

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

CLOSING LEGAL ARGUMENT

South African Police Services

Date: 29 MAY 2014

Source: Pages 8151 - 8196 of Commission transcript

ENQUIRY RESUMES

COMMISSIONER: We've had an opportunity to discuss the issue that Mr Hathorn raised about documents in a public domain and I think the decision that we've reached is that all the documents that are in the bundles that were circulated to the parties I think that's bundles 1 to 13 if I remember rightly, bundle 1 or 12 or 13, will be made available when the commission's report is made public, but that any party who wishes to object to any of those documents being made available will have until Friday the 6th of June to indicate to the Commission that there's a particular document. The Commission's view is that the dockets which were in fact, some dockets were disclosed in those bundles, the Commission has received just under 500 dockets contrary to what is said in the SAPS heads, we have received just under 500 and those will not be made public, and there will be one or two other documents which I can't specify right now but they will not be made public, but we will entertain any requests for documents to be withheld otherwise all of it will be put into the public domain electronically on the date that the Commission's report is published.

We will be issuing a letter to all parties indicating that, is that an

adequate way forward?

MR OSBORN: I spoke to Mr Hathorn during the break and he said that he would have no objection to receiving a brief set of our comments on his proposals which I will send to him and to the secretary in the next hour or so, but they won't be anything that – I don't anticipate anything controversial in what I'm saying.

COMMISSIONER: You discussed that with Mr Arendse as well?

MR OSBORN: I looked at again at our notes on Mr Arendse, or on SAPS and we don't think we need to say anything about that.

COMMISSIONER: About SAPS, okay, good, thank you very much, we will receive those ones once they're made available. Mr Arendse there's just one issue that I wanted to commence with, which was the letter sent to Biko, the State Attorney, on the 26th, indicating certain documents which had been asked for by the Commission and in the case of some of them the Commission is minded to accept that there are no such documents as they haven't been produced. There were some that the Commission is anxious to see which if we can't see we will accept and it may – the key ones of those are the non human resource resourcing of police stations outside of Khayelitsha it will be apparent I think that the Commission is very concerned about the equitableness of the allocations between police stations and we do know from what General Fick testified that in fact non-human resource allocations are basically made on the basis of human resource allocations so that if human resource allocations are inequitable then one can assume that the non-human resource allocations match that because basically cars are allocated to X number of members and so on, but it will be helpful for us to look at that, but the other issues are issues

such as the crime threat analysis which we dealt with earlier, the earlier inspections of the Khayelitsha FCS unit referred to by Colonel Harry and so on, and I just wanted to make sure that you had received letter, we don't necessarily need a response from you but it is a firm statement of the way the Commission intends to proceed.

SUBMISSIONS BY MR ARENDSE:

Thanks Madam Chair, Advocate Pikoli, can I undertake to give particular attention to what's required in the letter I do know because I raised it with Mr Biko earlier this morning again you know why has there been no response to it, and as regards the crime threat analysis I do recall the PC himself saying that he would make it available certainly because it deals with events past, so there's no crime threat, there's no intelligence issue, there's no – there should be no issue.

I'm not sure thought its been raised with me by one of the SAPS legal advisors that perhaps it's subject to security clearance, I'm not sure, from National I don't know.

COMMISSIONER: What the crime threat analysis of the individual police stations?

MR ARENDSE: No I'm - not the individual police stations I was referring to the crime threat analysis that's also done provincially by ... (intervention).

COMMISSIONER: We're less concerned about that, I mean really the issue is squarely to what extent is there effective intelligence led policing happening at these three police stations and in the absence of any evidence that there are of regular crime threat analysis and in the absence of any reference to them in the SFC minutes that we've seen I

think there's very little conclusion we can reach other than they are not being done, unless they are produced.

MR ARENDSE: Thank you, we will note that.

COMMISSIONER: Proceed.

MR ARENDSE: Thank you Madam Commissioner and Advocate Pikoli. The commission of enquiry here in Khayelitsha is in itself an event of enormous significance, and importance, not only to the residents of Khayelitsha but also to the police in Khayelitsha and I would also say to policing in the province. It's no – there's no need to dwell on what informed the establishment of the commission of enquiry, the legal and political contestation that preceded according with the Commission of Enquiry, the fact is it was established and importantly the fact is that the police had undertaken, had resolved and then did cooperate if not fully 100% very substantially you just now raised some outstanding issues of areas of either a lack of cooperation or non-cooperation which we will address. I think that is critically important, and I might as well start off with the last or one of the last questions that Advocate Pikoli raised with one of my colleagues and that is the culture of policing.

I think we've already made a very positive and important start here in Khayelitsha, with the kind of apology that was given by the provincial commissioner, by the acceptance of responsibility where there have been failures of policing, I would say that all of us were impressed by his honesty and his candour and he's clearly a person of integrity, and I would also go as far as to say that those of his DPC's and the station commanders and the detective commanders who testified have also displayed a willingness to admit mistakes and shortcomings and a

willingness to accept in good faith any recommendations that would come out of this commission in relation to how these mistakes and shortcomings could be rectified and remedied.

So to that extent this feeds into very, very importantly on how policing going forward should take place and that should accord with the kind of recommendations made by Johnny Steinberg in his submission last week that we should focus more on community policing, democratising the police and using a military response to crime, rather as a last resort, only if its necessary rather than using it as a first line of almost of attack.

So we would hope that the recommendations focus strongly on building community relations with the police and to that extent we have recommended the adoption perhaps not wholly, but certainly mainly of Dr Holtman in terms of the multi-faceted, multi-disciplinary approach to policing, it seems from reading and from hearing today the submissions of our colleagues that that is a favoured approach, and in that regard DOCS should play a crucial role and that approach and that task should be funded by the provincial government.

The other difficulty that we obviously cannot have is that policing is dealt with perhaps at this stage very broadly in the National Development Plan which has been adopted by cabinet and we clearly endorse that plan, the police must be professionalised and must be democratised.

