

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

Gilbert Lawrence

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COMMISSIONER: Ms Bawa we are now a little bit running a little bit behind time. I think we should potentially commence with our next witness now, seeing that Dr Lawrence is here.

MS BAWA: Dr Lawrence is here and I am not sure if it is Advocate Osborne or Advocate Adhikari who is going to be leading him.

COMMISSIONER: Sorry?

MS BAWA: He is going to be led by either Advocate Osborne or Advocate Adhikari.

COMMISSIONER: Right.

MR OSBORNE: It is myself.

COMMISSIONER: Sorry I beg your pardon, Ms Adhikari?

MR OSBORNE: And it will be me, Chair.

COMMISSIONER: Oh it will be you. So Mr Osborne would it be convenient for us to start now and have twenty minutes before the lunch adjournment? I mean the alternative would be to take a lunch adjournment from now to twenty to two but we may not have lunch available so I think it would be better to start, if you don't mind.

MR OSBORNE: Yes, I think that would be a good idea Madam Chair.

MS BAWA: Could I check with Advocate Osborne are you planning to swear in Mr Maurice and Dr Lawrence or are you only contemplating that Dr Lawrence will be giving evidence?

MR OSBORNE: The latter, only Dr Lawrence.

COMMISSIONER: Good. Good afternoon Dr Lawrence would you like to come forward?

MR LAWRENCE: Mr Osborne, you are geographically disadvantaged there; would you like to move forward and sit where Mr Masuku ordinarily sits or I mean - not Mr Masuku, sorry Mr Sidaki, or would you like to stay where you are?

MR OSBORNE: I am quite happy where I am. Thank you Madam Chair.

COMMISSIONER: Okay, good. I didn't want you to be out of line of vision there. Welcome Dr Lawrence. I apologise that we kept you waiting this morning. I think you know how these things go. We all despite our best attempts we don't always keep to our own timetables. I know that you are aware of the functioning of the Commission and that the proceedings are in public and that your name and that your testimony will be in public and may well be published in the media.

MR LAWRENCE: Yes, I do.

COMMISSIONER: And you have no objection to that?

MR LAWRENCE: No.

COMMISSIONER: Do you have any objection to taking the oath?

/...

MR LAWRENCE: I have no objection to taking the oath.

COMMISSIONER: Okay good. Then I am going to put you under oath.

GILBERT LAWRENCE: (Sworn States)

COMMISSIONER: Thank you very much indeed. Ms Osborne.

MR OSBORNE: Thank you Madam Chair.

EXAMINATION BY MR OSBORNE:

Preliminarily may I mention a series of documents that we sent to the secretary last night, which flow from the evidence of Mr Njzela yesterday. There was a considerable debate about the interpretation of one particular letter and that letter is the second of the letters in our listing.

COMMISSIONER: Can I just clarify that these letters have been made available to the other legal representatives as well.

MR OSBORNE: Yes indeed Madam Chair.

COMMISSIONER: So you are talking about the bundle that starts with the letter from the South African Police Service dated the 15th of March 2010?

MR OSBORNE: That is correct.

MR OSBORNE: Alright yes now we do have that. Does everybody have a copy of that? Mr Hathorn do you have a copy?

MR HATHORN: We have got electronic copies of them.

COMMISSIONER: Okay alright. Go ahead Mr Osborne.

MR OSBORNE: Okay. Dr Lawrence if you would first look at what we have marked as GL2, a letter of 16th March 2010 from the then Provincial Commissioner addressed to Deputy Provincial Commissioners and others.

MR LAWRENCE: Sorry sir. I am trying to find it.

MR OSBORNE: Dr Lawrence we have a spare here for you.

MR LAWRENCE: I don't know what happened. Thank you.

MR OSBORNE: So Dr Lawrence please turn then to the second letter which is GL2 dated 16th March 2010 as I say from then Provincial Commissioner to various officers within the Western Cape police hierarchy. Do you have that?

MR LAWRENCE: I have that.

MR OSBORNE: Are you familiar with that letter Dr Lawrence?

MR LAWRENCE: Yes I am.

MR OSBORNE: Now I will tell you Dr Lawrence that this was the subject of debate yesterday. It was noted yesterday that this letter is addressed not to DOCS but essentially the Western Cape police hierarchy. Now what I have done for everyone's benefit I have attached as GL1 substantially the same letter which was sent on the previous day 15 March 2010 to yourself. Do you see that Dr Lawrence?

MR LAWRENCE: I do.

MR OSBORNE: Now the letters are substantively similar as a comparison will show or at least they are similar in this respect. If I may take you to three elements of the letter, let's go with the letter to you dated 15 March. Paragraph 4 reads:

"A nodal point for complaints against SAPS has been established and it is imperative that all complaints in the Western Cape are forwarded via this office."

What was your understanding of the implication of that sentence Dr Lawrence?

MR LAWRENCE: My implication of this sentence Commissioners was that we had had indications from the Commissioner that the way we were doing our

complaints investigation was not what he wished to have done and so there was in fact a discussion around that, unhappiness around that and eventually a letter came and this letter came formally putting the position that from the date of the letter no complaints could be sent by anybody else but myself. That is the letter. In other words under my signature not just from me but under my signature which meant a whole lot of additional bureaucracy and that we would then have to send the complaints to the PC to his office and he would then determine the nodal point and that is what happened, so subsequent to that we had to then every complaint that we received from the public and through the way in which complaints came we then had to send it through this process.

MR OSBORNE: Now Dr Lawrence what was the protocol before the change harbingered by this letter?

MR LAWRENCE: Prior to this what happened was that right at the beginning when the department was established in fact our officials in fact had a card issued by the Police Commissioner the then Police Commissioner giving them access to police stations to do investigations. Subsequently to that cards were no longer issued but the practice continued and our officials / designated officials were able to on receiving complaints go to police stations and investigate such and then we had a period when there was unhappiness about this way of doing business and the PC then indicated that this will change.

MR OSBORNE: Now speaking of visits to police stations I take you to paragraph 5.4 of that letter which is on the second page of the letter and that reads apropos of what you have just said:

“Requests for physical inspections at stations and access to case dockets must also be forwarded to the nodal point and you will be assisted as far as possible.”

What effect did that language have in practice on the manner that you inspected police stations?

MR LAWRENCE: Well two things for the inspection of police stations they have to be done unannounced and they have to be done announced and certainly with this arrangement there is no room now for unannounced police visits and part of the inspections is to see what happens when it is just a normal day when the police are not prepared for such an inspection.

MR OSBORNE: Now Dr Lawrence a third question that arises in the context both of this letter and the next letter is whether you or DOCS would be in a position to directly approach station commanders with respect to complaints that had arisen as it were within their aegis? Did anything change in your practice in that regard in light of this correspondence?

MR LAWRENCE: Sorry I am not getting the question?

MR OSBORNE: The practice hitherto - correct me if I am wrong - had been that on occasion DOCS would directly approach a station commander with respect to a complaint in his station, in his or her station. Did anything change in that regard as a result of this correspondence?

MR LAWRENCE: Absolutely we were not allowed to do that any more and in fact during the changeover I can give an example where in fact we had to go to a police station. It had been agreed to by the Commissioner. This was the subsequent Commissioner and when we went there the station commander said no, his instruction is that we would not be allowed so there were phone calls to and fro between myself and the Commissioner and then it was allowed. So there are certainly no ways we could go directly to a police station any more.

MR OSBORNE: Thank you Dr Lawrence. Could you characterise in general terms how this change in the protocol foreshadowed in this letter effected how you understand the functions of DOCS?

MR LAWRENCE: We understood in terms of the Constitution that our oversight role and our role regarding relationship with the police as we understood it meant that we should be investigating complaints, that we should be able to visit police stations and that is what we did and that was agreed to as I said with prior PCs on a relationship basis and maybe that was part and we know that was part of the difficulty because it was based on personalities and so when there were issues about an interpretation of what our role was in terms of the Constitution this is what happened as a result of it, so what happened then was that the PC or the police then said this is how they interpret it and they don't wish us to do what we considered to be our job and the net result of this was that the complaints now had to go to a nodal point which meant that it was an extra burden I believe for myself but also an extra burden for the Police Commissioner because it all had to go to his office or to the nodal point and it inevitably produced delays and we then subsequently had to send reminder letters as to what had happened to complaints such as such and it got to the point where we were sending out Excel sheets of complaints that had yet not been responded to so that meant that certainly from the public's perspective who were making these complaints we were no more than a postbox and in a sense were not able to quickly and rapidly reply in terms of what was happening to their complaint.

MR OSBORNE: Yes, thank you Dr Lawrence. May I then on that note take you to what we have marked as GL3 which is a letter from yourself under your signature dated 28 May 2012 and it is addressed now to the new Police Commissioner the officer that took over from Commissioner Petros and if I might summarise the letter it is effectively a request from you to obtain the support of the Provincial Commissioner into a complaint that a member of the SAPS who had been alleged to have been guilty of domestic violence had firstly not been arrested and secondly that his firearm had not been withdrawn from him leading to the victim feeling intimidated by the suspect, to use your language at the end of paragraph 2. Is that a fair characterisation of the letter?

MR LAWRENCE: Yes it is.

MR OSBORNE: Now could I then turn you to the response of the Provincial Commissioner dated the 19th of June which is - I am sorry it is GL4 that I am looking at here. Would you just take a look at that letter please and refresh yourself as to its contents. Now we have or you have quoted that particular language, especially the language in paragraph 4 at paragraph 84 of your affidavit but if I might just emphasise that what I see as the pertinent language for present purposes. The view of this office - that is the PC's office, is that DOCS is placing itself as an authority inspectorate of the department to advise SAPS what to do with regard to matters that come from members of the public instead of requesting or giving the PC time to conduct an investigation based upon the report received. What was your response to this letter?

MR LAWRENCE: My response to this letter was that this certainly was way out of our understanding of what our responsibility was, that also we had complied with the request from the PC to write to him, the letter that you referred to previously was drafted. We can go back to that in a format that we had then agreed upon. There is a scope. There is a method of operation, how we will

deal with the complaint. What we will do and that was the said pattern or template that we used and that was the basis we wrote to the PC. This letter really came out of the blue because the letter was now in fact directly challenging our interpretation as it were of 206.3 on the basis that the police saw what we were doing in terms of requesting this investigation into this domestic violence case as one where we in a sense are infringing on interpretation of the constitution and so they felt that we were now actually coming in and doing police work.

MR OSBORNE: Could I take you to 206.3 of the Constitution which you have just mentioned and if I might just read to you the relevant provisions and ask you whether they are consistent with your understanding of the responsibility of the province. 206.3 reads:

“Each province is entitled:

- (a) To monitor police conduct
- (b) To oversee the effectiveness and efficiency of the police service including receiving reports on the police service;
- (c) To promote good relations between the police and the community;
- (d) To assess the effectiveness of visible policing...”

I won't go through the rest. If you think simply of a note simply those four subsections and notice the verb use: “monitor, oversee, promote and assess”, is that consistent with, do you think this language is consistent with the functions as you have just articulated them of your department?

MR LAWRENCE: I believe that that is indeed what our interpretation of what we should be doing as a department and that is what we have been trying to do.

MR OSBORNE: Let me turn you then to GL5, a letter dated 25 July 2013 from the MEC again to Police Commissioner Lamoer and it reads:

“I herewith request information on the number of lost and stolen SAPS dockets in the Western Cape for each of the financial years that followed 2009 through 2012.”

“I also request information on whether particular stations are problematic in this regard.”

Now to turn to the response to that letter dated - I can barely read this: 3 September 2009, a considerable interval having passed, and this is GL6. Would you read the second paragraph of that letter please?

MR LAWRENCE: “It is herewith respectfully requested that clarity be given on the following: the purpose for which this information is required.”

MR OSBORNE: What was your response to this letter? I presume it made its way to your desk having come into the MEC?

MR LAWRENCE: Really I couldn't understand why this was so.

MR OSBORNE: Why do you think it might have been so?

MR LAWRENCE: I think well, I can only surmise that the police didn't want to give us the information.

MR OSBORNE: Do you think that on your interpretation of the Constitution you were entitled to the information, the information on the lost dockets and stolen dockets?

MR LAWRENCE: We believe that it is right that we should ask for certain information if it is pertinent to our mandate and in terms of our mandate we need to understand in terms of civilian oversight what is happening within the police service, how does what is happening in the police service effect its

efficiency and effectiveness and clearly if there are issues relating to dockets that are lost then that is an issue that we would like to pick up. We would also like to know then is this a systemic issue or is it just a once-off issue so hence the question, if the answer comes back they have lost two dockets in the last three years then clearly it is very different if there is a large number that have been lost and our response will then be proportional to the answer.

MR OSBORNE: Thank you doctor. This is perhaps an opportunity time to consider the evidence of Mr Lehlo from IPID. He described as I recall a gap in the regulatory or supervisory oversight of the police and I think counsel for the SAPS used the word "lacuna" in that regard and as I understood it he perceived it as being a gap insofar as IPID under its statute is largely confined to the investigation of misconduct and offences as opposed to ordinary course service delivery complaints. Is that consistent with your understanding of the jurisdiction of IPID?

MR LAWRENCE: Yes certainly in terms of the IPID Act they are obliged to investigate serious crimes relating to police conduct or misconduct and that what would happen is that we would be - we could receive complaints and if it fell in those categories we would pass it on to IPID for them particularly because we would not be allowed to do those investigations.

MR OSBORNE: Now would this be the kind of complaint that you would pass on to IPID?

MR LAWRENCE: Sorry which was that?

MR OSBORNE: Well the particular - well the particular issue here, the alleged loss or stealing of dockets, would this be referred by you to IPID?

MR LAWRENCE: No.

MR OSBORNE: If it is not IPID that investigates it and if DOCS does not investigate this kind of complaint who would investigate this kind of complaint?

MR LAWRENCE: Well if you are referring to this then technically it is not a complaint that has come in that could or could not have been the basis for this letter but had it been a complaint that complaint if it is not investigated by us would then have to be investigated by the police.

MR OSBORNE: Forgive me, I did not mean to use the word "complaint", this matter, if this matter was not investigated by IPID it falling outside IPID's jurisdiction and if it falls outside of your jurisdiction who would look into this matter?

MR LAWRENCE: Well there is nobody that would look into the matter unless it would be presented to the police and then technically if they wished to or not, if there was no other body that could investigate the complaint.

MR OSBORNE: Thank you doctor. Could I turn you to the response to this letter, which is GL8 and again it is barely legible. I apologise for the quality of the copy. It is 12 June 2013 the letter to the Minister, the MEC from the Deputy Provincial Commissioner. Could you take a minute to scan that please?

MR LAWRENCE: I have read it.

MR OSBORNE: You will see that at paragraph 3 the Deputy Commissioner characterises this as or the matter broadly being the subject of your letter, the investigation of a criminal matter which is the responsibility of SAPS. Further down at paragraph 5:

"Your instruction pertaining to the investigation is considered an operational matter and is thus not the responsibility of your department."

What is your response to that language?

MR LAWRENCE: We did not consider this to be an operational matter. We received a complaint and we raised the complaint with the police and this was the - this was the response that they provided us with. Now we did not believe that this was an operational issue that meant that it was precluded from our investigation and whether the action happens - usually it happens during an operation or while the person is on duty so we could not understand what they meant by an operational matter. However their interpretation we could understand from this was that the police technically have said and we know that from the act that we have no jurisdiction over the police's operations. We do oversight but we do not have any jurisdictions over the operation so we cannot tell the police where they should police and how and in terms of daily operations and such. They have characterised this as such and therefore excluded us.

MR OSBORNE: Just to clarify Dr Lawrence, do you accept that DOCS lacks jurisdiction or a mandate with respect to operational matters of the police?

MR LAWRENCE: Yes we do, we lack that.

COMMISSIONER: Could I ask what Dr Lawrence means by an operational matter?

MR OSBORNE: Well the police have indicated that an operational - their normal operational, raids, in other words if we said: "Where are you going to do your next raid for drugs, which houses", they would not give us that information. They would consider that to be an operational matter but we said to them: out of your raids how many houses have you raided in Manenberg or whatever as a statistic they should be able to give us that information. From that we would be able to then interpret some kind of information in the area of what is happening, in other words there is a high number of such houses, etcetera, so that is the differentiation.

COMMISSIONER: Formulate that, have you got a formulation for that Mr Osborne? I think this is an ongoing issue and it will be helpful to at least have a working definition of what we mean by an operational matter.

MR OSBORNE: Yes, as I would understand it operational police conduct would be day-to-day crime fighting and one might use the word a police operation as Dr Lawrence has suggested a pending raid. Operational considerations would be distinguishable from - to use a word that came up earlier this morning, managerial questions; disciplinary matters within SAPS; service delivery complaints. I think there is a fairly clear distinction in that sense albeit it you will obviously get a blurry line in the middle, but to go - I am glad to have been reminded of the testimony of Mr Lehlo. If I recalled correctly his testimony was to the effect that he saw IPID to lack jurisdiction both with respect to managerial / disciplinary, internal disciplinary and with respect to operational matters. That being the case, what scope is there for oversight, independent oversight into those categories as to which we have heard IPID has no capacity or mandate for investigation?

MR LAWRENCE: It is a difficult area. Oversight can be oversight over everything in the law enforcement agency or it can be broken down and internationally there are those that believe oversight should be within the force like within the SAPS and the other big option is to have it totally independent and then there are hybrids of that internationally.

MR OSBORNE: And how would you categorise the regime created under Section 206(3) of our Constitution?

MR LAWRENCE: I think there are gaps. I think it is open to interpretation and I think we have tried to work within an interpretation which has not found favour with the police in terms of their interpretation which has produced these gaps so that we then find that the simplistic and a way to address oversight is that if somebody has a complaint about service delivery I wasn't treated well across the counter or the police didn't follow up - that is for DOCS. If somebody gets beaten up by the police guys in the police cell that is for the IPID. Now that is let's say simplistic categorisation but the comment that you made about what happens within the police, management etcetera there are gaps in that regard. Now that is why we have gone along the road to say we need to try and get some decision-making around that and we have gone the route of the act and yes, the act has been challenged, not yet in court but ... (intervention)

MR OSBORNE: Excuse me doctor, what Act are you referring to?

MR LAWRENCE: Sorry I am talking about the Community Safety Act.

MR OSBORNE: How will the Community Safety Act address some of the problems that we have been debating now for the past ten minutes?

MR LAWRENCE: The way we believe the act will resolve some of the issues and as we debate more come up, is that we will then have a legal mandate and an obligation on the part of DOCS as well as an obligation on the part of the law enforcement agencies and it is that that then becomes set in law and people are then obliged to comply. Part of or rather the aim of the act was to try and determine what DOCS should do. Many people are saying it is - you know we are trying to tell the police what to do. It is actually trying to set the parameters for what DOCS should be doing in this space and for that reason we have gone through the - gone along the road of producing an act and we have taken that act along the road. Some of the act has been challenged through the process of setting up the commission and some of it has been - we have been successful in some elements of trying to get an understanding of what could be a province's role and what could be the role of the provincial cabinet and legislature so we believe we will be able to address a number of the issues relating to what then is the determination of oversight; what then is the obligations of the police and also of the department. Chairperson just lastly to say the police have tremendous powers. They can take away civil liberties by arrest there and then and we believe it is important that the police are held to account and I think we have shown, we have seen these different gaps that are there and it is for that reason that we believe we need to go down this road.

MR OSBORNE: Dr Lawrence could I ... (intervention)

COMMISSIONER: Mr Osborne I wonder if this isn't a good time to take an adjournment, unless we are interrupting something, but we would want to take a lunch adjournment. Is there something you want to finish off quickly?

MR OSBORNE: Madam Chair yes, I would like to get through these letters, the remainder of which will be dealt with very quickly, so that is out of the way. First of all Dr Lawrence I see I omitted to discuss GL7, the letter which generated GL8, now if we look at GL7 from Advocate Gerber dated 11 June we will see that the subject matter was a complaint from a member of the public that she had been threatened with false arrest. Then finally, the final pair of letters I would draw your attention to, Dr Lawrence, GL9 and GL10 and this goes back to the vexed questions of announced versus unannounced visits to police stations. If you look at GL9 it is a letter from Mr Maurice of DOCS, dated 2 October 2012, which essentially which is a request addressed as the protocol

was evolved after 2010 to the Deputy Provincial Commissioner pointing out the obligations and entitlements of DOCS to visit police stations on a regular basis, pointing out in the second paragraph that the protocol established that in the month of October a total of three police stations must be visited and thirdly referring to an attached Annexure A which happens to be the three police stations here in Khayelitsha. Do you see all of that Dr Lawrence?

MR LAWRENCE: I do.

MR OSBORNE: Now let's look then finally on this batch of letters at the response from Police Commissioner Lamoer at GL10 dated 23 October 2012. Paragraph 2:

"The department can continue with oversight visits to police stations as requested."

Paragraph 3:

"However the request for the oversight visit to Khayelitsha, Harare and Lingeletu-West on request from the Commission of inquiry cannot be approved."

I am frankly puzzled at the reference in the second part of paragraph 3 to the phrase: "Request from the Commission of inquiry", how does that gel with the nature of your request at GL9?

MR LAWRENCE: Chairperson again that is a form letter and the letter then as you indicated in - sorry Chairperson. The first paragraph indicates why we do this, and in terms of what, Section 206, and that is the form letter, so the template remains the same per month and for the different police stations we are going to investigate / visit and so this was the same form letter but for this month we've put those three police precincts in and we were very surprised to receive the reply that we received because this would have been a norm. Yes, it was, obviously these are the police stations under the spotlight at the time but there should have been no reason why they could not have been visited.

MR OSBORNE: Because it was after all per your letter, part of your routine, ordinary course investigations or visits, was it not?

MR LAWRENCE: Yes, it was.

MR OSBORNE: Madam Chair I think this would be an opportune time to take the break.

COMMISSIONER: I think we will adjourn until two o'clock given the fact that we have got a full afternoon; unless anybody wants a longer adjournment. Is two o'clock
alright?

Good. We'll adjourn till two o'clock. Thank you very much.

COMMISSION ADJOURNS: (at 13:15)

COMMISSION RESUMES: (at 14:00)

COMMISSIONER: Good afternoon, we had said that we would deal with the application but I think we will wait until we've concluded this witness, is that alright, Mr Hathorn?

MR HATHORN: There's no difficulty.

THE CHAIRPERSON: Thank you. Okay, welcome back. Dr Lawrence, you're still under oath and Mr Osborne, would you like to continue?

DR GILBERT LAWRENCE: (s.u.o.)

EXAMINATION BY MR OSBORNE: (Cont.)

Yes, thank you, Madame Chair. Dr Lawrence, you've said in your affidavit before this Commission that there may be said to be a crisis in policing in the Western Cape. Could you explain why you say that? Could you explain why you said that there's a crisis in policing in the Western Cape?

DR LAWRENCE: Commissioners, part of the reasons for the statement was that we in the Western Cape have had for the country when we look at the police statistics, the police statistics, the police statistics that come out annually, Nyanga, the murder capital, when we look at the murder rates then Khayelitsha is third next to KwaMashu. When we look at the problems that we've been having with the gangsterism in the province the drug problem that we've having in the province as well. When we look at some of the indicators in the crime statistics, when we look at issues of the ratio of policemen to the population across the province and nationally and the average nationally, when we look at all of those together then yes, that's the reason for the statement that I put into the affidavit.

MR OSBORNE: Now Dr Lawrence, would you say apart from there being a crisis of policing the province there's a particular problem here in Khayelitsha?

DR LAWRENCE: When we look at the problem again in Khayelitsha I think again we look at the statistics for the country and for the province and we again look at murder rate in Khayelitsha. Now part of – now there are a number of other areas as well that have severe problems, why is Khayelitsha different in my estimation? I think part of the problem has been as a result of what communities have said and what we have picked up in the work that we do and then our attempts when we had the complaint that led to this Commission of Inquiry, when we had that original complaint, it was – eventually came out around vigilante killings. No there's no category for vigilante killings in the pre-statistics, it comes under murders and so we've been seeing these as murders in a sense and when you look at the definition then of a vigilante

killings it really is almost an indicator of a lack of trust in the police and we consider that to be a very serious thing that was happening within our communities and as a result of that, when we look at Khayelitsha then – and yes, vigilante or mob killings have happened elsewhere but given the numbers in Khayelitsha that then presents a particular focus on Khayelitsha in terms of if the community is resorting to that form of let's call it mob justice and bypassing the police then there must be a serious problem there.

MR OSBORNE: Now Dr Lawrence, you mentioned in passing in your answer the question of the ratio of police persons to population. In that regard could I ask you to turn to a letter dated 7 May 2013 which is record reference 0005258.

COMMISSIONER: That's a record reference which evades my understanding.

MR OSBORNE: I beg your pardon, Madame Chair?

COMMISSIONER: Where do I find that in the record?

MR OSBORNE: That is in the record, yes.

COMMISSIONER: 000?

MR OSBORNE: 0005268.

COMMISSIONER: It must be in a bundle I think.

MR OSBORNE: Oh, forgive me, this is – there may be an issue here, as the evidence leaders will know, faced with a plethora of DOCS documents, so to speak and a somewhat confusing numeration we of docs provided a separate continuous record set of references. Now this – our reference happens to be 5268. My helper is just giving me the proper reference if I...

MS BAWA: The arrangement was that if DOCS was going to rely on their own references they would provide hard copies to people at the Commission to follow.

MR OSBORNE: Yes, I take that point, Adv Bawa. Let me say this, it's file 6, item 55. Item 6, item 55.

MS ADHIKARI: M'Lady, bundle 2, file 3 where you'll find the Department of Community Safety documents and in that file there's a file 6.

COMMISSIONER: And then it's file 6?

MS ADHIKARI: File 6 and item 55 under that file 6.

COMMISSIONER: In other words you're saying it's bundle 2, 3, file 6?

MS ADHIKARI: Item 55. It should the pagination from the Department of Community Safety. It hasn't been paginated.

COMMISSIONER: Okay, I've got it, in fact it's in the third folder there which is letter Commissioner to Plato July 2013. Would that be it?

MS ADHIKARI: Yes.

COMMISSIONER: Okay, so if anybody else trying to find it it's in

the third heading under – sorry, let's go back, DOCS Watching Brief. So bundle 2, part 3, file 5. No, not file 5, file 6, okay, file 6 and it's part three of that and it's the second part of the folder. Have you it?

MR OSBORNE: Dr Lawrence, do you have it? It's a letter dated 7 May 2013 from the Provincial Commissioner, from the Deputy Provincial Commissioner.

DR LAWRENCE: Yes, I have it.

MR OSBORNE: Now this letter is to you, as I say, from Major General Japhta and appended to is three pages of population ratios for the Western Cape, 149 at that point, different stations. Now could I draw your attention to item 50 or station 50, Harare. On the far right hand column is a figure of 1702, meaning for every 1 702 people living in Khayelitsha there's only one police officer. If I might take you to Khayelitsha just over the page, station 56, the corresponding number is 1675.

COMMISSIONER: Oh there we are, it's out the file. Sorry, which pages are those are you looking to, Mr Osborne?

MR OSBORNE: I'm sorry, Madame Commissioner?

COMMISSIONER: Is it the second page of the annexures or the first?

MR OSBORNE: It's in fact the third page in the ...(intervention)

COMMISSIONER: Okay, thank you.

MR OSBORNE: ...little collection, the second page of the chart, Khayelitsha.

COMMISSIONER: The difficulty we've got is that we have to open a different folder each time, it's not in the same folder, so it's ...(intervention)

MR OSBORNE: I wonder if it may not be a good idea to prevail upon someone to make a copy.

COMMISSIONER: I'm sure we could.

MR OSBORNE: It's only a very brief document.

