

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE
INEFFICIENCY IN KHAYELITSHA AND A BREAKDOWN IN
RELATIONS BETWEEN THE COMMUNITY AND POLICE IN
KHAYELITSHA PHASE ONE

Thabo Leholo

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ON RESUMPTION ON 5 FEBRUARY 2014:

COMMISSIONER: Mr Hathorn I thought we might start by the application for the two witnesses to be led *in camera* on Monday morning, so I thought that if there is anything you wish to supplement your application or say in support of your application, this would be a good opportunity.

MR HATHORN: Commissioner I must confess that it slipped my mind. I haven't looked at the affidavits in respect of which the application has been made. Can we deal with it after lunch? Would that be ...(intervention).

COMMISSIONER: When would you like to do it?

MR HATHORN: Could we do it after lunch?

COMMISSIONER: Yes certainly.

MR HATHORN: I'll have a look at it over the lunch time.

COMMISSIONER: No, that's absolutely fine.

MR HATHORN: I'm sorry about that.

COMMISSIONER: No-no, no trouble at all. Alright, I think we are ready to commence. Welcome again Mr Leholo. We are very grateful that you made yourself available at this early hour of the morning. Am I correct in understanding that you are going to testify in English?

MR LEHOLO: Correct Chairperson.

COMMISSIONER: Thank you. And do you have any objection to taking the oath?

MR LEHOLO: I don't have any.

COMMISSIONER: Okay. And I just wanted to confirm that you also know that these proceedings are public proceedings, that your name will be made public and your evidence will be made public?

MR LEHOLO: Correct Chairperson.

COMMISSIONER: And do you have any objection to that?

MR LEHOLO: No objection.

COMMISSIONER: Thank you.

THABO LEHOLO: (sworn states)

COMMISSIONER: Thank you very much. Ms Bawa.

EXAMINATION BY Ms BAWA:

Good morning Mr Leholo.

MR LEHOLO: Good morning ma'am.

MS BAWA: You are a qualified attorney and you are currently employed by the Independent Police Investigative Directorate, to which for ease we shall refer to as IPID, is that correct?

MR LEHOLO: That's correct.

MS BAWA: And you are employed in the capacity as a Director of Investigations.

MR LEHOLO: That's correct.

MS BAWA: Okay. Tell us a little bit about your employment history. I see you've been employed since 1 November 2006 at the ICD, the Independent Complaints Directorate, which is the predecessor to IPID.

MR LEHOLO: That's correct. Chairperson I first started off ICD from its inception in 1997 for 18 months. I left, I went to practice. I came back, I was re-employed on the 16th November 2006 as the Provincial Head of ICD then. With the advent of IPID on the 1st April we were then appointed as Acting Provincial Heads from different periods because there were different acting heads. So I have since been, most of the time been acting as the Acting Provincial Head of IPID and also but I have been currently the director of investigations.

MS BAWA: Okay. Now Mr Leholo, given that the initial request from ourselves – myself and Adv Sidaki – was to cover a period of complaints which we indicated to you was from 1 January to August 2013, we then reached an arrangement with you that we would operate pursuant to the IPID financial year periods or reporting periods, which was from 1 April to 31 March, is that correct?

MR LEHOLO: That's correct Chairperson.

MS BAWA: So when you talk about years, that is essentially the years that we are referring to.

MR LEHOLO: Okay, okay.

MS BAWA: Now when did IPID come into force?

MR LEHOLO: From the 1st April 2012.

MS BAWA: Right. So everything that precedes the commencement of the 1 April 2012 which is the 2012 reporting period, is ICD related and everything post 1 April 2012 is IPID related. Is my understanding correct?

MR LEHOLO: That's correct Chairperson.

MS BAWA: And how did you deal with complaints that sort of carried over, that was in existence at 1 April 2012? Did they get dealt with under the ICD legislative regime or under the IPID legislative regime?

MR LEHOLO: The cases that were what we called as backlog, that were brought over to IPID, we dealt with them in terms of if it's an investigation, we investigate that particular matter in terms of the IPID Act.

MS BAWA: Okay.

MR LEHOLO: But let me say that there were also other matters that we had no conclusion – not yet conclusion at the time, that were also dealt with in terms of the ICD because they were already investigations that were in process.

MS BAWA: Right. Now so that effectively meant that the regime which existed from 1 April 2012 is a mix of the ICD regime and a mix of the IPID regime.

MR LEHOLO: Yes, that's correct.

MS BAWA: And that – okay. So maybe briefly Mr Leholo because you do this very well, what is the fundamental difference between ICD and IPID?

MR LEHOLO: Chairperson the difference is the ICD was operating in terms of the South African Police Service Act 68/1995, Section 53(2)(a) and particularly where it sets out the mandate that (1) ICD may investigate any misconduct and acts of criminality and also may refer such alleged misconduct or acts of criminality and further that ICD shall investigate all cases of death in police custody and death as a result of police action. The distinction in relation to IPID, IPID is governed by Section 28 of IPID Act 1/2012 but the mandate in respect of IPID is very specific; if one looks at Section 28(1) to (h) and 2, where that mandate is to investigate deaths in police custody, deaths as a result of police action, any complaints of discharge of firearm, any acts of – that is assault or torture that has resulted in the executions of police duties etcetera, etcetera. However the current Act is very specific; whilst the ICD, the Police Act that mandated ICD was sort of in some aspects, particularly the first category where in terms of investigations of act of criminality, was very broad and discretionary and also was not specific, where with ICD it is specific that – I mean with IPID, it is very specific that complaints that fall under Section 28 must be investigated.

COMMISSIONER: Just clarify that “must be investigated by IPID?”

MR LEHOLO: By IPID, correct.

COMMISSIONER: And you may not refer that investigation to SAPS?

MR LEHOLO: No, we may not.

COMMISSIONER: So Section 28 matters have to be investigated by IPID?

MR LEHOLO: Have to be investigated ...(intervention).

COMMISSIONER: Whereas under ICD you did have the authority

to refer things back.

MR LEHOLO: We did have the authority to... we had a discretion to refer except for what we call plus one deaths in police custody and the deaths as a result of police conduct; those the act states that we shall investigate those.

MS BAWA: Now the provision in chapter 10 of – and maybe for ease so that we don't confuse it, let's talk about ICD first okay – the provision in chapter 10 of the SAPS Act gave you the discretion where appropriate to refer an investigation onto the SAPS Commissioner concerned. How did you determine what the category where appropriate was?

MR LEHOLO: Chairperson first, mostly the cases of alleged misconduct perpetrated – I mean allegedly by members of the police service, in those cases – maybe if I can elaborate; you may get cases where a complainant will come and complain where he is not satisfied about the investigation of this case, about feedback, about that the investigator of that particular case was not treating him well, those kind of and which are mostly managerial functions. What we normally do, we evaluate those cases and use the discretion because we believe that such cases are managerial cases.

COMMISSIONER: Just to clarify again, presumably that means alleged misconduct but falling short of the commission of a criminal offence?

MR LEHOLO: Yes.

COMMISSIONER: So misconduct but not criminal – I mean obviously the commission of a criminal offence would also constitute misconduct.

MR LEHOLO: That will also – I'm coming to explain the criminal part of it.

COMMISSIONER: That's why I'm just asking you to be precise. When you say it's alleged misconduct it's particular categories of the misconduct.

MR LEHOLO: Yes, the particular categories.

COMMISSIONER: Ones which don't constitute a criminal offence, or were they defined in some other way?

MR LEHOLO: There are some that do not constitute criminal offence, there are others that also constitute a criminal offence. On both instances we have a discretion to refer but those that are purely misconducts we largely in those instances, we refer them. We believe that the complainant and the police... the police would exhaust the internal remedies that are within and if they don't get satisfaction we may also decide to investigate some of them. And also some of those kind of misconduct that the gravity of it, that we thought we may come to a conclusion where we investigate them. Likewise with criminal offences, there are some that we feel

that the magnitude of it, that the police can investigate or when we receive a complaint, we evaluate a complaint, we may find that it is not that the police are not investigating, it's just a question of communication. So in our discretion we won't take over those kind of cases, we'll rather communicate with the Station Commissioner or the Provincial Commissioner to bring it to their attention with...

MS BAWA: You are going to take it out of context, so let's just take him through it.

MR LEHOLO: Then we bring them to the attention of the attention of the Commissioner or the Station Commissioner and the complainant to deal with that matter or to finalise that matter internally. And there may be also those criminal offences that we take over and investigate.

MS BAWA: Okay. Now under the ICD the obligation rested on the National or the Provincial Commissioner to notify the ICD of all cases of death in police custody or as a result of police action, is that correct?

MR LEHOLO: Under ICD, correct yes.

MS BAWA: And under IPID?

MR LEHOLO: They have to notify IPID of all cases that fall under Section 28.

MS BAWA: And how does IPID verify if at all, that they are in fact notifying you of all those cases? And I ask you this question up front Mr Leholo because in the recent couple of days the South African Police Services have handed over a number of dockets to the Commission which is still being considered by the Commission and perusal of those dockets – and I have not looked at them myself but the Commissioners have looked at some of them – indicate that there are a number of offences which would conceivably fall within those categories with no indication on the dockets that they have in fact been referred to IPID, and no indication on the dockets, and none of it appear to correlate with the information of cases that you have provided to us as being pending before IPID.

MR LEHOLO: Okay. Chairperson there's an obligation in terms of the Act on the South African Police Service that for any offence or a case that is allegedly in terms of Section 28 ...(intervention).

MS BAWA: Let's call them the Section 28 offences then we know what they are.

MR LEHOLO: Offences yes, Section 28 offences, there is an obligation on the Commissioners to report, to notify IPID of those cases. And the process that normally follows is that the police will call our standby number and in that they will give us a CAS number because the first point of contact obviously is between the public and the... is the police station. Then we get the CAS number and out of that then they have to send a notification;

there's a *pro forma* notification that has been agreed between IPID and the South African Police Service to notify IPID and then where after our investigators will take over that docket. However if there are cases that fell through the cracks where the police have not notified us, there are those that we become aware and then we open a case in terms of Section 33, a case of non compliance. That is a criminal offence in terms of the IPID Act, that will be investigated criminally against that particular member or Station Commissioner. But there are those cases that where, some of the cases if they were not reported at all, there is no way that we can pick up those cases have not been reported.

MS BAWA: There's one area where I can see it conceivably falls in the cracks Mr Leholo. It's the date at which the offence occurs, because there's potentially a pending investigation still ongoing at SAPS and that date might well fall before the one – I think it was 1 June 2012 – 1 April 2012 deadline and so is it IPID's position that the relevant applicable to when the matter would fall under a Section 28 offence is the date on which the offence occurred, even though the investigation isn't finalised by SAPS?

MR LEHOLO: Can you come again? I don't get you.

MS BAWA: Assume it's for example a torture by a police officer – well that's not a good example because it would have had to be reported potentially under ICD. Assault, let's take assault. The date of the assault is 1 February 2012, right? The file is still opened by SAPS right, so it's still a pending case. Under the legislative regime would that have to be reported to IPID or not?

MR LEHOLO: Not, because it falls before the 1st April 2012.

MS BAWA: So it is only if the date of the offence is after 1 April 2012?

MR LEHOLO: From 1st April 2012 and onwards, then that particular case is supposed to have been reported to IPID, if it falls within Section 28.

MS BAWA: And if it does occur after 1 April 2012 and it's not reported to IPID then it's a criminal offence under the IPID act, and who do you hold responsible; the Station Commander, a senior officer, the Provincial Commissioner, the Inspectorate? Whose responsibility is it to have reported it to IPID?

MR LEHOLO: The first person that has noted that there is a... from the Police Service, that this is a criminal offence that falls within Section 28, that member must immediately in terms of the act notify IPID, and if he has not, then steps will have to be taken to be investigated who is actually at fault in the hierarchy of reporting of that incident.

MS BAWA: Now one of the things that distinguishes the ICD from IPID, is effectively that the ICD was a complaints driven body, it was a recipient of complaints and it then dealt with those

complaints pursuant to Chapter 10 of the SAPS Act and IPID has been established under its own legislation, funded independently by parliament and it is said to be an investigation driven body functioning independently of SAPS. Now is it then not part of IPID's responsibility to also put in place some checks and balances to ensure that incidences which fall under Section 28 are reported to IPID?

MR LEHOLO: The act is very clear Chairperson; if a member of South African Police Service has not reported it's a criminal offence and a misconduct that has to be investigated and if we become aware. And secondly, also the police are quite aware, police management, that – and also down the hierarchy of supervision – that such cases have to be reported and if they are not reported, SAPS internally have to take steps and also have to take steps. There have been instances where late – for example it's also an offence for late notification where SAPS have notified of a late notification by a member and steps are taken. I may also, one need also I think to look at in the event those instances that Adv Bawa is mentioning that what else can be done to ensure all cases that are falling within Section 28 are reported, I think that obligation is within the South African Police Service to make sure all such cases are investigated. I mean then it will mean that the police need to put mechanism in place to ensure all such cases and the other forms of where one can do that, doing routine inspections and checking what kind of dockets are there, whether those dockets have been reported to IPID or not, and if not, notify IPID and necessary action should be taken. Because from outside it's very difficult to know what has been reported or not because we rely on the act and the *bona fides* of the Police Service.

MS BAWA: Okay, now what you do have as both IPID and ICD is you have to set in place a system on how to deal with complaints and one of the difficulty which you describe in your affidavit is how the ICD was described as a toothless watchdog, as opposed to the powers IPID has. Now explain to us fundamentally how your powers in that regard has now changed.

MR LEHOLO: Okay. I'm smiling at the toothless terminology.

MS BAWA: It actually comes from one of your annual reports as well.

MR LEHOLO: No, I've been reading a lot about that you know. The distinction Chairperson is that to give ICD – IPID more teeth, if you look at the ICD regime, it was more complaints driven. There was an influx of, or you could report anything, influx of anything that relates to the police and that ICD have to look at that. And it could even be a simple straightforward managerial issue that relates a member of the public and the police. And so that's one. And secondly is that the recommendations that are

made by ICD to the police, the police has no obligation to respond to those recommendations. On the contrary, in respect of IPID (1), it is investigative driven, it's not complaints driven so the first significant difference is that the police are obliged to notify. In the previous regime there was no obligation on the police to report of any criminal offences committed, allegedly committed by their own members except for deaths. And further, the recommendations that are made by IPID sent to the South African Police Service, there is an obligation that police should act on that within 30 days and also give feedback, and failure also to give feedback in itself it's a misconduct and can amount to a criminal offence. So that's also that fundamental distinction and a shift on putting more obligation and also – more obligation on the police and also reacting to the recommendations that, the disciplinary recommendations that have been sent by IPID to the South African Police Service.

MS BAWA: Now Mr Lehlo we requested a number of documents and copies of complaints emanating from Khayelitsha from yourself and that was – well from yourself and Mr Parman essentially who was at the time acting as well, and we were provided with a substantial amount of information which was ICD and IPID related. And as we understand it and for short – you can correct me if I'm wrong – a complaint comes into the ICD or IPID – I don't think your system has changed as to how you deal with coming in – it is then given a unique reference number which is called your CNN number and that's the file for that complaint, and all information, all investigations, all correspondence, all reports, all recommendations are kept in that file. Is that the correct characterisation of how you operate per complaint?

