

# South African Defence Procurement: Challenges and Developments Thirty Years after Democracy

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## Abstract

Research on South African public procurement is common, but defence procurement has received limited attention so far, despite its significant financial and operational impact. This is concerning considering the substantial discretion granted to defence-contracting authorities, and the ongoing issues of fraud, corruption, and tender irregularities within the Department of Defence and the South African National Defence Force. Given the constitutional requirement for public procurement to be fair, transparent, and cost-effective, there is a need for increased focus on the regulation of defence procurement. Accordingly, this article distinguishes between “acquisition” and “procurement” as the two forms of defence procurement in South Africa; identifies key challenges, such as the continued reduction in the defence budget by government; cost containment, project delays, and corruption; and reflects on the effect of the new Public Procurement Act (No. 28 of 2024). The article also offers recommendations for addressing these challenges and improving the defence procurement system, thus ensuring adherence to fairness, transparency, and efficiency. The research findings emphasised the importance of effective policy implementation to combat fraud and corruption, improve capacity, and align procurement practices with legal requirements; thus, enhancing the overall effectiveness of the South African defence procurement system.

**Keywords:** Defence Procurement, Department of Defence, South African National Defence Force, Procurement Challenges, Defence Budget, Public Finance Management Act (No. 1 of 1999), Public Procurement Act (No. 28 of 2024).

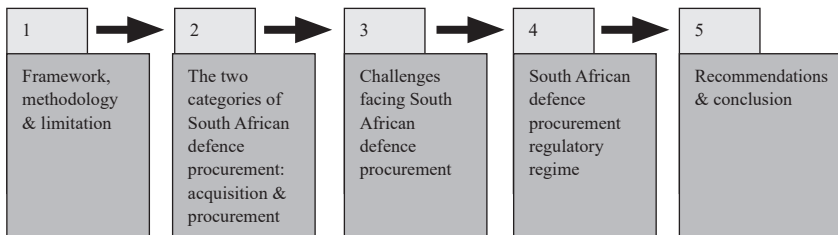
## Introduction

South African (SA) public procurement is the subject of regular and robust research.<sup>1</sup> Compared to this, SA defence procurement, however, has not received the same level of attention.<sup>2</sup> This is rather concerning, given that defence-contracting authorities generally have a ‘wider than usual margin of discretion’<sup>3</sup> than their civil public procurement counterparts, and defence spending comprises extremely large amounts of money.<sup>4</sup> The defence environment is also known for its secrecy,<sup>5</sup> and the Department of Defence (DoD) and the South African National Defence Force (SANDF) have been plagued by tender irregularities and allegations of corruption since its inception.<sup>6</sup> Finally, the constitutional imperative that public procurement be done in accordance with a system that is ‘fair, equitable, transparent, competitive and cost-effective’<sup>7</sup> requires public procurement practitioners and, especially those in academia, to increase their focus on SA defence

procurement regulation and policy.

Considering the above, and given that more than 30 years have passed since the creation of the SANDF,<sup>8</sup> as well as the introduction of the new Public Procurement Act (PPA) (No. 28 of 2024), now is the opportune time to take a close look at SA defence procurement, and in particular, the challenges that the DoD and SANDF continue to face within this environment. This research therefore built on my previous research,<sup>9</sup> and aimed to contribute to filling the gap that exists regarding research on defence procurement regulation and policy in South Africa.

Accordingly, the first part of this article briefly comments on the research framework and methodology adopted to develop the research presented in this article, and on the limitations of the research. The second part of the article explains the difference between the two categories of SA defence procurement. In the third part, several challenges within the SA defence procurement environment are identified and discussed. The penultimate part considers the influence of the regulatory regime in South Africa on defence procurement, with a specific focus on the new PPA. The article concludes with several recommendations for addressing some of the identified challenges. Important considerations taking into account the regulatory changes introduced by the PPA are highlighted. This evaluation is summarised in the schematic diagram below for ease of reference.



*Figure 1: Schematic diagram for reference*

## **Normative Framework, Research Methodology, and Limitations**

The normative framework for the current research may be found in the principle of legality (or rule of law),<sup>10</sup> the Constitution of the Republic of South Africa, 1996 (the Constitution), the statutes directly applicable to SA public procurement, as well as the broader idea of regulatory theory.<sup>11</sup> Accordingly, public procurement sits within the normative framework of law, which differentiates public procurement from other areas. Specifically, section 217 of the Constitution is applicable, which specifies that the procurement of goods, services and works required by the state to perform its functions is rooted in constitutionalism.<sup>12</sup> This is the foundational framework within which the current research was compiled, and against which the article must be considered.

Furthermore, the analysis reported on in this article followed the doctrinal legal research methodology. This method tends to dominate legal research design,<sup>13</sup> and ‘encompasses legal problem or issue identification and formulation, finding and analysing the relevant legal materials, and the production of a research product in the form of briefs, memoranda, court pleadings, judgments, legislative Bills, [and] academic texts’.<sup>14</sup> Ultimately, this method is ‘tacit within the [legal] discipline’.<sup>15</sup>

Finally, it is necessary to highlight the limitations of the study on which this article reports. Given the limited research within the field of SA defence procurement regulation and policy, the study did not entail a comparative analysis with other jurisdictions. Rather, it focused solely on the SA context and the challenges experienced in the defence procurement environment to contribute to scholarship in the area. Additionally, the challenges posed by national security, secrecy, and transparency are also not discussed, as there was insufficient scope within this study to do so.

### Acquisition versus Procurement

According to Uttley,<sup>16</sup> the armed forces of a state normally procure two categories of items, namely:

- Major weapons systems that are ‘purchased infrequently in small quantities at high unit costs’;<sup>17</sup> and
- ‘[S]tandard’ civilian products that are ‘routinely purchased in large quantities at low unit costs.’<sup>18</sup>

South Africa is no exception, and distinguishes between category 1 and category 2 matériel.<sup>19</sup>

Category 1 matériel comprises ‘major weapons systems’ or so-called ‘hard defence goods’,<sup>20</sup> and is defined as:

[M]aterial, components, product sub-systems and products that are *configured into a military system* that forms part of a defined military capability. A military system is designed and developed directly to military requirements and acquisition standards; contracted upon military authority; managed on a through life concept [*sic*] by a military authority for military use/purposes, and depends upon militarised logistic support that ensures its intended systems integrity.<sup>21</sup> [author’s italics]

In relation to category 1, the terms “military systems” and “armaments” cannot be separated. **Armaments** are ‘equipment designed, modified, adapted or intended to equip security forces, or maintain and support military or security operations’.<sup>22</sup> Armaments are part and parcel of the military systems, and category 1 matériel is acquired through the process of **acquisition**.<sup>23</sup> The funds for acquisition are budgeted for on the Financial Management System (FMS) of the DoD,<sup>24</sup> which is supplied by the Special Defence Account (SDA).<sup>25</sup> The operating funds however come from the General Defence Account (GDA), also budgeted for on the FMS.<sup>26</sup>

Category 2 matériel is defined as:

*[C]ommercial equipment, components, parts and supplies available on the open market [...]. Category 2 Matériel is items and systems which are designed and developed primarily for the commercial market and is not configured to form part of a military system. These items may be used, operated and supported without any adaptation in the military environment.<sup>27</sup> [author's italics]*

Commercial goods and services are obtained through the **procurement** process, by means of GDA expenditure, as budgeted for on the FMS.<sup>28</sup>

The effect of the above is that “defence procurement” is an umbrella term denoting two distinct processes. I, therefore, define SA defence procurement as follows:

It is an overarching term denoting two distinct procedures within the context of the South African military. It can refer to either the acquisition of category 1 matériel (primarily armaments and military systems) or the procurement of category 2 matériel (commercial goods and/or services).<sup>29</sup>

The challenges identified and discussed in the next section can be found in either the acquisition or procurement environment, or in both. Accordingly, it is important that readers understand the challenges taking into account the background and explanation provided here.

