

Office for Interception and Monitoring of Communications

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Enq: The Honourable Mr Justice J A M Khumalo

**REPORT TO JOINT STANDING COMMITTEE ON INTELLIGENCE
FOR THE PERIOD 1 APRIL 2010 TO 31 OCTOBER 2011**

Honourable Chairperson of the Joint Standing Committee on Intelligence, Honourable Members, ladies and gentlemen, it is an honour for me to present this report and my statistical information to you. I have not dealt with the merits of individual applications for the reason that these are top secrets which the Act protects from disclosure. These applications mostly involve difficulties experienced by agencies in the investigation of serious crimes such as:-

- Drug dealing and Drug trafficking,
- Vehicle thefts and car hijacks,
- Armed robberies,
- Corruption and Fraud,
- Assassinations, murder, terrorism, etc.

Interception involves the gathering of intelligence by secret surveillance; because of its nature it should never be allowed to become an end in itself. It should be used as a last resort in investigating crime. The Act regulates the making of applications for and, the issuing of, directions authorising the interception of communications and the provision of

communication-related information. The Act also regulates the execution of directions and entry warrants by law enforcement officers. It helps in combating the ever-present threat of serious crime including terrorism.

1. Constitutional Background

Section 14 of the Constitution of the Republic of South Africa guarantees as a fundamental right, the right of privacy which includes the right not to have the privacy of communication infringed. It stands to reason therefore, that the function of the designated Judge is also to protect innocent members of the public from unwarranted interception, and infringement of their right to privacy. A direction is therefore not easy to obtain because, as the courts have stated:-

"The potential to obtain such a direction is very strictly controlled. It could, for example hardly be issued on mere suspicion unsupported by hard facts."

Other democratic countries have similar provisions protecting privacy. Section 8 of the European Convention on Human Rights provides an example. In keeping with the constitutional right and the limitation clause the Regulation of Interception of Communications and Provision of Communication-Related Information Act No. 70 of 2002 was enacted as a law of general application. Section 2 thereof prohibits interception communications by third parties. Only stipulated state agents may apply to obtain a direction from a designated Judge to intercept a communication. The Act makes provision in sections 16, 17, 18, 20, 21 and 22 for various substantive applications and directions each with its own requirements. There is also provision for the monitoring of postal communications. The following directions may be issued by the designated Judge:-

- (i) *Interception direction in respect of a direct or indirect communication e.g. cell-*

- phone. (Section 16).
- (ii) *Real-time communication-related direction, (Section 17) i.e. information stored by a service provider for 90 days.*
 - (iii) *Interception direction combining real-time and archived communication-related information. (Section 18).*
 - (iv) *Archived communication-related direction. (Section 19) i.e. information stored by a service provider for a period determined in a ministerial directive referred to in section 30(2) of the Act.*
 - (v) *A direction authorising an entry warrant into premises for the purposes of:-*
 - (a) *Intercepting a posted article or communication, or*
 - (b) *Installing and maintaining an interception device on, and removing an interception device from the premises and this includes an oral warrant issued under section 23 of the Act.*

The duration of a direction and its extensions can only be three months. It is issued without any notice to the person or customer to whom it applies. For this reason a designated Judge has to be very careful when considering granting a direction. He will only grant a direction if he is satisfied that any of the grounds set out in sections 16(5), 17(4) and 19(4) of the Act are mentioned in the affidavit. The right of privacy of the person concerned must however be borne in mind.

2. Meetings with Office of Interception Centres, Service Providers and Law Enforcement Officers:

Whenever problems concerning any of the abovementioned instances arise meetings are held with responsible officers and problems are resolved. This helps to improve the quality

of work. The timeous delivery of directions to the Office for Interception Control which is now being delivered by one of the Clerks attached to the designated Judge's office has taken effect from 29/06/2011. From 18/01/2011 to 24/06/2011 the Office for Interception Centres came to fetch directions directly from our office, this arrangement was made between the designated Judge's office and Director Koopedi from the OIC to ensure that the correct directions reach the OIC and that the directions are triggered correctly before the Service Providers activate their triggers.

The Department of Defence have requested assistance to seek interception of communication in appropriate cases and my officials expressed their willingness to assist. Two of the problems which have given rise to these meetings are:-

2.1 The submission of documents mentioned in section 8(5) of the Act. It appears that my predecessors did not insist on their submission or check compliance with the Act. Section 8 deals with interception of communication for purposes of determining location in cases of emergencies resulting mainly from threat to life and limb. The section requires the following to be submitted by the service provider concerned and the Law Enforcement Agencies:-

- (a) a copy of a written confirmation of request made by the law enforcement officer to a service provider,*
- (b) an affidavit by the law enforcement officer setting forth the results of the request and information,*
- (c) an affidavit of the service provider setting forth the steps taken by the service provider in giving effect to the request of the law enforcement officer and the results and information obtained from such steps, and*
- (d) if such steps included the interception of an indirect communication, any*

recording of that indirect communication that has been obtained by means of that interception, any full or partial transcript of the recording and any notes made by the telecommunication service provider of that indirect communication."

2.2 A designated Judge is required to keep this record for five years. It is important to note that the section allows this interception to take place without prior authorisation by the designated Judge, because of the emergency. If there is no emergency as contemplated by the Act the interception is unlawful. Hence my eagerness to check that such interceptions comply with the Act. At present the police are up to date in their submission of these documents. I have in the meetings insisted on compliance. One of the Service Providers i.e. MTN has not submitted anything. It is anticipated that when compliance has been achieved these voluminous documents will be spot checked instead of them all being checked individually. What complicates the situation is that the section does not stipulate the simultaneous submission of documents by police and service providers to facilitate filing. I have suggested to police to submit these documents simultaneously including those from service providers to facilitate proper filing. Otherwise, the section if properly used is a useful weapon in combating serious crime.

3. Draft Directives in terms of Section 58(1) of the Act

These have been forwarded to the office of the late Advocate Labuschagne for consideration and approval by the Judges President of the Republic. Unfortunately Advocate Labuschagne passed away suddenly and I have not heard from his successor. Section 58(1) of the Act reads as follows:-

"A designated judge or, if there is more than one designated judge, all the designated judges jointly, may, after consultation with the respective Judges-President of the

High Courts, issue directives to supplement the procedure for making applications for the issuing of directions or entry warrants in terms of this Act."

4. Newspaper reports and articles criticising the Act and its implementation

The designated judge follows criticism of the Act and its implementation which from time to time appear in the media. There have even been suggestions of a commission of enquiry, because of allegations of illegal hacking into citizen's private telephone conversations. Apart from what I have said in connection with section 8 of the Act, I am personally not aware of any unlawful secret surveillance carried out by any of the state agencies. If such is the case the Departments concerned should investigate as a matter of urgency. Unfortunately no specific individuals are mentioned by the critics. Section 51 of the Act prescribes very severe penalties for transgressions under the Act. For instance any person who intercepts or attempts to intercept, or authorises or procures any other person to intercept or attempt to intercept, at any place in the Republic, any communication in the course of its occurrence or transmission, is guilty of an offence and is on conviction liable to a fine not exceeding R2,000 000 or to imprisonment for a period not exceeding 10 years. I can assure the committee that I have not spoken to any journalist and any enquiries they make are referred to the Department of Justice.

5. Statistical information

My office has a manager, a legal assistant, a secretary and three clerks. It is a good and supportive staff. The designated Judge is required to keep his records for five years. For a reason I do not know, no files have been destroyed by previous designated Judges and I can foresee a time when there will be no space to keep further records.

What now follows is a brief discussion of statistical data pertaining to the work done during the period under review.

There is no backlog in the applications dealt with. The incoming work is dealt with on a daily basis.

The National Intelligence Agency

Figures for the period are as follows:-

• Applications	65	
• Re-applications	27	
• Amendments	38	
• Extensions	38	
• Amendments and Extensions	31	
• Refusals		2
• Total	199	2

The South African Police Force

Figures for the period are as follows:-

• Applications	376	
• Re-applications	94	
• Amendments	111	
• Extensions	42	
• Amendments and Extensions	64	
• Refusals		4
• Total	687	4

The South African National Defence Force

- Application 1

The combined figures for the NIA, SAPS and SANDF are as follows:-

• Applications	442	
• Re-applications	121	
• Amendments	149	
• Extensions	80	
• Amendments and Extensions	95	
• Refusals		6
• Total	887	6

There was an increase of 81 new applications which is approximately 20%. Amendments and extensions on existing files amounted to approximately 50%. 3 217 requests in terms of Section 8 of the Act were dealt with by the South African Police.

A perusal of the above figures shows the following:-

- (a) Most of the work comes from the South African Police followed by the National Intelligence Agency;
- (b) The Department of National Defence has submitted only one application;
- (c) The Independent Complaints Directorate has not submitted any application during the period under review and I submit a nil return;

(d) The figure 887 which includes amendments and extensions is reasonably small considering the large number of cell phones and landline telephones currently in use in the country. This is in keeping with the notion that electronic surveillance is considered as the last resort in crime prevention and gathering of information to ensure the security of the state;


(e) The 20% increase in new applications may be due to a realisation by the law enforcement agencies of the effectiveness of interceptions. This indeed is the case if one thinks of the observation made by the South African Law Commission at page 19 of its project 105 which reads as follows:-

"..... Telecommunications are being used more and more in the organizing and commissioning of crime especially organized crime, heists and other serious violent crimes. Legal provision should be made to give law enforcement agencies the necessary tools to investigate such crime as well as other concomitant crimes such as money-laundering. A review of the Act should ensure that the emphasis in the Act should be on crime."

6. Recommendations by the Honourable Judge JAM Khumalo

Amendments to section 7 and 8 of the Act should be effected to facilitate filing of documents by police and service providers. Amendments to prevent any possible abuses by State agencies and service providers should be considered.

Lastly I wish to take the opportunity to thank the NIA and SAPS for being careful in supplying information required by the Act when preparing affidavits in support of applications submitted. I also thank the staff for assisting me in the preparation of this report.