MR LEHOLO: That's correct Chairperson.

MS BAWA: Right. So if one had regard to that file, say – and I say this fairly to you – say that in some occasions one finds that there might be an odd correspondence letter which has not been referred to but for the most part in the documentation provided to the Commission it was all there, right, so you have provided to us hard copies of files or complaints that you had identified for Khayelitsha, is that correct?

MR LEHOLO: That's correct Chairperson.

MS BAWA: And on a perusal, and those files Mr Lehlo just for the record, came under cover of an index and that index is essentially for the three police stations, Annexures TH4, TH5 and TH6 attached to your affidavit at pages 57 to 59. The handwritten writing is that of the Commission but the typed out parts are essentially those of IPID, is that correct?

MR LEHOLO: Correct Chairperson.

MS BAWA: Right. The handwriting is an addition by the

Commission of further cases and the typed section is what IPID had provided to us.

MR LEHOLO: That's correct Chairperson.

MS BAWA: In addition to that you provided us with a convenient recommendations file which contained the recommendations pertaining to these cases and the correspondence to the Director of Public Prosecution where you referred matters to the Director of Public Prosecution with your – under cover of a letter recommending prosecution, is that correct?

MR LEHOLO: Correct Chairperson.

MS BAWA: And let's get this out of the way; you make a recommendation to the DPP but the decision to prosecute you do not interfere with at all, is that correct?

MR LEHOLO: That's correct your worship – ag, Chairperson – but in some instances where we believe that we do not agree we engage the DPP and we resolve that.

MS BAWA: But ultimately that decision rests solely with the DPP.

MR LEHOLO: Correct so.

MS BAWA: Right. So you do not have control over disciplinary matters even if you come to the conclusion it's really egregious and criminal matters should proceed from it, you cannot compel that to occur.

MR LEHOLO: Can you come again?

MS BAWA: You can't force a criminal proceeding to be instituted.

MR LEHOLO: We cannot yes.

MS BAWA: Now Mr Leholo if we looked at these files that were provided to us and we did a summary of it, which you would find is the next annexure – maybe I should say also these schedules Mr Leholo reflected what IPID represented as being your closed cases.

MR LEHOLO: That's correct Chairperson.

MS BAWA: Right. You did not provide the Commission with your pending cases?

MR LEHOLO: We did not.

MS BAWA: But you afforded the evidence leaders the opportunity to peruse those pending cases.

MR LEHOLO: That is correct Chairperson.

MS BAWA: Now if one has regard to the closed cases which you see from Annexure TH7, which is page 60 of your affidavit, right?

MR LEHOLO: I've got it Chairperson.

MS BAWA: You will see that it has been given a number, we have a date of the complaint, we have a date of a recommendation, we've got the nature of the complaint, we've got the IPID recommendation and then we've got a column "SAPS", which is effectively what then proceeded the IPID recommendation. Now, in the recommendation column the one word that comes up very

often if one looks at all the dockets provided by IPID is “unsubstantiated.”

MR LEHOLO: Correct.

MS BAWA: Can you elaborate on how that is used in IPID?

MR LEHOLO: Okay. It’s mainly the misconduct matters. If a matter, upon receipt of a complaint during the ICD time, upon receipt of a complaint we evaluate and if we are of the view that that particular matter needs to be referred to the South African Police Service, we refer it and await response. There are some others that are straightforward that we might not receive; we do not expect a response, and even those that if after a period of time where we don’t receive a response of activity, we evaluate and close that case as unsubstantiated because we do not have the evidence, we have transferred it to the police to deal with the matter, but we do not have the evidence as to – the evidence in respect of the investigation, so it becomes a police matter to take it further, and then we close that on our part as unsubstantiated.

MS BAWA: So essentially when you say it’s unsubstantiated, it effectively means from your side you could not bring the case to any finality to make a finding whether the complainant is right or wrong?

MR LEHOLO: That is correct Chairperson.

MS BAWA: So essentially where does that leave the complainant Mr Leholo? Because they have now lodged this complaint with ICD and they then get a letter from ICD – and I’ll paraphrase the letter but I’ll read into the record because in a number... in the majority of these files we find this letter.

“Your complaint has now been referred

1. To the Station Commissioner.
2. To the Provincial Inspectorate of the Province of the Western Cape or
3. to the Provincial Commissioner.

The docket or the matter has now been closed by the Independent Complaints Directorate and you shall be contacted by SAPS as to the further as to the conclusion of your complaint.”

Is that a fair summation of the correspondence that is sent to the complainant?

MR LEHOLO: That is correct Chairperson.

MS BAWA: And that is effectively the last communication which the ICD has with that complainant.

MR LEHOLO: That’s correct, unless the complainant will come back if there’s any new matters or they are not getting satisfaction and then we may communicate with the police. But if that’s not the case, that’s the last.

MS BAWA: And now you’ve sent this letter on to SAPS and I put

it to you Mr Leholo, when one looks at each of these dockets, in only one of those instances of an ICD complaint – and I'm referring to the ICD period – was there a response from SAPS.

MR LEHOLO: That is correct Chairperson.

COMMISSIONER: I want just to clarify on that, are we talking now obviously about the Khayelitsha complaints?

MS BAWA: We are only referring to the Khayelitsha complaints.

COMMISSIONER: So only one of them. How many were there?

MS BAWA: Well let me lead that into evidence in a moment. The issue of how many complaints is on TH7. Before we come to how many complaints Mr Leholo, let me make a point while I'm on the substantiated point; if you go to TH7, which is page 60 of your affidavit, and we've got – I just want to put this into the record – there's 10 complaints on that page; 8 of them are closed as "unsubstantiated, refer to SAPS." On page 61 – are you with me Mr Leholo?

MR LEHOLO: I'm just getting the page but I'm with you.

MS BAWA: Okay.

MR LEHOLO: Page... my affidavit?

MS BAWA: Annexure TH7.

MR LEHOLO: Oh, you are referring to the annexure, not the page?

MR LEHOLO: Ja. Well ...(intervention).

MR LEHOLO: I've got TH7.

MS BAWA: It's an annexure and it's... sorry, I don't know if you have a typed copy of a number at the top of your page or not.

MR LEHOLO: No.

MS BAWA: No. It would be Annexure 7.

MR LEHOLO: Annexure 7, yes I've got that. I've got that, I've got Annexure 7.

COMMISSIONER: Could we just go through each complaint, just for this first page? Because I think it might be helpful. I know it might be a bit time consuming.

MS BAWA: If one looks – are you a Annexure 7?

MR LEHOLO: TH7, that's right.

MS BAWA: It says:

"Khayelitsha Site B Police Station closed. Cases of complaints received from IPID for the period 1 April 2010."

MR LEHOLO: I've got that Chairperson.

MS BAWA: Right. So if one looks at the first row, there is a number 1, there's a date of the complaint, date of recommendation, the nature of the complaint is corruption. It's closed unsubstantiated. It's referred to the Khayelitsha Station Commander for further investigation.

"2. It's closed and referred to SAPS for

investigation.”

In fact to the Station Commander.

“3. One person was arrested and suspended, the others to be suspended.”

So that was an attempted murder case. (4) is assault GBH, it was substantiated and there was a docket enrolled to court. (5) was an attempted murder was the complaint, IPID regarded it as a misconduct, a Regulation 20(a) offence, dereliction of duty, it was referred to the Inspectorate. Assault GBH torture, it was unsubstantiated, it was referred to the Khayelitsha Station Commander for further investigation. The next complaint was assault; you did a preliminary investigation, you referred it to the Lingeletu West Station Commander for further investigation. The next one was a theft; there was a preliminary investigation, it's referred to Khayelitsha Station Commander for further investigation. The next one is racism misconduct. You closed it and you referred it to Inspectorate. Improper conduct, that was closed unsubstantiated. You referred it to the Inspectorate. Now the difference in terminology will you agree with me, is attributed to the fact that there are different investigators but effectively what had happened in all the unsubstantiated files, they were closed or 8 on this page was closed and referred to SAPS.

MR LEHOLO: That is correct Chairperson.

MS BAWA: Okay. On the next page we have 8 of them, 7 are referred to SAPS.

MR LEHOLO: Correct Chairperson.

MS BAWA: On the next page we have 6, 3 are referred to SAPS.

MR LEHOLO: Correct.

MS BAWA: And if we go on through all these lists, I mean I can take you through it, it's a manual count we have, 6 out of 10, 8 out of 10, 4 out of 6 – sorry, I was... well if we... I was going to sort of just parachute it and not do each page. But do you want me to do each page?

COMMISSIONER: Have you got a global total that you can provide us with?

MS BAWA: No I don't have a global total.

COMMISSIONER: Well perhaps what you should do is just go through each page and just give us the number and if Mr Leholo has any difficulty he'll stop you.

MS BAWA: Okay. So we did on the first page, it was 8; on the second page it was 7; on the third page which for the record was page 62 it was 3; on the fourth page it was one; on the fifth page it was 7 that were referred to SAPS. I'm not on page 65 which is number 9 on top, it was 6; on page 66 it was 4 of the six complaints. Ja. On page 67 it was 5 of the 7 complaints; on page 68 it was 4 of the 7 complaints; on page 69 it was 5 of the 7

complaints; on page 70 it was the additional ones which we are going to deal with in a moment, and that comes out of the DPP. But essentially on the complaints that have been lodged in the total (counting) close to 50 of the total complaints – we'll get to a figure of the total in a moment – was effectively referred to SAPS and was closed under ICD as unsubstantiated.

MR LEHOLO: That is correct Chairperson.

MS BAWA: Now at the time Mr Leholo when you handed these, when IPID handed these files over to the Commission it was indicated to us that there was about 40 matters still pending.

MR LEHOLO: That's correct.

MS BAWA: And these matter related both to the ICD period and the IPID period, is that correct?

MR LEHOLO: That is correct Chairperson.

MS BAWA: And can you give us an indication as to – I accept that given the time period that's now elapsed, a number of these matters have been finalised, but can you explain to the Commission how come matters from the ICD period are still pending, given that the IPID had come into effect from 1 April 2012? We are nearly two years down the line and we still have pending matters from the ICD period; why is that?

MR LEHOLO: Chairperson it's because of the investigations and also because of the new complaints that are coming and the volumes of the work, so in terms of that volumes those, some of the old matters are still pending, because the approach, we do not ignore the new matters as well and so we are trying to deal with all those matters and as a result some of them are still outstanding.

MS BAWA: And there's a plan in place to deal with the backlog ...(intervention).

MR LEHOLO: Yes there's a strategic plan on backlog and for the previous, even during the ICD time and we embark on that plan and even this year, for this financial year there's a plan how to deal with backlog cases.

MS BAWA: Now Mr Leholo the Western Cape office deals with all policing, all the SAPS stations as well as all the Metro Police in the Western Cape Province, is that correct?

MR LEHOLO: That is correct Chairperson.

MS BAWA: You have a satellite office in George?

MR LEHOLO: Recently yes.

MS BAWA: Recently. That is since the 2011/2012 period?

MR LEHOLO: To be ...(intervention).

MS BAWA: It's on page 30 of your affidavit.

MR LEHOLO: That is correct Chairperson.

MS BAWA: Ja. And you have effectively got three posts filled in George.

MR LEHOLO: That is correct Chairperson.

MS BAWA: How many of those three persons are investigators?

MR LEHOLO: Currently they are three now. They used to be two but they are currently three.

MS BAWA: Okay. In your Cape Town office when you were ICD, you had 15 posts under 2011/2012, one was vacant. Is that correct?

MR LEHOLO: That is correct Chairperson.

MS BAWA: Right. So we brought in this IPID regime in 2012 and your staff complement was raised to 18.

MR LEHOLO: That is correct Chairperson.

MS BAWA: But you've got three vacant posts.

MR LEHOLO: At the time of swearing this affidavit yes.

MS BAWA: Yes.

MR LEHOLO: Ja.

MS BAWA: In fact during the 2012/2013 period your annual report indicated three vacant posts and in the 2013/2014 period you had one vacant post, is that correct?

MR LEHOLO: At the time of swearing this, because as time goes on there are new posts advertised and there are also people coming and going. So it's fluid. So by getting out of this door today probably those figures may increase or change.

MS BAWA: Sorry Mr Leholo. What is the situation today?

MR LEHOLO: Today there are more – there are three posts that are currently, have been advertised that we are conducting interviews, there's a person that has – two that have resigned and we are filling those posts, so it's quite fluid.

MS BAWA: It's a moving vehicle.

MR LEHOLO: Yes.

MS BAWA: But does your total of 18 increase at all?

MR LEHOLO: We are now 20.

MS BAWA: 20?

MR LEHOLO: Yes.

MS BAWA: So we've moved from a complaints driven body to an investigative driven body and you have been given two more bodies. Essentially that's the case.

MR LEHOLO: We have been given more but as I say is that we are 20 because some people resign, some come and new posts are advertised but basically we've got 20 people.

MS BAWA: You've got 20 people.

MR LEHOLO: H'n-h'n.

MS BAWA: And your task, has it expanded a lot more from ICD to IPID?

MR LEHOLO: Very much.

MS BAWA: Okay. And so essentially it's going to take you, if I understand the IPID mandate, it's going to take you much more

longer to deal with complaints than what it previously did because the obligations on you are now investigative driven.

MR LEHOLO: We have limited investigation. It creates a challenge. With more investigation one can deal with that. Also the other aspect, the complaints, the misconduct matters, the pure misconduct matters are no more within our mandate so they have actually taken off a little bit of strain. However there is an increase of criminal offences that are being reported by the police, that the police are obliged to report to us, then that has also increased and it's also a capacity issue and the time frame sometimes. We've got time frames on when to complete but it becomes a challenge to meet those time frames in 100%.

MS BAWA: Okay. Now Mr Leholo you keep both hard copies of your dockets and you also keep what is called electronic complaints control registers.

MR LEHOLO: That is correct Chair.

MS BAWA: Right. And you provided those electronic registers to the Commission for the relevant periods.

MR LEHOLO: That's correct.

MS BAWA: In fact you gave it to us for a longer period than what you could for the dockets because we had asked for it later, so we effectively got a longer period on the electronic record. Is that correct?

MR LEHOLO: That is correct Chairperson.

MS BAWA: And those electronic records that were provided to us, you don't keep it per station, is that correct? You keep it per complaint. It's a comprehensive record that you submit every month to your national office.

MR LEHOLO: That's correct.

MS BAWA: And so if look at Annexure TH12 to your affidavit, which is at page 86...

MR LEHOLO: I've got it.

MS BAWA: Right. Now this is an extract of the format. There are some columns that are not material to our exercise but I'm taking the liberty to do this because the complete registers have been made available to all the parties, right? So this is an extract of the complaint registers. Now just for ease, there is a number in the left hand column which shows the quantity and then there's the month that it's registered and the complaint. Your CCN number, which is 201205, the first six numbers will tell you which month that complaint is registered in. Is that correct?

