



**Western Cape
Government**

Community Safety

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The Honourable Mr Masizole Mnqasela
Speaker of the Western Cape Provincial Parliament
6TH Floor, Room 6-01
7 Wale Street
CAPE TOWN
8000

*Comms / Forum
Agreed to be followed and
referred to SC on Community
Safety, 17 to look at*

Dear Mr Mnqasela

**REPORT IN TERMS OF SECTION 17(8) OF THE WESTERN CAPE COMMUNITY SAFETY ACT,
2013 (Act 3 OF 2013) ON AN UNRESOLVED INVESTIGATION REGARDING POLICING IN
THE OVERSTRAND AREA, WESTERN CAPE**

The Western Cape Police Ombudsman received a complaint in terms of Section 17(1) of the Western Cape Community Safety Act, 2013 – Act No. 3 of 2013 (hereafter referred to as the Act), lodged by the Executive Mayor of the Overberg Municipality, Mr Dudley Coetzee. Similar complaints were also lodged by a Dr Du Preez and Mr D Keet.

The complainants basically alleged that the South African Police Service (SAPS) in the Overstrand area are unable to perform their mandate in terms of section 205(3) of the Constitution of South Africa (Act 108 of 1996), as SAPS in the Overstrand area (Gansbaai, Hermanus, Kleinmond and Stanford SAPS stations) does not have the manpower to function effectively.

A preliminary investigation was conducted into the allegations and the complaint was found to be substantiated. An investigation followed but due to the fact that the Office of the Western Cape Police Ombudsman could not resolve the complaint, a report containing findings and recommendations was referred to my Office in terms of Section 17(8) of the Act.

JASMIN GLASS

05 SEP 2019

CLERK OF THE PARLIAMENT
WESTERN CAPE

I will ensure that the recommendations directed to the Western Cape Government are implemented. The report was also forwarded to the National Minister of Police as is required in section 17(9) of the Act and the complainants were informed accordingly.

The report also contains recommendations directed at the Standing Committee for Community Safety, Cultural Affairs and Sport. I attach hereto the report and would kindly request you to have it delivered to the Chairperson of the Standing Committee.

Kind regards

A handwritten signature in black ink, appearing to read 'A. Fritz', with a stylized flourish at the end.

ALBERT FRITZ

PROVINCIAL MINISTER OF COMMUNITY SAFETY, CAPE TOWN

DATE: 3/09/2019

Our Ref: COM 0504 2019_1
Enquiries: Mrs A Lewis

DATE:	30 JULY 2019	File No:	COM 0504 2019_1
TO:	MEC FRITZ	FROM:	MR. JJ BRAND OMBUDSMAN: WCPO
SUBJECT:	REPORT ON COMPLAINT OF POOR RESPONSE FROM MR D COETZEE		
POLICE STATION:	GANSBAAI – HERMANUS – KLEINMOND – STANFORD SAPS		

Dear MEC Fritz,

We refer to the above and our meeting held on even date wherein the final report on the complaint of poor response of SAPS in the Overstrand area was handed to you in terms of Section 17(8) of the Western Cape Community Safety Act, 2013 – Act No. 3 of 2013.

Below is an executive summary of the findings and recommendations of the investigation of the Western Cape Police Ombudsman (WCPO).

1. Findings:

After analysing the public comments, inputs from SAPS and other Departments, comments from the CPF's, comments from the public meetings and conducting the individual interviews, this part of the report will focus on the findings that can be drawn from the results of the investigation.

The findings will be categorized in two different sections. The first category deals with the question on whether there is indeed a shortage of SAPS resources in the Overstrand area. The second category highlights the impact which the unavailability of sufficient resources has on the efficiency of the SAPS in the Overstrand area to perform their Constitutional mandate.

These findings will now be discussed in the same order.

1.1 Is there indeed a shortage of SAPS resources in the Overstrand area?

1.1.1 Statistics in relation to human resources

GRANTED VS ACTUALS – END APRIL 2019				
COMPONENT	GRANTED	ACTUAL	DIFFERENCE	%
Gansbaai	73	59	-14	81%
Hermanus	162	142	-20	88%
Kleinmond	45	40	-5	89%
Stanford	37	33	-4	89%
Cluster Office	13	9	-4	69%

The above table reflects the information of the human resources at the four stations and at the cluster:

- The stations are all below 90% of their granted figures (Gansbaai 81%, Hermanus 88%, Kleinmond 89%, Stanford 89% and the Cluster Office 69%).
- The ratio per operational members to population for the four stations equals the following:
 - Gansbaai: 1:258
 - Hermanus: 1:638
 - Kleinmond: 1:522
 - Stanford: 1:851

The National Commissioner for Police, General Sitole, has recently indicated¹ in his address to the Select Committee on Justice and Security, that policing numbers have not kept up with South Africa's population growth. He said the United Nations recommend a ratio of 120:1 police officers, whilst the ratio in South Africa is 383:1.

¹ <https://www.news24.com/SouthAfrica/News/police-asked-to-cut-r6bn-from-budget-sona-dream-at-risk-says-sithole-20190717>

In an interview² with the South African Broadcasting Corporation, published on the 1st of July 2019, the Minister of Police, Minister Bheki Cele, confirmed South Africa's Police-population ratio as 1:383. He however said the United Nations standard is 1 police officer for 220 people in the Country. Unfortunately, the Provincial Commissioner of SAPS did not provide the Police-population ratios as requested by this Office.

Judging from the ratios given by the National Minister – and the National of Police of 1:383, only Gansbaai station is within the National standard.

- Gansbaai and Kleinmond stations are both on the level of a Lieutenant Colonel. The granted figure for Kleinmond is however 28 members less than that of Gansbaai.
- The information in annexure C of the Station Intelligence Profile (SIP) for Stanford differs from the information provided by the Provincial Commissioner. The report by the Provincial Commissioner indicates that the station has 33 actual members, whilst the annexure C in the SIP indicated 37 members.
- The status on human resources for SAPS Specialized units operating in the Overstrand area can be depicted in table infra:

HUMAN RESOURCES GRANTED VS ACTUALS – END APRIL 2019				
SPECIALIZED UNITS	GRANTED	ACTUAL	DIFFERENCE	%
Overberg K9	18	18	0	100%
Overberg FCS	7	5	-2	71%
POPS Paarl*	127	99	-28	78%

* Denotes POPS Paarl is situated in Paarl but serves the Overstrand in terms of their mandate.

- The K9 (Dog unit) and FCS (Family, Child and Sexual Offences) Units are geographical located within the Overberg Cluster.

The information in the above table indicates that both the FCS – and POPS unit are understaffed and are on less than 80% of their granted capacity.

² <https://www.news24.com/SouthAfrica/News/sa-needs-60-000-more-cops-to-meet-un-standard-cele-20190624>

1.1.2 Statistics in relation to vehicles

The status of the vehicles at the four stations and the cluster office is depicted in the following table:

VEHICLES GRANTED VS ACTUALS – END APRIL 2019				
COMPONENT	GRANTED	ACTUAL	DIFFERENCE	%
Gansbaai	20	16	-4	80%
Hermanus	42	39	-3	93%
Kleinmond	15	12	-3	80%
Stanford	12	7	-5	58%
Cluster Office	2	6	4	300%

- **The stations are all below their ideal figures, with Stanford at a critical 58%.**
- The cluster has 2 vehicles more than their granted figure. These vehicles could have been placed in the interim at Stanford to assist the station.
- Gansbaai and Kleinmond stations are both on the level of a Lieutenant Colonel. The granted figure for Kleinmond is however 5 vehicles less than that of Gansbaai.
- The information in annexure D of the SIP for Stanford differs from the information provided in the report by the Provincial Commissioner. Unfortunately, the Provincial Commissioner of SAPS did not respond to a request from the WCPO to clarify the difference. The following table highlights the difference:

COMPONENT	SIP	REPORT	DIFFERENCE
Gansbaai	15	16	1 less
Hermanus	32	39	7 less
Kleinmond	6	12	6 less
Stanford	4	7	3 less

- Judged according to the SIP, the stations have a much bigger shortage in terms of vehicles. An aspect that was constantly raised during community engagements. Kleinmond and Stanford have far less than 50% of their granted vehicle fleet to their disposal.

The following table reflects the status of the vehicles at the SAPS Specialized units operating in the Overstrand area:

VEHICLES GRANTED VS ACTUALS – END APRIL 2019				
SPECIALIZED UNITS	GRANTED	ACTUAL	DIFFERENCE	%
Overberg K9	9	8	-1	89%
Overberg FCS	3	3	0	100%
POPS Paarl*	24	28	4	117%

* Denotes POPS Paarl is situated in Paarl but serves the Overstrand in terms of their mandate.

- The actual number of vehicles at the Specialized units are sufficient to serve the stations in the Overstrand area.

1.1.3 Accommodation needs

- November 2019 marks 7 years since the building and facilities of the Hermanus Dog unit at Hawston was destroyed due to protest action after an operation by SAPS. SAPS Facility Management is apparently paying rent for containers [for administration offices of the dog unit] and kennel facilities at the Hermanus SPCA, at a total cost of R 300,000 per annum [R 25000 monthly]. Unfortunately, the Provincial Commissioner of SAPS did not respond to a request from the WCPO to confirm this allegation.
- The Zwelihle satellite station was burnt down during the unrest and has made policing in the area of Hermanus more difficult. It has placed strain on the local community who have to travel far distances to report crime and endure long queues, resulting in possible under-reporting of crime. Commuters pay R16 to and from Hermanus CBD and Zwelihle when traveling with a taxi.

- The need for additional satellite police stations to be established additionally in Pearly Beach/Eluxolweni, Hawston/Onrus/Sandbaai and Betty's Bay/Hangklip/Pringle Bay. Commuters have to pay for instance R30 to and from Hermanus CBD and Hawston.
- The community strongly complained about the fact that Local Criminal Record Centre LCRC is stationed in Somerset West which makes taking fingerprints an impractical task for SAPS as crucial evidence is lost on crime scenes. The shortest distance is 141 kilometres and will take approximately an hour and a half to travel.

It is thus clear that there is indeed a shortage of human and physical resources, in the Overstrand area.

1.2 The impact which the unavailability of sufficient resources has on the efficiency of the SAPS in the Overstrand area to perform their Constitutional mandate.

Section 205(3) of the South African Constitution of South Africa (Act 108 of 1996) prescribes the Constitutional Mandate of the SAPS.

It states that "The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."

The ability of the SAPS in the Overstrand area to perform their Constitutional Mandate will be evaluated against each objective stipulated in the Constitution.

1.2.1 Ability to prevent, combat and investigate crime.

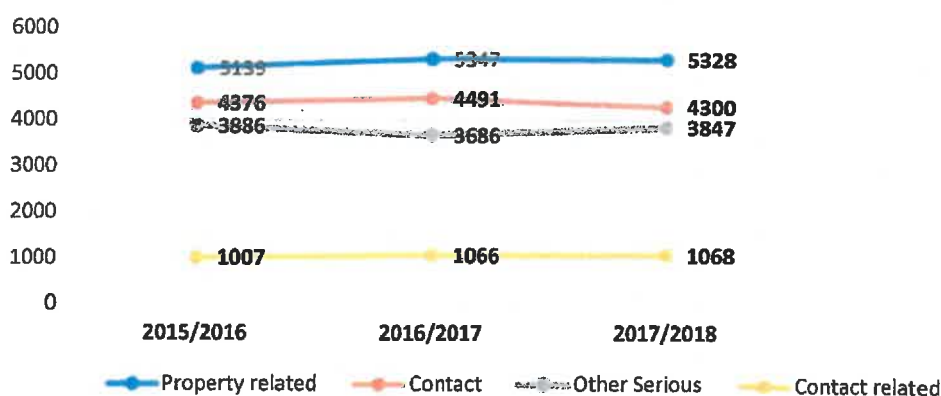
This SAPS objective will be broken down in the ability to prevent or combat crime and the investigation of crime.