J A M KROMALO
DESIGNATED JUDGE
2011/10/31

GLOSSARY OF ACRONYMS

AG	Auditor General
ANC	African National Congress
BCOCC	Border Control Operational Coordinating Committee
BMA	Border Management Agency
BPE	Best Practice Experts
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CI	Crime Intelligence: Division of the South African Police Services
CICF	Counter Intelligence Coordinating Forum
COMSEC	Electronic Communications Security Pty (Ltd)
COPE	Congress of the People
DA	Democratic Alliance
DB	Domestic Branch
DG	Director General
DDG	Deputy Director General
DI	Defence Intelligence: Division of the South African National Defence Force

DOD	Department of Defence
DPCI	Department of Priority Crime Investigations
DPSA	Department of Public Service and Administration
EIA	Environmental Impact Assessment
FB	Foreign Branch
FIFA	Federation of International Football Association
FIS	Foreign Intelligence Service
FTP	Formative Training Programme
FF+	Freedom Front Plus
IA	Intelligence Academy
ICT	Information & Communication Technology
IFP	Inkatha Freedom Party
IGI	Inspector General of Intelligence
IIRAC	International Intelligence Review Agencies Conference
ISC	Intelligence Services Council on the Conditions of Services
JCPSC	Justice, Crime Prevention and Security Cluster
JSCI	Joint Standing Committee on Intelligence

LEA	Law Enforcement Agencies
MISS	Minimum Information Security Standards
MOU	Memorandum of Understanding
MTEF	Medium Term Expenditure Framework
MRC	Ministerial Review Commission
MV	Military Veterans
NA	National Assembly
NATJOINTS	National Joint Operating Committee
NC	National Communications
NCC	National Communication Centre
NCOP	National Council of Provinces
NDPP	National Director of Public Prosecution
NIA	National Intelligence Agency
NICOC	National Intelligence Coordinating Committee
NIE	National Intelligence Estimates
NPA	National Prosecuting Authority
NSC	National Security Council

OIC	Office for Interception Centres
OIGI	Office of the Inspector General of Intelligence
RICA	Regulations of Interception of Communications and Provision of Communication-Related Information Act
RSA	Republic of South Africa
SADC	South African Development Community
SANAI	South African National Academy of Intelligence
SANDF	South African National Defence Force
SAPS	South African Police Service
SAQA	South African Qualifications Authority
SASS	South African Secret Service
SLA	Service Legal Agreement
SOP	Standard Operating Procedures
SSA	State Security Agency
UDM	United Democratic Movement



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**ANNUAL REPORT OF THE JOINT STANDING
COMMITTEE ON INTELLIGENCE FOR
FINANCIAL YEAR ENDING 31 MARCH 2011**

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1. INTRODUCTION

The Joint Standing Committee on Intelligence (JSCI) is a Parliamentary Committee established in terms of the Intelligence Services Act 40 of 1994 (herein after "the Act"). The members of the JSCI and the Chairperson are appointed by the President in consultation with the Speaker of the National Assembly and the Chairperson of the National Council of Provinces as the case may be, having been nominated by their respective political parties.

Political parties' membership of the JSCI depends on the results of the national elections and pending the issuing of the necessary security clearance by the National Intelligence Agency (NIA).

Subsequent to the April 2009 elections the following parties qualified to serve on the Committee:

African National Congress (ANC)	9 seats
Democratic Alliance (DA)	2 seats
Congress of the People (COPE)	1 seat
Inkatha Freedom Party (IFP)	1 seat
United Democratic Movement (UDM)	1 seat
Freedom Front Plus (FF+)	1 seat
Independent Democrats (ID)	1 seat
Total	16 seats

However, both the ID and the FF+ declined to serve on the Committee. The Committee therefore consists of 13 members since in terms of the Act 8 seats are the maximum a party may take up. It should be noted that the Chairperson of the JSCI is appointed separately in terms of Section 2(4) of the Act.

The members of the Committee are:

Name	Party
Mr L.T Landers	ANC (NA)
Mr JJ Maake	ANC (NA)
Ms SCN Shope-Sithole	ANC (NA)
Ms ST Ndabeni	ANC (NA)
Mr NB Fihla	ANC (NA)
Mr SS Mazosiwe	ANC (NCOP)
Ms MG Boroto	ANC (NCOP)
Ms A Dlodlo	ANC (NA)
Mr SD Montsitsi	ANC (NCOP)
Mr TW Coetzee	DA (NA)
Mr DJ Stubbe	DA (NA)
Mr CT Msimang	IFP (NA)
Mr NM Kganyago	UDM (NA)
Mr MS Shilowa	COPE (NA)

The Act further provides for the establishment of a joint standing committee to perform oversight functions related to intelligence and counter-intelligence functions of the Intelligence Services and report thereon to Parliament. The reporting includes the administration, financial management and expenditure of the Services and Intelligence Service Entities.

Accounting officers of the various intelligence structures/services are required to account to the JSCI in a manner that entrenches a culture of oversight and accountability, thereby strengthening Parliament as a pivotal national institution serving the people of South Africa.

2. THE LEGISLATIVE MANDATE OF THE JSCI

The following are some of functions of the JSCI as set out in Section 3 of Act 40 of 1994. These are to receive from:

-
- the Auditor-General an audit report compiled in accordance with Public Audit Act 25 of 2004 and after obtaining the report, to consider-
 - the financial statements of the Services, Academy and Comsec;
 - any audit reports issued on those statements; and
 - any reports issued by the Auditor-General on the affairs of the Services and the Intelligence Services Entities.
 - the Evaluation Committee a report on the secret services and intended secret services evaluated and reviewed by it, together with any comments or recommendations which the Evaluation Committee may deem appropriate.
 - any judge as defined in the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002, a report regarding the functions performed by him or her in terms of that Act including statistics regarding such functions, together with any comments or recommendations which such judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction contemplated in section 3 of that Act.
 - the Ministers responsible for the Services and the Intelligence Services Entities, a report regarding the budget for each Service or Entity for which he or she is responsible.

Further functions are:

- to consider and make recommendations on the report and certificate

transmitted to it in terms of section 7 (7) (d) of the Act by the Inspector-General of Intelligence.

- to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities.
- to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994 (Act 39 of 1994), and regulations regarding the intelligence and counter-intelligence functions of a Service, made under section 29 of the Intelligence Services Act, 1994 (Act 38 of 1994), section 87 of the Defence Act, 1957 (Act 44 of 1957), or section 24 of the South African Police Service Act, 1995 (Act 68 of 1995).
- to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the South African Secret Service, the National Defence Force and the South African Police Service.
- to order investigation by and to receive a report from the Head of a Service or the Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property: Provided that the Committee is satisfied that such complaint is not trivial or vexatious or made in bad faith.
- to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights entrenched in Chapter 2 of the Constitution to the South African Human Rights

Commission referred to in section 184 of the Constitution, and to receive a report from such Commission concerning the matter.

- to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, any Minister responsible for a Service or Parliament.
- to request the officials or bodies to explain any aspect of a report.
- to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security, including administration and financial expenditure.
- to consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act.
- to consider and report on the appropriation of revenue or moneys for the functions of the Services and the Intelligence Services Entities.

3. RESTRUCTURING

The restructuring process of the State Security Agency (SSA) continues at a slower pace than anticipated. Following Proclamation No 59 of 2009, a phased-in approach was followed to bring together the National Intelligence Agency (NIA), South African Secret Service (SASS), as well as South African National Academy of Intelligence (SANAI), the Electronic Communications Security (COMSEC) and the Office of Interception Centre (IOC) to have a single entity whereby the heads of these departments report to the Director General: State Security Agency.

During the year under review, the committee received several briefings on the progress on restructuring from the Minister of State Security. The progress made to date involves:

- As from the beginning of the financial year, the DG SSA is now the sole Accounting Officer.
- Corporate Services have been centralised.
- The DG has appointed interim heads of SSA corporate services;
- Chief Financial Officer has been appointed.
- Chief Information Officer, Head of Human Resources, Chief Logistic Officer and Head of Internal Audit have been appointed in acting capacity whilst in the process of filling in these critical posts.
- The high level structures of General Managers have been completed.

There are however, challenges since members of the community are still grappling with the transitional issues such as roles of new leadership and terminology like Domestic and Foreign Branch, integration of IT systems and finalisation of the migration plan as well as the delay in the outstanding legislation that will give effect to the new entity.

As reported in the previous year, the Minister of State Security, Dr S. Cwele briefed the committee about the possible amendments to existing intelligence legislation and also indicated that the legislation that will give effect to amalgamation of the various intelligence components into a single entity will be tabled in Parliament in the financial year. However, the legislation, the "National State Security Bill" is still in the drafting phase and will only be tabled in the coming financial year.

Although the committee has noted slow progress with the restructuring, the committee's great concern is with the instability that the process is causing amongst members of the community. The delay in finalising the restructuring process is creating a negative effect and causing uncertainty especially at a senior level which has further affected the morale of all members.

4. LEGISLATION

The JSCI has a responsibility to consider and make recommendations on all proposed legislation relating to the service and any other intelligence and intelligence related activities, and to initiate legislation in connection with such Service, intelligence and activities. Because the JSCI is a joint committee, the aforementioned legislation will be processed through the establishment by the National Assembly of the Ad Hoc Committee where after it will be dealt with by the National Council of Provinces (NCOP).

In March 2010 the Ministry of State Security tabled in Parliament the Protection of Information Bill. The National Assembly established the Ad Hoc Committee on the Protection of Information Bill with the sole purpose of processing this legislation and complete it in the current financial year. Several members of the JSCI, including the Chairperson were nominated to serve on the Ad Hoc Committee and this had an impact on the programme of the JSCI.

The Committee was briefed by the Ministry for State Security that the Ministry will soon be tabling legislation that will cover the restructuring process that is taking place in the civilian intelligence. Currently the Ministry and department operate in terms of presidential proclamation 59 of 2009. The JSCI will report further on this legislation in the next financial year annual report.

Due to the nature of the new SSA structure and as a result of the presidential proclamation, the JSCI was confronted with the problem of how to address and deal with Services in performing its duties. The Committee accordingly resolved:

"That the Committee noted that the civil intelligence was undergoing a process of restructuring which has created a new entity known as the State Security Agency (SSA).