MR LEHOLO: That's correct.

MS BAWA: Right. And then under "class" you have a Roman numeral. What is that?

MR LEHOLO: Actually Chairperson I don't know if we are talking of the same page. My TH12 is a document table 1, summary April

2010 to 2011. Are we talking of the same document?

MS BAWA: Let me... we are talking of this document.

MR LEHOLO: Then it's not what I have.

MS BAWA: It could be – my annexures are not marked so let me just check – I could have been misleading you. I'm sorry Mr Leholo. It starts with table 1, TH12. You are right, I'm wrong.

MR LEHOLO: It's part of... Chairperson it's part of TH12.

MS BAWA: But it's not the first page.

MR LEHOLO: It's not the first page yes.

MS BAWA: But maybe let's take you to the first page because I'm mindful of the time and I'm possibly just jumping the gun a bit.

MR LEHOLO: Okay.

MS BAWA: If we go to the first page of TH12 which is on page 82.

MR LEHOLO: As I said my pages were not numbered.

MS BAWA: Okay. So it would be the first page of TH12.

MR LEHOLO: Okay, I'm at the first page.

MS BAWA: Right. So this is effectively a table which had been compiled by the Commission of the summary of the complaints lodged and the recommendations made by IPID in respect of the Western Cape. So we've got one column which sets out the province and then we've got a column which says "Khayelitsha" and then we've got the percentage. It is your experience Mr Leholo that you did not get an unusually high number of complaints emanating from Khayelitsha, is that correct?

MR LEHOLO: Relatively yes, if one compare it to various stations within the Western Cape.

MS BAWA: Ja. If one looks at the percentage for the 2010/2011 period your number of complaints received is 4,75% of the provincial number of complaints, on this figure that has been calculated. If we turn the page, we see for the reporting period 2011/2012 we have 22 for Khayelitsha out of the province's 299, and if we turn the third page which is the third reporting period then – well actually the totals are on the fourth page – we see 19 in total for Khayelitsha for that period, and if one totals that up then we are looking, both finalised and pending together, at approximately 127 complaints received viz the Khayelitsha Police Stations for the three year period. Would that approximately be correct?

MR LEHOLO: That is correct Chairperson.

MS BAWA: I'm attributing an approximation to it to account for human error in ...(intervention).

COMMISSIONER: Ms Bawa could you just explain what the difference between the two percentages is on these schedules? There's a percentage in the fourth column – third column, and a percentage in the last column.

MS BAWA: There are two registers compiled by you; one is a

complaints control register and one is a recommendations control register, is that correct?

MR LEHOLO: Correct Chair.

MS BAWA: Right. So your complaints control register would reflect the complaints that you receive, is that correct?

MR LEHOLO: That's correct.

MS BAWA: And your recommendations register is completed once you've made a recommendation and you've effectively closed the file, is that correct?

MR LEHOLO: That's correct.

MS BAWA: Right. So the percentage column would reflect the complaints for Khayelitsha and the recommendations for Khayelitsha. Is that how you understand it?

MR LEHOLO: That is correct Chairperson.

MS BAWA: Right. And then the pages which follow which I initially took you to, which is the complaints control register, those are the details which is culled from the electronic register, do you agree?

MR LEHOLO: Agree.

MS BAWA: Okay. So effectively those would show you, and we have taken out the names of the complainants and we've taken out the names of the identifying features but effectively what is left in, is – and I'm back on the page which I held up to you earlier on, the ...(intervention).

COMMISSIONER: Can I ask a question about the recommendations? So when you got a recommendation in your recommendations register, that's a recommendation that has been based on your investigation of either a reference to the NPA or a reference to the Inspectorate for disciplinary purposes. What could the content of recommendations be?

MR LEHOLO: Yes that's correct, it's either a recommendation that we refer for disciplinary action and also refer to the DPP for prosecution or not.

MS BAWA: Mr Leholo for ease of understanding that, I actually want to take you through one of it, just so that it could be understood. It is actually the reference which is in paragraph 60 of your affidavit and it's to be found in bundle 1, IPID documents, page 96. Let me just see if I've got this right today. It's page 96 so... It's got a – sorry, I'm still being plagued with a virus that's not letting me get into things. (Pause). And you scroll down till you find number 96 on the paginated number. (Pause). Mr Leholo the – okay, if you go to item 28, bundle 1, IPID documents, and then you see – right, and then it's item 28 in file 1. You click on ...(intervention).

COMMISSIONER: Sorry, it's item number 29. Item number 29. Ja, and then go – no, item number 29 which says "88 to 109." Item number 29, 88 to 109 and then when you get into that, you can page down to page 96.

MS BAWA: That Mr Leholo is a copy of your... of a recommendations report. The name of the complainant is redacted on the version that... it might not be redacted on the version you've been given. Actually it has, it has been redacted on the version; the name of the complainant is not there but this is a copy of a case investigative report, is that correct?

MR LEHOLO: This is a case investigative report, it's out of which the recommendation is based.

MS BAWA: Right. Now if you look at that... and who would compile this report?

MR LEHOLO: The report is compiled by the investigator, verified by the supervisor and signed off by the acting head.

MS BAWA: And this complaint relates to a complaint of a sex worker who alleged that two police vehicles in Stellenbosch had stopped close to them and there were two occupants in each vehicle. It identifies the police officers and it implicates them in an assault, is that correct?

MR LEHOLO: That's correct Chair.

MS BAWA: And this complaint was lodged with the Independent Complaints Directorate by an NGO organisation. Do you recall that Mr Leholo?

MR LEHOLO: I recall this incident Chairperson.

MS BAWA: Do you remember which organisation this was Mr Leholo?

MR LEHOLO: Let me just... give me a second, I want just to peruse it. (Pause while Mr Leholo peruses document.) Chairperson I'm speaking under correction, we normally receive these similar cases from, it's either SWEAT or this other

organisation I have just... the name has slipped me, it will come back, but I know Ms Madlala is involved in it.

MS BAWA: Ms Williams who is the attorney for the Women's Legal Centre, it's a... sorry, I'll tell you now what the organisation is because we have verified that we can do this. But if you go down to the bottom of the page there are 7 recommendations that are made, and if I read them out to you is that:

"An investigation must be initiated into the allegations."

I think it's called Emerge Dignity. That's the name that's come to mind. Does it ring a bell?

MR LEHOLO: Come again?

MS BAWA: Emerge Dignity.

MR LEHOLO: The?

MS BAWA: Emerge Dignity – Embrace Dignity.

MR LEHOLO: Embrace Dignity ja. That's the correct organisation.

MS BAWA: Right. Now the organisation who lodged this complaint with the ICD was Embrace Dignity. And in your recommendations there were 7 recommendations made:

1. An investigation must be initiated into these allegations.
2. Disciplinary investigations must be instituted against the involved members as revealed by the investigation and same must subsequently be charged in terms of the relevant regulations.
3. The identified members must be charged accordingly in terms of the relevant regulations.
4. The outcome of the investigation must be communicated to the ICD within 30 days from the date of this letter.
5. The SAPS must update the complainant with respect of the progress herein.
6. The ICD must be advised of the progress in the investigation and
7. the matter must be submitted as unsubstantiated and it is recommended that the same be closed. The file can be reopened when need arises."

MR LEHOLO: That's correct.

MS BAWA: Now based on a perusal of the file in this matter Mr Leholo, it's a closed file and there's no further communication from SAPS in relation to the recommendation that was made in relation hereto. Can we then assume that you received no further communications from SAPS in respect of this complaint?

MR LEHOLO: Chairperson can I look at this closely? Because there have a number of this matter, I don't want to confuse things. There was a similar kind of incident. I just want to check whether it's the same incident that is in my mind that happened at Baden

Powell or it's something else, because I haven't read the content.

MS BAWA: Ms Williams is ...(intervention).

MR LEHOLO: It will be very helpful if I read this.

MS BAWA: Indeed Mr Leholo. Can I say into the record that Ms Williams from the Women's Legal Centre has contacted the organisation, who has gone through their files, even though the case worker is not there any longer and it indicates to them that they received no response from SAPS pursuant to this complaint and Ms Williams will be prepared to give evidence if required in relation hereto when her witness is on the stand.

MR LEHOLO: That's why I'm saying let me look at this because there's a recent matter of similar kind that I've dealt with, so I don't know whether it's this one or is it another matter of similar kind. That's why I want to read this.

MS BAWA: Mr Leholo this matter ...(intervention).

MR LEHOLO: Ma'am just to... give me an opportunity to read this.

COMMISSIONER: Just give him a minute to ...(intervention).

MS BAWA: Okay.

MR LEHOLO: I'll help you, I'll be helpful for the Commission.

COMMISSIONER: Go ahead Mr Leholo, please have a look at it. (Pause while Mr Leholo peruses the document.)

MR LEHOLO: Thank you.

COMMISSIONER: Go ahead Ms Bawa.

MS BAWA: I apologise, I'm taking you a bit too fast and maybe I should be less mindful of the time and give you an opportunity to deal with it. Mr Leholo to refresh your memory it is the matter which is referred to in paragraph 60 of your affidavit.

MR LEHOLO: Paragraph 6?

MS BAWA: Ja. In the last sentence we refer to an example of an investigative report provided.

MR LEHOLO: Excuse me, paragraph?

MS BAWA: 60. Sixty. It's on the typed page 27. It is the same investigative report that we had previously consulted in relation to.

COMMISSIONER: Are you now referring to the affidavit, paragraph 60, not actually to the case report?

MS BAWA: No.

COMMISSIONER: Okay. Have you got that Mr Leholo? Ms Bawa is referring back to your affidavit at paragraph 60, which states that:

"In some instances the ICD would request from SAPS that it be advised of the outcome of any investigation."

And then she wants to move from your statement there, to refer to the specific case report at page 96 of the bundle.

MR LEHOLO: Is that then – because I don't have the bundles with me – is this bundle 96 to 101 of this document?

MS BAWA: Yes.

COMMISSIONER: Well you said in your affidavit that in some cases the ICD as it then was would ask SAPS to report to it in relation to matters that it refers to SAPS and I think it's that averment that she wants you then to look at the particular case from page 96 to 101 because reading it, at least from my perspective, it seems you did precisely that.

MR LEHOLO: Yes, that's one. It's an example, an instance of some of those kind of cases.

MS BAWA: That's right. That's where we are going with that, and this is a case which was provided to the Commission, if you go to Annexure TH6, it's number 4 on the list on Annexure TH6, if we compare the CCN numbers.

MR LEHOLO: Number TH6?

MS BAWA: Annexure TH6, it's the Harare documents requested, that's the one, and it's item number 4, and it's the same CCN number as the case ...(intervention).

MR LEHOLO: That's correct.

MS BAWA: You've got the case file.

MR LEHOLO: That is correct Chair.

MS BAWA: So this is one of the files that has been closed as unsubstantiated by the ICD and the matter which you regarded as serious enough to recommend to SAPS to investigate and to report back to both ICD and the complainant in relation there.

MR LEHOLO: That is correct Chair.

MS BAWA: Okay. Now Mr Leholo there is a period that... and if we go to page 38 of your affidavit, to make it easier, the Commission asked IPID for reports relating to Domestic Violence Act misconducts as reported to ICD for the period 1 April 2010 to 31 March 2013. Can you explain what was IPID's mandate during that period?

MR LEHOLO: ICD's mandate.

MS BAWA: ICD's mandate during that period? Sorry.

MR LEHOLO: Ja. ICD's mandate in relation to domestic violence Chair was to monitor the implementation of the Domestic Violence Act and also if there has been any transgression on the part of the police in terms of not compliant with the Domestic Violence Act and then we would recommend that the police should lodge an investigation and also would write a recommendation for that. If we find that the matter is substantiated they have to take disciplinary action, if they find in their own investigation their referral is... there's no merits for it, they need to apply to ICD for exemption because in terms of the Domestic Violence Act, if there's a non compliance the police cannot simply after investigation say no, this member, they cannot, the misconduct is unsubstantiated. If they say so they need to provide us with the

evidence, the documentation of the investigation and apply to be exempted, meaning that they ask that we should accept that request or agree with what has been – agree with the outcomes of the investigation, then it becomes upon us to evaluate that. If we agree we grant exemption and if we do not agree we do not grant and recommend disciplinary action.

MS BAWA: And what kind of misconduct would that entail?

MR LEHOLO: It's transgression of the Domestic Violence Act, for example if a complainant comes to a station to complain of a domestic violence transgression, if he does not get assistance at a police station, in itself that's a transgression and that person, if it happens that she reports the matter to us and then we follow up that and the police need to give account what have they done. And that account then they have to give us a feedback in terms of that investigation. And then if they are of the view that there is no merit, then they have to apply for us to grant exemption and they must, that application must come with evidence of their investigation. And the other instances of domestic violence non compliance, it's when they are requested to serve the warrants or to serve the interdict, if in some instances some stations the complainant will say the police are not of assistance, that also falls under that non compliance. There are also other more substantive matters where it has been a situation where a member of the police has been involved in a domestic violence case and where there's a docket opened and that is if it's reported to us, and then we also look into that and make recommendations that steps should be taken against the member. Arising out of the investigation if they are of the view it is substantiated then the normal procedures and criminal procedures will follow and if they feel that it's not, there are no merits, then they will have to apply to exemption and then we have to look into that and either we agree with their finding or we disagree and we still insist that steps should be taken.

MR PIKOLI: How many exemptions have you had granted?

MR LEHOLO: There have been very-very few, depending... and we didn't have a very high volume of domestic violence complaints and the exemptions have been very few.

MS BAWA: Did you receive any applications for exemptions from any of the Khayelitsha stations?

MR LEHOLO: I could not... I don't think so.

MS BAWA: If we look at your affidavit at page 87, paragraph 87 on page 39, this was of particular concern with the evidence leaders when we consulted with both you and Mr Parman, and that was detailed in your affidavit at paragraph 87. Let me... you had this responsibility as the ICD from 1 April 2010 to 1 April 2012 when it became the responsibility of the National Civilian

Secretariat, is that correct?

MR LEHOLO: That's correct.

MS BAWA: So we are looking at the two year period.

MR LEHOLO: Okay.

MS BAWA: Could you read paragraph 87 into the record?

MR LEHOLO:

"As far as I have been able to ascertain, there are no specific report or documentation pertaining to the three Khayelitsha Police Stations in relation to any transgression of the DV Act. As far as could be ascertained for the period in question ICD/IPID did not have any complaints arising from the Domestic Violence Act emanating from the three Khayelitsha stations."

MS BAWA: Now Mr Leholo in the absence of a member of the public laying a complaint, if transgressions of the Domestic Violence Act were found to take place at the station, would there be an obligation on the members of SAPS to report that to the ICD?

MR LEHOLO: There was no obligation.

MS BAWA: So if this was not driven by the complainant then there would be no reason for the member of SAPS to come and seek an exemption from the ICD, is that how I understand this to operate?

