

Annual Report to Parliament as at – 31 March 2014



OFFICE OF THE JUDGE
COMPLAINTS MECHANISM FOR THE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI)
REPUBLIC OF SOUTH AFRICA

120 Plein Street, Cape Town 8000. Tel: 021 467 7027 Fax: 021 467 7033 Cell: 082 459 3459

Submitted to the Honourable Mr. Jacob Gedleyihlekisa Zuma
President of the Republic of South Africa

and

The Honourable Mr. Nkosinathi Nhleko
Minister of Police

and

The Honourable Mrs. Makhotso Magdaline Sotyu
Deputy Minister of Police

by

Judge Essa Moosa

Head to the Office of the Judge

(in compliance with section 17L of South African Police
Services Act, 68 of 1995)



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X9080, Cape Town 8000 Tel: 021 – 467 7010/21 Fax: 021 – 467 7033 Private Bag X463 PRETORIA, 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20

ENQUIRIES: CATHY HENDRICKS (Chief of Staff) ph: 0825780391/0123932816
hendricksc@saps.gov.za

Hon. B Mbete, MP
Speaker of the National Assembly
Parliament of the Republic of South Africa
PO Box 15
CAPE TOWN
8000

29 September 2014

Dear Honourable Speaker

**RE: TABLING OF ANNUAL REPORT: 2013/2014 OFFICE OF THE JUDGE:
COMPLAINTS MECHANISM FOR THE DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION**

Section (1)(a) of the Public Finance Management Act 1 of 1999, as amended requires the executive authority responsible for a department or public entity to table in the National Assembly or a provincial legislature, as may be appropriate, the annual report and financial statements and the auditor report on those statements.

In my capacity as Minister of Police under which the Office of the Judge resides hereby submit for tabling the Annual Report for the financial year 2013/2014.

Yours sincerely

Mr NPT Nhleko
Minister of Police



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REPUBLIC OF SOUTH AFRICA**

Private Bag X9080, Cape Town 8000 Tel: 021 – 467 7010/21 Fax: 021 – 467 7033 Private Bag X463 PRETORIA, 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20

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Hon. TR Modise
Chairperson of the National Council of Provinces
Parliament of the Republic of South Africa
PO Box 15
CAPE TOWN
8000

29 September 2014

Dear Chairperson

**RE: TABLING OF ANNUAL REPORT: 2013/2014: OFFICE OF THE JUDGE:
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Yours sincerely

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

Mr NPT Nhleko
Minister of Police

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**OFFICE OF THE JUDGE
COMPLAINTS MECHANISM FOR THE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI)
REPUBLIC OF SOUTH AFRICA**

120 Plein Street, Cape Town 8000. Tel: 021 467 7027 Fax: 021 467 7033 Cell: 082 459 3459

PREFACE TO ANNUAL REPORT

I have pleasure in attaching hereto the Second Annual Report of the Office of the Judge to Parliament in compliance of sub-section 9 of Section 17L of SAPS Act, 68 of 1995 as amended. The report covers period 1st September 2013 to 31st March 2014. The report provides a comprehensive overview of the Office of the Judge and its challenges.

In line with its constitutional and/or statutory mandate, the Office of the Judge remains committed to addressing its core function to ensure that the constitutional rights of members of the public arising from any investigation conducted by the Directorate of the Priority Crime Investigation (HAWKS) are respected and the independence and integrity of members of the HAWKS are safeguarded.

The Office of the Judge continues to strive to report timeously and in detail on its core functions to the Minister of Police on a case-by-case basis in compliance with sub-section 6 of Section 17L of SAPS Act, and on the performance of its functions periodically.

The Office of the Judge is also committed to report to Parliament annually in compliance of sub-section 9 of Section 17L of the SAPS Act on the performance of its function.

The Office of the Judge shall welcome any comments and criticism arising from the attached report.

DATED AT CAPE TOWN AT THIS 25th DAY OF SEPTEMBER 2014

A handwritten signature in black ink, appearing to read 'Essa Moosa', written over a horizontal line.

