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**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

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(YOUR REF: PM 1 [2011] / 4980)

Premier: Western Cape  
Private Bag X 9043  
Cape Town  
8000

24 October 2012

Dear Premier Zille

**O' REGAN COMMISSION OF INQUIRY**

I acknowledge receipt of your letters dated 19 and 23 October 2012 for which I thank you.

I have also received a copy of the letter dated 22 October 2012 addressed to you by the Women's Legal Centre. I have considered their letter and will, once I have received your response to this letter, decide how best to address the issues raised by them, in consultation with the National Commissioner. I am particularly keen to ensure that the investigation initiated by the National Commissioner is finalised as soon as possible.

You will recall that I convened a meeting with you on Tuesday, 9 October, 2012, to discuss my constitutional concerns about your appointment of the above commission.

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At the end of that meeting, you indicated that you would seek legal advice on my request to you to postpone the commission of inquiry, pending the finalisation of an investigation to be conducted on the instructions of the National Commissioner. I provided you with full details of that investigation in my letter dated 12 October, 2012. I did this as a courtesy to you and in the spirit of cooperative government.

I am, with the utmost respect, of the view that your appointment of the above commission may be unconstitutional and irrational and may breach both the letter and the spirit of co-operative government as provided for in Chapter 3 of the Constitution and the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). I have exchanged correspondence and have met with you in order to avoid an intergovernmental dispute. Our interaction has been cordial and constructive.

I am, therefore, disappointed that you have still not dealt with my request. You have, instead, posed a number of questions regarding the steps taken by the National Commissioner to investigate the matter. I am not going to deal with the issues which you have raised in your letters at this stage. I am certain that the National Commissioner will consider those issues and may, once she has discussed those with her management, issue additional instructions to accommodate your concerns. The National Commissioner manages and controls the police service and is the appropriate person to deal with the issues raised by you.

The National Commissioner exercises her functions in accordance with the South African Police Service Act, 1995 (Act No. 68 of 1995), national policing policy, and directions issued by me in my capacity as the Minister responsible for policing. It is very difficult for me to discuss the investigation and the concerns which you have with the National Commissioner and to issue directions to the National Commissioner while the commission appointed by you is continuing with its work. The commission is investigating alleged police inefficiency and an alleged breakdown in relations between the police and the community in Khayelitsha. These are issues which would normally be investigated by the police and which the National Commissioner would address and in

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fact wants to address. Should you confirm that the commission will be postponed or, in the event of your decision to appoint the commission being reviewed and set aside by the High Court, I shall discuss the investigation with the National Commissioner and issue directions.

I also need to mention that I am concerned that your commission appears to be rushing its work. This undermines my efforts to avoid an intergovernmental dispute. Commission hearings will commence on 29 October, 2012. Whilst I appreciate that the commission is completely independent, the fact that you appear not to have alerted the commission to my concerns compromises our intergovernmental relations and interaction. I may have to address a letter to the commission regarding our interaction on its appointment. I hope that this will not be necessary.

I have been advised that your commission has addressed correspondence to the State Attorney who represents the South African Police Service, the National Commissioner and myself. In that correspondence the commission has demanded information and documents from the South African Police Service and has threatened to issue subpoenas to secure the requested information, if necessary. I have been informed that the commission has also communicated with other organs of state. This suggests to me that the commission is extending its reach into other areas of the criminal justice system. If this is correct, then it would appear that, in effect, you may have exceeded powers which you have in terms of the Constitution and that your actions are ultra vires. The JCPS Cluster is the forum within which matters relating to the entire criminal justice must be raised.

I have undertaken to meet with you, from time to time, to discuss policing issues and shall do so. I have also stated that, but for the appointment of the above commission, the investigation which was to be initiated by the National Commissioner may have been completed by now. The National Commissioner did not proceed with that investigation because of your actions in appointing the commission. The National

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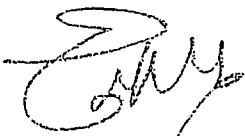
Commissioner and I have deemed it prudent to raise the commission with you before the investigation commences.

The work of the commission to date raises Public Finance Management Act issues of possible wasteful and irregular expenditure. To resolve that eventuality, I would have no objections to the submissions already made to the commission and the evidence already collected by it being submitted to the investigation panel, when it commences its work.

Under the circumstances, I respectfully request you to confirm by no later than 16h00 on Friday, 26 October, 2012 that you will either postpone the work of the above commission or withdraw its appointment, in the light of the legal issues raised by me and the undertakings given to you by both myself and the National Commissioner. Should you fail to do so, an immediate application to review and set aside the appointment of the commission will be launched.

I trust that this will not be necessary.

Yours sincerely



**E N MTHETHWA, MP**  
**MINISTER OF POLICE**

2012 -10- 24