The levels of cooperation already by virtue of the establishment of this Commission of Enquiry have been unprecedented and we would certainly hope that this level of cooperation takes root and is not only sort of a passing phase because the commission will now stop its work and be

dis-established. For example ...(intervention).

COMMISSIONER: Can we just pause there for a minute Mr Arendse because certainly I think it's something that concerns Advocate Pikoli and I is the sense that there really are urgent needs in Khayelitsha which require action, and what are your client's submissions on how that should take place. Let's just start for example with the problems in the FCS unit, which your client I think very candidly and honestly and admirably acknowledged its weakness, I think you know fixing a problem, the first thing is to acknowledge you have a problem, you don't think your car has got a flat tyre, you're never going to fix it, but there I think Colonel Harry was very frank and open and clearly concerned, I mean I think manifestly concerned to everybody who heard her testimony, but what should the approach of the Commission be in terms of that, because sexual violence and violence against children is a devastating scourge and needs to be addressed, so how does the Commission ensure that something is done there that is going to have a meaningful impact for the community members in Khayelitsha.

MR ARENDSE: I think clearly there are the kinds of recommendations which will sort of fall under the Holtman plan, which is more medium to long term and then there are those remedies that need to be put into place immediately by the police, because I think earlier this morning or not so long you made a comment that there are police shortcomings which must be remedied by the police, it's their job to do so, and to that extent the police has indicated that they would welcome recommendations in that regard and clearly the provincial commissioner must take as the head of policing in this province and of Khayelitsha in particular must take the

lead, I don't think we can sit here and say that we will just wait for the next inspectorate report from Brigadier Solomons, because the feature of this commission has been how good the police actually is/are at diagnosing problems, but fixing them its not a strength to put it mildly.

COMMISSIONER: Certainly and obviously the other thing that needs to happen is there needs to be accountability for and transparency about fixing them, and what are your submissions in that regard, should there be a report by – I mean it's clear the provincial commissioner will take ultimate responsibility for this but should there be regular reports by the provincial commissioner, and perhaps an annual report at the very least, or on progress in relation to the specific issues identified that need to be addressed, how would you suggest that there be some accountability to the community more broadly on this issue?

MR ARENDSE: It is not contained in a written submission but since we expected the question and now that you raise it squarely the Commission must put into place a process firstly and then a program of how that process needs to unfold, and that must result in a regular whether it is three monthly, six monthly or annually that is to your discretion, I think there's more than enough evidence coming from the police itself and starting with the Shabalala report in August 2012, which indicates in some instances systemic problems, which require to be addressed and this commission should use that opportunity to indicate how they need to be addressed and the way they need to address is that the PC will have to arrange a summit here in Khayelitsha for the police and for those role players involved in this Commission of Enquiry and the agenda for such a summit must be the shortcomings that have been identified during this

commission of enquiry and still remain unattended.

I think the evidence has been that certainly starting after Shabalala in August 2012 that there have been sincere and genuine attempts to fix some of those problems. The evidence of all the station commanders and the detective commanders is they no longer regard Khayelitsha as a sort of a backwash or backyard of policing in the province, they want to be here, they elected to be here because they want to make a difference to policing and to the lives of residents, so having overcome that hurdle that one would normally have where you have disgruntled officers serving here in Khayelitsha who are here reluctantly or because they're actually serving some kind of disciplinary sanction, that's not the problem, we've overcome that hurdle, and I think we need to – the Commission can ride as it were on that good faith and resolve on the part of senior officers that they want to make a difference and that's been the case across the board.

And just before Advocate Pikoli posed the question for example the unprecedented levels of cooperation was mentioned to me by Richard Bosman now just during the break, in his own personal relationship with General Japhta and he says its as a direct result of this commission of enquiry and I was hoping that I would hear similar experiences between Dr Lawrence and the police, and then we need to build on that and it seems to me just it was actually raised or pointed out to me by my colleague, Advocate Bisoku, and I think he's right, that the role that DOCS can play should fall under Chapter 3 of our Constitution read together with the inter-governmental framework relations act, and the terms of reference for such a task team can be worked on the basis of the constitution and that act, and that will build in reporting mechanisms, can

build in mechanisms where there's a deadlock or a breakdown, mediation, facilitation, the Act allows for that.

MR PIKOLI: I must indicate that I'm quite encouraged by the approach and attitude that your clients are taking. However we need to go beyond promises and convert those into reality, because this is what the people of Khayelitsha expect. I wonder when it comes to the question of implementation we shouldn't really come up with a clear action plan for the implementation of the recommendations, with an effective monitoring system in place so as to ensure transparency and accountability to the people of Khayelitsha, and I'm sure it's what your client would really want do.

MR ARENDSE: No absolutely I think the one thing that must come out of this commission of enquiry is that the talking must end and implementation and action must take place and that's why we had recommended the Holtman approach, it's a more than useful starting point, where all the role players, certainly a meeting of all the experts or those experts perhaps to be identified by the Commission should be party to a meeting Dr Holtman did say it won't be difficult, it just needs some re-evaluation, reassessment and those factors and indicators that she indicated on her plan those can just be revisited and that could be a starting point, and at the same time I think an action plan to be devised for the provincial commissioner as I indicated a few minutes ago, for him to start with the actual police and then I think the two can be married and DOCS could perhaps play that facilitation role between what the experts are saying on this side and the Provincial Commissioner on the other side.

MR PIKOLI: You see the paper by Berg, Cartwright, Lamb and McDonald that paper makes a number of these full recommendations, and also alludes to you know peace committees. In 2009 there were 280 or so functioning peace committees. It would be really, really you know a pity that we cannot go back and make sure that you know those initiatives are really, really put back in place, because they really serve the communities, and also it will take a lot of workload away from the police if the communities were ready to buy into that, but when it comes to the question of safety around the schools because most of them were associated with school safety.