That no legislation recognising the SSA is presently in operation. Furthermore that no amendments have been affected to the Intelligence Services Oversight Act 40 of 1994 or any other legislation which has the effect of altering and or amending the oversight functions of the Committee as provided for in Section 3 of the Act.

*That in light of the above and considering the legal opinion obtained by the Committee on the matter, that the Committee will continue to exercise its oversight function as envisaged by Act 40 of 1994 over the entities, Agency and Services set out in the Act or other relevant legislation.**

A copy of the resolution of the Committee was communicated to all relevant entities

5. OUTSTANDING MATTERS FROM PREVIOUS REPORTS

During the tabling of the 2009/2010 annual report the Committee identified the following recommendations for attention:

- Meetings with the President and the Presiding Officers of Parliament should be regularised.
- The Evaluation Committee must table the report to the Committee as provided for in the Oversight Act.
- The Minister for State Security must finalise all the regulations that are still outstanding for the Services.
- SANAI must finalise the process of accreditation of all the courses offered at the college.
- The Committee should meet with the National Security Council.

-
- The Executives must address the challenges facing by Comsec and the OIC.
 - The co-ordination of the sharing of intelligence products among the intelligence community must be strengthened.
 - Monitor and ensure that the re-structuring process within the civilian intelligence with the necessary legislative support be finalised as a matter of urgency.
 - The Executive must review the RICA.
 - Telecommunications equipment must be properly screened before being approved for importation into South Africa.

THE INTELLIGENCE STRUCTURES

6. STATE SECURITY AGENCY (Domestic Branch) NATIONAL INTELLIGENCE AGENCY (NIA)

During the Budget and Business Plan briefing for the current year, the Minister of State Security advised the Committee that the budget was informed by the government priorities. The two major outcomes for SSA this year was to assist in reducing the illegal border crossings as well as focusing on the restructuring process in order to increase professional ethos.

A presentation on the unit's expenditure and business plan was made to the JSCI on 30 March 2011. Domestic branch programme accounts for 53% of the SSA budget allocation. Personnel budget was expected to increase in line with the strategic plans of the unit. The organisational design of the domestic branch is informed by the need for greater legal and governance compliance, the

development of specialist capacities and the need to increase South Africa's national geographic and thematic footprint.

A number of objectives were presented to the Committee as plans for the next financial year of 2011/2012. The following are some of the objectives as presented to the Committee:

- Creation of a collection management mechanism where centralised and integrated target identification, tasking, monitoring and review can take place
- Capacity building intended at improving the ability for better collection
- Intelligence collection which is relevant to the Client's needs
- Ensure that all dimensions of both offensive and defensive collection are fully utilised and integrated into collection efforts
- Regarding the analysis of collected material, there is a need for an integrated SSA analysis capacity
- An integrated Counter Intelligence effort harnessed towards the security and stability of the state, its people and national interest at home and abroad
- To protect the South African state, its sovereignty and citizens against all forms of terrorism and to prevent South Africa from being used as a springboard of domestic or international terror.
- To create a secure environment to protect state assets, personnel, information and integrity of state information process.
- Vetting

7. STATE SECURITY AGENCY (Foreign Branch) SOUTH AFRICAN SECRET SERVICE (SASS)

The foreign branch of the SSA had 412 staff members as of February 2011. These are comprised of Intelligence Officers, Analysts and Intelligence Officers that are stationed abroad. The branch has stations and representation in 52 countries with the staff complement of 119 members. The key clients of the branch are; President and Cabinet, Minister of State Security, ICT Cluster, JSCI, AG and OIG. The following are the key objectives of the branch:

- Re-organise the core business organisational structure to collect on thematic and regional
- Reposition analysis to play a vital and central role on intelligence requirements planning to better focus and direct collection
- Re-establish and capacitate a credible special operations infrastructure that will ensure high impact and effectiveness
- Exceed expectations of all clients and stakeholders of SSA FB.
- Improved corporate governance

The branch had projected to have utilised 91.7% of its budget of R3.0bn by 28 February 2011, at the time of presenting, the branch had utilised 90.3% of its allocated budget. Foreign branch programmes accounted for 23% of the entire SSA budget allocation. Personnel expenditure was lower than the operational expenditure due to the foreign placements costs which are part of the operational expenditure. The operational expenditure budget also included the funding of increased global coverage.

**8. STATE SECURITY AGENCY (National Communications)
NATIONAL COMMUNICATION CENTRE (NCC)**

The National Communication Centre (NCC) presented their performance plan for the 2011/2012 financial year the Committee. Although presented during the year under review, the report on the performance of the NCC is in-line with their mandate and objectives. Their objectives included the following:

- Centralise and optimise an integrated technology architecture
- Optimised and effective collection coverage aligned to clients requirements and technology status
- Identify and develop IT security solutions
- Build human capital
- Build knowledge base to direct collection effort

9. OFFICE OF INTERCEPTION CENTRES (OIC)

The Office of Interception Centres presented its annual plans to the Committee in line with the restructuring process of the SSA. The following are some of the objectives as presented to the Committee:

- Review and align the OIC structure in view of the SSA and NC revised functions
- Recruit and appoint competent members/talent in the Office
- Establish strategic partnership with relevant stakeholders
- Provide lawful interception

-
- Coordination of training and development

The distribution of sufficient funds to the OIC is a major issue in the fight against crime. There is a constant need to upgrade equipment and technology in this area.

**10. ELECTRONIC COMMUNICATIONS SECURITY PTY (LTD)
(COMSEC)**

In line with the restructuring process, COMSEC is in the process of being de-registered as a state-owned company. Its assets and functions will be transferred to the State Security Agency. The Committee will monitor the take-over and report more fully later.

**11. NATIONAL INTELLIGENCE COORDINATION COMMITTEE
(NICOC)**

The National Intelligence Coordinating Committee has as its vision a mandate of ensuring peace and security through effective coordination of intelligence and the dissemination of national early warning. The mission of NICOC is to provide the South African state with timeous integrated all-source intelligence that adds unique value to policy and decision-making and also to provide quality early warning to the regional early warning centre.

The following were some of the strategic objectives of NICOC as presented to the JSCI:

- Produce and disseminate a high-quality National Intelligence Estimates

-
- Monitor the implementation of the approved 2010 NIE recommendations and
 - Contribute to the realisation of key outcomes through the production of strategic intelligence products on the domestic terrain
 - Contribute significantly to the functioning of the JCPS cluster
 - Facilitate a programme of engagement to enhance the quality of intelligence production
 - Contribute and participate in the regional process to establish and sustain an operational SADC REWC

The JSCI also received a briefing from NICOC on illicit mining in South Africa. This was after a request from the Committee based on the recent surge in the illicit mining activity. According to the briefing from NICOC, illicit mining threats have been found to fall mainly in two categories - the insiders who are employees and contract labourers who have access to precious metals, explosives, electricity conductors and commercial contracts. The second category is outsiders who are mainly:

- Corrupt law enforcement officials and public servants
- Illegal miners who are often self-employed are mainly ex-mine employees
- Unregulated international refiners and buyers of precious metals
- South African refiners and buyers of precious metals, some of whom do not always verify the sources of precious metals they buy.
- Scrap dealers who purchase copper and other electrical conductors without verifying the legitimacy of the product

-
- Front companies who trade with mines in relation to "legitimate" supply arrangements on other categories
 - Irresponsible recovery works and jeweller permit license holders
 - Certain interventions are underway to try and resolve the problem of illicit mining. These include activities such as:
 - Engaging local stakeholders in areas where such criminality is taking place
 - Adopt a comprehensive and holistic international approach involving a variety of stakeholders that will provide technical support in line with their expertise
 - Introduction of a stringent certification process to regulate the trade in gold and precious metals internationally. Currently precious stones are regulated by the Kimberly process
 - Develop an international investigation and prosecuting capacity
 - Develop local and international governance structures to manage the dynamics of dealing with the intervention strategies
 - Training for law enforcement and customs officials on techniques to investigate complex of this crime
 - Establish effective media strategy around awareness campaign to help towards driving impact.

**12. INTELLIGENCE ACADEMY
SOUTH AFRICAN NATIONAL ACADEMY OF INTELLIGENCE
(SANAI)**

On 30 March 2011 the Intelligence Training Academy of the State Security Agency presented its 2011/2012 annual performance plans to the Committee. These plans were preceded by the review of the Academy's performance in 2010/2011 financial year in particular challenges that were encountered. The following were the challenges identified:

- Specialist training not aligned with the accreditation requirements and the challenge of limited training delivery capacity
- Integrated SSA training policy is yet to be finalised which will clarify and establish the relationship between training and career development
- There is a need to promote a culture of leaning within SSA and the commitment of line managers in releasing staff for training
- Finalisation of the structure, post establishment and the appointments of all role-players
- Collaboration with line units/departments in developing case studies training

Going forward, the Academy outlined its intervention strategy to deal with the identified challenges and ensure that the institution achieve its mandate. The Committee has for long been concerned about the Academy's inability to get accreditation for all the training they offer, it has always been the view of the Committee that unless the Academy get the necessary accreditation of their modules, training offered will be of no value to the SSA and the Intelligence Community in general, they will also find difficulty in measuring the quality of

their modules given the fact that such modules would not have complied with the required quality standards.

13. DEFENCE INTELLIGENCE (DI)

On 21 April 2010, Defence Intelligence, an intelligence division of the South African National Defence Force presented to the Joint Standing Committee on Intelligence its annual performance plans and budget for the financial year 2010/2011. This annual plans also captured the objectives of DI which amongst others, included:

- Providing an intelligence capability and service
- Providing counter intelligence capability and service
- Providing early warning
- Participating in security management in the region and on the continent

Subsequent to the briefing on the performance plans, on 27 October 2010 DI briefed the Committee on their annual report and expenditure for the financial year 2009/2010. This report was covered in detail in the previous report of the JSCI.