## **Prevailing Challenges within the South African Landscape**

### ***General***

Globally, at least six widely encountered challenges or trends can be identified across the defence procurement system of more than one state.<sup>30</sup> Of these six challenges or trends, at least four also appear within the SA context,<sup>31</sup> in conjunction with other challenges. The discussion below therefore aims to highlight and discuss briefly the key challenges or trends that exist (or continue to reappear) within the SA landscape.

### ***Budget***

The defence budget is a vital component of defence procurement, seeing that it is the defence budget, which provides the funds for the acquisition and procurement of goods and services.<sup>32</sup> With an annual allocation of less than 1 per cent of the gross domestic product (GDP), the defence budget has been cut to the bare bone over the last decade,<sup>33</sup> despite the globally accepted norm that at least 2 per cent of the GDP should be allocated to defence spending.<sup>34</sup> In the light of the above, the Minister of Defence and Military Veterans has for a number of years complained that the DoD lacks the resources necessary to fulfil its mandate, a statement repeated by the Minister in more than one Annual Report.<sup>35</sup> It is also repeated by the Secretary for Defence and the Chief of the South African National Defence Force (CSANDF) in the DoD Strategic Plan 2020–2025.<sup>36</sup> The Minister specifically notes in the 2019–2020 Annual Report that the lack of funding has a direct impact on the acquisition projects of the DoD:

We are however now in a situation where the Defence budget has been cut beyond the bone – the Special Defence Account [...], is nearing its demise. This means that major acquisition projects for the landward forces and maritime forces are under serious threat from non-completion.<sup>37</sup>

In the 2021–2022 Annual Report, it is noted that:

The downward trend over multiple years in the Defence budget allocation has not yet been abated. This [...] will have a detrimental effect on the Department of Defence, and [...] the South African National Defence Force, as well as the Defence industry.<sup>38</sup>

Notwithstanding the above, several experts suggest that changes in the economy cannot be ignored, and that the DoD must bear some responsibility for the management and allocation of the defence budget.

First, Abel Esterhuysen, John Stupart and Clive Coetzee write that the DoD must reconcile itself with the fact that it will not receive more funds.<sup>39</sup> According to Esterhuysen, the 2015 *Defence Review* was drafted in 2014 when the SA ‘economic outlook was sustainably better’.<sup>40</sup> Moreover, the Review itself was ‘deliberately drafted without considering the costs and threats facing the country’.<sup>41</sup>

Second, Esterhuysen argues that placing the blame for the DoD (and SANDF) problems on a lack of funds implies taking the ‘easy way out’.<sup>42</sup> The DoD is not likely to get an increase in funds. In this regard, the Minister of Finance has responded in 2021 to recommendations by the Portfolio Committee on Defence and Military Veterans (PCDMV) for additional funding for:

- Border security;
- The Special Defence Account; and
- The mid-life upgrade of South African Navy vessels by stating, ‘there is little scope to provide additional funding at this time and fiscal constraints require departments to identify opportunities for reprioritisation’.<sup>43</sup>

Third, Esterhuysen argues that the division of the budget is incorrect, because, as a guideline, defence forces accept that, irrespective of the size of their budget, it should be divided into more or less equal portions between personnel, operational, and capital expenditure.<sup>44</sup> At the time, however, almost 80 per cent of the SA defence budget went towards personnel expenses, with limited money available for capital projects.<sup>45</sup> While this percentage has decreased since, compensation of employees (CoE) was estimated at 64 per cent of the budget for the 2023–2024 financial year.<sup>46</sup> In the same article, Esterhuysen suggests that the SANDF should look to its failure to implement an ‘up-or-out personnel management system’.<sup>47</sup> In this regard, in a typical hierarchical personnel system, most uniformed personnel should have left service by the age of 30. Yet, in 2025, South Africa had ‘69 392 “active” personnel in the national defence force, with an average age of 39’.<sup>48</sup>

Fourth, Lindy Heineken highlights the negative consequences of rank inflation.<sup>49</sup> This refers ‘to having too many people in the senior ranks disproportionate to the numbers in the lower ranks. *This makes the cost of the top band personnel excessive.*’<sup>50</sup> Similarly, Darren Olivier noted in 2025 that information about the SA military personnel ‘exposes a critical structural imbalance in the SANDF, with an inverted junior/senior officer structure, poor NCO [non-commissioned officer] ratios, and far too few junior enlisted compared to other forces’.<sup>51</sup>

Finally, the SANDF has been criticised for failing to put forward innovative strategies to maintain and operate the armed forces within the current budget. According to a PCDMV statement, ‘despite previous commitments the committee noted the repeated failure to deliver a fresh, effective strategy to reverse the decline’.<sup>52</sup>

Accordingly, it would seem as if personnel are getting too old, the size of the personnel complement is too large, too much is spent on CoE, and there is an accountability failure on the part of the DoD and SANDF. Ultimately, several budget issues are personnel-related.

It is, however, a fact that a further reduction in the defence budget will have severe and negative consequences for the DoD. Janse van Rensburg noted in 2021 that the decline of the budget ‘is really problematic in the maintenance of a professional military force’.<sup>53</sup> In this regard, the Minister of Defence and the DoD are right to emphasise the strain placed on performance through the decline of the budget. In 2022, former shadow Minister for Defence, Kobus Marais, noted that the budget should increase over the Medium-Term Expenditure Framework (MTEF) to 1 per cent of the GDP to help address the decline of the SANDF.<sup>54</sup> In 2024, Moses Khanyile, the Director for Centre for Military Studies, provided a presentation to the PCDMV titled “Addressing Contemporary Challenges in the SANDF”, which ultimately required the committee to ask:

- Whether the SANDF is fit for purpose in relation to current operations;
- What the actual budgetary requirement for the SANDF is; and
- Whether there is a risk of total collapse of the SANDF.<sup>55</sup>

In addition, Khanyile emphasised that 2 per cent of the GDP is a national norm for a sustainable defence force.<sup>56</sup> Finally, in 2025, James Kerr analysed the reasonability of an increase in SA defence spending to at least 1,5 per cent of the GDP, and the potential stabilising effects this may hold for SA defence.<sup>57</sup>

Accordingly, the reduction in the SA defence budget remains the biggest challenge in terms of defence matters generally, and in terms of defence procurement specifically.

### ***Cost-Containment and Project Delays***

Adding to the budget woes of the department is failure by the DoD to contain the costs associated with procurement and acquisition. SANDF procurement staff at unit level often complain about the length of procurement processes and constant delays.<sup>58</sup> Two key examples illustrate this point.

First is Project Hoefyster that was supposed to deliver 264 Badger vehicles<sup>59</sup> to partially replace the aging Ratel fleet.<sup>60</sup> The project came into effect in June 2007 with delivery expected in May 2012.<sup>61</sup> This was then supposed to be followed ‘by phase two – industrialisation and production of 238 Badgers – with a completion date of November 2023’.<sup>62</sup> By May 2020, the project was 45 months behind schedule,<sup>63</sup> and by 2022, no vehicles had been delivered to the South African Army.<sup>64</sup> By 2022, a total of R7,6 billion had been spent on the project; ‘R1,5 billion spent on the design and development phase, and R5 billion on the industrialisation phase’.<sup>65</sup> To date, the Armaments Corporation of South Africa SOC Ltd (Armscor) (the acquisition agent of the DoD) values the project at approximately R16 billion. Given these challenges, Armscor at some point recommended cancellation of the project.

In August 2022, the PCDMV was however informed that Armscor and Denel had in fact reached an agreement on the way forward,<sup>66</sup> and in February 2024, the committee was informed that, based on the decision taken by the Project Hoefyster control board in April 2023, the contracts for both phase one and phase two were to be amended.<sup>67</sup> In November 2024, the Chief of the South African Army however announced that:

Where we are standing with all the role players Hoefyster has been deferred in the simple terminology [...] it has been paused, not stopped.<sup>68</sup>

The Project Hoefyster woes thus continue.

