**36/1/4/1 (2019)**

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**(INTERNAL QUESTION PAPER NO 4-2019)**

**228. Maj Gen 0. S. Terblanche (DA) to ask Minister of Police:**

Whether he intends to introduce amending legislation in the National Assembly to devolve police powers to provincial governments; if not, what is the position in this regard; if so, what are the relevant details?
NW1187E

**REPLY:**The Minister does not intend to introduce amendments to any legislation in the National Assembly to devolve police powers to provincial governments. The devolving of police powers to provincial governments will be in contravention of Section 205(1) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") which states that the "national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government".

Section 205(2) of the Constitution states that "National legislation must establish the powers and functions of the police service and must enable to discharge its responsibilities effectively, taking into account the requirement of the provinces". This has been effected by the promulgation of the South African Police Service Act, 1995.

Section 205(3) of the Constitution makes provision for the duties of the police as follows: "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".

Section 206(1) of the Constitution requires that the Minister must take into account "the policing needs and priorities of the province as determined by the provincial executive".

Section 206(3) state as follows:

"Each province is entitled-

( a) to monitor police conduct;

(b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;

(c) to promote good relations between the police and community;

(d) to assess the effectiveness of visible policing; and

(e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the Province."

Section 207(1) of the Constitution provides that the President appoints a National Commissioner of Police to control and manage the police service under the direction of the Minister of Police.

In terms of section 207(3) of the Constitution, the National Commissioner is then responsible for appointing a Provincial Commissioner of Police in each Province to manage and oversee policing in the Province. The Provincial Commissioner is expected to report to the Provincial Legislature and the MEC responsible for Policing.

Section 207(4) of the Constitution makes it clearer that Provincial Commissioners are responsible for policing in their provinces as prescribed by national legislation and subject to the power of the national commissioner to exercise control over and manage the police service.
The Constitution introduced the concept of cooperative government, structured in the national, provincial and local spheres, which is distinctive, interdependent and interrelated. This implies that all spheres of government must conduct their business within the spirit and principles of cooperative governance and intergovernmental relations.

While the Constitution makes it clear that policing is a national competency, Provinces have a huge role to play in the maintenance of law and order, reduction in crime as well as policing in general. As provided in section 207(5) of the Constitution, the Provincial Commissioner is required to account to the provincial legislature on an annual basis on the state of policing in the province.

**ADV. DA BELL**

**Chief Director: Legislation**

**Date**:

Reply to question 228 recommended/not recommended

**MR. AP RAPEA
Secretary for Police Service
Date**: 2019/07/23

Reply to question 228 recommended

**GENERAL BH CELE (MP)
MINISTER OF POLICE
Date**: 2019/07/24