

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NO: _____

In the matter between:

MINISTER OF POLICE

First Applicant

**NATIONAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICE**

Second Applicant

**THE PROVINCIAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICE FOR THE WESTERN
CAPE**

Third Applicant

**THE CIVILIAN SECRETARIAT FOR THE POLICE
SERVICE**

Fourth Applicant

COLONEL M F REITZ

Fifth Applicant

BRIGADIER Z DLADLA

Sixth Applicant

COLONEL TSHATLEHO RABOLIBA

Seventh Applicant

and

THE PREMIER OF THE WESTERN CAPE

First Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
COMMUNITY SAFETY, WESTERN CAPE**

Second Respondent

THE CITY OF CAPE TOWN

Third Respondent

THE HON. JUSTICE CATHERINE O'REGAN N.O.

Fourth Respondent

ADV VUSUMZI PATRICK PIKOLI N.O.

Fifth Respondent

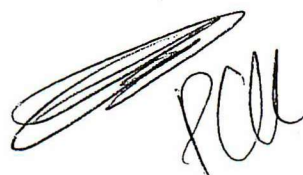
THE SECRETARY TO THE COMMISSION

Sixth Respondent

WOMEN'S LEGAL CENTRE

Seventh Respondent

AFFIDAVIT

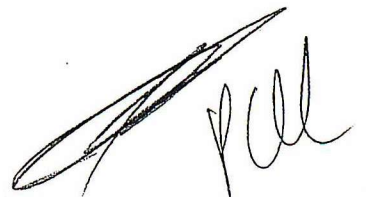


I, the undersigned,

ARNO HEINRICH LAMOER,

do hereby state under oath that:

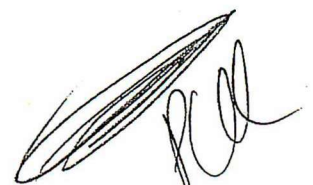
1. I am the Third Applicant; a member of the South African Police Services (the "SAPS"); and the Provincial Commissioner in the Western Cape. I am duly authorised to depose to this affidavit in my name and also on behalf of the Fifth, Sixth and Seventh Respondents who fall directly under my command in the Western Cape Province.
2. The contents of this affidavit are true and correct. Unless I indicate otherwise, or the contrary appears from the context, they are within my personal knowledge and belief. Any legal submissions contained herein are made on the advice of my legal advisors, which advice I verily believe to be correct. Where I rely on information conveyed to me by others, I state the source, which information I likewise believe to be true and correct.
3. The purpose of this affidavit is mainly to set out the factual background relevant to this application. It is filed in support of the interim and the main relief sought herein. My affidavit supplements the founding affidavit of the Minister of Police (the "*Minister*"), in relation to the factual context of the entire matter.



4. Before dealing with the appointment of the Commission and the November 2011 complaint lodged by the Seventh Respondent prompting such appointment, I make the following observations which are supported by the facts set out below:

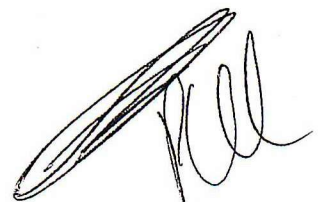
4.1. The complete failure by the Premier and/or the MEC to raise these complaints with the Minister, the National Commissioner or myself within the context of various statutory national/provincial oversight bodies and/or mechanisms, or even at personal meetings with the Minister during the period November 2011 – 22 August 2012. The Premier places much stock in some four letters, addressed to me (and merely copied to the Minister and the National Commissioner), in relation to the November 2011 complaint from December 2011 to June 2012. But based on the facts, it cannot be said that the Premier embarked upon an extensive effort to engage with the national executive and SAPS so as to give effect to her co-operative governance obligations.

4.2. There was extensive interaction during 2010/2011 between my office and the community of Khayelitsha and the civil social organisations who ultimately lodged the complaint with the Premier in November 2011.

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5. The structure of the factual background is as follows:

- 5.1. Section I – Failure to exercise provincial oversight power *via* existing statutory means.
- 5.2. Section II – SAPS interaction with the Khayelitsha community and the complainant organisations in 2010 - 2012.
- 5.3. Section III – The 9 November 2011 complaint and the Premier's purported engagement of the national executive and SAPS, culminating in the appointment of the Commission of Inquiry on 22 August 2012.
- 5.4. Section IV – Attempts by the Minister to avoid an inter-governmental dispute.
- 5.5. Section V – SAPS' investigation of the November 2011 complaints (as later supplemented).
- 5.6. Section VI – The conduct of the Commission of Inquiry following its appointment on 22 August 2012.

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5.7. Section VII – The Commission of Inquiry’s issuing of subpoenas in respect of myself and the station commanders of Khayelitsha, Lingulethu-West and Harare.

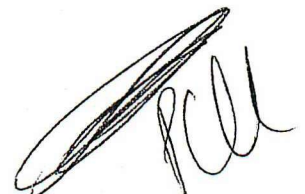
5.8. Section VIII – An analysis of the November 2011 complaints.

5.9. Section VIII – An analysis of the Premier’s allegation that recent “vigilante killings” in Khayelitsha are the result of a breakdown in relations between the SAPS and the Khayelitsha community.

I. FAILURE TO EXERCISE STATUTORY PROVINCIAL OVERSIGHT POWERS VIA EXISTING MEANS

A. Meetings with the Executive

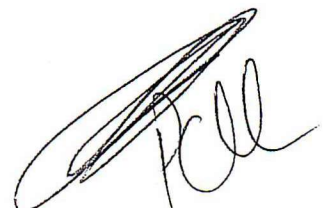
6. The Premier has consistently adopted the position that the Minister failed to respond to her various written requests to his office over an eight-month period in respect of the complaints of November 2011, which now form the subject matter of the Commission of Inquiry. As will be dealt with in further detail below, the Premier overstates the position, inasmuch as the aforesaid correspondence was not addressed to the Minister; rather, the series of correspondence was addressed to me. The Minister was only copied. No specific request for comment or engagement with the Premier was directed to his office.

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7. Moreover, the Premier's accusation that the Minister's office was unresponsive during this period ignores the fact that the Premier failed to mention the complaint when she and the MEC for Community Safety, Mr Dan Plato (the "MEC"), met with the Minister on 30 November 2011 to discuss gang-related violence in Cape Town. Moreover, notwithstanding that the Minister has always been willing to meet with the Premier to discuss any of her concerns, she never requested to meet with him on this issue.
8. The 30 November meeting referred to above was hosted by the Minister and attended by the Acting National Commissioner, MEC Plato, the Premier and myself.

