

MINISTER OF DEFENCE AND MILITARY VETERANS



NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO 3200

**REPLY RECOMMENDED BY:
MINISTER OF DEFENCE AND MILITARY VETERANS: MP**

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Mr S.J.F. Marais (DA) to ask the Minister of Defence and Military Veterans:

(1) Whether, with reference to the incidents of army brutality during the early days of the lockdown to curb the spread of COVID-19 in 2020, she has communicated and/or reported any incidents of army brutality to the public and/or their parliamentary representatives; if not, why not; if so, what are the relevant details;

(2)(a) What are the details of accessible channels that were put in place by her department for citizens to report incidents of army brutality and (b) how were the reports handled;

(3) What are the relevant details of the (a) support mechanisms that were established for victims of army brutality during the lockdown and (b) avenues that were available to persons for seeking justice, medical assistance and/or legal aid;

(4) Whether any valuable lessons have been learnt from the incidents; if not, what is the position in this regard; if so, what are the relevant details;

(5) Whether any resultant reforms and/or changes have been implemented in procedures, training and oversight of law enforcement during domestic deployments to prevent similar incidents in the future; if not, what is the position in this regard; if so, what are the relevant details?

REPLY:

1(a). The attached Litigation Report is listing all reported cases against the Department of Defence that emanated from Operation NOTLELA. The said Litigation Report is also outlining the current status of each case. ***See attached Operation Notlela Litigation Report March 2020 – Jan 2021***

The SANDF only knows of one (1) incident that was formally reported and investigated by the South African Police Service, which is before court for claims of damages as a result of the death of Mr Collins Khosa, allegedly caused by members of the SANDF. The claims are for general damages, loss of support and future medical treatment. It is noteworthy to remind ourselves that following that court ruling and court order thereafter, the incident in 2020, the then Minister of Defence and Military Veterans instructed the Defence Force to develop Standard Operating Procedures and Rules of Conduct containing guidelines on how military personnel should conduct themselves in such operations as was ordered by the court. The Rules of Conduct were presented to court as instructed and subsequently published both internally and

externally for public knowledge, education and awareness, as per the court order. It should further be noted that all internal operations are coordinated by the South African Police Service (SAPS) supported by the Defence Force under Operation PROSPER. As such, any incident would be investigated by the SAPS in conjunction with the Defence Force as was the case with the above-mentioned case.

2(a). The Department of Defence (DOD) has an Office the Military Ombud established in 2015, by means of the Military Ombud Act of 2012, to attend to and investigate complaints or concerns submitted by members of the DOD as well as members of the public with regard to matters involving the Defence Force/military. This institution is also known to members of the public through government publications as well as by means of regular roadshows conducted by the Military Ombud's institution.

2(b). All complaints, reports, cases or allegations submitted to the Military Ombud's Office are attended to according to the set processes and procedures of the institution. The Office of the Military Ombud can be consulted for further details on the processes and procedures that are followed.

3. The avenues available to all or any member of public were, and remains, the criminal justice system of government, the Military Ombuds, as well as the Chapter 9 institutions of government.

4. Lesson learnt is that some individuals in the law enforcement environment can, and do make mistakes during the conduct of their duties, and also that some members of the public do act in a manner that is inconsistent with the requirements and expectations of law abiding citizens when directed, advised, or engaged by the law enforcement officials.

5. The SANDF continuously conduct training on all aspects of operational deployments (force preparation), and all other functional competencies of a soldier (in-post training & cadre training) to sharpen their skills and expertise.