MR ARENDSE: Yes, I also recall that and certainly from the experts that the community safety forums should perhaps come back and be re-established, because I think the community safety forums would then incorporate the community police forums, neighbourhood watches, other safety committees, VPSU, because I think the problem that's come out of or that's been highlighted in the commission and I'm not sure what the reasons are but there's a lack of coordination between and amongst these structures. They all sort of doing their own thing and there's no coordination taking place, and maybe the umbrella body should be the community safety forum, where business and other interest would also be represented in this forum, because in the longer term obviously we're stuck with the community police forum under Section 18 of the Act and that may take still a while if there's any amendments to that Act.

MR PIKOLI: I just want to address a sore point for me when I was sitting here and listening to members of the community of Khayelitsha. There doesn't seem to be a clear strategy of how to police informal settlements.

It has not come out quite clearly and it will be unfair to the people who live in those informal settlements that they are without protection, because of the problems of the infrastructure because of inaccessibility of you know in terms of roads, the houses not being numbered and again it's an issue that requires you know a clear cooperation amongst all role players, without apportioning blame you know to any of the parties but ensuring that you know those informal settlements get properly policed.

MR ARENDSE: Mmm. I think I can't get away from the fact that there was no evidence at all from SAPS' side that there is a strategy or something different or separate strategy for policing of informal settlements and you're right Advocate Pikoli instead what has been thrown up is the difficulties in policing informal settlements. I think at best there is a recognition certainly in visible policing that there are hotspots and these hotspots tend to be focused around informal settlements, but clearly that's not enough, but what you raise would be an item on that agenda for a summit to take place or a recommendation, a clear strategy for informal policing should be devised, and should be implemented as soon as possible.

Madam Commissioner we also start off addressing the terms of reference and I don't want to take issue at all with the suggestions or the submissions made by Pete Hathorn in his opening as far as the terms of reference is concerned, and it seems to me it's going to serve no purpose at all I think we've got to accept from the police's side that certain inefficiencies were identified, and importantly and it's always a good starting point in any relationship that you are able to identify your own shortcomings, and this is a very, very important starting point. In fact the

starting point for the Commission of Enquiry was Shabalala, those experts who identified the first report were given was Shabalala, and they accepted it quite rightly as a given that as a starting point there are problems and that's how the Commission of Enquiry so we can't – what we rather take issue within our heads of argument really is we don't think it warrants a finding that the police that one, there's no policing in Khayelitsha, we take issue with any – and well we haven't heard that I think to be fair we haven't heard that from any of the complainant organisations or any of the other parties, we would have an issue if there was a finding that the police in Khayelitsha are incompetent, we don't think that whatever has come out of the commission of enquiry warrants such a finding. We would take issue if there was a finding that there is no law and order in Khayelitsha. There clearly is law and order. We would take issue with any finding that vigilantism, or vigilante attacks or bundu courts or street justice killings is as a direct result of police inefficiency, and thankfully we are assisted by that – by the complainants themselves, by DOCS and by the City where all except that this is, and it comes from the evidence of Ms Gobodo, or Professor Gobodo Madikizela herself that it's a complex issue, and yes the police may or police inefficiency or inactivity may be a contributory factor but it's not as a direct, so having said that we think the Commission of Enquiry should quite comfortably move past the first hurdle having identified inefficiencies.

As far as community breakdown is concerned we don't think that whatever even some of the harrowing testimonies that we've heard from individual witness warrants a finding that there is a breakdown in relations between the community and the police. We've heard evidence

from all the CPF's, certainly in the past two years that they've been established that there are meetings, that there are minutes, and they're happening. The criticism is that their criticism around independence or their lack of independence, that's an institutional governance issue, there's criticisms that community police forums are not entirely representative of the community, for example the SJC, and other NGO's are not part of that, but having – we've also heard evidence of station commanders having Imbizo's, we've heard from the detective commanders, impressive evidence from Colonel Marais, Colonel Swart where they have regular report backs to victims of crime, tell them what's happening so I don't think that the evidence before this commission warrants a finding of a breakdown.

Any relationship, any relationship must be informed by trust and confidence and by integrity and whilst we may have heard incidents or instances where there's been a breakdown in trust or where there's been a breakdown in confidence or where the integrity of certain individual police or their lack of integrity has brought the police into disrepute we submit that if you take that in its totality it cannot result in a finding of a breakdown.

COMMISSIONER: Mr Arendse on this why do you think the Constitution singles this out as an issue for investigation by a commission of enquiry, why is this important from a constitutional perspective?

MR ARENDSE: Just having had the benefit of looking at the Constitution while you asked I think it was Pete Hathorn that question we identified some earlier provisions in chapter 11 which perhaps informs that the chapter 11 deals with the security services, and one of the governing or

two of the governing principles, Section 198A,

‘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.’

And then 198B,

“To resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict nationally, internationally and so on.”

And then we also identified Section 199(8) which deals with the establishment, structuring, and conduct of security services, 8 provides that – to give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight and so on, and then Section 205 which deals specifically with the police, 205(3) the objects of the police service are to prevent combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law, and then of course Section 206 itself, 206(3)(c) each Province is entitled (c) to promote good relations between the police and the community.

COMMISSIONER: But is there a historical angle to this? Has it partly got to do with what the role of the police were under the apartheid regime?

MR ARNOLD: I think clearly in fact that is the basis I can't recall reading Johnnie Steinberg's footnotes but I don't know if he when they talk about a democratic police that moves away from the kind of old "kragdadige" approach to police of moving in, smashing up people, arresting people, I think it must be to do with the new ethos that's ushered in by the

Constitution and the principles of Ubuntu and forging a new path in a democracy together and ...(intervention).