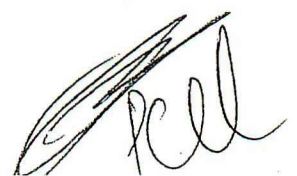
B. Civilian Secretariat for Police

9. As noted above, the Civilian Secretariat for Police (the "*Civilian Secretariat*"), is a statutory body established for purposes of exercising civilian oversight over the SAPS.
10. I am advised and verily believe that the Civilian Secretariat offered an effective avenue by which to raise any concerns the Premier or MEC Plato might have regarding policing in Khayelitsha. Yet, the Premier's

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representative on the Civilian Secretariat never raised the subject matter of the November 2011 complaint, any alleged breakdown in relations between SAPS and the Khayelitsha community, or the alleged vigilante killings in Khayelitsha supposedly linked to such a breakdown.

11. From the period February 2011 to 15 June 2012, the Civilian Secretariat met on at least six occasions. At the majority of these meetings, a representative of the Western Cape Provincial Government was present. The minutes of these meetings record that the allegations of police inefficiency in Khayelitsha and/or the alleged breakdown in relationship between SAPS and the Khayelitsha community were never raised at any of the meetings.
12. The Heads of Secretariat met on **11 February 2011, 17 June 2011, 23 September 2011, 11 November 2011, 24 February 2012 and 15 June 2012**. The minutes of these meetings record that the Western Cape Provincial Government was represented by Dr G Lawrence, the Head of Department: Community Safety. In some cases, Dr G Lawrence is marked as "absent" (17 June 2011, 23 September 2011, 24 February 2012); on one occasion, one S George attended in his stead. The minutes record that the Western Cape Provincial Government's representatives never raised the subject matter of the November 2011 complaint, police inefficiency in the three Khayelitsha police stations at issue here, any breakdown in relations



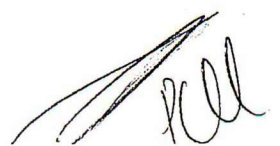
between SAPS and the community of Khayelitsha, or so-called vigilante killings in Khayelitsha (now attributed to the aforesaid breakdown in relations.) Copies of the aforesaid minutes are attached as annexure "AL1" - "AL6".

C. MINMEC

13. MINMECs are formal, inter-governmental structures where Ministers and MECs with common sectoral responsibilities co-ordinate their activities. In the case of security services, the establishment of a MINMEC is provided for in section 206(8) of the Constitution, 1996 as follows:

"A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective co-ordination of the police service and effective co-operation among the spheres of government".

14. I am advised and verily believe that MINMECs were established as vehicles for co-operation between the national and provincial spheres of government for purposes of formulating and implementing policies, as well as conflict-resolution, as mandated by Chapter 3 of the Constitution.
15. During the period February 2011 – August 2012, at least five MINMEC meetings were convened by the Minister, viz. on **25 February 2011, 1 July 2011, 24 November 2011, 16 March 2012 and 22 June 2012**. (Copies of

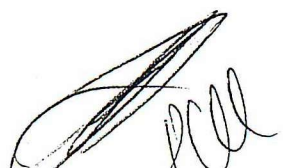


the minutes (some in draft form), are attached as annexures "AL7" - "AL11", respectively.)

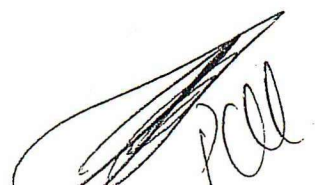
16. The Western Cape Provincial Government was duly represented at these MINMEC meetings by either the MEC or HOD for the Department of Community Safety. On every occasion, these representatives were afforded the opportunity to address the meeting on any safety and security issue that is of concern to the Province. But not one mention was made of the subject matter of the November 2011 complaints, police inefficiency in Khayelitsha, any alleged breakdown in the relationship between the SAPS and the Khayelitsha community, or the so-called vigilante killings in Khayelitsha.
17. In fact, the newly appointed National Commissioner attended the MINMEC meeting on 20 June 2012. I am advised by the National Commissioner that, during this time, she was personally overseeing an investigation into the complaints in order to report to the Premier.

D. Weekly Meetings between Provincial Commissioner and MEC

18. An important mechanism of Provincial oversight is the weekly standing meeting between the MEC and myself. At these meetings, I am to give feedback to the MEC's office regarding any policing matters in the Province.

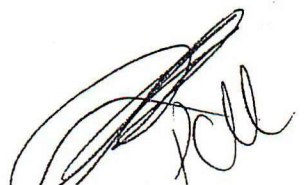


19. I must add that I enjoy a very good working relationship with the MEC. The MEC freely raises policing issues with me and requires me to provide information and feedback. It is unusual not to receive enquiries from the MECs office during any given week.
20. Neither the complaints of December 2011, nor any alleged breakdown in relations between SAPS and the Khayelitsha community was ever raised by the MEC during these standing meetings. The MEC never requested me to report to him on these issues. Not even the so-called vigilante killings in Khayelitsha, which appears to have been central the Premier's decision to appoint a Commission of Inquiry, were raised.
21. In this regard, I attach copies of the agendas for standing meetings on 18 July 2011, 23 August 2011, 29 August 2011, 26 September 2011, 9 October 2011, 17 October 2011, 24 October 2011, 31 October 2011, 7 November 2011, 14 November 2011, 28 November 2011, 12 December 2011, 6 February 2012, 10 July 2012 and 3 September 2012. (These agendas are attached as annexures "**AL12**" - "**AL26**" respectively.) I must add that, as of August 2012, the standing meetings were minuted at my request. Accordingly, as of 28 August 2012, "action minutes" were prepared. I attach, as examples, the action minutes for the standing

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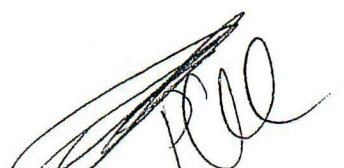
meetings on 28 August 2012 and 3 September 2012 (annexures "AL27" and "AL28" respectively.)

