



Zero-tolerance for the culture of impunity

OFFICE OF THE DPCI  
JUDGE  
(HAWKS OMBUD)



ANNUAL  
REPORT

2021 - 2022





**Zero-tolerance for the culture of impunity**

Private Bag X102 PRETORIA 0001, 246 Paul Kruger Street, 1<sup>st</sup> Floor, Protea Towers Building, PRETORIA.  
Tel: (012) 324 8417, Fax (012) 324 7435 Website: [www.dpcijudge.gov.za](http://www.dpcijudge.gov.za),  
Email address: [Complaints@dpcijudge.gov.za](mailto:Complaints@dpcijudge.gov.za)



### **Foreword by the Minister**

The Annual Report for the 2021/2022 Financial year gives an account of the performance of the Office of the DPCI Judge (O/DPCI/J or the Hawks Ombud) in accordance with its legislative mandate which is circumscribed in section 17L of the South African Police Service Act, 68 of 1995.

The civilian oversight that is exercised by this Office over the Hawks is key in giving effect to the rights which are entrenched in the Constitution of the Republic of South Africa, 108 of 1996. The Office of the DPCI Judge has ensured that the rights of aggrieved ordinary members of the public and equally members of the Hawks are protected through fair, transparent but uncompromising investigation and adjudication processes of complaints.

The Ministry of Police is enjoined by the South African Police Service Act (section 17L(12)) to ensure that the DPCI Judge has adequate personnel and resources to perform his or her functions. The Minister will continue to support the Office.

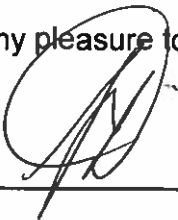
This Report reflects some of the challenges that the Office experienced in pursuit of its legislative mandate but they are by no means insurmountable.

The resources allocated to the DPCI Judge, although inadequate, were fruitfully utilised in accordance with the Public Finance Management Act (PFMA) in conjunction with the Civilian Secretariat for Police Service which joint effort contributed to the attainment of an unqualified audit. There is still room for improvement in expediting the procurement process of goods and the payment aspect for services duly rendered to the Office of the DPCI Judge.

I would like to express my sincere gratitude to the DPCI Judge and his functionaries for their gallant effort in serving the people of South Africa, particularly the less privileged, in the spirit of Batho Pele.

The DPCI Judge's five-year tenure expires on 06 October 2022. I have written and thanked him for the services he has rendered.

It is my pleasure to table the Office of the DPCI Judge's Annual Report for 2021/2022.



---

**Hon. Minister B Cele**

**Minister of Police**

**Date:**

25/09/2022



**Zero-tolerance for the culture of impunity**

Private Bag X102 PRETORIA 0001, 246 Paul Kruger Street, 1<sup>st</sup> Floor, Protea Towers Building, PRETORIA.  
Tel: (012) 324 8417, Fax (012) 324 7435, Website: [www.dpcijudge.gov.za](http://www.dpcijudge.gov.za),  
Email address: [Complaints@dpcijudge.gov.za](mailto:Complaints@dpcijudge.gov.za)

---

**Submitted to the Honourable Mr. Bheki Cele**

**Minister of Police**

**By**

**Judge F Diale Kgomo**

**Head of the Office of the DPCI Judge for tabling before**

**the National Assembly and National Council of Provinces**

**(In compliance with Section 17L(9) of South African Police Service Act, No: 68 of 1995)**



OFFICE OF THE  
**DPCI JUDGE**

Directorate for Priority  
Crime Investigation Judge

## Zero-tolerance for the culture of impunity

Private Bag X 102 Pretoria 0001, 246 Paul Kruger Street, 1<sup>st</sup> Floor Protea Towers Building, Pretoria  
Tel: (012) 324 7435/8417 Fax: (012) 324 7435, Website: [www.dpcijudge.gov.za](http://www.dpcijudge.gov.za)  
Email address: [Complaints@dpcijudge.gov.za](mailto:Complaints@dpcijudge.gov.za)

### TABLE OF CONTENTS

	<b>PAGES</b>
<b>Cover page</b>	<b>1</b>
<b>Table of contents</b>	<b>2-3</b>
<b>List of abbreviations/acronyms/definitions</b>	<b>4-5</b>
<b>Foreword by the Minister of Police</b>	<b>6-7</b>
<b>Tabling Letter by Speaker of National Assembly</b>	<b>8</b>
<b>Tabling Letter by Chairperson of National Council of Provinces</b>	<b>9</b>
<b>Preface by the Judge</b>	<b>10-11</b>
<b>Introduction</b>	<b>12-13</b>
<b>Litigation by the Office of the DPCI Judge</b>	<b>13-15</b>
<b>The Founding Charter and Powers of the DPCI Judge</b>	<b>15-19</b>
<b>Chapter 9 Institutions and Key Stakeholders</b>	<b>19-20</b>
<b>The oversight function and why the need</b>	<b>20-23</b>
<b>Office accommodation</b>	<b>23-24</b>
<b>The DPCI Judge Annual Operational Budget</b>	<b>25-27</b>
<b>Strategic Overview, Vision, Mission and Objectives of the O/DPCI/J</b>	<b>27-28</b>
<b>Post Establishment</b>	<b>28-33</b>
<b>Public Awareness Campaigns</b>	<b>33-34</b>
<b>Performance Overview of the Office in terms of the Annual Performance Plan Targets</b>	<b>34-35</b>
<b>Programme 1: Administration</b>	<b>35</b>
<b>Sub-Programme 1.1 Office Management</b>	<b>35</b>
<b>Sub-Programme 1.2 Finance</b>	<b>35-36</b>
<b>Sub-Programme 1.3 Marketing of the Office</b>	<b>36</b>
<b>Programme 2: Investigation</b>	<b>36</b>

<b>Sub-Programme 1.1 Case Management System</b>	<b>36</b>
<b>Complaints Received</b>	<b>36-39</b>
<b>Trends Analysis of complaints received per province</b>	<b>39-42</b>
<b>Complaints received during the current period falling within scope and mandate</b>	<b>42-46</b>
<b>Backlog cases finalised</b>	<b>46-55</b>
<b>Current cases finalised falling outside scope and mandate</b>	<b>55-59</b>
<b>Backlog cases finalised falling outside scope and mandate</b>	<b>59-62</b>
<b>Referrals of complaints to other institutions</b>	<b>63-64</b>
<b>Summary of cases finalised during the current period</b>	<b>64</b>
<b>Remedial actions</b>	<b>64-66</b>
<b>Recommendation</b>	<b>66-67</b>

## **LIST OF ABBREVIATIONS AND ACRONYMS**

AG	: The Auditor General
APP	: Annual Performance Plan
C/DMC	: Central/Departmental Moderating Committee
CAPT	: Captain
CEO	: Chief Executive Officer
CFO	: Chief Financial Officer
CGE	: The Commission for Gender Equality
CJ	: Chief Justice
CMC	: Central Moderating Committee
CMS	: Case Management System
Col	: Colonel
Con-Court	: Constitutional Court
CSPS	: Civilian Secretariat for Police Services
CST	: Constable
CT	: Cape Town
DPCI	: Directorate for Priority Crime Investigation (the Hawks)
DPP	: Director of Public Prosecutions
DPW	: The Department of Public Works
HR	: Human Resource
IEC	: The Independent Electoral Commission
IPID	: Independent Police Investigative Directorate
JICS	: Judicial Inspectorate of Correctional Services
Lt Gen	: Lieutenant General
Maj Gen	: Major General
NDP	: National Development Plan
NPA	: National Prosecuting Authority

O/DPCI/J Ombud : Office of the Directorate for Priority Crime Investigation (Hawks Ombud)

OCJ : Office of Chief Justice

PA : Personal Assistant / Executive Assistant

PFMA : Public Finance Management Act

PMDS : Performance Management Development System

PP : Public Protector

PSIRA : Private Security Industry Regulatory Authority

PTA : Pretoria

SAHRC : The South African Human Rights Commission

SAPS : South African Police Service

SAPS/DR : South African Police Service Discipline Regulations

SARS : South African Revenue Service

SGT : Sergeant

W/O : Warrant Officer





**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080  
CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

**Honourable Nosiviwe Mapisa-Nqakula, MP**  
Speaker of National Assembly  
Parliament of the Republic of South Africa  
P O Box 15  
**CAPE TOWN**  
8000

30 September 2022

**Dear Honourable Speaker**

**TABLING BY MINISTER OF POLICE: ANNUAL REPORT: OFFICE OF THE DPCI  
JUDGE: 2021/2022 FINANCIAL YEAR**

Section 65(1) of the Public Finance Management Act, 1999 (Act 1 of 1999) as amended, requires the Executive Authority responsible for a Department or Public Entity in the National Assembly or Provincial Legislature, as may be appropriate, to table the Annual Report and Financial Statements and the Audit Report on those statements.

In my capacity as Minister of Police under which the Office of the DPCI Judge resides, I hereby submit for tabling, the Annual Report for the financial year 2021/2022.

Yours sincerely

A handwritten signature in black ink, appearing to be 'B Cele', written over a horizontal line.

**Mr B Cele  
Minister of Police**

Date: 21/09/2022



**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 **PRETORIA** 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080  
**CAPE TOWN** 8000, Tel (021) 467 7021, Fax (021) 467 7033

**Hon.Mr Amos Masondo, MP**

Chairperson of the National Council of Provinces  
Parliament of the Republic of South Africa  
P O Box 15  
**Cape Town**  
8000

30 September 2022

**Dear Honourable Chairperson**

**TABLING BY MINISTER OF POLICE: ANNUAL REPORT: OFFICE OF THE DPCI JUDGE:  
2021/2022 FINANCIAL YEAR**

Section 65 (1) of the Public Finance Management Act, 1999 (Act 1 of 1999) as amended, stipulates that the Executive Authority responsible for a Department, must table in the National Council of Provinces the Annual Report, including the Financial Statements and the Audit Report on those statements within one month after the accounting officer for the Department received the Audit Report.

The Annual Report was prepared according to the "Guidelines for the preparation of Annual Reports of Departments" as received from National Treasury, March 2015. The Annual Report for the financial year 2021/2022 is scheduled to be tabled in Parliament by 30 September 2022.

Your assistance with the tabling of the Annual Report of the Office of the DPCI Judge is appreciated.

Kind regards

A handwritten signature in black ink, appearing to be 'B Cele', written over a horizontal line.

**Mr B Cele  
Minister of Police**

Date: 21/09/2022



**Zero-tolerance for the culture of impunity**

Private Bag X102 PRETORIA 0001, 246 Paul Kruger Street, 1<sup>st</sup> Floor, Protea Towers Building, PRETORIA.  
Tel: (012) 324 8417, Fax (012) 324 7435 Website: [www.dpcijudge.gov.za](http://www.dpcijudge.gov.za),  
Email address: [Complaints@dpcijudge.gov.za](mailto:Complaints@dpcijudge.gov.za)



### **DPCI JUDGE REPORT FOR 2021/2022**

1. This Annual Report marks the final report of my term as the DPCI Judge or Hawks Ombud, which five year term ends on 06 October 2022.
2. Its purpose is to give an account of the performance of the DPCI Judge's Office in compliance with section 17L(9) of the South African Police Service Act, 68 of 1995, (SAPS Act) which stipulates that:  
“(9) The Judge shall annually report to Parliament on the performance of his or her functions.”
3. This Report is an affirmation of my commitment and dedication as the DPCI Judge to deliver on my legislative mandate to exercise civilian oversight over the investigations undertaken by members of the Directorate for Priority Crime Investigation (DPCI) or the Hawks not to infringe the rights of members of the

public and to address any interference or undue influence by the Hawks against each other or where same is perpetrated by politicians.

4. Honourable Chairperson, I report the departure for greener pastures of an Assistant Director-Investigations (Mr Zwelithini Mkhuzo) in January 2022 and the departure of Adv Tshepo Boikanyo (Director and Acting CEO) for a higher position elsewhere with effect from 01 September 2022. I am, nevertheless, extremely pleased and proud of the functionaries in the Office of the DPCI Judge for their unstinting service and loyalty to duty, where everyone selflessly multitasks and are overworked without much demur and without fear, favour or prejudice.



**F. Diale Kgomo**

**DPCI Judge**

**Date: 14/09/2022**



## **ANNUAL REPORT FOR THE PERIOD 01 APRIL 2021 TO 31 MARCH 2022**

### **INTRODUCTION**

1. This is the Tenth Annual Report of the Office of the Directorate for Priority Crime Investigation Judge (DPCI Judge or Hawks Ombud), covering the period 01 April 2021 to 31 March 2022. From the Annual Report of 01 April 2017 to 31 March 2018 to the current Report were prepared/presented by the current incumbent, DPCI Judge F Diale Kgomo, who was appointed on 06 October 2017. This is therefore his final Annual Report as his five-year tenure expires on 06 October 2022.
2. The honourable Portfolio Committee on Police Service is reminded that an unfortunate confluence of occurrences conspired to prevent the Ninth Annual Report to be presented to this august house. The circumstances which gave rise to this failure are set out in "Late tabling of the office of the DPCI Judge Annual Report (2020/2021)". The report was completed and signed by the DPCI Judge on 30 November 2021 but was only signed on 03 March 2022 by the SAPS Minister for reasons beyond the control of the DPCI Judge. The DPCI Judge apologises to the Portfolio Committee for the part played by the O/DPCI/J in the debacle, fully explained in 2020/2021 Annual Report.
3. A brief overview of my tenure is therefore apposite. In the Press Conference held in Cape Town upon my appointment on 06 October 2017 the then SAPS Minister gave me a five year contract and underscored that the Office of the DPCI Judge has not operated maximally by virtue of being neglected. He was alluding to the fact that notwithstanding the creation of the oversight mechanism of the DPCI Judge with the

introduction of section 17L of the SAPS Amendment Act, 57 of 2008, which came into operation in February 2009, there were huge gaps in appointments of incumbent retired Judges (the pioneer: Judge Tumba Pillay 15/05/2010 to 15/05/2011; Judge Essa Moosa: 01/09/2013 to 26/02/2017 and myself) since 06 October 2017 to 06 October 2022). There was no warrant for the first appointment one year and three months after the law coming into force. There was also no justification for the interregnum of some two years and four months between the appointment of Judge Pillay and Judge Moosa. There was the further inexcusable hiatus of about eight months between Judge Moosa's death and Judge Kgomo's appointment.

