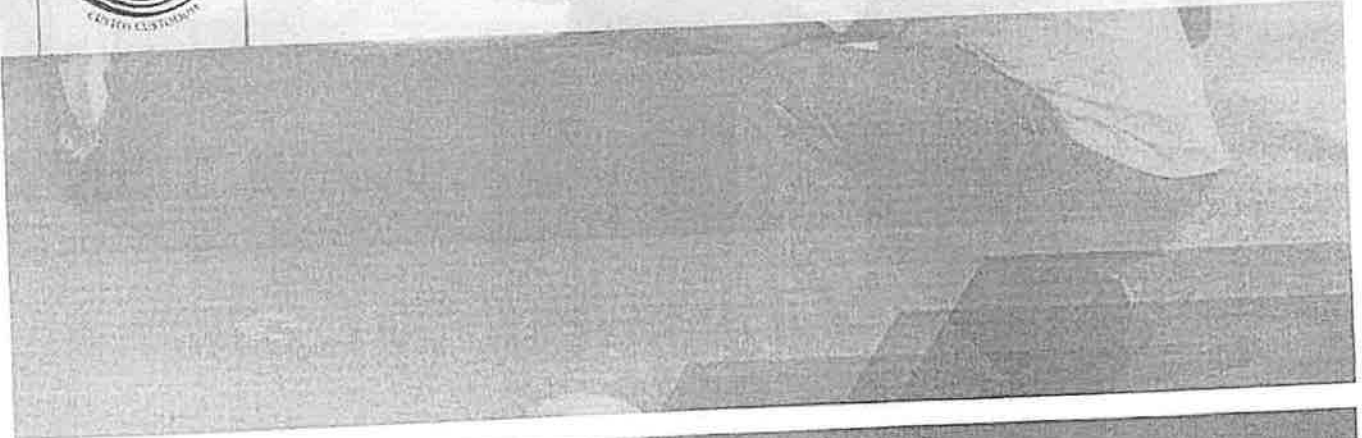


INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

S.M SDC



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE



S.M SPL

# TABLE OF CONTENTS

FOREWORD BY THE MINISTER OF POLICE	1
MESSAGE FROM THE ACTING EXECUTIVE DIRECTOR	3
OFFICIAL SIGN-OFF	4
PART A: STRATEGIC OVERVIEW	5
Constitutional Mandate	6
Legislative Mandates	6
Other Mandates	7
1. UPDATED SITUATIONAL ANALYSIS	7
1.1. Performance Delivery Environment	8
1.2. Organisational Delivery Environment	9
2. REVISIONS TO LEGISLATIVE AND OTHER MANDATES	9
3. OVERVIEW OF 2018/19 BUDGET AND MEDIUM-TERM EXPENDITURE FRAMEWORK (MTEF) ESTIMATES	9
3.1 Expenditure estimates: 2019/2020- 2021/22	10
3.2 Relating Expenditure trends to Strategic Outcome-Oriented Goals	12
PART B: PROGRAMMES & SUB-PROGRAMME PLANS	13
4. PROGRAMME 1: ADMINISTRATION	13
4.1 Purpose	13
4.1.1 Departmental Management	13
4.1.2 Internal Audit	13
4.1.3 Finance Services	13
4.1.4 Corporate Services	14
4.1.5 Office Accommodation	14
4.2 Strategic Objectives and Annual Targets for 2019/2020 to 2021/22	14
4.3 Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022	15
4.4 Quarterly Targets for 2019/2020	15
4.5 Reconciling Performance Targets with the Budget and MTEF	16
4.6 Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators	17
5. PROGRAMME 2: INVESTIGATION AND INFORMATION MANAGEMENT	17
5.1 Purpose	17
5.1.1 Investigation Management	17
5.1.2 Investigation Services	17
5.1.3 Information Management	17
5.2 Strategic Objectives and Annual Targets for 2019/2020 to 2021/2022	17
5.3 Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022	18
5.4 Quarterly Targets for 2019/2020	19
5.5 Reconciling Performance Targets with the Budget and the MTEF	21
5.6 Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance	21
6. PROGRAMME 3	21
6.1 Purpose	21
6.1.1 Legal Support and Administration	21
6.1.2 Litigation Advisory Services	22
6.1.3 Investigation Advisory Services	22
6.2 Strategic Objectives and Annual Targets for 2019/2020 to 2021/22	22
6.3 Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022	23
6.4 Quarterly Targets for 2019/2020	23
6.5 Reconciling Performance Targets with the Budget and MTEF	24
6.6 Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators	25
7. PROGRAMME 4: COMPLIANCE MONITORING AND STAKEHOLDER MANAGEMENT	25
7.1 Purpose	25
7.1.1 Compliance Monitoring	25
7.1.2 Stakeholder Management	25
7.2 Strategic Objective Annual Targets for 2019/2020 to 2021/2022	25
7.3 Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022	26
7.4 Programme Performance Indicators and Quarterly Targets for 2019/2020	26
7.5 Reconciling performance targets with the Budget and MTEF	27
7.6 Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators	28
PART C: LINKS TO OTHER PLANS	29
PART D: TECHNICAL INDICATOR DESCRIPTION TABLE	30
LIST OF ACRONYMS	31
ANNEXURE A: ADJUSTMENTS TO IPID'S STRATEGIC PLAN (2015-2020)	31
ANNEXURE B: UPDATED STRATEGIC RISK REGISTER FOR 2019/2020	35

S.M SML




---

FOREWORD BY THE MINISTER OF POLICE

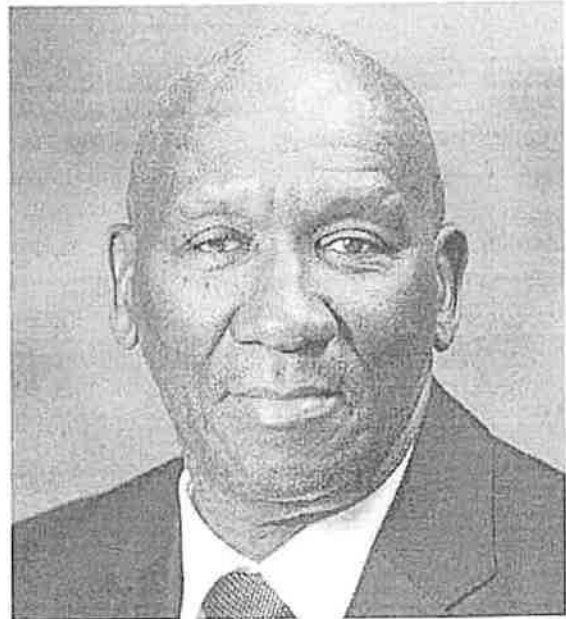
---

We come from a period in which our people were robbed of their dignity by the apartheid system, especially the use of the police to prop-up the apartheid regime. That is why more than sixty years ago the Freedom Charter, set out a vision of the police as "... helpers and protectors of the people".

The National Development Plan (NDP) echoes a similar vision for our country's police. I am on record as having said that the police must do all they can to protect our communities from criminals. There is no room for criminals in our society. Our country will once again choose a government that will run the country for the next five years. The priorities which will be core to that mandate will form part of our plans as government institutions. This goes for all our policing institutions, including the Independent Police Investigative Directorate (IPID).

We will draw inspiration from the various authorities to inform our planning, from the governing party's manifesto to government priorities as per the medium term strategic framework (MTSF) to cluster priorities etc. Citizens of our country will hold us to account based on the plans we have put in place.

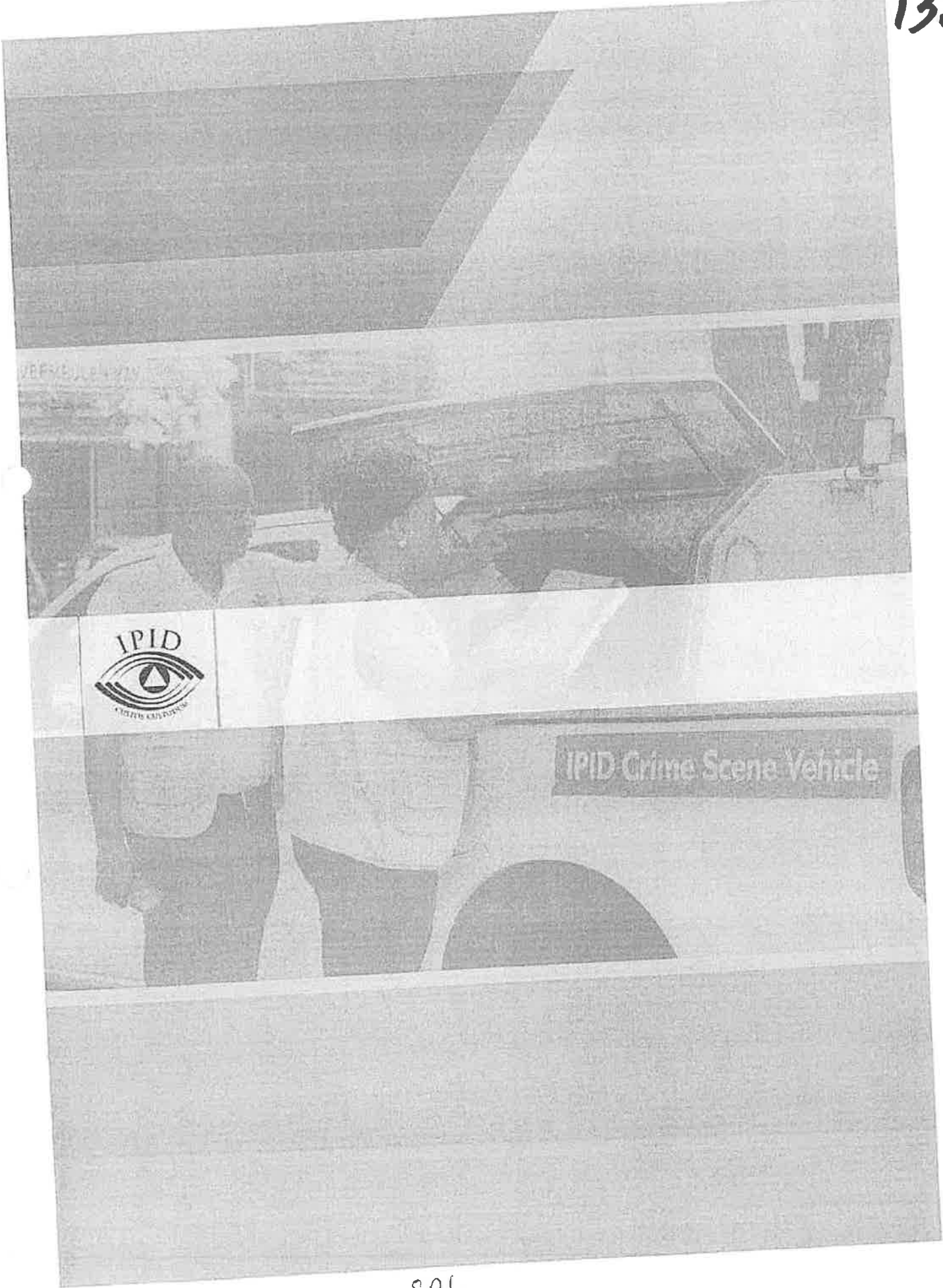
In my recent engagement with IPID management, I made it clear that we expect the IPID to investigate without fear, favour or prejudice.



We also expect IPID to speed up its investigations to ensure that those who are under investigation are brought before the courts speedily and expeditiously.

I trust that IPID will work hard to improve the quality of its investigations and recommendations. It is only by doing this that the efficiency of the criminal justice system will be reinforced. If we all do our work diligently, the dignity of our people will be restored.

**GENERAL BH CELE**  
MINISTER OF POLICE



S. N

SOL



## MESSAGE FROM THE EXECUTIVE DIRECTOR:

When I was appointed as Acting Executive Director on 01 March 2019, I stated that the Independent Police Investigative Directorate (IPID) will not change its commitment to conduct independent and impartial investigations. My appointment comes at a time when the IPID has made a name for itself as a formidable fighter against police criminality and corruption. This hard earned reputation will continue while I am holding the fort. This is because we all realise that the IPID plays a crucial role in the fight against corruption and other offences - this role will not be diminished by the departure of the former ED.

The IPID has a presence in all nine (9) provinces with a limited number of small District offices – some having been closed due to a limited budget and a heavy burden of accruals. I am pleased to announce that we have managed to clear all the accruals.

We continue to face the challenge of reaching all complainants and crime scenes of alleged police criminality. Vast distances make it difficult to respond swiftly to crime scenes and investigations. In some provinces, it is near impossible to preserve the integrity of crime scenes due to the long distances travelled by IPID investigators to reach those crime scenes. As a result, investigators spend most of their time travelling rather than investigating. This situation affects the effectiveness of investigations negatively. Notwithstanding the aforesaid challenges, we are equal to the task and we will do our best to give the best service to our communities.

We will work with all our stakeholders to ensure that the work that was started in the past continues at full speed – that it is business as usual. We will continue to investigate cases and bring errant police officers to book. We will continue to arrest those who abuse their power and bring them before the courts. This we will do without any fear or favour.

One of the projects that has been on our table for some time and which we want to finalise swiftly is the full implementation of section 23 of the IPID Act, which would bring the salaries and benefits of our investigators on par with those of SAPS detectives.



We have made significant progress in this regard but we will not rest until we have achieved full implementation and our investigators receive what is due to them.

This being an election year brings some uncertainty in regard to possible changes that may come with the new administration. Some priorities could change. Some could get a different emphasis.

We do not expect our core mandate to change and this is reflected in our plans as set out in this document. As the IPID, we have aligned our programmes with the various strategic frameworks that guide our policy positions.

The entire IPID team is committed to live up to the high standards expected of us by South African citizens.

MR MR VO SENNA  
ACTING EXECUTIVE DIRECTOR

506

S.M

133

OFFICIAL SIGN-OFF

It is hereby certified that this Annual Performance Plan:

Was developed by the management of the Independent Police Investigative Directorate under the guidance of the Executive Director, the Minister of Police and the Deputy Minister of Police.

Takes into account all the relevant policies, legislation and other mandates for which the Independent Police Investigative Directorate is responsible.

Accurately reflects the strategic outcome-oriented goals, objectives and targets that the Department will endeavor to achieve over the period 2015-2020.

MR P SETSHEDI  
ACTING CHIEF FINANCIAL OFFICER

Signature:   
\_\_\_\_\_

MS S LETLAPE  
OFFICIAL RESPONSIBLE FOR PLANNING

Signature:   
\_\_\_\_\_

MR VO SENNA  
ACTING ACCOUNTING OFFICER

Signature:   
\_\_\_\_\_

Approved by:  
GENERAL BH CELE, MP  
EXECUTIVE AUTHORITY

Signature:   
\_\_\_\_\_

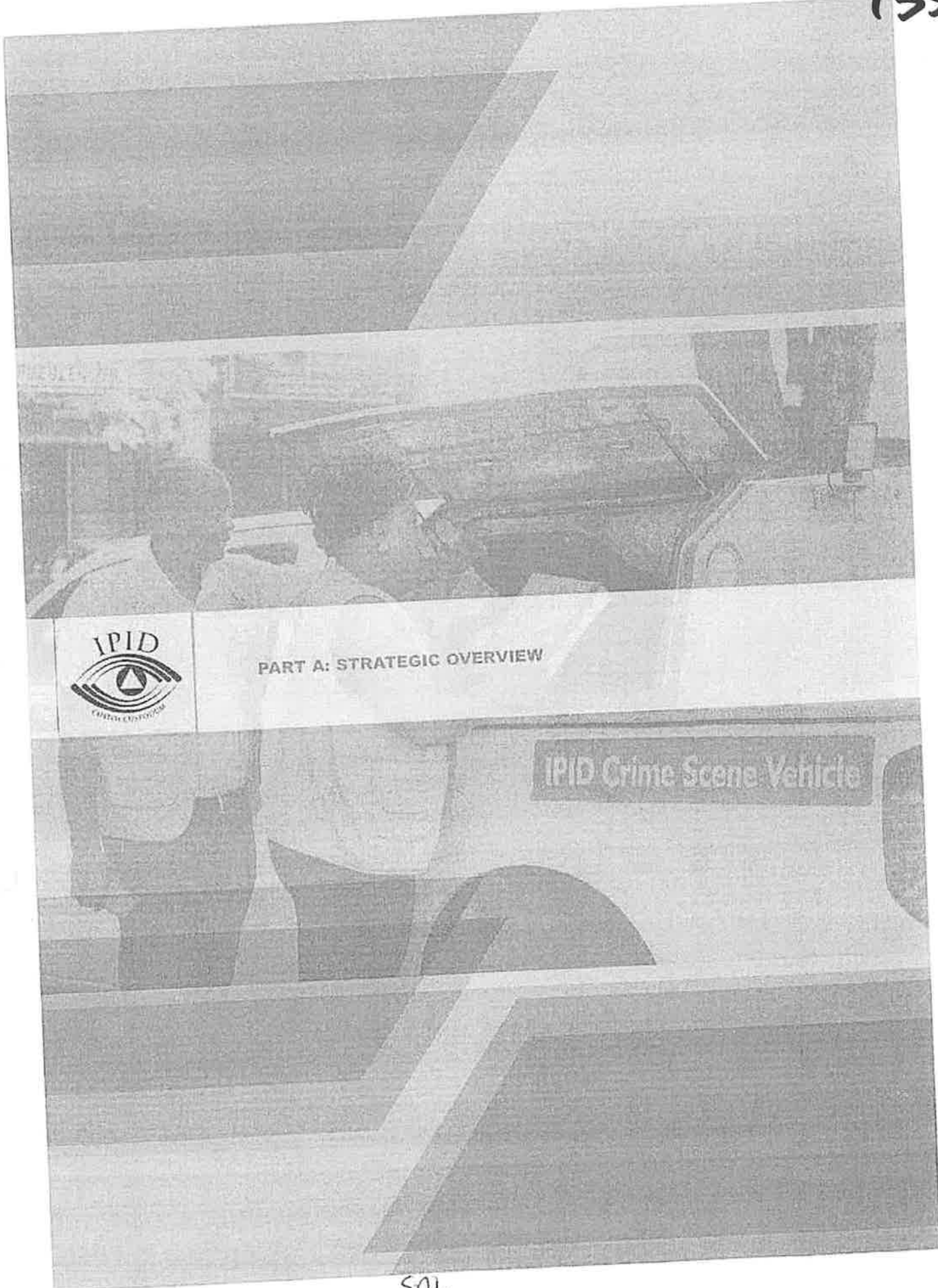
28 March 2019



S.M

SDL





S.M

SOL

**Vision**

An effective independent investigative oversight body that ensures policing that is committed to promoting respect for the rule of law and human dignity.