COMMISSIONER: Would you mind, Ms Dissel, that we sort it? It will be helpful if you are going to use documents if they could be provided to the Commission beforehand, unless you've provided us with the references because we have been swamped documents, quite appropriately, but it does take us time to find our way around them.

MR OSBORNE: Yes, we will attempt to do that.

COMMISSIONER: Thank you.

MR OSBORNE: In the meantime perhaps we can just go quickly onto another item and come back to that.

COMMISSIONER: Okay.

MR OSBORNE: The more general question of resources, SAPS resources, there's a document called the Resource Allocation Guide, RAG, which as I understand is published by SAPS and as I

understand it, that is a document which would tell one how the global pool of SAPS resources is distributed across the country. Have you – do you have a copy of that document, the RAG?

DR LAWRENCE: No, we do not have a copy in the department.

MR OSBORNE: Have you attempted to lay your hands upon a copy?

DR LAWRENCE: Yes, we have tried.

MR OSBORNE: Tell me about your effort?

DR LAWRENCE: We've tried to request it from the police informally and formally and we've written as well and one of the responses was that we should address it national because that's where the genesis of the document is. We've not had any joy there as well, so technically we're still waiting, as it were, because it's not – nobody said we can't get it but nobody is giving it to us. There was also a standing committee meeting where the PC came to the meeting and there was also a request for the Resource Allocation Guide and that has not gone to the standing committee either. So we've not been successful in getting the RAG.

MR OSBORNE: So you say that it hasn't actually been refused, has any suggestion been given as to why you haven't been given it thus far?

DR LAWRENCE: No.

MR OSBORNE: Why would you want such a document?

DR LAWRENCE: We'd want such a document because it gives a determination of the allocation of resources per police station and certainly would help us in our work of understanding the resourcing of police stations or precincts. What happens with the CPFs, for example, just by their relationship as being the CPFs they know what their resourcing is per police station but certainly we don't know that from the police and we don't know that across the province and certainly from the planning perspective and all kinds of issues it would be very useful to fulfil our oversight role to know what the resourcing is. When we've had complaints about the police or whatever it would be useful to know whether this complaint was about resourcing or not.

COMMISSIONER: Dr Lawrence, do you know offhand whether this is an issue that's raised in the National Parliament Portfolio Committee? Presumably they also have an oversight role and have they ever had access to the Resource Allocation Guide?

MR OSBORNE: It certainly would be part of their overview, I can't say whether they've asked for it or whether it's been given to them, but yes, it would form part of that.

COMMISSIONER: Thank you.

MR OSBORNE: Have you raised as DOCS the question of the allocation of resources and what – let me ask you two questions,

have you raised as DOCS at a national level the problem of the lack of resources in the Western Cape?

DR LAWRENCE: Yes, that has been raised by us and by the minister as well in terms of the ratios for the Western Cape and in a sense why is it different.

MR OSBORNE: In what forum have you raised that?

DR LAWRENCE: It's been raised in the Minmec as well by the Minister and it's been raised – we have a heads of department meeting with the national secretariat.

MR OSBORNE: And have you received any response or explanation as to the particular allocation of resources to the Western Cape in general?

DR LAWRENCE: No, we have no idea how the allocation – we certainly no input into how the allocation is made.

MR OSBORNE: Have you ever been asked – excuse me one second? Turning then to the document to which I referred earlier, the second page or the page attached to the letter to which I've referred contains an alphabetical list that starts with Albertinia and two pages later ends with Wynberg. I've already pointed out to you, I put it to you, Dr Lawrence, that ratio in Harare is 1 702 persons served by one policeman, the equivalent ratio in Khayelitsha over the page is 1 675 and the equivalent ratio in Lingeletu West is 592. Do you see those three figures, Dr Lawrence?

DR LAWRENCE: I do.

MR OSBORNE: Now could I direct your attention to item 17, station 17, so to speak, Camps Bay, what is the ratio according to this table of police to persons in Camps Bay?

DR LAWRENCE: The document says 38.14.

MR OSBORNE: Can you think of any possible reason for that rather dramatic discrepancy?

DR LAWRENCE: Not really.

MR OSBORNE: Could I turn then to the Minmec quarterly report for march of 2013 and you'll recall Dr Lawrence that I asked you pertinently whether the resource question had been raised at the national level by DOCS. This document – I fear we may run into the same problem. No, thankfully not, thanks to Adv Adhikari. It's bundle 2(3) file 6 item – it's the folder Minmec Reports and it's item 56. Do you have that Dr Lawrence?

MS ADHIKARI: I'm trying to get hold of it, I have it.

DR LAWRENCE: It's March 2013.

COMMISSIONER: We're a particularly poor class this afternoon, but can just read out that again, bundle 2(3)?

MR OSBORNE: Bundle 2(3) file 6.

COMMISSIONER: File 6.

MR OSBORNE: Item Minmec reports.

COMMISSIONER: Yes.

MR OSBORNE: Item 57.

COMMISSIONER: Yes.

MR OSBORNE: 56, I beg your pardon. Now all of our documents are in bundle 2(3). All of the DOCS' documents.

COMMISSIONER: Good.

MR OSBORNE: Now, Dr Lawrence, could I take you to page 3 of that Minmec report and you'll see that at the top of the page it's noted that Western Cape accounts for about 47% of all drug and gang-related crime, refers to a unique challenge and then says as follows:

"Despite assurances given in previous years, namely that priority attention shall be given by the police to such cases. Many examples have been gathered of cases which demonstrate that drug and gang cases are often not successfully prosecuted due to failures on the side of policing and investigations."

Now how did DOCS come to that conclusion?

DR LAWRENCE: Chairperson, if you read what it says there:

"...have been gathered of cases which demonstrate that drug and gang cases are often not successfully prosecuted due to failures on the side of policing and investigations."

Chairperson, we feel that when many of these cases have gone to court or whatever they get – through all kinds of reasons they get thrown out of court. In other words, there's the magistrate will decide that this case will no longer be proceeded with. So when we've tried to ascertain the number of cases that that happens to it becomes very worrying.

MR OSBORNE: When you say the magistrate will decide not to proceed what are the kinds of reasons that would be of concern to you as DOCS for not proceeding?

DR LAWRENCE: Well, either the police person is not in court at the time or there may be evidence that has been delayed, they're waiting for evidence to come and then there are postponements and eventually it gets to the stage where the magistrate will decide that he is not going to proceed with the case.

MR OSBORNE: Could I take you then to page 4 of this same document, middle of the page, heading Sector policing. And I'll just note that I'd emphasised earlier that it was in Minmec that resource constraints were taken up at the higher level and you will see that that's one place where it's done. Do you see that?

DR LAWRENCE: Yes, I see that.

MR OSBORNE: Then if you would turn to the 6th page of this report, there's two bullet points, reference to vigilante killings, do you see that?

DR LAWRENCE: I see that.

MR OSBORNE: And then finally as to resources or again as to resources, if you look at page 7 under the number 2 service delivery trends, final sentence of that sentence that starts – sorry, the final sentence of the paragraph starting with the words, “The Department...”

“The instruction ...”

That’s an instruction as to a particular modes of oversight visits and sector policing in particular.

“The instruction cannot be fully implemented at the majority of police stations because of a lack of resources.”

Next sentence:

“In many cases the impossible case load of investigators was also found to impact.”

Etcetera. Does that correctly reflect your understanding of what SAPS had discovered? Sorry, what DOCS had discovered regarding SAPS?

DR LAWRENCE: Yes, Chairperson, that is so.

MR OSBORNE: Now let me take you to paragraph – sorry, before I take you there, you will be aware that it was in 2011, late 2011, that the first complainant demanded of Province that this Commission be established, do you recall that?

DR LAWRENCE: I do.

MR OSBORNE: And you will also recall that it was amongst other things the spate of vigilante killings that in a series of later complaints came to become of the focuses of this Commission?

DR LAWRENCE: Yes.

MR OSBORNE: Now was the particular problem of vigilante killings taken up by the MEC with the PC at any point?

DR LAWRENCE: Yes, it was.

MR OSBORNE: Can you tell me what the upshot of that was?

DR LAWRENCE: Well, the PC meets with the minister every Tuesday when the meetings do happen but there’s a time set aside for that at which there is an agenda and minutes are kept and the PC will engage with the Minister. The one issue that I’m talking about in terms of how the discussion went was that the PC was unhappy about the Minister’s take on the vigilante issue and part of the debate was that:

1. There’s no definition of vigilantism.
2. The police were not certain that all these cases were in fact vigilante killings.

So the request of the Minister was that the Minister should not go public about these issues of vigilantism.

MR OSBORNE: Just to clarify, from whom was this request made or by?

DR LAWRENCE: From the PC.

MR OSBORNE: From?

DR LAWRENCE: The Provincial Commissioner.

MR OSBORNE: To the MEC?

DR LAWRENCE: To the MEC Plato.

MR OSBORNE: Let me take you to one of the many overviews or surveys of the situation in Khayelitsha, the particular situation in Khayelitsha which ultimately culminated in this Commission and in that regard I ask you to look at the report on Western Cape Policing Needs and Priorities for 2011/2012 and that is – it's again bundle 2(3) where all of the documents I'll be referring to are to be found. Bundle 2(3) file 5, item Policing Needs and Priority Reports, item 50. Do you – it's file, Cape Policing Needs and Priorities, item 50 and this is a rather comprehensive collection of data compiled by DOCS for the whole province and I would – recurring to the theme of the Resource Allocation of Resources, to which I've already referred you, Dr Lawrence, would you look to the forward by the MEC which is on page 7 of that report and the third paragraph, the MEC has something to say about the connection between reliable statistics, policing needs and the rational allocation of police resources. Do you concur with the sentiments? I'll give you a minute to look at that, do you concur with that sentence?

DR LAWRENCE: I don't have page 7, I have page 8 and subsequent.

MR OSBORNE: Alright, if I may just read to you what it says. Well, the MEC says that in essence in order fulfil provinces Province's mandate under Section 206(2) of the Constitution which demands that different provinces adopt policing policies which are tailor-made to the particular problems to be found in that province as opposed to a one-size fits all approach. If one bears that in mind, it also makes sense that one should adjust the allocation of police resources in a way that is responsive to the particular needs of that province. Does that properly capture your approach as you've described up till now?

DR LAWRENCE: Yes, both from a province to province perspective and also from an area to area perspective within a province.

MR OSBORNE: Could I then ask you to turn to page that I fervently hope we did copy for you, which is page 56.

DR LAWRENCE: I have it.

MR OSBORNE: Now I'll draw your attention to the fact that apart from offering an overview which is summarised in the introduction the survey rather comprehensively – is broken down into particular reports as to particular stations and it's Khayelitsha that is described from page 55 onwards. Do you see that?

DR LAWRENCE: I see that.

MR OSBORNE: And you will see, for example, that 55% and I'm referring you to the third paragraph, 55% of those surveyed in Khayelitsha rated the police response time as poor. Do you see that?

DR LAWRENCE: I see that.

MR OSBORNE: Is that consistent with your understanding of conditions in Khayelitsha as of then?

DR LAWRENCE: We get – obviously we get complaints, we get anecdotal evidence and this is an attempt obviously for us to try and quantify that we can put what people are alleging or saying to let's say a more formal way, so this does provide us with let's say some form of evidential base to what people are saying.

MR OSBORNE: And why is it necessary for you to commission your own external surveys?

DR LAWRENCE: Well, it's necessary because we are not being provided with this information from the police.

MR OSBORNE: Could you look to the bottom paragraph of that same page 56? It reads or it reflects the focus group finding that police officers should show more respect towards CPF members and respect the position they hold. Do you see that?

DR LAWRENCE: I see that.

MR OSBORNE: And at the top of page 57 there's a reference to a Khayelitsha Community Safety Summit held on the 21 October 2011. Can you tell us about that?

DR LAWRENCE: It was a summit that was brought together in collaboration with the Khayelitsha Development Forum and a number of different NGOs as well as government departments as well as spheres of government and it was held to discuss the issues that were troubling the people of Khayelitsha from a safety perspective. It was based on inputs and then focus groups, breakaway groups during the day and thereafter a report was issued.

MR OSBORNE: And the date of this was 21 October 2011.

DR LAWRENCE: That's correct.

MR OSBORNE: If it – it's going to put to you if I understand the list of questions provided by certain of the parties that, as it were, DOC's concern about Khayelitsha in particular is it's a kind of a newfound or manufactured or purpose-built concern. Bearing in mind the date of this summit, would you comment on that allegation?

DR LAWRENCE: There are a number of serious issues relating to crime and criminality in the Western Cape and gangsterism has been dominant, drugs have been dominant, you should take all the issues around the coast with perlemoen and all of that sort of thing, so from the DOCS perspective we get a number of these

let's call it complaints and memoranda from communities requesting that the department tries to intervene. Now we've also heard from the Khayelitsha in terms of the memorandum and the marches that accompanied those. In terms of some of the others, like the gang situation, there's been a lot of discussion, a lot of toing and froing around that an a lot of requests from this particular province for a gang unit, so I'm just putting the context.

MR OSBORNE: When you say a lot of requests from this particular province for a gang unit, are you talking about communities within the province?

DR LAWRENCE: It's come both from the communities and then formalised through the Minister and through the cabinet of the Western Cape.

MR OSBORNE: Now what's been the response from National Government as to the proposal or the demand that there be a specialised gang unit?

DR LAWRENCE: The response has been no, in the negative, so that has not gone anywhere and there have been numerous letters that's been raised in the MInmec by the Minister, there's been correspondence even from - the Premier is on record as requesting that as well.

MR OSBORNE: Was any reason given for the negative response to the request?

DR LAWRENCE: One of the reasons given is that the matter is in hand in the Western Cape and that there were adequate resources to deal with the matter and there's no need for specialised units, they were tried previously and they have been proven unsuccessful according to the police and they will not be reconstituted. So that is some of the issues that we've raised elsewhere. So to come back to Khayelitsha, similarly when we were faced with the demands of the Khayelitsha community relating to the issues about the police and the service delivery particularly of the police and then linked to the mob violence or the vigilante killings in Khayelitsha those issues then also had to be addressed and had to then be escalated. So given the nature of that particular complaint and complainant and the attendant attempts to try and resolve that, how did we try? Clearly obviously by asking for the Police Commissioner's response to these complaints and then on an ongoing basis through the one-on-ones with the MEC concerned as well as in correspondence.

Now, Chairperson, none of those helped us in terms of as we've previously we were not able to investigate fully, you also saw that we were not even able to go and visit the police stations, we were stopped from doing that and so the final recourse that the department had then was to look at the option of then having a more formal investigation in terms of the powers vested in the

Premier to have a Commission of Inquiry. That was not obviously taken lightly and even when decisions were made, as we're aware, the decision was challenged legally.

MR OSBORNE: Let me ask you this, recurring again to the question of the gathering of information. We've established that part and parcel of your monitoring and oversight role is to gather information and accurate statistics because without that it's very effective for you to oversee and monitor, is that correct?

DR LAWRENCE: That is correct.

MR OSBORNE: Now my understanding of the narrative as it's unfolded is that prior to 2010 you obtain a certain degree of cooperation not systemically but by virtue of the personal rapport so to speak and the personal cooperation of office holders, is that correct?

DR LAWRENCE: That's correct.

MR OSBORNE: Now post-2010 you've run into serious impediments as illustrated for example by the series of letters we discussed earlier. Does province have in mind any particular way of dealing with the chronic lack of information or the absence of accurate information?

DR LAWRENCE: Chairperson, what Province did in attempt to address some of these issues was to conduct a number of piloting projects which we've done and one way in which we've tried to address the issue of information because, Chairperson, everybody relies on crime statistics and they come out a year late because the police have to collect them for a year to make them annual statistics, then they have to verify them to make sure a murder was a murder and not a suicide, etcetera, and that takes another few months. So something like 18 months after the first part of that particular years under review we get the statistics, then they've got to be analysed and often they come in the format that is desirable.

Now Chairperson, most people are dependent, police included of determining their strategies and their programmes and projects and what they're going to do with their funding, personnel, etcetera, based on those statistics and that's not really a good idea if it's so late. So we too are basing what happens and, you know, every year when the statistics comes out everybody says oh, it's rising or its falling as if happened yesterday but it happened a year ago and we don't know what has happened in the interim. So our argument is that we need real-time statistics to know what is happening right now.

MR OSBORNE: Would the lag you describe also apply to the spate of vigilante killings?

DR LAWRENCE: Sorry, I didn't hear that.

MR OSBORNE: Would the lag which you describe also apply to

the spate of vigilante killings?

DR LAWRENCE: Absolutely because they are murders. WE don't know what is actually happening obviously in communities unless there some form of mechanism of reporting. Yes, we have CPFs and if they're functional then clearly mechanisms can be put in place and I'll come to that in a moment. We read it in the newspapers so often first information we get is from the newspapers about these events.

So, Chairperson, what we are trying to look at is how do we get real-time information and we are cautious not to call it statistics because that's the prerogative of the police and so what we've done is we've set up this EPP programme, the Expended Partnership Programme with the CPFs, I think you've heard about that, I don't know how much more the Commission needs to know or wants to know but I want say very – just make one point about the CPFs and the EPP programme and the comment about impimpis and that sort of thing. Chairperson, the National Development Plan clearly states that we need to involve communities in accountable, effective and efficient way and that's partly what we're trying to do as well to make sure that we can build up the CPFs and part of building up the CPFs is an accountability framework. So as has been explained yesterday, the funding model or the benefit model is such that there's benefit if there's a meeting with the Police Commander, there's benefit if there's been a public meeting, there's benefit if there's been a visit to the police station.

MR OSBORNE: So the level of funding, if I may interrupt you, for any particular CPF is linked directly to its performance as established under certain benchmarks. Is that the model?

DR LAWRENCE: Under the Police Act, Chapter 18 of the Police Act, that's under the Police Act when we use those standards to then assist the CPFs both to become good in terms of governance and also in terms of their oversight role.

MR OSBORNE: Doctor, do you fund Community Police Fora?

DR LAWRENCE: Yes we do, we fund Community Police For a through the EPP programme.

MR OSBORNE: And pursuant to what legislation is that funding provided?

DR LAWRENCE: We do that in terms of our interpretation of the oversight legislation in terms of trying to improve community and police relationships and in terms of trying to look at our agenda of increasing safety, there's no obligation for us by law to do so. So we then gather information from the CPFs and that gives us an idea of what the safety situation is in that particular area. Similarly, Chairperson, where we also gather information is that we have set up what we call an integrated information centre

within the department and the idea is that we will be able to obtain all kinds of information and be able to process that for our own use as well as for others who need that kind of information.

MR OSBORNE: What's the legislative or statutory or regulatory framework for your integrated information system?

DR LAWRENCE: That we will do under the Community Safety Act. So Chairperson, as I said, we've been doing a lot of these as a pilot but it will be enabled as a mandatory when our Community Safety Act is rolled out in its totality.

MR OSBORNE: Now will you share this information with SAPS and with anyone who is interested?

DR LAWRENCE: Absolutely.

MR OSBORNE: Let me take you back to what you said a little earlier, the nature of – or the inadequacies of the present modalities of collecting and distributing statistics. For that purpose would you look at a document that's called the Shadow Report on Safety Information. This is, as usual, bundle 2(3), Shadow Report – I'm sorry, file 1, Shadow Report it's called and it's item 15. It's a PDF document Western Cape. The full name of the document is Shadow Report on Safety Information. Now who compiled this report?

DR LAWRENCE: The Department of Community Safety.

MR OSBORNE: Let me take you – I'm sorry, when the term Shadow Report is being used what does this report shadow?

DR LAWRENCE: Chairperson, there are – as I said, there are the annual statistics and this is an attempt to try and provide alternative sources of information, not statistics, information, to help build a bigger picture so that we are not reliant on just one source of statistical information or other information as we try to build a picture not just of crime in an area but of safety, many issues relating to safety and crime don't get reported and don't have to be reported and so part of this is to try and build up alternative sources of gathering information and this one – this publication on the Shadow Report was about murders in the Western Cape and we gather that in information from mortuary data, which is reliable. Obviously when a person that is undisputed so it means that we are able to gather that information, so that's quite accurate.

What it does allow us to then to is to then compare with the final stats that come out from the South African Police Service and to see the reliability and the value of having this real-time compared to waiting for the annual stats, the statistics to come out. I say again it's not the official statistics, it is in fact information gathering.

MR OSBORNE: Speaking of the time lag then, which you've just referred to let me take to you to the bottom of page 3 of this

Shadow Report and you identify there in writing precisely what you've just testified about, the sentence at the bottom of page 3 that runs over onto 4:

“The first is the considerable delay in the release of crime statistics by the National Minister within times lines which are not aligned to the rigid budgetary processes within government. This means that government's response to any migration of or increasing crime patterns is delayed by at least two years.”

And then there's a second reason which I'll skip over for now. Now we've already heard quite a lot about Community Police Fora. Could I ask you briefly to tell the Commission about your understanding of the state of Community Police Fora in Khayelitsha in particular, the three fora attached to the three stations. Do you have knowledge of that?

DR LAWRENCE: Yes Chairperson, what happened with the – there are three police fora in Khayelitsha. We did a – in 2010 we did a survey from the department which looked at the functionality of all our CPFs or the Community Police Fora, and in that functionality survey we looked at the relationship between the CPF and the police, the CPF and DOCS as well and also looked at the functionality in terms of do they have a – are they working under the constitution, have they had elections, do they have meetings, etcetera, and then we drafted a report in that regard, so we have that as a report and the three Khayelitsha – I'll need to check on the detail of that, are there as well.

Then when we moved to the EPP programme we then decided that we would take 32 CPFs as a pilot and then we took Lingulethu West as one of those as well.

MR OSBORNE: Why did you choose Lingulethu West in particular?

DR LAWRENCE: Because they were functional.

MR OSBORNE: I see, so Lingulethu West even before this was functional and how do you characterise the other two?

DR LAWRENCE: I would need to relook at that, Sir.

MR OSBORNE: Let me take you to schooling. At least one of the parties, I understand, is going to attempt to persuade the Commission that there was at one time a programme called the Bambanani Programme which provided for at least a measure of security *inter alia* in schools on the basis of a system of volunteers, is that correct? Was there once sense a regime in the province?

DR LAWRENCE: Chairperson, there was a number of volunteers which the department had over the years and developed and those were called Bambanani volunteers, it was a name given to them,

they were volunteers and they received a stipend from the department and they had various functions including being school volunteers.

MR OSBORNE: Now is the Bambanani Programme still in existence to ask the question in so many terms, in so many words, I'm sorry

DR LAWRENCE: Yes, yes.

MR OSBORNE: In what form does that exist?

DR LAWRENCE: It exists in the form of the school volunteers predominantly that we have with a number of schools within the Western Cape including Khayelitsha, we have something like 70 of them in 20 schools in Khayelitsha.

MR OSBORNE: Why was the Bambanani programme reconfigured?

DR LAWRENCE: Chairperson, it's an interesting programme and it's mentioned in the National Development Plan around safety and security as a good example and they mention the patrollers and the volunteers in the Western Cape, Gauteng and Kwa-Zulu Natal. Chairperson, we've evolved from that and we've evolved from that for two reasons. The one is that at the time when I came into the department there were some serious issues relating to governance, that year we actually had two audits, the regularity audit as well as a special audit ordered by SCOPA. We went through and part of some of the problems were relating to how we managed are outsourcing an particularly in terms of the Bambanani volunteers. Subsequent to that, after two other audits on the Bambanani volunteers we had to do something about that.

Now part of that because there was double-dipping, there was fraud, they didn't pitch up or said they were there, they signed the registers irregularly and all that sort of thing.

MR OSBORNE: What does double-dipping mean?

DR LAWRENCE: Double-dipping means that we had what was called the Bambanani volunteers in the schools, we had a safety programme to look for missing children and what happened was that the idea of the EPWP from national was that this was an opportunity for communities to do some work and then be provided with some limited funding in the form of a stipend but that was supposed to be only for two years so that there could be constant turnover of other members of the community and some of these people did the double-dipping. So we had great problems in the supervision of all of that, so that was the one issue that we were facing. And then also the Bambanani were on the trains when the South African Railways took their policemen off the trains, we then put Bambanani on the trains. When they came back we put the Bambanani on the platforms. When the South African Police came onto the platforms we put the Bambanani in the parking lots.

MR OSBORNE: Now, Doctor, could I interrupt you for a moment? I want to focus briefly and then move on to the Bambanani programme as it operated in the schools and more particularly how the equivalent of the Bambanani programme remains alive in the schools. Now you've described that para 110 and following in your affidavit.

DR LAWRENCE: That's correct.

MR OSBORNE: I don't want to focus on that, if I may, I'd want to focus on two particular documents that I think capture rather well the current regime and those documents are as follows. They are both in bundle 2.3. The one document is file 10, item 19, the next is item 20 in that same file. So it's bundle 2(3) file 10, 19 and file 10, 20. Do you have those two documents?

DR LAWRENCE: I have them.

MR OSBORNE: There a Memorandum of Understanding which is item 19, could you tell us very briefly what this is all about? We see that it's between – it's an intra-governmental understanding, the Department of Community Safety of the province and the Provincial Department of Education. What is this up to in a word or a paragraph?

DR LAWRENCE: It's an interdepartmental not intra-governmental, it's the same government, it's two departments.

MR OSBORNE: Forgive me.

DR LAWRENCE: So it's an interdepartmental document and it's about is that DOCS has funded over the years the volunteers in the schools or the Bambanani, as they have been called, but we are doing that in another department of government, of the Provincial Government. So we then enter into this Memorandum of Understanding that we will provide the following into the Education Department School Safety Programme. The school safety programme of the Department of Education is obviously quite a large programme because they have to deal with school safety from fences to cameras to all kinds of things.

We, from the Department of Community Safety then have an understanding with that we will provide volunteers which we will then pay for in terms of the stipend from EPWP at schools that we agree with together. In other words, we don't put them in schools ourselves, the Education department determines the needs. Now there's over 1 600 schools, not all of those schools are in need but clearly more schools are in need that we can comfortably deal with in terms of our budget. So that's that document.

MR OSBORNE: What's the role of the school governing bodies in this regime?

DR LAWRENCE: The school governing bodies, what we again did in terms of trying to say how do we actually have a greater impact in the school situation given that the traditional school volunteers

were often older persons, often female persons and often just needed a job and so the big debate was, was this about job creation for poor communities or was this about trying to protect the school situation? They were not – they had no form of sort of security guard training, they had no form of equipment to manage the situation. So what we then did was to say how can we actually bring this closer to where the action is, as it were, and I mentioned the audit problems of supervision and such, so we decided then that the one way to do it was to make these school governing bodies the accountable institution for the volunteers. So we would pay them but through the school governing bodies.

MR OSBORNE: I see.

DR LAWRENCE: We could then hold them accountable and to be able to ensure that they have – that they come on duty and all of that situation.

MR OSBORNE: So, Dr Lawrence, just to elaborate or illustrate what you've just told us, perhaps we could take the Commission to page 3 of the Memorandum of Understanding and at para 3.4 provides for the funding and the manner in which that funding will be rendered accountable. Is that how you understand the programme operates in practice as of now?

DR LAWRENCE: This is how we are rolling the programme out, yes.

MR OSBORNE: Are any of these programmes already rolled out in Khayelitsha?

DR LAWRENCE: In terms of school safety?

MR OSBORNE: Yes.

DR LAWRENCE: Yes.

MR OSBORNE: How many?

DR LAWRENCE: We have 70 school volunteers in 20 schools.

MR OSBORNE: And since when has this programme been rolled out? When was it initiated?

DR LAWRENCE: It was initiated before I came to the department.

MR OSBORNE: Would you characterise as a success?

DR LAWRENCE: Sorry, are you talking about the school volunteers with the governing bodies or the original ones where they were just at the school?

MR OSBORNE: No, this new regime in terms of the documents we've just looked at. Well, let me ask you the question differently, are you in a position right now to evaluate whether this programme is a success or not?