MR LEHOLO: That's correct yes.

MS BAWA: So even if inspections were done at first or second level or at provincial level of the domestic violence registers, and transgressions of the Domestic Violence Act were found to happen by SAPS members of SAPS members, it would not come to you as ICD during that period if the member of the public didn't report it?

MR LEHOLO: If the member Chairperson does not report it, you won't find out. However, we'll be making also DVA inspections and cell inspections in the province and someone who inspects those registers one... in some instances one will pick up a particular case where you think there might be something and probing further you might pick up there is a DVA case and then we follow up whether there has been any action taken.

COMMISSIONER: Just for my own clarity, so the scheme works like this, that there is a failure by SAPS, the person who at a particular police station to take a complaint or something even more material like that, the person who has been not provided with SAPS service has to go back to the same police station and now report the fact that the last time they were at the police station, SAPS didn't do anything, before anything here gets initiated? What I'm trying to understand is that by definition it's a person who hasn't been assisted by SAPS who has to go back to

SAPS to ask for their assistance to make a record of the fact that they hadn't been assisted by SAPS. That's how the scheme works?

MR LEHOLO: It works this way; if there's a transgression or the person is not satisfied that he has not been assisted by SAPS, that person can report that matter to ICD and ICD – however there are instances where some will go back to the SAPS if they cannot be assisted and they will come to ICD if they know about ICD and then we'll react to that complaint.

COMMISSIONER: Because I was just reading Section 18 of the Domestic Violence Act which seems to say that failure by a member of SAPS to comply with an obligation must be referred to, in the old days the IPID, now to the Civilian Secretariat in relation to any reported failure. So the only things that have to be referred to ICD and now to the Civilian Secretariat is a further report of a failure by SAPS. Is it permissible under the current scheme for a person who is dissatisfied with SAPS service to go straight to the Civilian Secretariat?

MR LEHOLO: I do not know because currently how it works, that particular mandate has been taken out of IPID and I don't now how do they operate in that respect.

COMMISSIONER: Thank you.

MS BAWA: There is a further complication to this, because that member of the public must also be aware of the complicated legislative and regulatory regime that governs domestic violence, to even know that there's a transgression before they can even make the complaint, isn't that correct?

MR LEHOLO: That's correct Chair.

MS BAWA: So effectively even if it is found that there are several transgressions at any police station and the Inspectorate reports that have been conducted by SAPS' own Provincial Inspectorate have found during this period, 1 April 2010 to 1 April 2012 that there are transgressions of the DVA, and I want to get this straight; they don't have to ask you for an exemption and they don't have to lodge a complaint or refer it to you if the member of the public hasn't brought that complaint forward. Is that how I understand it to operate?

MR LEHOLO: That's correct Chair. Maybe I may also add Chair, is that the DV Act is one of the acts, I mean within the circles of people who are operating that, it's one of the pieces of legislation that we have lots of debates in terms of implementation and I mean I don't think it's the best piece of legislation and to regulate and how to deal with the issues of domestic violence – I mean domestic violence, I mean in various forums where we debated this matter and we shared the same sentiments, and other institutions they are dealing with the same matter. Hence even

when the new legislation, the IPID legislation and the Secretariat, the mandate that was shifted to them, I don't know whether that's also, that's the best solution, but there is a problem in terms of this legislation. That needs to be revisited if we think it has to service the people that it is intended to serve.

MS BAWA: But Mr Leholo bearing that in mind it is an incredibly important piece of legislation and its preamble makes it clear that it's there so that it could protect victims of domestic violence and effectively this mandate was initially given to the ICD and later to the Secretariat to deal with the failure to assist those victims. Do you agree with that?

MR LEHOLO: I agree Chairperson. And I also agree it's an important legislation but piercing deeper into that practically it's something else.

MS BAWA: If I can then take you, and our discussion thus far on the complaints mechanism has largely been under the ICD regime, mainly because most of the complaints that have been referred to the Commission were in fact IDC related complaints.

MR LEHOLO: That's correct Chair.

MS BAWA: But you are, since having done so also operating under an IPID regime. Could you tell the Commission whether, how that system is operating and whether there is an accountability to IPID which is requested by the – required by the legislation?

MR LEHOLO: In terms of DVA?

MS BAWA: In terms of – no well IPID hasn't got any obligations under DVA.

MR LEHOLO: Yes.

MS BAWA: But under the reporting obligations, the 30 day time periods etcetera that the IPID Act requires complaints to be dealt with.

MR LEHOLO: Chairperson are we still with the DV Act or have we moved?

COMMISSIONER: No-no.

MS BAWA: We've moved off the DVA Act.

MR LEHOLO: Okay. Then can you come with your question again because...?

MS BAWA: Let me rephrase the question. When you make disciplinary recommendations under Section 30 of the IPID Act, right, you do so to the National Commissioner or the appropriate recommendation goes to the appropriate Provincial Commissioner, is that correct?

MR LEHOLO: That's correct Chair.

MS BAWA: As I understand it, in some instances it's directed towards the Provincial Inspectorate in practical terms, is that correct?

MR LEHOLO: That's correct.

MS BAWA: There is an IPID, shall we call it a liaison at the nodal office of the Provincial Inspectorate, is that correct?

MR LEHOLO: That's correct.

MS BAWA: Right. Now you have to refer that as contemplated in Section 7 of the IPID Act, is that correct?

MR LEHOLO: That's correct.

MS BAWA: Right. Now within 30 days thereof, they must initiate disciplinary proceedings. You agree with me?

MR LEHOLO: I agree, that's...

MS BAWA: Right. And they must inform the Minister and provide a copy thereof to the Executive Director, that's of IPID, and the Secretary. That's the Civilian Secretariat. Is that correct?

MR LEHOLO: That's correct Chair.

MS BAWA: Right. Now how well has that been working? Because one of the complaints of your ICD has been that lack of communication between ICD and SAPS. Now the IPID Act has made compulsory provision for that communication to take place.

MR LEHOLO: Chairperson the IPID Act particularly regarding recommendation it's one area that as case workers and employees and other interest parties we have been advocating for, that the recommendation that were in the past during the ICD regime, where the police had no obligation to react on that, and with the IPID Act there's an obligation that the SAPS when we refer recommendation, they have to report not only to IPID, they also have to report to the Minister, they also have to report to the National Commissioner, and also the feedback and the time frames in which, how that should be done. Then as far as the province is concerned, it's working quite well. There's a vast, extreme, a very glaring shift in terms of implementing the recommendation and practically what we are doing is that whenever we make a recommendation, that recommendation with the evidence is sent to the nodal point, what we call a nodal point of the South African Police Service and IPID. In the province the office of the Inspectorate is a designated office that is dealing with all recommendations that are sent by IPID – disciplinary recommendations that are sent by IPID to the Provincial Commissioner, and that point, it's where these matters are registered and after that the police will do their own internal disciplinary investigation. The outcome thereof is communicated and on a bi-weekly basis and on a monthly basis that is IPID case workers, people are dealing with recommendations and South African Police Service, that is at the Inspectorate office, sit together, check how many recommendations are outstanding, reconcile the recommendations that have been sent the previous matter and whether we've got the same numbers and what is the

status of those. So that mechanism is working quite well, and then also the feedback in respect of that with the IPID regime, there has been a vast change and impact in terms of the police taking steps on those matters.

COMMISSIONER: Can I just clarify in terms of the legislation? So the duty that you are speaking about is the Section 30 duty, under Section 30 of the IPID Act.

MR LEHOLO: That's correct.

COMMISSIONER: Is that correct? And then this forum that you are talking about, is that the Chapter 4 Consultative Forum or is that something else?

MR LEHOLO: No-no, it's ...(intervention).

COMMISSIONER: It's an informal forum is it?

MR LEHOLO: It's something else, but we are required nationally to meet – I think it's part of that, but this particular one is specifically monitoring the recommendations which is... it's supposed to be... it's also between SAPS, the Secretariat and IPID.

MS BAWA: May I interrupt you Mr Leholo?

MR LEHOLO: Ja.

MS BAWA: You were here when... before 2010 there were meetings called joints.

MR LEHOLO: Yes.

MS BAWA: The ICD was part of those meetings, is that correct?

MR LEHOLO: That's correct.

MS BAWA: These meetings which are now taking place, take place with representatives of SAPS, representatives of IPID and the Provincial Secretariat, is that correct?

MR LEHOLO: It's one of those. There are various meetings. You see with this, how we have worked it out here in the province is that the nodal point, there are certain matters that pertains IPID and the SAPS regarding to recommendation and the flow of it and the attendance of it. That is one part. Then also there is the second part of it where these three parties, that is the Secretariat, SAPS and IPID are supposed to be meeting and looking at and that is that small part of, one could say part of that consultative forum that is supposed to be taking place in the provinces.

MS BAWA: You say supposed to. Is that not happening?

MR LEHOLO: It is happening but not on a regular basis. For example in some instances because of dates clashes but it's supposed to be happening every month.

MS BAWA: Mr Leholo we had some evidence here of a regime which had previously existed where there was co-operation between SAPS, the ICD and the complaints, the policing complaints, Directorate of the Department of Community Safety, where historically you used to have meetings, your consultative

meetings. You compare your complaints, you check which was duplicated on those complaints and there was a suggestion made to the Commission that that kind of approach of co-operation between bodies with oversight functions is what the witness recommended to the Commission as being the ideal approach to dealing with complaints as I understood the evidence. What would your view be in relation thereto?

MR LEHOLO: Chairperson that initiative was a provincial initiative to meet because after seeing that we are dealing within cross-purposes and working past each other in some instances. But dealing service delivery complaint, that will be amongst the solutions but not the only solution, but that could be one of the... a solution to some of the service delivery complaints, I agree with that.

MS BAWA: One of the second recommendations which had been made by another witness, in particular the forensic department, was the need to be able to access CAS numbers for instance or being able to correlate... being able to have access to police information for purposes of facilitating their mandate, if we put IPID into that role, is there any information or mechanism which would assist or make the task of IPID any easier in fulfilling and oversight and monitoring function of SAPS?

MR LEHOLO: I don't get your point.

MS BAWA: What would you need that you don't currently have, to make the job easier for IPID to be able to oversee and monitor and fulfil your mandate under the IPID Act?

MR LEHOLO: Our mandate is prescribed in the act. I think the act is sufficient enough in terms of what we investigate, what we do not investigate in terms of recommendation, how the recommendation should be handled, where should the recommendation be referred and if the South African Police Service does not comply with their act, there are consequences in terms of criminal consequences and disciplinary consequences, so it is set out in the act.

MS BAWA: I think we are a little bit at cross-purposes. I accept the legislative regime is a set down, but let me take a few examples; as IPID you do not have access to the SAPS CAS system.

MR LEHOLO: No, you mean access in terms of being able to enter and work into the CAS system?

MS BAWA: Not necessarily work into the CAS system but being able to... they have an electronic CAS system which we have been privileged to have a look at and so you could pull up a docket on the CAS system and you would be able to see – and I accept it's an ongoing project as to what's going on in the docket. Now it seems to me that from a practical point of view if you get a

complaint coming in to you which relates to a SAPS matter pertaining to a docket, you have to physically request that from SAPS. Is there any reason why you shouldn't be able to pull that docket off a CAS system?

MR LEHOLO: Now that you... I think ideally for all the criminal justice structures you know, the CAS system, for IPID have access to the CAS system electronically would be ideal. Then also that same kind of route up to the DPP to tracking, you know what is happening and it should not be limited to the South African Police Service but all the criminal justice structures, that is IPID, that is South African Police Service and the DPP, you know so that you can be able to check on a particular matter, and there's a lot of information within the CAS system that could assist in fast tracking cases. Likewise also if one could have access also in the DPP to check you know what, how far is the matter and also *vice versa* you know, that process could go a long way in the criminal justice system. I know there are initiatives – there are some initiatives towards that direction.

MS BAWA: It does mean Mr Leholo that a member of the public who is waiting for a complaint to be dealt with and repeatedly waits for a complaint to be dealt with and they come to IPID and you actually don't know where the complaint is in the process, that person you can't actually give an answer to until you've done some sort of further enquiry and you've got to wait for another body to get back to you, and so that member of the public leaves your office if they have come there in person, dissatisfied with the response that you can't give them because you don't have access to that information.

MR LEHOLO: Two things ma'am; if it's a matter that is investigated by IPID within IPID's mandate then it means you've got all the information. However if a person comes, thinking that this matter is within our mandate, for enquiry purposes yes, it could be easier. Instead of saying "no this matter is not within our mandate, can you please go XYZ to the Inspectorate" etcetera, but at the pinch of a button it could tell you where is the matter, at least if you give a minimum information, that could assist that person and to the right direction, I think that could be of assistance.

MS BAWA: And it would go a long way to improve the public's confidence in the bodies who effectively deal with ...(intervention).

MR LEHOLO: I agree, within the criminal justice structure there's a lot that needs to be done to, not to work as silos.

MS BAWA: I have no further questions.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: Mr Hathorn I can't remember how much time we allocated you. We allocated you, I think it was five minutes, or

was it ten minutes to question this witness?

MR HATHORN: I thought it was half an hour Commissioner.

COMMISSIONER: I've forgotten. Give me two minutes. Oh now 15 minutes. 15 minutes, I beg your pardon. It was five minutes to SAPS.

MR HATHORN: Commissioners can I just place on record at the outset that in our written questions we asked some detail questions about specific complaints and we have been informed by the evidence leaders that it has not been possible for Mr Leholo to access that information in the time available, and so we've come to an agreement that, I think it's by Monday that we'll get a written response to that, if that's in order with the Commissioners.

COMMISSIONER: It's in order. The evidence leaders had mentioned that to us and I understand that has been discuss with Mr Leholo as well.

SOMEBODY SPEAKS OFF RECORD

COMMISSIONER: I'm saying, what Mr Hathorn has said is that some of the questions he had put in written questions related to specific cases which he has not yet had an opportunity to be able to – you are not in a position today to be able to answer, but I think that's going to be discussed with the evidence leaders and a written answer will be provided in due course, is that correct?

MR LEHOLO: That's correct Chair, but there were some, a document that was also given to peruse and the question was whether these matters, which one, IPID matters. I've looked at this document yesterday and I've got answer to this one, but there are some that I cannot, because the answer is simple, straightforward.

COMMISSIONER: Okay thank you. I'm not sure which document that is. Do you know Ms Bawa?

MS BAWA: It's a question that emanates from Mr Hathorn's list of questions that he will take the witness through.

COMMISSIONER: Right, thank you. Well let's... you go ahead Mr Hathorn for the minute.

MR HATHORN: I actually don't intend dealing with it so perhaps I should just clarify. It relates to the current status of the 40 pending, currently pending cases. But given our time constraints I don't intend to go there this morning.

CROSS-EXAMINATION BY MR HATHORN:

Commissioners there are two documents that we wish to refer the witness to in the course of the evidence, and we are just busy circulating them at the moment. The witness has, he has seen them; we gave them to him yesterday and he has had a chance to consider them.