**Mission**

To conduct independent, impartial and quality investigations of identified criminal offences allegedly committed by members of the South African Police Services (SAPS) and Metro Police Services (MPS), and to make appropriate recommendations in line with the IPID Act, whilst maintaining the highest standard of integrity and excellence.

**Values**

The IPID adheres to the highest standards of ethical behaviour through the continuous application of our values. The following values are the core from which we operate and respond:

- Independence and impartiality
- Mutual respect and trust
- Integrity and honesty
- Transparency and openness
- Equity and fairness
- Courtesy and commitment

**Strategic-Outcome-Oriented Goals**

The Department's four (4) strategic-outcome-oriented goals are:

- The IPID is an effective independent oversight body
- The IPID investigates cases effectively and efficiently
- The police service is responsive to IPID recommendations
- The IPID is accessible to the public

**Constitutional Mandate**

Section 206(6) of the Constitution of the Republic of South Africa makes provision for the establishment of an independent police complaints body and stipulates that "On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police services in the province."

**Legislative Mandates**

The Independent Police Investigative Directorate (IPID) Act No. 1 of 2011 gives effect to the provision of section 206(6) of the Constitution, ensuring independent oversight of the SAPS and MPS. The IPID resides under the Ministry of Police and functions independently of the SAPS.

The IPID Act empowers the Department to investigate offences listed hereunder, allegedly committed by the SAPS and the MPS members.

**Section 28 (1) of the Act:**

- (a) Any death in police custody
- (b) Deaths as a result of police actions;
- (c) Complaints relating to the discharge of an official firearm by any police officer;
- (d) Rape by a police officer, whether the police officer is on or off duty;
- (e) Rape of any person in police custody;
- (f) Any complaint of torture or assault against a police officer in the execution of his or her duties;
- (g) Corruption matters within the police initiated by the Executive Director, or after a complaint from a member of the public or referred to the Department by the Minister, MEC or the Secretary for the Police Service;
- (h) Any other matter referred to the IPID as a result of a decision by the Executive Director or if so requested by the Minister, an MEC or the Secretary for the Police Service as the case may be.

Section 28 (2), the Department may investigate matters relating to systemic corruption involving the police.

Section 33(3), any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

**Other Mandates**

The vision 2030 of the National Development Plan (NDP) chapter 12: building safer communities; is that people living in South Africa feel safe and have no fear of crime. The core mandate of the IPID contributes towards the realization of Outcome 3 as outlined in the Medium Term Strategic Framework (MTSF) 2014-2019, namely: "All people in South Africa are and feel safe".

The IPID contributes to the achievement of NDP priorities by conducting independent and impartial investigations into allegations of criminality against members of the SAPS and MPS. Thereafter, refer departmental and/or policy recommendations to the Minister of Police; and refer criminal dockets to the National Prosecuting Authority for decision on whether to prosecute or not.



S.M  
SML



# 1. UPDATED SITUATIONAL ANALYSIS

The IPID management convened two departmental strategic review sessions to deliberate on the department's strategic direction, review past and current performance to ensure alignment between resources and targets. These sessions were attended by senior management from both provincial and head office. An environmental scan was also conducted through SWOT analytical tool to identify key external and internal factors that should be taken into consideration when planning for the next Medium Term Expenditure Framework (MTEF) period. The Department will endeavour to remain sustainable as a result of the identified strengths and opportunities.

## 1.1. Performance Delivery Environment

The 2018 Budget Review announced large-scale expenditure reproritisisation and tax increases, notably a one percentage point increase in the VAT rate. Over the medium-term expenditure framework (MTEF) period, government will maintain the main budget expenditure ceiling. Funds will be re-prioritised to manage spending pressures and support the President's economic stimulus and recovery plan. Since the inception of the Independent Police Investigative Directorate, the allocated budget has not been able to meet the demand to enable effective execution of its legislative mandate and operational independence. The constrained government's fiscus has also had an adverse impact to the Department's budget allocation. In the previous financial years, the Department experienced extensive budget cuts.

As a result, its resources were extremely constrained affecting its operations. These constrained fiscal envelope, gave rise to accruals amounting to R5.3 million in 2014/15, R6.9 million in 2015/16, R27.8 million in 2016/17 and R20.5 million in 2018/2019; which are mainly attributed to contractual obligations and travelling expenditure when conducting investigations. However, management has put measures in place to reduce the amount of accruals over the MTEF period.

Due to constrained financial resources the Department was unable to provide a conducive working environment for the investigators who are responsible for driving the Department's core mandate. The dilapidated Information and Communication Technology (ICT) infrastructure affected the effectiveness of the Case Management System which is used to process cases and record keeping of investigation case files.

Furthermore, working tools such as vehicles, investigation equipment and computers were inadequate to enable effective and efficient investigation of cases. All these put a strain on investigators, compelling them to work overtime and not being able to take adequate leave days in an effort to improve performance. Although some work commenced in the 2018/2019 financial year, management has prioritised improvement of the working environment over the MTEF period.

Taking into consideration the available human resources, financial resources and working tools, the Department will mainly focus on investigation of serious and priority crimes which include corruption, systemic corruption, death as a result of police action, death in police custody, rape by a police officer, rape in police custody and torture. The table below depicts a breakdown of case workload which includes cases registered in the new financial year and active cases carried over from the previous financial year/s (backlog). The workload for the 2018/2019 financial year increased by 20%. This may also lead to a higher workload in the new financial year, as all active cases will have to be carried over.

Financial year	Total case workload
2014/2015	10 657
2015/2016	10 695
2016/2017	9 513
2017/2018	9 097
2018/2019	11 955

Table 1: Total Workload

The reliance on other institutions for technical assistance is one of the contributing factors to backlog cases. The delay in obtaining technical reports affects completion of cases. Although investigation is concluded, a technical report is required in order to complete a case. It is in this regard that management has commenced with the review of the IPID Expansion Strategy to ensure alignment to emerging needs and the operational environment. The Strategy had previous received support from all relevant stakeholders, yet could not be funded. The management will continue to advocate for its funding.

In the 2018/19-2020/21 the Department had prioritised partial implementation of IPID Act section 23 which expresses remuneration and benefits of investigators. The inability of the Department to fully implement IPID Act section 23 was met with dissatisfaction by investigators which is also affecting their morale. During the current MTEF period the management will endeavor to conclude all necessary discussions and agreements with the relevant stakeholder to ensure full implementation of IPID Act section 23.

The four (04) activities listed below are at the core of the constitutional and legislative mandate of the Department and are critical for the department's effectiveness, regrettably they are still not funded:

- Full implementation of amended IPID Act, including section 23
- Full implementation of the IPID Expansion Strategy which is intended to accommodate the demand placed on IPID for additional regional and district offices.
- Full implementation of the Farlam Commission Report recommendation which addressed the operational independence of IPID from SAPS
- Full implementation of ICT Strategy

Republic of South Africa, National Institute for Public Protection  
Copyright © 2019. All rights reserved. This document is the property of  
the National Institute for Public Protection and is not to be distributed  
without the written permission of the National Institute for Public Protection.

SOL

S.M

The intended outcome about the existence of IPID is that public confidence in the criminal justice system will be restored, specifically SAPS and MPS. Also that human dignity be restored and that the rule of law be upheld. IPID is at the forefront of fighting against corruption. Inadequate resources compromise the effectiveness of the IPID in executing its constitutional and legislative mandate; and realisation of the NDP vision, "people living in South Africa feel safe and have no fear of crime".

1.2. Organisational Delivery Environment

The IPID is committed to deliver on its legislative mandate with the purpose of contributing towards a police service that is trusted by the community and operates in line with the principles enshrined in the Constitution of South Africa.

Service Delivery Model of IPID (Provincial and District Offices)

The IPID structure consists of a National Office, nine (9) Provincial Offices and four (4) District Offices. The District offices were established to improve access to IPID services; but due to the dire financial situation of IPID, a strategic decision was taken to close District Offices. A total of five (05) District offices have since been closed; Eastern Cape, Northern Cape, Free State, Kwa-Zulu Natal and North West, respectively. This was done to re-direct budget from these satellite offices to fund pressures. However, IPID is engaging Thusong Centres to acquire office accommodation that is affordable to ensure accessibility of IPID services.

Provincial Offices comprise of a Provincial Head, Deputy Provincial Head, investigators and administrative staff. However, this is not sufficient because the SAPS has 1 146 police stations<sup>2</sup>. The geographical location of some of IPID offices makes it difficult for ordinary citizens in rural or far-fetched areas to access its services. The closure of District offices has aggravated the situation. In addition, this geographical location necessitates extensive traveling for IPID investigators, thereby requiring and exhausting the greater part of the budget on travelling and accommodation.

Human Resource Capacity

During the establishment of the ICD, the Department of Public Service and Administration (DPSA) had conducted the human capacity assessment which had recommended a total of 535 personnel. In the 2016/17 the IPID's staff establishment was reduced from 414 to 388 as a result of expenditure ceiling that was put on Compensation of Employees which led to freezing of posts. In the 2018/2019 financial year the organisation's structure was reviewed and 27 additional posts were added by creating 24 new posts and unfreezing 3 unfunded existing posts.

The staff establishment was therefore increased from 388 to 415 which is subject to concurrence by the Department of Public Service Administration (DPSA). These posts are aimed at strengthening internal controls to address majority of Auditor General of South Africa (AGSA) audit findings in different Components.

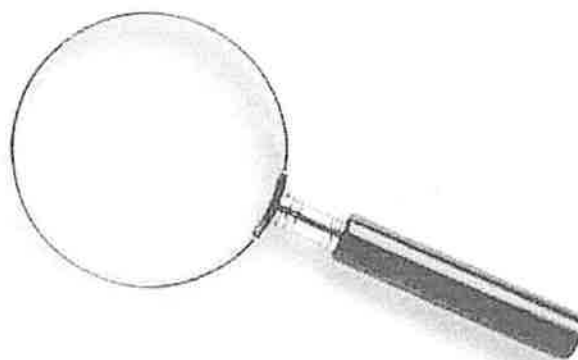
The total number of investigators is 191 with 171 on level 7-11 and a total of 20 on SMS level. The capacity is not adequate considering the increasing demand for IPID services. The capacity needs for investigation personnel and the required support staff are adequately addressed in the proposed Expansion Strategy.

The Department has been experiencing a high turnover rate particularly at entry salary levels, junior and middle management due to salary levels that are lower as compared to other government departments. The lack of succession planning, non-implementation of Retention Strategy, high workload and non-implementation of IPID Act Section 23 were identified as some of the contributing factors to the staff turnover. However, the strategies listed below were adopted to address this challenge:

- Development and implementation of Upward Mobility Plan
- Internal advertisement of posts for level 5 to 12 to encourage internal promotion
- Implement strategic training interventions for management and support staff
- Implement special investigation training interventions for investigators

Operational Independence of IPID

The operational independence of IPID is hugely dependent on adequate resourcing of both financial and non-financial resources to effectively implement its mandate with independence as a core value. At the core is the need for IPID to have its own capacity to fully investigate cases including technical support, forensic and ballistic experts. However due to limited resources, the Department still relies on SAPS and other state organs for this expertise which may compromise integrity of investigation.



2022-2019: Public Service Administration (DPSA) - Information Services (2016-2017) p.20

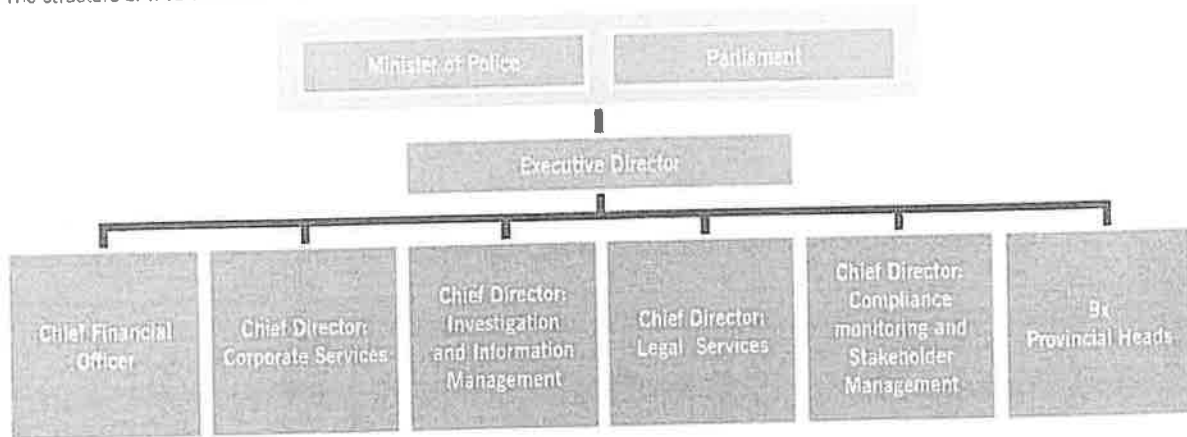
SDL

3.14



**Organisational Structure**

The structure of IPID is as follows:



**2. REVISIONS TO LEGISLATIVE AND OTHER MANDATES**

In the watershed Constitutional Court judgement (McBride v Minister of Police and Another (CCT255/15) ZACC 30; 2016 (2) SACR 585 (CC); 2016 (11) BCLR 1398 (6 September 2016) the legislature was given 24 months to amend the IPID Act in order to cure the defects in the Act. The amendments were effected in line with the judgment that further reinforced IPID's structural and operational independence.

The amended IPID Bill has gone through the National Assembly processes and is currently before the National Council of Provinces (NCOP) for processing and finalisation. Tandem to this process, the National Assembly approached the Constitutional Court for extension of the 24-month period of amendment; however, there has not been a respond from the Constitutional Court.

