1. Outline the *background and mandate* of the BMA Project

2. Provide an *overview of work undertaken*

3. Outline *current priorities*
MANDATE AND OVERVIEW OF PROGRESS
1. Border management in South Africa is currently exercised through multiple government departments and State agencies.

2. Pre-/post-1994 many bodies have played a coordination role in the border environment, e.g.
   - Border Affairs Committee Coordinating Committee (1996)
   - National Inter-Departmental Structure (NIDS) (1997)
   - Border Control Operational Coordinating Committee (BCOCC) (2001)
   - Inter-Agency Clearing Forum (IACF) (2010)

3. Coordination mechanisms have proved incapable of addressing the systemic and structural management problems affecting effective border management and border security in the country.

4. Various National Intelligence Estimates have pointed to significant weaknesses, threats and challenges in border environment in SA.
1. **3rd of June 2009**
   - In the State of the Nation Address: President JG Zuma stated that government “will start the process of setting up a Border Management Agency” in South Africa.

2. **26th of June 2013**
   - Cabinet resolved:
     * To establish a BMA that would include the ceding of functions from relevant organs of state
     * Implementation steps
     * DHA designated as the lead department for the BMA

3. **10th December 2014**
   - Cabinet endorsed:
     * BMA Vision
     * Key priorities for the Transitional Period (2015-2016)
     * DHA to assume the lead agency role for the BCOCC.

4. **23rd September 2015**
   - Cabinet approved the introduction of the BMA Bill, 2015 into Parliament
STATE OF BORDER MANAGEMENT
AFRICAN AND SOUTH CONTEXT OF BORDER MANAGEMENT

- Africa has 109 international boundaries less than 35% are clearly demarcated.
- Africa has about 350 official border-crossing points
- Occurrence of border communities straddling border lines.

South Africa has 72 Ports of Entry with critical challenges:

- There are 72 ports of entry. These include borders that are unmanaged or poorly managed by personnel who are ill-equipped, understaffed, ill-trained and unmotivated to prevent cross-border crimes and facilitate harmonious interactions between countries.
Typically internationally, and in South Africa, border management comprises of the following specific functions:

<table>
<thead>
<tr>
<th>Category</th>
<th>Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Immigration Control</strong></td>
<td>• Immigration service</td>
</tr>
<tr>
<td></td>
<td>• Specialised law enforcement / intelligence agencies</td>
</tr>
<tr>
<td><strong>Customs Control</strong></td>
<td>• Custom control and VAT services</td>
</tr>
<tr>
<td></td>
<td>• Customs law enforcement</td>
</tr>
<tr>
<td><strong>Border Safeguarding &amp; Surveillance</strong></td>
<td>• Armed forces (army, navy, air force)</td>
</tr>
<tr>
<td></td>
<td>• Specialised law enforcement / intelligence agencies</td>
</tr>
<tr>
<td><strong>Inspection of Plants and Plant Products</strong></td>
<td>• Plant health &amp; phytosanitary inspection service</td>
</tr>
<tr>
<td></td>
<td>• Plant quarantine service</td>
</tr>
<tr>
<td><strong>Border Policing</strong></td>
<td>• Cross-border policing &amp; law enforcement</td>
</tr>
<tr>
<td><strong>Inspection of Animals, Fish, Animal Products &amp; Foodstuff</strong></td>
<td>• Veterinary, animal, fish &amp; food inspection service</td>
</tr>
<tr>
<td></td>
<td>• Quarantine service</td>
</tr>
<tr>
<td><strong>Human Health Inspection</strong></td>
<td>• Public health &amp; sanitary inspection service</td>
</tr>
<tr>
<td></td>
<td>• Quarantine service</td>
</tr>
</tbody>
</table>

Physical security and infrastructure is a cross-cutting responsibility
South Africa has an extensive border environment: land, air and maritime.
Who are the Role-players?

- Presently, about **22 organs of state** have an interest in border management, but only **6 organs of state** bear operational responsibilities (SANDF, DHA, SARS, DAFF, DoH and SAPS) in the border environment.

