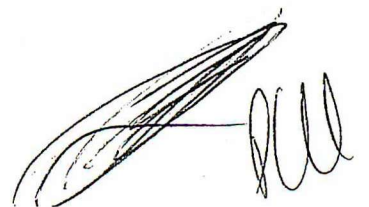


94.6. Soon after meeting the stakeholders, her office would "announce our agreement on the nature of co-ordination and collaboration". The National Commissioner was at pains to emphasise that her office sought to achieve integrated interventions.

94.7. She hoped to involve the City in this regard, since they indicated interest to participate in proposed integrated interventions her office would be advancing. Her office would keep the Province informed of developments and progress and remain committed to the course.

95. But in later correspondence with the Minister, the Premier discounted the National Commissioner's aforesaid letter of 7 August as merely a general courtesy letter, as opposed to a response to the Premier's request for comment regarding the Khayelitsha complaint. The Premier reasoned thus on the basis that this letter provided her with no comment regarding the content of the complaints in question, or the merits of the request for the establishment of a Commission of Inquiry.

96. I am advised and verily believe, however, that the National Commissioner's 7 August letter clearly related to the Premier's request for comment on the WLC complaint and their request for the establishment of a Commission of Inquiry. Not only did the letter's heading refer expressly to this matter, but

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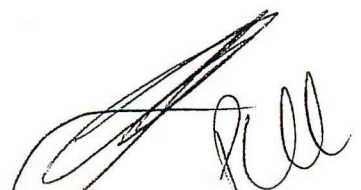
the National Commissioner pertinently referred to information received from the complainants and that her office was arranging to meet with them.

97. But the Premier is on record as rejecting this advice as "incorrect". In subsequent correspondence, the Premier explained that her office had enquired of the complainants as to whether such meetings had been arranged, to which they had been advised that nothing further had been heard by these complainants from SAPS subsequent to their meeting in early July 2012.

98. I understand that on **15 August 2012**, the Premier and her Cabinet "resolved to institute a Commission of Inquiry into alleged police inefficiency and a breakdown in police-community relations".

99. On **22 August 2012**, the Premier issued a media statement, announcing her appointment of a Commission of Inquiry into policing in Khayelitsha. A copy of the Premier's media statement is attached as annexure "**AL55**". According to the statement:

99.1. The scope of the enquiry was "allegations of police inefficiency in Khayelitsha and ... a breakdown in relations between the community and the police in the area". The Commission would consist of Justice O'Regan and Adv Pikoli as Commissioners; Adv Bawa and Adv

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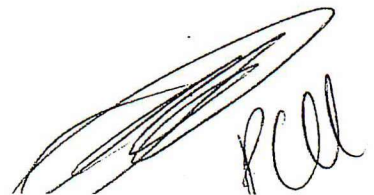
Sidaki were appointed to assist the Commission in gathering evidence and, if necessary, the leading of any evidence before the Commission.

99.2. The decision to appoint a Commission of Inquiry was based on the following considerations:

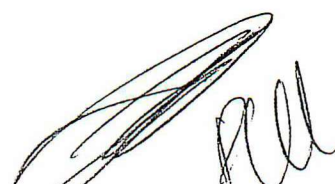
99.2.1. The initial request to establish a Commission of Inquiry into policing in Khayelitsha by the WLC, representing a group of civil society organisations.

99.2.2. The breakdown in relations was "believed to be the cause of a tragic spate of vigilante killings in parts of Khayelitsha where residents had taken the law into their own hands to exact 'mob justice', because they [had] no faith in the ability of the police to undertake thorough investigations, make arrests, or render the requisite assistance to ensure convictions in reported criminal cases".

99.2.3. The fact that, up to that point, there had been "at least 14 known acts of vigilante killings".

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- 99.2.4. News reports of vigilante killings quoted "a community member in Khayelitsha as saying 'we are tired of criminals, if killing them helps to reduce crime, let it be. Police are failing to arrest them, that is why residents are taking the law into their own hands'".
- 99.2.5. The fact that for seven months, viz. from November 2011 to June 2012, she had received no substantive response from either my office or that of the National Commissioner in response to the complaints against SAPS and consequential requests for the Premier's establishment of a Commission sent on 9 December 2011, and supplemented in June 2012.
- 99.2.6. The Premier had granted three extensions for SAPS' comment. (But the Premier's version that she agreed to the third and final extension, viz. to 31 July 2012, is contradicted by her letter to the WLC dated 16 July.)
- 99.2.7. The first substantive response from SAPS was only received on 29 June from their newly appointed National Commissioner, requesting a 3-week extension, pending her office's investigation into the allegations.

