

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

**CLOSING STATEMENT FOR AND ON BEHALF OF THE SOUTH AFRICAN
POLICE SERVICE (“SAPS”)**

BACKGROUND TO THE ESTABLISHMENT OF THE COMMISSION OF INQUIRY

1. By proclamation in Provincial Gazette 7026, dated Friday, 24 August 2012, the Premier appointed a commission of inquiry (*“the Commission”*) into **allegations of police inefficiency** in Khayelitsha and **a breakdown in relations between the community and the police in Khayelitsha**. She acted in terms of section 206(5) of the Constitution of the Republic of South Africa, 1996 (*“the Constitution”*), read together with the provisions of the Western Cape Provincial Commissions Act 10 1998. Section 206(5) of the Constitution gives the provincial executive the discretionary power to investigate, or to appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and to make recommendations to the Cabinet member responsible for policing.

2. In Schedule A of the Proclamation, the establishment of a Commission was justified on the basis of “complaints received alleging police inefficiency in Khayelitsha and the breakdown in relations between the community of Khayelitsha and the South African Police Service; and regarding acts of vigilantism that may be attributable, in whole or in part, to such alleged inefficiency or breakdown in relations between the community of Khayelitsha and the South African Police Service.” (Our emphasis).

3. Clause 4 of the Proclamation sets out the **terms of reference** for the Commission of Inquiry. They are the following:

3.1. to investigate **complaints** received by the Premier relating to **allegations** of-

(a) inefficiency of the South African Police Service stationed at Site B, Bonga Drive, Khayelitsha; Steve Biko Road, Harare, Khayelitsha; and Makabeni Street, Lingelethu West, Khayelitsha and any other units of the South African Police Service operating in Khayelitsha, Cape Town;

(b) a breakdown in relations between the Khayelitsha community and members of the South African Police Service stationed at the aforesaid police stations in Khayelitsha, or operating in Khayelitsha.

3.2. the investigation must include:

- (a) an investigation into the allegations; and
- (b) an investigation into the reasons for, and causes of, the inefficiency and breakdown in relations, if found to exist.

3.3. the Commission must compile a written report containing-

- (a) the findings of the Commission pertaining to the investigation;
and
- (b) recommendations as to how any inefficiency in the delivery of police services, or a breakdown in relations between the community of Khayelitsha and the South African Police Service, as may be found by the Commission to exist, may be alleviated or remedied.

3.4. The Commission's recommendations must include appropriate recommendations for the Province to consider when it makes recommendations to the Minister of Police, as contemplated in section 206(5)(b) of the Constitution.

3.5. The Constitutional Court¹ confirmed that a Province is entitled to establish a Commission of Inquiry as contemplated in section 206(5) of the Constitution to conduct oversight over and monitor the police in order to ensure that they are efficient and have the trust of the Community. The Constitutional Court has also found that a Province has coercive powers over the police for purposes of conducting its oversight or monitoring powers under section 206(5) of the Constitution that includes the power to subpoena the police. The Court has made clear that a Province exercising its investigative powers in terms of section 206(5)(a), may compel the police to give relevant and material information or answers when required to do so in order to give effect to its provincial entitlements in section 206(3) of the Constitution.

THE APPROACH OF THE POLICE TOWARDS THE COMMISSION

4. Following the ruling of the Constitutional Court the provincial police cooperated fully with the Commission, including submitting extensive documentation. Police officers from the three stations, from the Stations Commanders to the Detectives Commanders in Khayelitsha gave extensive oral evidence on the state of policing in Khayelitsha before the Commission. The Provincial Commissioner, and his Deputy Commissioners also gave their evidence in a candid and honest manner. Police witnesses were candid

¹ The Minister of Police & 7 Others v The Premier of the Western Cape & 8 Others 2014 (1) SA (1) (CC)

about the policing challenges they face on a daily basis and spoke freely about their workload or the burden of policing. Collectively their testimony showed that the police are committed to serving the community of Khayelitsha to the best of their ability within the available resources, and various other constraints beyond their control. Police documentation that was requested by the Commission was extensive and covered both institutional and operational issues relating to policing in Khayelitsha. They dealt with issues like the formalities for reporting of crime, the recordal of crime, the management of dockets, conducting of investigation, discipline of officials, training levels of police officers, resource allocation, general conditions of service, investigation of murder and rape case, the collection of DNA evidence and forensics. For that over a thousand dockets from the three stations; disciplinary registers of the three stations; human resources management tools; investigation diaries of investigators; minutes of meetings in which operational decisions were discussed; standing orders and national instructions in terms of which the police are required to conduct their policing responsibilities were handed to the Commission.² The documents covered every aspect of policing from the operational, to the administration, and senior management issues. At the opening of the Commission hearings in January 2014, it was estimated that the total number of documents handed

² The list and scope of the documents given to the Commission by the SAPS is set out in the Commission's letters dated 6 September 2012; Bundle 1; Item 3 at pages 595-624; The documents are also set out the draft Commission subpoenas that appear at pages 642 to 683; See also Bundle 3 which contains the SAPS documents; Bundle 4 Item 6 contains the Charge Sheets; Bundle 4 Item 7, 8 and 9 all contain SAPS documentation from the Provincial Commissioner to the Station Commanders in the three stations of Khayelitsha

over by the police was in excess of 50 000 pages.³ At various times during the hearing when further documentation was mentioned or relied upon by the witnesses, the Commission was granted access to it. Whether or not the extensive documentation demanded by the Commission was consistent with the terms of reference and a legitimate exercise of provincial oversight has not been debated. Suffice that the Commission of Inquiry's terms of reference were confined to an investigation of complaints, a determination of whether these complaints indicated a systemic failure of policing or a breakdown of trust between the community and the police.

5. At the commencement of proceedings of the Commission of Inquiry, the Chairperson commended the police for the full disclosure of information and general cooperation given to it by senior and junior police officials.⁴ It cannot be disputed that the extent of the cooperation given by the police considerably lightened the burden of the investigative work of the Commission.
6. From the records handed in by the police to the Commission, it is manifestly the case that the police have effective internal control mechanisms that are capable of detecting institutional and operational weaknesses. In particular, the reports of the police inspectorate⁵ contained clear and frank assessment

³ Paragraph 14 of the Opening Statement of the Commission Chairperson Justice O'Regan

⁴ Paragraph 14 of the Opening Statement of the Commission Chairperson Justice O'Regan

of institutional challenges involving non-compliance by the police with its own operational and institutional standing orders, national instructions and/or provincial directives.⁶

7. The cooperation of the police enriched the entire investigative process. The Commission was given sufficient evidence by the police to determine whether the allegations investigated pointed towards general police inefficiency and a breakdown of trust between the community of Khayelitsha and the police. Equally, the evidence incontrovertibly showed that the police have commendable levels of policing experience and are doing their best within the resources available to police the areas of Khayelitsha, efficiently and effectively. The police continue to hold the thin line between public order and chaos. To that extent, the police are conforming to their constitutional and legislative mandate to protect, detect, and to serve the people.

8. From the outset, it is respectfully submitted that having regard to the complaints received by the Premier, and the evidence relating to alleged police inefficiency in the Khayelitsha it could not be found or established as a fact that the police stations in Khayelitsha are generally inefficient. Similarly, there is no evidence that the community of Khayelitsha, as a consequence of the instances of alleged policing inefficiency, have lost faith in the police. It

⁶ The Commission was given all the relevant national instructions and directives in a separate disk. The relevant ones were attached to specific affidavits of the police witnesses. Bundle 3 Item 3.22 SO 12 to 67; SO General; SO Finance

cannot also be concluded that evidence of vigilante killings indicates distrust on the part of the community, in the police. The issue of community members taking law into their own hands by killing suspects of criminal conduct will be dealt with below.

THE STANDARD OF POLICE EFFICIENCY

9. The evidence clearly demonstrated that any standard of police efficiency must be evaluated in relation to a number of variables including the socio-economic and political factors characteristic of the policing environment.⁷ Police efficiency cannot simply be based on crime statistics: on the number of arrests that are made; the number of community complaints; or the rate of convictions in court. Police efficiency cannot also be based on whether the police are able to correctly complete forms and record information accurately. The number of arrests made in any policing precinct and compliance with formalities like recording information can be but a small indicator of police efficiency or inefficiency.

10. The test for efficient policing must include whether there is general law and order in any community based on the respect of human rights. A community

⁷ **Bundle 12 Item 7:** Gareth Newman at para 2 of Submissions;
Bundle 12 Item 2: Johnny Steinberg at para 2 of Submissions to Commission, in particular on Policing in Informal Settlements;
Bundle 12 Item 6: Dr Chris Paul De Kock “Is Crime Combatting in Khayelitsha Intelligence Led and Is it Effective in Greater Khayelitsha?”

must generally feel safe because of the state of law or order. Whether there is law and order in any community depends on the role that is played by various stakeholders within any community. For example, members of the community report crime to appropriate institutions; members of the community are prepared to work in crime prevention strategies involving information gathering relevant to crime prevention, whether as informers or police intelligence structures, community members, if called upon to do so, testify against alleged criminals; the efficiency of the justice system; the role played by families in preventing their children from joining violent and criminal gangs; the presence of a social and economic system that keeps members of the community in productive work.

11. A further indicator of policing efficiency is whether the community generally subscribes to the principle of the rule of law, in that they resort to legal methods of resolving disputes rather than self-help. Without fear of contradiction, we respectfully submit that the answer to whether there is general police efficiency in Khayelitsha is in the affirmative: the Khayelitsha police are engaged in regular policing activities in that they record reported crime, conduct investigations by using technics that are consistent and sensitive to the constitutional parameters of human rights, bring suspects before the courts within the prescribed legal requirements, ensure that the rights of suspects are protected as provided for in the Constitution; have a relatively healthy relationship with strategic community stakeholders who

play a vital role in prevention forms of policing; assists communities with information on their rights and duties and collect evidence on which the Courts are able to convict or acquit suspects.

12. The evidence is that the communities of Khayelitsha subscribe to the rule of law, abide the Constitution, uphold law and order generally, and display an overwhelming desire to resolve their disputes in a non-violent manner within the precepts of the law. Contrary to what was predicted or expected, the community of Khayelitsha is a remarkable community committed to the institutions of democracy underlying a democratic police service. Their biggest and most complex challenge remains their high unemployment rates, and generally poor living conditions.

13. Conversely, a breakdown in policing can be said to have taken place where there is no law and order in a community. There is a breakdown in policing when community members, as a rule, alternatively in defiance of the law, refuse to report crime because they consider the police to be illegitimate institutions of law and order. When communities, generally refuse to be involved in the prevention of crime but rather, resort to self-help methods of resolving disputes, then there are cause for concern. Further indicators of a breakdown in policing include the general rejection by the community of police intervention in any disputes involving community members, and the resort to self-help methods of resolving crime. An alleged growth in vigilante

murders may be an indicator of a loss of confidence in the police but even the experts say it is more complex than that. A state of lawlessness in any environment may be caused by a number of social, political and economic factors. For example, the outburst of xenophobic violence in which foreigners were killed cannot be said to have been a loss of trust in policing, but was a combination of factors far removed from policing. The evidence was that during those attacks, it was the police that brought some stability through regular policing methods.

14. It is clear from the evidence before the Commission that experts are agreed that every community presents different crime patterns, and therefore policing challenges that require innovative (democratic) policing methods. For example, it is self-evident that the crime generators in Khayelitsha and relatively poor communities are different to those in affluent areas. The policing needs of community members in Khayelitsha differ considerably to those of people living in richer and well-resourced areas.⁸ In order to appreciate the terrain in which policing takes place in Khayelitsha, one must

⁸ See report by Major General Chris de Kock dated 3 August 2012 and titled “**Serious Crime in Khayelitsha and Surrounding Areas**” Crime Research and Statistics in Crime Intelligence. He addresses the crime profile of Khayelitsha in Executive Summary of the report in the following terms: “*The Crime profile of Khayelitsha has actually not changed over the past 12 to 13 years. It still remains a dominantly social contact crime. This type of crimes is less policeable in terms of conventional policing methods/ procedures such as focused patrols, roadblocks, cordon-and-search operations. It still exhibits a complex mixture of factors influencing crime situation such as a high influx of people not knowing one another and a resultant lack of social cohesion; unemployment; dire poverty; lack of proper housing, privacy/ and recreational facilities/ activities. The way to address the situation also still remains the same; Only an integrated Government-community response can really address the high levels of social contact crime. It seems as if nothing happened in this regard since 1999.* Pge ii

have regard to the history of regular policing in that area. What is startling is that the growth of informal communities in the policing precinct of Khayelitsha happened sporadically and was manifestly unplanned. Even where there are plans to develop formal settlement areas, local authorities do not factor in, or consider policing. Policing is often an afterthought.

15. Whether there is systemic police inefficiency must be evaluated against what the police are able to do with the resources and experience that they have. Although the police differ strongly with his thumb-suck conclusions that policing in Khayelitsha is done **“by chance”**, there are some useful insights that should be relied on to determine whether it can be said that policing in Khayelitsha is generally inefficient. Dr Chris De Kock’s distinction between *“policeable”* and *“non-policeable”* crimes is a useful starting point to evaluate the efficiency of the police within its proper context.⁹ We deal with these later in these submissions.

