

SUID-AFRIKAANSE POLISIEDIENS**SOUTH AFRICAN POLICE SERVICE**

Privaatsak/ Private Bag X 540 Pretoria 0001

Verwysing
Reference 3/1/5
Navrae
Enquiries Lt Gen MJ Mamotheti
Telefoon
Telephone 012 421 8001
E Pos
Email Mamotheti@saps.gov.za

**DIVISIONAL COMMISSIONER
VISIBLE POLICING AND
OPERATIONS
HEAD OFFICE**

- A. All Divisional Commissioners
- B. All Provincial Commissioners
- C. All Component Heads

OPERATIONAL POLICY: DEMANDS FOR MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE TO ACCOMPANY PRIVATE ORGANISERS AND/OR MEMBERS OF THE COMMUNITY TO TARGET FOREIGN NATIONALS

- A – C. 1. The purpose of this circular is to provide clear policy and operational guidance to all members in the South African Police Service (SAPS) following recent incidents in various areas where private organisers and or communities have demanded that members of SAPS accompany them to identify and remove foreign nationals.
2. It is important to note that private organisers and individuals have no legal authority to identify, detain or remove any person on the basis that they believe they are legal or illegal foreigners. They also lack the legal authority to require SAPS members to act against legal or illegal foreigners.
3. The participation of SAPS in any unlawful intervention to force foreign nationals, whether documented or undocumented, to close businesses and vacate communities will exposes SAPS to legal suits, reputational damages and/or human rights risks.
4. **LEGAL AND POLICY FRAMEWORK**
- 4.1. According to the Immigration Act, 2002 (Act no. 13 of 2002), the power to address immigration violations, verify foreign national, and detain or deport undocumented foreign nationals falls under the sole mandate of the immigration officers from the Department of Home Affairs (DHA).
- 4.2. The Border Management Authority (BMA), established under the Border Management Authority Act, 2020 (Act no. 2 of 2020) is responsible for coordinating border functions and managing and securing ports of entry. These include inter alia the following
- preventing and combating illegal cross-border activities;
 - enforcing immigration legislation;
 - facilitating legitimate trade and travel; and
 - conducting inspections and law enforcement operations at ports of entry.

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- 4.3. While both the DHA and BMA have the primary responsibility for immigration enforcement, the SAPS plays a supporting role under the law and upon formal requests within the law.
- 4.4 The supporting role of SAPS includes rendering assistance of the following:
- Verifying identities of individuals where there is a lawful basis to do so during policing operations;
 - Detecting suspected immigration violation during normal policing duties or crime prevention operations and referring such matters to the DHA or BMA;
 - Arrest where authorised by law in case a person is suspected of being an illegal foreigner under the Immigration Act or when a criminal offence has been committed;
 - Providing security during immigration enforcement operations to protect officials, members of the public and those being processed;
 - Maintaining public order during inspections or enforcement operations that may attract resistance or public unrest;
 - Investigating related criminal offences such as human trafficking, fraudulent identity documents, corruption, and employers' contravening immigration laws.
- 4.5 The SAPS must act in accordance with Sections 9, 10 and 21 of the Constitution of the Republic of South Africa, 1996, the South African Police Service Act, 1995 (Act No. 68 of 1995) and the SAPS Code of Conduct, ensuring the protection of the rights to equality, dignity and freedom of movement of all individuals in the Republic, regardless of nationality or immigration status.
- 4.6. The SAPS must also facilitate peaceful gatherings by adhering to the prescriptions in the Regulation of Gatherings Act, 1993 (Act 205 of 1993) and must not facilitate gatherings or actions intended to intimidate, evict, or commit public violence.

5. OPERATIONAL DIRECTIVE AND REFERRALS

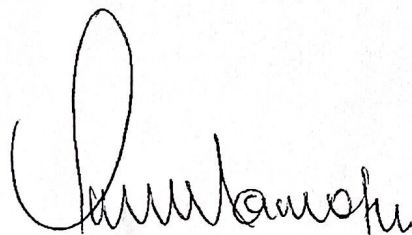
- 5.1. All members in the SAPS must be instructed as follows:
- 5.1.1 Refrain from participating in any actions arranged by civilian to identify, threaten, or remove foreign nationals from homes or businesses. Any member participating in these actions is guilty of conducting unlawful actions and can be charged according to the law.
- 5.1.2 Refer the community leader or private individuals who request assistance from SAPS to participate in civil actions against foreigners or who complaints about suspected undocumented persons to the DHA/BMA.
- 5.1.3 Ensure that public order is maintained in accordance with the Regulation of Gatherings Act by policing all gatherings professionally, using minimum force and de-escalation principles when necessary.

POLICY CLARITY AND OPERATIONAL GUIDANCE: DEMANDS FOR MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE TO ACCOMPANY PRIVATE ORGANISERS AND/OR MEMBERS OF THE COMMUNITY TO TARGET FOREIGN NATIONALS

- 5.1.4 Prevent and Investigate crime by taking decisive action against any person who commits intimidation, assault, malicious damage to property, public violence, or who forces the closure of businesses.
- 5.1.5 Document all such incidents and notify the relevant stakeholders, including DHA and BMA.
- 5.1.6 Any misconduct committed by members of the SAPS in relation to this directive must be reported to the relevant commander and if necessary to the Independent Police Investigation Directorate (IPID) for investigation.

6. COMMAND RESPONSIBILITY

- 6.1. Divisional Commissioners, Provincial Commissioners and Component Heads must ensure that:
 - 6.1.2 This directive is communicated to all members in the SAPS during parades and training.
 - 6.1.3 Members understand that non-compliance may result in disciplinary action, civil liability and criminal prosecution.
 - 6.1.4. Community engagements are conducted proactively in hotspot areas to manage expectations and prevent escalation.
- 7. SAPS remains committed to upholding the Constitution and the rule of law and to protect the right to peaceful protest while taking firm action against lawlessness and anti-foreigner sentiments violence.
- 8. Your cooperation in ensuring compliance is appreciated.



**LIEUTENANT GENERAL
DIVISIONAL COMMISSIONER: VISIBLE POLICING AND OPERATIONS
MJ MAMOTHETI**

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