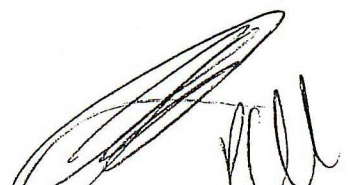
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99.2.8. "The crisis of vigilante killings had been escalating and the death toll stood at least [at] 13 known murders, a completely untenable situation".

99.2.9. Despite the extensions, the Premier had received no feedback from the National Commissioner on the content of the complaints, or any indication that her office was making "real or substantial progress with an investigation into the rise of vigilantism and other alleged problems pertaining to SAPS in Khayelitsha".

99.2.10. The Premier's statement records that "in light of this lack of progress and SAPS missing the 21 July deadline", she called a meeting with the complainants on 26 August, during which the latter "reaffirmed" that they wanted a Commission of Inquiry to be appointed as per the initial request.

99.2.11. Accordingly, the Premier "decided to accede to the complainants' request".

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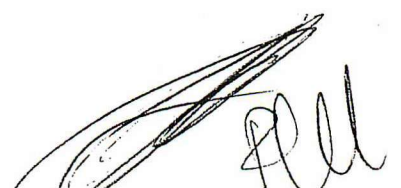
100. The media statement confirmed further that the Commission was to submit a written report to the Premier, containing "its findings and recommendations as to how the police inefficiency and the breakdown in relations as may be felt to exist, may be alleviated or remedied". Such recommendations would be considered when the Western Cape Government makes recommendations to the Minister under section 206(5)(b) of the Constitution.

101. In her media statement, the Premier was at pains to emphasise the link between her decision to appoint the Commission of Inquiry and the "scourge of vigilantism". The decision to appoint a Commission was made with a view to make recommendations, which, if implemented would:

"[G]ive rise to more effective and efficient policing being applied by SAPS in Khayelitsha so as to eliminate the scourge of vigilantism and restore the affected residents' respect for the application of the rule of law".

102. The media statement concluded with a commitment by the Western Cape Government to "continue to do all [they] can, within [their] limited constitutional powers, to help SAPS achieve [SAPS'] constitutional mandate, viz to effectively and efficiently prevent, combat and investigate crime".

103. Various newspapers published extracts from the media statement in an article "*Khayelitsha Policing to be probed: The Premier*" dated **22 August**

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2012, SAPA reported the Premier as attributing the spate of vigilante killings in part of Khayelitsha to the alleged breakdown in relations between the community and the police. Moreover, the Premier reportedly acknowledged that she had received a substantive response from SAPS when the National Commissioner was appointed in June 2012 and that the National Commissioner had requested a 3-week extension to the Premier's deadline for comment. The Premier reportedly said that the deadline was extended three times to 31 July, but that the National Commissioner's office had still not responded by then. The Premier said she "met the complainants on August 6, and they still wanted a Commission of Inquiry". A copy of the SAPA report is attached as annexure "**AL56**".

104. The SCJ issued a press statement on the back of the Premier's 2 August media statement. (A copy of the 22 August SJC press release is attached as annexure **AL57**.) While the SCJ welcomed the Commission of Inquiry, it was critical of the Commission's terms of reference, inasmuch as they "fail[ed] to include the City of Cape Town's Metro Service – an integral part of policing in Khayelitsha". (Emphasis added)

105. It is clearly apparent from the SCJ's statement that their members' concerns are not limited to alleged failures on the part of SAPS, but also "continued failures on the part of ... others responsible for safety and justice in Khayelitsha".