16. In these submissions, we respectfully submit the following issues are pertinent in the evaluation of whether or not regular policing is taking place in Khayelitsha:

16.1. the complaints that led to the establishment of the Commission;

⁹ Expert Bundle, Item 15 discussion in pages 4 to 16

- 16.2. the complaints' system of the police;
- 16.3. the police response to the complaints;
- 16.4. the System of Policing in Khayelitsha:
 - 16.4.1. detectives and investigation of crimes;
 - 16.4.2. police visibility;
 - 16.4.3. management of dockets;
 - 16.4.4. crime scene management;
 - 16.4.5. policing of gangs;
- 16.5. police resourcing according to the Resource Allocation Guide ("RAG");and
- 16.6. evaluation of experts on policing and in this case we will rely on the evidence of Dr Holtman and Newham to support the conclusion that policing is a multi-dimensional, and ultimately multi-agency responsibility, although at its core the police have a constitutional

duty to protect, to serve, to detect, and to fight crime and bring criminals to justice.

THE COMPLAINTS

17. The complaints, referred to in the terms of reference, for investigation by the Commission are contained in annexure “P1”¹⁰ and are the following;

17.1. initial complaints lodged with the Premier by the Woman’s Legal Centre on behalf of a group of the following civic organisations;

17.1.1. the Social Justice Coalition;

17.1.2. the Treatment Action Campaign;

17.1.3. Equal Education;

17.1.4. Free Gender (which on 6 December 2011, withdrew as a complainant);

¹⁰ The approach adopted by the SAPS in respect of the specific complaints is set out in the affidavits filed in the High Court: they appear in Bundle 1 Item 3, the affidavits of Minister of Police; National Commissioner of the Police and Provincial Commissioner of the Police. As far as the specific complaints are concerned, the evidence from these affidavits is that the SAPS dealt with the complaints in accordance with the complaints procedure applicable to the SAPS.

17.1.5. Triangle Project; and

17.1.6. Ndifuna Ukwazi.

17.2. Supplementary complaints submitted by the WLC dated 5 June 2012 are attached as annexure “**P2**” and comprised the following:

17.2.1. the statement of Madam Xholi;

17.2.2. two statements of Thandokazi Njamela, accompanied by news articles;

17.2.3. the statement of Nomonde Nakile, accompanied by news article and supporting documents;

17.2.4. the statements of Mandisa Inkinde;

17.2.5. the statement of Angy Peter (ironically, currently facing a murder charge in a vigilante killing in the Western Cape High Court.

17.2.6. two statements from an anonymous community members;

18. The complainants lodged the complaint in terms of section 206(5)(a) of the Constitution, and 66(2)(a) of the Constitution of the Western Cape Province. The complaint was addressed to the Premier of the Western Cape; the MEC of Community Safety Western Cape; the Western Cape Provincial Commissioner of Police; the Mayor of Cape Town; the Mayoral Committee for Safety and Security; and, the Minister of Justice and Constitutional Development.

19. The nub of the complaint was initially based on what the complainant organisations referred to as eight (8) case studies. The complainants claim to have monitored the handling of these complaints by the Police and out of that monitoring, took the view that there was grave concern about police inefficiencies and a breakdown in trust between the SAPS and the community of Khayelitsha. The complainants alleged that the eight (8) case studies were regarded as examples of widespread inefficiencies, apathy, police incompetence, and systemic failures of policing routinely experienced by Khayelitsha residents, which has resulted in a *“complete breakdown in the relationship between the police and the community.”*

20. Paragraph 5 of the complaint describes the scope of the complaint and state that while the primary complaint is directed at policing in Khayelitsha and the alleged breakdown in relations, *“it also relates to the manner in which policing functions interface with the broader administration of justice in*

Khayelitsha. Accordingly, the SAPS (National and Western Cape), the Department of Justice and Constitutional Development, the Department of Correctional Services and the National Prosecuting Authority are all implicated to the extent that their officials are involved in the prosecution or prevention of crime in Khayelitsha.” In oral evidence it became clear that the complainants’ witnesses viewed the scope of their complaint as going beyond the police inefficiencies.¹¹ It was also clear from expert evidence that policing is not solely responsible for the proper maintenance of law and order.¹²

21. The complainants maintained in paragraph 6 of the complaint that they did intend to *“to single out a particular organ of state, to simply criticize or place blame, or to target those working in Khayelitsha or the Western Cape. By calling for a commission of inquiry to investigate the criminal justice system in Khayelitsha in its entirety, the expectation is that its findings will identify the nature and extent of the problems that are undermining the ability of these organs of state to function optimally.”*

22. The overall objective of the complaint as set out in paragraph 7 thereof was to *“have positive tangible results for the community with respect to levels of safety and access to justice. The corollary of this is that such environment*

¹¹ Statement of Zackie Achmat dated 22 January 2014 which appear in Bundle 8(3) Item 45; Statement of Mlungwana; Bundle 1; File E; Item 30

¹² See evidence of Dr Holtman Transcript – page 7716- 7722.

will be one in which the police, the DoJCD, the DCS and the NPA will be able to operate in a more efficient and effective manner.”

23. It is clear from the nature and scope of the initial complaint that a commission of inquiry in terms of section 206(5)(a) of the Constitution would have no jurisdiction to address non-policing issues. Although the complaint implicates the Department of Justice and Constitutional Development, the Department of Correctional Services and the National Prosecuting Authority, a commission of inquiry under section 206(5)(a) of the Constitution can only focus on “*complaints of police inefficiency or a breakdown in relations between the police and any community*”.
24. In paragraph 10 of the complaint, the complainant refers to the legal framework in terms of which the complaint is based. It is clear from the scope of the legislation referred to and relied on by the complainants that a broad range of constitutional rights and duties are implicated. It was equally clear during oral evidence and by experts that efficiency in policing is a by-product of intersecting factors, which include the role that must be played by different departments.¹³ The issues raised in the complaint cover a wide array of constitutional rights referred to in paragraph 14 and 15, whose

¹³ See Holtman’s evidence in Transcript – page 7725; Mlungwana and Zackie Achmat’s evidence.

protection is far beyond the scope of efficient policing but would require broad state developmental initiatives.¹⁴

25. In paragraph 18, the complainants refer to the principles of cooperative government in section 41 of the Constitution, which must be read together with the provisions of the Intergovernmental Relations Framework Act, 2005. In paragraph 19 the complainants then opine that *“the spheres of government and departments which fall outside the mandate of the Western Cape Provincial Government – such as SAPS, the CTMPD, the DoJCD, the DCS and the NPA, will be required to cooperate with the commission of inquiry to facilitate its investigations.”* This position is acceptable only if the Commission took the broad view that policing in Khayelitsha is not solely responsible for the levels of crime or dissatisfaction with the management of crime. The position would be acceptable if all parties accepted that the policing terrain is the responsibility of other government departments and any allegations of police inefficiency would implicate such government agencies.
26. In paragraphs 20 and 21 of the complaint, the complainants allege that section 195(1) of the Constitution is applicable to the SAPS, the CTMPD, DoJCD, DCS and the NPA. The commission of inquiry under section 206(5) (a) has no legal authority to investigate whether or not the Department of Justice and Constitutional Development, the Department of Correctional

¹⁴ See Holtman’s evidence in Transcript – page 7724-7725 and 7732

Services and the National Prosecuting Authority comply with their duties under section 195(1) of the Constitution. A Premier of a provincial executive exercising a power in terms of section 206(5)(a) of the Constitution has no constitutional authority to cause an investigation into these departments. However, as is clear from the position taken by the police, policing is a multi-agency responsibility requiring that other government agencies play their precise responsibilities.

27. Paragraph 27 of the complaint then refers to the provisions of the South African Police Service Act, No 68 of 1995, in particular the preamble. It is clear from the preamble that the framework for policing legislation and policy is the national focus. Section 6(2) of the SAPS Act provides for the National Commissioner of Police to appoint in each province a Provincial Commissioner whose sole mandatory duty is to “*determine the distribution of the strength of the Service under his or her jurisdiction in the province among the different areas, station areas, offices and units.*” This responsibility is largely an operational one and impacts on how the SAPS are run. The Commission of Inquiry must determine whether the Provincial Commissioner is able to meet with operational challenges affecting the SAPS within the three stations under investigation.
28. The complaint regarding the Metro Police was excluded from the scope of an investigation by the commission of inquiry on the alleged basis that the Metro

Police had cooperated with the Premier. This means that the Premier decided to focus on the SAPS via a Commission of Inquiry for its apparent lack of cooperation. As a consequence of this exclusion, the investigation by the Commission did not test the scope of policing that is done by the Metro Police in the communities of Khayelitsha and whether the Metro Police could do more or less to improve the quality of policing services in the areas under investigation. The exclusion of the Metro Police from the scope of the investigation means that the full extent of resources available to conduct policing in Khayelitsha was not investigated or evaluated. This means that the full capacity of policing in the areas was not tested. Objectively speaking, if there are numerous examples of police inefficiency and a breakdown in community trust of the police, this appears not have been confined only to the SAPS but organs tasked with policing in Khayelitsha, which include the Metro Police.

29. The complaint also refers to section 49 of the Criminal Procedure Act No 51 of 1977 and the use of force in affecting arrest. The complainants contended that the commission of inquiry must be appointed because the use of force by the police is part and parcel of the duties of the police that has a bearing on community relations. The complainants however did not give evidence to support the use of force in conducting arrests. During the hearings of the Commission, there was no evidence of a complainant that had been beaten up by the SAPS of Khayelitsha during an arrest. There is evidence of

complaints of excessive use of force by the police in the documents submitted by the SAPS and the IPID but it cannot be said that the characteristic feature of policing in Khayelitsha is excessive use of force when conducting arrests.¹⁵ Essentially the use of force is authorised in very prescribed circumstances by police officers in carrying out their arresting functions. The power to use force during arrests is essentially an operational matter and cannot be an indicator of police efficiency or inefficiency. Whether or not the excessive use of force can serve to be an indicator of police inefficiency is a matter that requires better studies than has been presented to the Commission. At the very least, the use of force, where justified, can indicate neither police efficiency nor inefficiency.

30. Paragraph 39 of the complaint refers to the policing activities that are conducted under the Prevention of Illegal Eviction from and Unlawful occupation of Land Act (PIE). There was no evidence given to demonstrate police complicity let alone inefficiency in enforcing the provisions of the PIE Act. There was fliriting reference to policing the eviction of unlawful occupiers in the evidence of the Police in which it was stated that the duty of the police in such situation is to ensure that public order is maintained.

31. In section 68(2) of the Constitution of the Western Cape, the Provincial Cabinet "*must determine and convey to the member of the national Cabinet*

¹⁵ See IPID documents: Bundle 1 Item 8 File 1 to 5(a)

responsible for policing, the policing needs and priorities of the Western Cape.” The question one must ask is whether in appointing the Commission of Inquiry, the Premier had regard to policing needs and priorities of the Province as conveyed to the National Minister of Police. It is unclear whether the Premier considered the provincial priorities and needs as the basis on which a commission of inquiry was to investigate allegations of police inefficiency and a breakdown in relations with the community. Second, section 68(2)(b) specifically provides that the Provincial Cabinet:

31.1. may lodge a complaint about any misconduct of, or any offence committed by, a member of the police service in the Western Cape, with the national independent police complaints body established by national legislation and

31.2. must participate in the committee composed of the national Cabinet member and the Provincial Ministers responsible for policing established by the National Constitution to ensure effective co-ordination of the police service and the effective cooperation between the national and provincial spheres of government.

32. The decision to appoint a Commission of Inquiry to investigate the complaints of police inefficiency and a breakdown in community trust without regard to these provisions deprived the Commission of the opportunity to test

inefficiency against the needs and priorities of the province as approved by the Provincial Cabinet. The Commission of Inquiry has no evidence of any steps that were taken by the Province in terms of section 68(2)(b) which would show that there is a prevalence of police inefficiency in Khayelitsha of the nature that the community has lost trust in policing institutions.

33. The Premier identified the “*nub*” of the complaint as being contained in paragraphs 48 and 49. In these paragraphs, the complaint is summarised as follows:

“48. Members of the Khayelitsha community routinely experience violations of the rights set out above in their dealings with the police. What is stated below will demonstrate that the constitutional rights to: equality, human dignity, life, freedom and security of the person, privacy, movement, property, housing, access to courts as well as the rights given to arrested, detained and accused persons, are violated by the police, including the CTMPD and other actors in the criminal justice system, on a daily basis. The police also violate laws founded upon these fundamental rights such as the Children’s Act and PIE.

49. The systemic failure of the Khayelitsha police, including the CTMPD, to prevent, combat and investigate crime, take statements, open cases and apprehend criminals also violates the provisions of section 195 of the Constitution which requires that all public administration be conducted professionally, ethically, impartially and with the effective, economic and efficient use of human, material and financial resources.