COMMISSIONER: Ja, it may well be one of the many elements of a sort of deep seated never again type of aspect in our constitution, the idea that there should be a breakdown between the police and the community, that the community should see the police as enemies or hostile in any way, something we actually want to protect. I mean that may be why the constitution focuses on it, and so of course the police are in a very difficult situation because they don't have a reservoir of goodwill going back, stretching into community memory as being the place, the safe place to go to, that's not what our history, that's not what is presented to the South African Police Service, so they have a particularly heavy burden, not dissimilar may I add to courts I think.

MR ARENDSE: Yes.

COMMISSIONER: A particularly heavy burden to play and in trying to win that confidence and that's you know at least arguably why that's so weighted in Section 205 which seems to me that that then responds – requires a specific response from SAPS when that issue is raised.

MR ARENDSE: Yes.

COMMISSIONER: And needs to inform the way in which SAPS deals with challenges to their – to a relationship.

MR ARENDSE: And that perhaps also informs the approach to DOCS and ...(intervention).

COMMISSIONER: Hence because they are responsible for community safety?

MR ARENDSE: Well sort of you do your job we'll do our job, the point of

the constitution is that we must do this job which is to protect and to serve we must do it together, in a coordinated and integrated way. And what's struck Thabane and I from time to time especially when people like Dr de Kock and others gave evidence is that some of them who have one foot or at some point for many years had both feet in the apartheid police were the architects of some of our policies today, and then they leave the police and they come here and they criticise the police and perhaps we should move away and get the younger Steinberg's and others who – and also Dr Newham who gave evidence quite impressively, to come in and to at least participate in policy making.

COMMISSIONER: I think that's fair comment, I think we should just in relation to the record clarify that Dr de Kock only joined the police in 1993 having been sociologist prior to that, but it's important to get his own personal ...(intervention).

MR ARENDSE: Sorry, I thought it was 1983.

MR HATHORN: Sorry it was actually post 1994, it was either 94 or 95.

COMMISSIONER: Ja, okay thank you. But just to return then to what you were saying about how we should interpret Section 206(5) your accepting that this issue of a community relationship is an important issue for SAPS in a democratic environment.

MR ARENDSE: It is very important and we would have absolutely no difficulty in supporting the McClain approach which he also proposed during his evidence.

COMMISSIONER: One of the issues that – the Commission has raised of several of the expert evidences was this idea of a neighbourhood or a local policing commitment that – which would be the SAPS would

undertake to a local community certain levels of delivery, service delivery. I mean is this something that your client would be hostile to, or would this be something that would be workable?

MR ARENDSE: I think it's something that could be useful and something which would be accepted, consistent with the undertakings given by the Provincial Commissioner.

MR PIKOLI: Advocate Mayosi has made a compelling argument on the question of the non-caring attitude of the police, lack of empathy, no compassion, not treating people with dignity, and basically this is what is addressed also in Section 263 of our Constitution, when talking about promoting good relations. Perhaps one can argue and say perhaps those are just isolated cases. Would you address us on this question of a few rotten apples in a barrel, because the issue is how people perceive you know the purpose of the police, how they've been treated by the police, whether it's just one instance out of many, but the issue here is you know the people should be able then to have that trust in the police.

MR ARENDSE: I think the issue was addressed and was answered by the Provincial Commissioner and by the approach to this commission which we outlined at the outset, and obviously at that time we didn't have the benefit of the expert reports which refers to this rotten apples syndrome and that's what we had put forward, at the outset of this commission, but I think we – the Commission would also be very careful about relying on surveys, which indicate levels of satisfaction or dissatisfaction, because I do recall in my cross-examine of the Ntenti(?) report, that you've got a number of questions that they were unable to answer, and one of them was that during the course of their survey there was a particular – we had

Marikana, we had the Thabane incident and we had several instances which were being highlighted on national television, beatings of people, suspects by the police, the Daveyton incidents and they were unable quite understandably to answer to what extent do these negative images of the police not here in Khayelitsha but in other areas around the country what effect does that have on the perception of the police. So it's not an easy question to answer, we also know that for obvious reasons the number of witnesses called here by the complainant organisations were limited, with due respect some of the witnesses didn't quite stick to what was in their written statements, so it's – I don't think that the – that puts the commission in a position to make a finding that the police in Khayelitsha treat the residents of Khayelitsha with disdain and with disrespect and violate their rights to dignity and all those issues that were highlighted by my colleague, Ms Mayosi, I think that's far too strong, I think it overstates the position and I don't think that the commission would have, and anybody who were – anybody who was present here when they gave evidence would that – would have gotten that impression from the operational commanders here in Khayelitsha, they came across as empathetic, they came across as sincere, and they came across as officers who were willing and prepared and who were actually engaging with the community and understood that policing without community involvement, without community cooperation will never be effective.

MR PIKOLI: If you were to make such a positive finding on the police as having you know – come out as being sincere, why can't the commission make the same finding when it comes to the community witnesses who are here?

MR ARENDSE: No, Advocate Pikoli what I said was that was - that certainly came from the evidence of the police, all that I'm saying to make that kind of finding that was being proposed by Advocate Mayosi would be too harsh and would be overstating it in the light of what I had said that the police evidence was and in the light of the fact that you would be cautious to adopt any particular survey or Ntenti Report I recall that one of the latest or one of the later DOCS surveys indicated an 80% satisfaction level with the police and that then became some area of contestation and they put in an affidavit and I can't recall exactly what it says, they didn't mean it or it was a mistake or something like that.