**3. OVERVIEW OF 2018/19 BUDGET AND MEDIUM-TERM EXPENDITURE FRAMEWORK (MTEF) ESTIMATES**

**3.1. Expenditure estimates: 2019/2020- 2021/22**

Vote expenditure estimates by programme and economic classification

**Programmes**

- 1. Administration
- 2. Investigation and Information Management
- 3. Legal and Investigation Advisory Services
- 4. Compliance Monitoring and Stakeholder Management

Programme	Revised estimate	Average growth rate (%)	Average Expenditure/ Total (%)	Medium-term expenditure estimate			Average growth rate (%)	Average Expenditure/ Total (%)
				2019/20	2020/21	2021/22		
R million	2018/19	2015/16 - 2018/19		2019/20	2020/21	2021/22	2018/19 - 2021/22	
Programme 1	102.4	11.4%	31.2%	107.6	113.4	120.8	5.7%	31.9%
Programme 2	194.5	8.8%	63.3%	206.0	221.2	234.3	6.4%	61.5%
Programme 3	5.8	1.9%	2.1%	7.5	8.0	8.6	14.1%	2.2%
Programme 4	12.4	40.5%	3.4%	15.6	15.7	17.9	12.9%	4.5%
<b>Total</b>	<b>315.1</b>	<b>10.3%</b>	<b>100.0%</b>	<b>336.7</b>	<b>359.4</b>	<b>381.6</b>	<b>6.6%</b>	<b>100.0%</b>
Change to 2018 Budget estimate								

**Economic classification**

SOL

S.M

Programme	Revised estimate	Average growth rate (%)	Average Expenditure Total (%)	Medium-term expenditure estimate			Average growth rate (%)	Average Expenditure Total (%)
				2018/19	2019/20	2021/22		
<b>Current payments</b>	<b>306.7</b>	<b>9.8%</b>	<b>98.6%</b>	<b>330.5</b>	<b>353.1</b>	<b>375.1</b>	<b>6.9%</b>	<b>98.0%</b>
Compensation of employees	197.4	7.3%	65.5%	228.8	246.5	262.6	10.0%	67.2%
Goods and services	109.4	14.8%	33.2%	101.7	106.5	112.5	0.9%	30.9%
<b>Transfers and subsidies</b>	<b>0.8</b>	<b>13.7%</b>	<b>0.4%</b>	<b>0.8</b>	<b>0.8</b>	<b>0.9</b>	<b>4.2%</b>	<b>0.2%</b>
Departmental agencies and accounts	0.7	23.9%	0.2%	0.8	0.8	0.9	7.7%	0.2%
Households	0.1	-22.7%	0.2%	-	-	-	-100.0%	0.0%
Payments for capital assets	7.6	47.5%	1.0%	5.4	5.5	5.7	-9.3%	1.7%
Machinery and equipment	7.6	47.5%	1.0%	5.4	5.5	5.7	-9.3%	1.7%
Payments for financial assets	0.0	-	0.0%	-	-	-	-100.0%	0.0%
<b>Total</b>	<b>315.1</b>	<b>10.3%</b>	<b>100.0%</b>	<b>336.7</b>	<b>359.4</b>	<b>381.6</b>	<b>5.6%</b>	<b>100.0%</b>

### 3.2. Relating Expenditure trends to Strategic Outcome-Oriented Goals

Chapter 12 of the National Development Plan calls for building safer communities in South Africa. This is given expression by Outcome 3 "all people in South Africa are and feel safe" of government's 2014-2019 Medium-Term Strategic Framework. The work of the Independent Police Investigative Directorate is directly aligned with this Outcome as the Department seeks to ensure that all people in South Africa live safely in a society free of corruption, and with an independent and fair criminal justice system. Over the medium-term, the Department will focus on investigating serious and priority crimes outlined in section 28 of the Independent Police Investigative Directorate Act (2011), and providing the necessary tools of trade for investigators through the strategic reprioritisation of funds.

Due to the nature of IPID's business which is labour intensive, Compensation of Employees (CoE) is the Department's largest cost driver, accounting for a projected 67.2 per cent (R935.3 million) of its total budget over the MTEF period. Spending on CoE is expected to increase at an average annual rate of 10 per cent, from R197.4 million in 2018/19 to R262.6 million in 2021/22. This increase is due to cost of living adjustments and the filling of 11 funded vacant posts for investigators by the end of 2018/19.

#### Investigating serious and priority crimes

Serious and priority crimes include, but are not limited to, corruption, systemic corruption, death as a result of police action, death while in police custody, rape by a police officer whether on or off duty, and rape while in police custody. The need for improved oversight by the Department on the South African Police Service was underscored by the increase in cases of corruption reported to the directorate between 2015/16 and 2017/18. During this

period, the Department received 511 cases of corruption for investigation, of which 252 were decision ready by the end of 2017/18 and handed over to the South African Police Service and the National Prosecuting Authority for further processing. Based on historic performance the Department expects to have 180 decision ready cases over the medium-term.

Investigations of senior police officials are often met with resistance, including counter-litigation which increases the Department's legal costs and places pressure on its operational capacity. Due to limited personnel capacity in the Legal and Investigation Advisory Services Programme, the Department makes use of private attorneys to assist with all litigation cases. In order to curb the use of private attorneys, the Department has gone out on a tender to appoint a Panel of Attorneys. The Department's overall expenditure on legal services is expected to increase at an average annual rate of 2.1 per cent, from R5 million in 2018/19 to R5.3 million in 2021/22 due to the volume of cases being investigated.

In 2017/18, deaths in police custody and as a result of police action constituted 11.3 per cent (637 out of 5 651) of the total number of cases reported to the Department. Of these, 275 were decision ready and forwarded to the National Prosecuting Authority and the South African Police Service for further processing. Over the medium term, the Department plans to ensure that at least 450 cases of deaths while in police custody and 390 cases of deaths as a result of police action are decision ready. To achieve these targets, the Department will strengthen its investigative capacity by filling all 11 vacant funded investigator positions in the Investigation and Information Management programme by the end of the first quarter of 2019/20 financial year, resulting in an increase of 9.3 per cent (R588.5 million) in spending on compensation of employees in the programme over the MTEF period.



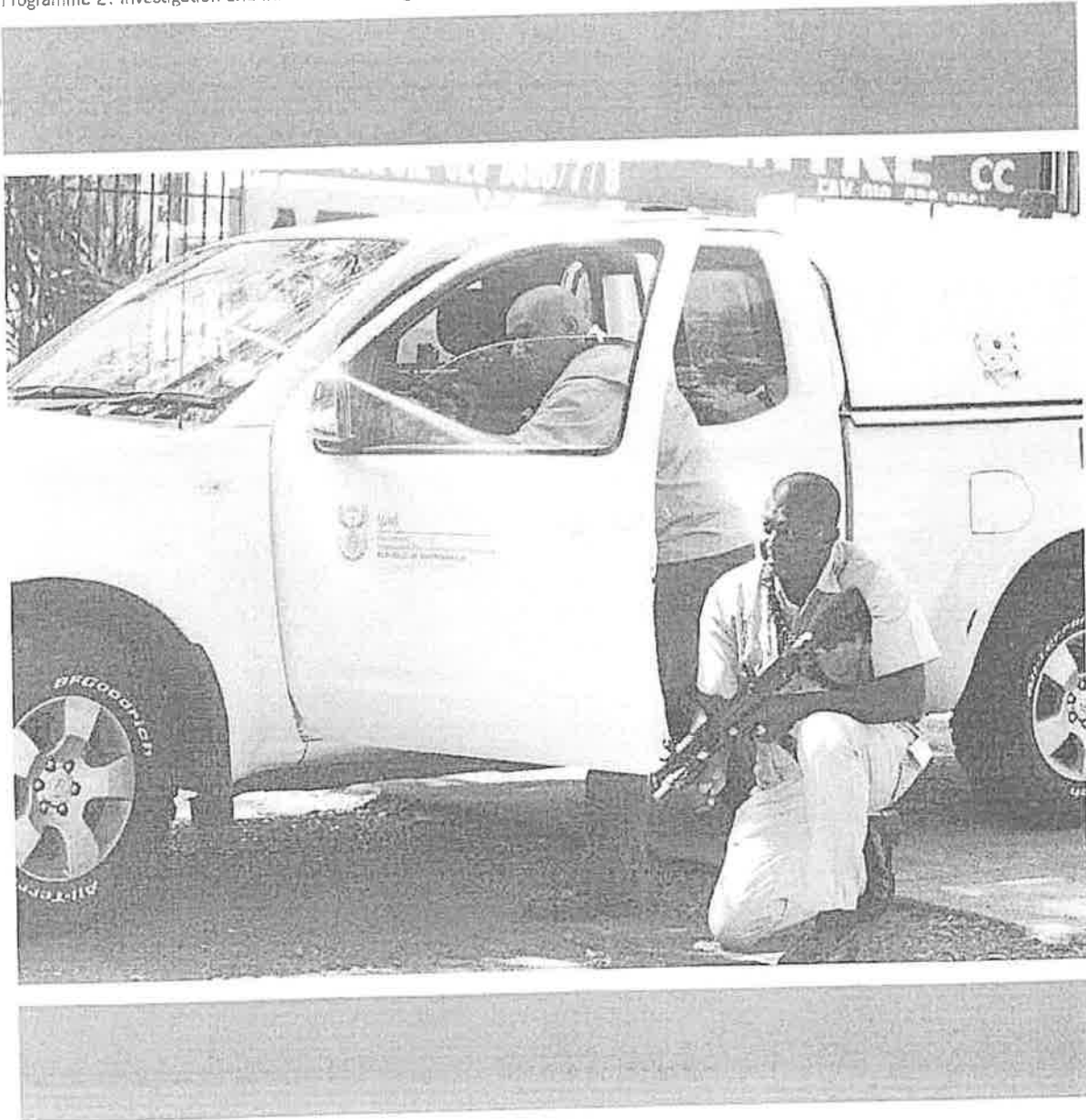


### Providing the necessary tools of trade

Over the MTEF period, the Department will continue to strengthen its capacity to investigate cases of serious and priority crimes allegedly committed by members of the police service. To this end, the Department will ensure that investigators have the necessary tools of trade to effectively perform their duties by procuring investigative and transport equipment.

In this regard, the Department has reprioritised R7.6 million over the MTEF period from spending on travel and subsistence, and other machinery and equipment in Programme 1: Administration to spending on minor assets and transport equipment in Programme 2: Investigation and Information Management.

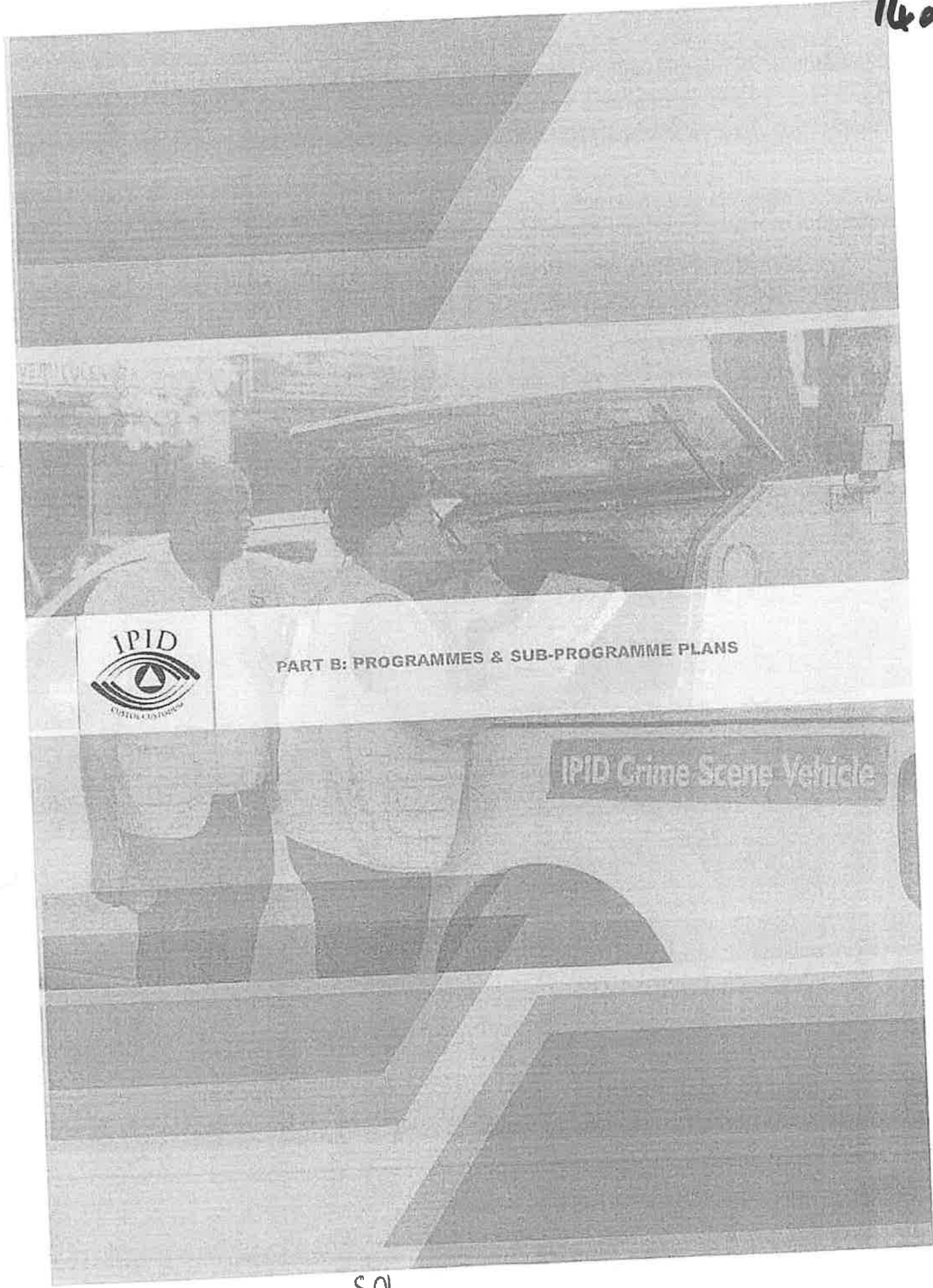
This will enable the procurement of 30 vehicles and investigation equipment (specialised cameras and recording equipment) over the medium term. Procuring vehicles rather than renting them is expected to result in cost efficiencies on fuel and maintenance, and yield projected savings of R2.9 million over the MTEF period. The reprioritised funds are derived from closing down five satellite offices in Eastern Cape, Northern Cape, Free State, KwaZulu-Natal and North West, as the Department could no longer sustain their operational costs. A total of 15 personnel who were located in these offices were redeployed to the respective provincial offices. As such, performance targets for all cases related to investigation remain constant over the medium term.



SOL

S.M

142



PART B: PROGRAMMES & SUB-PROGRAMME PLANS

IPID Crime Scene Vehicle

S. M

SOL





To effectively and efficiently deliver on our mandate, our activities and priorities are organized according to the following budget programmes:

- Programme 1: Administration
- Programme 2: Investigation and Information Management
- Programme 3: Legal and Investigation Advisory Services
- Programme 4: Compliance Monitoring and Stakeholder Management

#### 4. PROGRAMME 1: ADMINISTRATION

Programme 1 activities are guided by the following key legislative framework: Public Finance Management Act (PFMA), Preferential Procurement Policy Framework Act (PPPFA), Treasury Regulations, Public Service Act (PSA), Public Service Regulations (PSR), Labour Relations Act, Skills Development Act, Employment Equity Act, Basic Conditions of Employment Act, Government Immovable Asset Management Act (GIAMA), National Archives Act, Minimum Information Security Standards (MISS), Public Administration Management Act (PAMA), Promotion of Access to Information Act (PAIA) and etc.

##### 4.1. Purpose

Provide strategic leadership, management and support services to the Department. The Programme consists of the following five sub-programmes:

##### 4.1.1. Departmental Management

This Sub-programme provides strategic leadership, overall and management and strategic reporting to the Directorate and ensures overall compliance with all relevant prescripts through the following components:

- **Executive Support:** Provides strategic support to the Executive Director of the IPID. It also provides administrative, logistical and secretariat services and coordination of activities in the Office of the Executive Director.
- **Corporate Governance:** Provides risk and ethics management services and ensures compliance with laws, regulations and other prescripts.
- **Strategy and Performance Monitoring:** Responsible for implementing effective organisational strategic planning, performance monitoring and reporting processes in line with relevant legislations. It also conducts evaluation to improve department's performance.
- **Vetting Services:** Provides pre-employment screening as well as information gathering for existing employees in order to obtain security clearances in line with the IPID Act.
- **Labour Relations:** Manages labour related issues by coordinating orderly collective bargaining and effective resolution of employee labour disputes.
- **Security Management:** Provides Security Management Services by developing and supporting the implementation of security policies, systems and procedures. It provides access security, information security and physical security and monitors the implementation of information technology

policies based on Minimum Information Security Standards, Minimum Physical Security Standards and the Occupational Health and Safety Act.

##### 4.1.2. Internal Audit

This Sub-programme provides assurance and consulting services by conducting risk based audit reviews and performing ad-hoc requests.

##### 4.1.3. Finance Services

This Sub-programme ensures the establishment and implementation of strategic finance pertaining to sound financial management, accounting, procurement, provisioning and related internal controls in compliance with relevant legislative requirements. The sub-programme consists of the following components:

- **Office of the Chief Financial Officer:** Provides strategic support to the Executive Director and core service delivery Programmes, pertaining to finance services of the Department. The Component provides effective leadership and ensures the establishment and implementation of strategic finance, for the achievement of departmental objectives. This Component provides leadership to the Finance, Supply Chain Management (SCM) and Asset Management components. This component also provides strategic support in the implementation of relevant IPID Act financial management imperatives.
- **Finance:** Provides for the establishment and implementation of sound financial management, expenditure and budgetary management, accounting services, cash-flow management, financial reporting and related internal control systems in compliance with relevant legislative requirements. It also assists the Executive Director in implementing the legislative imperatives as provided for in section 7(1)(a), section 7(1)(b); section 31(1)(a) and section 32(2)(a) of the IPID Act. It provides critical finance support to all service delivery units within the department for the achievement of departmental objectives.
- **Supply-Chain and Asset Management:** Provides for the establishment and implementation of provisioning, procurement, asset management and related internal control systems, in compliance with relevant legislative requirements. It provides critical supply-chain and asset management services to the Department and renders efficient provisioning services which contribute towards the attainment of departmental objectives.

##### 4.1.4. Corporate Services

This Sub-programme provides support services to the Department as a whole through the following components:

- **Human Resources Management and Development Services:** Provides human resources management and development services through the development of human resource policies and strategies. It ensures the alignment of the organisational

structure to the Strategic Plan. It is responsible for rendering efficient and effective human resource administration services. It promotes the optimal development and utilisation of human resources and co-ordinates the employee health and wellness programme.