50. *The Premier and MEC for Community Safety have the constitutional power to appoint a commission of inquiry into policing in Khayelitsha, and to develop a plan to eliminate the problems identified, based on its recommendations”.*
34. The Commission has indeed heard some complaints that implicate the police in relation to some violations but these are substantially less than that contained in the complaints. The question is whether where some complaints were substantiated by evidence this is sufficient to form the basis of a finding of systemic failures of policing. This is the context where it is manifestly the case that social, political and economic factors make police work more difficult.
35. The fact that two more stations were built in ten (10) years demonstrates how the police have pumped the necessary resources to create the necessary capacity of the police to do their work. The allegations of high rates of murder, sexual assault and attempted murder cannot be examples of police inefficiency and a breakdown in community trust. An increase in these crimes does not by necessary implication evidence inefficient policing. A rise in reported crime may be an indication of a socio-political or economic development and/or reported population growth. What is also clear is that

high alcohol consumption leads to high crime rates, especially in areas where there are illegal liquor outlets.¹⁶

36. In paragraph 55, the complaint states that there is increase in reported cases of sexual violence in Khayelitsha. This increase in reported crimes could also be an indication of community trust of the police, otherwise why would a distrusting community increase their reporting of these crimes. Ironically, the complainant in paragraph 56 says that property crimes such as burglaries, theft and robbery are rife and are often not reported to the police because the community does not believe that the crimes will receive attention. There is a logical inconsistency in the statement. If a crime is not reported, it will not be investigated. There is no information or credible evidence in terms of which it can be shown that people are not reporting crime because of a perception that nothing will be done. Evidence in this regard is either minimal, or purely anecdotal.
37. Statistical information reflected in paragraphs 58 and 60 is no evidence of police inefficiency and/or community distrust of police. The statistic may indicate a rise in crime, but that is not an indicator of police inefficiency. There may be a number of reasons for this, including the state of unemployment, homelessness, poverty and general social depression, well

¹⁶ Expert bundle: Item 13: Thys Gilliomme page 6 in which he asserts that there is a high demand for alcohol in the areas of Khayelitsha read this with the evidence of the Police witnesses in which they indicate that Fridays and the weekends are the most difficult times for policing because of high alcohol consumption.

recognized as crime generators. A rise in crime may simply be explained by the socio-economic and even political conditions of any particular community. For example, a community in which drug-related crimes are committed may be constantly raided by the police, but never reduce the crime. It may also be an indicator to the police that more resources ought to be deployed to these areas and from a planning perspective assist the SAPS in getting the right formula in their deployment decisions.¹⁷

COMPLAINANTS' VIEW OF POLICE INEFFICIENCY AND ALLEGED EVIDENCE OF BREAKDOWN IN POLICING AND COMMUNITY RELATIONS

38. The complainants address the issues of a breakdown in community trust in policing in paragraphs 63 to 67 of their affidavits filed in the High Court application. Their view of why there is a breakdown is the following:

38.1. SAPS and Metro Police are overburdened and under-resourced;

38.2. the failure of SAPS members to conduct proper investigations with the result that there are unnecessary postponements. There is no secure witness protections system with the result that witnesses disappear. There is no trauma counseling for victims of crime. Bail is incorrectly granted in schedule 6 crimes. The process of investigating

¹⁷ Catherine Ward, Submissions on Gangs in Bundle 12; Item 8; See Lingeletu Station Plan on Gang in Bundle 5 Item 3 which show the strategy on combating gangs.

a crime is not predictable. There will be cases where the investigation will take longer, done well or done badly. It all depends on the nature of the crime being investigated, the skills of the investigating officer and other factors for an investigation to reach commendable levels of efficiency. However, instances where the SAPS has failed to follow proper investigation methods and been reported, there has been action taken.

38.3. insufficient visible policing in Khayelitsha. The factors set out in paragraph 65 clearly demonstrate the variables that make police work difficult. It is not evidence of inefficiency or a breakdown in community relations. The fact that there are no proper roads, services, lights and addresses means that policing will be more difficult than in areas where there are services, like lights, roads and addresses. A commission of inquiry is not a reasonable response to address the absence of roads, lights, services and proper houses with proper addresses.

38.4. In paragraph 66 the affidavit, the complainants allege that the police treat victims with disrespect. The truth of the matter is that Khayelitsha police overwhelmingly do not treat victims of crime badly. Where there is such evidence, it is minimal. Where individual police officers have been reported for disrespectful treatment of crime

victims, interventions have been swift, and decisive. Such conduct has always been addressed through the disciplinary channels of the SAPS.

39. Despite identifying the CTMPD as being *“a fundamental part of the policing problems being experienced by Khayelitsha”* viz inefficiency, disrespectful conduct towards victims etc, there was no evidence of how the alleged cooperation with the Premier improved the efficiency of the CTMPD. The specific issue that the complaint referred to in relation to the CTMPD is the *“general demeanor of its members and their many acts of unlawful evictions and destruction of property in informal settlements.”* This conduct in evictions is identified as *“a violation of the constitutional rights and other legal obligations.”* The decision to exclude from the scope of the Commission the CTMPD against whom allegations of police inefficiency are made deprived the Commission of evidence that could give it a better, more balanced picture of policing at the three (3) stations and in Khayelitsha generally.
40. In paragraph 73 of the complaint, the complainants further define the scope of the complaint. They say, *“...although this complaint relates to Khayelitsha specifically, many of the issues are relevant to other poor and working class areas in the city and the province. The civil society organizations thus urge the provincial executive to consider instituting a similar inquiry into an area that also experience disproportionately high levels of crime and where*

access to justice in inadequate, such as Hanover Park, Mitchell's Plain or Manenberg. This will allow the commission of inquiry to generalize experience from both formal and informal settlements."

41. What is clear from the complaint's evaluation of the policing problem in Khayelitsha is that it is a part of a broader challenge throughout the province in relation to disadvantaged and poor communities. The nature of the problems that the police have to deal with have their origin in broad socio-economic and political conditions of the community that cannot be effectively addressed by a commission of inquiry looking only at the issue of policing. The scope of a commission of inquiry established under section 206(5)(a) of the Constitution is limited to realistically give a diagnostic recommendation based on its terms of reference.

THE POLICE SYSTEM OF PROCESSING AND INVESTIGATING COMPLAINTS

NODAL POINTS FOR PROCESSING COMPLAINTS

42. What appear to be common cause between the parties is that the police have a clear and effective way in which they address complaints. (The complaint is how the complaints, once received, are treated, and dealt with). The SAPS have clear guidelines that are published extensively on how complaints against them should be reported, and in fact are reported. There

was ample evidence that the complaints' system is indeed responsive to community complaints. There are various ways in which the police receive complaints from the community:

42.1. a person may attend any police station to complain – either by writing, phoning or physically visiting the police station;

42.2. CPF may take their complaints about the police. The SAPS do not control this complaints' procedure;

42.3. at the Provincial Level, there is a Complaints' Section of the Provincial Office. The office has a 24-hour cell number that people can call into to register their complaints;

42.4. the Department of Community Safety (Provincial Secretariat) has a complaints' procedure. The complaints are channeled to the Complaints' section of the SAPS;

42.5. the presidential hotline also receives complaints and refers such to SAPS.

43. The Provincial office monitors all complaints lodged via the nodal points and provides feedback to other departments depending on the nature of the

complaint, and where it originated. For example a presidential hotline complaint will be dealt with and a report submitted to the National office on the matter.

44. If any disciplinary transgressions are identified, disciplinary steps are taken against the police officer concerned. We have what is called Performance Evaluation Program – PEP where every employee signed a performance contract-performance management tool. Performance contracts are signed annually based on performance evaluation. Officers are evaluated twice a year. Part of that process entails identification of personal developmental areas. When a specific officer is not performing properly, then it is determined whether it is due to a lack of training or not. Corrective measures are taken. If it is laziness, for example, then a disciplinary process is followed.

45. The management of complaints against the South African Police Service is set out in the Standing Order 101. The purpose of this order is to regulate the management of complaints against the service. An electronic database is kept at the business unit, which keeps record of the registration assignments and closure of all complaints lodged against the SAPS at the business unit. The database must be utilised to analyze complaints and must reflect the following elements:

- 45.1. date on which the complaint was received;
 - 45.2. name of the complainant;
 - 45.3. contact details of the complainant;
 - 45.4. nature and classification of the complaint;
 - 45.5. name and contact details of the investigator; and
 - 45.6. the outcome of the investigation.
46. Complaints are categorised into three segments. The first is service delivery complaints from members of the community; the second is service delivery complaints from employees of the SAPS; the third category is internal employment relations' complaints from employees of the SAPS which cannot be dealt with through the applicable provincial procedure. The complaint under investigation by the Commission of Inquiry falls under the first categories, which are service delivery complaints from members of the community. Under this category, the following procedure is followed:
- 46.1. a complaint is registered. If a complaint is about another business unit the commander of the business unit who received it must ensure

that it is forwarded to the relevant business unit. The member receiving the complaint must ensure that a written acknowledgment of receipt of the complaint is provided to the complainant;

46.2. a complaint must be recorded in a register or database kept for this purpose;

46.3. the reference number of the complaint must clearly identify the complaint in terms of its nature, classification, state of origin and province.;

46.4. after registration, the commander of the business unit who received the complaint must ensure that the complaint is, within at least two (2) working days of its receipt, refer to the place of origin for the place of origin for investigation and to be remedied if necessary.

47. The commander of the station of origin must ensure that an investigator is designated to investigate the complaint. The investigator must provide a written acknowledgement of receipt for the complaint to the commander, which must clearly reflect the signature, rank, personal number, name, the name of the business unit, telephone number, date and time on which the complaint was received.

48. The investigator must:

- 48.1. peruse the complaint filed to determine the basis of the complaint;
- 48.2. arrange and conduct an interview with the complainant;
- 48.3. verify the complaint with the complainant;
- 48.4. determine the cause of the complaint and the desired outcome;
- 48.5. determine relevant measures to address the complaint;
- 48.6. confirm with the complainant whether he or she is satisfied with the proposed corrective measures;
- 48.7. ensure that the complainant sign a certificate after finalisation of the investigation, to confirm the satisfaction or dissatisfaction of the complainant with the outcome; and
- 48.8. compile and submit a detailed report of the investigation to the commander.

49. The report of the investigation to the Commander must contain the following elements:
- 49.1. date on which the complaint was received;
 - 49.2. name of the complainant;
 - 49.3. contact details of the complainant;
 - 49.4. nature, classification and place of origin of the complaint;
 - 49.5. nature and contact details of the investigator;
 - 49.6. summary of the facts relating to the complaint;
 - 49.7. whether the complaint was founded or unfounded;
 - 49.8. whether any misconduct is suspected and, if so, a recommendation regarding such misconduct;
 - 49.9. any other proposed corrective measures and a recommendation as to what measures may be taken to avoid similar complaints in future.

50. The investigation is finalised in the following way:
- 50.1. the commander must, on receipt of the investigation report, satisfy himself or herself that the investigation has been conducted properly and that the report is acceptable;
 - 50.2. if the commander is not satisfied with the report from the investigator, he or she must within two (2) working days refer the report back to the investigator, with instructions on how to properly complete the investigation;
 - 50.3. if the commander is satisfied with the report, he or she must sign the report and, within two (2) working days, submit it to the business unit;
 - 50.4. on receipt of the final report, the business unit commander must ensure that the complaint has been properly investigated; if not, the report must be sent back with instructions on how to properly complete the investigation;
 - 50.5. if the head of the business unit commander finds the report acceptable, the commander thereof must officially inform the complainant of the outcome of his or her complaint.
51. Standing Order 101 prescribes timeframes within which a complaint must be dealt with:

- 51.1. the registration, acknowledgment and forwarding of the complaint to the place of origin must be done within a period, not exceeding five (5) working days from the date of receipt of the complaint;
- 51.2. the receipt, recording and assignment of the complaint to the investigator at the place of origin must be done within a period not exceeding two (2) days;
- 51.3. the investigating officer must complete the investigation within a period not exceeding nineteen (19) working days from the date he or she has been assigned the investigation of the complaint, unless the commander deems otherwise, provided that it does not exceed nineteen (19) working days;
- 51.4. in the event that an investigation of a particular complaint is so complex that it cannot be finalised within a period of nineteen (19) working days, the commander must provide the investigator reasonable extension until the finalisation thereof, and communicate such extension in writing to the business unit;
- 51.5. the commander of the place of origin must, on receipt of the investigation report, either refer it back to the investigator if the complaint is not satisfactorily addressed or, if he or she is of the

opinion that it is satisfactorily addressed, to the business unit within a period not exceeding two (2) working days;

- 51.6. the business unit commander must, on receipt of the final investigation report, refer it back to the place of origin for correction or inform the complainant of the status outcome of the investigation within a period not exceeding two (2) working days.

52. Notwithstanding the right of the complainant to seek other remedies outside the SAPS to have his or her complaint addressed, a complaint filed will be regarded as closed if the commander of the business unit is satisfied with the outcome of the investigation and the remedial steps taken to address the complaint, where applicable. Where the SAPS for necessary attention refer the complaint to any other relevant institution, it shall be regarded as a form of closure on the complaint.

