



5TH NATIONAL POLICY CONFERENCE

**30TH JUNE – 5TH JULY 2017
GALLAGHER CONVENTION CENTRE, MIDRAND**

**THE YEAR OF OLIVER REGINALD TAMBO:
LET US DEEPEN UNITY!**

PEACE AND STABILITY DISCUSSION DOCUMENT





PEACE AND STABILITY

DISCUSSION PAPER

TOWARDS THE 5TH NATIONAL POLICY CONFERENCE

INTRODUCTION

1. The discussion document looks at reviewing and proposing new policy areas regarding Peace and Stability. It raises a number of critical issues, which warrant the attention of the African National Congress (ANC) as we move towards the ANC Policy and 54th National Conference. The discussion document will touch on the following broad themes:

- **South Africa's State of Peace and Stability since 1994.**
- **Identify and account on all Peace and Stability resolutions adopted at the 53rd National conference. Tabulate what has been achieved, implemented, and where challenges still prevail.**
- **Identify areas within Peace and Stability where policy needs review, amendment or introduction of new policy.**

SOUTH AFRICAN'S STATE OF PEACE AND STABILITY SINCE 1994

2. Our departure point as ANC is that South Africa is relative stable compared to many countries of the African continent and the world. Despite our relative stability, our security assessment identifies economic weaknesses as one of the key threats to national security and interests because it is at the centre of

the triple challenges of poverty, unemployment and inequality. South Africa's economic performance continued to weaken in 2016. The situation was aggravated by the continued sluggish economic growth in major economies. The global economy is facing major headwinds and is struggling to attain higher growth path. The growth trend in the emerging economies is recovering in countries such as China, Brazil and Russia. Peace and stability is maintained within an acute economic environment owing to the country's sluggish GDP growth and persistent contraction. This is exacerbated by the long-standing triple challenges of poverty, unemployment and inequality. Central to these challenges is the slow economic transformation, which continues to undermine the political transformation as realised.

Activities of Foreign Forces seeking to undermine our revolutionary Advance (Foreign Intelligence Services (FIS))

3. There is a concerted effort many foreign state and non-state actors who have launched an aggressive onslaught to former liberation movements in our region, the ANC is not an exception. In addition to economic weaknesses, our security assessment identified the activities of the **Foreign Intelligence Services (FIS)** as an overarching threat undermining our national security and national interest. During the past year, they

continued their efforts, in close collaboration with negative domestic forces, to undermine our democratic and constitutional advances. The modus operandi of FISs is through penetration, influencing, manipulation and ultimately subversion in the quest to advance and promote their national interests. These attacks may result in the diversion of governance and the possibility that the broader purpose of government will be hijacked by those with ulterior agendas, sectarian interests and nefarious intent.

4. If the state is weakened, it will be increasingly vulnerable to institutional penetration by foreign or hostile forces. The main strategy used by the FISs is to mobilise the unsuspecting masses of this country to reject legally constituted structures and institutions in order to advance unconstitutional regime change. The alignment of the agendas of FISs and negative domestic forces threatens to undermine the authority and security of the state. Their general strategy makes use of a range of role players to promote their agenda and these include, but are not limited to: mass media; non-governmental organisations and community-based organisations; foreign and multinational companies; funding of opposition activities; Judiciary, religious and student organisations; infiltration and recruitment in key government departments; placement of non-South Africans in key positions in departments; prominent influential persons; and punning of covert intelligence networks and covert action on our soil.
5. In essence, FISs work with their partners inside the country to ensure that the ANC led Government is unable to implement any policy that runs counter to their policies and strategic objectives, and is prevented from adopting independent positions in regional and international forums. Given our influence on the global stage, our geo-political positioning, our land, food and future energy plans, FISs will continue to prioritise South Africa for intelligence collection. As the gateway to the African continent, our detractors believe that their efforts to control and manipulate South Africa will enable them to control the whole African continent, advance their agendas and expand their spheres of influence.

Proposed points discussion:

- ❑ The nature of the current laws dealing with the above matter do not impose strong criminal sentences to serve as deterrent. There is a need for such laws to be tightened.

- ❑ Current diplomatic immunities and privileges creates a loophole and opportunities for exploitation by diplomats. There is need to tighten the standard operation procedures to avoid abuse.
- ❑ There is a need to deal with the high trend of espionage, subversion, propaganda and information peddling by those controlling the public spaces.

6. Further, our security assessment identifies four broad categories of threats and those are:
 - threats to the territorial integrity of the Republic,
 - threats to the authority of the state,
 - threat to the well-being and safety of South Africans and threat to the country's economic development.

Threats to the country's territorial integrity

7. In terms of threats to the country's territorial integrity our assessment identified two of them and those are:
 - challenges in the management of migration.
 - management and control of the border environment.
8. As a country we continue to experience the high entry of economic migrants into the country who claims to be asylum seekers. As a result, they continue to saturate our urban and per-urban centres, hence their intensification of moving into the rural parts of the country. Despite all interventions, it is evident that South Africa remains the preferred destination of economic migrants in Southern Africa. This is complicated by the vulnerability of our land borders of which the SANDF managed to deploy only 13 of the required 22 infantry companies due to financial constraints. Further, our vulnerability in monitoring the airspace allows its misuse with people conducting illegal activities for their own nefarious personal intent.
9. Since 1994, our maritime environment continues to experience inadequate patrols, insufficient coverage maritime zones and non-adherence to regulations and legislative provisions.

Proposed discussion:

- ❑ Speedy implementation of the Border Management Authority (BMA) to fast track the integration mechanism and educate members of the branch on its benefits.

- ❑ Management of migration taking into account protection of low skilled jobs and certain economic sectors in the interest of locals.
- ❑ Dealing with issue of crime and xenophobia.
- ❑ Increased capacity and budget of the security cluster to effectively deal with the territorial integrity of the country.

Threats to the authority of the State

10. In terms of threats to the authority of the State, our security assessment identifies seven of them and those are :
- violent community protests,
 - violent industrial action,
 - instability in the transport sector,
 - instability in the education sector,
 - cyber-security challenges,
 - undue activities of the private security industry
 - inability to secure information and critical infrastructure.
11. Although community protests are provided for in the country's legislative framework, of national security concern is the planned violence accompanying the protests. However, since 1994 the triggers of community protests have not changed and these include demand for water, electricity, housing and employment opportunities. Emerging triggers include demarcations issues and the demand for free quality higher education for all. To this end, a national security concern only arises when people plan to be violent during such protests. During 2016, our peace and stability was threatened by the politicisation of student protests for the achievement of narrow political ends.

Proposed discussion

- ❑ Enforcement of public gathering act.
- ❑ There is a need to categorise the vandalism of public properties as economic sabotage.
- ❑ Improve effective intelligence and prosecutorial driven investigations.
- ❑ Address challenges of governance and service failure that are used as platform by opportunistic elements.
- ❑ Awareness and public education on the right to protest without impacting on others negatively.

Threats to the well-being and safety of South Africans

12. In terms of threats to the well-being and safety of South Africans, our assessment identifies four of them and those are:
- the non-traditional security threats (water, food and energy challenges)
 - International terrorism
 - violent extremism,
 - transnational organised crime
 - Narcotics.
13. Given the nexus between water, food and energy security, the government faces a daunting challenges to ensure the sustainable flow of these services. This obligation remains threatened by the recent drought which struck the entire sub-Saharan Africa. Further, South Africa continues to grapple with the threat of terrorism and violent extremism.
14. We are gradually moving away from just being a planning, fundraising and launching pad for terrorist groups to a recruitment base for foreign terrorist fighters. This is characterised by the targeted internet recruitment of our unsuspecting youth, high-jacking of mosques by radical preachers and the accelerated expansion of suspicious faith based groupings. This is complicated by government's omission to register and monitor the activities of religious groups and their subsidiaries.
15. In terms of organised crime; a worrying trend is the unprecedented growth of gangs and their activities. They are now fully operational in all provinces, though prevalent in Western Cape, Eastern Cape, Free State, Gauteng and Kwazulu-Natal. In the transnational crime space, issues of human trafficking, people smuggling, illegal trafficking in and consumption of narcotics remain prevalent. In this theatre, foreign nationals remain central in the perpetration of these criminal acts.

Proposed discussion

- ❑ Rally and mobilise communities at the branch level to lead society in the fight against the use of narcotics.
- ❑ Revive and lead community participation in the community safety forums and street committees.
- ❑ Improve state capacity on delivery of services.
- ❑ Improve intelligence and prosecutorial driven investigations.
- ❑ Public awareness and education programme on curbing extremist, gangsterism and drugs.

Threats to economic development

16. Central to all these is the threats to economic development and these include:
 - illicit financial flows,
 - corruption,
 - illicit mining of precious metals,
 - threat of ferrous and non-ferrous metals
 - wildlife crimes.
17. The centrality of these threats is their ability to undermine economic development which gives rise to a number of other threats outlined above. More than R80 billion are estimated to be leaving South African borders to foreign jurisdictions in illicit financial flows at an annual basis. Our economy has for a long time suffered decades of transfer pricing and other forms of illegal capital flight by multinational companies. Perceived corruption has begun not only to undermine governance and the rule of law, but also the authority and credibility of government institutions. Further, the illicit mining of our precious metals continue to undermine our economic development efforts. It is now expanding from traditional derelict gold mines of Gauteng, Free State, and Mpumalanga to the mine fields of Kwazulu-Natal and the Chrome mines in Limpopo Province.
18. Further, our assessment confirmed the emerging nexus between illicit mining and the theft of ferrous and non-ferrous metals. The latter is characterised by the theft of rail infrastructures, electricity pylons, and MTN and Vodacom tower batteries which are used for household lighting in Zimbabwe. This nexus is characterised by the stealing of copper cables in both derelict and operational mining facilities. On the other hand, our assessment confirmed the escalation of wildlife crimes which has become the fourth lucrative transnational organised crime after drugs, firearms and human trafficking.
19. To this end, Mozambique and Zimbabwe are used as key operational bases for poachers particularly for those operating in the Kruger National Park (KNP).

□ Awareness and civic education on illicit mining, financial outflows, Theft of ferrous and non-ferrous material, corruption, wildlife protection.

20. In addition to the above domestic threats, our assessment further identifies threats arising from the global and foreign terrain and those are; problems of illegal migration, international terrorism, international economic crisis, transnational organised crimes, and markets for illicitly acquired resources. As a country, we inhabit a world wherein the balance of power and the global structures that give effect to it are undemocratic and inequitable. However there are clear indications of movement away from a western-dominated, unipolar world towards new centres of development and alternative growth models around emerging powers such as China, Russia, India and Brazil. Patterns of conflict are also changing, becoming increasingly asymmetrical and driven by issues of access to resources.
21. At the same time, we inhabit a world in which the interests underpinning military-industrial complexes retain their ability to shape the global agenda and wage war to further these interests.
22. The rapidly evolving world in which we live confronts us with a number of security challenges. International approaches to security have shifted since the end of the Cold War, with security problems beyond our borders becoming imported issues impacting on the stability and security of our country.
23. Globalisation has opened up space for, and facilitated the growth of transnational crime syndicates, among others.
24. The manner in which national political power is pursued, maintained and expanded by role players on the South African political spectrum over the next 15 years is likely to have a significant impact on the prospects of transformation in general, and the NDP in particular, for achieving its goals and objectives. In turn, the NDP itself, in terms of realising its objectives, may be the cause of far-reaching changes to the face of the South African political spectrum. In terms of setting a benchmark, it is noted that the present South African political spectrum is defined by one dominant narrative or organising concept, namely transformation.

