

# EXPERT REPORT ON THE INDEPENDENT OVERSIGHT OF POLICE STATIONS

## Khayelitsha Commission of Inquiry 2014

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### Introduction

1. The issues of the effective oversight of police stations and investigations into SAPS were raised during the course of the Khayelitsha Commission's (the Commission) phase 1 hearings. In response, this report will deal with the following:
  - a) the value of independent oversight
  - b) foreign and international models of best practice;
  - c) oversight structures relevant to the Khayelitsha police stations; and
  - d) recommendations.
2. The term "oversight" is used in this report to describe two specific processes: 1) the inspection of police stations and custody facilities; and 2) the investigation of complaints concerning the police.
3. This report focuses primarily on oversight functions insofar as it pertains to the protection and fulfilment of the rights of detainees. It must be said, however that effective oversight over operational concerns helps ensure good governance, the combating of corruption and the swift reaction to crime – concerns no doubt relevant to the fulfilment of citizens' right to freedom and security.

### The value of independent oversight

#### *The rights of detainees*

4. Police cells operate outside of public view. Insular environment such as these put detainees at risk of abuse, neglect, and poor conditions. The absence of any form of independent scrutiny provides no challenge to this treatment, rendering detainees

vulnerable to the abuse of processes as well as violence and assault from both each other and police officials.<sup>1</sup> The words of the Special Rapporteur on Torture are particularly appropriate:

“Experience shows that most acts of torture, and certainly the most cruel and egregious, happen in the first few hours or days after a person’s arrest, and while he/she is technically under preventive detention.”<sup>2</sup>

5. Given the Western Cape’s prominence when it comes to the rate of complaints against the police, it is at least plausible that a significant number of these occur in Khayelitsha. Indeed, the Independent Complaint Directorate’s Annual Report for 2009/2010 indicated that there were seven deaths at the Khayelitsha police station that occurred whilst suspects were in custody or as a result of police action. The report describes one of these incidences which led to the death of an individual:

“...on 28/09/2009, two permanent members and six reserve members assaulted a member of the public by kicking and hitting him with half a brick. He was transported to the Khayelitsha police station where individual members again assaulted him in full view of other police members and administration staff – these members and administration staff declined to make statements. The victim of the assault died in hospital.”<sup>3</sup>

6. Accordingly, if the rights of detainees mean anything at all, institutions such as police cells must be transparent in their operations and must be held accountable for the protection of those constitutional rights.<sup>4</sup> Independent oversight is, uncontroversially, the best way to achieve this. As noted by the Special Rapporteur on Torture in 2011:

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<sup>1</sup> According to the 2011/2012 Independent Complaints Directorate Annual Report (ICD Report), the Western Cape accounted for the second highest number of complaints (857) and 18% of all complaints nationally. Four hundred and twenty six of these complaints were made in relation to police misconduct, 348 in relation to criminal conduct, 29 regarding the Domestic Violence Act and 54 on deaths in police custody or as a result of police action. In the 2010/2011 period, the Western Cape accounted for 17% of all complaints and notifications in the country, which was, again, the second highest. Seventy per cent of the complaints (calculated across the provinces) concerned police brutality (attempted murder, assault and assault GBH), 4% concerned torture and 2% concerned incidences of rape.

See also M Deitch ‘The need for independent prison oversight in a post-PLRA world’ Federal Sentencing Reporter, 24 (4), 236–244.

<sup>2</sup> Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 2011, A/HRC/16/52

<sup>3</sup> ICD Annual Report 2009/2010, 65. It is also worth noting a 2005 SAPS National Instruction that laments the ‘issuing of unlawful instruction relating to the arrest and detention of suspects,’ particularly the practice of refusing to transport suspects to court before the commencement of a weekend.

<sup>4</sup> M Deitch ‘The need for independent prison oversight in a post-PLRA world’ Federal Sentencing Reporter, 24 (4), 236–244.

