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April 16, 2015

**Attention: Mr M Rogers**

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**WRITTEN SUBMISSION BY THE FREEDOM OF EXPRESSION INSTITUTE ON THE  
DRAFT WHITE PAPER ON THE POLICE**

**Introduction**

1. The Freedom of Expression Institute, hereinafter referred to as the FXI, after due consideration submits comments of the Draft White paper on Police issued under notice number 179 of 2015 (Government Gazette No 38527).
2. FXI welcomes this opportunity availed by the Civilian Secretariat of Police to make written submissions towards the review of the Draft White Paper on Police. We further request the opportunity to make oral submissions in the public hearings on the issues raised herein.
3. The FXI commends the Civilian secretariat for the recognition of the importance of contributions from stakeholders with confidence that they will be prudently considered; and where applicable, adopted.
4. The FXI wishes to make its comments which follow below.

## The FXI

5. The FXI is a non-governmental organisation which was established in 1994 to protect and foster the rights to freedom of expression, access to information and to oppose censorship. The FXI supports the right of equal access to information and knowledge, promotes the right to protest, assembly and gathering, advocates for a free media environment and opposes censorship in all forms. The FXI provides litigation and legal support services, research, civil education and advocacy to a diverse range of beneficiaries. The FXI envisions a society where everyone enjoys freedom of expression and the right to access and disseminate information and knowledge. Our mission is to fight for freedom of expression and eliminate inequalities in accessing and disseminating information and knowledge in South Africa and beyond.
  
6. Section 17 of the Constitution of the Republic of South Africa, 1996 enshrines the right for everyone, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions. The Regulation of Gatherings Act 205 of 1993 provides the basis for the procedure to be followed in conducting legal gatherings. The act guides the conduct of both the public and authorities in the exercise of the right.
  
7. Most relevant to this submission in the work of the FXI is the monitoring and protection of the right to protest and assembly. Through this work FXI has been engaged with authorities, including the South African Police Services, municipal police, and communities on awareness-raising on the Regulation of Gatherings Act. The FXI has also handled complaints of unlawful conduct on the part of police officers on protesters exercising their rights to protest. In this regard the FXI has observed the following problems;
  - 7.1 Arbitrary interpretation of the RGA by various authorities charged with safeguarding the right to protest,
  
  - 7.2 Considerable number of notices to protest (in line with the RGA) being turned down on dubious ground,

- 7.3 Authorities authorising gatherings, only for them to withdraw the authorisation at the eleventh hour, leaving conveners with little to none time to seek recourse for such a decision,
  - 7.4 Systematic last minute convening of section 4 meetings denying conveners of gathering an opportunity to appeal authorities' decisions in court,
  - 7.5 Blanket bans on gatherings, which is unlawful as it effectively suspends the right to protest,
  - 7.6 Killing of protesters due to excessive use of force on the part of law enforcement agencies,
8. These deficiencies have serious explication on the realisation of the right to protest. They contribute to violence that often results towards loss of lives, acts of damage to both public and private properties and consequently further disruption and regression in delivery of services to communities.
9. It is against this background that the FXI makes its comments.

## **Overview of the White Paper**

10. The White Paper raises challenges facing the police – these challenges focus on the environment, namely the nature of crime and shifts in the community partnerships in policing. Further, the White Paper speaks of twenty years of “democratic policing”.
11. The White Paper fails to appreciate the role and functions of the police within a rights-based framework. A glaring omission in the White Paper is mention of the weaknesses in policing resulting in the deaths during protests from Harrismith (2004), Khustong (2006), Ficksburg (2011) to Marikana (2012) resulting in the establishment of a commission of inquiry.

12. An example of the failure to appreciate that a rights-based approach to policing is fundamental in a constitutional democracy can be found in the section in the White Paper entitled “human rights” where one finds a mere two paragraphs.
13. There is a focus on the police “partnerships” with the community and less so on the police as a “service” to the community.

## **Chapter 2: Approach to Policing**

14. There is an assumption, which we submit is wrongly placed, that the violent nature of protests is solely as a result of the behaviour of communities. The White Paper ought to acknowledge that the police have in certain instances used disproportionately excessive force in policing protests.
15. The procedure for obtaining “permission” (RGA) to gather has proved to be flawed with loopholes which unfortunately results in frustrations compelling communities to resort to exercising the right without following this mechanism.
16. The Independent Police Investigation Directorate, formerly the Independent Complaints Directorate, has made recommendations on better policing of protest action and the police appear not to have implemented the recommendations [the ICD report is instructive on the sort of ammunition to be used to police protesters. Using buck-shot and not water cannons for example – the police continue to carry the image of being a force and not a service].
17. The FXI contends that a human rights approach should be at the core of all police operations and not a footnote as is described in the White Paper.

## **Chapter 3: Building a professional police service**

18. The White Paper devotes one paragraph to training, which the FXI views as inadequate in light of the challenges facing the police service and the experiences of the past which in part relate to poor training.
19. In order to achieve the objectives of a police service that is founded on human rights, there should be training on a regular basis. There must be upgrading of skills and knowledge of human rights as they apply to policing.
20. Ensuring compliance with policies and procedures is crucial to maintaining a professional police service. It is therefore of concern that under the sub-heading “Regulatory enablers for professionalism” in paragraph two therein, the White Paper states the following:
- 20.1 *Non-compliance with and/or failure to heed set policies and procedures will result in routine administrative review and if necessary, measures to correct, review and if appropriate, discipline. (our emphasis)*
21. Non-compliance with policies necessarily requires disciplinary action. Police officers must recognise the seriousness with which management takes deviations from policy. We submit that this cannot be an option. Such an attitude to a failure to comply with policies results in a community lack of trust in the police.
22. Regular training and strict adherence with policy promotes a culture of accountability.

#### **Chapter 4: A framework for a professional police service**

23. The section on the Independent Police Investigative Directorate (“Directorate”) needs to place an emphasis on the independence of the Directorate. This section would appear to conflate the functions of the Civilian Secretariat for Police and the Directorate. They are not the same and the distinction should be clarified.

24. The Directorate, in addition to monitoring the conduct of the police, is charged with receiving and investigating complaints on police conduct. The powers of the Directorate must be bolstered to instil confidence within the community and make the institution effective.
25. Of importance to the success of the Directorate is ensuring the implementation of its recommendation.
26. The relationship between the Directorate and the office of the National Commissioner must be clearly defined. Further, police officers must be made aware of the role and function of the Directorate and its importance in ensuring policing is rights-based.

## **Chapter 6: Maintaining the momentum for Delivery**

27. Paragraph 6.2 highlights the intention to review and amend existing legislation and regulations such as the South African Police Service Act of 1995. We submit that part of such a review could include the Regulations of Gatherings Acts, with its above noted shortfalls a considered review could tighten up ambiguities and allow proper adherence and less manipulations.

## **Conclusion**

28. The FXI appreciates the opportunity to make these representations to the Civilian Secretariat for Police and stresses that the comments above are made in the spirit of contributing to strengthening policing and promotion of the right to freedom of expression in South African.
29. FXI reiterates its desire to make oral representation at any hearings held in this regard. Furthermore, if any additional information is require on the submissions made, please contact the FXI using the details provided above.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'S. Segodi', with a small dot at the end.

**Sphiwe Segodi**

Project Officer

*On behalf of the Freedom of Expression Institute*