I think the point that we make about findings and standards of police efficiency and alleged breakdown between the police and the community is that at the end of the day there is law and order here amongst and in the community of Khayelitsha. That law and order is maintained by the South Africa Police Service. There are high levels of crime, and there are a number of contributory factors towards that, which may include a police inefficiency, it may include the police lack of responding to complaints, it may include all those things that's been identified here in the commission, but at the end of the day we made the submission that the police in Khayelitsha hold the line between law and order and chaos, and disorder, and we would certainly urge the commission to be cautious in being too critical of the police to the extent that the goodwill that is being demonstrated here by the PC, by the DPC's and by the station commanders and the detective commanders that that is shattered. I think given that the terms of reference were published in August 2012 obviously there was a delay because of litigation, I think the improvement since

after August 2012 is quite tangible, to the extent that the commission can be comforted and all of us can be that the police in Khayelitsha they take their mission seriously and they take the rights of the residents of Khayelitsha to safety and security seriously.

How are we doing for time?

COMMISSIONER: You still have more time if you need more time.

MR ARENDSE: We've made our written submissions and I obviously don't want to read them, perhaps if I could just get to some summarised points. Or let me deal with some of the answers given to some questions to some of my colleagues. The – and perhaps I'm getting into it myself now, because I think we need to get away from you know some or other party or parties being vindicated by what's come out of the commission, I think we need to get away from that language that this is a victory for somebody or other. We're here, we've been here for a good couple of months, there's been high levels of cooperation and we – I reckon the Commission through the process that was followed we actually got to the root of many, if not all of the problems that the police face here in Khayelitsha, because I'm tempted to go to the complaints of November 2011 which Pete Hathorn is really the nub, because the nub of the complaint is that there has been a breakdown of the criminal justice system here in Khayelitsha, but because of the limitations on the terms of reference of the commission of enquiry it is only focused on the police, so that in itself is an indication that if the complainant organisations were of the view that the breakdown of law and order is a criminal justice – that all of us are implicated in this then it would be almost perverse then to say you only then blame the police. In fact there is a – there would be a

disconnect between a finding of police inefficiency and a breakdown in relations between the police and the community if there's such a finding and if we look at the remedy, and the recommendations being made by everybody which is that it's not only the police there are other State agencies, the community must play the role, all of us must play the role.

COMMISSIONER: I think you're right Mr Arendse we are very conscious that firstly you know this is one aspect of the criminal justice system which its what our terms of reference determine, and we're also very conscious of actually this is a forward looking exercise, this is – this really should not be about point scoring, blame laying, politics (with a small p) it's actually about the people of Khayelitsha and being entitled to a competent and courteous public service. I wonder if it might be – it really would be helpful for me if you would be in a position to do so, to have a look at some of the recommendations that have been made by the complainant organisations and just to – I've made a summary of them here, for my ease of reference, would it be inappropriate for me just to raise a couple of them with you to see what your views would be on that?

MR ARENDSE: Yes.

COMMISSIONER: So if we start with visible policing ...(intervention).

MR ARENDSE: Are you asking me today for permission?

COMMISSIONER: Yes, I am really interested in what your views on these recommendations would be. If that would – would that be okay?

MR ARENDSE: That's in order.

COMMISSIONER: You're not having to testify, we won't even put you under oath, but I'm sure that more than me would be interested in your response to these. So if we start with a visible policing proposal, the first

one is the implementation of national instruction 3 of 2013 and on sector policing and I don't think we need to talk about that. There is this issue of patrols in informal settlements and I think from the Commission's perspective there's certainly something constitutionally unacceptable about saying to the most vulnerable people in our entire country you're not entitled to have any visible policing, so there needs to be some solution to what is undoubtedly a difficult policing problem. Do you have any thoughts on that, on what should be said about the need to provide patrols, obviously it links in to resourcing, which is a separate issue but it's certainly not acceptable I think to Advocate Pikoli and I for us to leave the situation that you say to somebody who is living in an informal settlement that in fact it's too difficult to police in our constitutional era, this is not something that can fit easily with our constitutional consciousness.

MR ARENDSE: In that regard I don't recall the police in their evidence saying that it's impossible, what they said it was difficult, and I think that difficulty is compounded by the resource problem.

COMMISSIONER: There is quite a bit of evidence for example that there have been moments when neighbourhood watches have policed informal settlements together with members of the South African Police Service, we have the example that Mr Lunat gave of the Easter 2012 I think it was moment, but there were others as well, referred to Ms Mtwana, so it ... (intervention).

MR ARENDSE: Yes of General Pedros himself, and I think there was also that one instance of it was Easter 2012 or Eastern 2011 when DOCS also participated in patrols and there was I think that was from Lunat's

evidence, where there was a significant decrease in levels of crime over that weekend, so there's a clear value in that.

COMMISSIONER: You see if we go to the local policing commitment idea it seems to me that one of the things a local policing commitment could make, could say was that the South African Police Service will wherever possible make available one or two members of the visible policing unit to neighbourhood watches on a regular basis when they're conducting that, that would ensure that neighbourhood watches would act in accordance with the Rule of Law, which is an important ...(intervention).

MR ARENDSE: And not be a kind of a vigilante grouping which has also been raised, so I accept that under the leadership of the police to obviously to provide the authority to take action, to arrest and so on, although you can do a citizen's arrest to –so to that extent there would – there's no excuse why the police cannot provide a single police officer and it brings me to what I mentioned earlier is that the lack of coordination for example between neighbourhood watch, community police forum but it must be done perhaps it should be done under the – well it must be done under the leadership of the police.

COMMISSIONER: I think that seems to make important sense. So that was the issue in relation to visible policing. There's also this problem at a station of documents which I think many witnesses pointed out and certainly those of us who participated in the inspection *in loco*, it was quite clear that there's a problem with attestation Brigadier Dladla talked about the poor design of the community service centre at Site B, and again presumably the idea that they would be, the proposals that come from the complainant organisations that there be a clearly identified

space, a floor manager clearly marked, this was not inconsistent with what brigadier Dladla was saying and potentially the use of police reservists, and indeed we also explored the possibility of using legal practitioners who have got to preserve, have got to you know provide community service would be another possibility there. But that wouldn't be something that your client would have a difficulty with.

MR ARENDSE: Absolutely.

COMMISSIONER: Ja.