Second, Project Hotel was supposed to provide, inter alia, for the construction of a hydrographic survey vessel. Despite the contract being signed in 2017, by May 2020, it was 11 months behind its scheduled completion date of November 2022.<sup>69</sup> While Armscor updated the completion date in February 2022 to April 2023,<sup>70</sup> the date was once again extended to the ‘end of 2023, or early 2024’ in October 2022.<sup>71</sup> This did not materialise and by May 2024, the overall project progress was at ‘75% of completeness’, with the vessel itself only ‘55% complete’.<sup>72</sup>

Accordingly, South Africa, like other states, appears to experience the same trends in terms of cost containment and delays.<sup>73</sup>

### ***Tender Irregularities, Fraud, and Corruption***

From the Strategic Defence Procurement Package (the so-called “Arms Deal”) in 1999<sup>74</sup> through to the procurement of the immune booster, Interferon, from the Republic of Cuba in 2020,<sup>75</sup> the financial state of the DoD is worsened by the continued prevalence of tender irregularities,<sup>76</sup> fraud, and corruption. The SA media regularly report on this challenge,<sup>77</sup> and in May 2022, the Provost Marshal General, Rear Admiral Mokgadi Maphoto, revealed defence corruption and fraud (not just relating to defence procurement) amounting to R2,243 billion in total.<sup>78</sup> Furthermore, the DoD Annual Report for 2023–2024 indicates:

[Irregular expenditure] to the amount of R338 million was incurred during the year under review [with, among others] [...] R171 million [...] incurred when the Department procured Goods and Services without following the South African Procurement Legislation [and] R46 million [...] incurred when the

Department entered into a lease agreement without following a transparent procurement process.<sup>79</sup>

It is difficult to comprehend the inability of the department to address this challenge or to explain if one considers the points below.

First, the DoD acquisition and procurement policies, in conjunction with the Armscor acquisition policies, list the clear step-by-step processes that must be followed when contracting for goods, services and works.<sup>80</sup>

Second, the majority of instances of irregular expenditure are within the ‘uniformed officers’ Department’,<sup>81</sup> and not the Defence Secretariat.<sup>82</sup> This means within the SANDF, where uniformed personnel are subject to strict military discipline<sup>83</sup> that requires lawful orders to be obeyed and rules to be followed.<sup>84</sup>

Finally, the DoD issues a Department of Defence Instruction (DoDI) with each of its internal policies that govern procurement of commercial goods and services and the acquisition of armaments. These DoDIs contain important principles regarding defence procurement integrity, conflicts of interest, and accountability. More importantly, these DoDIs comprise written legal military orders under section 19(5)<sup>85</sup> of the Military Discipline Code (MDC)<sup>86</sup> with which uniformed personnel involved within this specific environment must comply.<sup>87</sup> It is, therefore, unclear why financial misconduct relating to procurement and acquisition occurs, or why there seems to be a culture of disregard for proper procurement procedures and rules.

### ***Training, Experience, and Capacity***

The DoD also appears to have a shortage of skills, affecting the ability of the department to deal efficiently with defence procurement. In a briefing to the PCDMV on 26 October 2016, the Chief of Logistics (C Log), Lt Gen Morris Moadira, said that the biggest challenge in the DoD was a skills gap, often resulting in irregular expenditure.<sup>88</sup> In this regard, the compliance unit of the DoD Internal Audit Division and Supply Chain Management (SCM) compliance unit reported on 8 June 2022 that a number of procurement units that had a standing mandate to procure, lacked the basic SCM training to do so.<sup>89</sup> Further, some of the units operated without bid committees,<sup>90</sup> had inadequate ‘tools of trade’,<sup>91</sup> operated without proper delegation,<sup>92</sup> and duties were not segregated properly between officials.<sup>93</sup>

While this is in line with global trends,<sup>94</sup> it also highlights that the DoD is not complying with the Public Finance Management Act (PFMA) (No. 1 of 1999): Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities 2005 (PFMA NT Regulations 2005).<sup>95</sup> Regulation 16A5.1 specifically requires competent and trained staff in line with the ‘requirements of the Framework for Minimum Training and Deployment issued by the National Treasury’. Similarly, functioning without bid committees is in violation of Regulation 16A6.2.

### ***Payment of Invoices within 30 Days***

Regulation 8.2.3 of the PFMA NT Regulations 2005 provides:

Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgement.

In 2011, National Treasury issued National Treasury Instruction No. 34 of 2011,<sup>96</sup> which states that, with effect from 1 February 2012, all national departments must –

[P]rovide the National Treasury each month with exception reports on the number of invoices and the value thereof that have not been paid within thirty (30) days from receipt together with reasons for not making the payments timeously.<sup>97</sup>

Finally, paragraph 3.10 of the National Treasury Instruction Note on Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management<sup>98</sup> states that the payment of invoices outside the prescribed 30-day period is viewed as a violation of Regulation 8.2.3, and may be reported by the Auditor-General of South Africa (AGSA) as part of their audit function. National Treasury also releases an annual report on compliance with the payment of invoices.<sup>99</sup>

The last decade has seen the DoD report several challenges in this regard. In September 2013, the Secretary for Defence, Dr Sam Gulube, informed the Standing Committee on Appropriations that the DoD had made the payment of invoices within 30 days a priority,<sup>100</sup> and that he had ‘made himself available for contact directly should suppliers be too afraid to raise the payment issue for fear of victimisation’.<sup>101</sup> In October 2016, the C Log commented, that ‘the payment of suppliers within 30 days’ remained a challenge, and that so-called “payment forums” had been established.<sup>102</sup> In June 2021, the PCDMV once again heard that ‘the main challenge faced by the Department was the payment of invoices within 30 days’.<sup>103</sup> Finally, for the financial year 2023–2024, National Treasury indicated:

The Department of Defence reported the highest number of invoices paid after 30 days which amounted to 84 934 invoices or 78% of the total invoices paid after 30 days by national departments in the 2023/24 financial year.<sup>104</sup>

This amounted to R1,407 billion.

These facts illustrate that the DoD is in violation of Regulation 8.2.3, and appears to have made little progress in resolving the matter.<sup>105</sup> If urgent action is not taken, the DoD appears likely to persist in its failure to comply with the relevant financial prescripts.

## **Regulation**

### ***A Fragmented System***

South African defence procurement does not have its own regulatory regime. In the words of Phoebe Bolton, '[s]ubject to a few exceptions, the same legislation and rules apply to civil goods and services, dual-use or grey-area goods and services; and hard-defence goods and services.'<sup>106</sup> The DoD must, therefore, comply with the ordinary public procurement regulatory regime, several internal DoD policies, as well as legislation, such as:

- the Armaments Corporation of South Africa, Limited Act (No. 51 of 2003);
- the Defence Act (No. 42 of 2002);
- the Defence Special Account Act (No. 6 of 1974); and
- the National Conventional Arms Control Act (No. 41 of 2002).

Even if the PPA therefore reduces the fragmentation of the ordinary (civil) public procurement regulatory regime, defence (military) procurement regulation will always maintain a certain level of fragmentation considering the various statutes and policies that apply within this environment.

In addition, the current regulatory regime presents various challenges for the DoD, and the future is uncertain in light of the introduction of the PPA.<sup>107</sup> This is considered below.

### ***Department of Defence Internal Regulation***

Apart from the broad legislative mandate that applies, defence procurement is also regulated by numerous internal policies, as shown above.