- **5 organs of state** undertake responsibilities at Ports of Entry on behalf of **15 other organs of state**.

- **BMA: PMO / BCOCC** currently performs a coordinating function at selected Ports of Entry, but it lacks regulatory clout and teeth.

- **SANDF** has **13 companies**, with 175 soldiers, along the borderline. In total there are about **2275 soldiers along the borderline**.
What is the combined budget of the Role-players?

- Estimated **R3,8bn** is utilised between role-players in the border environment.
- In **some areas it is difficult to disaggregate the budgets** for border management.
- An **Expenditure Performance Review (EPR)** will be **undertaken** in early 2015 to obtain greater clarity on funding & budgets in the border environment. The **EPR will also assist in executing the principle of “funds following functions”** when the BMA is established.
BORDER MANAGEMENT AGENCY ESTABLISHMENT CONSIDERATIONS: KEY ASSUMPTIONS

BMA functions and co-ordination:

✔ BMA will likely assume responsibility for a **basket of control functions** currently performed by a number of organs of state.

✔ **Border protection** of South African sovereignty is the responsibility of the SANDF. DPW, DAFF, DEA, DHA and SAPS perform supporting border control and administrative functions.

✔ Only **5 border management authorities** have a permanent presence at **PoEs**.

Policy and Implementation:

✔ BMA should **not** be tasked with the development and ongoing refinement of “National Policy” in areas of human travel, immigration, trade, customs, health, phyto-sanitary issues etc.

✔ BMA should be tasked with implementation of national policy of parent departments (e.g. CBSA executes about 90 laws of different departments)

✔ BMA must interact with policy departments and share operational experience

Balancing security with legitimate travel & trade:

✔ National security must be cross-cutting dimension in border management

✔ **Legitimate travel and trade must facilitated**

✔ “Whole-of-government” national risk management and targeting must inform the work of the BMA

Effectiveness Gains & Fiscal Certainty:

✔ Establishment of new South African organs of state or the shifting of functions does not make effectiveness gains a given

✔ Phased implementation should be considered
CONSIDERATIONS: INSTITUTIONAL OPTIONS

5 BMA institutional form options were assessed:

1. BMA must be located under single Executive Authority
2. Government Component & Public Entity both suitable
3. Aware of concerns over proliferation of Public Entities
4. Government Components more suitable for a single function scenario
5. Public Entity has added advantage of accommodating an inclusive Board representing multiple parent organs of state
CABINET ENDORSED BMA VISION AND TWO-PHASED IMPLEMENTATION APPROACH
1. **BMA will be outcomes focused:** Balance facilitation of legitimate trade and travel functions while simultaneously addressing security risks.

2. **BMA will be established as a single body:**
   a) Under a single executive authority
   b) Constituted as a single accounting authority
   c) Established by an enabling Act

3. **BMA will assume control of port of entry and borderline functions:**
   a) **Ports of Entry functions** will be: immigration control; customs control; human health inspection; inspections of animals, fish and associated foodstuffs and products; inspections of plants and related products; border policing; and full custodianship for infrastructure at land Ports of Entry.
   b) **Maritime environment:** BMA Coast Guard will be established to patrol and secure the 12 nautical miles zone (territorial waters) and the South African Navy will secure the remainder of the maritime zone extending to Exclusive Economic Zone.
   c) **Land borderline:** BMA Border Guard will be established
   d) **Air border environment:** appropriate complementary BMA capability will be established to monitor, and secure the country’s airspace together with the South African Defence Force and Air Force.
4. **Establishment of a National Border Risk Management and Targeting Centre**

   ✓ This “whole-of-government” Centre will align and integrate all appropriate technology and risk management processes and systems impacting on the border environment.

