

MEDIA STATEMENT READ BY HEAD OF THE SPECIAL INVESTIGATING UNIT (SIU) ADVOCATE ANDY MOTHIBI DURING THE RELEASE OF A REPORT OF FINALISED INVESTIGATIONS AND OUTCOMES OF INVESTIGATIONS INTO ALLEGATIONS ON THE PPE PROCUREMENT BY STATE INSTITUTIONS – PROCLAMATION R.23 OF 2020

05 February 2021

1. INTRODUCTION

The South African government declared a national state of disaster in March 2020 having recognised that special circumstances existed to warrant the declaration of a national state of disaster in terms of the Disaster Management Act 57 of 2002 (the Act). The decision was informed by consideration of the magnitude and severity of the COVID-19 outbreak which had been declared a global pandemic by the World Health Organisation and classified as a national disaster by the Minister of Cooperative Governance and Traditional Affairs as envisaged in Section 3 of the Act.

Emergency procurement measures were subsequently implemented by the National Treasury. Following the implementation of the emergency procurement by various state institutions at all levels of government and in all provinces, a number of procurement irregularities and corruption allegations were reported to the Special Investigating Unit (SIU) by whistle blowers.

In the case of the Gauteng Provincial Government, the Office of the Gauteng Premier, through the Director General of the Province, had approached the SIU to assist with the investigation of certain allegations of irregularities in respect of the procurement of goods and services, including for PPE, by the Gauteng Provincial Department Health for its own use and also for use by other Gauteng Provincial Departments. The SIU entered into a Secondment Agreement with the Office of the Gauteng Premier in order to second a multi-disciplinary investigation team to the Office of the Gauteng Premier to assist with the investigation pending the Proclamation process.

The allegations reported to the SIU involved amongst others the irregular procurement of Personal Protection Equipment (PPE), hospital and quarantine sites, catering services (food parcels), ventilators, disinfecting equipment and motorized wheelchairs.

The SIU used the allegations to prepare and process a proclamation. On 23 July 2020, and with the publication of Proclamation No. R23 of 2020, President Cyril Ramaphosa referred certain allegations of impropriety in connection with the affairs of all State Institutions to the SIU and provided the SIU with its terms of reference, which are fully set out in the Schedule to the Proclamation.

The investigation spans primarily the period 1 January 2020 and 23 July 2020 (i.e. the date of publication of the Proclamation), but also authorises investigations into matters which took place prior to 1 January 2020 or after 23 July 2020, but are relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule to the Proclamation or involve the same persons, entities or contracts investigated under authority of the Proclamation.

The Proclamation further specifically tasked and authorised the SIU to exercise or perform all the functions and powers assigned to, or conferred upon it by the Special Investigating Units and Special Tribunals Act 74 of 1996, including the recovery of any losses suffered by State Institutions or the State, in relation to the said matters in the Schedule to the Proclamation.

As envisaged in the reporting requirements provided for by the SIU Act, President Ramaphosa directed that the SIU submit to him progress reports every six weeks. The SIU has complied with the stated reporting requirements. The SIU has to date made significant progress in PPE investigations and today we release the progress and outcomes of these investigations to public of South Africa.

2. SIU LEGISLATIVE MANDATE

The SIU is mandated by the Special Investigating Units and Special Tribunals Act 74 of 1996 to investigate serious maladministration or malpractices in connection with the State Institutions (these are all state institutions at National, Provincial and Local spheres of government), State Assets and public money as well as any conduct which may seriously harm the interests of the public including acts of corruption. The SIU is further mandated to institute and conduct civil proceedings in any court of law or a Special Tribunal in its own name or on behalf of the State Institutions.

3. REFERRAL OF MATTERS BY THE PRESIDENT TO THE SIU FOR INVESTIGATION

The President refers matters by Proclamation to the SIU for investigation on the grounds of any alleged:

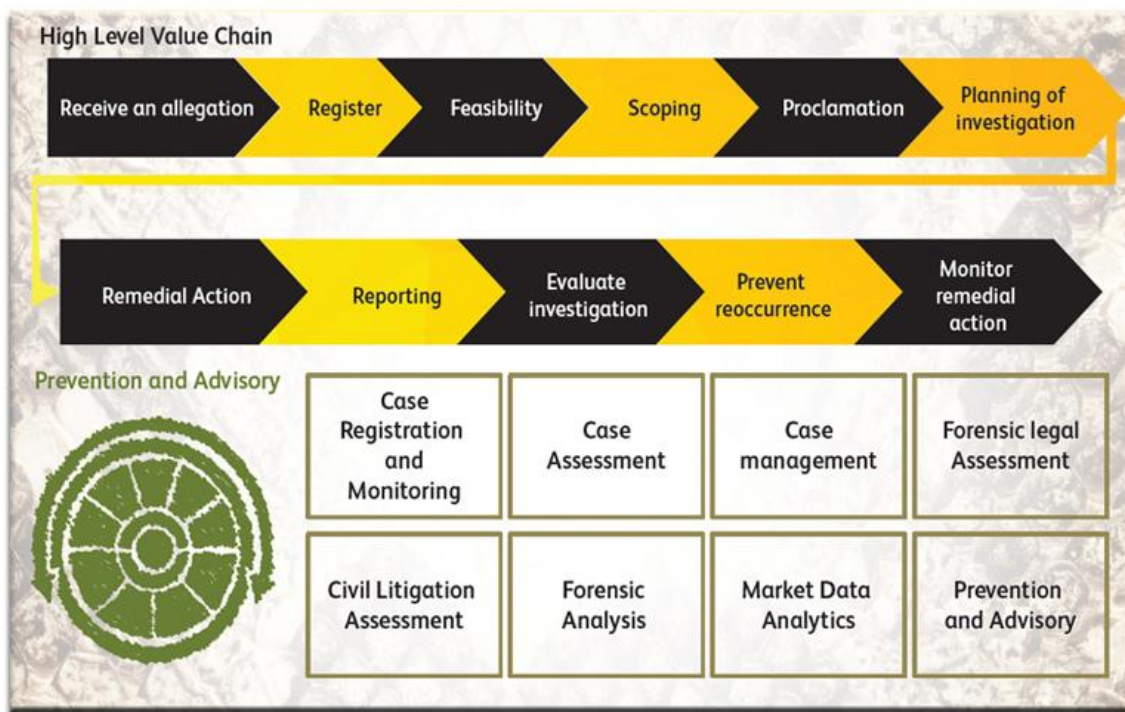
- (a) Serious maladministration in connection with the affairs of any state institution;
- (b) Improper or unlawful conduct by employees of state institution;
- (c) Unlawful appropriation or expenditure of public money or property;
- (d) Unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon state property;
- (e) Intentional or negligent loss of public money or damage to public property;
- (f) Offence referred to in the Prevention and Combating of Corrupt Activities Act of 2004, committed in connection with the affairs of any state institution;
- (g) Unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