53. In accordance with the procedure set out in Standing Order 101, each police station has a register of complaints. Any member of the public who wishes to register a complaint against a member of the SAPS is entitled to do so in any police station of the SAPS. Once a complaint is registered with a police station, that complaint is dealt with in accordance with the procedures of Standing Order 101.

54. Whether or not the procedure set out in Standing Order 101 is effective in dealing with complaints of police inefficiency, can only be considered with due regard to the actual complaints that were filed with the police stations in Khayelitsha. The complaints' registers that were submitted to the Commission indicate that complaints are captured and followed through by appropriate investigations and decisions. Disciplinary decisions are taken by the police commanders, and that there appears to be no significant decline in the number of complaints. Whether or not the disciplinary decisions are appropriate for the offences is a matter that people may differ but it cannot be suggested that the police are inefficient when exercising disciplinary powers.
55. The Police Act prescribes regulations in terms of which the complaints procedure is also dealt with. In terms of section 68A of the Regulations, the Minister may convene a committee to enquire into allegations of misconduct, neglect or failing to take action by a member or members of the South African Police or any other matter, which the Minister deems necessary. A committee established by the Minister shall consist of at least three persons appointed by the Minister at which at least one shall be a member of the South African Police. The Minister shall appoint a person whom he deems a suitable chairperson of the committee and other persons who in his discretion are well versed in any matter, which may have to be considered at the enquiry. This method of dealing with complaints appears adequate to deal effectively with community complaints about service delivery in policing.

56. The Police Act also prescribed regulations for the South African Police Service relating to the Code of Conduct for members of the Service. In terms of clause 2 of the Code of Conduct, police officers commit themselves to acting with utmost professionalism in carrying out their police duties.
57. In what follows, it is important to evaluate how and whether the complaint systems of the police have worked. The report of the SAPS relating to the complaint dated 7 July 2012 from Major-General Jephtha is part of the record before the Commission.¹⁸ It is clear from the report that the view of the SAPS is based on their experience and work with the community.
58. A more direct and comprehensive report into the allegations of the initial complaint is set out in detail in a report of Lt Gen Tshabalala. The report gives a detailed response to the cases referred to in the complaint and how the SAPS addressed them.¹⁹ A further report on the complainants and the SAPS's response to them dated 26 June 2012 by the Provincial Commissioner addressed to the National Commissioner in accordance with the normal protocols in the SAPS, is also part of the record.

¹⁹ Tshabalala Report appears in Bundle 1 Item 3; page 684-710

59. It is manifest clear that the case that the complaints on which the Premier established a Commission of Inquiry were dealt with firmly by the police using the complaints system within the police. This is not to suggest that the complaints were frivolous or unwarranted. This is also not to suggest that there was no basis to criticize the police. What is clear is that the attention given to the complaints by the police demonstrates a commendable level of institutional sensitivity to community concerns. When the Premier submitted the complaints to the Police, they were investigated, as all other complaints have been, and appropriate decisions were taken thereafter. Even if the police may be criticized for their initial response, on its own, it is not evidence of general police inefficiency- alternatively- it is not evidence that the police have lost the trust of the community. People complaint to the police about the police because they know their rights and expect that the police will take these complaints seriously. However, when the police have dealt with the complaints- as in the case of the complaints that formed the basis of the complaints to the Premier- the fact that complainants are unhappy with the outcome does not mean loss of general trust in the police or indicate general police inefficiency.
60. In affidavits filed in Court, the police indicated how the specific complaints referred to them by the Premier, were addressed.

THE SAPS DEALT WITH EIGHT CASES REFERRED TO IN THE COMPLAINT

The case of Zoliswa Nkonyana

61. The case of Zoliswa Nkonyana was not first raised with the SAPS by the complainants when they lodged the complaint with the Premier. In a memorandum by the civic organisations, namely Social Justice Coalition, the Treatment Action Campaign, Equal Education, AIDS Legal Network, Free Gender, Triangle Project and Luleka Lisizwe, this case was also raised. The memorandum was addressed to the MEC for Community Safety, Minister of Justice and Constitutional Development, Minister of Police and Mayoral Councilor for Safety and Security and was titled *“Khayelitsha Community Organisations Demand Safety, Security and Equal Access to Justice for all”*.
62. The SAPS in a memorandum dated 6 February 2011 responded to the complaint relating to the case of Zoliswa Nkonyana. The steps taken by SAPS are set out in a police memorandum, and are the following:
- 62.1. On receipt of the complaint, SAPS extended an invitation to the complainants on 6 December 2011 to attend a Khayelitsha cluster meeting with the SAPS.

- 62.2. The Provincial Chairperson of the Community Policing Forum and the Provincial Head: Legal Services, Brigadier Slingers, Major General Ndlovu, Brigadier Dladla and Colonel Wiese attended the meeting. None of the complainants attended the meeting with the result that the opportunity to deal with the complaint was lost. Had the complainants attended the meeting there may well have been a frank discussion on the issues that could have reassured the complainants of the police interest in resolving community complaints.
- 62.3. At the meeting of 6 December 2011, the issues were discussed by those in attendance. First, the SAPS did not fully understand the nature of the complainant because the community forum established to address issues of trust between the police and community did not raise the complaints. In any event, the SAPS did not have clarity on the details of the complaint. In paragraph 55 of the complainant, it stated that, "*crimes such as burglaries, theft and robberies are rife and are often not reported to the police because they do not receive the necessary attention.*" It stands to reason that an unreported crime will not receive police attention, for the simple reason that it is unreported. The complaint is not that there was a reported crime that received no attention. Then in paragraph 59, the complaint indicates a rise in reported crimes, which is inconsistent with the logic

advanced in paragraph 55. The contentions advanced in support of a breakdown do not stand logical scrutiny.

63. A further meeting was held on 3 July 2012 to address the complaint from Social Justice Coalition. It is clear from the attendance register that the role players present were capable of addressing the complaint comprehensively. Members of the Community Policing Forum and SAPS structures attended the meeting. In the meeting, Lorraine Mosana of the Community Policing Forum indicated that the complainants are sometimes invited to attend Community Policing Forum imbizos but they never attend. Other members of the Community Policing Forum support this view.

64. To the question whether there is a breakdown in community relations with the SAPS, the members of the Community Policing Forum's view is that there is not. We deal with this evidence later in these submissions. Most of the community problems with the SAPS are addressed through well-attended community imbizos called by the Community Policing Forum. It was also pointed out that while the community organisations did not attend as such, individual members of these organisations attended and participated in the community imbizos.

65. When dealing with the case of Zoleka, the reason given for the delays in the prosecution of the accused person was that the family changed attorneys

and there were always new witnesses. The delays had little, if anything, to do with the police investigations, or the lack thereof.

66. The problems of police relations with the community are addressed through Community Police Forums held regularly with community members. It appears that the complainant organisations do not attend these meetings but organise their own events and marches without engaging the CPF. The problems in policing are also addressed via community imbizos that are held by the CPF to provide the community with a platform to evaluate police efficiency and crime prevention. The complainants, in particular members of the Social Justice Coalition are always invited to attend CPF meetings and imbizos to address the concerns relating to community – police relations.
67. A further community initiative is that the Department of Justice and Constitutional Development organised workshops for the CPF and community in which issues involving the criminal justice system are discussed and information is given to the community for its understanding.
68. Between 3 and 4 August 2012, the Isini Sam Conference was held in Masiphumelele Primary School, Makaza hosted by Triangle and Free Gender and funded by Heinrich Boll Foundation and Human Rights Foundation. The conference dealt with a variety of issues relating to hate crimes and constitutional rights. Members of the SAPS were invited and attended the

conference. The conference dealt with the relationship between SAPS and community organisations. On the issue, it was agreed that strategic planning in the SAPS is done nationally. Every station has a performance plan based on that national plan. The Police Act makes provision for CPF to be part of developing the station operational plan. It was indicated that the community could report to the station commander police members who were not performing their duties diligently. There is also a service charter with a toll free number in every police station where complaints could be lodged. The value of CPF was highlighted.

69. An Information Note of Colonel Wiese reports on the complaint raised by a community organisation called Free Gender. The note refers to *“several initiatives currently underway, aimed at addressing the issues raised by ‘Free Gender’ and improving the working relationship between the South African Police Service and the Khayelitsha community at large.”* These initiatives include the following:

- 69.1. amendment of operational plans pursuant to a decision taken at a meeting held with Free Gender in Nyanga cluster on 19 April 2012 to make provision for the inclusion of gender-based violent offences as priority crimes;

69.2. sensitisation of members of the SAPS to hate crimes involving sexual orientation;

69.3. proposal by Free Gender forwarded to the national SAPS office for attention and consideration;

69.4. improving partnerships with community organisations through scheduled regular meetings. In this regard it must be pointed out that the following meetings were held between SAPS and Free Gender;

69.4.1.16 August 2011;

69.4.2.3 November 2011;

69.4.3.2 December 2011;

69.4.4.29 March 2011;

69.4.5.19 April 2011;

69.4.6.26 July 2011;

- 69.5. a resolution to continue working with community organisations to ensure that there is trust and cooperation. On 28 November 2011, members of SAPS policed a protest organised by Free Gender at Khayelitsha Magistrates Court to raise awareness on gender-based violence. This protest march was well publicised in both the electronic and print media;
- 69.6. on 8 December 2011 an interdepartmental open day was held in Khayelitsha between the SAPS and community organisations;
- 69.7. on 4 February 2012 a memorial service organised in honor of Zoliswa Nkonyana was attended by Khayelitsha Cluster office. On that occasion an undertaking was given by SAPS to treat these hate crimes as priority crimes. The public was asked not to take law into their own hands when dealing with criminals but to report them to the SAPS.
70. It is clear from the above that the relationship between the community and the SAPS are a subject of concerted effort by the community organisations working together with the SAPS. Community relations are also worked through the CPFs and related imbizos.

Complaint in respect of Makhosandile “Scare” Qezo

71. The facts as alleged in the case of Makhosandile “Scare” Qezo referred to in the complaint are not evidence of police inefficiency. According to the complaint, the SAPS arrested Lonwaba ‘Lizo’ Gubeni, who was charged for attacking Qezo. There is no allegation that the arrest was done contrary to the rights of the arrested person or that there was police inefficiency. The granting of bail was not a police issue but a matter decided by the prosecutor and the Court having regard to the facts and circumstances of the case. When the accused person failed to appear in court, was re-arrested on 25 August 2010.
72. The allegation of police inefficiency is based on the allegation that the SAPS failed to inform the family members of the re-arrest as they had requested. The re-arrest was done in accordance with the law, and was done efficiently. The lapse in failing to notify the complainant or an interested social movement like the Social Justice Coalition of the re-arrest did not prejudice his rights to a fair trial and cannot be evidence of systemic inefficiency in policing. The decision to grant bail does not depend on the presence or evidence of the investigating officer. The court knew the facts of the accused’s escape since it had issued a warrant for his arrest after failing to appear.

73. In paragraph 14, the complainant alleges that the Investigating Officer indicated that the accused in the case had a further warrant of arrest for another criminal offence. While it is an unsatisfactory state for the matter to remain unresolved, it cannot be solely blamed on police inefficiency. The reasons for postponing a matter can be varied and there is no suggestion that police inefficiency of the nature that warrants the appointment of a commission of inquiry are evidenced in the postponements. Where a postponement is warranted, for example in circumstances where the investigating officer couldn't be available because he has taken leave, which too cannot be evidence of inefficiency. Members of the SAPS are entitled to take leave.
74. The fact that the matter remains unresolved cannot be evidence of police inefficiency and a breakdown in police and community relations. On the ordinary facts of this complaint what is clear is that the SAPS arrested the accused and brought him to justice before the court for prosecution.

Case of the rape of a minor in Taiwan, Khayelitsha

75. The alleged rapist of the child in Taiwan was arrested by members of the SAPS and brought to Court. The arrest of the accused is evidence that the SAPS working with the community is able to conduct successful investigations and make arrests as quickly as possible. The State's failure to

oppose bail is not solely a policing matter and therefore the SAPS cannot shoulder the entire blame for the decision of the NPA. The allegation of interference with witnesses and intimidation are serious and when it was reported to the SAPS, charges were preferred against the accused. The fact that the SAPS took statements and placed the case under the same case number as the rape case is not evidence of systemic police inefficiency. The SAPS cannot be expected to arrest a person simply because the father of the victim of the rape reports threats and intimidation. As a matter of fact, there has to be evidence that the accused interfered with and intimidated the witnesses.

76. The allegation that the SAPS asked the family to locate the accused and inform them so that they can arrest him is not evidence of police inefficiency or insensitivity. The fact of the matter is that the report on the accused was that he had been seen at the vicinity of the victim's home shouting and threatening to burn down the house. The SAPS were simply asking for reasonable cooperation from the victim's family.

77. The loss of dockets is a troubling issue for the SAPS but where the culprit is found, the SAPS has never been shy to take stern action against its members implicated in such matters. The docket is usually given to the Prosecutor and it is not clear from the complaint whether the loss was an act of police incompetence, neglect or inefficiency. Even if it would be regarded

as such, this cannot be regarded as evidence of police inefficiency and a breakdown in police and community relations.