“Regular inspections can ensure the adequate implementation of safeguards against torture, create a strong deterrent effect and provide a means to generate timely and adequate responses to allegations of torture and ill-treatment by law enforcement officials.”<sup>5</sup>

7. Although there are a number of standing orders regulating the treatment of suspect during arrest and detention, it is worth noting that there are no public reports from the police regarding compliance with such orders. This renders the public in the dark in respect of their rights and what may reasonably be expected from the police. Were such statistics made public, public awareness would be enhanced as would the mechanisms used by oversight structures to monitor compliance.
8. Interestingly, the Office of the Inspecting Judge, in contrast to the Independent Policing Investigative Directorate (IPID), is mandated through legislation to not only investigate the complaints of prisoners, but to inspect prisons regularly in order to ‘report on the treatment of prisoners...and on conditions and any corrupt or dishonest practices in correctional centres.’<sup>6</sup> It is curious, then, given that people are detained in both prisons and police cells, that there is no national legislative mechanism providing for the regular inspection of police cells.

### **Models of best practice**

9. The following examples illustrate the role and importance of unannounced visits to detention facilities. I have drawn on the experience of and commentary on the Sub-Committee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the Committee to Prevent Torture (CPT) as well as oversight mechanisms in the United Kingdom.
10. Before examining the various oversight mechanisms, it is worth reflecting on the meaning of certain provision of UNCAT.<sup>7</sup>

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<sup>5</sup> Presentation delivered by J Mendez, Special Rapporteur on Torture, at APT Global Forum on the OPCAT, November 2011.

<sup>6</sup> Section 90(1) Correctional Services Act 111 of 1998.

<sup>7</sup> The South African government ratified UNCAT on 10 December 1998.

11. Articles 2 and 16 require that state parties take measures, legislative, administrative, judicial or otherwise, to prevent torture and ill-treatment. The Committee against Torture (discussed below) and other treaty monitoring bodies have recommended various measures that states should take to fulfill their obligations to prevent torture in terms of UNCAT.

12. Unannounced visits to places of detention have been described as ‘one of the most important [of such] measures’<sup>8</sup> by such bodies as well as by Prof. Manfred Nowak during his tenure as UN Special Rapporteur on Torture.<sup>9</sup>

*Optional Protocol to the United Nations Convention against Torture (OPCAT)*

13. The OPCAT established an international inspection system for places of detention. The Sub-Committee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is authorised to visit all places of detention in State parties and provide advice and assistance to them.<sup>10</sup>

14. Under the OPCAT the SPT is entitled to unrestricted access to all places of detention and must be granted access to have private interviews with the persons deprived of their liberty, without witnesses, and to any other person who in their view may supply relevant information, including government officials.

15. The SPT has adopted a practice of conducting unannounced inspections to places of detention. Although unannounced inspections are not referenced explicitly in the OPCAT, they are understood to be implied in articles 12 and 14 and necessary to the effective implementation of the SPT’s mandate.<sup>11</sup> The SPT’s country reports, guidelines

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<sup>8</sup> M Nowak ‘Torture and Enforced Disappearance’ Catarina Krause and Martin Scheinin (eds.), *International Protection of Human Rights: A Textbook* (Turku: Institute for Human Rights, Åbo Akademi University, forthcoming 2009), 171, at 172.

<sup>9</sup> See also CAT Commentary by Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary* (Oxford: Oxford University Press, 2008).

<sup>10</sup> Although the South African government signed the OPCAT in September 2006, it has yet to ratify this instrument.

<sup>11</sup> Articles 12 and 14 state, in relevant part:

“In order to enable the Subcommittee on Prevention to comply with its mandate... States Parties undertake

- To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention...

and its fourth annual report (2011) reflect this.<sup>12</sup>

16. State parties to the OPCAT are also required to establish a ‘National Preventive Mechanism’ (NPM): ‘one or several independent national preventive mechanisms for the prevention of torture at the domestic level.’<sup>13</sup>

17. The SPT specifically included in its own guidelines<sup>14</sup> that that states should ensure that its own preventive mechanisms should be able to carry out unannounced visits at all times to

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- To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment

In order to enable the Subcommittee on Prevention to fulfill its mandate, the States Parties to the present Protocol undertake to grant it:

- Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
- unrestricted access to all places of detention and their installations and facilities;
- The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
- The liberty to choose the places it wants to visit and the persons it wants to interview

Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.”