DR LAWRENCE: No, we can't evaluate whether it's a success or not, whether it's better than the one before, that's what we are trying to do, yes.

MR OSBORNE: Now to take you back to the issue of mob justice

in – mob justice as it's euphemistically called in Harare. I want to point you to the Easter Weekend Initiative which was in fact cited by Mr Loonat yesterday, it was Mr Loonat who cited it as a success. I thought it would be useful to take the Commission to a DOCS item or document which provides for a report on that so-called Easter Weekend Initiative and it's a document to be found in bundle 2(3) file 13, item 8, and the name is Patrol of Neighbourhood Watch Walkabout. Patrol of Neighbourhood Watch Walkabout.

COMMISSIONER: Mr Osborne, we've only got up to seven items in file 13, are you sure that's the correct reference?

MR OSBORNE: One moment, if I may?

COMMISSIONER: Ja.

MR OSBORNE: Alright, forgive me, we'll get back to that. Bundle 4 – sorry, it's bundle (3) of which in file 3 there's only two documents, one is called DOCS Index and the second is Joseph Report.

COMMISSIONER: So ...

MR OSBORNE: Does the Commission have that?

COMMISSIONER: No, so I'm just looking at it. What did you say it was in file 4? Let's get again.

MR OSBORNE: File 4(3) and there's only two documents in that (3).

COMMISSIONER: Bundle 4 file 3 docs. Yes, and it's the second one, Joseph...

MR OSBORNE: Joseph Report, that's right. Joseph is the person who compiled the report. Now there's a report then of the walk-about which as a witness has already testified was a success within its parameters. There were problems, however, and I think that the witness may have alluded to this. What were the problems encountered during that Easter Weekend walkabout as you understand it, Dr Lawrence?

DR LAWRENCE: Are you referring to the problems in terms of the community, the reason for the – or the actual walkabout?

MR OSBORNE: No, not so much the reason as the problems encountered in the course of the walkabout.

DR LAWRENCE: Yes, Chairperson, I think the walkabout was successful initially and as we go through the weekend there's a report on the weekend but when we come to the 8 April, it started on the 5 April and then went through and by the time it came to the 8 April it says:

“Patrols did not proceed due to the unavailability of policing resources.”

MR OSBORNE: And this, if I may interrupt you, Doctor, is the last page of this three page report, paragraph 3.4.

“Patrols did not proceed due to the unavailability”

Etcetera and then a similar note is struck at para 5 of that same page the of Neighbourhood Watch had a problem during the joint patrol because it says SAPS did not accompany them during those particular patrols. Do you see that?

DR LAWRENCE: I see that.

MR OSBORNE: Now is that characteristic of the patterns as you've seen them emerge in Khayelitsha?

DR LAWRENCE: This was a particular event, it wasn't the normal because this had arisen out of the needs in the community and they felt they wanted to patrol the whole of the weekend and other witnesses have testified in terms of the impact that it had but if one looks at the actual way in which this happens, it is dependent on the police marching with the volunteers and if the police are not there, for whatever reasons, then obviously it then doesn't happen, so it's dependent on the police and dependent on police resourcing.

MR OSBORNE: Were there people on the ground from DOCS in the course of this patrol?

DR LAWRENCE: Yes.

MR OSBORNE: And you'll see their names set out in the middle of page 2, item 3.2, the individuals were Bernard Joseph, the author of the report and three others.

Let me close, Doctor, by asking you a question that's been put to many of the witnesses before this Commission. Well, let me preface the question in this manner, how long have you held your post as HOD of DOCS? How many years?

DR LAWRENCE: Since September 2007.

MR OSBORNE: Do you think you're in a position to assess the items that are the remit of this Commission whether the police functioned efficiently in Khayelitsha firstly and secondly, whether there may be said to be a breakdown in relations between the community and the SAPS. Are you in a position to provide an assessment?

DR LAWRENCE: Chairperson, it's a difficult question and I think – however, I think it's a necessary question that we have to find an answer for. I think, as I've explained over the years, the years, the relationship has not gone very well in terms of DOCS and the police in terms of being able to do our oversight role and I think the complaints that we've received from the community we've not been able to fully investigate and determine whether in fact there is an opportunity to make that kind of diagnosis and so I really think that is the reason for this Commission of Inquiry, I think we've gone down this road, we've tried to investigate, we've tried to ask for comments from the Police Commissioner and I think as a department when we look at what's happened in the province, yes, we've not been successful in getting a gang unit and yet the

gangs run rampage, we've had a dreadful situation with the vigilante killings. All of those are indicators that there is something seriously happening and when we look at Khayelitsha with what has happened with vigilantism as I've said earlier, which really, if the community is taking the law into their own hands then that indicates that we're heading for something very dangerous.

MR OSBORNE: Do you blame the South African Police Service for the situation in Khayelitsha?

DR LAWRENCE: No, I don't the South African Police Service for the situation in Khayelitsha, we're talking about the total situation, but I think that part of my assessment and why we have looked at the Community Safety Act, is saying that, I believe, that the police are hamstrung by a one size fits all approach to solutions and that in fact what we need is an opportunity to say that for different provinces, as we said, or for different regions in provinces. So yes, there are no streets, there are no – there's inadequate street lighting. In one of the reports as you saw for the summit people were asking that the police should patrol more at night when crime happens and I think that's part of the problem that the police are facing.

MR OSBORNE: I think one of the previous witnesses responded to – or provided an interesting analysis, the question was raised, as I recall it, would is the existence of outside toilets which people have no choice but to use in the dark of night, is that a fundamental cause of crime in Khayelitsha to – not to use the precise language – and her response, as I recall is, yes indeed, the objective infrastructural reality of outside toilets is a fundamental problem, however the job of the police is to allocate their resources and tailor their response in a way that accommodates the situation on the ground in Khayelitsha. Would you say that's a fair assessment?

DR LAWRENCE: Chairperson, it's a fair assessment. In our S05 we have five principles, one of the principles deals with opportunities and part of – and that's why we've not called an SO5 increasing or decreasing crime, we've called it increasing safety and one of the principles raised there is opportunities, we have to decrease opportunities for crime and we have to increase opportunities for safety. Now if you've got outside toilets, that's increasing opportunities for crime. Now that puts a challenge to those who should be dealing with toilets, yes, but it also means that the police have to police that because that's the *de facto* situation.

Now we then have to address that together.

MR OSBORNE: Okay, thank you very much for your testimony, Dr Lawrence.

NO FURTHER QUESTIONS BY MR OSBORNE

COMMISSIONER: Thank you, Mr Osborne.

CROSS-EXAMINATION BY MR HATHORN: Thank you, Commissioners. We have a document we would like to circulate, it's an extract from the 2012/2013 DOCS report on the identification of policing needs and priorities. It's not the complete document but it contains the summary and one or two of the recommendations. It's at bundle 2 under the DOCS documents, file 5 and it's item 51.

COMMISSIONER: File 5, item 51, thank you.

MR HATHORN: Dr Lawrence, before we get to the document you - I just want to deal with the statement that you make in your affidavit that each of the three levels of government could have done more to combat crime in Khayelitsha and I'd invite you to elaborate on that statement and I'd like you to bring with the level of government which you would be most familiar with and that's the Provincial Government.

DR LAWRENCE: Chairperson, when I say that we could do more I'm looking at that from a perspective that goes into the future because I think what we are trying to do in DOCS is to say what do we want into the future and just to try and patch up what we have at the moment is inadequate and that's why we decided to go for a Community Safety Act so that we can for the first time try and sort out what are roles and responsibilities because without that it's just pie in the sky of trying to decide more programmes more volunteers, more this. So firstly, that's where it comes in, the Community Safety Act.

But then at another level, if we take the National Development Plan and we look at the National Development Plan which talks about demilitarising the police, it talks about enhancing the police, professionalizing the police service. Those are key, I believe, parts of how we can do better into the future and then it talks about and integrated community response and it talks about partnerships within communities and talks about CPFs and so on. And so if we just take that Integrated Development Plan, those five key points around increasing safety I believe that is something that is the three spheres of government we can work together towards and I think if we have that as where we're moving towards then the way we do business on let's say year to year, if it slots in with that I believe that is how we can actually do more.

So that is my overarching strategy around what I believe we can do more together.

MR HATHORN: And the other two levels of government in what respects could they have done more?

DR LAWRENCE: I'm including all three levels of government.

MR HATHORN: Yes.

DR LAWRENCE: Because remember, CPFs and communities are at let's say local levels government, the province in terms of its oversight role, in terms of how do we help to professionalize the police in terms of that, how do we help to look at the questions of partnership with communities rolling out the EPP and all of that sort of thing and then certainly from National Government with a budget of – there's a budget of about R90 billion rands from National in terms of the justice cluster, Police, Corrections, National Prosecuting Authorities, so the greatest budget for making a difference in the country is there. When you look at budgets, you know, as you go into the provinces and if look at budgets as it goes to the municipalities, they go down. So the budgeting side that really – obviously policing is a national competency as well so the budget also comes from National.

MR HATHORN: I'd like to move on to the document that has been placed before you, it's obviously not the complete document as stated and I presume it is a document that is familiar to you, you wrote the forward which is not in front of us at the moment but I assume you played a part in the compilation of this summary or the policing needs and priorities?

DR LAWRENCE: Yes.

MR HATHORN: And this is the 2012/2013 report. As I understand it this is the current document highlighting the present priorities, there's no more recent document available.

DR LAWRENCE: No.

MR HATHORN: It appears to be the product of a careful and fairly rigorous process, could you just explain to the Commission the process that is gone through in order to identify these needs and priorities?

DR LAWRENCE: Chairperson, what we do is there are 25 police precincts in the province and what we did to compile that document was to have a meeting in each of the precincts which is then a collection of police stations within the cluster. So 25 of those meetings were held across the province in every cluster. The meeting is conducted in a formal way, the persons who attend sit in the format that we have here today. Up front on the table would be the Minister or myself and all the CPF chairpersons of the cluster. In the rest of the hall would be SAPS, the CPF members, of Neighbourhood Watch members, members of the justice cluster and other NGOs invited to the meeting. The meeting is fully recorded, in other words with audiovisual and the process is that the Minister will make an input to set the understanding of what the meeting is about and then there are different presentations, presentation on what we understand by S05, Strategic Objective 5, and then there are reports on each of the police stations in the cluster by the – earlier we spoke about

inspections of police stations and so we do an inspection report. Then the police – the relevant police person would also make an input in terms of the crime situation in the particular cluster area. I forgot to say at the beginning the CPF Chairpersons would also have a word and the idea is that this is not an attempt to be top down from DOCS but to try and bring ownership to the process to the CPF chairpersons and everybody else in the hall.

Then there's an opportunity for the people in the hall to then raise their concerns or issues, questions and such and those questions are then usually responded to by DOCS or by the relevant person be it the PC or even the particular CPF chairperson. All of this is recorded and then forms the report of that particular cluster and all 25 then are compiled into the report.

MR HATHORN: And I understand it that the purpose of this report, this official departmental identification of needs and priorities in the province is to inform the national policymaking functions around policing, is that correct?

DR LAWRENCE: That's correct.

MR HATHORN: And the ultimate purpose is to ensure that the allocation of resources to policing is done in a way that enables the SAPS to deal effectively with crime, is that correct?

DR LAWRENCE: Yes, that's correct.

MR HATHORN: Now can we turn to the executive summary and on the second page of the document in front of you ...(intervention)

DR LAWRENCE: No, I don't have it in front of me.

MR HATHORN: Sorry, can I just ask that one of...?

DR LAWRENCE: Thank you, Adv Arendse.

DR LAWRENCE: I have it.

MR HATHORN: Dr Lawrence, can you just read into the record the fourth paragraph in the executive summary which identifies the main priorities for the province?

DR LAWRENCE: Is that the paragraph starting "The following socioeconomic..."

MR HATHORN: That is correct.

DR LAWRENCE: "The following socioeconomic infrastructure on service delivery challenges emerged as policing needs and priorities of the Western Cape substance abuse, poverty and unemployment, illiteracy and youth boredom, gangsterism, need for money, demand for stolen goods, withdrawal of court cases, police corruption, light sentences of criminals, easy access to illegal firearms, open spaces and bush areas, lack of recreational facilities, shebeens, taverns and drug outlets, negligence and ignorance of community members, domestic violence, shortage of manpower,

vehicles and dilapidated police station buildings.”

MR HATHORN: It's correct that what you refer to here in your affidavit as the especially severe crisis of policing in Khayelitsha doesn't appear amongst one of the priorities or needs that is highlighted in the summary.

DR LAWRENCE: No.

MR HATHORN: Can you explain what the reason is for that?

DR LAWRENCE: Sorry?

MR HATHORN: Can you explain why that is the case?

DR LAWRENCE: Why it is the case is because obviously this is what has come up in the meeting so we cannot orchestrate the meeting, this is what people feel are dominating the issues that they raise. When we go to the Khayelitsha again, again it's in a cluster with other police stations as well, it may come up as a concern but then all the other concerns have to come to the fore as well.

MR HATHORN: So the method that is followed as I understand it, Doctor, and you must correct me if I'm wrong, is that you take the problems that are identified across the various clusters, the problems that are identified most frequently are then highlighted and those are the problems that you identify as the priorities for the province, is that correct?

DR LAWRENCE: That's correct.

MR HATHORN: So it seems to me that the shortcoming in this method is that the problems that are highlighted in Camps Bay and your counsel drew attention to the extremely favourable police to population ratio that residents in Camps Bay enjoy. The problems identified by the Camps Bay precinct would enjoy substantially the same weight as the problems identified in a precinct like Harare or Khayelitsha which are of a completely different order of magnitude.

DR LAWRENCE: Except that they are reported separately, so there's a summary as you're dealing with but remember each one is reported separately at each precinct, so obviously the difference in a particular area will come through differently as each precinct is reported on.

MR HATHORN: No, I accept that, but what I'm putting to you is the shortcoming in your method is that it takes no account of the severity of the problem that is faced, that you might have a problem in Camps Bay which Camps Bay residents would regard as being a pressing issue but when you compare it with the situation faced in Harare it – as I put it, it's of a completely different order of magnitude and that is – your method that you follow in identifying needs and priorities doesn't take into account the severity or the importance of the needs.

DR LAWRENCE: In other words, you're indicating that we need

weighting mechanism?

MR HATHORN: That is what I'm indicating.

DR LAWRENCE: We note that, also remembering that part of the process – and that's why I laboured in terms of saying what happened was to get community participation, so certainly yes it's something that we would need to build up on.

MR HATHORN: Yes. And so my suggestion to you, Doctor, would be that one takes this process – and it sounds as though it's rigorous process and at the conclusion of that process, rather than just pulling all the information together one evaluates it and applies a further assessment of what are the pressing needs and then takes that into account before one formulated the official Provincial policy document.

DR LAWRENCE: Noted, thank you.

MR HATHORN: Doctor, the question of the police to population ratios was dealt with again in your evidence-in-chief and it strikes me that the question of resource allocation, it comes up if one turns over to the page following the recommendations – sorry, following the summary, the recommendations, if you'll have a look at this, the second to bottom block there's a section on resource allocation where it's stated there's a need to review resource allocation to rural police stations.

DR LAWRENCE: I see it, yes.

MR HATHORN: So there seems to be an awareness on the part of your department about the disparity in resource allocations but what is striking is that there's no identification of the problem between resource allocations and it's been dealt with already between Harare Khayelitsha and other stations like Camps Bay. Again, that hasn't been addressed as a provincial need or a priority as far as I'm aware.

DR LAWRENCE: Not in this process as you're saying that it came up to the top, but certainly we've been as a department dealing with resource allocation, it's even gone to the standing committee and as I've indicated previously, with the Police Commissioner. Our concern about resource allocation is that we've had complaints where people have said they've gone to a police station and there would be limited staff on duty and the comment obviously back from the police is that people go on leave, people are on maternity leave, people are on course and all that sort of thing, and we're asking a further question which is not just what the resource allocation is but what is the actual allocation so that the resource allocation may well be adequate for the day but if you take where people are away then it is inadequate, so it's actually the next step beyond resource allocation but we haven't yet been able to get access to the RAG to actually see the resource allocation to then go the next step

and to say well, that's how many people are supposed to be on duty but if they are ill or sick or on maternity leave, etcetera. So yes, it's not here but we are very definitely from the department's perspective, from the Minister, from where it's been raised elsewhere, including the standing committee, very concerned about resource allocation in the Western Cape.

MR HATHORN: Again I want to come back to the same question is that it seems to me to be a shortcoming in the method that you adopt for identifying provincial needs and priorities is that you can have these enormous disparities in resources allocated between Khayelitsha and Camps Bay but in terms of the method that you have adopted it doesn't identify those as pressing needs or top priorities to be addressed in that provincial policy.

DR LAWRENCE: I think what we've tried to do was to try similar to what we said about the statistics, is to say we need a number of sources of information to draft the priorities as well, so that before this was the only one way and that was to address it through the CPFs. We are gathering information in other ways as well and we could then have to pull of that together before we draft what then would be called the priorities of the Western Cape.

MR HATHORN: Doctor, can I ask you a blunt question, that the disparity in resources and the level of policing between Khayelitsha and Camps Bay is startling and would you agree with that?

DR LAWRENCE: Yes, on...

MR HATHORN: And on the face of it, it would – addressing this disparity should be one of the priorities for policing in the province, would you agree with that?

DR LAWRENCE: Yes.

MR HATHORN: The method that you have adopted for identifying priorities in the province, as it stands at the moment, has failed to identify that as a priority.

DR LAWRENCE: Yes, I think what you're saying is it has not come through the methodology that we are using and the methodology allows people to indicate what they consider the great needs. Now resourcing always comes up and maybe that's part of the problem that because it's always coming up the other things take precedence.

MR HATHORN: Ja. And you've acknowledged already that ... (intervention)

COMMISSIONER: Could I just ask – sorry, could I just interject, I just wondered how widely is this fact known. I mean, I know that we, as a Commission, really struggle to get any information about the resource allocation systems but I did wonder whether the province was actually aware of this differential before the Commission started and is this something that is widely known?

You got it during the period the Commission's been established, there was somewhat of a bru ha ha about it but has this been widely known for many years?

DR LAWRENCE: Chairperson, we've been concerned for many years about the resource allocation but the actual figures we struggled to get and if you remember the time the figures came out and then it was denied as the actual figures and so, so yes, it's not widely known.

COMMISSIONER: These were received in May 2013 according to this document.

DR LAWRENCE: Yes, but I mean it's ...(intervention)

COMMISSIONER: Were you personally aware of them before this date, these actual figures?

DR LAWRENCE: No, not the actual figures.

COMMISSIONER: I think that should inform your questions to some extent, Mr Hathorn.

MR HATHORN: Yes. Dr Lawrence, as far as I can establish though, correspondence between Deputy – between your department and the Deputy Commissioner Japhta was there any reluctance on the Deputy Commissioner's part to provide these population to police ratios?

DR LAWRENCE: We had the problem as – I think you know that there were problems with the veracity of the information, it was turned around and came back again, so we got it in the end and those are the figures that the Minister published, as I were, and said those are the figures and the figures came from SAPS so we can't verify it on the SAPS side we have to accept what they've given us.

MR HATHORN: And the purpose of this Commission is I think that all the parties agree that it's not looking backwards, it's forward looking and it's wanting to redress problems rather than cast blame. Would you agree that in terms of the methods that are adopted going forward for identifying provincial priorities that the disparity in resources should be – it is a pressing need and it is a priority that should be incorporated into the official documents.

DR LAWRENCE: I think it should be incorporated in the official document and I think thinking about it how we do that is important, I think from a community's perspective they see police action rather than police resources, in other words I had a robber and nobody came, not really concerned about how many policemen are at the station, so I think we would need to look carefully at how we illicit that kind of information and how we then write up the report to make sure otherwise what we'll end up with is to say that resourcing is a big issue, you know, never mind vigilantism and gangsterism, people would have a different perspective, so I think

it won't just be a ranking, we'll have to give perhaps categories and in the categories indicate what are the highest issues that are coming forward. So we will go back to the drawing board on that.

MR HATHORN: Dr Lawrence, I'm aware that I'm under quite tight time constraints but there are number of other issues that we would expect to find in your list of provincial priorities and needs which are not there and the first and most obvious one is the question of vigilante violence. Now I, in my reading of this document, was unable to establish that vigilante violence had been identified as need or the need to deal with vigilante violence, had been identified as a need or priority. Can you comment on that?

DR LAWRENCE: Yes, I think part of the problem around that is that it was in one particular area predominantly, that there was a major issue in the Khayelitsha area. We did have, as you're aware, a cluster which was held for the Khayelitsha area and yes, it didn't come up as major issue and remember, this was while it happening. There's a Commission of Inquiry, I don't know if people felt well, the Commission of Inquiry would handle that and therefore it didn't on that side, there could be a number of reasons why it didn't come up on that side. Murder certainly comes up and remember the reporting is done in terms of crime statistics categories, so it could be in a sense hidden under murders or the concern that the public have for murders and not for vigilante killings or those issues, the mob justice.

MR HATHORN: Can you tell us when this report was drafted, Doctor?

DR LAWRENCE: I think at the end of last year.

MR HATHORN: Because we know from the task team report which was part of the court record and I assume that you're familiar with the document ...(intervention)

DR LAWRENCE: Sorry, which task team report is that?

MR HATHORN: It was the task team that was set up by SAPS nationally to – under the leadership of the Late Lt General Tshabalala to investigate the ...(intervention)

DR LAWRENCE: No, I've not seen it.

MR HATHORN: I'm not going to take you through it but I'll just read a brief extract to you and it has a slightly unsavoury heading "Bundu Courts" and it says here that:

"The cluster commander's office at Khayelitsha has made a study of cases that can be considered "Bundu court executions"

And it says:

"For the period April 2011 to June 2012 78 incidents were reported at the three police stations in the Khayelitsha area for which murder dockets have been

opened and are being investigated.”

So it seems that well before the point at which this report of yours was drafted there was a very substantial problem in Khayelitsha of vigilante killings and it's a concern to us and to the Commission as well, I would imagine, that the monitoring processes established by your department appeared to have failed to identify this.

DR LAWRENCE: We don't have a monitoring programme to identify those, the priorities meeting is obviously open to those members who come there to indicate what they considered to be their crime situations. Now clearly we can prompt them and all that sort of thing but again, as I said earlier, we don't have the complete statistics of how many murders there were, now clearly 70, 70, five is five too many already so I take the point that obviously if there's a trend that's happening then that should be reported on.

MR HATHORN: Ja. Doctor, in terms of Section 206(3) of the constitution it says:

“Each province is entitled:

(a) to monitor police conduct.”

So that's certainly a monitoring function. And:

“(b) to oversee the effectiveness and efficiency of the police service including receiving reports on the police service.”

So it certainly whether or not you've got a monitoring function within the department it should be – it's part of the constitutional functions that your department should be performing as monitoring these sorts of situations.

DR LAWRENCE: Correctly, that is why we're having put forward the Community Safety Act because we have not been able to do that as effectively as we should be.

MR HATHORN: I accept that your department has been hamstrung to a considerable extent in its ability to perform its monitoring functions but there were still avenues open to you and which you've spoken about at some length in the course of your evidence-in-chief to – and you've been able to work around that but it seems to me that there were shortcomings in those monitoring functions, if you were not able to identify a problem of this magnitude.

DR LAWRENCE: I think a bit unfair to say that if you're saying it all boils down to the P & Ps then yes, partly I agree with you. If you say that as a department we've not been able to deal with that issue of this magnitude not true, we're sitting here today because of what the department did in terms of what was happening in Khayelitsha, we have a Commission of Inquiry, that in fact is the – it's the highest remedy that we can put forward and we've gone

that route. So unfair to say that we've not addressed the issue and not recognised it as being a very serious problem both for the province as well as for Khayelitsha and that's what we've done. If you – ja.

MR HATHORN: No, we accept that and we accept that your department and the Premier have taken the complaints which have been raised by our clients for many years and for many years our clients felt that they were banging their heads against a brick wall, no one was taking them seriously until the appointment of this Commission. I want to put it to you, though, that there was still prior to the appointment of this Commission that if your monitoring functions had been exercised effectively you should have picked up the problem.

DR LAWRENCE: Sorry? A question?

MR HATHORN: I'm putting it to you you should have picked up the problem earlier before the complaint was laid in November 2011 if you had been monitoring effectively.

DR LAWRENCE: We were not able to monitor effectively and I think perhaps you could explain, you know, how you presumed we would have been able to do that. We were trying and we do it on the basis of complaints and then we do it on the basis of investigations so that we can investigate police stations, we can check registers and all that type of thing. If we're not able to that efficiently and effectively then we're not going to be able to pick up what is actually going on in communities timeously, we'll pick it up late.

MR HATHORN: Doctor, I don't – I've got limited and I don't want to intrude on what is effectively a turf war between provincial and national government over policing powers, I don't think we've got time to get into that debate at present. Thank you, Commissioners, I've got no further questions.

NO FURTHER QUESTIONS BY MR HATHORN

COMMISSIONER: Thanks, Mr Hathorn, Mr Arendse?

CROSS-EXAMINATION BY MR ARENDSE: Thank you. Dr Lawrence, in fact what prompted or what gave rise to this Commission of Inquiry were the complaints from the SJC that they forwarded to you in November 2011. On your own you did not take up this issue and decide to act in terms of 206(5) of the constitution by either instituting an investigation or by establishing a Commission which you were able to do on your own, is that not the case?

DR LAWRENCE: Sorry, I didn't hear the question?

MR ARENDSE: I put it to you that what prompted this Commission of Inquiry and what prompted you and your department and your MEC and the Premier to establish this Commission of Inquiry was SJC complaints of November 2011, it

was not you or your department or the MEC, you obviously took it through a process because the Premier had to actually proclaim and establish the Commission of an Inquiry in terms of the constitution?.

DR LAWRENCE: Yes, what happened was that there was a complaint from the SJC and the evolution of that complaint resulted in the Commission of Inquiry.

MR ARENDSE: So at no stage prior to November 2011 – and we're not going to find it in any of your documents that you've placed before the Commission – do you actually invoke or refer to 206(5) by saying the situation in Khayelitsha is so dire, so desperate, so unacceptable that a Commission of Inquiry must be established or you yourself must investigate the matter in terms of 206(5).

DR LAWRENCE: No.

MR ARENDSE: Is that correct?

DR LAWRENCE: That's correct.

MR ARENDSE: Because you have those powers on your own, *mero moto* as they say in a bit of Latin, you can invoke that and the same question would have arisen in 206(5), if you had to institute an investigation and the investigation required the police, their attendance or for them to hand over documents, I don't know, but the matter may or may not have also gone to court on the same basis that the establishment of the Commission went to court, i.e. you cannot subpoena the police. It may have been the same thing but at least it would have been initiated by you and your department but that's not what you did, is that right?

DR LAWRENCE: There was a lot of correspondence and attempts to try and resolve the issue and to find out what was going on and requests made to the police and to the PC, both formally in letters and in meetings. So no, there was no pre-investigation before a Commission of Inquiry but there was a lot of pre-work being done in attempt to see if the matter could be resolved. Now part of an investigation would start with giving the other party the opportunity to respond. In other words, we have the complaint, we have allegations, we ask the police to respond, that's the other party in the situation. Depending on that response we determine what further steps need to be taken. Now those kinds of engagements were held with the police, were held in terms of correspondence, were escalated and together with some of the difficulties that we were having as a department in terms of minor complaints and other investigations, the response was then consistent with what had happened before. Now yes, in a normal situation perhaps your comment about an investigation would have preceded the possibility of a Commission of Inquiry but I think given the history of the engagements and the lack of

responses or timeous responses and as has been led today, that's what resulted and further, it was not as if it was a rapid decision to have a Commission of Inquiry, there were lots of attempts and I hear – not here, I have heard but I've not seen the Tshabalala report as well. So there were responses from the National Minister and the National PC request to the Premier not to have a Commission of Inquiry while other investigations were being done by the National Police. So – ja, that would be my response.