The proclamation sets out the terms of reference and the president may at any time amend a proclamation issued.

The SIU is required, within the framework of the terms of reference set out in the proclamation to:

- (a) Investigate all allegations regarding the matter concerned;
- (b) Collect evidence regarding acts or omissions which are relevant to the investigations;
- (c) To institute and conduct civil proceedings in a Special Tribunal or any court of law for – any relief which the state institution concerned is entitled to, including the recovery of any damages or losses which may be suffered by such state institution, any relief relevant to any investigation or any relief relevant to the interests of SIU.
- (d) To refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority
- (e) To perform any functions which are not in conflict with the provisions of the SIU Act, as the President may from time to time request;
- (f) From time to time as requested by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned or any court of law
- (g) Upon the conclusion of the investigation, to submit final report to the President; and
- (h) To at least twice a year submit a report to Parliament on the investigations by and the activities, composition and expenditure of SIU.

4. SIU VALUE CHAIN

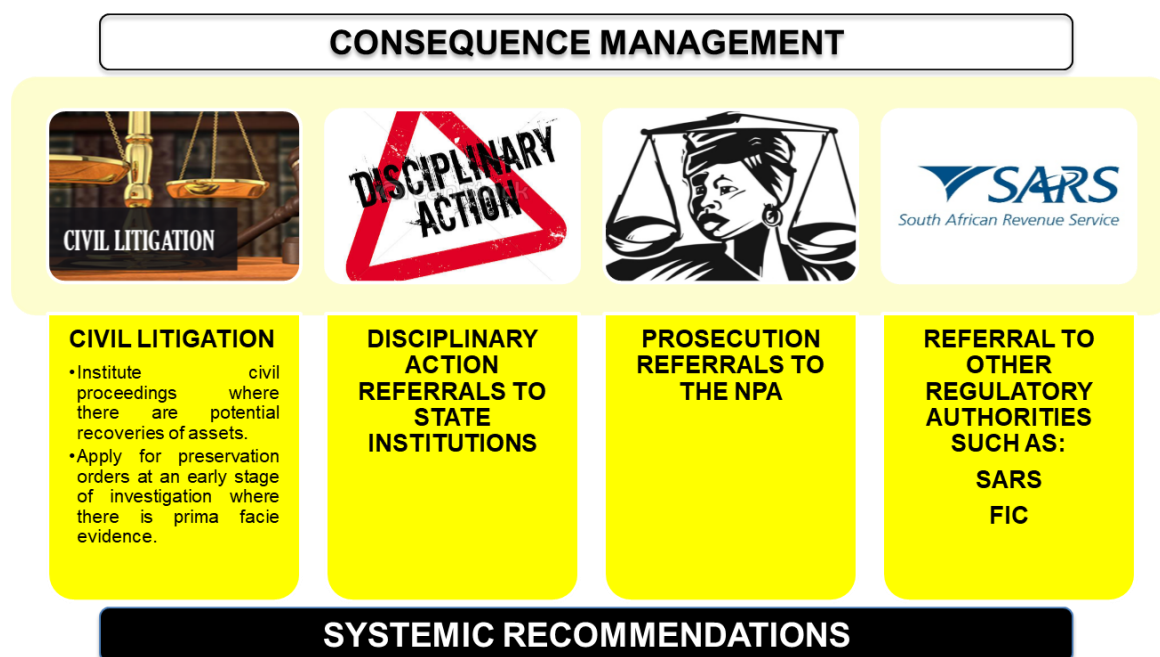


5. OUTCOMES THE SIU SEEKS TO ACHIEVE IN ITS INVESTIGATIONS

The deliverables of the investigation are as follows:

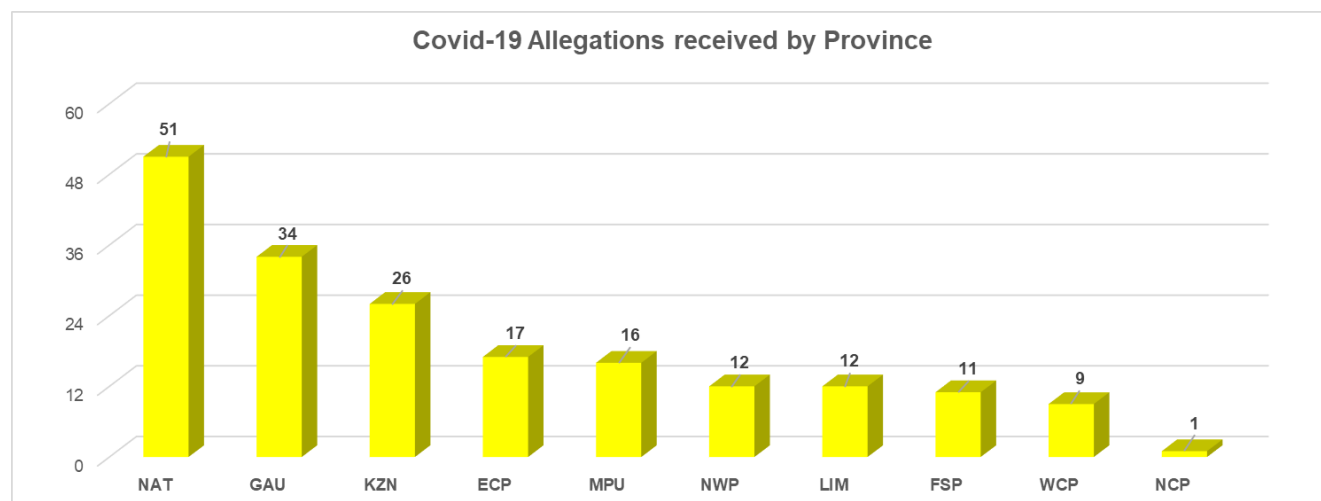
- To investigate allegations pertaining to the procurement of goods and or services.
- To institute civil proceedings in the Special Tribunal for the recovery of losses and/or the prevention of further losses.
- To refer evidence in respect of criminal, administrative, executive and/or disciplinary action, and to make systemic recommendations.
- To compile and submit progress Reports and a final Report to the President in respect of the investigation conducted.

