



CITY OF CAPE TOWN
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STAD KAAPSTAD

OFFICE OF THE EXECUTIVE MAYOR

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For attention:

The Honourable Minister of Police: Bheki Cele

Per email: GaehlerSMK@saps.gov.za

CC: PhokaneN@saps.gov.za

And

The Honourable Minister of Justice and Correctional Services

Per email : Ministry@justice.gov.za

And cc : ZaneNdlovu@justice.gov.za;

: Amahlalela@justice.gov.za; BSarela@justice.gov.za

Dear Honourable Ministers Cele and Lamola,

18 August 2022

RE: REQUEST FOR EXPANDED POLICING POWERS FOR CITY OF CAPE TOWN

I hope this letter finds you both well.

As you are both aware, South Africans have been living with high levels of crime for a long time and Cape Town is no different in this regard. Each year new statistics are released on levels of crime. The latest crime statistics show yet further increases in all sexual offences, with a 13.7% increase in sexual offence crimes committed. Cape Town Central saw a 54.2 % increase in serious crimes being reported (2653 cases in 2021/22 – up from 1720 in 2020/21).

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A recent assessment by the Western Cape Government found that 48% of SAPS detectives in the Western Cape have a caseload of over 200 dockets per person, which is 333% above the 50 - 60 norm. This problem is compounded by the current shortage of more than 500 detectives in the province. Between 1 April 2022 and 30 June 2022, the South African Police Service (SAPS) withdrew 198 cases serving before court because of police inefficiencies. That is 198 cases that will never be tested by law, 198 alleged crimes where the perpetrators will simply walk free.

Data collected by the Institute for Security Studies has also provided information showing that the performance of policing, and police discipline is declining. It is therefore not a surprise that recent surveys by Afrobarometer show there are very low levels of trust in the SAPS and that the SAPS is regarded as the most corrupt component of government.

In an early attempt to curb the scourge of crime locally, the City of Cape Town has a well - established and high functioning municipal police service, duly established in terms of Section 207 of the Constitution and referred to herein below as 'the Metro Police'. In addition to this the City also has a large contingent of Law Enforcement Officers, who were also proclaimed as Peace Officers by the then Minister of Justice in 2018 and to which Peace Officers various legislated policing powers now attach in terms of section 334 of the Criminal Procedure Act.

The City of Cape Town's approach to the current policing system is informed by all provisions of the Constitution as addressed in Chapter 11 thereof, along with the various other underlying legislation that is now in place. When read as a whole it is clear that the Constitution provides a high level of flexibility in order to obtain an optimum functioning of the policing system. Section 205(1) states that 'The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.' Currently the governance and management of the SAPS operates on a centralised basis, but Section 205(1) gives general authorisation for the SAPS to be organised differently, ie at both provincial and metropolitan (or other municipal) level too.

The current prevalence of crime in every aspect of our community; and the incapacity of SAPS to currently make any meaningful inroads in this regard makes it imperative that the functioning of the police service must now be strengthened by way of further decentralisation and devolution of policing functions to those organs of state where such capacity exists, like the City of Cape Town.

This letter is being addressed to you to set out our reasons for this assertion and to request your agreement to the devolution of specific policing powers to the City's Metro police and Law Enforcement Officers as well as a decentralisation in the determination of area specific policing plans for this city.

The request is made on the basis that it is now abundantly clear that the current highly centralised system of policy determination and policing service delivery in South Africa is not working and this failure has to be addressed by new and innovative means.

The South African policing system does not have to continue functioning in the current way. It can and must change and the Constitution allows for this, i.e. a policing service that is managed differently. What is required for this to happen is your support. The ancillary aim of this letter is hence also to provide you with reasons why your support for this request on decentralisation and devolution is both reasonable and rational.

REASONS FOR THE DECENTRALISATION OF THE POLICE FORCE AND GREATER DEVOLUTION OF POLICING POWERS.