JUDGE ESSA MOOSA
OFFICE OF THE JUDGE



**OFFICE OF THE JUDGE
COMPLAINTS MECHANISM FOR THE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI)
REPUBLIC OF SOUTH AFRICA**

120 Plein Street, Cape Town 8000. Tel: 021 467 7027 Fax: 021 467 7033 Cell: 082 459 3459

**THE SECOND REPORT TO PARLIAMENT IN COMPLIANCE OF SUB-SECTION 9 OF
SECTION 17L OF THE SOUTH AFRICAN POLICE SERVICE ACT 68 OF 1995 AS
AMENDED, FOR THE PERIOD 1 SEPTEMBER 2013 TO 31 MARCH 2014.**

INTRODUCTION

This is the Second Report from the Office of the Judge of the Complaints Mechanism for the Directorates for Priority Crime Investigation (DPCI) and covers the period 1 September 2013 to 31 March 2014. The First Report dated 12 May 2011 was submitted by the previous incumbent, Judge Pillay, and covered the period 15 May 2010 to 15 May 2011, that is, for the duration of his tenure of office. He did not renew his contract. The Office of the Judge was vacant for the period 16 May 2013 to 31 October 2013. The present incumbent, Judge Essa Moosa, was appointed with effect as from 1 September 2013.

THE APPOINTMENT

Judge Essa Moosa was appointed by the Minister of Police, the Honourable Nathi Mthethwa, as the retired judge in terms of section 17L of the South African Police Act 68 of 1995 as amended (SAPS Act). The appointment was made after consultation and approval of the Chief Justice and the Minister of Justice and Constitutional Affairs as required in terms of section 7(1)(b)(i) of the Judges Remuneration and Conditions of Employment Act No 47 of 2001 (the Judges Act). The appointment was for a period of two years, effective as from 1 September 2013 to 31 October 2015. This was confirmed by the Minister in a letter dated 1 October 2013 addressed to the Judge.

THE ROLE AND FUNCTION OF THE JUDGE

The role and function of the Judge are the following:

- to receive and investigate complaints from any member of the public who can provide evidence of a serious and unlawful infringement of his or her right caused by an investigation of the Directorate of Priority Crime Investigation (also known as the HAWKS) (sect 17L (4)(a)) ; and
- to receive and investigate complaints from members of the HAWKS who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her, regarding the conducting of an investigation (sect 17L (4)(b));
- to receive a request from the Head of the HAWKS to investigate complaints or allegations relating to investigations by the HAWKS or alleged interference with such investigations.

THE EXCLUSION

The Office of the Judge shall not investigate complaints about intelligence matters falling under the jurisdiction of the INSPECTOR-GENERAL OF INTELLIGENCE (sect 17L (3)), which includes Police crime intelligence. Nothing, however, prevents the Office of the Judge receiving a complaint concerning matters falling under the jurisdiction of the Inspector-General of Intelligence and referring such complaint to him or her for his/her attention, consideration and disposal (sec 17L (5)).

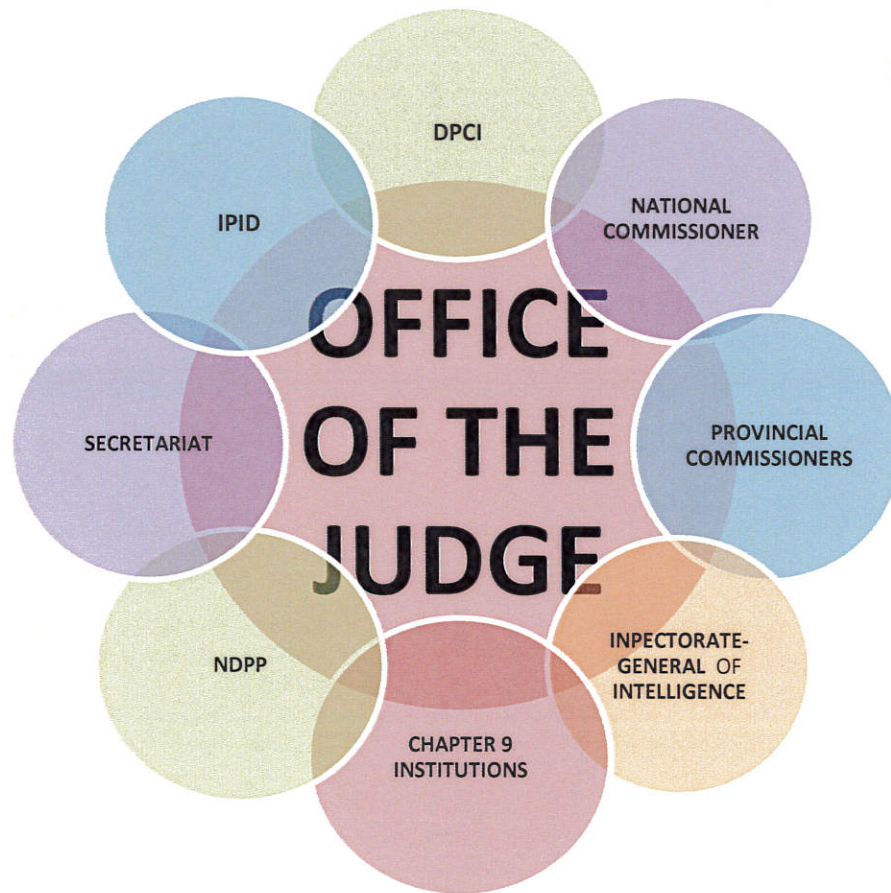
Any complainant in terms of this section shall not be entitled to use this section to establish whether there is an investigation against him or her, or be entitled to any delay, interference or termination of such investigation on the basis that such complaint has been made (sect 17L (11)) and this subsection shall not be construed to inhibit the Office of the Judge to investigate any matter which relates to an on-going investigation (17L (14)).