The key outcomes, which are underpinned by the need to ensure consequence management, may be illustrated as follows:



6. ALLEGATIONS RECEIVED

A total of 189 PPE procurement corruption allegations were reported to the SIU. The breakdown of reported allegations are as follows:



7. EXPENDITURE AND CONTRACTS UNDER INVESTIGATION

According to data received from the National Treasury, a total of R30.7 billion was spent by State institutions between April and November 2020 of which R13 334 240 581 is subject to the SIU investigation.

As at the date of the release of the progress reports and the outcomes, a total of 2 556 PPE contracts were awarded to the value of over R13,3 billion are under the SIU investigation. These contracts were awarded to 1 774 service providers. Investigations into 164 (26%) PPE contracts to the value of over R3.5 billion have been finalized, 1 541 (51%) contracts to the value of R6.8 billion are currently being investigated and investigations into 851 (22%) contracts are yet to commence. More allegations are still being received by the SIU as such the numbers change from progress report to progress report.

8. BRIEF CURRENT STATUS OF INVESTIGATIONS

Contracts' Investigation Status	No. of Service Providers	No. of Contracts awarded to service providers	Value of contracts awarded to service providers	Percentage of matters under investigation by value
Finalised	141	164	3 510 461 786	26%
Ongoing	777	1 541	6 847 544 412	51%
Investigation to still commence	856	851	2 976 234 383	22%
Total	1 774	2 556	13 334 240 581	100%

9. OBSERVATIONS BASED ON INVESTIGATIONS CONDUCTED TO DATE

Investigations revealed, amongst others, the following:

- It appears that persons in positions of authority within some state institutions believed that the declaration of a 'national state of disaster' meant that all procurement is

automatically now conducted on an 'emergency' basis, and without compliance with any of the normal prescripts regulating public sector procurement, but without realising that even 'emergency' procurement must still be conducted in accordance with certain minimum prescripts to ensure (in as far as possible) that such processes remain fair, equitable, transparent, competitive and cost-effective as prescribed by section 217(1) of the Constitution (e.g. to motivate to the Accounting Officer/Authority of the State institution concerned why it is wholly or partially impractical to invite competitive bids, and have that Accounting Officer/Authority record the reason for such impracticality and approve a SCM Deviation in terms of Regulation 16A6.4 of the Treasury Regulations, which must be reported to the relevant Treasury and the Auditor General of South Africa etc.).

Various officials:

- a) merely rubber-stamped decision taken by; and/or
- b) accepted and gave effect to 'unlawful' instructions from officials more senior than them, which resulted in a complete break-down of the checks and balances protection normally afforded by the principle of 'segregation of duties' (e.g. the first capture the transaction, the second approves the transaction and the third authorises the transaction etc.). Consequently, officials working within support services processed Commitment Letters, Purchase Orders, Invoices and payments without ensuring compliance with normal SCM prescripts and other control measures.

Furthermore, it appears that certain officials within state institutions who do not trust procurement processes undertaken by the National Government (e.g. the procurement processes undertaken by National Treasury to secure Transversal contracts), and hold a view which is in SIU's perspective false, incorrect or unwarranted view that such procurement processes and resulting contracts create monopolies in public sector procurement, which excludes fair opportunity for local, provincial, black empowerment and/or SMMEs (i.e. Small, Medium and Micro Enterprises) suppliers or service providers to compete fairly for such contracts. This perception seemingly resulted in the state institutions, particularly at Provincial Government level intentionally:

- a) avoiding the use of Transversal contracts, as inter alia prescribed by Practice Note 8 of 2019/2020; and
- b) ignoring the prescripts of Practice Note 3 of 2020/2021, which required from all State institutions to centralize all their procurement within the National Treasury

Procurement Team (which comprised of the National Department of Health and the Chief Procurement Officer in National Treasury), as assisted by Business South Africa on a non-profit basis, which resulted in procurement irregularities and grave loss and prejudice to the Provincial Government and the *fiscus*.

- Bearing in mind that the national state of disaster was declared on 15 March 2020, where after PPE procurement commenced, certain service providers were found to have only been registered on the CIPC during February and March 2020 (and thus would and could not have had demonstrable track records).
- Companies awarded contracts were not registered on the Central Supplier Database.
- Certain service providers were already in the de-registration process when they quoted and were awarded contracts (their tax status is being verified as this would have impacted on their registration on the CSD).
- The type of goods supplied were not consistent with the nature of the business for which companies are registered on the CIPC, i.e. they should not have been requested to quote for the services.
- Product specifications were ignored and products that were not suitable for its intended purposes were purchased and in several instances against the advice of expert opinion on the usefulness of the product.
- Certain companies were awarded BBBEE points as level 1 contributors when they in fact did not qualify.
- In some instances, political pressure played a role in the procurement of PPE.
- It appears that the names of the service providers were determined before any SCM process commenced.
- The delivery of substandard and/or PPE that does not comply with the technical specifications contained in the invitation to submit quotations. Furthermore, certain PPE were not packed according to predetermined standards.
- There was no attempt to negotiate with suppliers in bringing prices within the thresholds provided by Treasury. This resulted in overpayment for goods.
- The Departments lack basic control measures that will establish correct product delivery. In several instances we found under delivery of items.
- There appears to be no verification protocols on supplier registration details. This has resulted in several suppliers claiming VAT when they were not registered with SARS as VAT vendors.

