

**IN RE: COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE
INEFFICIENCY IN KHAYELITSHA AND BREAKDOWN IN RELATIONS
BETWEEN THE COMMUNITY AND THE POLICE IN KHAYELITSHA**

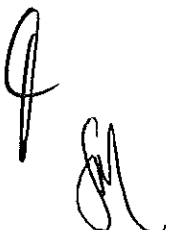
AFFIDAVIT

I, the undersigned,

GILBERT ARTHUR LAWRENCE

do hereby state under oath that:

1. I am the Head of the Western Cape Provincial Department of Community Safety (the "*Department*"), and have been since 23 July 2007.
2. The facts set out in this affidavit are, unless otherwise stated, or apparent from the context, either within my personal knowledge, or have been obtained from officials or documents to which I have access, either by virtue of the fact that they are held in the files of the Department, or are held in the files of other departments of the Province of the Western Cape ("*Province*"). These facts are to the best of my knowledge and belief, true and correct.
3. As the Head of the Department ("*HoD*"), I am the Accounting Officer, with functions and responsibilities provided for in section 40 of the Public Finance Management Act, 1 of 1999.
4. I am duly authorised to depose to this affidavit.



INTRODUCTION

5. A Commission of Inquiry into allegations of police inefficiency in Khayelitsha and a breakdown in relations between community and the police in Khayelitsha (the "*Commission*"), was established by the Premier of the Western Cape Province (the "*Premier*"), on 24 August 2012, pursuant to her discretionary powers under s. 206(3) and (5) of the Constitution of the Republic of South Africa, 1996 (the "*Constitution*"), read together with s 127(2)(e) of the Constitution and s. 1(1) of the Western Cape Provincial Commissions Act, 10 of 1998.

6. On 8 March 2013, the Commission addressed a letter to me, advising:

"It would serve the Commission's mandate for the DOCS to make written and oral submissions on matters germane to the Commission's terms of reference."

7. My understanding is that this document constitutes an "institutional" affidavit, as contemplated in paragraph 3 of Notice 3 of 16 October 2013. (This affidavit having been due on 29 November 2013, I have applied for condonation for its late filing, necessitated by the considerations set out in the application.)

8. I have been briefed as to the Commission's mandate. I am advised that this affidavit will form part of the evidence before the Commission, and that all evidence will be made available to the general public. I am advised further that I may be asked to give oral evidence at a public hearing. I am advised further that, if I am cross-examined, questions will be provided to the

Commission beforehand. Insofar as any evidence contained in this affidavit is based on information from any other persons, it may be necessary to call him or her.

9. Province stands ready to respond promptly and fully to requests for further information, or for elaboration or clarification regarding the contents of these representations. It will make available to the Commission any provincial officials deemed by the Commission to be necessary or helpful to speak to matters before the Commission. It will furnish documents that fall within the respective departmental responsibilities of those officials.
10. Province has had regard to paragraph 4 of Notice 3 of 16 October 2012, to the effect that the Commission will admit in evidence documents, including official reports, media reports, both print and electronic, without sworn or affirmed statements from their authors. Accordingly, many of the documents submitted to the Commission are not lodged under cover of this affidavit, or any other affidavit. In the interests of brevity, no attempt is made to summarise, explicate or elaborate upon the bulk of the documents placed by Province before the Commission. Province will welcome any queries regarding the content of most of the documents submitted to the Commission and stands ready to furnish any additional documents that the Commission may require.
11. A first tranche of documents was made available to the Commission in March 2013. On 8 March 2013, the Commission posed a number of questions with respect, *inter alia*, to the information provided by DOCS. I should note that in certain instances it was not possible to respond fully to the questions owing to

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the fact that such documents were not available within the files of Province.

12. On 10 September 2013, the Commission provided an interim index of documents received from DOCS as of that date, together with a memorandum entitled "*Evaluation of documentation and information to date provided by the Department of Community Safety*". On 30 October 2013, I wrote to the Commission, attaching detailed responses to the queries set forth in the Commission's letter of 8 March 2013, in tracked text under each paragraph.
13. On 5 November 2013, the Chief Director: Civilian Oversight of Province provided the Commission with, *inter alia*, a report on vigilantism compiled by officials in the Directorate: Policy and Research. On 11 November 2013, the Chief Director: Civilian Oversight provided certain information which had not been available earlier, including particulars as to oversight inspections conducted at the Harare police station, Lingeletu-West police station and Khayelitsha Site B police station on 30 October 2013, 31 October 2013 and 6 November 2013 respectively.
14. On 21 November 2013, Adv Gerber provided a summary of information to the Commission to date, including also certain previously unavailable documents.
15. The abovementioned interim index lists 66 documents, many of substantial length, relating to DOCS activity in the province, and to conditions in Khayelitsha in particular. I am advised that the Secretariat is in the process of updating and amending the interim index, which will be provided to the parties once finalised. I am further advised that certain of the documents referred to do not appear on the interim index, or may as yet not have been supplied to the Commission. Such documents will be forwarded as soon as possible.



Accordingly, references herein are to the interim index where appropriate; where the documents do not appear on the index a description of the document is provided. Once the final index is prepared, references herein will be updated and submitted.

16. In general terms, the documents presented to the Commission by DOCS concern:

16.1. Public outreach by DOCS (File 1 of the index as at 10 September).

16.2. DOCS report on sector policing (File 1).

16.3. DOCS reports re implementation of the Domestic Violence Act in 2010 and 2011 (File 1).

16.4. DOCS reports re *in loco* inspections of police stations and on the functionality of community police fora (File 1).

16.5. Community complaints management (File 2).

16.6. Policing complaints reports: 2008/2013 (File 2).

16.7. Joint complaints meetings (File 2).

16.8. Community safety barometer studies 2011/2012 (Files 3 and 4).

16.9. Precinct reports 2011/2012 – including precinct reports specifically on Harare, Khayelitsha in general and Lingeletu-West (File 4).

16.10. Report on identification of policing needs and priorities in the Western Cape Province, 2010/2012 (the “PNP Reports”) (File 5).