1. DIFFERENCES IN CRIME CHARACTERISTICS BETWEEN DIFFERENT PROVINCES AND MUNICIPALITIES.

One obvious difference between provinces is the size of their populations, which differs vastly, from over 16 million in Gauteng to less than 2 million in the Northern Cape. As a result, it is not a surprise that there are differences in levels of crime between the different provinces. But population differences do not account for all of the differences in levels of crime. If population differences are taken into account, we still find that rates of murder vary substantially between the different provinces. Provinces such as the Eastern Cape, the Western Cape and KwaZulu-Natal for instance tend to record the highest per capita rates of murder in South Africa.

These are not the only differences. Each province in South Africa is unique in other ways. If we take into account differences in levels of murder, we still find that there are very big differences between the different provinces in patterns of crime. In provinces with large metropolitan areas, such as Gauteng and the Western Cape, police record much higher rates of aggravated robbery than other provinces. Other provinces record the highest rates of sexual offences. Likewise with other

categories of crime such as housebreaking. Patterns of crime vary substantially between the provinces.

Differences in types of recorded crime also do not reveal the full picture. For instance, there are also major differences between the different provinces in the types of weapons used in crime. A report published recently by the Medical Research Council shows that weapons such as knives ('sharp force') accounts for 41% of murders in South Africa while firearms account for 32%.

The Western Cape (42%) and Gauteng (41%) have the highest proportion of firearm deaths. In these two provinces, firearms may account for a higher proportion of deaths than sharp force. However in 6 provinces (Eastern Cape, Free State, Limpopo, Mpumalanga, North West and the Northern Cape) firearms account for less than 30% of homicides. Provinces in which they account for the smallest proportion of murders are the Northern Cape, where they account for less than 5% and in the Eastern Cape and North West, 18%. This is likely to mean that, in these six provinces at least, sharp force deaths account for more deaths than firearms do. Strategies for addressing murder in the Western Cape or Gauteng should prioritise illegal firearm ownership. But in the Northern Cape, Eastern Cape or North West approaches to addressing rates of murder should be different.

Whilst the City's law enforcement officers have an excellent track record of confiscating illegal firearms, in predominantly the gang-affected communities which are unique to this City in many respects, their powers are currently limited to the prevention of crime, and limited investigation powers, as you know. With more powers, these officers could go beyond simply arresting criminals, and begin to unravel criminal networks and further disempower gangs and crime syndicates working in our City.

2. RESOURCE ALLOCATION METHODOLOGY AND OUTCOME

The decreasing annual budget over the last few years, coupled with the irrational method of resource allocation by SAPS (as confirmed by the O'Regan Commission) continues to have a devastating effect on the capabilities of SAPS. Over the past five financial years, the National Police Minister has decreased the number of SAPS officers allocated in 71% of the Western Cape's police stations. In Lingeletu West (Khayelitsha) the deployment allocation fell from 139 to 124, resulting in an increase of 40% in murders. In Mitchells Plain, where the deployment allocation fell from 464 to 455, there was an increase of 8.6% in contact crimes. And most telling, at Cape Town Central, where the deployment allocations fell

significantly from 525 to 425, there was an increase of 54.2% in community-reported serious crimes.

In contrast to the above, in the City of Cape Town the recent additional deployment of 1100 Law Enforcement officers has boosted our own policing capacity and the resource allocation of this personnel has been guided by a data-led approach with these "LEAP" officers being deployed to 12 of the country's top 30 murder hotspots located in the City. Of the 12 murder hotspots where LEAP have been deployed, 4 no longer feature among the 30 murder hotspots in the country. These include Gugulethu, Philippi East, Mitchells Plain and Elsies River. Despite some still featuring among the top 30 stations, this deployment of our officials has led to us seeing positive declines in murders and attempted murders within our hotspots in communities including Nyanga, Delft, Mfuleni, Harare, Kraaifontein, Khayelitsha and Philippi.