- Suppliers using front companies to obtain multiple contracts from a department.
- Cover quoting by officials and suppliers.
- Splitting of bids to meet the quotation and/or delegation threshold.
- Misrepresentation from suppliers by not disclosing their close friendships with officials who were involved in awarding PPE contracts.
- PPE was packaged under a false/forged, cloned label.

10. OUTCOMES AND ACTION TAKEN THUS FAR

CIVIL LITIGATION CASES INSTITUTED IN THE SPECIAL TRIBUNAL (“ST”)

As at 20 November 2020, the SIU had instituted civil matters in the Special Tribunal to the value of R259 624 735 for review, which will include recovery of State funds. The value and details of the matters before the Special Tribunal are as follows:

Rand value and number of matters instituted in the Special Tribunal				
Province	Description	Value of outcome	Date instituted	Progress to date
Eastern Cape (ECP)	Department of Health: SIU v Fabkomp (Pty) (Ltd) and Others: (EC04/2020)	R10 148 750	18/09/2020	<p>The cause of action is based on the irregular procurement by the Eastern Cape Department of Health of motorcycles with a “sidecar” to transport patients, which resulted in a process that was not fair, competitive or cost-effective. The matter was heard in the ST and the Eastern Cape DoH was interdicted from making any payments to the supplier and from accepting delivery of any goods from the supplier, pending the finalisation of Review proceedings to challenge the validity of the award and resulting contract.</p> <p>The Review proceedings have been instituted in the ST and the matter will be heard on 22/04/2021.</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
ECP	The OR Tambo Municipality "Door-to-door" case: (EC06/2020)	R4 899 000	26/10/2020	<p>This matter relates to an investigation into the irregular procurement of an awareness campaign that was conducted in the Eastern Cape.</p> <p>Civil proceedings have been instituted against an entity called Phathilizwi Training in the ST to review and set aside the award and the resulting contract, and to recover losses suffered by the Municipality.</p> <p>The defendant has thus far not defended the matter and the SIU is in the process enrolling the matter for hearing in the ST.</p>
ECP	The Alinani Trading-matter (EC05/2020)	R2 785 276	30/10/2020	<p>This matter relates to the procurement of PPE for the Department of Education in the Eastern Cape.</p> <p>The SIU successfully applied to the ST to have the bank accounts of the first four Respondents frozen and to interdict the Department from making any further payments to them. The SIU will issue summons to recover losses suffered by the Department.</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
Gauteng (GAU)	The SIU v Ledla Structural Development (Pty) Ltd and 43 Others: (GP07/2020)	R139 000 000	06/08/2020	<p>In this matter a contract to deliver PPE was irregularly awarded by the Gauteng Department of Health, while unit prices were also artificially inflated by between 211% and 542%.</p> <p>Notwithstanding the fact that the Department was aware that the SIU was investigating the contract and the Department had stopped almost all payments in respect of suppliers under investigation by the SIU, on 3/08/2020, the Department made payment of R38 758 155 to the supplier. This had immediate clearance and substantial amounts were moved from the bank account of the supplier to the bank accounts of two other entities, who in turn transferred/paid the funds to at least 36 other entities. We noted the speed and the haste with which this was done.</p> <p>On or about 06/08/2020, at the request of SIU, the FIC implemented a directive to freeze a total of R26 449 526 in the bank accounts of 39 entities. This attachment was only valid for 10</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>working days as a legal emergency intervention to stop the funds from disappearing.</p> <p>Civil proceedings were instituted in the ST under Case No. GP 07/2020 and it was enrolled for 20/08/2020. On 20/08/2020, the ST granted, inter alia, the following interim orders:</p> <ul style="list-style-type: none"> • The 1st to 39th Respondents were prohibited from dealing with the funds to the value of R26 449 526 that were frozen in their bank accounts; • The implementation of the contract between the Department and the 1st Respondent was suspended and the 1st to 42nd Respondents were interdicted from giving effect thereto; • The 43rd and 44th Respondents (i.e. the GEPP and GPAA) were interdicted from releasing the pension benefits due to the 42nd Respondent (a former Chief Financial Officer of the Department), pending the outcome of a damages claim to be instituted against the 42nd Respondent;