22. As to the standing meeting of 3 September 2012, I am advised by the Deputy Provincial Commissioner, General Jephta, that the MEC expressly raised a video, depicting certain police action and a police shooting at Hangberg, Hout Bay. According to the minutes, the MEC stated that the video had been broadcast internationally. The Deputy Provincial Commissioner indicated that no complaints had been received and enquired from the MEC when the alleged incident took place so that she may investigate. Accordingly, it is difficult to understand why, if the issue of so-called vigilantism in Khayelitsha was of critical importance to the Province, this issue was never expressly raised at any of the standing meetings by the MEC.
23. I foreshadow here, that the Commission of Inquiry has, since its appointment, sought information and/or documentation from my office and the Khayelitsha station commanders regarding matters that go beyond the scope of their terms of reference. For example, the Commission has requested me to furnish reports and/or documentation pertaining to the alleged dumping of rape kits in Delft during 2011. But at the standing meeting of 18 July 2011, one of the agenda items is listed as "Investigation Report on Dumped Forensic Samples in Delft". In fact, I reported to the



MEC's office on this issue. At no stage did the MEC's office indicate that the report was somehow unsatisfactory or that any further action was required of the SAPS.

24. Moreover, despite the fact that the MEC regularly addresses written requests for information to me, he never wrote to me regarding the complaints that formed the subject matter of the November 2011 complaint, or any alleged breakdown in relations between SAPS and the Khayelitsha community. More specifically, the MEC also failed to raise with me the so-called vigilante attacks in Khayelitsha, let alone the notion that these attacks were as a result of the aforesaid alleged breakdown in relations. As an example of a usual request for information from the MEC's office, I attach a copy of a letter from the MEC addressed to me on **17 August 2012**. (A copy of the MEC's letter is attached as annexure "**AL29**".) In his letter, the MEC refers to a Court-ordered eviction of persons occupying a clinic in Khayelitsha. The MEC requested me to provide him with a report on this matter, including information as to whether SAPS had given support to the Sheriff to effect the evictions at the clinic.

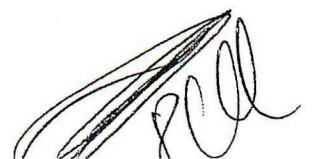


**E. Meetings between Provincial
Cabinet and Provincial Commissioner**

25. The Provincial Cabinet may at any time call me to address them on any policing issue in the exercise of their oversight and monitoring function. However, for reasons that are unclear, the Provincial Cabinet did not call me to address them on any of the complaints raised in the November 2011 complaint; the alleged breakdown in relations between SAPS and the Khayelitsha community, or the "vigilante killings" in Khayelitsha during 2011/2012 (that the Premier now links to the alleged breakdown in relations.)

II. SAPS INTERACTION WITH KHAYELITSHA COMMUNITY (2010/2011)

26. I am advised and verily believe that both formal and informal interactions between SAPS and the Khayelitsha community belie the claims that there is a breakdown in their relations as contemplated in section 206 of the Constitution. Various reports compiled, *inter alia*, by the Provincial Government are directly at odds with such a claim.

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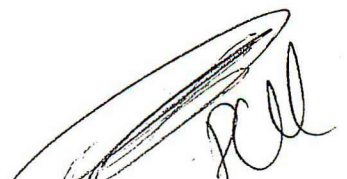
A. August 2012 Report

27. I am advised and verily believe that, even assuming the Commission was validly appointed, this report demonstrates the irrationality of limiting the scope of the inquiry to three SAPS stations in Khayelitsha.

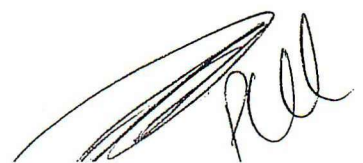
28. A report dated **3 August 2012**, "Serious Crime in Khayelitsha and Surrounding Areas", compiled by Crime Research and Statistics Crime Intelligence, describes the type of crimes committed in Khayelitsha thus:

"[The crimes are] less policeable in terms of the conventional policing methods/procedures, such as focus patrols, roadblocks, cordon – and search operations ... [and] still exhibits a complex mixture of factors influencing its crime situation such as a high influx of people not knowing one another and the resultant lack of social cohesion; unemployment, dire poverty, a 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". (The relevant extract from the report is attached hereto as annexure "**AL30**".)

29. The report highlights that it is artificial to focus on Khayelitsha, inasmuch as other police stations within the Cape Metropole face similar, if not more serious, challenges. For example, the report states that Nyanga Police Station "beats Khayelitsha on the robbery and social contact crime list. As far as violent crime is concerned, Nyanga is a much more problematic station than Khayelitsha".



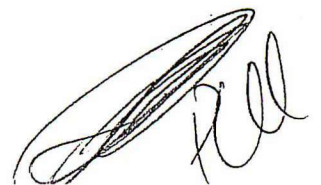
30. I must add that this report from Crime Intelligence was compiled at the behest of the Task Team appointed by the Inspectorate following a request from the newly appointed National Commissioner in June to investigate the matter.
31. In my capacity as Provincial Commissioner, I can confirm that the SAPS in Khayelitsha face unique and complex challenges. The three police stations in Khayelitsha police an area of approximately 43 square kilometres, which mainly comprises of informal settlements. The lack of an adequate road infrastructure in and around the informal settlements hinders effective policing. Moreover, the influx of people as a result of rapid urbanisation places additional burdens on the SAPS' already limited resources. This influx of new residents further undermines the SAPS' ability to compile and maintain proper statistics of the size and make-up of the population within the Khayelitsha policing sector.
32. To address the issue of limited resources, two further police stations will be established in Khayelitsha within the next two to three years. The first, Makhaza police station, will be constructed in 2014.