3. RESPONSIVENESS

There are also major variations in the patterns and characteristics of crime in different parts of South Africa. Responsiveness in policing is determined by ensuring that the police in each part of the country are alerted to, focused upon and capacitated to deal with the most serious crime problems in that area. However, the current centralised system is not responsive and annual policing priorities are only being set at a national level. Despite the Western Cape Government regularly performing an annual Policing Needs and Priorities exercise and presenting these findings to the SAPS Management, they appear to be largely, if not entirely, ignored.

Given this there is little or no attention paid to ensuring that police are responsive to the needs of people in different areas, and as such the issues of gang related violence and civil disobedience as well as orchestrated land invasions which the residence of Cape Town are witness to on an almost daily basis, are simply not focused on with the degree of emphasis required to make a difference. The ultimate result of this is failure, as was seen when SAPS was obligated to make the alarming and unprecedented call for the assistance of the SANDF with respect to ongoing gang violence in some of our suburbs in recent years.

4. BOTTLE-NECK IN POLICY-MAKING IN THE CURRENT ONE-SIZE-FITS-ALL APPROACH

One of the factors contributing to the problems with the SAPS is the dysfunctional centralised policy making system. As indicated above, Section 206(1) provides that the Minister of Police must 'determine national policing policy'. The Minister is supposed to consult the provincial governments on their needs and priorities before doing so.

Section 206(2) of the Constitution indicates that the national policing policy 'may make provision for different policies in respect of different provinces'. This is now appropriate, as there are clearly major differences in the crime and policing situation in each province.

Unfortunately, these provisions have never been adhered to. Since 1996 when the Constitution was passed, the Minister of Police has never issued a national policing policy that sets out the different policing priorities or programs for the different provinces. There have been some documents that can be seen as 'national policing policies' but these policies have all followed a 'one size fits all approach' and do not make reference to the differences between different provinces.

4. INNOVATION AND LEARNING

Despite the wide range of different crimes and conditions in different parts of the country, the current policing system is governed and managed in terms of a centralised 'one size fits all' approach. This approach allows little room for new ideas and approaches to be tried out. In fact, the opposite applies. New ideas are often seen as a problem because they are not approved by national instructions.

One of the great advantages of decentralisation and devolution is that it will allow for more flexibility in this regard. Police in different parts of the country will be better able to try new approaches to the specific challenges that they are facing. It will also support strengthening of the overall policing system. Police in one province will be able to learn lessons from innovations in other areas. This can also be supported if there is more investment in evaluating and reporting on the impact of different approaches. Reporting on 'lessons learned' in one area will be able to benefit police in other areas.

It is with respect to this area that the City of Cape Town's police can and will further excel as innovative technology gives us the means to develop and execute a truly integrated approach to make the best use of the City's scarce resources. To this end:

In the coming months, we will convert the current Transport Management Centre in Goodwood into a Joint Services Operations Centre or JSOC. To use a biological analogy, the JSOC will be the 'head' of our policing operation – it is where our entire crime-fighting apparatus will be run from.

In addition, the City already has an Emergency Police Incident Control or 'EPIC' software system, which processes data in real time to give our operational command a situational analysis, and enables a response that is decisive and immediate to crimes as they occur.

The 'eyes' of the City's metro policing operation are also being enhanced with our various camera-based technologies including CCTV footage being supported now by remotely piloted as well as manned aircraft systems, automatic number-plate recognition technology, dash cams in police vehicles and body worn cameras. These digital 'eyes' will constantly feed data back to our operational command, via the EPIC software system which will be further augmented by a network of audio sensors that detect when a shot is fired, precisely where it is fired and even the calibre of firearm used. Gunshot location data will further assist in the deployment of resources to gun crime hotspots, react quickly to gun crime when it occurs, and to help with evidence that is essential to the successful prosecuting of those who commit gun crime.