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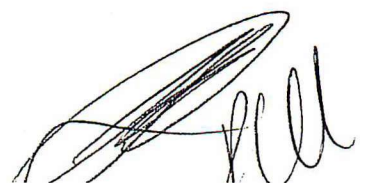
106. Finally, the SCJ's media statement put paid to the Premier's public position that the spate of vigilante killings was linked to SAPS inefficiency.

"After speaking to residents as to why such atrocities (a spate of mob justice murders that has left at least 14 people dead since the beginning of 2012) were taking place, G Peter of the SCJ stated that: 'When we asked residents why people were taking the law into their own hands and killing suspected criminals, people replied that there was no faith in police or the courts to deal with those who broke the law. This is the clearest indication of a broken relationship between communities and police.'" (Emphasis added)

107. A copy of the proclamation "Commission of Inquiry into allegations of police inefficiency in Khayelitsha and of a breakdown in relations between the community and the police in Khayelitsha" (No 9/2012, Provincial Gazette 7026 of 24 August 2012) is attached hereto as annexure "**AL58**".

IV. MINISTER'S ATTEMPTS TO AVOID INTER-GOVERNMENTAL DISPUTE

108. On **27 August 2012**, the Minister addressed correspondence to the Premier, expressing concern about media reports that she had appointed a Commission of Inquiry into allegations of police inefficiency in Khayelitsha and of a breakdown in relations between the community and police in Khayelitsha. (A copy of the 27 August letter is attached as annexure "**AL59**") The Minister recorded as follows:



108.1. the Premier had appointed the Commission without "either discussing the matter with [him] or notifying [him of her] intended actions";

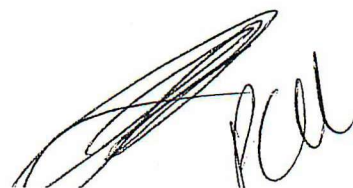
108.2. the Minister was aware that she had discussed the establishment of a Commission of Inquiry with the National Commissioner, who has taken steps to address her concerns;

108.3. while the Minister respected the Premier's right to establish Commissions of inquiry, he did not believe there to be any rational basis for the establishment of this Commission; that her decision was premature and may impact on other initiatives currently underway.

109. The Minister requested that the Premier postpone the commencement of the work of the Commission of Inquiry in order for them to discuss the matter and to find possible alternative resolutions. The Minister invited the Premier to meet with him to discuss, *inter alia*:

109.1. The Premier's correspondence with the National Commissioner.

109.2. The processes underway in the office of the newly appointed National Commissioner.

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109.3. The structures that exist which aim to deal with matters of this nature.

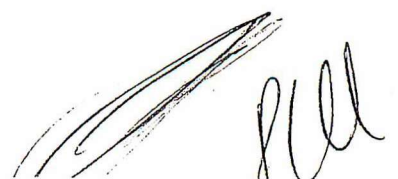
109.4. Why the Premier believed that a Commission of Inquiry was the most appropriate mechanism to establish the veracity of the allegations of police inefficiency and the breakdown in relations between the community and the police in Khayelitsha.

110. Significantly, the Minister informed the Premier that, subsequently to learning of her appointment of a Commission, he had received a report and pertinent documents relating to the matter from the National Commissioner.

111. In her response of **28 August 2012** (attached as "**AL60**"), the Premier refused the Minister's request for a postponement of the work of the Commission of Inquiry. The Premier motivated her refusal as follows:

111.1. The Premier was of the view that her obligations to SAPS and his office with regard to co-operative governance had been fully complied with.

111.2. The decision to proceed with the establishment of a Commission of Inquiry was the product of "a long and exhaustive process of inter-

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governmental correspondence from my office with *inter alia* [the Minister's office]".

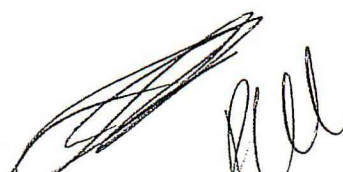
111.3. The Minister's office was "included in each step of that process, in terms of which [The Premier] repeatedly asked SAPS (at every level) to communicate with [her] on this matter".

111.4. She had agreed to "each request for a postponement of the decision [to appoint a Commission] so as to allow the SAPS to engage with [The Premier's office] on this matter prior to a decision being taken".