16.11. Chief Directorate: Civilian Oversight reports (File 5).

17. I make no attempt to capture the content of this voluminous documentation, nor can I claim to be intimately familiar with it all. I can do no more than touch upon certain of the themes that emerge from the documents, with an emphasis upon those sections that in my judgment are of the most immediate import to the remit to the Commission.

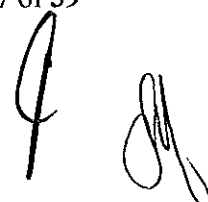
OVERVIEW

18. Before turning to a survey of certain aspects of the Department's engagement in Khayelitsha, I offer some general observations that appear from the aforementioned documentation, or derive from my personal knowledge, and from information conveyed orally to me by DOCS officials.
19. There may fairly be said to be a crisis in policing in the Western Cape. According to figures released by SAPS on 19 September 2013, it has the highest *per capita* crime rate in South Africa. I am of the view that this has been caused, in part, by police inefficiency, which has in turn contributed to a breakdown in relations between the SAPS and some of the communities in which it operates. I hasten to add that by no means can all of the blame be laid at the door of SAPS; many of the problems faced by SAPS are intractable and not susceptible to ready solution. In addition, other role-players could no doubt have done more to assist in the fight against crime.
20. The province-wide crisis appears to be especially severe in Khayelitsha. Statistics show that Khayelitsha had, for the last measured 12 month period, the third worst murder rate of any police district in the country (after Nyanga





and Inanda in KwaZulu Natal). During this period 354 people were murdered in Khayelitsha. Of those, 168 were recorded at Khayelitsha Police Station, 54 at Lingelethu-West police station and 132 at the Harare police station.

21. In light of these figures, the disproportion between the national police to population ratio, of 1:303 on the one hand, and the corresponding ratio, of 1:1703, at the Harare police station, is of particular concern. When the provincial Minister earlier this year pointed out the anomaly that it was largely the most crime-prone areas that had the most adverse ratios, he was accused of lying by the provincial Commissioner. (The latter subsequently withdrew the allegation and apologised.)
22. Because DOCS has constitutionally assigned powers and responsibilities, established in Chapter 11 of the Constitution, with respect to policing within the province, the crime crisis in Khayelitsha is of course of great concern to the Department.
23. My view is that DOCS has been hampered in dealing with the crime problem in general by three factors:
 - 23.1. The absence of a proper statutory and regulatory framework for the exercise of Province's powers and responsibilities with respect to policing.
 - 23.2. Financial and other resource constraints.
 - 23.3. The failure on the part of SAPS, in certain instances, to offer co-operation indispensable to the carrying out of DOCS' responsibilities.

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24. The recently promulgated Western Cape Community Safety Act (the "CSA"), is designed to address these issues. If nothing else, it and the regulations to be made thereunder will resolve the lack of clarity regarding Province's monitoring and oversight powers.
25. Until the CSA was promulgated there was little guidance to be had regarding the protocols applicable to the obtaining of information, or provincial monitoring or oversight, or engagement with the community in crime prevention. Nor did the necessary provincial institutions exist, except in rudimentary form.
26. The CSA will be no panacea, but it is hoped that full implementation thereof will allow Province to play its fullest part in addressing crime in the Western Cape.
27. I must mention here that the CSA has not yet been implemented, owing to a constitutional challenge threatened by national government, as to which there has been an exchange of correspondence between Province and the State Attorney. For the moment, therefore, the Department continues its endeavours to satisfy, in difficult circumstances, what Province has interpreted as its powers and obligations in this regard, without the benefit of the CSA and the regulations to be issued thereunder.
28. All stakeholders accept that the crime problem in Khayelitsha in particular, as in South Africa in general, cannot be addressed by policing alone. Comprehensive community involvement in crime prevention is indispensable. It is for that reason that the CSA places emphasis on the promotion of community-based crime prevention initiatives.



29. It is equally well accepted that effective combatting of crime requires all spheres of government to collaborate in tracking criminals, facilitating community-based crime prevention and, most fundamentally, economic development and the creation of opportunities for employment. But the need to tackle the underlying social and economic causes of crime does not excuse national, provincial and local governments from exerting their best efforts within the constraints of available resources to afford communities the safety and security promised by section 12 of the Constitution.
30. Province hopes that the Commission does not degenerate into recrimination, finger pointing, and blame shifting exercises. None of the actors before the Commission are without fault. National, provincial and local government could have done more. More especially, they could, and should have, collaborated more closely to promote the safety and security of the people of Khayelitsha.
31. It is to be hoped that the Commission will play a valuable role in guiding participants to satisfy their obligations and responsibilities, in a spirit of co-operation and the sharing of information, instead of the rivalry and mutual suspicion that has regrettably characterised past interactions.

SUBMISSIONS

A. Establishment of the Commission

32. The Commission flowed from complaints received by civil society bodies operating in Khayelitsha, pointing to systemic failures in policing. A spate of vigilante killings seemed to suggest that people had lost faith in the ability of



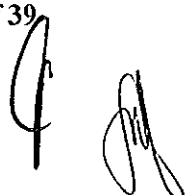
SAPS to deal with violent crime, signalling a breakdown in the relationship between the community in Khayelitsha and the SAPS.

33. Based on the Province's powers, and the abovementioned factors, the terms of reference of the Commission are:
- 33.1. To investigate complaints of the "inefficiency" of the South African Police Service's ("SAPS") stations in Khayelitsha; and "a breakdown in relations" between the community and SAPS. This wording mirrors s 206(5)(a) of the Constitution. The investigation must include consideration of specific complaints, as well as a broader investigation into "the reasons for, and causes of, the inefficiency and breakdown in relations, if found to exist".
- 33.2. To compile a written report of findings and recommendations, relating to measures to "alleviate or remedy" inefficiencies or breakdown found to exist. Especially importantly from Province's perspective, recommendations will assist the Province in carrying out its duty, in terms of s. 206(5)(b) of the Constitution, to make recommendations to the Minister of Police (the "*Minister*").
34. It is fervently to be hoped that the Commission will ultimately assist the SAPS in its duty to "prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants ... and their property, and to enforce the law" (s. 205(3) of the Constitution).
35. Civil society organisations have been calling for a commission of inquiry into the failings of the criminal justice system in Khayelitsha for some time. On



28 November 2011, the Women's Legal Council ("WLC"), delivered a detailed complaint regarding alleged inefficiencies in the SAPS.

