

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

OPENING STATEMENT

South African Police Service

Date: 23 January 2014

Source: Pages 41 - 57 of Commission transcript

MR ARENDSE: Thank you, Madame Chair, and Adv Pikoli, Honourable Commissioners. At the outset may I just mention that we had prepared an opening statement which has been forwarded to Mr Searle(?). Could we just ask that because it hasn't finally been edited so prior to its distribution to our colleagues and/or the media could we just get a further opportunity of doing some editing before it is distributed. Madame Chair, you have correctly outlined the constitutional framework within which this Commission will operate and also the broader constitutional framework as regards political and socio-economic rights and duties of the various role-players involved and participating in the Commission. We would with respect also submit that these constitutional and legal, or this constitutional legal context must also be interpreted and applied in the effectual social and political context that will be emerging through various witnesses during the course of these hearings.

Madame Chair, you and Adv Pikoli have also correctly identified the key role that the South African Police Services have to play in terms of protecting the citizens of this country and particularly in Khayelitsha which is the focus of this inquiry. You also correctly stated at the outset that this is a difficult role that they have to play. Some of us must not suffer from amnesia especially some of our colleagues and perhaps some of the witnesses that will be giving evidence during the course of this hearing.

Since the dawn of democracy in 1994 the police have made great strides in promoting and protecting the rights of the citizens including many but not all, including removing many but not all of the vestiges of apartheid policing. We point out at this stage that before 1994 the police, did the police played an active political role in fomenting, encouraging

and promoting drugs and gangs and vigilantes especially here on the Cape Flats and that has not escaped the Khayelitsha area. We will hear through expert witnesses that have been lined by the evidence leaders that this is still the case and that's important contextually.

Although we have high crimes in most if not all the poor and disadvantaged areas established under apartheid, we do not live in a lawless society. Policing takes place in accordance with the constitution and the Police Act. The Maseko murderers were apprehended, the crime was solved, they were brought to justice, they were convicted and they were sentenced. During the inspections it should have been plain to the Commissioners, our colleagues and some prospective witnesses that policing does take place in the Khayelitsha area. This inquiry is really about whether it is effective or not, efficient or not and whether the effectiveness and the efficiency of the police can be improved.

To that extent the South African Police Service welcomes the inquiry especially if its recommendations could assist in improving efficiencies and ensuring that relations between the police and the community is improved especially where this is found by the Commission to be lacking. The policing terrain in Khayelitsha is characterised by homelessness, lack of proper housing, under-housing, overcrowded informal settlements, lack of recreational facilities and very serious and high levels of unemployment and hopelessness generally.

The residents of Khayelitsha live in an abnormal society. So much was made plain by former President Mbeki in his famous and much lauded speech titled The Two Nations speech on the 8 February 2008 when he had announced the government's war on poverty. He highlighted, and with respect we submit it's still the case, the difference between the largely white advantaged areas and increasingly accessed by the black middle and upper middle classes and those poverty-stricken urban, peri-urban and the rural areas inhabited by black citizens.

These are apartheid designs and they continue to be the case. For many of these citizens who are here today and who will testify, they find that very little has changed.

When we did the inspection *in loco* we witnessed how difficult or even impossible it is for the police to carry out their normal policing responsibilities in these communities. The patrols conducted on foot are not only difficult but also dangerous for the police. The lights and roads are in a state of disrepair or neglect and in some cases just absent. Essentially, the police are policing a community that is angry about poor service delivery including poor sanitation,

the absence of decent living conditions.

So when we judge the competence of policing we need to take into account this particular terrain, judge them in the context of the challenges facing these communities. A police officer working in Khayelitsha confronts the faces of angry people, the police are not only the first line but also the last line of attack or defence or even comfort to the community of Khayelitsha. Police officers, men and women, become priests, counsellors and social workers.

The only hope that crime will not engulf these communities is in fact the presence of the police. Rather than be blamed the police should be commended rather than being vilified. Collectively we and the Commissioners must take a strategic decision to ensure that the police services in the community of Khayelitsha becomes a beacon of hope and safety. We all need to make that leap of faith to ensure that the people's rights entrenched in the constitution, which you highlighted, Madame Chair, are protected at all times.

Just a brief summary of the complaints and the test for what we say or what we say is the test for police incompetence. We have read the statements of some members of the community who complained about the manner in which some of the police conducted themselves. We will during this Commission hear mothers who have allegedly been treated badly by the police, young men whose rights were allegedly violated by the police, young women who felt alone and unsafe with the police. If these instances are proved or are found by the Commission to have occurred then the police deeply regrets these unfortunate acts by a few undisciplined members of the police. These undisciplined members must be reported and they will be dealt with by the police in terms of their disciplinary code and procedures. Community members must know that they have rights and that these rights must be protected by the police and any member of the police who violates these rights have no place in the police service. Where there are problems with the police these will be taken note of and measures will be taken to improve the image and the capacity of the police in order to deliver effective policing.