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<ul style="list-style-type: none"> The Department was interdicted from making any further payments to the 1st Respondent. <p>The return date for the interim order was 06/10/2020. A case management meeting was held by the ST on 09/09/2020.</p> <p>The case was opposed by almost all the Respondents.</p> <p>On 06/10/2020, the Special Tribunal postponed the matter to 20 and 21/11/2020, and the interim order was extended to 20/11/2020.</p> <p>Prior to the hearing, the SIU withdrew the Application against:</p> <p>(a) the Twenty Sixth Respondent, after it agreed to refund the R2 000 000 that it received from the Third Respondent to the Third Respondent and for that amount to also be attached as part of the funds frozen in the account of the Third Respondent (i.e. the amount frozen in the account of the Third Respondent increased from R9 670.37 to R2 009 670.37); and</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>(b) the Thirty Fifth Respondent, because it had never received any payments from Ledla, and the relevant bank had erroneously provided the FIC and the SIU with incorrect information.</p> <p>The matter was heard on 20/11/2020 wherein judgement was reserved. Judgement was then handed down on 10/12/2020.</p> <p>On 10 December 2020 the matter was heard and the Special Tribunal:</p> <p>(a) Reviewed and set aside the R139 million contract that was concluded between the Department and Ledla;</p> <p>(b) Extended its interim order made on 20 August 2020 to interdict the GEPP from paying out the pension benefits due to a former Chief Financial Officer of the Department until the finalisation of the action proceedings that the SIU instituted against that former CFO in which the SIU seeks to hold the former CFO and one other liable for losses and damages allegedly suffered by the Department;</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>(c) Confirmed the interim orders that were granted against the First Respondent, the Second Respondent, the Thirteenth Respondent and the Fourteenth Respondent, and the ST declared the funds held in their bank accounts (i.e. a total amount of approximately R16 661 065.23) forfeit to the State;</p> <p>(d) Discharged the interim orders that were granted against the Fifth Respondent, the Twelfth Respondent, the Twenty Second Respondent, the Twenty-Eight Respondent, the Thirty First Respondent and the Thirty Seventh Respondent, and the funds held in their bank accounts (i.e. a total amount of approximately R173 944.74) were released; and</p> <p>Ordered the SIU to obtain an independent audit report in respect of the remaining Respondents who may have sold PPE directly or indirectly to Ledla to quantify the loss suffered by the Department in having paid more for PPE than the maximum prices prescribed by National</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
				<p>Treasury and to submit that report to the ST no later than 22/01/2021, where after the ST will consider making supplementary orders, and the interim order of 20/08/2020 was extended to 26/01/2021, and again extended to 02/02/2021 and again extended to 04/02/2021.</p> <p>Yesterday, the Special Tribunal to declared more than R10 million held in bank accounts of 20 companies and entities be forfeited to the State. This brings the total of the money forfeited to the State in the case of SIU vs Ledla Structural Development and Others to over R26 million of the R39 million paid by the Gauteng Department of Health in the R139 million contract. The instruction I have given to the SIU – to execute the order, recover the money and pay those monies back to the State - Gauteng Department of Health.</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
GAU	SIU v Kabelo Mantsu Lehloenya, Professor Mkhululi Lukhele and MEC for Gauteng Health (GP11/2020)	R43 532 709	11/09/2020	<p>In the Ledla matter, the ST interdicted the 43rd and 44th Respondents (i.e. the GEPP and GPAA) from releasing the pension benefits due to Ms Lehloenya (i.e. the 42nd Respondent, who is a former CFO of the Department), pending the outcome of a damages claim to be instituted against her.</p> <p>On 11/09/2020, the SIU issued Summons in the ST under Case No. GP11/2020 against Ms Lehloenya (1st Defendant), Professor Lukhele (a former Head of Department for the Department) (Second Defendant) and the MEC for Gauteng Health (3rd Defendant – who represents the Department as an interested party and against whom no relief is sought) in which the SIU seeks to recover losses suffered by the Department in the total amount of R43 532 709.</p> <p>Both Defendants are defending the civil case. The matter has been sent down for hearing from 01/06/2021 to 18/06/2021.</p>

Rand value and number of matters instituted in the Special Tribunal

Province	Description	Value of outcome	Date instituted	Progress to date
KwaZulu-Natal (KZN)	<p>Department of Social Development:</p> <p>Rosette Investments (KN01/2020);</p> <p>Gibela (KN02/2020);</p> <p>LNA Communications (KN03/2020);</p> <p>Zain Brothers (KN04/2020)</p>	<p>R4 899 000</p> <p>R4 899 000</p> <p>R3 960 000</p> <p>R4 800 000</p>	<p>25/10/2020</p> <p>25/10/2020</p> <p>25/10/2020</p> <p>25/10/2020</p>	<p>This matter relates to the irregular procurement of blankets for the Department of Social Development in KZN.</p> <p>The investigation revealed that in fact less blankets were distributed than the Department had in its stores prior to embarking on the procurement process.</p> <p>Civil proceedings have been instituted against the supplier in the ST to review and set aside the award and the resulting contract, and to recover losses suffered by the Department.</p>
National	<p>National Department of Public Works and Infrastructure: The SIU v Caledon River Properties (Pty) (Ltd) and Others Beitbridge Border matter: (GP12/20 and LP01/2020)</p>	R40 800 000	18/11/2020	<p>This matter relates to the procurement process of a service provider/contractor for the erection of a fence along the SA border with Zimbabwe, near Beitbridge.</p> <p>The SIU investigation found evidence that the procurement process was irregular. The contract has a value of R40 million.</p> <p>The SIU instituted civil proceedings in the ST for an order to “freeze” the bank account of the First and Second Respondents, alternatively for the Respondents to provide bank guarantees of</p>

Rand value and number of matters instituted in the Special Tribunal				
Province	Description	Value of outcome	Date instituted	Progress to date
				<p>R21 819 878 (Magwa Construction) and R1 843 004 (Profteam CC).</p> <p>The initial application was withdrawn by agreement between the parties, an undertaking not to make any further payments was obtained from the Department and a fresh application was launched in the ST on 18/11/2020. In the application the SIU seeks to set aside the contract.</p> <p>The respondents raised points in law, challenging the jurisdiction of the ST to grant the relief sought by the SIU. The hearing was held on 26/01/2021 and the judgement was reserved.</p>
	Total	R259 624 735		

As at the 4th February there are 15 enrolled in the Special Tribunal to the contact value of R365 million.

11. NUMBER OF REFERRALS MADE FOR DISCIPLINARY ACTION AGAINST OFFICIALS

SIU investigations revealed evidence that requires disciplinary action to be taken against certain officials involved in the irregularities.