THE POWERS OF THE JUDGE

The Office of the Judge has the following powers:

- The Office of the Judge may investigate a complaint or refer it to be dealt with, amongst others, by the (i) Secretariat for Police; (ii) Independent Police Investigative Directorate (IPID); (iii) National Commissioner; (iv) Head of DPCI; (v) Relevant Provincial Commissioners; (vi) National Director of Public Prosecution; (vii) Inspector-General of Intelligence; or (viii) Any institution mentioned in Chapter 9 of the Constitution of the Republic of South Africa, 1996 (sect 17L (5));

GRAPH 1: STAKEHOLDERS



- The Office of the Judge may request and obtain information from the National Directorate Of Public Prosecution (NDPP) in so far as it may necessary for the Office of the Judge to conduct an investigation (sect 17L (7));
- The Office of the Judge, to the extent that it is reasonably necessary for the performance of its functions: (a) may request and obtain information and documents under the control of the Service for the purpose of its investigation; and (b) may enter any buildings or premises under the control of the Service in order to obtain such information and documents; (c) shall be entitled to all reasonable assistance by a member of the Service; and (d) the refusal to comply or interference by any member of the service shall amount to a criminal offence (sect 17L(7A) and (16). ;

COMMUNICATION STRATEGY (AWARENESS CAMPAIGN)

The Secretary of Police in consultation with the Judge shall develop and implement a plan to promote awareness amongst the public and members of the DPCI on the functions and role of the Complaints Mechanism (sect 17L (15)). The Secretary of Police in consultation with

the Office of the Judge developed a communication strategy that is aimed at the marketing the Office of the Judge to its stakeholders.

The stakeholders identified in accordance with section 17L are the Secretariat for Police, the Inspector-General of Intelligence, (IGOI), the National and Provincial Commissioners of Police, the Head of the DPCI, the Independent Police Investigation Directorate (IPID), the National Directorate of Public Prosecution (NDPP), the Public Protector, the South African Human Rights Commission, (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality (CGE), the Auditor-General, the Independent Electoral Commission, and the Independent Communication Authority of South Africa.

OPERATIONAL BUDGET

The Minister of Police shall ensure that the Judge has sufficient personnel and resources to fulfil his or her functions (17L (12)).

The Secretary of Police in consultation with the Judge shall prepare an annual operational budget for the specific and exclusive use of the official duties of the Judge and may not be used for any other purpose (sect 17L (13)).

An earlier incumbent was appointed for the Office of the Judge but he operated without a budget and without resources. He was temporary located in his former chambers at the High Court, Durban where he made use of the facilities of the High Court. The remuneration of the incumbent was covered from the budget of the Judiciary. The incumbent did not renew his contract when it expired.

The Budget for the Office of the Judge was allocated for the first time for financial year 2013-2014. The budget formed part of the budget of the Secretary of Police and is specifically ring fenced for the use of the official duties of the Office of the Judge. The budget is administered by the Secretariat for Police and the Secretary of the Police is the accounting officer.

The total amount budgeted for the year under review was R 1,945,000.00. The total amount spent for the year under review was R 556,235.53. The amount of the budget unspent for the period under review was R 1,388,764.47.