MR ARENDSE: Ja, I don't want to dwell on it because thankfully we do have a Commission of Inquiry but it's a theme that your counsel raised, so I just want to touch on it and just leave it there. That yes, there are parties and we're one of them that feel that DOCS has opportunistically climbed onto the band wagon in this Commission of Inquiry because you had the power in terms of the constitution to do something about this situation in Khayelitsha and you did nothing about it until this Commission of Inquiry - until the complaint was raised with you in November and was then subsequently pursued by the NGO's and by the SJC. You obviously took it up and we don't want to debate the reasons why you did but on your own you never did so, you didn't feel the need to do so because your own priorities and needs that Mr Hathorn has gone through and I'll you through some of them, they don't indicate the kind of crisis that exists here in Khayelitsha. Is that not the case?

DR LAWRENCE: I have responded and I want to just add, that if you look at the crises of what happened with the complaint and how it was handled, yes at the end there was a commission of enquiry.

MR ARENDSE: Dr Lawrence I am going to just leave off on it, but let me just say the last thing on this, you surprise me when you say you did not hear, or if I heard you wrong please correct me, you didn't see the Tshabalala report before?

MR LAWRENCE: I did not see the Tshabalala report.

MR ARENDSE: Never seen it?

MR LAWRENCE: Never.

MR ARENDSE: I'm surprised, you deposed to an affidavit in the court case. Anyway if you look at your PNP's and you can correct me and you and your counsel can take the commission to the PNP's for 2011/2012, 2012/2013.

MR OSBORNE: May I just interject with an objection, Dr Lawrence did not depose to an affidavit in either the High Court or the Constitutional Court.

COMMISSIONER: Thank you for the correction. Mr Arendse would you like to proceed?

MR ARENDSE: Thank you for the correction, I would have expected the witness to say that I don't recall deposing to an

affidavit, so you didn't Dr Lawrence so you in the clear, but I'm still surprised that as the HOD of the Department that this document that has become such a focal point of the court case in the Constitutional court, in the Commission of Enquiry and has given a lot of people a lot of grist for the mill and to chew on it, because there's a lot of bad things that's said there about us, the police, that you've not engaged with this document.

DR LAWRENCE: I have not seen it.

MR ARENDSE: Now just to go back to the PNP's, if you look at the 2011/2012, if you look at the 2012/2013 nowhere do you raise the issue of vigilantism, nowhere do you raise the issue of police inefficiency, nowhere do you say that there is a breakdown in relations between the police and the community, nowhere do you raise the issue of rape of women, gender violence, there's reference to Devias, very obliquely, in fact you give some and we're going to go through that, you give some, you give the police stations quite high marks for dealing with that, but you don't deal with it all. Is the reason the same that you gave to Mr Hathorn that because you only engaged ...(intervention).

COMMISSIONER: Mr Arendse it will be surprising if the reason were different, its only five minutes since he was asked the question. I mean I – if there's some different aspect of it you wish to explore I think that's fair enough, but we are very short of time, and there were pertinently put by Mr Hathorn.

MR ARENDSE: Sorry I missed it.

COMMISSIONER: The question of why these issues were not contained in the PNP reports, either of 2011/12 or 12/13 were pertinently probed by Mr Hathorn as to why they weren't. I think the witness answered them then. If there are different aspects of that you want to cover, but it doesn't seem to me that there is much purpose to be served by asking the same question of the same witness five minutes later.

MR ARENDSE: No, because I'm not satisfied with the answer, that's why I'm asking him.

COMMISSIONER: Perhaps you could ...(intervention).

MR ARENDSE: So I am first putting to him what he told Mr Hathorn and then I will put to him what I want to put to him.

COMMISSIONER: Well move on then.

MR ARENDSE: You say it's because you only engaged with the cluster and with the CPF's, and that you really get information from them and that is what you base your PNP's on, is that what I understood you to say?

DR LAWRENCE: That's correct, the PNP process is I've indicated, it gives an opportunity for the community and the CPF to raise their concerns about what they considered to be the causes of crime in their area.

MR ARENDSE: Now this is what you say in the document, because it is not confined to the CPF's, this is what you say in your own document:

“Policing needs and priorities report is a culmination of a broad consultative process and provides an overview of the policing needs and priorities of the Western Cape. Secondary data and safety information obtained through the performance of the Department's oversight functions formed the basis of this report. A photo voice technique coupled with focus group discussion with selected group of people complemented the secondary data. In addition telephonic interviews with CPF chairpersons were conducted in areas where there was limited or no civilian oversight data and safety information available. Bulk sms and sms short codes were also used to facilitate communication between the department and the CPF's. The CPF's through the sms short code sent safety information directly to the department.”

So it was a process that was beyond just CPF's.

DR LAWRENCE: Yes, I did say that, I said in terms of everybody who was there and I also reported that the department will report on their pre-station visits, they will report on the information that they have gathered. It all comes to the one meeting so there's a lot of information in that meeting. I did say not just the CPF's are there, we've got neighbourhood watches, we've got the justice cluster, we have other NGO's in the meeting as well.

MR ARENDSE: So is it your evidence that none of these NGO's or any one of the entities attending this meeting raised the issue of vigilante killings or any other issues that have arisen so far in the Commission of Enquiry, that you don't identify in your PNP's.

DR LAWRENCE: I'm not saying that they don't raise it because I think I've answered previously that obviously people raise a number of issues in the meetings and then there's a summary made of the meeting, so it may well have been raised but it hasn't risen to the top in the meetings correctly, you're right there.

MR ARENDSE: So I'm trying to understand here that we have a Commission of Enquiry, which mainly arose because in early March and July 2012 the premier attaches several newspaper reports which indicates that there's an unacceptably high level of vigilante killings. Why would you have had to do that when it is your department that is statutorily enjoying to play this role, to pick up these things, to monitor and to pick it up and report to the Premier or to the provincial cabinet that there is an issue?

DR LAWRENCE: The simplest way of getting that information would be to ask the police is this true, are there vigilante killings,

can you give us the number, and we don't get that information. I said earlier too we get it from the newspapers.

MR ARENDSE: She never asked the police, she sent through a list of vigilante killings that were in the – you need the newspapers Dr Lawrence?

DR LAWRENCE: Chairperson the minister had asked the PC in the meetings about the vigilante killings, about the mob justice, we ask every week for a report on what the crime situation is, we don't get very much answer, we get told that the crime situation has increased or it has decreased.

MR ARENDSE: Now what could be the explanation for DOCS not having received complaints from members of the community, from the residents of Khayelitsha that have come forward in numbers to this Commission of Enquiry? Let me suggest an answer, that they also don't have any confidence in you or your department, alternatively that they don't trust you or your department, otherwise these complaints would have been coming forward and you would have done something about it.

DR LAWRENCE: Let me respond by saying that previously as I said we received the complaints and allowed to investigate, one of the problems we face now is that when the complaints come through the timeline for response from the PC and therefore back to the client, or sorry, the complainant, is so long, so yes you're right, people lose faith in our ability to go to the police with a complaint, so that is serious, and you're quite right about it, that given the way in which the nodal point is operating we cannot go back quickly enough to people who complain and so they won't come back, you're right. Now what have we done about that, we've done some other things to try and address some of those, for example we've done what we call the issue of going to court with a watching brief, because we've had complaints from people who say that the police, the cases get thrown out of court, and we read about it in the newspapers, like I said, and so we decided to go to a court and sit in the court and to listen to what is going on publicly and then to pick up on that, and as a result of that we've been able to write up a report on what has happened, and we've discovered for example that there are some issues relating to policemen not pitching up at court, forgetting the court date and eventually the case is thrown out of court.

Now we've had some cooperation around that, for example we've been able to send a list recently of 26 cases to the PC, indicating where we believe there was dereliction of duty by policemen. The PC has disciplined 19 of those officers named in that report. Now that is something that we didn't know before, and we didn't do before, but we've done that because there are other areas where we can't get any joy, or any opportunity to do

what we need to do ...(intervention).

MR ARENDSE: Sorry to break you, but that's one of the – you see what I'm trying to understand, and which I hope you can explain to the commission, your evidence seems to be or the golden thread of your evidence seems to be you know we can't do nothing without the police. You can't verify a complaint without checking with the police and we can't do anything about the complaint because we don't have access to the police, we can't go into the police stations, we can't get the docket, that seems to be what you are saying, but that can't be right.

DR LAWRENCE: That's correct.

MR ARENDSE: Because you still have another function which is on – the one of civilian oversight, you can talk to the people, that's what the NGO's do, and that's what they've done, they talk to the residents who are directly affected by crime and they get a sense and then they pick it up and they run with it, and they lodge a complaint. Now similarly you've answered the question I was going to pose to you is that why can't you get one of your officials to sit in a court, and to monitor the judicial process, and to see so many dockets have been called up today in this court, of the 20 or 30 or whatever there's been ten or twelve withdrawals. Now that's unacceptably high, and you make a note of it, or you ask the prosecutor – you don't have to ask the police, the police hand the docket over to the prosecutor.

Now you say you've recently adopted that approach and it seems to have paid some dividends.

DR LAWRENCE: Chairperson the words civilian oversight over the police means exactly that, civilian oversight over the police, not over the community. Our responsibility is to ensure that the police are doing what they should be doing effectively and efficiently. To do that we need to gather information for baseline from the police. If we get a complaint about the police we have to investigate that from the police. If the police are not allowing us to investigate and they wish, as I said earlier, you can have an in-house investigation, which is what the police do, only, or you can have an external independent investigation component or unit.

Now as I said ideally one would want them totally independent because then there's no opportunity for bribery and corruption as well. We don't have that, the closest we've got for serious crimes mortality etcetera, is the IPIT, but on the other side, in terms of service delivery complaints and in terms of the police not doing what they are supposed to be doing the closest we have is in terms of the constitution and that's our interpretation of it. The case, the example that I gave you about the court is about the police, we do not have oversight over the prosecuting authority, this Commission is not about the justice

cluster, that was a request that this Commission should be about the justice cluster, because people complain about bail, they complain about parole, it's not within our bailiwick, we cannot do that oversight, so we have oversight over the police, so when we go to court we are monitoring what the police are doing, not what the prosecuting authority – in other words why is the policeman not attending for the third time and a murder case gets thrown out of court on that basis, adjournments and delays, is there a problem, is it because the detectives have too large a workload, is it negligence, did the person forget to come to court, and a person has suffered out there because somebody was murdered, so it's part still of our civilian oversight role over the police, and because we've been blocked in one area we have had to develop other areas.

MR ARENDSE: Now Dr Lawrence I want to suggest to you, in fact very strongly, and this has got nothing to do with the interpretation of the Constitution, you just don't understand your role at all.

DR LAWRENCE: I've heard you raise that ...(intervention).

MR ARENDSE: Because your focus, and that is the better answer that you should give to Mr Hathorn when he asks you why were these things identified, because you have completely neglected the community. Your focus is entirely on the police but at the end of the day the police, their job is to protect the community, now if they don't do their job then the community is not going to be protected and the community complains about it and it is your job to pick up those complaints from the community and you failed to do so.

DR LAWRENCE: Chairperson I am glad that you raised the question about our job. Yes, you are right, we struggle to understand our role and responsibility given the interpretation particularly from the police. It is for that reason that we developed the Community Safety Act and that Community Safety Act will then determine what our roles and responsibilities will be, it will then provide obligations on behalf of the police in terms of not just our oversight over the police but also in terms of complaints, the setting up of an ombuds person will clearly determine some of the major complaints that could come from communities. Maybe this Commission would not have been necessary if we had an ombudsman. So that is why we are setting up the Act.

Now the Act has been passed, regulations have not been fully put through and there have been let's say informal challenges from the police. Now we believe that yes, if there is not a consensus of opinion of what we should do then it needs to go maybe to the Constitutional Court because then for our sakes it

will give a definitive response to what the role and the function of the Department of Community Safety in every province, not just this province, in every province would be because there are Community Safety departments in every province. The result may well be that we would each then in each province have to have a community safety act. So yes we do struggle with our role and responsibility over the years in terms of being blocked in many situations and having to do other things and yes we would like a definitive end to this so that we would know what we can do and what we can't do and if the Constitutional Court says that no this has got nothing to do with interpretation fine then we can do lot's of other things.

MR ARENDSE: Dr Lawrence I want to suggest to you that your failure to do your job has got nothing to do with the police blocking you. If someone has lodged a complaint with you; I went to the police station, I reported a rape, I reported a murder, I reported a robbery please take this matter up and you do what the 2010 directive requires you to do and that is to refer the complaint to the nodal point. There is nothing that stops you, your department on any version whether under the new CPA or under the Constitution, there is nothing stopping you from pursuing a complaint. Why should you not pursue the complaint, why should you not monitor that the police are in fact investigating the complaint and if they don't investigate the complaint at all or if they take three months or six months and the member of the public says but I am not happy, this complaint where is it – surely you can't shrug your shoulders and say sorry I have given it to the police? What do you do?

DR LAWRENCE: I can give you a case in point. We gave evidence that we tried to get some information and the response was a letter from the police to indicate that we were now dealing with operational matters, that was led as evidence early today, that is the kind of response that we get. So when we try and investigate a complaint that is what happens, that is an example. Now if we get the run around or get stonewalled or there are delays then we have to look at other remedies and that is why we have had to go down the route of the Act.

MR ARENDSE: Now the letter, this letter of 16 March 2010, it says:

“Requests for physical inspections at stations and access to case dockets must also be forwarded to the nodal point station commanders and will then be given further instructions in this regard.”

DR LAWRENCE That is not the letter that I am referring to sir.

MR ARENDSE: No I am referring to this letter that deals with complaints from the public which you and Mr Njozela say you

know our hands are tied, we can't do anything. When we now get a complaint after this letter we no longer serve any useful purpose because it goes to the police and they must deal with it and we can't touch it.

DR LAWRENCE: Sorry I don't understand. If there is a complaint about a policeman who gave poor service delivery and we then write to the PC and then PC through his channels will investigate and the ideal in terms of that letter is that we will get a response to say that such and such has happened or the matter has been handled or that is the end of the story or nothing could be ascertained.

MR ARENDSE: Because that is a disciplinary issue, that is about the conduct of a policeman or a police officer but we have heard here through the Commission in the past couple of weeks people complaining that they did complain and they were not taken seriously or they say they have complained and a case docket was opened but they were never informed on the progress of the case.

DR LAWRENCE: Yes we deal with that as well.

MR ARENDSE: Or there was a complaint, the matter has gone to court so many times and it is now 2014 it went to court in 2009 and we still have not heard anything.

COMMISSIONER: Mr Arendse can I just interject. It would be helpful for me to understand this line of questioning, to know what it is your clients' submission that this letter means. Is this letter permitting the Department of Community Safety to undertake its own investigations or not. If you could just give me what your client's position is.

MR ARENDSE: My client's position is that this letter does not preclude DOCS from pursuing their own investigations in relation to the complaint. With respect madam Chair I am now being pre-empted because the witness testified that there was a discussion, there was a meeting between him and the PC and I am not sure whether the MEC was involved before this letter – because I want to understand or rather ask him about his understanding what is the rationale behind this directive.

COMMISSIONER: Just so that I have got it clear, from your understanding your client's position is that it has no objection to DOCS doing its own investigations into complaints received against police behaviour.

MR ARENDSE: In fact the witness gave evidence that it was often a personality issue. That at some stations they were permitted and others would say no there is the directive.

MR LAWRENCE: Chairperson I don't understand because if – in any investigation we have to involve the police so if it is a complaint about the police we can go out and speak to the people but at the end of the day we must ask the police what is your

response and then we go through the channel and then the person that we have gone to now and wasted our time with waits for a response and we say we are waiting. So how to we – I don't understand how we can investigate with a letter like that. Investigating to us meant we would not have to go through the nodal point, we have a complaint and we go and investigate at the police station.

MR ARENDSE: Dr Lawrence why was – you said in your evidence that there were discussions, you may have used a stronger word like negotiations, there were discussions and then this letter was issue. What do you recall the then PC saying to you now this is the reason why we need to do this?

DR LAWRENCE: What I said was – I didn't say there were negotiations I said there were discussions that led up to that because what was happening we were able to go to visit police stations and then correctly as you yourself have said from the evidence at some police stations we had an easier time that at others and so then sometimes we had to then phone to head office to say we are not having any joy at a particular police station. That was the past and then more and more that became what was happening and eventually the PC said you will now – we will all have to go through is going to constitute a nodal point and all the mail, all our complaints will then have to come through the nodal point. Subsequent to that we go a letter.

MR ARENDSE: And that was the reason why he said it has to all go through a nodal point?

DR LAWRENCE: Well there were a number of reasons but I believe one of the reasons was that there was an ... well a comment that we had leaked a particular complaint that had been made about police beating up somebody in Long Street. Now whether that was the precipitating factor I can't say but that was one of the unhappiness's that the PC indicated.

MR ARENDSE: Now what are the others? Was that, did that come up in your meeting? Or let me ... (intervention)

DR LAWRENCE: Well it was in the newspaper so yes it came up in the meeting.

MR ARENDSE: Now in the meeting you were told that there was a need to rationalise, to have one centre of complaints so that the police could keep control of these complaints. In other words so that they can know that these complaints – because as you know complaints may come from the Human Rights Commission, it could come from the Public Protector and it could come from many other sources, it may come from members of the public and of course it could come from DOCS and the idea was all these complaints it may relate to the same issue so when they come to the nodal point that the police are able to see that this complaint relates to

perhaps the same issue and that was the whole idea behind centralising these complaints.

DR LAWRENCE: There is a difference between us and the rest of the public putting in a complaint. We would have the complaint put to us and we would then be able to investigate, another complaint could come directly to the police or come through Iped and if it is not in their category they would forward it to the police as well. But complaints that came to us within our own remit we were then able to investigate so for us now to go through a nodal point is a very different scenario to the general public's complaints that go to all the police stations being sent to a central nodal point, a very different scenario.

MR ARENDSE: Yes because this is what it says at paragraph 3.

“A nodal point for complaints against SAPS has been established and it is imperative that all complaints received by DOCS are forwarded via this office. The provincial nodal point is responsible for receiving, registering and recording all complaints and must ensure that these complaints are fully investigated and that the complainant or the office forwarding the complaint receives proper feedback. The nodal point also ensures that no investigations are duplicated and that a speedy and impartial investigation takes place. Where deemed necessary an investigation will be conducted by persons outside the station where the allegation is made.”

DR LAWRENCE: Speedy it was not, bureaucratic it was and again I contend that we are in a different category having a legal mandate to investigate in terms of civilian oversight. Very different to complaints that then come to police stations and elsewhere.

MR ARENDSE: Now the then PC Commissioner Petros also says at paragraph 7:

“Please note that it is of the utmost importance that complaints against the SAPS receive priority attention and are finalised as a matter of urgency. When station commanders receive instructions from the Provincial Inspectorate to conduct an investigation or furnish information they must comply with these instructions immediately to prevent unnecessary delays.”

Now your answer will be that despite this, despite this instruction there were delays, is that right?

DR LAWRENCE: Yes ... (intervention)

MR ARENDSE: My question is a follow up question. You have meetings with the PC, you and the MEC, every week and you also have your quarterly meetings.

DR LAWRENCE: The meetings are scheduled every week.

MR ARENDSE: Was this directive of 16 March 2010 ever revisited or raised in meetings to say look PC let's go back to the previous system, this is not working?

DR LAWRENCE: Yes it was raised and no we didn't say can we go back to the previous system, we raised it to say that it is not working and if you look at the amount of correspondence in terms of that, I have sent schedules of unanswered complaints, it obviously is not working.

MR ARENDSE: But that is a schedule of complaints you have because it is taking now too long.

DR LAWRENCE: That is correct.

MR ARENDSE: Can you show me or show us a letter of complaint from your side to say this is not working and here is an attached schedule please revisit this directive.

DR LAWRENCE: No.

MR ARENDSE: Now we were still dealing with very serious crime here in Khayelitsha at unacceptably high levels that DOCS had failed to identify. We know that you do your own barometers and these barometers are based on interviews with members of the public, is that correct?

DR LAWRENCE: That is correct.

MR ARENDSE: So they are not reliant on police statistics, why did your barometer not pick it up in Khayelitsha or wasn't it working?

DR LAWRENCE: The barometer is there to find out what is happening in the area, if it doesn't come through the system then it doesn't come through the system. So yes, it wasn't on that barometer.

MR ARENDSE: Is that the only answer that it didn't come through the system or was there something wrong with your system or something wrong with your barometer, something wrong with the questions that you posed or was there actually also resistance from the community to not respond to the barometer.

COMMISSIONER: Can I ask for clarity what is it precisely that you are asserting that the barometer did not disclose, it wasn't clear to me.

MR ARENDSE: It does not pick up the crimes like vigilantism, rape and other crimes that are not mentioned.

COMMISSIONER: I think it is perceptions of safety isn't it, that is what it is about. So you are saying it didn't pick up the fact that there are serious crimes?

MR ARENDSE: Yes.

COMMISSIONER: Is there a particular aspect of the barometer that you are referring to, I mean particular year or – I mean I think it is a very generalised question.

MR ARENDSE: I am trying to also move quickly and it is not anywhere in any barometer, it is not in any of the PMP's if one goes back, right back, 2008, 2009 through to 2012, 2013 it has not been picked up by DOCS and of course I stand to correction the witness who is responsible for these barometers if he wants to challenge the assertion then he is at liberty to do so. May I proceed?

COMMISSIONER: Yes you may.

MR ARENDSE: Dr Lawrence is it fair to say that on the information that you have placed before this commission, documentary and orally through your evidence and through Mr Njozela that you cannot say that the police in Khayelitsha are inefficient and that you also cannot say that there is a breakdown in community relations between the police and the Khayelitsha residents.

DR LAWRENCE: No I can't say that definitively but clearly when one looks at the broader picture besides what we have done, things such as the statistics around crime and all that sort of thing then clearly there is something wrong but to determine there is a total breakdown or a partial breakdown in relations with the community, no I can't say that. But in terms of the evidence which we have put before and the fact that we have a Commission of Enquiry into vigilante killings I repeat what I said earlier that if we look at all forms of criminal activity then vigilante killings really present us with a serious challenge in that it is a direct opposition to governments and government by the way in which an alternative form of justice is put in place so that is a serious challenge.

MR ARENDSE: Ja we are dealing with that as best we can when witnesses give evidence so don't make these statements to blindly. The fact of the matter is that if you look at all your PMP's and all your barometers it is not picked up now you result to an answer based on crime statistics issued by the police. So I am even more concerned now because if you look at crime statistics, and we have had experts sitting where you are sitting and talking about bumps and graphs showing high murder and robbery rates, we still don't see them anywhere in your documents. Even historically, a year on, why were these trends not picked up in the Western Cape. You mentioned today, it is not mentioned here, you talk about Nyanga being the murder capital and all that kind of thing, we all read that in the papers, why is it not addressed in your own reports?

DR LAWRENCE: Well I suppose it also is where communities are in terms of, as I have said, in terms of what they report in terms of the PMP's and the different exercises that we do out there. It doesn't mean as I said also that we are not addressing those

things as they come through including the Khayelitsha situation.

MR ARENDSE: Now let's just talk about the rag – ma'am am I under some time constraint?

COMMISSIONER: Sorry but I am not persuaded by your, sort of, the way you formulate what the Barometer study disclosed. I have just drawn them up again because it wasn't my recollection – my recollection is that 2 out of 5 people in Khayelitsha say that they have been affected by crime. Two thirds of them say that they feel unsafe at most times. Many of them identify serious crime as what makes them feel unsafe. That is the picture that comes out of the Barometer study so it is not clear to me when you say the barometer study didn't show there was a problem, I am not sure ... (intervention)

MR ARENDSE: Madam Commissioner we can go there and we can go to the PMP's and look at the percentages. Even where they say they are not happy, yes it is a substantial minority but if you take the substantial minority and the 18% or whatever they seem to consistently be then there is not even a majority who say that the police are inefficient or there is a breakdown in relations between the community and the police and as I have indicated if the witness wants to draw my attention or the Commission's attention to the barometer then he must do that.

COMMISSIONER: (Inaudible – microphone not on 21:03) ... for questions. Certainly if I was asked this question I would want to go back and look at the barometer surveys to decide whether or not that is an accurate picture. I am just trying to remember, I am looking through your questions to see if you had drawn this to the witnesses attention. The evidence leader says not. I think it would be helpful to have accurate encapsulations of the documents and perhaps refer the witness to the specific document and your specific assertion in relation to the document. I certainly feel that the way you are encapsulating the barometer studies although I haven't had a chance to go back and have a careful look at them now, it is not actually accurate.

MR ARENDSE: Thank you madam Commissioner. I don't know how much time I have or whether I will have an opportunity to do that.

COMMISSIONER: That is a good question, not a lot. I think you know we should try to finish you know just after half past four because we still need to have some re-examination and possibly questions from the evidence leaders.

MR ARENDSE: And without making excuses for not going to the specific documents, I was trying to get through it fairly quickly by making submissions and putting propositions to the witness for him to respond to.

COMMISSIONER: Fair enough. You see if I feel that it is an

unfair question to the witness because either the witness hasn't been alerted to it or it is inaccurate then I will indicate that.

MR ARENDSE: Perhaps advocate Masuku will find it for me and before I close. Can I go and actually refer to a document. I am not sure whether this is part of the bundle. Okay let me ask you this, just on the RAG one got the impression Dr Lawrence listening to you that you have got just no idea of this RAG; the numbers, how it works, how the allocations are made, nothing.

DR LAWRENCE: No that is not true.

MR ARENDSE: Is it not true?

DR LAWRENCE: Not true.

MR ARENDSE: Okay so maybe remind me what do you know about the RAG?

DR LAWRENCE: It is what I don't know about the RAG, that is the issue. We have had a full explanation on how it works, how the allocations are done and all that sort of thing but when it comes down to the police stations and what happens in the actual police station in terms of resource allocation.

MR ARENDSE: So you don't know that part too?

DR LAWRENCE: We don't know what happens in the police station and in terms of the allocation to the police station, how is that monitored and kept up and the comment that I made earlier, the allocation may say so many people but how many people are actually on duty at that particular time. So it is how the RAG is applied within the police station.

MR ARENDSE: But you do know what allocations are made to the individual stations?

DR LAWRENCE: I don't know, maybe my officials would know that but I wouldn't know what is allocated to every individual station but clearly when you talk to the CPF's the CPF's chairperson will know how many policemen are allocated and they will say what the shortfalls are as well, so that is known. What they don't know is when people away, as I have said.

MR ARENDSE: Now I am looking here at a document madam Chair which is called the Report on Oversight Inspection conducted on 6 November 2013. this is for the Khayelitsha police station and in the executive summary in the second paragraph, this is what you say in the executive summary Dr Lawrence:

“According to the Resource Allocation Guide (RAG) the station is granted a total number of 302 members which means the station is under-staffed by 30 members. These shortages are a challenge for the station to function effectively such a vast and dynamic area like Khayelitsha.”

Then for Harare there is a similar – this one is dated 30 October 2013:

“According to the Resource Allocation Guide the station is granted a total number of 198 members which means there is a shortage of 13 members compared to what is the actual number 185 currently at the station. These shortages are a challenge for the station to function effectively.”

MR OSBORNE: Can I interject and ask if we could have the index reference for this document?

MR ARENDSE: I don't know.

COMMISSIONER: We do have them, Ms Dissel would you be able to give us – these are the audit reports, the most recent audit reports.