Following the request of the Committee, DI prepared and presented to the Committee a report that looks at the stability of the African Continent, particularly focusing on the stability/instability of Somalia and the risk it poses to Africa in general and the Horn of Africa in particular. The report also looked at the security implications of piracy in the Indian Ocean for South Africa. Several findings were made about the political situation of Somalia:

-
- The country does not have functioning, cross-clan military force able to extend territorial control
 - No civil service and no essential social services are provided
 - TFG's credibility continues to decline as a result of its inability to use foreign assistance to build capacity and function effectively
 - Internal tension and weaknesses are distracting the TFG from focusing on the critical issues of stability
 - TFG enjoys little support from Somali population as it cannot provide any security protection and its forces are unable to capture territory
 - A peace agreement with the insurgents is unlikely to succeed because of the insurgent's belligerence, uncompromising style of politics and extremist religious convictions.
 - Al-Shabaab's terror attack in Kampala mark the regionalisation of the Somalia conflict and have raised the organisation's international profile and the attacks served as a warning to any country considering deploying forces in Somalia.

On its briefing of 16 February 2011 to the Joint Standing Committee, DI presented a detailed insight on the piracy problem that is currently being experienced in the horn of Africa, particularly in Somalia region. The Committee was informed that the crisis in Somalia is the major restriction to finding a solution to the piracy threat. The security situation in this area has not changed much, particularly given the fact that since the early days of piracy in 1992 during the fall of General Siad Barre regime, these activities seem to have increased. The more structured form of piracy dates back to the early 90s and has now developed into fully fledged, two pronged illegal fishing and shipping piracy

conflict. In protecting South Africa and SADC interest from piracy activities it is recommended that:

- South Africa should in the immediate term prioritise maritime patrols within SADC waters particularly in the north of the Mozambican channel
- South Africa should persuade ESA-IO member states to commit fully to the implementation of the adopted strategy to combat piracy off the Somali coast and the greater South African waters
- In the short term, South Africa should contribute to international initiatives aimed at building effective governance capacity in Somalia

14. CRIME INTELLIGENCE

Crime Intelligence is a division of the South African Police Service with the objective of contributing to the neutralisation of crime by gathering, collating and analysing intelligence, culminating in an actionable police activity. The Joint Standing Committee on Intelligence received a briefing on the Division's strategic plan and budget allocation for the financial year 2010/2011. This plan incorporated Government policy directives which was integrated into the daily policing activities of CI in particular and SAPS in general. The Division also has additional obligations towards NICOC relating to the National Intelligence Estimates applicable to the intelligence mandate of the South African Police Service.

The CI receives their budget allocation from the SAPS budget. This budget is monitored both by the Portfolio Committee on Police (open budget) and the Joint Standing Committee on Intelligence (Secret service account).

In the year under review, the vision of the SAPS was to create a safe and secure environment for all the people in South Africa and its mission was to prevent and

combat anything that may threaten the safety and security of any community, investigates all crime that may threaten the safety and security of any community, ensure offenders are brought to justice and participate in efforts to address the root cause of crime. The Division strategic direction is informed by the departmental vision and mission statement and in the reporting year CI had the following as their focus area:

- Provision of actionable intelligence and crime priorities to enable prosecutions
- Focus intelligence operations against syndicate involved in drug and people smuggling and human trafficking

The priorities for the Division in the reporting year were crime dependent on police action such as drug related crimes and illegal possession of firearms. With regard to the Division's obligation to NICOC, in the reporting year CI was tasked to provide inputs in the following priorities:

- Organised crime which involves drugs, vehicles, weapons, diamonds, people smuggling, human trafficking, corruption and commercial crimes
- Political instability
- Terrorism
- Border security and integrity
- Right wing extremism
- 2010 FIFA World cup
- Social instability, service delivery protests and

-
- Attacks against foreigners

ACTIVITIES OF THE JSCI IN THE REPORTING YEAR

15. AUDITOR GENERAL

The mandate for the Auditor General is derived from the Constitution of the Republic of South Africa, 1996 and the Public Audit Act (Act 25 of 2004). Section 2 of the Intelligence Services Oversight Act 40 of 1994 talks about the establishment of the Committee on Intelligence to perform an oversight on the intelligence structures. The Act gives the oversight responsibilities to the Committee in relation to the intelligence and counter intelligence functions of the Services, which include the administration, financial management and expenditure of the Service and in respect of the administration, financial management and expenditure of the Intelligence Services Entities and report thereon to Parliament.

In discharging the financial oversight responsibility, the Committee is assisted by the AG through its annual audits and any other audit as the Committee may request. The financial oversight coordination between the two offices has assisted both offices in strengthening their oversight mechanism on the Services. In the year under review the AG's office had to grapple with the challenge of auditing the newly formed State Security Agency which its existence is legalised through a Presidential Proclamation. At the core of the challenge was whether the AG should audit state security as a new entity or should it be audited as it was previously established before the proclamation and the restructuring process.

Legal opinions were sought by both the AG and the Committee and based on these opinions, the AG's office indicated that they will continue auditing the Intelligence Services in-line with the old structure. The Committee also resolved

to perform its oversight function on the Intelligence Services guided by the previous structure until such time that the legislation to formalise the restructuring process.

The AG tabled the audited financial statements of the Services to the Committee. These statements are attached in this report in-line with the Intelligence Services Oversight Act 40 of 1994. (refer to annexure A)

16. OFFICE OF INSPECTOR GENERAL OF INTELLIGENCE (OIGI)

The Office of the Inspector General briefed the Committee on the tapes on 19 May 2010. The report on the "tapes" was presented by the former IG, Mr Zolile Ngcakani in the presence of the newly appointed IG, Advocate Faith Radebe. Following some media outcry and perceptions on the illegality of the interception of the "Zuma tapes", the IG decided to find out if the interceptions were properly approved and how they were handled. The investigation was self tasking to fulfil their monitoring function as stated in section 7(7) (a) of the Intelligence Oversight Act 40 of 1994.

- The findings were that the intercepts were lawfully obtained by National Intelligence Agency and Crime Intelligence;
- The judge's authorisation in terms of RICA was obtained;
- The services did not supply intercepted material to any party;
- The IG further noted that there was a lacuna/gap in the RICA Act (dealing with the handling of intercept material)

IG certificates on Intelligence Services

The IG presented the certificates of the reporting period 01 April 2009 to 31 March 2010 on 10 November 2010 in terms of section 7 of the Act. The IG was satisfied that the activity report (Annual Report) of services fairly represents the activities of the services in the year under review. However there were some key raised by the IG which included amongst others:

- The slow pace of restructuring and its impact on other structures
- The risk posed by personnel shortages
- Concern about ongoing investigations of fraud cases implicating members of the services
- Lack of effective coordination within the services in relation to liaising with foreign intelligence services
- Although significant efforts have been made to overcome the vetting challenges vetting within the services still remain a challenge

17. INTERCEPTION JUDGE

According to the Act the committee shall receive a report from, any designated judge as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002. A report regarding the functions performed by him or her in terms of that Act, including statistics regarding such functions, together with any comments or recommendations which such designated judge may deem appropriate, provided that such report shall not disclose any information contained in an application or direction referred to in that Act. (See report on Annexure B)

In the year under review, the judge briefed the committee and indicated that he was pleased with the improvements of applications brought before him. The

services continue to be more careful in supplying information required by the Act and this has resulted in a drastic reduction of refusal. The committee has also noted that the turnaround for application is 24 hours and the office of the judge has no backlog.

The judge with the request from the committee has explored the possibility of "electronic interception directions". His findings were that, whilst there might be advantages with the electronic application process, a couple of issues such as the validity of an electronic direction, prescribed security standards that should be implemented and archive requirements for electronic application and directions issued will have to be considered and provided for in the Act. However, the matter will be given more attention by the Department of Justice and Constitutional Development.

The Committee is concerned with the short term given to the designate judge. The appointment is usually for a period of a year renewable. Furthermore, the period is not usually in line with the financial year, making it challenging for the incoming judge's reporting. It is therefore recommended that the extension of the term for the designate judge be considered as well as ensuring that the term is in line with the financial year.

18. JSCI OVERSIGHT VISITS

The JSCI undertook a visit from 2 to 6 August 2010 to Pretoria. The objective of the visit:

- Training of Committee members by the Office of the Auditor General on understanding of financial statements and expenditure of special accounts.
- To visit intelligence entities; inspect their facilities and receive briefings on sensitive and special projects run by Defence and Crime Intelligence services.

It was also necessary to familiarise the members who joined JSCI during the 4th Parliament on the functions of Defence and Crime Intelligence while exposed to the equipment they use. The briefings and presentations also dealt with details on projects that could not be accommodated during committee meetings due to limited allocated time. These presentations also make it possible for the Committee to assess the capacity of the services and to ascertain whether they are able to produce quality products with their allocated funds.

Meeting with Defence Intelligence (DI)

Acting Chief of Defence Intelligence, General Matlakeng gave an overview of the presentations. A presentation that reflects on challenges DI faces when dealing with border security, vetting and skills retention was made to the Committee. The following were the challenges identified:

- A challenge of poaching of skilled personnel by other state departments. This year the unit lost seven (7) members. The unit is planning to recruit young people in addressing personnel shortage looking at the responsibility of services and recruiting middle management personnel outside Defence Intelligence.
- Given the high staff turnover, the department is in constant need for staff vetting. The department is envisaging establishing monitoring section to monitor those already in the system and to vet people continuously to determine transgressions. Criminal records are taking long to reach the vetting unit thereby causing the delay on the vetting process.
- On border security the department indicated that the challenge they face is when they apprehends illegal immigrant crossing the border they hand over to Home Affairs Immigration section and at times these illegal immigrants are released.

The Committee was again reminded of the dreadful condition of the HQ of DI. Both the location and the condition of the building are shocking.

Meeting with Crime Intelligence (CI)

The delegation was welcomed by Lt General Mdluli, Divisional Commissioner of Crime Intelligence with his senior management. Commissioner Lazarus gave general overview of the unit noting that the Portfolio Committee on Police oversees overt structures while the covert structures are overseen by the Joint Standing Committee on Intelligence. Audit Committee meets four times a year to look at financial reports and to improve control. The CI is audited by the AG and thereafter the report of the audited statements is presented to Parliament through the JSCI.