**Category 1 matériel acquisition** is subject to:

- The Ministerial Directive on Acquisition of Armaments in the Department of Defence;
- The Policy on the Acquisition of Armaments in the Department of Defence (a DoDI); and
- The Department of Defence Handbook for the Acquisition of Armaments in the Department of Defence and in Armscor (DAH B 1000).<sup>108</sup>

**Category 2 matériel procurement** is subject to:

- The Policy on Procurement and Sales in respect of Commercial Goods and Services (a DoDI);
- The Joint-Defence Publication on the Process and Procedures for Procurement and Sales in respect of Commercial Goods and Services (PPCGS); and
- The Functional Planning and Budgeting Guidelines of the Matériel Governance Risk and Compliance Directorate.<sup>109</sup>

While the DoD has managed to update the internal policies and procedures applicable to category 1 acquisition continuously, the same cannot be said of category 2 procurement.<sup>110</sup> This introduces the first challenge presented by regulation.

### ***Challenges under the Current Regulatory Regime***

The first challenge is that the DoD finds it difficult to keep up with the changing pace of the current regulatory regime. Since the commencement of the Preferential Procurement Policy Framework Act (No. 5 of 2000) on 3 February 2000, there have been four separate sets of regulations, namely the 2001,<sup>111</sup> 2011,<sup>112</sup> 2017,<sup>113</sup> and 2022 Preferential Procurement Regulations.<sup>114</sup> This challenge is especially evident within the context of category 2 matériel procurement.

By August 2023, the category 2 matériel procurement DoDI and PPCGS had not been officially updated since 1 August 2004 and still “officially” referred to the 2001 Regulations.<sup>115</sup> Other policies that apply within this area, including the Functional Planning and Budgeting Guidelines of the Matériel Governance Risk and Compliance Directorate,<sup>116</sup> were nevertheless updated over time.<sup>117</sup>

To accommodate the changes introduced to defence procurement as a whole by the 2022 regulations, the DoD introduced the DoD Interim Policy on Preferential Procurement in the DoD in January 2023.<sup>118</sup> This policy was implemented by means of DoD Implementation Instruction: 03/2023 Process and Procedures for Preferential Procurement in the DoD dated 23 January 2023, and SANDF (C Log) Implementation Instruction: Implementation of DoD Implementation Instruction No. 03/2023: Process and Procedures for Preferential Procurement in the DoD dated 26 January 2023.<sup>119</sup> The latter instruction was issued by the C Log specifically in relation to category 2 matériel procurement. This leads to the next challenge.

The second challenge is that the DoD wholly deviates from Regulation 16A4.1 of the PFMA NT Regulations 2005, which provide that:

The accounting officer or accounting authority must establish a separate supply chain management unit *within the office of that institution's chief financial officer*, to implement the institution's supply chain management system.  
 [author's italics]

Considering this provision, the Secretary for Defence must establish the SCM unit (category 2 matériel procurement) within the office of DoD Chief Financial Officer (CFO), who is then supposed to report to the Secretary for Defence as Accounting Officer (AO). Contrary to other departments of state, the DoD CFO however fulfils no role within the SCM function.<sup>120</sup> Rather, the C Log, who is responsible for logistics, assumes overall responsibility for the SCM function.<sup>121</sup> While placement of SCM under the C Log appears to be accepted military practice,<sup>122</sup> it poses a challenge from a regulatory and financial point of view, as there is no specific statutory provision that recognises this authority of the C Log. The AGSA and the PCDMV have therefore criticised the circumvention of Regulation 16A4.1.<sup>123</sup>

## **Developments (and Challenges) under the Public Procurement Act**

### ***Categories of Procurement***

The Public Procurement Act (PPA) (No. 28 of 2024) defines procurement in terms of different types of procurement. According to section 1 of the PPA, “procurement” means:

- (a) ‘the acquisition of goods or services for construction, repair or maintenance of infrastructure or capital assets;
- (b) the acquisition of goods or services, other than goods or services referred to in paragraph (a);
- (c) the acquisition of infrastructure or capital assets; and
- (d) the letting or disposal of assets.’

Accordingly, the PPA recognises three basic types of procurement, namely goods and services for consumption; infrastructure and capital assets and goods or services related to infrastructure and capital assets; and the letting and disposal of assets.<sup>124</sup>

It should be noted that the SA defence procurement system includes all three of the above-mentioned types of procurement. Through category 1 acquisition and category 2 procurement, the system allows the DoD – and particularly the SANDF – to acquire everything from food, clothing and buildings (sometimes also leased through the Department of Public Works and Infrastructure), to specific military capabilities (and their maintenance) in order to be an operationally deployable military force.<sup>125</sup>

Furthermore, section 8 of the PPA requires a procuring institution to conduct procurement in accordance with the Act and to develop and implement an effective and efficient procurement system in accordance with the provisions of a prescribed framework.<sup>126</sup> Ronald Watermeyer, Jonathan Klaaren, and Samuel Laryea, however, claim, ‘[the Act] is weak on guiding principles for the procurement framework, leaving much of the shape and nature of the procurement framework to be developed through regulations and instructions, and not through statute’.<sup>127</sup> The authors also argue, ‘[d]ifferentiated regulations according to type of procurement are very much on the table’, and suggest that section 63(7)(a) ‘permits the Minister to make regulations for different categories of procurement’.<sup>128</sup> This poses an important question for the current researcher, namely should the Minister of Finance consult with the Minister of Defence and Military Veterans, the Secretary for Defence and CSANDF, as well as practitioners and academic scholars, and use this power to draft and implement a set of regulations unique to the military environment?

In plain terms, should there be a specific set of regulations that cater for the uniqueness and multifaceted nature of defence procurement, and which recognises it as an additional type of procurement?

It was beyond the scope of the current study to provide an answer to this question; however, it is an important one to consider in future research.

### ***The Role of the Chief of Logistics***

Section 1 of the PPA holds that AO means ‘in relation to a department ... the accounting officer as defined in section 1 of the Public Finance Management Act’. Section 1 of the PFMA refers to section 36(2)(a) of the PFMA, which states, ‘[the] head of department must be the accounting officer for the department.’ Within the DoD, this means that the Secretary for Defence serves as AO. Under the new PPA, the Minister of Finance must prescribe a framework (see section 24(1)) within which a procuring institution, such as the DoD, must develop and implement a procurement system (section 8(1)(b)), and the Secretary assumes overall responsibility for making decisions on behalf of the DoD under section 7 of the PPA.

Importantly, section 8(1)(b) read with section 24(3)(b) of the PPA prescribes that the procurement system must provide for ‘institutional and governance arrangements’. This formulation is broad enough for one to argue that the PPA no longer requires the SCM function to fall under the purview of the CFO. Indeed, the new PPA would allow for the Secretary for Defence to continue delegating the SCM function to the C Log without it presenting the same regulatory challenges as before.

### ***Definition of National Security***

The inclusion of national security in the PPA is a new development in SA public procurement regulation. While not new to the defence environment, it is a term with which ordinary public procurement practitioners per se would not be familiar.<sup>129</sup> This begs the question, where does the definition in the PPA come from? Is it a definition that Treasury drafted on its own, or was inspiration drawn from other legislation? If it is the latter, why is there no cross-reference?

The definition of national security appears to be drawn from, among others, the National Strategic Intelligence Act (NSIA) (No. 39 of 1994). The only difference is the layout of the definition in the two Acts. The failure to include a cross-reference could nonetheless lead to interpretation errors, as it is the first time that this concept appears in procurement legislation.<sup>130</sup> A cross-reference to the NSIA, for example, could have assisted in giving procurement practitioners both broader context and meaning in terms of the concept and its implications going forward.

### ***Definition of Military Veteran***

Section 1 of the PPA holds that “military veteran” ‘means any South African citizen who rendered military service to any of the non-statutory military organisations which were involved in South Africa’s Liberation War from 1960 to 1994’. Again, the question can be asked whether Treasury on its own decided what constitutes a military veteran for purposes of preferential procurement, or whether the definition comes from other legislation.