MS BAWA: I am back in action. It is Bundle 2, it is under the Department of Community Safety and it is file 13 and then you will see the first two in the file is Harare and the second two is the Lingelethu, numbers 2, 3 and 4.

MR OSBORNE: Thank you very much.

MS BAWA: So which one are you reading from Mr Arendse?

MR ARENDSE: I read from the oversight inspection conducted on 30 October 2013 at the Harare police station and the one of 6 November 2013 Khayelitsha.

COMMISSIONER: Mr Arendse may I just clarify. Are you putting this in order to say that the witness does have some knowledge of the Resource Allocation Guide or is it for some other reason?

MR ARENDSE: No it is for that reason. Dr Lawrence you stated emphatically as a fact in your executive summary this is the position, so many posts have been established at the police station and there are so many shortages and these shortages are of concern to us and obviously those posts need to be filled.

DR LAWRENCE: Correct.

MR ARENDSE: Now I didn't get that sense with due respect and I don't think I am the only one in this room, that you just had no idea of this RAG and how it works?

DR LAWRENCE: I think what I said earlier and if you remember I said the issue of the RAG is how the allocation is done and we have got the document indicating the staff to population ratio so the RAG allocation comes out at so many police persons. The question then is, is that correct for that population or for the whole (indistinct 27:42). Now that allocation is done at a national level.

Secondly what I said was there is a RAG allocation for a police station and there may be vacancies or shortages as you have indicated and we report on that but what actually happens to the personnel in that particular police station. In other words how many people are serving the public or are out on the road or whatever; it is that question that we are asking further that I said.

MR OSBORNE: Can I just clear something up. My recollection is not – it is that the doctor did not say that he knew nothing about the RAG, he said he had asked, the department has asked repeatedly for the RAG document and has never received it notwithstanding several requests.

MR ARENDSE: Yes and that is why I asked because he doesn't know it but these reports say you do know it.

DR LAWRENCE: Chairperson I have said what I have said now in terms of the staff are busy with the reports that they do, we get hold of the RAG in terms of providing that information, the comment is how is that RAG allocation and that is the report that we want to get from the police.

COMMISSIONER: Can I just clarify this, when these audits were done presumably members of your staff go to the police station and say what is your Resource Allocation Guide and the station commander will say it is 302 and they will then say can you give us the breakdown and how many of those are vacancies.

DR LAWRENCE: That is right.

COMMISSIONER: That is actually what the audit is for, it is to get that information from the police stations. So it is done on a police station by police station basis?

DR LAWRENCE: That is correct.

COMMISSIONER: I don't know if that helps you Mr Arendse but we are also struggling to work out who gets to know about the Resource Allocation Guide, the Commission itself is having some difficulty getting that information and understanding it. I am sure that will all be elucidated (intervention)

MR ARENDSE: Ja but unless you want me to go through it Dr Lawrence but I am looking for example at the Harare one of 30 October and you deal with it fully, the shortcomings, the allocations, you talk about Harare has four sectors:

“Ideally due to the size, sheer population density and lack of infrastructure 12 sectors would have facilitated a more effective approach to policing. This is not possible due to a shortage of staff and other resources.”

Then you say:

“Two patrol vehicles and four sector cell phones have been allocated to the four sector commanders and are utilised in terms of sector policing. These are not dedicated to sector teams. The shift utilise on average 3 patrol vehicles.”

This whole thing about shifts and averages and members per shift – so the question is then where did you get this information from then? From the CPF's?

DR LAWRENCE: That is the Resource Allocation as it should be

or as it is when they find it. What we don't know is that what, how it was determined and is it right for that particular police precinct given the population figures etcetera.

MR ARENDSE: Now why are you not able to do that exercise, what has that got to do with the Constitution or with the directive of March 2010 that you cannot work out – we have heard in fact expert, we heard some expert evidence of population figures ranging from 450 000, speculation that it is probably at a million and those kinds of figures but the ballpark figure from the City of Cape Town 350 000 to 400 000 – you can do that, why can't you as DOCS do that exercise?

DR LAWRENCE: Yes we can do it, we don't have the resources to do everything that we can do, why can't we just ask the police to tell us on what basis they did the calculations and that is what we asked them.

MR ARENDSE: But why must you ask the police if your job is to do oversight over the police and especially if you say the police refuse or decline to give you that information.

DR LAWRENCE: If we were to do everything at the police then we would need another department so that is not a good way to go about it, we would like to struggle to make sure that the police can provide us that information. Oversight means that there is a complaint, you first give the person against whom the complaint has been laid to have an opportunity to respond and then you deal with the response however it may be. Similarly for example when we get the complaints that we do send and eventually when we get the response we interpret that response and we sometimes write back to the PC to say that we don't think that the response is adequate. Now if because of the RAG and all those we do our own investigations then we need the power to be an independent, totally independent, investigator and that is what we are looking towards in terms of the Act to say now what is our roles and responsibility in that. But we are going down uncharted territory, at the one moment the doors have been closed in certain aspects with the police and other doors can be closed as well if we don't have a real mandate in terms of what our roles and responsibilities are.

MR ARENDSE: So your evidence is that you rely heavily if not exclusively on statistics given to you by the police?

DR LAWRENCE: I didn't say that.

MR ARENDSE: I am putting it to you that that is your evidence. You can't get it from independent sources, you can't get it for yourself because you must wait for the police.

DR LAWRENCE: No, what I said was that we would like to get the police's information or statistics about real time as we had access to years ago. Years ago the department actually had a line to

Pretoria and were given access to the information clearly provided that we didn't publish it or whatever but we could work with that information, that is what we would like to have.

MR ARENDSE: In fact you didn't even seem to have information about the most serious crimes that are being committed here in Khayelitsha.

DR LAWRENCE: Then that would have been very useful if we had real time with the police we would have picked it up that way quicker.

MR ARENDSE: But I just put it to you that experts sat where you are sitting, they picked it up – they picked it up from the crime statistics, they picked it up from surveys conducted by their research groups and they demonstrated how it was done and how it is credible etcetera and we ask questions about it. Why can't you do it?

DR LAWRENCE: We can, there is nothing wrong with why we can't do it. Do we have that mandate, do we have the capacity, is it necessary for us to do it.

MR ARENDSE: But it is necessary because the Constitution said it is your job to do it.

DR LAWRENCE: No sorry sir what I was saying is, is it necessary for us to do it if there are alternative sources to receive it meaning the police.

MR ARENDSE: Now the other issue I want to raise with you is the issue of CPF's. Your oversight reports of all three stations indicate that there are CPF's in place and that they function. Is that correct?

DR LAWRENCE: Correct.

MR ARENDSE: Now just for the record and if I have to I will take you there. There was a CPF in Khayelitsha in 2008 to 2011 that operated fully functionally, do you recall that, it was when Colonel Nel was the station commander at Harare.

DR LAWRENCE: No I am not sure, sorry.

MR OSBORNE: Could I ask Mr Arendse to give us the reference for that?

MR ARENDSE: There is no reference, there is a letter that I will make available to you. It was ... (intervention)

COMMISSIONER: Sorry it also comes as somewhat of news to the Commission because we are certainly missing many minutes for the Harare CPF in that period.

MR ARENDSE: This is not a minute of an Harare CPF ... (intervention)

COMMISSIONER: But if you say it was functioning efficiently one would expect minutes.

MR ARENDSE: It is something that I want to put to the witness because it was raised directly with him by Colonel Nel so I am just

testing the witness's recollection. There was a letter – which I will make available madam Commissioner – dated the 4th of June 2010 where Colonel Nel copies you a letter which is addressed to the Cluster Community Police Board and the Department of Community Safety and the Cluster Commander Khayelitsha where he refers to ... (intervention)

COMMISSIONER: Is this on the record before the Commission, is this in the record before the Commission?

MR ARENDSE: No this is not in the record.

COMMISSIONER: This is a document you are applying to add in now late?

MR ARENDSE: Yes, yes madam?

COMMISSIONER: And why should we grant you that application?

MR ARENDSE: I only received it today.

COMMISSIONER: You only received it today?

MR ARENDSE: I only received it today and it arose in a completely different context.

COMMISSIONER: You know there is a process here for admitting documents and it has been a laborious one to put it mildly and the whole purpose of this is because it is not an adversarial process and nor is it a backward looking process, it is an investigative process looking forward but everybody needs to be properly appraised of what is happening. Why is this document so important that we should admit it?

MR ARENDSE: It only arose because the Commission requested Colonel Nel to testify. The Commission invited us or said either we can lead him and we then said it is fine we will consult with him and we will lead him and that consultation took place last night.

COMMISSIONER: Okay and what is the content of this letter say?

MR ARENDSE: It is a letter referring to the suspension of the CPF chairperson Mr Andile Lili ... (intervention)

COMMISSIONER: You don't have to say the name.

MR ARENDSE: So it was sent, copied, to the DCS so they were aware of it and my instructions from Colonel Nel and he will obviously testify when he gets his turn was to say that up until that point the CPF at Harare was fully functional between 2008 and the date of ... (intervention)

COMMISSIONER: Without putting that evidence in at this stage do you want to just put that to the witness as a proposition?

MR ARENDSE: Well I asked the witness whether he was aware and he said he couldn't recall, I am not going to take it any further.

COMMISSIONER: You could perhaps make that document available to Ms Dissel and we will look at it and determine whether we will admit it before Colonel Nel gives evidence.

MR ARENDSE: Well I can't act as court orderly and cross-examiner.

COMMISSIONER: I think we are really at the end of your timing here Mr Arendse, do you want to pursue other issues in relation to the CPF's?

MR ARENDSE: The witness has confirmed that according to him and their documents that the CPF's at the three stations are functional, he has given that answer. I think the – again if I have to Dr Lawrence your oversight inspection reports just to confirm they do not indicate a dysfunctional police service in Khayelitsha, is that also your recollection?

DR LAWRENCE: That's correct.

MR ARENDSE: They also do not indicate that there is a breakdown in relations between the police and the community is that correct?

DR LAWRENCE: They don't go, they don't say that.

MR ARENDSE: You quite rightly raise issues, you raise concerns.

DR LAWRENCE: Absolutely.

MR ARENDSE: But one would think that there would be like a huge concern where you say look this concern now indicates inefficiency or it indicates a breakdown, the documents don't do that.

DR LAWRENCE: We need to read more into the documents than maybe just the statement say.

MR ARENDSE: No, I'm asking you, if you say look it doesn't say that.

DR LAWRENCE: It doesn't say that in as many words yes.

MR ARENDSE: Ja, I think the remaining issue madam chair, honourable commissioner Pikoli is the one that relates to the Bambanani program and the school safety program. My colleague, Mr Osborne, asked you whether this program is still in existence and your answer was yes but it seems from when you elaborated it is clearly not the case, we are now talking about a school safety program which is restricted to I think 20 schools?

DR LAWRENCE: In Khayelitsha.

MR ARENDSE: In Khayelitsha sorry.

DR LAWRENCE: 550 across the province.

MR ARENDSE: Yes, I'm talking about Khayelitsha, it's a program that's now restricted to 20 schools.

DR LAWRENCE: No, it's not a program restricted to 20 schools, it's at 20 schools.

MR ARENDSE: So what does that mean? It's unrestricted?

DR LAWRENCE: No ...(intervention).

MR ARENDSE: Does that apply also to more schools than 20?

DR LAWRENCE: No, it means that more schools can be included.

MR ARENDSE: So at the moment it's restricted to 20 schools.

DR LAWRENCE: At the moment it's at 20 schools and it can be increased.

MR ARENDSE: Because maybe you should increase it because two principals gave evidence here and they have no knowledge of this program. Their schools were Chris Hani at Makhaza and Zola Senior Secondary at Site C.

DR LAWRENCE: There are a number of schools where we do not have the program, the program is not at every school. The program is determined by the Education Department in terms of where the need is, in terms of their school safety program, and it's dependant also on the financial situation, so there are 1 600 schools in the province and we do not have that program at every school.

MR ARENDSE: So you can't say offhand whether this program actually also extends to these two schools that I've mentioned to you?

DR LAWRENCE: It would be very strange if the principal didn't know that people were on his premises, you indicated that the principal didn't know about those, so I can't say whether that school ...(intervention).

MR ARENDSE: No, I actually said to one of them that you know I read in paper that the WCED has a school safety program, and they said well you mustn't believe what you read in the papers.

DR LAWRENCE: That's a strange one because the Bambanani is not the school safety program, the Bambanani volunteers is a component of the school safety program. The school safety program comes out from the WCED, they have a major issue with their school safety program, they have counselling for students, they have all kinds of activities, all kinds of programs, so it's very strange that a school principal would not be knowledgeable about that. They have to know about it because if there's any traumatic event at a school it's the school safety program that kicks in, so I find that very strange for a school principal to say that, but maybe ...(intervention).

MR ARENDSE: But it may be that he is maybe in the unrestricted area, he is not part of that program.

DR LAWRENCE: No, the school safety program is for all the schools, the Bambanani are only at some schools, so in other words school safety ...(intervention).

MR ARENDSE: So there's a DOCS program and a WCED program.

DR LAWRENCE: If a child falls off a bench or if a bench falls on a child that's part of school safety, if the gate is not – if the fence is broken that's part of school safety, so they have a school safety program, but a component of that is the Bambanani volunteer program.

MR ARENDSE: So the one thing that's now no longer the case, I wouldn't say it's missing, is no longer the case, is the volunteers that DOCS had previously developed and had paid a stipend that were actually in the community, that's no longer the case?

DR LAWRENCE: They're no longer on the stations, they're no longer in the parking areas, they're no longer in the trains, the reason for that is that the police are now occupying those situations.

MR ARENDSE: So that Bambanani program has been discontinued?

DR LAWRENCE: That ...(intervention).

MR ARENDSE: For the reasons that you gave?

DR LAWRENCE: That's correct.

MR ARENDSE: So the answer should have been a qualified one or no, it's no longer the same Bambanani program which is referred to in our written questions, the one which you should know very well, because you were the head of department at the time, the one that was initiated by MEC Ramatlakane?

DR LAWRENCE: That is correct, and as I explained we had many, many Bambanani volunteers, and whenever there was a function or whatever they would come out and put on their bibs, what we've done as I've said we've evolved since then, and we have the same principle, which are volunteers paid a stipend out of the EPW program but now we've done – we are doing that through the school safety volunteers, we are doing that through the Chryssilis Academy students, and they come out of the academy and they go into the communities, they join the CCID, the SIDS programs as well and they attach to up to 60 organisations, so we send them there for six months and we pay them the stipend, and then the next group come out, so we've evolved that program and we've actually upgraded it if I can put it that way, and similarly that's what we're doing ...(intervention).

MR ARENDSE: It doesn't sound to me like an upgrade, it sounds to me like a downgrade but do you accept ...(intervention).

DR LAWRENCE: Sorry, I don't understand the question.

MR ARENDSE: Well I don't understand your answer, so maybe let's just pass it. The Bambanani program that was established under MEC Ramatlakane.

DR LAWRENCE: That's correct.

MR ARENDSE: Do you accept that that program was effective, I'm not talking about the problems of double-dipping that were identified by Scopa, there was an effective program in terms – it was an effective program in terms of promoting relations between the community and the police.

DR LAWRENCE: It was a program at the time and the time has superseded it, in other words we can't have such a program

today, it would be with great difficulty, one, because of the Public Finance Management Act in terms of the way in which we will be able to pay resources, so that won't happen again, so that's been part of the reason. So yes we're quite happy to say it was effective for what it did at the time, what it did I would query, but it was effective for what it did. Whether it was effective in terms of increasing and improving community/police relations, yes it was all we had, we've moved on since then.

MR ARENDSE: Now because you see just lastly I mean we had this one instance over Easter in 2012, even Mr Loonat was going on about it, he praised it, why just that one intervention when he says, and I don't know whether you read his affidavit or whether you agree with him, that over that weekend there was only one murder. Why don't we have more of these interventions here in Khayelitsha. What precludes you in terms of your constitution or your mandate from doing these things from time to time?

DR LAWRENCE: Well the CPS legally mandated in terms of the police act. The neighbourhood watches are not, and the neighbourhood watches are within the neighbourhood and if you read Mr Loonat's comments, neighbourhood watches from other neighbourhoods came as well to support Khayelitsha, so it wasn't just the people of Khayelitsha, they brought in neighbourhood watches from elsewhere. Neighbourhood watches are not mandated, sorry, not legally mandated, there's no legal – which means that at the moment there's a lot of let's call it freedom around neighbourhood watches, they are not paid and so yes they can be transient, in other words people come and people go. We train them, we support them, we provide them with bibs and torches and two-way radios and all that sort of thing, and we roll that out even in Khayelitsha as well.

That is why in terms of the new Community Safety Act we want to try and see if we couldn't register the neighbourhood watches. Now that would then help to try and formalise that situation and provide a better situation for people to join neighbourhood watches and then be able to do more and more of the patrols that you're talking about. So yes we can have the *ad hoc* arrangements as happened and you correctly say Mr Loonat says that there was an improvement in the situation, we also read in the report that it was not sustainable by the Monday people did hot pitch up, the police because maybe they had other things to do did not come as well.

So that's part of the problem, people can't, neighbourhood watches cannot March without the police, so there are challenges around.

COMMISSIONER: Okay. Mr Arendse we are really at the end of your "30 minutes".

MR ARENDSE: I do appreciate but madam chair we – this has been going on, we've all been very flexible. The witness was led not in terms of a statement, which is perfectly understandable, Mr Osborne started with what would appear to be a sticky issue of defining their jurisdiction and their roles and I agree with his approach, but then we go on it, it's not in the statement, I haven't even looked whether I asked some of these questions that were posed in writing I don't know, but you know it's going to be difficult to say it's 30 minutes or 40 minutes, I am at the end, I just want to raise this, I am not going to ask any questions because I'm not sure we're going to get any answers, but that was about this EPP, this program of yours Dr Lawrence which you may have been told which provides a basis for funding for CPF's, which Mr Loonat whom you no doubt know was quite critical about. I don't think I'm going to – and which he claims is based on politics.

DR LAWRENCE: Would you like to elucidate and I can respond?

MR ARENDSE: No, no, I don't want to ask you, I'm just saying that that was the last area ...(intervention).

DR LAWRENCE: Chairperson I can't let a comment like that hang.

MR ARENDSE: Okay.

COMMISSIONER: You don't have – can you recall more precisely what Mr Loonat had said Mr Arendse otherwise we might have to ask Ms Bawa, can you recall Ms Bawa?

MS BAWA: In fact Mr Loonat did not go there in his oral evidence, his statement and his affidavit was that he had a perception that the money being allocated to the EPP program was being given to specifically directed wards of – under the control of a particular political party in that preference.

DR LAWRENCE: I can give a quick response.

MS BAWA: We did not hear Mr Loonat on that.

DR LAWRENCE: I can give a quick response that clearly it's a police precinct that has a CPF, it's multiple wards, you know wards change, political flavour, so that is not true, secondly when we did the rollout we started with a pilot, we started with 32 precincts, it included the Khayelitsha one and then lastly to say that as we evolved with the process and spoke to the SAPS and the SAPS were on board, we have a letter, we have correspondence from SAPS requesting 21 stations to be put on which they listed, so chairperson we did not have any mechanisations around how we allocated those, they were done on the basis of number one whether the CPF were functional so that we would obviously have the best chance of the success of the EPP, and then as we rolled them out we then as I said engaged with the police, the police have issued, it's in the files that they agreed that it would be rolled out to every police station,

we said not yet, because some of them were not necessarily functional enough and the police identified 21 police stations that they wished it to be rolled out to, so chairperson we did not in any way try to manipulate that.

MR ARENDSE: Loonat's affidavit at paragraphs 112, 113, and 114 of his affidavit on pages 44 and 45 but it's right, it wasn't raised in his oral evidence.

COMMISSIONER: Our recollection is Ms Bawa's account of it is correct, those paragraphs that you've referred to is what Mr Loonat said, as Ms Bawa sub-phrased it now, is that correct? Thank you. Anything else Mr Arendse?

MR ARENDSE: No, thank you Dr Lawrence.

NO FURTHER QUESTIONS BY MR LAWRENCE

MR OSBORNE: Madam Chair may we be allowed some responses?

COMMISSIONER: I just wondered whether there was anything from the evidence leaders before you did that, would that be alright?

MR OSBORNE: Thank you madam chair.

MS BAWA: There is quite a number of issues that have arisen in the evidence which surprisingly hasn't been touched on by both parties, and which is of quite importance to the Commission in itself, but before I go there, there's one – two issues that's arisen from Mr Arendse's cross-examination, one is the Barometer studies reports and chair my assessment of the Barometer reports is entirely different to what Mr Arendse's was and I'm thinking that the easiest way to place this beyond dispute is if we ask the DOCS counsel to in writing submit the pockets of the Barometer report in relation to which the crime in Khayelitsha is mentioned, because there's about six Khayelitsha related reports, rape is prominently one of the crimes that come in at high percentages, we've just picked one up at an arbitrary level and basically it says the findings are congruent with the crime statistics by SAPS, the most common crimes reported, the crimes experienced in the last three years by gender, robbery, burglary, assault, murder, rape, sexual assault, so I don't want to leave the issue there because it's not a correct characterisation of the Barometer reports and maybe we do not for the assistance of the Commission, but the proper references to the Barometer reports be given.

MR ARENDSE: But Madam Chair the point about the PNP's and the Barometer is that the Act, the Constitution provides in 2003 that the PNP's from the provinces will be fed to the Minister in terms of the Minister devising national policy, and then there's a problem because then Dr Lawrence must explain why are findings, conclusions, surveys that's conducted in terms of the Barometer not included in the PNP's? It is really the disconnect that I

wanted to highlight madam chair.

COMMISSIONER: Thank you, that's clear, no, I think that's the same thing that Mr Hathorn explored, they're not in the context of the Barometer ...(intervention).

MR ARENDSE: Maybe that should be one of the recommendations of the Commission of Enquiry.

MR OSBORNE: May I respond madam chair to what evidence leader has suggested, we would wholeheartedly embrace the opportunity to put in some written submissions on the Barometer reports, it's not only that, there's also shadow reports, there's also earlier reports from 2010 and it seems that Mr Arendse has not had the chance properly to review those, because if he had and I was ready to take him, or the witness to them right now, he would have found not five or six or ten but twenty different references to the precisely the classes of crime that he claimed DOCS was blissfully unaware of, rather than that rather laborious process right now, perhaps we could put something in writing.

COMMISSIONER: I think it will be helpful, I mean we're all somehow swamped by the quantity of paper that we've had before us and the difference sauces of it, and the Commission the evidence leaders have done what they can to manage producing more a kind of summaries of it, but if you could produce a summary Mr Osborne which everybody could look at and if it's agreeable to everybody it could be admitted, that would be very helpful, thank you.

MR OSBORNE: We would be most happy to do that, apart from that we have one or two other points of clarification if we may be permitted.

COMMISSIONER: I just want to hear a little bit further from Ms Bawa because I imagine you would want to go after that?

MR OSBORNE: Appreciate that.

MS BAWA: My second point on those reports is there is a deficiency in the report, when you do community surveys and you don't ask a question you're not going to get an answer, and that's a flaw in any community survey, it's one that's been picked up by the Commission and in respect of which we're going to have evidence later. So the one aspect of a Barometer report that is not asked, there is no question on vigilantism, so you're not going to get an answer in relation to vigilantism.

Would you care to comment on that?

DR LAWRENCE: Well I think it's noted the Barometer questionnaires are revised and yes there wasn't a specific question on mob-justice or vigilantism.

MS BAWA: My next question goes towards the ranks, now Dr Lawrence your view being in government and from DG in different departments so you might have a better understanding of this than

what I have, but there's a national allocation of a budget to the South African Police Service. When I checked the last round they got 7.1 billion nationally.

On the medium term framework, the cluster – let me put the proposition to you, we can dispute on my figures but on the provincial medium term framework on the figures that we get out of the police, the provincial police plans over the last four year period, the latest one shows 800 610 000 million.

DR LAWRENCE: I'm not sure.

MS BAWA: Roughly. But I want to raise this the figures are not as material, I want to raise with you essentially when you run the rag, you run the rag for the Western Cape Province so you can work out what the total number of police you have in province, what the total amount of money you have allocated in your province, and what resources you have in each police station *vis a vis* what areas they police and *vis a vis* what terrain they police in, and that is the data which I think the department has been requesting from SAPS and has not been forthcoming. The one on one data from police stations that one obtains from inspections, you do get on request at the station, but it's the globular data to see how those resources is allocated which is not in the public domain, it's not with you, despite requests its not with us, National Civilian Secretariat tells me she doesn't have it, am I correct that that's what's missing?

DR LAWRENCE: Chairperson what happens is that we have an allocation of so many police persons in the Western Cape, what we don't – and the Western Cape has got the National Parliament, and there's a large VIP unit. We are not sure how much of that allocation, so when we look at the allocation for the Western Cape you have a figure but we cannot contextualise that figure in term now the VIP unit are also doing police work, we understand that, but if we say we have so many police stations in the Western Cape and we divide that by let's say the number or whatever, then we're not getting the true picture because we have no idea what has been allocated with the VIP unit for example.

DR BAWA: Because the difficulty we've had as evidence leaders, no matter which expert we ask they tell us we don't know, the data is not in the public domain, we can't tell you they work it out and if we try and do it without official police statistics we would get nowhere. Would you agree with that?

MR LAWRENCE: I agree with that.

MS BAWA: It is also so Dr Lawrence that there has been a change in legislation with the introduction of the Civilians Secretariat Police Service Act of 2011 which has come into force.

DR LAWRENCE: Correct.

MS BAWA: Right, and could you explain what the relationship is

between your department and that because the Provincial Secretariat now resides in some complicated manner at your door. DR LAWRENCE: That's correct, the National Credit Secretariat for police act put in place a national secretariat before they did have a secretariat but it was at another level, and just to add that from the 1st of April they will then be a government department, they're a secretariat now, they will be a government department from the 1st of April and that presents us with further challenges because we're across the country, we don't know the full implications of that. What happened is that the Secretariat was put in place and the debate was whether it should be like other departments like the prosecuting authority and other national departments who have regional offices in provinces.

Now they couldn't afford to have regional offices, but prior to the Secretariat Act coming into being each province could have a provincial secretariat. So provincial secretariat were established in provinces by provinces. This provide had a provincial secretariat as well and the Department of Community Safety a provincial secretariat. The Act came into being and the Act clearly states that if there are provincial secretariats then those provincial secretariats will be deemed to be provincial secretariat in terms of the new Act, which meant that our secretariat then becomes a secretariat in terms of the Act. There's only another one that is in Gauteng,

The rest of the country, the provinces have to establish a secretariat and one of the prescripts of establishing this secretariat is that the head of that secretariat who will not be the head of the department, must be appointed in consultation with the national minister.

COMMISSIONER: And where is the province in that process?

DR LAWRENCE: No, the province must do it, the minister of Community Safety is Limpopo and the national minister must co-determine the appointment of that person, which has its problem.

COMMISSIONER: Let's just stick to the Western Cape because you have an existing provincial ...(intervention).

DR LAWRENCE: So we are working together with the national secretariat, we sit on all the committees, I attend the heads of department meetings, they have a number of deputy directors, we attend monitoring evaluation committees etcetera, so we are fully compliant with the law as it stands, we have collaborated in terms of the inspection protocols and templates for visiting police stations with them, and the other provinces and we implement what they have asked us to do in terms of the police station visits, we codetermine some of the APP outcomes for them and we have to put those in our APP's obviously so that it can come up from the provinces to national. So that's what we've been doing as a

provincial secretariat.

MS BAWA: I raised this because when the legality of the Commission was challenged the secretariat was put up as being the mechanism by which the complaints which has been brought before this commission should have been dealt with, and – but I also hear from what you're telling me there's a little bit of the them in the us in terms of this, do you have a provincial secretariat budget that's given to you by the national secretariat?