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B. Complaint Records

33. The crime statistics and records of complaints in respect of Khayelitsha, Lingeletu-West and Harare police stations contradict the notion that there is a breakdown in relations between SAPS and the Khayelitsha community.
34. An analysis of the number of crimes reported, as well as complaints lodged, shows no significant drop in interactions with members of the community over the past three financial years. In this regard, I attach spread sheets detailing records of the total number of complaints attended to ("complaints" in this context does not necessarily refer to complaints against police officers. "Total number of complaints" refer to any reports of crimes lodged by members of the public, as well as complaints that may have been received regarding police conduct), the total number of cases investigated (this number refers to the number of dockets opened) and finally, the total number of complaints received against service delivery.
35. In respect of Khayelitsha Police Station (spread sheet attached as annexure "**AL31**"), the records show as follows:

35.1. Total number of complaints attended to: 2009/2010 = 11 494;
2010/11 = 12 273 and 2011/12 = 11 731.



35.2. Total number of cases investigated: 2009/2010 = 11 357; 2010/11 = 9 265; and 2011/12 = 11 228.

35.3. Total number of complaints received against service delivery: 2009/2010 = 19; 2010/11 = 23 and 2011/12 = 20.

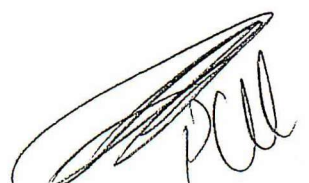
36. In respect of Lingeletu-West Police Station (spread sheet attached as annexure "**AL32**"), the records show as follows:

36.1. Total number of reported crimes: 2009/2010 = 5 159; 2010/11 = 5 788 and 2011/12 = 7 134.

36.2. The total number of complaints received via the police station's telephone lines: 2009/2010 = 9 406; 2010/11 – 7 497 and 2011/12 – 7 697.

37. In respect of Harare Police Station (spread sheet attached as annexure "**AL33**"), the records show as follows:

37.1. In respect of total reported crime: 2009/2010 = 11 799; 2010/11 = 10 597 and 2011/12 = 9 622.

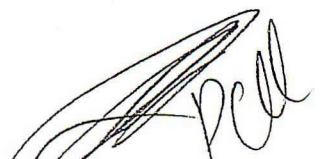


37.2. In respect of total complaints received *via* the police station's landline: 2009/2010 = 14 742; 2010/11 = 14 481 and 2011/12 = 12 937.

38. Moreover, there is simply no basis to suggest that complaints received against police officers stationed in Khayelitsha are not taken seriously and dealt with expeditiously by SAPS. In this regard, I attach a spread sheet detailing all complaints received in respect of these three police stations over the last few years. The spread sheets records the relevant SAPS 513 complaint number, the origin of the complaint (*viz.* whether the complaint was received by the ICD/IPID, the Provincial offices, *via* walk-ins; *via* the Presidential hotline and telephone calls to the station), the complainant's name, the category or description of the complaint, the summary of the complaint, as well as the outcome. (Copies of the respective spread sheets for Khayelitsha, Lingeletu-West and Harare are attached as annexures "AL34", "AL35" and "AL36" respectively.)

C. 2010/2011 Provincial Report: Levels of Satisfaction

39. According to a draft report on the levels of satisfaction of clients and victims of crime at 149 police stations in the Western Cape Province for the 2011/2012 period, compiled by the Western Cape Government's Secretariat for Civilian Oversight, further belies claims that there is a



breakdown in relations between SAPS and the Khayelitsha community. (A copy of the report will be made available to this Honourable Court and/or respondents if they so require.)

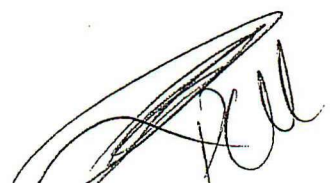
40. In respect of the Khayelitsha Police Cluster (consisting of eight police stations: Harare, Khayelitsha, Lingeletu-West, Lwandle, Macassar, Somerset West, Gordon's Bay and Strand Police Stations), the Department's Client Satisfaction Survey concluded that:

40.1. The majority (72%) of respondents were satisfied with the willingness of police officers to assist clients and victims of crime.

40.2. 76% of respondents were satisfied with the respect which clients and victims of crimes were treated.

40.3. The majority of respondents (58%) indicated that police officers were available when needed.

40.4. 70% of respondents indicated that they will give information about crime or perpetrators of crime in their areas and 51% of respondents indicated that police offices are committed in addressing crime.

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40.5. Most of the respondents are aware of the NHW structures and CPFs serving their areas.

40.6. Under the heading "Concerns", no specific mention was made of either of the three police stations at issue here.

D. 2011/2012 Provincial Report: Safety Barometer

41. A report compiled for the Western Cape Department of Community Safety, "Community Safety Barometer 2011/2012" dated April 2012, contradicts the Premier's claims. (A relevant extract from the report is attached as annexure "AL37"). The report records the views of some 1304 respondents in the Khayelitsha cluster. According to the report, respondents rated police liaison/ relationship with the community as follows: "very poor" = 26,5%; "poor" = 19,9%; "neither poor nor good" = 29,3%; "good" = 9,5%; "very good" = 13,2% and "don't know" = 1,6%.

E. Provincial Reports: Policing Needs and Priorities

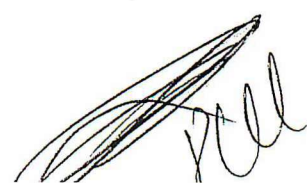
42. The Western Cape Department of Community Safety's "Report on the Western Cape Policing Needs and Priorities" (for the period 2011/2012) makes no mention of any of the concerns specifically highlighted in the November 2011 complaint, the alleged breakdown in relations between



SAPS and the Khayelitsha community, and the so-called vigilante killings in Khayelitsha (attributed by the Premier to the aforesaid breakdown in relations). Similarly, the Department's report on the identification of policing needs and priorities in the Western Cape Province for the period 2010 – 2011 (dated 29 November 2010), no mention was made of any of the three aforesaid issues in the report. (A copy of these reports will be made available to the Honourable Court, should it so require.)

F. Community Policing Forums

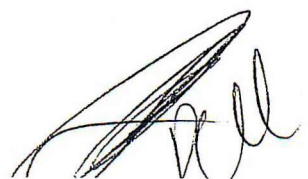
43. Yet another important point of contact between SAPS and the Khayelitsha community is the Community Policing Forum (the "CPF"). The Khayelitsha CPF meets monthly and is composed of representatives from both SAPS and residents of Khayelitsha who are elected by an open and democratic process. (Copies of minutes of the meetings of the CPF for 2011 – 2012 are available if this Honourable Court and/or respondents so require.)
44. A survey of the aforesaid CPF minutes confirms that neither members of the Khayelitsha community, nor the civil society organisations represented by the WLC raised the specific complaints set forth in the November 2011 with the CPF. In fact, it appears that the civil society organisations represented by the WLC have largely ignored the CPF as a means of addressing their concerns.