<sup>12</sup> The SPT’s country reports, most of which contain recommendations regarding unannounced visits, are available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=23&DocTypeCategoryID=9](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=23&DocTypeCategoryID=9)

The SPTs annual reports are available at <http://www2.ohchr.org/english/bodies/cat/opcat/annual.htm>

Guideline 5 of the SPT’s Guidelines (Twelfth session Geneva, 15–19 November 2010) states:

- “A programme for intended visits for the upcoming year shall be published by the Subcommittee by the end of each year and States parties to be visited shall be notified through their Permanent Mission in Geneva.
- A second notification containing the dates of the visit and the names of the members of the visiting delegation shall be communicated to the State party together...
- The notification may indicate some of the places that the delegation intends to visit. This shall not prevent the visiting delegation from visiting other places of detention not indicated in the notification.”

<sup>13</sup> Article 17 of OPCAT states:

“Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.”

<sup>14</sup> Id supra note 10.

all places “in accordance with the provisions of the OPCAT” and is quick to encourage or recommend NPMs to conduct unannounced inspections.<sup>15</sup>

*European Committee for the Prevention of Torture (CPT)*

18. The CPT was established pursuant to the coming into effect of the European Convention against Torture and operates under the Council of Europe. All European countries are required to submit to routine inspections for the purpose of assessing how persons deprived of their liberty are being treated.<sup>16</sup>

19. The CPT has unlimited access to places of detention and the right to inspect them without any restrictions.<sup>17</sup> Like the SPT, the CPT makes unannounced visits.<sup>18</sup>

20. Although unannounced visits are not referenced explicitly in the European Convention, the CPT’s rules of procedure state that any notification from the CPT of its intention to visit a state party ‘will not prevent the visiting delegation from deciding to visit places not indicated in the notification.’<sup>19</sup>

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<sup>15</sup> See for example ‘Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay, 7 June 2010.

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<sup>16</sup> The CPT draws its authority from Articles 2 and 7 of the European Convention:

“Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.”

“The Committee shall organise visits to places referred to in Article 2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances...”

<sup>17</sup> Article 8 of the European Convention states, in relevant part:

1. The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2.
2. A Party shall provide the Committee with the following facilities to carry out its task:
  - a) access to its territory and the right to travel without restriction;
  - b) full information on the places where persons deprived of their liberty are being held;
  - c) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction.

<sup>18</sup> The CPT’s country reports are all listed at <http://www.cpt.coe.int/en/visits.htm#2014>

<sup>19</sup> Title III, Chapter II, Rule 33, CPT Rules of Procedure, CPT/Inf/C (2008) 1.

21. In addition, the CPT's own set of standards, designed to assist state parties to effectively prevent torture in detention facilities, state the following regarding the inspection of police cells:

“the inspection of police establishments by an independent authority can make an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both regular and unannounced, and the authority concerned should be empowered to interview detained persons in private. Further, it should examine all issues related to the treatment of persons in custody: the recording of detention; information provided to detained persons on their rights and the actual exercise of those rights; compliance with rules governing the questioning of criminal suspects; and material conditions of detention.”<sup>20</sup>

### *The United Kingdom*

22. Subsequent to having ratified OPCAT in December 2003, the United Kingdom undertook to strengthen the mandate of independent oversight institutions, particularly the role of volunteer lay inspectors, Her Majesty's Inspectorate of Prisons (HMIP) and Her Majesty's Inspectorate of Constabulary (HMIC).

### *Lay visitors*

23. The Police Reform Act of 2002, amongst other things, reorganised the structure and powers of lay visitors – ‘independent custody visitors (ICVs)’- to places of detention.<sup>21</sup>

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<sup>20</sup> CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2013.