Twenty-five referrals have been made to various State institutions for the institution of disciplinary action for misconduct and contravening of the supply chain management policies and sections of the PFMA and the MFMA. The officials are employed in the following State institutions:

- **Free State (FS) Provincial Treasury** – 1 referral was made in respect of SCMQ608 & /609/20/21 and SCMQ3/2020 against a Senior Manager on 9 November 2020. The SIU is currently assisting the Provincial Treasury with this matter.
- **Gauteng Department of Health (Gauteng DoH)** – 1 referral was made against a Middle Manager on 18 September 2020. The SIU met with the evidence leaders appointed in the matter. The matter is set down to be heard on 15 March 2021.
- **Gauteng DoH** – 1 referral was made against another Senior Manager on 18 September 2020. The SIU met with the evidence leaders appointed on the matter. The disciplinary hearing was scheduled to be heard on 11 to 15 January 2021, but it was postponed following an application by the Senior Manager for further information. The new date for the disciplinary hearing is 1 to 5 February 2021. The SIU will follow up on the outcome of the hearing.
- **Gauteng DoH** – 2 referrals were made against another Senior Manager on 23 September 2020 and 25 September 2020. The official resigned from the Department on or about 3 October 2020.
- **Gauteng DoH** – 1 referral was made against the Spokesperson of the President on 10 November 2020. The SIU was informed that the Office of the President is taking relevant steps.
- **KwaZulu-Natal Department of Education (KZN DoE)** – 6 referrals were made on 5 November 2020 against 2 Senior Managers and 4 Middle Managers. In respect of all disciplinary referrals made, the SIU have been in contact with the Department. Although the Department is at various stages of actioning the recommendations none

of the matters have been finalised to date. The SIU will follow up on the outcome of the hearings.

- **Sekhukhune District Municipality in Limpopo** – 5 referrals were made on 30 September 2020 against Middle Management and Senior Management officials. 4 of the officials are on suspension pending finalisation of the disciplinary process. 1 official resigned before being served with a letter of suspension. The disciplinary process is delayed due to Covid-19 infections within the Municipality.
- **Mpumalanga Department of Health (MPU DoH)** – 2 referrals were made on 29/10/2020 against a Middle Manager and a Senior Manager. The HoD has informed the SIU that the referrals have been sent to their lawyers for review and a decision on the way forward. The SIU will follow up on the outcome of the hearings.
- **North West Department of Education (NW DoE)** – 2 referrals were made on 30 September 2020 and 13 November 2020 against a Middle Manager and an Administrative Clerk. Proceedings in respect of 1 referral were scheduled to begin on 18 December 2020 but have been postponed to a date to be announced later. Proceedings in respect of the other referral have not yet started and the SIU is awaiting a response from the Department.
- **Ratlou Local Municipality in the North West** – 2 referrals were made on 6 October 2020 against a Senior Manager and a Middle Manager. The SIU held a meeting on 28 January 2021 with the newly appointed Administrator and she undertook to fast track the process.
- **JB Marks Local Municipality in the North West** – 2 referrals were made on 8 October 2020 against 2 Senior Managers. A law firm was appointed to deal with one of the disciplinary referrals. The SIU consulted with the law firm on 19 November 2020 and the second meeting will be scheduled around February before the hearing can continue. The newly appointed MEC of COGHSTA is following up on the other disciplinary referral.

The SIU will follow up on all the above matters to ensure that consequence management is implemented.

12. NUMBER OF REFERRALS MADE FOR EXECUTIVE AND/OR ADMINISTRATIVE ACTION

Two Referrals of evidence which points to misconduct or irregular conduct on the part of Members of the Executive Council, Executive Mayors and Councillors is sent to the relevant authority to take appropriate action:

- **Gauteng DoH** - 1 referral was made on 18 September 2020 in respect of the former MEC who according to the SIU's investigation failed to fulfil his obligations to comply with the Constitution; with his general oversight responsibilities in respect of the Department which contributed thereto that the Department failed to comply with the prescripts of the Constitution, and his obligations in terms of the PFMA. The MEC has since been discharged. On 23 October 2020, the former MEC filed an urgent application in the High Court of South Africa (Gauteng Division, Pretoria) under Case No. 555372/2020 to review and set aside the SIU referrals as being unlawful, unconstitutional and therefore invalid. The SIU opposed the application. The matter was set down for hearing on 21 January 2021 before the full bench of the High Court and on the same day judgment was reserved
- **JB Marks Local Municipality** – 1 referral was made on 12 November 2020 for action to be taken against an office bearer in respect of the awarding of a donation to an entity. The newly appointed MEC of COGHSTA is following up on this matter and will update the SIU on the outcome.

13. RAND VALUE OF CASH AND/OR ASSETS SAVED AND TO BE RECOVERED

The SIU has identified potential cash and assets to be saved and to be recovered from service providers to the value of R260 647 in five Provinces. This is the rand value in cash and / or assets that is potentially to be saved and to be recovered based on various legal processes such as money saved for the state institutions based on a contract being set aside, payment of money stopped pending civil proceedings service provider/s signing acknowledgment of debt.

Acknowledgement of Debt documents (AoDs) are signed and the debtor agrees to repay the money in one lump sum or repays the money in monthly instalments until the debt is fully repaid. The SIU also makes recommendations to State institutions to withhold payments to service

providers (usually where irregularities have been uncovered by the investigations and pending civil proceedings in the ST or the High Court).

The AoD is accepted in conjunction with the State Institutions concerned to ensure that the accurate amount due is paid back. However, it is important to note that this does not absolve the debtor of any criminal prosecution should there be evidence pointing to criminal action on their part.