45. The extensive interaction between SAPS and the Khayelitsha community, as evidenced by the minutes, belies any allegation that there is a systemic and/or a serious breakdown in relations between SAPS and the Khayelitsha community, warranting a Commission of Inquiry.
46. Finally, I understand that neither the Premier, nor the MEC ever approached the CPF for comment as to the contents of the November 2011 complaint, any alleged breakdown in relations between SAPS and the Kayelitsha community, or the "vigilante killings" the Premier now seeks to attribute to the aforesaid breakdown.

III. 9 DECEMBER COMPLAINT

47. On **9 December 2011**, I received a complaint from the Premier regarding police conduct in Khayelitsha for my comment. The Premier copied this letter to the Minister and the Acting National Police Commissioner, Lt Gen Mkhwanazi (the "*Acting National Commissioner*"). (A copy of The Premier's 9 December letter is attached hereto as annexure "**AL38**".)
48. The Premier had received this complaint on 22 November from the Women's Legal Centre ("*WLC*"), acting on behalf of a group of non-governmental organisations operating, *inter alia*, in Khayelitsha, Cape Town. These NGOs were: The Social Justice Coalition (the "*SJC*"); The



Treatment Action Campaign (the "TAC"); Equal Education; Free Gender (who subsequently withdrew as a complainant); Triangle Project and Ndifuna Ukwazi. (I refer to these NGO's as the "*complainant organisations*").

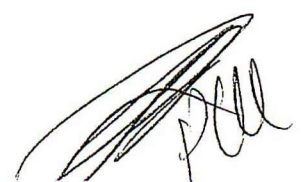
49. The Premier described the nub of the complaint thus:

"Members of the Khayelitsha community routinely experienced violations of [their] rights ... in their dealings with the police. ... [Their] constitutional rights to: equality, human dignity, life, freedom and security of person, privacy, movement, property, housing, access to courts as well as the rights given to arrested, detained and other accused persons, are violated by the police including the CTMPD [Cape Town Metro Police Department] and other actors in the criminal justice system, on a daily basis ... the systematic failure of the Khayelitsha police, including the CTMPD, to prevent, combat, and investigate crime, take statements, open cases, and apprehend criminals also violates ... section 195 of the Constitution ..."

50. The Premier's letter was accompanied by the WLC complaint, which presented eight case studies as the "factual basis" for the above assertions. (A detailed analysis of the 9 December complaint and accompanying case studies is set forth further below.)

51. In her letter, the Premier referred to the range of powers of Provincial Government in relation to police conduct thus:

51.1. Section 206(3) of the Constitution, mandating Province to monitor police conduct and, *inter alia*, to oversee the effectiveness and



efficiency of the police service, as well as to promote good relations between the police and the community.

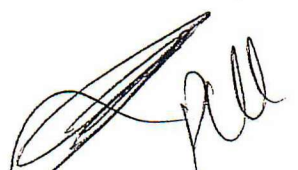
51.2. "Various means" by which Provincial Government may perform the oversight and monitoring function vis-à-vis the police service, "ranging from the laying of the complaint to the independent complaints body, requiring [the Provincial Commissioner] to appear before a Provincial Committee to answer questions, to the establishment of a Commission of Inquiry".

52. According to the Premier, the "substance of this complaint [was] directed at the conduct of the SAPS at Khayelitsha". As such, the Premier requested me to comment as to:

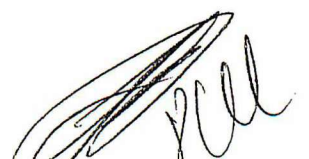
52.1. The substance of the complaint.

52.2. The method I considered most appropriate to deal with the complaint.

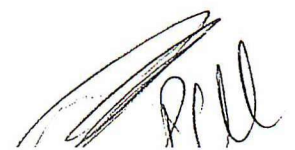
53. The Premier indicated also that she would forward a similar request to the City of Cape Town, given that the complainant also made allegations regarding the conduct of the officials in the City's Municipal Police Service.

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54. The Premier requested me to provide her with comments by no later than 30 January 2012.
55. In **December 2011**, I met with the Executive Legal Officer of SAPS, Lt Gen Molefe (the "*SAPS Executive Legal Officer*"), to discuss the Premier's 9 December letter. He advised me that he would have to liaise with the then Acting National Commissioner as to the way forward.
56. On **14 February 2012**, the Premier addressed further correspondence to me, calling upon me to comment on the merits of the complainant organisations' request for the establishment of a Commission of Inquiry by 28 February 2011. (A copy of the Premier's 14 February letter is attached hereto as annexure "**AL39**".)
57. In my response of **27 February 2012**, I informed the Premier that the matter had been referred to the SAPS Head Office for instructions. (A copy of my letter is attached hereto as annexure "**AL40**".)
58. I immediately contacted the SAPS Executive Legal Officer for guidance. He advised that the then Acting National Commissioner was of the view that, to the extent the Premier has the authority to appoint a Commission of Inquiry, it is not for SAPS to comment on how she should exercise those powers.


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59. I must interpose here that on **29 March 2012**, the Minister met with the community leadership of Khayelitsha regarding disturbing incidents of violence against foreign nationals. Following the Minister's request, I ensured that the SAPS provincial leadership, the cluster commander and the station commanders were in attendance to meet with members of the community and listen to their concerns. (A copy of the minutes of the Minister's *imbizo* is attached hereto as annexure "**AL41**".)
60. On **22 May 2012**, I received a further letter from the Premier, in which she expressed the view that the "ongoing acts of vigilantism [in the area] ... appear to give credence to the alleged breakdown of trust as contained in the complaint". The Premier indicated to me that she intended to make a decision within the next 10 days. Once again, the Minister's office and that of the then acting National Commissioner were copied on the letter. (A copy of the Premier's 22 May letter is attached hereto as annexure "**AL42**".) In an email transmitted on **24 May 2012**, my office confirmed that the matter is receiving attention and feedback would be forwarded in due course. (A copy of the email is attached as annexure "**AL43**".)
61. On **5 June 2012**, a public participation programme in Khayelitsha was attended by senior provincial SAPS officers, senior officers at the various stations in the Khayelitsha cluster, community leaders (such as members of the CPF), and members of the community. (I attach a copy of the event



programme as annexure "AL44".) At no stage of these proceedings did any community leader or member of the community express any sentiment that there was a breakdown in relations between SAPS and the Khayelitsha community, or that the "vigilante attacks" referred to in the Premier's aforesaid letter was as a result of any such breakdown or as a result of police inefficiency.