- **Ability to prevent or combat crime.**

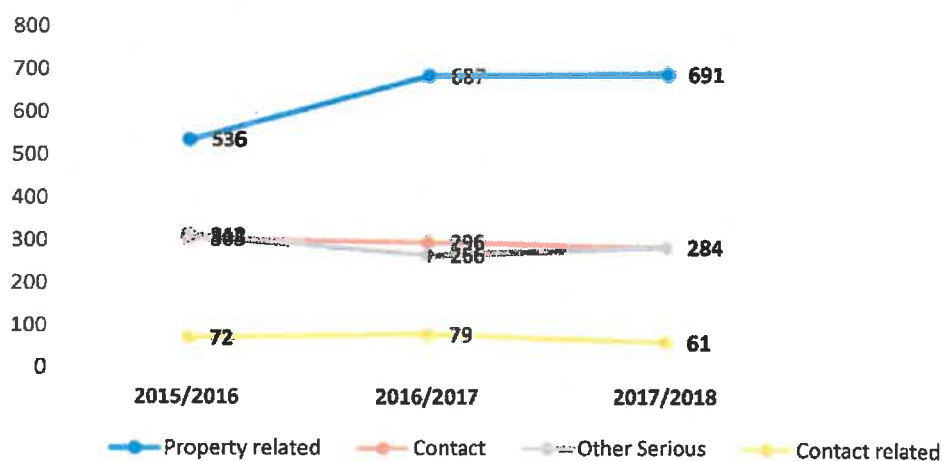
The following five charts illustrate the crime statistics for the Overberg Cluster and the four Overstrand stations for the 17 Community reported crimes.

The total 17 Community reported crimes are categorized in contact, contact related, property related and other serious crimes. A detailed description of the crime classifications in SAPS are discussed on page 92 of my investigation report.

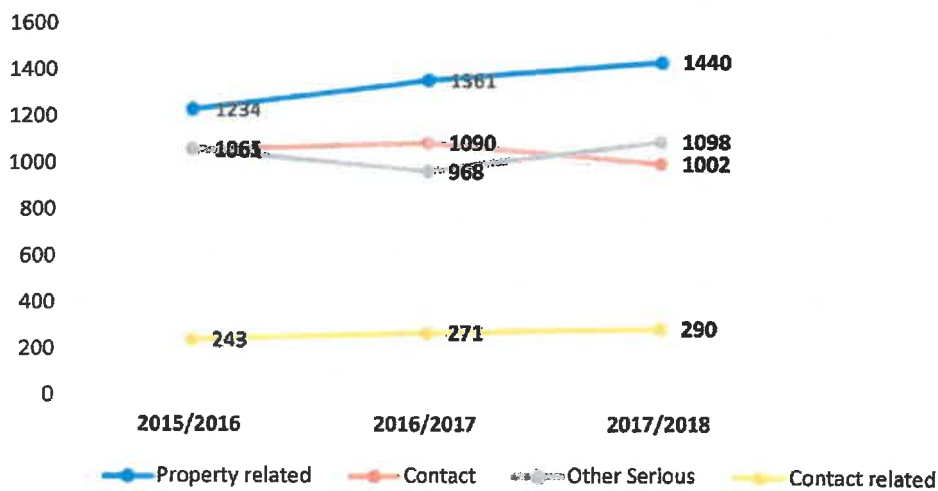
Crime statistics: Overberg Cluster



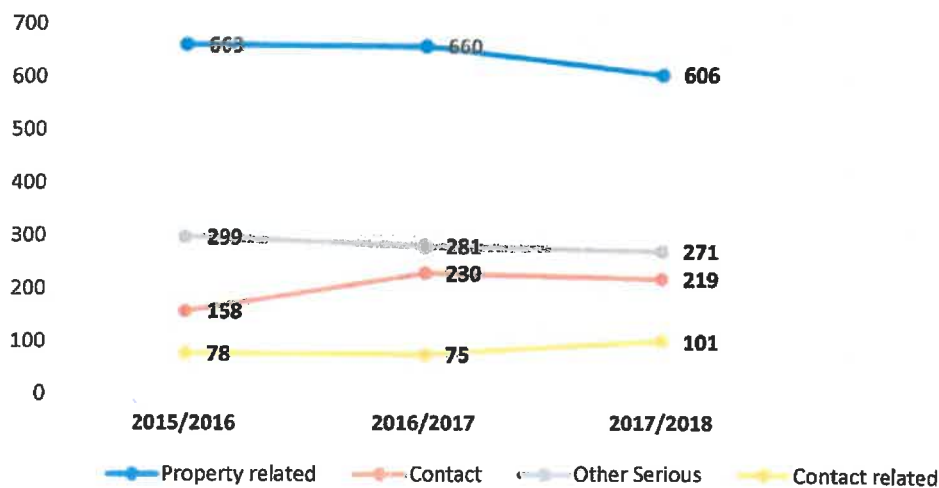
Crime statistics: Gans Bay



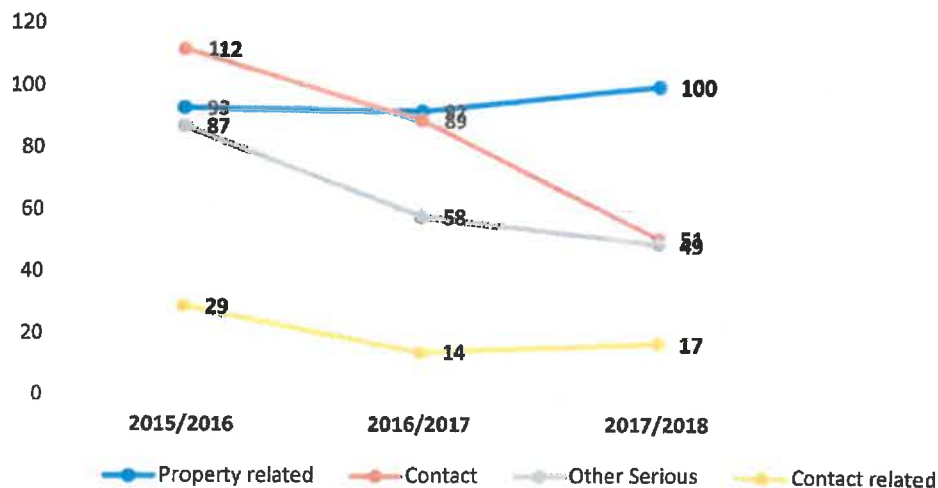
Crime statistics: Hermanus



Crime statistics: Kleinmond



Crime statistics: Stanford



The above crime statistics indicate a stabilization in crime at the Cluster and at the four stations over the last three financial years. One can unfortunately not regard the data as reliable as the communities in almost all the areas have indicated that they do not report crime anymore due to the poor responsiveness of SAPS, and because they don't trust SAPS.

The various communities specifically highlighted the following concerns regarding policing in the Overstrand area:

- Poor response by SAPS to complaints in general. The community alleges that it's a known fact that when the police are called out to any of the surrounding areas in Kleinmond, they are told that only one vehicle is available.
- Poor response by SAPS to crime scenes and by the Local Criminal Record Centre (LCRC) to crime scenes for fingerprint investigations.
- Lack of enforcement by SAPS and other law enforcement agencies.
- Abalone poaching and the link to organized crime related activities.
- Road closures of the R43, R 44 and N2.
- Non-existence of sector policing in the Overstrand area.

- One of the main concerns raised by the community of Hawston was the lack of visibility from SAPS and that no crime prevention duties are performed in the area.
- The Police of Hermanus are allegedly also fearful of Hawston unless they accompanied by Public Order Policing (POP).
- The other big issue that the community of Zwelihle has, is the police brutality that the community suffers at the hands of SAPS during protests that they intend to engage in, peacefully.
- Apart from police brutality, the community members complained about how cases that come from the Zwelihle community are never taken seriously. Sometimes, case dockets go missing and the reasoning from SAPS is that there are too many dockets.
- A neighbourhood watch was formed in the Zwelihle community even though it is not accredited and a representative was elected to be part of CPF. This all fell flat because of the alleged unresponsiveness of SAPS. Additionally, the community has noticed a trend of vigilantism (kangaroo Courts) starting in the community.

It is clear that SAPS in the Overstrand area does not have the ability to prevent or combat crime.

Ability to Investigate crime.

- The cases to Court, Detection, Undetected, Withdrawn, Conviction, and Trial ready rate were provided by the Provincial Commissioner of SAPS as requested. It was comparatively reflected for the last three financial years as per the SAPS Efficiency Index System (EIS) for the Cluster and Overstrand stations. The data on the EIS is derived from the information reflected on the SAPS 6 per component for a specific period. The SAPS 6 is a management tool to measure the performance of detectives for a specific

period, and to act as an electronic case management system. The snapshot on top of the next page is an example of the SAPS 6.

PERIOD FROM	201606	TO	201606	INDICATORS (10/1)										
SPECIAL EVENT	OR OFFENSE CODE							ON A A B DEFENSES/CALL						
DETAIL NUMBER														
MONTH	1	2	3	4	5	6	7	8.1	8.2	8.3	8.4	8.5	8.6	
201606	224	183	129	12	85	0	181	739	37	0	112	19	700	
SCR TOT	224	N/A	129	12	85	0	N/A	N/A	37	0	112	19	N/A	
TOTAL	224	N/A	129	12	85	0	N/A	N/A	37	0	112	19	N/A	

NOTE: THESE FIGURES MUST NOT BE COMPARED TO OTHER SAPS DATA

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- The various columns of the SAPS 6 can be explained as follows:

Column 1:	Cases reported during a specific period.
Column 2:	Cases carried forward from a specific period.
Column 3:	Cases sent to court during a specific period (arrests are made).
Column 4:	Cases withdrawn during a specific period.
Column 5:	Cases closed as undetected during a specific period.
Column 6:	Cases closed as false/unfounded during a specific period.
Column 7:	Cases not completed and carried over to the next period.
Column 8.1:	Total number of Cases pending in Court at the beginning of a period.
Column 8.2:	Total number of convictions recorded for a specific period.
Column 8.3:	Total number of not guilty verdicts recorded for a specific period.
Column 8.4:	Total number of cases withdrawn in Court for a specific period.

Column 8.5: Total number of cases settled by means of alternative dispute resolutions, warrants of arrests issued, etcetera.

Column 8.6: Total number of Cases pending in Court at the end of a period.

Columns 1 – 7 thus reflect the progress in the investigation of cases before Court, whilst columns 8.1 – 8.6 reflect the movement of cases in Court.