**Information Communication Technology:** Provides communication services by developing, implementing and maintaining Information Communication Technology Strategy and advisory services. It is responsible for development and implementation of a Master System Plan and Strategy for Information System Security. It develops, manages and co-ordinates website, intranet and integrated ICT infrastructure. It also provides Business Continuity services.

**Auxiliary Services:** Provides record management services, manage fleet services, render switchboard services, render messenger services and oversee the rendering of cleaning services. It also provides overall services related to activities and costs of office accommodation for the Department as a whole. This includes managing Service Level Agreement with Department of Public Works regarding the renting of new property and maintenance of existing property.

**4.1.5. Office Accommodation**

This Sub-programme houses the devolved funds which are appropriated for office accommodation and related costs. The Auxiliary Services component performs the management of IPID facilities.

**4.2. Strategic Objectives and Annual Targets for 2019/2020 to 2021/22**

The following table outlines the output targets for the budget year and over the MTEF period for the strategic objective.

Strategic Objective	Strategic Indicator	Strategic Plan Target	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
			2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
A capable workforce	Number of strategic training areas undertaken as per IPID's Training Plan	28	New Indicator	7	13	7	7	7	7

**4.3. Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022**

The following table sets out the Programme Performance Indicators and output targets for MTEF period:

Programme Performance Indicator	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Percentage vacancy rate per year	9.42%	11%	7%	< 10%	<10%	<10%	<10%
Percentage implementation of annual Internal Audit Plan per year	New Indicator	70%	74%	80%	80%	90%	100%
Percentage implementation of risk mitigation strategies per year	New Indicator	New Indicator	New Indicator	40%	50%	60%	60%
Number of evaluations conducted per year	New Indicator	New Indicator	New Indicator	Approved Evaluation Plan	1	1	1
Obtain positive audit outcome	New Indicator	New Indicator	New Indicator	New Indicator	Unqualified audit opinion	Unqualified audit opinion	Clean audit opinion
Percentage implementation of ICT Infrastructure Plan	New Indicator	New Indicator	New Indicator	New Indicator	80%	90%	100%

S.M S.D.L



Departmental agencies and accounts	164	537	560	639	20.0%	0.6%	688	742	789	7.3%	0.6%
Households	92	292	-	4	61.8%	0.1%	-	-	-	100.0%	-
Payments for capital assets	650	128	7	4 485	90.4%	1.6%	3 172	3 198	3 163	-11.0%	3.2%
Machinery and equipment	650	128	7	4 485	90.4%	1.6%	3 172	3 198	3 163	-11.0%	3.2%
Payments for financial assets	2	12	-	-	-100.0%	-	-	-	-	-	-
<b>Total</b>	<b>71 563</b>	<b>72 374</b>	<b>80 545</b>	<b>102 417</b>	<b>12.7%</b>	<b>100.0%</b>	<b>107 571</b>	<b>113 420</b>	<b>120 808</b>	<b>5.7%</b>	<b>100.0%</b>
Proportion of total programme expenditure to vote expenditure	39.6%	29.9%	31.5%	22.5%	-	-	32.0%	31.6%	31.7%	-	-

Details of transfers and subsidies											
Households											
Social benefits	79	19									
Current											-100.0%
Employee Social Benefits	79	19									-100.0%
Departmental agencies and accounts											
Departmental agencies (non-business entities)											
Current	364	537	560	639	20.0%	0.6%	688	742	789	7.3%	0.6%
Safety and Security Sector Education and Training Authority	364	537	558	637	20.5%	0.6%	686	740	787	7.3%	0.6%
Communication			2	2			2	2	2		
Households											
Other transfers to households	13	273	-	4	-32.5%	0.1%	-	-	-	-100.0%	-
Current	13	273	-	4	-32.5%	0.1%	-	-	-	-100.0%	-
Employee Social Benefits											

4.6. Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators

The Department will continue to utilise the additional allocation received from SAPS for strengthening of the internal control systems in an effort to achieve a clean audit opinion by 2021/22 financial year as part of strengthening the accountability.

The Department will over medium term utilise R5 million per annum from the additional SAPS allocation to implement the ICT Infrastructure Plan to enable safe keeping of information as well as recovery of information systems from unforeseen disasters. The implementation will include an external hot recovery site, backup & storage facilities and email archiving solution. The ICT security systems that will also enhance IPID's information security include modern firewalls, intrusion detection & prevention systems, and encryption of mobile devices was also highlighted as the weakness that requires an urgent attention.

The implementation plan will cover the infrastructure revamp and upgrades which includes an enhancement of the information security systems and disaster recovery. Business enabling platforms such as Microsoft SharePoint and Exchange are also part of ICT Plan.

S.M SQL



147

## 5. PROGRAMME 2: INVESTIGATION AND INFORMATION MANAGEMENT

### 5.1. Purpose

Coordinate and facilitate the Department's investigation processes through the development of policy and strategic frameworks that guide and report on investigations. The programme consists of the following three sub-programmes:

#### 5.1.1. Investigation Management

This sub-programme develops and maintains investigation systems, procedures, norms, standards and policies in line with the IPID Act (2011) and other relevant prescripts.

#### 5.1.2. Investigation Services

This Sub-programme manages and conducts investigations in line with provisions in the IPID Act (2011)

#### 5.1.3. Information Management

This Sub-programme manages information and knowledge-management services through the development and maintenance of a Case Flow Management System and database, analyses and compiles statistical information.

### 5.2. Strategic Objectives and Annual Targets for 2019/2020 to 2021/2022

The following table outlines the output targets for the budget year and over the MTEF period for the strategic objective.

Strategic Objective	Indicator	Strategic Plan Target	Audited/Actual Performance			Estimated performance	Medium-Term Targets		
			2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Specialised investigative capacity established	Number of investigators trained on specialised services as per the Training Plan per year	325	New indicator	73	100	75	75	75	75
Decision ready cases finalised	Percentage of decision ready cases completed from total cases received	60%	69% (7407)	49% (3449)	32% (2 934 of 9097)	45% (5347)	45% (4893)	45% (3061)	45% (3260)

### 5.3. Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022

The following table sets out the Programme Performance Indicators and output targets for MTEF period:

Programme Performance Indicator	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Percentage of cases allocated within 72 hours of receipt of written notification per year	92% (5126)	79% (5543)	79% (4445)	79% (5332)	80% (5100)	80% (5400)	80% (4608)
Number of statistical reports generated as per Sec 9(n) of IPID Act per year	18	6	6	2	2	2	2
Number of investigations of deaths in police custody that are decision ready per year	69% (229)	46% (140)	72% (145)	150	150	150	150
Number of investigations of deaths as a result of police action that are decision ready per year	66% (470)	29% (115)	30% (130)	130	130	130	130
Number of investigations of discharge of an official firearm by a police officer that are decision ready per year	62% (959)	49% (805)	21% (145)	500	150	150	150

SOL

S.M

Programme Performance Indicator	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Number of investigations of rape by police officer that are decision ready per year	74% (130)	54% (61)	66% (69)	65	69	69	69
Number of investigations of rape while in police custody that are decision ready per year	89% (25)	25% (5)	100% (9)	10	10	10	10
Number of investigations of torture that are decision ready per year	54% (124)	36% (63)	18% (39)	60	45	45	45
Number of investigations of assault that are decision ready per year	72% (5070)	53% 2 040)	31% (1 140)	2000	2000	2000	2000
Number of investigations of corruption that are decision ready per year	57% (130)	41% (66)	45% (56)	60	60	60	60
Number of investigations of other criminal and misconduct matters referred to in section 28(1)(h) of the IPID Act that are decision ready per year	58% (180)	35% (110)	22% (33)	80	40	40	40
Number of investigations of offences referred to in section 33 of the IPID Act that are decision ready	New indicator	New indicator	New indicator	New indicator	10	10	10
Number of approved systemic corruption investigations that are decision ready per year	7	4	5	2	3	3	3
Number of all backlog decision ready cases completed per year	68% (1 250)	49% (1 128)	33% (1 128)	1 250	1 490	1 490	1 490
Percentage of dockets referred to the National Prosecuting Authority within 30 days of being signed off per year	84% (808)	75% (859)	92% (1 317)	90% (1300)	90% (1350)	90% (1400)	90% (1450)
Percentage of disciplinary recommendation reports referred to the South African Police Service and Municipal Police Services within 30 days of being signed off per year	89% (1149)	83% (1 026)	94% (1 732)	90% (1400)	90% (1450)	90% (1550)	90% (1650)

5.4. Quarterly Targets for 2019/2020

The following table sets out the Quarterly Targets for the Programme Performance Indicators identified above.

Programme Performance Indicator	Reporting Period	Annual Target	Quarterly Targets			
			1st	2nd	3rd	4th
Percentage of cases allocated within 72 hours of receipt of written notification per year	Quarterly	80% (5100)	80% (1275)	80% (2550)	80% (3825)	80% (5100)
Number of statistical reports generated as per Section 9(n) of IPID Act per year	Quarterly	2	-	1	-	1
Number of investigations of deaths in police custody that are decision ready per year	Quarterly	150	20	50	110	150
Number of investigations of deaths as a result of police action that are decision ready per year	Quarterly	130	10	30	90	130

S.M  
SDL



Programme Performance Indicator	Reporting Period	Annual Target	Quarterly Targets			
			1st	2nd	3rd	4th
Number of investigations of discharge of an official firearm by a police officer that are decision ready per year	Quarterly	150	30	90	120	150
Number of investigations of rape by police officer that are decision ready per year	Quarterly	69	5	15	45	69
Number of investigations of rape while in police custody that are decision ready per year	Quarterly	10	-	3	6	10
Number of investigations of torture that are decision ready per year	Quarterly	45	5	15	30	45
Number of investigations of assault that are decision ready per year	Quarterly	2000	300	700	1400	2000
Number of investigations of corruption that are decision ready per year	Quarterly	60	10	20	50	60
Number of investigations of other criminal and misconduct matters referred to in section 28(1)(h) of the IPID Act that are decision ready per year	Quarterly	40	5	15	30	40
Number of investigations of offences referred to in section 33 of the IPID Act that are decision ready per year	Quarterly	10	-	5	8	10
Number of approved systemic corruption investigations that are decision ready per year	Annually	3	-	-	-	3
Number of all backlog decision ready cases completed per year	Annually	1 490	-	-	-	1 490
Percentage of dockets referred to the National Prosecuting Authority within 30 days of being signed off per year	Quarterly	90% (1350)	90% (337)	90% (675)	90% (1012)	90% (1350)
Percentage of disciplinary recommendation reports referred to the South African Police Service and Municipal Police Services within 30 days of being signed off per year	Quarterly	90% (1450)	90% (362)	90% (725)	90% (1087)	90% (1450)

5.5. Reconciling Performance Targets with the Budget and the MTEF

Table 20.11 Investigation and Information Management expenditure trends and estimates by sub-programme and economic classification

Subprogramme	Audited outcome				Adjusted appropriation	Average growth rate (%)	Average Expenditure/ Total (%)	Medium-term expenditure estimate			Average growth rate (%)	Average Expenditure/ Total (%)
	2015/16	2016/17	2017/18	2018/19				2019/20	2020/21	2021/22		
R million						2016/16 - 2018/19					2018/19 - 2021/22	
Investigation Management	10 920	16 521	15 876	18 056		18.3%	9.3%	19 684	20 310	22 147	7.0%	9.4%
Investigation Services	137 653	135 356	141 082	171 796		7.7%	88.5%	177 564	190 611	201 863	5.5%	86.7%
Informatics Management	4 055	3 607	2 726	4 645		4.5%	2.3%	5 742	9 699	10 327	30.5%	3.9%
<b>Total</b>	<b>152 628</b>	<b>155 484</b>	<b>159 684</b>	<b>194 507</b>		<b>8.4%</b>	<b>100.0%</b>	<b>205 990</b>	<b>221 220</b>	<b>234 337</b>	<b>6.4%</b>	<b>100.0%</b>

S.M  
SDL

150

	5 953	7 796	7 650								
Change to 2018 Budget estimate											
<b>Economic classification</b>											
<b>Current payments</b>	<b>150 844</b>	<b>155 175</b>	<b>159 402</b>	<b>191 269</b>	<b>8.2%</b>	<b>99.2%</b>	<b>203 702</b>	<b>218 830</b>	<b>231 745</b>	<b>6.6%</b>	<b>98.8%</b>
Compensation of employees	101 282	113 406	113 920	126 026	7.6%	68.6%	142 798	155 188	164 522	9.3%	68.7%
Goods and services <sup>1</sup>	49 562	41 769	45 482	65 243	9.6%	30.5%	60 904	63 642	67 223	1.0%	30.0%
<i>of which:</i>											
Computer services	2 692	5 176	3 408	2 830	1.7%	2.1%	2 900	3 171	3 467	7.0%	1.4%
Legal services	1 407	276	3 803	5 000	52.6%	1.6%	5 065	5 194	5 328	2.1%	2.4%
Fleet services (including government motor transport)	5 365	3 933	4 390	8 014	14.3%	3.3%	8 673	9 355	9 930	7.4%	4.2%
Operating leases	8 182	3 549	11 985	15 204	22.9%	5.9%	14 419	14 681	15 475	0.6%	7.0%
Property payments	5 445	5 694	8 099	10 877	25.9%	4.5%	14 604	15 020	15 619	12.8%	6.6%
Travel and subsistence	19 139	15 761	8 447	13 429	-11.1%	8.6%	8 146	8 759	9 395	-11.2%	4.6%
Transfers and subsidies <sup>1</sup>	167	69	282	135	-6.8%	0.1%	88	90	92	-12.0%	-
Departmental agencies and accounts	1	12	8	66	304.1%	-	88	90	92	11.7%	-
Households	166	57	274	69	-25.4%	0.1%	-	-	-	-100.0%	-
Payments for capital assets	1 617	158	-	3 100	24.2%	0.7%	2 200	2 300	2 500	-6.9%	1.2%
Machinery and equipment	1 617	158	-	3 100	24.2%	0.7%	2 200	2 300	2 500	-6.9%	1.2%
Payments for financial assets	-	82	-	3	-	-	-	-	-	-100.0%	-
<b>Total</b>	<b>152 628</b>	<b>155 484</b>	<b>159 684</b>	<b>194 507</b>	<b>-</b>	<b>100.0%</b>	<b>205 990</b>	<b>221 220</b>	<b>234 337</b>	<b>-</b>	<b>100.0%</b>
Proportion of total programme expenditure to vote expenditure	65.2%	64.3%	62.5%	61.7%	-	-	61.2%	61.6%	61.4%	-	-

S.M  
SIDL





Details of transfers and subsidies										
Departmental agencies and accounts										
Departmental agencies (non-business entities)										
Current	1	12	8	66	-	-	88	90	92	-
Communication	1	12	8	66	304.1%	-	88	90	92	11.7%
<b>Households</b>										
<b>Other transfers to households</b>										
Current	166	57	274	69	-	0.1%	-	-	-	-
Employee Social Benefits	98	35	274	-	-	0.1%	-	-	-	-
Claims Against The State	68	22	-	69	-25.4%	-	-	-	-	-100.0%

**5.6. Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators**

Over the medium term, CoE and travel and subsistence will remain the biggest cost drivers in Programme 2: Investigation and Information Management, constituting 71% and 4% of the total budget respectively. Spending on CoE will increase from R126.0 million in 2018/19 to R164.5 million in 2021/22, an average of 10% mainly to provide for inflationary adjustments.

In 2017/18, deaths in police custody and as a result of police action constituted 11.3 per cent (637 out of 5 651) of the total number of cases reported to the Department. Of these, 275 were decision ready and forwarded to the National Prosecuting Authority and the South African Police Service for further processing. Over the medium term, the Department plans to ensure that at least 450 cases of deaths while in police custody and 390 cases of deaths as a result of police action are decision ready.

The Department has reprioritised a total of R1.2 million over the medium term from closed satellite offices' operational costs to minor assets in order to provide for the strategic procurement of investigative equipment for investigators. The investigative equipment to be procured includes specialised cameras, protective clothing, recording equipment and firearms. In addition, the Department intends to procure its own fleet of vehicles for investigators and has reprioritised R7 million over the medium term for this purpose. The investigators are currently making use of rental vehicles from G-fleet, which on average have costed R3.3 million per annum between 2015/16 and 2017/18.

The procurement of vehicles for investigators will lead to a cost reduction of R2.3 million per annum over the medium term. The procurement of specialised investigative equipment and vehicles is not expected to improve performance in the short term hence the indicator targets remain constant over the medium term. However, it is expected that the procurement of vehicles will result in reduced cost for the rental of G-fleet vehicles as the Department will have its own vehicles, and that the investigators will be able to effectively execute investigations which will thus have a positive impact on performance in future.

**6. PROGRAMME 3: LEGAL AND INVESTIGATION ADVISORY SERVICES**

**6.1. Purpose**

Manage and facilitate the provision of investigation advisory services. Provide legal, civil and labour litigation services. The programme consists of the following three sub-programmes:

**6.1.1. Legal Support and Administration**

The sub-programme manages the Directorate's legal obligations by developing and maintaining systems, procedures and standards to assist, guide and direct legal support within the Directorate.