4. The backlog was therefore unseemly when Judge Kgomo was appointed. The lack of personnel capacity, the inadequate resources and cramped office space endures/persists. This situation is partly the catalyst for the litigation in the case of the **DPCI Judge against the SAPS Minister and Others: Case No 48247/20**, set down for hearing in the High Court, Gauteng Division, Pretoria, on 07 November 2022, dealt with in para 5.1 below.

#### **LITIGATION BY THE OFFICE OF THE DPCI JUDGE**

5. It is convenient to deal with the litigation/legal matters since the appointment of the current DPCI Judge on 06 October 2017 and the costs implications so far.

5.1 In the DPCI Judge (Kgomo) v/s SAPS Minister (Cele) case alluded to in para 4 above the current status of the case is as follows:

The Acting Judge President, Justice Ledwaba, recommended mediation. The DPCI Judge has agreed to the proposal. The date of the 7<sup>th</sup> of November 2022 falls beyond the tenure of DPCI Judge Kgomo which necessitated a motivation for an extension to 31 December 2024 to deal with the mediation and its outcomes (implications). The history of the case has been dealt with ad nauseam in 2020/2021 Annual Report and bears no repetition. **Legal fees:** The Legal fees paid so far is in the amount of **R1, 089 334.15**.

5.2 Prior to the institution of the aforementioned case the DPCI Judge had sought and obtained an independent Legal Opinion by Adv Wim Trengove (SC) and his junior Adv Palesa Khoza (Ms) through the State Attorney. The opinion underscored the flaws in s 17L of the SAPS Act, 68 of 1995, hence the relief sought from the court which implicates constitutional issues, in the matter referred in para 5.1 (above). **Legal Fees:** The joint legal fees paid to counsel amounted to **R68 320.00**.

5.3 In the case of **Walter Mnisi v/s Minister of Police & Others**: Case No 34913/19, the DPCI Judge is cited as the Third Respondent. In it Mr Mnisi sought to review and set aside the Report of the DPCI Judge: Ref No: O/DPCI/J: 189/2018 which dismissed his complaint. The DPCI Judge has opposed his application. Mr Mnisi has since not prosecuted his case any further. The DPCI Judge has now asked the court to dismiss his application with a punitive costs order in order to recoup our legal costs. As far as we know the Minister is silent on the matter.

**Legal Fees:** The legal fees in this regard has not yet been billed.

5.4 The other matter is **Simon Leroy Mapyane v/s the DPCI Judge (Kgomo) & Others**: Case No: 4170/21: Gauteng Division, Pretoria. Mr Mapyane is the former Provincial Head of the Hawks in Mpumalanga who has since been dismissed for fraud and even subsequently convicted and sentenced for fraud. He is the complainant in matter Ref No: O/DPCI/J: 76/07/2016. The DPCI Judge found in his favour and in the Remedial Action ordered that the Hawks compensate him in a specific amount for his loss of property in their hands. He is dissatisfied with the Remedial Action and now seeks to review and set aside the DPCI Judge's decision. The DPCI Judge is opposing the application and seeks its dismissal with costs. Court processes are still being exchanged. The SAPS Minister is once again silent in the matter.

**Legal Fees:** The DPCI Judge has been presented with a legal fee bill in the amount of **R35 604.72** which is due and payable and has been approved for payment by the DPCI Judge.

5.5 The case of **Stephanus Dawid Maartens v/s Elegant Line Trading 898 CC & Others**: Case Number 56229/2021 in the Gauteng, Pretoria Division of the High Court. The DPCI Judge is cited as the Eleventh Respondent "in his capacity as the Directorate for Priority Crime Investigation Judge (Hawks Ombud)".

No costs are sought against the DPCI Judge. The DPCI Judge is cited in part because the relief sought is that: The 10<sup>th</sup> Respondent (the Hawks) be ordered to investigate the Applicant's criminal complaint: Benoni CAS No 249/3/2020. Having perused the application and consulted with the DPCI Judge's attorneys, Malatji & Co, and junior counsel it was decided to abide the court's decision because in terms of the Constitution of the Country (Section 205(3)), the SAPS Act, other legislative provisions and the Common Law, the Hawks, who are members of the police, are obliged to investigate offences within their mandate

or jurisdiction and to furnish reasons for declining to do so. In that event section 17L(4) of the SAPS Act may be triggered to the intervention of the DPCI Judge.

**Legal Fees:** The attorneys and counsel have magnanimously agreed not to charge a fee.

5.6 Only the fees mentioned in paras 5.1 and 5.2 have been paid so far.

#### **THE FOUNDING CHARTER AND POWERS OF THE DPCI JUDGE**

6. Section 17L (8)(a) – (c) provides that to the extent that it is reasonably necessary for the performance of the functions of the DPCI Judge/Hawks Ombud he/she:

**(8)(a) May obtain information and documents under the control of the Service.**

The “Service” is a reference to the South African Police Service (SAPS) in general. This is therefore not only confined to the DPCI/Hawks. However, the DPCI Judge has encountered instances in respect of which there were either no cooperation or there was resistance or where the former National Commissioner of Police (NCOMPOL) and the National Head of the Hawks, misdirected themselves or were given lamentably poor legal advice. A few examples may suffice:

(i) On 21 October 2019 in the matter between **Isaac Kgabisi Aphone v/s Maj Gen Leroy Mapyane** Ref No: O/DPCI/J 229/08/2018 the DPCI Judge requested the NCOMPOL to furnish it with the following information:

(A) “Procedure in registering/opening a criminal investigation; and

(B) Rules/regulations etc on whether or when may a junior police officer investigate his/her senior criminally or concerning a disciplinary enquiry,” and received a response that such information must be sought from the DPCI (the Hawks) because the Hawks are an independent institution. As if the DPCI Judge did not know that. The information requested was pertinent to SAPS not the Hawks.

(ii) In the matter of **Maj Gen Simon Leroy Mapyane v/s Capt RL Nkwanyana & Another** Ref No: O/DPCI/J:76/07/2016 both Lt Gen Godfrey Lebeya and Maj Gen Mokoena (Ms), Provincial Head of the Mpumalanga Province of the Hawks, failed to provide the requisite information and documentation for a period of over a year. See 8(b) below as to how the DPCI Judge resolved the issue.

**(8)(b) The DPCI Judge may enter any building or premises under the control of the “Service”.**



These powers have been exercised sparingly, most prominently in the matter alluded to in (ii) above when the Deputy and Assistant Directors went to Mbombela to source the information and documents and furnished an investigation report.

**(8)(c) This is a general or catch-all provision that the DPCI Judge “shall be entitled to all reasonable assistance by a member”.**

A “member” here must be accorded a broad interpretation because the legislature does not seem to draw or contemplate a distinction between “member” and the all encompassing “Service”. The terms may be used conjunctively like: a “member” of the “Service”.

7. The DPCI Judge is satisfied that, notwithstanding the vast improvement in fighting corruption and other priority crimes since his appointment on or about 01 June 2018, the National Head of the Hawks, Gen Lebeya, has back-pedalled on occasion when a colleague is implicated. He has defaulted in respect of both subsections (8)(a) and (c) in the following respects:

- (i) He in essence reviewed the Remedial Action by the DPCI Judge that he must institute disciplinary proceedings against Maj Gen Prince Nkitseng Mokotedi and Brig Landa Edgar Malima in the matter of **Capt/Lt Gen Candice Coetzee v/s Maj Gen Prince Mokotedi and Others** Ref No: O/DPCI/J: 111/01/2017 issued on 16 March 2021 by deciding that they have no case to meet. He also failed to inform the DPCI Judge of his undermining decision until the DPCI Judge enquired what the outcome of the disciplinary inquiry was. His response is dated 01 August 2022. This matter cannot be left there lest the Remedial Action by the DPCI Judge be willy-nilly second-guessed and rendered nugatory.
- (ii) A second instance is where a member of the Hawks complained anonymously (for fear of reprisals or career limiting) that the Lt Gen Lebeya was treating Maj Gen Zintle Mnonopi favourably. The DPCI Judge raised the disgruntlement with Maj Gen Lebeya in Cape Town during 02 July 2019. He explained that a disciplinary process was underway. After a considerable period of silence the DPCI Judge asked for the outcome and a copy of the disciplinary enquiry. Instead of complying with the request the General in a few paragraphs explained on 05 November 2021 that Maj Gen Mnonopi was exonerated and why. The serious implication and the effect thereof was that the DPCI Judge was not entitled to a copy of the inquiry although he was exercising oversight (or was a watchdog) over investigation of the Hawks including the General himself. So much for openness and transparency. This matter also cannot be ignored as it

undermines the authority of the DPCI Judge to the detriment of members of society who are aggrieved that their rights have been seriously and unlawfully infringed. See in particular the provisions of s 17L(7A) of the SAPS Act quoted in full at para 8 below.

8. **In terms of section 17L( 7A) the DPCI Judge “may request information from any member of the Service for purposes of any investigation by that judge and the refusal to comply with such a request shall be a criminal offence for which a person, upon conviction, may be sentenced to a fine or imprisonment or both a fine and imprisonment of two years.”**

The profound general question that falls for determination is whether the conduct of Lt Gen Lebeya or even the then NCOMPOL, Gen Kehla Sitole, may be construed as a criminal offence and a “refusal” to comply with a request or they were just misguided or ill-advised. Further engagement with the current incumbents are called for but the DPCI Judge is satisfied that their conduct does not fall foul of this provision.

9. **In terms of section 17L(7) of the SAPS Act the DPCI Judge “may request and obtain information from the National Director of Public Prosecution in so far as it may be necessary for the Judge to conduct an investigation”.**

Without going into detail or specifics on this aspect, the NDPP has cooperated without any demur. However, it has happened that a few Directors of Public Prosecutions (DPP's) and prosecutors were dilatory in furnishing the requisite information which delay has had a detrimental effect in finalising Reports, which in turn reflects poorly on the Office of the DPCI Judge.

10. Somehow allied to s 17L (7A) quoted in para 8 above is s 17L(16) which stipulates that:

“(16) Any interference with the retired judge in the performance of his or her functions and duties shall be a criminal offence for which a person upon conviction may be sentence to a fine or imprisonment of two years or both such fine or imprisonment.”

The DPCI Judge has not experienced “Any [overt] interferences with the retired Judge in the performance of his functions and duties”. The SAPS Minister and the Secretariat have unquestionably frustrated the DPCI Judge from carrying out his mandate optimally, yes, but such conduct would not conform to the legal definition of “interference”.

11. By virtue of s 17L(10) THE National Head of the Hawks “**may request the retired judge to investigate complaints or allegations relating to investigations by the Directorate or alleged interference with such investigations.**”

Our records show that Lt Gen Lebeya has invoked this provision on at least one occasion:

This happened in respect of the matter Mr Erick Melaphi, Tefo Maimane, Sydwell Nkuna and Edwin Gadivhane v/s W/O Given Makhubele & Others Ref No O/DPCI/J275/06/2019. The complaint involves the crimes of extortion and defeating the ends of justice against members of the Hawks. It is therefore understandable that the Hawks ought not to investigate their peers (their own) hence the referral by the National Head of the Hawks. After perusing the complaints the DPCI Judge reckoned that the Independent Police Investigative Directorate (IPID) would be best placed to look into the complaints. It also makes no sense for the DPCI Judge to probe a matter that is currently on trial in a criminal court; that is to avoid the detested parallel investigations phenomenon.

12. In accordance with s 17L(5) the DPCI Judge “may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, among others, the Directorate for Priority Crime Investigation [the DPCI or the Hawks], the Independent Police Investigative Directorate [IPID], the National Director of Public Prosecutions [NDPP], the Inspector-General of Intelligence [IGI], or any institution mentioned in Chapter 9 of the Constitution of the Republic of South Africa, 1996.”