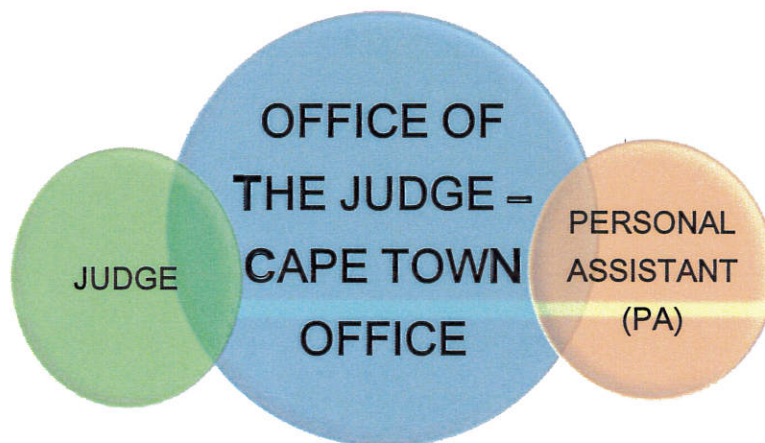
The reason why the total budget was unspent is due to the following circumstances:

- The new incumbent was only appointed with effect as from 1 September 2013 and had to set up the Office of the Judge anew. He had to find the necessary office and facilities to operate from. To do so, he had to overcome procedural issues which were

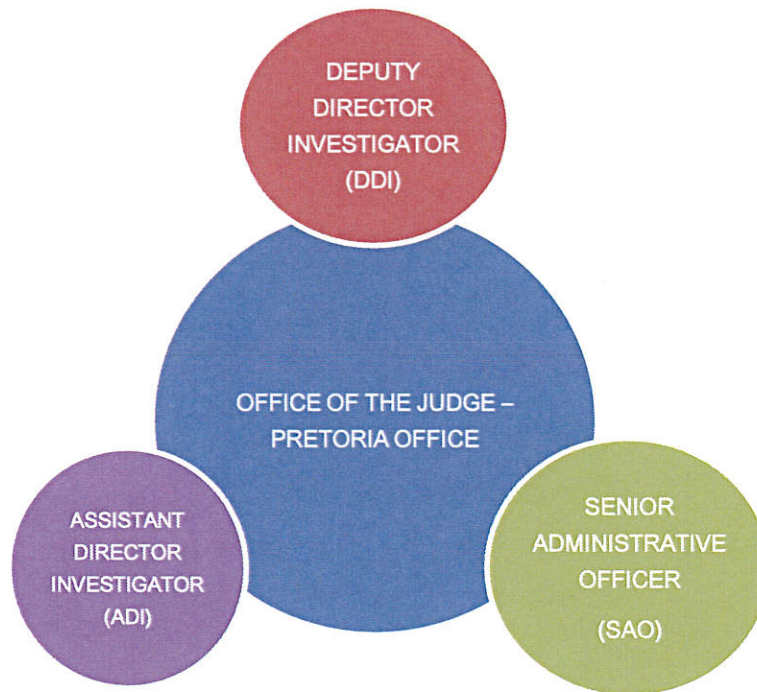
a long and drawn out process. With the assistance of the then Minister of Police, Nathi Mthethwa, he was temporary accommodated in the Ministry of Police offices at 120 Plein Street, Parliament, Cape Town.

- His Personal Assistant was appointed with effect as from 1 March 2014. She was also accommodated in the Ministry of Police. The other members of the staff were only appointed during the next financial year. The remuneration of the Judge is covered from the budget of the Judiciary and accordingly does not impact on the budget of the Office of the Judge. Because only one member of the personnel was appointed during the year under review and during the last month of that period, there was a substantial saving on the line item of remuneration.
- The budget made provision for office facilities in Cape Town where the Judge will be located and in Pretoria where the investigative staff will be located. As both these offices because of procedural issues could not be set up, there were considerable savings during the period under review in respect of other line items. The various line items make up the amount of the savings.

GRAPH 2: CAPE TOWN OFFICE STRUCTURE



GRAPH 3: PROJECTED PRETORIA OFFICE



PROCEDURE

The regulations governing the Complaints Mechanism has enacted the following procedures:

- A category 1 complaint shall be a complaint by any member of the public in terms of sect 17L (4)(a); and
- A category 2 complaint shall be a complaint by any member of the DPCI in terms of sect 17L (4)(b));
- All complaints shall be in writing in the prescribed form and lodged by email, fax, post or be delivered at the office of the complaints mechanism or lodged at any office of the Independent Police Investigation Directorate (IPID), which must ensure that the complaint is submitted to the Judge without any delay;
- The personnel of IPID shall assist any complainant who wishes to lodge a complaint at its offices, to complete the prescribed form if so requested
- The prescribed complaint form and all relevant information of the complaints mechanism shall be available at all police stations and placed on SAPS website; and

- The Judge may require from any complainant to submit allegations made by him or her to the Judge in the form of an affidavit.