DR LAWRENCE: No we receive no funding, and that's part of the problem why it hasn't been rolled out in the other provinces, because the other provinces have indicated that they require funding from national. We have gone to national treasury as a collective and national treasury has not come to the party on that one. Also correctly as you talk about complaints, the National Secretariat Act does not set up a mechanism for dealing with complaints against the police, it says that they have to ensure that it is done but they have no legal right to do it, in other words to do the actual complaints investigations. However they have made that proposal in their regulations and we have indicated to them that we think that is technical *ultra vires* but they have not published their regulations, but that's what they've put in their regulations.

COMMISSIONER: Let me just clarify that, from what you are saying the other provincial civilian secretariats are not operating pending the grant of funding from ...(intervention).

DR LAWRENCE: No, I'm not saying pending, obviously the would try and get it from their provincial treasuries, but their provincial treasuries are also balking at it ...(intervention).

COMMISSIONER: So as a matter of fact have we got functioning provincial secretariats or not?

DR LAWRENCE: Excuse me?

COMMISSIONER: As a matter of fact are provincial civilian secretariats functioning or not?

DR LAWRENCE: They're not – in other words we've never had, we have not yet had a meeting of the heads of the provincial secretariats at national, because technically we only have two at the moment.

COMMISSIONER: Thank you.

DR LAWRENCE: There are some in the offing because they're setting that up with posts and so on, but no we have not yet had the collective, the act prescribed that within 18 months of the act the secretariat should be up and running, so there's a default there.

MS BAWA: But it does seem Dr Lawrence if one looks at even the preamble of the Act, and I raise this because the debate this morning had been we have looked at who deals with serious

crimes and we basically have no one else but the police dealing with just about everything else, and it does seem that if one has a look at the civilian secretariat for police services act, it sets out what the constitutional rights are, it then sets out what the police rights are, and then it says there is a need to promote democratic accountability transparency and openness with the police service and to ensure cooperation between the police service and the communities it serves, and if one goes on further in the Act it does contemplate that it plays that role of some sort, in fact it is already obliged to play that role with respect to the Domestic Violence Act, and so I want to have your comment on whether it would be an effective mechanism to fill that lacuna that's been identified.

DR LAWRENCE: Sorry?

MS BAWA: Must I ...(intervention).

DR LAWRENCE: No, is that the question?

MS BAWA: Yes.

DR LAWRENCE: Chairperson its again obviously the – it's the national secretariat for the police and so the head of that secretariat reports directly to the minister of police, so it's not independent in that sense, and the national secretariat obviously supports and attends the national minmecs as well that the national ministers attend. The complication that we have is that there isn't a national department of community safety, there are national departments of health, education, social development, we are the only, we do not have a national department, so that is part of the reason why there is no national funding for the secretariats. Can the secretariat fulfil that role? Our argument is that whatever the national secretariat can do within in its mandate we would welcome in terms of this field, we do not have the sole rights as it were and say if there's another body that could do it. Whether it will fill the gap totally we are not sure, and given that they have now become a department we are not sure what the implications would be for provinces and departments like ourselves as well.

MS BAWA: Isn't there an advantage to them becoming a department because one then sees them moving out from under the control of the Minister of Police?

DR LAWRENCE: We are not – that's what we're not sure of whether that will actually happen and if it's the department of what, we're not sure what the relationship will be with the National Minister of Police.

MS BAWA: Because ...(intervention).

DR LAWRENCE: Remember that the police are a department.

MS BAWA: Yes.

DR LAWRENCE: So they will also be a department but then it may well be that the two departments report to one minister.

MS BAWA: Okay. It does seem that if this commission makes any recommendations or it comes to a finding of inefficiency or that there is a breakdown and it makes certain recommendations, one of the recommendations or one of the difficulties is always implementation and the secretariat does have a function to fulfil in that regard, and one of the questions I would like to pose to you on the current legislative structure would the national civilian secretariat be an appropriate body with which this commission could recommend to oversee any recommendations?

DR LAWRENCE: The commission would need to study the Act, the Secretariat Act to see whether the secretariat is empowered to do whatever the recommendations envisage, or we may find that it's a similar thing to what we have at the moment but the act has made a general statement about what it wishes to do but in actual fact when it comes to practicality it's not possible. Acts can be amended of course and so then if one can then make a recommendation provided that possibly there's an amendment to the Act to empower it to do what needs to be done. Regulations can obviously also be drafted in terms, but only in terms of what the empowering legislation is.

MS BAWA: It does also seem that there's a – one of the things that this national civilian secretariat has done is to develop a monitoring tool which is in fact part of our record, and that it's that monitoring tool that forms as I understand it now the tool that you use when you do your oversight visits to police stations?

DR LAWRENCE: Yes we co-determine the monitoring tool as I said as part of our total collaboration with the national secretariat, and there are expectations of us, for example there's an expectation of us to visit a police station once a year. We envisage in terms of the EPP program currently the EPP visit the police stations ten times a month, okay, that's a requirement that they visit the police station ten times a month. We've had eight visits to police stations over the last period and we envisage 300 for this year, so that will improve.

MS BAWA: There is a significant difference in the monitoring tool which is used by the secretariat versus the almost basic monitoring tool which forms a subject of the EPP program.

DR LAWRENCE: That's correct obviously, it's not the same.

MS BAWA: It's not the same, it's not comparable in the least?

DR LAWRENCE: No, not at all, but clearly it allows the CPF's who are local to know what is happening in their local station on a regular basis.

MS BAWA: I want to come to the EPP program but if we talk about the monitoring tool, if one looks at the instructions that go with the monitoring tool it contemplates an inspection both unannounced and announced, it then contemplates a report being

a compiled, a consultation meeting being with the station commander, a report back to the national secretariat and then some further input as to how those cooperation liaison with the station commander actually went, is that how you're doing it at the moment?

DR LAWRENCE: Yes, we are doing it like that.

MS BAWA: And how have you found that to be, how effective has it been?

DR LAWRENCE: Well it's still earlier days, but – and it depends from police station to police station and also from the tools mechanism clearly we will monitor the tool and then if any changes are necessary those changes will be brought into effect, but it's still too early.

MS BAWA: It does seem that this tool is actually a mechanism by which you can build community relations, based on the kinds of questions that it asks. Do you agree?

DR LAWRENCE: Yes.

MS BAWA: Okay. Now are you doing these inspections announced or unannounced, even the ones for the national secretariat?

DR LAWRENCE: I am not sure how we're doing them at the moment, but we are complying with their request to do them both announced and unannounced, so whether we're first doing them unannounced and then later announced, but I can't say what we're doing at the moment.

MS BAWA: So the provincial secretariat doesn't need to have the consent from the nodal point before they go and do inspections? That's where I'm going.

DR LAWRENCE: That's where you're going to – I can't ... (intervention).

COMMISSIONER: Is that answer yes or I'm not sure?

DR LAWRENCE: I'm not sure.

MS BAWA: Because it does seem that the correspondence that's been the conflict as to what it means, it has two implications, one it deals with complaints, and I think that's been dealt with, that whether it's an interpretive problem or not, the factual scenario has been is that DOCS went from an investigative towards a post box, and Mr Njozela had said, but I am a lot more interested in the inspections at the stations and the access to case dockets that the request must be forwarded to the nodal point station commander and then they will give further instructions. Now it's quite clear that when you ask for – before you go and do an inspection you must effectively ask the nodal point whether you want to do this inspection and they will revert to you as to when you can do this inspection, is that – my understanding correct?

DR LAWRENCE: That's our current scenarios and we saw it with

the visit to Khayelitsha.

MS BAWA: Right, and when – and do you ask for case dockets?

DR LAWRENCE: The issue of case dockets is a vexed issue, because there has been a number of long standing cases that have come from the province that go back many years, and part of what we've tried to do within the secretariat is to have access to the case dockets and there are instructions around that, that we can only see closed cases, so there are restrictions, so it may not be when they say you can have access to it, having access to a closed docket is very different to having access to an open docket, so we still have restrictions placed on us.

MS BAWA: But – okay. Could you ...(intervention).

COMMISSIONER: Can I just interrupt there, because one of the things that drove the establishment of this commission were a series of complaints, many of them going back a very long period of time, which the complainants seem to find very difficult to find out what actually was happening. Now it turns out that many of those dockets were in fact open dockets, what you are saying is that even under a system would DOCS have been able to assist with that at all, or would you have faced a response from SAPS if you had asked for a specific docket that's an open docket and you can't see it.

DR LAWRENCE: We've tried through Advocate Gerber to do that, and we've been successful but again it's been based on relationship or it's based on personalities, based on asking the PC about particular cases. It has not been a fluid situation of what we can actually access.

COMMISSIONER: One of the real problem is that the person that seems to fall out of all this conversation is the person on the street who has been the victim of crime and there doesn't seem to be any way in which they can get the answers to their questions, either because if they end up – they either end up before Iped, if it happens to be an Iped matter it gets referred back to the police and its unsubstantiated from Iped perspective, or they end up coming before you and you can't get it out of SAPS and SAPS don't seem to be able to give it, and that's really an absolute cancer in a relationship between a community and SAPS, is that if you can't get an answer from SAPS, and what is your view on how that should be resolved?

DR LAWRENCE: Well chairperson what we've done in the department is that we've appointed a senior legal person, who was previously a prosecutor and part of that was to perhaps allay the fears of SAPS that we would be cautious with what we would be able to see and look at, similarly when we did the watching briefs we have a partnership with the University of the Western Cape using law students, again just to make sure that we can

contain let's call it the understanding of confidentiality and all that sort of thing, so we've done those things to try and to say that we're trying to co-solve issues rather than to point fingers, and that's been the way we've worked, and as I said it's worked in terms of relationships, it's worked in terms of personalities, but actually it needs to be formalised in some way, that there can be that kind of access so that we will be able to say what is happening. Now similarly in the watching briefs you have a scenario that you in the court and clearly it's like being a reporter in the court, you comment on what comes before you, but clearly a conversation with the prosecutor and the policeman concerned adds value to the engagement and makes a more meaningful report to the PC in terms of saying this is what the finding was in the court and I've had a look at the docket, the docket indicates that you know there hasn't been a whatever, whatever, so that's where we've tried to go.

MS BAWA: Dr Lawrence even that project is flawed in the following senses, you are only as good on that project as how much cooperation you get from the prosecutor in the court to a point?

DR LAWRENCE: That's correct.

MS BAWA: And secondly ...(intervention).

DR LAWRENCE: However – sorry if I may add that I think we've been able to prove the value of such a project and we're hoping as I've said that we would be able to have the project formalised so that we can obviate that kind of situation.

MS BAWA: It's also been difficult for the commission to assess because that project hasn't been rolled out at the Khayelitsha Court at all.

DR LAWRENCE: Ja, no it hasn't been rolled out at the Khayelitsha court and there's no – what's the word – it's not a problem – the reason for it is that we started because there was a situation in Hamburg where a person was murdered in front of his father, and that case was kept being postponed in the court case and it eventually came to our attention and that's how we started it, so we can be accused of bias, because we cannot do every court case, we go to that time issues related to gangsterism and if it was perhaps a domestic violence case we would leave the court, we didn't have the resources, so again we can be accused of bias because you're only going into certain cases, however we do feel that it's worth doing. There was a comment that maybe we should sit in the court and look at other forms of perhaps comments that could come from the prosecuting authority or just the way the court runs and so on, well that would be consuming of resources, but maybe that's something that needs to be done. I might add that there was a meeting by the chief justice of the

country, Justice Mogoeng, and we were invited to that through the justice cluster in the Western Cape where there was a concern about, and that was a meeting that he had with all the judges, concern about the adjournments and all of that within the justice system. Now there was Judge Erasmus who was tasked with that till end of last year, and I then wrote to him and told him about the watching brief project and he – we actually had an appointment and so we spoke about it, because clearly it seemed to find favour that something like that could be done, whether it's us or whether whoever, but just to look at the issues of just adjournments, postponements in the criminal justice system, now that goes beyond our brief.

COMMISSIONER: Ms Bawa how much longer are you going to be, I'm conscious, it's nearly half past five, and people have – okay my suggestion to everybody if we can hang in here it will be useful to try and finish Dr Lawrence's evidence today if we can, and it probably is going to take another ten minutes with Mr Osborne's further follow ups, so can we continue? If people need to depart I understand. Mr Arendse?

MR ARENDSE: I've got a meeting at six thirty which involves the community, 100 000 of them, and I need to be at that meeting.

COMMISSIONER: We will do what we can, Ms Bawa can you see if you can be very quick.

MS BAWA: Once of the issues that seem to come up and I will go to CPF's because it's of critical importance, is functionality, what makes a CPF regarded as a functional CPF?

DR LAWRENCE: Chairperson what we consider a functional CPF is one that there's been formal elections, in other words done in a proper way, that in fact they meet regularly and that they meet with the station commander as well, that they have positions for whoever needs to be on the CPF and that they have sufficient number to constitute, so that would be the sort of governance side of it, and then what we would want to know is are they able to work within that particular community.

MS BAWA: And on the existing EPP program if they meet all this criteria, if they have those meetings, if they have their minutes, if they do their inspections then the CPF will get a total of R3 000 a month?

DR LAWRENCE: Approximately R3 000 they can only have an AGM once a year for example, approximately.

MS BAWA: But it's an approximation of – so we were provided with schedules of how much money actually got paid to the CPF's in the last three years and I want to take you to those schedules, I don't know if you have a copy of that handy, because the test is then your top limit, or your upper limit of a totally functional CPF would get roughly R36 000 a year, on the DOCS assessment of

the program. Do you ...(intervention).

MR ARENDSE: Madam Chair just while Dr Lawrence is looking, most if not everything the CPF's now, the issue of the secretariat, we were under the impression that the civilian secretariat is either going to be subpoenaed or has been requested to participate, we don't act for them, we certainly would then in the light of this line of questioning want to make some written submissions so there's a whole host of questions, all the questions Ms Bawa has asked does not arise from cross-examination, and there's no reason – you have not asked why did she not raise it with the witness when she had an opportunity to do so.

COMMISSIONER: When she had an opportunity to do what?

MR ARENDSE: Why didn't she ask these questions at the outset of the ...(intervention).

COMMISSIONER: But this is Mr Osborne's witness.

MR ARENDSE: But she had an opportunity of raising these questions, they don't arise from cross-examination.

COMMISSIONER: No, no that's not correct, the Commission is not leading this witness, the Commission is allowed to ask any questions, this is an investigative process and Ms Bawa is asking questions on behalf of us, the witness is being led by Mr Osborne and we received his statement from Mr Osborne.

MR ARENDSE: But then we are constrained and restricted by asking certain questions.

COMMISSIONER: That's how the rules are Mr Arendse, if you read it, and that's because it's not an adversarial process, it's not us against you, this is an investigative process in which you are allowed an opportunity to represent your client's views and to have an opportunity to be heard, but actually at the end of the day this commission is investigation, not running a piece of litigation, and those were rules that were set out right at the outset.

MR ARENDSE: I did not suggest that this is a different process to the one that you describe, I'm asking about the fairness of allowing a wide berth, very wide berth to the evidence leaders.

COMMISSIONER: The issue of the civilian secretariat is very important to the Commission. It has been known, certainly to the Commission and I imagine certainly to your client and to the province, that the provincial department of community safety is currently serving as the provincial secretariat for the national civilian secretariat, which is an important piece of legislation dealing with this, which we have wanted to explore and touch on, and this is our opportunity to do so. It's dealt with in the statement, we know that this is the role of the department and we always wanted to ask the department these questions. We can't leave this as a gap, we are not having the national civilian secretariat coming before us because it's a provincial department

and we're only dealing with one small area of one province, so that is really why Dr Lawrence is here to answer both questions in relation to the Department of Community Safety and in relation to the Civilian Secretariat, it is our only opportunity to put questions to him. But it is becoming clear to me that at half past five we probably cannot continue today, if we can't finish today it's probably – Dr Lawrence I'm sorry that that's the case, we had hoped to be able to finish today, but we – I think it's impractical to do so and I think that what we should do at this stage is probably adjourn and meet again tomorrow morning and probably start early tomorrow morning. I'm not sure what your position is in the morning, would you be available in the morning at nine o'clock?

DR LAWRENCE: Yes I will.

COMMISSIONER: You would be, and other people could we be able to start early Mr Arendse, would that suit you?

MR ARENDSE: Yes if we were to finish, were going to finish Dr Lawrence we were going to suggest and I spoke to Advocate Masuku that we start with Mr Bosman at nine o'clock tomorrow, so now difference.

COMMISSIONER: Alright, so that's good, so we will do that, we will start at nine and then just to clarify that I think that we are actually having immediately after we're having Ms Harmse, and then we will go onto Mr Bosman, because Ms Harmse needs to be dealt with in the morning, and that's obviously also very important evidence relating to the way in which prosecutions are conducted at the Khayelitsha Magistrate Court, she is the senior public prosecutor there. So that's the way we will go forward we will deal with the rest of the questions tomorrow Dr Lawrence, move onto Ms Harmse, then onto Mr Bosman. Thank you very much, I'm sorry it's been a long day, it is trying, and we will reconvene tomorrow morning at nine o'clock.

MS BAWA: May I point out that my line of questioning arises from paragraph 44 on page 14 of Dr Lawrence's statement.

COMMISSIONER: Thanks Ms Bawa, perhaps you could point that out to Mr Arendse once we've adjourned. We will now adjourn.

6 February 2014

ON RESUMPTION ON 6 FEBRUARY 2014 (at 09:00)

COMMISSIONER: Right Dr Lawrence would you like to come forward again and take the seat, thank you. Good morning and thank you once again for making yourself available you would recall that you are still under oath from yesterday.

/...

DR LAWRENCE: I acknowledge that yes.

COMMISSIONER: Thank you I'm going to turn over to Ms Bawa. Ms Bawa?

MS BAWA: As a matter of housekeeping we were given a document yesterday called "police to population ratios" I think Advocate Arendse provided it.

COMMISSIONER: Yes I think we should give it a number.

MS BAWA: Marked "GL3".

COMMISSIONER: One of the difficulties is that we got from Mr Osborne a Bundle of documents which were labelled as I recall it "GL1-9" is that correct Mr Osborne?

MR OSBORNE: That is correct.

MS BAWA: Okay.

COMMISSIONER: Can we give it "GL10" so there's no confusion?

MR ARENDSE: Sorry Madam Commissioner good morning ja this document I received last night in response to a query that I raised so I'm sorry that it has not been made available before, I was not aware of it but I thought...

COMMISSIONER: Just one minute because I think we're dealing with a different document Mr Arendse.

MS BAWA: I'm talking about the correspondence to Mr Wiley from the Provincial Commissioner dealing with population ratios.

MR ARENDSE: Yes that's the one I sent this morning.

MS BAWA: Oh did you provide it this morning?

MR ARENDSE: I sent it this morning.

MS BAWA: Okay then I'm sorry.

COMMISSIONER: It hasn't been admitted yet but if we could just clarify we got a document with the population ratios which was sent to the Province was that part of your Bundle G1-7 Mr Osborne?

MR OSBORNE: It was not Madam Chair.

COMMISSIONER: So it was an additional document you handed in, does it form part of the record somewhere it's actually under the DOCS documents.

MR OSBORNE: Madam Chair, there is a document that's part of the record which is May the 9th if I recall.

COMMISSIONER: That's correct.

MR OSBORNE: Now is this the very same document may I enquire?

COMMISSIONER: I think it is actually now I recall we looked at it, the document that was handed in yesterday was actually part of Bundle 2(3) and except in Bundle 2(3) it was separated out into four documents because the Annexures were each one separate so we don't actually need to attach it number because it actually is part of Bundle 2(3) I will be able to find it.

MS BAWA: No, no we checked that this morning, there is a May

document which deals with police to population ratios. When we checked this morning the document which Advocate Arendse has now made available to us is dated 22nd October 2013 its second page is entirely different and its schedule has different figures to it.

COMMISSIONER: Are the figures different as well?

MS BAWA: The figures are different let me hand it...

COMMISSIONER: Thank you it's very nice to have a range of court orderlies.

MR OSBORNE: If I may be helpful I believe that those initial figures were provided by SAPS, there was then a suggestion two months later from the Police Commissioner that those figures were wrong. We heard nothing more for a while and this presumably is the Police Commissioner's attempt to correct the error that he says appeared in the May 9th letter.

COMMISSIONER: Let's start with the project of labelling this can we label it "GL10"?

MR OSBORNE: Madam Chair that would be "GL11".

COMMISSIONER: GL11 thank you so I'm just going to read into the record this is a letter to the Chairperson of the Standing Committee on Community Safety in the Province from the South African Police Service dated 22nd October and it has an Annexure which purports to contain the population to police ratios for the Province. Right so we receive this into evidence.

LETTER TO CHAIRPERSON OF THE STANDING COMMITTEE ON COMMUNITY SAFETY DATED 22ND OCTOBER MARKED EXHIBIT GL11

MR OSBORNE: Okay.

COMMISSIONER: I think that we will go down an unnecessary sidetrack if we deal with this immediately thank you. Are there any other housekeeping matters you want to...(intervention)

MS BAWA: Is the letter that Advocate Arendse had, the Colonel Nel letter and I don't know whether that was given to Ms Dissel yesterday to make copies of to put in, I'm not sure what happened to it.

MR ARENDSE: I still have the letter I'm not sure whether it has been admitted Chair because you raised why I hadn't made it available before and I said well it arose just out of consultation the night before and Colonel Nel has been requested to testify at your request.

COMMISSIONER: Could you make the letter available to Ms Dissel and Advocate Pikoli and I can consider it, it did seem a little bit as if we were talking about a period quite a long time ago which was prior to 2010 but nevertheless make it available to us and we'll make a ruling on it. Any other administrative matters at this stage, no good would you like to proceed with your

questioning of Dr Lawrence.

CROSS-EXAMINATION BY MS BAWA (continued)

MS BAWA: Good morning Dr Lawrence.

DR LAWRENCE: Good morning.

MS BAWA: There's two issues that pertinently arise from yesterday's discussion we were having, one that I need to correct and one that I hope you've been able to get an answer on. The first is whether the inspections being done by the Provincial Inspectorate to the Khayelitsha police stations are unannounced visits or whether they are announced visits?

DR LAWRENCE: They are announced visits, in other words notice is given.

MS BAWA: So all the reports that have been provided to the Commission of inspections or visits done in the last two years are on the basis of, or say since 2010 are based on announced visits.

DR LAWRENCE: Yes.

MS BAWA: Now we had a bit of a discussion yesterday and I got myself into knots in getting the figures right and I put the proposition to you that SAPS nationally was getting seven billion and you were taken aback, it was my error it was 71 billion as the budget and I stand corrected so that was an error on my part which you did correct and I then moved on is that correct?

DR LAWRENCE: Correct.

MS BAWA: As I understand it with the SAPS national budget eight million of the 71 million or approximately eight billion is what is allocated to the Western Cape SAPS is that correct?

DR LAWRENCE: Approximately correct yes.

MS BAWA: In contrast to that the budget of your department on the documentation reflected to us is in the region of 388 million would you confirm that to be correct?

DR LAWRENCE: That's the total budget of the department which includes four programs including traffic which takes nearly half of that budget, provincial traffic.

MS BAWA: If I understand how it's broken down is the Directorate that deals with monitoring and evaluation of the 388 million is allocated a budget of R21 582 000 is that correct?

DR LAWRENCE: I don't have all the figures in front of me but approximately yes.

MS BAWA: There is another budget of 64 million which is allocated to what's called "program 3" which doesn't deal with this aspect does that sound correct to you Dr Lawrence?

DR LAWRENCE: Yes.

MS BAWA: If one goes to the document which is the document which contains the schedule of payments which had been made...

COMMISSIONER: Do you have a record reference for it?

MS BAWA: It's the Annexure which was attached to the

application for cross-examination of Mr Loonat that's got the schedules of the amount of payments made to the CPFs I don't think it's part of...

COMMISSIONER: Sorry it's not in this file it's the DOCS application to cross-examine Mr Loonat.

MS BAWA: Indeed, right but as I understand it Dr Lawrence and it's with reference to questions which the Commission had asked the department as well and in relation to which we got responses from you. I have provided Dr Lawrence with the document it's called "memorandum" and it's dated 10 September 2013 and it's found on the Bundle at Bundle 2 file 3 and it's file 9 and it's item 9.5. Let me just – I might be misleading you on the 9.5, no I'm right it is 9.5 it's the memo of the 10th September. This memorandum Dr Lawrence the Commission posed a series of questions to the department and the department responded in writing to those questions is that correct?

DR LAWRENCE: Correct.

MS BAWA: A number of these questions related to Community Police Forums. Can I take you page 17 of the document under No. 8 dealing with Community Police Forums and the question which the Commission posed was "what role does DOCS play, if any, in relation to the Khayelitsha CPFs" and I'm not going to take you through it entirely. It seems the answer given was:

"In an attempt (in the third paragraph) to better regulate the relationship with the CPFs a uniform constitution for police forums in the Western Cape was developed by the department in close consultation with the board, SAPS and DOCS"

In the second last paragraph:

"In 2011 the Secretariat for Police that came into operation on 1 December 2011 section 5(i) of the said Act empowered the Provincial Secretariat to provide guidance to CPF and associated structures and facilitate their proper functioning.

With this new legal mandate and considering the importance of CPFs within the Provincial Strategic Objective 5 increase in safety, DOCS in 2011 conducted the first of its kind functionality audit".

Now I just want to understand did you act as the Provincial Secretariat in doing that or as the Department of Community Safety?

DR LAWRENCE: As the Department of Community Safety.

MS BAWA: Okay.

DR LAWRENCE: Parallel processes.

MS BAWA: It's a parallel process right so you weren't acting pursuant to the provisions of the Secretariat Act in conducting

those surveys.

DR LAWRENCE: No that was a functionality audit that is referred to and that was a large baseline as we in the department tried to look at the way forward in rolling out a way of assisting the CPFs. The big problem with the CPFs was that some of them were functional or dysfunctional and we needed to make that baseline and so that was a baseline study in functionality by the department.

MS BAWA: It seems what the EP program's aim to do was that it wasn't going to be a one size fits all kind of project and that you would look at individual CPFs and see what the needs, how the needs arose, am I characterising that correctly?

DR LAWRENCE: Yes we wanted to, first of all we wanted to try and bring all the, the overtime to bring all the CPFs up to proper functionality as defined and to take section 18 of the Police Act which deals with CPFs and to determine what the requirements would be to ensure that they actually did what was required of them. Now doing what was required of them we felt it necessary then to have the sheet that goes with the EP program to look at as I said before issues of governance and issues of oversight and issues of how they would deal with what needs to be dealt with around the police stations.

MS BAWA: Dr Lawrence one of the issues that the Commission is grappling with, both in respect of SAPS at the Khayelitsha police stations at one level and DOCS and the CPFs, we have been trying to work out precisely how much resources in terms of money has been spent by the Department of Community Safety in Khayelitsha, can you give us an indication of that? There is some of an answer on page 20 of the memo where we were told that since the inception of the EPP program the Khayelitsha CPFs had until October 2013 received 26 000 and on the next page we're told that you spent 30 000 on CPF training in the Khayelitsha excluding the cost of employment in the three year period. I'm exploring with you whether there was any other of the 21 million spent specifically on Khayelitsha?