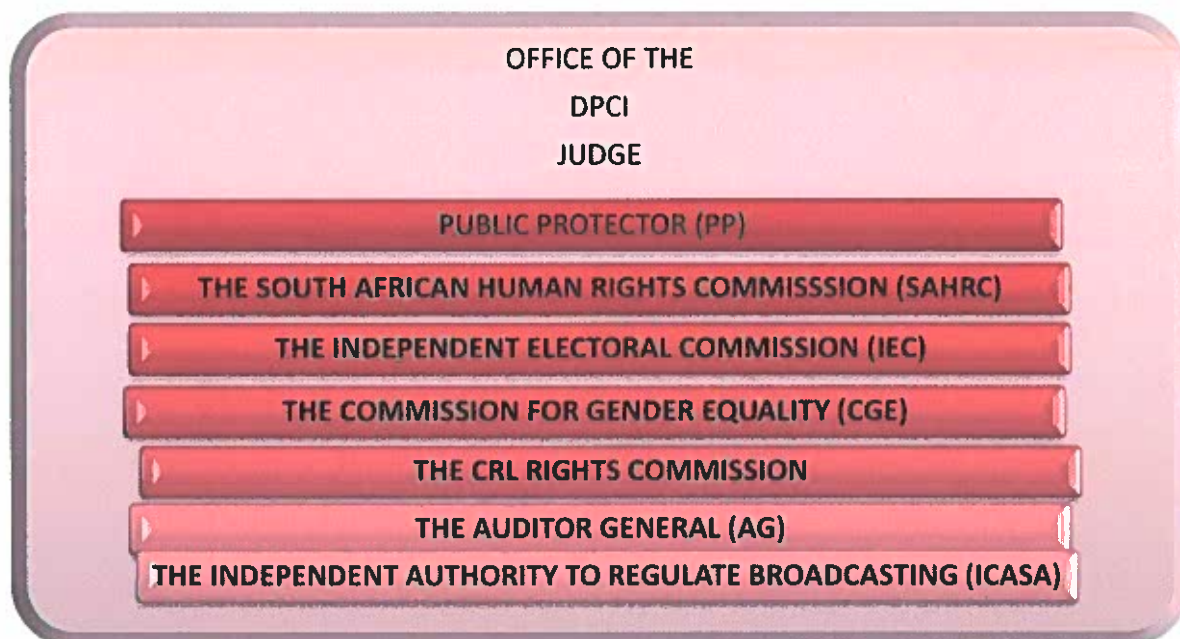
12.1 These complaints are ordinarily classified as “Referral” matters. It must be noted that the said provision does not ipso facto (per se) oust the jurisdiction of the DPCI Judge. It says the DPCI Judge “may upon receipt of a **complaint investigate such complaint** or refer it to be dealt with by, among others, .....”. It contemplates or implicates that another institution may be better placed or equipped to deal with such matter. However, if s 17L (4)(a) or (b) is not implicated a referral must be made in that the Hawks would not have been involved in the investigation of the case. This nature of complaints (the referrals) are by far the overwhelming majority of cases dealt with as the statistics below reflect.

12.2 In rare instances the DPCI Judge would request (it cannot demand or directly, where it is not legislatively authorised) an institution to furnish the Office of the DPCI Judge with outcomes of a referral for its records and/or report to Parliament.

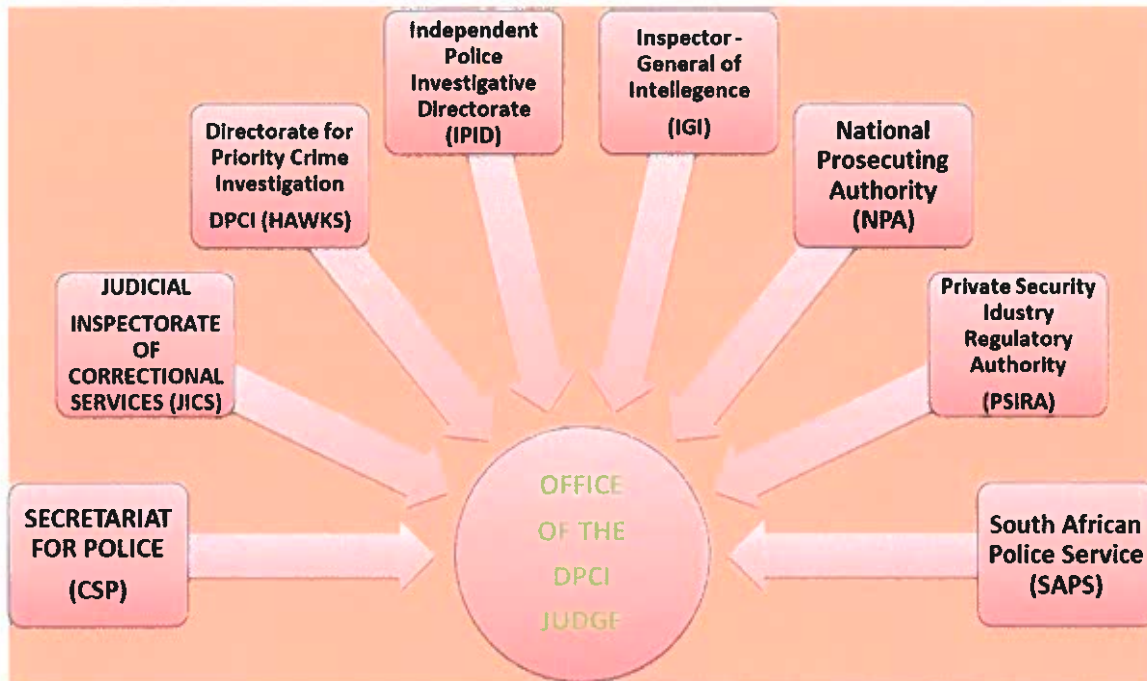
**For example: In Brig Saul Slingers v/s The 2013 SAPS Commissioner of Police and Lt Gen Ntlemeza Ref No O/DPCI/J: 234/09/2018 the DPCI Judge referred the DPCI Judge's Report to the Public Protector (PP) and the National SAPS Commissioner on 17 September 2020 to investigate whether Brig MN Nongwana was irregularly (unlawfully) paid the salary of a major general for several years after his appointment (promotion) to the rank of major general was reversed. A report back from the PP would go a long way to demonstrate that organs of state co-operate to fight malfeasance.**

### **13. CHAPTER 9 INSTITUTIONS AND KEY STAKEHOLDERS**

**Graph 1: Below is depicted a list of Chapter 9 institutions**



Graph 2: Below is depicted our key stakeholders



### THE OVERSIGHT FUNCTION AND WHY THE NEED

14. Following the needless dissolution of the Directorate for Special Operations (the Scorpions), Parliament substituted it with the Directorate for Priority Crime Investigation (the DPCI or the Hawks) in terms of s17C of the SAPS Act. It bears reminding that the ConCourt in **Glenister v/s President of the Republic of South Africa (Glenister II) 2011 (3) SA 347 (CC)** per Moseneke DCJ and Cameron J at para 210 made these insightful findings:

“(210) First, it [the kind of entity newly created] impacts on the public perception of independence. A reasonable and informed member of the public may have misgivings about the DPCI’s independence, given that the features protecting it are so markedly more tenuous than those of the DSO. Second, we find it hard to conclude that the creation of an entity that is markedly less independent than the DSO can fulfil the state’s duty to respect, protect, promote and fulfil the rights in the Bill of Rights. This is because, as we now show, independence is assessed for accountability and oversight. These factors must be analysed to determine whether, on the whole, the body satisfies the threshold of adequate independence. **The now-defunct DSO was independent. While it does not represent an inviolable standard, comparison with it shows how markedly short of independence the DPCI falls**”.

(DPCI Judge's emphasis)

15. Still on the theme of "why the need for oversight": In the same case at para 147 Ngcobo CJ described the functions of the DPCI Judge in these terms:

"(147) Finally, there is judicial oversight to prevent undue interference, which may result in criminal sanctions. In order to address any undue political influence with the functioning of the DPCI, section 17L(1) makes provision for the appointment of a retired judge to investigate complaints. These complaints include complaints of any improper influence or interference, whether of a political or any other nature, exerted upon [a member of the Directorate or the Hawks] regarding the conducting of an investigation. In addition, the head of the Directorate may, of his or her own accord, request the retired judge to investigate complaints or allegations relating to investigations by the Directorate or alleged interference with such investigations. This is an important legal mechanism to address undue political interference in the investigation."

Moseneke DCJ and Cameron J at paras 246 and 247 whilst not taking issue with the definition of the function of the DPCI Judge pronounced by Ngcobo CJ they determined that the better guarantee of rendering the DPCI (Hawks) free from political or other interference was to upgrade them, at the very least, to the level of where the Scorpions were.

16. It bears further reminding that:

- 16.1 In **Helen Suzman Foundation v President of the Republic of South Africa & Others 2015 (2) SA 1 (CC) (Glenister III)** the ConCourt "read-in" certain words or phrases where it deemed Parliament fell short. At para 95 (which need not be regurgitated) the Court demonstrated the enormous powers vesting in the Hawks. The warning for the need of civilian judicial oversight comes early, at para 46 of the judgment, to curb any abuse of power by the Hawks. Chief Justice Mogoeng pronounced:

"(46) Members of the DPCI [the Hawks] must always prove to be above reproach-men and women. And this underscores the need for integrity-testing to obviate the abuse of power and victimisation of innocent citizens by members of the DPCI. While it is quite fitting to be on high alert about the possible manipulation and abuse of the system by anybody, including political executives, it is equally important that the public and even senior politicians themselves be protected from the possible abuse, blackmailing and victimisation by or through the DPCI or its individual members".

16.2 As recently as 11 February 2021 in **Case Number 43469/2020, Nomachule Gigaba (born Mngoma) v/s Minister of Police (the DPCI/the Hawks are Second Respondent)** Mr Justice Sardiwalla, in the Pretoria High Court, made the following deeply disturbing findings against some members of the Hawks:

“(77) It appears in this matter that the arresting officers abused their powers and position as members of the Hawks presumably to avenge a wrong or perceived wrong as complained and alleged by Mr Gigaba and not for any lawful purpose and was accordingly *infraudem legis*. The warrant was obtained for an ulterior motive. The argument of the respondents that they were investigating a conspiracy to commit murder against Mr Gigaba is not sustainable in light of the fact they have alluded [to] no further information on this alleged conspiracy or how the charges against the applicant are connected to it. There is also no evidence of this in the docket and takes the matter no further. It is clear that this is in fact a domestic dispute between two prominent members of society, however the offences are not deserving of the high priority of the Hawks and the involvement of the Hawks itself speaks to the abuse of powers by Mr Gigaba as a former Minister in using the State administrations for his own personal benefit with an intention to intimidate his wife in a domestic spat. The scourge and dominance of patriarchy in our society must be pierced and women’s rights to fair and equal treatment must be protected”.

The Learned Judge concluded:

“(80) I am satisfied that the evidence before me demonstrates that the fourth and fifth respondents [Capt KM Mavuso and Sgt Norton Ndabambi] acted with malice, in that their actions appeared to have been motivated by an abuse of power by a former minister and member of the Executive. There is no evidence that an investigation was conducted regarding a conspiracy to commit murder of Mr Gigaba and the respondents have failed to give any evidence to gainsay the applicant’s version”.

The Court then issued the following orders, inter alia:

- “4. The confiscation of the applicant’s [Ms Gigaba’s] information and communication technology equipment is unlawful.
5. The respondents are ordered to restore all information unlawfully removed from applicant’s ICT equipment.
6. The third [Maj Gen MO Ngwenya], fourth and fifth respondents are directed to return the information which was downloaded from electronic gadgets of the applicant by

the respondents, including the information contained in Disc 1 to Disc 6 referred to forthwith”.

16.3 It must be remarked that a complaint was lodged with the DPCI Judge against the aforesaid deprecated conduct by the implicated members of the Hawks. The matter falls within our purview in that a cabinet Minister (a politician) has been found by a Civil Court to have unlawfully interfered in the investigation by the Hawks and that member of the Hawks, in turn abused their powers and position to appease Mr Gigaba much to the prejudice of Ms Gigaba. The complaint was lodged with the Public Protector (PP) who in turn referred it to the DPCI Judge in terms of s 6(4)(c)(ii) of PP Act and has been registered as Ms Nomachule Gigaba (born Mngoma) v/s Two Others (Members of the Hawks) Ref No: O/DPCI/J 56/03/2022. The investigation is on-going. Worthwhile pointing out is that Capt Kenneth Naborth Mavuso was found to have similarly abused his power as in in **Mapyane v/s Nkwanyana & Mavuso Ref No (O/DPCI/J 76/7/2016**, Report signed off on on 25 March 2021.

17. Perhaps the treatment of the aforementioned ConCourt and High Court cases might go some way towards answering one honourable SAPS Portfolio Committee member's question in the 2019/2020 Report on whether the Institution of the DPCI Judge is still required. In the view that O/DPCI/J takes of the matter the analysis, nature and seriousness of some grievances received and adjudicated reinforces the need to rather strengthen the legislative framework and mandate of the DPCI Judge to ensure that the letter and spirit of the Constitution is given effect to for the benefit of broader society, particularly the marginalised and improvident (the poor). Not the other way round.

#### **OFFICE ACCOMODATION**

18. The lack of adequate office space has been one of the factors that inhibits the O/DPCI/J from performing its mandate optimally. This has been a never-ending saga. We are cramped up in five offices whereas we require at least 14 of them. This is a conservative requirement that even discounts moderate future expansion and virtual operation. We should not all report for duty even when there is a pressing need. Readily available offices contiguous to ours were kept reserved for us for over six months at no cost for the reservation, until they were snapped up (a case of commercial exigency). Now office space that we need is available in the same building



at the same lease rate as the offices that the DPCI Judge currently occupies. The Police Department that is paying the rental of the O/DPCI/J has done its part after previously dragging its feet. The Department of Works had been the stumbling block but is now cooperating. It is now more than three years later. As stated, we have asked the Deputy Minister of SAPS, Mr Cassel Mathale, to intervene or facilitate the process. He kindly consulted with the DPCI Judge at the latter's invitation fairly recently. The DM appears to have roused them from their slumber, hence the reported positive movements. The prepared lease agreement is at the legal services for perusal and vetting whereafter it will be signed by the Deputy-Director General (DDG), it was reported.