- For the purpose of this investigation, the performance of the Detective Service in the Overstrand area was evaluated against the cases sent to Court, Detection, and Conviction rates; as well as the number of cases withdrawn before Court.
- The percentage for the cases sent to court rate is calculated as:

$$\frac{\text{Column 3}}{\text{Column 1} + \text{Column 2}} \times \frac{100}{1}$$

- The percentage for the detection rate is calculated as:

$$\frac{\text{Column 3} + \text{Column 4} + \text{Column 6}}{\text{Column 1} + \text{Column 2}} \times \frac{100}{1}$$

- The percentage for the conviction rate is calculated as:

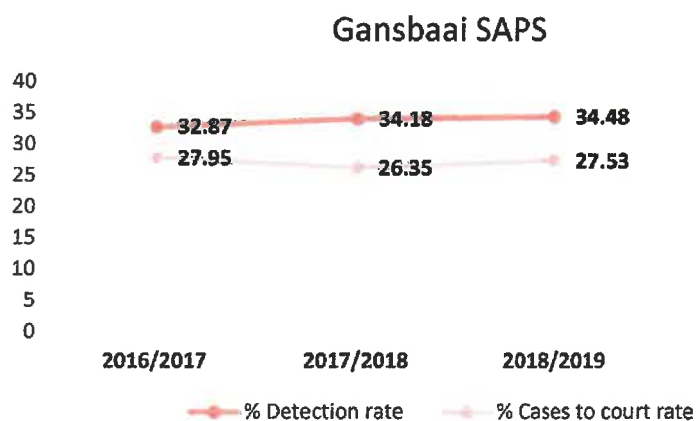
$$\frac{\text{Column 8.2}}{\text{Column 8.2} + \text{Column 8.3}} \times \frac{100}{1}$$

The calculation of the conviction rate is however not a true reflection of the performance as the cases sent to Court (column 3), cases pending in Court (column 8.1) and cases settled otherwise (column 8.5), are not taken into consideration in the calculation. As a result, the conviction rate was not taken into account when the performance of the Detective Service in the Overstrand area will be evaluated.

- The data in the following tables for the four stations in the Overstrand area were provided in the report submitted by the Provincial Commissioner of SAPS.

GANSBAAI				
Financial year	Cases to Court rate (%)	Detection rate (%)	Conviction rate (%)	No of cases withdrawn before Court
2016/2017	27.95	32.87	95.05	77
2017/2018	26.35	34.18	88.89	128
2018/2019	27.53	34.48	99.08	125

The information for the detection rate and cases sent to Court for Gansbaai SAPS, reflected in the previous table, can be illustrated in the following chart on top of the next page:



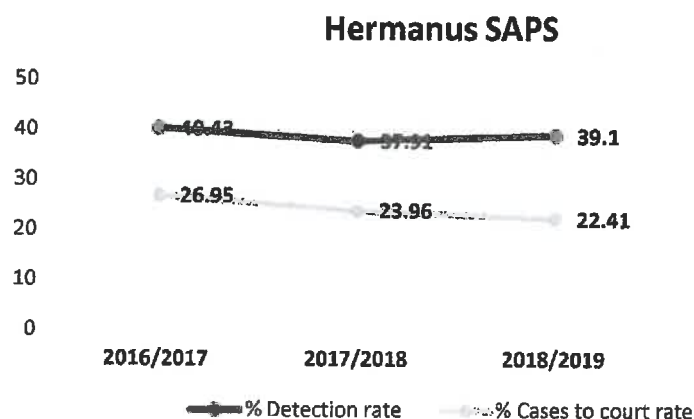
When the above data is analysed, the following conclusions can be made:

- Arrests were not affected in 72% of the cases reported to SAPS in Gansbaai during 2016/2017, deteriorating to 74% during 2017/2018 and again slightly improved to 72% in 2018/2019.

- In more than 65% of the crimes reported to SAPS in Gansbaai, the crimes were not detected by the SAPS. The number of cases withdrawn in Gansbaai increased with 48 cases, or with an alarming 62,3%.

HERMANUS				
Financial year	Cases to Court rate (%)	Detection rate (%)	Conviction rate (%)	No of cases withdrawn before Court
2016/2017	26.95	40.43	92.37	544
2017/2018	23.96	37.91	92	590
2018/2019	22.41	39.1	98.5	705

The information for the detection rate and cases sent to Court for Hermanus SAPS, reflected in the previous table, can be illustrated in the following chart:



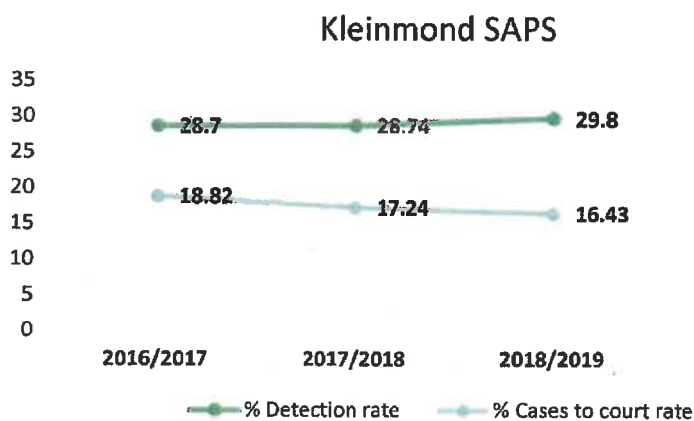
When the above data is analysed, the following conclusions can be made:

- Arrests were not affected in 73% of the cases reported to SAPS in Hermanus during 2016/2017, deteriorating to 76% during 2017/2018 and further deteriorated to 78% in 2018/2019.
- In more than 60% of the crimes reported to SAPS in Hermanus, the crimes were not detected by the SAPS. The increase in the detection rate can

mainly be contributed to the increase in the number of cases withdrawn before Court. The number of cases withdrawn in Hermanus increased with 161 cases, or with an alarming 29,6%. Hermanus station contributes to half of the 323 cases withdrawn in the Cluster.

KLEINMOND				
Financial year	Cases to Court rate (%)	Detection rate (%)	Conviction rate (%)	No of cases withdrawn before Court
2016/2017	18.82	28.7	84.48	119
2017/2018	17.24	28.74	85.71	144
2018/2019	16.43	29.8	83.87	192

The information for the detection rate and cases sent to Court for Kleinmond SAPS, reflected in the previous table, can be illustrated in the following chart:



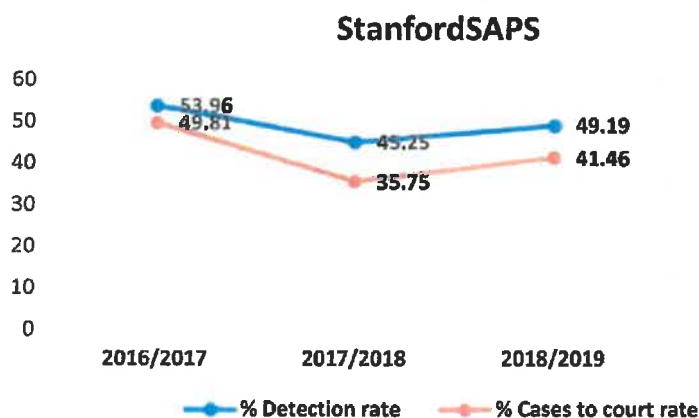
When the above data is analysed, the following conclusions can be made:

- Arrests were not affected in 81% of the cases reported to SAPS in Kleinmond during 2016/2017, deteriorating to 83% during 2017/2018 and further deteriorated to 84% in 2018/2019.

- In more than 70% of the crimes reported to SAPS in Kleinmond, the crimes were not detected by the SAPS. The increase in the detection rate can mainly be contributed to the increase in the number of cases withdrawn before Court. The number of cases withdrawn in Kleinmond increased with 73 cases, or with an alarming 61,3%.

STANFORD				
Financial year	Cases to Court rate (%)	Detection rate (%)	Conviction rate (%)	No of cases withdrawn before Court
2016/2017	49.81	53.96	100	11
2017/2018	35.75	45.25	100	27
2018/2019	41.46	49.19	100	22

The information for the detection rate and cases sent to Court for Stanford SAPS, reflected in the previous table, can be illustrated in the following chart.



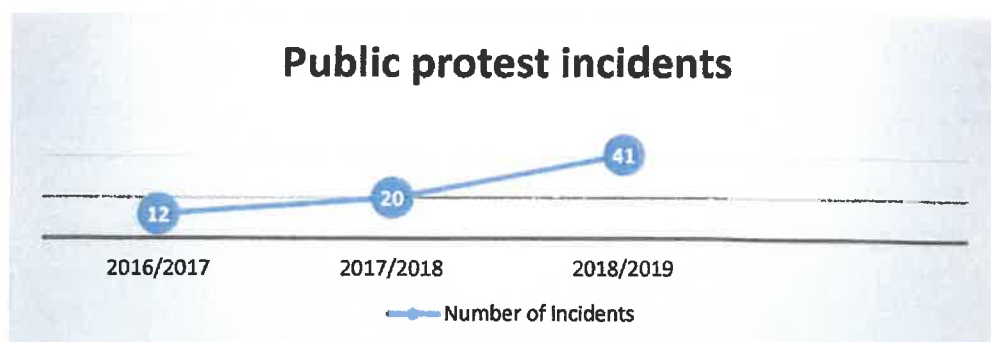
When the above data is analysed, the following conclusions can be made:

- Arrests were not affected in 50% of the cases reported to SAPS in Stanford during 2016/2017, deteriorating to 64% during 2017/2018 and improved to 58% in 2018/2019.
- In more than 50% of the crimes reported to SAPS in Stanford, the crimes were not detected by the SAPS. The increase in the detection rate can mainly be contributed to the increase in the number of cases withdrawn before Court. The number of cases withdrawn in Stanford increased with 11 cases, or by an alarming 100%.
- The cases sent to Court at all the stations will be much lower if the arrests for crimes dependent on police action (drug arrests, firearm arrests, driving under the influence of liquor) are not included.
- The report by the Department of Community Safety (DOCS), and more specifically the details of cases monitored by the Court watching brief unit of DOCS for the four stations, is an indication of ineffective investigations.

The deteriorating performance by the Detective Service, is an indication that SAPS does not have the ability to investigate crime.

1.2.2 Ability to maintain public order.

- The following graph on top of the next page illustrates the increase in public protest incidents during the last three financial years as provided by the Provincial Commissioner of SAPS:



- The statistics in the chart at the bottom of the previous page, reflects an increase of 66.67% in public violence incidents from the 2016/2017 financial year to the 2017/2018 financial year, and again a 105% (more than double) increase between the 2017/2018 financial year and the 2018/2019 financial year. Overall, public violence incidents increased with 241.7% from the 2016/2017 financial year to the 2018/2019 financial year.
- The community of Zwelihle in Hermanus has a big problem with police brutality that the community suffers at the hands of SAPS during protests that they intend to engage in, peacefully. A number of community members came forward to show us the injuries which they sustained during engagements with the police. It was established that their criminal cases are investigated by the Independent Police Investigation Directorate (IPID).
- The following written comments were received from the Community Police Forum (CPF) of Hermanus:
 - "Failure by the SAPS to act against/arrest perpetrators committing illegal acts in their presence e.g. blocking roads and burning tyres in full view of senior SAPS members.
 - Failure by the SAPS to arrest known inciters of public violence whose incitement to public violence has resulted in some R40 millions of damage to public property and resulted in an estimated R400 million loss to the Overstrand.
 - Failure by the SAPS to react to complaints from, and reports by, the public who have witnessed illegal acts of public violence, damage to public and private property, illegal blocking of public roads, stoning of vehicles, extortion, thuggery and intimidation being brazenly and maliciously perpetrated in numerous instances.
 - The above are all issues that have reached unacceptable levels and have a negative effect on our economy and the safety of residents and visitors to the Overstrand."