DR LAWRENCE: Chairperson, it's a very difficult question to answer because we can give you those specifics in terms of the programs but if you're asking what did the department spend on Khayelitsha then it goes beyond that and it goes beyond that program because remember we also have a program in terms of safety and security in terms of our institutions so I could add what we are spending on security at, our input in terms of security at the Khayelitsha Hospital for example and I'm not trying to – because that comes out of our budget so those are all little bits that add up. So there are a number of other areas that we pick up on as well as part of the SO5, as part of safety for the whole

province and then clearly there are parts of that that will be relevant to Khayelitsha as well. We could even include our traffic, although it's Provincial Traffic, but there are relations that we have with the Metro Traffic as well. Chairperson, one could argue if you look at it in terms of the last two financial years the cost of this Commission is a very serious cost from the department in addressing the issues in Khayelitsha, the big issue of why this Commission was set up. Now that's a huge cost compared to the rest of those and I would argue that that could be added in in terms of what this department has done on a regular basis in Khayelitsha but let's say in an exceptional circumstance in terms of this Commission which is part of our mandate.

MS BAWA: You see Dr Lawrence as I understood it the Traffic doesn't come out of the 21 million budget is that correct?

DR LAWRENCE: No it doesn't it comes from the other parts of the budget.

MS BAWA: Does the security to the Khayelitsha Hospital come out of the 21 million budget?

DR LAWRENCE: No, no.

MS BAWA: And if we're dealing with it up to the, you see we're trying to work out to what extent has the dysfunctionality or the breakdown been exacerbated or caused by lack of resources and so we're trying to work out how have they been resourced. So effectively even if we take the Commission out of that conclusion what are we then left with besides the precise funding going to the CPFs through the EPP program and the money which has been paid into the school safety program and that which has been spent on training, is there anything else we're missing?

DR LAWRENCE: No but we can give you those figures and how they've actually increased in Khayelitsha, certainly you can see even if you look at the schedule of payments for the CPFs, as we've indicated Lingeletu West was on the original schedule and so they're already had money. If you look at that schedule you'll see certain other precincts that got R300 for example because they started later. So even in terms of our new police around the funding, Khayelitsha received funding let's say ahead of many other precincts across the province.

MS BAWA: Well let's look at that funding because yesterday we had this conversation about you can get up to a total of 36 000 although the memo that was provided to us said 30 000 so I'm not entirely sure whether your maximum in a year is 3 000 a month or a 30 000 for the year. But whichever it is if you look at Annexure E that's been provided to us which deals with policing needs and priorities the item right at the end, the only Khayelitsha item which is on that list is Lingeletu West. Do you have the document Dr Lawrence?

DR LAWRENCE: I've got one which has all three of the Khayelitsha...(intervention)

MS BAWA: No I think you must go one page earlier which deals with, the first page is "policing needs and priorities".

DR LAWRENCE: No sorry I've got, it says Annexure E and it starts with the amount given for...(intervention)

MS BAWA: Well my Annexure E...(intervention)

DR LAWRENCE: 2013/2014.

MS BAWA: ...has got four pages 2011, 2012 perhaps Mr Osborne can provide you with a copy of it?

COMMISSIONER: Do we have this Ms Bawa or not?

MS BAWA: It's the four schedules attached to the application for cross-examination for Mr Loonat.

COMMISSIONER: Yes of course that's in my Mr Loonat file not here today.

MR OSBORNE: Evidence Leader I have to hand only the very same document that Dr Lawrence is referring to and it is marked "E" and it, as he says, has figures for all three of the Khayelitsha stations on it.

MS BAWA: I have four schedules, the first schedule deals with "policing needs and priorities" and it lists 32 police stations in the period 2011/2012 a total of R32 000 is spent of which Lingeletu gets 1 000 say 1 600, 1 500,93. So out of that total budget the amount proportional to the other 31 stations is roughly 30%, no 3%. But let's talk it off a schedule that you do have in front of you, the next schedule that deals with the "expanded partnership program for 2012/2013" is that the one you do have in front of you Dr Lawrence?

DR LAWRENCE: I have the 2013/2014.

MS BAWA: Do you not have 2012/2013?

MR OSBORNE: We only have "E" which is 13/14.

MS BAWA: Let me proceed to another line of questioning and we'll arrange to have this copied because it doesn't make sense for us to have this conversation without everybody – I'm sorry now that my scribblings are on it. Advocate Adhikari sent us four schedules...(discussion aside) we'll come back to that aspect. Dr Lawrence the other conversation that was happening yesterday related to the memorandum dated, well the instruction dated 16 March 2010 of the Bundle of documents which was SAPS' instructions, the Provincial Commissioner's instructions for the investigations of complaints can you lay your hands on that one it's the one dated 16 March 2010?

DR LAWRENCE: No.

MS BAWA: It's the Bundle of documents which Advocate Osborne handed up as the correspondence and it's the second one in the Bundle marked "GL2".

DR LAWRENCE: Okay I do have that, I have it.

MS BAWA: Right, now Dr Lawrence as I understand the chain of command within the police ranks when the Police Commissioner gives an instruction and you don't follow that instruction you are going to be disciplined is that the correct understanding?

DR LAWRENCE: That's my understanding of what would probably happen yes but what actually happens I can't say.

MS BAWA: Now if we look at item 8 on this notice which we all seem to have been ignoring, item 8 says:

“No station commander or supervisor at station level may correspond directly with the Department of Community Safety regarding complaints against the SAPS. The contents of this instruction apply *mutatis mutandis* to cluster commanders as well as provincial units and components”.

Now on my clear reading of that provision that is a clear instruction to station commanders that there will be no communication directly with DOCS is that your understanding of that instruction as well?

DR LAWRENCE: Yes.

MS BAWA: Where station commanders have sought to be conciliatory and been assisting DOCS in any way they would in effect go against a clear instruction from the Provincial Commissioner.

DR LAWRENCE: Yes.

MS BAWA: Dr Lawrence one of the things that seemed to come out of the SAPS Act as an important component in which CPFs have to play a role in is in the contribution that they make towards the creation or development of annual safety plans. We asked the department for copies of annual safety plans for Khayelitsha but the department was not in possession of any of those safety plans. Are you aware of any contribution that the CPFs who are part of the EPP make in contributing towards the development of the annual safety plan? I will refer you to page 36 of the document which I gave you in the morning, the memo which is the list of documentation we requested and under 15.2 we ask for a copy of the safety plan developed for Khayelitsha and the notation provided by the department is “still outstanding”. So the only inference I can draw out of the 12 Lever Arch boxes that DOCS is not even in possession of the safety plans as developed in Khayelitsha.

DR LAWRENCE: To the best of my knowledge that's right.

MS BAWA: So you are not aware of any, so part of your EPP program does not involve them scoring points for being part of a development of the annual safety plan?

DR LAWRENCE: Currently not.

MR ARENDSE: Madam Commissioner may I just interpose and just for the record we have also enquired now about these annual safety plans because you will recall that it arose from the evidence and the affidavit of Mr Loonat.

COMMISSIONER: Yes and in fact we then subsequently...(intervention)

MR ARENDSE: You then requested and that's where the query came from our side. There are no such safety plans and we will forward, it's not so much of an opinion but the response to that that there are no such safety plans and that the SAPS station commanders and the CPFs are not obliged to draw up such safety plans. I may also have proceeded under the mistaken impression when I never even questioned Mr Loonat because they said if you look at the constitution, the uniform constitution that had been adopted there is no such obligation.

COMMISSIONER: My understanding from Mr Loonat's evidence is that it came out of a regulation which he indicated was Regulation 8 and Regulation 9 although he didn't tell us of what so perhaps you could ask your clients that as well. He didn't suggest that it came from the constitution but he talked about it coming out of a SAPS regulation perhaps that could be looked at we're certainly looking for it ourselves.

MR ARENDSE: As you please Madam Commissioner.

COMMISSIONER: Thank you. Ms Bawa?

MS BAWA: I now have copies of the schedule to which I referred Dr Lawrence to, all the handwritten notes should probably be ignored because they were mathematically incorrect and that's what got me into trouble in the first place yesterday. You see Dr Lawrence we're trying to work out issues of functionality and community breakdown in relations and the difficulty in ascertaining that is a measurement. One of the objectives of the EPP program is to move away from the unaccountability of the CPFs to an accountable CPF where you can actually measure their performance as I understand the object of the program.

DR LAWRENCE: Yes.

MS BAWA: So one of those measurements as to how well the CPF does in complying with the EPP the better the financial reward is from the Department of Community Safety is that a fair conclusion?

DR LAWRENCE: No.

MS BAWA: Correct me, how am I misunderstanding this?

DR LAWRENCE: There's an amount that they receive and I think that's part of some of the problems, it is not an incentive to perform it's a benefit when you perform. So the idea is not that they perform on the basis of receiving funds the idea that we have functional, accountable CPFs, so part of that is to ensure that

there's governance and so that's what we're looking at. Now we wouldn't like that if funding is withdrawn for any reason that the CPF collapses that's not right we are trying to use the funding mechanism to ensure that there's compliance with what they need to do. What we will roll out further then if I can say is other ways in which we will fund CPFs, fund the clusters and fund the Board that's all in our pipeline but clearly we are developing this.

MS BAWA: That's part of the contemplated 24 million which you anticipate spending on this over a period of time.

DR LAWRENCE: Probably more than that because currently the EPP is only with the CPFs. Now remember the CPFs have a structure, they have clusters and they have the Board, previously we funded the Board, the Board then dealt with programs for CPFs. We now believe that if we are going to look at oversight over the CPFs and the police stations the next level up could also be funded to provide information at the next level. Take for example public order policing it's not a station-based issue it's the next level up so who could do that, could it be the cluster or could it be the Board. So we would then have a similar scheme we believe where information could be garnered around that kind of oversight as well so the funding stream would be improving and would be increasing.

MS BAWA: So if we move away from my terminology which is an incentive to perform to your terminology the benefits you get if you perform and then we look at what benefits they got out of the maximum benefits they could get for the performance that they did give. If one looks at the Table, in the first Table that we take right to the bottom of the R32 000 that got spent in the 2011/2012 year Lingeletu West got the benefit of R1 593.

DR LAWRENCE: Correct.

MS BAWA: My improved mathematical calculation says that was 4.9% of what was spent we can do that. So for the EPP project, and it doesn't seem that the other 30 except for Prince Albert and maybe Bishop Lavis who got a bit more, it seems that that's almost an average amount if one goes down to the list for the EPP initiative what Lingeletu West received, would you agree with that?

DR LAWRENCE: For the EPP yes that's correct it's the EPP initiatives and I agree with that yes.

MS BAWA: Yes so then we go to the next page which is the 2012/2013 period and in that year you spent a total of 344 000 plus some odds and there we've got money going to all three CPFs; Harare gets 7 450, Khayelitsha 4 937 and Lingeletu West 13 313 out of a possible benefit of 30 000. Now if we use the current Department of Education of pass rates of 30% then Lingeletu West has just barely passed and the other two have

failed in obtaining their maximum potential benefit for performance, is that a fair assessment?

DR LAWRENCE: No it's not.

MS BAWA: Why not?

DR LAWRENCE: We need to understand that we started a program called the EPP, the funding mechanism was on the basis of reports received and in terms of what was done and there's a calculation per line item and the CPF is then paid on the basis of the line items completed, verified and added up. Now the funding in the first year and in the second year, remember this is 32 we're rolling out to 150 so when you take a financial year or any period it depends on when that particular CPF started. So if they started last month they may only get R300 or something so that is why if you looked at your first schedule it was only Lingeletu West when they came on, I don't know which month they came on, similarly when we look at Harare and Khayelitsha it's when they came on. We have to roll this out to all 150 police stations so it's not based on any proportionality of – the funding is based on their input and based on when they started if you want to do an accumulation. If we broke this down per month then obviously we'll get some other figures.

MS BAWA: If we broke it down to a month then for Harare for a month they got an average of R620, for Khayelitsha they got an amount of R411 and for Lingeletu West they got an amount of R1 109, the calculator is working this time round. But my point is Lingeletu West is there the previous year so we can assume that they're part of the EPP program in its entirety the next year right?

DR LAWRENCE: That's correct.

MS BAWA: That's correct so they are the ones that barely passed with just over 30% having been part of the pilot project. Now do you know when during that year the Harare CPF and Khayelitsha CPF joined the program?

DR LAWRENCE: No.

MS BAWA: Could that be ascertained and provided to the Commission?

DR LAWRENCE: Yes.

MS BAWA: But now we do know that all three CPFs are part of the program and so we come to the next one. In the next financial year we see that it is rolled out to many more CPFs and the department has actually spent a total of just over 646 000. So there is a progressive improvement in the number of CPFs now being part of the program which is essentially you want to get it to all 150.

DR LAWRENCE: Yes.

MS BAWA: But then we look at Lingeletu West right top of the list they get in 10 321 now I accept that the 2013/2014 year is not

yet at an end so this financial year is not yet completed, do you run till 31st March?

DR LAWRENCE: Yes ma'am.

MS BAWA: So essentially we've got a two month period that is still left and even a potential three month period if the figures have not been updated. But even on that of a potential 30 000 for the third year that Lingeletu West is in the program they also look like they're just barely going to pass on a 30% of the potential 30 000 that they could get. If one looks at Harare who has now been in the program for the previous year they have marginally upped, in fact they have deteriorated because the previous year they got 7 450 and by the end of the financial year they might very well hit the same amount that they got the previous year. The one that seems to have had a significant improvement is the Khayelitsha CPF but even so we're not even getting close to where they're earning 50% of the potential capacity that they could earn. Now Dr Lawrence I'm raising this with you for two instances because if the EPP is the only almost objective measure that we now have for testing how functional the CPF is on the basis of the payments that DOCS had made 100% functional is your 30 000 and anything less will give you a percentage of it then surely we've still got problematic CPFs in Khayelitsha.

DR LAWRENCE: Problematic in terms of not fully complying with everything that would as it were benefit them in terms of the funding and that means that when we have our CPF meeting we've got to determine what are some of those issues, bottlenecks or blockages. That is the intervention that the department has to make as well because the intention is that all of the CPFs should be able to access all of the funds...

COMMISSIONER: May I just interject here Dr Lawrence and just comment that one of the things that strikes me is that it's not a very good performance overall in fact I think there are just under 100 on this 2013/14 list so if we just round it up on average CPFs are getting in the region of R6 000 to R8 000 a year which is a very small...(intervention)

MS BAWA: Maybe I could assist you, in the first year the three in Khayelitsha the only one was Lingeletu who was 4.9%, in the second year they got 7.5%, in the third year they got 4.28% of the total money spent.

COMMISSIONER: That's an interesting figure of course the numbers are changing you started off with 32 and you grew but over all three years there seems to be only one police station which somewhat mysteriously got more than the 30 000 but I don't want to get too distracted with that but they're all performing badly or not performing optimally is perhaps a better way of

formulating it. What is your understanding of that and is there any kind of plan in place to try and assist CPFs to meet the performance measures that you've established?

DR LAWRENCE: Yes we do and we are looking at it in terms of trying to adjust what is on – the CPFs have also indicated that some of the tasks are onerous to visit the police station 10 times a month etc. They have also indicated some changes that they would like on our schedule in terms of what items need to be perhaps added or taken off and so we've taken note of those and that's part of trying to adjust the program. As we said this was a new way in which we are dealing with this and so those will be taken into consideration to ensure that they can have compliance but at the same time be functional. So are our requirements too onerous, yes we need to look at that.

COMMISSIONER: May I also ask another question has there been any thought given to the idea that the average income in a particular suburb may be taken into account in determining how much the suburb might receive so that for example a relatively well off suburb may get a relatively less amount, particularly given the fact that it seems as if a lot of the needs of the CPF may be readily available to middle class person like a telephone whereas might not be so readily available to somebody who is not middle class and who has not got an income. We have certainly received evidence before this Commission which suggests that the three Khayelitsha police stations are of the poorest communities, of any community in the Western Cape and therefore there's very little spare income to be able to support the basic resources of a CPF.

DR LAWRENCE: Sorry a very interesting point and that's why I'm saying is it an incentive or a benefit because we have to be consistent across all the CPFs in terms of how we determine what is in fact good governance. Now you'll find that let's say more affluent suburbs you could argue don't need our funding but we still measure them on how they've accessed the funding.

So you take a CPF like Pinelands and they say well we actually want your money but this is a bit too onerous and we are pensioners and we can't get around there. Now we are arguing at the moment that we would like to see a compliance for the benefit so that we can have consistency around the governance issues as well as what we consider to be part of the oversight issues. If we are saying how else do we support communities like Khayelitsha, which we don't in communities like let's say Pinelands, there are other initiatives that we do. Remember that our oversight role is not only restricted to the CPFs, now I know the debate now is about support for the CPFs but we also have other programs in Khayelitsha. Currently as I've indicated when we spoke about the Bambanani we are rolling out the volunteers that have gone to

Chrysalis Academy. Now they have been trained, they've had three months' training which presents them with discipline, they do some basic skills training as well and we've placed them also in Khayelitsha.

When we did the Shadow Report the impact of the Shadow Report was that the person most susceptible to being murdered in those areas is a black male under the age of 35. The person most likely to be the perpetrator is a black male under the age of 35. So part of our targeting of young people, of youth is parallel to what we're doing in terms of the funding of the CPFs. Now I know the focus of the funding is CPFs but from the department's perspective we also have to look at the whole crime situation in these areas so we are spending funding on that as well.

In addition we have a religious program with all religious organisations whether it's mosques or Christian religion or whatever again at particular times and again we are focusing on how do we get funding into these communities but in a way that satisfies the PFMA. So we take for example religious organisations, many of them have structures, many of them have definite ways of accountability so we can fund them. So we are trying to look at different ways of funding communities like that.

Then the next task is to say part of what we are doing is a whole of society approach. Now the same person who is sitting on the CPF is probably a member of a church or probably a member of a soccer club or probably and so how do you link all of those together so that's what we're trying to do we cannot put all our eggs as it were in one basket.

COMMISSIONER: I understand but if I could just follow up on the question I put which is that in poorer areas some of the simple things which in a middle class area in order to function as a CPF seem available and one of the things that has really been raised here is transport, getting to a CPF meeting is really an issue. My understanding is the CPFs – and we're going to hear evidence from them in due course – are often reliant on SAPS for that which is problematic because if they try to hold SAPS to account or have some sort of conflict with SAPS the transport option may just be withdrawn. Now that seems to me to be something that the DOCS, and it is clearly committed to the CPFs, may well say well we need to have some sort of a sliding scale approach to CPFs to ensure that they can operate effectively in environments where communities don't have any resources.

DR LAWRENCE: Chairperson I think again we're getting into the debate of what is the obligation of DOCS in terms of the CPF and I think we've had that debate that constitutionally there's no obligation as it were because these CPFs have not been created in terms of our legislation but certainly in terms of the SAPS Act.

There has been the tradition across the country that SAPS would attend the meetings and would assist in transporting members to meetings. Previously in this province there were other funding mechanisms for transport as such but that was mostly through the board, the Provincial Board.

We take note of those Chairperson but I think we need to be cautious about what our mandate is as a department and as I've indicated and as Ms Bawa has indicated as well if you look at the limited funding that we have, if you look at the need out there across the whole province not just the City of Cape Town, if you look at priority areas whether it's gangsterism or whatever then that funding is pretty stretched.

Now part of for example the way we ran the Bambanani before was to have volunteers out there in the schools etc then to have supervisors and to have people going out using state vehicles obviously at a cost to go and check up on all those kinds of things. What we are trying to do now is to link these initiatives into the community so that we don't have that cost of officials and official vehicles etc but then to use technology so that's why we have the template on the computer to try and say how can we save resources from staffing resources to make sure that we are actually funding where it really matters. So again I come back to the religious program where we then through a proper mechanism they have to apply there's a proper memorandum of understanding and then we do inspection visits to make sure that what we have asked to happen is happening. That is rather than to say we will go and do these kinds of programs within communities.

Chairperson, another way in which we are looking at funding is that as, the idea was that as this rolled out and correctly as we say we had hoped that those who had been on for a year would not be up to the 30 000, that if they saved some of that money we could then do a process of matching funding. In other words if they save some money from the payments and were able to say right we've got R10 000 we want to do a particular project the Department could then look at a rand-for-rand matching. So a lot of what you are saying seems restrictive in terms of how funding but unfortunately Chairperson, and I think you're aware of this, the restrictions placed on departments through the PFMA, the Auditor-General etc forces us to go down this road and we want to provide the funding. I must also say that it has been very difficult to actually find ways in which we can fund communities without the onerous task of being responsible for everything that happens in a community the EPP provides that way. It doesn't mean that they cannot use that funding for transport etc but we note your comment that in fact the amount may be too little I think it's the *quantum* that we're talking about.

MS BAWA: My point on the amount Dr Lawrence was you in your affidavit in paragraph 104 in particular make the point that one of the objectives that you succeed or hope to succeed in with the EPP program is to enhance the sustainability of the CPFs. Now if you're getting R482 as a CPF per month then I have great difficulty in understanding how that is sustainable if you have to take care of transport etc and it raises Judge O'Regan's concern that if we are the means by which the police station is monitored then the freebies we get from SAPS may very well be placed in jeopardy.

DR LAWRENCE: Sorry I don't understand the "freebies"?

MS BAWA: I think this was the difficulty in how Mr Loonat and Mr Abrahams tried to articulate or didn't articulate their difficulties with the EPP program. You get benefits if you perform under the EPP program, your performance is monitoring the very person on whom you are reliant for transport, office space, computers, printers putting out your newsletters. Now whilst there is great merit, and I have no difficulty conceptually with what the EPP is hoping to achieve, the difficulty comes that when you're dealing with communities such as Khayelitsha – it may not be a difficulty in Pinelands where the person has a computer in their home but when you come to communities such as Khayelitsha you create that difficulty and what I understood, maybe in the most articulate way, Mr Loonat and Mr Abrahams were trying to say, not only do we have an oversight and monitoring function we need to build relationships with the police and in performing one function we are breaking down in some ways another function in doing that, especially in communities such as Khayelitsha.

DR LAWRENCE: Chairperson I find it strange that we're being castigated for creating that anomaly which has existed for a long time and in fact it's our very concern that in terms of the Police Act the CPFs have been established which immediately establishes a relationship which, as you say, makes it prone to possible favours or disfavour. That has been going on for a long time and the police have been providing accommodation etc and the police have been providing the transport and so there is that kind of relationship. To blame the department now for that and to say that our program exacerbates that is not fair. I agree that what we are looking at is a way of funding CPFs but to put that total burden onto my department and to say that we're actually exacerbating another situation I don't think is fair.

MS BAWA: I don't think you understand I was not putting the blame at the door of the department I was simply making the point that if we're looking at sustainable CPFs to do oversight and monitoring independently at police stations, that independence is in some way compromised because of the dependency relationship

that the CPF has with SAPS that's the point I'm trying to make.

DR LAWRENCE: No but I think you further – if I may that's how I understood it to say that DOCS is not providing sufficient funding for that independence to happen and that's the blame that I'm hearing.

MS BAWA: I'm not saying DOCS is not providing sufficient funding I'm saying CPFs don't have sufficient funding.

DR LAWRENCE: That I will accept.

MS BAWA: That's the difficulty and the funding that DOCS does provide isn't enough to create that kind of independence for a CPF. We have all accepted that there's *lacuna* in who is actually responsible for funding it, my point is that what the CPFs have at their disposal isn't sufficient to create that kind of independence. But just to be noted that on the memo that I provided to you this morning there is an account on page 39 under paragraph 15.21 of a report that your department provides on the CPFs, it's already part of the evidence so I'm not going to take you but that's the situation which prevailed at the time of that inspection on CPFs. It is also noted in the report that you provide under 25.5 that there are departmental representatives that are designated to attend CPF meetings, it's on page 31, I've lost the page reference but it's not material, the point I'm trying to make is that you have designated persons in that cluster who are meant to attend CPF meetings as DOCS representatives is that correct?

DR LAWRENCE: That's correct.

MS BAWA: So there is an attempt on the part of DOCS for a presence at meetings to assist with meetings we just haven't seen it in the historical minutes that we've obtained from SAPS that there's a DOCS presence at the meeting. Is that something that was implemented only as part of the EPP program?

DR LAWRENCE: What we've done is we've also, part of the functionality study that we did looked at the relationship with DOCS and looked at the relationship with the police in terms of the CPFs and clearly there were concerns even about the relationship with DOCS so we have to build up on that as well. One of the parts of the EPP that we felt was necessary was to ensure that there was full representation at the meeting by DOCS officials. Now given the size of the department and given 150 police stations across the province we then come up with challenges of capacity as well as even challenges of transport which will then also bite into budget etc. What do we for example Chairperson I attend as an official one of the CPFs as well, not in Khayelitsha but I attend one. That's part of trying to as it were re-establish the relationship between CPFs and DOCS.

MS BAWA: You also, and I'd like to move off CPFs, but I have one comment on neighbourhood watches, in paragraph 106 page 36 of

your affidavit you deal with neighbourhood watches and “it’s contemplated that neighbourhood watches that are accredited with the department receive training and equipment”. Do you offhand know how many of the neighbourhood watches in Khayelitsha are accredited with the department?

DR LAWRENCE: No Chairperson that’s a proposal that comes into the Community Safety Act, now neighbourhood watches are not established in terms of any law so we cannot accredit them in terms of anything. What we are proposing is that we will have a voluntary accreditation for neighbourhood watches, in other words they will be able to be accredited by the Department of Community Safety and part of that again is to try and see how we can increase the issues about sustainability etc and we believe that there may then be some form of benefit if the neighbourhood watches are accredited in that way. What we are finding clearly Chairperson is that as we offer neighbourhood training, and Mr Loonat made comment about that it was five days and now it’s two days ongoing, is that many people couldn’t attend the five days. Also we found that people attended the training and literally within a month or two were no longer part of the CPF so the training needs to be very carefully monitored to ensure in fact that people do go on the marches and continue to belong to the neighbourhood watches. What we’ve also tried to encourage is that the link with the neighbourhood watch and the CPFs obviously and the SAPS to ensure that there is in fact some form of oversight over those who have been trained. So in the future we hope to have an accreditation, we hope to be able to have data available from neighbourhood watches and in that way to better assess just the size, the scope and what is happening in communities with neighbourhood watches.

MS BAWA: If we now turn to the School Safety Program because it seems as if the two major projects running in Khayelitsha is on the one hand the CPF and on the other the School Safety Program. There is an explanation provided in the memorandum on page 13, now as I understand it from the evidence you’ve given here today that the persons who are placed at schools receive a three month training program before they’re placed at the school is that correct?

DR LAWRENCE: A lot of what has happened in those neighbourhood watches is they’ve been historically there, in other words people have been there for many, many years. What we are looking at now in terms of the new dispensation which moves to the school governing bodies is to have a memorandum of agreement with the school governing bodies and clearly an inter-departmental agreement with the Education Department and DOCS and what we envisage in terms of that agreement is that

the current neighbourhood watches obviously will stay because we can't just summarily dismiss them there will be a labour relations issue, so they have been in terms of their agreement protected for at least up to three months. So by natural attrition new persons who come on board will then undergo the training and provide them to be adequately resourced for that job. Now remember they are not security guards they do not have any arms or anything like that. Over the years they have mostly been older persons, usually female persons, and what we are hoping to do is to change the profile of those Bambanani volunteers and link them and if you look at the memorandum of understanding and the agreements we do that as part of the School Safety Program of the Department of Education.

MS BAWA: But that's what you aim to do on the existing program, the explanation on page 30 is that members of the community that are appointed there currently get a stipend of R70 is that correct?

DR LAWRENCE: That's correct.

MS BAWA: Right and those are people who are mostly older women at the school and they're not actually equipped with any weapons, in fact in most cases if they want to make a phone call they have to go to the principal's office because they don't have a cell phone, as I understood it from some of the evidence that we got. Now the reason why it raises one of the areas of concern that has come before the commission is the increasing number of gangs amongst young people at schools, the highly violent crime arising from those gangs, which has an impact on the drop-out rate at school, are we sure that this project where we're putting persons at schools after a three month training is going to be able to make a difference in that and shouldn't we have a more comprehensive inter-departmental local provincial and national response to a rising gang problem in Khayelitsha?