36. The Premier forwarded the complaint to the Provincial Commissioner. He was deemed best placed to deal with the issues. The letter was copied to the Minister and National Commissioner of the SAPS. Unfortunately, as illustrated by correspondence before the Commission which forms part of the record of the Constitutional Court case, the latter's response was less than adequate.
37. In March 2012, there were reports of the brutal killing of eight suspected criminals by community members. The provincial MEC for Community Safety (the "*Provincial Minister*"), sought an explanation from the Provincial Commissioner. The latter did not respond. In the meantime, the three Community Police Forums in Khayelitsha took the initiative to address the mob killings with a joint patrol for the Easter weekend falling between 5 - 9 April 2012. The results are reflected in a DOCS report of April 2012. DOCS representatives attended briefing sessions before the patrols; for example, in the Harare policing precinct, four DOCS representatives made inputs into instructions given to members of the patrol.
38. The Premier again sought input both from the Minister and the National and Provincial Commissioners on 22 May 2012. She said the attacks lent "credence to the alleged breakdown of trust". A response was sought within 10 days. The Provincial Commissioner replied only that the matter was "receiving attention" and that "feedback will be forwarded in due course". Nothing further was forthcoming.

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39. In the same period, further input from community activists alleged that ongoing vigilante killings were linked to failures on the part of the SAPS. The WLC provided a second supplementary complaint. The Premier again forwarded documentation to the Provincial Commissioner (copied to the Minister and the National Commissioner). Comments were sought by 20 June 2012.
40. On 7 July 2012, Provincial Minister Plato was invited by the Khayelitsha Community Police Forum to attend a safety seminar co-hosted with the Khayelitsha Development Forum (KDF) - to discuss, amongst others, "mob justice". There was discussion of ways to enhance partnerships between the community and crime prevention agencies in the context of vigilante killings.
41. Arising from the latter, DOCS produced a report on 14 August 2012, recommending the establishment of a commission of inquiry. On 15 August 2012, the Provincial Cabinet approved the proposed commission. The Premier appointed the Commission on 22 August 2012. Meanwhile, in September and October 2012 vigilante killings continued.
42. Sensitive to the fact that the primary responsibility for operational law enforcement rests with the SAPS, Province attempted early on to engage the Provincial Commissioner. Weekly standing committee meetings are held between the Provincial Minister and the Provincial Commissioner. Province raised the Khayelitsha crisis several times in the course of these meetings, as reflected in samples of agendas and minutes, as follows:

42.1. 23 August 2011: *"Concerns raised by communities in Khayelitsha and Hanover Park that officers at those stations often are not equipped with*

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the predominant language skills of areas and people are not able to communicate with officers”.

- 42.2. 9 October 2011: On the agenda: *“SJC memorandum and Khayelitsha Safety Summit”.*
- 42.3. 5 March 2012: *General Lamoer requested that Minister Plato not to speak publicly about vigilante attacks.*
- 42.4. 26 March 2012: *Minister Plato told the General that he would be calling meetings with the leadership and councillors in Khayelitsha to address vigilante killings, and invited the General to task police officers to attend such meetings.*
- 42.5. 7 May 2012: On the agenda: *“Khayelitsha community memorandum on poor policing as per media reports”.*
- 42.6. 6 August 2012: *General Lamoer remarked that the detective branch in the Western Cape is “over-strength”.*

B. The Statutory Mandate of the Department

(a) Legal Basis of DOCS

43. Section 7(2) of the Public Service Act, 104 of 1999, read with Schedule 2 of the Act, provides for the establishment of the Provincial Departments for Community Safety. Although all nine provinces have departments for safety, the name and structures of each department varies. Yet the powers, functions and duties of these departments are not comprehensively provided for in any one instrument. Instead, provinces derive their mandates in



respect of their respective departments from a number of documents, most notably:

- 43.1. Section 206 of the Constitution.
 - 43.2. The South African Police Service Act of 1995.
 - 43.3. The National Crime Prevention Strategy of 1996.
 - 43.4. The White Paper of Safety and Security of 1998.
44. DOCS is tasked with performing the functions of the Provincial Secretariat for Safety and Security as established in terms of section 2(1)(b) of the SAPS Act. Its functions included the performance of "*such functions as the Minister may consider necessary or expedient to ensure civilian oversight of the Service*". Section 2(3) of the SAPS Act allows for the National Minister of Police to make regulations regarding the establishment and proper functioning of secretariats, provided that regulations with regard to provincial secretariats shall be made in consultation with the executive co-ordinating committee. Such regulations have, however, never been issued. The Provincial Secretariat has hence continued to function under the sole authority of the Provincial Executive. It received funding from the provincial government, and reports to the Provincial Legislature.
45. Province has accepted that it has both the power and the obligation, in terms of section 206(3) of the Constitution to oversee and monitor policing in the Province. This does not entail, of course, that Province is authorised to involve itself in the conduct of day-to-day operations of SAPS on the ground. Indeed, even if such authorisation existed, the limited resource of DOCS



would render that utterly impossible. I point out that the entire budget for DOCS in the current financial year is R388 million, which is broken down as follows:

46. Currently the Department, and its budget (Annual Report 2012/2013: Department of Community Safety; Western Cape Government; September 2013), is organised into five main areas of responsibility, referred to as "Programmes". These are:

46.1. Programme 1: Internal processing (budget: R39 886 000).

46.2. Programme 2: Increasing safety for communities by improving performance of policing through effective oversight (budget: R21 582 000).