We do not belittle the feelings of community members who have allegedly been short-changed as far as their rights are concerned. We also have to be fair, however, in terms of evaluating the work of the police in a community like Khayelitsha. The test of whether or not these complaints collectively indicate general incompetence or breakdown in community relations must be contextual and objective. In other words, we cannot use the standards of policing found in Constantia or Camps Bay or Rondebosch to be the same as those in Khayelitsha. We will therefore submit that there is no systemic failure of policing

account the social and economic conditions of the people of Khayelitsha.

The issue of vigilante killings will feature prominently in these hearings and will be used as an example that people in Khayelitsha have lost faith in the police. The police have a different view as regards some of these murderous actions.

Our constitution enjoins all of us to play a role in ensuring that policing is effective in their particular areas. There is also duty on members of the community to report crime. That duty goes further. It includes the duty to carry out citizen's arrest and to bring suspects to the police. It involves giving evidence to the police and ensuring that witnesses come forward so that these accused persons are successfully prosecuted. Members of the public with complaints against the police are entitled to lodge these complaints with the Police Inspectorate or with the Department of Community safety and the Community Police Forums. The complaints before the Commission about vigilante killings are not supported by critical evidence that demonstrates a breakdown of community trust in Khayelitsha. For example, there is in fact an increase in reported crimes in

Khayelitsha police stations by members of the community. We submit that that increase or that report as far as increased crime is concerned is a show of confidence in the police.

Secondly, in the police's view, killing by community members are not a regular feature and must be condemned. If one takes the reported cases of murder which can be classified as vigilante murders within the general pool of murders, a number of conclusions can be drawn from these. We submit that most of those result from pure criminal conduct.

As regards a breakdown of trust between the police and the community, whether or not there's such a breakdown there will be evidence of these services by the police and we will show that people do largely trust the police even where they make or have made mistakes.

We will show that the police are members of the Khayelitsha community, they have a strategic alliance with community organisations operating there. They share a common interest, they share a common objective and that is to ensure the safety and security of the community in accordance with the constitution.

We will conclude that the complaints do not indicate or evidence police incompetence, we will also conclude after the evidence that there is not breakdown of trust between the police and the community.

Consistent with the Minister's approach in the High Court and the Constitutional Court, our instructions have been to comply with all requests by the Commission that are in conformity with its terms of reference and which would assist the Commission in carrying out its mandate subject only to logistical and other constraints some of which are beyond the police, the Commission's requests have largely been complied with notwithstanding that grave reservations have been expressed from time to time as to whether some of the requests from the evidence leaders fell outside the Commission's terms of reference.

In our cooperation we have spent extensive time and cost, sorry, we have provided the documents and if we have not done so, they will be made available to the Commission in due course. Accordingly, the approach adopted by the police in this Commission is one of constructive engagement and cooperation. This cooperation has already been demonstrated by the police when the National Commissioner in August 2012 just shortly after she was appointed and just shortly before the Marikana incident in August 2012 when she Commissioned what is generally referred to as the Tshabalala report. If I may just mention that Gen Tshabalala had unfortunately passed on and where there was an intention to call him he obviously cannot and we will call one of the task team members, Brig van Zyl to come and give evidence. We still have to prepare a written statement from him but we are hoping to do so as soon as possible.

If you, I don't know, Commissioners, whether you have a copy of, or on your computers a copy of the opening statement but in the next few pages - and I'm not going to read it - we deal extensively with what came out of the Tshabalala report. If I may just mention that the report was placed before the court, the High Court and the Constitutional Court for an entirely different purpose. It was there because the National Commissioner wanted to show her *bona fides* that these complaints have been taken on board by her, they were being investigated and the investigation was in fact in several instances damning of the police. That was the purpose of the Tshabalala report.

It also showed that the complaints of November 2011 submitted by the SJC had in fact been dealt with and in 80, if not 90, of the cases there were convictions and the perpetrators were sentenced by the court.

If you have a hard copy of the report before you, I move to page 9 of the opening statement paragraph 17. Just on the task team concluded that it was evident that the police could not claim that the services that are rendered in the community in the Khayelitsha area are of such

a standard that the community does not have any reason for complaining. On the other hand, it concluded that it was also unreasonable for any NGO to make a statement that there is, quote, a total breakdown in relations between the police and the community. Indeed it found that despite the challenges that the police face in the area the police is - and I quote from the report, executing its core function.

In line with above mentioned cooperative approach, the police do not regard it as their duty during these hearings to defend or to protect inefficient, errant or undisciplined members of the police force. Where there are instances of misconduct and indiscipline the police would welcome the identification of such conduct in order that disciplinary action may be taken against these police officers.

Then I go on to mention the investigation by the police of complaints lodged by the NGO post November 2011 and then we make the statement:

"It is clear from many statements and/or affidavits submitted to the Commission by parties other than the police that acts of vigilantism are due to *inter alia* acts of pure criminality, deeply entrenched notions or systems of so-called people's justice."