111.5. During the 8-month engagement period with SAPS, there had been "an increase in the tragic phenomenon of vigilante murders in [Khayelitsha] allegedly as a result of the affected residents' lack of trust in inter alia the ability of the SAPS to do their jobs effectively".
(Emphasis added)

112. In support of her contention that she had fully complied with her obligations under co-operative governance vis-à-vis the Minister, The Premier cited the following:

112.1. She had advised both the Minister and I of the initial complaints in December 2011. The Premier noted that one Simon Chabangu of

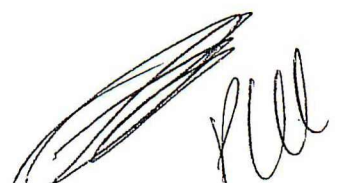
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the Minister's office acknowledged receipt of her 9 December letter on 12 December 2011, informing the Premier that "the matter is receiving our utmost attention and further correspondence will be directed to [her] in due course". (But, the Minister was merely copied on the Premier's correspondence of 9 December 2011; the Premier's request for comment on the substance of the allegations and the complainants' request for the appointment of a Commission of Inquiry was directed at myself – not the Minister.)

112.2. The Premier received nothing from either the Minister's office, or my office, prior to the deadline of 30 January 2012.

112.3. On 14 February the Premier again "wrote both to [the Provincial Commissioner and the Minister], again asking for their comments before 28 February 2012". (But, yet again, the letter of 14 February was addressed to me; the Minister was simply copied. No specific request was made of the Minister himself.)

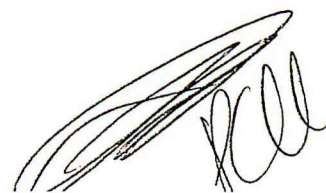
112.4. By 27 February 2012, the Premier had been informed by me that I had referred the matter to SAPS head office for instructions. Having met with the complainants on 8 March 2012, the complainants submitted a second set of supplementary complaints to the Premier, which prompted her "again [to write] to [the Minister's]

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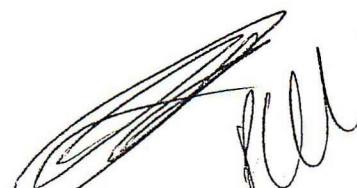
office and that of [the Provincial Commissioner] (and copied to the then Acting National Commissioner) on 22 May, noting their lack of substantive response. (As is apparent from copy of the Premier's 22 May letter, it was an overstatement to say that the Premier wrote to the Minister's office. The 22 May letter was addressed to me. The Minister was merely copied and no specific requests were made of him.)

112.5. The Premier extended the 1 June deadline, having received yet further complaints, which was forwarded to "both [the Minister's] and that of [the Provincial Commissioner] on **13 June**". (Once more, The Premier overstates her correspondence with the Minister in as much as the Minister was simply copied in on the correspondence. No specific request was made of him.)

112.6. Having received "a detailed response" from the City of Cape Town regarding complaints against the Metro Police on 6 June 2012, the Premier decided that the complaint would be best dealt with by way of a referral to MEC Plato to deal with further as he sees fit, in accordance with his powers under the South African Police Services Act. I am not aware that the City's response has been made public. I certainly have not been provided with a copy.

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- 112.7. Having received a request from the newly appointed National Commissioner for purposes of conducting an investigation, the Premier granted this extension.
- 112.8. The Premier alleges, notwithstanding her contradictory letter to the WLC, that she subsequently agreed to a third postponement of the comment deadline until 31 July 2012, in light of interaction between the WLC and the National Commissioner's office.
- 112.9. At a meeting of 6 August, representatives of the WLC and their clients confirmed to the Premier their request for the establishment of a Commission of Inquiry. According to the Premier, the representatives confirmed that they had heard nothing further from SAPS on the matter.
- 112.10. A letter from the National Commissioner dated **7 August 2012** constituted, according to the Premier, merely a courtesy update on the general activities of the country as a whole as opposed to a substantive comment regarding the Khayelitsha issue.
- 112.11. The Premier maintained that, in contrast to the Metro Police and City of Cape Town's response, "no response has been received to date (either on the substance of any of the complaints or the merits

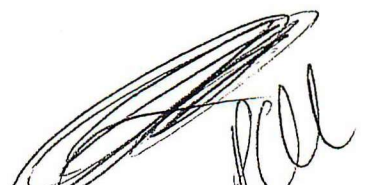
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of a request for a Commission) from any SAPS office at provincial or national level”.