### **THE DPCI JUDGE'S ANNUAL OPERATIONAL BUDGET**

19. The next challenge, perhaps the most fundamental, is the location of the budget of the DPCI Judge within the Secretariat. This problem was brought home to the honourable SAPS Portfolio Committee previously, but we now make a somewhat different point. Section 17L (13) of the SAPS Act provides:

“(13) An annual operational budget shall be prepared by the Secretary in consultation with the retired Judge and provided for under the budget for the Secretariat for the specific and exclusive use of the official duties of the retired Judge and may not be used for any other purpose”.
20. In light thereof that we complain year-in and year-out that the CSPA Secretary and his Chief Financial Officer (CFO) ignore the “in consultation” provision and present the O/DPCI/J with a fait accompli (take it or leave it) budget we sought and were kindly workshopped by the CFO division of the Office of the Chief Justice (OCJ) on 28 October 2020 as regards when the consultation ought to commence and how the budget is prepared. The functionary facilitating the workshop stated in no uncertain terms that it was incomprehensible how the Office of the DPCI Judge could function without at least one dedicated official in our Office to deal with the budgetary/financial matters.
21. As alluded to with regard to the Notice of Motion above, the CSPA Secretary, the Secretariat and the SAPS Minister are amongst the Respondents. Because they are conflicted vis-à-vis the DPCI Judge in the litigation Adams & Adams Attorneys acted for the DPCI Judge (the Applicant). The Secretary refused to pay their bill for services rendered, out of spite it must be added. The DPCI Judge rendered the account to the Secretary on 01 October 2020. Adams & Adams consequently withdrew their services

when payment was not forthcoming. The DPCI Judge wrote to the Solicitor General (Sol-Gen) on 10 and 17 December 2020 and his office was visited by the Director, Adv Boikanyo, and Dep Director, Rasiwela, of our Office on 14 January 2021 to intercede and come to our rescue. This was also followed up with several reminders (of various kinds). No courtesy of an acknowledgement of receipt or response to date hereof came our way from the Sol-Gen. This conduct is therefore not only unprofessional but amounts to a refusal to assist. See **Pharmaceutical Society of South Africa and Others v Tshabalala- Msimang and Another NNO; New Clicks South Africa (Pty) Ltd v Minister of Health and Another 2005 (3) SA 238 (SCA)** at 260 para 38: Harms JA (Concurring Navsa JA, Mthiyane JA, Brand JA and Cloete JA).

22. Having hit this brickwall from all angles the DPCI Judge had no option but to look for an alternative legal representative and instructed Malatji & Co Attorneys to prosecute its stagnated application. Through their assistance the National Treasury directed as follows on 21 June 2021: The Secretary of Police “cannot withhold payment due to Adams & Adams, as the services have been rendered”. The Secretary only paid on 07 October 2021, a year later calculated from 01 October 2020 and accordingly flouted “National Treasury Instruction Note Number 34” with the theme: “Effecting Payment within Thirty (30) Days from the Receipt of an Invoice as required in terms of Treasury Regulation 8.2.3”. See also section 38(1)(f) of The Public Finance Management Act (PFMA) No 1 of 1999, as amended. The Secretary then foreshadowed, conflicted as he was, that he may not pay Malatji & Co Attorneys for services rendered, ironically, from the budget ring-fenced for the Office of the DPCI Judge. The Secretary accordingly attempted unconstitutionally to deny the legislatively mandated DPCI Judge access to a court of law notwithstanding what section 34 of the Constitution decrees. It stipulates that:

“34 Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum”.

The DPCI Judge is pleased to report that the Secretary belatedly paid both Adams & Adams and Malatjie & Co, Attorneys. The Adams & Adams invoice attracted interest in the amount of **R29 276.80**, which the Office of the DPCI Judge unfairly had to pay from its meagre budget. This was wasteful and fruitless expenditure.

23. On the issue of “Financial Independence” the O/DPCI/J is confident that it stands on solid ground. See the ConCourt judgment in **Sonke Gender Justice NPC v/s President of the Republic of South Africa & Others 2021 (3) BCLR 269 (CC)**

delivered on 04 December 2020. The discussion from para 84 to the Order at para 133 are very insightful. However, for parity of reasoning only para 130 is quoted:

“(130) The Judicial Inspectorate as it is currently formulated is neither financially, nor operationally independent. In enacting section 88A (1)(b) and 91, Parliament has failed to meet the objective benchmarks for institutional independence. In light of my finding that section 88A (1)(b) and 91 fail to ensure an adequate level of independence of the Judicial Inspectorate, it follows that the State has not acted reasonably and effectively as required by section 7(2) of the Constitution. **These sections offend the constitutional obligation resting on the State to establish an independent correctional centre oversight mechanism. The declarations of constitutional invalidity in respect of section 88A (1)(b) and 91 should accordingly be confirmed**”. (O/DPCI/J Emphasis)

24. It is with the foregoing discussion that this segment of the DPCI Judge’s budget must be understood and reconciled:

24.1 The total budget allocation of the Office of the DPCI Judge that the Secretary imposed on us is **R6, 928,000.00**. The budget was split into salaries and wages: **R5, 168,000.00** and goods and services is **R1, 636,000.00**.

24.2 The operational budget expenditure is as follows: compensation of employees is **R5,243,451.00** with overspending of **R75,451.12**; goods and services expenditure was **R2,623,245.56 (with a commitment of R33,127.72)** with overspending of **R954,117.84**, (Machinery and equipment) is **R20,904.31** with a saving of **R95,611.02**.

24.3 The main cost drivers of the operational budget were as follows: payment of legal fees: **R1, 089,334.15**; payment for computer services: **R429, 229.93**; sita information services: **R336, 485.93**; travel and subsistence: **R314, 877.53**, fleet services: **R252, 082.27**; communication: **R207, 843.83**; advertising: **R120, 336.00**; audit fees: **R115, 827.00**; printing and office equipment: **R60, 587.60**; machinery and sundry equipment: **R20, 904.31**.

The total operational expenditure budget was **R7, 890,760.99** (from the original budget allocation of **R6, 928,000.00**). The budget was overspent by **R934.117.94**.

25. The expenditure was vital and necessary for the Office to deliver on its mandate and in compliance with the statutory obligations in terms of section 17L of the SAPS Act and the achievement of performance targets set out in the Annual Performance Plan. It is

recorded that the fleet of cars have exceeded their lifespan: The Kia was acquired in 2013, the DPCI Judge's Audi was acquired in April 2018 and has clocked 144 248 kilometres, the Ford was acquired in 2014. Because the O/DPCI/J is not consulted on the budget the Office has to make do with the aged fleet.

### **STRATEGIC OVERVIEW: VISION, MISSION AND OBJECTIVES OF THE O/DPCI/J**

26. Over the past few years the DPCI Judge has regurgitated the same Strategic view in the form of its Vision, Mission and Objective. In truth the DPCI Judge has been unable to execute same as he should in that certain strategic and fundamental functions and powers reside elsewhere: the CSPA Secretary who has usurped the powers of the DPCI Judge and the SAPS Minister who, as already alluded to, is not very helpful. In the premises, in its sphere of operation, the Office of the DPCI Judge is rather guided primarily by the "Basic values and principles governing Public Administration" as enjoined in section 195 (1)(a) to (g) of the Constitution of South Africa which reads:
- "195 (1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
  - (b) Efficient, economic and effective use of resources must be promoted.
  - (c) Public administration must be development-oriented.
  - (d) Services must be provided impartially, fairly, equitably and without bias.
  - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
  - (f) Public administration must be accountable.
  - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
  - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
  - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation."
27. Those constitutional provisions, naturally, speak for themselves. In the Office of the DPCI Judge and in the country-wide outreach programmes and talkshows with members of the Hawks, other stakeholders and members of the public this constitutional spirit is advocated. The following article by Deon Rossouw, the CEO of

the Ethics Institute, in the Business Day of Thursday 29 November 2018, has become our mantra as it accords largely with what s 195(1)(above) espouses:

**“Legal v/s Ethical:** Being legally compliant does not provide automatic moral standing. Sticking to the rule book and the law is often a technique used to bypass more important ethical dimensions. Respect for the law is a cornerstone for a just and safe society. Societies that flout legal standards tend to be unsafe, prone to corruption and moral decay. And yet while legal compliance is essential to a good society it is not sufficient.

**More is needed and that ‘more’ is morality.....**

Legal compliance is important but it also needs to pass ethical muster. If legality does not coincided with morality, even legal decisions might still be regarded as morally wrong. And there is the inverse category as well, where the ethical course of action may fall outside of the law”.

**POST ESTABLISHMENT**

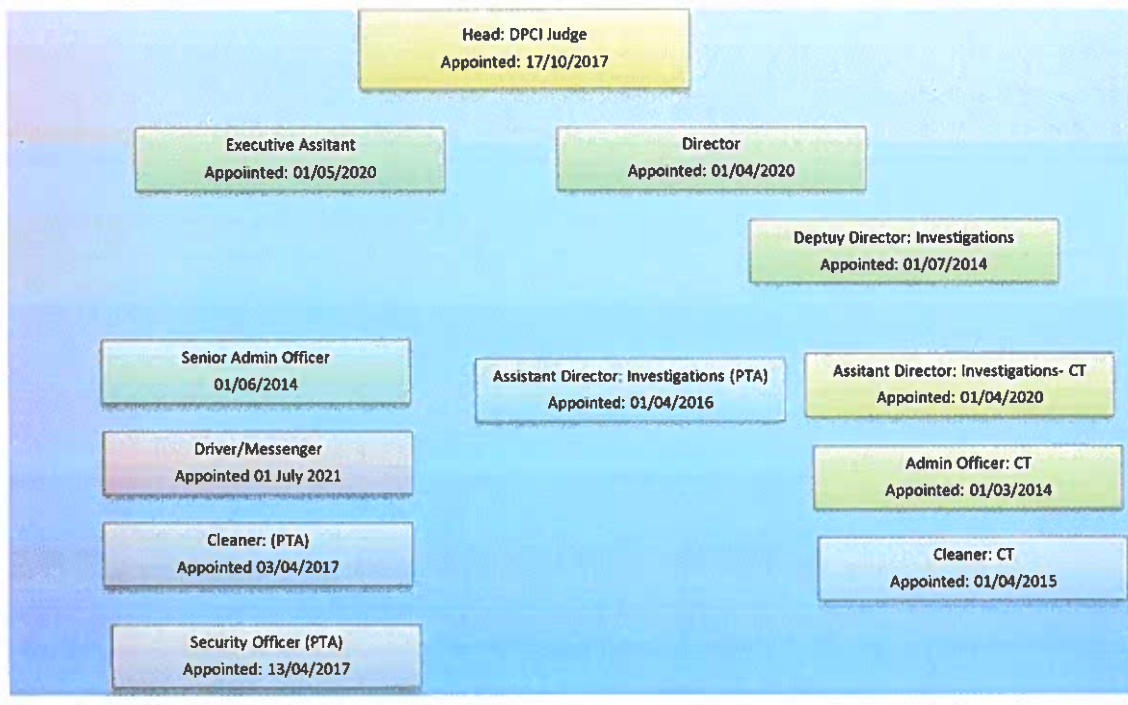
28. The O/DPCI/J comprises 12 approved and funded posts on its fixed establishment. An Assistant Director, Investigation, has moved to greener pastures in February 2022 and his post has been advertised. The Head Office is located in Pretoria and the subsidiary in Cape Town. The latter was staffed by an Investigator (Assistant Director) who has resigned and an Administrative officer and a cleaner. The rest, as depicted on the “Overview of Post Establishment”, below on Table 1 are based in Pretoria. Except for the Judge, the terms and conditions of their employment are governed by the Public Service Act, No 103 of 1994, as amended.

**28.1 Table 1: Overview of post establishment of the O/DPCI/J**

Post	No of posts	Salary level
DPCI Judge	1	Judge President
Director	1	13
Deputy Director Investigations	1	11
Assistant Directors Investigations	2	10

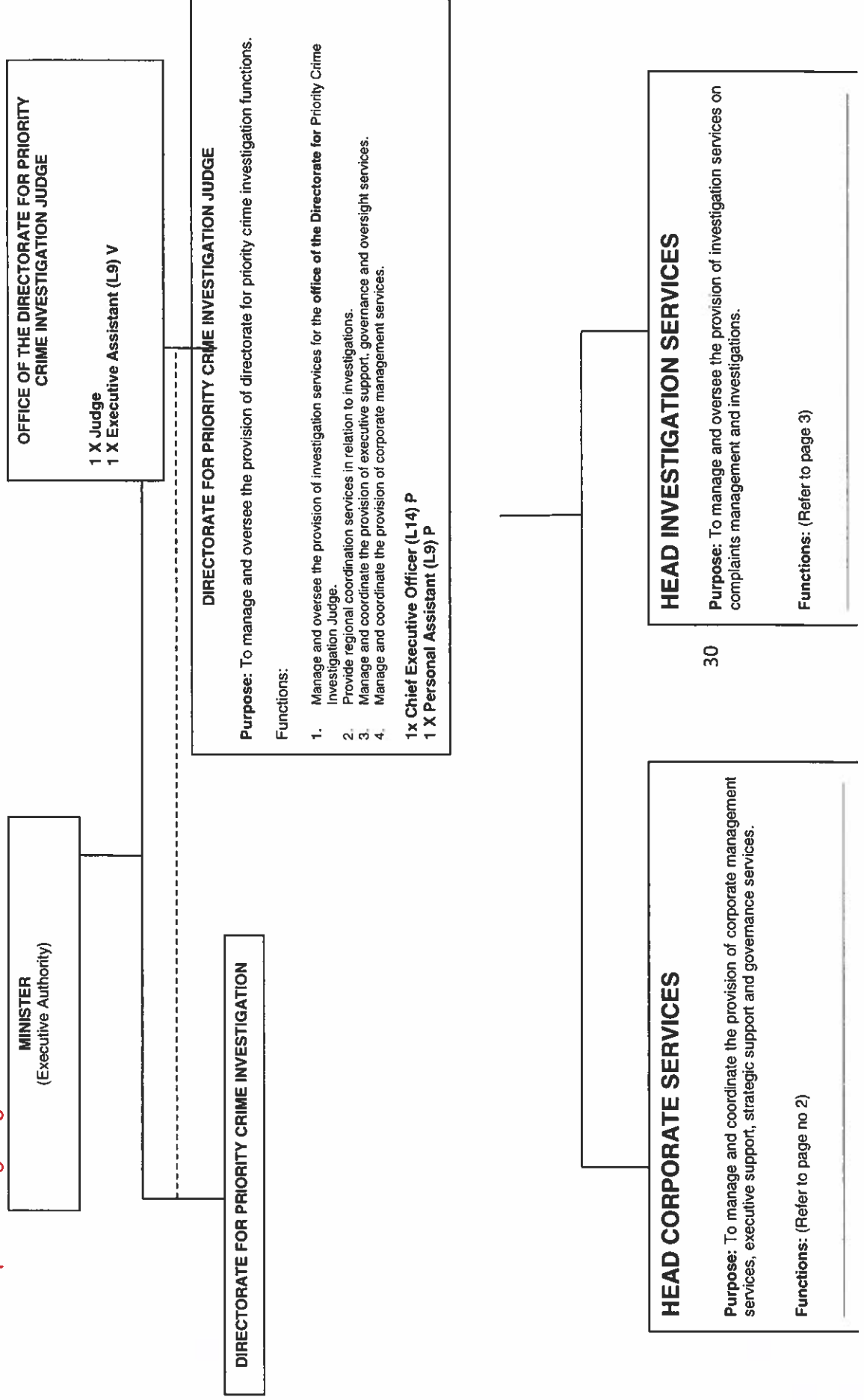
Executive Assistant to DPCI Judge	1	9
Senior Administrative Officer	1	8
Administrative Officer	1	7
General Workers	2	3
Security Officer	1	4
Driver/Messenger	1	4
	12	