MR ARENDSE: Or perhaps the other State department which is Home Affairs.

COMMISSIONER: Ja.

MR ARENDSE: Should just put a point person there on a daily basis to commission the documents.

COMMISSIONER: Ja. I think that would be an excellent idea because of course most people needed for Home Affairs or for SASSA and having some kind of a mobile attestation service which would be available for people who go to SASSA or to Home Affairs would be – would certainly save people the kind of walking around from one Government agency to another.

MR ARENDSE: Because what we saw during our inspection *in loco* was queue standing out of the service centre, and two thirds of the people in that queue were there to have their documents signed.

COMMISSIONER: Ja, ja. Absolutely and I mean it makes the community service centre not feel like a service centre at all, particular if you need to lay a charge or deal with SAPS for some other person. Then I'm just going to go through the ones that seem to me to be important. Another

proposal in relation to crime scene management was the idea that there would be forensic response packs, I think this was proposed by Dr Klatzow but the idea that we would have very simple response packs in vehicles together with the mini generator which was something that several people raised, I remember Mr Makele raised it but it was also put to various branch commanders and my understanding from General Fick is in fact that is provided in Hout Bay but not provided in Khayelitsha, once again you wouldn't see that as a problematic reaction?

MR ARENDSE: No, not at all.

COMMISSIONER: The detective branches you know is obviously a very acute issue and seems to probably relate to staffing issues, but there was talk in fact Colonel Wiese's testimony was that in a kind of emergency backlog team needs to be deployed which has been done in relation to the FCS units, but you know the numbers that we saw from the three police stations in terms of black backlogs of investigations are enormous.

MR ARENDSE: Yes.

COMMISSIONER: Okay then we've talked about the CCTE units again I don't think that we need to raise here similarly with the magistrate's court I think we've completely exhausted that. Crime intelligence is a matter of concern to both Advocate Pikoli and I and the absence of any clarity as to what's – why there seems to be relatively little evidence led policing, intelligence led policing operating the complainant organisation suggest that there be some sort of investigation to identify where the problem lies. It is raised in several of the inspection reports and indeed one of the things the inspection report say is that its complained of by the visible policing commanders that they are not getting intelligence led information

from the CIO's, I mean any proposals as to how to address that?

MR ARENDSE: Well I – can I suggest firstly that we do our best endeavours to get hold of these CIO reports, that the commission has pointed out is lacking, and then perhaps address that in writing having raised it with the PC and the station commanders.

COMMISSIONER: You know any things you have to propose would be helpful although I have to say that we are under some quite acute time constraints in terms of completing a report, but I just wanted you to have an opportunity to comment on it at this stage. One of the issues that I think is also really a grave concern is the fact as you quite rightly point out in your written submissions that the provincial inspectorate and the internal audit have very ably identified the difficulties of these police stations going back now to as far as the Commission has had information which is 2009, culminating the Project 6 report which Mr Hathorn referred to. The difficulty that seems to arise is actually, is having identified the problem is actually implementing change and that's a concern that I have is how to ensure that any change that is implemented is accountable and transparent going forward.

One of the possibilities would be to say that there needs to be a joint task team set up with members of DOCS and the provincial inspectorate to continue monitoring this process going forward with quarterly reports to either the MEC or the provincial legislature, do you have comments on this? On the fact of how to actually get the reports which I think are very ably formulated, implemented?

MR ARENDSE: Well I earlier proposed the police summit to be convened and to be led by the provincial commissioner, and that this should be an

item on the agenda, but in relation to whether the task should be a joint task between the police and DOCS I think as legal representatives we would prefer the commission making such a recommendation, having interpreted, because that's the other level which we – which apart from saying that they should know their boundaries we are not particularly helpful as far as assisting the commission in our written submissions on what we understand by oversight.

COMMISSIONER: Ja, I mean its really Section 206(3) which talks about provinces being entitled to monitor police conduct and to oversee the effectiveness and efficiency of the police service, whatever that may mean in relation to police stations other than the three with which we are concerned, to the extent that the commission concludes that there is a real need to improve the effectiveness and efficiency of these police stations it seems that section 206(3) would entitle the province and more broadly than the province the citizens of Khayelitsha to know what's been done in that regard.

MR ARENDSE: I don't think we are going to have a difficulty with that especially since these reports are historical, the police find them as a fact and DOCS should then it seems to me be entitled to continue monitoring and supervising whether these shortcomings have been addressed, are being addressed and whether they're satisfactorily addressed.

COMMISSIONER: Ja, thank you. The next issue is the youth gangs issue which I put to Mr Osborne which is a matter of really grave concern, firstly that it's a novel phenomena so potentially not deeply entrenched, secondly affecting very harmfully young people in Khayelitsha, some of whom are being kept out of school, the evidence establishes many of

whom are being subjected to kind of violent events as a result of this and I think that the proposal that the complainants organisations have made that there be a task team under the guidance of DOCS and this was put to Mr Osborne but which would need to involve far more broadly than DOCS it would need to involve your clients, it would need to involve the Western Cape Department of Education, Social Welfare and a range of NGO's to try to ensure that children are kept out – to any possible extent kept out of these youth gangs and reduce the levels of violence to which young people are subjected, I mean your client would presumably be willing to participate in such a task team?

MR ARENDSE: There would be to that extent we don't take issue with Dr Ward's evidence and her proposals.

COMMISSIONER: Ja, I mean it seems to me that the last thing, the solution that we do not is throwing large numbers of children into prisons, it doesn't seem to be an appropriate way forward so there needs to be a kind of a social – broad social response in how to deal with these gangs. Then in relation to there are quite a lot of proposals in relation to domestic violence but I don't want to take you through them, they seem to be fairly self-evident. The issue of the relationship with the community is perhaps the one that is you know requires most careful thought and I think there your proposal of a summit as long as it's not entirely a talk shop but is a summit I think connected to the idea of a local policing commitment which your client would make an undertaking to the citizens of Khayelitsha as to what kind of a service level delivery they should be entitled to expect and to which they can hold the police accountable would be a very valuable way forward.

