
PUBLIC PROTECTOR
SOUTH AFRICA

Report No. 48 of 2018/19

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE GAUTENG DEPARTMENTS OF ROADS AND TRANSPORT AND COMMUNITY SAFETY AND THE SOUTH AFRICAN POLICE SERVICES TO ENFORCE THE LAW RELATING TO THE OPERATIONS OF MINIBUSES/MIDIBUSES (TAXIS).
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Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (Public Protector Act).

(ii) This report communicates the Public Protector’s findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into a complaint lodged by members of the Greater Brakpan Taxi Association (the GBTA) and the Johannesburg Benoni Brakpan Springs Secunda Witbank Taxi Association (the JBBSSWTA), (hereinafter referred to as the Complainants) on 08 February 2012 relating to an alleged failure by the Gauteng Departments of Roads and Transport (the GDRT) and Community Safety (GDoCS) and the South African Police Service (SAPS) to enforce the law relating to the operations of minibuses/ midibuses (taxis).

(iii) The Complainants are members of the GBTA and the JBBSSWTA, operating on a route between Brakpan and the Johannesburg Central Business District.

(iv) In the main, the complaint was that: (a) The law enforcement agencies in the Gauteng Provincial Government (the GDoCS; the GDRT and the SAPS) were failing to enforce law and a court order which prohibited illegal taxi operators from operating on the legal routes allocated to the JBBSSWTA and the GBTA; (b) That the Complainants were adversely affected by the deliberate deviations and the non-compliance of the relevant “organs of state” with the resolutions adopted during the Inter-State Agencies meetings; and (c) that lack of proper law enforcement in the taxi industry had caused adverse effects which included the violent assassination of at least 6 of their members.

(v) The GDRT, the GDoCS and the SAPS did not dispute that there were issues plaguing the taxi operations surrounding the routes allotted to the two associations.
(vi) The Departments involved however disputed that challenges experienced by the Complainants were as the results of their inaction or failure to enforce the law.

(vii) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the GDRT, GDoCS and the SAPS failed to enforce the law in respect of operators of minibuses / midibuses operating without licences/permits? If so, did this constitute improper conduct and/or maladministration?

(b) Whether the GDRT, the GDoCS and the SAPS failed to comply with the resolutions of the Inter-State Agencies? If so, did it constitute improper conduct, abuse of power or unjustifiable use of power?

(c) If the answer to any of the above issues is in the affirmative, were the Complainants prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act?

(viii) In dealing with the matter, my predecessor established the Inter-State Agencies forum in an attempt to resolve this complaint, in line with the powers given to her by section 6(4)(b) of the Public Protector Act. My predecessor also requested that all stakeholders continue to engage in an attempt to find a lasting solutions to this matter. However, when the Complainants showed dissatisfaction with progress made on the complaint, a formal investigation was also conducted through meetings and interviews with the Complainants and relevant officials from the Departments involved, as well as an inspection of all relevant documents and an analysis and application of all relevant laws, policies and related prescripts, followed.

(ix) Key laws and policies taken into account to help me determine if there had been maladministration by the Departments involved and prejudice to the Complainants
were principally those imposing administrative standards that should have been upheld by the Departments and/or its officials.

(x) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) Regarding whether the GDRT, GDoCS and the SAPS failed to implement the law in respect of operators of minibuses/midibuses operating without licences/permits? If so, did it constitute improper conduct and/or maladministration?

(aa) The allegation that the GDRT, the GDoCS and the SAPS failed to enforce the law in respect of operators of minibuses/midibuses operating without licences/permits, is partially substantiated.

(bb) The 2007 court order which the Complainants sought the Gauteng law enforcement agencies to enforce was subsequently rescinded on 16 October 2012, therefore unenforceable.

(cc) The Gauteng law enforcement agencies failed to prevent members of the GBTA splinter group from operating taxi’s without operating licences, which was in contravention of section 50 of the Transport Act, and for also duplicating the route between Brakpan and the Johannesburg Central Business District in contravention of section 63 of the Transport Act.

(dd) The GDoCS was unable to consistently conduct operations targeting illegal operations in terms of section 205(3) of the Constitution and section 11(1) of the Transport Act, except on few instances.

(ee) The SAPS failed to consistently seize or impound taxis which were concerned in or were on reasonable ground believed to be concerned in the commission
or suspected commission of an offence as envisioned by Section 20 of the Criminal Procedure Act.

(ff) The GDRT, the GDoCs and the SAPS failed to maintain safety and public peace in the Public Transport industry as required by the section 205(3) of Constitution and section 11(1) of the National Land Transport Act.

(gg) The GDRT failed to discharge its responsibility in line with the provision of the section 11(1) of National Land Transport Act.

(hh) The GDRT failed to communicate with its MEC regarding the proposal to implement measures contained in section 91 of the Transport Act as a way of curbing the violence and bringing stability to the industry.

(ii) The conduct of the GDRT, the GDoCS and the SAPS constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the GDRT, the GDoCS and the SAPS officials complied with the resolutions of the Inter-State Agencies? If not, did this conduct constitute improper conduct, abuse of power or unjustifiable use of power?

(aa) The allegation that the GDRT, the GDoCS and the SAPS officials failed to comply with the resolutions of the Inter-State Agencies is partially substantiated.

(bb) I was not persuaded that the MEC for Roads and Transport failed to comply with the resolution of Inter-State Agencies meeting on 19 April 2013 regarding the closure of the Duduza/Tsakane Taxi Rank.

(cc) I was also not persuaded that holding of the elections of the GBTA’s Executive Committee was contrary to the Inter-State Agencies resolution. The deferment of the election of the GBTA’s Executive Committee would have been contrary to the minimum standards adopted in line with the Passenger Road Act.
(dd) I could not find evidence that the Gauteng law enforcement agencies, i.e. the GDoCS and the SAPS complied with the Inter-State Agencies resolution of 06 September 2013 requiring them to continue targeting unlicensed taxi operators and eliminating illegal taxi operators.

(ee) The conduct of the GDRT, the GDoCS and the SAPS constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(c) If the answer to any of the above issues is in the affirmative, were the Complainants improperly prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act?

(aa) The allegation that the Complainants suffered improper prejudice as a result of the alleged conduct of the GDRT, the GDoCS and the SAPS is substantiated.

(bb) Lack of proper enforcement of the law resulted in unlicensed taxi operators operating illegally. Furthermore, some of the members of the JBBSSWTA and GBTA lost their lives whilst vehicles belonging to some of the members were vandalised during the period in question.

(cc) Therefore, the conduct of the Departments concerned amounted to improper prejudice to the Complainants as envisaged in section 6(4)(a)(v) of the Public Protector Act.