28.2 Table 2: Office of the DPCI Judge Organogram (existing)



28.3 As far as the Proposed Organogram is concerned the intention is that only key positions should be approved and costed at an initial phase. Those incumbents and the DPCI Judge would then set the rest of the process in motion.

**Table 3: Proposed Organogram**



## HEAD CORPORATE SERVICES

**Purpose:** To manage and coordinate the provision of corporate management services, executive support, strategic support and governance services.

**Functions:**

1. Manage corporate support management services.
2. Manage financial management services.
3. Manage executive and technical support services.
4. Manage stakeholder management services and facilitate interface between the office and the department and between the office and other relevant structures.
5. Ensure the establishment and maintenance of intergovernmental and international relations.
6. Coordinate the development and implementation of strategic and operational plans.
7. Develop governance and compliance framework and protocol to ensure the appointment of members and effective functioning of relevant structures and committees.
6. Manage the monitoring and evaluation functions and ensures the submission of mandatory reports (annual, quarterly, monthly strategic and tenure report in line with to the relevant authorities and structures (i.e. Minister and Parliament).

### Sub-Directorate: Financial and Supply Chain Management Services

**Purpose:** To manage the provision of financial management services.

**Functions:**

1. Provide management accounting services.
2. Provide financial administration and accounting services.
3. Provide supply chain and asset management services.
4. Provide Internal Control services

1 X DD Finance & Supply Chain Management (L11) P

### Sub-Directorate: Corporate Support Services

**Purpose:** To manage the provision of corporate support management services.

**Functions:**

1. Provide Communications services.
2. Provide Informational Communications Technology services.
3. Provide Security and Facilities management services.
4. Provide Human Resource Management Services.
  - Provide Human Resources Planning and Administration services.
  - Provide Employee Relations services.
  - Provide Employee Health and Wellness services.
  - Provide Employee Utilization and Capacity Building services.
  - Provide Organisational Development services.

1 X DD: HR Management and Development (L11) P



## HEAD INVESTIGATION SERVICES

**Purpose:** To manage and oversee the provision of investigation services on complaints management and investigations.

**Functions:**

1. Manage and facilitate the development of policies, standard operating procedures and norms and standards.
2. Promote and monitor compliance on the implementation of policies, standard operating procedures and norms and standards.
3. Identify or conduct urgent or systematic practises for investigation or referral of the Judge in terms of the commissions Act.
4. Facilitate, arrange and coordinate special investigations.
5. Conduct research and impact assessment activities.
6. Conduct follow-ups to ensure the implementation of the recommendations.

### DIRECTORATE: INVESTIGATION SERVICES

(Western Cape & Northern Cape)

**Purpose:** To coordinate and provide investigations and complaints management services and support the functioning of the relevant structures at regional level.

**Functions:**

- 1) Coordinate and provide complaints management service.
- 2) Conduct investigations of complaints submitted by Public and DPCI members.
- 1 X Deputy Director (L12) P
- 1 X Assistant Director (L10) V
- 1 X Admin Officer (Support Services) (L7) F
- 1 x Cleaner (L2) F

### DIRECTORATE: I INVESTIGATION SERVICES

(Gauteng North & South, Limpopo, Mpumalanga, North West)

**Purpose:** To coordinate and provide investigations and complaints management services and support the functioning of the relevant structures at regional level.

**Functions:**

- 1) Coordinate and provide complaints management service.
- 2) Conduct investigations of complaints submitted by Public and DPCI members.
- 2 X Deputy Director (L12) F + P
- 2 X Assistant Director (L10) F + P
- 1 X Admin Officer (Support Services) (L8) F
- 1 x Security Officer (L3) F
- 1 x Cleaner (L2) F

### DIRECTORATE: INVESTIGATION SERVICES

(KZN, Eastern Cape and Free State)

**Purpose:** To coordinate and provide investigations and complaints management services and support the functioning of the relevant structures at regional level.

**Functions:**

- 1) Coordinate and provide complaints management service.
- 2) Conduct investigations of complaints submitted by Public and DPCI members.
- 1 X Deputy Director (L12) P
- 1 X Assistant Director (L10) P
- 1 x General Assistant (L5) P
- 1 x Cleaner (L2) P

**29. To put matters in perspective and to elaborate on the Proposed Organogram.** It will be noted from the previous Annual Reports that in correspondence with the SAPS Ministers (Mr Fikile Mbalula and General Bheki Cele) during November/December 2017 and afterwards that the DPCI Judge's priority is to engage a CEO who will work with the Judge to populate the proposed Organogram as and when it became absolutely necessary and depending on the availability of funds, but commencing with key positions such as: (i) Head Corporate Services (HCS); (ii) Chief Financial Officer (CFO); and (iii) Head Investigation Services (HIS). The proposed Organogram is therefore a blueprint adapted and developed from other templates in organs of state or government Departments.

### **THE PUBLIC AWARENESS CAMPAIGNS (STAKEHOLDER ENGAGEMENT SESSIONS) AS WELL AS THE CORPORATE IDENTITY OF THE OFFICE OF THE DPCI JUDGE**

30. Section 17L (15) of the SAPS Act contemplates that the Secretary in consultation with the retired Judge, shall develop and implement a plan to promote awareness amongst the public and members of the Directorate (the Hawks) on the functions and the role of the complaints mechanism carried out by the DPCI Judge.

30.1 The O/DPCI/J has over the past five years embarked on intensive marketing campaigns during which we visited all provinces to raise awareness of its mandate amongst members of the Hawks only at the initial stage. The second leg thereof had to do with outreach campaigns, programmes and engagements amongst and with members of the public, who are always the chief focus of the O/DPCI/J, as well as our stakeholders and other relevant organs of state who in the main report to the Ministry of Police. See para 13 (above). We also invited local civic formations and members of the media of that particular province or area whenever we have these campaigns and promotions.

30.2 Due to the Covid-19 pandemic the Office of the DPCI Judge had put on hold the awareness campaigns in compliance with the Disaster Management Act and Regulations. The Office is now in full swing with this programme in the current financial year (2021/2022). As far as the "second leg" alluded to in para 30.1 (above) is concerned we visited the following Provinces:

(a) Khayelitsha, Cape Town, Western Cape on 12 December 2017.

- (b) Bloemfontein, Free State, on 06 March 2018.
- (c) Durban, Kwa-Zulu Natal, on 07 June 2018.
- (d) Phokeng, Rustenburg, North West on 13 March 2019.
- (e) Zwelitsha, Buffalo City, Eastern Cape on 27 November 2019.
- (f) Kimberly, Northern Cape, on 06 April 2022
- (g) Polokwane, Limpopo, on 31 May 2022
- (h) Gauteng is scheduled for 29 September 2022 and Mpumalanga scheduled for November 2022.

30.3 In fairness, it ought to be pointed out that the Communication Division of the Secretariat is the only Unit of the Secretariat that is really helpful to the DPCI Judge. It assists with the marketing of the Office in terms of section 17L(15) of the SAPS Act. The irony is that when the Office is well marketed and complaints stream in the Office of the DPCI Judge then cannot cope due to the lack of personnel capacity, lack of appropriate skills, expertise and resources. We must be upfront to admit that we, consequently, fail to meet our own targets set, although the well publicised backlog of complaints/cases also has something to do with the below par output, which does not detract from the admirable individual performance of the staff.

30.4 As previously reported, still pertinent to the marketing endeavour, the O/DPCI/J developed and designed its logo for corporate identity more than two years back. The office's motto is "**Zero tolerance for the culture of impunity**". This is the guiding principle to members of the Hawks that they must be women and men of integrity; that their conduct should be beyond reproach and must demonstrate ethical behaviour and leadership. These qualities apply with even more resonance to the DPCI Judge and his functionaries. The logo is integral to our letterhead (above at the Preface and Cover Page). It is the O/DPCI/J's corporate identity and brand which has by now become well established and distinctively identifiable and associated with our Institution.

## **PERFORMANCE OVERVIEW OF THE OFFICE IN TERMS OF THE ANNUAL PERFORMANCE PLAN TARGETS: IRREGULARLY ACCOUNTING TO CSPS SECRETARY ON HUMAN RESOURCES (HR) MATTERS**

31. Before dealing seriatim with the Performance Overview Programmes and Sub-programmes the following intractable challenges must be factored in for a proper perspective in this area:

31.1 The total denial of Human Resource Personnel has brought about the anomaly that the performance assessment of the staff of the Office of the DPCI Judge is carried out by the CSPS Secretariat. This includes the performance of the Director/Acting CEO and the Investigators who, sometimes, probe complex, highly sensitive and confidential matters and prepare reports for consideration by the DPCI Judge. The Judge then writes and signs off on the final and binding Reports. The Secretariat has no inkling of the depth of the work done, nor should they as it is not their sphere of operation.

31.2 The O/DPCI/J is held to ransom because should the Performance Reports not be presented to the Secretariat for assessment then the DPCI Judge's personnel would forfeit their bonuses and salary notches when they become due. Irrespective of the scores determined or the recommendations made by the O/DPCI/J the Secretariat has the final say and even countermands the assessment of the DPCI Judge. They rarely assent to the O/DPCI/J's intrinsic assessment. This has shuttered the morale of our personnel.

### **Programme 1: Administration**

#### **Sub-Programme 1.1: Office Management**

32. A performance measurement and reporting system supports management decision-making and enables the O/DPCI/J to adhere to and comply with internal and external accountability reporting prerequisites and legislative requirements. In terms thereof Performance Monitoring and Evaluation Reports were compiled with to ensure the achievement of strategic objectives.

Performance Agreements of all staff were signed and submitted to the Human Resource (HR) of the Secretariat as well as the Annual Procurement Demand Plan which was broken down into four Demand Management Plans per quarter, and bi-annual Performance Assessment Reports in compliance with internal prescripts. Apart from the 2020/2021 financial year, the Annual Reports have been timeously tabled in Parliament in compliance with s 17L (9) of the SAPS Act. The compliance rate with internal prescripts is close to 100 % in accordance with the target set in the Annual Performance Plan (APP).

#### **Sub-programme 1.2: Finance**

**33. The financial expenditure of the Office:** The Office has spent its budget in compliance with the Public Finance Management Act (PFMA) and adhered to the procurement processes set out in the Supply Chain Management rules. During the period under review the Office utilised its full (100%) budget on goods and services in accordance with its planned targets. The operational budget allocation for the office was **R6, 576,000.00** and the operational expenditure was **R6, 366,201.71**. The savings was **R93, 029.99** which was unavoidably caused by the vacant posts, as already explained. There was no fruitless, wasteful or irregular expenditure. The output in terms of the operational financial expenditure is 99%.

### **Sub-programme 1.3: Marketing of the Office (Public Awareness Campaigns)**

34. Section 17L (15) of SAPS Act obliges the O/DPCI/J in consultation with the Civilian Secretariat for Police Services to develop and implement a plan to promote awareness amongst the public, members of the Hawks and other Chapter nine institutions on the functions and role of the complaints mechanism. The office had scaled down on the number of awareness campaigns because of limited capacity and the Covid 19 pandemic in compliance with the issued health protocols, as already stated.

## **Programme 2: Investigation**

### **Sub-programme 1.1: Case Management System**

#### **Complaints Received**

35. During the period under review, the office received a total of 63 complaints compared to 58 received during the previous financial year: Five (5) more complaints. The statistics indicate that the Office would have grown even more had it not been for the Covid-19 pandemic, the lack of personnel capacity and financial constraints visited on the Office of the DPCI Judge by the Secretariat and the SAPS Minister.

Of the 63 complaints so received 22 fell within the scope of our mandate in terms of s 17L (4) of the SAPS Act. The figure received in this category/sub-head during the previous financial year is 19, an increase by three (3) complaints.