<sup>21</sup> Section 51 of the Police Reform Act 2002 states:

1. Every police authority shall—
  - a) make arrangements for detainees to be visited by persons appointed under the arrangements (“independent custody visitors”); and
  - b) keep those arrangements under review and from time to time revise them as they think fit.
2. The arrangements must secure that the persons appointed under the arrangements are independent of both—
  - a) the police authority; and
  - b) the chief officer of police of the police force maintained by that authority.
3. The arrangements may confer on independent custody visitors such powers as the police authority considers necessary to enable them to carry out their functions under the arrangements and may, in particular, confer on them powers—
  - a) to require access to be given to each police station;
  - b) to examine records relating to the detention of persons there;
  - c) to meet detainees there for the purposes of a discussion about their treatment and conditions while detained; and
  - d) to inspect the facilities there including in particular, cell accommodation, washing and toilet facilities and the facilities for the provision of food.

24. The ICV code of practice requires the following in respect of visits to police facilities:

“ICVs regularly conduct unannounced visits to police stations. This element of “spot-checking” is an important tool in ensuring ICVs are able to provide an accurate “snapshot” account of detention conditions.”<sup>22</sup>

### *Inspectorates*

25. The system of independent custody visitors is complemented by the HMIP and HMIC. In 2011, again, pursuant to ‘meeting the objectives of OPCAT’, the HMIP and HMIC concluded a memorandum of understanding whereby it was agreed that the HMIC would conduct inspections of ‘police custody conditions in England and Wales.’

26. Importantly, the agreement states that the “majority of inspections will be unannounced [thereby] excluding the pre-planning of support from the [police] and creating a situation where the operation staff at the relevant custody suite will not be expecting [the inspectors]”.

### *South African Judicial Inspectorate for Correctional Services (Inspectorate)*

27. There is very little in the Correctional Services Act 111 of 1998 (the Act) regarding the Inspecting Judge’s role as an inspector. Nevertheless, the Inspectorate does conduct unannounced visits.<sup>23</sup>

28. The Act’s somewhat ambiguous mandate has come under fire recently for failing to deal adequately with inspections.<sup>24</sup> Moreover, the recommendations stemming from a large-scale review of the Inspectorate which included interviews with both staff of the Inspectorate and members of civil society organisations, included the view that “the Inspectorate needed to be more proactive in order to maximise its impact, including initiating inspections on a larger scale and making many more unannounced visits.”<sup>25</sup>

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<sup>22</sup> Code of Practice on Independent Custody Visiting, March 2013, UK Home Office, p 9.

<sup>23</sup> See Annual Reports of the Office of the Judicial Inspectorate, 2000 2005, available at <http://judicialinsp.dcs.gov.za/Annualreports/annualreport.asp>

<sup>24</sup> See various reports from civil society presented to the Portfolio Committee on Correctional Services at <http://www.pmg.org.za/report/20121031-strengthening-judicial-inspectorate-correctional-services-stakeholder>

<sup>25</sup> S Jagwanth, ‘A review of the Judicial Inspectorate of Prisons of South Africa’, CSPRI Research Paper Series No. 7, May 2004.

## *Guidelines*

29. The Association for the Prevention of Torture has drafted a practical guide on monitoring police custody.<sup>26</sup> It contains extremely useful information regarding how best to determine whether detainees and suspects have or are being treated by police officials. It is also an excellent indicator on the types of records, registers and information that police stations themselves should be keeping.

### **Adequacy of oversight structures of Khayelitsha police stations**

30. There is evidence from the Commissions suggesting that oversight structures have essentially failed to prevent large-scale mismanagement of police stations in Khayelitsha, particularly when it comes to the inspection of police custody facilities and the processing of complaints.

31. The following recommendations are thus made on the basis that the Commission makes a finding to this effect.

### **Recommendations**

#### *SAPS Internal inspection mechanisms*

32. There is certainly value in internal inspections. Although such value is largely confined to management and resourcing issues, it is ultimately SAPS that is responsible for complying with its own principal legislation. Monitoring legislative compliance is thus a basic management responsibility

33. Based on a reading of the evidence before the Commission and the information within the public domain from annual reports it seems that the internal audit process does not deal with conditions of detention in a meaningful manner. There is very little, for example, regarding the treatment of arrested persons, conditions of detention, or complaints regarding the abuse of process or ill treatment.