During the year under review it was not possible to make information concerning the Complaints Mechanism of the Judge and the complaints forms available at all police stations and place such information on SAPS website, because the establishment of the Office of the Judge was in the process of being set up and the necessary staff was in the process of being appointed.

IMPLEMENTATION OF THE OFFICE OF THE JUDGE

Initially the Judge operated from his home until he was given a temporary office in the Ministry of Police at 120 Plein Street, Parliament, Cape Town during December 2013, as the process of procuring permanent offices is a long drawn out process. The Judge worked closely with members of the Secretariat for Police to put in place the administration of his Office and had the following meetings:

Preparatory Meetings

A series of preparatory meetings were held between the Judge, the Minister of Police, Nathi Mthethwa, Secretary of Police, Ms Jenni Irish-Qhobosheane, Chief Director: Legislation, Dawn Bell, and Director: Legislation, Armichand Soman culminating in his formal appointment as the DPCI Retired Judge with effect as from 1 September 2013.

Formal Meetings

Subsequent to his appointment, a series of formal meetings were held by the Judge as follows:

1. Meetings with the Secretariat

- On 10 October 2013 a formal meeting was held in Pretoria with the Civilian Secretariat for Police officials. The Judge was briefed: (i) on his role and function as head of the Complaints Mechanism; (ii) that the budget is being administered by the Civilian Secretariat for Police and that Secretary of Police Jenni Irish-Qhobosheane is the Accounting Officer for the budget; (iii) that the budget is ring-fenced and is to be used exclusively for the official purposes of the Judge; and (iv) that he was briefed about the offices, staff, office furniture and equipment, transport, budget, communication strategy, procurement procedures and other administrative matters.

- On 10 October 2013 a separate meeting was held in Pretoria with Kibiti Lepphoto, the Chief Financial Officer, in connection with the existing budget of 2013/14 and the proposed budget for 2014/15. It was agreed to follow up the meeting when Mr Lepphoto is next in Cape Town. A follow up meeting was held in Cape Town on 15 October 2013 when the proposed budget of 2014/15 was discussed and amended.
- On 10 October 2013 a separate meeting was held with Pinda Ntsaluba, Director: Communications, to discuss the communication strategy and the statutory requirement to create awareness of the work of the Judge amongst members of the public and members of the DPCI. This meeting was followed up in Cape Town on 21 October 2013 at the SAPS building in Bellville, Cape Town. In addition to Ntsaluba, Sello Manyama, Assistant Director: Communications, gave a Power Point presentation, which was well received. Further meetings that were held on the communication strategy and the budget for this programme were approved.

2. Meeting with Minister of Police

On 16 October 2013 the Minister of Police, Nathi Mthethwa was briefed at the Cape Town International Airport. The Judge briefed the Minister on the meetings he had with various members of the Civilian Secretariat for Police concerning staffing, premises, budget and communication strategy. The Minister of Police informed the Judge that his appointment was announced officially on 17 October 2013 by the Ministry of Police. The Minister of Police, Nathi Mthethwa informed the Judge that a formally introduction with various stakeholders will be scheduled for the Deputy Minister of Police, the National and Provincial Commissioners of Police, the Head of the DPCI, Public Protector, the NDPP, the IPID, and the IGOI.

3. Meeting with Previous Incumbent

On 28 October 2013 the Judge communicated with Judge Thumba Pillay, who was the previous incumbent in the Office of the Judge Complaints Mechanism. The purpose was to introduce himself and to discuss the affairs of the Office during Judge Pillay's tenure. They made arrangement to meet. The Judge met Judge Pillay in Durban on 25 November 2013. He briefed him on his tenure of office including the various matters handled by him. He handed the Judge his annual

report which he had sent to the Minister of Police in terms of section 17L (9) of the SAPS Act. The Judge uplifted some of the files from Judge Pillay and arranged for the remainder to be uplifted later. Armichand Soman later uplifted the remainder of the files from his former Secretary and handed such files to the Judge. The files are presently archived in the Office of the Judge in Cape Town.