Proposed discussion

- Enforcement of appropriate legislation on transfer pricing and illicit economy.
- Tighten legislation and curb illicit mining.
- Introduction of life style audits, broaden vetting and financial Monitoring to curb corruption.

25. The absence of a national consensus on the content, purpose and benefits of transformation. Too often, transformation is portrayed as a win lose equation, as opposed to the required win-win narrative. From a foreign intelligence perspective, the management of South Africa's reputation amidst local conditions of sustained instability, as well as an all-encompassing pursuit of economic opportunities, would rank as top priorities.
26. In the next 20 to 30 years, Africa is estimated to have one of the largest youth bulge in the world. As a result, the governments' inability to effectively manage their youth's affairs will in the future become one of the national security threats. Further, considering Europe's efforts to tighten their migration policies in an attempt to reduce the number of migrants entering their countries, most of the African youth will move to South Africa. Added to our own youth bulge, such situation will lead to fierce competition for the scarce resources, thereby generating social instability. As a result, it is imperative for the government to ensure that the current political transformation is translated into economic transformation to benefit of our youth.
27. As Peace and Stability our efforts remain focused on reasserting the authority of the State, guarantees its territorial integrity, protect the well-being and safety of South Africans. Further, we strive to ensure the country's economic development and protect our people from the fear of attack by either domestic threats or from those arising from abroad. In doing our work, we remain guided by the provision of the National Development Plan and the National Security Strategy. However, lack of adequate funding continues to compromise our ability to effectively deliver on our respective mandates.
29. A further consequence is the increased number of returning foreign terrorist fighters (RFTFs) that have upon return to their home countries radicalised, recruited, established new cells and planned attacks. This has translated into the heightening of the threat posed by RFTFs and development of home-grown networks evidence by coordinated attacks launched since July 2015. Further, regional affiliates of the Islamic State have stepped up to conduct domestic and regional attacks and the increase in lone-wolf attacks and self-radicalisation of individuals under the IS banner was discerned.
30. The threat from terrorism has increased over the last year in Africa. Groups continue to have the ability to destabilise multiple countries at once. Although the majority of groups are national in focus, the increasing transnational impact of their activities cannot be ignored.
31. South Africa is not a primary target for attack by an international terrorist organisation. However, South African cannot afford to be complacent and reactive as individuals resident in the country.
32. Further, individuals from South Africa have attempted to travel to the IS. While some have returned, a few have successfully joined the Islamic State. There are also individuals propagating and finding resonance to the IS ideology which could potentially have serious implications for home grown terrorism and lone wolf attacks. IS ideology and propaganda being spread through the Internet and social media, although not currently directly aimed at South Africans, pose a threat in particular to the youth who are often targeted with tailor-made propaganda.
33. Loopholes in anti-money laundering and combating the financing of terrorism provisions were also exploited by individuals attempting to travel to the Islamic State thus necessitating that financial institutions enhance their detection systems to comply with South African Reserve Bank exchange control regulations regarding access to discretionary debit and credit card allowances abroad. The establishment on the BMA will also help strengthen provisions against cash couriers moving large unauthorized amounts across the border.

Threat of International Terrorism current trends and Analysis

28. During 2016 the so called Islamic State (IS), celebrated the second year of its self-proclaimed Islamic Caliphate and continued expanding its territory. This expansion is achieved through the exploitation of the internet, social media and digital communication for propaganda, recruitment, planning and implementation of attacks outside the "Caliphate". The cyberspace coupled with the continued recruitment of foreign terrorist fighters (FTFs), has enabled the Islamic State to expand its reach far beyond its own immediate "Caliphate" and wilayats.

Notwithstanding the prioritisation and continuous monitoring of the terror threat, South Africa's response to understanding, preventing, mitigating, combating and dealing with the consequences of terrorism is guided by its unique circumstances, constitutional and legislative provisions, local root

causes and enabling factors as well as proportionate to the threat faced by the country.

Proposed discussion

- ❑ Review legislation on counter terrorism.
- ❑ Increase financial intelligence monitoring and prosecution.
- ❑ Conscientise communities through the branches in the dangers of radicalisation of community member by terror groups through internet and social media platforms.

PROGRESS REPORT ON ALL PEACE AND STABILITY RESOLUTIONS FROM THE 53RD NATIONAL CONFERENCE

34. An annexure has been compiled that goes into depth all resolutions taken at 53rd National conference in Mangaung, articulating progress and challenges in the implementation of Peace and Stability resolutions.

[See annexure to document: in-depth update in the implementation resolutions.]

35. The Ministry of Police through the Civilian Secretariat for Police Service has developed the white papers on Policing and Safety and Security as a means to address the gaps identified by the 53rd conference of the African National Congress and as a way of ensuring the implementation of the National Development Plan.

36. Some of the policy proposals that might emanate from the white papers are the following:

White Paper on Policing:

37. Demilitarisation and Professionalization of the SAPS.

38. Locating Community Police Forums within the Civilian Secretariat for Police Service to enhance operational effectiveness and strengthen its oversight role.

39. Establishment of a Division: Municipal and Traffic Police in support of the implementation of the single national police service.

40. Re-organising the role and function of the Civilian Secretariat for Police Service to become the Department of Police.

41. Developing a two-stream system of recruitment

to support the enlistment of high calibre officers needed for professional policing.

42. Enhance Public Order Policing through added focus on command and control, training and equipment.

White Paper on Safety and Security:

- Institutionalising interdepartmental cooperation and collaboration through the establishment of sustainable, well-resourced implementation and oversight structures across the three spheres
- A directorate for Safety, Crime and Violence Prevention must therefore be established at each sphere
- It is required that DPME assume responsibility for establishing such a directorate at national level
- This will be replicated at provincial level in the Office of the Premier and within the respective Municipalities

REVIEW, AMENDMENT OR INTRODUCTION OF NEW POLICY

Correctional Services

Interstate Prisoner Exchange

43. The Department of Correctional Services and the country is hosting in its 243 correctional centres 6440 sentenced foreign nationals that are serving an average of 10.6 years for various crimes committed in South Africa. The South African taxpayer foots a bill amounting to R845 million per annum and R8.96 billion over their average ten-year sentence period. This is based on a per capita cost of R359.49 per offender per day, in terms of the 2016/17 financial year rate. This is made more serious by the nature of crimes committed by foreign nationals, as four-in-ten of the 6440 foreign nationals has committed aggressive crimes which include murder and attempted murder.

44. In addition the costs of rehabilitation may be regarded as fruitless given the fact that on completion of the sentence they get deported to their respective countries of origin. More over the requisite psycho-social and emotional support and stability required for offenders to be more reception to rehabilitation interventions is extremely limited as familial and community relations or contact is very poor.

45. Considering that South Africans in foreign prisons and correctional centres only constitute 14% of the number of foreign nationals in our care (i.e.

910 as of May 2016 compared to 6440 foreign nationals as of March 2016), serious consideration and approval of a new policy to enable Prisoner Transfer Agreements at bilateral and multilateral platforms should be urgently finalized. Through court and Cabinet processes, the initiative was started about six years ago and had moved tardily ever since, hence the submission for an elaborate and accelerated development of a Prisoner Transfer Agreement policy for South Africa.

Question

As a developing country is South Africa in a position to Incarcerate and fund (from the fiscus) the long imprisonment of foreign nationals who commit aggressive crimes such as murder and robbery or must these convicted persons be sent back to their country of origin to serve their sentence? What areas of concern must be highlighted in the policy?

Parole review: Consider parole review

46. International trends show that numbers of offenders serving their sentences within their communities are much higher than those in custody, with custody reserved for crimes regarded as very serious against the society. The vision of the people of South Africa as far back as during the formulation of the Freedom Charter in 1955 had been to reserve “imprisonment ... for serious crimes against the people, and shall aim at re-education, not vengeance”. However the current dominant paradigm, as the legacy of the apartheid system, reflects higher propensity for incarceration, with the caseload of community corrections constituting about one third of the population of sentenced offenders.
47. It is imperative therefore, to rethink our approach, build a credible community corrections and supervision capacity and rebuild the trust and confidence of the judiciary and our society in this sector of the country’s correctional system. Planned changes include the introduction of a separate legislation for Parole and Supervision, so that dedicated and comprehensive policy and legislative framework is built, as well as resourcing and capacitating of community corrections.
48. The current Correctional Services Act, Act 111 of 1998 as amended, is fairly cluttered with numerous amendments and does not sufficiently deal with this element in Chapters IV and V, which is compounded by limited investment in the community corrections leg of the Department of

Correctional Services. Correctional Services will be segmented into two main streams, the custodial and non-custodial services that are governed in terms of the Correctional Services Act, Act 111/1998 as amended and the envisaged Parole and Supervision Act.

49. The proposed legislation will also help realign our services with the Criminal Procedure Act, Act 51/1977 as amended to make restorative justice a mandatory process to help heal the harm caused by crime. The piece of legislation build sufficient capacity for facilitating an inclusive process from the frontline in Correctional Centres with professionals such as social workers to better manage relations with victims. The legislation will create an enabling legislative, policy and operational environment for establishing statutory relations with community based agencies for ensuring effective implementation of community corrections services.

Question

How will the review of parole regime impact on overcrowding in correctional centres? Advance victim participation? Ensuring effective social re-integration? Petty offences and serious crimes? What consideration on parole/probation must be to reduce overcrowding?

Nelson Mandela Rules

50. The character of the liberation struggle and its centralization of uTat’uNelson Mandela as an embodiment of that character continue to reverberate across the world. The latest manifestation of the character is the adoption of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners, which were rebranded as Nelson Mandela Rules and launched by the United Nations in December 2015. South Africa has been a pioneer of these changes and participated in a series of consultative meetings attended by eminent persons from across the world regional blocks. Through the new Constitution passed in 1996, Correctional Services Act, Act 111 of 1998 elements of which were promulgated in 2004, and the White Paper on Corrections in South Africa approved in 2005, our country had started and continues to implement 87.5% of the eight thematic areas adopted by the United Nations.
51. In respect of the new definition of solitary confinement and prohibitions in respect of its use, the Department will undertake a policy review and make appropriate adjustments to the management

of Ebongweni Super Maximum facility as well as those highly overcrowded facilities. In respect of custodial deaths and / or injuries, the Department of Home Affairs will review their Standard Operating Procedures to enable independent oversight of investigations, while the Department of Defence is to review its detention barracks regulations. The SAPS will review the National Crime Combating Forum instruction and standing order on arrest and treatment of arrested people, while DCS and DSD has to review their SOP and Blue Print to formalize the processes of handling complaints.

52. Current an inter-departmental committee composed of the Departments Home Affairs, Social Development, Defence, and South African Police Services has developed a domestication strategy the Nelson Mandela Rules, the identification of gaps and ensuring the institution of corrective measures and better practices. We will invigorate the inspiration across various safety and security arms of the state to ensure a progressive realization of the Nelson Mandela Rules, because history and the world expects us to be at the fore front of the transformation of detention facilities.

Question

As a constitutional democracy, human rights being the pillar of our hard-won democracy, must all institutions that detain those who are in conflict with the law adhere to the Nelson Mandela Rules (United Nations Standard Minimum Rules for Treatment of Prisoners)? Or must each institution determine their own standards?