112.12. At least 13 people have died in Khayelitsha over the engagement period, “allegedly as a result of acts of vigilantism meted out by mobster persons perceived as having engaged in criminal activity in the area. In each case [the Premier’s office] know[s] that no charge was laid with SAPS with respect to the alleged criminal activity, prior to the mob action in question”.

112.13. The Premier was under increasing pressure, receiving further complaints about the alleged inefficiency and breakdown in relations between the community and SAPS as being one of the main reasons for the vigilante action that was taking place in Khayelitsha.

112.14. The Premier was of the view that the complaints in question merit investigations “especially given that [the Premier’s office] know[s] of at least 13 people who have lost their lives as a result of mob justice, actions alleged to be a result of the inefficiencies and loss of trust referred to above”.

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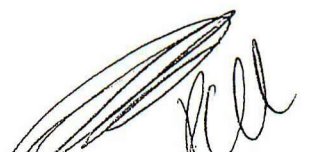
113. In his response of **30 August 2012**, the Minister requested a meeting be convened to discuss the matter. A copy of the Minister's letter is attached as annexure "**AL61**".

114. The Premier responded in a letter dated **3 September 2012** (attached as annexure "**AL62**"). She agreed to the Minister's proposal they meet, subject to the proviso that the WLC and the various clients it represents could be present. The Premier motivated her proviso on the basis that "it was these complaints which first initiated [her] communication to [the Minister] on this matter and eventually contributed to the establishment of this Commission of Inquiry". (Emphasis added) As to the Minister's so-called "implied threat of legal action" The Premier noted as follows:

114.1. The Premier was at pains to emphasise that the establishment of the Commission "took place after extensive communication with both SAPS and the Minister's office, which to date remains unanswered".

114.2. SAPS could suffer not prejudice as a result of the Commission continuing with its work.

114.3. The Premier attributed the 9-month delay in the establishment of the Commission to the exhaustive nature of engagement with both

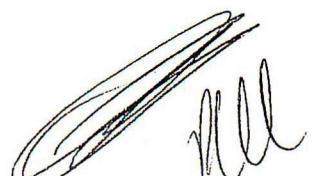
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the Minister's office, my office and that of the National Commissioners and her "repeated requests to SAPS asking for comment".

114.4. Once again, the Premier was quick to point out that during this 9-month period, approximately 13 people died in Khayelitsha from acts of vigilantism "allegedly driven by a loss of trust by the community in SAPS".

115. On **4 September 2012** the Minister confirmed that he would be available the following week for a meeting. The Minister indicated further that he had requested his office to liaise with the National Commissioner's office regarding the proposed meeting. (A copy of the 4 September letter is attached hereto as annexure "**AL63**".)

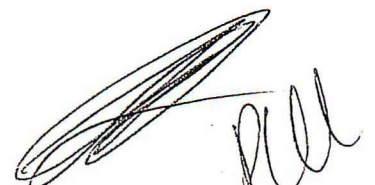
116. On **25 September 2012**, the Minister wrote to the Premier, expressing certain concerns ahead of their meeting scheduled for 9 October. (A copy of the Minister's letter of 25 September is attached hereto as annexure "**AL64**".) He was concerned that as to the legality of the Commission, inasmuch as the complaints forming the subject matter of the inquiry involved "the investigations of crimes or suspected crimes". For that reason, it was also problematic that O'Regan J, a retired judge, had been appointed as Commissioner.

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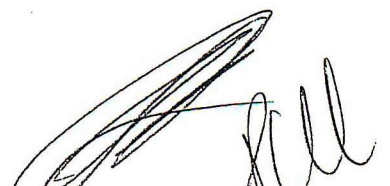
117. The Minister recorded his objective for their 9 October meeting as follows:

First, to discuss the matter so as to avoid an inter-governmental dispute and second, to have the Commission of Inquiry cease formal hearings pending the resolution of any disputes or differences they may have. The Minister went on to cite his obligation in terms of section 42 of the Inter-Governmental Relations Framework Act, requiring him to make every good faith attempt to settle an inter-governmental dispute before formally declaring such dispute. The Minister also requested the Premier to suspend the work of the Commission, pending their 9 October meeting.