(xi) The remedial action I considered appropriate in terms of section 182(1)(c) of the Constitution is that:

(a) The Heads of the Departments of the GDRT and the GDoCS, and the National Commissioner of SAPS to:
(aa) Take steps to ensure that members of the GBTA and the JBBSSWTA, who are operating without licences, do not continue operating without operating licenses, within 30 days of the issuing of this report; and

(bb) Take steps to ensure that they shut down all illegal taxi operations in Duduza and/or Brakpan area, within 30 days of the issuing of this report.

(b) The MEC for Roads and Transport to:

(aa) To investigate why the Department did not report on the proposal about the closing down of the Duduza Taxi Rank, and provide the findings to the Public Protector within 30 days of the issuing of the report.

(c) The MECs for Roads and Transport and for Community Safety to:

(aa) Ensure the utilisation of the Rapid Joint Task Force to deal with illegal taxi operators.

(d) The MECs for Roads and Transport to:

(aa) Within 30 days of the issuing of the report, ensure that a feasibility study is conducted and presented to the Premier on the establishment of the traffic law enforcement function within GDRT as implemented in other Provinces and report on the outcome thereof to the Public Protector within 60 days.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE GAUTENG DEPARTMENTS OF ROADS AND TRANSPORT AND COMMUNITY SAFETY AND THE SOUTH AFRICAN POLICE SERVICES TO ENFORCE THE LAW RELATING TO THE OPERATIONS OF MINIBUSES/MIDIBUSES

1. INTRODUCTION

1.1. This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (Public Protector Act).

1.2. This report is submitted to:

1.2.1. The National Commissioner of the South African Police Service (the SAPS);

1.2.2. The Premier of the Gauteng Provincial Government;

1.2.3. The Member of the Executive Council (MEC) responsible for Community Safety in the Gauteng Provincial Government;

1.2.4. The MEC responsible for Roads and Transport in the Gauteng Provincial Government; and

1.2.5. The Complainants – the GBTA and the JSSBBWTA.

1.3. This report relates to my investigation and partial mediation into allegations of a failure by the Gauteng Departments of Community Safety (the GDoCS) and the Gauteng Roads and Transport (the GDRT) and the SAPS to enforce the law relating to operation of minibuses / midibuses taxis and a duplication of the route between Brakpan and Johannesburg Central Business District (CBD).
2. THE COMPLAINT

2.1. The Complainants, members of Johannesburg, Benoni, Brakpan, Springs, Secunda and Witbank Taxi Association (the JBBSSWTA) and Greater Brakpan Taxi Association (GBTA) approached the Public Protector alleging that:

2.1.1. The law enforcement agencies in the Gauteng Provincial Government (the GDoCS; the GDRT and the SAPS) were failing to enforce law and a court order which prohibited illegal taxi operators from operating in the legal routes allocated to the JBBSSWTA and the GBTA;

2.1.2. They have been adversely affected by the deliberate deviations and non-compliance of the relevant “organs of state” with resolutions adopted during the Inter-State Agencies meetings, and

2.1.3. The lack of proper law enforcement in the taxi industry had caused adverse effects which included the violent assassination of at least 6 of their members.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector was established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs. Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that:

"The Public Protector has a power as regulated by national legislation —
(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,

(b) to report on that conduct; and

(c) to take appropriate remedial action”.

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the constitutional court, (in the matter of Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the public protector:

3.5.1 The remedial action taken by the Public Protector has a binding effect, “When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences” (para 73);

3.5.2 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
3.5.3 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);

3.5.4 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);

3.5.5 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (para 69);

3.5.6 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (para 70);

3.5.7 The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (para 71);

3.5.8 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (para 71(c));
3.5.9 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));

3.5.10 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropiety, unlawful enrichment or corruption, in a particular case (para 71(e));

3.6 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows:

3.6.1 The Public Protector has power to take remedial action, which include instructing the Members of the Executive including the President to exercise powers entrusted on them under the constitution where that is required to remedy the harm in question (para 82);

3.6.2 The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (para 85 and 152);

3.6.3 There is nothing in the Public Protector act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (para 91 and 92);

3.6.4 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):

(a) Conduct an investigation;
(b) Report on that conduct; and
(c) To take remedial action.
3.6.5 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (para 104);

3.6.6 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para105).

3.6.7 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (para 107 and 108);

3.6.8 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action ( para 112);

3.7 The institutions mentioned in this report are organs of state and their conduct amounts to conduct in state affairs, as a result the complaints fall within the ambit of the Public Protector’s mandate. Accordingly, the Public Protector has the power and jurisdiction to investigate and take appropriate remedial action in the matter under investigation.

3.8 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties in this investigation

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The complaint was initially classified as matter capable of resolution by way of a conciliation or mediation in line with section 6(4)(b) of the Public Protector Act. In this regard, several Inter-State Agencies meetings were held in order to address the issues brought by the Complainants. Albeit being long overdue, I decided to compile a report in order to bring closure to this matter.
4.1.2 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.3 The complaint was classified as a Service Delivery complaint for resolution by way of a formal investigation in line with sections 6(4) and (5) of the Public Protector Act.

4.1.4 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
   - What happened?
   - What should have happened?
   - Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
   - In the event of maladministration what would it take to remedy the wrong or to place the Complainants as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the GDoCS, the GDRT and the SAPS failed to enforce the law relating to taxi operations, in particular, on the routes operated by the GBTA and the JBBSSWTA.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the officials of the GDoCS, the GDRT and the SAPS.
4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where Complainants have suffered prejudice, the idea is to place him or her as close as possible to where they would have been had the institutions concerned complied with the regulatory framework setting the applicable standards for good administration.

4.2.5 During the investigation process, I issued notices in terms of section 7(9)(a) of the Public Protector Act (Notice) to the institutions implicated in the report on 21 February 2019 to afford them an opportunity to respond to the Public Protector's provisional findings. All the institutions served with a Notice were to respond to 04 March 2019. I engaged with the MEC for Roads and Transport, Dr. I Vadi, on 04 March 2019 and also received his submissions dated 27 February 2019 and 6 March 2019 respectively.

4.2.6 I also received a response to the Notice dated 19 March 2019 from the Acting Head of Department of the GDRT. Unfortunately no responses or submissions were received from the GDoCS and the SAPS in this regard.

4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether the GPDRT, GDoCS and the SAPS failed to implement the law in respect of operators of minibuses / midibuses operating without licences/permits? If so, did it constitute improper conduct and/or maladministration?