- The Provincial Commander for Operational Response, for both public order policing (POP) and tactical response teams (TRT), highlighted the following during an interview with the Western Cape Police Ombudsman:
- The Colonel indicated that the POP units are utilized far beyond their mandate, their primary function of crowd management. They are also utilized for a secondary function of crime prevention.
- He said that with the magnitude of public protests, they do not have sufficient resources. They have one water cannon for the whole Province. If George for instance want to use the water cannon, it will take half a day to get it there. He also indicated that their Nyalas are problematic. They are more in the Garage than outside. He added that National has promised that they will send new ones soon.
- The Colonel was requested to describe the process that is followed from the time when a request for assistance is received from the Overstrand stations, until the incident is fully addressed. He also had to include specific time frames in his response, like for example travel time to Hermanus. His response was: "I will inform the unit commander and brief them of the situation, the type of protest, who is responsible and also why they are protesting. Additional information which they must inform me of, is whether the roads are blocked and which type of protest. In the case of Hermanus, Paarl will be the responsible unit for that area. The commander will then mobilize her members. They will get their equipment and stuff in about 30 minutes. They must then travel to Hermanus which will take 2, to 2 and a half hours more. It also depends where they are deployed at that stage as they first have to go back to the unit to get their equipment. Especially when they busy with a crime prevention operation."
- The Colonel made the following additional comments: "In my opinion we need a POP unit there in the Overberg area. The other side which we also need a unit is in Vredenburg, Saldanah as distance travelling is impacting on their response. They did for instance establish extra units in other

Provinces. In KZN there are 7 units, as well as the Eastern Cape got 7. I was surprised when I arrived here to see that the Western Cape only have 3 units, for such a big Province."

- One of the emerging priorities which were identified in the Annual Operational Plan (AOP) for the cluster for the 2018/2019 financial year, is the "Reaction time of POPS into Overberg Cluster."
- The response from SAPS on a request from this Office on a contingency plan in addressing specifically public violence was found to be lacking planning, organizing, control and leadership. It only indicates that: "Policing of public violence is prescribed in terms of National Instruction 4 of 2014: 'Public Order Police: Crowd Management during public gatherings and demonstrations'. The role of the local authority with regards to public violence cannot be over emphasized as most protest actions that lead to public violence emanate from service delivery complaints which is the responsibility of the local authority and or other Government Departments."

The above is an indication that the SAPS does not have the ability to effectively maintain public order in the Overstrand area.

1.2.3 Ability to protect and secure the inhabitants of the Republic (Overstrand) and their property and the ability to uphold and enforce the law.

These two objects of Policing are evaluated together as they are interlinked to a large extend.

- The Preamble of the South African Police Service Act, Act 68 of 1995 as amended by the South African Police Service Amendment Act, Act 10 of 2012 states the following:

"PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996, requires national legislation to provide for the establishment, powers and functions of the South African Police Service to function in accordance with national

policing policy and the directions of the Cabinet member responsible for policing;

WHEREAS there is a need to provide a police service throughout the national territory to-

- (a) ensure the safety and security of all persons and property in the national territory;
- (b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
- (c) ensure co-operation between the Service and the communities it serves in the combating of crime;
- (d) reflect respect for victims of crime and an understanding of their needs; and
- (e) ensure effective civilian supervision over the Service;

AND WHEREAS there is a need to provide for a Directorate in the Service that is dedicated to the prevention, investigation and combatting of national priority offences, in particular serious organized and transnational crime, serious commercial crime and serious corruption, and that enjoys adequate independence to enable it to perform its functions."

The preamble of the South African Police Service Act, Act 68 of 1995, clearly prescribes that the Police Service must ensure co-operation between the Service and the communities they serve in the combating of crime and *reflect* respect for victims of crime and an understanding of their needs.

The contrary was found during the course of this investigation on Station, Cluster and Provincial level. As a matter of fact, there seem to be a total disconnect between the needs of the community and the needs of the community as it is viewed by the SAPS on the three levels. The following aspects serve as examples:

Station level

- The various communities specifically highlighted the following concerns regarding policing in the Overstrand area:
 - Poor response by SAPS to complaints in general. The community alleges that it's a known fact that when the police are called out to any of the surrounding areas in Kleinmond, they are told that only one vehicle is available.
 - Poor response by SAPS to crime scenes and by the Local Criminal Record Centre (LCRC) to crime scenes for fingerprint investigations.
 - Lack of enforcement by SAPS and other law enforcement agencies.
 - Abalone poaching and the link to organized crime related activities.
 - Road closures of the R43, R 44 and N2.
 - Non-existence of sector policing in the Overstrand area.
 - One of the main concerns raised by the community of Hawston was the lack of visibility from SAPS and that no crime prevention duties are performed in the area.
 - The Police of Hermanus are allegedly also fearful of Hawston unless they accompanied by Public Order Policing (POP).
 - The other big issue that the community of Zwelihle has, is the police brutality that the community suffers at the hands of SAPS during protests that they intend to engage in, peacefully.
 - Apart from police brutality, the community members complained about how cases that come from the Zwelihle community are never taken seriously. Sometimes, case dockets go missing and the reasoning from SAPS is that there are too many dockets.
 - A neighbourhood watch was formed in the Zwelihle community even though it is not accredited and a representative was elected to be part of CPF. This all fell flat because of the alleged unresponsiveness of SAPS. Additionally, the community has noticed a trend of vigilantism (kangaroo Courts) starting in the community.

- In addition, the CPF of Gansbaai highlighted the following concerns:
- *"Abalone poaching is huge and what comes with this crime is scary. Young children are being bribed with high fashion clothes and drugs to become „runners“ for the poachers. This causes children to drop out of school and families are torn apart due to children leaving home and are caught up in drug abuse.*
 - *Beaches are becoming no longer safe to enjoy and high speed vehicles take to the beaches and our roads.*
 - *Without the SAPS full manpower compliment, this is a huge task and a concern for the town. This level of crime should be rated on the top of the crime list as it is out of control.*
 - *Gangsters are coming to live in Gansbaai and without SAPS manpower, they will become uncontrollable. We recently had fatal shootings.*
 - *Lack of CCTV at SAPS office is a concern; however, the CPF will be installing these with funds and donations, hopefully in the near future.*
 - *Not only is our concern about a shortage of SAPS members; another huge concern is the fact that liquor licences are issue very easily. It has happened that members of the community appealed against the application but the licence is still granted. Alcohol is one of the main factors that create violent assaults and domestic violence.*
 - *I also feel that our local municipality is not always supportive with CPF projects and many times it is a huge fuss to have items installed. I understand that there are processes but surely when it is about ensuring that an area is safe, these processes require immediate attention to accommodate. I feel that first something needs to happen before things are done. Do we need to wait for "We should have or if only we did?"*
 - *Surely prevention is the way to go. CCTV & LPR cameras installation is a must and electrical systems should be accommodated by the municipality.*

- The daily challenges of our SAPS members speaks volumes as at times there is only 1 (one) vehicle or at best 2 (two) vehicles in operation. It is an impossible task for the vast area that is required to be protected and attended to.
- On a positive note, I am very proud of our new station commander, Lt Col Coetzee who is ensuring to the best of his ability with the compliment of staff the safety of our community. He is passionate about his work and has an "open door" policy."
- The CPF of Hermanus also raised their concerns regarding the following:
 - o "We request that this probe be extended to cover the entire Overberg area, as lack of resources in nearby towns affects crime in our town too, we share common criminals and we need to connect the dots, eg ATM fraud, and syndicated crime. Protest action in neighbouring towns, not only politics unrest, but, labour issues as happened in Grabouw recently, have resulted in the N2 being closed, affecting access to our town.
 - o Hermanus has been the centre of political unrest, and we believe a POPS unit based permanently in Hermanus is essential and will enable early response times to these situations in the whole of the Overberg.
 - o Crime levels in Hermanus continue to be a challenge, affecting not only residents of Hermanus, but visitors too. SAPS are often not in a position to respond immediately when called, and follow-ups can be slow. They simply do not have the resources to take the situation fully in hand and detectives each have unacceptable numbers of dockets to attend to.
 - o SAPS Hermanus (both the detective branch and Vispol) need more vehicles. We request the Ombudsman to study the Station Inspection Reports, 6 per month are filled in by the CPF as an ongoing requirement of the EPP, where numbers of vehicles on duty are recorded at random times.

- o An LCRC (Local Criminal Record Centre) to deal with finger printing and forensics (photography, collection of forensic evidence etc.) within the Overberg Cluster would enhance SAPS efficiencies.
 - o The fact that habitual criminals appear back on the streets the day after their court appearances indicates a serious problem either with SAPS or with the Prosecuting Authority, this needs to be investigated thoroughly to identify what the issue is, criminals caught and released perpetuates the crime problem.
 - o Monitoring of parolees would also done more thoroughly if there was more manpower available.
 - o The Zwelihle satellite station was burnt down during the unrest and has made policing the area more difficult. It has placed strain on the local community who have to travel far distances to report crime and endure long queues, resulting in possible under-reporting of crime, we are of opinion that this satellite station needs to be replaced.
 - o The possibility of a satellite station in Hawston should also be looked into.
 - o There has been a huge influx of people to the Overstrand area, and jobs are few. This has resulted in a heavy daily load being placed on all departments of our local SAPS, which has not been supported by the same level of increase in resources.
 - o The previous Hawston K9 compound was burnt down six years ago. Efforts are being made by the CPF, through the Overstrand Municipality to erect a new facility at the Municipal farm, and negotiations have been ongoing. We trust that the issue will reach conclusion soon. We also question why the dogs were not utilised during the unrest?"
- None of the above issues raised by communities are included in the Station Intelligence Profiles (SIP) for the four stations.

- The Annual Operational Plan (AOP) for the four stations were analysed and the following findings were made:

Gansbaai station AOP for 2018/2019

- The AOP consists of three programmes, programme 1 for administration (which deals with the KPA's for support services), programme 2 for Visible Policing and programme 3 for the Detective Service.
- Programme 2 also has the same key performance area (KPA) included as the Cluster, of crime prevention and frontline service. The performance indicators listed are the reduction of contact crime, contact related crime, property related crime, other serious crimes, trio crimes and crimes against women and children. **No reference is made to the reduction of abalone/marine related crimes.**
- One of the objective statements is to the "effective management of Reservists at Station level". The Performance indicators are to focus on the number of reservists recruited and the number of active reservists. A zero target was however set for the recruitment of reservists.
- The following is an extract from the foreword from the Station Commander of Gansbaai of the APP of the Station:

"The Annual Operational Plan for 2018/2019 serves as a standard for the administration, budget, resource allocations and operational priorities for SAPS Gansbaai precinct. This Plan remains focused on four key priorities and focus areas of the vision of Provincial management that serve as the foundation on which SAPS Gansbaai would be able to address all the safety concerns from our communities."

The plan does not address all the safety concerns from the communities, judged according to the inputs received from communities, and specifically from the station CPF. The CPF remarked as follows in one of their comments: *"Abalone poaching is huge and what comes with this crime is scary. Young children are being bribed with high fashion clothes and drugs to become "runners" for the poachers. This causes children to*

drop out of school and families are torn apart due to children leaving home and are caught up in drug abuse."

Furthermore, the Station Commander of Gansbaai notes that: "Contact and Property crime is on the forefront in our community with criminals that lurk and are ready to pounce." This again is in contradiction with the safety concerns of the communities.