4. Meeting with Chapter 9 Institutions

On the 29th November 2013 the Judge had a meeting with some of the Chapter 9 institutions in Pretoria and members of the Secretariat for Police were in attendance. Those in attendance were Thabo Lehola, representing the acting head of Independent IPID, Kayum Ahmed, Chief Executive Officer of SAHRC, Marissa van Niekerk, of CGE, Dawn Bell, Armichand Soman, Pinda Ntsaluba of the Secretariat for Police. The meeting was chaired by Ms Millicent Kewudi, the Chief Director of Monitoring and Evaluation, in the office of the Secretariat for Police. Absent from the meeting was a representative of the Public Protector. The Judge was introduced by the chairperson. He then addressed the meeting explaining his role, function and powers. He emphasized he had powers to refer any matter to one of the Chapter 9 institutions. A lively interchange discussion took place and everyone committed themselves to work together to enable them to carry out their respective constitutional and statutory mandates.

5. Meeting with the Head of DPCI

On 15 December 2013 the Judge had a meeting with Lt Gen Anwar Dramat in Cape Town. They discussed respective roles, functions, powers and mandates of DPCI and the Office of the Judge. They agreed to co-operate with each other in order to carry out their respective constitutional and statutory mandates. They also discussed a complaint received by the Complaint Mechanism from a member of the public against members of the Hawks. They agreed to share information in order to avoid duplication and waste of resources.

SECURING OF OFFICES

The Judge was informed that the procurement of his offices both in Cape Town and Pretoria, might take a long time because of the tender processes. The Secretariat for Police Supply Chain Unit has been liaising with the Department of Public Works to secure existing premises as a temporary measure. It was agreed that should they not be successful in

procuring such temporary offices in the New Year, they would settle for the long tender process in order to secure permanent premises both in Cape Town and Pretoria.

The Judge inspected various offices both in Cape Town and Pretoria belonging or leased to Department of Public Works. These offices were either inaccessible to members of the public who may wish to visit such offices or were situated in buildings occupied by the police. In the former case, there were no suitable public transport available and in the latter case to maintain the independence of the Office of the Judge, it was felt that it would not be in the interest of members of the public to be located in the same building where the police are situated.

The Minister of Police had arranged for offices to be made available in the Ministry of Police as a temporary measure until suitable offices could be obtained in Cape Town. The Offices of the Judge was accordingly located at 9th Floor, 120 Plein Street, Parliament, Cape Town with effect as from December 2013. The Office of the Judge in Pretoria was temporary located at the offices of the Civilian Secretariat for Police at Van Erkom Building, 217 Pretorius Street, Pretoria, until permanent offices could be secured.

APPOINTMENT OF PERSONNEL

The recruitment of staff was done both in Cape Town and Pretoria. The various posts for his unit were advertised during the latter part of 2013 and it was agreed that the shortlisting and interviews of prospective candidates will take place in the New Year. The shortlisting will be done in Pretoria but the interview for his Personal Assistant will take place in Cape Town and the interviews for the other posts will take place in Pretoria. The shortlisting for the Personal Assistant took place on 9 January 2014 and the interviews took place in Cape Town on 16 January 2014. The appointment of the Personal Assistant, Bongiwe Maselana, was made with effect as from 1 March 2014 and her contract of service was linked to the term of Office of the Judge.

The shortlisting for the post of Deputy Director Investigator took place in Pretoria on 7 February 2014 and the interviews were conducted on 20 and 21 February 2014. After the interviews, three candidates were chosen in order of preference. The first candidate was disqualified because of his qualification and the second candidate, namely, Edward Rasiwela, was appointed but his appointment could take effect in the new financial year.

The shortlisting of the Assistant Investigator took place in Pretoria on 20 February 2014 and interviews were thereafter conducted for the Senior Administrative Officer. The interviews for the shortlisted candidates for the post of Assistant Investigator were put on hold depending on the volume of work that the Office of the Judge will attract. Three candidates for the post Senior Administrative Officer were chosen by the panel in order of priority. The first candidate when offered the position declined the offer. The second candidate, Ruth Majozi, was offered the position and she accepted the appointment. Her appointment was effective within the next financial year.

