**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1371**

**DATE OF QUESTION: 19 MAY 2017**

**DATE OF SUBMISSION: 02 JUNE 2017**

**Adv G Breytenbach (DA) to ask the Minister of Justice and Correctional Services:**

1. Whether his department is in the process of revising (a) the Regulation of Interception of Communications and Provision of Communication-Related Information Act, Act 70 of 2002 and (b) any other interception legislation; if not, what is the position in each case; if so, what progress has been made in each case;
2. whether each process is inclusive of a revision of section 205 of the Criminal Procedure Act, Act 51 of 1977, as amended; if not, in each case, why not; if so, what are the relevant details in each case?

**NW1513E**

**REPLY:**

1. (a) Yes.

(b) The Regulation of Interception of Communications and Provision of

Communication–related Information Act (RICA), 2002 (Act No. 70 of 2002) has been earmarked for revision and appropriate amendments. This is as a result of a number of requests for amendments that have been received from various quarters and also as a result of concerns regarding the implementation of the RICA which have been brought to the attention of the Department. These requests relate, among others, to the following:

1. the need to enhance governance, transparency and accountability mechanisms in order to oversee the interception of communications;
2. the need to give further consideration to the compulsory registration of SIM-cards and the regulation thereof; and
3. the broadening of RICA to cater for the combatting of cybercrime, making provision for other forms of electronic surveillance and regulating the use of remote access tools to investigate crime.

The Department is still in an investigative and initial drafting phase. A draft Bill is not yet available. Discussions with some of the law enforcement agencies regarding certain proposed amendments are under way. Public consultation will follow once the Department has processed the draft Bill through the required internal processes.

1. Yes. Section 15 of the RICA deals with the availability of other procedures for obtaining real-time or archived communication-related information. In terms of this section, the availability of the procedures in respect of the provision of real-time or archived communication-related information provided for in [sections 17](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/txsg/i1sg/j1sg/d8ui#g0) and [19](http://dojcdnoc-ln1/nxt/gateway.dll/jilc/kilc/txsg/i1sg/j1sg/f8ui#g0) of the RICA (applications to the interception judge for real-time communication-related and archived communication related-directions) does not preclude obtaining such information in respect of any person in accordance with a procedure prescribed in any other Act. However, in terms of section 15 of the RICA any real-time or archived communication-related information which is obtained in terms of such other Act may not be obtained on an ongoing basis.

In this regard, section 205 of the Criminal Procedure Act (CPA), 1977 (Act No. 51 of 1977) is relevant. Section 205 of the CPA deals with the power of a judge, regional court magistrate or magistrate, upon the request of a Director of Public Prosecutions (DPP) or a public prosecutor authorized thereto by the DPP, to require the attendance before a judge, regional court magistrate or magistrate, for examination by the DPP or the public prosecutor authorized thereto by the DPP, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed. If such person furnishes that information to the satisfaction of the DPP or the public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she is under no further obligation to appear before a judge, regional court magistrate or magistrate.

The Department is aware of concerns relating to the application of section 205 of the CPA in order to obtain real-time or archived communication-related information. Since section 205 of the CPA can be used to obtain material and relevant information regarding any alleged offence and not only information relating to communication as provided for in the RICA, the Department will consider amendments to section 15 of the RICA together with the amendments referred to in question 1 above.