The primary objective of Crime Intelligence is to gather intelligence, collate and analyse to address crime. Border intelligence has been identified as one of the major areas of concern hence a lot of focus has been placed on the area.

Findings by the Committee while on oversight

After having considered and reviewed the information obtained during the oversight visit, the Committee noted the following:

- The Border Control Operational Coordinating Committee (BCOCC) was not effective and a new structure has been established known as Border Management Agency (BMA).
- Home Affairs has amended its rules that causes release of apprehended illegal immigrants handed over to Home Affairs Immigration section.

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- The fact that SAPS have not received instructions to leave the borders, impacts heavily on the success of SANDF. The concern of porous borders is not yet resolved.
 - The relocation of Defence Intelligence to new Headquarters, if approved will take three years from now. DI is currently renting premises at R3,5 million a month and this is a serious concern.
 - Challenges of vetting head hunted officials and personnel employed within the Ministries whereby an incumbent is vetted after being employed.
 - There is a lack of uniformity between NIA and DI in terms of vetting processes.
 - Crime Intelligence needs operational vehicles with specialised equipment to trace criminals.

19. RECOMMENDATIONS

As a consequence of the overall work performed by the Committee during the year under review, the JSCI makes the following recommendations:

- Inadequate vetting in the intelligence community both regarding procedure and the vetting of officials is of serious concern and the Executive must address this problem urgently.
- The prolonged process of the restructuring of the civilian intelligence is affecting the morale of the SSA community. The Minister must attend to these problems before it escalates.

-
- The term of office of an Interception Judge should be extended to allow for enhanced co-operation between the Judge and the intelligence community.
 - Officials who leave the Services should notify the JSCI of their intention. There is presently no exit strategy in the community and there is a need for such a procedure. All intelligence entities should develop one.
 - The RICA needs to be amended as report in the last annual report to the JSCI.
 - The Committee notes that a number of previous recommendations have not been attended to.

Further special attention should be given to the findings of the JSCI as set out herein above. In particular the challenge pertaining to vetting within the intelligence community must be attended to.

C.V. BURGESS, MP

Chairperson: Joint Standing Committee on Intelligence (JSCI)

20. ANNEXURES

- A. Report of the Auditor-General
- B. Judge's Annual Report on applications for interceptions
- C. Programme of the JSCI for the Financial Year 2010/2011
- D. Diagram of restructured State Security Agency
- E. Glossary

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE SECRET SERVICES ACCOUNT OF THE DEPARTMENT OF POLICE FOR THE YEAR ENDED 31 MARCH 2010

REPORT ON THE FINANCIAL STATEMENTS

Introduction

I have audited the accompanying financial statements of the Secret Services Account, which comprise the appropriation statement, the statement of financial position as at 31 March 2010, and the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and a summary of significant accounting policies as set out on pages 6 to 21.

Accounting Officer's responsibility for the financial statements

The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with the modified cash basis of accounting determined by National Treasury as set out in accounting policy note 1.1 and in the manner required by the PFMA. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

As required by section 186 of the Constitution of South Africa and section 4 of the Public Audit Act of South Africa and section 3 of the Secret Services Act, 1978 (Act 56 of 1978), my responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with International Standards on Auditing and General Notice 1570 of 2009 issued in Government Gazette 32756 of 27 November 2009. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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

Basis for opinion

Level of Audit Assurance

Owing to the nature of certain operational transactions and the circumstances under which they are incurred and recorded as well as the circumstances under which the assets and services are procured and utilised, the level of assurance in respect of certain operational expenditure is, under these circumstances lower than with ordinary audits.

**SECRET SERVICES ACCOUNT:
SOUTH AFRICAN POLICE SERVICE
ACCOUNTING POLICIES**

for the year ended 31 MARCH 2010

The Financial Statements have been prepared in accordance with the following policies, which have been applied consistently in all material aspects, unless otherwise indicated. However, where appropriate and meaningful, additional information has been disclosed to enhance the usefulness of the Financial Statements and to comply with the statutory requirements of the Public Finance Management Act, Act 1 of 1999 (as amended by Act 29 of 1999), and the Treasury Regulations issued in terms of the Act and the Division of Revenue Act, Act 2 of 2006.

1. Presentation of the Financial Statements

1.1 Basis of preparation

The Financial Statements have been prepared on a modified cash basis of accounting, except where stated otherwise. The modified cash basis constitutes the cash basis of accounting supplemented with additional disclosure items. Under the cash basis of accounting transactions and other events are recognised when cash is received or paid.

1.2 Presentation currency

All amounts have been presented in the currency of the South African Rand (R) which is also the functional currency of the department.

1.3 Rounding

Unless otherwise stated all financial figures have been rounded to the nearest one thousand Rand (R'000).

1.4 Comparative figures

Prior period comparative information has been presented in the current year's financial statements. Where necessary figures included in the prior period financial statements have been reclassified to ensure that the format in which the information is presented is consistent with the format of the current year's financial statements.

1.5 Comparative figures - Appropriation Statement

A comparison between actual amounts and final appropriation per major classification of expenditure is included in the Appropriation Statement.

2. Revenue

2.1 Appropriated funds

Appropriated funds comprises of departmental allocations as well as direct charges against revenue fund (i.e. statutory appropriation).

Appropriated funds are recognised in the financial records on the date the appropriation becomes effective. Adjustments made in terms of the adjustments budget process are recognised in the financial records on the date the adjustments become effective.

Opinion

In my opinion, except for the matter described in the Basis for opinion paragraph, the financial statements present fairly, in all material respects, the financial position of the Secret Services Account as at 31 March 2010 and its financial performance and its cash flows for the year then ended, in accordance with the modified cash basis of accounting as determined by National Treasury as set out in accounting policy note 1.1 and in the manner required by the PFMA and section 3 of the Secret Services Act, 1978 (Act 56 of 1978).

Emphasis of matter

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

Basis of accounting

The Secret Services Account's policy is to prepare financial statements on the modified cash basis of accounting as determined by the National Treasury, as set out in accounting policy note 1.1.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

In terms of the FAA of South Africa and *General notice 1570 of 2009*, issued in *Government Gazette No. 32768 of 27 November 2009* I include below my findings on the report on predetermined objectives, compliance with the PFMA, Electronic Communications Act, 2005 (Act No. 36 of 2005) and financial management (internal control).

Predetermined objectives

The predetermined objectives related to the Secret Services Account are reported together with the predetermined objectives of the Department of Police.

Compliance with laws and regulations

No matters to report.

Auditor-General

Pretoria

30 July 2010



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS AND PERFORMANCE INFORMATION OF THE NATIONAL INTELLIGENCE AGENCY (NIA) FOR THE YEAR ENDED 31 MARCH 2010

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the accompanying financial statements of the National Intelligence Agency, which comprise the appropriation statement, the statement of financial position as at 31 March 2010, and the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information, as set out on pages XXX to XXX.

Accounting officer's responsibility for the financial statements

2. The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with the South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and in the manner required by the Public Finance Management Act (PFMA), 1999 (Act 1 of 1999). This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

3. As required by section 188 of the Constitution of South Africa and section 4 of the Public Audit Act of South Africa and section 3 of the Secret Service Act, my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with International Standards on Auditing and *General Notice 1570 of 2009* issued in *Government Gazette 32758 of 27 November 2009*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Basis for qualified opinion

Level of Assurance

7. Owing to the nature of certain operational transactions and the circumstances under which they are incurred and recorded as well as the circumstances under which services are procured, utilised and safeguarded, the level of assurance, in respect of certain operational expenditure and assets, under these circumstances is lower than with ordinary audits.
8. In addition possible unrecorded account balances could occur due to the increased risk of completeness of all transactions and balances at year end. accounts receivable as disclosed in note 10, account payables in note 12 and contingent liabilities disclosure could be misstated. I am unable to quantify the misstatement. I was unable to perform alternative audit procedures to obtain sufficient, appropriate audit evidence that the above balances are accurate and complete.
9. The opening balance for the standing advances as disclosed in note 11 was incorrectly transferred from the Oracle system to the SAP system. Sufficient appropriate audit evidence in the form of supporting documentation for the difference of R4 868 000 could not be provided.

Qualified opinion

10. In my opinion, except for the matter described in the Basis for qualified opinion paragraph, these financial statements present fairly, in all material respects, the financial position of the National Intelligence Agency as at 31 March 2010 and its financial performance and its cash flows for the year then ended, in accordance with the SA Standards of GRAP and in a manner required by the PFMA.

Emphasis of matter

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

Basis of accounting

11. The NIA's policy is to prepare financial statements on the basis of Statements of Generally Recognised Accounting Practice, as described in accounting policy note 1 to the financial statements. They have opted to utilise the transitional conditions as per Directive 4 that is available with the first time adoption of GRAP.

Unauthorised/Fruitless and wasteful/Irregular expenditure

12. As disclosed in note 24 to the financial statements, irregular expenditure to the amount of R5 897 841 was incurred, as a proper tender processes had not been followed.

Material underspending of the budget

13. As disclosed in the appropriation statement, the department has materially under spent the budget to the amount of R121 447 000. The unspent funds are inclusive of commitments to the value of R89 658 000 in respect of open orders which were issued to service providers.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

14. In terms of the PAA of South Africa and *General notice 1570 of 2009*, issued in *Government Gazette No. 32758 of 27 November 2009* I include below my findings on the report on predetermined objectives, compliance with the Public Finance Management Act (PFMA), Public Service Act (PSA), Intelligence Service Act (ISA) and financial management (internal control).