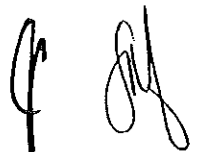
46.3. Programme 3: Increasing safety by enhancing active citizenship (budget: R64 103 000).

46.4. Programme 4: Optimising road safety (budget: R203 246 000).

46.5. Programme 5: Maximising safety contribution of the Western Cape Government institutions, assets and people (budget: R59 772 000).

(b) **Chapter 11 of the Constitution**

47. The Constitution establishes the division of government into national, provincial and local spheres, endows each spheres with powers and responsibilities, and vests in all South Africans fundamental rights, including the right to be free of public and private crime and violence (s. 12).



48. We look to Chapter 11 of the Constitution to establish the parameters of policing powers in particular. It is two sub-sections of s. 206 that provides specifically for the provincial monitoring, oversight and other powers with respect to police conduct:

"(3) 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; and

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

(4) A provincial executive is responsible for policing functions-

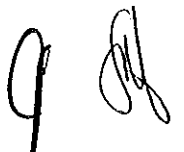
(a) vested in it by this Chapter;

(b) assigned to it in terms of national legislation; and

(c) allocated to it in the national policing policy."

49. Section 207(5) is also relevant, insofar as it provides that the Provincial Commissioner "must report to the provincial legislature annually on policing in the province".

50. As has already been made clear, the constitutional text cannot be interpreted so as to vest in the provinces the day-to-day operational duties of police work. But that does not mean that Province is without very important powers, entitlements and duties with respect to policing within its provincial boundaries. That this is so has been recognised by the Constitutional Court in the very decision upholding the lawfulness of this Commission, Minister of



33 (1 October 2013). The Court held:

“[Province] has a legitimate interest that its residents are shielded from crime and that they enjoy the protection of effective, efficient and visible policing.” (Para 37)

51. Further:

“A premier and the province bear the duty to respect, protect and promote the fundamental rights of people within the province. In this case, the Premier is obliged to take reasonable steps to shield the residents of Khayelitsha from an unrelenting invasion of their fundamental rights because of continued police inefficiency in combating crime and the breakdown of relations between the police and the community.” (Para 51)


52. Further:

“There is much to worry about when the institutions that are meant to protect vulnerable residents fail, or are perceived to be failing. The police service has been entrusted with the duty to protect the inhabitants of South Africa and to uphold and enforce the law. The Constitution requires accountability and transparency in governance. And it establishes both a general framework for oversight as well as specific mechanisms through which a province may exact accountability.” (Para 52)

53. Needless to say, DOCS associates itself wholeheartedly with these sentiments, and is confident that the decision ensures that any attempt to challenge the CSA as *ultra vires* provincial powers will fail.

(c) Provincial Policies and Monitoring

54. The dearth of legislative and regulatory guidance as to provincial powers has not led Province to ignore its constitutional responsibilities established in

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Chapter 11. This is evidenced by a number of provincial policy documents and initiatives, to some of which I now turn.

(i) **Strategic Objective 5: Increasing Safety**

55. Province has promulgated a set of strategic objectives that laid the groundwork for the CSA. The Department was assigned the lead in implementing Strategic Objective 5 (SO:5), having to do with optimising safety and security. (*Increasing Safety to drive an objective of Safety and Security broadly with diverse stakeholders*”, http://www.Westerncape.gov.za/eng/your_gov/10534/pubs/plans/2011/212722).

56. Four working groups were established to pursue the following goals:

56.1. Maximising the safety contribution of the Western Cape Government.

56.2. Optimising civilian oversight.

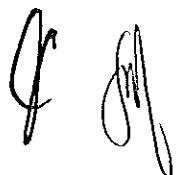
56.3. Optimising road safety.

56.4. Designing and establishing the institutions required to make “safety everyone’s responsibility”.

57. The second of these priorities was elaborated as including the objective of:

“Building on existing work in this focus area, this workgroup will investigate how best the Provincial Government of the Western Cape can use its legislative power to monitor and exercise oversight over SAPS and other law enforcement agencies, in a way that aligns with the whole-of-society approach to safety.”

58. The foregoing is consistent with relevant recommendations contained in the National Development Plan, namely *“the mobilisation of communities (CPF)*



with dedicated budgets and cost-benefit analysis improving on their effectiveness" (<http://www.npconline.co.za/medialib/downloads/home/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf>).

59. Community involvement, transparency, public understanding and active citizenship are the key elements in the "whole-of-society approach" that underpins Provincial Strategic Objective 5. In broadening the scope of provincial involvement in public safety, emphasis is placed on the role of partnerships with community bodies. This echoes the National Development Plan's emphasis on "Building community participation in community safety" (<http://www.npconline.co.za/medialib/downloads/home/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf>).

60. The Department's "Community Liaison" sub-programme mobilises communities against crime through increasing levels of consciousness, structured community participation, empowering community policing and establishing partnership with communities against crime. The Department is responsible for the following interventions:

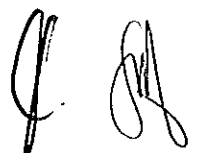
60.1. Recruitment and development training of Neighbourhood Watch ("NHW") volunteers.

60.2. Recruitment of police reservists.

60.3. Establishment of new stakeholder forums and support for existing fora.

60.4. Alignment of community anti-crime structures with CPF's.

60.5. Community charters.



60.6. Response to conflict resolution requests.

61. We have seen that s. 206(3) of the Constitution mandates provinces to “promote good relationships between the police and the community”. Through the workgroup dedicated to *optimising civilian oversight*, the Department developed a model for the focus on partnerships envisaged by SO:5. This envisions a number of strategies to institutionalise the *whole-of-society* concept. These include:

61.1. The strengthening of existing structures, including the CPFs.

61.2. The rolling-out of new Neighbourhood Watch and Community Safety Forums.

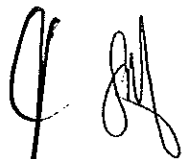
61.3. The creation of new community structures such as the Western Cape Safety Advisory Committee (section 25 to 28 of the CSA).