4.3.2 Whether the GDRT, the GDoCS and the SAPS officials complied with the resolutions of the Inter-State Agencies? If so, did this conduct constitute improper conduct, abuse of power or unjustifiable use of power?

4.3.3 If the answer to any of the above questions is in the affirmative, were the Complainants improperly prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act?
4.4  The Key Sources of information

4.4.1  Documents

4.4.1.1  The written complaint lodged by the Complainants dated 08 December 2012;
4.4.1.2  Correspondence between the Complainants and various organs of state;
4.4.1.3  Minutes of the meetings between the Complainants and various organs of state;
4.4.1.4  Minutes of meetings held between officials from Public Protector, the Complainants and the representatives of the GDoCS, GDRT, SAPS, CSP and the National Department of Transport\(^1\); held on 16 March 2012;
4.4.1.5  Report submitted by the GDoCS, undated;
4.4.1.6  Report submitted by the GDRT;
4.4.1.7  List of membership submitted by Mr Motha on 08 January 2015;
4.4.1.8  Inter State-Agency meeting held on 10 April 2013 at the Johannesburg Central Police Station;
4.4.1.9  Minutes of a meeting between stakeholders held on 19 April 2013;

4.4.2  Interviews conducted

4.4.2.1  Interviews with the new Executive Members of the GBTA on 20 November 2014.
4.4.2.2  Interview with Mr Motha 08 January 2015
4.4.2.3  Interview with the MEC for Roads and Transport (Gauteng Provincial Government) on 04 March 2019.

4.4.3  Correspondence sent and received

4.4.3.1  Letters to Complaints from the GDRT dated 19 June 2013.
4.4.3.2  Petition from the GBTA to the Public Protector dated 01 October 2012.

\(^1\) These institutions will hereafter be referred to as the Inter-State Agencies.
4.4.3.3 Letter from the attorneys of the Splinter Group of the GBTA dated 26 June 2013.
4.4.3.4 Letter from the GDoCS to the dated 28 May 2012.
4.4.3.5 Letter from the National Commissioner to the Public Protector.
4.4.3.6 Letter from the Public Protector to the Minister of Police dated 07 November 2012.
4.4.3.7 Letter from the Minister of Police to the Public Protector dated 23 December 2012.
4.4.3.8 Letter from the Public Protector to the GDRT.
4.4.3.9 Response from the Acting Head of Department of the GDRT dated 19 March 2019

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution of the Republic of South Africa, 1996; (The Constitution)
4.4.4.2 The Public Protector Act, 23 of 1994; (Public protector Act)
4.4.4.3 The Gauteng Public Passenger Road Transport, 7 of 2001 (Passenger Road Act)
4.4.4.4 Minimum Standard Constitution Guidelines
4.4.4.5 The Civilian Secretariat Act for Police, 2 of 2011;
4.4.4.6 National Land Transport Act, 5 of 2009; (Transport Act)
4.4.4.7 Regulations issued under the National Land Transport Act: Minimum Requirements for the Preparation of Provincial Land Transport Frameworks, RG 825, 03 October 2011;
4.4.4.8 Criminal Procedure Act, 51 of 1977; (Criminal Procedure Act)

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS.

5.1 Whether the GDRT, GDoCS and the SAPS failed to enforce the law in respect of operators of minibuses/ midibuses operating without licences/permits? If so, did it constitute improper conduct and/or maladministration?
5.1.1 It is common cause that the JBBSSWTA and the GBTA formed a joint venture to operate the route from Brakpan to Johannesburg Park Station in 1985. This joint venture was entered into with the knowledge of the Registrar of Transport, who prepared the Memorandum of Understanding (MOU), which was signed by both parties. It terms of the MOU, only people with operating licenses would be allowed to operate on the route.

5.1.2 It was not disputed that in 2001, the GBTA had a general meeting where new leaders were elected with Mr J Motha as the Chairperson. Due to unknown reasons, the GBTA was divided into two groups, one backing the new leadership and one siding with the old leadership (hereinafter referred to as the splinter group).

5.1.3 The splinter group was ferrying passengers between Tsakane/Duduza Taxi Rank and Johannesburg (Wanderers and Plein Taxi Rank). The majority members of the splinter group did not have legal operating licenses.

5.1.4 The JBBSSWTA approached the South Gauteng High Court for relief and judgment was granted in its favour on 06 March 2007, interdicting the splinter group\(^3\) from, *inter alia*, operating on the *illegally duplicated route*, picking up commuters at Wanderers and Plein Streets in the Johannesburg Central Business District (CBD), picking up commuters from Duduza Taxi Rank, and operating on routes from Brakpan Taxi Rank to Benoni, Springs and Germiston; and return.

5.1.5 This matter was referred to the Gauteng Registrar of Transport, Mr P Dhlamini, who was also the second respondent on case number 2006/20918. The Registrar conducted an inquiry into operations within the routes of the GBTA and their rank facilities. The Registrar concluded that:

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\(^2\) Case no: 2006/20918

\(^3\) Members of the GBTA
(a) The centre of power in the GBTA should be in the hands of a democratically elected executive committee of the GBTA;

(b) The legislative framework that regulates public transport matters provide for methods of dealing with problems in the industry;

(c) There was a co-existing executive committee operating parallel to the legitimate GBTA executive committee;

(d) The co-existing executive committee and its members must return to the GBTA;

(e) Only registered routes and legally allocated ranking facilities will be used by the GBTA. The law enforcement agencies would monitor the operations until there was stability. The temporary, but officially allocated ranking facilities would form part of the discussion, verified and if there was a need, be allocated to the GBTA;

(f) The office of the Registrar will, together with the City of Ekurhuleni Metropolitan Municipality (City of Ekurhuleni), assist in the facilitation of the meetings; and

(g) That the decision was applicable immediately.

5.1.6 During the meeting with the Public Protector on 04 March 2019, Dr I Vadi that submitted, the GDRT had no capacity to enforce the law due to the fact that the Gauteng Traffic Police was placed under the MEC for Community Safety. Consequently all issues of enforcement would only happen with the assistance of the GDoCS, the SAPS or the Metro Police Department.
5.1.7 The main issue for determination was whether the Gauteng law enforcement failed to enforce the court order granted in favour of the JBBSSWTA and the related laws.

5.1.8 The JBBSSWTA submitted that it approached the Gauteng SAPS in an attempt to enforce the court order and between the 10th and 16th of May 2011, the SAPS impounded 68 vehicles belonging to members of the splinter group. The SAPS advised the JBBSSWTA that it would not be able to assist further with the enforcement of the court order because it had received instructions from MEC of Community Safety to cease with the operation and/or the enforcement of the court order.