**6.1.2. Litigation Advisory Services**

The sub-programme coordinates civil and labour litigation, and grants policing powers. Other key activities and outputs include finalising contracts and service level agreements.

S.M  
SDL

6.1.3. Investigation Advisory Services

The sub-programme provides support during and after investigations, provides legal advice and guidance to investigators and ensures that all cases forwarded for prosecution comply with the requirements of the prosecution.

6.2. Strategic Objectives and Annual Targets for 2019/2020 to 2021/22

The following table outlines the output targets for the budget year and over the MTEF period for the strategic objective.

Strategic Objective	Strategic Indicator	Strategic Plan Target	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
			2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
To provide investigation advisory services to investigators to ensure quality investigation	Percentage of legal advice provided to investigators before and after investigations	90%	75% (12)	100%	100% (7)	90% (6)	90% (6)	90% (6)	90% (96)

6.3. Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022

The following table sets out the Programme Performance Indicators and output targets for MTEF period:

Programme Performance Indicator	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Percentage of legal advice provided to the department on litigation matters within 12 working days of receipt of the action or application per year	New indicator	New indicator	New indicator	New indicator	100% (6)	100% (6)	100% (6)
Percentage of written legal advice provided to the Department within 30 working days of request per year	85%	71%	10% (1)	70% (4)	70% (8)	70% (8)	70% (8)
Percentage of contracts/service level agreements finalised within 30 working days of request per year	79%	-	71% (22)	70% (10)	70% (25)	70% (25)	70% (25)
Percentage of oral legal advice provided to investigators within 24 hours of request per year	90% (6)	100% (3)	100% (2)	90% (3)	90% (2)	90% (2)	90% (2)
Percentage of written legal advice provided to investigators within 2 working days of request per year	90% (6)	100% (3)	100% (5)	90% (3)	90% (5)	90% (5)	90% (5)
Percentage of PAA requests finalised within 30 days per year	57% (54)	91% (60)	90% (91)	100% (65)	100% (95)	100% (95)	100% (95)
Number of workshops conducted with investigators on practice notes produced per year	New indicator	New indicator	New indicator	New indicator	3	3	3

S.M  
SOL

6.4. Quarterly Targets for 2019/2020

The following table sets out the Quarterly Targets for the Programme Performance Indicators identified above.

Programme Performance Indicator	Reporting Period	Annual Target	Quarterly Targets			
			1st	2nd	3rd	4th
Percentage of legal advice provided to the department on litigation matters within 12 working days of receipt of the action or application per year	Annually	100% (6)	-	-	-	100%
Percentage of written legal advice provided to the Department within 30 working days of request per year	Annually	70% (8)	-	-	-	70%
Percentage of contracts/service level agreements finalised within 30 working days of request per year	Annually	70% (25)	-	-	-	70%
Percentage of oral legal advice provided to investigators within 24 hours of request per year	Annually	90% (2)	-	-	-	90%
Percentage of written legal advice provided to investigators within 2 working days of request per year	Annually	90% (5)	-	-	-	90%
Percentage of PAIA requests finalised within 30 days per year	Annually	100% (95)	-	-	-	100%
Number of workshops conducted with investigators on practice notes produced per year	Quarterly	3	-	1	1	1

6.5. Reconciling Performance Targets with the Budget and MTEF

Table 20.13 Legal and Investigation Advisory Services: expenditure trends and estimates by sub-programme and economic classification

Sub-programme	Audited outcome				Average growth rate (%)	Average Expenditure/Total (%)	Medium-term expenditure estimate			Average growth rate (%)	Average Expenditure/Total (%)
	2015/16	2016/17	2017/18	Adjusted appropriation 2018/19			2019/20	2020/21	2021/22		
Legal	1 753	1 834	2 381	1 737	-0.3%	35.8%	1 882	1 989	2 115	6.8%	25.8%
Support and Administration											
Litigation Advisory Services	2 180	1 894	1 461	2 350	2.5%	36.7%	2 778	2 942	3 133	10.1%	37.4%
Investigation Advisory Services	1 801	1 507	892	1 708	-1.7%	27.5%	2 853	3 117	3 365	25.4%	36.8%
<b>Total</b>	<b>5 734</b>	<b>5 235</b>	<b>4 734</b>	<b>5 796</b>	<b>0.4%</b>	<b>100.0%</b>	<b>7 513</b>	<b>8 048</b>	<b>8 613</b>	<b>14.1%</b>	<b>100.0%</b>
Change to 2018 Budget estimate							(198)	(248)	(216)		
<b>Economic classification</b>											
Current payments	5 708	4 962	4 462	5 796	0.5%	97.3%	7 513	8 048	8 613	14.1%	100.0%
Compensation of employees	4 427	3 618	3 144	5 216	5.6%	76.3%	6 903	7 396	7 925	15.0%	91.6%

SOL

S.M

154

Goods and services <sup>1</sup>	1 281	1 344	1 318	579	-23.2%	21.0%	610	652	688	5.9%	8.4%
<i>of which:</i>											
Administrative fees	9	9	7	8	-4.5%	0.2%	14	14	14	21.3%	0.2%
Communication	37	96	50	105	41.6%	1.3%	79	85	98	-2.3%	1.2%
Consumable supplies	9	6	3	10	2.1%	0.1%	7	9	8	-5.8%	0.1%
Consumables: Stationery, printing and office supplies	9	-	23	44	69.2%	0.4%	88	97	106	34.5%	1.1%
Travel and subsistence	298	410	147	308	1.1%	5.4%	330	349	361	5.4%	4.5%
Training and development	11	-	49	83	96.4%	0.7%	87	94	100	6.3%	1.2%
Transfers and subsidies <sup>1</sup>	-	273	272	-	-	2.5%	-	-	-	-	-
Households	-	273	272	-	-	2.5%	-	-	-	-	-
Payments for capital assets	26	-	-	-	-100.0%	0.1%	-	-	-	-	-
Machinery and equipment	26	-	-	-	-100.0%	0.1%	-	-	-	-	-
<b>Total</b>	<b>5 734</b>	<b>5 235</b>	<b>4 734</b>	<b>5 796</b>	<b>-</b>	<b>100.0%</b>	<b>7 513</b>	<b>8 048</b>	<b>8 613</b>	<b>-</b>	<b>100.0%</b>
Proportion of total programme expenditure to vote expenditure	2.4%	2.2%	1.9%	1.8%	-	-	2.2%	2.2%	2.3%	-	-
<b>Details of transfers and subsidies</b>											
Households											
Other transfers to households	-	273	272	-	-	2.5%	-	-	-	-	-
Current											
Claims Against The State	-	273	272	-	-	2.5%	-	-	-	-	-

6.6. Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators

Investigations of senior police officials are often met with resistance, including counter-litigation, which increases the directorate's legal costs and places pressure on its operational capacity. Due to limited personnel capacity in the Legal and Investigation Advisory Services Programme, the Department makes use of private attorneys to assist with all litigation cases. In order to curb the use of private attorneys, the Department has gone out on a tender to appoint a Panel of Attorneys.

As a result, and due to the volume of cases being investigated, the Department's overall expenditure on legal services in the Investigation and Information Management programme is expected to increase at an average annual rate of 2.1 per cent, from R5 million in 2018/19 to R5.3 million in 2021/22.

S.M SPL



**7. PROGRAMME 4: COMPLIANCE MONITORING AND STAKEHOLDER MANAGEMENT**

**7.1. Purpose**

Safeguard the principles of cooperative governance and stakeholder relations. Monitor and evaluate the relevance and appropriateness of recommendations made to the South African Police Service and Municipal Police Services in terms of the Independent Police Investigative Directorate Act, 2011. The programme consists of the following two sub-programmes:

**7.1.1 Compliance Monitoring**

The Sub-programme monitors and evaluates the quality of recommendations made and responses received from on such recommendations from the South African Police Service, Municipal Police Services and National Prosecuting Authority in compliance with the reporting obligations in terms of the IPID Act, 2011.

**7.1.2. Stakeholder Management**

The Sub-programme manages relations and liaises with the Directorate's key stakeholders such as the South African Police Service, Municipal Police Services, Civilian Secretariat for Police, National Prosecuting Authority, the Special Investigating Unit, the Public Protector of South Africa, the State Security Agency and civil society organisations, in line with the requirements of the IPID Act.

**7.2. Strategic Objective Annual Targets for 2019/2020 to 2021/2022**

The following table outlines the output targets for the budget year and over the MTEF period for the strategic objective.

Strategic Objective	Indicator	Strategic Plan Target	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
			2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
An Integrated Communication and Stakeholder Engagement Strategy	Percentage implementation of the Integrated Communication and Stakeholder Engagement Strategy	90%	New Indicator	Draft Integrated Communication and Stakeholder Engagement Strategy	53% (13)	90%	90% (22)	90% (22)	90% (22)

**7.3. Programme Performance Indicators and Annual Targets for 2019/2020 to 2021/2022**

The following table sets out the Programme Performance Indicators and Annual Targets for the MTEF period:

Programme Performance Indicator	Audited/Actual Performance			Estimated Performance	Medium-Term Targets		
	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Number of community outreach events conducted per year	244	98	127	80	40	40	40
Number of formal engagements held with key stakeholders per year	142	134	186	128	136	136	136
Number of disciplinary recommendations referred to SAPS and MPS that are analysed per year	New indicator	New indicator	New indicator	1000	1100	1100	1100
Number of criminal referrals forwarded to NPA that are analysed per year	New indicator	New indicator	New indicator	748	748	800	800
Percentage of responses from SAPS and MPS that are analysed per year	New Indicator	New indicator	New indicator	50%	70% (1260)	70% (1260)	70% (1260)
Percentage of responses from the NPA that are analysed per year	New indicator	New indicator	New indicator	50%	70% (840)	70% (840)	70% (840)
Number of case docket inspections conducted per year	New indicator	New indicator	New indicator	New indicator	5	5	5

SOL

S.M

7.3. Programme Performance Indicators and Quarterly Targets for 2019/2020

The following table sets out the quarterly targets for the Programme Performance Indicators identified above:

Programme Performance Indicator	Reporting Period	Annual Target	Quarterly Targets			
			1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Number of community outreach events conducted per year	Quarterly	40	10	20	30	40
Number of formal engagements held with key stakeholders per year	Quarterly	136	34	68	102	136
Number of disciplinary recommendations referred to SAPS and MPS that are analysed per year	Quarterly	1100	275	550	825	1100
Number of criminal referrals forwarded to NPA that are analysed per year	Quarterly	748	187	374	561	748
Percentage of responses from SAPS and MPS that are analysed per year	Quarterly	70% (1260)	70% (315)	70% (630)	70% (945)	70% (1260)
Percentage of responses from the NPA that are analysed per year	Quarterly	70% (840)	70% (210)	70% (420)	70% (630)	70% (840)
Number of case docket inspections conducted per year	Quarterly	5	-	2	2	1

7.4. Reconciling performance targets with the Budget and MTEF

Table 20.15 Compliance Monitoring and Stakeholder Management expenditure trends and estimates by sub-programme and economic classification

Subprogramme	Audited outcome				Adjusted appropriation	Average growth rate (%)	Average Expenditure/Total (%)	Medium-term expenditure estimate			Average growth rate (%)	Average Expenditure/Total (%)
	2015/16	2016/17	2017/18	2018/19				2019/20	2020/21	2021/22		
R. million												
Compliance Monitoring	4 115	4 139	5 876	7 366	21.4%	60.3%	10 227	10 904	11 695	16.7%	64.3%	
Stakeholder Management	117	4 499	4 496	5 028	250.3%	39.7%	5 351	5 791	6 162	7.0%	35.7%	
<b>Total</b>	<b>4 232</b>	<b>8 638</b>	<b>10 372</b>	<b>12 394</b>	<b>43.1%</b>	<b>100.0%</b>	<b>(1 636)</b>	<b>(1 810)</b>	<b>(1 829)</b>			
Change to 2018 Budget estimate												
<b>Economic classification</b>												
Current payments	4 169	8 365	10 252	12 394	43.8%	98.7%	15 578	16 695	17 857	12.9%	100.0%	
Compensation of employees	3 556	7 044	8 525	11 024	45.8%	84.6%	13 389	14 379	15 413	11.8%	86.7%	
Goods and services <sup>1</sup>	613	1 321	1 727	1 370	30.7%	14.1%	2 189	2 316	2 444	21.3%	13.3%	
of which:												
Advertising	14	15	147	160	125.2%	0.9%	167	176	188	5.5%	1.1%	
Communication	41	149	127	155	55.8%	1.3%	215	224	152	-0.6%	1.2%	

S.M  
50L



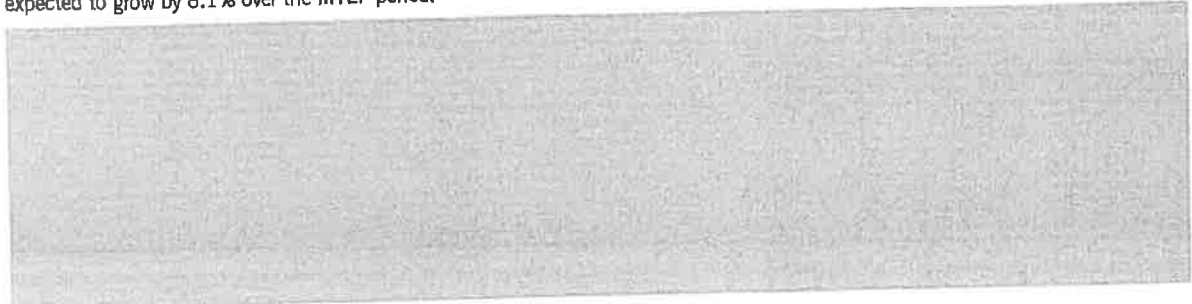
Computer services	50	215	747	84	18.9%	3.1%	89	100	101	6.3%	0.6%
Consumables: Stationery, printing and office supplies	32	153	40	53	18.3%	0.8%	121	127	135	36.6%	0.7%
Travel and subsistence	377	437	388	718	24.0%	5.4%	1 338	1 437	1 597	30.5%	8.1%
Training and development	35	47	26	69	25.4%	0.5%	86	103	111	17.2%	0.6%
Transfers and subsidies <sup>1</sup>	-	273	-	-	-	0.8%	-	-	-	-	-
Households	-	273	-	-	-	0.8%	-	-	-	-	-
Payments for capital assets	63	-	120	-	-100.0%	0.5%	-	-	-	-	-
Machinery and equipment	63	-	120	-	-100.0%	0.5%	-	-	-	-	-
<b>Total</b>	<b>4 232</b>	<b>8 638</b>	<b>10 372</b>	<b>12 394</b>	<b>-</b>	<b>100.0%</b>	<b>15 578</b>	<b>16 695</b>	<b>17 857</b>	<b>-</b>	<b>100.0%</b>
Proportion of total programme expenditure to vote expenditure	1.8%	3.6%	4.1%	3.9%	-	-	4.6%	4.6%	4.7%	-	-

Details of transfers and subsidies											
<b>Households</b>											
<b>Other transfers to households</b>											
Current			- 273	-	-	-	0.8%	-	-	-	-
Claims Against The State			- 273	-	-	-	0.8%	-	-	-	-

**7.5. Relating expenditure trends to Strategic Outcome-Oriented Goals and Performance Indicators**

The performance targets for community outreach indicator have been reduced over medium term due to capacity constraints. The Provincial offices are utilising investigators to conduct outreach campaigns which affects their core mandate, which is investigation of allocated cases. The Department will continue to conduct the planned community outreach events within the allocated resources.

The fiscal position of the Department makes it difficult to carry out aggressive communications and stakeholder activities hence the reduction of the target. The Department will over the medium term establish and use other effective means of communication such as community radio stations and local newspapers to reach the members of community. The average expenditure in travel and subsistence is expected to grow by 8.1% over the MTEF period.



SOL

S.M



PART C: LINKS TO OTHER PLANS

IPID Crime Scene Vehicle

The Department does not have major infrastructure plans, does not administer conditional grants nor has public entities and public private partnerships.

S.M

SOL





PART D: TECHNICAL INDICATOR DESCRIPTION TABLE

IPID Crime Scene Vehicle

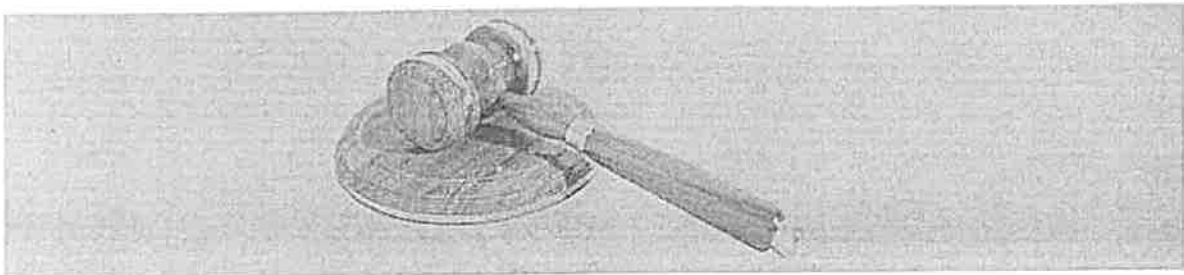
Please refer to IPID's website ([www.ipid.gov.za](http://www.ipid.gov.za)) for full definitions of all strategic indicators and programme performance indicators.