62. Later in **June 2012**, Major General Dladla (Head: Provincial Legal Services), and Major General Burger (Deputy Provincial Commissioner of Human Resources), accompanied by other senior police officers, attended a meeting in Khayelitsha arranged by the SCJ, viz one of the complainants. I am advised by the aforesaid two officers that during the meeting, no criticism was levelled against SAPS; rather, the complaints were directed at the Metro Police.
63. On **5 June 2012**, the *Cape Argus* reported that the Premier was consulting lawyers regarding the setting up of a Commission of Inquiry into the apparent breakdown in relations between SAPS the community of Khayelitsha. According to the report, the Premier's actions were prompted by "a call from civil society for a formal enquiry into complaints of police negligence and ... a spate of vigilante attacks in Khayelitsha dating back to March". The report further referenced the Premier's response to a parliamentary question pertaining to the establishment of a Commission of



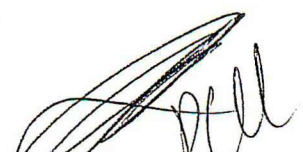
Inquiry that: "[she] will make a decision one way or the other in the next week or so". The Premier is also reported to have said that "[the] bodies have the right to reply to the allegation before a Commission is instituted ... the department concerned, the [SAPS] has not yet replied". A copy of the *Cape Argus* article "Inquiry over mob justice on the cards" dated 5 June 2012, is attached hereto as annexure **"AL45"**.

64. On **12 June 2012**, President Zuma announced his appointment of General Phiyega as National Commissioner of SAPS (the "*National Commissioner*"). I am advised by the National Commissioner that she took office two days later on **14 June 2012**.
65. On **13 June 2012**, the Premier furnished me with "another set of additional supplementary facts" from the original complainants, as well as an email from a Khayelitsha resident expressing concern about the "ongoing acts of vigilantism". (A copy of the Premier's 13 June letter is attached hereto as annexure **AL "46"**.)
66. In her letter, the Premier raised the fact that she had yet to receive any substantive response to her letters of 9 December 2011, 14 February 2012 and 2 May 2012. According to the Premier, "in the face of these complaints" and a "vigilante murder" in the Makhaza area over the weekend of 8-10 June 2012, she was "now compelled to consider the establishment of a



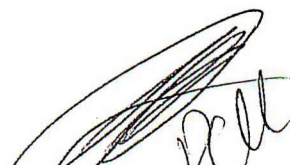
Commission of Inquiry to investigate the veracity of these complaints". The Premier requested my comments pertaining to all the complaints in respect to both the factual content as well as the merit of the request for a Commission of Inquiry to be established by **20 June 2012**. A copy of this letter was sent to the Minister and to the National Commissioner.

67. On **18 June 2012**, I confirmed receipt of the Premier's 13 June letter and accompanying "additional supplementary facts". I reiterated that the matter had been referred to the SAPS Head Office for handling. (A copy of my 18 June letter is attached hereto as annexure **AL47**".)
68. I understand that on **21 June 2012**, the SAPS Executive Legal Officer requested the Premier to extend her 20 June deadline for the response.
69. In a letter dated **29 June 2012**, the National Police Commissioner requested the Premier to extend the comment deadline of 29 June to 20 July 2012, as she required time to consult with provincial management and other role-players at provincial and national level for purposes of conducting an investigation. In particular, she advised that my feedback report was before her for consideration, and that the complaints were being investigated with the assistance of the National Inspectorate. The National Commissioner expressed her commitment to address any complaint that citizens are not receiving the level of service they are entitled to. For this



purpose, the National Commissioner would embark upon a comprehensive process to resolve the issues without necessarily resorting to the establishment of a Commission of Inquiry. The National Commissioner requested an opportunity to investigate the matter and produce a report within realistic time frames. At the time, the National Commissioner expected to be in a position to report to the Premier by 20 July 2012. (A copy of the National Commissioner's letter of 29 June 2012 is attached as annexure "**AL48**".)

70. I am advised by the National Commissioner that, in response to her request for various internal reports on the matter, she was considering a report by the Deputy Provincial Commissioner, Major General Jephta (dated 7 June 2012), as well as my report (dated 26 June 2012). Copies of the aforesaid reports are attached as annexure "**AL48_A**" and "**AL48_B**", respectively. I deal with the content of these reports under the heading: "VII. Analysis of November 2011 complaint" further below.
71. I am advised by the National Commissioner that she immediately requested the Inspectorate to investigate the complaint. The Divisional Commissioner of the Inspectorate, Lieutenant General Tshabalala, in turn, appointed a task team under the leadership of Major General Rapudi (the "*Task Team*"), to conduct a qualitative assessment of the issues raised in the complaint. (Confirmatory affidavits will be filed by Lieutenant General Tshabalala and

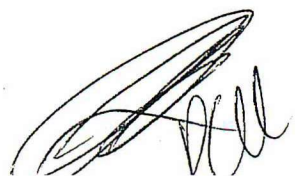


Major General Rapudi insofar as the appointment and investigation by the Task Team are concerned.)


72. On **2 July 2012**, the Premier issued a press statement (annexure "**AL49**"), alerting the public to the National Commissioner's request to hold in abeyance for three weeks any process towards the establishment of a Commission of Inquiry, pending an investigation by her office into the complaints. Again, the Premier was quick to emphasise that during the 7-month period she corresponded with the Provincial and National Commissioners of Police, "the crisis of vigilante killings continued to escalate and the death toll currently sits at 11 known murders". The Premier decried this as a "completely untenable situation". She bemoaned the fact that the Province's constitutional roles in policing matters is confined to oversight but stressed that:

"[T]he consistent delay in response by SAPS have made it difficult for us to fulfill this function. We have been patient in our engagement with SAPS but this patience is finite and, in fact, the patience of the residents of Khayelitsha has already run out".

73. The Premier emphasised that the second extension (*viz.* 20 July), would be the last deadline extension. She concluded by stating that she would address correspondence to the complainants to inform them of the latest development and encourage them to engage further with the National Commissioner's office "regarding any further complaints they have and on the progress of the investigation over the next three weeks".