5.1.9 During the Inter-State Agencies meeting on 18 April 2013, the GDoCS presented a court order reportedly granted by the South Gauteng High Court in favour of the GBTA on 16 October 2012 rescinding the earlier court judgment granted to the JBBSSWTA. On the other hand, the JBBSSWTA and the GBTA\(^4\) denied knowledge of the existence of the October 2012 court order because they were never served with a notice of motion as per the Supreme Court Act, 59 of 1959, as amended (Supreme Court Act) and the Uniform Rules of the Supreme Court. However, a copy of the rescission order was presented to the investigation team.

5.1.10 It was evident that the court order which the Complainant sought to be enforced had been rescinded.

5.1.11 The second issue of determination was with regard to the general enforcement of the law, outside the court orders.

\(^4\) According to the court order, the Applicant was the GBTA and the First Respondent was GBTA. In this regard the parties involved in this case were not the Complainants.
5.1.12 The Complainants submitted that this matter had been on-going for more than a decade and had directly or indirectly contributed to incidents of taxi violence reported to have occurred in the Ekurhuleni area in the past 20 years. The Complainants further mentioned that the duplication of routes made it difficult for members of the JBBSSWTA and the legitimate members of the GBTA to operate peacefully on the route.

5.1.13 During the 15 October 2012 meeting, Mr Jabu Dube and Mr Thami Mayisela from the GDoCS, reported that they had, in the past, attempted to facilitate a peace agreement between the members of the legitimate GBTA and the splinter group, because they believed that violence and illegal operations would only seize, provided there was a united GBTA. However, the Complainants maintained that they had requested the GDoCS and the GDRT to close down the illegal Duduza Taxi Rank in order to ensure that illegal operators do not operate in the area.

5.1.14 The Complainants further submitted that the Duduza Taxi Rank was the main course of the illegal operations in the area. The GDRT and the GDoCS submitted that it was not responsible for the closing of the taxi rank. However, the Complainants contended that it was the GDRT who undertook to facilitate the closure of the taxi rank.

5.1.15 Mr Modise Sojane of the the GDRT indicated that joint operations with the SAPS required the Minister of Police’s approval.

5.1.16 The GDRT further submitted that it had adequately discharged its duties of maintaining law and order and that the Complainants had created conflict amongst themselves.

5.1.17 The GDoCS indicated that although it had powers to impound vehicles, the law required it to release the vehicles upon receipt of payment of a fine by the owner of a vehicle. In the event that a vehicle is impounded three times for the same

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5 First Inter-Agency Meeting held at the Public Protector’s offices, see par. 8.21-8.2.3 below.
offence, it could then be forfeited to the GDoCS / State as an instrument of crime. However, due to the GDoCS’ capacity constraints, it was unable to conduct successful routine operations. Successful operations would usually require joint operations between the GDoCS, the SAPS and the Metro Police Department.

5.1.18 The GDoCS further indicated that as a department, it was ready to act against taxi operators without valid operating licences, provided it received support from the SAPS.

5.1.19 During the meeting held on 15 October 2015, Mr Shaun Palman from the National Department of Transport (NDT) indicated that since this matter was brought to its attention, the NDT has dealt with it. According to the NDT, government did not recognize illegal operators because most of their vehicles were not roadworthy and consequently contributed to deaths on the roads. The NDT further stated that joint operations by the law enforcement agencies would produce positive results.

5.1.20 During the meeting held with the GBTA’s new executive committee, it transpired that the Duduza Taxi Rank was a legal rank, but it was not intended for the routes between Duduza and Johannesburg CBD.

Application of the relevant legal framework

5.1.21 The issue is regulated by the provisions that will be traversed below.

5.1.22 Section 205(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides that the objectives of the police service is to prevent, to combat and investigate crime, to maintain public order, to protect and secure inhabitants of the Republic and their property, and to uphold and enforce the law.

5.1.23 The mandate of the GDoCS is to ensure safety in the Gauteng Province. Its responsibilities include monitoring policing agencies; implementing crime-prevention initiatives; managing traffic; educating citizens about public safety; and improving the relationship between communities and law enforcement agencies.
5.1.24 The GDRT and the GDoCS in consultation with relevant stakeholders, are responsible for maintenance of law and order in the Public Transport Industry.

**The Criminal Procedure Act, 51 of 1977**

5.1.25 In terms of Section 20 the State may seize anything:-

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; and

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

5.1.26 The SAPS was empowered to impound any midibuses suspected to have been operating without a license. The SAPS and/or the GDoCS could not demonstrate how, on a continuous basis, dealt with unlicensed operators operating on the routes and taxi ranks in question.

**The National Land Transport Act, 5 of 2009**

5.1.27 Section 50 provides that no person may operate a road-based public transport service, unless he or she is the holder of an operating licence or permit issued for the vehicle concerned. In terms of section 90(1)(a) of the Transport Act, a person is guilty of an offence, if that person operates a public transport service in contravention of section 50. There was no evidence adduced by the SAPS that the illegal operators were accordingly charged in terms of the aforesaid provisions.
5.1.28 In terms of section 63(a) and (b), an operating licence issued under this Act does not authorize the holder to undertake transport on or over a road if it is unlawful to do so in terms of any other law; and does not exempt the holder from the obligation to comply with any requirement or condition imposed by or in terms of any law, licence or permit issued by any other competent authority. In operating on duplicated routes, the splinter group was acting contrary to the licence conditions.

5.1.29 Section 11(1)(b) provides, in relation to the provincial sphere of government *inter alia*, that the provincial sphere of government is responsible for:

(a) planning, co-ordination and facilitation of land transport functions in the province, and preparing the Provincial Land Transport Framework in terms of section 35;

(b) co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province and promoting provincial legislation with a view to promoting the objectives of the Act; and

(c) liaising with other government departments in the national and provincial spheres with the responsibilities that impact on transport and land use, planning issues, and bringing together key players;

(d) ensuring implementation of the provincial integrated development strategy and public transport strategy, with due attention to rural areas, with the focus on less capacitated municipalities or those that do not fulfil their responsibilities in respect of transport service delivery, either by direct implementation or assistance under paragraph (v).

5.1.30 Section 87 authorises an authorised officer to impound any vehicle which is used by any person for the operation of public transport without the necessary operating licence or permit. Section 2 further states that:

(2) “A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only—
(a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or

(b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC, which is an impoundment fee”.

5.1.31 The Complainants submitted that the impounded vehicles were release only on the basis of the payment of an impoundment fee. The GDoCs argued that the law required it to release impounded vehicles upon receipt of payment of a fine by an owner. However, section 87(2)(b) of the Transport Act makes a conviction as a prerequisite of an impoundment fee. There was no evidence adduced by the law the GDoCS or the SAPS that the release of the impounded vehicles occurred in line with this section.