The case of Adelaide Ngongwana

78. The case involved the shooting of Adelaide Ngongwana in the leg allegedly by members of the SAPS. The complaint is that the shooting was accidental and arose from a mistake by members of SAPS who were pursuing armed robbers. The complaint is that the police initially told the victim of their shooting to walk to the hospital but that she *“managed to convince one of the officers to assist her to the car. Despite just being shot in the leg, she was still forced to walk to the police car.”* There are two important details that demonstrate police efficiency and community trust. The first is that the SAPS were prepared to transport the victim in their car to the hospital. The second is that the decision to transport her in a police car was taken after a conversation with the victim. The allegation that she was forced to walk to the police car despite being injured is inconsistent with the previous allegation that an officer agreed to transport her to the police van to the hospital.

79. The allegations in paragraph 24 of the complaint is that the victim was taken to *“Site B hospital and put on the stretcher and left her there because they said they were busy.”* First, it cannot be expected that the SAPS should

have waited for the victim to be treated and thereafter transported her back. It is regrettable that she had no money to return home after treatment at the hospital but that cannot be evidence of systemic policing failure. The SAPS went beyond the call of duty in offering to transport the victim to the hospital. It is not the duty of the SAPS to transport injured persons to the hospital. The SAPS could have called an ambulance to do so.

80. The Social Justice Coalition lodged a complaint with the Independent Complaints Directorate (“ICD”) on behalf of Ngongwana. They claim to have done so because she was scared to do so herself. The victim is a 70-year old woman who had been injured in a shootout. It is honorable that the Social Justice Coalition decided to file a complaint on her behalf because such a step means that she did not have to spend any resources travelling to a police station and complaining about the shooting that had happened which is accepted was erroneous.
81. The ICD conducted an investigation in which the SAPS cooperated. The investigation concluded that the SAPS had acted within their rights and had done nothing wrong. The complainant disagrees with the findings of the ICD on police conduct and actions but no real basis is set out for that disagreement. From the facts of this case, there is nothing that justifies the conclusion of either police inefficiency or loss of community trust.

82. The case of Mrs Ngongwana does not disclose a *prima facie* case of policing inefficiency and a breakdown in community trust of the SAPS. It was dealt with in accordance with established procedures for investigating allegations of police misconduct.

The case of Angy Peter

83. She was a passenger in a taxi when another Quantum taxi passed by at high speed being pursued by two police vans. The complainant understands the reason that the police were pursuing a taxi that had failed to stop after an accident. The complaint is that the police fired live shots at the taxi to stop it. The shots were fired in a busy place where a by-stander was shot at the back. The police stopped when many people stood around the victim who had been shot. The police would not allow anyone to speak to the wounded man and actively prevented those wanting to. Another person who had been shot also approached the police. Thirty minutes later an ambulance arrived and took the victim to the hospital. In a nearby garage a third person had been shot and was also transported in an ambulance that had arrived at the scene.
84. The facts of this case indicate that the SAPS were doing policing work involving a dangerous fleeing suspect. The pursuit of a fleeing suspect is acceptable policing conduct. The shooting of a fleeing suspect is also

legitimate policing business. The shooting of innocent by-standers is regrettable and should not happen, but sometimes it is unavoidable. The Premier cannot believe from the facts of this case that there is evidence of systemic policing inefficiency and a breakdown in community trust of the police to warrant an investigation. The SAPS, once they had managed to stop the fleeing taxi were entitled to take the taxi away and carry out further investigation on the taxi. This too is normal policing conduct.

85. The complainant then went to the police station with a friend from Social Justice Coalition to request further information about the incident. The facts of this complaint do not warrant the appointment of a commission of inquiry to investigate systemic policing inefficiency or a breakdown in community trust.
86. It is clear in any event that a complaint by the complainant was addressed through the normal and established channels to investigate the police for alleged wrongs. The ICD dismissed the complaint.

The case of Nandipha Makeke

87. The facts of this case do not disclose a *prima facie* case of systemic policing incompetence, but the contrary. The alleged rapists were arrested and brought before the Courts. When TAC members were threatened as

alleged, the police took them to safe-houses and provided them with security. Far from demonstrating SAPS failure and a breach in police trust the facts disclose the contrary. When the TAC members were threatened, on the complainant's version, the SAPS provided safe houses. If there was a breakdown in community trust of the SAPS, the TAC members living in Khayelitsha would not have approached the SAPS for protection. This case study cannot justify the appointment of a commission of inquiry to investigate systemic policing inefficiency and a breakdown in community trust on a complaint of this nature.

The case of Nokuzola Mantshantsha

88. This case involves the CTMPD's eviction activities and demolition of houses in Khayelitsha. If there are facts which could justify a claim that there is a breakdown in community trust of policing in Khayelitsha it would be these facts involving evictions and demolitions of people's homes. The Premier has shielded the CTMPD from the scope of the commission's investigation on the basis of their alleged cooperation with her. This uneven and inconsistent approach to investigating what she calls systemic policing inefficiencies is not justified by the reasons that she gives especially when one looks at the facts of this particular case which implicate the policing activities of the CTMPD relating to matters that would cause extreme community resentment of policing. Nothing can breach community trust more severely than policing

activities involving the eviction and demolition of people's homes, even if this was done legally.

89. The shielding of the CTMPD from the scope of the Commission's investigation under the circumstances is inexplicable.

SUPPLEMENTARY COMPLAINTS

90. The Premier forwarded supplementary complaints to the SAPS under a covering letter dated 13 June 2012. In that letter she views the complaints as *“additional facts from several of the original complainant organisations, alleging that these provide further evidence of the allegations of inefficiencies and a breakdown in the relationship between the community and SAPS serving the Khayelitsha community.”* The Premier adds to these supplementary facts an email from a resident of Khayelitsha *“asserting *inter alia* that an air of hopelessness exists in the area in the fact of on-going acts of vigilantism that are becoming a frequent occurrence...”* The Premier then concludes that *“the fact that such person does not view the intervention of the SAPS in those circumstances as a visible solution appears to give credence to the alleged breakdown of trust between the community and the SAPS as alleged in all previous complaints that I have sent you for comment.”*

Complaint of Madam Xholi

91. The complaint is a serious one and received immediate attention when the SAPS knew about it. They, as required by the law, referred the matter to Independent Police Investigative Directorate on 31 May 2012 for investigation. If there should be merit in the case, the SAPS have established procedures for bringing the culprits to book. The facts of this, although very worrying, do not evince a systemic policing inefficiency in the SAPS. It shows that there may well be individuals within the SAPS who breach the established policing methods or protocols for whatever reason. However on its own, the case would not justify the exercise of a power in terms of section 206(5)(a) of the Constitution to appoint a commission of inquiry.

Case involving Thandokazi Njamela of Assault GBH: CAS 830/12/2009

92. The case involves allegations of assault of the complainant by a friend of her boyfriend. The SAPS issued a warrant of arrest and later cancelled it. The case was further withdrawn after Lt Galnt made a statement where the Senior Prosecutor was requested to withdraw the case for unknown reasons. When the SAPS examined the case and were unsatisfied with the manner in which the case had been handled, the case docket was handed to Colonel Marais to be reopened for further investigation.

The case involving murder and attempted murder: Thandokazi Njamela: CAS 02/11/2010

93. The complainant is a witness to a shooting incident in which two people were killed. The group of men who shot used assault AK 47 in a tavern. Through proper investigation by the SAPS five people were arrested and their court appearance was on 14 September 2012. This cannot be evidence of policing inefficiency or a breakdown in community trust of the SAPS as alleged by the Premier.

The case of murder involving Nomonde Nakile's husband: CAS 825/07/2002

94. In this case the SAPS investigated the fatal stabbing of the complainant and an accused was arrested and charged. The court date for the accused was 28 August 2012. This case is not evidence of systemic policing breakdown and evidence of loss of confidence by the community on the SAPS. There are no allegations that the SAPS conducted their investigations in a manner that has compromised the case or violated the rights of the accused.

The case of Assault with GBH: CAS 45/12/2011

95. This case involves complaints of cellphone robbery on the complainants and two other women. The case was struck off the roll because the investigating officer had failed to complete the investigation and had failed to attend to the prosecutor's requests. The docket was handed to Detective Commander, Colonel Marais for reopening and further investigation. The evidence is that the SAPS take steps when there is a complaint of incompetence to ensure that the SAPS remain ready to fulfil their primary mandate.

The case of rape involving a minor: CAS 630/11/2010

96. In this case the SAPS conducted a thorough investigation and apprehended the alleged culprit. The case was set down for hearing on 11 July 2012.

The case of assault: GBH involving anonymous: CAS 269/11/2009

97. This case was reopened for further investigation and handled by Group Commander Captain Nkosi.

The case of a rape complainant: CAS 279/04/2012

98. The complainant had opened a case of rape against her husband. She was advised at the police station to apply for a protection order in terms of the Domestic Violence Act in order to obtain their protection from her husband.

The complainant withdrew her case of rape against her husband and to that end filed a statement. The complainant complained about the treatment that she had received in the hands of Warrant Officer Mchitwa. The implicated officer was dealt with in accordance with the disciplinary processes of the SAPS. She was subjected to retraining on matters involving handling of sexual violence cases. The docket was inspected and it was concluded that it had been investigated in accordance with normal policing protocols.

Case of rape involving Mondisa Inkonde: CAS 177/06/2008

99. The complainant alleged rape by her ex-boyfriend sometime in June 2008. She was unhappy with her treatment in the hands of the SAPS. The matter was taken up by management of SAPS, proper investigation was conducted and the docket booked with the prosecutor in Khayelitsha.

CONCLUSIONS ARISING FROM THE COMPLAINTS

100. The complaints generally do not support allegations of systemic policing inefficiency and a breakdown in community trust of the SAPS;

100.1. all the complainants approached the SAPS when they have needed to report a crime or some other form of police help;

100.2. bar the allegations involving the handling of two (2) cases, the complainants complain about other delays in the criminal justice system and do not allege that police inefficiency was the cause of it. Even if this were implied, it is clear that this cannot be evidence that police in general are inefficient;

100.3. the SAPS investigated all the matters, and effected arrests. Where the investigation was reported as being unsatisfactory, the SAPS took steps to rectify the problems. The unhappiness with the quality of investigation in some of the complaints does not demonstrate systemic policing inefficiency or a breakdown in community trust of the SAPS;

100.4. where a complainant was unhappy with police investigation, the person reported such unhappiness in the police station. Such complaints were addressed through the disciplinary processes of the SAPS.

THE SYSTEM OF POLICING IN KHAYELITSHA

101. Policing in Khayelitsha is achieved through its structures and units to achieve its basic policing goals.²⁰ In South Africa the legislative and policy rules for

²⁰ See Brigadier Dladla's statement and evidence in Bundle 9; Item 4(9); Colonel Rietz: Transcript 2878

the conduct and actions of the police are largely in line with the objectives of democratic policing as formulated above.²¹ The more pertinent of these are briefly referred to in the paragraphs that follow.

102. Section 198 of the *Constitution of the Republic of South Africa* prescribes the principles that govern national security in the Republic. Of these sub-sections (a) and (c) are particularly relevant:

- (a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.
- (b) ...
- (c) National security must be pursued in compliance with the law, ...

103. In this regard it should be noted that South Africa's 'high level of crime and violence' along with a number of other issues, was already listed in 1996 in the *South African White Paper on Defence* as the greatest threat to our national security. The other issues refer to, amongst others, social, economic and environmental threats such as poverty, unemployment, poor education and training, lack of proper housing and adequate social services.

104. As for policing, the 'objects' of the police service are specified in section 205 (3) of the Constitution as:

²¹ Dr Johan Burger's submissions in Bundle 12 Item 9

104.1. to prevent, combat and investigate crime

104.2. to maintain public order

104.3. to protect and secure the inhabitants of the Republic and their property, and

104.4. to uphold and enforce the law.

105. In the preamble to the *South African Police Service Act (No. 68 of 1995)* it is clearly stated that there is a need to provide a police service throughout the national territory to:

105.1. ensure the safety and security of all persons and property ...;

105.2. uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;

105.3. reflect respect for victims of crime and an understanding of their needs;

106. The fundamental rights referred to in the preamble include the rights to equality, human dignity, life, and freedom and security of the person. In addition, according to section 13 (3) of the *South African Police Service Act*:

a member who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances.

107. Section 2 (a) of the *Domestic Violence Act (No.116 of 1998)*, illustrates the principle that the police, when they arrive at the scene of a complaint, must render assistance to the complainant, including to obtain medical treatment:

Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported - render such assistance to the complainant as may be required in the circumstances, including assisting ... and to obtain medical treatment; ...

108. The general principles underlying the duties and obligations of the South African Police Service are also reflected in their **Vision, Mission, Values and Code of Ethics** as contained, amongst others, in their *Strategic Plan for 2010 - 2014*. Some of the more relevant of these are quoted below:

*“The **vision** of the SAPS is to create a safe and secure environment for all the people in South Africa*

*The **mission** of the SAPS is to-*

- *prevent and combat anything that may threaten the safety and security of any community; ...*

The values of the SAPS are to-

- *protect everyone's rights and to be impartial, respectful, open and accountable ..."*

109. The **Code of Ethics** 'has the specific purpose of providing a standard of police behaviour that does not allow any leniency for poor service delivery ...'. Amongst the more specific principles in the Code, employees of the SAPS undertake to 'treat every person with equal respect'; and to 'protect the inhabitants of South Africa against unlawful actions'.