COMPLAINTS RECEIVED

During the period under review, the Office of the Judge received five complaints which fell within the mandate of the Office of the Judge. A further complaint that was received fell outside the scope of each mandate and was referred to the National Commissioner of Police for her attention, consideration and disposal. Three of the complaints were received from members of the public in pursuant to sub-section 4 (a) of section 17L of the SAPS Act which was a category 1 complaint. Two of the complaints were from same complainant. The fourth complaint was received from a member of the HAWKS in pursuant to sub-section 4 (b) of section 17L, which was a category 2 complaint. The investigations in respect two of the complaints were completed during the period under review and investigations in respect of the other two complaints are still pending during the period under review.

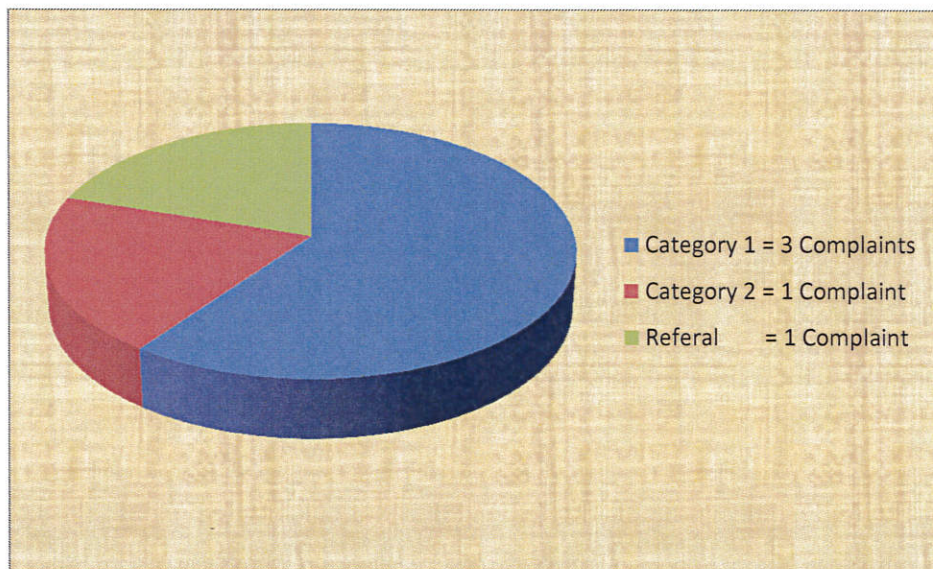
The first complaint dated 11 October 2013 was referred to us by the Secretary of Police and related to allegations of false incrimination, harassment and intimidation levelled against members of the HAWKS. The second complaint dated 11 December 2013 was submitted to us direct by the same complainant and related to allegations of the infringement of the rights of the complainant and his staff during a search and seizure operation conducted by members of the HAWKS on 5 December 2013. The findings in respect of both complaints were that the Office of the Judge was not provided with evidence of a serious and unlawful infringement of the complainant's right or that of his staff and neither could such violation be established during the course of its investigation.

Arising from the first complaint certain allegations were made against certain police officer and a member of the Crime Intelligence. As the alleged complaint fell outside the scope of our mandate, we referred such complaint to the National Commissioner of Police, in terms of sub-section 5 of section 17L, for her attention, consideration and disposal.

The third complaint dated 7 February 2014 was referred to us by the Secretary of Police and related to serious and unlawful infringement of the complainant's rights by an alleged investigation by the HAWKS. The investigation is pending during the period under review.

The fourth complaint by a member of the HAWKS, dated 12 February 2014, was referred to us by the Acting Provincial Head of the HAWKS and related to intimidation by certain Municipal officials during the course of the complainants' performance of his duties as an investigating officer. The matter is pending during the period under review.

GRAPH 4: TOTAL COMPLAINTS RECEIVED



REPORTING

On the 20th December 2013 the Judge reported in writing to the Secretary of Police, Ms Jenni Irish-Qobosheane, and a copy of the report was sent to the Minister of Police, Nathi Mthethwa for his information. The Report sets out his appointment, his role, function and powers and various provisions of his Office as provided for in Section 17L of the SAPS Act, and the Regulations governing his Office.

The Office of the Judge reported to the Minister of Police, in pursuant to Section 17L(6) of the SAPS Act, in respect of the two complaints that were completed during the year under review.

A handwritten signature in black ink, appearing to read 'Essa Moosa', is written over a horizontal line.

JUDGE ESSA MOOSA

OFFICE OF THE JUDGE

DATE: 25/9/14