

## NATIONAL ASSEMBLY

**FOR WRITTEN REPLY****QUESTION 1061**

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**(INTERNAL QUESTION PAPER NO 11-2023)**

**1061. M. Gen O S Terblanche (DA) to ask the Minister of Police:**

- (1) With regard to the recent instruction from the Western Cape Police Commissioner that all A1 statements in the Western Cape will now be taken from victims in English only and given that the Republic currently has 11 official languages and that the Constitution of the Republic, 1996, provide that the national and provincial governments must use at least two official languages, what therefore is the position on A1 statements being taken in English only considering that most South Africans are not English speaking;
- (2) whether he has found that by using one language only victims may refuse to come forward to report crimes at all; if not, what is the position in this regard; if so, what are the relevant details;
- (3) whether he will instruct all provincial Commissioners of Police to remove any such language policy to prevent any form of discrimination against victims; if not, why not; if so, what are the relevant details?

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**REPLY:**

- (1) In the South African Police Service (SAPS), policy and directives are issued at different levels. At national level, national instructions, policies and circulars conveying policy decisions that are applicable to the whole of the SAPS, are issued. At provincial level, provincial instructions and circulars conveying policy decisions that are only applicable to the province, are issued. At district or station level, district or station instructions and circulars conveying policy decisions that are only applicable to the district or station respectively, are issued.

At divisional level divisional directives and circulars conveying policy decisions that have national application *relating to the area of responsibility of the division*, are issued. Such divisional directives and circulars are applicable to the whole of the SAPS.

National Policy and directives issued at national level (including at divisional level) always prevail over policy or directives issued at provincial, district or

station level. In other words, if there is a conflict between a National Instruction, policy or directive issued at national level (including at divisional level) and a policy or directive issued at provincial, district or station level, the national policy or directive must be followed. Policy and directives may only be issued at provincial, district or station level if the policy or directive deals with a *matter that falls within the area of responsibility* of the province, district or station respectively.

Any policy decision or directive issued in the SAPS (irrespective of at which level) must be in line with the legal framework within which the SAPS functions. This office took note of the instruction from the Provincial Commissioner: Western Cape. Paragraph 9 of the said instruction is confusing and in conflict with the National Policy of the SAPS.

Paragraphs 10(6) and (7) of National Instruction 13 of 2017 (Case docket management) provides as follows:

- "(6) A statement made in one of the official languages must be taken down in that language, without distorting the meaning of the words*
  
- (7) If the member taking a statement is not conversant with the language of the person who is making the statement [e.g. a language other than one of the official languages], the services of an interpreter must be obtained."*

Paragraph 11(1) of National Instruction 10 of 2020 (Attestation of statements and authentication of reproductions or copies) provides as follows:

- "(1) If the deponent is unable to speak any of the official languages or if none of the police officials speak any of the languages of the deponent, an interpreter should be appointed to translate the deponent's statement from the language he or she (deponent) uses, into English.*
- (2) The police official must then write the statement in the English used by the interpreter.*
- (3) Between the deponent's signature and the certification of the commissioner of oaths, the interpreter must certify the translation in the following manner:*
  - (a) "Translated from Zulu into English, back into Zulu."*

- (b) *He or she must then sign the certification or add his or her mark or thumbprint if he or she is illiterate.*
- (c) *The language that is used by the deponent is to be stated in the preamble of the statement."*

The interpreter will be required to complete and sign a certificate that he or she interpreted the contents of the statement and the annexures thereto into English from the language used by the deponent language, and *vice versa* truly, correctly and to the best of his or her ability.

The Provincial Head: Legal Services in the Western Cape has been alerted that the provincial instruction should be withdrawn and rectified.

- (2) Regulation 3(1)(a) of the Use of Official Languages Regulations, 2013, provides that every national department must, in order to determine the official languages contemplated in section 4(2) of the Use of Official Languages Act, 2012 (Act No.12 of 2012), consider the factors stipulated in section 6(3) of the Constitution including –
  - (a) language usage of members of the public that access the services of the national department, having regard to —
    - (i) language needs of members of the public accessing the services;
    - (ii) language statistics in the population census; and
    - (iii) research that the national department may conduct;
  - (b) expenses associated with adopting official languages for government purpose.

The National Commissioner issued Policy 1 of 2016: The use of official languages in the South African Police Service. The Policy was published in the Government Gazette on 8 March 2016 (Gazette No. 39788). This Policy is based on the following underlying principles:

- (a) Functional multilingualism - language preference(s), use and proficiency of the target audience; a broad acceptance of linguistic diversity; and recognition of linguistic human rights (also referred to as language rights):

- (b) social justice; and
- (c) Batho Pale Principles.

It is not the Policy position of the SAPS to deal with members of the public or community in only one language.

It must be noted that one of the reasons for the instruction from the Provincial Commissioner: Western Cape is a directive by the Judge President of the Western Cape High Court issued on 28 February 2018 entitled "*Official Language Records in all Courts within the Western Cape*". The directive provides that all court documents in both criminal and civil cases shall be in English. The only limited exception permitted will be the submission of witness statements in a language other than English, and only if the witness is not sufficiently conversant with English.

- (3) All Provincial Commissioners will be instructed by the National Commissioner to withdraw any provincial language instruction, which is in conflict with national policy.

Reply to question 1061 recommended/~~not recommended~~



**GENERAL  
NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE  
SF MASEMOLA (SOEG)**

Date: 2023-04-04

Reply to question 1061 approved/~~not approved~~



**GENERAL BH CELE, MP  
MINISTER OF POLICE**

Date: 12/04/2023