STRUCTURE OF POLICE²²

110. The system of policing in Khayelitsha is structured to meet the core business of policing along the lines set out in the affidavit of Brigadier Dladla, of the Khayelitsha Site B Police Station submitted to the Commission.²³ There was nothing in the evidence to suggest that the structure and the units of the police promote inefficiency or a breakdown in trust with the community. The evidence appears to suggest that these structures are appropriate for policing. The police structures in all the three stations are consistent with police stations everywhere and are organized to achieve regular and efficient

²² See Brigadier Dladla's affidavit on the structure of the Police in the Station. The structure is essentially the same in all Brigadier stations and the Colonel Station, except that a Colonel Station is smaller than a Brigadier Station.

²³ Bundle 8 File 3(9) Brig Dladla's statement deals with how operations are planned and executed

policing. There was no evidence to suggest that any changes to the structures were necessary to increase police efficiency. The only issue in evidence was whether the structures were operating efficiently – this with specific reference to terms of reference – in which it had been alleged that there might well be general policing inefficiency. As issues were being probed a bit more, it became clear that there were gaps in the deployment of resources. The resources argument did not support the view that there was general policing inefficiency or a breakdown of trust in the police by the community. What the resources argument is able to explain is that the police, like all other service departments, operate within the contracts of resources. The evidence did not prove that resources were a factor in the complaints – for example that if resources had been available – the police would have given feedback to the complainants or completed a particular form correctly and accurately.

111. Officer after officer in the police indicated in oral evidence testified that an increase in resources (cars; more warm bodies with sufficient experience to assist with the detective work; technology that could help with docket management etc.) would enable them to do more. They were however united in rejecting the allegation that they operated inefficiently within the resources that they had. All the station commanders, detective commanders and CPFs, indicated that more resources could give them the space to do

more to prevent crime but that with the resources allocated to them, there were bound to be pockets of inefficiencies.

112. What became clearer during the Commission hearings was that the police themselves, through the systems of inspections, had flagged the issues of non-compliance and resources. It is on these inspectorate reports that the complainants will persist with the allegations of systemic inefficiencies. Ironically, this reliance is a misreading of the situation. None of the complainants could link the reported instances of non-compliance with the complaints on which they sought the establishment of a Commission of Inquiry. In other words, it is only full disclosure by the police that other complaints about policing disclosed in the inspectorate reports, that a debate about whether inefficiencies are general and systemic or specific and targeted. What the inspectorate reports show is that the police are constantly engaged in trying to improve the quality or levels of compliance. Through its inspectorate system, the police uncover and detect institutional and operational weaknesses. They do so in a frank manner. The fact that the police are able to detect institutional and operational weaknesses proves that the police inspectorate is efficient. The content of the police inspectorate reports is not evidence of general or systemic inefficiency. The reports target specific institutional, administrative or operational issues. They do not conduct an audit of institutional or operational efficiency. What they conclude

is that certain steps are not taken and should be taken to increase compliance and effectiveness.

Detectives and investigation of Crimes²⁴

113. The detectives' services in all stations provide an efficient detective services in which, within the resources available to them, they are able to investigate crimes, collect relevant evidence on which suspects are convicted. The fact that police inspectorate reports report negatively on compliance issues does not detract from the efficient manner in which the police are able to carry out their functions. The conviction rate generally was good. What was however impressive about the detective commanders is their sense of duty and service and acute awareness of the complex community that they serve. All the detective commanders have an impressive history of policing in the detective environment and cannot be said to be individually or collectively inefficient in their work. In their evidence, they were able to show that they provide an efficient detective service that could be improved, if more resources were given to them. Their evidence was balanced and fair in that where there were problems that had already been identified by the police inspectorate, they readily conceded and were able to articulate the reason for such problems.

²⁴ See the oral evidence of Detective Commanders of the Khayelitsha Stations, detective Marius, Swart and Tobias read together with that of Major-General Molo in Bundle 8 File 9(20.1 to 20.18)

114. In order to arrive at the conclusion that there is systemic inefficiency in detective services, one must show that the investigations are generally poor; Management of crime scenes leaves a lot to be desired; collection and preservation of evidence is not done; taking of statements is not done and where it is done, it is of a poor quality; dockets are generally not properly managed with the result that docket information is of no value to the prosecutors and the magistrates etc. The evidence is that in one or two cases, the detectives missed a step with the result that a complainant was left unhappy. However, objectively seen, there is no evidence that suggests wanton disregard for proper investigative and policing methods. In other words, even where the work of detectives may be criticized fairly, there is no evidence that there is general and entrenched systemic policing failures. The evidence showing rather that where there had been lapses in the chain of investigation, the police took appropriate steps fit for the lapse. Where a disciplinary step had to be taken, the detective commanders demonstrated that they took such decisions. There is evidence before the Commission to show that the detective commanders take steps to reprimand sloppiness and inefficient performance. In the report of the Task Team established by General Tshabalala, the problem identified was that the disciplinary interventions did not appear to have an impact on the number of complaints. This is far from evidence of systemic inefficiency.

115. What is clear from the evidence of the detective commanders is that disciplining detectives who operate under the extreme pressure of the work is a delicate balance. They have to weigh many factors before they can impose very serious forms of discipline like dismissing or demoting someone for a lapse in their work. What cannot be denied though is that the detective commanders were diligent in their management of discipline and services offered within the resources given. Even when they expressed the view that more resources would improve the situation, it was not from the viewpoint that there was systemic policing incompetence. The detectives were clear in what kind of resources they required- for example, they expressed the view that more experienced isiXhosa-speaking detectives could improve the quality of service offered to a community whose main language is isiXhosa.
116. The evidence was unequivocally that the Detective Branch units operating in Khayelitsha are functioning well and there is no justifiable evidence to suggest that there is a systemic deficiency in the detective service. The evidence is that more detectives are required to alleviate the burden of dockets and give the commanders a bigger pool of resources from which to deploy. With the resources at hand, the detectives' commanders were satisfied with the performance of their detectives.
117. There was no evidence that the formal training of detectives is a problem and should be subject to any scrutiny. All the detectives operating in Khayelitsha

are trained in the basics of detective work and there was no evidence to suggest that such training is deficient.²⁵ From the evidence of the detective commanders, it was clear that the detectives are subject to on-going training, either formally through courses or informally, on the field with experienced detectives.

118. Further evidence is that detective services understand their operational duties and appreciate the value of paying attention to the details. There was no evidence of systemic detective blunders that could justify the conclusion that there is systemic or dysfunctional detective service.

Police visibility

119. Police visibility plays an important policing function in Khayelitsha. It is recognised as the eyes and ears of the police through which the prevention of crime may be achieved. It is also conducted via a number of initiatives including patrols on foot and vehicles, sector policing and community policing forums. The question is whether the system of sector policing implemented at the three Khayelitsha police stations is working effectively with reference to National Instruction 3/2009 (where applicable) and Provincial Guidelines (Western Cape) 3/1/5/1/342 of 6 June 2007 and National Instruction 3/2013.

²⁵ *ibid*- Bundle 8 item 9 – In Major General Molo's statement he addresses the training that detectives go through. There is no evidence that the courses are inadequate

120. The evidence from the police was clear and unambiguous on the value of visible policing. There can be no doubt that this system of visible policing is valuable policing. The concept of Sector Policing is implemented within the scope of visible policing. Sector Managers were appointed and members are deployed within the different sectors. Sector Crime Forums are established and monthly Sector Crime forum meetings are being held.
121. The crime prevention units at the three Khayelitsha police stations work effectively in that daily, weekly and monthly meetings are being held to review the crime situation in order to identify the crime patterns and threats. Crime prevention operations and resources are then deployed in accordance to the crime threat analysis.
122. On whether the VISPOL units could be equipped to conduct their work in a variety of modes of transportation including quad-bikes and bicycles, it was clear that the police had in fact explored these options and found them to be less than satisfactory in the combatting or prevention of crime. The environmental design is of such a nature that such patrols pose the risk of attacks and injury to members. The housing design is such that patrols on any other form other than foot patrol is impossible in some areas and dangerous in others. The major problems for bicycle or quad-bike patrols are the low electric wires spun across between the shacks and low hanging roofs of shacks. These types of operational concepts are resource hungry as foot

patrols cannot be conducted with a group of less than ten officers during night patrols. A smaller area is covered by such patrols. Foot patrols are conducted but in a distinct area as directed by the crime threat and pattern analysis in areas that is not accessible with vehicles. It is not possible to conduct such operations 24 hours.

123. A further discussion on the impact of absenteeism and the management of leave as of particular concern. The police have identified this as a resource drain and are deeply concerned about it. There are various ways in which the police are intervening to ensure that the full complement of the police is utilised. There are various categories of absenteeism:

- annual vacation leave;
- sick leave;
- family responsibility leave;
- study leave;
- sport leave;
- maternity leave;
- training;
- court duties;
- rest days.

124. Sick leave and family responsibility leave are the only categories of leave that are unplanned. Station commanders monitor absenteeism daily and redeploy

resources to ensure that service delivery is not affected. All three stations' absenteeism rate is not unacceptably high. The stations are well within the National norms and standards.

125. Are there adequate resources being allocated to VISPOL and are these being appropriately managed? There are no shortages of logistical resources, however the accommodation at all three stations is a challenge. Ratio of vehicles to Visible Policing personnel (Document attached). With regard to personnel there is a shortage as testified but that does not support the conclusion of general inefficiency.²⁶

126. The evidence before the Commission clearly demonstrates that the community service centres (CSCs) at the three Khayelitsha police stations provide an efficient service to members of the Khayelitsha community. There is a high volume of community members visiting the CSCs for a number of services, some of who could be obtained from other state departments. Every community member who comes to the CSC has been served in accordance with the acceptable professional standards. There is a queuing system in place which is managed by a floor manager. Where there are urgent matters requiring urgent attention, the floor manager is able to detect and provide immediate assistance.

²⁶ Bundle 8 File 5 (11) Statement of Major General Fick

127. The procedure in opening dockets at the three police stations is in accordance with National Instruction 3/2011. No crime is recorded in the OB or Information registers. All crimes reported are registered on the CAS in the CSC where after the case is referred to the crime office for investigation.

128. The telephones at the police stations, including the telephones in the station, the sector cell phones and the 10111 numbers are working effectively insofar as they relate to the three Khayelitsha police stations. There were complaints and evidence that the telephones are not answered at all or timeously and that where the telephone has been answered no police response is forthcoming in a timely fashion.

129. The evidence of the Police was that all vehicles deployed in a sector book on the air at the beginning of a shift indicating the sector where they are deployed and the call sign of the vehicle. Further to this all vehicles are booked on the CAS system by the shift commander. Radio control Calls received through 10111 are despatched to sector vehicles at the station who then attends to complaints. All vehicles have radios that are in working order. 10111 is a toll free number. The cell phone number of the sector is not a toll free number. All complaints received on the sector cell phone are captured by the CSC to ensure attendance. Uncontested evidence of Major General Jephtha with regards to the amount of complaints received and attended by the stations is evidence that the system is effective. Where the police have been

unable to respond timeously, a reasonable explanation was given, for example, the police response is determined also by the gravity of the situation. Where there is gun shooting, and an immediate threat to life, the police response is faster than where there is a community protest over toilets.

130. All complaints are registered on the CAS and are monitored by the CSC commander and Cluster operational room to ensure that all complaints are attended. The CIO as well as the station commanders monitors outstanding complaints daily. The Performance Chart monitors the response time to complaints on a monthly basis.

Crime Scene Management

131. The training and experience of officers in crime scene management was shown through the evidence of the Detective Commanders to be above average. The two complaints dealt with during the commission hearings; one involving a clothing item that had not been collected at a crime scene and another involving the handling of a dead body do not point to a systemic inefficiency in crime scene management. The detectives themselves testified that the examples were regarded as unsatisfactory but did not indicate a breakdown in policing. In fact there was no evidence that the lapses were endemic and in the specific cases compromised a prosecution or investigation.

132. Crime Scene Management (CSM) is being effectively carried out at the three Khayelitsha police stations in accordance with national instructions. Particular consideration is given to processing the crime scene in accordance with prescripts, including the handling of photography, sketches, measurements, searching the scene and reconstruction. Officers attend all serious crime scenes and experts are called out to collect evidence as prescribed. The stations do experience challenges where crime scenes are destroyed due to crowding on scenes. Crime scene management is part of basic training. Additional crime scene management training was presented to all shift commanders in the province during 2011.²⁷ There is basic training and the refresher course. Officers' course, Crime prevention courses include the management of crime scenes.²⁸ The collection and preservation of evidence found on the crime scene is done in accordance with the normal procedures of crime scene management.