COMMISSIONER: Read into the record what they are. I see this

is bundle 1 file D, page 39, is that correct? That's one of them. I think just read into the record what the documents are, where they are found in the record before the Commission.

MR HATHORN: That is correct. The first document is a letter from the head of the Provincial Inspectorate dated 3 January 2010 to the Independent Complaints Directorate and it's to be found in bundle 1 file D at page 39. And the second document is a Provincial Inspectorate report dealing with an inspection of the Harare Police Station and conducted by Brig Jan Solomons and it's dated August 2012 and it's to be found in bundle 3, item 330 in respect of the Harare Police Station and it starts from page 323 and the last page is 349.

Mr Lehlo can you just confirm that these documents were given to you yesterday morning and you've had an opportunity to consider them?

MR LEHOLO: That's correct Chair.

MR HATHORN: We'd like to start Mr Lehlo with the case of Ms Adelaide Ngongwana. And this case is of significant to the complainant organisations because it is one of the specific complaints that was incorporated into the complaints that was lodged with the Premier in November 2011 and that initiated the process that led to the establishment of the Commission. And just to put it into context, the complainant organisations raised complaints about the structural problems in policing in Khayelitsha and they supported these general complaints with specific incidents. The case of Ms Ngongwana is one of the specific incidents that was relied upon by the complainant organisations. And I'd just like to read to you what was said in that November 2011 complaint, and it describes the incident with Ms Ngongwana. It says:

“On the morning of Sunday 3 October 2010 Adelaide Ngongwana, who was in her seventies was mistakenly shot in the leg by police in Khayelitsha. Police were pursuing suspects who had shot at them and the police returned fire in a public crowded area. Police initially told Ngongwana that she would need to walk to the hospital. In tears Ngongwana managed to convince one of the officers to assist her to the car. Despite just being shot in the leg she was still forced to walk to the police car. When they arrived at Site B Day Hospital, they put her on a stretcher and left her there because they said they were busy. After she was treated and discharged she had to walk home because she had no money.

The Social Justice Coalition lodged a complaint with the Independent Complaints Directorate in October

2010 on Ngongwana's behalf, partly because she was too scared to open her case against the police at the station."

And she details the allegations against, around people being scared to lay complaints, the reasons for that. Can I just pause there Mr Leholo?

MR LEHOLO: Excuse me, before you proceed, are you reading from a letter?

MR HATHORN: I'm reading from the complaint that was lodged with the Premier in November 2011, outlining what the substance of Ms Ngongwana's complaint was. Ms Ngongwana, just to clarify, has subsequently died, so she has not been in a position to come and testify to the Commission as to what exactly happened, but this is one of the complaints that was raised by the complainant organisations. It was stated that it was referred to the IDC. We have given you the letter that we've discovered from the Western Cape, the Head of the Provincial Inspectorate in the Western Cape. Would you like to comment to us as to the process that was followed in investigating this complaint?

MR LEHOLO: Are we talking of this letter, the response of this letter of 3 January 2010?

MR HATHORN: Yes, that's obviously the culmination of the process but can you give us any insight into what the ICD did with this matter?

MR LEHOLO: If reading from this letter and the response given, to me it reads that this particular matter was reported to IPID – I mean to ICD and it was referred to South African Police Service for investigation. And then consequently thereafter a response was given to ICD in a letter dated 3 January on a number of matters that the police have dealt with, 3 January 2010.

COMMISSIONER: Just to pause there, this letter is incorrectly dated I'm sure. It should be the 3rd January 2011.

MR HATHORN: That is correct.

COMMISSIONER: Thank you.

MR LEHOLO: And the response as that – I'll just read paragraph 3.2. I'm not going through the whole document, where in short they explained what has happened and how they approached the matter and then the response was:

“3.2 In both shooting incidents the suspect first shot at the police and the police returned fire.

3.3 The matter can be regarded as concluded.”

MR HATHORN: Mr Leholo I'd just like to take you to paragraph 3.14 of the letter which is wrongly dated 3 January 2010, where it says that:

“The second incident on 3 October 2010 occurred in Site B in Khayelitsha. Members stationed at Grabouw

SAPS chased a stolen motor vehicle with the registration CEO (etcetera), a red Toyota from Grabouw into Khayelitsha policing areas.”

And the members... the vehicle was stolen in Grabouw, and this is the following paragraph.

“The suspect pulled out a firearm and fired at the police members, the members returned fire and fired three shots at the suspect but the suspect managed to run away. A bystander, Ms Ngongwana, was wounded in the process.”

Now, it seems to me that that confirms the substance of Ms Ngongwana’s complaint as reflected in the earlier letter, and I’m not asking you to say that it was accurate in every detail. We don’t know. But it looks on the face of it as if this was a legitimate complaint and at least the fundamental elements of that complaint have been confirmed by the Inspectorate investigation. Would you agree with that assessment?

MR LEHOLO: Yes.

MR HATHORN: Now there are two aspects to the complaint; the first aspect would be whether or not the police were justified in firing under the circumstances when they opened fire at one suspect in a crowded area in circumstances where they would have been required to exercise considerable caution before opening fire. Do you agree with that?

MR LEHOLO: Correct.

MR HATHORN: The second aspect of the complaint relates to the treatment of Ms Ngongwana who was treated with a lack of consideration, a lack of courtesy, a lack of basic humanity, on her version as presented. Would you agree with that?

MR LEHOLO: Correct.

MR HATHORN: The first aspect that seems to me debatable as to whether – we just don’t know enough about the circumstances in which the firing took place, it might well be that the police were justified in firing – but I would be concerned that there is no indication in this letter that we’ve got that there was a proper investigation into whether or not... whether that shooting was justified, that the police should not except in very-very exceptional circumstances fire in a situation like that where there is obviously a great chance that members of the public are going to be injured. Would you agree with that?

MR LEHOLO: Correct.

MR HATHORN: And it does not seem to me that there has been any particular interrogation or rigorous assessment of the conduct of the police in opening fire, as far as we can establish from the letter.

MR LEHOLO: Because there was a CAS number open, the matter

was referred to the police to investigate both the misconduct and then in terms of the CAS numbers that are provided here and then they gave it that response.

MR HATHORN: The CAS number is a different issue. I'm looking at the investigation that was conducted by the ICD which seems to have referred the matter to the Inspectorate, so the Inspectorate is acting on behalf of the ICD in following up this matter. And it seems to me that it's a very superficial and unsatisfactory analysis of whether the police were justified in opening fire under those circumstances.

MR LEHOLO: From the face of the letter it does not give details you know, what steps have been taken and so forth, save to say that the police were justified in their action.

MR HATHORN: Well that's what concerns me. It might be that they were justified but it's not apparent from this letter that any rigorous investigation into whether or not they were justified, took place. It looks like it's a superficial conclusion and how they get there isn't explained in the letter.

MR LEHOLO: Without seeing the documentation on what they base this, I won't be able to conclude to say that it's superficial or not.

MR HATHORN: Ja. No I agree with you, but it's not, it's certainly not clear from the letter that there has been a proper and thorough investigation into whether the shooting was justified.

MR LEHOLO: It's not clear yes, I can say.

MR HATHORN: The second aspect is clearer, that the manner in which Ms Ngongwana was treated is just not dealt with. Can you explain that?

MR LEHOLO: Is not dealt with in the letter?

MR HATHORN: No, it's not dealt with in the letter.

MR LEHOLO: I'm not the author of the letter. I cannot explain that.

MR HATHORN: You are answerable for the ICD's conduct, which was investigating this complaint and it doesn't look as though any response – well we know that there has been no response received from the SJC who lay the complaint on behalf of Ms Ngongwana, apart from this letter.

MR LEHOLO: What I have said to the Commission is that the matter was referred in terms of Section 53 for the police to conduct an investigation on the matter.

MR HATHORN: So Mr Leholo I want to put it to you that in conclusion, that there were two elements to the complaint; the one element seems to have been investigated but there were problems, it seems to have been... it's not clear that a thorough, rigorous investigation was conducted and with this second aspect of the complaint the SJC has had no response whatsoever to that

complaint.

MR LEHOLO: As I've said to you earlier that without the documents – the letter in itself does not explain all, so one could not therefore come to... I cannot come to the conclusion or the inference that not all the aspects of this particular matter were canvassed when it was referred, or whether it was dealt with by the Inspectorate.

MR HATHORN: Mr Leholo this is the only response that the SJC has had and from this response it's clear that no feedback has been provided in respect of the second aspect of the complaint.

MR LEHOLO: Yes it's not reflected here.

MR HATHORN: And I put it to you there has been a shortcoming in the investigation of that complaint because as far as the SJC is aware, it hasn't been investigated, it hasn't been dealt with.

MR LEHOLO: I cannot come to that conclusion without verifying the steps that have been taken by the party where the matter was referred to.

MR HATHORN: I'm putting it to you if it was investigated this fact wasn't communicated to the SJC and that in itself is a problem.

MR LEHOLO: Can you come again?

MR HATHORN: If, in the unlikely event that either the ICD or the inspectorate did investigate the second aspect of the complaint, this wasn't communicated to the SJC, which in itself is a problem.

MR LEHOLO: It was not communicated to what?

MR HATHORN: To the SJC who laid the complaint.

MR LEHOLO: You speak fast. The latter part, I don't hear what... what is SCI something? That I don't hear from you.

MR HATHORN: Mr Leholo do you know who laid this complaint?

MR LEHOLO: Sorry?

MR HATHORN: Who laid the complaint that we are talking about?

MR LEHOLO: You have read out, you said it's Ms Ngongwana.

MR HATHORN: The SJC, the Social Justice Coalition laid the complaint on behalf of Ms Ngongwana.

MR LEHOLO: Correct.

MR HATHORN: And what I'm putting to you is that there has been no response to the second aspect of the complaint, which relates to the way in which the police treated Ms Ngongwana, from the ICD.

MR LEHOLO: What I'm saying to you, without verifying the documentation, I cannot conclude or convincingly say that the second aspect of it was not attended to, because I cannot base that on the fact that... because it has not been recorded here. I can if I have to say yes, I need to verify that first from the content of the investigation, then I will be able to answer that.

MR HATHORN: I accept that, but you can't say whether or not that aspect of the complaint was investigated, but what you can't

dispute is that this wasn't communicated to the SJC, because I'm putting it to you that this is the only response that the SJC has had to the complaint and that aspect of the complaint wasn't dealt with in this response.

MR LEHOLO: I'm not sure of that, it was not communicated.

MR HATHORN: Well I'm putting it to you that, and if necessary the SJC can testify.

MR LEHOLO: Then that's your opinion.

MR HATHORN: I'm putting it to you as a fact, not an opinion Mr Leholo.

MR LEHOLO: I don't know. I note that it's a fact what you are saying, you are putting a fact, I note your fact but I don't know whether it was not communicated, it was communicated or not.

MR HATHORN: Let's put it like this; that if what I'm putting to you is correct, then it follows that the ICD hasn't communicated anything in response to the second aspect of the complaint to the SJC which laid that complaint.

MR LEHOLO: If you are saying – can you come again with that part?

MR HATHORN: If what I'm putting to you is confirmed as being correct, then the ICD has failed to do its duty to communicate to the SJC which laid the complaint, what the result of the investigation was into the conduct of the police in relation to the way that they treated Ms Ngongwana.

MR LEHOLO: That aspect will depend whether that complaint was registered in the name of Ms Ngongwana or in the name of the organisation. So that's what I'm not sure of. If it's registered in the name of – was registered in the name of the complainant, obviously it would have gone to the victim, or if it was registered in the name of the third party, the representative it would have gone. However what I said to you is that this particular complaint we received and by the process that was followed, it was referred to the Inspectorate for attendance.

MR HATHORN: Fortunately Mr Leholo we do know who the complainant was because we are told in this letter, and it's reflected as Mr G Sibling. That's an obvious spelling mistake; Mr Gavin Silber was the secretary of the Social Justice Coalition at the time. He is clearly the one who laid the complaint on behalf of the Social Justice Coalition. So we know that the SJC was the party that laid the complaint.

MR LEHOLO: Okay.

MR HATHORN: Do you accept that?

MR LEHOLO: That he is the complainant? Look I can only satisfy myself when I see the file you know, then I can be in a better position to respond to you. But based on what, the fact that you are saying that he was the... I cannot dispute that he was not the

complainant but I need to satisfy myself because in some instances you will find that the complaints registry, in the process of complaints registry the complaints registers, they receive complaints in the name of an organisation and sometimes they register them in the name of a victim, so that's why I'm saying I might not be sure whether this was registered in the name of the victim or the representative of the victim. So I need to satisfy myself of that.

MR HATHORN: Mr Leholo we submitted these questions on Thursday last week. You've had – I don't know when the written questions were communicated to you but it would seem to me that you've had ample opportunity to investigate this case of Ms Ngongwana and to retrieve the file and consider the file.

MR LEHOLO: I got this letter yesterday and then I communicated with my office to check out this.

COMMISSIONER: Mr Hathorn do you have the CCN number?

MR HATHORN: No we don't Commissioners. That's one of the problems.

COMMISSIONER: I think we'd like to put a question to Mr Leholo. I know it's interrupting in your cross-examination but if you could hold on a moment, Adv Pikoli would like to put a question.

MR PIKOLI: Yes. This flows from the question asked by Adv Hathorn. When you received this letter of 3rd January 2011, which regards the matter as having been concluded, how was it registered on your side? Did you also regard the matter as being finalised?

MR LEHOLO: Yes we do Chairperson, regard it as finalised because when I see that this is an ICD matter, it's a 10WC matter, then I think this is one of those matters that were finalised and referred.

COMMISSIONER: Thank you Mr Hathorn.

MS BAWA: Could we maybe place on record that Mr Leholo did not get this letter from us prior to yesterday? It was ...(intervention).

COMMISSIONER: Oh! It was ...(intervention).

MS BAWA: It was only provided to him during the course of yesterday afternoon for him to be able to verify the information, so whilst the questions were posed on Thursday Mr Leholo did not have this piece of information.

COMMISSIONER: That's why I asked about the CCN number, because it's very difficult to trace these matters without having the relevant number. I see that the letter doesn't in fact include it at the top; even though it contains a SAPS reference number it doesn't contain a ICD reference number.

MR HATHORN: Commissioners the questions posed last Thursday did include a question under the heading "Ms Adelaide

Ngongwana.” It’s question number 6. It says - in the task team report high court record it gives the reference there. It is stated that there is no proof that the attempted murder case laid by Ms Ngogwana, and then the CAS numbers are given, was ever reported to IPID; and then:

“6.1 Was this matter reported to IPID or the ICD and if so what steps were taken to investigate the complaint and what was the outcome of the investigation.”

So Mr Lehlo should have been alerted last week at least that this was going to be on the agenda today. We only ascertained that this was already part of the record earlier this week and we made the letter available once we found it had been part of the record.

COMMISSIONER: Thank you.