And then a final issue of course is the ongoing relationships between SAPS and DOCS on the one hand and also with the other oversight bodies but we are concerned about complaints and the way in which complaints were managed, but it seems to me that it's important that these are dealt with in a constructive way going forward.

Alright, please don't I know I have subjected you to these thoughts but they're very ...(intervention).

MR ARENDSE: Madam Chair unless there's any other questions we've made our submissions in writing and we've always indicated by a frank admission of difficulties that police have that we are here to assist and to discuss solutions to these problems.

COMMISSIONER: Well we thank you very much and we're very grateful for all the documents and the support that we have received and I mean there's no doubt that the key to this problem most firmly lies in your client's hands so it's a great encouragement to us to see the amount of documentation that has been provided and the willingness with which your clients have been willing to testify.

MR ARENDSE; Thank you.

COMMISSIONER: Mr Hathorn reply?

MR HATHORN: Thank you Commissioners. At the outset it would be churlish of us not to acknowledge the constructive approach that SAPS have displayed in their response to the recommendations and in particular the proposal of the Community Safety Summit to be led by the Provincial Commissioner I think has the seeds of a very fruitful cooperative project going forward which I think is going to be necessary, all the parties are in agreement that a broad based initiative the whole of society approach is

going to be required, and on behalf of the complainant organisations we place on record our appreciation for the constructive approach reflected here.

There is a point on which we differ with the submissions, a substantial point and that is on the question of whether or not the commission should find that there's been a breakdown in relations between the SAPS and the Khayelitsha community, both Ms Mayosi and I dealt with this to some extent in our initial submissions, it's not our contention that there has been a complete breakdown to the extent that you have an apartheid era occupying force in Khayelitsha that is an instrument of oppression but our submission for the reasons that we've set out earlier is that there has been a substantial breakdown.

I earlier in response to question from Commissioner O'Reagan in respect of the constitutional purpose of the term breakdown in 2065 I don't know the question and I would like to come back to that and address you on that now. Once I've done that Ms Mayosi wishes to reply on the question of the EPP that was raised earlier and Mr Bishop wants to also deal with the question of respond to Advocate Katz on the question of the regulation of shebeens and alcohol but if I can just deal with the question of what is the constitutional purpose underlying the use of the word breakdown and in relations between SAPS and the community, and the starting point it seems would have to be the purpose of section 2065, this was dealt with in the second certification judgment, the powers of the provinces had been diminished in the final - in the first draft of the final constitution and the provinces had been removed their direct operational powers over policing in the provinces had been removed and there had

been a diminish in these powers. Section 206(5) was thrown in in order to make up for that reduction in powers and in the second certification judgment the purpose of the 2065 as a whole was to give the section 206(3) powers, the oversight, the monitoring and the other powers stipulated in 206(3), the purpose of 206(5) is to give teeth to those powers, so that's the first building block in understanding the constitutional purpose behind 206, behind the breakdown in relations phrase.

Then the phrase breakdown in relations with the community obviously references Section 206(3)(c) which entitles the province to promote good relations between the police and the community so there's an active duty on the province to promote those relations, and there's clearly a relationship between the breakdown in relations there, and 206(5) and the duty to promote good relations in 206(3).

Also one needs to look at the concept of inefficiency which is also used in 206(5) and inefficiency is referenced in Section 195 of the Constitution, the duties, the basic values and principles governing Public Administration, and in section 195(1)(b) one of the principles or values of public administration is the efficient economic and effective use of resources must be promoted, and contrary to what is submitted by or was submitted earlier by Province in this regard it would seem that the term "efficiency" is used in a broad sense as suggested by Commission O'Reagan in what was put to him as being not just inputs and outputs and the relationships between the two of them but in a broad sense as efficient economic and effective use of resources, so it's a broader understanding of inefficiency than just inputs and outputs.

The next building block is looking back to Section 221 of the Interim Constitution which established the principle of community policing within the constitutional framework, which was reflected in the SAPS Act, again the concept of community policing, and the requirement as articulated by Professor Steinberg in his evidence that the vision of community policing is one where police are incorporated into the ebb and flow of the daily lives of the community, so that's the idea or that's the vision underpinning community policing concept which is not expressly reflected in the constitutional provisions, but there are echoes of it in the interim constitution and in the legislation that was given that was promulgated to give effect to that.

And then the final element of the building block is Commissioner O'Reagan what you referred to as the historical and social context, the context which was fundamental to the constitutional assembly, very much uppermost in their mind as the context out of which policing had come in the past where many communities across the country had been brutalised by the police, and we submit that that would be the primary purpose informing the use of the word breakdown in relations with the community, as that was a horror that this provision must be seen as being designed to ensure it does not recur and that this power to prevent, to establish a commission of enquiry into a breakdown in relations is to constitute an early morning sign to ensure that the police do not revert to past patterns to past practices to the habits of their predecessor, the apartheid era policing, and so that would be the one part of the equation to function as an early warning sign and the second aspect of it would be to promote that the 206(3) good relations with the community.

Those will be our submissions with regard to the constitutional purposes served by the use of the phrase a breakdown in relations with the community.

Ms Mayosi is going to deal with the question of the EPP but before she does we've been requested by our clients to explicitly acknowledge a few people who have played an important role in the smooth functioning of the work of the commission and that Iris van der Poll who has managed the sound and transcription services, Thabisa Moekasana who has been involved in the transcribing, Neil Gordon, the sound technician, Thosi Ngwande the interpreter, and Nondamisa Nkusana the interpreter and our thanks and I think all of our thanks present in this room go out to all of them for their very efficient way that they have conducted the proceedings here.

COMMISSIONER: Thanks from the Commission to all of those people as well. Ms Mayosi?