118. In her response of **8 October 2012** (attached as "**AL65**") the Premier denied that the Commission had been tasked with the investigation of crime and its work would compromise the independence of the police. The Premier was of the view that the Minister had failed to provide her with any "valid reasons" as to why the Commission should not proceed with its work. She reiterated that, despite her attempts over an 8- month period "of communication to both [the Minister's] office and that of [the Provincial Commissioner] to engage with SAPS on the complaints [she] was then receiving, no similar willingness to co-operate was displayed by either [the Minister's] office or SAPS ... in this regard".

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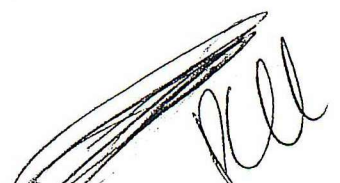
119. On **9 October 2012**, I attended the meeting hosted by the Minister with the Premier, the National Commissioner, the Secretary of Police and the HOD of the Western Cape Provincial Department of Community Safety. Present also was Mr Daniels, the Chief State Law Adviser and Ms Stewart, a legal adviser in the Premier's office.
120. The Minister expressed concern that alternative mechanisms within the inter-governmental relations framework were not utilised to deal with the concerns now forming the subject matter of the Commission of Inquiry. The Minister pointed out that the appointment of the National Commissioner in June had been a positive development, adding that she had actively sought closer co-operation with the Province.
121. The Premier explained that she had given the National Commissioner an opportunity to respond to the issues raised. The Premier contrasted the response of SAPS to that of the City of Cape Town. She explained that she had spoken with the National Commissioner; had given her a deadline, and even extended the comment deadline. In comparison, having written to the City of Cape Town, the Premier "got a response in a week".
122. But the National Commissioner denied that the Premier had afforded her a reasonable opportunity to deal with the concerns raised. The National Commissioner pointed out that, having received the Premier's letter of mid-

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June, she had been given some four days to respond. The National Commissioner immediately wrote to the Premier, asking for an extension of about 21 days to investigate the matter, undertaking to respond to the Premier in writing. Moreover, she personally met with the Premier to discuss the matter within weeks of taking office.

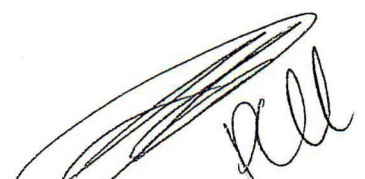
123. The National Commissioner readily conceded that her estimate of the time required had been overly optimistic. But she emphasised that during this 21-day period, she had engaged with the Province. At her behest, a senior investigative team visited Cape Town, met with the complainants and actively investigated the complaints. But before the National Commissioner had an opportunity to consider the Inspectorate's report, the Commission of Inquiry had been appointed. The National Commissioner expressed disappointment that, having shown her intention to co-operate with the Premier and requesting an opportunity to address her concerns, she had not been "given the space" to do so. The National Commissioner emphasised that, especially given the complexity of the issues, she had required more time.

124. During the meeting, the Premier repeatedly raised recent incidents of "necklacing" in defending her decision to establish the Commission, stating *inter alia* that: "we must investigate necklacing". I was at pains to point out that SAPS was investigating this latest incident of "necklacing" and, in fact,

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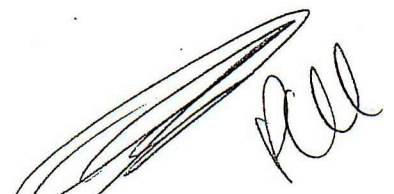
did not consider it a real “necklacing” case. In any event, I stated that the “necklacing” had nothing to do with a so-called breakdown in relations between the police and the community, and that the police had already succeeded in arresting suspects. The Minister also expressed concern that the SAPS was being blamed for “necklacing”, underscoring that such an approach was at odds with the Premier’s own admission that the whole criminal justice system must be improved. The Minister emphasised that the problem lay not with the SAPS *per se*, but that socio-economic issues were at play.