In this regard, Treasury appears to have drawn the definition from section 1 of the Military Veterans Act (No. 18 of 2011), which defines a military veteran as:

[A]ny South African citizen who –

- (a) rendered military service to any of the military organisations, statutory and non-statutory, which were involved on all sides of South Africa’s Liberation War from 1960 to 1994;
- (b) served in the Union Defence Force before 1961; or
- (c) became a member of the new South African National Defence Force after 1994, and has completed his or her military training and no longer performs military service, and has not been dishonourably discharged from that military organization or force [...].

A further definition can also be found in clause 4.6 of the Broad-Based Black Economic Empowerment Defence Sector Code of Good Practice in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act (No. 53 of 2003) as amended by Act 46 of 2013 (Defence Sector Code), which defines “Black Military Veterans” as:

[A]ny Black South African citizen who:

- 4.6.1 rendered military service to any of the Non-Statutory Military Organizations, which were involved in South Africa’s Liberation War from 1960 to 1994;
- 4.6.2 served in the Union Defence Force before 1961;
- 4.6.3 became a member of the new South African National Defence Force after 1994; [...].

These definitions read together indicate that the PPA definition is problematic for several reasons. First, Treasury has seen it fit to recognise only part (a) of the definition in the Military Veterans Act, and to limit this to citizens who served in the non-statutory forces.<sup>131</sup> Meaning only those who served in Umkhonto we Sizwe (MK), i.e. the armed wing of the African National Congress, and the Azanian People’s Liberation Army (APLA), the paramilitary wing of the Pan Africanist Congress (PAC), is to be recognised for preferential procurement purposes. Second, those soldiers who served in the old South African Defence Force as well as the so-called TBVC<sup>1</sup> statutory forces are excluded from preferential procurement.<sup>132</sup> Third, soldiers who both joined and retired from the SANDF after 1994, are excluded as well. Finally, the comprehensive definition of “Black Military Veterans” in the Defence Sector Code appears to have been ignored entirely.

The differences between the PPA and other legal instruments are irreconcilable, and likely to cause obstacles for fair and lawful administration of the PPA going forward.

Notwithstanding the above, the recognition of members of the non-statutory forces as military veterans also comes with the well-known challenge of determining whether the person served in the non-statutory forces. In 2015, Ian van der Waag noted, ‘[t]he non-statutory forces did not maintain detailed personnel records and the use of noms de guerre

<sup>1</sup> “TBVC” refers to Transkei, Bophuthatswana, Venda, and Ciskei, and is a term used to refer to the armed forces of four former homelands or “Bantustans” under the SA apartheid system.

was common practice.<sup>133</sup> Similarly, in relation to the Department of Military Veterans (DMV) database, Heinecken noted in 2019, '[t]he verification of all military veterans on the database is an ongoing concern. [...] The integrity of the database is also an ongoing concern as no electronic platform exists, which increases the potential for the abuse of the system.'<sup>134</sup> In this regard, the 2022–2023 Annual Report of the DMV states, '595 files of Non-Statutory Forces (NSF) members were processed by the National Military Veterans Verification Panel. The set annual target was 1 440 and therefore there is a deficit of 845 unprocessed files during the 2022/23 financial year.'<sup>135</sup>

It is, therefore, safe to say that it is going to be difficult to determine whether a person claiming to have served in the non-statutory forces, and that they should therefore receive a tender for preferential procurement purposes, was indeed a member of the non-statutory forces.

## Recommendations

Considering the general and regulatory challenges identified above, it is necessary to consider possible remedial action to address these challenges.

Before discussing specific recommendations, it should however be mentioned that the biggest obstacle to the effective functioning of the SANDF remains the SA defence budget. Of the five principles listed in section 217(1) of the SA Constitution, the defence budget, together with its severe constraints, puts more emphasis on the need for cost-effectiveness in the defence procurement process than it does within the context of ordinary civil public procurement. Indeed, the ever-decreasing size of the defence budget raises the issue of budget pressure to ensure optimal spending.

Considering the above, the following recommendations are made. The first recommendation, which is two-folded, relates to the budget. On the one hand, note should be taken of the fact that the Minister of Defence and Military Veterans has indicated that an increase to 2 per cent of the GDP is required. This has also been emphasised by members of the PCDMV and academic scholars. While the current author will not stipulate a specific percentage, he believes that government has a clear responsibility to consider that further budget cuts and unplanned and non-budgeted items for internal deployment of the SANDF stretches the DoD beyond its means.<sup>136</sup> The DoD needs a financial injection if it is going to address the decline of the SANDF.

On the other hand, it is vital that the DoD realise that its own hands are not tied. Annual allocation of resources to defence may be beyond its control, but the division of the budget is not. Considering the need to increase financial resources, the SANDF must reduce its personnel complement and its annual expenditure on CoE.<sup>137</sup> The reduction in CoE should be rechannelled towards operational and capital expenditure. This will allow increased funding for maintenance and/or replacement of the deteriorating military capabilities of the SANDF,<sup>138</sup> especially within the context of the Air Force and the Navy.<sup>139</sup>

The second recommendation is for an external and independent audit of all SCM units.<sup>140</sup> This is necessary to address various concerns regarding the SCM training of DoD personnel, as well as the capacity of SCM units. A full-scale audit will identify both the physical and financial state of the units and indicate areas for improvement. In making this recommendation, it is necessary to note the 2021–2022 Annual Report, which states:

Although the initial plan was to audit all 73 procurement units, due to resource constraints, priority was given to key procurement units and 11 were audited by end of March 2022.<sup>141</sup>

The benefit of a full audit, nevertheless, outweighs the resource constraints. It is a once-off action that will provide a complete picture of all SCM Units. This will allow the DoD to formulate a single and consolidated strategy to address all SCM unit constraints.<sup>142</sup> This recommendation also aligns with the view of former Minister of Defence, Thandi Modise, who wrote in the 2022–2023 Annual Report:

The single most prevalent challenge relates to the Defence Procurement System. We simply cannot continue with non-compliance in the procurement of goods and services. We have agreed that any form of corrupt activity must be rooted out and pursued vigorously. *The Acting Secretary for Defence, as the Accounting Officer, has been instructed to conduct a complete and rigorous review of the whole procurement system, to identify the root causes, and to put in place a robust and high integrity procurement system.*<sup>143</sup> [author's italics]

The third recommendation is that the Secretary for Defence as AO improve consequence management within the DoD and SANDF.<sup>144</sup> While this may seem daunting due to the internal accountability arrangements by the DoD presenting certain challenges for effective consequence management,<sup>145</sup> it needs to be done as a matter of great urgency. This is recommended by Parliament, the AGSA, civil society and others.<sup>146</sup> The AO however does not need to act alone. A well-functioning system of combined assurance involving Parliament, the AGSA, the Public Protector and the Military Ombud could assist.<sup>147</sup> In this regard, it is specifically argued:

Combined assurance requires one to focus on the system itself, not on its individual elements. Procurement is after all an administrative process. In this administrative process, we are not concerned with whether an individual element complied with good governance and the applicable regulatory framework; instead, one asks whether the elements together were able to ensure a fair and impartial administrative process. The same argument should apply to oversight of defence procurement. Instead of focusing on the ability of an individual mechanism to extract full accountability, one should ask whether all the mechanisms working in unison are able to achieve the target.<sup>148</sup>

Accordingly, the Secretary for Defence, as well as Parliament, the AGSA, the Public Protector and the Military Ombud should increase collaboration and work in unison to extract full accountability from the DoD for defence procurement activities. Extracting full accountability<sup>149</sup> is 'achieved through all the different mechanisms working together, passing the baton from one to the other until the task of oversight [and consequence management] is complete'.<sup>150</sup>

The fourth recommendation seeks to assist with the task of improved consequence management. The DoD should implement a new anti-corruption policy.<sup>151</sup> This policy should directly address the continued fraud and corruption within the DoD, including within the context of defence procurement. Furthermore, the new policy must:

- Be accessible to the public on the official DoD website;<sup>152</sup>
- Be undersigned by the Minister of Defence, the Secretary for Defence, and the CSANDF;<sup>153</sup>
- Be in line with the constitutional and statutory frameworks applicable to the DoD;
- State that senior officials are required to lead by example, and that they should set the tone for anti-corruption behaviour;<sup>154</sup>
- Define the scope of the fraud and corruption it aims to eradicate;<sup>155</sup>
- State the specific accountability measures which the DoD and the SANDF have in place to prevent fraud and corruption; and
- State the consequences for those who have violated the policy and/or have been found guilty of fraud and corruption under the policy.<sup>156</sup>

If implemented, the policy will allow for a unified approach to combatting military fraud and corruption and make it possible for both public officials and citizens to know what the official stance of the DoD is on fraud and corruption within the defence context.