Home Affairs

Managing identity and international migration

53. The purpose of this paper is to explain why the DHA is wrongly positioned, what must be changed and how those changes can happen.
54. All states need to know with certainty the individual identity and the related civil status of their citizens and all persons within their borders. This enables states to ensure national security, collect taxes, hold elections, plan more effectively and provide access to services. For every person, the state needs to know, amongst other things, name, date and place of birth; nationality; whether the person is alive or dead, married or single and the details of their children. If a citizen wants to travel they must be provided with documents that verify their identity and status and conform to international regulations.

55. The state must control the entry and exit of persons through land, air and sea ports and decide how long foreign nationals can stay, what they can do and under what conditions. The management of international migration also involves entering into relationships with various countries (over 200) using many legal instruments and organisations. These relations impact on your citizens and businesses that are in other countries and the chances of attracting migrants with scarce skills or investment capital.

56. Under apartheid the functions described above were used to divide the nation by race and ethnicity; to deny citizenship and rights to the majority; administer the migrant labour system stretching across Southern Africa; and deliver acceptable services to persons classified as “Europeans”. The lives of the majority of South Africans were in the hands of poorly educated officials who administered manual processes that were arbitrary and corrupt.

57. In South Africa, in 1994, the sole mandate to perform all of the functions outlined above was given to the Department of Home Affairs (DHA). The new Department of Home Affairs (DHA) was formed from 11 apartheid departments to serve one South African nation. The priority was to affirm the identity and status of citizens so that they could claim their rights and access services.

58. Over the past 23 years the role of the DHA has been widely misunderstood to be that of an administrative department that delivers routine identity and immigration services of low value. The department has stated that as presently constituted and perceived it is currently not able to effectively, securely and strategically deliver against this mandate.

59. In March 2016, the DHA was officially located within the JCPS cluster as the first step to ensuring that it plays a key role in the security architecture of the state. Other key elements that need to be repositioned are its policy framework and security, operational, organisational and funding models.

Progress made in understanding and implementing the DHA's mandate

60. When the Government of Nation Unity was formed in 1994 the strategic nature of the mandate of the DHA was poorly understood, and in particular its role as a key element of national security and socio-economic development. Indicative of this,

is that for the first two administrations (1994 – 2004) the DHA was allocated to a minister from an opposition party.

61. The DHA was generally regarded as an administrative department that provided enabling documents and has received low budgets accordingly. Departments receive much higher levels of funding that are regarded as being highly strategic and requiring security; or as being crucial to national security, service delivery or to economic development.
62. For more than ten years the DHA has argued that it is strategic; that it needs to be secure; and it is a crucial enabler of public and private services, economic development and security.
63. This argument was supported by internal and external developments.
 - Inefficiency and outdated systems combined with corruption made life unbearable for citizens waiting for crucial enabling documents such as birth certificates, IDs and passports.
 - The level of fraudulent documents led to other countries claiming that South Africa was the weakest link in security globally and some imposed new visa requirements.
 - The abuse of the asylum seeker system by migrants with low skill levels combined with the 2008 influx of Zimbabweans led to a systems breakdown and social unrest.
 - The DHA had to develop a new approach to immigration and new systems to meet the demands of South Africa joining the family of nations after 1994, including hosting international events such as the 2010 FIFA world cup.
64. There was a growing understanding of the importance of the DHA, especially with regard to the impact of its mandatory services and the need to manage immigration. Cabinet and Treasury supported the Turnaround Programme (2007-2009), meeting 2010 FIFA World Cup commitments and modernisation projects. The DHA began to work much more closely with JCPS departments.
65. At the policy level the proposed international migration policy (2016 Green Paper) shows that the DHA has arrived at a clear understanding of its mandate and role that is in line with the best thinking and practice internationally. The previous policy (1999 White paper) was compliance-based and unconnected with either development or national security imperatives. Amongst other gaps it paid no attention to historical realities, such as migrant labour, and crucial global and African trends and challenges. The new policy shows that South Africa can build capacity to manage international migration in the national and regional interest, especially in terms of economic development and security.
66. The DHA's understanding of the importance and role of the management of identity evolved during the National Population Registration (NPR) campaign launched in 2010. Given the history of colonialism and its extreme form of apartheid, one focus was on the critical role of the DHA securing the identity of the most marginalised and enabling them to access rights and services. The primary objective, however, was to clean up and secure the National Population Register in partnership with Health, Education and Social Development, provincial and local governments and communities.
67. The DHA has further evolved its understanding of the importance of managing identity in a rapidly digitising world. A comprehensive, secure National Identity System (NIS) would be a powerful enabler of economic development. Providing South Africa with a secure digital identity is essential for the building of e-government and e-commerce platforms. This will reduce fraud and costs, improve services and attract investment and new industries. The same identity and immigration systems would form the backbone of a national security system.

What is the mischief the DHA has to address?

68. If the DHA was able to deliver against its full mandate it would strengthen the capacity of state greatly and be a critical enabler of development, access to rights and services, national security and governance and administration. The primary mischief is that in spite of the developments outlined above, the DHA is prevented from being a secure, strategic manager of identity and international migration; and thus, it cannot play an effective role as part of the security architecture of the state.
69. The reason is that in 1994 the democratic state inherited identity and immigration systems and structures designed to serve colonialism and which were adapted to preserve white rule under apartheid. After independence, other post-colonial states integrated critical aspects of identity and immigration management into the security structures of the state. The Zambian Department of Home Affairs is one example with the same Minister being responsible for the police, prisons and immigration, among other areas. In South Africa, the DHA was seen as delivering routine administrative functions and this has had serious

consequences. The DHA has weak enforcement capacity, almost no specialists, outdated systems and limited integration with the JCPS cluster. As currently established and funded, whatever improvements are made the DHA:

70. Remains only partly integrated into the security cluster and lacks basic protection and security for systems, staff and infrastructure. This exposes staff, citizens and the nation to serious and increasing threats and risks and does not enable proactive responses.
71. Operate without critical specialists needed to develop and manage its systems and protect its data from being compromised by criminal syndicates or other states. The DHA has no statistician, only six IT specialists, no business process or security analysts, 700 immigration Inspectors nationally, no senior manager in charge at ORTIA, no operational intelligence for critical areas such as permitting; and low-level staff in foreign missions and critical posts at ports of entry. The majority of staff have low educational qualifications that are suited to running manual, paper-based systems and not the smart management of digital processes.
72. Will still have challenges in maintaining a clean population register, mainly due to a lack of enforcement capabilities with regard to birth, marriage and death registration and refugee and immigration acts; and to the limited digitising of past and current records.
73. Cannot respond adequately to the threats posed by human smugglers, traffickers and organised crime bosses who see South Africa as an easy target and a place to settle in.
74. Remains reactive in the highly competitive global market for critical skills which are essential for economic growth, training and attracting domestic and foreign investment.

What the repositioning of the DHA means

75. The mandate of the DHA remains what it was 1994: to manage identity and international migration in the interests of service delivery, development and national security. However, the DHA is still locked into legal, funding, operational and organizational models that prevent it from delivering effectively against this mandate. When the Cabinet agreed in 2016 to the development of a business case to address this historical problem, the following key strategic areas were identified:

- Policy and an Act that defines the DHA's

mandate and role.

- Securing the DHA and defining its role in security.
- New operational and organisational models
- A viable funding model that will have a positive impact on the fiscus.

Policy and an Act that defines the DHA's role

76. An essential part of the repositioning process is to change the way in which the DHA is perceived. Most South Africans continue to see the DHA as being important because of its products and services. They do not see it as a key part of a national security system and at the same time a critical enabler of economic development. For this reason, a White Paper is required that provides a policy basis for anchor legislation that defines the mandate, role and legal status of a Home Affairs that is fully integrated into the security cluster. The proposed Immigration Act will be aligned to the DHA White Paper principles, which will also guide the development of a National Identity Act that is needed for the building of a comprehensive National Identity System.

Securing DHA and its role in security

77. Another pillar of the repositioning process is to provide the DHA with the support and capacity it needs to protect and secure its people, systems, infrastructure and data. A secure DHA will have the capacity to work closely and proactively with other organs of the state to mitigate risks and counter threats to national security. This requires four main elements to be in place. The DHA must have the capacity to maintain national security standards, including cybersecurity, and in particular trained and conscious staff and specialist structures and capacity. Another critical element is policies, laws, systems and processes that are aligned with the DHA's security mandate.

78. A third element is adequate support by the security services, and in particular the SSA in terms of providing intelligence and counter-intelligence, vetting, training and assessments. The most serious threat will be the loss or corruption of data through cyber-attacks. Most critical therefore will be specialists employed by the DHA working closely with national cybersecurity structures established by the JCPS. It is also essential that all JCPS contribute effectively to the secure management by the Border Management Authority (BMA) of the border environment.

79. The fourth element for securing the DHA is the informed, active support from state and non-state institutions and the public at large.

New operational & organisational models

80. The operational model proposed has a back office where decisions are made in respect of the service applied for and which can lead to a change of civic or immigration data. Key components of the back office will be a rules-based risk engine that will quality-assure, verify data and investigate exceptions. Policy, legal, research, statistical and analysis units will support this work and draw tactical and strategic lessons that will be used to mitigate risks, counter threats and address systemic faults in partnerships with relevant departments.
81. Applications will be made through various front-office channels that are user-friendly and fully digitized, with clear security protocols and escalations. Channels might be online or provided by third parties trained by the DHA, such as other departments or banks.
82. The design of the system will be robust and highly secure while the selection of channels will be flexible to meet user's needs. Provision of services will be informed by legislation whereby some services are being initiated by the user, such as applying for a passport; and some services being mandatory, such the registration of a birth or a death within a stipulated time. Problems will be referred to a contact centre staffed by experienced officials with some access to systems. If unresolved then higher-level specialists will be allocated to the case and an appointment with the applicant arranged. The specialists, civic and immigration, will be based at a network of offices that can be reached within a reasonable time.

A viable funding model

83. In a digitising world citizens expect to receive rapid service, whether from the private sector or government. Investors will invest where states have efficient and secure services that create a better climate for business. Digital identity is essential to e-government and e-commerce and it is at the heart of individual, corporate and national security. It is also relevant to note that access to large data that is relevant and accurate has become a critical factor in the economy.
84. The DHA is the custodian of identity and it is building a comprehensive and accurate database of valuable data that is one of the largest globally.

Even if a small portion of this value is used to raise revenue the capital investment by the state will be repaid many times over: directly through revenue, and through large reductions in fraud, efficient gains and stronger investment flows.

85. The current budget allocated to the DHA is not sufficient to protect the organisation, maintain modern systems or comply with mandatory objectives, such as 100% of births registered within 30 days. Given competition for resources and severe fiscal constraints the DHA will have to raise much of the revenue required to secure and manage a modern, strategic Home Affairs. In this regard three key decisions will have to be made.
86. South Africans will have to own the vision of a modern Home Affairs and support the capital investment needed to build a capable department and highly secured agile systems that will be used to generate revenue.
87. The DHA will have to be given authority to use the funds it raises; or be given an appropriate baseline budget for security, operations and maintenance of its systems.
88. The DHA will need to have the legal status required to build, maintain and secure the systems, infrastructure and organisation necessary for the management of identity and international migration.
89. The above point explains why SARS has several hundred IT specialists, many of them experts; and the DHA almost no specialists with; and less than 100 technicians to support central systems and all offices countrywide. SARS and the security services are not constrained by the regulations of the DPSA, SITA and DPW, which are not designed for large technology-enabled departments that have to be both secure and agile in a highly complex world.
90. Part of the revenue will be generated by fees via multiple channels that are designed to meet specific needs, such as the premium immigration Centre that was launched by DHA in Sandton. Mandatory policy will ensure that the revenue will be used to extend the same systems to the most marginalised and remote communities. Fees should also be charged for maintaining the interfaces between the DHA and private organisations, such as the banking sector. The fee charged for each of the millions of hits on the identity system daily would be small, but the total would grow to be very large. The sale of identity services and products would be another large revenue stream, with potential

partners including GPW, the CSIR and private sector companies

91. The ANC should support the principle of repositioning Home Affairs as a secure, professional, modern department that is a powerful enabler of service delivery, economic development and state security.