Hermanus station AOP for 2017/2018

- o The plan is in the same format as that of Gansbaai for the 2018/2019 financial year.
- o Again, one of the objective statements is to the "effective management of Reservists at Station level". The Performance indicators are to focus on the number of reservists recruited and the number of active reservists. A target was set to recruit 3 reservists for the financial year which is definitely not realistic, judging against the number of volunteers that offered to assist the station as reservists.
- o No reference in the AOP is made to abalone poaching, the reconstruction of the K9 dog unit and the Zwelihle satellite police station.
- o The baselines for the response times to complaints (Alpha 12:19 minutes, Bravo 12:43 minutes, Charlie 12:10), also seem to be incorrect, evaluating against the outcry of communities in Hawston, Mount Pleasant and Zwelihle concerning poor response times from SAPS.

Kleinmond station AOP for 2018/2019

- The plan is in the same format as that of Gansbaai for the 2018/2019 financial year and consists of the same KPA's, objective statements, performance indicators and key actions. Only the targets differ.
- The second objective statement refers to addressing the contributors to crime– provincial generators. Only four crime generators – drugs, liquor, firearms and vehicles are listed. No reference is again made of

addressing **abalone/marine related crimes unique to the Overberg Cluster as a crime generator.**

- One of the objective statements is again to focus on the "effective management of Reservists at Station level". The Performance indicators are again stated as to focus on the number of reservists recruited and the number of active reservists. A target was set to recruit 4 reservists for the financial year which is definitely not realistic, judging against the number of volunteers that offered to assist the station as reservists.
- The targets set for the response times to complaints (Alpha 9:32 minutes, Bravo 12:55 minutes, Charlie 9:32 minutes), also seem to be incorrect, evaluating against the outcry from communities in Betty's Bay, Hangklip, Mooi Uitsig, Rooi Els and Pringle Bay concerning poor response times from SAPS.
- The following emerging priorities and challenges are listed on page 11 of the AOP:
 - "Murder: Most murder cases were as a result of liquor related incidents and difference between amongst each other and 3 of those murder occurred at geo block 4912 =42,86 % and 3 on geo block 4917 also = 42,86% all in Sector 1 and one 4923 =14,19% there 6 arrests made out of 7 murders reported one suspect in incident of shooting is still at large.
 - Corrective measures: Members of community needs to be educated about liquor abuse by engaging in social crime projects and also conduct liquor operations on license and unlicensed premises.
 - Assault GBH mainly occurred at geo block 4912 =35,71% (30 cases) and 4917 =28,57%(24 cases). Most of assaults GBH occurred between people who know each other very well and are liquor related more than 82,14% of these cases combined occurred in Sector 1.
 - Corrective measures: To hold more regular patrols on identified hotspot areas by Vispol members and closure of illegal shebeens especially Sector 1.

- Focus on possession of dangerous weapons"
- No priorities or challenges are highlighted concerning abalone/marine related crimes as highlighted by the communities during consultation sessions.

Stanford station AOP for 2018/2019

- The foreword by the Station Commander is exactly the same as the foreword by the Station Commander of Gansbaai SAPS in the AOP for the 2018/2019 financial year – only the name of the station differs. The plan therefore does not address all the safety concerns from the communities, which is judged according to the inputs received from communities.
- The plan is in the same format as that of Gansbaai for the 2018/2019 financial year and consists of the same KPA's, objective statements, performance indicators and key actions. Only the targets differ.
- The second objective statement again refers to addressing the contributors to crime – provincial generators. Only four crime generators – drugs, liquor, firearms and vehicles are listed. No reference is again made of addressing **abalone/marine related crimes unique to the Overberg Cluster as a crime generator**.
- One of the objective statements is also to focus on the "effective management of Reservists at Station level". The Performance indicators are again stated as to focus on the number of reservists recruited and the number of active reservists. A target was set to recruit 3 reservists for the financial year which is definitely not realistic, judging against the number of volunteers that offered to assist the station as reservists.

The 2019/2020 AOP's was not assessed as the Office of the Provincial Commissioner indicated that: "it has not been finalized and is still in draft format awaiting the finalized targets". This is a concern as the first quarter of the 2019/2020 financial year was already completed, and no direction has been set in terms of policing.

- The following table³ depicts the number of active reservists at the Overstrand stations for the last three financial years:

STATIONS	ACTIVE RESERVISTS 2016/2017	ACTIVE RESERVISTS 2017/2018	ACTIVE RESERVISTS 2018/2019
Gansbaai	1	0	0
Hermanus	3	3	3
Kleinmond	2	2	2
Stanford	3	3	3
Total at 4 stations	9	8	8

Part of the follow up request⁴ and directive which were sent to SAPS, requested the current status of recruitment of reservist members for the Overstrand area. At the time of submitting this report, SAPS did not respond.

Cluster level

Cluster AOP for 2018/2019

- The AOP consists of two programmes, programme 2 for Visible Policing and programme 3 for the Detective Service.
- Programme 2 has a key performance area (KPA) included of crime prevention and frontline service. A total of 9 objective statements are listed under this KPA. Only the first two objective statements will be discussed.

³ Page 4 and 5 of the report submitted via correspondence with reference 25/2/2/2(201900117) dated the 14th of June 2019

⁴ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

The first objective statement deals with reducing the levels of reported serious crimes. The performance indicators listed are the reduction of contact crime, contact related crime, property related crime, other serious crimes, trio crimes and crimes against women and children. **No reference is made to the reduction of abalone/marine related crimes.** The second objective statement refers to addressing the contributors to crime – provincial generators. Only four crime generators – drugs, liquor, firearms and vehicles are listed. No reference is again made of addressing **abalone/marine related crimes unique to the Overberg Cluster.**

- Programme 3 only has one KPA, crime detection. One of the performance indicators listed under this KPA are to improve the detection, trial ready, and conviction rates for contact crime, contact related crime, property related crime, other serious crimes, trio crimes and crimes against women and children. Again no reference is made to **abalone/marine related crimes.**
- The following emerging priorities were identified in the AOP for the Cluster:
 - "High influx rate into the Cluster
 - High unemployment rate,
 - Nutrition rate vs ever growing population
 - Increase in core business diversions
 - Reaction time of POPS into Overberg Cluster
 - Lack of available office space for LCRC
 - Limitations to rotate officers/members working at stations for many years
 - Opportunities of metro pole criminals into rural areas"
- The words abalone/marine related crimes do not appear once in the entire AOP for the Cluster.
- No reference is also made to the issues identified by the communities during the consultation process with the public in the previous paragraphs. Besides abalone poaching, important issues like reconstruction of the K9 dog unit

and the Zwelihle satellite police, the improvement of response times to complaints and the recruitment of reservists are not included.

Provincial level

In response to a contingency plan on abalone poaching which was requested from the Provincial Commissioner of SAPS, the following response⁵ was received: *"On abalone poaching it deems mentioning that the protection of marine living resources is regulated by the Marine Living Resources Act, 18 of 1998. In terms of this Act the responsible Minister may appoint Fishery Control officers. In terms of Section 51 of the Act these officers have a wide range of powers and functions even more than members of the South African Police Service. These Fishery Control officers are responsible to enforce the Act."*

In a follow up request⁶ to the office of the Provincial Commissioner, question was raised whether the above response implies that the South African Police Service does not have a duty in terms of the prevention of abalone poaching in the Overstrand area?

In reply to a follow up request by this Office on the 16th of July 2019 to urgently provide the outstanding information, the Provincial Commissioner of SAPS responded⁷ as follows:

"Your letter with reference COM 0504 2019 1 dated 30 July 2019 has reference.

Having considered the request for additional information in terms of the above-mentioned investigation, this office has the following concerns:

- *In terms of the Notice as published in the Provincial Gazette of 14 May 2019, the purpose of the investigation is to determine the inability of the South African Police Service in the Overstrand to perform its mandate due to the*

⁵ Page 8 of the report submitted via correspondence with reference 25/2/2(201900117) dated the 14th of June 2019

⁶ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 30 June 2019

⁷ Correspondence from Provincial Commissioner with reference 25/2/2(201900007) dated the 16th of July 2019

insufficient allocation of resources. However, the request for additional information focusses primarily on the involvement of the South African Police Service in the prevention of abalone poaching and the investigation of cases relating to abalone poaching.

- As stated previously, the policing of abalone poaching is not the primary function of the South African Police Service, it is, however, the primary function of the Department of Agriculture, Forestry and Fisheries. Similarly, the conservation and protection of milkwood trees is regulated in the National Forest Act, No. 84 of 1998 and as being declared a protected tree the latter Department is primarily responsible for law enforcement in this regard. To clarify the position of the South African Police Service, an analogy can be drawn with the fact that all members of the South African Police Service are considered to be Traffic Officers, however law enforcement of road traffic is not the primary responsibility of the South African Police Service"

A follow up request⁸ and directive were sent to SAPS awarding them the opportunity to clarify their stance on the policing of abalone and the environment. After several emails – and telephonic requests, SAPS failed to respond.

Some provisions in certain Acts will be discussed to determine if clarity can be provided on the roles and responsibilities of SAPS in terms of current legislation:

- Section 51 (5) of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), states the following:

"A fishery control officer shall in the exercise of his or her powers in terms of this Act, be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)."

- Section 66 of the National Forests Act, 1998 (Act No. 84 of 1998), stipulates the following:

"General powers of forest officers"

66. (1) A reference to an offence in this Chapter is a reference to an offence in terms of this Act.

(2) A forest officer has in respect of any offence all the powers vested by law in a police official.

⁸ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019.

(3) A forest officer exercising powers under this Act—

(a) is deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977):

(b) must carry with him or her, and produce on request, the prescribed proof of his or her identity and appointment as a forest officer.

- Section 31O of the National Environment Management Act, 1998 (Act No. 107 of 1998), states as follows:

"31O. Powers of South African Police Service members. -

(1) A member of the South African Police Service has, in respect of an offence in terms of this Act or a specific environmental management Act, all the powers of an environmental management inspector in terms of this Part excluding the power to conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.

(2) Notwithstanding subsection (1), the Minister or MEC, as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 31K to 31O."

- The definition of a peace officer as stipulated in the Section 1 (definitions) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

"'peace officer' includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959 (Act 8 of 1959), and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334 (1), any person who is a peace officer under that section;"

- Section 40(1) (a) of the Criminal Procedure Act, 1977, Act No. 51 of 1977.
The section stipulates the following:
"40 Arrest by peace officer without warrant
(1) A peace officer may without warrant arrest any person-
(a) who commits or attempts to commit any offence in his presence;"

It is clear from the above, that SAPS officials have the powers to police abalone – and environmental related crimes, in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Part of the follow up request⁹ and directive which were sent to SAPS, requested the number of cases (supported with the CAS numbers) which have been registered on the Crime Administration System (CAS) in the Overstrand area, in terms of the Marine Living Resources Act, 18 of 1998, for the last three financial years. SAPS did not respond.

It was also indicated to SAPS in the same request¹⁰ that no contingency plan was presented for abalone poaching as requested. SAPS was again requested to submit the plan as previously requested, or to indicate if no specific plan is in place. SAPS did not respond.