34. When it comes to the inspection of cells, conditions of detention and the processing of complaints that may arise from such inspections, the value of internal audits is limited, for such monitoring does not stem from an independent source. Uncontroversially, a

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<sup>26</sup> Available at [http://www.apt.ch/content/files\\_res/monitoring-police-custody\\_en.pdf](http://www.apt.ch/content/files_res/monitoring-police-custody_en.pdf)

vitality important aspect of any oversight mechanism is its independence from the institution or organization it intends to assess and freedom from “undue political interference.”<sup>27</sup>

35. The internal monitoring system should therefore be accompanied by meaningful independent oversight.

#### *Community Police Forums (CPFs)*

36. The evidence from the Commission suggests that CPFs for the Khayelitsha area are, for the most part, inefficient and have thus have failed to achieve the objectives set out in section 18 of the South African Police Services Act 68 of 1995 (SAPS Act).

37. The evidence also suggests that part of the reason the failure of the CPFs may be insufficient resources.

38. Although there is no oversight mandate conferred on CPFs through the SAPS Act, it would appear that the Western Cape Community Safety Act 2013 (Community Safety Act) envisages some type of oversight role for CPFs, primarily through the functions of the provincial ombudsman.

39. Section 17(4) states:

“If the Ombudsman is of the opinion that a complaint may more appropriately be dealt with by another competent authority, including a national authority, a community police forum, a constitutional institution or the Provincial Commissioner, he or she may at any time refer a complaint or aspect thereof to that other authority.”

40. Any oversight role that CPFs are or will be directed to perform should be viewed with circumspection given their lack of independence. Corder points out that institutional independence has two facets:

“In the first place, to make institutions dependent on budget allocations received through the very departments that they are required to monitor is not desirable. Secondly, these institutions must be seen by the public to be independent and free of the possibility of influence or pressure by the executive branch of government. Approval by the executive of budgets, or other issues of staffing is thus inconsistent with independence, as well as the need to be perceived as

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<sup>27</sup> *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) at para 188.

independent by the public when dealing with their cases”.<sup>28</sup>

41. Community Police Forums are dependent entirely on SAPS for both financial and administrative resources.<sup>29</sup> Such dependence mitigates against the quality of any independent oversight they may be asked to perform.<sup>30</sup>
42. Thus, to the extent that the Ombudsman may require any assistance with the processing of complaints, we recommend that members of CPFs not be involved. This would necessarily require an amendment to the Community Safety Act.
43. This recommendation also applies to the CPFs’ involvement with any oversight activities, including inspections directed by the provincial Minister.

*Civilian Secretariat for Police (Secretariat)*

44. The legislative framework for the Secretariat provides for both financial and administrative independence as it receives its budget from parliament and is required to table reports on its activities. It cannot be described as entirely independent, however, since it is required to report to the Minister of Police.
45. Despite this requirement, the Secretariat is thus well-placed to perform important oversight functions, particularly inspections and the receipt of complaints.
46. Indeed, there is evidence that the secretariat does conduct inspections, for which the National Monitoring and Evaluation Tool (NMET) was developed. The NMET reportedly contains a comprehensive section on custody management and the treatment of detainees. However, any reports on inspections are not made public.

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<sup>28</sup> H Corder, S Jagwanth and F Soltau Report on Parliamentary Oversight and Accountability (June 1999), 56. Available on the web at: <http://www.pmg.org.za/bills/oversight&account.htm>

<sup>29</sup> Chapter seven SAPS Act.

<sup>30</sup> The Constitutional Court in *New National Party of South Africa v Government of the Republic of South Africa* 121 1996 (6) BCLR 489 (CC). states that independence (in respect of the Independent Electoral Commission) required both financial and administrative independence.