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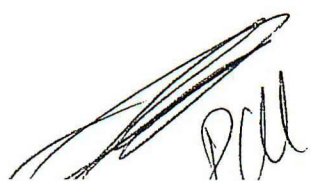
74. Only the following day (after first responding in the media), the Premier responded to the National Commissioner's letter of 29 June 2012. (A copy of the Premier's letter of 3 July 2012 is attached hereto as annexure "AL50".) The Premier acceded to the extension request, in view of the National Commissioner's undertaking to "immediately investigate the complaints with the aim of resolving the issues therein". But the Premier added that no further extension would be granted, in view of the "volatile situation in Khayelitsha" and that the initial complaint had been sent to the National Commissioner's predecessor some seven months before.
75. On **5 July 2012**, I met with the Task Team at my offices in Cape Town to discuss the November complaint (as supplemented). The Task Team advised me that they were mandated to investigate the allegations made by the NGOs, and to investigate the reasons, relationships and quality of service delivery with the view of briefing the National Commissioner as to the most effective and appropriate action. In my capacity as Provincial Commissioner, I requested the Task Team to broaden the scope of their investigation to investigate any other aspects they may consider helpful in improving the overall quality of service delivery in Khayelitsha.
76. Between **9 – 13 July 2012**, the Task Team conducted focussed inspections at the three police stations that formed the subject matter of the November

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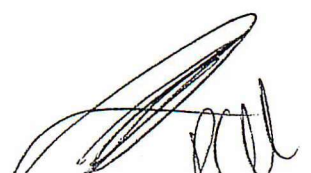
complaint, viz. Khayelitsha, Harare and Lingulethu-West. The inspection focussed on the evaluation of the line function activities, such as the attendance of complaints; crime prevention; sector policing and the investigation of crime. The Task Team also investigated the interaction and relations between the police and the Khayelitsha community in the context of social crime prevention and complaints of poor service delivery registered at the three police stations. The Task Team even analysed reports of previous inspections conducted at these police stations during 2011-2012.

77. When the Task Team approached the complainant organisations, they were met with openness and a willingness to discuss their complaints and concerns. On **11 July 2012**, the Task Team met with the complainant organisations and the WLC. The parties discussed the subject matter of the November 2011 complaint and the complainant 'organisations' more general concerns and complaints. The specific content of the discussions are captured in a WLC letter subsequently addressed to the Premier on 13 July. I deal in greater detail with this aspect below.

78. The Task Team did not limit their investigation to discussions with the complainant organisations. They also met with the chairpersons of the CPFs for the respective police stations; representatives of other community organisations (such as the Khayelitsha Development Forum (the "KDF")).

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79. Given the scope and thoroughness of the investigation, the Task Team was only able to furnish the National Commissioner with its report in August.
80. On **13 July 2012**, the Minister requested a meeting on 18 July with the Premier, the MEC for Community Safety, the Executive Mayor of Cape Town and the Police Chief of Cape Town Metro Police at the behest of the National Commissioner. The purpose of the meeting was to discuss the business of policing in the framework of partnership policing. (A copy of the Minister's letter is attached as annexure "**AL50_A**".)
81. In a letter dated **13 July 2012**, the WLC addressed correspondence to the National Commissioner (copying the Premier's office), advising that they had met the investigative team set up by the National Commissioner. The WLC confirmed that the team offered the following undertaking:
- "[N]ot simply to intervene in individual cases, but to view the emerging problems in the proper systemic light, and to keep an open mind to the establishment of a Commission of Inquiry, where all role-players can be brought together under one objective, as solution to the systemic problems." (A copy of the WLC's letter of 13 July is attached hereto as annexure "**AL51**".)
82. Accordingly, the WLC requested the Premier to postpone her decision as to whether or not to establish a Commission of Inquiry until 31 July 2012.

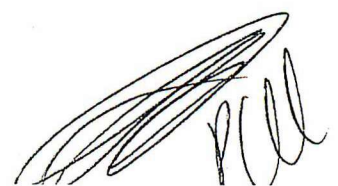


83. In her **16 July 2012** response, the Premier refused the WLC's request for a further 11-day extension of the SAPS comment deadline. A copy of this letter was also forwarded to the National Commissioner's office. (A copy of the Premier's 16 July letter is attached hereto as annexure "**AL52**".)

84. The Premier expressed surprise at the WLC's apparent about-turn, noting that it had made repeated demands of her to act expeditiously in this matter and "urged [her] to establish a Commission of Inquiry". The Premier motivated her refusal of the WLC's request for a further extension of the SAPS Comment deadline as follows:

84.1. The WLC and its clients were not the only complainants. She had also received complaints from other individuals "urging [her] to take action as regards allegations of inefficiencies by SAPS and a breakdown in the trust of SAPS by affected communities of Khayelitsha".

84.2. The *Sunday Argus* "once again reported on the matter over the weekend and statements made by the residents therein continue to reflect a scepticism that demands an urgent response".

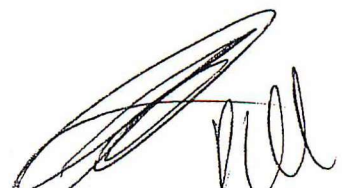
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84.3. The Premier “understood” that there had been another two “necklacings” in Khayelitsha of suspected criminals over the past few days.

84.4. During a radio interview on the *Zibonele* Radio Station over the previous weekend, people allegedly “called in and spoke about the loss of confidence in the police and the resultant crisis they perceive to now exist. The issue is clearly of very serious concern to the residents and they are impatient at perceived lack of response to date”.

84.5. Whilst the WLC was requesting the Premier to delay her decision, “politicians are seeking to use these delays to their sectarian advantage”. As an example, the Premier cited a statement reported by the *Cape Times* that day by Mr Tony Ehrenreich, ANC caucus leader in Cape Town, as describing the Premier as “... reporter reporting on events, in a manner that identifies problems and provides little by way of solutions”.

84.6. While the Premier was “very encouraged” by what appeared to have been “the first concrete steps taken by SAPS to address the situation”, the National Commissioner was the only new member to

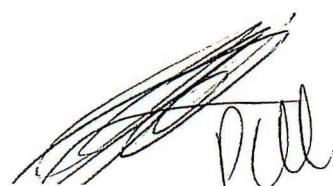
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her organisation. As a whole, the organisation had almost eight months to investigate the complaints.