61.4. Setting up the Western Cape Security Partnership.

62. I am cognisant that these laudable objectives are no substitute for the concrete action on the ground. Practical steps, not plans and programs, are what is needed to make people safer in their homes and on the streets. Much of what is envisaged remains unimplemented, for the reasons adumbrated above. Nevertheless some significant steps have been taken, of which a few are briefly described below.

(ii) **Community Surveys**

63. Recalling the provincial entitlement under s. 206(3) to *monitor* police conduct, to *oversee* the effectiveness and efficiency of the police service, to *promote*



relations between the police and the community, and to assess the effect of visible policing, it follows that Province must develop tools for informing itself about police conduct within the province and related matters. The first port of call would logically be the SAPS itself. However, frustrated by difficulty in extracting facts and figures from the Provincial Commissioner and the National Minister, Province has conducted a number of studies of its own into crime. (A collection of these studies has been made available to the Commission as part of DOCS' documentary submissions.)

64. To take but one example, valuable information was obtained as to deficiencies in policing in Khayelitsha in the Policing Needs and Priorities Report (2011/12) (the "PNP"). This was the product of an extensive survey of all 149 police precincts in the province, entailing a household survey of more than 13 000 people, and consultations with numerous civil society stakeholders.
65. The PNP was developed within the spirit of sections 206(1) and (2) of the Constitution; the latter states "the national policing policy may make provision for different policies after taking into account the policing needs and priorities of these provinces". As noted by the Provincial Minister in the introduction to the Report, moving away from the one-size-fits-all approach to crime is vital when "considering the different needs of communities, many of which are based on the racial segregation policies of apartheid ... a system based on uniformity ... is systematically weak and increasingly unable to respond to the specific needs within our communities." (Page 7)
66. It was also noted that neither "SAPS or any other government department or

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civil society organisation on its own will [not] be able to address the challenge of crime ... [all spheres of government] and civil society need to synergise their strategies and resources." (PNP, p 9)

67. Consistent with the recognition of the need to develop community-specific responses to crime, the PNP report disaggregated survey reports by different police clusters. The Khayelitsha cluster was in turn broken down into the Khayelitsha, Harare and Lingeletu-West police stations. Overall the results for the Khayelitsha cluster showed that armed robbery, illegal firearms and housebreakings were the three priority crimes for most people. (PNP, p 55) Some 55% of participants in the Khayelitsha cluster rated police response times to distress call as poor, while 29% were undecided. (PNP, p 56) Participants also wanted police officers to show more respect for CPF members, and demanded greater police visibility. (*Id*)

(iii) **The Role of the Provincial Department of Social Development**

68. The whole-of-society approach presupposes that combatting crime is not the exclusive responsibility of governmental departments to which the safety and security portfolio is entrusted. Almost every department in government has its role to play.
69. For example, social crime prevention and related projects are funded by the Department of Social Development in Khayelitsha, including, to name but a few:
- 69.1. The Nonceba Family Counselling Centre, which provides individual and family counselling services to victims of abuse, domestic



violence and crime, in particular child victims of sexual abuse.

69.2. Mosaic, which provides 24-hour individual and group crisis counselling, court support and information services to victims of domestic and sexual violence.

69.3. NICRO, which aims to reduce recidivism by reintegrating ex-offenders and diverting adults from incarceration.

70. The range of non-governmental organisations funded in Khayelitsha by the Department of Social Development, include:

70.1. Ikamva Labantu Masimanyane;

70.2. Ikamva Labantu Masibambane;

70.3. Ikamva Labantu Masithandane;

70.4. Ikamva Labantu Nolukholo;

70.5. Baphumelele Children's Home;

70.6. SANCA, Khayelitsha;

70.7. Z-Section Service Centre; and

70.8. The Homestead Project for Street Children.

71. The Department of Social Development also runs child and youth care centres for children in conflict with the law, including youth who are awaiting trial or have been sentenced.

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C. The Community Safety Act

(a) Background to the CSA

72. It was in 2010 that the provincial Cabinet resolved that provincial legislation regarding monitoring and oversight over SAPS operating in the Western Cape, be drafted. Cabinet was of the view that both the Constitution, and the Constitution of the Western Cape, 1997 (the "WCC"), afforded a basis for such legislation. Cabinet recognised that, not only is Province *entitled* to monitor and oversee SAPS in the Western Cape; it is *obliged* to do so in terms of the Constitution.
73. One of the premises for the monitoring and oversight powers vested in provinces with respect to SAPS under Chapter 11 of the Constitution is recognition that a "one size fits all" approach to policing is inadequate. As with other competencies which are allocated concurrently as between Province and national government, it is appropriate that national policies and programmes be implemented within a particular province in a manner sensitive to the situation in that province and other provinces.
74. The philosophy animating the CSA may be gleaned from the Province's Policy Framework:

"The constitutional mandate, as stipulated in section 206(3) of the Constitution, presupposes the right to oversee the effectiveness and efficiency of the police, to receive reports on policing service, to assess the effectiveness of visible policing and to influence positively policing within a province in so far as it relates to crimes committed in such province. Despite this powerful oversight and monitoring mandate in respect of SAPS activities and functions within their area of jurisdiction, Provinces have done little to develop systematic oversight or monitoring mechanisms. Functions normally associated with effective oversight, such as the independent collection of data, the regular



evaluation of performance and the development of measurable performance standards, are, generally speaking, not being performed by Provinces, despite their having a clear mandate to do so". (*Policy Framework*, p 4-5.)