5. **BMA will continue current service delivery improvement initiatives:**

   These approaches include:
   
   a) Single window development
   b) One-stop border posts
   c) Cowrie Place Port of Entry Control Centre (PECC)
   d) Single business process approach to service delivery
   e) Layered approach to risk management and mitigation
6. **BMA will assume operational responsibility for Port of Entry infrastructure and maintenance:**
   Differing approaches will be taken at land, air and sea Ports of Entry:
   - Air and sea ports of entry must comply with the legitimate requirements of BMA to satisfy international licencing requirements
   - BMA to assume legal responsibilities for land ports of entry accommodation and infrastructure

7. **BMA will establish its own organisational culture, identity and conditions of service:**
   a) Foster a uniform organisational culture and identity
      i. One face, one brand, one uniform; and
      ii. Uniform conditions of service for all staff
   b) Ongoing learning and professional development
   c) Zero tolerance for all forms of corruption and unethical behaviour
   d) Employ public servant cadres of high integrity and a Batho Pele ethos.
1. **Transition Phase (January 2015 – December 2016)**
   
a) Continuation with present collaborative efforts at Ports of Entry under formalised Multi-Party Agreements
b) Above agreements will seek to strengthen the BCOCC in this interim period
c) Commence with BMA legislative drafting process and its enactment: approximately 115 Acts and 42 international and regional agreements and protocols identified
d) Initiate process to align national risk targeting processes between stakeholders in the border environment.
e) **BCOCC to be relocated to the DHA**: Opportunities exist to pilot the strengthened BCOCC as the prototype for the planned BMA.
f) **Launch Operation Pyramid**: enhance borderline control and coordination in the transition period
g) Launch the BMA

2. **Agency Phase: 2017 and beyond**
   
a) Implementation of legislation to operationalise the BMA as a ‘multi parent’ Public Entity within the Ports of Entry environment initially and the provision of authority
b) Adopt a phased approach to the expansion of the BMA mandate and functions to include the air, land (Border Guard) and maritime (Coast Guard) border line environment.
CURRENT PRIORITIES
1. **Multi-Party Agreement** on border management in the transition period has been finalised. Only 6 out of 22 Departments have signed.

2. A **BCOCC Review** was finalised in April 2015.

3. A **BMA Business Case** was finalised in September 2015 which was tabled with Cabinet for noting. The Business Case has been submitted to National Treasury to enable the decision on the listing and classification of the BMA as a national public entity.

4. **Operation Pyramid**, which focuses on the improved management of the borderline environment in the transition period, was launched on 19 June 2015.

5. Four **BMA pilot sites** identified: King Shaka International Airport; Port of Entry Control Centre (PECC) in the Port of Cape Town; Skilpadshen; and Kruger National Park. The purpose is to pilot key aspects of the BMA's vision and learn lessons to inform the BMA.

6. A **BMA Expenditure Performance Review** was finalised in September 2015.

7. Cabinet approved a **BMA Bill, 2015** on the 23rd of September 2015 for introduction to Parliament. The BMA Bill has been submitted to Parliament.

8. A **Socio-Economic Impact Assessment** for the BMA Bill, 2015 was completed.

9. A terms of reference has been finalised to prepare “**Integrated Border Management Strategy for South Africa**”. The intention is to finalise this strategy by March 2016.

10. Proposals on effecting the **interim alignment of Border Risk Management processes** and a conceptual **framework for a National Border Risk Management and Targeting Centre** are being finalised.
Multi-Party Agreement

PURPOSE
To provide a transitional mechanism, pending the coming into operation of legislation formally establishing the Border Management Agency, to facilitate the secure, efficient, effective and enhanced coordination and management of South African Ports of Entry and the Borderline environment.

KEY SECTIONS
1. Cooperative Governance
2. Approach to Coordination & Management of the Border Environment
3. Revised Institutional Arrangements
4. Escalation Protocol
5. BMA Pilot Sites
6. Operation Pyramid
7. NBMCC
8. Departmental Secondments and/or Dedicated Officials
9. Critical Success Factors
10. Financial Arrangements
11. Infrastructure Development
12. Dispute Resolution
1. The **BMA Business Case process commenced in 2014** with the BMA: PMO and GTAC

2. Current BMA Business Case was submitted to Cabinet for noting.

3. The Business Case was formally submitted to National Treasury.

4. In 2016 an additional version and revision of the BMA Business Case is envisaged.
OPERATION PYRAMID: “ENHANCING BORDERLINE CONTROL AND COORDINATION IN THE TRANSITION PERIOD”