Predetermined objectives

15. No matters to report.

Compliance with laws and regulations**PFMA and Treasury Regulations****Non-adherence**

16. The agency did not have adequate policies and procedures to sustain a process to ensure the completeness of related party transactions as required by PFMA section 38(1)(b).
17. Monthly creditors reconciliations were not performed as required by PFMA section 38(1)(a)(i).
18. Suspense accounts were not cleared and monthly reconciliations were not done to ensure correct allocation of transactions as per Treasury Regulations 17.1.1 and 17.1.2
19. Management did not provide, even after formal resolutions and requests, the monthly and quarterly reports to the audit committee to ensure the compliance of review and comment on the quality of the reports as required by Treasury Regulations Section 3.1.13(b).
20. The audit committee only consisted of 2 members, instead of 3 at year-end after the resignation of 1 member as required by PFMA 77 (a).
21. Contrary to the requirements of section 38(1)(h) of the PFMA no evidence could be obtained that disciplinary steps were taken against officials who contravened compliance with rules and regulations.
22. Contrary to the requirements of PFMA Section 42(1) (a) and (b) and 42(2) transfer documentation regarding assets and liabilities was not signed by the accounting authority.

INTERNAL CONTROL

23. I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the PFMA, Intelligence Service Act and Intelligence Service Regulation, but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

Leadership

24. The accounting officer did not effectively monitor the compliance, with laws, regulations and internally designed procedures resulting in non-compliance and fruitless expenditure.

Financial and performance management

25. The accounting officer did not maintain an effective and efficient system of internal control and financial systems to ensure quality of the reported financial information.
26. Staff in the finance department did not enhance their competencies to enable them to prepare quality financial statements in compliance with the new financial reporting requirements.

OTHER REPORTS

Investigations

27. An investigation was conducted against a service provider for audio and video equipment. The company was subsequently placed under liquidation and a claim was lodged with the liquidators. Disciplinary action was instituted against the members.
28. A forensic audit was conducted into a company appointed for the disposal of assets.
29. As reported in the prior year an investigation into alleged fraud was conducted at Opmed. The matters were reported to the Police to assist in the criminal investigation and to take the matters to court.
30. During January 2008, NIA received information from Momentum's Head of Forensic Examination and Anti-Money Laundering division, indicating that there were transfers from NIA's account within Momentum to the account of the broker. This matter was reported to the Financial Services Board (FSB) and Financial Advisory and Intermediary Services (FAIS) for investigation.
31. A formal investigation has been instituted at a covert structure.

Auditor-General

Pretoria

30 July 2010



REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE SOUTH AFRICAN NATIONAL ACADEMY OF INTELLIGENCE (SANAI) FOR THE YEAR ENDED 31 MARCH 2010

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the accompanying financial statements of the SANAI, which comprise the appropriation statement, the statement of financial position as at 31 March 2010, and the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information as set out on pages ... to

Accounting officer's responsibility for the financial statements

2. The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practise (SA Standards of GRAP) and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and for such internal control as the accounting officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error, selecting and applying appropriate accounting policies and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

3. As required by section 188 of the Constitution of South Africa and section 4 of the Public Audit Act of South Africa and section 3 of Secret Service Act, my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with International Standards on Auditing and *General Notice 1570 of 2009* issued in *Government Gazette 32758 of 27 November 2009*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

7. In my opinion, the financial statements present fairly, in all material respects, the financial position of the South African National Academy of Intelligence as at 31 March 2010, and its financial performance and its cash flows for the year then ended, in accordance with the South African Standards of Generally Recognised Accounting Practice and in the manner required by the Public Finance Management Act of South Africa.

Emphasis of matter

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

Amendments to the applicable basis of accounting

8. As disclosed in accounting policy note 1, the Accountant-General gave SANAI approval to prepare their statements in accordance with Directive 4 (transitional provisions for municipalities) on 30 June 2009.

Fruitless and wasteful expenditure

9. As disclosed in note 36 to the financial statements, fruitless and wasteful expenditure to the amount of R530 668 was incurred, due to penalties for late payments.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

10. In terms of the PAA of South Africa and *General notice 1570 of 2009*, Issued in *Government Gazette No. 32758 of 27 November 2009* I include below my findings on the report on predetermined objectives, compliance with the PFMA, Secret Services Act and financial management (internal control).

Predetermined objectives

Usefulness of reported performance information

11. The following criteria were used to assess the usefulness of the planned and reported performance:

- **Measurability:** Are objectives made measurable by means of indicators and targets? Are indicators well defined and verifiable, and are targets specific, measurable, and time bound?

The following audit findings relate to the above criteria:

Planned and reported performance targets not specific/measurable

12. Strategic objective 1 - Development and delivery of quality intelligence training for the preparation and formation of intelligence officers:
- 50% of the planned targets are not specific in not clearly identifying the nature and required level of performance;

- 25% of the planned targets are not measurable in identifying the required performance.

The following serves as an example:

Indicator	Target
A model is developed for the impact on line.	Yes
Develop and implement system of tracking compliance in training.	Yes

13. Strategic objective 2 - Develop and conduct research programmes that enhance training delivery:

- 38 % of the planned targets are not specific and measurable in clearly identifying the nature and the required level of performance.

The following serves as an example:

Indicator	Target
Research Policy and Plan developed. Design an internal development programme to develop research skills	Research and experimentation conducted on equipment and training resources

Reported indicators/targets not complete as no supporting source information was provided

14. Management in core business did not properly document the monitoring of performance as a result we were unable to obtain adequate and sufficient audit evidence to verify the completeness of reported information against predetermined objectives

Compliance with laws and regulations

PFMA and Treasury Regulations

15. Due to management not providing, even after formal resolutions and requests, the monthly and quarterly reports to the Audit Committee, the committee did not review the quality of monthly/quarterly reports as is required by Treasury Regulations Section 3.1.13(b).
16. At year end the audit committee only consisted of 2 members, instead of 3 as required by PFMA section 77 (a).
17. The accounting officer did not submit a signed performance contract for audit purposes as required by the PFMA section 36(5).
18. SANAI did not have adequate policies and procedures to sustain a process to ensure the completeness of related party transactions as required by PFMA 38(1) (b).

INTERNAL CONTROL

19. I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the PFMA, but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

Leadership

20. The accounting officer did not effectively monitor the compliance, with laws, regulations and internally designed policies and procedures resulting in non-compliance and fruitless and wasteful expenditure as reported in this report.

Financial and performance management

21. The accounting officer did not implement adequate systems to ensure the complete and accurate collection, recording, processing, monitoring and reporting of results against predetermined objectives specifically for performance management.

OTHER REPORTS

Investigations

22. An investigation was conducted on the former deputy principal. At the date of the report, the case was still ongoing.

Auditor-General

Pretoria

30 July 2010



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS AND PERFORMANCE INFORMATION OF THE SOUTH AFRICAN SECRET SERVICE FOR THE YEAR ENDED 31 MARCH 2010

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the accompanying financial statements of the South African Secret Service (SASS), which comprise the appropriation statement, the statement of financial position as at 31 March 2010, the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information, set out on pages XX to XX.

Accounting Officer's responsibility for the financial statements

2. The accounting officer is responsible for the preparation and fair presentation of these financial statements in accordance with the South African Standards of Generally Recognised Accounting Practise (SA Standards of GRAP) and in the manner required by the Public Finance Management Act (PFMA). This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

3. As required by section 188 of the Constitution of South Africa and section 4 of the Public Audit Act of South Africa and section 3 of the Secret Service Act, my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with *International Standards on Auditing and General Notice 1570 of 2009* issued in *Government Gazette 32758 of 27 November 2009*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Basis for qualified opinion

Level of assurance

7. Due to the nature of certain transactions and the circumstances under which they are incurred and recorded as well as the circumstances under which the services are procured and utilised, the level of assurance, in respect of certain operational expenditure and assets are under these circumstances lower than with ordinary audits.

Property, Plant and Equipment

8. In terms of GRAP 17 paragraph 10, SASS is required to recognise all assets that they utilise and from which they receive a service potential benefit. SASS did not recognise the assets they have used for more than one period at the foreign stations. It is not possible to quantify the amount by which note 19, property, plant and equipment is understated, as asset registers were not maintained for foreign station assets.

Qualified opinion

9. In my opinion, except for the effects of the matters described in the Basis for qualified opinion paragraphs, these financial statements present fairly, in all material respects, the financial position of the South African Secret Service as at 31 March 2010 and its financial performance and its cash flows for the year then ended in accordance with the SA Standards of GRAP and in the manner required by the PFMA.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

In terms of the PAA of South Africa and *General notice 1570 of 2009*, issued in *Government Gazette No. 32758 of 27 November 2009* I include below my findings on the report on predetermined objectives, compliance with the Public Finance Management Act (PFMA), Public Service Act (PSA), Intelligence Service Act (ISA) and financial management (internal control).

Predetermined objectives

10. No matters to report.

Non-compliance with laws and regulations

Public Service Act

11. Members of the South African Secret Service are performing remunerative work outside employment of the Service without the approval of the Executive Committee as required by section 30 and 31 of the Public Service Act.

PFMA and Treasury Regulations**Non-adherence**

12. The Service did not have adequate policies and procedures to sustain a process to ensure the completeness of related party transactions as required by PFMA 38(1) (b).
13. Due to management not providing, even after formal resolutions and requests, monthly and quarterly reports to the Audit Committee, the committee did not review the quality of monthly/quarterly reports as is required by Treasury Regulations Section 3.1.13(b).
14. At year end the audit committee only consisted of 2 members, instead of 3 as required by PFMA 77 (a).

INTERNAL CONTROL

I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the Public Finance Management Act, Intelligence Service Act and Intelligence Service Regulation but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

Leadership

15. The Accounting Officer did not ensure the effective monitoring of the Service's compliance, with laws, regulations and internally designed policies and procedures resulting in non-compliance.

Financial and performance management

16. Pertinent information relating to assets at foreign stations was not identified and captured by management to support financial reporting, resulting from the incorrect interpretation of the recognition requirements of GRAP 17.

OTHER REPORTS**Investigations in progress**

17. As stated in the accounting officer's report, an investigation is currently being performed on source remuneration expenditure.