A thirst for so-called instant justice which is a culture, we submit, is rooted in our historical past of a distrust or even disdain for those in authority including the police. We would therefore appeal to the NGOs and to residents in Khayelitsha to make a leap of faith, this is a new police force that have now been in service for just about 20 years, it is a new police force that operates within the context of a constitution which is based on human rights.

I have made a statement in the opening that the police have largely succeeded in themselves making that leap but there are still remnants in the police who feel more comfortable with methods of policing which is rooted in our apartheid past and this we do not condone, we do not accept and we reject them and if such conduct is highlighted during this inquiry, we welcome it.

Honourable Commissioners, there can be no doubt that conventional or so-called normal policing methods or strategies cannot be deployed or used in many parts of

Khayelitsha particularly in areas that exhibit high density informal settlements. The severe lack of proper or any infrastructures such as roads, electricity, street lighting, sanitation, any sort of town planning are the main contributory factors that make the informal settlements an ideal breeding ground for crime. Those who bear the brunt of the extraordinary high levels of crime in these informal settlements are women and children, the aged and the infirm. This much was evident during the Commission's

inspection *in loco* conducted at various areas both during the day and at night. It only served to highlight and indeed reinforce the very difficult if not impossible task confronting the police in effectively combating crime especially in the informal settlement areas. None of the strategies proposed by the NGOs or by some witnesses will make any difference. The only solution is to eradicate these informal settlements. Proper housing and proper supporting infrastructure must be built in order to meet the demands of increased urbanisation but the police crucially must be involved in the planning and implementation of such housing and infrastructure.

The Commission's inspections *in loco* at the three police stations and its questioning of the three station commanders have shown that there is a properly functioning police service in the whole of the Khayelitsha area. The area is serviced by dedicated and diligent police officers, both men and women, who are committed to ensuring the safety of the general public and the residents in the Khayelitsha area. It is clear, however, that policing Khayelitsha particularly at night and in the informal settlement areas is highly dangerous and that any forms of conventional policing cannot be deployed let alone employed effectively. The highly dense informal housing in several areas, the very narrow foot paths, the lack of roads, infrastructure and lighting make policing virtually impossible. The cordoning off of crime scenes and the pursuits of criminals cannot take place as it normally would in a suburban area like Rondebosch, Constantia or Camps Bay. Indeed it is highly doubtful that the employment of additional or more police officers or more police vehicles and other provisioning would be able to effectively address these problems. Notwithstanding this, the police does its best to deal with the many challenges it faces and it does function effectively as a police force in the wider Khayelitsha area.

The crime statistics show high levels of crime but it also shows that crimes are reported which we submit demonstrates confidence in the police and these crimes are investigated, suspects are arrested, matters are referred to court and accused are convicted and sentenced. The police service is therefore fully functional in the Khayelitsha area and it is constantly striving to improve its service that it renders to the broader community.

It is clear that many of the problems that exist in the Khayelitsha area are of a nature that cannot be fixed only by the police. This much has been fairly conceded by our colleagues who act for various parties in this inquiry. Political and socio-economic problems do not fall within the mandate of the police. However, they impact on the effectiveness of the police service and in particular service delivery protests that take place from time to time has the effect of diverting valuable police resources

into areas other than combating of crime which is their core function. Indeed it would have been apparent to the Commission that during the inspections police officers spent much of their time having to Commission certificates and forms required by other government departments.

As regards police community relations the evidence will show that such relations do exist and have improved. There is little the police can do where CPFs are boycotted or shunned by certain grouping within the community. CPFs are established according to the SAPS Act and should most desirably be reflective of the entire community. Notwithstanding this, there is nothing that prevents NGOs or other residential groupings from approaching the police to establish a dialogue that would contribute towards better policing the area. The SAPS are open to such initiatives.

Although many of the problems confronting Khayelitsha residents cannot be solved or resolved by the police the police commits itself to being part of any attempts to find meaningful and lasting solutions that would satisfy the residents of Khayelitsha. From its side the police is committed to improving inefficiencies on the one hand and dealing with any indiscipline on the part of officers where these are identified and/or reported on the other. It is also committed to a lasting and constructive relationship with the community through the CPS and any other credible forum established by the community. At the very least the community must maintain its trust in the police in order that crime may be combated effectively. As indicated in the police statements and affidavits a new police station to be built at Makhaza has been approved. It is hoped that upon its completion a new and additional police station will improve efficiency and encourage trust and confidence in the police service.

We conclude with some of our recommendations. If we are correct that the complaints do not indicate a general state of incompetence in the police then the Commission must make that finding and submit its report accordingly. If we are correct that there is no breakdown in the trust in the police then the Commission must also make such a finding.

The recommendations that the police would make even if the Commission were to clear it of any of these accusations is that there should be concerted effort by the local and provincial authorities and national authorities to improve the conditions of people living in Khayelitsha.

There must be proper housing, roads, lights, job opportunities for the youth and sanitation conditions must be improved. At the end of the day the police stand between those who live in poor living conditions and the anger of the community. We would therefore ask for our colleagues and for other parties and for witnesses to

come forward with their complaints, lodge them but to tread lightly because at the end of the day they need the police. Thank you.