MS MAYOSI: Thank you Chair. Chair I just want to respond to the submissions that were made by Mr Osborne regarding the EPP, how he put it forward as DOCS' contribution to the functionality of CPF's. Chair as I stated previously the EPP program is indeed a commendable program but what must be –what must not be forgotten is what emerged in evidence before this commission, that in order for CPF's to be effective when they function properly they are able to perform their role independently and their role being to monitor and to exercise some kind of oversight over SAPS. In the current formulation in Khayelitsha they are incapable of doing that, primarily because of an issue of resources, unless the EPP as an intervention is able to solve that problem the EPP

then falls short of being effective itself to the problem of CPF's, because then CPF's are forced to be dependant on the very SAPS that they are supposed to be exercising independently and monitoring an oversight role over.

What is proposed would make the EPP even more functional, even more effective would be to capacity the human resources that sit on CPF's, the funding model of EPP's is such that in order to release the funds there are reports that must be generated, there are inspections that must be done and so on. In terms of the knowledge and skills base of the individuals that serve on CPF's the support of the EPP, of DOCS through the EPP must begin to capacitate those human skills, those human resources in order to enable them to participate meaningfully in such a way that they can unlock the funding of the EPP.

Those are my submissions in relation to the EPP. My last submission Chair I just wish to make to respond to Advocate Arendse's submission that the testimonies of the community witnesses here, notwithstanding how harrowing they were they don't justify a finding that there is a breakdown in relations between the community and SAPS. I think it needs to be placed in context, the community organisations whose complaint triggered the establishment of this commission began to campaign around the issues that this commission is looking at from 2003, it was a ten year sustained campaign, the events of which really outlined in the High Court papers, which are part of the record, I am advised that approximately 172 community and organisational statements are before this Commission, some 34 or 25 community witnesses gave evidence, each and everyone of which had a story to tell of the way in which SAPS

has failed them. Now those people have families, they are themselves direct victims of crime that have families, some of whom are dead, some of whom are alive, who are indirect victims of crime. It cannot be that all of these stories, beginning more than ten years ago, cannot justify a finding that there's a problem, there is a serious problem and the name of that problem is a breakdown in relations between SAPS and this community.

If this commission does not make this finding the breakdown will get worse and nothing is going to be done about that breakdown.

Now SAPS – from how we've seen how SAPS deals with issues or fails to put names to issues, there's vigilantism, but that's not what it's called, its not classified as such, there are youth gangs but colonel Reitz says they are just boys standing around the corner being naughty, SAPS will not give a name to this breakdown in relations unless this commission finds there to be that breakdown. My submission or our submission chair is that this commission must make that finding because this community can no longer afford the consequences of a finding not being made.

Thank you.

MR BISHOP: Commissioner I just have one very brief submission.

COMMISSIONER: We thought you had been silenced, but please very brief.

MR BISHOP: It's just a response to an issue raised by Advocate Katz for the City relating to the informal regulation of shebeens which we proposed in our written submissions. Advocate Katz argued that you couldn't make such a recommendation because it would involved a violation of the rule of law and our submission to that is when enforcing a

law strictly is going to do more harm than good that organs of State have the power not to enforce that rule strictly. There's many examples of this sort of harm reduction for example if prostitution is illegal you can still provide condoms to prostitutes or if drug use is illegal you can still provide drug users with needles, if that's going to improve the situation rather than enforcing the law strictly, and in this case it's necessary to distinguish between good shebeens and bad shebeens. Shebeens that are havens for crime, for assaults and murders and so on and shebeens that are just unlicensed areas for social drinking, and SAPS already draws this distinction, General Goss testified at page 5132 of the record, he says so even the shebeens we have to police shebeens in such a fashion that you would deal drastically with the shebeens that are problematic and the others you have to deal with them in a fashion that you tell them look you have to close at this time of the night, if they cooperate you won't have a problem with these shebeens, because at the end of the day they are areas where people can go to sit down and relax and have a drink, so the submission is simply that SAPS as it is and as it is entitled to do should continue to distinguish between good shebeens and bad shebeens and that is a form of informal regulation and the important point is merely that shebeen owners should be made aware of what the requirements are, that it should be more formalised and clear these are the closing times and these are other requirements that we want you to meet, otherwise we are going to close you down, and there's nothing inappropriate about that.

Thank you.

MR HATHORN: Sorry Commissioners I can't allow Mr Bishop the last

word, but I forgot to acknowledge Mr Sandile Gomo as well as the other people who have been assisting us.

COMMISSIONER: Thank you Mr Hathorn, thank you Mr Gomo.

MR PIKOLI: At the sitting of this Commission in Khayelitsha the Commission would like to say thank you for being here at this Commission. The Commission would like to thank you especially the community witnesses that took the time to come to this commission and give evidence about things that they have witnessed, things that they have gone through, things that have lost, they have lost their kids, they have lost their friends, as well as their relatives.

This Commission would like to thank you because it is clear that things that matter to this community, that are important to you, you care about those and you also care about the way that you should do work with the police and also you've made sure that you correct the way the police and the community's relationship is, after today the Commission is going to sit and they are going to look at all the evidence that was said here and thereafter they will be able to draw up recommendations that will try to improve the state of things in Khayelitsha and the way that the police in Khayelitsha should be working.

After this now that is what we are going to do, we are going to write that report and submit it to the Premier of the Province. We trust that the Province and the police in this area will be able to work together to see or go through those findings together. Therefore this Commission would like to thank you.

COMMISSIONER: Thank you very much everybody, that brings the end of the proceedings as the Commission, we would like to thank the legal

representatives who have participated and all the other people who have been here helping the Commission's work, we are very grateful to all of you. We will now adjourn to consider our report, and we will – that report will be published once it has been made available to the Premier.

Thank you very much.

INQUIRY ADJOURNS: (at 13:35)