75. The Framework observes that provinces:

"Have a constitutional responsibility to protect the people within the provincial boundaries against police brutality, poor service delivery and/or the refusal by SAPS to perform their statutory duty of protecting communities". (*Id*, 17)

76. The Framework raises a number of concerns regarding Provincial monitoring of the SAPS in prior years:

76.1. "The current hybrid system of civilian oversight has resulted in a combination of legal mandates despite the fact that these oversight functions are specifically divided in the Constitution between Provincial and National government". (PF, p 6)

76.2. 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". (PF, p 6)

76.3. A "lack of regular review of the daily activities of the SAPS has created increased levels of impunity amongst police members". (PF, p 6)

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". (PF, p 6)



77. To address these problems, the Framework envisaged:

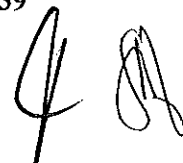
“Provincial legislation ... to compel the SAPS Provincial Commissioner to report to the MEC on cases such as police deaths, deaths in custody, murders in the province, loss of firearms, or any other area which the province may regard as a priority.” (PF, p 13)

78. It was recommended that DOCS be placed in a position to gather information regarding the total number and nature of complaints received from the public, allowing a statistical analysis and tracking of complaints, broken down by area. In particular, it was recommended that:

78.1. The DOCS inspectorate focuses its resources on problem areas, requiring full inspections. (PF, p 14)

78.2. An effective “in-house” complaints department is established, with DOCS adopting a similar approach to organisations in the private sector. All complaints would be recorded on a central database, before being forwarded to a specific person; the flow of the complaint would thus be recorded, and the actions and feedback of the responding person monitored until the complaint was resolved. (PF, p 15)

78.3. The “monitoring and evaluation” tool developed by the National Civilian Secretariat be adopted. The focus of inspections thereunder would include access to police stations, at which the actual number of on-duty officers - particularly after hours - could be ascertained. Other objectives of unannounced visits would include verification that procedural registers are being used, reports on the

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treatment of people in custody, firearms control and the like. (PF, p 15)

78.4. Detailed inspection standards and a system to capture inspection findings, on the Integrated Database, are developed. (PF, p 15)

This would permit the focusing of resources by means of:

78.4.1. An alignment of policing resources with unique needs of particular communities.

78.4.2. Development of policing policies for this particular province moving away from "one-size-fits-all" approach. (PF, p 7)

79. Regarding station visits, it was recommended that there should be a minimum of 10 visits to each of the 149 police stations in the province by members of the Community Police Forums (CPF's), Neighbourhood Watches, or other existing or new civilian oversight structures:

"Before, during or after hours, information could be gleaned regarding the number of police actually on duty, absenteeism levels, availability of vehicles for emergencies, and the number of people arrested, deployment patterns, and the number of people arrested in a given area over a particular timespan. This information would be captured on a web-based reporting system allowing for real-time relay of information to be analysed by the DOCS. It would be possible to identify stations failing to comply with minimum standards. This information would be used to establish which police stations should be subjected to a full and on-going inspection." (PF, p 14)

80. Regarding the last-mentioned item – *in loco* inspections of police stations – regulations will be issued under the CSA providing mandatory protocols and timeframes for such inspections.

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81. There has been much progress in recent years, even without the benefit of the Act. In 2009, only eight station oversight visits were conducted. In the past year all 149 police stations were visited at least once by the Directorate: Monitoring and Evaluation, in some cases accompanied by the Provincial Minister. More than 300 inspections are scheduled for the current financial year. In terms of the Expanded Partnership Programme ("EPP") (discussed further below), members of the CPF must visit the local station 10 times per month.

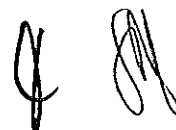
(b) Difficulties in Eliciting SAPS Co-Operation

82. The CSA is designed in part to address difficulties encountered by Province in efforts to obtain access to information indispensable to proper exercise of its monitoring and oversight obligations over policing in the province.

83. An extensive paper trail records SAPS recalcitrance. This manifests what Province views as a misunderstanding of the powers and duties of provincial government with respect to policing within provincial boundaries. Considerations of space and time permit the consideration only of a few examples.

84. On 19 June 2012, the Provincial Commissioner wrote to DOCS, objecting that DOCS was:

"Placing itself as an authority/inspectorate of the Department to advise SAPS what to do with regard to matters that come from the members of the public instead of requesting or giving the Provincial Commissioner time to conduct an investigation based upon the report received ... This office disagrees with the view of the Department to impose terms to [sic] SAPS contrary to the spirit enshrined in sections 206(3) and 206(5), as the purpose therein [sic] of the legislature was to give the MEC a facilitating power on behalf of the National Ministry of

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the SAPS and thus it is only the National Ministry and the National Commissioner who may impose terms and conditions as to how the police may perform its conduct.”

85. This attitude is, so I am advised and verily believe, entirely inconsistent with the decision of the Constitutional Court upholding this Commission.
86. In fact, the recalcitrance of the SAPS has arisen even in the context of DOCS' attempts to obtain information for purposes of responding to queries from the Commission. As noted in DOCS' comments on the Commission's letter of 10 September 2013 letter (para 27.1), efforts to obtain the SAPS Resource Allocation Guide ("RAG"), were not successful, despite DOCS' request for the SAPS to provide the document.
87. Regrettably such instances are not unusual. Province has had to contend with:
- 87.1. Refusals to deliver information.
 - 87.2. Ignoring of repeated requests for information.
 - 87.3. Lengthy delays in production of information.
 - 87.4. Provision of inadequate information.
 - 87.5. Provision of inaccurate information, and ignoring of follow-up requests for the correct information.
 - 87.6. Insistence on referral of requests for information to the office of the Provincial Commissioner, often followed by refusal to provide the information by the latter.

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87.7. "Passing of the buck," - *via* referral by a particular SAPS office of a request to another SAPS office, where it turns out that the latter also declines or is unable to satisfy the request.

87.8. Arbitrary classification of information demonstrably necessary to facilitate proper monitoring and oversight as "operational".

88. None of what I have said should be read as denying that SAPS faces formidable challenges in Khayelitsha, especially in light of the severity of socio-economic problem that plagues the people there. But it is precisely in view of the enormous difficulties faced in policing a poor community facing enormous infrastructural problems, chronically high unemployment, and a paucity of social support structures, that one would expect SAPS to embrace Provinces' inputs and support. It is to be hoped that the Commission will encourage SAPS and Province to work closely together going forward. Such co-operation is the only way they will satisfy their joint obligation to bring safety and security to that troubled community.