Approach:

i. Front-line / visible initiatives
ii. Improved risk targeting of existing capabilities
iii. Increased border community participation & development
iv. Flexible borderline spatial targeting
v. Establish Joint Permanent Commissions with neighbouring countries & Municipal twinning arrangements
vi. Learn lessons for BMA’s involvement in the borderline
BMA Pilot Sites Initiative: Mandate on BMA Pilots

1. On the 10th of December 2014 Cabinet approved the vision for a Border Management Agency (BMA) in South Africa. Cabinet also directed that pilot sites be identified to test the implementation of the approved BMA vision.

2. It should be noted that on 1st of May 2014, the Port of Entry Control Centre (PECC) was established in the Port of Cape Town to incorporate all relevant Government Business Processes and maintain the integrity of the Port of Entry (Poe) under an integrated approach.

3. The PECC should be regarded as the first flagship BMA pilot site to which should be added additional pilot sites in the land and air Poe modalities.
BMA Pilot Sites Initiative

VISION
The vision for the BMA pilot sites is to operate a world class service delivery and intelligence-driven, coordinated and joint command structure to enhance cooperative interaction and manage inter-agency activities and operations within the border environment.

OPERATIONAL CONCEPT
1. Integrated Client Service & Risk Management Approach
2. Integrated Work Processes & Common Work Areas
3. Physical Accommodation of Operational Departments
4. Human Resources and Deployments
5. General Resourcing and Funding
6. Command and Control
7. Escalation Protocol
8. Integrated Planning
9. Uniform Corporate Government Branding
10. Change Management, Staff Training and Readiness
11. Operational Instruction

PILOT SITES
1. Skilpadshek Land POE
2. King Shaka International POE
3. Port of Entry Control Centre (Port of CT)
4. Kruger National Park (Land Border Line)
BCOCC REVIEW

PURPOSE

1. 5th February 2015, Minister Gigaba: Directed that a review of the BCOCC be undertaken to make it an “instrument of transformation”

2. Terms of Reference adopted: assess performance of the BCOCC & propose an operating model for the transitional period.

STRATEGIC RECOMMENDATIONS

1. Alignment of the BCOCC with the BMA: PMO
2. Vision, Mission & Mandate for the Transition Period
3. Enhanced Role and Authority
4. Escalation Protocol
5. Strengthening of the NBMCC
6. Borderline Role
7. Resources
8. Revised Structure & Institutional Arrangements
BMA BILL

PURPOSE
1. Provide for the establishment of a BMA
2. Provide framework legislation (e.g. regulations will deal with details)

SOME KEY AREAS
1. Mandate of BMA is border law enforcement:
   – Port of Entry & Borderline
   – Key functions identified
   – Respects role of SANDF in border protection
2. Proposed to be National Public Entity:
   – Outside of Public Service Act, but subject to PFMA
   – Headed by a Commissioner
3. Ministerial Consultative Committee proposed
4. Providing for the establishment of a Border Guard
5. Detailed identification of BMA functions in 59 pieces of legislation
6. Provides for Transitional Arrangements

Process:
• Extensive consultations were undertaken in preparing the draft BMA Bill
• Public Comment period from August to September 2015
• Introduction to parliament envisaged for October 2015
1. Give effect to the **BMA Vision**

2. **Integrated** Border Management approach

3. **Basket of key functions will be ceded** to the BMA

4. **Framework** Legislation

5. BMA is an **Implementation Agency**

6. **Policy mandates will remain with principal organs of state**

7. **BMA will assume full command and control** over Ports of Entry and border law enforcement areas

8. Tagged as **Section 76 legislation**
a) Draft Bill *gazetted* between the 5th of August 2015 – 4 September 2015

b) Approximately 289 issues and comments received from 34 organisations and persons

c) Types of Comments:
   - Typographical & legal drafting
   - Procedural
   - Substantive
OUTLINE OF REVISED BMA BILL

CHAPTER 1
DEFINITIONS, APPLICATION AND PURPOSE OF ACT
1. Definitions
2. Application of Act
3. Object of Act