Questions

Regarding the DHA's position in the state and society. The Justice, Crime Prevention and Security cluster are collectively responsible for national security and public safety. Cabinet in March 2016 declared the DHA to be a full member of the cluster, along with SAPS, SANDF, SSA, DCS and the Department of Justice.

- ❑ What is the understanding that ANC members have of the mandates and role of the DHA? Can they list three or four of the mandatory responsibilities of the DHA?
- ❑ What must be done to ensure that the DHA can deliver on its full mandate?
- ❑ What must be done to ensure that the staff, systems and data of the DHA is sufficiently protected from syndicates, fraud and other threats to play its full role in national security and public safety?
- ❑ How can the DHA use the digital revolution to:
 - i. Empower all citizens?
 - ii. Drastically reduce fraud and corruption?
 - iii. Enable much faster and better services?
 - iv. Improve responsiveness to the people problems and planning?
- ❑ Building the capacity of the state to effectively manage identify and international migration is expensive. How can the DHA exploit its very valuable systems and data to crat new revenue streams?

DEFENCE

A case for new funding model for the SANDF and the Defence Review

92. The Government faces significant and competing requirements, this putting enormous pressure on the fiscus and consequently leading to a constrained funding ceiling to Defence that does not allow for the implementation of the Defence Review.
93. MTEF appropriations from the fiscus are also not

stable, with budget cuts being applied year-on-year. Defence capability planning and the acquisition of defence systems are more often than not multi-year projects and which cannot be committed to under these prevailing circumstances. Between 1994 and 2016, the defence budget has decreased from 2,4% of GDP and has levelled out in recent years to 1.1% of GDP. The defence budget has thus halved as a percentage of GDP in the last 22 years while the ordered commitments of the SANDF has in fact increased.

94. This Defence Force has served this nation well, both domestically and abroad, but even with the best will in the world, our systems are in extreme stress and we are unlikely to be able to sustain our current contribution for much longer.
95. These circumstances are unfortunate in the least, as the defence contribution to the developmental agenda of the state is unlikely to be realised. The Defence Review is explicit in the expectation and contribution that an appropriately funded Defence Force can make on the lives of people, as well as stimulating economic growth and contributing to skills development.
96. As a country, we recognize the implications of growing instability in other regions of the continent as it has the potential for political, economic, and security implications for our own country. These include a pull effect for refugees and irregular migration of people towards South Africa. As recently witnessed during the recent attacks on foreign nationals, the situation impacts on South Africa's own internal stability.
97. Our Defence Force has a critical role to play as we, together with our regional and other partners on the African continent and beyond, seek to secure the peace and stability without which economic development will not be possible.
98. It is therefore important for us to seek a national consensus of defence policy as urged by both the 1998 and 2015 Defence Reviews.
99. The requirement is to build a highly professional and disciplined defence force sufficiently resourced to protect our country and constitutional democracy. This is the patriotic imperative on which we need national consensus across political divide. The defence force is too valuable a national asset to be a subject of partisan political bickering.

100. The Department has taken initiatives on a funding model for the Defence Force which will inter alia:

- Provide alternative funding for the Milestone 1 to arrest of the decline of the SANDF.
- Provide alternative funding solutions for the DoD Long-Term Force development.
- Assist policy decision makers to reduce the funding burden for the SANDF on the national fiscus.
- There are various alternative sources for a future funding model that we currently examining and in discussion with the National Treasury and Cabinet. These include:
 - The leveraging of DoD land and property assets
 - Rendering various disaster management services for a fee
 - A more efficient collection of reimbursement from the United Nations for peace support operations
 - The leveraging of DoD intellectual property
 - The rightsizing of the human resource component of the department
 - The disposal of redundant equipment
 - In-house maintenance and repair of some of our assets and facilities.

101. The National Treasury and the DOD have since established an inter-departmental Budget Task Team to consider the proposed funding model towards achieving a long-term perspective on the required resources to implement the Defence Review.

102. If the Department does not get appropriate funding to implement the Defence Review, a re-evaluation of South Africa's defence capability and the capacity its ordered of the DOD to sustain commitments is inevitable. This implies that the Defence Force will have to be redesigned to fit its funding allocation and not its Constitutional obligations.

The executive accountability for Denel

103. Denel SOC was incorporated as a private company in 1992 in terms of the South African Companies Act (No 62 of 1973), after the unbundling of the then Armscor.

104. The current operational challenges that are affecting DENEL's ability to deliver and properly support the SANDF's capability requirements compounds the need for direct correlation between DENEL's planning and operations and that of ARMSCOR and the SANDF. The DOD has

found itself having to provide the financial rescue for DENEL SOC as its probable collapse poses a risk to the operational integrity of the SANDF, vulnerability of the Defence Intellectual Property and the security of the South African state.

105. The current financial situation and organisational instability of DENEL have always been left to the Minister of Defence to resolve, and while these have been possible in certain short term instances, sustainable solutions are frustrated by the inability of the Minister and the DOD to make policy decisions affecting the operations of DENEL SOC.

106. The Defence Review also suggests that, given its central role in supporting the operational readiness of the SANDF, including the provision of sovereign defence capabilities, DENEL SOC should be transferred to the Executive Control of the Minister of Defence and Military Veterans as a viable and stable state manufacturer of our capabilities.

107. Recently DENEL SOC faced serious financial destabilisation, tethering on the brink of bankruptcy and possible liquidation. Most of the challenges currently affecting the DENEL SOC are due to poor and inconsistent decisions and an unstable corporate governance environment. This year alone, the DOD, through ARMSCOR has had to provide RM 850 short-term financial relief to DENEL.

108. Although Denel's short term cash flow crisis has been resolved, the organization remains financially vulnerable due to the challenges mentioned above. External financial shocks remain a real threat to Denel in particular those shocks induced by note holders and credit providers.

109. DENEL's structural deficiencies and debt legacy makes it vulnerable to possible liquidation and unbundling of its assets which may fall into private or foreign entities. Private and foreign interests may collude in order to induce a situation of bankruptcy resulting in business rescue/liquidation. This would enable private sector organisations to purchase portions of the Denel asset base at a fraction of its real value. This potential outcome should be monitored and avoided at all costs by the State.

110. Denel's existing organizational structure requires re-engineering given the level of duplication and the lack of shared services approach. This too, if addressed through a proper restructuring process will free-up additional cash flow.

111. The Department of Defence is of the view that Denel will be better positioned if it were transferred from the Department of Public Enterprises to the Department of Defence. It is also our view that a new funding approach should seriously be considered for Denel which could involve a possible partnership with the South African Defence Industry.

Questions

- How can we arrest the decline of the SANDF?
- The Economy of the country is in decline and there is not enough budget to meet all the needs of the country?
- What can be done to fund the SANDF so that it can meet its constitutional mandate?
- How can the SANDF contribute to patriotism, skills development and job creation in the country?

Activities of the private security companies

Background

112. The activities of the private security industry amount to the outsourcing of state security and military functions. The industry poses a threat to the security of the Republic because of extensive foreign ownership of and involvement in the industry, with foreign shareholders controlling 50%-60% of the market capitalisation of the industry; in many instances the directors of these companies have extensive intelligence, security and military experience; the industry provides cover for the conduct of covert intelligence work; the potential and actual access these companies enjoy to privileged state information; their sophisticated technological and electronic information gathering capacities; the threat of industrial espionage; the fact that government departments are often their clients; and the role of South African mercenaries abroad, which raises questions around the loyalty of these individuals to the Republic, their ability to subvert our foreign policy, their possible involvement in crime and sedition, and their role in furthering the corporatisation of war.

113. To date our approach to regulating the industry has been piecemeal and largely ineffective. Given the span of interests and stakeholders involved in this sector, including foreign interests, what needs to be done by government requires sustained

political will and the ability to withstand serious domestic and foreign pressure. We recommend developing a strategy to properly regulate the industry; properly regulating mercenarism and the role of South Africans in foreign conflicts; and capacitating and strengthening the Private Security Industry Regulatory Authority.

Current Trends and Analysis

114. The growth of the South African private security industry has been reaffirmed. As at May 2016, a total of 9,411 legally registered private security companies comprising 485,970 active security officers were recorded by the Private Security Industry Regulatory Authority (PSIRA). The largest number of security companies is found in Gauteng (3,679) followed by KwaZulu-Natal (1,651), Western Cape (1,042) and Limpopo (874).

115. The industry continues to provide security services to government departments and state institutions. While most companies render guarding and access control services, a few provide armed response, risk assessments and IT security services to organs of State thus heightening the risk of unauthorized access to classified, sensitive or privileged information.

116. The increased involvement of private security companies in taxi-related conflict was discerned in 2016 as their services are procured by the taxi associations and their executives. PSIRA has identified taxi associations and security companies involved. There are also security company owners who own taxis and serve as executive members of taxi associations. Private security companies are also involved in the collection of rank fees and preventing taxi operators from operating outside their assigned routes. This could potentially exacerbate existing conflicts over operating routes.

117. The absence of written contracts between taxi associations and security companies coupled with cash payments renders this difficult to monitor and regulate; thus creating an environment conducive to illicit financial flows and tax evasion.

118. Foreign military assistance remains a major concern as foreign entities, especially the United States of America (USA) and United Kingdom (UK), outsource South African private security companies to provide security services in foreign conflict zones.

Forecast

119. Threats posed by the private security industry will persist in the context of inadequate regulation of

the industry and security companies' continued involvement in the taxi industry and other activities including the movement of illicit gold and illicit firearms.

120. While PSIRA is key in regulating the sector, the organisation derives most of its funding from the private security industry itself, hence Government would need to partner and play a more prominent role in the regulation of the industry. In the absence of effective regulation, the threat posed by the industry will persist unabated.
121. The expansion of the US-Africa Command (AFRICOM) in both Africa and the Middle East is likely to increase the outsourcing of security functions to South Africa's growing security industry.

Proposed discussion

- ❑ There is a need to look into the foreign ownership, management control and the employment of the foreign nationals including their possession of high calibre weapons.
- ❑ There is a need to look into the role of the private security companies in facilitating the participation of South Africans in the conflict areas abroad, in violation of Foreign Military Assistance Act.
- ❑ Re-examine the government's utilization of the private security companies in the National Key Points or Critical Infrastructure.
- ❑ Look into the inadequate cooperation between the law enforcement agencies and the private security companies.

JUSTICE AND CONSTITUTIONAL DEVELOPMENT

122. Policy to accelerate the transformation of the Criminal Justice System in order to realise the developmental goals of the NDP:
123. **Desired Policy:** must develop an Integrated Criminal Justice System to enhance efficiency and improve the coordination and integration across the criminal justice value chain.