47. Despite the Secretariat's reported inspection work and its legislative objective being to provide for civilian oversight and to monitor police performance,<sup>31</sup> the Civilian Secretariat for Police Service Act 2011 (Act) does not provide for the regular inspections of police cells or the investigation into complaints beyond those functions referred to it by the Independent Policing Investigative Directorate (IPID).<sup>32</sup>
48. This is unfortunate, given the Secretariat's legislative authority to "access any building or premises under the control of the police service."<sup>33</sup> Moreover, the conducting of inspections is unlikely to impact on resources in any significant way, since it is an established institution with readily available access.
49. Accordingly, it is our recommendation that to the extent necessary, the Act be amended so as to provide for the regular inspections of police detention facilities against a clear set of standards. A series of regulations or directives would need to be issued regarding the applicable standards regarding conditions of detention. Such standards would be based on international and constitutional norms, both of which exist and are available. In addition, the Act would need to be amended to require that inspection reports be tabled before both provincial and national parliaments.
50. Regarding the receipt and investigation of complaints, the Secretariat could also be tasked to refer any complaints it receives during the course of its inspections to the Western Cape provincial Ombudsman. Of course, complaints falling within the investigative ambit of the Independent Policing Investigative Directorate (IPID) would necessarily be referred there. However, complaints outside of IPID's mandate, or 'lesser' complaints, could most certainly fall within the purview of the ombudsman (discussed below). This would also require legislative amendment to the Act.

51.

*Western Cape Department of Community Safety (Department)*

52. Although the Department is carrying out its constitutional oversight role by, amongst others, inspecting police stations (including cells), the effectiveness of such visits appears

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<sup>31</sup> Section 3 Civilian Secretariat for Police Service Act 2011

<sup>32</sup> Part 5 Civilian Secretariat for Police Service Act 2011

<sup>33</sup> Section 9 Civilian Secretariat for Police Service Act 2011

to be limited by the fact that such visits are not formally regularised (publicly, at any rate) and that inspection reports are not made public through any form of tabling procedure.

53. It is thus our recommendation that the provincial minister undertake to formalise a system of regularised and unannounced inspections as well as direct that the reports from such visits be tabled before parliament each quarter.
54. In order to assist the Department with station inspections, we recommend that the Minister authorise a delegation of interested members of the community to accompany Departmental delegations. Such members should be duly qualified or experienced in the field of policing, safety, criminology etc. so as to do away with any need for training as well as incorporate a level of professional expertise to station visits.
55. Regarding the functions of the Ombudsman, section 16 of the Western Cape Community Safety Act states “any person may submit a complaint ...regarding alleged police inefficiency or a breakdown in relations between the police and any community.”
56. IPID is tasked with investigating matters involving death, assault, torture etc. ‘Lesser’ concerns, such as ill treatment, conditions of detention, abuse of process etc. (i.e. those outside of its investigative remit), although not as serious as IPID-type complaints, nevertheless constitute grave constitutional rights violations.
57. We recommend, therefore, that the ombudsman’s functions be broadened so as to encompass complaints excluded from the IPID ambit, i.e. ‘lesser complaints.’ The introduction of such complaints need not have a significant resource impact, for such matters do not require invasive, highly skilled (and thus education and training intensive) policing type investigations. The powers accorded to the ombudsman are more than sufficient to finalise ‘lesser’ complaints.
58. The broadening of the ombudsman’s function does not exceed his or her authority in terms of the Community Safety Act, for investigations such as these still fit comfortably within the ‘oversight’ role. Moreover, we argue that the failure to deal with such issues goes against what OPCAT will ultimately require of the state as well as what UNCAT

already does require: “effective.... measures to prevent acts of torture.”<sup>34</sup>

59. In addition, we recommend that the ombudsman work closely with the provincial Secretariat in order to streamline the processing of complaints as well as ensure that any non-cooperation on the part of SAPS be referred to senior management as well as IPID in terms of section 28(g) and (h).

### **Conclusion**

The value of regularised, unannounced inspections from an institution that has complete independence from its subject cannot underestimated, particularly when dealing with detained suspected offenders, a category of society that are extremely vulnerable. Oversight structures involved in monitoring and inspections must, however, strive to utilise the same set of standards when evaluating compliance. In addition, those institutions involved in investigations must have a formalised system of referrals. There must be agreement regarding which institutions will deal with certain categories of complaints and a system whereby complaints, once investigated, are referred to the relevant prosecuting authority.

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<sup>34</sup> Article 2 UNCAT.