In response to a question raised by this office on the details of the number of illegal confiscations of abalone by SAPS or other law enforcement agency in the Overstrand station precincts, the Overberg Cluster and in the Western Cape Province for the last three financial years, the data in the following tables¹¹ were provided:

⁹ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

¹⁰ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

¹¹ Page 9 of the report submitted via correspondence with reference 25/2/2(201900117) dated the 14th of June 2019

OVERSTRAND STATION PRECINCTS

Confiscations of illegal abalone						
Financial year	Cases	Arrests	Wet	Dry	Weight	Value
2016/2017	96	136	115963	2987	29289	44 830 275
2017/2018	110	153	148340	1312	37216	56 217 900
2018/2019	107	156	58964	410	14782	22 296 000

OVERBERG CLUSTER

Confiscations of illegal abalone						
Financial year	Cases	Arrests	Wet	Dry	Weight	Value
2016/2017	121	176	127323	43098	36141	67 140 225
2017/2018	131	174	229355	59029	63242	112 571 175
2018/2019	127	204	93914	410	23519	35 402 250

WESTERN CAPE PROVINCE

Confiscations of illegal abalone						
Financial year	Cases	Arrests	Wet	Dry	Weight	Value
2016/2017	257	440	270104	173370	84863	179 305 500
2017/2018	260	441	432788	369244	145121	328 455 300
2018/2019	276	499	180385	148435	59940	134 440 125

The data in the above tables indicates an initial increase in the number of abalone related cases, arrests, quantities seized and weight of abalone confiscations from the 2016/2017 financial year in the Overstrand station precincts. This tendency however dramatically changed in the 2018/2019 financial year. SAPS indicated that the data reflected confiscations from all law enforcement agencies, and not only the data from SAPS confiscations.

The pattern in abalone confiscations over the last three financial years can be illustrated in the following graph:

Confiscations of illegal abalone in kilogram



The above graph clearly illustrates a decrease in the quantities of illegal abalone confiscations over the last three financial years. SAPS indicated that this data applies to confiscations by all law enforcement agencies.

The assumption can thus be made that the integrated operations between the different law enforcement agencies have firstly decreased, and it secondly is a clear indication that the focus shifted away from abalone related crimes.

The Office of the WCPO also requested the case numbers of the case dockets which were registered in support of the data depicted in the above tables on page 48 of this report.

A list of cases was attached as annexure 8 to the feedback report¹² from the Provincial Commissioner. It was noted that a total of 313 cases were registered for abalone confiscations over the last three financial years in the Overstrand station precincts. No case numbers were however provided for the stations in annexure 8 as requested. SAPS also indicated that 379 cases were registered

¹² Report submitted via correspondence with reference 25/2/2(201900117) dated the 14th of June 2019

for abalone confiscations for the last three financial years in the Overberg Cluster. Case numbers were only provided for four Swellendam cases registered during this period in annexure 8 – Swellendam CAS 108/07/2016, 152/03/2017, 276/07/2016 and 235/11/2017. SAPS was requested¹³ to provide the additional CAS numbers for the cases registered to correspond with the data reflected in the tables on page 48 as originally requested. SAPS did not respond.

National level

- The Department of Environmental Affairs (DEA) was designated as the Lead Department, supported by the Department of Agriculture Forestry and Fisheries (DAFF) and the National Joint Operational Intelligence Structure (NATJOINTS). The Compliance and Enforcement Working Group (CEWG) for Initiative 5 chaired by the DEA was constituted following the pilot project which ended in March 2016.
- Initiative 5 focuses on joint operations in the maritime environment, with multiple role-players, from different jurisdictions, the NATJOINTS is utilized to execute such operations. NATJOINTS Supplementary Instruction 4 to NATJOINTS Operational Instruction 31 of 2016 to this effect were issued.
- The NATJOC is the Nodal Point and Secretariat for Operation Phakisa Initiative 5 and the PROVJOINTS have appointed Provincial Coordinators to plan and execute operations in the Western Cape (WC), Eastern Cape (EC), Northern Cape (NC) and Kwa-Zulu Natal (KZN) Provinces sea borderline and Exclusive Economic Zone (EEZ), inclusive of the adjacent coastal areas. Brigadier Zandberg is appointed as the coordinator for the Western Cape.
- The Provincial Coordinators are responsible for the coordination and execution of operations within their respective Provinces. The success of operations is reliant on effective operational communication, cooperation and coordination amongst respective role-players.

¹³ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

Dependent on the Operational Plan, proactive or reactive operations are executed to ensure compliance and enforcement of the respective risk and threats identified under the Operational Concept.

- An official from DAFF added that they basically came together and do enforcement of all legislation within the marine environment. They, as DAFF, had to do the fisheries side of Phakisa. "We do operations in a specific area and have the area under control for days and even weeks. We unfortunately cannot be there 24 hours." He continued to state that the abalone poaching in the Overstrand area is mainly driven by syndicates or organized criminal networks. They thus also have their counter intelligence, and once they know that we have pulled out of the area, that is when the problem starts.
- The Chairperson of the Governance structure for Initiative 5 (hereafter referred to as the Chairperson) expressed her concerns that her problem with the abalone in the Western Cape is that nobody is pulling everything together and identifying the gaps. There must be certain projects. She is aware of some of the projects which are done with the Hawks (DPCI). They are not aware of cases by the Provincial Organized Crime unit.
- An official from DAFF also emphasized that the attacks on SAPS and DAFF property also had a serious impact on the performance afterwards of officials as they were scared to act. The Chairperson of the Governance structure for Initiative 5 alleges that State Security had sent out alerts prior to these attacks, but nothing was done. She said that State Security expected Departments, especially SAPS to act at the time when these alerts were put out, but nothing apparently happened. An official from the State Security Agency confirmed that the alerts were forwarded to the NATJOINTS and was then apparently escalated to the PROVJOINTS. He provided the dates and the contents of these alerts, as follow:

"17 May 2018

The probability of physical violence and intimidation increasing is high and could lead to armed conflict between the groups and loss of life. It is recommended that the NATJOINTS instigates urgent action to mitigate the threat in the Overberg Region to prevent the possible escalation of violence. Furthermore, it is recommended that the Overberg Operational Approach Concept, as presented at the NATJOINTS in October 2017, be implemented in the region.

26 October 2018

Law enforcement activities should be intensified, including the implementation of the Overberg Intervention Plan, to address this challenge, especially in known hotspots. The current situation not only presents reputational damage for South Africa as acts of violence committed in front of or against tourists can have an impact on the regions tourist activity. Given past incidents of aggression against law enforcement, violence, with potential for loss of life, can be anticipated."

- It was conveyed to this Office that the poachers subsequently burnt a vessel that was basically brand new with great capabilities, specifically designed for that area. The perpetrators knew exactly where it was stored. They threatened one official to a point where they had to take him out of the area and place him in Cape Town. This was after these officials had excellent successes against poachers.
- The Chairperson alleges that she is not aware of the classification of abalone related crime by SAPS. She knows that rhino poaching was made a priority crime which saw a priority committee established at first on rhino poaching. It is now more about wild life trafficking. Abalone falls within that category. According to her, they developed the National Integrated strategy to combat wildlife trafficking with the Police. They identified four species that were identified as priorities, rhino, elephant, cycads and abalone. This strategy went all the way up; it was sent to DEVCOM. It went to the JCPS cluster who approved it and the Police Minister was supposed to take it to cabinet, but he has not done it yet. She also emphasized that it does not make sense that abalone is on the one hand classified as a priority by two priority committees, but that abalone is not registered as priority crimes.

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A copy of the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) was obtained. The consultation process is described¹⁴ on top of the following page:

"1. The development of the NISCWT was an integrated Justice, Crime Prevention and Security (JCPS) Cluster, SAPS-led process and was developed in collaboration with relevant Departments and Agencies, including the Departments of Environmental Affairs (DEA), Agriculture, Forestry and Fisheries (DAFF); Justice and Constitutional Development (DOJ&CD); International Relations and Cooperation (DIRCO); Defence (DOD); Financial Intelligence Centre (FIC), South African National Parks (SANPARKS); National Intelligence Coordinating Committee (NICOC); South African Revenue Services (SARS); State Security Agency (SSA); National Prosecuting Authority (NPA); and Provincial Conservation Authorities (PCAs). All role players will continuously engage with their respective principals to ensure the NISCWT and its activities are integrated into the respective departmental/ agency strategies, performance and operational plans as well as budgeting processes.

2. The JCPS's National Development Committee was consulted on the NISCWT as well as the Presidency (DPME/SEIAS Unit).

3. Further engagements with all role players regarding the NISCWT and the implementation thereof will continue through the Priority Committee on Wildlife Trafficking of the JCPS National Joint Operational and Intelligence Structure (NATJOINTS). "

- The following are some important extracts from the strategy:
 - **"LAW ENFORCEMENT:** Law enforcement in South Africa is primarily the duty of the South African Police Service, which is responsible for investigating crime and maintaining safety and security throughout the country. The South African Police Service is established in accordance with the provisions of Section 205 of the *Constitution of the Republic of South Africa* of 1996. However, for purposes of this strategy, the term also includes, where relevant, activities of other government departments within the country's security, legal and justice, conservation, customs, home affairs, financial, diplomatic and legislative domains."¹⁵

¹⁴ Page 4 of the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) May 2018 – Version 9

¹⁵ Page 8 of the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) May 2018 – Version 9

- **"Improving law enforcement, supported by the whole of government and society, to effectively investigate, prosecute and adjudicate wildlife trafficking as a form of transnational organised crime:** The strategy outlines the necessary steps the South African Police Service and other relevant government and non-government entities should take to increase and enhance the law enforcement capacity in the country, focusing specifically on the investigation and prosecution of wildlife trafficking syndicates. This includes a significant improvement in wildlife trafficking investigation resources (both human and technological); changing current policies which will make the South African Police Service the lead department regarding the issue of combating wildlife trafficking; increased investigations and prosecutions related to corruption and wildlife trafficking; improving intelligence gathering and analysis on the issue; strengthening collaboration between the South African Police Service and other government departments as well as non-government entities that play a role in the wildlife and conservation sectors; and consolidating law enforcement initiatives regarding the investigation of wildlife trafficking."¹⁶
- **"Increasing the government's ability to detect, prevent and combat wildlife trafficking in South Africa and beyond:** The strategy outlines the necessary initiatives government should take to increase its ability to detect and prevent wildlife trafficking, especially in the border management environment. This includes an increase in detection and prevention resources in and around the country's ports and borderlines; reducing the risk of corruption at these ports; increasing and centralizing wildlife compliance and enforcement resources; and increasing crime prevention initiatives in and around poaching hotspots."¹⁷

¹⁶ Executive summary on page 10 of the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) May 2018 – Version 9

¹⁷ Executive summary on page 10 of the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT) May 2018 – Version 9

- The Chairperson said that they fought quite hard to have the rhino – and elephant cases registered with their own crime codes on the Crime Administration System (CAS) of SAPS. She could not confirm whether a separate crime code was allocated for abalone poaching. An official from DAFF however confirms that all abalone related crimes are registered in terms of the Marine Living Resources Act (MLRA).
- The Chairperson alleges that they attempted 10 years ago, when the Department of Fisheries was still part of the Department of Environmental Affairs, to get the Marine Living Resources Act under the National Information Management Act (NIMA). If you look for example at rhino poaching, it is under that Act. The sentences imposed is then much more. They will again look at bringing the MLRA under the NIMA now that they are one Department again. Abalone, according to Ms Craigie, should actually be classified under the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004). They can then use exactly the same provisions as they are using in terms of rhino poaching. Provinces can then strengthen that.
- The Chairperson conveyed that Brigadier Zandberg is responsible for operation Phakisa in the Western Cape. A request¹⁸ and directive were sent to SAPS requesting the current status of operation Phakisa in the Province, the minutes of Provjoint meetings, as well as the last Provjoints agenda. After several email – and telephonic requests, SAPS failed to respond.
- She apparently attended the National meetings regularly, but Captain Leechand has attended the last couple of meetings. A project proposal was apparently put together by Colonel Olivier to have a medium term deployment in the area. The proposal, as far as she understands, went up as far as the Deputy Commissioner who approved it.