T. J. J. - General

Pretoria

30 July 2010



AUDITOR - GENERAL
SOUTH AFRICA

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE ELECTRONIC COMMUNICATION SECURITY (PTY) LTD (COMSEC) FOR THE YEAR ENDED 31 MARCH 2010

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the accompanying financial statements of the Electronic Communication Security (Pty) Ltd, which comprise the statement of financial position as at 31 March 2010, and the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information, and the directors report, as set out on pages ~~XXX~~ to ~~XXX~~ 101 75

Accounting authority's responsibility for the financial statements

2. The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with the Statements of General Recognised Accounting Practice (GRAP) and in the manner required by the Public Finance Management Act (PFMA), 1999 (Act 1 of 1999) and the Companies Act of South Africa (Act no. 61 of 1973). This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

3. As required by section 188 of the Constitution of South Africa and section 4 of the Public Audit Act of South Africa and section 3 of the Secret Services Act, my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with International Standards on Auditing and General Notice 1570 of 2009 issued in *Government Gazette 32758 of 27 November 2009*. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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

Audit Opinion

7. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Electronic Communication Security (Pty) Ltd as at 31 March 2010 and its financial performance and its cash flows for the year then ended in accordance with the SA Standards of GRAP and in the manner required by the PFMA and the Companies Act of 1973.

Emphasis of matter

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

Basis of accounting

8. The public entity's policy is to prepare financial statements on the basis of Statements of Generally Recognised Accounting Practice, as described in accounting policy note 1 to the financial statements.
9. Comsec has opted as disclosed in note 6.3 of the notes to the financial statements that directive 2 will be applied in terms of transitional conditions for application of SA Statements of GRAP. Detail of the application is part of note 9 and 10 respectively for property plant and equipment and intangible assets.

Restatement of corresponding figures

10. As disclosed in note 7.2 to the financial statements, the corresponding figures for 31 March 2009 have been restated as a result of errors discovered during the year of 31 March 2010 in the financial statements of Comsec at, and for the year ended 31 March 2009.

Fruitless and wasteful expenditure

11. As disclosed in Annexure 1 to the financial statements, fruitless and wasteful expenditure to the amount of R60 000 was incurred, as interest paid on late payments to suppliers.

Material underspending of the budget

12. As disclosed in the statement of financial performance the surplus as at 31 March 2010 amounted to R45 134 000.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

13. In terms of the PAA of South Africa and *General notice 1570 of 2009*, issued in *Government Gazette No. 32758 of 27 November 2009* I include below my findings on the report on predetermined objectives, compliance with the PFMA and financial management (internal control).

Predetermined objectives

14. No matters to report.

Compliance with applicable Legislation

PFMA and Treasury Regulations

15. Management did not provide, even after formal resolutions and requests, the monthly and quarterly reports to the audit committee to ensure the compliance of review and comment on the quality of the reports as required by Treasury Regulations Section 27.1.8 (d).
16. The audit committee only consisted of 2 members, instead of 3 at year-end after the resignation of 1 member as required by PFMA 77 (a).
17. Contrary to the requirements of PFMA Section 42(1) (a) and (b) and 42(2) transfer documentation regarding assets and liabilities was not signed by the accounting authority.
18. Contrary to the requirements of TR 31.1.2(j) and TR 17.2.2 bank and creditor's reconciliation were not done on weekly basis.
19. Comsec did not have adequate documented policies and procedures to sustain a process to ensure the completeness of related party transactions as required by PFMA 38(1) (b).
20. Although the entity has an appointed board there is no evidence of the board complying with its fiduciary duties as required by section 50 of the PFMA. This resulted in some non-compliance of the general responsibilities as stipulated in section 51 of the PFMA.
21. Contrary to the requirements of TR 53(3), the entity did not obtain approval from the executive authority to retain a budget surplus from the financial year 2008/09, amounting to R 51 027 000.

INTERNAL CONTROL

22. I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the PFMA, but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

Leadership

23. Comsec management did not develop and implement a significance and materiality framework.

23. Regular monitoring of compliance, by the accounting authority, with laws, regulations and internally designed policies and procedures is not done effectively and resulted in non-compliance issues

Financial and performance management

24. Management did not develop and implement adequate financial policies to ensure the information reported is of high quality.

T. Tjebba - General

Pretoria,
30 July 2010





the doj & cd

Department
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Office for Interception and Monitoring of Communications

Please quote our self reference number in all correspondence
P O Box 57155, ARCADIA, 0007-523 Church Street, Pretorius Building, ARCADIA, 0083
Tel (012) 341 0650, Fax (012) 341 0620

Ref: 7/21/2
Enq: The Honourable Mr Justice J A M Khumalo

**UPDATED BRIEFING ON INTERCEPTION STATISTICS COMMENTS AND
RECOMMENDATIONS**

PERIOD UNDER REVIEW: 1 APRIL 2010 TO 31 OCTOBER 2010

Honourable Chairperson of the Joint Standing Committee on Intelligence, Honourable Members, ladies and gentlemen. I wish to thank you for inviting me to present this statistical information. I have been redesignated by the Honourable Minister of Justice and Constitutional Development in terms of section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002) for the period 1 November 2010 to 31 October 2011. My office serves the entire Republic of South Africa. A brief resume of my functions is necessary.

Section 14 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) guarantees as a fundamental right, the right to privacy, which includes the right not to have "the privacy of communications infringed". The limitation clause in the Constitution provides that the rights in the Bill of Rights (in which section 14 is included), "may be limited only in terms of a law of general application to the extent that the limitation is reasonable, and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors..." In keeping with this constitutional right and the limitation clause the Regulation of Interception of

Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002) was enacted as a law of general application. Section 2 thereof prohibits interception of communications by third parties. Only stipulated state agents may apply to obtain a direction from a designated Judge to intercept a communication. A direction is not easy to obtain because, as the Courts have stated:

"The potential to obtain such a direction is very strictly controlled. It could, for example, hardly be issued on mere suspicion unsupported by hard facts."

It follows, therefore, that the application must be sufficiently motivated. The Act makes provision in sections 16, 17, 18, 20, 21 and 22 for various substantive applications and directions each with its own requirements. There is also provision for the monitoring of postal communications.

A designated Judge may issue the following directions:-

- (i) Interception direction in respect of direct or indirect communication. e.g. cell-phone, (section 16);
- (ii) Real-time communication-related direction, (section 17). Information stored by a communication service provider for 90 days;
- (iii) Interception direction combining real-time and archived communication-related information (section 18);
- (iv) Archived communication-related direction; (section 19). Information stored by the service provider for the period determined in a directive referred to in section 30(2) of the Act.

A direction can only be for three months and it can be extended for only three months. If it

is allowed to lapse the applicant has to apply afresh. It is issued without any notice to the person or customer to whom it applies and without hearing such person or customer. For this reason the designated judge has to be very careful when considering applications and he must seek sufficient information. In exceptional circumstances an oral application may be made for an oral direction or an oral entry warrant. This will be the case where it is not reasonably practicable to make a written application because of the urgency of the case. The oral direction or entry warrant must be confirmed by the designated Judge within 12 hours after the issue thereof. There is also provision for a cancellation.

What now follows is a discussion of statistical data pertaining to work done during the period under review.

National Intelligence

New applications	16		
Re – applications	12		
Amendments	2		
Amendments and Extensions	14		
Extensions	<u>11</u>	Refused	<u>1</u>
Total	55		1
Total 56 including one refusal.			

South African Police Force

New applications	136	Refused	5
Re – applications	21		
Amendments	20		

Amendments and Extensions	20		
Extensions	<u>17</u>	Refused	<u>1</u>
Total	214		6

Total applications including refusals = 220.

The NIA and SAPS figures make a total of 276.

This makes an average of 39.4 per month. Agencies continue to be careful in supplying information required by the Act and this has resulted in a drastic reduction of refusals. Applications are dealt with on the same day they are received and we thus have no backlog.

Draft directives and standardized forms have been prepared for approval by the respective Judges Presidents. This will also help in reducing applications refused. In the seven months under review there were 1593 section 8 (eight) matters reported by the Police. These have to be checked by the Designated Judge to ensure compliance with the Act. The figure of 276 applications is reasonable considering the large number of cell phones and landline phones currently in use in the country. This shows that interception is considered as a last resort in investigating crime.

The Department of Defence and the Independent Complaints Directorate have submitted no applications during the period under review and I therefore submit a nil return.

I have not dealt with the merits of individual applications for the reason that these are top secrets which the Act protects from disclosure. These applications, all involve difficulties experienced by agencies in the investigation of serious crimes such as:

- Drug dealing and Drug trafficking;
- Vehicle thefts and car hijacks;
- Armed robberies;
- Corruption, Fraud; and
- Assassinations, murder, terrorism etc.

This concludes what I have to say about statistical matters. I now wish to comment on a matter that was briefly discussed by the Committee at my last briefing and that is the subject of electronic interception directions.

"In view of technological developments in the field of electronic messaging and equipment which provides for secure connections, digital signatures as well as encryption and other security measures, a secure process can be designed in order to deal with electronic applications for directions in terms of Chapter 3 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002) (the Act).

An electronic application process may have the following advantages:

- (a) Enhanced confidentiality and security in that the directions are not handled by an array of persons.
- (b) Saving of time on the travelling by law enforcement agencies to and from the office of the designated judge.
- (c) Cost saving implications relating to storage requirements and general operational requirements.
- (d) Applications for directions can be made any time of the day or night, which is

currently dependent on the physical availability of the designated judge.

- (e) Applications for directions will be expedited.

The following steps in the application for a direction in terms of the Act are relevant if an electronic application process for directions is considered:

- (a) An application for a direction must be lodged by a law enforcement agency. This application is usually accompanied by a number of documents which may be electronically generated.
- (b) Receipt and consideration of the application by the designated judge who may require additional information from the law enforcement agencies.
- (c) Informing the law enforcement agencies of the decision and if the application is approved, sending the direction to the relevant law enforcement agency.
- (d) The serving of the direction on an electronic communications service provider by the relevant law enforcement agency.
- (e) Informing the interception centre of the approved direction.
- (f) Archiving of documents by the office of the designated judge.