35.1 Of the 22 complaints falling within our mandate 20 were received from members of the public in terms of s 17L(4)(a) of the SAPS Act while two (2) complaints were received from members of the Hawks in terms of s 17(4)(b)

of the SAPS Act. The number of complaints received from the Hawks are understandably low compared to those received from members of the society.

Two (2) complaints were received during the previous financial year.

35.2 A total of 41 complaints received fell outside the mandate of the O/DPCI/J during the current financial year in comparison to 39 during the previous financial period. There has been an increase by two (2) complaints.

35.3 It is essential to emphasise the importance of always conducting a preliminary investigation in all cases received by the DPCI Judge. It is not always possible to discern or establish whether a complaint falls within the purview of cases that the DPCI Judge is enjoined to adjudicate on the merits.

The exercise is undertaken to determine the appropriate institution or state organ to which the complaint should be referred. The statements of complaint are in a number of instances drafted in a manner that demonstrates that the ordinary man/woman in the street cannot always draw a distinction between members of the SAPS and those of the DPCI (the Hawks). The DPCI Judge does referrals on their behalf and furnish them with a copy of the Report. This eliminates the necessity for them being sent from pillar to post or even having to utilise their own resources to establish the body/institution having jurisdiction(mandate) in respect of their complaints as contemplated in s17L(5) of the SAPS Act quoted in para 12 of this Report.

**Table 4 depicts categories of complaints received**

<b>s 17L (4)(a) of SAPS Act</b>	<b>s 17L (4)(b) of SAPS Act</b>	<b>Outside mandate</b>	<b>Total complaints</b>
20	2	41	63

36. All 63 complaints were registered upon receipt and therefore within the 72-hour period prescribed in the Annual Performance Plan. They were also classified according to the relevant categories in terms of s 17L(4) of the SAPS Act. The cases are then allocated to the investigators for investigation. Acknowledgement letters of receipt of the complaints were sent to complainants or interested parties within 48 hours of registration. The output was 100% in compliance with the target set out in Annual Performance Plan.

**Table 5: Breakdown of complaints received per province**

Provinces	Within mandate	Outside mandate	Total
Gauteng	11	16	27
Western Cape	3	5	8
Eastern Cape	1	6	7
Free State	1	4	5
Kwa-Zulu- Natal	2	2	4
Limpopo	1	3	4
Mpumalanga	1	1	2
North West	1	1	2
Northern Cape	0	2	2
Anonymous	1	1	2
<b>Grand Total</b>	<b>22</b>	<b>41</b>	<b>63</b>

**Table 6: Categories of complaints received from members of the public and members of the Hawks**

Complaints	Received	Type of complaints
S17L (4)(a) SAPS Act (members of public)	20	Complaints from the public relating to unlawful infringement of their rights and prejudices suffered emanating from investigations conducted by Hawks
S17L (4)(b) SAPS Act (members of Hawks)	2	Complaint of interference with the investigation, unfair treatment by the Senior Management of the Hawks 's

and alleged falsification of affidavit  
of a witness

Total 22

### Trend Analysis of complaints received per province

37. The trend analysis conducted by the Office of the DPCI Judge for the cases received in accordance with s 17L (4) of the SAPS Act per province is as follows (See table 7 below):

Gauteng Province	Nature of Offences	Number of cases
	Hawks investigator forged signature of a witness.	1
	Failure to pay informers fees by the Hawks.	2
	Hawks members unlawfully seized items during search and seizure operation.	1
	Failure to investigate cases of fraud by the Hawks (Alleged fraudulent Constitutional Court Orders).	1
	Hawks investigator refusing to restore the unlawfully seized items (Computer box and 2 cellphones).	1
	Complaint of failure to investigate crime by Lt Gen Godfrey Lebeya which led to the killing of Col Kinnear.	1
	Complaint of interference with investigation and unfair treatment by Hawks Senior Management.	1
	Failure to provide feedback to the complainant by the Hawks investigator.	1
	Unlawful publishing of pictures to the media by a Hawks.	1
	Misconduct and abuse of powers by the Hawks investigators.	1
	Alleged falsification of affidavit of a witness by a member of the Hawks.	1



Western Cape	Unlawful search and seizure by the Hawks.	1
	Undue delay to conclude investigation.	1
	Failure to investigate complaint by the Hawks.	1

Kwa-Zulu Natal	Vehicle parts unlawfully stripped while in the custody of the Hawks.	1
	Failure to provide feedback by the Hawks.	1

Free State	Improper investigation by the Hawks.	1
------------	--------------------------------------	---

Mpumalanga	Abuse of powers by a Hawks investigator.	1
------------	--	---

Eastern Cape	Failure to investigate fraud case by the Hawks.	1
--------------	---	---

Limpopo	Unlawful arrest by and corruption against a Hawks investigator.	1
---------	---	---

North West	Failure to investigate fraud case by the Hawks.	1
------------	---	---

### **Trend analysis of complaints received outside mandate per province**

38. The trend analysis conducted by the Office of the DPCI Judge for the complaints falling outside mandate and scope of the DPCI Judge is as follows: (See table 8 below):

<b>Gauteng</b>	<b>Nature of complaints</b>	<b>Number of cases</b>
	Unprofessional conduct and ethnic discrimination by a police officer.	1
	Lack of feedback by National Deputy Director of Public Prosecutions.	1
	Fraud against Africa A360 research and consulting company.	1

	Corruption and fraudulent activities at Cell C cellphone company.	1
	Loss of firearm at Newlands SAPS.	1
	Refusal to open a case by SAPS.	1
	Poor service delivery by SAPS.	1
	Complaint against drug dealers and SAPS reluctance to investigate.	1
	Failure to assist complainant to open a case.	1
	Dereliction of duty against IPID investigator.	1
	Unlawful arrest by SAPS.	1
	Unreasonable delay in applications of firearm competency tests by SAPS.	3
	Refusal to hand back passports by police after case was struck from court roll.	1
	Unlawful arrest and detention by police.	1

Eastern Cape	Failure to enforce Protection Order by police.	1
	Failure to provide feedback by police.	1
	Poor service delivery.	1
	Complainant seeks to claim damages to her car.	1
	Unsatisfactory investigation of theft of livestock by police.	1
	Failure to investigate case of assault by police.	1

Western Cape	Fraud and extortion against SASSA.	1
	Fraud and corruption in the recruitment section of the Hawks (Labour dispute).	1
	Undue delay to finalise application of firearm competency test.	1
	Assault by a police officer on complainant.	1
	Poor service delivery against SAPS.	1

Free State	Refusal to restore firearm by police.	1
	Theft of livestock: police in action.	1
	Fraud and theft by Old mutual official.	1
	Refusal to re-enlistment program of SAPS.	1

Limpopo	Unlawful eviction by landlord: police inaction.	1
	Illegal detention by members of SAPS.	1
	Unsatisfactory investigation by police.	1

Kwa-Zulu-Natal	Corruption and malfeasance at Uphongolo Municipality: inaction by SAPS.	1
	Alleged unlawful arrest by SAPS but found not guilty.	1
	Undue delay to finalise application for firearm competency test.	1

Mpumalanga	Seizure of items (laptop, cellphone, ID and Bank card by police.	1
------------	--	---

North West	Livestock(sheep) unlawfully confiscated by the police.	1

### COMPLAINTS RECEIVED DURING THE CURRENT PERIOD FALLING WITHIN SCOPE AND MANDATE

39. During the period under review we received a total of twenty-one [21] **complaints falling within the scope of our mandate**. Of the 21 new complaints, only one (1) was finalised whereas 20 are pending due a variety of reasons, such as the matter pending before court, which compel us to pend our investigations; the dockets are with the NPA for decision and others awaiting the finalisation of investigation

conducted by the Hawks and older backlog cases receiving priority. See para 41 (below)

**Case finalised within mandate during the period under review. See table 9 below:**

Ref No	Complainant	Nature of complaint	Status of the cases
1. O/DPCI/J 06/04/2021	Sibusiso Tshabalala	Abuse of powers by the Hawks.	Unsubstantiated. The complainant was found guilty by the Regional Court. The DPCI Judge Finding exonerated the respondent on allegation of abuse of powers.

40. The following cases falling within mandate received during the period under review were not finalised due to reasons that they await NPA's decision; running a parallel process at Court or pending the finalisation of the investigation done by the Hawks or disposing of older backlog cases. **See table 10 below:**

Ref No	Complainant	Nature of complaint	Status of the case
1. O/DPCI/J 18/05/2021	Thabo Selby Thipa	Forgery against a member of the Hawks.	The handwriting expert evidence is outstanding.
2. O/DPCI/J 21/06/2021	Piere Theron	Improper investigation of corruption case by the Hawks	Awaiting the investigation report of the case and compile the final report.

3. O/DPCI/J 23/06/2021	Anonymous	Failure to pay informer's fees by the Hawks.	Awaiting the DV number (informer's number).
4. O/DPCI/J 24/06/2021	Kgotso Matjila	Unlawful search and seizure of items by the Hawks.	The investigation is complete and the Draft report is outstanding.
5. O/DPCI/J 26/07/2021	Andre Minnaar	Failure to investigate fraudulent Constitutional Court Orders by the Hawks.	Draft Report is for consideration by the DPCI Judge.
6. O/DPCI/J 30/08/2021	Ndileka Mfunda	Failure to investigate fraud by the Hawks.	Obtained copies of the docket and the Draft report is outstanding.
7. O/DPCI/J 33/10/2021	Dr Bert Kirsten	Unlawful search and seizure, and failure to investigate a case by the Hawks.	To establish if the Randburg case is under investigation as well.
8. O/DPCI/J 34/11/2021	Silas Simon	Failure to release seized items (computer box and two (2) cellphones.	To obtain respondent's statement.
9. O/DPCI/J 35/11/2021	Minister of Police (General Bheki Cele)	Failure to investigate a case by the National Head of the Hawks.	To obtain response statement to Lt Gen Godfrey Lebeya.
10. O/DPCI/J 36/11/2021	Ian Edward	Failure to investigate fraud case by the Hawks.	To obtain investigative report from the respondent.
11. O/DPCI/J 47/12/2021	Lt Col Phumla Mrwebi	Interference with the investigation and unfair treatment by the Senior Management of the Hawks.	Witnesses statements and respondents statements outstanding.

12. O/DPCI/J 48/01/2022	Amos Topiyo Mphelo	Failure to pay informer's fees by the Hawks.	Draft Report is compiled for consideration by the DPCI Judge.
13. O/DPCI/J 50/01/2022	Daries Naidoo	Failure to provide feedback to the complainant by the Hawks.	To obtain progress report of the case.
14. O/DPCI/J 51/02/2022	Adv Anel Du Toit on behalf of Henk van Aswegen and Suzan van Aswegen	Corruption and misconduct against Capt Hermanus Johannes Els of the Hawks.	Supporting evidence from the complainant to substantiate the allegation is awaited.
15. O/DPCI/J 55/02/2022	Adriaan Pillay	Unlawful publishing of pictures of his wife by the Hawks to the social network media.	Draft report compiled for consideration by the DPCI Judge.
16. O/DPCI/J 56/03/2022	Adv Brenda Madumise- Pajibo & Onica Nonhlanhla (WISE)	Abuse of powers by the Hawks in the case involving Noma Gigaba.	Awaiting the power of attorneys to proceed with the investigation.
17. O/DPCI/J 57/03/2022	Piere Mostert	Undue delay to conclude investigation by the Hawks.	The investigation report of the fraud case is awaited from the Hawks investigator.
18. O/DPCI/J 60/03/2022	Ondine Schrick	Vehicle stripped off parts while in the custody of the Hawks.	To obtain statements from complainant, witnesses and respondents.
19. O/DPCI/J 61/03/2022	Teracita Esau	Failure to investigate fraud case by the Hawks.	To obtain the investigation report

			of the fraud case from the Hawks.
20. O/DPCI/J 62/03/2022	Yashoda Kathrada	Improper conduct by the Hawks member.	Received the departmental investigation report. Draft report is outstanding.

41. Apart from the above-mentioned cases investigated, the O/DPCI/J has investigated and finalised the following Backlog Cases which fall within the mandate during the period under review: (see table 11 below):

Ref No	Complainant	Nature of complaint	Manner of disposal	Referred to
1. O/DPCI/J 52/4/2016	Mandisi Njoli	Failure to provide feedback on the status of fraud case by Lt Col Mbeki and Col De Wee of the Hawks	Substantiated. Implicated members were verbally warned.	No referral as the matter is finalised.
2. O/DPCI/J 36/10/2020	Hilmar Cramer	Failure to probe the issue of the hazardous explosives concealed at Sasol Petroleum Ltd in Sasolburg by Col JN Makua of the Crime Against State (CATS) of the Hawks.	Unsubstantiated. The DPCI Judge is unable to find that Col JN Makua was so tardy in investigating the complaint to the point that he unlawfully or seriously violated the rights of the complainant.	No referral as the complaint already received the attention of the Department of Labour.