MS BAWA: Madam Commissioner, the witness, and that is an oversight on all our parts; we assumed that the bundle and task team report is known to everybody. We did not give Mr Lehlo a copy of the task team report so the substance of what was in the questions to be completely fair to the witness does not necessarily allow him to take the matter much further. May I suggest the practical way to get an answer is Mr Lehlo is responding to a couple of questions in writing to Mr Hathorn; that we afford him an opportunity to look at the ICD / IPID records and then add that response to the other written response that he is giving.

MR HATHORN: We would have no objection to that but we would also request that if time permits that - and it might be necessary for us to request that Mr Lehlo be recalled to be questioned about whatever that response and - that written response might be.

COMMISSIONER: What is also clear is that this does not fall within the - at least the second element of the complaint, but I don’t think the first element does either so that is arguable. The second element doesn’t fall within the issues that have to be investigated by the ICD. There are things that can be referred to SAPS and this appears to be referred to SAPS and it is clear, it seems to me that is something that you may want to put to the South African Police Service that the second element, which is effectively really I think what Mr Lehlo refers to as a “service delivery complaint”, in other words the way in which a member of the public is treated by SAPS can make it sound like it is serious complaint very often but it is not something that either ICD or IPID see as falling within their sole mandate, not within the mandate of IPID at all as far as I understand it.

MR HATHORN: Yes, Commissioner, it is clearly not within the mandate of IPID but it is certainly arguable that it would have

fallen within the mandate of the ICD.

COMMISSIONER: Yes, but it could be referred to SAPS which is what happened.

MR HATHORN: Yes.

COMMISSIONER: I think pursue it, we will take it under advisement (indistinct). Do you have further questions?

MR HATHORN: We are happy to leave it there and that once we get the written response then we can decide how to take it forward. Mr Leholo I would like to move to paragraph 12 of your affidavit.

MR LEHOLO: Paragraph?

MR HATHORN: Paragraph 12 of your affidavit where you refer to the annual report of the Deputy Minister at the conclusion of the term of the ICD and the Deputy Minister of Police sets out some of the shortcomings in the ICD and one of those shortcomings was the lack of implementation of ICD recommendations and the lack of feedback from SAPS in that regard. I would like to elaborate on that on the ICD's experience of the lack of feedback and non-implementation of its recommendations in the Western Cape. You have dealt with this in some specific cases in your evidence-in-chief and I would like just a general outline of the problems experienced by the ICD in this particular regard.

MR LEHOLO: In the Western Cape?

MR HATHORN: In the Western Cape.

MR LEHOLO: Look obviously some were implemented; some were not; some in terms of. I think here the evidence also in chief is that some of the recommendation or referrals that were sent some we would receive response, others won't receive response. Yes, so it varies but we are specific and say out of so many what is the general trend. It is very difficult for me to say it.

MR HATHORN: So you haven't done that. You are not in a position to provide an assessment of the extent to which the recommendations were acted on or not?

MR LEHOLO: No.

MR HATHORN: I would like to move on to paragraph 28 where you deal with Section 28 of the IPID Act ... (intervention)

MR LEHOLO: Paragraph?

MR HATHORN: 28 of your affidavit which essentially summarises Section 28 of the Act and it is clear from Section 28 that your mandate is limited to cases of serious misconduct and from your reports there had been instances or there is at least instance that I can recall where you've declined to investigate matters because it falls outside the ambit of Section 28. Can you confirm that, that you only investigate serious matters falling within the scope of Section 28?

MR LEHOLO: Yes, we only investigate matters that are falling

within the scope.

MR HATHORN: So with regard to matters that fall outside of the scope of Section 28 and we are thinking of complaints of misconduct or defences the civilian secretariat is not as I understand in a position empowered to investigate complaints that fall outside the scope of Section 28? Can you confirm that?

MR LEHOLO: You are saying the civilian secretariat is not?

MR HATHORN: The civilian secretariat has no authority. It has no power to investigate cases complaints of non-serious offences or misconduct that falls outside the scope of Section 28.

MR LEHOLO: Matters that are falling outside Section 28 are investigated by the police for example if you look at Section 28 they are matters like thefts and many other matters and managerial matters within. Obviously if we receive such complaint we refer them back. We advise the complainant and we refer them back to SAPS.

MR HATHORN: Yes, I am just trying to work out. We know from your evidence what the scope of your mandate is. I am looking at the other independent investigative bodies that have been established and the civilian secretariat although it does have certain powers to monitor the Domestic Violence Act and it also has the authority in terms of Section 6 to monitor the extent to which the SAPS deals with complaints, it itself doesn't have the capacity to deal with complaints or investigate complaints. Do you agree with me in that regard?

MR LEHOLO: I am not sure of that and I think that would be best placed to the secretariat.

MR HATHORN: Mr Leholo, are you aware of any investigative capacity that the civilian secretariat has?

MR LEHOLO: Investigative capacity to investigate what?

MR HATHORN: To investigate complaints.

MR LEHOLO: Do you mean complaints / criminal complaints or do you mean misconduct complaints?

MR HATHORN: Complaints, Mr Leholo.

MR LEHOLO: I am not aware of that.

MR HATHORN: The Department of Community Safety, Dr Lawrence in his affidavit states that on the 19th of January 2012 he received a letter from General Lamoer in which he was instructed that only SAPS has the authority to investigate service delivery complaints and Dr Lawrence states in his affidavit that the effect of this was to reduce the complaints oversight role to that of a mere postbox. Would you agree with that, that DOCS has no authority or capacity in terms of the way that its powers are understood at least by General Lamoer to investigate service delivery complaints?

MR LEHOLO: As I said I cannot answer for the two parties that

are involved there. I might have my own impression if I have to look into this matter. I cannot help you there.

MR HATHORN: No I am not asking you to answer for them. I am asking you to the extent of your knowledge has DOCS got the capacity to investigate service delivery complaints?

COMMISSIONER: Mr Hathorn I think it might be helpful if you ask the witness questions that relate to the IPID. It is quite difficult for this witness to comment on DOCS. He wouldn't be an expert on it anyway. I think these are things we can put to Dr Lawrence in due course; we are going to hopefully hear in the course of the day so if you could confine your questions to the things that this particular witness has expertise in, which relates to IPID. I understand the thrust of what you are saying but these are arguments to be made and propositions to be put to other witnesses.

MR HATHORN: Commissioners perhaps if I can put the conclusion that I am leading towards to the witness and it seems to me that outside of Section 28 there is no independent body existing outside of SAPS to investigate complaints of offences or misconduct on the part of SAPS. Would you concur with that Mr Leholo?

MR LEHOLO: My belief is that matters that are outside are investigated, if they are outside the mandate of the IPID they are investigated by the police.

COMMISSIONER: I think that that is the answer you are wanting is that?

MR HATHORN: Yes.

COMMISSIONER: You are saying that they are investigated by an entity other than the police and I think Mr Leholo is saying they are investigated by the police.

MR HATHORN: Yes.

COMMISSIONER: Does that not meet your question?

MR HATHORN: That is where I was going to Commissioner. Now Mr Leholo Section 206(6) of the Constitution requires that an independent police complaints body established by national legislation must investigate any alleged misconduct of or offence committed by a member of the police service in the province and outside of those complaints falling within the ambit of Section 28 which is a narrow part of the entire scope of complaints against the police and it would exclude service delivery complaints, that there is no independent body that has been established to investigate those complaints. There seems to be a gap in the constitutional framework established to monitor and investigate complaints against the police. What is your comment in that regard?

MR LEHOLO: Well there are various schools of thought whether

they - that is not a provincial function of the provincial secretariat or so to say the DOCS or not. So there are various opinions on that, you know. Some, I believe that they also have the mandate to investigate such kind of matters. Others believe they don't and I have not applied my mind which is the correct opinion.

MR HATHORN: I am less interested in the legal debates about whose has got and what the powers of DOCS are, but then the situation that is existing at present in fact whether there is such a body to investigate the non-section 28 complaints.

MR LEHOLO: As I said it is the police who investigate those matters.

MR HATHORN: And that is what the problem is that I am putting to you Mr Leholo is that there is no independent body to investigate the complaints. It is asking the police to be their own watchdog and that is not what the Constitution envisages.

MR LEHOLO: I am not sure because IPID has got a particular mandate but an oversight mandate. There is the secretariat gets an element of also dealing with certain aspects of policing and then I think if I understand you, so you are saying that if for example a theft case is reported where allegedly a police member is involved in it does not fall within the mandate of IPID; therefore it must be investigated by another body but not the police and currently there is no such body?

MR HATHORN: Yes that is what I am putting to you.

MR LEHOLO: But you see my answer to that is that I believe those matters because the police themselves have an investigative mandate so they can investigate those matters.

MR HATHORN: Okay. Mr Leholo I don't want to get involved in a debate about constitutional interpretation but I just want to put it on record that the wording of the Constitution on the face of it is very broad. It says "any alleged misconduct or offence" and I am putting it to you that the interpretation given to that in Section 28 is far narrower than the constitutional language which results in a gap in the oversight role.

MR LEHOLO: I note your comment.

COMMISSIONER: Mr Hathorn how much more time are we going to have? I am just a bit worried about just our timing. How many more minutes do you think you need?

MR HATHORN: Commissioners can we have five minutes to go through the other document that we have ... (intervention)

COMMISSIONER: Yes, well we are going to take an adjournment. I am wondering, Mr Masuku how much time do you need for your questions for this witness at this stage?

MR MASUKU: If I am permitted some leeway to flesh out the questions that I had already given, I shouldn't be long.

COMMISSIONER: Okay, alright, look what we'll do is

... (intervention)

MR MASUKU: I will probably be ten minutes really but
... (intervention)

COMMISSIONER: Okay, alright, I am conscious that our day's programme is looking under threat, but let's take an adjournment now. It is twenty-five past eleven and we will reconvene at twenty-five to twelve. By that stage Mr Hathorn will hopefully be in a position to wind up his questions and we will hear your questions Mr Masuku and we'll then move on to the next witness. Thank you very much. We adjourn to twenty-five to twelve.

COMMISSION ADJOURNS: (at 11:25)

ON RESUMPTION: (at 11:40)

COMMISSIONER: Mr Leholo you are still under oath and hopefully you won't be there very much longer.

THAHBO LEHOLO: (Still under oath)

COMMISSIONER: Mr Hathorn.

CROSS-EXAMINATION BY MR HATHORN: (Cont)

Mr Leholo can you have a look at the second document that we gave you this morning? You will see that it is a report by Brigadier Jan Solomons of the Provincial Inspectorate relating to an inspection that he conducted at the Harare SAPS from 13 to 17 August 2012. Can you confirm that?

MR LEHOLO: I confirm it.

MR HATHORN: We are under time constraints so I don't want to go through it in detail but I want to refer you to paragraph 4.2 of that report. It is page 335 and it is an analysis of police initiated crimes for December 2011 at the station and we are not going to go through it in detail but if you can turn over the page to page 336 it says that there are 93 cases perused and then a summary is given of those cases and I just want to read extracts to you. Paragraph 4.3 on page 336, under paragraph 4.3 there is:

"4.3 Due to long outstanding blood/alcohol reports from the laboratory cases were provisionally withdrawn by the state public prosecutor but are pending with investigating officers. These are matters where investigating officers failed to complete investigations and/or no adherence to SBP instructions..."

And then it gives a range of case numbers.

"4.4 Many cases were withdrawn before court by SBP due to poor / incomplete A1 statements.

4.5 The cases pending indicated one with a conviction which was never captured.

4.6 Warrant of arrest still not obtained or any attempts by investigating officer (and then the name is given) to arrest or circulate..."

And then at the bottom:

“...no adherence and BF date expired.”

“4.7 The following shortcomings were identified in the current pending cases relating to police initiated crimes. A few examples, and then:

4.7.1 Possession of drugs...”

And the conclusion at the bottom there:

“To date four months later this is still outstanding. Investigating officer also does not adhere to BF dates.”

4.7.2 Possession of drugs...”

The name of the captain is given:

“...gives BF date to investigating officer to deal with warrant of arrest seven months. Why? And the Captain instructs investigating officer to send exhibits to laboratory only three months later. Why only then?”

And then if you keep on reading, there is just a litany of complaints and it is clear that these cases are being inadequately investigated and the conclusion appears at page 339 under paragraph 4.8.1 and there is the heading at the bottom of the page:

“Findings: police initiated crimes. The pending cases are being dragged by investigating officers relating to outstanding concerns and requests from SBP. Poor preliminary investigations, officer should identify and address these issues before SBP discovers and queries it. 42 cases within this period are prolonged unnecessarily...”

And I am not going to take you through all of them but I put it to you Mr Leholo that it is quite clear that there are very substantial deficiencies in the investigation of these police initiated crimes at the station. Would you concur with that conclusion?

MR LEHOLO: It will depend 93 out of how many to draw that conclusion but when looking on the face of this yes, this reflects a “not good state of affairs”.

MR HATHORN: Well I am not sure exactly what the staff complement was at the time but my understanding of the Harare Station is that it has got a staff complement in terms of visible policing and detectives of between 150 and 200 members and Advocate Masuku will correct me if I am misleading you in that regard, but it would seem to me that these 93 cases which are provided as examples and they don't purport to be comprehensive are a very strong indication that there are serious problems there.

MR LEHOLO: Yes, it indicates there are challenges, I agree with you.

MR HATHORN: Mr Leholo of these complaints, it would appear that many of them are not the sort of complaints that find their way onto the radar of the ICD or the IPID. Would you agree with that just looking at the nature of the complaints there?

MR LEHOLO: Yes, I perused this. These are not within the mandate of IPID.

MR HATHORN: Sorry, they are not within the mandate?

MR LEHOLO: Yes.

MR HATHORN: They would relate - they are late in 2011 so they would be ICD era complaints for the most part but ... (intervention)

MR LEHOLO: They will be discretionary ICD, discretionary ICD complaints, whether - in fact many of these matters are more managerial disciplinary interventions than even ICD.

MR HATHORN: How many of the cases - are you in a position to answer this question; I don't want to be unfair to you, but it was in the list of questions that were provided last week, but are you able to tell us how many of the cases fell under the jurisdiction of the ICD?

MR LEHOLO: I looked through this document and also these 93 cases. If you go to 4.3, clearly "long outstanding blood/alcohol response from the laboratory", it is a managerial issue, supervisory issue. 4.2: "many cases withdrawn", is a supervisory matter. "Cases pending in the case indicated one with conviction which was never captured." It is an internal matter; likewise if you go "the CAS, possession of drugs; non-execution of warrant of arrest." It is an internal matter. If you go down: "warrants of arrest not issued." That is an internal matter. As I said many of these matters are process matters, internal managerial supervisory matters of that particular station. Then when one will say, these matters fall within the IPID mandate, it is not.

MR HATHORN: No. I am not putting that to you Mr Leholo. I am wanting to know how many of them fell within ... (intervention)

MR LEHOLO: When I glanced through, Chairperson, many of these matters are internal supervisory matters and managerial matters, execution of managerial duties.

MR HATHORN: Mr Leholo I am putting this to you for two reasons. The first one is to establish that there are many offences being committed by police officers which are not coming within your radar which either do not fall within your jurisdiction or when it was a complaints initiated process the complaints were not being forwarded to the ICD. What is your comment in that regard?