The crime and policing expert, Mark Shaw stated in 2002:

'The SAPS remains one of the largest police agencies in the world; given its size it is often an unwieldy and, on the ground, unaccountable instrument. ... [T]he current system is too centralised ... The highly centralised nature of policing sits uncomfortably within the context of democratic South Africa ... [I]t's post-apartheid character was the result of a political bargain rather than any sensible review of what policing in South Africa should look like and do. ...'

This critique still applies 20 years later, and is sadly even more appropriate now.

The current approach to governance and control of the SAPS reflects South Africa's apartheid past in which the government emphasised centralised control over the police. The SAPS is a direct descendant of the South African Police (SAP), which was established in 1913 following the establishment of the Union of South Africa in 1910. During the following 81 years, until 1994, the approach taken to control of the SAP was a centralised one. However, the current arrangements are not effective in promoting the safety of South Africans and greater decentralisation can help South Africa develop a policing system that is more effective in responding to the varying needs of people, businesses and other groups, in different parts of South Africa. As the police service of a democratic country the SAPS needs to be governed and controlled in a manner that is far more effective in supporting responsiveness to the diverse policing needs of different communities.

On the basis of what is set out above, the City of Cape Town requests both your agreement and support for the following action being taken, to enhance and improve the delivery of policing services in South Africa by both SAPS and the City's officials and in so doing materially contribute to the reduction of crime:

A. THE EXTENSION OF THE CITY'S CURRENT POLICING POWERS, EITHER BY WAY OF AN ASSIGNMENT OF THIS FUNCTION TO THE CITY COUNCIL IN TERMS OF SECTION 99 OF THE CONSTITUTION, OR IN TERMS OF A LEGISLATIVE AMENDMENT TO SECTION 64 E (C) OF THE SAPS ACT SO AS TO EXTEND OUR LAW ENFORCEMENT OFFICERS POWERS BEYOND CRIME PREVENTION TO INCLUDE THE POWER TO CONDUCT FULL CRIMINAL INVESTIGATIONS.

Whilst the current power of criminal prevention currently enables our Law Enforcement Officers to engage in (or be responsible for) all types of crime prevention, which includes:

- Primary prevention with potential perpetrators and victims;
- Secondary prevention with those who are already victims or perpetrators; and
- Tertiary prevention with the public;

the SAPS Act does not empower our Metro Police to conduct criminal investigations.

I am advised that there is still legal uncertainty as to the ambit of the definition of criminal investigation per se but understand that most academics assert that the term "criminal investigation" refers to the process of collecting information (or

evidence) about a crime in order to: (1) determine if a crime has been committed; (2) identify the perpetrator; (3) apprehend the perpetrator; and (4) provide evidence to support a conviction in court.

Currently the City's Safety and Security investigations Unit, in particular, conducts the following investigations in terms of its mandates:

- Establishing *prima facie* evidence of criminal activity within our scope — especially gun, drug, and metal theft-related crime;
- Attacks on City frontline service staff and vandalism/theft of critical public infrastructure;
- Gang activity and drug dealing in the City's affordable rental units;
- Watching briefs on court cases involving an arrest made by law enforcement, especially for firearm, drug, and gang-related matters; and
- Internal investigations into staff misconduct within Safety and Security.

All of the above work results in evidence gathered by the City being handed to SAPS to take further to prosecution with the NPA. In general, the City collates data and statistics on a daily basis to ensure all our law enforcement operations are evidence-led. This is simple best practice to enable the efficient use of limited resources but the exclusion from the mandate to investigate crime, as currently contained in the SAPS Act, causes unnecessary tensions and exclusions of the City's officers from certain areas of crime investigation, which they are well suited and capacitated to do.

Given that the City of Cape Town' law enforcement officials currently have an enhanced capacity to conduct successful criminal investigations by virtue of, inter alia,

- The Metro Police's strategic deployment policies
- Our Innovative Technical resources (as above); and
- Our fiscal viability and increased LEAP personnel;

to refuse to agree to the City's Metro Police being empowered to perform this function, for reasons of territorial contestation alone and whilst SAPS are manifestly often simply unable to do so, would not only be unreasonable and irrational, but also will directly prejudice the citizens of this country in the ongoing efforts to bring crime levels down.