5.1.32 Section 1 defines an "authorised officer" as:

(a) “an inspector contemplated in section 86;

(b) a member of the South African Police Service, including a member of a municipal police service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) a person in the service of a provincial department or a municipality, or the Road Traffic Management Corporation established by the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), whose duty it is to control traffic or to inspect motor vehicles or licences for motor vehicles;

(d) a road transport inspector contemplated in section 37 of the Cross-Border Act”

5.1.33 The GDoCS, the GDRT and the SAPS only had a joint operation once, during which operation several of the illegally operated vehicles were impounded. The
Departments concerned failed to subsequent hold routine operations, citing limited resources as the reason for not enforcing the law as required. This despite the fact that the situation was very tense, and that people were already killed as a result of the illegal operations of the splinter group.

5.1.34 Section 91 states that

(1) "If in any area in the relevant province the MEC considers that because of violence, unrest or instability in any sector of the public transport industry in the area or between operators in the area, the safety of—
(c) passengers using the relevant services; or
(d) residents; or
(e) any other persons entering the area,
has deteriorated to an unacceptable level, the MEC may, after consulting relevant planning authorities, by notice in the Provincial Gazette, define the area and declare it to be an area in respect of which the notification prescribing the extraordinary measures contemplated in subsection (2) may be made.

(2) The MEC may, by notice in the Provincial Gazette, give notice that—
(a) one or more or all the routes or ranks in such a declared area are closed for the operation of any type of public transport service, for the period stated in the notice;
(b) any operating licence or permit authorising any of the services referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area is suspended for the relevant period;
(c) subject to subsection (6), no person may undertake any of the services referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area or in terms of an operating licence or permit suspended as contemplated in paragraph (b) for the relevant period".
During the meeting with the Public Protector on 04 March 2019, Dr Vadi submitted that at no time did his office receive a request (formally or informally) from the GDRT, or the SAPS, or the NDT, or the relevant municipal transport planning authority or transport enforcement agency, to close the Duduza Taxi Rank. Further that the Civilian Secretary for Police also did not make such a request as mooted during one of the Inter-State Agencies meetings. In his written submission, the MEC argued that:

“In the absence of any report from the law enforcement agencies and other relevant government officials and Departments, or for that matter from the Office of the Public Protector, regarding the incidents of violence, let alone the nature and extent of violence, unrest and instability that the threatened passengers, residents, and other persons at the Duduza Taxi Rank, the MEC cannot wilfully exercise an arbitrary administrative act by closing the said taxi rank”.

The difficulty in accepting the Dr Vadi’s argument was the notion that his inaction was as a result of lack of knowledge regarding the engagements his department was undertaking with other stakeholders on the allegations of lack of law enforcement relating to operators around the Duduza rank. However, it was noted that in order for Dr Vadi to have decided to close the Duduza taxi rank, he would have had to satisfy himself that conditions mentioned in section 91 of the Transport Act were prevailing at the time. Judging from the decision to implement the extraordinary measures in terms of the aforesaid section to close the Tsakane Taxi Rank on 23 May 2018 as a result of the fatal shooting, Dr Vadi demonstrated his appreciation of the obligation placed upon him by section 91 of the Transport under such circumstances.

It is in this context that his submission that he was not fully appraised about the situation at the Duduza Taxi Rank, should be accepted under the circumstances. However, the conduct of the officials of the GDRT who failed to appraise the MEC
regarding the Inter-State Agencies meetings and engagements cannot be condoned.

5.1.38 Unfortunately in its response to the Notice dated 20 March 2019, the GDRT asserted that the MEC’s discretion not close the “relevant routes and ranks” was not exercised arbitrarily or capriciously. According to the MEC, he had not exercised any discretion nor taken any decision because the proposed closure was never brought to his attention. It should be noted that the GDRT made no reference to the resolutions of the Inter-State Agencies about the closure of the Duduza Taxi Rank and whether this resolution was duly communicated to the MEC to him at the time.

5.1.39 In terms of section 20 of the Criminal Procedure Act, the State may seize anything which is concerned in or on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere. The GDoCS and the SAPS failed to seize any of the vehicles which were illegally operated by the splinter group or operating without the requisite licenses or permits.

Conclusion

5.1.40 Based on the above, the 2007 court order which the Complainants sought the Gauteng law enforcement agencies to enforce was subsequently rescinded on 16 October 2012.

5.1.41 The Gauteng law enforcement agencies failed to prevent members of the splinter group from operating minibuses/midibuses without operating licenses, which was in contravention of section 50 of the Transport Act, and, for also duplicating the route between Brakpan and the Johannesburg Central Business District in contravention of section 63 of the Transport Act.
5.1.42 In the circumstances, the Gauteng law enforcement agencies did not consistently comply with their constitutional and legislative mandates as traversed above. In this regard, the GDoCS was unable to consistently conduct operations targeting illegal operations in terms of section 205(3) of the Constitution and section 11(1) of the Transport Act except on few instances.

5.1.43 The SAPS failed to consistently seize or impound taxis which were concerned in or were on reasonable ground believed to be concerned in the commission or suspected commission of an offence as envisioned by Section 20 of the Criminal Procedure Act.

5.1.44 The GDRT, the GDoCs and the SAPS failed to maintain safety and public peace in the Public Transport industry as required by the section 205(3) of Constitution and section 11(1) of the Transport Act.

5.1.45 The GDRT failed to discharge its responsibility in line with the provision of the section 11(1) of the Transport Act.

5.1.46 The GDRT failed to communicate with its MEC regarding the proposal to implement measures contained in section 91 of the Transport Act as a way of curbing the violence and bringing stability in the industry.

5.2 Whether the GDRT, the GDoCS and the SAPS failed to comply with the Resolutions of the Inter-State Agencies. If so, does it constitute improper conduct, abuse of power or unjustifiable use of power?

Common cause

5.2.1 It is common cause that following a series of consultations with the JBBSSWTA and the GBTA, the GDoCS and my predecessor, the latter initiated an Inter-State
Agencies meeting between the GDoCS, the NDT, the GDRT, the SAPS and the Complainants.

5.2.2 The purpose of the meetings was to facilitate a relationship between all the stakeholders involved in the management of the taxi industry, in order to ensure that commuters were commuted free of violence. The first Inter-State Agencies meeting was held on 15 October 2012 at the Public Protector’s offices.

5.2.3 My predecessor convened the Inter-State Agencies committee in an attempt to resolve this complaint, in line with the powers given to me by of section 6(4)(b) of the Public Protector Act.