Finally, the introduction of the PPA requires the DoD, like all organs of state, to conduct a thorough review of its regulatory policies and procedures. The DoDIs, policies and handbooks, which govern acquisition and procurement respectively, should be brought in line with the new PPA, and the DoD must implement its own procurement policy, including on preferential procurement, as required by section 16 of the PPA.

## Conclusion

Defence procurement is a niche area of public procurement in South Africa and has for some time needed scholarly attention. The current study aimed to explore this area of the law and to shed light on the various challenges prevalent in it more than 30 years after democracy.

The DoD and the SANDF face numerous challenges, including a continued reduction in the defence budget; failure to contain costs of large projects and to complete projects on time; a lack of skills, training and capacity; continued tender irregularities; and the non-payment of invoices within the prescribed 30-day period. In this regard, while the budget appears to be the largest stumbling block, it cannot be the sole focus, as the DoD and SANDF have to accept responsibility for the failure to implement effective consequence management and curb defence-related corruption, which drains the coffers.

The introduction of the PPA, nevertheless, presents the DoD and SANDF with an opportunity to address the decline of the armed forces, especially within the context of defence procurement. The DoD must develop policies in line with the new PPA, which

allows for streamlined defence procurement practices that can be implemented effectively. In addition, the department must tend to the eradication of corruption, implement improved consequence management, and hold to account those who commit tender irregularities.

It is with the above in mind that future research in SA defence procurement regulation and policy should focus on the role of anti-corruption measures in the PPA, in conjunction with the Prevention and Combatting of Corrupt Activities Act (No. 12 of 2004). The purpose should be to test the effectiveness of these mechanisms within the defence and broader security environment. In addition, the role of military discipline, as envisioned in the Defence Act (No. 42 of 2002) and the MDC, in ensuring a disciplined force should not be overlooked either.

A well-functioning military with sufficient resources and an efficient (and corruption-free) procurement system is required to tackle the security issues of the day.

## Endnotes

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- <sup>1</sup> P Bolton, 'The Regulatory Framework for Public Procurement in South Africa', in G Quinot & S Arrowsmith (eds.), *Public Procurement Regulation in Africa* (Cape Town: Cambridge University Press, 2013), 192.
- <sup>2</sup> Bolton, 'The Regulatory Framework for Public Procurement', 192; Heydenrych, *An Analysis of Defence Procurement*, 5.
- <sup>3</sup> Anonymous, 'Defence Procurement', SIGMA, 25 September 2011, 3. <[https://www.oecd.org/en/publications/defence-procurement\\_5js4vmntfz0p-en.html](https://www.oecd.org/en/publications/defence-procurement_5js4vmntfz0p-en.html)> [Accessed on 2 March 2025].
- <sup>4</sup> The total expenditure indicated in the Department of Defence (DoD), 'Annual Report for the FY2022/2023', 2023, 26. <[https://nationalgovernment.co.za/department\\_annual/461/2023-department-of-defence-\(dod\)-annual-report.pdf](https://nationalgovernment.co.za/department_annual/461/2023-department-of-defence-(dod)-annual-report.pdf)> [Accessed on 2 March 2025] was R54,6 billion; Similarly, the Medium-Term Expenditure Estimates are R52,5 billion for 2023/2024, R51,8 billion for 2024/2025 and R53,8 billion for 2025/2026. (DoD, 'Annual Performance Plan 2024', 2024, 77–78. <<http://www.dod.mil.za/document/ReportsNav/Reports/Annual%20Performance%20Plan/DOD%20Annual%20Performance%20Plan%202024.pdf>> [Accessed on 2 March 2025]).
- <sup>5</sup> L Heineken, *South Africa's Post-Apartheid Military: Lost in Transition and Transformation* (Cape Town: UCT Press, 2019), 75; Heydenrych, *An Analysis of Defence Procurement*, 87–91, 252–263.
- <sup>6</sup> Notable examples include the Strategic Defence Procurement Package (SDPP) or "Arms Deal" of 1999, and the procurement of the immune booster Interferon from the Republic of Cuba in 2020 during the Covid-19 pandemic. See Heydenrych, *An Analysis of Defence Procurement*, 217–230, 237–246.
- <sup>7</sup> Section 217 of the Constitution of the Republic of South Africa, 1996 (Constitution).
- <sup>8</sup> The South African National Defence Force (SANDF) came into existence at midnight on 26 April 1994. Joe Modise (formerly the commander of uMkhonto weSizwe) was the first democratic Minister of Defence, and General Georg Meiring (formerly commander of South African military operations in South West Africa) the new Chief of the SANDF. (L Thompson, *A History of South Africa*, 4th ed. (Jeppestown: Jonathan Ball, 2014), 272).
- <sup>9</sup> Heydenrych, *An Analysis of Defence Procurement*; E Heydenrych, 'Re-evaluating Oversight of South African Defence Procurement: Can Combined Assurance Help Extract Full Accountability from the Department of Defence?', *Scientia Militaria*, 52, 2 (2024), 25–51.

- 10 ‘The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive “are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law”. In this sense, the Constitution entrenches the principle of legality and provides the foundation for the control of public power.’ See *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) para 80.
- 11 Regulatory theory examines how rules and mechanisms, either public or private, influence and shape behaviour. See CU Uche, ‘The Theory of Regulation: A Review Article’, *Journal of Financial Regulation and Compliance*, 9, 1 (2001), 67.
- 12 ‘Section 217 of the Constitution is the source of the powers and function of a government tender board. It lays down that an organ of State ..., if authorised by law may contract for goods and services on behalf of government. However, the tendering system ... must be fair, equitable, transparent, competitive and cost-effective. This requirement must be understood together with the constitutional precepts on administrative justice in section 33 and the basic values governing public administration in section 195(1).’ See *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2014 (1) SA 604 (CC) para 31; ‘The norm-setting constitutional provision on the procurement ... is section 217(1) of the Constitution.’ See *Minister of Finance v Afribusiness NPC* 2022 (4) SA 362 (CC) para 97.
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- 15 Nyathi, ‘Re-asserting the Doctrinal Legal Research Methodology’, 376.
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- 17 For example fighter jets and munitions.
- 18 For example food, stationary and clothing.
- 19 “Military [equipment](https://dictionary.cambridge.org/dictionary/english/materiel) and [supplies](https://dictionary.cambridge.org/dictionary/english/materiel)”. See *Cambridge Dictionary*. 2025. <<https://dictionary.cambridge.org/dictionary/english/materiel>> [Accessed on 25 February 2025].
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- 21 Heydenrych, *An Analysis of Defence Procurement*, 95–96.
- 22 Heydenrych, *An Analysis of Defence Procurement*, 96.
- 23 Heydenrych, *An Analysis of Defence Procurement*, 96.
- 24 Heydenrych, *An Analysis of Defence Procurement*, 96.
- 25 Established under section 1 of the Defence Special Account Act 6 of 1974.
- 26 Heydenrych, *An Analysis of Defence Procurement*, 96.
- 27 Heydenrych, *An Analysis of Defence Procurement*, 96.
- 28 Heydenrych, *An Analysis of Defence Procurement*, 96.
- 29 Heydenrych, *An Analysis of Defence Procurement*, 99.