133. Experts collect the evidence on the scene. Collection of evidence forms part of the training curriculum for detectives. It is a specialised field and the detective on the crime scene has the responsibility to contact the relevant expert to the crime scene.²⁹ The evidence of the Commission on lapses in

²⁷ Refer to the National directive on crime scene management attached.

²⁸ See evidence of Detective Commanders.

²⁹ See the evidence of Swart in which he testified about the lapses in crime scene management involving a beanie.

crime scenes is 3 out of over 2400 incidents in which Lt Col Swart was involved. This does not indicate inefficiency.

134. Extensive evidence was led on the management of dockets allocated to each investigating officer, and the quality of docket administration. There was a clear suggestion that the docket management is in shambles with the consequence that the prosecutors were unable to carry out their duties and dispense justice. The allegation went as far as suggesting that the failure of the docket management system was a threat to the criminal justice system. However, there was not a single evidence of a lost docket. What appears to have been a problem are dockets missing in court when the matters are called.

135. The evidence of the police indicated that there were no problems with the number of dockets allocated to members per month it is well within the National in terms of S.O 321. The average of 25 – 30 dockets per month is acceptable. However there is a challenge with regards to the investigation backlogs that arise as a result of re-deployments of members or death of some. Directives on the Performance Chart in terms of the different dimensions in terms of Serious and Violent Crime, property related crime, will determine the allocation.³⁰

³⁰ Refer to evidence for Major General Molo, Col Marais and Lt Col Swart.

136. Investigations of serious cases take longer due to:

- dependency on expert reports from other units or departments. ;

- relocation of witnesses and complainant;

- High Court cases that result in members (I/O) being out of circulation whilst the case is appearing in the High Court. (Other cases are now neglected).

137. Shortcomings with docket administration are not due to system failures but non-compliance by officers. The inspectorate conduct regular announced visits to police station and identifies non-compliance with national instructions or directives. The non-compliance is of concern to the police but not because it is systemic but important to provide accurate management and information on dockets. There is ample evidence that this form of non-compliance has been dealt with through appropriate disciplinary measures.

138. The office resources, including computers, printers, telephones, and internet access, available to each investigating officer are challenges but it cannot be said that the police are generally inefficient because of these. The challenges are not with equipment but rather with the data cabling.³¹

³¹ Testimony of Major General Fick, on the current status.

139. There were concerns regarding systems to obtain forensic reports on evidence, such as analysis of blood and other bodily fluids; ballistic evidence; DNA; and post-mortem reports. The streamlining of the process is inhibiting as the information is not electronically available. The police have a fully functional system. All systems in the police are linked and operate as one. For example, if a motor vehicle is reported stolen, a case docket is registered on the CAS system. After registration of the case docket on the CAS system, the vehicle is circulated and reflects immediately on the system.

140. The detective service utilise the following systems namely 1. CAS system 2. Circulation system. 3 Firearm system. 4 Property system. 5 PRDCRI Finger Print Record System. 6. ICDMS system - the new intergrated CAS system for detective service. 7 NPI system (national phographic identification system 8. FES system (Finger Print Enrolment System. The notion that the systems are stand alone systems and ineffective is far fetch as all these systems are interlinked as explained above. The PRDCRI system is most the advanced system and allows the investigator/administrative clerk to print a SAPS 69 form in the office. This replaces the previous systems that required the detective to drive to Cape Town to collect the SAPS 69. This system has radically reduced the turn arround time from 69% to 80%.

141. In the policing system, the collection and integrity of the DNA is very important. Currently DNA evidence is utilised in serious cases and is extremely important where no witnesses or other evidence is available. In such circumstances, DNA evidence is indispensable to successful prosecution. There are legislative amendments which will radically change the way in which DNA evidence is collected and preserved.³² There is no evidence that there is systemic inefficiency in the collection and preserved by the police. The field of DNA evidence is ever changing and there is room for the police to do better.

142. The availability of fingerprinting, photography and sketch plan operations was evidently the basis in detective work. The status of fingerprints can be accessed on the CAS system. A 24-hour standby number is available and the satellite office situated at Khayelitsha SAPS and are easy accessible. The availability of SAP 69s is electronic and is immediately accessible.

143. All three stations have an effective exhibit management system but only two of the stations (Khayelitsha and Harare) have sufficient storage facilities. This was a problem but could never be an indicator of inefficiency.

144. There were concerns expressed regarding the training of detectives and on the evidence there can be no conclusion that the training of detectives is sub-

³² See Bundle 12 evidence of Dr David Klatzow's Expert report.

standard. The training of detectives was comprehensively addressed by Major-General Molo in both his oral and written evidence.³³ There is ample evidence that Khayelitsha stations have good detectives who perform efficient detective services. Training needs are established through annual Work Place Skills Audit. Members are nominated to go on training courses according to the needs of the station but it is the evidence that detective commanders are constantly engaged in training the younger detectives on the work of a detective.

145. The oversight, supervision and management of detectives, was shown to be effective and efficient. The implementation of instructions is not limited to officers alone but all levels. However in the management of detectives the commanders were candid about the challenges that they face and how they address these. It was clear that the detective commanders understand their detectives, the work experience of each detectives, the family challenges and work load. What was also clear is that detective commanders were not harsh in addressing non-compliance and instances of ill-discipline because of the extreme pressures of detective services in Khayelitsha. The functioning of the Detective Service Centre at each police station operates in accordance with national and provincial instructions.

³³ See Major General Molo's affidavit.

146. Khayelitsha has a 24-hour operating DSC with 4 members per shift and a commissioned officer working flexi time, to ensure command and control.

147. Harare has a 24-hour operating DSC with 4 members per shift and a commissioned officer on standby is responsible, to ensure command and control.

148. Lingelethu West has a 24-hour operating DSC with 1 member per shift and a commissioned officer on standby is responsible, to ensure command and control.

149. There is clear evidence of the existence and effectiveness of internal mechanisms to prevent the theft and loss of dockets. In fact there was no evidence of docket loss but of dockets being late for Court when it is meant to be there. Monthly docket audits are being held in accordance to the prescripts of the National Instruction. At Khayelitsha all dockets are being scanned. At Harare and Lingelethu West all court dockets are scanned. A further back up system is that all court dockets are scanned at the court room. Monthly certificate are received from the Detective Commanders on case dockets. The testimony of Lt Col Swart and Capt Pillay's testimony was that for the past few years there have been no reports of stolen dockets.³⁴ The available evidence

³⁴ See evidence of Det Swart and Captain Pillay.

is that the system of docket management is efficient and effective in preventing docket theft, loss of vandalism.

150. On the regularity of docket inspection, the following evidence was inconvertible:

150.1. monthly production files;

150.2. brought forward system;

150.3. daily and monthly inspections;

150.4. 24-hour inspections;

150.5. certification (Court ready) by an officer on docket to and from court;

150.6. Cluster, Provincial and National inspections.³⁵

151. On whether the level of customer satisfaction in relation to the investigative there has been no survey conducted to test that. In the absence of an official Customer service survey, the station is dependent on the Cluster, Station Management Framework to determine the level of customer satisfaction.

³⁵ Reference was made during testimony of Col Marais evidence of one docket not submitted for 24-hr inspection.

CRIME STATISTICS, CRIME INTELLIGENCE AND CRIME INFORMATION OFFICERS

152. The evidence on crime intelligence did not show that there is lack of training, resources or experience. What the evidence showed is that in some instances, intelligence could play a more central role and there was little evidence that it was.³⁶ There was however no evidence of general intelligence failures. The evidence is that crime intelligence capacity exists in all three stations. The information on crime intelligence did not cover operational functions or test the efficiency of operational methods of intelligence gathering. The evidence available on intelligence was so negligible as to permit a responsible guess on its operational efficiency or institutional capacity. What was available on the value of intelligence in policing were minutes of the SCCF.³⁷ The major critic on crime intelligence was Dr Chris de Kock.³⁸ References were made by the Brigadier Dladla, Major- General Jacobs and Molo on the role played by intelligence. Police witnesses indicated that police intelligence is relied upon when assessing crime threats. The extent of involvement of crime intelligence in crime prevention and detection was canvassed.

³⁶ See Evidence of Major General Jacobs in Transcript page 6078- 6085

³⁷ On the Station Planning – see Brigadier Dladla’s statement

³⁸ See Chris de Kock on “is crime combating intelligence led and is it effective in Greater Khayelitsha?” in Bundle 12 Item 28

153. The evidence in summary, by the police witnesses who spoke on intelligence was that intelligence plays a fundamental role in crime prevention and crime combating. The evidence in Khayelitsha is that crime intelligence plays its role efficiently in ensuring that crime threats are identified for the police.³⁹

154. Mapping and compilation of crime threat analysis is the responsibility of SAPS and are only utilised to determine the operational focuses and duties. The use of crime intelligence is evidently a feature of policing in Khayelitsha⁴⁰ contrary to Dr Chris De Kock's conclusion that policing is done by chance in

³⁹ Brigadier Dladla in Transcript – pages 3647 to 3653; Major General Jacobs in Transcript – pages 6080 to 6084 on the role of police crime intelligence.

⁴⁰ Ibid;

Khayelitsha.⁴¹ The observations of Dr Chris De Kock arose solely from his analysis of the minutes of SCCF minutes. The conclusions of De Kock were themselves a thumb-suck derived from no experience of actual operational activities of intelligence. He accepted during cross-examination that he had no knowledge of how intelligence work in the collection of information was done. What he could do and did was to analyse information that he had received. The conclusion were an unfair reflection of what the police do in Khayelitsha. There is no evidence that the police in Khayelitsha conduct their policing outside normal policing strategies. There is evidence that policing in Khayelitsha is conducted through policing norms and standards - identification of hot spots, appropriate deployments, crime explanations and peak time

⁴¹ De kock opines that *“the policing in the three stations which form Greater Khayelitsha is policing by chance and luck and clearly not intelligence led policing which SAPS claim as their doctrine. With the crime information reflected in the minutes of the three SCCF’S it is actually impossible to effectively combat the crime in Greater Khayelitsa and in all probability crime reductions and increases have nothing to do with policing in this area, but are a result of external factors. With the information in the minutes which was not generated according to what is described in 5.1) the three stations will not be in a position to:*

- . 158.1. *Do planned and focussed visible policing.*
- . 158.2. *Do planned displacement of crime.*
- . 158.3. *Provide specific and useful information about the social and physical environment of crime in Greater Khayelitsha to its Government partners (e.g. local authority, transport, justice etc.) and NGO partners so that these partners can assist them in crime combatting and specifically in social crime prevention.*
- . 158.4. *Allocate linked cases to the same detective or task team of detectives.*
- . 158.5. *Escalate linked cases (crime series) to cluster level which must then check for linkages between series of the different stations in the cluster and escalate cluster series to Provincial level. These linkages and crime series should form the basis for the collection plan of crime intelligence gathering/collection. If crime intelligence gathering/collection do not have a collection plan, or only have one which is based on what their superiors want, it cannot contribute to crime combatting and it can politically be manipulated.*

deployments, crime linkages and displacements.⁴² The fact of the matter is that Dr Chris de Kock's conclusions on the quality of policing in Khayelitsha is limited to a single source – the contents of the minutes of the SCCFs. The reality of policing activities as exposed in the wealth of documents submitted before the Commission presents a different picture than the one seen by Dr De Kock.

155. On youth gangs, the evidence of Dr Catherine L Ward was generally satisfactory and its recommendations a sound basis to inform the general approach to gangs. What is clear is that the policing of gangs is more complex than has been made to look. The type of gangs in Khayelitsha however does reveal that measures other than policing would be a better deterrent for gangs. As far as policing is concerned, there was no evidence of police failure in dealing with youth gangs. In fact the evidence was that the police had not only arrested gang leaders, but at times had intervened by engaging in mediation tactics.

156. The issue of gangs cannot be resolved by arrests alone. In fact the evidence of Dr Ward was that the strongarm approach of arresting gangsters generated more hardness in gang activity. There is also anecdotal evidence that arresting young people for gang activities without appropriate social intervention simply breeds more organised and violent gangsters.

⁴² See Statement of Brigadier Dladla in Bundle 8

157. More relevantly, the existence of gangs in any society is not an indicator of police inefficiency. The phenomenon of gangs and its policing is more an indicator of social and economic factors. The suggestion that gangs can be policed out of existence or by vigorous arrests and incarceration is simply immature and unrealistic. The evidence on gangs does not support the conclusion that there is systemic police inefficiency or a breakdown in community trust of the police.