Background to the policy

124. The transformation of the Criminal Justice System is predicated on the 7 Points Plan adopted by

Cabinet in 2008. It has become necessary to revise the 7 Points Plan to adapt the work of the JCPS cluster to the developing trends and the need to revamp the criminal justice system in its entirety.

125. Motivation for the policy:

- The proposed ICJS is necessary to realise the following transformative goals:
 - ❑ Redraft the Criminal Procedure Act to radically transform old-order policies and court processes to improve the efficiency of the criminal justice system;
 - ❑ Accelerate the modernisation of the criminal justice system to enhance efficiency.
 - ❑ To improve victim support and the implementation of the child justice system.
 - ❑ Strengthening the capacity of the State to maintain domestic peace and stability and to deal effectively with threats to domestic stability caused by illegal migrants.
 - ❑ Enhance intelligence-driven investigations.
 - ❑ Develop a corruption-resilient criminal justice system.

126. The desired Integrated Criminal Justice Strategy provides opportunity to review the pillar of the criminal justice of the National Crime Prevention Strategy (adopted in 1995) and revamp the 7 Point Plan adopted by Cabinet in 2008. Therefore the Strategy is geared to capacitate the State machinery in dealing with developing trends in the criminal justice system such as criminal acts and violence experienced during public protests and protests at institutions of Higher Learning against fees increase.

Questions

- ❑ How do we develop a comprehensive plan/strategy to ensure efficiency of the criminal justice system in the face of sever budget constraints?
- ❑ Will the envisaged strategy ensure that Government is able to move towards an integrated approach to budgeting for criminal justice system?
- ❑ What steps are necessary to restore/enhance public confidence in the criminal justice?

- ❑ The National Crime Prevention Strategy adopted in 1996 require overhaul to address new challenges and trends that confront the criminal justice system. The incidents of the Marikana tragedy, the violence and torching of schools that erupted in Vuwani and the damage to institutions of higher learning have overstretched the criminal justice system. It there other alternatives to strengthen the system to the proposed Strategy?

Policies aimed at increasing access to justice

127. **Desired Policy:** As part of enhancing access to justice the Department must establish a one stop court precinct in small towns, rural villages and far-flung areas in order to provide court-related services of both the Magistrates and High Court

Background to the policy:

128. There is notable progress regarding the rationalisation of the jurisdictions of the Magistrate’s Courts to bring them in line municipal boundaries where this is necessary to enhance access to justice. The outcome of this constitutional imperative is to ensure that there is a Magistrate’s Courts in every municipality that provides a full range of services obtainable from a Magistrate’s Court. Already in 6 provinces, namely Gauteng, North West, Mpumalanga and Limpopo provinces, the rationalisation process is under implementation.

Motivation for the Policy

129. The process of rationalisation has a direct impact on the distribution of courts across municipalities and provinces. For enhance access to justice and efficiency of the justice system it is important that all services of all courts are accessible, especially to people in rural villages, small towns and far-flung areas. For this purpose it is important that these areas services are obtainable from a one-stop court precinct where services of a Magistrate’s Court, High Court and other justice-related services can be access.
130. The establishing of one stop court precinct will reduce costs in infrastructure enhance integration of court-related services in rural and far-flung areas.

Question

- ❑ Historically High Courts were built in big cities and towns and it becomes costly for communities in the far-flung areas to access the courts. Although circuit courts bring are intended to bring services closer to the people, they do not provide a satisfactory solution as circuit courts only ensures that the trial occurs at decentralised service point. All other processes, including filing of court processes, engaging legal representative occurs at the seat of the High Court. What measures are necessary to ensure that people in rural villages and far-flung areas are able to obtain a full basket of court-related services close to where they live?

Transformation of the State Legal Services to enhance the capacity of the State

Desired Policies:

131. The State Attorney Amendment Act of 2014 to be implemented as matter of urgency
132. The legislative reforms to align the dispensation of Solicitor-General to the NDPP and enhancement of the capacity of the State Attorney must be accelerated

Background to the desired policy:

133. The State Attorney Amendment Act enacted in 2014 introduced policies that seek to improve the coordination and management of State litigation the briefing advocates to represent the State. The transformation of legal profession in so far as it enhances opportunities for the allocation of State’s legal work to Blacks and women practitioners is dependent on the finalisation of the latter policy.

Motivation for the policy

134. The post 1994 democratic dispensation marked a turning point in the characterisation of the State and its obligations towards its citizens. As a result of this change, the State requires a new breed of lawyers in the Offices of the State Attorney and the Chief State Law Adviser who have the requisite capacity and capability to provide world-class legal service to the State.
135. The head of the State Legal Services should therefore enhance the status and stature of the Chief Legal Advice of the State who in many countries is equal to that of the Minister. The State Attorney’s Amendment Act will yield the desired outcomes.

Question

- ❑ What are the challenges regarding the State Legal services and in particular impediments to the promulgation of the State Attorneys Amendment Act ?
- ❑ What are the challenges regarding the State Legal services and in particular impediments to the promulgation of the State Attorneys Amendment Act

Transformation of the Judiciary and the legal sector

136. Noting that the current stance of ‘self-transformation’ within the sector attribute to the delay in the realisation of the transformation goals of the Constitution.
137. Therefore ANC:
- Must influence the development of a criteria for the appointment of judicial officers with progressive credentials and transformative judicial philosophy and expertise as required by the NDP.
 - Ensure that adequate steps are taken to eliminate the risk of appointing candidates who are not loyal to the Constitution and are beholden to racial and oppressive policies of the past regime to the bench.
138. Government must accelerate the transformation of the legal sector:
- Implementing the State Attorney Amendment Act of 2014 which provides a framework to transform policies on the allocation of State’s legal work to Women and Black practitioners. In turn this will provide opportunity to nurture skills and talent in niche areas of the law and thereby provide a critical mass of candidates for elevation to judicial office.
 - Enhancing the capacity of the National Legal Forum on the Legal Practice established under the Legal Practice Act by creating a core team of progressive practitioners to work on a semi-permanent basis to realise the statutory mandate for the Forum.
 - Establishing effective oversight mechanisms over the work of the National Forum on the Legal Practice by Government and Parliament to eliminate the risk of interest-driven outcomes that overlook public interest.
 - Accelerating the transformation of the law curriculum to infuse a new legal culture and

the language imperative underpinned by the Constitution.

- Developing bursary, scholarships and funding schemes that will enable Government to attract a critical mass of legal practitioners in niche areas of the law, including constitutional litigation, commercial law, property law, aviation, etc.
 - Partnering with progressive international law institutions and universities with a view to facilitate exchange programmes to nurture and hone legal skills on various facets of the law among practitioners, academics and law scholars.
139. Noting that there is an increasing tendency by the opposition to use the courts as means to thwart the implementation of Government policies.
140. It is therefore recommended:
141. That Government must develop programme of action to implement the resolutions of the historic meeting of the National Executive and the leadership of the Judiciary which was convened by the President on 27 August 2015. The desired programme must also include measures through which the three arms of State commit to;
142. Regular and constructive interface in the spirit of the principles of cooperative governance espoused in Chapter 3 of the Constitution;
143. Jointly promote the values of the Constitution which are aimed at advancing nation-building and deepening and nurturing our constitutional democracy.
144. Convening a people’s summit as recommended by the Fourth NGC in order to facilitate constructive debate that will contribute in the development and the understanding of the jurisprudence and thereby eliminate risks of judicial overreach.
145. Noting that there is a need for the radical reform of the South African legal system which still largely founded on legacies of the colonial and apartheid regimes.
146. There is therefore a need to undertake a comprehensive renaissance of the legal system that is geared, among others, to:
- Overhauling the old-order legislation to reverse the legacy of inequality and deprivation and the reinvigoration of a new legal order founded on the democratic Constitution. A

clear programme on the review of apartheid laws must be undertaken through the South African Law Reform which itself must be transformed and capacitated to carry-out this magnitude exercise.

- Influence the development of progressive jurisprudence that advances the realisation of an equal and democratic society based on freedom. The on-going project on the assessment of the decisions of the Constitutional Court and the Supreme Court of Appeal will lessons on the mechanisms for community participation in developing value-based jurisprudence.

Acceleration of the transformation of the South African legal system as a whole (Renaissance of the legal system)

147. **Desired Policy:** Government must accelerate the renaissance of the legal system to build a new legal order founded on the Constitution as the supreme law of the land

Background to the desired policy:

148. The Constitution provides a new paradigm and a vehicle to reconstruct the South African legal system to embrace ethos and values that underpin the Constitution. The aim is to ensure the radical reform of the legal system from its colonial and apartheid construct and the infusion of a new value system including uBuntu. This calls for, among others, the repeal of old-order statutes and

advancing a progressive jurisprudence.

Motivation for the policy

149. The renaissance of the legal system is necessary to overhaul for the thousands of old-order Acts and secondary legislation that entrenched the legacy of inequality and exclusion of the colonial and apartheid regimes. The reform of these laws must be Government-led exercise that is informed by the policies of the ANC.

150. Legislative reforms are necessary to regulate the interaction between the Branches of State. Whilst the principles of cooperative governance in Chapter 3 of the Constitution are applicable to the spheres of Government, from a policy perspective it appears necessary that similar principles apply to the Branches of State through a constitutional or legislative design. This will ensure that necessary mechanisms are put in place to address instances of judicial overreach and other encroachment of constitutional mandates of each Branch.

Questions

- ❑ What progress has been made to transform the legal system in its entirety and what measures must be put in place to accelerate outstanding reforms?
- ❑ How do we accelerate the process of overhauling the plethora of the colonial and apartheid laws that still prevail?

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

1. Correctional Services		
Resolution	Progress	Challenges
<i>The capacity of the parole boards and case management committees be strengthened to ensure effective standard operating procedures and improvement in the quality of decisions</i>	<p>The capacity and performance outputs improved, reaching 96.52% of the 43 454 parole cases considered in 2015/16 financial year. Of the cases considered 56.37% (23 642) were placed on parole, day parole, medical parole and straight release.</p> <p>Quality of decisions A re-offending risk tool and decision making matrix is currently being developed for implementation at Case Management Committees and Correctional Supervision, Parole Boards. The tools will be tested and re-worked before it is submitted for formal approval. A target date is set for end of January 2017.</p> <p>Standard operating procedures All parole boards work according to standard procedures and set processes.</p>	None
<i>There should be a deliberate effort to involve the community in the integration of former inmates into society</i>	<p>Increased mobilization and participation of communities and their structures in the administration of corrections.</p> <p>Since 2013 the Department has formed partnerships, signed Memorandum of Understanding's, Service Level Agreement's and Protocols with numerous partners i.e partners of the Criminal Justice System, Academic Institutions, Non-Profit Organizations and Profit Organizations, Traditional leaders, Local Municipalities, Faith Based Organizations and other civil society structures, to help improve rehabilitation and social reintegration of offenders into society.</p>	<p>The impact of these initiatives remains limited given the desired scope and reaches among all communities affected by crime in South Africa. Budgetary limitations, cuts in baseline allocations of budget over the MTEF, will invariably inhibit efforts to build on these success stories.</p> <p>None</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