CHAPTER 2
BORDER MANAGEMENT AGENCY
4. Establishment of Agency
5. Functions of Agency
6. Composition of Agency

CHAPTER 3
COMMISSIONER, OFFICERS AND SUPPORT STAFF
Part A: Commissioner
7. Appointment of Commissioner
8. Functions of Commissioner
9. Delegation of functions, duties and powers by Minister and Commissioner
10. Terms and conditions of appointment of Commissioner

Part B: Officials, commissioned officers and functions, duties and powers of officers
11. Appointment of officials
12. Commissioned officers
13. Functions, duties and powers of officers

Part C: Employment terms and conditions of officials
14. Terms and conditions
15. Confidentiality

Part D: Employment disputes
16. Prohibition of strikes, lockouts and protest action
17. Determination of employment disputes

CHAPTER 4
FUNDS, ASSETS AND LIABILITY
18. Funds
19. Immovable property
20. Liability
### CHAPTER 5

**ASSIGNMENT OF FUNCTIONS TO AGENCY**

21. Assignment of functions to Agency
22. Amendment of Schedule 1 of this Act
23. Transfer of administration of legislation to Minister
24. Assignment of functions permitted by legislation
25. Assignment by protocol
26. Assignment of functions by regulation

### CHAPTER 6

**INTER-MINISTERIAL CONSULTATIVE COMMITTEE AND OTHER COMMITTEES**

27. Inter-Ministerial Consultative Committee
28. Border Technical Committee
29. Advisory Committees

### CHAPTER 7

**GENERAL**

30. Offences and penalties
31. Regulations
32. Determination of ports, points and places of entry
33. Transitional provisions
34. Short title and commencement

### SCHEDULE 1

**ASSIGNMENT OF LEGISLATIVE FUNCTIONS AND POWERS TO AGENCY**

### SCHEDULE 2

**GENERAL POWERS OF OFFICERS**

### SCHEDULE 3

**TRANSITIONAL PROVISIONS**
Application

- Applies to border law enforcement in Ports of Entry and the border law enforcement area

Object

- To provide for the establishment, organisation, regulation and control of the Border Management Agency

Functions

- To provide for the establishment, organisation, regulation and control of the Border Management Agency
Legal Status

- Organ of state
- National public entity
- Armed service

Structure

- Commissioner
- Border Guard
- Support Staff

Commissioner

- Appointed by President
- Chief Executive Officer
- Accounting Officer
- Commander
BILL OVERVIEW

Functions of Officers
- Derived from Schedule 1
- Derived from Criminal Procedure act, 1977
- Prohibited from striking
- New Schedule 2 on functions of Officers

Funds
- Appropriated by Parliament
- Any government grants

Immoveable Property
- Minister to determine policy to acquire immoveable property
- Can acquire and dispose of property
Assignment of Functions to BMA

- Those assigned in Schedule 1
- Transfer via a Presidential Proclamation under S97 of the Constitution
- Assignment permitted by legislation
- Assignment by protocol
- Assignment by regulation

Inter-Ministerial Consultative Committee

- Purpose is a consultative forum
- Consult on functions affecting the BMA
- Any Minister can refer matters
Determination of Ports, Places and Points of Entry

- Can only be designated with approval by the Minister of DHA

Transitional Provisions & Commencement

- Schedule 3 on Transitional Provisions
- President can determine different dates to bring different provisions of the Act into force
The 2014 Presidency SEIAS Guideline recognizes that *new policy initiatives can have unintended consequences* in the following ways:

- Through inefficient implementation mechanisms;
- Stakeholders face an excessive cost from complying with the regulation;
- By over or underestimating the benefits associated with the new rule’s aims; and/or
- By underestimating the risks involved – in other words, by overestimating the likelihood of success in achieving the anticipated benefits.
In June 2013 Cabinet considered this model and decided against this approach since it perpetuates the status quo which was not working.

The December 2014 Cabinet decision favoured this option under the BMA vision that endorsed the need for a single agency.

The June 2013 Cabinet decision also ruled out this option when it decided that functions should be ceded to the BMA.

Thank you