VENGEANCE KILLINGS/ATTACKS

158. Once of the most distressing aspects of community response to crime is the taking of law into their hands – which is often referred to as vigilantee murders.⁴³ This community response to crime took its prominence during the apartheid regime when communities who were united in fighting against the apartheid system killed informers in what were referred to as community justice. Informers of the apartheid regime were dangerous for the community and could compromise the struggle against the apartheid system. In Khayelitsha communities, people have taken law into their hands to punish suspects of crime in scenes that are gruesome and distressing. The Commission seeks to investigate whether or not these types of killing are an

⁴³ See Report compiled by Benjamin Haefele: “Vigilantism in the Western Cape”; Department of Community Safety in Bundle 1 Item 3; pages 711-731, in particular paragraph 5 dealing with the causes of Vigilantism

indication that the police, as during the apartheid regime, lost legitimacy as a consequence of their inefficient policing. In other words, is the community telling us that they do not trust the police when it takes the law into its own hands to mete out instance judgement on a suspects? The answer to this question is multifaceted.⁴⁴ First the evidence is that community responses to crime through instant forms of judgement is entrenched as part of community life of justice, law and order. The evidence show that the incidents are sporadic and not part and parcel of life in Khayelitsha. The incidences of instance community judgement on a suspects has been spontaneous and driven by motives far removed from a reasoned rejection of regular policing. The evidence before the Commission from those that participated in instant judgement of suspects discloses the following feature:

- 158.1. First there was a robbery involving cellphone or money;
- 158.2. The victim called someone in authority at home who immediately organised a group of people to apprehend the suspect;
- 158.3. The community members apprehended the suspect;
- 158.4. The community members would conduct interrogation demanding from the suspects the stolen items;

⁴⁴ See Bundle 12 Item 24; Professor Gobodo-Madikizela's submission on "The Crowd Violence of Vigilantism";

158.5. If the suspect or suspects were unable to produce the alleged stolen items, he was beaten up severely; if the suspect did not, despite the beating, produce the stolen items, the community would take the suspect to the family;

158.6. The family would be asked to pay for the stolen items and if the family was unable to do so, the suspect would be taken away, stoned to death.

159. In other examples, taxi owners would be involved in the interrogation of the suspects. There are at least three examples of people who testified before the Commission who were affected by vigilante murders. The evidence showed that the main objective of the victims was not to kill the suspect, but to recover the stolen items immediately. There was no evidence that these murders were committed because people simply did not trust the police. The reason given in evidence is that the victims of crime wanted to recover their items immediately and when asked why they did not report these matters to the police, they would then say police system is too slow and would not help them recover their items immediately.

160. The witnesses were aware of how the police would treat a case of robbery. The items – in this case money or cellphones or piece of clothing would be be

confiscated and kept by the police as evidence. The victims were not interested in that. They are interested in recovering their items from the suspects. Secondly, there would be an investigation involving the taking of statements from witnesses. The suspect would be charged and given the opportunity of applying for bail. The suspect who is granted bail would come back to the community, hire a lawyer to defend the case. The case would be postponed a number of times for many reasons. The complainant would be expected to testify against the suspect. An impartial judge or magistrate may acquit or convict the person. The convicted person may appeal the conviction. The criminal justice is an elaborate system that takes into account procedural and substance fairness into account. The community system is instant and give the complainant immediate result.

161. The reasons for vigilante killings were varied none of which was distrust of the police as a consequence of policing inefficiency. It is very clear that for the complainant, there were immediate benefits in engaging community forms of judgement than there are if the case goes to the police.

162. It is true that vigilante killings under the apartheid regime represented a protest against the police system. However it is not true that vigilante killings in Khayelitsha after the democratic dispensation represents a distrust of the police. People do not take law into their hands because they do not trust that, if the suspect is handed over to the police, the police will not arrest him or her.

People take law into their own hands because there is partly immediate benefits from that – immediate recovery of stolen items - immediate gratification that justice has been done and the culprit will not do that again-anger and frustration at being violated by a suspect's criminal conduct.

163.The police conducted research of these instances of community driven murders. This is evidence of an interest in understanding this type of community response to crime. In the research it was clear that vigilante killings required no special adapted investigative methods. The police treated these murders as murders and investigated them as such. Added to that it became clear that community responses to crime had be based on understanding the criminal justice system and the principle of the rule of law. The police acting together with stakeholders in the communities who included the CPFs and churches and schools conducted workshops in which the community was informed about the importance of relying on regular policing responses rather than taking law into one's hands.

164.This approach was no doubt followed by arrests of perpetrators of vigilante killing and in all the cases that were raised with the Commisson, it is clear that the police conducted thorough investigations which resulted in successful convictions.

165. In summary, instances of vigilante killings therefore do not evidence police inefficiency. These instances also do not evidence a breakdown of community trust in policing. The strategy that has been relied on by the police to prevent communities taking law into their own hands is sound and consistent with ordinary policing strategies. There is no evidence that public education imbizo to deal with the rule of law are an inappropriate or inefficient response to vigilante killings. What is also clear is that the Khayelitsha police stations are constantly engaged with the communities to avert instances of communities taking law into their own hands.

166. A finding that vigilante killings are as a result of police inefficiency is simply irresponsible and wrong. A finding that there is a growth in vigilante murders is also simply wrong and cannot be justified on the basis that the police are inefficient. In addition, a finding that the community has lost trust in the police – that is why they are taking the law into their hands – is simplistic and does not accurately appreciate the socio-economic and political dimensions characteristic of societies in South Africa that have lived in conditions of oppression for a long time.

SEXUAL VIOLENCE

167. The evidence of Col Harri was complete in explaining the challenges faced by the Family Violence, Child Protection and Sexual Offences Unit (FCS) unit

operating in Khayelitsha working with other partners, such as the Thuthuzela Care Centre, that are working to address crimes of sexual violence.

HUMAN RESOURCE ALLOCATON AND FINANCIAL MANAGEMENT

168. There was extensive evidence given by the police by Brigadier Rabie⁴⁵ on the resource allocation guide which gave a full picture of the resource allocation guide. The evidence's value is in that it gives context to how resources are specifically allocated to stations.

169. On the resource allocation guide, it was suggested by Dr Redpath there was a mis-alignment in the allocation of resources to station in that some stations were over-resourced when they could do with less when those that needed more were given less resources. First it is clear that the evidence of Dr Redpath cannot be taken as a complete answer to the issue of police resourcing. Second, Dr Redpath's evidence failed to discredit the resourcing approach adopted by the police. It was regarded as simplistic and not based on a clear appreciation of the policing environment. The Redpath evidence in any event cannot be evidence of general police inefficiency based on the complaints. It also cannot be evidence of general community mistrust of the police.

⁴⁵ See Brig Rabie's statement and evidence; Bundle 8

170. Major General Fick and Burger dealt with different aspects of the allocated resources.⁴⁶ Major General Fick addressed the allocation of resources like police cars, computers, desks and necessary equipment. Major General Burger addressed the allocation of personnel. What is clear in their evidence is that the management of resources in the three stations, whether it is police equipment or human resources is not out of sync with the environment itself.

171. It cannot on their evidence be concluded that there is a chronic shortage of police resources to conduct normal policing functions in Khayelitsha. There was general agreement that more resources would always have an impact on the state of policing. However there is no evidence that there is a systemic misuse or underuse of police resources given at the station. There was no evidence that the police are inefficient in managing their own resources even where there were concerns with absentism and need for more personnel.

172. The evidence of Joy Fish and Johan Schlebusch⁴⁷ on human resource management did not point in any direction that the police are unaware of. As a start, these experts had no experience in resourcing a security environment. While their views on human resource management, discipline and general morale are commendable, they do not assist in answering the question of

⁴⁶ Bundle 9 Item 4- Major General Burger's statement

⁴⁷ Bundle 12 item 14

systemic policing inefficiency and a breakdown in trust between the community and the police.

173. The evidence on its own does provide food for thought but does no more than restate the basic principles that govern human resource management.

SAPS RECOMMENDATION

174. There is evidence that the police operate in a difficult environment beset with complex factors most of which have nothing to do with policing. The policing infrastructure from which efficient policing may be achieved is a responsibility of a multi-disciplinary state departments. In this regard, the assessment of the state of policing is welcome to the extent that it provides a useful basis for reflecting on accountable service delivery on the issue of policing in the communities. Policing can be done better and efficiently but such a result is a by-product of many stakeholder, chief amongst them – the community. To suggest that the community has lost faith in the police is to suggest that there is anarchy in the community and a breakdown of law and order.

175. A responsible reflection on the strength or weakness of policing in Khayelitsha will not conclude that there is anarchy and a breakdown of law and order in the communities. There are real policing challenges and the police were candid about them. They have always been and that much is clear in the

thousands of documents that the Commission accessed from the police and the frank testimony of those that testified. The delivery of adequate policing is as challenging as delivering socio-economic rights. It is dependant on a number of variables that include financial and management resources, financial resources, experience, proper planning, the cooperation and active participation of the communities and enthusiasm of the police themselves.

176. Policing in Khayelitsha must improve but it cannot on its own provide an answer to the challenges of crime. There is ample evidence to suggest that policing in communities that are underdeveloped and suffer from high levels of unemployment, lack of adequate community infrastructure, underhousing, absence of adequate sanitation is challenging and difficult. The community already suffer from extreme conditions of insecurity from the social and economic factors, and within it are high crime generators. To castigate policing in Khayelitsha on the basis that forms were inaccurately completed, minutes were not properly kept is to be technical and unrealistic. To deride the gallant efforts of the police in Khayelitsha by suggesting that there is no method in their policing is mean, ill-informed, unfair and insensitive to the real challenges that face policing must be based on. Contrary to the views of Dr Chris De Kock that policing in Khayelitsha is done by chance, the evidence is that policing services are structured, determined and targetted.

177.There is no unique training that the police require to police a poor, overcrowded area like Khayelitsha. They use regular methods of policing consistent with our constitutional requirements.

178.The evaluation of the performance of the police stations in Khayelitsha should not be isolated from the socio-economic challenges facing that communities and others. In this regard, the police are constantly engaged in a process of improving policing strategies which now stand as part and parcel of the National Development Plan.⁴⁸ There is a genuine attempt to institutionalise efficiency in policing generally. What is clear from the documentation supplied to the Commission is that the police have effective internal controls that detect weakness and affirm strength. The police are therefore constantly engaged in improving their crime prevention and combating strategies.

179.In that process, the most valuable resource for reflection is the oversight of the communities and other organs of state, including commissions of inquiries as this one. Oversight models that are consistent with our constitution by providing valuable input into policing are a requirement. However, these oversight models must not usurp the power of the police to implement acceptable policing strategies in pursuance of the constitutional duties solely placed on them. In the exercise of oversight functions, there should be

⁴⁸ National Planning Commission, 2012, National Development Plan 2030: Our Future Make it Work. Department: The Presidency, Republic of South Africa: Pretoria,

deference given to the police. Oversight should be responsibly exercised to strengthen the police and not to provide a platform to expose police weaknesses in a manner that compromises their ability to provide security. Oversight should not be used for political reasons or to encourage public distrust of the police. It should be used to strengthen and encourage responsible policing. Oversight is the power to shape the culture of policing and to engender public support for such an essential service. It is not a platform to discredit the police and to expose them as a weak and ineffective police service. To do so simply creates an atmosphere of distrust and an opportunity for lawlessness to thrive. Ultimately an irresponsible exercise of oversight powers may discredit the policing institutions and create a fertile platform for crime to thrive and lawlessness to be institutionalised.

180.Improvements to policing are necessary and must always be sought. A concession that there is a need for improvement in the policing of Khayelitsha is not a concession that there is evidence of systemic police inefficiency. Equally a concession that community involvement in policing must be improved is not a concession that there is a breakdown of community trust in Khayelitsha. These are self-evidently long standing positions held by the police itself.

181.Finally, Dr Holtman, who has worked with the police before, makes sensible and acceptable proposals for changes that could improve the state of policing.

Her views on how policing could be improved is a fair assessment of the variables that are necessary to enable the police to take policing to another level. They are a fair basis on which to determine the quality of policing service that is possible without the involvement of other organs of state. Picking on policing and presenting it as a single solution to crime prevention and combating misses the point.

CONCLUSIONS

182.If we are correct that the complaints do not indicate a general state of incompetence or inefficiency in the SAPS, then the commission must make that finding and submit the report accordingly.

183.If we are correct that there is no breakdown of trust in the SAPS as ample shown by the evidence of the CPFs and KDF witnesses, then the commission must make that findings accordingly. In this regard, it is fair to say that the role of the CPFs and KDF should be improved through the provision of resources. The goals of the CPFs do not require any changes. The institutional position of the CPFs do not require any changes. What is required is that the CPFs are able to provide assistance in the crime combating and prevention strategies. The enabling environment for the CPFs must include independent financial resources that enable them to carry out community outreach programs and to be a resource for the police – community relations.

184.The recommendations that the SAPS would make, even if the Commission were to clear it of these accusations of systemic inefficiencies is that the socio-economic conditions of people living in Khayelitsha should be improved, in order to reduce the potency of the crime generators. Attention should be paid to planning for police stations and resources as the communities expand. At the moment, when housing developments are being planned, no attention is given to the establishment of police stations. Similarly no attention is given to the building of community amenities that encourage responsible youth activities. Dr Holtman's approach is a commendable one in that it proceeds from the premise that an improvement in the lives of people reduces the sources of crime and increases the chances of efficiency provision of policing services.

185.The socio-economic development and improvement in housing, sanitation, jobs, responsible social amenities for the communities of Khayelitsha will result in the improvement of policing. To insist that the police operate a first world policing service in the current conditions of deplorable housing and sanitation; absence of economic development and therefore joblessness; absence of responsible forms of entertainment – is to recommend the imposition of a police state in the communities of Khayelitsha.

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26 MAY 2014