1. Correctional Services		
Resolution	Progress	Challenges
<p><i>The ANC should play a leading role in ensuring victim participation in the parole processes</i></p>	<p>Since 2012 DCS accelerated its role in the restorative justice programme, by introducing the Victim-offender Mediation and Dialogue with the aim of placing victims at the centre of its activities. Many profiles of lifers who had failed to engage victims were returned for closing these gaps, and a new framework (Checklist) has been introduced to verify and ensure that victim engagement in the rehabilitation process, which is proving very effective in healing the scars of crimes among victims, families and communities happens.</p> <p>Auxiliary Social Workers were employed. They have enhanced the preparation of a victim to participate in the Victim Offender Mediation and Dialogue programme, this resulted in the increase of victim participation</p> <p>In parole consideration 6732 victims participated in Correctional Supervision and Parole Board sessions since 2012/13 financial year, registering a 35% growth year on year between 2014/15 and 2015/16 financial years.</p> <p>An audio visual conferencing system has been established connecting all 53 parole board offices, to enable victims of crime to access and participate in parole considerations across the country, thereby breaking the distance and poverty barriers to victims participation in parole considerations.</p>	<p>In most of the cases the department does not have a policy that guides it in the funding of Non-Profit Organization.</p> <p>Criminal record expungement for minor offences to enable employability and economic participation.</p>
<p><i>The Departments of Correctional Services , Justice and Constitutional Development and South African Police Services should ensure that the issue of inmates who spend long periods in remand detention is addressed through better case flow management</i></p>	<p>DCS passed the Correctional Matters Amendment Act; particularly Section 49G which was promulgated in July 2013, to address the challenges of long serving remand detainees, In terms of this provision Correctional Services is authorised to track and report to the judiciary all cases of remand detainees that have been in custody for at least two years.</p> <p>DCS presents figures on all remand detainees and their length of stay to the Judiciary for discussion on local case flow meetings Other interventions focus on other categories of inmates, eg those with bail or those who are state patients or awaiting observation not strictly relevant to the category referred to</p>	<p>Beyond providing information to the Judiciary, DCS has little control over the outcome of cases referred, in fact cases referred in terms of Section 49G (Remand Detainees detained longer than 2 years to court for reconsideration of their detention), has not proved very successful.</p> <p>Part of the challenge facing the remand detention system is high numbers of remand detainees who are granted bail, but remain in custody because they could not afford the allocated bail. The Bail Task Team of criminal justice partners also found out that those without bail were essentially never visited by family or community representatives. Of the sample of 341 remand detainees interviewed, only 12% had a family visit, which means 299 or 88% are not visited or supported by their families or community. This is one of the indicators that the country's structural challenges such as poverty and inequality are also playing a key role in the current levels of incarceration and overcrowding</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

1. Correctional Services (continued)		
Resolution	Progress	Challenges
<i>DCS should provide support and information to victims of crime to enable their increased participation in parole hearings</i>	<p>A procedure was developed to facilitate and promote the involvement of victims in Parole Board meetings when the release of offenders is considered.</p> <p>The participation of victims has increased over the years from 253 in 2010/11 to 2279 in 2015/16. Information on victim involvement is also available on the DCS home page.</p>	<p>Courts need to inform victims of their rights to be involved in parole considerations.</p> <p>Restorative Justice Orientation and a focus on victims at the beginning of serving a sentence should enhance tracing of victims and should lead to more victims being involved in the parole consideration process.</p>

2. Home Affairs		
Resolution	Progress	Challenges
<i>Government should reconsider its policy relating to centres for asylum seekers during consideration of their status</i>	<p>The DHA has undertaken to move Asylum Centres closer to the northern ports of entries to ensure that applicants are processed as they enter the Republic before they sojourn. To this end the department closed the Refugee Centres in Port Elizabeth and Cape Town.</p> <p>Land has been acquired in Lebombo to build a processing centre that will ensure that applications for asylum are concluded before persons proceed to stay in anywhere else in the country. A feasibility study for this processing centre will be concluded by end of 2016/17.</p> <p>The amendments to the Refugee Act of 1998 are currently in parliament in order to ensure that legislation supports the intention of the department on closing and establishment of centres including necessary capacities to determine cases.</p>	<p>NGOs and Lawyers are challenging the closure of these offices and the matters are in front of the courts and that affect implementation.</p> <p>Legislation provide that consideration of the asylum claim does not take less than 30 days and more than 90 days at the departmental level. It therefore means that, for a more secured and managed process, provision for shelter and basic necessities are considered by the state as the regime deals with humanitarian cases.</p> <p>Increased resources both for operations and appropriate infrastructure will therefore be required to support such an approach.</p>
<i>There should be awareness programs to combat xenophobia and educate society against narrow nationalism</i>	<p>The Department is embarking on broad consultation in reviewing its white paper on migration. The intention is to take a government wide and whole of society approach in managing migration. It is the view of the department that everyone should be involved in order to understand migration and the role migrants play in our society whether being economic or socio-cultural development. In this regard wide consultations with civil society, traditional leaders, different communities has taken place 2016 and is ongoing.</p> <p>In order to strengthen state intervention on the integration of foreign nationals and foster social cohesion, the Inter-Ministerial Committee on Migration instructed government. This process is now aligned with the current review of the immigration policy.</p> <p>The department also participate on the United Nations Protection Working Group that deals with matters of xenophobic attacks and local integration amongst others. The working group consist of civil society, community leaders, lawyers human rights, academic institutions, national departments and UN Agencies. The working group meets regularly to discuss matters affecting both migrant and local communities.</p>	<p>Other state department and spheres turn to view migration and migrants as only the responsibility of the Department of Home Affairs. Therefore turn to limit their mandate towards foreign nationals, and that negatively affect integration and social cohesion.</p> <p>There is a need to identify and empower a coordinating structure to instruct and monitor departments and state entities on the implementation of programs earmarked for social cohesion and integration of foreign nationals.</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

2. Home Affairs (continued)		
Resolution	Progress	Challenges
<p><i>Legislation should be introduced to criminalise the fraudulent acquisition of vital documents such as Identity Documents and provide for such crimes to be treated as a serious offence</i></p>	<p>The current Birth and Deaths Act (as amended), Identification Act, Citizenship Act provides for the criminalisation of fraudulently acquired documents and provision of false information in the National Population Register. An individual can be sentenced for certain offences in a court of law for a period not exceeding 15 years.</p> <p>The Immigration Act in force from 2014 has penalties for various criminal offences that range from 12 months to a period not exceeding 15 years depending on the offence.</p>	<p>Briefings and training is given by the DHA, with the Department of Justice, but the courts do not always treat the offences with the seriousness they deserve.</p>
<p><i>ANC branches should be involved in Stakeholder Forums of the Department as a demonstration of “the people” governing as per the Freedom Charter</i></p>	<p>Members of forums do not represent political parties but local government structures and government departments. Participation in Stakeholder forums is largely through these structures and includes councillors and members of ward committees; plus representatives from various government departments. The forums are generally chaired by the speaker of the local council.</p>	<p>There is a problem of the continuity of Stakeholder Forums, particularly following local government elections</p>
<p><i>There is a need for a single national identity system which will contain a profile of all South Africans and documented foreign nationals who comply with our laws.</i></p>	<p>The comprehensive National Identity System (NIS) will depend on the seamless integration of biometrics and biographical systems that contains all data for citizens and non-citizens.</p> <p>Phase 1: The department is currently upgrading HANIS system into an Automated Biometric system (ABIS) with capability to identify and verify people through fingerprints, facial recognition and IRIS technology. The ABIS is a fundamental baseline for the NIS.</p> <p>Phase 2. Automation of Birth, Marriages and Death registration processes is near completion which form baseline for back-end systems upgrade that will replace the current national Population Register (NPR).</p> <p>Biometrics capturing process has been automated and in the process of rollout through the enhanced Movement Control System (EMCS) at the Ports of Entry and also form a baseline for NIS. A pilot project was carried out at ORTIA, Cape Town, King Shaka and Lanseria.</p> <p>Phase 3: Work on designing the new developments and integration of all back end systems (ABIS, NPR, Asylum seeker and Refugees system, EMCS etc.) into the NIS has been started through a strategic partnership between DHA, SITA and CSIR. Requirements, design and procurement will also be completed by end of Financial Year 18/19.</p>	<p>DHA is modernising its systems and most IDs and passports are now processed through fully digital paperless secured systems. Births, marriages and death registration will be automated in 2017/ 2018, however a number of back end legacy systems still remains.</p> <p>Another serious challenge is unreliable telecommunications networks which the digital systems fully relies on for service delivery. The high interruption of networks causes service disruption in DHA offices and undermines the modernisation programme. The matter has been discussed and receiving Ministerial level and Portfolio Committees for Home Affairs and Portfolio Committee for Telecommunication and Postal Services. The network situation could be improved in the short term if the DHA is exempted from complying with a provision in the SITA Act.</p> <p>There are also underlying problems that need resolution. These are insufficient funding to establish and maintain a fully digital, secure DHA; there are hardly any of the required specialists; and the DHA is constrained by its current legal status. Section B of this report sums up the argument for repositioning the department so that it can deliver against its full mandate.</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

2. Home Affairs (continued)

Resolution	Progress	Challenges
<p><i>Home Affairs should take a lead in the border management agency as a department which is seized with immigration issues</i></p>	<ul style="list-style-type: none"> • Cabinet approved the BMA Bill to published for public comment in August 2015; • Cabinet approved the BMA Bill for submission to Parliament in September 2015 (this included the view that the BMA should be a Schedule 3A National Public Entity; an armed organisation; and functions should be transferred / ceded to the BMA from relevant organs of state); and • BMA Bill deliberated on in NEDLAC between November 2015 – May 2016, which included 7 businesses 	<p>The main challenges experienced relates to three areas of disagreement that were not resolved during the NEDLAC consultative process:</p> <p>Establishment of the Authority: Labour disagrees that the BMA will be a Schedule 3A national public entity in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) since it views this as privatisation of government functions. Business is of the view that the risks are too high in establishing a new Agency. Government is of the view that all the main substantive concerns raised by Labour are addressed in the revised Bill.</p> <ul style="list-style-type: none"> • Security Vetting Process: Labour and Business have a longstanding disagreement with Government on the security vetting process across Government institutions. Their view is that it is ineffective and inefficient. Government is of the view that a security vetting process is an absolute necessity for all future BMA officials and employees. • Routine Searches: The view of Business was that officials should only be permitted to search goods and persons where there are reasonable grounds to believe that a warrant is likely to be granted, if applied for, and that the delay in applying for such a warrant would defeat the object. Government is of the view that routine searches at ports of entry, and within the border law enforcement area, cannot be subjected to these limitations The BMA Bill was formally introduced into the parliamentary process in May 2016 after the NEDLAC process. The Portfolio Committee on Home Affairs is in the final stages of processing the BMA Bill. <p>The BMA Bill must still be submitted to the NCOP for deliberations, where after it must be returned to the National Assembly for final consideration and enactment.</p> <p>During the parliamentary process on the BMA Bill, 2016 the following challenges arose:</p> <ol style="list-style-type: none"> a) National Treasury and SARS made submissions on the BMA Bill, which proposed that the customs function be totally excluded from the BMA and its legislation, citing the possible negative impact on SARS, revenue collection and tax administration. b) Following the intervention and facilitation by the Deputy President between Home Affairs and National Treasury towards the end of 2016 there is now agreement that: <ul style="list-style-type: none"> • The BMA will assume all frontline customs functions at Ports of Entry; • Revenue collection will remain a SARS function, supported by the BMA at Ports of Entry; and <p>Provision will be made in the BMA Bill for enhanced oversight and monitoring by principal Departments over the BMA.</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