5.2.4 In addition, in line with the powers afforded to her in section 7(3) of the Public Protector Act, my predecessor approached the Minister of Police and requested his intervention. My predecessor also requested that all stakeholders will in future convene in an attempt to resolve this matter.

5.2.5 The first Inter-State Agencies meeting resolved the following:

(a) No taxi operators should be allowed to operate any route without a valid legal operating licence;

(b) The Public Protector would approach the Minister of Police regarding the enforcement of the law in order to ensure that the issues between the two associations and the splinter group are resolved through law enforcement;

(c) All the stakeholders will convene and come up with an implementation plan about what will be done to end the conflicts; and

(d) The Public Protector will request an intervention by the Minister of Police.
5.2.6 Following the meeting, my predecessor wrote a letter to the former Minister of Police, the Honourable Mr Nathi Mthethwa, MP, requesting the intervention of the SAPS in line with the undertaking referred to above.

5.2.7 The Minister of Police responded advising her that:

5.2.7.1 The Secretariat for Police had briefed the former National Commissioner, General Phiyega, about the matter and the former National Commissioner had requested the Divisional Commissioner of Visible Policing, Lieutenant - General Mothiba, and the Deputy Provincial Commissioner, Major - General Gela to attend to the matter;

5.2.7.2 Due to the fact that the matter was essentially an operational matter, Major-General Gela will run the matter through the Gauteng Provincial war room;

5.2.7.3 Major-General Gela would furthermore involve the different stakeholders in ensuring that law enforcement issues were addressed; and

5.2.7.4 The Civilian Secretariat for Police would then update the Public Protector with information and developments.

5.2.8 On 18 April 2013, the Civilian Secretariat for Police wrote a letter to the Inter-State Agencies advising them of the following:

5.2.8.1 That the SAPS Gauteng Province initiated an Inter-State Agencies meeting on 10 April 2013;

5.2.8.2 The SAPS Gauteng presented feedback on the success of joint operations targeting minibuses/midibuses operations in December 2012. According to the report, the operations targeted minibuses/midibuses in Germiston, Honeydew and Johannesburg CBD;
5.2.8.3 The JBBSSWTA and the GBTA raised a concern that operations did not address illegal operators as stipulated in the court order;

5.2.8.4 The main concern of the GDoCS was that the JBBSSWTA and the GBTA desired that the impounded vehicles not be handed back to the owners. However, in terms of the Transport Act, the GDoCS did not have powers to permanently impound minibuses/midibuses, but prescribes payment of stipulated fine by the owners of the impounded vehicles;

5.2.8.5 The GBTA complained about a notice issued by the Public Transport Registration Office inviting its members to attend elections to be held on 23 and 24 April 2013 at Brakpan City Hall and it requested the GDRT to postpone the elections;

5.2.8.6 The JBBSSWTA and the GBTA reported that since the splinter group de-associated from the legitimate GBTA, five of their members had died as a result of taxi violence;

5.2.8.7 Several stakeholders proposed *inter alia* the closure of the Duduza Taxi Rank and the investigation of the legitimacy of the October 2012 court order; and

5.2.8.8 All the Inter-State Agencies were invited to a meeting to be held on the 19 April 2013.

5.2.9 Following the invitation from the Civilian Secretariat for Police, an Inter-State Agencies meeting was held on 19 April 2013 and the following was discussed:-

5.2.9.1 The issue of the court order was discussed as addressed above;

5.2.9.2 The impoundment of illegally operated minibuses/midibuses or enforcement of law should not only be considered when there is a court order. In this regard, law enforcement should operate within the ambit of the law and should not exclusively rely on court orders, especially when dealing with illegal taxi operations including the closure of illegal taxi ranks;
5.2.9.3 The elections of the new GBTA executive committee should be deferred until such time that order is restored;

5.2.9.4 Major - General Gela's operations would continue to take place despite the fact that the matter is still being discussed by the Inter-State Agencies forum;

5.2.9.5 The Civilian Secretariat for Police would follow up with the relevant channels in respect of closure of the Duduza Taxi Rank;

5.2.9.6 The Public Protector team would follow up with all relevant stakeholders in order to ensure that the matter is resolved;

5.2.9.7 The Minister of Police would be requested to intervene by facilitating a process of appointing a mediator to deal with conflict between the splinter group and the two legitimate taxi associations (JBBSSWTA and the GBTA);

5.2.9.8 The Civilian Secretariat for Police would conduct an inspection in loco at the taxi ranks and routes reported to be illegal and to approach the Ekurhuleni Metropolitan Council to make them aware of the challenges regarding taxi operations / taxi ranks.

5.2.10 The Complainants subsequently approached my office again complaining that the GDoCS and the GDRT invited all of them to a meeting that was held on Monday 13 May 2013. The meeting was also attended by the Director in the office of the Civilian Secretariat for Police, Mr. L Qhomfo, on his own initiative;

5.2.11 The members of the JBBSSWTA and Mr Qhomfo were requested to excuse themselves from the meeting at a later stage;

5.2.12 Mr Majola of the GDRT allegedly stated that whether they liked it or not, the elections would take place. He further demanded that the GBTA and the
JBBSSWTA provide him with a date for elections, in the event that they do not comply, their operating licences would be suspended or totally forfeited;

5.2.13 The Complainants were under the impression that the Inter-State Agencies unanimously agreed that the Tsakane / Duduza Taxi Rank will be closed;

5.2.14 Mr Muthabe, a Member of the Executive of the mother body of Ekurhuleni Taxi Associations (Top Six) indicated that whether the Complainants approach the Presidency, the NDT or their attorneys, elections will proceed. Mr Muthabe had been requested by the Top Six executives to mediate on their behalf; and

5.2.15 The Complainants further complained that their members continued being killed due to the fact that this matter had not been resolved;

5.2.16 On 11 June 2013, Mr Modise Sojane: Director:Registration and Monitoring: GDRT, wrote a letter to the former Chairperson of the GBTA, Mr Motha, informing him that the GDRT represented by Chief Director, Mr Majola, held meeting referred to above and reiterating that the GBTA must provide a date for election;

5.2.17 On 19 June 2013, my investigation team approached the GDRT urging it to comply with the resolutions of the Inter - State Agency meeting held on 19 April 2013;

5.2.18 My investigation team received a copy of the notice from Mr Modise Sojane inviting all operators (Permit/Operating License Holders) of the GBTA to attend an annual general meeting and elections to be held on 24 July 2013;

5.2.19 On 8 August 2013, my predecessor attempted to reconvene the Inter-State Agencies meeting to resolve the outstanding issues, however the meeting could not proceed due to lack of attendance by the GDRT;