¹⁸ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

The Chairperson provided official correspondence¹⁹ from SAPS in the Western Cape, signed by Brigadier Zandberg. The correspondence indicates in paragraph 1a) that:

"The operational plan was presented to the DPC: Policing, Major General Mancini on 2018-09-11 where he recommended the operation. The recommended plan was sent on 2018-09-11 to the Provincial Commissioner: Western Cape, Lt Jula for approval."

Paragraph 1b) states the following: "Request for assistance from Overberg detectives. There was 142 enquiries with regard to Abalone poaching opened at Gansbaai SAPS to the DPC:Detection. Maj Gen Vearey, was to assist with capacity to handle these enquiries. The Branch Commander has received an email from the DPCS office. This email does not address his request with regard to assistance. Email attached (Annexure 'A')."

A meeting with Lt Col Smit, Task Team for Investigations Abalone was convened on 2018-09-06 upon instruction of Prov Head General Investigations, Brig Cele. Lt Col Smit made contact with Capt Rautenbach where the matter was discussed. A follow up meeting between Lt Col Smit and Capt Rautenbach is scheduled for Friday 2018-09-14.

Feedback and outcome of this meeting will be provided at the next Phakisa meeting scheduled for 26/09/2018."

- A request²⁰ and directive were sent to SAPS inviting Brigadier Zandberg, Brigadier Cele, Lieutenant Colonel Smit and Captain Rautenbach for interviews, awarding them the opportunity to respond on the above allegations. After several email – and telephonic requests, SAPS failed to respond.
- The Chairperson said that they would like to do more Phakisa operations but because they are not permanently deployed, they needed the sign off from

¹⁹ Official feedback from the Western Cape Coordination Centre with reference 11/1/3/1 dated 03-09-2018

²⁰ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

the Provincial Commissioner in the Western Cape of the operational plan. The guys on the ground says they cannot only deploy in terms of Phakisa if there is not the Provincial instruction to assist as it is difficult to do more with the same amount of resources. It was conveyed to the National priority committee that there is a Phakisa committee in the Provjoints, and that Phakisa is on the agenda of the Provjoints. A request²¹ and directive were sent to SAPS requesting the agenda and minutes of the Provjoints from the Provincial Commissioner. After several email and telephonic requests, SAPS failed to respond.

- An official from DAFF indicated that they do not have space at this stage for frozen abalone at the storage facilities, as all the available space has been utilized. They used to sell abalone by means of formal tender processes. Abalone would have been offered for sale in batches, it would be graded in terms of quality by a qualified grader. The profit generated then went into the marine living resources fund.
- The Chairperson indicated that they as Phakisa also wrote a letter to the Deputy Director General of Fisheries requesting funding from the marine living resources fund to support Phakisa operations.

They however never received a response. She also alleged that even at the time when abalone was sold, the money from the fund never solely went into enforcement, but was an addition to the budget of the Department.

- An official from DAFF indicated that diving is prohibited from Quoin Point to the main harbour hall in Gansbaai. He indicated that any law enforcement official can act against a person who wears diving gear and goes into the water in this particular area. He says this was one of the biggest concerns of the community as the law enforcement agencies are not utilizing this vital legislation to prevent abalone poaching. He also added that the details of vehicles (including registration numbers), transporting abalone, and the licence details of boats, were recorded on video footage and still images.

²¹ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

This evidence was made available to SAPS, but they indicated that they do not have the manpower to do the investigation.

- The following questions were posed to an official who was recently appointed at the storage facility of the Department of Environmental Affairs in Paarden Island and is responsible for the disposal of abalone. His responses to the questions are indicated in bold:

- The total quantity of abalone currently stored in the facility?
"Approximately 200tons (200, 000 kgs). The correct quantum is not known due to the numerous burglaries and specific stock counts were not undertaken after each incident."
- The estimated value of this abalone?
"The recent Annual Financial Statements indicate R106million while I have to caution as the stock has not been graded."
- The last time that abalone was disposed of?
"December 2017"
- The reason why no abalone was disposed of for a considerable period of time?
"I will make the necessary enquiry." No final response was received, at the time of drafting this report.
- The process which is prescribed for the disposal of abalone?
"The Department must adhere to the policy on the Handling of Confiscated Abalone which was approved on 27 November 2009."
- The policy document which prescribes the disposal process?

A copy of the policy, approved on the 27th of November 2009, which guides the handling of confiscated abalone was provided. The following is an extract of the financial implications of the policy:

All costs associated with the management of confiscated abalone will be covered by the Marine Living Resources Fund. All Revenue derived from the selling of the confiscated abalone will accrue to the Marine Living Resources Fund.

- The details of the burglary/robbery incidents that occurred at the storage facility (dates, case numbers, Police stations reported to, etc.).

A list of cases was received and attached to this report as per annexure A.

It is noted with concern that a balance to the value of R40,170,150.00 have been lost due to various criminal activities. This is also an indication that these activities must be organized and can also be categorized to fall under section 16 of Chapter 6 of the SAPS Act, Act 68 of 1995, as discussed on page 64 of this report. Although the investigation of the 13 cases falls outside the scope of the investigation in relation to the Overstrand complaint, it is still a concern that all the cases are not investigated by the Directorate for Priority Crime Investigations (HAWKS). Three cases were investigated by detectives at different stations and are all closed as undetected.

- Brigadier Swart, the Provincial Head of the Crime registrar was interviewed

The main points of the interview with the Brigadier are as follow:

- She is accountable to the National Head of Crime registrar, but responsible to the Provincial Commissioner of the Western Cape to provide crime statistics and products.
- The Crime Information Management Analysis Centre (CIMAC) officials at station level provide the same products to the Station Commanders as well as the crime patterns and crime threat analysis to guide them in terms of their operations.
- There is an official course for officials. There is currently no Provincial course available as there is not a budget. At National there is only one or two courses per year. The training of officials is thus going a bit slow.
- There was never any capacity provided to crime registrar at Cluster level. They can't get to all because of the capacity problems.

Currently, they focus on the bigger centre, the Metropole. Unless, they pick up something in a smaller cluster or when information is provided.

- She confirms that there is a huge shortage of CIMAC officials at station level. Two of the stations do not have any CIMAC officials, which are at Kleinmond and Stanford. **Brigadier Swart indicate that you cannot be efficient if you don't have personnel.**
- She indicated that abalone related crimes are not classified as priority crimes by the Provincial or Cluster Office or the Overstrand stations.
- Explained the difference between A and B crimes. A Crimes are the serious crimes such as murders and attempted murders. Basically, the 21 crimes plus more. The B crimes are more police initiated crimes where members go out and do stop and searches. She indicated that it is almost the petty crimes. Corrected herself and used the word less serious crimes. She said it is like urinating in the street or riotous behaviour, that type of crimes.
- The Brigadier indicated at the time of the interview that she doesn't know whether abalone related crimes are classified as A – or B crimes. She however confirmed that they don't focus on abalone related crime.
- A request²² and directive were sent to SAPS requesting Brigadier Swart to verify whether abalone related crimes are classified as A – or B crimes. After several email – and telephonic requests, as previously indicated, SAPS failed to respond.
- Interview with Colonel Olivier – Provincial Commander: Border Police and Captain Truter (coordinator for operation Phakisa)
 - Colonel Olivier said that his job description entails basically the ports of entry: Cape Town Harbour, Cape Town International Airport, Mossel Bay Harbour and Saldanha Harbour.
 - Colonel Olivier provided the following information specifically in relation to Border Policing and abalone poaching in the Overberg area:

²² Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

- o Section 24 of the Bill of rights (Chapter 2 of the South African Constitution – Act 108 of 1996) stipulates the following concerning the environment:
"Everyone has the right –
(a) to an environment that is not harmful to their health or wellbeing; and
(b) **to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –**
(i) prevent pollution and ecological degradation;
(ii) **promote conservation;** and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."
- o Overberg/Overstrand does not have a Port of Entry.
- o Day to day Policing of coastal towns and in particular Gansbaai/Hermanus remains the responsibility of the Provincial Commissioner, Cluster Commander and Station Commander. "There is currently no dedicated budget for small harbours as it is policed by VISPOL within the relevant Clusters. The proposed multilayer cooperation will be costed and shared between the division Operational Response Services and the relevant Provincial Commissioner."²³
- o "While most of the visited smaller harbours are in proximity of Border Policing units, the remote of smaller harbours such as Hermanus and Gans Bay where poaching of the marine resources have been a sustained additional burden for authorities. It is clusters as such where a crime prevention water wing will be of extreme value in support of other departments battling an uphill battle. These must include the policing of

²³ Paragraph 7.5.1 of the written response by the SAPS Component Head for Border Policing to questions by the Portfolio Committee on Public Works during the stakeholder's engagement on small harbors: 6 February 2018

such small harbours. It is thus noted that the establishment of the water wing capacity should be a priority"²⁴

- o Colonel Olivier confirmed that diving is prohibited from Quoin Point to the main harbour hall in Gansbaai.
- o He said that they are extremely under strength in terms of human resources. Last year, they had 50 members of Border Policing deployed in Stabilization. Although they came back to the unit, the majority of these members in the last year have been transferred, basically all of them. The members have been transferred because a moratorium which was placed on transfers, was lifted in the middle of last year. They still have six members on a duty arrangement at the Provincial Anti-Gang as well. He said that the Border Policing unit is at 50-60% of the strength it is meant to be. Saldanha harbour is supposed to have 1 vessel but currently have none, whilst Cape Town harbour must have five vessels and currently only have one.
- o He indicated that they have done a number of operations in the Overstrand area. They had sustained proactive deployment since July 2018. They had their 20 metre vessel in Gansbaai, with two teams, for about a two-week period. Then they had an operation with the Department of Agriculture Forestry and Fisheries (DAFF) with their vessel, Saartjie Baartman, from July – August 2018. In October and November 2018, they had operations with the South African National Defence Force (SANDF) and DAFF. Their budget was depleted in January as they are depending on their line function budget which does not make provision for any of the Phakisa projects. They however have a good relationship with the Department of Environmental Affairs (DEA) and they have paid for their accommodation on various occasions.

²⁴ Paragraph 7.7.1 of the written response by the SAPS Component Head for Border Policing to questions by the Portfolio Committee on Public Works during the stakeholder's engagement on small harbors: 6 February 2018

- They also from time to time get requests for instance. They then go from Cape Town, 200 kilometres make arrests, open the case and detain the suspects at the station and drive back to Cape Town again. Approximately 400km there and back.
- A request²⁵ and directive were sent to SAPS requesting the list of operations, and debriefing reports of all operations, which the Border Policing unit had conducted for the last three financial years in the Overberg Cluster and at the Overstrand stations. After several email – and telephonic requests, as previously indicated, SAPS failed to respond.
- Section 16 of Chapter 6 of the South African Police Service Act, Act 68 of 1995, deals with Organized Crime. The section stipulates the following:
 - "16. (1) Circumstances amounting to criminal conduct or an endeavor thereto, as set out in subsection (2), shall be regarded as organised crime, crime which requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof.
 - (2) Circumstances contemplated in subsection (1) comprise criminal conduct or endeavor thereto –
 - (a) by any enterprise or group of persons who have a common goal in committing crimes in an organised manner;
 - (b) (i) by a person or persons in positions of trust and making use of specialized or exclusive knowledge;
 - (ii) in respect of the revenue or expenditure of the national government; or
 - (iii) in respect of the national economy or the integrity of currencies;

²⁵ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

- (c) which takes on such proportions or is of such a nature that the prevention or investigation thereof at national level would be in the national interest;
- (d) in respect of unwrought precious metals or unpolished diamonds;
- (e) in respect of the hunting, importation, exportation, possession, buying and selling of endangered species or any products thereof as may be prescribed;
- (f) in more than one province or outside the borders of the Republic by the same perpetrator or perpetrators, and in respect of which the prevention or investigation at national level would be in the national interest;
- (g) in respect of which the prevention or investigation requires the application of specialised skills and where expedience requires that it be prevented or investigated at national level."