The provisions of this Act were evaluated to determine whether an electronic application process can be utilised for purposes of applications for directions. Although the Act is not clear on the matter it is submitted that if the following is taken into account one may well come to the conclusion that an electronic application process can be accommodated under the Act:

- (a) The Act does not specifically prescribe the procedure that must be followed when making an application for a direction as intended in sections 16, 17, 18, 19, 20 and 21, other than that it must be made to a designated judge and that the application

should be in writing. The Act also provides that the direction issued by the designated judge should be in writing and the same principles discussed hereunder would therefore apply to the issuing of the direction.

- (b) The fact that an application can be made in writing to a designated judge, implies that the applicants do not need to be physically present when an application is made.
- (c) The following Acts are relevant to the interpretation of the word "writing":
- (i) The Interpretation Act, 1957 (Act No. 33 of 1957), which provides as follows:
- "In every law expressions relating to writing shall, unless the contrary intention appears, be construed as including also references to typewriting, lithography, photography and all other modes of representing or reproducing words in visible form."*
- (ii) Section 12 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), which provides that a requirement in law that a document or information must be in writing is met if the document or information is -
- * in the form of a data message; and
 - * accessible in a manner usable for subsequent reference.

During discussions with the Department of Justice and Constitutional Development (the Department responsible for administering the Act) it was indicated that it may be advisable to explicitly make provision in the Act for electronic applications for interception directions rather than to rely on an interpretation of the Act. It was further indicated to me that various other aspects may also have to be considered, and which should also be provided

for in the Act, *inter alia*, -

- (a) prescribed security standards that should be implemented;
- (b) the procedure to be followed when making such an application;
- (c) special needs and procedures of the law enforcement agencies;
- (d) the validity of an electronic direction; and
- (e) archive requirements for electronic applications and directions issued.

The Department has indicated that it is in the process of considering various other amendments to the Act and that this specific aspect will be addressed during that process.

Thanks Chairperson.

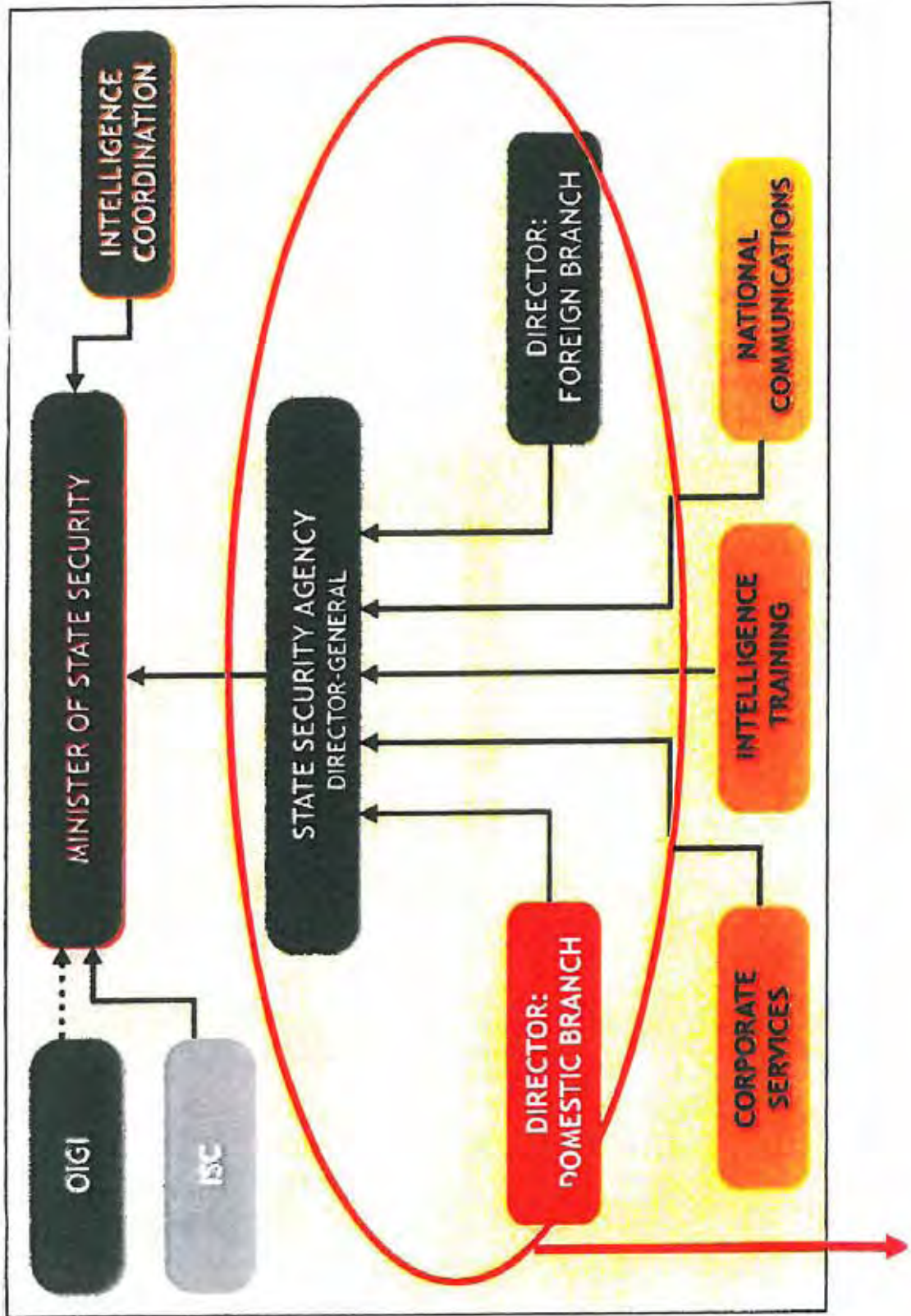
DESIGNATED JUDGE
5 November 2010

PROGRAMME OF THE JSCI FOR YEAR ENDING 31 MARCH
2011

Wed 07 April 2010	Briefing by Inspector General – Certificates
Wed 21 April 2010	Briefing by CI and DI on Budget Hearings
Thurs 22 April 2010	Briefing by NIA on Budget Hearings & Report on FIFA World Cup Readiness
Wed 05 May 2010	Briefing by Judge of Interceptions on Statistics & State Security Agency Budget Vote
Wed 12 May 2010	Finalization of Strategic Plan Document and Consideration of JSCI Annual Report
Wed 19 May 2010	Deliberations on IG's Reports, Adoption of JSCI oversight report and update on the 2009/2010 Annual report
07 Jun – 16 Jun 2010	Constituency Period – 2010 FIFA World Cup
Fri 23 Jul 2010	Finalisation of the Tape Report and Annual Report
Wed 28 Jul 2010	Briefing by IG on Business and Strategic Plans
02 – 06 Aug 2010	Oversight Week CI, DI and AG
Wed 04 Aug 2010	Consideration and recommendations of the Restructuring Briefing.
Wed 11 Aug 2010	Consideration of Oversight Report

Wed 18 Aug 2010	Meeting with the President
Wed 25 Aug 2010	Briefing by NICOC – Establishment of BMA
Wed 01 Sep 2010	Briefing by OIC on Issues raised during Oversight
Wed 08 Sep 2010	Briefing by Minister of SSA
Wed 15 Sep 2010	Deliberations on Outstanding Issues
23 Sep – 08 Oct 2010	Constituency Period
Tue 19 Oct 2010	Briefing by AG and IG on restructuring Challenges of the Intelligence Services
Wed 20 Oct 2010	Briefing by NIA, SANAI and Cosec on Quarterly Reports
Wed 27 Oct 2010	Briefing by DI and CI on Quarterly Reports
Wed 03 Nov 2010	Briefing on Recruitment of the Researcher
Wed 10 Nov 2010	Briefings by the IG (annual report) and the Judge
Wed 17 Nov 2010	Considerations of outstanding committee reports
29 Nov – 10 Dec 2010	Constituency Period
13 Dec – Jan 2011	Leave Period
Wed 26 Jan 2011	Briefing on CI Investigations emanating from the Media

Wed 16 Feb 2013	Briefing by DI
Wed 23 Feb 2011	Briefing by OIGI on Draft Regulations
Wed 02 Mar 2011	Deliberations on IG's draft regulations
Wed 09 Mar 2011	Deliberations on Outstanding matters
Wed 16 Mar 2011	Briefing on CI and DI Strategic Plans
Wed 23 Mar 2011	Briefing by Minister of SSA on Strategic Plans
Wed 30 Mar 2011	Budget hearings by NIA and Spending Centers



GLOSSARY OF ACRONYMS

AG	Auditor General
ANC	African National Congress
BCOCC	Border Control Operational Coordinating Committee
BMA	Border Management Agency
BPE	Best Practice Experts
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CI	Crime Intelligence: Division of the South African Police Services
CICF	Counter Intelligence Coordinating Forum
COMSEC	Electronic Communications Security Pty (Ltd)
COPE	Congress of the People
DA	Democratic Alliance
DB	Domestic Branch
DG	Director General
DDG	Deputy Director General
DI	Defence Intelligence: Division of the South African National Defence Force

DOD	Department of Defence
DPSA	Department of Public Service and Administration
EIA	Environmental Impact Assessment
FB	Foreign Branch
FIFA	Federation of International Football Association
FIS	Foreign Intelligence Service
FTP	Formative Training Programme
FF+	Freedom Front Plus
IA	Intelligence Academy
ICT	Information & Communication Technology
IFP	Inkatha Freedom Party
IGI	Inspector General of Intelligence
IIRAC	International Intelligence Review Agencies Conference
ISC	Intelligence Services Council on the Conditions of Services
JCPSC	Justice, Crime Prevention and Security Cluster
JSCI	Joint Standing Committee on Intelligence
LEA	Law Enforcement Agencies

MISS	Minimum Information Security Standards
MOU	Memorandum of Understanding
MTEF	Medium Term Expenditure Framework
MRC	Ministerial Review Commission
MV	Military Veterans
NA	National Assembly
NATJOINTS	National Joint Operating Committee
NC	National Communications
NCC	National Communication Centre
NCOP	National Council of Provinces
NIA	National Intelligence Agency
NICOC	National Intelligence Coordinating Committee
NIE	National Intelligence Estimates
NSC	National Security Council
OIC	Office for Interception Centres
OIGI	Office of the Inspector General of Intelligence