

(REVISITED VERSION)

EXECUTIVE SUMMARY

POLICY GUIDELINES

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

The Directorate for Priority Crime Investigation (“the Directorate”) is mandated to prevent, combat and investigate:

- national priority offences, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister in concurrence with Parliament;
- selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 2 of 2004); and
- any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament.

“National priority offences” is defined as organised crime, crime that requires national prevention or investigation, or crimes that requires specialised skills in the prevention or investigation thereof, as referred to in section 16(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995). Crimes mentioned in section 16(1) include:

- crimes committed by persons in a position of trust and making use of specialised or exclusive knowledge;
- in respect of the revenue or expenditure of the national government; or
- in respect of the national economy or the integrity of currencies;
- crimes of which the proportions require national investigation or prevention in the national interest;

- crimes committed across national and international borders;
- crimes where international requests for assistance are made in the investigation or prevention thereof;
- crimes which a Provincial Commissioner requests the National Head of the Directorate, to investigate on national level, with the National Head of the Directorate having the power to make the final decision on whether the crime shall be investigated on national or provincial level; and
- crimes in respect of which investigation thereof by members under the command of a Provincial Commissioner will detrimentally hamper the prevention or investigation of national priority offences.

A Schedule of offences which are also regarded as national priority offences has been inserted in section 16 of the South African Police Service Act, 1995. These crimes, *inter alia*, relate to the security of the Republic and international obligations of the Republic in respect of terrorism, war crimes, genocide and crimes against humanity, non-proliferation of weapons of mass destruction, the non-proliferation of firearms, combating of mercenary activities and the control of conventional arms. The focus of the Directorate is on serious organised and transnational crime, serious commercial crime and serious corruption.

The policy guidelines of the Minister, attached as Annexure A, as approved by Parliament determine the parameters of the mandate of the Directorate.

In essence, the policy guidelines provide for:

- offences selected by the National Head of the Directorate;
- offences that must be addressed by the Directorate;
- offences that may be addressed by the Directorate;
- offences referred to the Directorate by the National Commissioner;
- the conclusion of Protocol(s) for the identification of possible offences that

may be selected by the National Head of the Directorate as well as Protocol(s) in respect of national priority offences not selected by the National Head of the Directorate; and

- transitional arrangements.

In respect of the offences or category of offences which the National Commissioner may refer to the Directorate, the prioritisation of the offences must be aligned with the priorities and objectives of the Department of Police and the National Commissioner.

POLICY GUIDELINES DETERMINED BY THE MINISTER WITH CONCURRENCE OF PARLIAMENT UNDER SECTION 17K(4) FOR-

A. SELECTION OF NATIONAL PRIORITY OFFENCES BY THE NATIONAL HEAD OF THE DIRECTORATE; AND

B. REFERRAL OF ANY OFFENCE OR CATEGORY OF OFFENCES TO THE DIRECTORATE BY THE NATIONAL COMMISSIONER

1. **WHEREAS** the Directorate had been established to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption;

2. **WHEREAS** section 17D(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), as amended, (the Act) provides that the functions of the Directorate are to prevent, combat and investigate-

(a) national priority offences, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister in concurrence with Parliament;

(b) selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 2 of 2004); and

(c) Any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament.

3. **WHEREAS** section 17A of the Act defines “national priority offence” as organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16(1) of the Act; and

4. **WHEREAS** section 17K(4)(a)(i) and (ii) provides that the Minister, with concurrence of Parliament, shall determine policy guidelines for the selection

of national priority offences by the National Head of the Directorate or policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate.

5. **NOW THEREFORE** the Minister determines the following policy guidelines with concurrence of Parliament for the selection of national priority offences by the National Head of the Directorate and the referral to the Directorate by the National Commissioner of offences or category of offences for investigation by the Directorate.

6. **POLICY GUIDELINES: SELECTION OF OFFENCES BY THE NATIONAL HEAD OF THE DIRECTORATE**

6.1 The National Head of the Directorate must give due consideration to the factors set out in paragraph 7 *infra*, in order to ensure that serious organised crime, commercial crime and corruption are being attended to by the Directorate. The Directorate must focus on crimes of a considerable extent and scope, in other words **“serious or high level crimes”**.

6.2 In respect of the selection of national priority offences by the National Head of the Directorate, such selection should be informed by crime threat assessments.

6.3 The National Head of the Directorate must conclude operational Protocol(s) with relevant Provincial Commissioners and Divisional Commissioners in order to identify matters that will be addressed by the Directorate.