3. Intelligence		
Resolution	Progress	Challenges
<i>Government expedites the crafting and execution of a Comprehensive National Security Strategy</i>	The National Security Strategy (NSS) was completed and adopted by Cabinet on 04 December 2013. It is now being implemented and its first implementation report was presented to the JCPS DG Cluster.	Lack of financial resources make it difficult to implement all recommendations of the NSS.
<i>National Key Points be secured by National Security Agencies</i>	Work is underway to capacitate the National Security Agencies to secure the country's National Key Points.	Lack of adequate financial resources continue to hamper the efforts. Further, various government departments remain locked in long term contracts with private security companies but commit not to renew once contracts expire.
<i>The Government should expedite the finalization of the relevant legislation and regulations</i>	The General Intelligence Laws Amendment Act was passed in 2013. However, the Protection of State Information Bill (POSIB) remains under discussion.	The NGOs and Civil Society Organisations threaten the government with the Constitutional Court should POSIB be signed into law
<i>There must be public awareness campaigns on securing the cyber space.</i>	The Department of Telecommunications and Postal Services has developed the public awareness strategy to guide the public awareness efforts.	Lack of adequate funding continues to hamper such efforts.
<i>The security cluster must put systems and measures to protect the integrity of state information systems.</i>	The SSA conducts regular information security awareness briefings across government in accordance with Minimum Information Security Standards.	Capacity challenges continue to hamper the implementation of such efforts.
<i>Focused attention on economic intelligence and illicit economy</i>	The Economic Intelligence Unit is currently operational and conducts regular economic intelligence assessments. The economic Cluster is busy developing National Strategy for countering Illicit Economy.	The Economic Intelligence Unit is currently being realigned to address the challenges
<i>Government must finalise the implementation of a security cluster ICTS.</i>	The ICTS Cluster held a Workshop to ensure the revival of the Cluster and ensure the full attendance of relevant Directors-General at the meetings.	None.
<i>Cooperation against international terrorism and violent extremism in the global village should be strengthened.</i>	South Africa participation in the UN, AU and SADC countering terrorism efforts. Further, we are a member of Global Counter-Terrorism Forum. South Africa championed the development of SADC Counter-Terrorism.	None.
<i>There should be an inter-ministerial cooperation in eliminating illegal mining activities</i>	A NICOC inter-departmental committee has been established to coordinate government's effort in mitigating illegal mining activities. Further, South Africa through DIRCO championed the UN effort to development an international instrument for countering the scourge.	Undocumented foreign nationals continue to drive the scourge. The involvement of legitimate businesses for tax evasion remain problematic.

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

4. Justice and Constitutional Development		
Resolution	Progress	Challenges
<p><i>The ANC reaffirms the position that the branches of the State are co-equal parties entrusted with distinct constitutional powers in their quest to realize the ideals of a democratic South Africa. Each branch of the state must therefore observe the inherent constitutional limitations regarding its own power and authority and that no branch should undermine the others when exercising its constitutional mandate;</i></p>	<ul style="list-style-type: none"> • A historic meeting of the National Executive and Heads of the Judiciary was convened by the President on 27 August 2015. The meeting was convened at the request of the Chief Justice after the Judicial had raised concerned that Government has failed to obey the court judgement that called for the arrest of President Al Bashir. • In the statement read by the President on national television and which was echoed by the Chief Justice, both the Executive and the Judiciary committed to, among others: (a) respect each constitutional territory; refrain from attacking each other publicly; and (c) engage further on the matter relating to judicial governance and court administration. • Subsequent to the meeting of 27 August 2015 the Cabinet established an Inter-Ministerial Committee to look specifically into the issue of judicial governance and court administration. The mandate of the IMC which is chaired by the Deputy President is to develop the Government’s position on the institutional arrangements proposed by the Judiciary. • The IMC, in carrying out its task will be guided by section 165(4) of the Constitution which enjoins organs of State to support and assist the courts to protect their independence, accessibility and effectiveness. 	<p>The following are key challenges which from time to time lead to tension between the Branches of State:</p> <ul style="list-style-type: none"> (a) There is no mechanism to deal with occasional instances of judicial overreach in some of the judgments of the Superior Courts (b) The proposal of an absolute judicial governance and court administration model by the Judiciary (which is contrary to the resolutions of the 52nd Conference) <p>Perceived ineffective mechanisms to deal with unethical judicial conduct.</p>
<p><i>There should be criteria for eligibility to judicial appointment which include amongst others social activism.</i></p>	<ul style="list-style-type: none"> • The NDP acknowledges that “for the law to be an agent of change, it must be interpreted and enforced in a progressive, transformative fashion” and that to realise the desired change it is necessary to review the criteria for the appointment of judges • There has been significant progress with regard to the appointment of Black judges although the gender transformation is lagging behind in the appointment stakes, • It is important that judges with a progressive philosophy and who advance judicial activism to give effect to social transformation be appointed to the bench. The ANC through its deployees in the JSC must influence the review of appointment criteria used by the JSC and ensure intense scrutiny and evaluation of candidates for judicial office. • Appointing judges of colour to the bench alone will not reverse the legacy of inequality and deprivation orchestrated over centuries of colonial and apartheid rule. This must be accompanied by the radical transformation of the legal architecture that will promote progressive jurisprudence and the change of attitudes and mind-set in the interpretation and application of the law. • The observation made by the 4th NGC that newly appointed judges get assimilated by the dominant culture in the Judiciary and hence do not enhance transformation is as a result of the legal system that is still steeped in the apartheid past. It is in this context that that the Constitution is a bridge between a legal system that was used as a tool to oppress the majority and just legal system that promotes the achievement of human dignity and equality and the advancement of human rights 	<p>The absence of a legislative framework for the screening of candidates who are considered for judicial office increase the risks of appointing judges who are beholden to their anti-transformation ideologies and thus not contribute in the building of progressive jurisprudence to advance the desired change.</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

4. Justice and Constitutional Development (continued)

Resolution	Progress	Challenges
<p><i>Government should strengthen briefing black lawyers so as to acquaint them with defending the state and not individuals, thus creating a pool for potential judges.</i></p>	<ul style="list-style-type: none"> Allocation of legal work to private practitioners. These policies, which provide for preferential briefing of Black and women practitioners will be submitted to Cabinet and Parliament for their approval during 2017. The National Forum on legal practice which is established by the Legal Practice Act was established in February 2015. The Forum is tasked with the role of putting the necessary processes in place for the establishment of the Legal Practice Council and other regulatory structures of the profession which will spearhead the implementation of the Legal Practice Act in its entirety. The Legal Practice Act provides transformative measures to remove barriers to legal profession and increase access to the profession by previously disadvantaged communities. 	<p>The legal profession is still untransformed and there is resistance to the policies that are geared to transform the sector. Political intervention is required to drive the desired change.</p>
<p><i>In order to facilitate access to justice, court jurisdictions should be aligned to municipal demarcation as much as it is reasonably possible.</i></p>	<ul style="list-style-type: none"> The rationalisation process has been completed in four provinces, namely Gauteng, North West, Limpopo and Mpumalanga provinces. Work in respect of the Free State and Northern Cape provinces is earmarked for completion by mid-year in 2017. The rationalisation of magisterial districts constitutes the Blueprint for the rationalisation of the High Courts and from a scientific basis for the construction and distribution of Magistrates Courts and local seats of the High Court in the previously marginalised areas. The construction of the Limpopo and Mpumalanga High Courts enhances the rationalisation process and advances access to justice. 	<p>Court infrastructure is the greatest challenge that hampers the rationalisation process. There are still several Municipalities without a court infrastructure thus compelling communities to obtain court services from another municipality leading to inadequate access to justice. Court infrastructure from former Homelands and self-governing territories is dilapidated and cannot cope with increased services and the number of people. A continued investment in court infrastructure is necessary to enhance access to justice.</p>
		<ul style="list-style-type: none"> Acting appointments are, as a general rule, limited to a period of two years except where there are compelling reasons to exceed the said period. This is with a view to encourage those who hold long acting stints to apply and permanent position in the Magistracy The Magistrates Commission still experience challenges in dealing with the backlogs in the appointment of magistrates with close to 250 vacancies still to be filled. There is no common understanding regarding the interpretation of the Constitution Seventeenth Amendment in so far as it gives the Chief Justice constitutional powers in relation to norms and standards for court performance. The Inter-Ministerial Committee which was established by Cabinet process established to guide institutional reforms in the Judiciary is expected to guide on this matter. It will also give clarity on the role of the Cabinet Member responsible for the administration of justice in this context. Overcrowding of correctional facilities is attributed partly to the clocked court rolls. Not only Remand detainees but also increased long term sentenced inmates (minimum sentences impact) contribute to this. Most long remands are re serious cases in regional courts which now also have to deal with civil matters leaving less time for criminal matters. The longest outstanding cases usually get preference.

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

4. Justice and Constitutional Development (continued)		
Resolution	Progress	Challenges
<p><i>The LOCUM system Magistrates Courts should be regulated to eliminate its abuse and to enable transformation of the judiciary.</i></p>	<ul style="list-style-type: none"> Legislation to address acting appointment acting magistrates based on requests by Chief Magistrates and Regional Court Presidents has been enacted. In terms of the legislation acting appointments for up to 12 months (instead of just 3 months at a time) to ensure improved coordination in above regard. Unlike in the Superior Courts Judiciary, there is greater attrition in the Magistracy and the creation of 113 new posts of Magistrate as a result of the rationalisation process enhanced the opportunity for transformation at this level of the Judiciary 	<ul style="list-style-type: none"> Acting appointments are, as a general rule, limited to a period of two years except where there are compelling reasons to exceed the said period. This is with a view to encourage those who hold long acting stints to apply and permanent position in the Magistracy The Magistrates Commission still experience challenges in dealing with the backlogs in the appointment of magistrates with close to 250 vacancies still to be filled.
<p><i>The Criminal Justice System should redouble efforts to ensure that case flow management is optimized in order to reduce backlogs</i></p>	<ul style="list-style-type: none"> The Constitution Seventeenth Amendment, 2012 and the Superior Courts Act No. 10 of 2013 which came into operation on 23 August 2013 have placed judicial case management firmly under the Judiciary. These constitutional and legislative reforms introduced far-reaching changes to the criminal justice as they entrust, upon the Chief Justice the responsibility for the development and monitoring of norms and standards for judicial functions of all courts. The norms and standards published by the Chief Justice requires accused persons to plead within 3 months and trials be finalised speedily. The monitoring of long outstanding cases is done by the Cluster and judiciary and reports are tabled at judiciary-led Provincial Efficiency Enhancement Committees (PEEC) where all stakeholders are present. 	<ul style="list-style-type: none"> There is no common understanding regarding the interpretation of the Constitution Seventeenth Amendment in so far as it gives the Chief Justice constitutional powers in relation to norms and standards for court performance. The Inter-Ministerial Committee which was established by Cabinet process established to guide institutional reforms in the Judiciary is expected to guide on this matter. It will also give clarity on the role of the Cabinet Member responsible for the administration of justice in this context. Overcrowding of correctional facilities is attributed partly to the clocked court rolls. Not only Remand detainees but also increased long term sentenced inmates minimum sentences impact) contribute to this. Most long remands are re serious cases in regional courts which now also have to deal with civil matters leaving less time for criminal matters. The longest outstanding cases usually get preference.