<p>3. O/DPCI/J 35/09/2018</p>	<p>Etrezia Botha</p>	<p>Non-compliance with Labour laws and non-payment of taxes by her former employer</p>	<p>Unsubstantiated. The respondents Brig Bongani Maqashalala, Brig MR Mbatha and Catherine Helena Col Fortman are exonerated from any misconduct or malfeasance.</p>	<p>No referral.</p>
<p>4. O/DPCI/J 252/02/2019</p>	<p>Capt Boitumelo Ramahlaha</p>	<p>Abuse of power by former National Head of the Hawks, Lt Gen Berning Mthandazo Ntlemeza</p>	<p>Unsubstantiated. The complainant has not been able to produce evidence that his rights were seriously violated and unlawfully infringed during the investigation by the cited respondents</p>	<p>No referral.</p>
<p>5. O/DPCI/J 108/01/2017</p>	<p>Ramadimetja Lina Nkwana</p>	<p>Improper investigation of fraud case by Sgt Michelle Esterhuizen attached to Organised Crime Unit of the Hawks</p>	<p>Unsubstantiated. The Senior Public Prosecutor declined to prosecute. The complainant can lodge a complaint against the Sheriff to the South African Board of Sheriffs.</p>	<p>No referral.</p>



<p>6. O/DPCI/J 110/01/2017</p>	<p>Adv Deolin Willemse</p>	<p>Racism and unprofessional conduct against Col H Cooper attached to the Commercial Crime Unit of the Hawks.</p>	<p>Dismissed. The complainant has not made out a <i>prima facie</i> case against the respondent, Col H Cooper.</p>	<p>No referral.</p>
<p>7. O/DPCI/J 61/04/2016</p>	<p>Gaolaolwe Mokoka</p>	<p>Seizure of motor vehicle by the Hawks</p>	<p>Unsubstantiated. The respondent, Capt Ntesang Rodnicca Maletswa was bona fide in her conduct, blameless and exonerated.</p>	<p>No referral.</p>
<p>8.O/DPCI/J 162/12/2017</p>	<p>Baete Simon Putsoane</p>	<p>Wrongful arrest and house searched without a search warrant and theft of cash amount by W/O Phillimon Moeletsi attached to the Organised Crime Unit of the Hawks.</p>	<p>Unsubstantiated. There is warrant of arrest issued against the complainant for fraud. The complainant is fugitive. Complainant is consulted his lawyer to pursue a civil case. The DPCI Judge can play no further part.</p>	<p>No referral.</p>

<p><b>9.O/DPCI/J</b> 295/09/2019</p>	<p>Deon Raymond Larry</p>	<p>Abuse of power and misconduct against Capt Mark Mclean.</p>	<p>Unsubstantiated. The respondent Capt Mar Mclean is exonerated as he neither abused his power nor infringed the complainant's rights.</p>	<p>No referral.</p>
<p><b>10.O/DPCI/J</b> 178/04/218</p>	<p>Siphokazi Ndudane</p>	<p>Bribery and impersonation as police officer (Maj Gen Khana of the Hawks).</p>	<p>Unsubstantiated. The Office of the DPCI Judge discovered that it was scam in which the unknown suspects tried to extort money from the complainant. Similarly the Office of the DPCI Judge could not find evidence implicating the respondent, Maj Gen Alfred Khana.</p>	<p>No referral.</p>
<p><b>11.O/DPCI/J</b> 300/12/2019</p>	<p>W/O Matseba Lucas Moabelo</p>	<p>Threats to assault against Capt Serana Harrison Phiri.</p>	<p>It is clear from the facts of the statements that the complaint relates to threats</p>	<p>IPID</p>

			of violence and trumped up charges of extortion. The DPCI Judge does not have a mandate to investigate criminal acts against members of the Hawks and referred it to IPID to consider investigating the criminal allegations against Capt Serena Harrison Phiri and Col Nicholas Bheki Ndwandwe.	
12.O/DPCI/J 311/01/2020	Ashveer Suchit	Failure to conduct proper investigation in the case of fraud by the Hawks and SAPS members (Sgt Mtshali, Col AL Molo and Brig AW Holby	The DPCI Judge has directed Lt Gen Godfrey Lebeya to implement the Remedial Action and caution the respondent Col AL Molo.	National Head of the Hawks: Lt Gen Godfrey Lebeya.
13.O/DPCI/J 58/02/2021	Desai Mduduze Luphongo	False charges against members of the Hawks.	Unsubstantiated. The DPCI Judge is satisfied that the members of	No referral.

	and Jan Lefu Mofokeng		the DPCI (the Hawks) have not committed any misconduct.	
14.O/DPCI/J 325/03/2020	Sipho Cyril Nzuza	Unlawful seizure of cellphone and violation of right to privacy by Lt Col Peter Michael Kroutz and W/O Qondi Makeleni.	The allegations are to be adjudicated by the trial court before whom case serves. The Office of the DPCI Judge subscribes to the principle of separation of powers.	No referral.
15.O/DPCI/J 01/04/2020	Victor Ofentse Senna former Acting Head of IPID	Serious and unlawful infringement of rights by the Hawks, Capt Mtshali, Lt Gen Godfrey Lebeya and Nomkhosi Netsianda.	The DPCI Judge is satisfied that the Lt Gen Lebeya, has failed to investigate the eminently reasonable concerns and suspicions expressed by Mr Senna and intervene appropriately to curb, what was manifestly an abuse of power by certain	Minister of Police

			members of the Hawks and by necessary implication the misdirection by Ms Nomkhosi Netshianda of IPID.	
16.O/DPCI/J 138/07/2017	Phillip Van Heerden	Failure to arrest suspect and provide feedback by Capt T Deport of the Hawks	The DPCI Judge directed Lt Gen Godfrey Lebeya to implement the Remedial Action: to ensure that the investigation is not comprised and thereby sully the rapidly improving image of the Hawks. Brig Mushavhaduvha Ramovha's communication, he should be firmly warned that he cannot shirk his responsibilities. The DPCI Judge should be furnished with progress report	National Head of the Hawks, Lt Gen Godfrey Lebeya.

			until the case is disposed off.	
17.O/DPCI/J 114/02/2017	Mwandile Vananda	Unlawful seizure of motor vehicle by W/O WK Louw of the Hawks.	Unsubstantiated. The DPCI Judge found no credible evidence pertaining to the alleged assault by the police. The complainant had ample opportunity to report such assault to IPID or nearest police station upon his detention or report to his legal representative.	No referral.
18.O/DPCI/J 58/02/2021	Palesa Lebitse	Abuse of powers and improper influence to the investigation conducted by the Hawks by the Deputy Minister of Finance, Dr David Masondo.	Unsubstantiated. The complainant, Ms Palesa Lebitse, does not claim that Dr David Masondo abused his powers as a politician to interfere with the investigation of the Hawks. The DPCI Judge could neither discern such	No referral.

			interference. Dr Masondo must be castigated in that his motives in having Ms Lebitse charged were not purely honourable.	
19.O/DPCI/J 212/07/2018	Nandipa Magadaza on behalf of Pastor Timothy Omotoso	Unlawful arrest and infringement of constitutional rights by members of the Hawks, Lt Col Brenda Magwangqana and others.	Unsubstantiated. The complaint has not been properly lodged before the DPCI Judge in that Ms Magadadza had no authority to lodge the complaint on behalf of Pastor Timothy Omotoso, alternatively, the pastor has not deposed to any complaint. The DPCI Judge defer to the Court of law to avoid two parallel processes running on essentially the same issues which may bring	No referral.

			about needless conflicting outcomes, The respondents are accordingly exonerated.	
20.O/DPCI/J 35/10/2020	Charlene Chandler	Intimidation, unprofessional conduct and misuse of state resources by W/O Pelisa Pama of the Hawks.	The DPCI Judge directed Lt Gen Godfrey Lebeya to implement the Remedial Action: to give a stern warning and a bit of counselling TO W/O Pama.	National Head of the Hawks, Lt Gen Godfrey Lebeya.
21.O/DPCI/J 306/12/2019	Gayle Mower	Failure to open a fraud case by Capt Ramesh Heeral and Capt Awelani Brian Thenga.	The DPCI Judge directed Lt Gen Godfrey Lebeya to investigate whether Capt Awelani Brian Thenga failed to obtain the required information during the course of investigation.	National Head of the DPCI (Hawks), Lt Gen Godfrey Lebeya.

**42. Cases received and finalised falling outside the mandate of the O/DPCI/J during the period under review.**

Table 12 depicts the finalised complaints outside mandate



No	Ref No	Complainant	Nature of complaint	Referred to/Status
1.	O/DPCI/J 09/04/2021	Gabriel Akindutire	Breach of contract by Africa360 Research and Consulting Partners.	This is purely a civil matter. No referral was made.
2.	O/DPCI/J 13/04/2021	Shaista China	Refusal to open a case of intimidation by landlord.	The matter involved SAPS members. The matter was referred to Provincial Commissioner of SAPS: KZN.
3.	O/DPCI/J 15/04/2021	Lucky Peter Machabe	Kept in detention but the police does not know anything about the crimes he was convicted and sentenced.	The matter was referred to Inspecting Judge of the Judicial Inspectorate of the Correctional Services (JICS).
4.	O/DPCI/J 02/04/2021	Mojalefa Shadrack Moholo	Poor service delivery against police.	This is a civil matter. The complainant undertook in his statement to refer the complaint to the Provincial Commissioner of SAPS: Free State.
5.	O/DPCI/J 11/04/2021	Damian Govender	Identity theft, fraud, corruption and cover ups perpetrated within the Cell C a cellphone company.	The matter falls under the jurisdiction of the Hawks. Provincial Commissioner of SAPS: Gauteng and National Head of the DPCI (Hawks).
6.	O/DPCI/J 03/04/2021	Jim Maluleke	Impropriety and poor service delivery by a member attached to Rabasotho SAPS.	The matter was referred to Provincial Commissioner of SAPS: Gauteng.
7.	O/DPCI/J 19/06/2021	Mojalefa Moholo	Fraud by Ms Marlene Kayser from Old Mutual	The matter does not involve members of the Hawks. It was referred to Provincial Commissioner of SAPS: Free State.

8.	O/DPCI/J 20/06/2021	Whistleblower	Maladministrati on and corruption at Uphongolo Local Municipality.	The matter falls under the jurisdiction of the Hawks and PSIRA. The complaint was referred to National Head of DPCI (Hawks) and Private Industry Regulatory Authority (PSIRA).
9.	O/DPCI/J 14/04/2021	Lucky Peter Machabe	The convict, Mr Masilo Frederick Kubjana is working illegally ay Polokwane SAPS.	A SAPS member is implicated. It was referred to Provincial Commissioner of SAPS: Limpopo.
10.	O/DPCI/J 29/08/2021	George Tony Kubayi	Dereliction of duty by Mr Mathoko, investigator of IPID.	Our investigation revealed that a IPID investigator is involved. The matter was referred to IPID.
11.	O/DPCI/J 39/11/2021	Gun Owners of South Africa on behalf of David Hermanus van Zyl	Undue delay to finalise the competency certificate application.	The complaint involves the SAPS. It was referred to Provincial Commissioner of SAPS: Gauteng.
12.	O/DPCI/J 40/11/2021	Gun Owners of South Africa on behalf of CFM Louw	Unreasonable delay to finalise the application for a firearm licence renewal.	The complaint involves SAPS. It was referred Provincial Commissioner of SAPS: Western Cape.
13.	O/DPCI/J 41/11/2021	Gun Owners of South Africa on behalf of Leander Christiaan Van Zyl	Unreasonable delay to finalise the application for firearm competency test.	The complaint involves SAPS. It was referred Provincial Commissioner of SAPS: Northern Cape.
14.	O/DPCI/J 42/11/2021	Gun Owners of South Africa on behalf of Anesh Jayraj Hardavnarai	Unreasonable delay to finalise the application for firearm competency	The complaint involves SAPS. It was referred to Provincial Commissioner of SAPS: KZN
15.	O/DPCI/J 38/11/2021	Gun Owners of South Africa on behalf of Maritza van Eeden	Undue delay to conclude the turnaround reasonable prescribed time of 90 days.	The complaint involves SAPS. It was referred to Provincial Commissioner of SAPS: Gauteng.

16.	O/DPCI/J 32/10/2021	Johnny R 'Nanas' Gouws	Wrongful arrest and detention.	No member of the Hawks is involved. (Hawks Ombud) has no authority to review a court decision.
17.	O/DPCI/J 25/07/2021	Capt Masakhane Tshokela	Grievance relates to allegations of suspected fraud and corruption and unfair labour practice against SAPS Promotions and Reward Section in the Western Cape.	This is HR (Human Resource) dispute between the employee and employer. It was referred to the National Commissioner of SAPS and Public Protector.
18.	O/DPCI/J 44/11/2021	Maruping Daniel	Unsuccessful application for re-enlistment to SAPS.	No member of the Hawks is involved. It was referred to the National Commissioner of SAPS.
19.	O/DPCI/J 05/04/2021	Mokete Simon Mokhonanzi	Poor service delivery against members of Arlington and Fouriesburg SAPS after opened a case of stock theft and malicious damage to property.	No Hawks member is involved. Provincial Commissioner of SAPS: Free State..
20.	O/DPCI/J 49/01/2022	Alridge Domingo	Failure to investigate threes cases by members of Humansdorp SAPS	SAPS members were involved. It was referred to the Provincial Commissioner of SAPS: Eastern Cape.
21.	O/DPCI/J 45/04/2021	Luvuyo Rumbu	Poor service delivery against members of Fort Beufort SAPS. Complainant opened a case of stock theft but the police are doing nothing.	No member of the Hawks is involved but SAPS members are involved. It was referred to the Provincial Commissioner of SAPS: Eastern Cape.