MS T.R. MODISE

MINISTER OF DEFENCE AND MILITARY VETERANS: MP

OPERATION NOTLELA LITIGATION REPORT MARCH 2020 - JAN 2021

No	Date Received	Plaintiff / Applicant	Name of Court	Case Number	Cause of Action / Claim	Notice to Oppose / Defend	Date of Hearing	Outcome	Remarks	Counsel Appointed
1	01/04/2020	Fair & Equitable Society	North Gauteng High Court	21391/2020	Interdicting SANDF and SAPS from abusing members of the public and ordering them to observe and respect the Constitution.	Served and filed on 02/04/2020	07/04/2020	Matter was withdrawn by the Applicants	Notice of withdrawal was received on 05/04/2020 and the file has now been closed.	Adv M. Skhakane (SC) and Adv S. Kazee
2	03/04/2020	Mushroom Bagerezi & Others	North Gauteng High Court	21381/2020	To be declared that the Applicants are waste reclaimers who are providing essential services and that they should be exempted from the imposed restrictions in terms of Section 11(B) of the Disaster Management Regulations.	Served and filed on 06/04/2020	07/04/2020	Application was dismissed and no order was made as to costs. The parties have now served us with Appeal papers and they have decided to petition the Constitutional Court on an urgent basis.	Matter is awaiting the appeal process to be finalised. We now doubt if the Applicants would still proceed with their appeal following the President's decision to move the lockdown to level 1. Based on this, this matter would also be regarded as finalised.	Adv H. Mphse
3	06/04/2020	Mosima Hendrina Marole & Another	North Gauteng High Court	21390/2020	The Applicants be permitted to transport their mother from Limpopo to their residential address in Gauteng. They alleged that their mother is a qualified care giver / nurse and she was coming to provide essential services to the Second Applicant who is 08 months pregnant.	None	09/04/2020	Matter withdrawn by the Applicants	Notice of withdrawal was received on 07/04/2020 and the file has now been closed.	None

4	20/04/2020	Khosa Mphephu & Others	Constitutional Court and High Court	21521/20	Seeking an order to interdict members of SANDF from abusing / violating the rights of members of the public.	Yes	05-06 May 2020	Matter finalised.	The matter was dismissed at the Constitutional Court and they then referred the matter to the Gauteng High Court. Argument has been advanced and Judgement was delivered on 15 May 2020 where the Respondents were ordered to place members who were at the address of the deceased on suspension. It was further ordered that guidelines and code of conduct be developed and published on various media platforms. Further that internal reports befiled with the Judge's Secretary on or before 04 June 2020. The SANDF has since complied with the court order and the matter is now finalised. We will only await a civil claim should the family decide to sue the SANDF and the matter would further be managed from there.	Adv Maenentze SC and Adv M. Mojapelo.
5	21/05/2020	C. Chuma and Others	Pta High Court	22747/20	An urgent application to allow the applicants to be allowed to do their recycling work without running a risk of being arrested and to be provided with PPEs by governement.	Yes	28/05/2020	R0.00	Application struck off the roll due to lack of urgency.	Adv H. Mpshe

6	27/05/2020	T. Sefatsa	N/A	N/A	A letter of demand received from SAHRC. They alleged that the complainant has been assaulted by the military personnel. They also claim damages in an amount of R1,600.000.00	N/A	N/A	Matter pending and we await summons.	Matter pending.	N/A
7	24/06/2020	M.J. Mosholiba	Fouriesburg Magistrate's Court	63 / 2020	Summons served where it is alleged that the Plaintiff was unlawfully arrested by military personnel. Damages in the amount of R100 000-00 are being claimed. State Attorney has been instructed to assist us and defend the matter.	Yes	Has not been set down yet	Matter Pending	Matter pending.	None
8	24/06/2020	Z.Dibetle	Jhb High Court	12150/2020	The Plaintiff alleges that he was assaulted by Members of SAPS, Metro Police and SANDF in Soweto and is therefore claiming damages to the amount of R800 000-00 . State Attorney has been instructed to assist us and defend the matter.	Yes	Has not been set down yet	Matter pending	Matter pending	None
9	24/06/2020	P.G. Masindi	Jhb High Court	12148/2020	The Plaintiff alleges that he was assaulted by Members of SAPS, Metro Police and SANDF in Soweto and is therefore claiming damages to the amount of R800 000-00 . State Attorney has been instructed to assist us and defend the matter.	Yes	Has not been set down yet	Matter pending	Matter pending	None
10	25/06/2020	H. Gxuluwe	Jhb High Court	12149/2020	The Plaintiff alleges that he was assaulted by Members of SAPS, Metro Police and SANDF in Soweto and is therefore claiming damages to the amount of R800 000-00 . State Attorney has been instructed to assist us and defend the matter.	Yes	Has not been set down yet	Matter pending	Matter pending	None