The breakdown is as follows:

- **Gauteng DoH** – recommendations were made to withhold payments to 5 service providers to the value of R116 622 500. The Department has confirmed that no further payments will be made pending the finalization of the SIU investigations and civil proceedings.
- **Gauteng DoH** – The Special Tribunal granted an order to freeze funds in the bank accounts of 39 service providers to the value of R26 million. As on the 4th February this whole amount of R26 million has been forfeited to the state.
- **Gauteng DoH** – 1 AoD was signed to the value of R247 500. The service provider was contracted to supply surgical masks and the value of the contract is R7 256 606. The AoD was signed because of an overpayment in respect of VAT that was made on one invoice submitted.
- **KZN DoE** – 3 AoDs were signed to the value of R1 201 542 for the under-delivery of goods supplied and for overcharging the Department for VAT. 3 service providers were contracted to supply PPE with a cumulative contract value of R15 129 064.40. 1 AoD at a value of R176 191 is being repaid in monthly installments and to date R44 047.80 has been repaid. The other 2 AoDs totaling R1 025 351 have been repaid in full.
- **KZN DSD** – a recommendation was made to withhold payment to 1 service provider to the value of R2 040 000. The Department has confirmed that no further payments will be made pending the conclusion of the litigation process that the SIU has instituted.
- **KZN DSD** – 1 AoD was signed to the value of R276 450 for charging the Department VAT while they were not registered as VAT vendors. The service provider was contracted to supply PPE and the value of the two contracts was R2 570 174.

- **MPU DSD** – 1 AoD was signed to the value of R76 090 because the service provider inflated the price of the PPE that was procured. The AoD signed was based on the fact that the investigation revealed there was a difference between what was supposed to be charged and what they actually charged. The debtor is making monthly repayments and so far R15 000 has been repaid.
- **MPU DoH** – 2 AoDs were signed to the value of R150 800 based on the fact that the investigation revealed the service providers inflated the price of stationery that was procured with the PPE. The AoDs signed were for the difference they were supposed to charge and what they actually charged. Both these AoDs have been repaid in full.
- **NW Department of Health** – 2 AoDs were signed to the value of R19 592 based on the fact that the investigation revealed the service providers were paid VAT by the Department but were not registered VAT vendors. Both these AoDs have been repaid in full.
- **Matzikama Local Municipality in the WC** – a recommendation was made to withhold payment to 1 service provider to the value of R80 000. The Department has confirmed that no further payments will be made pending the finalization of the SIU investigations.

14. NUMBER OF REFERRALS MADE TO THE RELEVANT PROSECUTING AUTHORITY

The SIU has made 38 referrals to the National Prosecuting Authority in respect of evidence of criminality for prosecution. The referrals include allegations of fraud, corruption and the financial misconduct relating to the Public Finance Management Act (PFMA) and the Municipal Financial Act (MFMA). The NPA referrals are from the investigations in the following institutions:

- **Eastern Cape Department of Health (EC DoH)** – 2 referrals were made on 12 November 2020 against 2 Senior Managers. The offence is corruption. A criminal case (CAS 08/09/2020) is under investigation by the Hawks and the SIU is collaborating with the NPA and the Hawks. An NPA Prosecutor was assigned to this matter.
- **OR Tambo District Municipality in the Eastern Cape** – 3 referrals were made on 13 November 2020 against the 2 Senior Managers and the Director of an entity. The offence is fraud and contravention of section 61(1) and section 173 of the MFMA

(financial misconduct). A criminal case is already under investigation by the Hawks (CAS 64/07/2020). The Hawks arrested the Director of the service provider and 1 of the Senior Managers. The criminal case was remanded until 15 February 2021. An NPA Prosecutor was assigned to this matter.

- **Free State Provincial Treasury** – 6 referrals were made in respect of SCMQ608 & 609/20/21 and SCMQ3/2020, on 30 September 2020 and 12 November 2020 against a Senior Manager and the CEO of an entity and the entity. The offence is fraud. Criminal cases were registered at Parkroad Police Station and are currently being investigated by the Hawks under CAS 933/11/2020 (SCMQ608 & 609/20/21) and CAS 665/10/2020 (SCMQ3/2020). A prosecutor has been assigned to the matters and are currently consulting the SIU investigator.
- **Gauteng DoH** – 2 referrals were made on 22 September 2020 and 25 September 2020 against a Senior Manager. The offence is financial misconduct in terms of Section 86(1) of the PFMA. A criminal case was opened with reference Johannesburg CAS 484/12/2020. The matters are under investigation by the SAPS.
- **Gauteng DoH** – 2 referrals were made on 23 October 2020 against an entity and the Director. The offence is fraud. A criminal case was opened with reference Johannesburg CAS 360/12/2020. The matters are under investigation by the SAPS.
- **KZN Department of Social Development (KZN DSD)** – 1 referral was made on 8 October 2020 against a Senior Manager. The offence is financial misconduct. A prosecutor has since been assigned and briefed by the SIU.
- **KZN DoE** – 9 referrals were made on 15 October 2020, 20 October 2020 and 27 October 2020 against 3 entities, their directors and their managers. The offence is fraud, alternatively forgery and uttering. A prosecutor has since been assigned and the SIU has met with the NPA and Hawks for a briefing on this matter. The SIU is providing ongoing support to the prosecuting team.
- **Sekhukhune District Municipality** – 2 referrals were made on 30 September 2020 against 2 Middle Managers. The offence is fraud and financial misconduct. The NPA has assigned a prosecutor and a criminal case was opened with CAS 33/07/2020.

- **National Department of Public Works and Infrastructure** - Beitbridge Matter – 7 referrals were made on 28 September 2020 against 2 entities, their directors and the Project Managers. The offence is fraud. The NPA has appointed a prosecutor.
- **Ratlou Local Municipality** – 1 referral was made on 08 October 2020 against a Senior Manager. The offence is financial misconduct. The matter was referred back to SIU to finalise a few queries that were raised by the NPA. The SIU has agreed to finalise the queries and send the documents back by 3 February 2021.
- **JB Marks Municipality** – 1 referral was made on 14 October 2020 against a Senior Manager. The offence is financial misconduct. The matter is still under review by the NPA.
- **Western Cape Department of Environment, Forestry and Fisheries** – 2 referrals were made on 08 October 2020 against an entity and the Director. The offence is fraud, alternatively forgery and uttering. A criminal case was opened at Pretoria Central under CAS 26/11/2020

15. SECONDMENT TO DEPARTMENT OF EMPLOYMENT AND LABOUR

The SIU received allegations relating to the payment of the Temporary Employment Relief Scheme (TERS) paid by the Unemployment Insurance Fund (“UIF”). However, due to these matters fall outside the mandate of the Proclamation. A secondment agreement was entered into between the Department and the SIU for SIU to assist the department with the investigations. The secondment agreement came to an end on 15 December 2020.