5.2.20 The meeting was however reconvened on 6 September 2013 and the following resolutions were adopted:-
5.2.20.1 The GDRT and the GDoCS would approach the joint operation committee in order to eliminate illegal operations of midibuses/minibuses within the province;

5.2.20.2 The GBTA would deal with the internal conflicts;

5.2.20.3 The GBTA would submit a list of all the operators whom it reasonably suspects to be operating illegally;

5.2.20.4 The law enforcement agencies, through the Joint Operation Committee, would specifically target illegal taxi operators;

5.2.20.5 The GDRT and GDoCS would report back on the outcome of the joint operations;

5.2.20.6 The GDRT to continue with the GBTA elections; and

5.2.20.7 The Public Protector would make a final decision with regard to the allegation of non-compliance with the law.

5.2.21 During the meeting held on 20 November 2014 between the representatives from the GBTA, Civilian Secretariat for Police, the SAPS and the Public Protector, it was confirmed that the new Executive Committee had since been elected and elections were held on 29 April 2014. Mr Motha indicated that he was voted out as chairperson and he had not been operating for a while. However, during the meeting referred to above the Chairperson of the GBTA emphasized that the new elected committee was committed to bringing stability in the industry and the area to benefit both operators and communities. There were successes mentioned, which included the following:

(a) Resolving differences with the former Chairperson of the association, Mr Motha and having reached an agreement to have his taxis operating in the area as normal; and
(b) The establishment of a sub-committee which was mainly looking into resolving challenges pertaining to operations in various taxi ranks and routes

**Issues in dispute**

5.2.22 The issue for determination was whether the GDRT, GDCoS and the SAPS failed to comply with the latest resolutions of the Inter-State Agencies.

5.2.23 The Complainants maintained that the officials of the GDRT, Mr Modise Sojane: and Mr Majola, interfered in the running of the GBTA by insisting that the elections of the new executive committee should proceed.

5.2.24 The Complainants submitted that, despite the adoption of certain resolutions during the Inter-State Agencies meeting, the GDRT insisted that the elections of the new Executive Committee of the GBTA should proceed, which election was held on 29 April 2014. This was done despite the situation still being tense. Further that the Duduza Taxi Rank was also still open, and the splinter group was continuing to operate illegally from there to the Johannesburg CBD

5.2.25 During the meeting with the MEC on 06 March 2019, he contended that the issue of election of the new executive committees of the taxi associations was regulated in terms of law and the officials of the GDRT had no discretion to decide on the frequency of the said elections.

**Application of the relevant legal framework**

5.2.26 As already indicated, during the Inter-State Agencies meeting held on 19 April 2013, the following was agreed upon by the parties in attendance: -

5.2.26.1 That the Duduza Taxi Rank, from where the splinter group was operating illegally, must be closed;
5.2.26.2 That the elections of the new GBTA Executive Committee would be deferred until such time as order is restored.

5.2.27 As already alluded to, the Duduza and Tsakane Taxi Ranks were never closed as proposed in the Inter-State Agencies meetings. The Complainants believed that the Inter-State Agencies unanimously agreed that the Tsakane / Duduza Taxi Rank will be closed. However, the MEC for Roads and Transport vested with authority described under section 91 of the Transport Act argued that he held no requisite information to enable him to act accordingly.

5.2.28 According to section 71 of the Gauteng Public Passenger Road Transport Act, 7 of 2001 (Public Passenger Act):

(1) “The MEC may instruct an association by written notice to hold elections for the executive committee of the association or referendums on issues causing conflict or tension within the association or between the association and another association or associations, within a time stated in the notice, and direct in the notice that the election or referendum be independently monitored by-

(a) a person or persons appointed and paid for by the MEC; or

(b) a person or persons appointed and paid for by the association at its cost.

(2) The Registrar may suspend or cancel the registration of an association that fails to comply with an instruction issued under subsection (1)”

5.2.29 In terms of clause 6.4 of the Minimum Standard Constitution adopted in line with the Public Passenger Act, the Executive Committees of taxi associations were required to hold elections every two years.

5.2.30 In his response to the Notice, the MEC submitted that the legal requirement was that the Executive Committees of taxi associations be elected every two years and the electoral process had to be supervised and monitored by the GDRT. As such
there was no discretion placed on the officials of the GRDT, Mr Majola and Mr. Sojane, to exercise in this regard.

5.2.31 During the Inter-State Agencies meeting held on 06 September 2013, the following was agreed upon by the parties.

5.2.31.1 The GDRT and the GDoCS would approach the joint operation committee in order to eliminate illegal operations of midibuses/minibuses within the province.

5.2.31.2 The law enforcement agencies, through the Joint Operation Committee, would specifically target the unlicensed taxi operators.

5.2.31.3 The GDRT to continue with the GBTA elections.

5.2.32 Notwithstanding the regulatory framework traversed above, it should be noted that the initial Inter-State Agencies resolution of 19 April 2013 resolution was revised during the subsequent meeting referred above.

5.2.33 Consequently, the holding of the elections of the GBTA’s Executive Committee was sanctioned by the Inter-State Agencies resolution. It is important to note that Mr Motha also confirmed, during a meeting held with the investigation team on 20 November 2014, that successful elections of the GBTA were held on 29 April 2014.

5.2.34 The only issue which remained was with regard to compliance with continuous operations targeting the unlicensed taxi operators. The Complainants continued to report that their members were being killed due to lack of proper law enforcement in the industry, and in particular on issues relating to the JBBSSWTA and the GBTA.

5.2.35 Moreover, the investigation team did not receive reports from the GDoCs and the GDRT regarding the joint operations as resolved by the Inter-State Agencies meeting of 6 September 2013.
Conclusion

5.2.36 In the circumstances, I was not persuaded that the MEC for Roads and Transport failed to comply with the resolution of Inter-State Resolution of 19 April 2013 regarding the closure of the Duduza/Tsakane Taxi Rank.

5.2.37 I am also not persuaded that holding of the elections of the GBTA’s Executive Committee was contrary to the Inter-State Agencies resolution. In view of the foregoing, the deferment of the election of the GBTA’s Executive Committee would have been contrary to the said minimum standards.

5.2.38 Lastly I could not find evidence that the Gauteng law enforcement agencies complied with the Inter-State Agencies resolution of 06 September 2013 requiring them to continue targeting unlicensed taxi operators and eliminating illegal taxi operators.

5.3 Whether the Complainants were prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act;

5.3.1 It is common cause that the splinter group was still operating in Duduza Taxi Rank and had now taken over the GBTA. As a result, the Complainants were not operating anymore.