11	13/07/2020	Minister of Defence	N/A	N/A	The State Attorney has been instructed to claim damages against Mabasa Trading and others for delivering Patrol Ration Packs that have expired. The amount to be claimed on behalf of SANDF is R28 749 006.00 . This was discovered during lockdown patrols.	N/A	N/A	Matter pending	Summons have been issued and served upon the affected companies. They have also filed their notices of intention to defend.	Adv Janse van Rensburg and Adv M. Rasekgala
12	11/08/2020	T.M. Mathunyane	N/A	N/A	Letter of Demand for unlawful assault at Motetema, Limpopo. The amount being claimed is R300 000.00 .	N/A	N/A	Matter Pending	Matter Pending	None
13	11/08/20	C.M. Moganedi	R0.00	N/A	Letter of Demand for unlawful assault at Motetema, Limpopo. The amount being claimed is R300 000.00 .	N/A	N/A	Matter Pending	Matter Pending	None
14	28/09/2020	Ms N.L. Mathagu and Ms S.N. Mukulumedzi	N/A	N/A	Letter of Demand for their unlawful harrasment and arrest at 26 Avenue Villieria, Old Commando Building, Pretoria. The amount being claimed is R1 044,204.00 .	N/A	N/A	Matter Pending	Matter Pending	None
15	29/10/20	Khosa and others	North Gauteng Hig Court	48636/20	Received summons where the plaintiffs are claiming damages for emotional shock, medical costs, loss of support and constitutional damages. Amount claimed is R72 079 600.00 .	yes	N/A	Matter still pending and negotiation / settlement proposal is underway.	Matter still pending and negotiation / settlement proposal is underway.	Adv M. Mojapelo
16	11/08/2020	Mathunyane T.M.	N/A	N/A	Letter of demand against members of SANDF and SAPS for unlawful assault in Motetema Limpopo. The plaintiff claims an amount of R300 000.00	N/A	N/A	N/A	N/A	N/A
17	05/10/2020	Mareme N.G.	N/A	N/A	Letter of demand against members of SANDF and SAPS for unlawful assault in Motetema Limpopo. The plaintiff claims an amount of R300 000.00	N/A	N/A	Matter pending	Matter still pending.	None

18	05/10/2020	Ntlabathi	North Gauteng High Court	65380/2020	Rfn Ndobeni shot and killed Rfn Ntlabathi whilst they were deployed in Kimberley for Ops Corona. The family is claiming an amount of R50 000 000.00	Exception filed 30/03/2021	N/A	Plaintiff filed a Notice of Bar and we raised an exception due to vague and embarrassing particular of claims	WC.L forms were emailed to the Plaintiff's Attorneys in order to pursue the matter ito Military Pension's Act.	
19	05/10/2020	Mabaso N.		N/A	Letter of demand against members of SANDF, SAPS	N/A	N/A	Matter pending	Matter still pending	None
20	05/10/2020	Dilebo & Others	North Gauteng High Court	5155/20	Summons served where it is alleged that the members of the SANDF shot and killed Mr Dilebo in Chochocho, Mpumalanga. The Plaintiffs are claiming damages for an amount of R145 000 000.00. State Attorney has been instructed to assist us and defend the matter.	Notice of Intention to Defend has been filed	N/A	Matter pending	Matter still pending	N/A
	Total	R20.00								