84.7. "Vigilante action, allegedly arising out of lack of confidence in the police to apprehend criminals and provide evidence to convict them in court, has not abated and a plan, as far as [the Premier knew] to address the crisis has not been formulated".

84.8. In conclusion, the Premier stated that, unless she was furnished "at the very least" with a motivated request from the National Commissioner in this regard, detailing both her office's efforts thus far and the National Commissioner's "plan", the Premier doubted whether the 11-day respite would change the situation materially, following eight months of delay.

85. On **18 July 2012**, I accompanied the National Commissioner to the offices of the Premier in Cape Town. I am advised by the National Commissioner that she had requested the meeting with the Premier so as to introduce herself and to express her commitment to work together with the Premier to address policing issues in the Province. At this meeting, the National Commissioner asked for a meeting with the Premier and MEC Plato to discuss the Khayelitsha complaint and the Premier's proposed establishment of a Commission of Inquiry. The National Commissioner

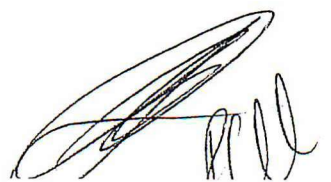
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asked for more time to investigate the matter and confirmed that she was already in communication with some of the NGOs. At one point during the meeting, the Premier stated that she knew that the Minister was opposed to the establishment of a Commission of Inquiry, but that she was willing to go to court to defend the Commission.

86. I am advised and verily believe that the aforesaid statement by the Premier could reasonably be interpreted to indicate that the decision to establish a Commission was, by that stage, a foregone conclusion.

87. On **19 July 2012**, the WLC responded to the Premier's letter of 16 July 2012. (A copy of the WLC letter is attached hereto as annexure "**AL53**".) While the WLC acknowledged the Premier's reluctance to delay her decision as to the establishment of a Commission, the WLC considered the following factors to warrant an extension of the comment deadline by 11 days:

87.1. Collectively, the WLC's clients have been working on this issue for some 10 years, intensely aware of the inherent urgency requiring immediate attention.

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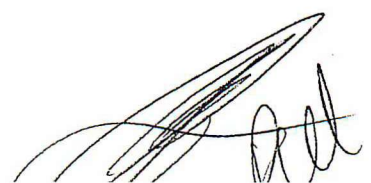
87.2. In contrast to earlier unsuccessful attempts to elicit a response from SAPS, the newly appointed National Commissioner has taken steps to engage with the basis of the complaint on behalf of SAPS.

87.3. That the National Commissioner is engaging the complaint "is evidenced by her sending down a team of high-ranking SAPS members to speak to [the WLC's] organisation and investigate the cases [they] provided as examples".

87.4. At the 11 July 2012 meeting with the National Commissioner's task team, it was agreed that the complainants would support an extension of the 20 July comment deadline provided:

87.4.1. The task team would not "close their minds" to the idea of a Commission of Inquiry in a report they were submitting to the National Commissioner.

87.4.2. The National Commissioner would be invited to come to Khayelitsha and to speak to the community to hear their concerns.

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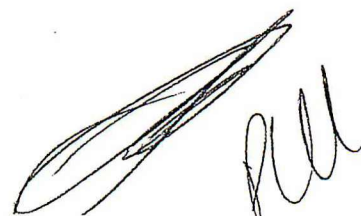
87.4.3. In addition to investigating the specific cases provided by the WLC's clients, "the larger context and the systemic issues would also be considered".

87.4.4. The WLC's clients would "provide the National Commissioner with additional information about their work dating back almost 10 years on this matter". (Emphasis added)

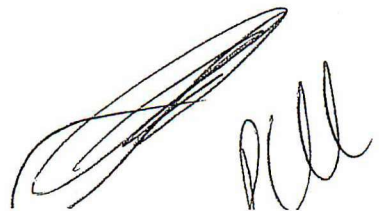
88. The WLC expressed the view that the "short extension" would allow the National Commissioner to consider "the additional information to be provided by our clients, and to analyse the information that was gathered during their meeting with clients and their investigation of the cases while they were in Cape Town". The National Commissioner accordingly reasonably believed that further/additional information from the WLC would be forthcoming.

89. On **19 July 2012**, the National Commissioner requested the SAPS Executive Legal Officer to provide an outline of his involvement in the matter between November 2011 to date. I understand this report was forthcoming shortly thereafter.

90. On **20 July 2012**, the Premier's second deadline expired.

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91. On **31 July 2012**, the deadline proposed by WLC, but rejected by the Premier, expired.
92. It appears from the Premier's later correspondence that she met with representatives of the WLC and their clients on **6 August 2012**. Notably, neither the National Commissioner, nor I were invited to attend this meeting.
93. According to the Premier, the aforesaid organisations "personally confirmed to [her] their request for the establishment of a Commission of Inquiry to alleged police inefficiencies and a breakdown of trust between the residents of Khayelitsha and SAPS". The representatives allegedly confirmed that they had heard nothing further from SAPS after having addressed further correspondence to them. The representatives reportedly advised the Premier they "believe[d] it is imperative that a Commission be established so that the root causes of the ongoing acts of vigilantism in the area can be addressed". (Emphasis added).
94. On **7 August 2012**, the National Commissioner addressed correspondence to the Premier headed "Complaints regarding alleged police inefficiency and a breakdown in police-community relations in Khayelitsha, Cape

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Town". A copy of this letter is attached as annexure "**AL54**". The National Commissioner advised as follows:

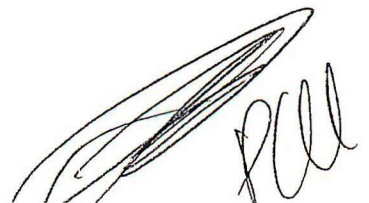
94.1. Since the National Commissioner's faxed response to the Premier on 29 June 2012, she had visited the Province and Cape Town, in particular, on more than one occasion, meeting with several stakeholders in the process. These visits were aimed at familiarising herself with the work of SAPS in the Province and to gain insight into the challenges facing SAPS in their service delivery.

94.2. "The findings are intricate and complex. Factors observed cannot be addressed overnight but rather require a progressive long-term turnaround strategy".

94.3. The SAPS team in the Western Cape enjoys "solid and robust leadership focussed on deliberate turnaround strategies".

94.4. The Premier could be assured of their "continued full support".

94.5. Her office had "received communication from the complainants" and are arranging to meet and discuss the issues they raise.

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