MR LEHOLO: You see in terms of that mandate of ICD the police

had no obligation to forward those matters to us.

MR HATHORN: Yes, that is not the question. I am putting it to you they weren't reaching you for whatever reason. We can debate the reason if necessary.

MR LEHOLO: Hence I am saying the police had no obligation to do so.

MR HATHORN: But they weren't ... (intervention)

MR LEHOLO: So for whatever reason they had no obligation to ... (intervention)

MR HATHORN: No-no I think we are agreeing with each other in that regard. The second point that I want to put to you is that this report indicates a structural failing in the manner in which cases which are referred to prosecution are dealt with. It seems from what we are reading on these pages that police officers are quite naturally very slow and reluctant to investigate and deal with complaints against fellow officers from the same station and that is why one is seeing that there are great delays. There are cases that are not being dealt with. Statements are not being taken properly. The blood/alcohol samples are not being sent off for analysis, etcetera, etcetera and that seems to me to be a shortcoming in the process in the whole process that ICD or IPID might refer a matter to the senior public prosecutor, the prosecutor might agree that there is a case that needs to be brought before court but if that case is not investigated properly then one is not going to see that justice is dispensed in that regard. Do you have any comment on that proposition?

MR LEHOLO: With respect Chairperson the Advocate went too long now. I want to get what is the question, so I lost you as you were going on ... (intervention)

MR HATHORN: The question is this: there appears to be a weakness in the system for prosecuting cases against police. Would you agree with that?

MR LEHOLO: Well my response to that sir, when I read this document it refers or one deduction I can make is there are various challenges if one looks at it. It is not necessarily regarded to cases that go for prosecution but there are other challenges that might also be deeper challenges.

MR HATHORN: Yes, one of those challenges is that you cannot realistically expect police to investigate complaints against other officers in the same station and expect that they can be dealt with in an objective and dispassionate manner as if one was dealing with a member of the public who wasn't working together in the same environment on a daily basis.

MR LEHOLO: Personally chair and I - that theory that the police cannot investigate themselves I do not agree with that and there are investigation that are being conducted by the police that have

been successful, well investigated, investigated and some of the police members are currently in jail and due processes have taken its course. My take on these issues, it is more to do - it is not just a question of having another body to look into this matter, but look inside what are the issues and address that and also a culture, you know, of people. Take the police service as a private company or any institutions, if there are problems inside we deal with the problems. We don't say "let's get a third party to deal with those problems", so for me and for the country if I have to express my opinion of that we need to do something with the service or to assist so that the police - we can confidently generally or the public can generally and confidently say "I reported my case in a particular station. I have got a satisfactory response or I have no qualms that my case is reported", I mean perhaps investigated at Khayelitsha you know, or whatever station. But to say that any case that is reported against a police member can therefore not be investigated by the police, I don't believe I don't agree and I don't also - I don't agree with that score.

MR HATHORN: Mr Lehlo I think we might well - you might well be disagreeing with something that hasn't been put to you, all I am putting to you is that in this instance in this station it seems as though there are problems with the police investigating charges against colleagues working in the same station and I think you have already agreed with that proposition.

MR LEHOLO: Well it is their case, it is 93. If one looks at a sample of these cases, I don't know whether are all these cases against the members because some of them it seems as if - the execution of a warrant, I don't know that case is it against a member and there are similar kinds of cases so I was not sure in respect of that and if these 93 are all cases that relates to police members and when you have to look at, if I had a sample, if it is a sample of many similar cases, yes, I may say that there might be challenges in investigation of those cases in that particular station.

MR HATHORN: Yes sir. How would you propose that those challenges be addressed?

MR LEHOLO: Well as I said constitutionally the police got a mandate to investigate crime, whether it is from their members or not their members and I understand also there are challenges in these stations that have been mentioned here. Now there is an enquiry into sort of what is the problem there. One of my suggestions is to jack up management within those stations. The other possible proposal I think generally there is a culture that need to be created in a particular work environment you know in respect of relations between complainants and the station and

also a culture that need to be created in any work situation where there is a transgression we need to deal with those transgressions decisively without favour of our own colleagues or without favour of anyone and fear.

MR HATHORN: Thank you Commissioners.

NO FURTHER QUESTIONS BY MR HATHORN

COMMISSIONER: Thanks Mr Hathorn. Mr Masuku.

MR MASUKU: Thank you Commissioners.

CROSS-EXAMINATION BY MR MASUKU:

Mr Leholo in paragraph 41 of your affidavit I just want to read it for you and this is what you say. You say:

“At the outset I point out that as far as I have been able to ascertain the ICD / IPID has not received a significantly higher number of complaints in relation to members operating in Khayelitsha than other police stations nor have the ICD / IPID received a significantly high number of complaints that should have been in itself of grave concern.”

And from your evidence that you have given despite being pointed out to certain instances where that conclusion could have been different, you essentially stick to that conclusion that you set out in paragraph 41. In other words you pointed out to for example my learned friend to an instance where you could have said well this incident here involving police is of concern but it does not alter your conclusion in paragraph 41, right?

MR LEHOLO: That is correct.

MR MASUKU: From the work that you do and the work that you have been asked to look at by the Commission having regard to the terms of reference of the Commission are you in a position to say whether - just from the investigations you have done and the complaints you have received, whether it will be fair to conclude that there is general incompetence in the police service particularly in Khayelitsha?

MR LEHOLO: If one takes a sample of investigations that have been referred to us and with their overall number of complaints that are normally reported to the police service one cannot draw such conclusion with the sample of cases that we have.

MR MASUKU: Yes, because your conclusion would be yes, there are specific cases which are of concern that you investigate within your mandate that are effectively dealt with and resolved, right?

MR LEHOLO: Correct.

MR MASUKU: You also said you are aware of the internal mechanisms within the SAPS which are able to deal with administrative or problems that members commit.

MR LEHOLO: There are internal processes yes.

MR MASUKU: Yes, so you would also so you would say even if

the situation may be criticised in one way or another the conclusion that there is general incompetence in the police service would be an inaccurate reflection of how the service works, right?

MR LEHOLO: A general incompetence in the entire service?

MR MASUKU: Yes in Khayelitsha.

MR LEHOLO: In Khayelitsha; as I am saying I cannot draw that conclusion.

MR MASUKU: You have answered that question.

MR LEHOLO: With the sample of complaints because it is a fraction of complaints that are referred to us vis-à-vis the number of complaints that the members of the public report to Khayelitsha Station.

MR MASUKU: And from the work that you do which is very important to bring it in general within the community essence of police accountability. Would you say that from the complaints that you received from your observation of how the police work and deal with itself, whether there is a breakdown of relations between the community and the SAPS here in Khayelitsha?

MR LEHOLO: Yes it would be very difficult for me Madam Chair to say yes or no because really I don't know what the happenings - the broader happenings within the Khayelitsha community and contacts with the police save for the cases that we receive.

MR MASUKU: What I am asking is, when you reflect on the cases that you have dealt with that are relevant for Khayelitsha, when you look at those cases would you say that a conclusion - would you conclude that there is a breakdown of relations between the community and SAPS? If the answer is no it should be no ... (intervention)

MR LEHOLO: You see based on ... (intervention)

MR MASUKU: We would like a "no" answer.

MR LEHOLO: For me that question cannot have been answered based purely on the 40 cases that way cannot be answered, yes.

MR MASUKU: But if you were to receive from the community 40 cases of really serious crimes that were committed by the police in Khayelitsha your - given the overall mandate of the organisation that you work for would you be able, would you be in a position to say: "well this, because reflecting on these complaints and what I am seeing here I can't - there is a breakdown of relations between the police and the community because part of why people come to you is because they want somebody to resolve their problems with the police.

MR LEHOLO: You see in that one will have to do a closer analysis of those cases and also the whole question of whether there is a breakdown cannot only be answered purely on looking on dockets. There are bigger issues at stake here so you have

also to refer to that which are outside the parameters of IPID.

MR MASUKU: Okay it is okay if that is your answer, I am content with that answer. I would have liked an answer that says yes in a way, but I can't get that out of you. Can I - you referred to, you said that there is now a stricter regime; the stricter regime within the IPID Act in terms of which compliance by the police is required and if there is non-compliance you know people can be charged under Section 33, right?

MR LEHOLO: That is correct chairperson.

MR MASUKU: Now have you charged anybody under Section 33 for non-compliance with Section 29 or Section 28?

MR LEHOLO: Yes, we have investigation some policemen and women.

MR MASUKU: In Khayelitsha?

MR LEHOLO: In Khayelitsha. I need to check the statistics thereof. I think I need to check the statistics thereof.

MR MASUKU: Okay because I think this is very important for what we want to argue at the end of the case. If those statistics could - if you could obtain those statistics that would actually help, because if you have not charged anybody under Section 33 for non-compliance there are two conclusions that can be drawn. The first conclusion is that there has been compliance and so there is no need for you to charge under Section 33. The second conclusion would be that you simply haven't done your work.

MR LEHOLO: And the third conclusion would also be whether all those cases that falls under Section 28 have been reported by the police in this area.

MR MASUKU: Yes and now that is the last question that I actually want, my last question that I wanted to ask you on, what you have just said. In reflecting on the recommendation just in light of what the commission intends doing or has been constituted and you are thinking through the solutions that may well enable the police to become effective, I identified that as a problem. If your job relies on police action and if the police do not act as a result with the consequences that you are not able as IPID to know what complaints you - what complaints the police have been dealing with, that is a lacuna in the way you read then the legislation or in your operational procedures.

MR LEHOLO: Let me respond by saying sir, I think this all starts with the internal processes of the police and also the accountability within the police and the question that need to be asked is that are all matters that falls within Section 38 if any police person picks those up, are they reporting it, and also what are the processes that are inside, internal processes of the police to ensure that they are doing what is expected or compliance with that. For me it starts there and the legislation cannot solve. It is

supplementary and the oversight bodies are supplementary but oversight and ensuring that the constitutional mandate and the protection of human rights of the people starts from within everyone; starts from within every institution and starts from within the South African Police Service to ensure those things are happening. They are mechanisms that are there and also we need to take an extra - how could it be perfect if there are some lacunas?

MR MASUKU: I agree with that proposition but the reason I raised that is because you will - you are questioned by my learned friend Mr Hathorn in relation to one case where an investigation seem not to have covered both complaints that were required and they will have been that in the reporting of that case the SAPS did not - well when the SAPS reported that case when you looked at the report that they gave you, you were not able to see that the other portion of the complaint has not been covered. So what I would and I am putting it as a proposal that the IPID could actually make to the Commission that the SAPS be required on a regular basis to show a list of complaints that they have received and what they have done just as a routine or where the IPID is permitted to go to the police station, look at the list of complaints received to check whether there has been - what the nature of these complaints are, whether in fact Section 33 - sorry, Section 28 and 29 has been complied with the reporting responsibility. Just on your own without necessarily having to rely on the actions of the police and I am accepting here that within the police there may well be non-reporting that is committed and so I am saying in order to ensure that the police are consciously aware that this is a responsibility that they have to do on a regular basis that you are given the power to simply walk into a police station and say: "Well I need to see your complaints schedule or your complaints / your book and from there I want to check whether you have reported certain cases which you should have reported." That is what I am saying could be your proposal to the commission.

MR LEHOLO: I think there is an inspectorate. It is the inspectorate of SAPS' inspectorate responsibility to ensure compliance with; that they comply with legislation; that they comply their own regulations and also as IPID we are also having meetings with - I know there are monthly meetings with, as I have testified earlier, with the inspectorate to check on the matters that we have referred to them, the status of that, and the progress in as far as instituting disciplinary action and the outcomes thereof. The gap that is being raised probably are whether all - are there matters that negligently or deliberately not or for whatever reason, not reported to IPID. I believe that is accountability and the responsibility and a managerial responsibility that the institution that has an obligation to deal with this matter must seriously take

into consideration and implement and also I said earlier that in doing this kind of work we have to do it and even police internally have to do these things without fear or favour because we can have as many independent institutions as possible to try and get - I say that we want to cure what is within, if there is a problem within the police service but the process of healing / curing must come from, it also starts from within. You know we must strengthen those witnesses from within to ensure and also where there is non-compliance take action; take effective action. Those are some of the proposals that I am having because we cannot begin to start look for the solutions from the second step. You need to begin with the first step and the first step is from within.

MR MASUKU: Yes, I was just looking for something that compliments but I hear your answer. Commissioners, that will be all.

NO FURTHER QUESTIONS BY MR MASUKU

MR HATHORN: Commissioners may ... (intervention)

COMMISSIONER: Any further examination Ms Bawa?

MS BAWA: There are just three issues arising from that.

RE-EXAMINATION BY MS BAWA:

Mr Leholo you agree that the - or would you agree that the SAPS provincial inspectorate doesn't quite comply with the definition of an independent institute under civilian control? Would you agree with that?

MR LEHOLO: I agree with that.

MS BAWA: It is an internal disciplinary mechanism that an organisation should have within and especially a structure like SAPS that would look after it or would oversee its own members but it does not - it is not independent and it is not under any form of civilian control of any kind.

MR LEHOLO: That is correct.

MS BAWA: Okay and my second question, we were banding about the number of 40 cases and maybe this needs to be corrected. You agree that you provided a list of cases to the Commission which were 40 dockets of finalised cases?

MR LEHOLO: That is correct.

MS BAWA: There was another list of pending cases?

MR LEHOLO: That is correct.

MS BAWA: That was in addition to the finalised cases? That is correct?

MR LEHOLO: Correct.

MS BAWA: Right. I took you to schedule Annexure 7 and in addition to your finalised cases and pending cases you provided to the Commission we had this debate that you have an electronic case register which indicated a different figure to those cases and we calculated that up under Annexure - I think I made the mistake

and it was Annexure 12 which was the summary of your electronic records for the three periods. Do you agree?

MR LEHOLO: Correct, yes.

MS BAWA: And that totals to 130 cases which would include your finalised cases and your pending cases as reflected on your electronic records.

MR LEHOLO: That is correct.

MS BAWA: Right, then the question that arose from Advocate Masuku's cross-examination was: are there any cases which had arisen under Section 28 or Section 29 of the IPID Act? In that regard I took you to the Annexure 7 which is the schedule of cases that had been provided to the Commission with an explanation in relation thereto. Now I am mindful that you don't have a paginated bundle but if we take the first page of Annexure 7 Mr Leholo the one that starts on top with 2010 and you go to - this annexure has got page numbers at the bottom and you go to page 8, or sorry, page 11 of that schedule which would be the record page 70 the entry right on top relates to an incident which is not reported by IPID, in fact by the station commander in relation - are you on the right page Mr Leholo?

MR LEHOLO: Yes, yes, yes.