(c) An Overview of the Act

89. According to the preamble of the Act, its objects are:

"To regulate and to provide for the carrying out of the policing functions of the Provincial Cabinet in terms of Chapter 11 of the Constitution of South Africa, 1996 and Chapter 8 of the Constitution of the Western Cape, 1997; to support the mandate, duties and functions of the Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act, 2011, and to provide for cooperation with the Civilian Secretariat and the Provincial Secretariat established in terms of that Act; to provide for directives for the establishment of community police forums in terms of the South African Police Service Act, 1995; to provide for the accreditation of neighbourhood watches; to provide for the establishment of partnerships with community organisations; to establish and maintain an integrated information system and a



database of organisations; to provide for the compulsory registration of security service providers on the database of organisations; to establish the Office of the Western Cape Provincial Police Ombudsman to allow for the investigation of complaints regarding policing; to regulate reporting on policing; to establish a Provincial Safety Advisory Board; and to provide for matters incidental thereto.”

90. Section 2 provides that the purpose of the Act is to:

- “(a) regulate the functions of the Provincial Cabinet as contemplated in Chapter 11 of the Constitution and Chapter 8 of the Constitution of the Western Cape, 1997;
- (b) provide for the carrying out of the functions of the Provincial Cabinet as referred to in section 206 of the Constitution and sections 66 and 67(1) of the Constitution of the Western Cape, 1997—
 - (i) to monitor police conduct;
 - (ii) to oversee the effectiveness and efficiency of the Police Service, including receiving reports on the police service;
 - (iii) to promote good relations between the police and the community;
 - (iv) to assess the effectiveness of visible policing;
 - (v) to investigate any complaints of police inefficiency or a breakdown in relations between the police and the community; and
- (c) support the objects of the Civilian Secretariat and Provincial Secretariat”.



91. One notes that this text closely tracks the language in s. 206(2) of the Constitution read together with s. 206(5). The Act covers the following main areas:

91.1. First, the provincial Minister is empowered, *inter alia*, to monitor police conduct; oversee the effectiveness of policing policies and promote

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good relations between the community and the police. In exercising these powers, he may authorise DOCS employees, *inter alia*, to attend at scenes of police activity, and enter police premises.

- 91.2. Second, the Minister may issue directives regarding the establishment of community police forums, and election of members. An organisation may apply to the provincial Minister for accreditation as a neighbourhood watch.
- 91.3. Third, a provincial Ombudsman is established for purposes of receiving and investigating complaints into alleged police inefficiency and problems in relations between the police and the community. The investigative powers of the office include the power to direct any person to submit affidavits or give evidence
- 91.4. Fourth, an "integrated information system" is established to collect data from organs of state, private "security service providers", and various other institutions.
- 91.5. Fifth, the provincial Commissioner must report to the provincial Minister regarding, *inter alia*, police firearms lost or stolen; numbers of persons arrested; allocation of budget and resources; and complaints received about police misconduct.
- 91.6. Sixth, the Act establishes a provincial Secretariat as contemplated in the Civilian Secretariat Act. [s 18(1)]
92. Enabling regulations under the CSA are being drafted, although, as noted, implementation has been slowed by a threatened constitutional challenge.



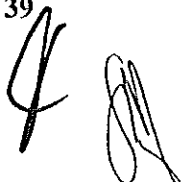
93. I am confident that these provisions will allow Province for the first time properly to carry out its constitutionally ordained duties.

(d) The CSPA

94. In tandem with the CSA, new national legislation came into force. The Civilian Secretariat for Police Services Act, 2011 (the "CSPA Act"), came into operation on 1 December 2011. The Act provides for civilian oversight of the SAPS by a national body, the Civilian Secretariat for Police Services (the "CSPA").

95. But a number of provisions of the CSPA Act, relating in particular to the establishment, funding, appointment and day-to-day operations of "Provincial Secretariats" bodies, designed to be the "eyes and ears" of the CSPA in the provinces, have proven problematic in implementation. One reason is that regulations envisaged by section 33 of the CSPA Act have, to date, not yet been promulgated. Appointments in the CSPA itself have been finalised only very recently. (To date, according to the information at my disposal, only Gauteng and the Western Cape have in fact established provincial secretariats.) No meeting of provincial secretariats have to date been called by the CSPA.

96. Moreover, the CSPA Act bypasses the functions assigned to provinces in terms of Chapter 11 of the Constitution. These include determining the policing needs and priorities of the province (*per* section 206 (1)); dealing with public complaints (*per* section 206(5)); receiving reports from police (*per* s. 206 (3)(b)); and dealing with a situation where the provincial executive has

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"lost confidence" in the provincial Commissioner (*per* section 207(6)).

97. Subsection 34(2) states that "any provincial secretariat structure in existence at the provincial sphere of government immediately before commencement of this Act continues subject to section 16". Accordingly, the Western Cape's functional secretariat was confirmed as the provincial secretariat to the National Minister on 31 May 2013. However, in the absence of the implementing measures mentioned above, this has so far had little practical effect.
98. There is no reason why the investigative powers of the national secretary should not live side-by-side with the distinct provincial monitoring and oversight powers vested by s. 206(3) of the Constitution; the matter would become problematic only insofar as national government attempted to displace provincial investigative powers with parallel national powers.

D. Existing Institutions

99. As noted above, Province has, even in the face of the constraints discussed above, pursued initiatives designed to promote community involvement in the combatting of crime. I mention but a few examples over and above the items already named, and the many others described in documents submitted to the Commission already.