5.3.2 The Complainants submitted that some of the members belonging to the GBTA were killed and vehicles belonging to some of the GBTA and the JBBSSWTA were vandalised.

5.3.3 About 42% of the JBBSSWTA members were widows who were breadwinners in their homes. In this regard, the business was a means to take their children to school and so forth. Some of the GBTA and the JBBSSWTA members were injured
and threatened with death. Despite opening cases in this regard, nothing had happened with the cases.

**Conclusion**

5.3.4 In the circumstances the Complainants suffered improper prejudice.

6 **FINDINGS AND OBSERVATIONS**

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I hereby make the following findings:

6.1 Regarding whether the GDRT, GDoCS and the SAPS failed to implement the law in respect of operators of minibuses/midibuses operating without licences/permits. If so, did it constitute improper conduct and/or maladministration?

6.1.1 The allegation that the GDRT, the GDoCS and the SAPS failed to enforce the law in respect of operators of minibuses/midibuses operating without licences / permits, is partially substantiated.

6.1.2 The 2007 court order which the Complainants sought the Gauteng law enforcement agencies to enforce was subsequently rescinded on 16 October 2012, and therefore unenforceable.

6.1.3 The Gauteng law enforcement agencies failed to prevent members of the splinter group from operating minibuses/midibuses without operating licenses, which was in contravention of section 50 of the Transport Act, and for also duplicating the route between Brakpan and the Johannesburg Central Business District in contravention of section 63 of the Transport Act.
6.1.4 The GDoCS was unable to consistently conduct operations targeting illegal operations in terms of section 205(3) of the Constitution and section 11(1) of the Transport Act except on few instances.

6.1.5 The SAPS failed to consistently seize or impound taxis which were concerned in or were on reasonable ground believed to be concerned in the commission or suspected commission of an offence as envisioned by Section 20 of the Criminal Procedure Act.

6.1.6 The GDRT, the GDoCs and the SAPS failed to maintain safety and public peace in the Public Transport industry as required by the section 205(3) of Constitution and section 11(1) of the National Land Transport Act.

6.1.7 The GDRT failed to discharge its responsibility in line with the provision of the section 11(1) of National Land Transport Act.

6.1.8 The GDRT failed to communicate with its MEC regarding the proposal to implement measures contained in section 91 of the Transport Act as a way of curbing the violence and bringing stability in the industry.

6.1.9 Therefore, the conduct of the GDRT, the GDoCS and the SAPS constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2 **Regarding whether the GDRT, the GDoCS and the SAPS failed to comply with the resolutions of the Inter-State Agencies. If so, did it constitute improper conduct, abuse of power or unjustifiable use of power?**

6.2.1 The allegation that the GDRT, the GDoCS and the SAPS officials failed to comply with the resolutions of the Inter-State Agencies is partially substantiated.
6.2.2 I was not persuaded that the MEC for Roads and Transport failed to comply with the resolution of Inter-State Agencies meeting on 19 April 2013 regarding the closure of the Duduza/Tsakane Taxi Rank.

6.2.3 I am also not persuaded that holding of the elections of the GBTA’s Executive Committee was contrary to the Inter-State Agencies resolution. The deferment of the election of the GBTA’s Executive Committee would have been contrary to the minimum standards adopted in line with the Passenger Road Act.

6.2.4 I could not find evidence that the Gauteng law enforcement agencies, i.e. the GDoCS and the SAPS complied the Inter-State Agencies resolution of 06 September 2013 requiring them to continue targeting unlicensed taxi operators and eliminating illegal taxi operators.

6.2.5 Therefore the conduct of the GDoCS and the SAPS constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.3 Regarding whether the Complainants were improperly prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act;

6.3.1 The allegations that the Complainants were improperly prejudiced by the conduct of the Departments concerned is substantiated.

6.3.2 Lack of proper enforcement of the law resulted in unlicensed taxi operators operating illegally. Furthermore, some of the members of the JBBSSWTA and GBTA lost their lives whilst vehicles belonging to some of the members were vandalised during the period in question.

6.3.3 Therefore, the conduct of the Departments concerned amounted to improper prejudice to the Complainants as envisaged in section 6(4)(a)(v) of the Public Protector Act.
6.4 OBSERVATIONS

6.4.1 I have observed that in Gauteng Province traffic management functions are not consolidated within one department like in some of the Provinces. Whilst there are measures of collaboration between the various state institutions, the model does not seem to be ideal for effective and efficient traffic management.

6.4.2 Some of the challenges are evidenced by the failure to implement the resolutions of the Inter-State Agencies that was established by my predecessor with a view to resolving issues and facilitating a relationship between all stakeholders within the taxi industry, in order to minimize violence in the taxi industry.

7 REMEDIAL ACTION

7.1 The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Complainants as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing the systemic deficiencies often leading to taxi violence in various areas, is the following: -

7.1.1 The MECs for Roads and Transport and for Community Safety, and the National Commissioner of SAPS to:

7.1.1.1 Take steps to ensure that members of the GBTA and the JBBSSWTA, who are operating without licences, do not continue operating without operating licenses, within 30 days of the issuing of this report; and

7.1.1.2 Take steps to ensure that they shut down all illegal taxi operations in Duduza and/or Brakpan area, within 30 days of the issuing of this report.
7.1.2 The MEC for Roads and Transport to:

7.1.2.1 To investigate why the Department did not report on the proposal about the closing down of the Duduza Taxi Rank, and provide the findings to the Public Protector within 30 days of the issuing of the report.

7.1.3 The MECs for Roads and Transport and for Community Safety to:

7.1.3.1 Ensure the utilisation of the Rapid Joint Task Force to deal with illegal taxi operators.

7.1.4 The MECs for Roads and Transport to:

7.1.4.1 Within 30 days of the issuing of the report, ensure that a feasibility study is conducted and presented to the Premier on the establishment of the traffic law enforcement function within GDRT as implemented in other Provinces and report on the outcome thereof to the Public Protector within 60 days.

8. MONITORING AND IMPLEMENTATION OF THE REMEDIAL ACTIONS

8.1 The MEC for Road and Transport to furnish a report on the state of affairs with regard to the operations of both the JBBSSWTA and the GBTA and his investigation with mentioned in 7.2.1.1, within 40 days of the issuing of the report.

8.2 The MEC for Community Safety to furnish a report on measures taken to deal with illegal taxi operators on the routes operated by both the JBBSSWTA and the GBTA, within 65 days of the issuing of the report.
Unless the remedial actions taken by the Public Protector are reviewed and set aside by the Court of law, compliance is not optional and same must be complied with within the stated period.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 28/03/2019