- 30 (a) Cost-containment and project delays, (b) training, experience and capacity constraints, (c) lack of clear formulation of military requirements and specifications, (d) budget constraints or a continued reduction in allocation of a portion of the national budget to defence, (e) national security and secrecy leading to a lack of available information and (f) corruption. These challenges were drawn from a range of systems, including the United States of America, the United Kingdom, Canada and India. See S Markowski & P Hall, ‘Challenges of Defence Procurement’, *Defence and Peace Economics*, 9, 1/2 (1998), 3; S Perlo-Freeman & C Solmirano, *Why Arms Procurement Goes Wrong?* (Stockholm: Stockholm International Peace Research Institute, 2012), 1; K Hambleton, I Holder & D Kirkpatrick, ‘Ten Chronic Challenges in UK Defence Acquisition’, *Defence Studies*, 13 (2013), 361; A Khan & HS Jhaji, ‘Challenges of Defence Procurement: A User Perspective’, in LK Behera & V Kaushal (eds.), *Defence Acquisition: International Best Practices* (New Delhi: Pentagon Press, 2013), 88; T Taylor, ‘Defence Procurement: Overcoming Challenges and Managing Expectations’, in R Matthews (ed.), *The Political Economy of Defence* (Cambridge: Cambridge University Press, 2019), 258; AL Kimball, ‘What Canada Could Learn from US Defence Procurement: Issues, Best Practices and Recommendations’, *School of Public Policy Publication*, 8, 17 (2015), 1; O Kundu, ‘Risks in Defence Procurement: India in the 21st Century’, *Defence and Peace Economics*, 32 (2021), 343.
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- 35 See DoD, ‘Annual Report for the FY2018/2019’, 2019, 8. <[https://www.gov.za/sites/default/files/gcis\\_document/202002/dod-annual-report-fy2018-19-final-web-layout.pdf](https://www.gov.za/sites/default/files/gcis_document/202002/dod-annual-report-fy2018-19-final-web-layout.pdf)> [Accessed on 2 March 2025]; DoD, ‘Annual Report for the FY2019/2020’, 2020, 7. <[https://www.gov.za/sites/default/files/gcis\\_document/202104/dod-annual-report-2019-20.pdf](https://www.gov.za/sites/default/files/gcis_document/202104/dod-annual-report-2019-20.pdf)> [Accessed on 2 March 2025]; DoD, ‘Annual Report for the FY2020/2021’, 2021, 10. <[https://www.gov.za/sites/default/files/gcis\\_document/202110/defenceannualreport202021.pdf](https://www.gov.za/sites/default/files/gcis_document/202110/defenceannualreport202021.pdf)> [Accessed on 2 March 2025]; DoD, ‘Annual Report for the FY2021/2022’, 2022, 5. <[https://nationalgovernment.co.za/department\\_annual/408/2022-department-of-defence-\(dod\)-annual-report.pdf](https://nationalgovernment.co.za/department_annual/408/2022-department-of-defence-(dod)-annual-report.pdf)> [Accessed on 2 March 2025]; DoD, ‘Annual Report for the FY2022/2023’, 9.
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- 80 Heydenrych, *An Analysis of Defence Procurement*, 119–120, 132–133.
- 81 PMG, 'Challenges with Supply Chain Management'.
- 82 The DoD is comprised of the Defence Secretariat and the SANDF. The Secretariat, as the civilian component, is primarily staffed by defence civilians/Public Service Act Personnel (PSAPs). See Heydenrych, *An Analysis of Defence Procurement*, 52–55.
- 83 Heydenrych, *An Analysis of Defence Procurement*, 56–65.
- 84 Section 200(1) of the Constitution; M Nel & S Els, 'Introduction to South African Military Justice', in M Nel, S Els & VE Sibiyi (eds.), *Applied Military Justice for Practitioners* (Cape Town: Juta, 2024), 7.
- 85 'Any person who neglects to obey any unit, formation or force order of which it is his duty to have knowledge, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.' See M Nel, 'Military Offences', in M Nel, S Els & VE Sibiyi (eds.), *Applied Military Justice for Practitioners* (Cape Town: Juta, 2024), 82, 85–87.
- 86 Established under section 104 of the Defence Act 44 of 1957.
- 87 Failure to comply with lawful verbal orders also constitute a violation of the Military Discipline Code under sections 19(1) and 19(2).

- 88 PMG, ‘SANDF Procurement Processes: Chief Logistics Briefing’, 26 October 2016. <<https://pmg.org.za/committee-meeting/23525/>> [Accessed on 2 March 2025].
- 89 PMG, ‘Project Thusano: DoD Response to AGSA Findings; DoD Audit Committee and Internal Audit Division on Challenges and Monitoring of Internal Audit Action Plan; with Deputy Minister’, 8 June 2022. <<https://pmg.org.za/committee-meeting/35176/>> [Accessed on 2 March 2025].
- 90 Regarding competitive bidding, the DoD’s Procurement Planning and Budgeting Guidelines requires bid specification committees, bid evaluation committees and bid adjudication committees. There are similar requirements in the Armscor Supply Chain Management Policy. See Heydenrych, *An Analysis of Defence Procurement*, 127, 162–164.
- 91 PMG, ‘Project Thusano’.
- 92 This is a requirement. Section 44(1) of the Public Finance Management Act 1 of 1999 (PFMA) permits an Accounting Officer (AO) to, in writing, delegate any of the powers entrusted to them to an official in the department or instruct any official in the department to perform duties originally assigned to the AO. The Secretary for Defence (as AO) delegates to DoD officials the power to ‘procure, sell and conclude contracts’. While this enables the decentralised execution of Category 2 procurement, it is subject to the caveat that the delegation is dependent on the ‘capability and capacity of the procurement entity to procure and sell’. Heydenrych, *An Analysis of Defence Procurement*, 121.
- 93 PMG, ‘Project Thusano’.
- 94 Heydenrych, *An Analysis of Defence Procurement*, 192.
- 95 GN R 225 in *Government Gazette* 27388 of 15 March 2005.
- 96 Office of the Chief Procurement Office (OCPO), ‘National Treasury Instruction No. 34 of 2011 – Effecting Payments Within Thirty (30) Days from Receipts of an Invoice as Required in terms of Treasury Regulation 8.2.3’, National Treasury, 30 November 2011. <[https://d7.westerncape.gov.za/other/2012/1/tc68\\_2011.pdf](https://d7.westerncape.gov.za/other/2012/1/tc68_2011.pdf)> [Accessed on 26 April 2025].
- 97 Para 4.5.
- 98 OCPO, ‘National Treasury Instruction Note on Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management’, National Treasury, 2011. <[http://ocpo.treasury.gov.za/Resource\\_Centre/Legislation/20110531%20Instruction%20Note%20on%20Enhancing%20Compliance%20Monitoring%20SCM.pdf](http://ocpo.treasury.gov.za/Resource_Centre/Legislation/20110531%20Instruction%20Note%20on%20Enhancing%20Compliance%20Monitoring%20SCM.pdf)> [Accessed on 2 March 2025].
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- 100 PMG, ‘Payment of Invoices Within 30 Days: Input by Departments of Defence and Military Veterans, Justice and Constitutional Development & Correctional Services on; Oversight Report on visit to Mpumalanga and Limpopo’, 17 September 2013. <<https://pmg.org.za/committee-meeting/16376/>> [Accessed on 2 March 2025].
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- 102 PMG, ‘SANDF Procurement Processes’.
- 103 PMG, ‘Challenges with Supply Chain Management’.
- 104 National Treasury, ‘2024 Annual Report’, 10.
- 105 Heydenrych, *An Analysis of Defence Procurement*, 199.
- 106 Bolton, ‘The Regulatory Framework for Public Procurement’, 192.