MS BAWA: Yes, and the station commander was effectively asked to respond and his response was bearing in mind that IPID came into force and effect on 1 April 2012 that he only became aware of IPID on 17th April 2012 and the reporting obligations there under and it was subsequent thereto on 23rd April 2012 that he got clear instructions from Major General Jafta in relation to IPID and the reporting obligation and a station instruction was put into place and he was referred to a national instruction in relation to IPID that was only made available 12 April 2012, effectively twelve days after IPID came into force and effect and his response was essentially: "I did not comply because I did not know about these provisions at the time as station commander." Do you agree?

MR LEHOLO: I agree yes Chairperson.

MS BAWA: So that was the one incident that I can refer you to. If you turn to - there is another, I think it is earlier. It is on page 7 and it is the three - it is 66 of the record. It is the fifth line item and the fourth. Are you on page 7 Mr Leholo?

MR LEHOLO: Correct Chairperson.

MS BAWA: The fourth item says:

"Contravene Regulation 20 and SAPS Standing Order be charged departmentally under Section 28(1)(B) and the inspectorate pursuant to their reporting requirements to IPID advise on 26 September that the matter was finalised and the member had been found not guilty."

Is that correct?

MR LEHOLO: That is correct. That is correct Chair.

MS BAWA: So essentially on the finalised matters that had been referred to the Commission bearing in mind that that was only a short period in relation to which IPID related. There are in fact two matters of non-reporting that has arisen. There may well be later but as at the time that the Commission took the documents you would agree that there are two items on the list in relation thereto? Would you agree Mr Leholo?

MR LEHOLO: Do you regard this one as the second matter?

MS BAWA: Yes, that is right.

MR LEHOLO: No this is not in terms of Section - this is Regulation 20. It is not a Section 33 matter.

MS BAWA: No but isn't it a Section 28(1)(B)?

MR LEHOLO: It is a Section 28 by the contravention of the regulation but not contravention of Section 33. So what from the two - there is only one that is a non-compliance in terms of Section 33.

MS BAWA: Thanks for clearing that up. My third question comes vis-à-vis your debate with Advocate Masuku about doing inspections. The one thing that struck me and Advocate Hathorn touched on that, there is some dilemma about a station disciplining its own station for example and the Afrikaans phrase 'jy maak 'n wolf skaapwagter' comes to mind, where you are asking them to do the disciplinary actions and the one thing that struck me was we have cluster commanders. We have 25 clusters and that cluster command falls in between the provincial inspectorate and the station and so if you are following an internal disciplinary mechanism for a station are you not guaranteed a more independent approach if it is your cluster doing your inspections and your investigations on a disciplinary complaint rather than the station itself? I would like your comment on that.

MR LEHOLO: You see Chair, when I look at this I also look at the national picture and the question of institutions, yes, we have challenges and then we are saying or if we are saying to resolve those challenges which are disciplinary challenges, which are in-house challenges, that as an institution or that particular section of the institution we are unable or is unable to deal with its own in-house therefore let us look, let us get consulted or outside parties to deal with that. I think that would not result to everlasting solutions. We need to look at what is the actual problem, whether if it is a problem of culture, if it is a problem of discipline then let us deal with that. Let's get to the root causes rather than saying: "I am as this company I am unable to deal with my own people, lest therefore as a national solution hire out the service." For me that may be partly but it is not an everlasting

solution to the problems that we are having within in policing. If within that particular station if we are to be specific there is a problem in terms of dealing with their own managers, if there is a problem with managers dealing with disciplinary problems, then there is a problem, then deal with that particular problem, than hiring out. I mean the institution, the police institution; there is province and so forth. Look into the matter and deal with the matter. How do we deal in instances where managers are not doing their job, where they have to discipline people, where things need to happen and are not happening. Let's deal with that problem and if we are avoiding that we would remain with this big challenge because I verily believe that yes, an independent oversight body is necessary but if internally, if we are saying then even issues of discipline in-house issues you need to hire out, I do not think that is the way to go and that that can be done. That will be a solution but there are deeper problems amongst us. It could be a cultural problem with cultural practices within a particular station or within the bigger scheme / the organisation.

MS BAWA: Thank you Mr Leholo. I am okay.

NO FURTHER QUESTIONS BY MS BAWA

MR HATHORN: Commissioners there was part of the evidence led in response to questions from Advocate Masuku dealt with the question of whether on the evidence before Mr Leholo there has been a breakdown in relations and between the police and the Khayelitsha community and the question of general incompetence. Given the importance of this to the mandate of the Commission we request an opportunity very briefly just to follow up on the responses given there.

COMMISSIONER: Five minutes.

MR HATHORN: Thank you Commissioners.

FURTHER CROSS-EXAMINATION BY MR HATHORN:

Mr Leholo in response to the questions put to you in respect of whether you were able to assess whether there had been a breakdown in relations between the police and the community and whether there was evidence of general incompetence in the police in Khayelitsha I understood your answers to be firstly that you were unable to conclude that there was general incompetence and you were unable to draw any firm conclusions in respect of the question of the breakdown. Is that a fair assessment of your responses to those questions?

MR LEHOLO: Yes.

MR HATHORN: It seems to me that there are a number of possibilities and the first possibility would be that the police stations in Khayelitsha from what you are able to understand from the complaints that you received are normal functioning police stations which are generating no greater volume of complaints and

no more serious complaints than any other ... (intervention)

MR MASUKU: Sorry to do this, but it is not fair. The question put to the witness and the proposition put to the witness and the answer given was not what I was said.

COMMISSIONER: I mean I don't want to get us into a dispute about this. I had understood that Mr Hathorn had asked the witness if he agreed with both what his version to the question and the answer was ... (intervention)

MR MASUKU: No but he postulates it on the basis that I said that?

COMMISSIONER: Okay well what do you ... (intervention)

MR MASUKU: And that is not correct ... (intervention)

COMMISSIONER: What do you think he said?

MR MASUKU: I asked him whether he could conclude from the work that he does whether a conclusion that there was general incompetence within the SAPS was a fair conclusion. He said no, his answer was unequivocal no, but what is being put to him now is not what I said.

COMMISSIONER: Mr Hathorn this could become a very long-winded engagement over something that at the end of the day something that this Commission has to determine in the light of the evidence before it. I am not sure that the expertise of the witness as to whether in his view and if I may just be quite candid my understanding is that this witness does not investigate under IPID any incompetence at all. He only deals with criminal offences effectively so you know what the value of that is to the Commission, given the fact that the Commission has got a wealth of other information before it, I am not sure where this is taking us.

MR HATHORN: Commissioners can we be permitted to deal with it. I don't think Advocate Masuku and I have any different understanding of the witness's response on the question of general incompetence and I think that perhaps there was a misunderstanding of what was put to him. Can I just repeat to the witness what our understanding was of his response to the question on general incompetence and then briefly proceed. There are just three further questions that I would ... (intervention)

COMMISSIONER: Mr Masuku let's hear the rest of the question and then we can at least see where we are going. Yes, go ahead Mr Hathorn. You outlined three possibilities ... (intervention)

MR HATHORN: Three possibilities ... (intervention)

COMMISSIONER: In the light of the answers that Mr Leholo gave to Mr Masuku's questions, what are those three possibilities and then let's hear if Mr Masuku has still got problems.

MR HATHORN: Yes. Mr Leholo the first possibility is that the

Khayelitsha Police Stations are just - they are normal police stations. They are generating normal number of complaints that you would expect and the complaints that are being generated are no more serious than the average and your inference on the basis of that would be they are pretty par standard police stations. That would be one possibility.

COMMISSIONER: The second and the third.

MR HATHORN: The second possibility would be that your complaints mechanism is not picking up the issues, the real issues that are the difficulties that are being experienced in the stations in Khayelitsha and the third possibility would be that - so the problem there is with the complaints mechanism rather than in the stations and the third possibility would be that people have lost faith in the whole policing structures to the extent that they don't feel that it is worthwhile drawing their complaints to the attention of the authorities because they have got no confidence that they will be dealt with, so any of those three possibilities would be able to explain the nature of the complaints that you are receiving.

COMMISSIONER: Mr Masuku, what was your view on that; in other words what is being put to the witness as I understand it is that in the light of his comment that there isn't and I think he answered the question there isn't, he couldn't conclude that there was a material incompetence at these police stations. It would not be fair to conclude that. There are three other possibilities. Do you have any difficulty with that being put to the witness?

MR MASUKU: I have no objection to that question being asked except it is a question that should have been asked right from the beginning. It is key to the mandate of the Commission. Why is he asking it after I have made substantial - you know ... (intervention)

COMMISSIONER: I think it flowed directly from your question, which was your first question on your list of questions and the response to it. It may have been premature to put before that.

MR MASUKU: All I am saying is that the question goes into what we are trying to do here with respect Chair is that we are trying to assist the Commission to determine whether there is general incompetence within the SAPS as a consequence of which there is now broken down trust. Those are key questions that every witness must testify to. If they don't ask him that question and then ask him on the back of what I have said it simply just with the time that we have spent on this witness it incredibly longer than the time that we are going to spend on SAPS witnesses.

COMMISSIONER: Yes, thank you Mr Masuku. I think you may put your question Mr Hathorn.

MR HATHORN: Mr Lehlo would you like me to repeat it? I have

already put it, the three possibilities.

MR LEHOLO: Yes, if you can. Let's take it one by one Chairperson. Then we can refer, yes.

COMMISSIONER: Just to make it clear to you Mr Lehlo, what he is really saying is that you have concluded that on your experience of looking at the evidence of all the police stations you cannot see a pattern of particular incompetence in the Khayelitsha Police Stations. You can't see that. That is what you testified to?

MR LEHOLO: Yes, that is what I said, Chair, is that with what we are doing it is just an element of the broader policing work.

COMMISSIONER: Right.

MR LEHOLO: Therefore one cannot draw the conclusion and say definitely there is general incompetence of general this and that.

COMMISSIONER: And Mr Hathorn is saying that in the light of what you have seen there are various other possibilities as I understand Mr Hathorn.

MR HATHORN: Yes.

COMMISSIONER: Would you like to put them as crisply as you can and clearly as you can and then hear what the witness has to say and then we will move on?

MR HATHORN: Mr Lehlo let's go through the three possibilities again. The first is that there are no extraordinary problems in the policing in Khayelitsha. The second is that there are problems... (intervention)

MR LEHOLO: Can I respond to the first one because if you put them, you know I get lost. I will lose you.

MR HATHORN: Sure, okay. Well let's deal with that one.

MR LEHOLO: Your first question is that there are no ... (intervention)

MR HATHORN: There are no extraordinary problems with policing.

MR LEHOLO: Based on, based on the cases, if I have to base on the cases that we have received and investigated in terms of the mandate those kinds of cases are relatively the same in other stations, in other stations other than Khayelitsha we get similar kind of, but generally if one would say there are not, the other part of it is that where there are no - is that extra?

MR HATHORN: Extraordinary or substantial problems.

MR LEHOLO: It will be difficult for me to respond on that because there might be other cases that are not falling within the mandate of IPID that are reported to Khayelitsha Police Station, you know, which might be extraordinary and I won't be in a position to comment on that.

MR HATHORN: So that would be a fourth possibility. Then the second possibility is that there are substantial problems but your reporting mechanism, your complaints mechanism isn't picking up

those problems?

MR LEHOLO: There are?

MR HATHORN: There are substantial problems with policing in Khayelitsha but your complaints mechanism isn't picking them up. They are not getting channelled through to you.

MR LEHOLO: What I can say Chairperson while I don't know whether - from what one reads, you know, general on policing issues there is a lot that I have been saying about Khayelitsha and also in some of the forums that sits there are a number of issues that have been raised about policing in Khayelitsha but those issues we can never pick through cases within - you can't tailor down the problem in Khayelitsha or any part of policing problem in Khayelitsha purely by looking at complaints that are being reported to IPID and also the IPID mechanism are specifically geared towards reporting of specific complaints and even if you could have other alternatives to those to pick up certain things, if there are gaps, that won't be speaking to the general policing problems, challenges of policing within the area. So you cannot measure that purely by looking at IPID or by saying: "Improve this within the IPID mechanism, therefore you would be able to pick up other problems." There are bigger problems of policing. Policing problems is not just simply criminal investigation. There are bigger problems so you cannot pick that through that. It is one element to the bigger; it could also be a fraction to the bigger policing issue that is in the area.

MR HATHORN: I think we accept that, and the third possibility that we would like to put to you is that people have lost confidence in the policing system to the extent that although there are substantial problems they are not making their way through to you because people don't feel it is worth their while to report the problems.

MR LEHOLO: With due respect Chair it will be difficult for me to respond on that because I am not within the area. I won't dispute if those are the experiences but it will be difficult for me. I will be really not giving a fair comment on that on either side.

MR HATHORN: Thank you.

NO FURTHER QUESTIONS BY MR HATHORN

COMMISSIONER: Thank you. Anything further?

MR PIKOLI: Thanks, Mr Leholo. Having shifted the focus from being a complaints driven organisation to an investigation driven organisation is this somehow also reflected in your budget allocation particularly as it concerns the creation of new posts; posts of investigators because if I recall correctly you mentioned that usually at some stage there were 18 - you had 18 investigators to about 20, is that correct?

MR LEHOLO: Yes.

MR PIKOLI: Will that give you sufficient capacity to then you know carry out your value focus?

MR LEHOLO: Chairperson, my apologies for laughing. Chairperson clearly there is a focus in terms of budget on beefing up and increasing investigators. There is a process but the number of investigators clearly it won't be enough. It is not enough. We are aware of that. We are as a department also advertising new posts and the budget - the current budget of IPID is focused on and whatever we are doing is focused on investigation equipping, empowering and upskilling investigators. It is acknowledged we need to have more capacity and investigators to enable us to execute the mandate, you know, because if one look at the number of investigators and volume of work and the complaints that are - the notification that we have received, yes, one need to be beefed up and there is a conscious move towards an attendance of that hence if one - there is a number of posts that have been created and also there is agreement we need more posts to attend to this and also to be more - as an investigative driven - current driven body, that demands a lot so obviously budget and capacity needs to be increased.

MR PIKOLI: Just one last point. In paragraph 14 of your statement ... (intervention)

MR LEHOLO: Yes Chair.

MR PIKOLI: You say that the IPID resides under the Ministry of Police.

MR LEHOLO: The IPID.

MR PIKOLI: You know as was the case with the ICD it is financed from money that is appropriated directly from Parliament. Can you explain as to what you mean as against the independence of the IPD the question of saying it resides under the ministry; what does that mean?

MR LEHOLO: First Chair is that ICD was created under the police legislation, the South African Police Service Act and IPID has an independent act. However but we still report in terms of the reporting structure there. The Minister, the Minister of Police, the IPID reports are under the Minister of Police but the budget is appropriated from Parliament.

MR PIKOLI: Are you accountable to the Minister?

MR LEHOLO: In terms of reporting of, yes, we do report to the Minister but the budget - yes, I can give a simple yes, yes.

COMMISSIONER: Thank you. Thank you very much indeed Mr Leholo for your very helpful evidence and for making your report available but also for making all the documentation available which has assisted the Commission tremendously. You may now stand down as a witness. Thank you very much for being here.

MR LEHOLO: Thank you.
WITNESS EXCUSED