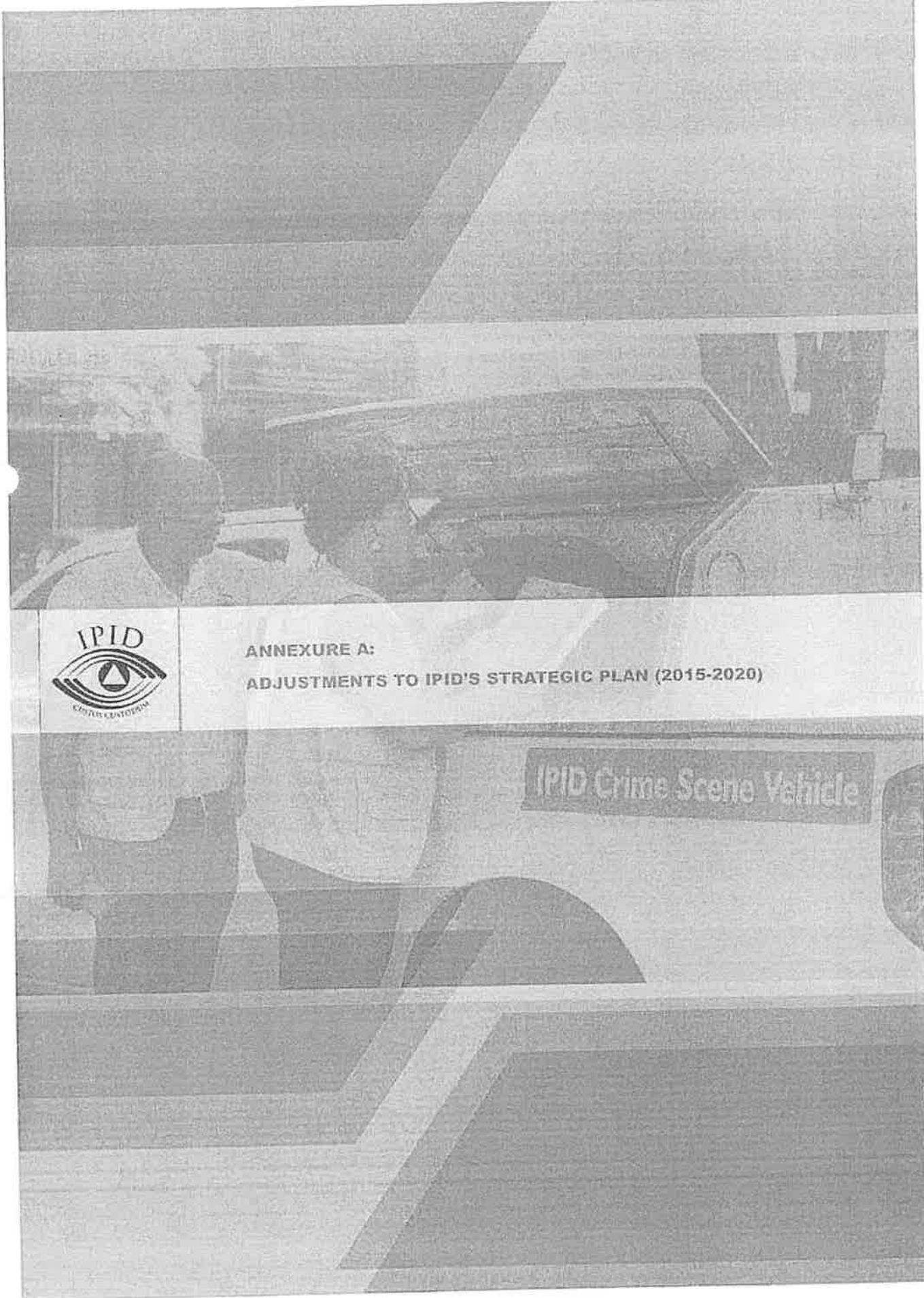
S.M

SOL

## LIST OF ACRONYMS

ConCourt	Constitutional Court
CoE	Compensation of Employees
CSPS	Civilian Secretariat for Police Service
DPSA	Department of Public Service Administration
GIAMA	Government Immoveable Asset Management Act
ICT	Information Communication Technology
IPID	Independent Police Investigative Directorate
MISS	Minimum Information Security Standards
MOU	Memorandum of Understanding
MPS	Municipal Police Service
MTBPS	Medium Term Budget Policy Statement
MTEF	Medium Term Expenditure Framework
MTSF	Medium Term Strategic Framework
NDP	National Development Plan
NSIT	National Specialised Investigations Team
NT	National Treasury
PAIA	Promotion of Access to Information Act
PAMA	Public Administration Management Act
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
PSA	Public Service Act
PSR	Public Service Regulations
SAPS	South African Police Service
SCM	Supply Chain Management





**ANNEXURE A:  
ADJUSTMENTS TO IPID'S STRATEGIC PLAN (2015-2020)**

S.M 506

ANNEXURE A: ADJUSTMENTS TO IPID'S STRATEGIC PLAN (2015-2020)

The Framework for Strategic and Annual Performance Plans (2015) provides that "A Strategic Plan may be changed during the five-year period that it covers. However, such changes should be limited to revisions related to significant policy shifts or changes in the service delivery environment. The relevant institution does this by issuing an amendment to the existing plan, which may be published as an Annexure to the Annual Performance Plan, or by issuing a revised Strategic Plan". Further, the Framework further requires departments to set SMART strategic objectives that reflect the high level outputs the department would like to produce in order to achieve its outcome-oriented goals and vision.

In view of the above, the Department has made adjustments to some of its strategic objectives, strategic indicators and strategic targets. A summary of the adjustments from the 2016/17 to 2019/2020 financial year is presented as follows:

ADJUSTMENTS TO THE STRATEGIC PLAN						
Old			Changes			Justification for Adjustments
Strategic Objective	Strategic Indicator	Strategic Target	Strategic Objective	Strategic Indicator	Strategic Target	
<b>Programme 1: Administration</b>						
Capacity building is undertaken	Vacancy rate per year	<10%	A capable workforce <sup>6</sup>	Number of strategic training areas undertaken as per IPID's Training Plan <sup>7</sup>	7	The ultimate outcome of undertaking capacity building is to ensure that IPID has a capable workforce that is able to deliver on its mandate. The objective will be achieved by capacitating IPID employees through a themed strategic approach to training.
Departmental Performance Management System operates optimally	Number of performance reports produced	9	-	-	-	Discontinued  The indicator for this strategic objective was not SMART enough and target was the production of performance report which was not adequate to assess whether the Department is achieving its strategic objective. Based on AG's repeat findings as well as the recommendations of the Portfolio Committee on Police, management took a decision to replace this strategic objective with the one that aims to improve the risk maturity level of the department.
Effective risk management	Improved risk level of risk maturity	Level 5	-	-	-	Discontinued Based on management deliberations and performance dialogue with the Department Planning, Monitoring and Evaluation it was agreed that the strategic objective was more operational.

S.M  
SDC



**ADJUSTMENTS TO THE STRATEGIC PLAN**

Old			Changes			Justification for Adjustments
Strategic Objective	Strategic Indicator	Strategic Target	Strategic Objective	Strategic Indicator	Strategic Target	

A capable workforce	Number of strategic training areas undertaken as per IPID's Training Plan	21			28	The target was reviewed to incorporate the annual target of the last year of the MTSF five-year period.
---------------------	---	----	--	--	----	---

**Programme 2: Investigations and Information Management**

Case Management System	Percentage of cases registered and allocated within 72 hours of receipt of written notification Number of statistical reports generated on the number and type of cases investigated, recommendations made and the outcomes thereof	90% 18 reports	Specialised investigative capacity established <sup>11</sup>	Number of employees trained as per the Specialised Investigation Training Plan	325	Investigations are the core business of the Department. Based on the trend analysis as well as recommendations emanating from various reports (external and internal) for the need for IPID to improve on its performance regarding its core business, it becomes necessary for IPID to prioritise and strengthen its investigative capacity.
------------------------	--	-------------------	--	--	-----	---

Decision ready cases finalised	Percentage of decision ready cases (finalised) per annum	58%	Decision ready cases completed	Number of decision ready cases completed from total cases received	60	To ensure the strategic objective and strategic indicator are aligned to the Standard Operating Procedure and specific in line with the SMART principle.
--------------------------------	--	-----	--------------------------------	--	----	--

Recommendation reports generated and referred	Percentage of recommendation reports referred per annum	80%				Discontinued The indicator was duplicated at both strategic and APP Level. The referral of recommendation reports will be monitored at a Programme Performance Indicator level
---	---	-----	--	--	--	---

**Programme 3: Legal Services**

Legal and litigation services provided	Percentage of legal opinions provided to the Department <sup>13</sup>	90%				Discontinued The strategic indicator was duplicated as a strategic indicator and a programme performance indicators. It will be retained at APP level.
--	---	-----	--	--	--	---

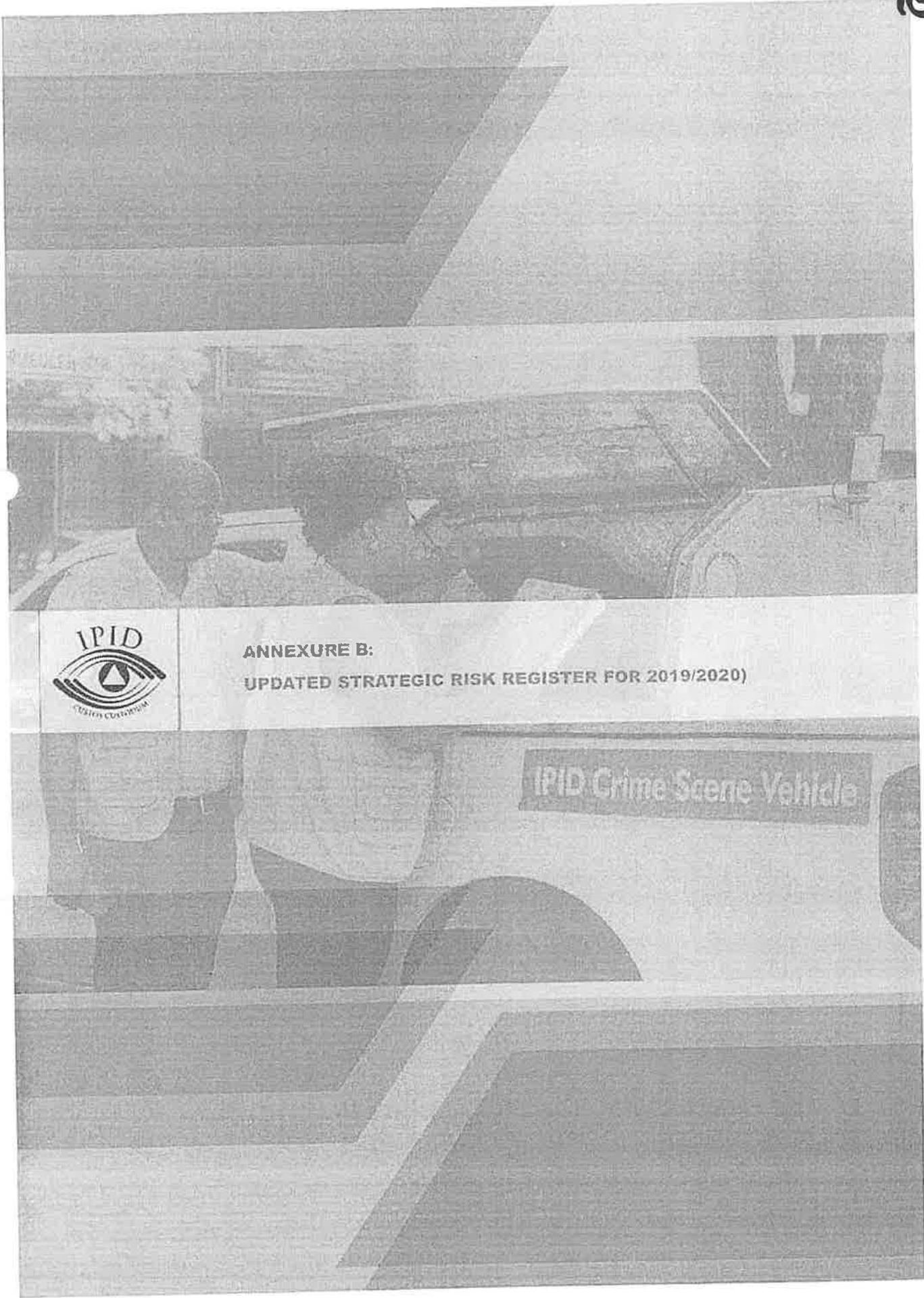
S.M      SDL

ADJUSTMENTS TO THE STRATEGIC PLAN						
Old			Changes			Justification for Adjustments
Strategic Objective	Strategic Indicator	Strategic Target	Strategic Objective	Strategic Indicator	Strategic Target	
Investigation advisory services are undertaken	Percentage of legal advice provided to investigators	90%	To provide investigation advisory services to investigators to ensure quality investigation <sup>14</sup>	Percentage of legal advice provided to investigators before and after investigations	-	The strategic objective and strategic indicator were reviewed to ensure that they are specific and relevant to the programme's purpose. However, they still measure the same object.

Programme 4 Compliance Monitoring and Stakeholder Management						
Quality Assurance of Recommendations Report	Number of reports on the evaluation of the quality of IPID recommendations per year	4	Ensure an Integrated Communication and Stakeholder Engagement Strategy	Percentage of implementation of the Integrated Communication and Stakeholder Engagement Strategy	90%	At the core of IPID's legislative mandate is the need to conduct "investigations" and "engagements" with relevant stakeholders to address the outcomes of the investigations as contemplated in Section 9 read with Section 15, 21 (g) and 30 of the IPID Act No. 1 of 2011. Based on management discussion it became evident that the Department must prioritise its approach and mechanisms to fulfilling the above-mentioned sections of the Act as they have a bearing on IPID's overall performance. It is in this regard that the implementation of an integrated strategy on stakeholder engagement and communication has been prioritised in order to assist the IPID to improve on its performance.
Compliance Monitoring of Responses to Recommendations	Number of submitted reports on the responsiveness of SAPS/MPS/NPA on IPID recommendations per year	4				
Public Awareness Campaigns	Number of community outreach events conducted per year	216				
Stakeholder Management	Number of formal engagements conducted with key stakeholders per year	120				



S.M 504



**ANNEXURE B:  
UPDATED STRATEGIC RISK REGISTER FOR 2019/2020)**

S.M  
SOL

ANNEXURE B: UPDATED STRATEGIC RISK REGISTER FOR 2019/2020

Risk Title	Risk Description	Contributing Factors	Risk Owner	Risk Residual Rating	Mitigation Strategies/Response Action
1. Counter Investigations by SAPS	The mandate of IPID is to investigate cases and finalise them efficiently and on time. Cases might not be finalised as per the set objectives due to the counter investigations that sets to interfere with the investigations by IPID.	<ul style="list-style-type: none"> <li>Interferences on IPID investigations</li> <li>Counter litigations against IPID officials</li> </ul>	<ul style="list-style-type: none"> <li>Programme Manager: Investigation and Information Management</li> <li>Programme Manager: Legal Services</li> </ul>	High Risk	<ul style="list-style-type: none"> <li>Engagement with Ministry of Police and Senior Management of SAPS to manage counter investigations</li> <li>Court Interdicts launched to stop the counter investigations</li> <li>Adequate resourcing of human capacity and litigation budget to address the legal implications</li> </ul>
2. Infiltration of IPID investigations by SAPS	IPID investigates criminal cases against SAPS police officials as per S28 of the IPID Act. Possible Infiltration by SAPS officials in the investigations conducted by IPID to derail the process poses a risk on the IPID ability to achieve its mandate	<ul style="list-style-type: none"> <li>Possible collusion with IPID Investigators and SAPS officials</li> <li>Possible threats to harm IPID investigators</li> <li>Bribery offered to IPID investigators</li> </ul>	Programme Manager: Investigation and Information Management	High Risk	<ul style="list-style-type: none"> <li>Launch litigations against members of SAPS on interference of IPID investigations</li> <li>Engagement with Ministry of Police and Senior Management of SAPS to manage Infiltration</li> <li>Liaise with other relevant security cluster department to solicitate assistance with regard to protection of investigators;</li> <li>Issue protective equipment to investigators to protect themselves from any possible dangerous situations they may encounter.</li> <li>Facilitate defensive tactical training for investigators for them to be able to protect themselves against any threat or harm they encounter</li> <li>Conduct Advocacy session to intensify Integrity Strengthening of IPID investigators.</li> <li>Perform regular lifestyle audits</li> </ul>