During the secondment investigation, the seconded team worked closely with the SAPS and the Hawks. A total of 75 criminal cases have been opened and are currently under investigation. The secondment team conducted a red flag analysis of the TERS data and found the following:

- A total of 6 140 government officials were identified and were claiming from UIF to the value of R41 009 737, making use of 3 959 bank accounts.
- Of the 3 959 bank accounts identified, a total of 581 bank accounts were associated to multiple beneficiaries (3079).
- 79 exceptions were identified relating to members of the South African National Defence Force (“SANDF”). A total of 59 SANDF members received payments to the value of R327 630.

The seconded team also looked into payments to inmates at the Department of Correctional Services as well as payments to deceased individuals. The SIU has processed a proclamation to fully investigate the UIF matters.

16. DOMESTIC PROMINENT INFLUENTIAL PERSONS AND THEIR IMMEDIATE FAMILY

There is a general public outcry about the involvement of domestic prominent influential persons (as defined in the Financial Intelligence Centre Act, Act 38 of 2001 ("FICA")) and their immediate family (as defined in FICA), benefitting from PPE procurement by State Institutions.

Currently such involvement does not necessarily render the awarding of contracts to such people, or entities that they are involved in, unlawful and such contracts must be scrutinized for compliance with the principles of section 217(1) of our Constitution and the PFMA and the MFMA.

The need exists for considering additional safeguards for situations where State Institutions contract with persons in these categories.

FICA currently regulates the conclusion of contracts between "accountable institutions" and domestic prominent influential persons and their immediate family, but the schedule listing "accountable institutions" does not include State Institutions, such as national, provincial, or municipal entities, or even State Owned Entities.

In addition, FICA only envisages remedial action through "administrative sanctions". FICA also does not create a statutory offence if its provisions are not complied with.

17. RECOMMENDATIONS

The SIU recommends that legislative amendments be considered to provide for safeguards when State Institutions are to contract with domestic prominent influential persons and their immediate family, as well as entities in which they have an interest, or are beneficial owners of.

All State Institutions should be bound by such safeguards.

It is not suggested that the mere fact that someone falls in this category would render the contract unlawful, but it should be a prerequisite of all supply chain management processes that a disclosure must be made that a potential service provider falls within the category set out above.

18. SUMMARY OF OUTCOMES

Summary of outcomes achieved between 23 July 2020 and 25 November 2020		
Outcome achieved	Number	Value
Rand value of potential cash and/or assets to be recovered		R160 647 890
Rand value of actual cash and/or assets recovered		As on the 4th February the value of the actual cash recovered and cash saved is R127 220 543
Number of referrals made for disciplinary action against officials	25	
Number of referrals made for executive and/or administrative action	2	
The number of referrals made to the Relevant Prosecuting Authority	38	
Rand value of matters in respect of which evidence was referred for the institution or defence / opposition of civil proceedings		R259 624 735

19. CONCLUSION

While the investigations are still underway and we continue to submit progress reports to the President as required, we continue to execute on the outcomes of the investigations and follow up on the referrals to ensure that there is consequence management. We are focusing on ensuring that there is accountability at all levels of the state administration including executive authority accountability.

Our collaboration and cooperation with other agencies in the Fusion Centre has proved valuable.

The NPA has provided prosecutors to guide criminal investigations and will prioritize consideration to the matters referred to.

The Special Tribunal has proved to be of critical importance to speed up the civil litigation instituted by the SIU. We will take all steps necessary to ensure that losses suffered by the State due to irregularities, corruption and maladministration are recovered and paid back to the state.

The SIU will present to the Portfolio Committee on Justice and Correctional Services, Select Committee on Public Accounts and other relevant Parliamentary Committees.

It is worth emphasising that the SIU investigations have revealed a flagrant and wanton disregard of the applicable law, policies and procedures. My observation is that the flagrant and wanton disregard is underpinned by insatiable pursuit of self-enrichment. That cannot go unpunished. We therefore have to ensure that the responsible officials and private sector parties identified should be harshly punished and clear message be sent out to the would be maladministrators and the corrupt that action will be taken against them.

It is disheartening to see state officials in all spheres of government, who have been called to serve the people of South Africa being implicated in unlawful and illegal activities in procurement processes that are meant to benefit the public with corrupt intent to unduly benefit themselves and their friends and or relatives to the prejudice of the state and of the public.

If corruption is not tackled by all in society, it has a potential to weaken State's capacity to deliver basic services like water, electricity, roads, housing, healthcare and education. I appeal to public servants and those in position of power and responsibility to serve the people of South Africa with integrity and pride.

The SIU will continue to pursue all those officials who resigned in the face of the investigations or in the face of disciplinary actions by freezing their pensions and instituting civil litigation to recover the monies stolen from the State Institutions and to cover any damages that they may have caused to the State Institutions. Where there is evidence pointing to any act of criminality on their part, they will also be pursued through criminal investigation and prosecution.

The work of the Health Sector Anti-Corruption Forum (HSACF) which was launched by the President in October 2019 as outcome of the Presidential Health Summit is acknowledged. Its collaboration with the law enforcement agencies has ensured that Corruption, Maladministration and Malpractices in the Health Sector including the COVID - 19 Corruption cases are reported, investigated and prosecuted. The HSACF is constituted by state officials, Health Sector Regulators as Council for Medical Schemes, Board of Health Care Funders (BHF), Civil Society Organizations as Corruption Watch, Section 27 and other Health Sector Organizations. The Forum is coordinated by SIU.

Allegations of corruption may be reported to the SIU 24 hour anonymous whistle blower hotline on 0800 037 774 or siu@whistleblowing.co.za.

- THE END -

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