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4. Justice and Constitutional Development (continued)		
Resolution	Progress	Challenges
<p><i>The NEC should be seized with the contradictions pertaining to the constitutional provisions relating to Traditional Leaders and their role and function in society with particular reference to their adjudicating powers.</i></p>	<ul style="list-style-type: none"> • A revised Traditional Courts Bill (TCB) was approved by Cabinet in December 2016 and is scheduled for introduction into Parliament soon. • The approved Bill has been revised extensively to address concerns and contestations that were raised during the Parliamentary hearings following the introduction of the earlier version of the Bill into Parliament in 2008 and 2012. Some of the aspects of the Bill which were improved substantially in the revised Bill are the following: <ul style="list-style-type: none"> • the Bill requires the Minister of Justice and the Commission on Gender Equality to implement measures to promote equal participation by women both as members and parties before the traditional courts; • the right to opt out (and in) into the traditional courts and thus everyone is free to seek legal redress in the Magistrates Courts; • the courts are consensual and thus providing an alternative dispute resolution mechanism to millions of people especially in traditional communities who chose to use the courts; • the departments of Justice and Constitutional Development and Traditional Affairs will jointly support these courts to ensure that they dispense justice expeditiously and freely and thus increase access to justice. • Confidence in the State legal services has diminished over the years largely due to lack of effective leadership and adequate capacity in the offices of the State Attorney. State Attorneys had largely become conveyor belts as dependency on private lawyers had increased astronomically over the years. • The amendments to the State Attorneys in 2014 (through the State Attorney Amendment Act of 2014) have introduced fundamental reforms of the Office of the State Attorney. In implementing the desired reforms a turn-around to revamp the offices of the State Attorney's has been embarked upon. The appointment of the Solicitor-General and creating a credible crop of public-sector lawyers will turn the State Attorney's office into a law firm of choice for all spheres of Government and State Entities. • The Professionalisation of the of the State Attorney profession will attract career public-sector-lawyers and in this way Government will become a training ground for in niche and specialised areas of law such as aviation, constitutional law, environmental and mining law. This will in turn prevent Governments departments and other organs of State from by-passing offices of the State Attorneys and engaging services of private law-firms directly. 	<p>The nature of the courts as Courts of Law and the role of Provinces in traditional courts are matters that are likely to dominate the debate during the Parliamentary process. It is important that the ANC adopts a uniform stance on these matters to avoid the recurrence of the past when the Provinces rejected the Bill when it was introduced in the NCOP.</p>

PEACE AND STABILITY CONSOLIDATED PROGRESS REPORT ON 53RD CONFERENCE RESOLUTIONS

4. Justice and Constitutional Development (continued)		
Resolution	Progress	Challenges
<p><i>The state should investigate the reasons for the perception that it has a poor success rate at courts, and inter-alia consider the quality of its legal advice</i></p>	<ul style="list-style-type: none"> Confidence in the State legal services has diminished over the years largely due to lack of effective leadership and adequate capacity in the offices of the State Attorney. State Attorneys had largely become conveyor belts as dependency on private lawyers had increased astronomically over the years. The amendments to the State Attorneys in 2014 (through the State Attorney Amendment Act of 2014) have introduced fundamental reforms of the Office of the State Attorney. In implementing the desired reforms a turn-around to revamp the offices of the State Attorney's has been embarked upon. The appointment of the Solicitor-General and creating a credible crop of public-sector lawyers will turn the State Attorney's office into a law firm of choice for all spheres of Government and State Entities. The Professionalisation of the of the State Attorney profession will attract career public-sector-lawyers and in this way Government will become a training ground for in niche and specialised areas of law such as aviation, constitutional law, environmental and mining law. This will in turn prevent Governments departments and other organs of State from by-passing offices of the State Attorneys and engaging services of private law-firms directly. 	<p>Aligning the Solicitor's dispensation inhibits plans to revamp the leadership of the institution as it is has become futile to attract the calibre of the leadership required to take the institution to higher level. Legislative amendments to benchmark the Solicitor-General's dispensation to the Office of the National Director of Public Prosecution are underway.</p>

5. Police		
Resolution	Progress	Challenges
<p><i>To establish a single Police Service</i></p>	<p>The Ministry has developed an approach to implement a single police service. The approach has been captured in the white paper on policing and a discussion document has been developed in this regard.</p> <p>The discussion document will also start to inform the amendments to the South African Police Service Act.</p>	<p>There were delays in implementing this resolution as the process was only started in 2014.</p>
<p><i>Improve the Conditions of Service for SAPS members at lower levels</i></p>	<ul style="list-style-type: none"> The Ministry has launched the SAPS transformation programme which is been led by the Office of the Deputy Minister. The Transformation programme will also attend to this matter. The Transformation Task Team was launched in 2016. 	<p>The resolution was also delayed.</p>
<p><i>To establish street committees to assist in the fight against crime</i></p>	<ul style="list-style-type: none"> The Ministry is in the process of reviewing the Community Police Forum Policy. The intention is to align it to the provisions of the white paper on policing in preparation for the amendments to the SAPS Act. The implementation of the street committees resolution will form part of this process 	<p>The resolution was also delayed. The implementation of the resolution was delayed due to the finalisation of the white papers</p>

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5. Police (continued)		
Resolution	Progress	Challenges
<i>Transformation in Security Departments</i>	The Ministry has launched the Transformation Task Team in August 2016. The roles and responsibilities of the Task Team are to attend the transformation challenges in SAPS.	There were delays in implementing this resolution as the process was only started in 2014.
<i>Rhino Poaching</i>	<ul style="list-style-type: none"> The Ministry has developed an integrated strategy to address the Rhino Poaching challenges. The strategy was developed at NATJOITS level and has started to yield results in this regard. The SAPS and the DPCI are in the process of developing more capacity together with the Department of Environmental Affairs. 	Insufficient human capacity to contain the problem
<i>Develop a Comprehensive National Security Structure</i>	<ul style="list-style-type: none"> The National Security Strategy was developed and finalised in December 2013. The Ministry is in the process of implementing together with the other cluster Departments. 	None
<i>National Key Points be secured by National Security Agencies</i>	<ul style="list-style-type: none"> The Ministry has started the process of repealing the National Key Points Act and replacing it with the Critical Infrastructure Bill. The Bill has been finalised and is currently at NEDLAC for consultation. 	None
<i>Non-Statutory Forces</i>	The matter is being attended to as part of the Transformation Committee	None

6. Defence		
Resolution	Progress	Challenges
<i>Adequate provision of funding must be made by the state for the implementation of the Defence Review outcomes . Alternative models of funding the implementation of the Defence Review such as ring-fencing the United reimbursement for PSO and revenues generated from the disposal of absolute assets should be explored</i>	The Defence Funding model is a strategic resourcing tool that will produce a documented comprehensive Defence Funding policy , strategy and plan for the DOD optimal utilisation of of resources from the defence appropriation and alternative revenue streams. Options currently being explored include, generation of income from the moveable assets , alternatives use of endowment properties , reduction of leased property portfolio, intellectual property and technology opportunities , HR interventions , SAMHS opportunities and UN reimbursement income.	The value of alternative funding may be limited and may not close the required gap for the Defence Review Implementation, therefore state funding will still be relied upon.
<i>The ANC should ensure that DOD and Dirco engage with the AU and UN to ensure appropriate equipping of the peace keepers in Sudan to enable them to defend themselves or the SANDF members to withdraw from the SUDAN PEACE KEEPING OPERATION</i>	The SANDF withdrew forces from Sudan in April 2016	

6. Defence (continued)		
Resolution	Progress	Challenges
<p><i>The ANC should lead an advocacy campaign to educate the public about the necessity of the implementation of the Defence Review especially as it relates to national sovereignty and safety of all citizens.</i></p>	<p>The Education and Awareness Plan has been developed and was approved by DOD.</p> <p>Work sessions in May 2016.</p>	<p>The implementation plan has taken long for good reasons for completion for new issues to be communicated as this is a complex process which need proper management .</p>

7. Military Veterans		
Resolution	Progress	Challenges
<p><i>The newly elected NEC should expeditiously resolve this matter, including the manner in which the state should take charge of the exhumation and repatriation of comrades who are buried outside the country.</i></p>	<p>The DMV is in discussion with the Department of Arts and Culture on the development of a policy on the Exhumation and Repatriation of the remains of Comrades who are buried outside the country. The draft policy is currently under discussion</p>	<ul style="list-style-type: none"> • A challenge arises in that certain countries will not release the remains of comrades citing that this form part of their own history. • In this regard, the Department of Military Veterans is exploring the possibility of getting approval for conducting visits to the grave sites of buried military veterans to allow for families to receive closure
<p><i>There should be programmes to uplift and attempt to reintegrate former MK members within the structures of the ANC and broader society in order to utilise the skills which they acquired in their training and education, particularly in politics and security</i></p>	<ul style="list-style-type: none"> • The DMV has acknowledged the mandate and is implementing programmes to benefit all former Non Statutory Force (NSF) members. Programmes offered as benefits include the provision of access to skills development and training programmes as well as higher education and training programmes. • The DMV has also started discussion with the South African Qualifications Authority and the National School of Government on a process for implementing Recognition of Prior Learning (RPL) Programme for Military Veterans. 	<p>The resolution was also delayed.</p>
<p><i>There should be programmes to uplift and attempt to reintegrate former MK members within the structures of the ANC and broader society in order to utilise the skills which they acquired in their training and education, particularly in politics and security</i></p>	<ul style="list-style-type: none"> • The DMV has acknowledged the mandate and is implementing programmes to benefit all former Non Statutory Force (NSF) members. Programmes offered as benefits include the provision of access to skills development and training programmes as well as higher education and training programmes. • The DMV has also started discussion with the South African Qualifications Authority and the National School of Government on a process for implementing Recognition of Prior Learning (RPL) Programme for Military Veterans. 	<ul style="list-style-type: none"> • The absence of adequate office infrastructure in all provinces and the absence of an organisational structure that is commensurate with the task of the DMV to enable the Department to deliver effectively to its mandate for its entire constituency. • Lack of capacity in DMV to provide skills development. • Absence of plan to identify skills needs of military veterans to overcome these.
<p><i>There should be a dedicated budget for the Department of Military Veterans which should be adequately resourced.</i></p>	<p>The budget for the Department of Military Veterans (DMV) is approved. DMV is not yet an independent vote but DMV gets an allocation from Department of Defence.</p>	<ul style="list-style-type: none"> • The Department has been underspending its funds. • More Military Veterans' are applying for benefits. This is leading to a budget shortfall

7. Military Veterans (continued)

Resolution	Progress	Challenges
<i>The Military Veterans Act and Special Pensions Act need to be reviewed and amended.</i>	The DMV is in the process of amending the Military Veterans Act. A task team has been established.	The process of amending the Act is an unpredictable process given the dynamics thereof
<i>Government must conclude the resolution of all outstanding matters related to the NSF by the end of the financial year</i>	This process has been concluded and the relevant legislation that governed integration has been repealed.	None
<i>All state organs across all spheres of government must comply with the Military Veterans Act 18 of 2011.</i>	<ul style="list-style-type: none"> • The process is moving at a slow pace. • DMV needs to develop capacity to implement MoU it has with other departments and state organs. 	None
<i>A process to clean the database for military veterans</i>	<p>The Department has established a dedicated team, led by the Deputy Director General, with the following objectives:</p> <ul style="list-style-type: none"> • Conduct a scientific and objective assessment of the status of the database, with regard to the accuracy, completeness, and reliability of the information in the database. • Develop policy and SOPs to govern use of the database. • Fill vacancies at senior level to manage database. • Move responsibility for database to the office of the DG. 	None



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