S.M SPL



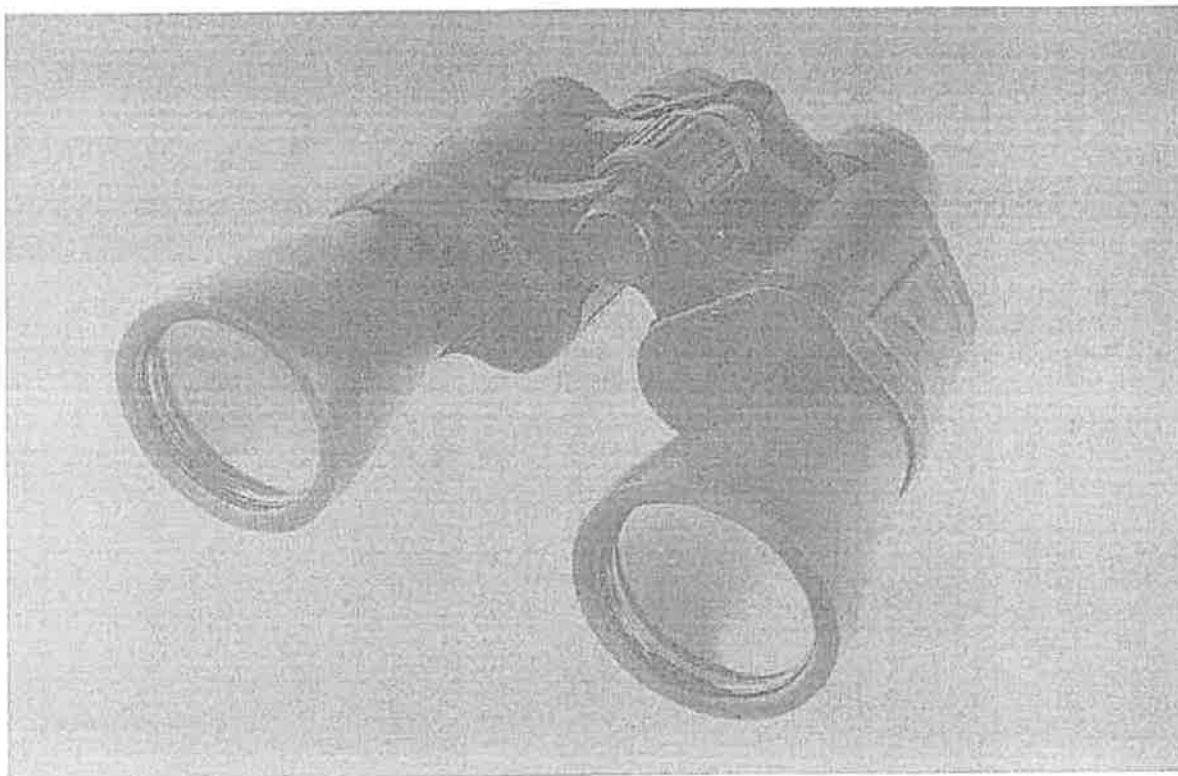


Risk Title	Risk Description	Contributing Factors	Risk Owner	Risk Residual Rating	Mitigation Strategies/Response Action
3. Political Interferences	In delivering the constitutional mandate, the IPID may be affected by external political environment to achieve proper implementation of its objectives.	Inadequate reporting/ accounting lines	Programme Manager: Legal Services	Extreme Risk	<ul style="list-style-type: none"> <li>Clear accounting and reporting lines to be incorporated in the proposed amendments of the IPID Act, consistent with the Constitutional Court judgment and the constitutional provisions</li> </ul>
4. Constrained Resources	Adequate resources and their proper allocation is fundamental to the IPID to achieve its overall objectives. Due to the continuous baseline budget reduction experienced, there is a high possibility of resources being constrained which will impact negatively on operations.	<ul style="list-style-type: none"> <li>Limited budget allocation and continuous reduction of baseline allocation.</li> <li>Unfunded operational activities</li> </ul>	Chief Finance Officer; Programme managers	High Risk	<ul style="list-style-type: none"> <li>Continuous engagement with National Treasury on the request for further funding of the IPID Act.</li> <li>Source funding through other avenues</li> <li>Reprioritisation of limited funding to focus on critical strategic objectives.</li> </ul>
5. Inadequate Information Systems	Proper information technology serves as a critical part of the origination's ability to perform its duties and achieve its mandate. The risk on the information systems impact on the department's performance as it will hinder in terms of conducting certain functions to finalise the work that needs to be done.	<ul style="list-style-type: none"> <li>Obsolete IT infrastructure (network and equipment)</li> <li>Compromised Information security</li> </ul>	Programme Manager : Corporate Services	High Risk	<ul style="list-style-type: none"> <li>Re-prioritisation of budget for network and infrastructure upgrade</li> <li>Implementation of network and infrastructure upgrade project</li> </ul>

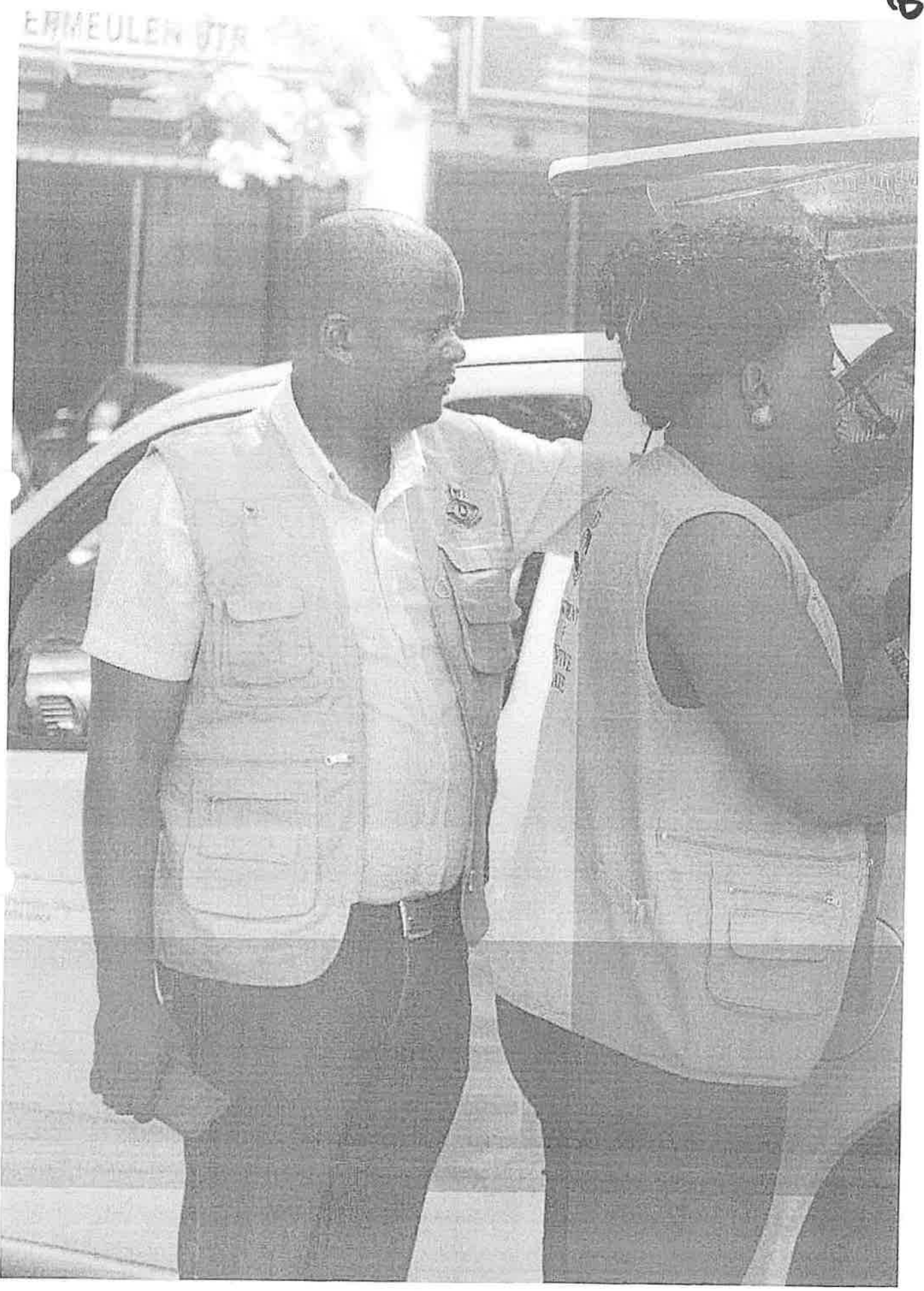
SAL

S. M

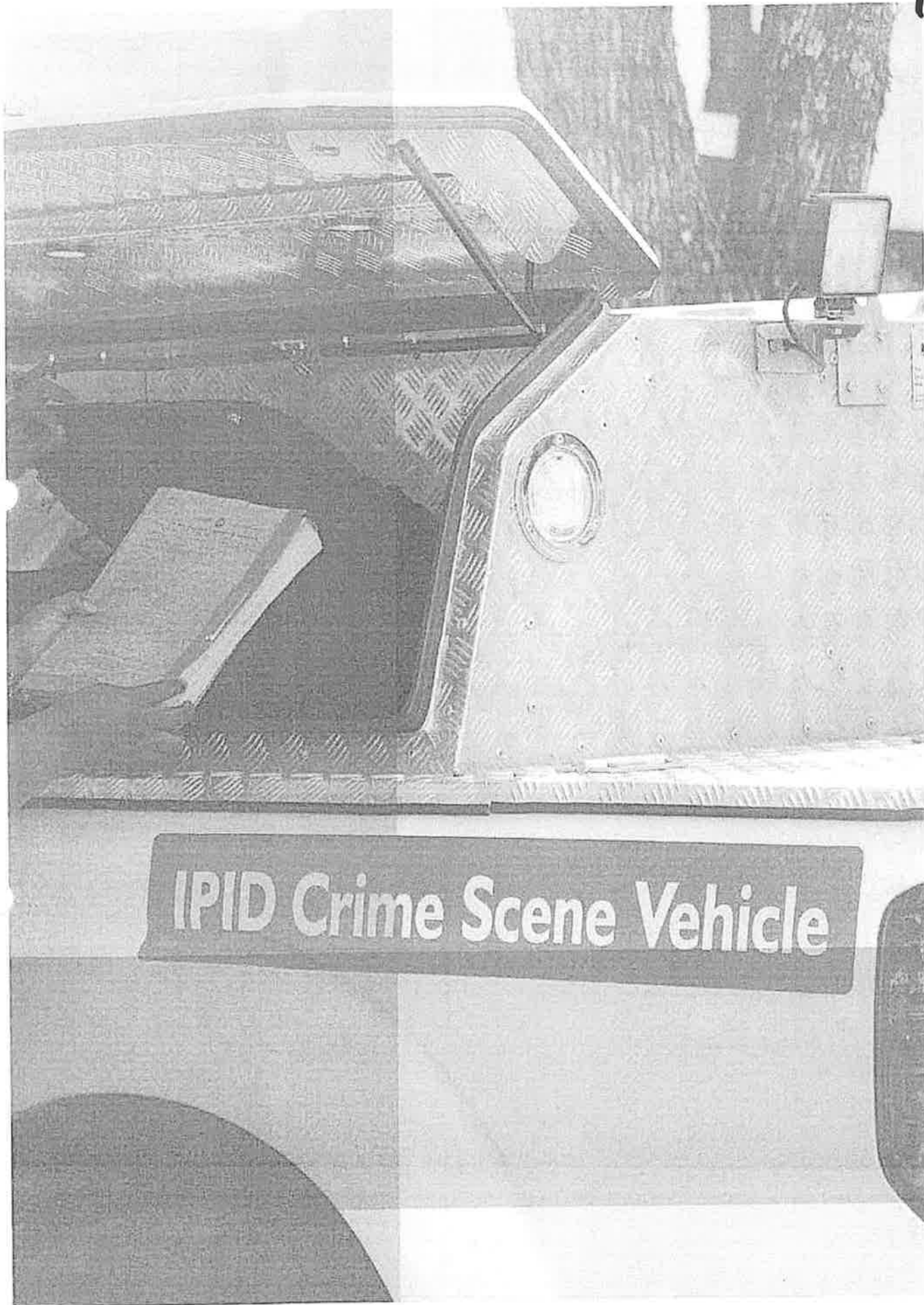
Risk Title	Risk Description	Contributing Factors	Risk Owner	Risk Residual Rating	Mitigation Strategies/Response Action
6. Inability to Investigate and finalise cases timely	The mandate of IPID is to investigate cases and finalise them effectively and on time. Cases might not be finalised as per the set objectives.	<ul style="list-style-type: none"> <li>Reduced Accessibility to clients</li> <li>Capacity on Specialised investigations</li> <li>Resource constraints (budget &amp; working tools)</li> <li>Delays in obtaining technical reports</li> </ul>	Programme Manager: Investigation and Information Management	High Risk	<ul style="list-style-type: none"> <li>Department to establish working relations with other departments to assist with work space</li> <li>Enhance skills by providing training on certain areas of specialized investigations to optimize service delivery</li> <li>Recruitment of relevant technical skills to address the gap on specialized investigations</li> <li>Reprioritization of investigation to match the resources available</li> <li>Continuous engagement with the FSL (forensic services lab) and Health department (pathology services) to speed up the technical reports for IPID cases</li> </ul>



S.M SDA



S. 17 SOL



**IPID Crime Scene Vehicle**

S. M      SDL



National Office  
City Forum Building  
114 Madiba Street  
Pretoria  
Gauteng  
012 399 0000 • 012 326 0408  
complaints@ipid.gov.za  
www.ipid.gov.za



SDI  
SDL

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISIO, PRETORIA)

CASE NO: 21521/20

In the matter between:

**KHOSA, MPHEPHU**

First Applicant

**MONTSHA, NOMSA**

Second Applicant

**MUVHANGO, THABISO**

Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS**

First Respondent

**SECRETARY FOR DEFENCE**

Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE**

Third Respondent

**MINISTER OF POLICE**

Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE**

Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT**

Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT**

Seventh Respondent

**OFFICE OF THE MILITARY OMBUD**

Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE  
DIRECTORATE**

Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

Tenth Respondent

**RESPONDENTS' NOTICE TO OPPOSE**

**PLEASE TAKE NOTICE THAT** the First, Second, Third, Fourth and Fifth Respondents hereby file their intention to oppose the above matter and appoint the address of their attorneys as the address where all documents in the application may be served.

**PLEASE TAKE FURTHER NOTICE THAT** the Respondents shall accept service of all subsequent documents and notices at their attorneys address situated at Salu Building, 316 Thabo Sehume Street, Pretoria. The Respondents are further prepared to accept service of all subsequent documents and notices by means of electronic mail at [Lufuno.funie18@gmail.com](mailto:Lufuno.funie18@gmail.com) and [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za).

**DATED and SIGNED at PRETORIA on the 26<sup>TH</sup> day of APRIL 2020.**



**STATE ATTORNEY PRETORIA**  
1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents'  
Attorneys  
Ground Floor, Salu Building  
316 Thabo Sehume Street  
Pretoria  
Private Bag X 91  
Pretoria, 0001  
Ref: L TSHIVHASE/Z73  
Tel: (012) 309-1697  
Fax: (086) 447 5976  
Cell: 076 996 1681

EMAIL: [lufuno.funie18@gmail.com](mailto:lufuno.funie18@gmail.com)  
and [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za)  
Enq: MS L TSHIVHASE

**TO: THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT**

**AND TO: IAN LEVITT ATTORNEYS**

Attorneys for the Applicants  
19<sup>th</sup> Floor, Sandton City Office Towers  
Cnr Rivonia and 5<sup>th</sup> Street  
Johannesburg  
Po Box 783244  
Sandton, 2146  
Tel: 011 784 3310  
Cell: 083 959 4610  
Email: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)  
REF: W STEYL/MAT

**AND TO: MADLANGA & PARTNERS INC. ATTORNEYS**

Attorney for the Sixth Respondent  
The Hyde Park Offices  
1<sup>st</sup> Floor, Block A  
Strouthos Place, Hyde Park  
Johannesburg  
Tel: 011 490 1711  
Email: [qugulethu@mpiattorneys.co.za](mailto:qugulethu@mpiattorneys.co.za)  
[sinazosmadlanga@gmail.com](mailto:sinazosmadlanga@gmail.com)

**AND TO: MAJANG INC ATTORNEYS**

Attorneys for the Seventh Respondent  
9 Felstead Avenue  
Fancourt Office Park, Building 12



Northriding

Johannesburg

Tel; 011 704 1348/2649

Cell: 071 648 6858 and 061 409 2779

Email: [majang@majanginc.co.za](mailto:majang@majanginc.co.za)

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za)

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO.: 21521/20

In the matter between:

**KHOSA, MPHEPHU**

First Applicant

**MONTSHA, NOMSA**

Second Applicant

**MUVHANGO, THABIISO**

Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS**

First Respondent

**SECRETARY FOR DEFENCE**

Second Respondent

**CHIEF OF THE SOUTH AFRICAN**

Third Respondent

**NATIONAL DEFENCE FORCE**

**MINISTER OF POLICE**

Fourth Respondent

**NATIONAL COMMISSIONER OF THE**

Fifth Respondent

**SOUTH AFRICAN POLICE SERVICE**

**ACTING CHIEF OF THE JOHANNESBURG**

Sixth Respondent

**METROPOLITAN POLICE DEPARTMENT**

**CHIEF OF THE CAPE TOWN**

Seventh Respondent

**METROPOLITAN POLICE DEPARTMENT**

**CHIEF OF THE EKURHULENI**

Eighth Respondent

**METROPLITAN POLICE DEPARTMENT**

**OFFICE OF THE MILITARY**

Ninth Respondent 2 OMBUD

**INDEPENDENT POLICE INVESTIGATIVE**

Tenth Respondent

**DIRECTORATE**

**MINISTER OF COOPERATIVE GOVERANCE**

Eleventh Respondent

**AND TRADITIONAL AFFAIRS**

**NOTICE TO OPPOSE**

**KINDLY TAKE NOTICE** that the Sixth Respondent hereby gives notice of its intention to oppose the application proceedings herein.