After several interviews and research conducted on abalone poaching, it became clear that it can be classified as organized crime in terms of Section 16 of the South African Police Service Act, Act 68 of 1995.

In response to a request made by this Office to provide the number of registered projects/network operations, the Provincial Commissioner of SAPS responded²⁶ that: "There are currently nine (9) registered projects/network operations in the Overberg Cluster."

The Provincial Commissioner was requested²⁷ to indicate whether these projects/network operations all related to abalone poaching and to indicate which SAPS component is responsible for the investigation of the said projects/network operations. He was also requested to provide the details of investigations pending and concluded {specify the outcome} of abalone related crimes in the

²⁶ Page 11 of the report submitted via correspondence with reference 25/2/2/2(201900117) dated the 14th of June 2019

²⁷ Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

Overstrand area. He was lastly asked to explain the process that is followed when a crime threat/pattern is identified at station level.

No response was received from SAPS.

It also became clear that SAPS in the Overstrand Stations and at the Provincial level do not have the ability to protect and secure the inhabitants of the Republic (Overstrand) and their property and the ability to uphold and enforce the law. This is partly due to resource constraints, but predominantly due to the inability of the SAPS to police the needs from the communities in the Overstrand area.

1.3 General findings established during the course of the investigation.

- The Department of Community Safety in the Western Cape Government submitted a report²⁸ in response to specific questions raised by the Western Cape Police Ombudsman.
- The following comments are made on page 2 of the report from the Department of Community Safety (DOCS): **"Extract from reports on the PNP process for Overberg police stations with reference to the human resource shortfall [2011/12, 2014/15, 2015/16 and 2016/17 PNP sessions]"**

"Although 2011/12 is not in the past 5 financial years, yet for the record and to showcase how long this PNP need has been consistently registered:

As far back as 2011, a District wide safety strategy was developed for Overberg District Municipality by the Dept. of Community Safety and the Centre for Justice and Crime Prevention (CJCP). It was then already highlighted that factors contributing to crime in the District is a shortage of manpower.²⁹

The shortage of manpower was consistently raised in the financial years of 2011/12, 2014/15, 2015/16 and 2016/17. These reports were not only sent to the SAPS Provincial Commissioner but also to all Cluster Commanders and Station Commanders to take into consideration when annual and station plans are developed. The report was also sent to all CPF Chairpersons, Cluster Chairpersons and the Provincial Cluster Board for consideration and oversight. Lastly it was also sent to all District and Local Municipalities to consider when Integrated Development Planning is taking place".

²⁸ Submission by the DOCS via reference DCS 10/3/9 dated the 4th of July 2019

²⁹ Department of Community Safety (2011). Final Overberg District Wide Safety Strategy, p.31.

- The Head of the Department (HOD) has indicated in the same report, submitted to this Office, that it is a concern that Hermanus and Stanford do not have accredited NHW structures.
- The HOD concluded their report with the following statements:³⁰

"The information available do indicate that bearing in mind the sheer size of the crime threat of the 4 policing areas of Hermanus, Gansbaai, Stanford and Kleinmond, SAPS resources available, will not be sufficient. Also note doubling of crime over time for certain stations in certain categories.

Furthermore, syndicates are involved in the smuggling of abalone which indicate the organised crime nature of this crime activity. As a result of the functioning of these syndicates, there is extreme pressure on limited SAPS resources of the 4 police stations."
- Mr. Louther is the Chief Prosecutor for the Overstrand area. He is of the opinion that investigations must be prioritized to focus on the crimes which have the biggest impact on the needs of communities.
- He also indicates that the "Green Court" was very effective and successful when it operated in Hermanus. This was an Environmental Court which was sitting at the time when operation "Neptune" was conducted in the Overstrand area.
- The percentage calculation of the conviction rate is calculated as:

$$\frac{\text{Column 8.2}}{\text{Column 8.2} + \text{Column 8.3}} \times \frac{100}{1}$$

The calculation of the conviction rate is however not a true reflection of the performance as the cases sent to Court (column 3), cases pending in Court (column 8.1) and cases settled otherwise (column 8.5), are not taken into consideration in the calculation. As a result, the conviction rate will not be

³⁰ Page 6 of submission by the DOCS via reference DCS 19/2/1 dated 04-07-2019

taken into account when the performance of the Detective Service in the Overstrand area will be evaluated.

- It is also noted that Stanford SAPS have a larger population than both Gansbaai and Kleinmond, according to their SIP. They however have a smaller personnel compliment.
- It was indicated in the response from SAPS that the absenteeism rate due to sick leave according to the Efficiency Index System (EIS) for the last three years, reflects in the following table³¹:

Absenteeism Rate: Sick leave					
Financial year (Annual)	Cluster	Hermanus	Gansbaai	Stanford	Kleinmond
2016/2017	3.75	5.89	2.79	2.28	3.69
2017/2018	3.57	5.57	3.24	2.2	2.96
2018/2019	3.62	3.79	4.7	3.78	4.07

The information indicates that the absenteeism rate has stabilized at the cluster, decreased at Hermanus (although still high) and significantly increased at Stanford, and especially at Gansbaai and Kleinmond.

A follow up request³² and directive was sent to SAPS requesting the formula for calculating the absenteeism rate for sick leave, as well as the total days lost due to absenteeism from the Overstrand stations for the last three financial years. At the time of submitting this report, SAPS did not respond.

2. Conclusion and recommendations:

2.1 The preliminary investigation is finalized.

2.2 The complaint is found to be substantiated based on the findings contained in paragraph 6, supra. Due to the fact that the Office of the Western Cape Police Ombudsman could not resolve the matter, it is referred to the Provincial Minister of

³¹ Page 4 of the report submitted via correspondence with reference 25/2/2(201900117) dated the 14th of June 2019

³² Correspondence to Provincial Commissioner via reference COM 0504 2019_1 dated 17 July 2019

Safety and Security in terms of Section 17(8) of the Western Cape Community Safety Act, 2013 – Act No. 3 of 2013.

2.3 Accordingly, the following recommendations are made for referral to the Provincial Minister of Safety and Security for his further discretion:

2.3.1 Recommendations for possible escalation to the National Minister of Police.

- An urgent review is conducted of the human resources allocated to the Overstrand stations and the Specialized units performing duties in the area, to ensure that the resources are aligned to the South Africa's Police-population ratio of 1 :383. Specifically, the finding about Gansbaai and Kleinmond stations which are both on the level of a Lieutenant Colonel. The granted figure for Kleinmond is however 28 members less than that of Gansbaai.
- An urgent review is conducted of the vehicles allocated to the Overstrand stations to ensure that the stations are sufficiently resourced according to their allocation. Specific attention should be given to clarify the information in annexure D of the SIP document for the stations, with the information according to the fixed establishment provided in the report by the Provincial Commissioner.
- The following accommodation needs are urgently addressed in the Overstrand area:
 - The re-establishment of the Dog unit in the Overberg cluster.
 - The reconstruction of the Zwelihle satellite station.
 - The need for satellite police stations to be established additionally in Pearly Beach/Eluxolweni, Hawston/Onrus/Sandbaai and Betty's Bay/Hangklip/Pringle Bay.
 - A satellite office be established for the Local Criminal Record Centre in the Overberg Cluster would enhance SAPS efficiencies.
- The possibility be investigated to have a Public Order Police Unit established in the Overberg Cluster.

- The levels of compliance in terms of the policy on Sector Policing be evaluated at the stations in the Overstrand area and corrective measures be implemented.
- The concerns of communities, specifically concerning police corruption and the lack of the ability of SAPS to enforce the law, be addressed.
- An investigation be launched into the reasons for the inability of SAPS to investigate crime, and the deteriorating performance of the Detective Service in the Overstrand area.
- The Annual Operational Plans (AOP) for the Overberg Cluster and the four stations be urgently reviewed to ensure that addresses the needs of the communities. It is also proposed that measures be implemented to ensure that AOP's are compiled before a financial year commences.
- Urgent attention be given to the vigorous recruitment of reservists in the Overstrand area as a force multiplier.
- The project proposal for the curbing of abalone poaching in the Overstrand area, be implemented urgently in support of Operation Phakisa Initiative 5 and of the stations in the Overstrand area.
- The allegations be investigated that State Security had sent out alerts (dated the 17th of May 2018 and the 26th of October 2018) prior to attacks on SAPS and DAFF property, but nothing was done.
- Ensure that the National Integrated Strategy to Combat Wildlife Trafficking (NISCWT), dated May 2018, be urgently submitted to National Cabinet for approval.
- The investigation of the cases concerning the loss of abalone due to various criminal activities be reviewed and prioritized.
- Abalone related crimes be categorized as a serious crime by SAPS, the same as the case with rhino poaching.
- The possibility be investigated to establish a crime prevention water wing to police small harbors.

- Ensure that organised projects in relation to abalone poaching are initiated and investigated by the Organized Crime Unit of SAPS. After several interviews and research conducted on abalone poaching, it became clear that it can be classified as organized crime in terms of Section 16 of the South African Police Service Act, Act 68 of 1995.
- The possible establishment of an Environmental Court be considered in consultation with the National Minister of Justice and Constitutional Development.

2.3.2 Recommendations for referral to the Standing Committee for Community Safety, Cultural Affairs and Sport at Provincial Parliament

- The current policing model which is followed in the Province.
- The policing approach or strategy which is followed in the Province.
- Whether sector policing is still applied in the Province.
- The plan as recommended in paragraph 20 by Commissioner (Dr) Luthuli in the June 2018 report of the Public Service Commission.
- The status of the equality Court case: **Social Justice Coalition and Others V Minister of Police and Others (EC03/2016) [2018] ZAWCHC 181 (14 December 2018)**.
- The status of the implementation of the recommendations made by the Western Cape Police Ombudsman, following an investigation in terms of the decline in the appointment of active police reservists by SAPS in the Western Cape. The investigation report was submitted to the Standing Committee for Community safety on the 9th of November 2018.

2.3.3 Recommendations directed to Western Cape Government Departments

- The Provincial Minister of Environmental Affairs address the backlog concerning the disposal of abalone at the storage facilities with the National Minister of Environmental Affairs and Fisheries. The money generated through the disposal of abalone can assist with the enforcement of abalone related crimes.

- The Department of Community Safety ensure an urgent improvement in the recruitment of accredited NHW structures in the Overstrand area.
- The Department of Community Safety review the public needs and priority process to ensure SAPS act to the needs identified during the consultation processes.
- The Department of Community Safety, in conjunction with other Provincial Government Departments, consider the establishment of community safety forums in all the municipal areas. The legal opinion, provided by the Corporate Service Centre for Legal Services at the Western Cape Government, must however be carefully considered during this process.



Mr. JJ Brand
Western Cape Police Ombudsman
Date: 30/07/2019