Clearly after arresting any person on suspicion of having committed a criminal offence, the arrested person will still be taken to a SAPS police station as soon as possible and the close working relationship between our Metro officers and SAPS officers will need to be maintained, if not enhanced, but what this extension of the Metro Police powers will do is enable the City to do is freely gather and collate

vital evidence and information with respect to any crime that is committed in this metro and present this to the SAPS and NPA as a completed docket, in pursuit and furtherance of a successful prosecution.

A. THE FORMAL RECOGNITION OF THE CITY'S RIGHT TO DETERMINE CITY-SPECIFIC POLICING NEEDS AND PRIORITIES, IN THE FORM OF A SUBSIDIARY POLICING PLAN, AND ITS ADOPTION AND SUPPORT IN ANY NATIONAL POLICING PLAN IN TERMS OF SECTION 206 (2) OF THE CONSTITUTION HENCEFORTH. THIS CITY OF CAPE TOWN SUBSIDIARY POLICING POLICY MUST BE TAKEN INTO ACCOUNT IN ANY DETERMINATION OF A NATIONAL POLICING POLICY BY THE NATIONAL MINISTER OF POLICE IN TERMS OF SECTION 206 (1) AND (2) OF THE CONSTITUTION, ALTERNATIVELY BY THE PROVINCIAL GOVERNMENT IN TERMS OF ANY ASSIGNMENT TO IT OF THIS FUNCTION UNDER SECTION 206 (4) (B) AND (C) OF THE CONSTITUTION.

Doing this will entail the City of Cape Town being given subsidiary policing policy determinative powers. It means that in addition to the City still being subject to national policing policy, the Minister of Police would include this Metro's specific policing needs, as put forward by us, as a complementary policy therein and which subsidiary police policy will be more finely attuned to this metro's specific policing needs and priorities.

Such allocation, devolution or assignment of such subsidiary police plan determination to both the City and the Provincial Government is not only constitutionally envisaged but will allow for different and better approaches to policing applying in different geographical areas. The enablement of a decentralisation of the policy dictating police service in parts of South Africa via this means, whereby there is greater provincial or local government engagement can similarly only but enhance the effectiveness of the policing service as a whole.

C.THE EXTENSION OF THE A PEACE OFFICER'S POWERS, IN TERMS OF SECTION 334 OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 AS AMENDED TO ENABLE PEACE OFFICERS TO ALSO DEAL WITH:

- Serious offences listed in schedule 1 of the CPA;

- threats to commuters, persons generally, property or infrastructure;
- drug and liquor related offences;
- offences related to firearms and ammunition;
- offences relating to trafficking in persons; and
- offences relating to the transport of passengers.

With the City's innovation and addition of our Auxiliary Law Enforcement Officers ("LEAP") as a force multiplier to the permanent officers, Law Enforcement Officers employed in the City of Cape Town are currently often the first responders to reports of crime in the City of Cape Town. Such deployment can be rendered more effective by the lawful allocation, by way of assignment or promulgation of the above additional policing powers in terms of section 334 of the Criminal Procedure Act as amended, to augment the current powers of our Peace Officers.

I urge you to give these requests your urgent consideration and attention.

This letter is addressed to you after detailed consideration as to what roles the City can play in further curtailing crime in Cape Town. We are fortunate to have a well resourced, functioning Metropolitan Municipality, which has much to offer as regards an effective policing service for our residents too.

The City of Cape Town has both the appetite and enthusiasm to take this task on. Our assistance and support of SAPS that this will occasion, in the daunting task they face, is hopefully something that will be welcomed and I look forward to hearing from you both shortly in this regard.

Yours faithfully



Geordin Hill-Lewis
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