DR LAWRENCE: That's a big question chairperson, it's a big problem yes, but let me start at the local level and I think I've tried to explain earlier that we recognise that and we're trying to make sure that – with respect people say let's have more volunteers at the school, let's have more of that, we have to also look at other things, and we have to try and make sure that our interventions are evidence based and so that's why we have done some research around that, and if we – as I've just used one example, and besides all the other research out there from the academics and from the university as our own shadow report indicates a targeted area, so that is why if we look at the religious youth program it is another intervention to say well young people are most susceptible to become gangsters, so why shouldn't we be doing something around that, and so that is the program that we're following. What we've said to the churches and mosques

you have young – you have programs for youth, you are organised that way, you have facilities spread out throughout the community, so what we want is an intervention, you usually have your youth clubs whenever, now during the school holidays in December, January and at Easter and in July can you continue that program and not shut down for the holidays like you would normally do and we will fund it on a basis, and that's what we do.

So over the last festive season hundreds of young people were then taken off the streets and put into those programs. Now that is what we call trying to be in a partnership way with communities, similarly if we look at as I said the Chrysselis program, so what we're trying to do there's a basket of interventions and we are not saying there is just one and let's expand, expand, however we are trying to address the school volunteers. Now, as I've said, we've done the intervention, we're looking at the school governing bodies, because they are at the local level, it means the school governing bodies will have a say in who is appointed, they will then be able to make some of those issues that you have spoken about whether it be cell phones or communication etcetera, linking to other programs like the religious programs, like the programs of the City of Cape Town, like the programs of the NGO's. Part of what we need to do is to make sure that we can do a collective response around that.

You talk about the national level, you talk about gangsters yes, this department, the minister and the Premier have asked for a gang unit in this province to intervene in these issues, so that when there are breakouts of gang violence whether it's in Mannenberg or Hanover Park or whatever there has been all kinds of interventions. The most recent from the City of Cape Town has been to put an armed person in a school. Now is that the last resort or is it the first resort?

So there's a number of initiatives out there, and we too, from the department given our limited budget, are trying to see how do we maximise the budget that we have by using again making partnerships rather than us running backwards and forwards. So chairperson it is a big question.

MS BAWA: You see Dr Lawrence when we asked in the memorandum what programs were running in Khayelitsha we essentially got four answers, one was the EPP program on CPF's, we got told about the school safety program, we got told about your policing needs and priorities and we got told about the surveys being done on the Barometers, so when you tell me about the religious youth program now, it's not been provided to the Commission in any form, as having had an impact in Khayelitsha.

DR LAWRENCE: We can provide documentation around that if that is desired.

MS BAWA: I think it's necessary because we've repeatedly in writing made requests for all kinds of programs and its impact on Khayelitsha. The memorandum in point which was a second attempt on our part to get it, there is not one word about it in there. To take you off – and I really want to finish now, but it does seem there's two other issues, the issue that was raised on vigilantism not having been raised in the PNP process, does DOCS have any role in the station crime combating forum meetings that take place, do you ever get an invitation to attend?

DR LAWRENCE: Not that I'm aware of, as official.

MS BAWA: Because I don't see in many of the station – I haven't looked at all of them, but in a substantial number of them I don't see vigilantism raised at the station level itself. Another comment I made in one of the questions that was raised is there was some concern expressed about language as being a barrier to community relations in Khayelitsha, has it been the department's understanding that there is a language communication problem between SAPS and the community in Khayelitsha?

DR LAWRENCE: Chairperson that has been raised in fact across the board in terms of communities wish to be addressed in their home language when they come to the police service, and the police services have indicated that it is not always possible to do so, but that has been a consistent comment or complaint from communities.

MS BAWA: Dr Lawrence as I understand it there are minmec meetings and there are meetings that you attend as HOD across the provinces. Now the difficulties which the Department has experienced in their relationship with SAPS is it only in the Western Cape that that has been experienced, or is it experienced in the other eight provinces as well?

DR LAWRENCE: Chairperson let me say that there is no consistency about an interpretation of a civilian oversight across the provinces and so different provinces do it differently, and certainly when we speak when I speak to my colleague, HOD's across the different provinces they also do express some frustration at their ability to do what they would like to do. In other provinces it's not a problem, but it is determined by what their actual department of community safety, community liaison deems to be their oversight role.

MS BAWA: So are you aware in other provinces that they are allowed to do unannounced visits at police stations or alternatively that they are allowed to investigate policing complaints, do you have any knowledge of that, and my third link to that is are they in possession of the RAGS for their provinces?

DR LAWRENCE: I can't comment on that.

MS BAWA: The issue of the national development plan was raised

almost tangentially in your evidence, to what extent do you think that is material to a solution that should be forthcoming out of this process?

DR LAWRENCE: I think as I mentioned that there – if you extract the five elements from the national development plan as it affects let's call it the total security cluster, then we would support it as a province and as a department, including their comment about civilianising the police or demilitarising the police, and obviously also enhancing the justice cluster. And then particularly of importance to us would be the issues relating to an integrated approach to community involvement, and also then enhancing as they do – as they talk about CPF's and other bodies like that, so let's say those first three are out of our ambit as a department, I mean we have no role to play – not no role to play but no mandated role to play around the cluster, the justice cluster, and also the civilianisation of the police, but clearly we have a role to play in the integrated approach to communities, and community involvement and that's a serious mandate that we take.

So certainly in terms of where the national development plan is going, and we also consider obviously strategic objective 3 from national as well, which relates to safety in communities.

MS BAWA: On two other issues, it does seem that an area which we don't see a significant development on programs in the Khayelitsha goes around homophobia, xenophobia, do we anticipate that part of the roll-out on the EPP program would be development of programs for vulnerable groups in these categories, is it contemplated?

DR LAWRENCE: Chairperson there are other departments, such as social development involved in some of those kinds of programs, and that's part of what I spoke about as an integrated approach. For us as DOCS to take on all of that I don't think is right or necessary, this doesn't mean that if CPF's with the funding they have believe that that is something that they would like to arrange out of their funding, or in collaboration with DOCS then absolutely so. Summits can be held, workshops can be held so those things are possible. Sustainable programs that is what other departments do, like as I said social development, and also for example the school safety program deals with things like gangsterism, drugs and awareness programs for young people, so if more information is needed from those two departments they can provide the interventions that they do in Khayelitsha and the affectivity of that.

MS BAWA: Dr Lawrence one of the five elements which emanates from your strategic objective 5 relates to police reservists, to enhance police reservists, now it's with concern that we noted from the information that's been provided to us from SAPS that

not only is there a decreasing number of persons volunteering to be a reservist but there's a decreasing number of persons arriving to do any active participation, as reservists at police stations. Surely that is another area that needs to be enhanced as cooperation between DOCS, the community and SAPS?

DR LAWRENCE: The quick answer is yes, the long answer is that obviously a reservist has to be under some form of regulation and the police have been busy a long while now on redoing that, because there have been some serious issues about reservists who've wished to have been incorporated into the police force, but that's the noise around that. But that has been a long time in coming, so we are certainly disturbed by the loss of the reservists and it's been stated publicly by the Department, by the Minister and we certainly have over the years certainly encouraged that, so I agree with you we would like that to be resolved as soon as possible in terms of the possibility of reservists, and the big issue is then payment, you know they work free and then the next period they have to be paid for, so budget allocation is necessary as well to provide for that, but we would not be providing such a budget reallocation, certainly not.

MS BAWA: It does seem that what contributes towards a breakdown in the relationship with the community as well as efficiencies with the police service, it seems to be accepted that any solution has got to be a multi-faceted solution across inter-governmental departments, do you accept that?

DR LAWRENCE: Yes I do.

MS BAWA: And one final question which has got nothing to do with your current position but your experience historically within government, one of the difficulties which we observed when we did the inspection at the SAPS offices was the long queues of people and particularly at the Site B police station, and we were told that this problem is caused, or the difficulty is caused because they're there to commission documentation that they require for purposes of SASSA, child grants, pension grants, and for other purposes. Now given the difficulties that we face in policing there must be another means or another avenue that can be explored for purposes of assisting SAPS without having to go into legislative interventions to establish commissioners, more appropriately in Khayelitsha or maybe even elsewhere, do you have any comment in relation to how that can be done?

DR LAWRENCE: It's been going on for a long time and I think SAPS themselves and really SAPS should come up with the solution for that because it takes away, it detracts from their work, their performance and the availability of resources and we all go there, I go there myself as well, but there should be alternatives to that at alternative sites for doing that, not necessarily at the

police station, or if its at a police station then to have other trained personnel to be able to do that, I agree, yes.

MS BAWA: Would you go as far as saying that it's a function that should be taken out of policing, into another area?

DR LAWRENCE: I think what needs to happen is that the appropriately qualified personnel, whether it's newly created or whatever, should be able to do that and whether it's in SAPS or outside of SAPS I think that then comes with whoever is trained to do it. I don't think it needs to be part of SAPS.

COMMISSIONER: As many of these documents relate to government services of a variety of sorts, is there any reason why the regulations regulating who is a commissioner of oaths cannot be amended to create as it were an official within the appropriate government department, again so people don't go from pillar to post, I mean why should there not be somebody attached to SASSA and to municipal offices whose task is to commission documents, or several people, so that people are not having to go to the police station and back to SASSA and then back somewhere else, it would not only enhance SAPS ability to do its work but it seems to be also a very *abarto que le* approach thinking about what people, the implications are for civilians.

DR LAWRENCE: No, I agree with you. When I grew up we had a whatever they were called around the corner so you could go to the gentleman concerned to have your documents certified. So I agree totally that there needs to be some amendment and maybe a more commissioners of oaths brought to – you know put them with SASSA, put them in the – it just adds that burden there as well. On the other hand as well it is a one stop shop so there are pro's and con's of having a discreet stand alone facility and having it where people are. But I think there are now malls opening in the townships etcetera, those could be convenient places near railway stations etcetera where those kinds of documents – where it can happen. So I think it is not just who does it, it is also where it can be done should be investigated.

MS BAWA: Thank you Dr Lawrence.

NO FURTHER QUESTIONS BY MS BAWA

COMMISSIONER: Thank you Ms Bawa. Advocate Pikoli.

QUESTIONS BY MR PIKOLI:

Thank you madam Chair. I would like to start on a tragic note. As we were sitting here on Tuesday there was another mob killing not far from here in Philippi, another example of extra-judicial killing, not a statistic a human life. And yet our constitution is quite clear, the functions of SAPS are clearly stated out in Section 205(3) of our Constitution and the functions of provinces clearly stated out in Section 206(3) of the Constitution and there seems to be this tension between Section

205(3) and Section 206(3) and yet there is no dispute in terms of what SAPS is supposed to be doing and what provinces are supposed to be doing and we have spent a lot of time on apportionment of blame, the shifting of blame and the people expecting services from government. Looking forward the province here has CSE as a way forward and on page 25 of your statement talking about the framework of the Community Safety Act, whilst the Act is not fully operational in terms of all its provisions it would seem that it seeks to play down the future in terms also of regulating the indirection between SAPS and your department.

I just want to raise some concerns which seem to emanate from this. On paragraph 76.2 says SAPS had exercised a monopoly on crime statistics and security information resulting in an inability of many role players to make informed decisions about safety and security issues. In 76.3 a lack of regular review of the daily activities of the SAPS has created increased levels of impunity amongst police members. What has caught my attention more than anything else is 76.4, the inability to deal effectively with complaints from communities has resulted in a build up of frustrations, increased levels of despondency and a general loss of confidence in the ability of SAPS and the Department of Community Safety.

Now would you agree that this might be speaking to the breakdown of trust between SAPS and the community and secondly is it your understanding that the problems that you have as a department insofar as carrying out your functions in terms of Section 206(3), is it as a result of SAPS misinterpreting your functions in terms of the Constitution or your effective functioning with SAPS is as a result of police conduct perhaps as evidenced by the much spoken about letter of the 15th of March 2010?

DR LAWRENCE: Commissioners, Commissioner I note your reference to those items. The comment that I would like to make is that it is actually both and it is not an interpretation by SAPS of our role that has come to us formerly, we have only received their interpretation when perhaps we have spoken but officially it has come through letters when there has been an instruction either to the police or a request for us to do things in a different way. So the - until there was the, let's call it the legal intervention, did not formally tell us what they thought we should be doing in a formal way so that we could engage on that. We indicated what we believed we should be doing in terms of our interpretation of Section 206(3) etcetera and that was let's say the stand off.

Our argument in not being able to do what we believed we should be doing then gave rise to our concerns that because there was the lack or the gap that these are the kinds of things that

would happen as a result of that and we believe that that has happened because our opportunity for quick responses has been stopped and on top of that the delays that has come through on just ordinary complaints has then as I have indicated previously made communities feel that it is then pointless sending requests to us. And similarly if there is a long delay through us to the communities then again there would be a situation when they would then feel that SAPS is then not properly coming to the party.

So Commissioner, yes I do believe that that sums up our situation which we believe in a sense has almost gotten worse. Now we spoke about the ratios earlier and I think that particular unfortunate episode where wrong ratios were given or it was alleged that there were wrong ratios, and what subsequently happened further then makes communities feel that both the department and the SAPS are not talking together about these issues which would have been the ideal scenario of a cooperative situation of trying to intervene in what is a reality and how do we go forward and that is how we would like to be working on this. So that unfortunately it comes out as an antagonistic situation we would argue we would like to know what the ratios are and then we would like to engage with SAPS and say right how do we address this matter going forward. That would be in a sense the ideal cooperative way of going forward. But if the comment – and we know it took such a long time to get just those, that information it then goes towards, I don't want to say a breakdown in the relationships, but a testy relationship.

COMMISSIONER: Mr Osborne any re-examination?

RE-EXAMINATION BY MR OSBORNE: If I may madam Commissioner, just a few items. Dr Lawrence to go back yet again to the much canvassed letter which is GL 2 in the pack handed up yesterday. It seems to me that the overall tenure of the letter and especially the language used in the second sentence of paragraph 3 makes clear precisely that notwithstanding what counsel for SAPS has put to you, it is indeed SAPS's understanding that you are nothing more than a post box in the sense *inter alia* that you don't have an independent investigative power at all and I refer you again in that second sentence:

“It is the provincial nodal point that is responsible for receiving, registering and recording of complaints and must make sure that these complaints are fully investigated and that the complaint or the office forwarding the complaint receives proper feedback.”

So by implication it is not for you to get back to the complainant. The complaint is as it were passed into the hands of

SAPS for them to deal with it hence forth. Does that seem a fair interpretation or to put it differently was this the interpretation which you placed upon it when you saw this letter?

DR LAWRENCE: Yes.

MR OSBORNE: Final sentence of that same paragraph:

“Where deemed necessary an investigation will be conducted by persons outside the station where the allegation is made.”

Who do you think would designate this person outside the station where the allegation is made where necessary, who would designate that person?

DR LAWRENCE: I presume the PC, the provincial commissioner.

MR OSBORNE: A question is being put to you by a commissioner as to whether some of the tensions or the fraught relationship between yourself and SAPS has flown from a difference in the interpretation of the crucial sections in Chapter 11 of the Constitution. Now I am not sure if I heard you correctly but I though I heard you saying, please help me here, that there was no official as it were pronouncement from SAPS as to their view of the interpretation of the Constitutional provisions but rather that their interpretation had become manifest through their conduct and their words. Is that what you said?

DR LAWRENCE: Yes.

MR OSBORNE: Well I have to disagree with you there notwithstanding that you are my witness so to speak and I will call your attention in that regard to GL 4 of the letter that we put up yesterday dated 19 June from Commissioner Lamoer to yourself. The second paragraph of that letter seems to offer a fairly definitive view as to at least how the PC chooses to read Section 206(3) and 206(5) of the Constitution. Quote:

“In terms of Section 206(3) read with 206(5) there is no obligation based upon the MEC’s office to conduct an investigation and give instruction to SAPS how their duties and functions must be conducted.”

Now perhaps with that we can’t quarrel because in fact you have rendered an entitlement to investigate but not an obligation so perhaps we won’t quarrel with that. But let’s look at the first sentence of paragraph 5 of that same letter.

“This office disagrees with the view of the department to impose terms to SAPS contrary to the spirit in terms of Section 206 and sub 5 ... “

And this is interesting language.

“ ... as the purpose therein of the legislature was to give the MEC a facilitating power on behalf of the National Ministry of the SAPS.”

What do you think that phrase “facilitating power” means or

implies as used by the Provincial Commissioner in this letter?

DR LAWRENCE: May I first respond to your comment that I made a comment that you indicated I didn't make or shouldn't have made; I indicated when I was responding to the Commissioner that we had not had a formal response, a formal input from the police in terms of their understanding of our role and function except when in discussions or when they corresponded with us in terms of an instruction given or like this letter, this is a response to a letter we had written to them requesting an investigation, they responded then by telling us the interpretation. My comment was that we had not received a normal letter to say this is how we see the role and functions of DOCS, that was my, maybe that is splitting hairs but that is my comment that I made earlier. This is in response to a letter that we wrote.

MR OSBORNE: I apologise Dr Lawrence.

DR LAWRENCE: The facilitating power, very difficult to understand, all I am interpreting from that is a much weakened interpretation of what the section means in terms of what we understood it to mean. They are saying the minister just has a facilitating power which is powerless.

MR OSBORNE: That the MEC just has a power?

DR LAWRENCE: Sorry that the MEC just has.

MR OSBORNE: On behalf of the National Ministry?

DR LAWRENCE: On behalf of the National Ministry.

MR OSBORNE: Now you will know that the Community Safety Act has been promulgated, it was promulgated last year. Can you tell me how the implementation of that act is proceeding?

DR LAWRENCE: What happened with the Community Safety Act is that it was a long time in genesis because we obviously had to deal with our interpretation of the law, we had to make sure that we weren't conflicting with any other national provincial laws and so it took a long time in genesis. Part of that writing up in genesis was to invite the South African Police Service to participate and to make comments which they didn't do. And our act has gone through its processes and eventually it was – sorry the Bill went through its processes and it was enacted. Now what we need to do next is obviously write the regulations around the act so that the different sections can then be fully functional.

We did receive a challenge from the National Minister to the Act that letter was then changed immediately the next day to a letter that didn't challenge the whole act but shared a discomfort around some sections of the act and that was correspondence, it wasn't a legal challenge, it was correspondence. Subsequently we awaited to see whether there would be a legal challenge or any further correspondence and we have not received such. We have corresponded to indicate was there anything further that the

police wished to do and we then decided that we would enact certain sections of the law and then draft the regulations thereto the seemed not to be in contention with the letter that SAPS wrote to us at that time.

So Chairperson we sit in a situation where we are rolling out the act, we still do not know whether we will have a legal challenge from SAPS the South African Police Service and that is our current situation. So we sit again in a situation of tension because we have not been formally told by the South African Police Service that they will go ahead with a legal challenge but they have expressed their discomfort about what they consider certain sections of the act.

MR OSBORNE: May I interrupt you, would it be fair to say that the discomfort that they have expressed manifests rather radically different interpretation of the scope of entitlements rendered to you under the Constitution than yours?

DR LAWRENCE: Yes.

MR OSBORNE: Then the story or the timeline of the establishment of this very commission in which we now sit. My recollection is that the Women's Legal Centre approached the Premier in November of 2011 with its first complaint, is that your recollection?

DR LAWRENCE: Yes.

MR OSBORNE: When, given that we are talking then about late 2011, when was the commission in fact established?

DR LAWRENCE: The Commission of Enquiry was established in August 2012.

MR OSBORNE: Now that is an eight month delay, can you explain especially in light of the urgency clearly that the complainants attached, can you explain why it took that long for the Commission to be formally established by the Premier?

DR LAWRENCE: Part of the reason Chairperson for that was that there was correspondence between the Premier who is the person, the only person, who can set up such a Commission, the department cannot and neither can the MEC, correspondence with the PC and the National Minister and that correspondence went on until the commission was eventually established in August of 2012 and the correspondence was relating to the commission, the setting up, I believe there were also meetings held in terms of the different views from National and the province and eventually the Premier then decided to go ahead with the setting up of the commission. So the delay was really as a result of the challenge by the National Minister and SAPS towards the establishment of the commission.

MR OSBORNE: That was essentially my prior question. Let me ask you this; what was the tenure of the correspondence between

the province and the minister in the period between November 2011 and August 2012?

DR LAWRENCE: The tenure of that was to request that the National Commissioner and the, well there was a change over of the Commissioner as well, and to the Minister to answer the complaints and to make comments about the complaint as well and that was the initial tenure of the letter to the Minister went.

MR OSBORNE: That was your initial request then?

DR LAWRENCE: That's right.

MR OSBORNE: What response if any did you receive?

DR LAWRENCE: Not a lot to go further on.

MR OSBORNE: What was the response?

DR LAWRENCE: Acknowledged receipt of letters.

MR OSBORNE: Did you ever get a response to the substance of questions or elicitation of comments from the National Government or from the National Minister?

DR LAWRENCE: No.

MR OSBORNE: In other words you went ahead and established the commission without having received input from the National Minister?

DR LAWRENCE: The Premier indicated that – and there were timelines given that she wished to as it got closer to August – that she wished to and requested that there be an input but nothing was forthcoming and so the Premier went ahead.

MR OSBORNE: And you are aware that one of the constitutional basis for the high court and then the constitutional court challenge which eventuated was that there had been insufficient consultation with National Government.

DR LAWRENCE: Yes.

MR OSBORNE: Now August 2012 then as we have mentioned was the establishment and we began sitting here not 2 weeks ago or perhaps 2 weeks ago in January of 2014, how do you explain the gap between the establishment of the commission in August 2012 and the fact that we began to sit here this very month?

DR LAWRENCE: That was as a result of the high court challenge and then subsequent to that the constitutional court challenge and the time that those challenges took to be heard and to be finalised.

MR OSBORNE: And what did the constitutional court have to say to National Government's challenge to the establishment of this commission?

DR LAWRENCE: Well technically it was dismissed and that the commission was allowed to continue.

MR OSBORNE: I couldn't help – and let me just finally on this topic share with you my sentiment – I couldn't help finding it ironic yesterday afternoon to hear counsel for the National Minister

having accused you or the province of dragging its feet in the establishment of the commission having done its level best over the course of nearly two years to prevent the commission even from being established. Did you share my sentiment in that regard?

DR LAWRENCE: I think that is correct.

MR ARENDSE: That was not put to the witness madam Commissioner.

COMMISSIONER: Yes Mr Arendse?

MR ARENDSE: It is totally unfair and wrong for my colleague to say that. I asked Dr Lawrence about who initiated the process that led to the establishment of the commission and I put it to him that it was the SJC and not the department notwithstanding the fact that the department, the province and the Premier has the power under 206(5) to initiate an investigation or a commission in terms of the constitution. That is what was put.

COMMISSIONER: Yes but nevertheless by doing so you put in issue the process that had led to the establishment of the commission and what had been delays related to it. I think Mr Osborne is legitimate in the light of your questions. Mr Osborne, continue.

MR OSBORNE: Thank you madam Commissioner. Just two minor items to conclude.

MR ARENDSE: Excuse me madam Commissioner, we don't act for the National Minister in this commission.

COMMISSIONER: I beg your pardon?

MR ARENDSE: We act for the police, we do not act for the minister in these proceedings.

COMMISSIONER: Mr Osborne please take that into account.

MR OSBORNE: Two final items then if I may. I mentioned this earlier to explain the various, well to explain that we had two different police to population ratios, one attached to a letter of May and then another letter with somewhat different figures later in the year. Now the explanation for that is to be found in a communication from Minister, Provincial Commissioner Lamoer which is as I understand it not in evidence but I think it is – well I will put it in evidence if necessary but I don't think it is disputed that ... (intervention)

COMMISSIONER: Mr Osborne you know that any documents ought to have been put into evidence already and I think it will be – it is just trying the process here to be trying to lead a document that you should have put to the commission if you want it to be in evidence before the commission.

MR OSBORNE: Madam Commissioner may I ignore the letter altogether and simply ask for the independent recollection of the witness. Do you recall hearing at some point that from the

Provincial Commissioner that the figures delivered earlier in the year were inaccurate?

DR LAWRENCE: Yes.

MR OSBORNE: And in what context did you hear that?

DR LAWRENCE: There was correspondence to Minister Plato.

MR OSBORNE: And would you say that there was any tension or acrimony in the course of this back and forth?

DR LAWRENCE: Well originally the data or the ratios were received from the SAPS officially, the minister then indicated that something needs to be done about that, it was sent to the standing committee for a meeting of the standing committee and subsequently the minister had a press conference on those figures. The PC rejected that claim of the minister in indicating that he had not given the minister the information, there was newspaper articles about lies and all that sort of thing and subsequently the PC then wrote to the minister then indicating that he apologises for that because he had the – the information had been given to the PC by one of his deputies while he was on leave and so that was his reason. Subsequently other stats were given.

MR OSBORNE: You said at the very beginning, and this is my final point, you have said at the very beginning of your affidavit Dr Lawrence that you are *qua* head of department also the accounting officer for DOCS.

DR LAWRENCE: Correct.

MR OSBORNE: Now as accounting officer you will no doubt be sensitised to Section 38(1)(b)(2) of the PFMA.

DR LAWRENCE: Yes.

MR OSBORNE: And I will just read that to you to record the exact language:

“The accounting officer for a Department etcetera must prevent unauthorised, irregular, unfruitful and wasteful expenditure.”

No doubt you are acutely aware of that language?

DR LAWRENCE: Yes.

MR OSBORNE: Tell me, if you were to provide funds to organs or bodies like community police forums with respect to which there was not an established system of accounting for the utilisation of those funds, would you feel comfortable in light of the articulated responsibilities that attach to your office as accounting officer?

DR LAWRENCE: I would not do it and that is part of why we have tried to set these mechanisms in place.

MR OSBORNE: Thank you, that is all I have.

NO FURTHER QUESTIONS BY MR OSBORNE

MR ARENDSE: Madam Commissioner I just have two points. The one is we looked at the regulations that Mr Loonat referred to and

that is incorporated into the Constitution which is part of his affidavit is that South African Police interim regulations for community police forums and boards of 11 May 2001, regulation 8 provides that it is one of the obligations of the community police forum to develop a community safety plan in consultation with the station commander and we have now sent out requests to ask the station commanders were you consulted and if you weren't then why not and why didn't you ask for these plans. So it is a bit different the request that you sent out.

COMMISSIONER: Thank you Mr Arendse. Ms Bawa had in fact drawn that to my attention during the course of the evidence this morning so there is an obligation it would seem.

MR ARENDSE: The other issue on the delay of this commission. There was an urgent interim interdict application in December which was dismissed, there was nothing stopping the commission from proceeding. The matter proceeded on a narrow basis that the commission did not have the power to subpoena the police, the parties agreed, the Premier all the parties agreed that in the circumstances it would not be desirable for the commission to proceed and we fast tracked the matter to the constitutional court and a ruling was then given. In the meantime, as far as I know, the evidence leaders and the commission established their office, they collected statements from the public and they proceeded otherwise with their work.

COMMISSIONER: Mr Arendse you know this is information with which the commission is actually, of which the commission is actually aware and I don't actually think that at this stage it is an issue going forward but you had put the question and I think it was legitimate for Mr Osborne to have a follow up but we know exactly what the process was because obviously the commission was involved with it and it has been and will form part of the commissions report as it must but I can't see that we really need much evidence on this.

Thank you very much indeed Dr Lawrence, we are very grateful to you for all the time that you have made available, for all the documents which we have received from DOCS which are extremely helpful, voluminous, but very helpful and so we thank you for your time here this morning and you may now stand down.

There is one interlocutory matter Mr Hathorn which I think it is important that we deal with now and that is the application that you have made on behalf of your clients to lead two witnesses in camera on Monday afternoon. Would you like to make what submissions you wish in support of that application at this stage and then I want to hear the attitude of the other parties.