107 At the time of writing, the Act was not yet enacted.

108 Heydenrych, *An Analysis of Defence Procurement*, 132.

109 Heydenrych, *An Analysis of Defence Procurement*, 119.

110 Heydenrych, *An Analysis of Defence Procurement*, 327.

111 Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2001 (GN R 725 in *Government Gazette* 22549 of 10 August 2001) (2001 Regulations).

112 Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2011 (GN R 502 in *Government Gazette* 34350 of 8 June 2011) (2011 Regulations).

113 Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017 (GN R 32 in *Government Gazette* 40553 of 20 January 2017) (2017 Regulations).

114 Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2022 (GN R 2721 in *Government Gazette* 47452 of 4 November 2022) (2022 Regulations).

115 Heydenrych, *An Analysis of Defence Procurement*, 128–130.

116 These guidelines follow the structure of regulation 16A of the PFMA: Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities 2005.

117 Heydenrych, *An Analysis of Defence Procurement*, 128–130.

118 DoD, ‘Annual Performance Plan 2024’, 50.

119 DoD, ‘Annual Performance Plan 2024’, 171.

120 ‘Mr Siphwe Sokhela, CFO, DOD, told the Committee that it was difficult to account for something that one was not responsible for. He was referring to the supply chain, as the CFO did not have any input when it came to the supply chain.’ See PMG, ‘Challenges with Supply Chain Management’.

121 ‘The SCM function remained within the logistics environment, contrary to the requirements of Treasury regulation 16A4.1, which states that the SCM function must be under the direction of the chief financial officer (CFO).’ See PMG, ‘AGSA on DoD Status of Records Review; DoD on Operation Thusano; with Deputy Minister’, 26 May 2021. <<https://pmg.org.za/committee-meeting/33069/>> [Accessed on 1 September 2024].

122 Heydenrych, *An Analysis of Defence Procurement*, 120–121, 195–197.

123 ‘Supply chain management (SCM) remained a concern due to instances of non-adherence to SCM legislation, as well as the evident failure of the current preventative controls to mitigate this. In the current and previous financial years, we reported on various instances of non-compliance with SCM legislation that resulted in irregular expenditure being incurred by the Department.’ See PMG, ‘AGSA on DoD status of records review’. See also PMG, ‘Challenges with Supply Chain Management’.

124 R Watermeyer, J Klaaren & S Laryea, ‘Thinking Through the Regulation of Different Types of Procurement Provided for in the Public Procurement Act’, *African Public Procurement Law Journal*, 11, 1 (2024), 46.

125 Heydenrych, *An Analysis of Defence Procurement*, 95, 130.

126 Watermeyer et al., ‘Thinking Through the Regulation’, 46.

127 Watermeyer et al., ‘Thinking Through the Regulation’, 46.

128 Watermeyer et al., ‘Thinking Through the Regulation’, 68–69.

129 The concept of national security appears in section 3(a) of the Preferential Procurement Policy Framework Act 5 of 2000, but is not defined. The concept does not appear in the Preferential Procurement Regulations, 2022, the PFMA, the Construction Industry Development Board Act 38 of 2000 or the old State Tender Board Act 86 of 1968.

130 See note above.

131 The statutory forces refer to the former South African Defence Force, and the TBVC defence forces, namely Transkei Defence Force, Bophuthatswana Defence Force, Venda Defence Force and Ciskei Defence Force. The non-statutory forces refer to Umkhonto we Sizwe (MK), the armed wing of the African National Congress, and the Azanian People's Liberation Army (APLA), the paramilitary wing of the Pan Africanist Congress (PAC). See I van der Waag, *A Military History of Modern South Africa* (Jeppestown: Jonathan Ball, 2015), 285–286.

132 See note above.

133 Van der Waag, *A Military History*, 294. Synonyms for “nom de guerre” include ‘pseudonym’ and ‘alias’, and it is a ‘a name chosen by someone to use when he or she is involved in a particular activity, especially fighting in a war’. See *Cambridge Dictionary*, 2024. <<https://dictionary.cambridge.org/dictionary/english/nom-de-guerre>> [Accessed on 15 October 2024].

134 Heinecken, *South Africa's Post-apartheid Military*, 104.

135 Department of Military Veterans, ‘Annual Report 2022/2023 Financial Year’, 2023, 33. <<http://www.dmv.gov.za/documents/AR/AR%202023.pdf>> [Accessed on 15 October 2024].

136 Heydenrych, *An Analysis of Defence Procurement*, 341–342.

137 Heydenrych, *An Analysis of Defence Procurement*, 342.

138 Heydenrych, *An Analysis of Defence Procurement*, 342.

139 G Martin, ‘Air Force and Navy “Hardly Operational” as SANDF Performance Declines’, *defenceWeb*, 21 November 2024. <<https://www.defencweb.co.za/editors-pick/air-force-and-navy-hardly-operational-as-sandf-performance-declines/>> [Accessed on 1 March 2025].

140 Heydenrych, *An Analysis of Defence Procurement*, 342.

141 DoD, ‘Annual Report for the FY2021/2022’, 102.

142 Heydenrych, *An Analysis of Defence Procurement*, 342.

143 DoD, ‘Annual Report for the FY2022/2023’, 8.

144 Heydenrych, *An Analysis of Defence Procurement*, 344.

145 Currently, the Secretary institutes disciplinary steps against defence civilians under section 8(g) of the Defence Act 42 of 2002, which states that they are responsible for ‘the discipline of, administrative control over and management of employees [defence civilians], including their effective utilisation and training’. Conversely, regarding uniformed members, the Secretary implements disciplinary measures through the CSANDF, as they are not within the direct line of command and control of uniformed personnel. The Secretary does this by issuing instructions to a uniformed member under section 10(a) or to the CSANDF under section 10(b) of the Defence Act. However, there have been instances where the CSANDF did not comply with the Secretary’s instructions. See AGSA, ‘Material Irregularities in National and Provincial Government’, Office of the Auditor-General of South Africa, 30 September 2022, 22. <[https://www.agsa.co.za/Portals/0/Reports/Material%20irregularity/202122/2021-21%20PFMA%20Material%20Irregularities%20Report%20\(interactive\)%20\(1\).pdf?ver=2022-11-24-130359-540](https://www.agsa.co.za/Portals/0/Reports/Material%20irregularity/202122/2021-21%20PFMA%20Material%20Irregularities%20Report%20(interactive)%20(1).pdf?ver=2022-11-24-130359-540)> [Accessed on 2 March 2025].

146 Heydenrych, *An Analysis of Defence Procurement*, 293–295, 303–305, 309–316.

147 Heydenrych, ‘Re-evaluating Oversight’, 41–42.

148 Heydenrych, ‘Re-evaluating Oversight’, 41.

- 149 “Full” accountability means the ability to extract answerability from the DoD and impose sanctions on the DoD where its actions are deemed improper. Further, “accountability” within the defence context requires a different approach considering national security limitations and the secrecy of information. “Full” accountability goes beyond ordinary accountability (answerability and sanction). It specifically means that no DoD conduct is beyond reproach or excluded from oversight mechanisms. Accountability may be important, but it is “full” accountability that must flow from military oversight’. See Heydenrych, ‘Re-evaluating Oversight’, 27–28.
- 150 Heydenrych, ‘Re-evaluating Oversight’, 43–44.
- 151 Heydenrych, *An Analysis of Defence Procurement*, 351.
- 152 This will promote transparency and allow members of the public to have a reference point regarding the DoD’s stance on fraud and corruption.
- 153 This will indicate that top management support the policy’s implementation.
- 154 This will address the apparent tendency that has developed among senior military personnel to diverge from, *inter alia*, accepted DoD defence procurement procedures.
- 155 This must include defence procurement-related fraud and corruption.
- 156 Heydenrych, *An Analysis of Defence Procurement*, 351–352.
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