**FURTHER TAKE NOTICE** that the Sixth Respondent hereby appoints the below mentioned attorneys as its attorneys of record at which address it will accept service of all processes, notices and documents in the application proceedings.

**PLEASE TAKE NOTICE THAT** the Sixth Respondent hereby files its intention to oppose the above matter and appoints Madlanga and Partners Inc. Attorneys as its attorneys of record.

**DATED and SIGNED at HYDE PARK on 24<sup>th</sup> day of APRIL 2020**

(Electronic Signature)

---

**PER: G.O. MADLANGA**

**MADLANGA & PARTNERS INC. ATTORNEYS**

(An Attorney with the Right of Appearance  
in terms of Section 4(2) of Act 62 of 1995)

Sixth Respondent's Attorneys

The Hyde Park Offices

1st Floor, Block A

Strouthos Place, Hyde Park

**JOHANNESBURG**

**MATGOM/461**

Tel: (011) 447-0345

**CELL: 071 673 7738**

Fax: 086 219 0390/ (011)447 6666

Email: [gugulethu@mpiattorneys.co.za](mailto:gugulethu@mpiattorneys.co.za)

[admin@mpiattorneys.co.za](mailto:admin@mpiattorneys.co.za)

**C/O NGENO & MTETO ATTORNEYS**

BROOKLYN OFFICE PARK

488 FEHRESEN STREET

BROOKLYN

Tel: (012) 323 0154

Fax: (012) 323 0192

Ref: Mr Tando Ngeno

**TO: THE REGISTRAR OF THE HIGH COURT  
GAUTENG DIVISION  
PRETORIA**

**AND TO: IAN LEVITT ATTORNEYS**

**Applicant's Attorneys**

19TH Floor, Sandton City Office Towers

Cnr Rivonia and 5th Street

**JOHANNESBURG**

P. O. Box 783244

Sandton, 2146

Tel: (011) 784 3310

Cell: 083 959 4610

Email: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

REF: W STEYL/MAT

**AND TO: STATE ATTORNEY PRETORIA**

**First to Fifth Respondent Attorneys**

Ground Floor, SALU Building

316 Thabo Sehume Street

**PRETORIA**

Private Bag X91

Pretoria, 0001

REF.: L TSHIVHASE/Z73

Tel: (012) 309 1697

Fax: (086)447 5976

Cell: 076 996 1681

Email: [lufano.funie@gmail.com](mailto:lufano.funie@gmail.com)

[LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za)

Enquiry: **MS L TSHIVHASR 4**

**AND TO: CHIEF OF THE CAPE TOWN METROPOLITAN  
POLICE DEPARTMENT**

**Seventh Applicant**

7 Martin Hammerschlag Way

Cape Town Center

Cape Town

Tel: 012 596 1999

Email: [charl.kitching@capetown.gov.za](mailto:charl.kitching@capetown.gov.za)

[herschel@solomon@capetown.gov.org](mailto:herschel@solomon@capetown.gov.org)

**AND TO: MAJANG INC. ATTORNEYS**

**Attorneys for the Eighth Respondent**

9 Felstead Avenue

Fancourt Office Park, Building 12

Northriding

Johannesburg

Tel: (011) 704 1348/2649

Cel: 071 648 6858 and 061 409 2779

Email: [majang@majanginc.co.za](mailto:majang@majanginc.co.za)

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za)

**AND TO: OFFICE OF THE MILITARY OMBUD**

**Tenth Respondent**

349 Witch-Hazel Avenue

Eco – Park Estate

Pretoria

Tel: (012) 676 3800

Email: [milobud@milobud.org](mailto:milobud@milobud.org)

[intake@milombud.org](mailto:intake@milombud.org)



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO. 21521/20**

In the matter between:

<b>KHOSA, MPHEPHU</b>	First Applicant
<b>MONTSHA, NOMSA</b>	Second Applicant
<b>MUVHANGO, THABISO</b>	Third Respondent
and	
<b>MINISTER OF DEFENCE AND MILITARY VETERANS</b>	First Defendant
<b>SECRETARY FOR DEFENCE</b>	Second Defendant
<b>CHIEF OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE</b>	Third Defendant
<b>MINISTER OF POLICE</b>	Fourth Respondent
<b>NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE</b>	Fifth Respondent
<b>ACTING CHIEF OF THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT</b>	Sixth Respondent
<b>CHIEF OF THE EKURHULENI METROPOLITAN POLICE DEPARTMENT</b>	Seventh Respondent
<b>OFFICE OF THE MILITARY OMBUD</b>	Eight Respondent
<b>INVESTIGATIVE DIRECTORATE INDEPENDENT POLICE</b>	Ninth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

Tenth Respondent

---

**THE SEVENTH RESPONDENT'S NOTICE OF INTENTION TO OPPOSE**

---

**BE PLEASE TO TAKE NOTICE THAT** the Seventh Respondent hereby gives notice of its intention to oppose this matter and appoints the offices of its Attorney of record, as the address at which he will accept all notices and documents relating to this action.

**BE PLEASED TO TAKE FURTHER NOTICE** that the Eight Defendant shall accept service of all subsequent process or documents at its attorneys of address situated at 9 Felstead Avenue, Fancourt Office Park, Building 12 First Floor, Northriding c/o Ngoato Attorneys Pretoria Tower Building, Cnr Paul Kruger and Pretorius Street, Pretoria Central.

**DATED at JOHANNESBURG on this the 26<sup>th</sup> day of April 2020.**

*(electronically transmitted)*

---

**MAJANG INC ATTORNEYS**

Attorneys for the Seventh Respondent

9 Felstead Avenue

Fancourt Office Park, Building 12

Northriding

Johannesburg

Tel: 011 704 1348/2649

Fax: 011 484 1955

Cell: 071 648 6858

Cell: 061 409 2779

e-mail: [majang@majanginc.co.za](mailto:majang@majanginc.co.za);

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za);

**Ref: EKV102/20/MAT181**

**NGOATO ATTORNEYS**

SUITE 505/9

Pretoria Tower Building

Cnr Paul Kruger & Pretorius Street

Pretoria Central

Tel: 012 321 0738

**TO:**

**THE REGISTRAR OF THE  
HIGH COURT, GAUTENG DIVISION, PRETORIA  
BRAAMFONTEIN, JOHANNESBURG**

**AND TO:**

**MINISTER OF DEFENCE AND MILITARY VETERANS**

First Respondent

**C/O STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume

Pretoria

Tel: 012 309 1697

Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);

[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

**AND TO:**

**SECRETARY FOR DEFENCE**

Second Respondent

**C/O STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume

Pretoria

Tel: 012 309 1697

Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO:**

**CHIEF OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE**

**C/O STATE ATTORNEY**

Third Respondent

28<sup>th</sup> Floor, 316 Thabo Sehume

Pretoria

Tel: 012 309 1697

Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

**AND TO:**

**MINISTER OF POLICE**

**C/O STATE ATTORNEY**

Fourth Respondent  
28<sup>th</sup> Floor, 316 Thabo Sehume  
Pretoria  
Tel: 012 309 1697  
Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

**AND TO:**

**NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Fifth Respondent  
**C/O STATE ATTORNEY**  
Fifth Respondent  
28<sup>th</sup> Floor, 316 Thabo Sehume  
Pretoria  
Tel: 012 309 1697  
Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

**AND TO:**

**MADLANGA & PARTNERS INC. ATTORNEYS**

Attorneys Sixth Respondent  
The Hyde Park Offices  
1<sup>st</sup> Floor, Block A  
Strouthos Place, Hyde Park  
Johannesburg

Tel: 011 447 0345/3720

Email: [gugulethu@mpiattorneys.co.za](mailto:gugulethu@mpiattorneys.co.za);  
[sinazomadlanga@gmail.com](mailto:sinazomadlanga@gmail.com);

**AND TO:**

**OFFICE OF THE MILITARY OMBUD**

**C/O STATE ATTORNEY**

Eighth Respondent

28<sup>th</sup> Floor, 316 Thabo Sehume

Pretoria

Tel: 012 309 1697

Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

**AND TO:**

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

**C/O STATE ATTORNEY**

Ninth Respondent

28<sup>th</sup> Floor, 316 Thabo Sehume

Pretoria

Tel: 012 309 1697

Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ltshivahse@justice.gov.za](mailto:Ltshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

**AND TO:**

**MINISTER OF COOPERATIVE GOVERNANCE**

**AND TRADITIONAL AFFAIRS**

Tenth Respondent

**C/O STATE ATTORNEY**

Fifth Respondent

28<sup>th</sup> Floor, 316 Thabo Sehume

Pretoria

Tel: 012 309 1697

Email: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za);  
[Ttshivahse@justice.gov.za](mailto:Ttshivahse@justice.gov.za);  
[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com);

**REF: L TSHIVHASE/Z73**

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISIO, PRETORIA)

CASE NO: 21521/20

In the matter between:

**KHOSA, MPHEPHU**

First Applicant

**MONTSHA, NOMSA**

Second Applicant

**MUVHANGO, THABISO**

Third Applicant

and

**MINISTER OF DEFENCE AND MILITARY VETERANS**

First Respondent

**SECRETARY FOR DEFENCE**

Second Respondent

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE**

Third Respondent

**MINISTER OF POLICE**

Fourth Respondent

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE**

Fifth Respondent

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT**

Sixth Respondent

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT**

Seventh Respondent

**OFFICE OF THE MILITARY OMBUD**

Eighth Respondent

**INDEPENDENT POLICE INVESTIGATIVE  
DIRECTORATE**

Ninth Respondent



MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS

Tenth Respondent

**RESPONDENTS' NOTICE TO ABIDE**

**PLEASE TAKE NOTICE THAT** the Eighth and Ninth Respondents hereby intends to abide by the decision of this Honourable Court. The Respondents appoint the address of their attorneys as the address where all documents in the application may be served.

**PLEASE TAKE FURTHER NOTICE THAT** the Respondents shall accept service of all subsequent documents and notices at their attorneys address situated at Salu Building, 316 Thabo Sehume Street, Pretoria. The Respondents are further prepared to accept service of all subsequent documents and notices by means of electronic mail at [Lufuno.funie18@gmail.com](mailto:Lufuno.funie18@gmail.com) and [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za).

**DATED and SIGNED at PRETORIA on the 26<sup>th</sup> day of APRIL 2020.**

  
**STATE ATTORNEY PRETORIA**  
08<sup>th</sup> and 09<sup>th</sup> Respondents' Attorneys  
Ground Floor, Salu Buiding  
316 Thabo Sehume Street  
Pretoria  
Private Bag X 91  
Pretoria, 0001  
Ref: L TSHIVHASE/Z73  
Tel: (012) 309-1697  
Fax: (086) 447 5976  
Cell: 076 996 1681  
EMAIL: [lufuno.funie18@gmail.com](mailto:lufuno.funie18@gmail.com)  
and [LTshivhase@justice.gov.za](mailto:LTshivhase@justice.gov.za)  
Enq: **MS L TSHIVHASE**

**TO: THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT**

**AND TO: IAN LEVITT ATTORNEYS**

Attorneys for the Applicants  
19<sup>th</sup> Floor, Sandton City Office Towers  
Cnr Rivonia and 5<sup>th</sup> Street  
Johannesburg  
Po Box 783244  
Sandton, 2146  
Tel: 011 784 3310  
Cell: 083 959 4610  
Email: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)  
REF: W STEYL/MAT

**AND TO: MADLANGA & PARTNERS INC. ATTORNEYS**

Attorney for the Sixth Respondent  
The Hyde Park Offices  
1<sup>st</sup> Floor, Block A  
Strouthos Place, Hyde Park  
Johannesburg  
Tel: 011 490 1711  
Email: [gugulethu@mpiattorneys.co.za](mailto:gugulethu@mpiattorneys.co.za)  
[sinazosmadlanga@gmail.com](mailto:sinazosmadlanga@gmail.com)

**AND TO: MAJANG INC ATTORNEYS**

Attorneys for the Seventh Respondent  
9 Felstead Avenue  
Fancourt Office Park, Building 12  
Northriding  
Johannesburg

Tel; 011 704 1348/2649

Cell: 071 648 6858 and 061 409 2779

Email: [majang@majanginc.co.za](mailto:majang@majanginc.co.za)

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za)

194

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO. 21521/20

In the matter between:

**KHOSA, MPHEPHU**

**First Applicant**

**MONTSHA, NOMSA**

**Second Applicant**

**MUVHANGO, THABISO**

**Third Applicant**

and

**MINISTER OF DEFENCE AND MILITARY VETERANS**

**First Respondent**

**SECRETARY FOR DEFENCE**

**Second Respondent**

**CHIEF OF THE SOUTH AFRICAN  
NATIONAL DEFENCE FORCE**

**Third Respondent**

**MINISTER OF POLICE**

**Fourth Respondent**

**NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE**

**Fifth Respondent**

**ACTING CHIEF OF THE JOHANNESBURG  
METROPOLITAN POLICE DEPARTMENT**

**Sixth Respondent**

**CHIEF OF THE EKURHULENI  
METROPOLITAN POLICE DEPARTMENT**

**Seventh Respondent**

**OFFICE OF THE MILITARY OMBUD**

**Eighth Respondent**

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

**Ninth Respondent**

**MINISTER OF COOPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

**Tenth Respondent**

---

**NOTICE OF SET DOWN**

---

**TAKE NOTICE THAT** the matter been set down on the urgent motion roll for hearing in the above Honourable Court on **1 May 2020**, at 10H00 or as soon thereafter as the matter may be heard.

DATED AT JOHANNESBURG ON THIS THE **28th DAY OF APRIL 2020**



---

**IAN LEVITT ATTORNEYS**

Attorneys for Applicants

19<sup>th</sup> Floor, Sandton City Office Towers

Cnr Rivonia and 5<sup>th</sup> Street

Johannesburg

Po Box 783244

Sandton, 2146

Tel: 011 784 3310

Cell: 083 959 4610

E-mail: [wikus@ianlevitt.co.za](mailto:wikus@ianlevitt.co.za)

**REF: W STEYL/MAT3055**

**TO: THE REGISTRAR**  
**ABOVE HONOURABLE COURT**

**AND TO: MINISTER OF DEFENCE AND MILITARY VETERANS**  
First Respondent  
c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: SECRETARY FOR DEFENCE**

Second Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: CHIEF OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE**

Third Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MINISTER OF POLICE**

Fourth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE**

Fifth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MADLANGA & PARTNERS INC. ATTORNEYS**

Attorneys for the Sixth Respondent

The Hyde Park Offices

1<sup>st</sup> Floor, Block A

Strouthos Place, Hyde Park

Johannesburg

Tel: 011 447 0345/3720

E-mail: [gugulethu@mpiattorneys.co.za](mailto:gugulethu@mpiattorneys.co.za)

[sinazosmadlanga@gmail.com](mailto:sinazosmadlanga@gmail.com)

**AND TO: MAJANG INC ATTORNEYS**

Attorneys for Eight Respondent

9 Felstead Avenue

Fancourt Office Park, Building 12

Northriding

Johannesburg



Tel: 011 704 0348/2649

Cell: 071 648 6858 / 061 409 2779

E-mail: [majang@majanginc.co.za](mailto:majang@majanginc.co.za)

[magoshi@majanginc.co.za](mailto:magoshi@majanginc.co.za)

REF: ECU102/20/MAT181

**AND TO: OFFICE OF THE MILITARY OMBUD**

Ninth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

REF: L TSHIVHASE/Z73

**AND TO: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

Tenth Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**

**AND TO: MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL  
AFFAIRS**

Eleventh Respondent

c/o **STATE ATTORNEY**

28<sup>th</sup> Floor, 316 Thabo Sehume Street

Pretoria

Tel: 012 309 1697

E-mail: [TiPillay@justice.gov.za](mailto:TiPillay@justice.gov.za)

[Ltshivhase@justice.gov.za](mailto:Ltshivhase@justice.gov.za)

[Lufuno.Funie18@gmail.com](mailto:Lufuno.Funie18@gmail.com)

**REF: L TSHIVHASE/Z73**