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**(a) The Provincial Community Police Board
and Community Police Fora**

100. Regrettably, the Provincial Community Police Board, established in terms of section 21; South African Police Service Act 68 of 1995; Republic of South Africa (the "*Provincial Board*"), had become dysfunctional by 2010. It has failed to submit audited financial statements to the Department. There have been unilateral decisions of serving Provincial Board members to extend their terms of office. Finally, the Provincial Board has been riddled with internal disputes.
101. The Expanded Partnership Programme ("*EPP*"), initiated by Province in September 2011, was designed to address these problems. On 10 May 2013, the SAPS issued instructions to station commanders for the implementation of the Project at all 150 CPFs in the Western Cape.
102. The EPP is based upon the *whole-of-society* concept. The fundamental purpose is to strengthen community participation in community safety. It sets minimum standards of delivery for every CPF.
103. Funding available to CPFs under the EPP has significantly increased. CPFs previously received a "donation" of between R1 500 to 2 000.00 per year for administrative cost. Under the EPP, obtain R30 000.00 per year.
104. The EPP envisages regular Community Meetings, newsletters, the facilitating of joint problem identification, and recording of complaints received. Financial risks associated with funding programmes are mitigated. Sustainability of these structures, especially in previously disadvantaged communities, is greatly enhanced.



105. Pursuant to the EPP, the Department is in the process of establishing a website (<http://epp.pgwc.gov.za/civosp/inloco.login>), to enhance communication channels between CPFs and the Department. It will allow DOCS to generate regular reports on the functioning of CPF's, and on performance of the SAPS as it relates to the areas of civilian oversight. (The system is similar to the electronic reporting system, that has been implemented successfully by the Judicial Inspectorate for Correctional Services.)

(b) Neighbourhood Watch Structures

106. The Department recognises the important contribution made by neighbourhood watch structures ("NHW"). It has therefore supported such structures by means of the donation of equipment and providing training, consistently since 2006. Under s. 6 of the CSA NWH's accredited by the Department will receive further training and equipment, etc. within the ambit of the Public Finance Management Act. Again the objective is to, *per* the NDP, achieve the mobilisation of communities with dedicated budgets subsequent cost-benefit analysis.

(c) Other Crime Prevention Projects

107. The Department on its own and in cooperation with SAPS, the City of Cape Town and other provincial departments has over the last few years run a number of preventative programs. The Chrysalis Youth Academy, Violence Prevention through Urban Upgrade (VPUU), the Youth, Safety and Religion Partnership Program, the Expanded Partnership Programme, and the Youth



Work Placement Project are examples. Currently the Department has more than 60 formal partnerships with organisations throughout the Western Cape.

108. Various other crime prevention programs such as drug rehabilitation, after-school programs, social workers programs, and many more, are run by other provincial departments, including, as already noted, the Department of Social Services and Health.
109. A challenge in enhancing the effectiveness of crime prevention programs remains the lack of access by the Department to up-to-date information about crime patterns and community safety concerns. It is impossible to properly target such programs without input as to where they are most needed. The content of programs need to be appropriately tailored according to the specific challenges of the areas in which they are based. Province needs the kind of information exclusively in the hands of the SAPS. It is hoped that the CSA, by facilitating the free flow of information from the SAPS, will help alleviate this difficulty.

(e) **School Safety Projects**

110. DOCS' School Safety Projects entails the appointment of members of the community on the Expanded Public Works programme (EPWP), to provide basic security services at high-risk schools, including access control, safe crossing of roads and sounding the alarm. However, the programme has been hamstrung by poor control measures, lack of local ownership and fraud.
111. There have been negotiations with the Western Cape Education Department (WCED) to assume joint ownership of the programme. A MOU was

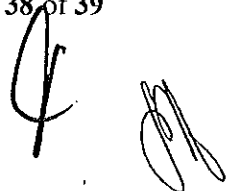
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developed and signed between the Heads of Departments (DOCS and Education) in April of 2013. This brings School Governing bodies and principals into the project, taking co-ownership of the appointment process and overseeing day-to-day work activities.

112. To further strengthen this programme, the Department has developed a web-based system that allows for the creation and funding of posts, appointment, payment and termination of EPWP workers. This is necessary to mitigate risks including nepotism, corruption, and "double dipping". The system now being piloted will focus on the deployment of the safety volunteers, the efficiency of payments, and the collection of safety incident reports and time sheets.

(e) Investigation of Complaints Against the SAPS

113. The Department has attempted to investigate public complaints, as contemplated by s. 206(5) of the Constitution of specific police inefficiency, albeit with only limited success. Regrettably, the SAPS has not always cooperated in this regard either. The Provincial Commissioner, in a letter of 19 January 2012, instructed that only the SAPS could investigate alleged service delivery complaints. This leaves the Department to serve as little more than a post box for complaints received from communities.
114. It was this weakness in this system that gave rise to sections 10 to 18 of the CSA, which provide for a Western Cape Ombudsman, with the expertise and support to improve on the manner in which complaints from communities relating to policing are processed.

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115. In the interim, the Department has established a dedicated 24/7 phone service for receiving policing complaints and compliments (021 483 4332). Members of the public may contact the Department via e-mail (*policingcomplaints@westerncape.gov.za*), fax (021 483 6592), or by sending a SMS commencing with the key word "Reward" or "Report" to the number 35395, or address written correspondence to the Department (Private Bag 5346, Cape Town, 8000).

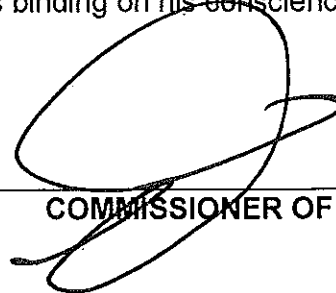
116. All complaints are registered on the Police Complaints and Compliment system. All service delivery complaints are forwarded to the SAPS for investigation and report back, whilst the Department monitors progress.



DR GILBERT ARTHUR LAWRENCE

It is hereby certified that the aforesaid declaration was signed and sworn in my presence on this 6th day of December 2013 at Cape Town the deponent having confirmed and acknowledged:-

- a) That he knows and understands the contents of this declaration;
- b) That he has no objection to taking the prescribed oath;
- c) And that he considers the prescribed oath as binding on his conscience.



COMMISSIONER OF OATHS

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Keerom Street Chambers
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Cape Town