6.4 Any offence selected by the National Head of the Directorate must be a “national priority offence” as defined in section 17A of the Act, and the selection must be aligned with the strategic operational priorities of the Department of Police and the National Commissioner of the South African Police Service and must comply with at least one of the following criteria:

6.4.1 The offence is committed by a person, group of persons or syndicate acting in an organised fashion or a manner which could result in substantial financial gain for the person, group of persons or syndicate involved and must comply with the requirements set out in section 16(2A) of the Act,

- 6.4.2 The offence is committed / planned in more than one province or outside the borders of the Republic by the same perpetrators;
- 6.4.3 The offence has an impact on the revenue or expenditure of the national government;
- 6.4.4 The offence has an impact on the national economy or the integrity of currencies;
- 6.4.5 An offence in respect of which the investigation in the Republic by the Service is requested by an international police agency or the police of a foreign country;
- 6.4.6 An offence that involves mutual legal assistance and/or extradition proceedings or;
- 6.4.7 An offence in respect of which the prevention or investigation requires the application of specialised skills which are only available in the Directorate or can be sourced by the Directorate.

7. OFFENCES THAT MUST BE ADDRESSED BY THE DIRECTORATE

The investigation of the following national priority offences, irrespective of the extent, impact, nature or perpetrators thereof, is the exclusive responsibility of the Directorate:

- 7.1 High treason;
- 7.2 Sedition;
- 7.3 Any offence referred to in paragraph (a) of the definition of “specified offence” in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);
- 7.4 Any offence referred to in Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002);

7.5 Any offence referred to in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); or

7.6 Any offence referred to in the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), or the Prohibition of Mercenary Activities and the Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006).

8. **OFFENCES THAT MAY BE ADDRESSED BY THE DIRECTORATE**

Any other national priority offence set out in the Schedule to the Act (section 16(2)(iA)) or which a Provincial Commissioner requests the National Head of the Directorate to prevent or investigate, may be addressed by the Directorate, depending on the following factors:

- Monetary value;
- Complexity of the case;
- Extent of the case;
- Public interest;
- Urgency; and
- Organised fashion.

9. **POLICY GUIDELINES FOR THE REFERRAL OF OFFENCES BY THE NATIONAL COMMISSIONER**

Any offence or category of offences, other than national priority offences, referred to the Directorate by the National Commissioner must comply with the following minimum criteria:

9.1 The prioritisation of the offence must be aligned with the declared strategic priorities of the Department of Police and the National Commissioner of the South African Police Service;

9.2 The referral to the National Head of the Directorate must be in writing and must be accompanied, where possible, by an affidavit and supporting documents that contain *prima facie* evidence of the commission of a crime.

9.3 In respect of any offence referred to the Directorate, due consideration must be given by the National Commissioner to the factors set out in paragraph 7 *supra*, in order to ensure that serious organised crime, commercial crime and corruption are being attended to by the Directorate.

10. **NATIONAL PRIORITY OFFENCES NOT SELECTED BY THE NATIONAL HEAD OF THE DIRECTORATE**

10.1 Whereas the Act provides for a multi-disciplinary approach in achieving the objectives of the Directorate and whereas the National Head of the Directorate may select national priority offences, Protocol(s) between the National Head and relevant Provincial Commissioners as well as Divisional Commissioners must be concluded, after approval of these policy guidelines by Parliament, to ensure that offences not selected by the National Head are sufficiently addressed by a specific Province or Division of the South African Police Service, other than the Directorate.

10.2 Offences which may need to be provided for in the Protocol(s) referred to in paragraph 9.1, include, but are not limited to:

- offences which a Provincial Commissioner requests the National Head of the Directorate to prevent or investigate but to which the National Head does not accede to;
- any offence referred to in Chapters 2, 3 and 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
- any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 14 of 1992);
- any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms,

explosives or armament;

- any offence contemplated in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004);
- any offence the punishment where for may be imprisonment for life.
- In respect of offences reported to the Directorate under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the National Head of the Directorate shall select cases which must be investigated by the Directorate, taking into account the criteria mentioned in paragraph 7, and all other such reported matters shall be directed to the relevant Provincial Commissioner for investigation.

11. TRANSITIONAL ARRANGEMENTS

11.1 These policy guidelines must be implemented as soon as possible.

11.2 Until such time that sufficient capacity has been created within the Detective Service to deal with offences which fall outside the scope of these policy guidelines, on-going criminal investigations, currently being dealt with by the Directorate, must where possible, be finalised by the Directorate.