22.	O/DPCI/J 52/02/2022	Derick Jonker	Unlawful arrest, detention and assault by members of Robertson SAPS.	SAPS members were involved. The case is already been investigated by IPID.
23.	O/DPCI/J 53/02/2022	JP Du Toit of Otto Krause attorneys on behalf of Hardus Van Bosch & 4 Others	Refusal by W/O Freddy Groep attached to Provincial Office Organised Crime Unit to handover the passports of his clients who are charged of fraud.	No member of the Hawks is involved. The matter involved a SAPS member. It was referred to the Provincial Commissioner of SAPS: Gauteng
24.	O/DPCI/J 16/05/2021	Enock Mafokama	Unlawful arrest by Sgt Dlamini a member of SAPS Tactical Response Team (TRT).	A SAPS member is involved. It was referred to the Provincial Commissioner of SAPS: Gauteng.
25.	O/DPCI/J 46/11/2021	Bheki Buthelezi	Unlawful seizure of the assets of the complainant by members of Nelspruit SAPS.	A member of SAPS is involved. It was referred to the Provincial Commissioner of SAPS: Mpumalanga.

**43. The O/DPCI/J finalised the following Backlog Cases which fell outside scope and mandate of the O/DPCI/J during the current year.**

Table 13 depicts complaints finalised falling outside mandate

No	Ref No	Complainant	Nature of complaint	Referred to/Status
1.	O/DPCI/J 94/09/2016	Shane Rudman	Violation of privacy and persecution by members of Table View SAPS and Provincial Detectives: Western Cape.	No Hawks member was involved but only SAPS members were involved and the matter was referred to the Provincial Commissioner of SAPS: Western Cape.

2.	O/DPCI/J 52/01/2020	Yahaya Addrisu	Failure to provide feedback by the investigating officer of Kempton SAPS.	The matter was referred to the Provincial Commissioner of SAPS: Gauteng.
3.	O/DPCI/J 54/02/2021	Malatsi Humphrey Koko	Failure to investigate case of illegal selling of land by Middelburg SAPS.	The matter was referred to the Provincial Commissioner of SAPS: Mpumalanga.
4.	O/DPCI/J 51/01/2021	Jabu Tembe	Failure to register and investigate a fraud case by at Richard bay SAPS.	The matter was referred to the Provincial Commissioner of SAPS: KZN
5.	O/DPCI/J 37/10/2020	Simla Singh	Unprofessional conduct by a member of Isipingo SAPS.	Referral to Provincial Commissioner of SAPS: KZN.
6.	O/DPCI/J 45/11/2020	Mluleki Henry Mlombi	Poor service delivery against police (Opened a case but no investigating officer visited him to obtain information).	The matter implicate SAPS members. The matter was referred to the Provincial Commissioner of SAPS: Eastern Cape.
7.	O/DPCI/J 32/09/2020	Margret Gladys Mmatli	Failure to investigate assault case at Letlhabile SAPS.	Only SAPS member is involved. It was referred to the Provincial Commissioner of SAPS: North West.
8.	O/DPCI/J 44/11/2020	Kgotlollo Donald Mogadima	Corruption, contempt of court, defeating the ends of justice, theft and unlawful publication of his identity against members of South African Police Service.	No referral because the complainant has not produced evidence that shows that the respondents were involved in any malfeasance or misconduct.

9.	O/DPCI/J 47/01/2021	David Ubisi	Undue delay to access transcript of the application for leave to appeal which was refused.	No Hawks member is involved. Referred to the Inspecting Judge of the Judicial Inspectorate of the Correctional Services (JICS).
10.	O/DPCI/J 48/01/2021	Nsingizi Mthethwa	Assault and pointing of firearm against members of the South African Police Service.	The matter was referred to the Provincial Commissioner of SAPS: Gauteng.
11.	O/DPCI/J 295/09/2019	Leon Lewitton	Failed to prevent his property (including a house, furniture and household effect) being sold by McCluskeys.	No referral as the matter as the matter was already reported to SAPS, Hawks and National Prosecuting Authority (NPA).
12.	O/DPCI/J 46/01/2021	Eunice Nyameka	Shot by police from Khayalitsha SAPS	The matter falls under the jurisdiction of IPID and SAHRC. The matter was referred to both the Independent Police Investigative Directorate (IPID) and South African Human Rights Commission (SAHRC)
13.	O/DPCI/J 287/08/2019	Siphosethu Mlata	Violation of her privacy by Khayelitsha SAPS.	SAPS members are involved. The matter was referred to the Provincial Commissioner of SAPS: Western Cape.
14.	O/DPCI/J 148/10/2017	Phillip Ntiyo	Fraud at First National Bank (FNB). Complainant alleges that he won a competition but when he approaches the bank to claim the prize he was taken from pillar to post.	No referral as similar complaint was lodged to IPID, SAPS and Public Protector.

15.	O/DP148CI/J 295/09/2019	Elizabeth Dennise van Schalkwyk	Fraudulent claim and the Fidelity Fund.	The matter falls under the jurisdiction of the Hawks and Legal Services Ombud. The matter was referred to both the National Head of the DPCI (Hawks) and the Legal Services Ombud (LSO).
16.	O/DPCI/J 19/06/2021	Mojalefa Moholo	Fraud by Ms Marlene Kayser from Old Mutual.	No Hawks member is involved. The matter was referred to the Provincial Commissioner of SAPS: Free State
17.	O/DPCI/J 20/06/2021	Whistleblower	Maladministrati on and corruption at Uphongolo Local Municipality.	The matter falls under the jurisdiction of the Hawks and PSIRA. It was referred to both the National Head of DPCI (Hawks) and Private Industry Regulatory Authority (PSIRA).
18.	O/DPCI/J 161/12/2017	Konyana John Maoba	Failure to pay full pension benefits	No Hawks member is involved. No referral on the basis that the complainant failed to evidence to substantiate the allegation of corruption.
19.	O/DPCI/J 230/11/2016	Peter Solomon	Lack of progress by investigator attached to Lentegeur SAPS.	No referral, the complainant is deceased.
20.	O/DPCI/J 309/01/2020	Brigitte Holland	Abuse of power against leadership of City of Cape Town and fraud by Standard Bank.	The matter falls under the jurisdiction of the Hawks. National Head of the DPCI (Hawks) Lt Gen Godfrey Lebeya.
21.	O/DPCI/J 15/05/2020	Roger Magoro	Unlawful arrest by members of Midrand SAPS.	APS members are implicated. It was referred to the Provincial Commissioner of SAPS: Gauteng.

### **Referrals of complaints to other institutions:**

44. Section 17L(5) of the SAPS Act provides that notwithstanding the fact that a complaint falls within the scope and mandate of the O/DPCI/J the DPCI Judge has a discretion to refer it to an institution that also has a mandate to deal with therewith, evidently if the interest of justice will be better served. However, in the following instances a total of thirty-seven [39] (pure referral complaints that fell outside the mandate of this Office) were directed to the relevant institutions that were so considered. The referrals are classified as follows:

44.1 Twenty-three [23] complaints related to alleged Poor Service Delivery (PSD) like poor investigation, failure to investigate, failure to conclude investigation (long delays) failure to provide feedback or updates to complainants etc and misconduct accusations against SAPS members were referred to relevant Provincial Commissioners. Two (2) complaints were referred to the National Commissioner of SAPS which concerned the irregular recruitment and appointment for an advertised post (also referred to the Public Protector) and unsuccessful application for re-enlistment in the SAPS.

44.2 Four [4] complaints were referred to the National Head of the DPCI (Hawks). They pertained to alleged maladministration and corruption at Uphongolo Local Municipality, to abuse of power against the leadership of City of Cape Town and fraud against Standard Bank and complaint of identity theft, fraud, corruption and cover-ups perpetrated within Cell C a cellphone company (which was also referred to Private Industry Regulatory Authority (PSIRA);

44.3 Three [3] complaints were referred to IPID. The first related to alleged dereliction of duty to investigate attempted murder case against a police officer by IPID investigator, allegation pertaining to intimidation against Hawks member and a complaint of attempted murder against police which was also referred to the South African Human Rights Commission (SAHRC);

44.4 Two [2] complaints were referred to Judicial Inspectorate of the Correctional Services (JICS) related to undue delay to access the transcript of an application for leave to appeal; and an allegation of a wrongful detention.

44.5 One [1] complaint was referred to the Legal Services Ombud and to the National Head of the Hawks) involving alleged fraudulent claims against the complainant and Fidelity Fund;



44.6 One [1] complaint was referred to the Department of Labour about the failure to probe the issue of the hazardous explosives concealed at Sasol Petroleum Ltd in Sasolburg by Col JN Makua of the Hawks.

44.7 In respect of eight (8) complaints no referrals were made due to a variety of reasons.

#### **Summary of all complaints finalised during the period under review**

45. A grand total of 68 (sixty-eight) complaints were finalised which comprise complaints within and outside the DPCI Judge's mandate. A total of 113 (one hundred and thirteen) finalised during the previous financial year. The finalisation rate of the complaints went down mainly due to factors alluded to in para 2 of this Report. The completion rate of the backlog cases, predominantly adjudicated on the merits, picked up markedly.

#### **Remedial actions**

##### **Complaints in respects of which Remedial Action were ordered**

46. In **Ashveer Suchit v/s D/Sgt Mtshali & Others: Ref No (O/DPCI/J) 311/01/2020** The DPCI Judge directed in the Remedial Action issued on 25 November 2021 as follows:

"It is directed that the National Head of the DPCI (the Hawks), Lt Gen Lebeya, merely caution him [Col AL Moloi], if need be, a formal disciplinary hearing, to desist from the type of deprecated conduct fully dealt with in the body of the Report."

47. In **Phillip Van Heerden v/s D/Capt T Delport Ref No (O/DPCI/J) 138/07/2017** the Remedial Action issued on 02 February 2022 runs thus:

"A. The Office of the DPCI Judge furnishes this report to the Head of the Hawks, Lt Gen (Dr) Godfrey Lebeya, to note the outcome of the O/DPCI/J investigation and ensure that the investigation is not compromised and thereby sully the rapidly improving image of the Hawks. As regards paras 5 and 6 of Brig Ramovha' s communication, he should be firmly warned that he cannot shirk his responsibilities and indirectly impose on the DPCI Judge an obligation to advise the complainant, Mr Van Heerden, in terms thereof. The complainant is in front of his eyes, in his area of operation. He must do his work.

B. This report is furnished to the SAPS Minister in compliance with s 17L(6) of the SAPS Act which requires that:

“The retired Judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister”.

- C. A copy of this report is furnished to the complainant, Mr Phillip Van Heerden, who is advised to keep in touch with the Provincial Head of the Directorate, Brig Ramovha, and Provincial Commander, Brig Hoys, to monitor the progress in the matter.
- D. An abbreviated progress report must be furnished to the DPCI Judge, at the end of every April, August and December until this wantonly neglected case is disposed of in whatever procedural and legal manner.”

48. In **Charlene Chandler v/s Capt Pelisa Pama Ref No: (O/DPCI/J): 35/10/2020** the Remedial Action issued on 23 March 2022 was the following:

“(14) It is difficult to separate the two. They were involved in a form of repartee.

They need self-examination and introspection and nothing more than a stern talking to by their employers. A bit of counselling may do no harm.

(16) A copy of this Report is furnished to the National Head of the DPCI (the Hawks) to take note, give Capt Pelisa Pama a stern warning and maybe even a bit of counselling.”

**Table 14 depicts referral of complaints to the DPCI (Hawks) in terms of section 17L (5) of the SAPS Act**

No	Ref No	Complainant	Nature of complaint	Respondents	Referred to/Status
1.	O/DPCI/J 11/04/2021	Damian Govender	Identity theft, fraud, corruption and cover ups perpetrated within the Cell C a cellphone company.	Members of Umhlali SAPS and Cell Company	National Head of the Hawks, Lt Gen Godfrey Lebeya.
2.	O/DPCI/J 20/06/2021	Whistle-blower	Maladministration and corruption at Uphongolo Local Municipality.	Officials of Uphongolo Local Municipality	National Head of the Hawks, Lt Gen Godfrey Lebeya.

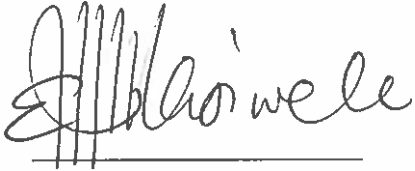
3.	O/DPCI/J 306/12/2019	Gayle Mower	Failure to open a case of fraud by members of the Hawks.	Capt Ramesh Heerlal and Capt Awelani Brian Thenga	The National Head of Hawks is urged to determine whether it was not incumbent upon the investigator, Capt Awelani Brian Thenga, in the cause of his investigation to visit the complainant, Ms Gayle Mower to obtain information (and documents he required).
4.	O/DPCI/J 309/01/2020	Bridgette Holland	Abuse of powers against the leadership of the City of Cape Town and fraud by Standard Bank.	Members of Pinelands SAPS, Leadership of City of Cape Town and Standard Bank	National Head of the DPCI (Hawks).

**RECOMMENDATION:**

49. Pertaining to the process of amending s17L of the SAPS Act to remedy certain defects or inadequacies in the legislation concerning the DPCI Judge’s mandate:

49.1 To ensure its independence: operationally, financially and structurally. See for example: The Legal Practice Act, 28 of 2014, at Chapters 5: Legal Service Ombud (ss 45-53): Establishment of Office; Objects of Ombud; Appointment and Independence; Powers and Functions; Term of Office; Acting Ombud; Staff, Finances and Accountability of Office of Ombud; and Annual Report.

49.2 That the Honourable Portfolio Committee enquire from both the CSPA Secretary and the SAPS Minister how far the amendment legislative process has gone and when it is anticipated to be completed and to urge the Secretary, to the extent that he/she can, to accelerate the process.



**MR EDWARD RASIWELA**  
**ACTING DIRECTOR O/DPCI/J**  
**DATE: 14/09/2022**



**JUDGE F. DIALE KGOMO**  
**HEAD: O/DPCI/J**  
**DATE: 14/09/2022**