125. The Premier also cited her visits to Khayelitsha, during which members of the community complained that the SAPS “will not catch the crooks”. But the National Commissioner rejected the notion that the apprehension of criminals by SAPS takes place in a vacuum. Rather, issues such as social development and education - matters in the hands of Province – impacts upon SAPS’ ability to “catch the criminals”. The National Commissioner added that the “pipeline of catching is in the Premier’s hands”.
126. The Premier agreed that crime and unemployment must be dealt with, adding that unemployment was the number one issue. The Premier added that: “when people read about necklacing, investments dry up”. Notably, the Premier acknowledged that, while it is the SAPS’ duty to apprehend criminals and investigate crime, it is the responsibility of the NDPP to

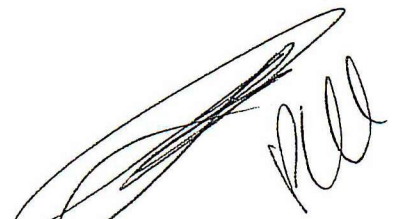
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prosecute accused. The Premier readily conceded that the conviction rate was "pitiful", adding that unless the conviction rate is improved "we shall have a problem".

127. During the meeting, Ms Stewart, the Premier's legal advisor, enquired what process would be put in place if the Province agreed to a postponement. This question was apparently prompted by the National Commissioner's complaint that she had not received adequate time to investigate and respond. The National Commissioner responded to Ms Stewart, indicating that if they sat down to talk, they could show the Province "what is happening".
128. The issue of the Metro Police arose when the National Commissioner questioned whether the City of Cape Town was enforcing its by-laws, most notably in respect of Council houses being used as drug dens. The Premier responded that the City enforced the by-laws through police. When the National Commissioner questioned why the Metro Police had not been included in the terms of reference of the Commission, the Premier explained that there was only "passing reference in the complaint to the Metro". Moreover, the Premier called for evidence and the Metro responded within a week. According to the Premier, the complaint was about the anti-land invasion unit. The Premier explained that the SAPS must support the anti-land invasion unit, not the Metro Police.

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129. But the Minister was critical of the exclusion of the Metro Police, pointing out that SAPS and the Metro Police regularly operate in conjunction, citing the recent example of striking drivers who were burning property.
130. As the meeting was concluded, the Premier stated that she would seek legal advice on the Minister's request for suspension of the Commission of Inquiry's work. When Mr Daniels enquired whether she would like details of what processes would be put in place should she agree to a suspension of the Commission, the Premier answered in the affirmative.
131. In a letter dated **11 October 2012**, the Premier thanked the Minister for hosting the aforesaid meeting, and confirmed that it had been agreed that the Minister's office would provide her with "the plans and/or strategy" SAPS had now developed and intends to implement in order to deal with the complaints now before the Commission. The Premier concluded by pointing out that there were "several other pressing matters" involving SAPS in the Western Cape Province, which the Premier would like to discuss with the Minister in the presence of the Provincial and National Commissioners, MEC Plato and Alderman J P Smith, and requested a further opportunity for such a meeting. A copy of the Premier's letter dated 11 October is attached hereto as annexure "**AL66**".

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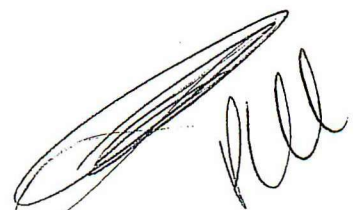
132. In his written response of **11 October 2012** (attached as "**AL67**") the Minister detailed firstly, the work of existing oversight and monitoring structures in respect of policing issues effecting Khayelitsha and, secondly, the steps already taken by the National Commissioner in respect of the complaints, as well as the steps yet to be implemented in terms of the National Commissioner's proposed action plan in that regard.

133. As to examples of existing oversight and monitoring structures, the Minister recorded as follows:

133.1. The Khayelitsha district does receive "regular attention".

133.2. The Provincial Joint Structure, an extension of the National JCPS cluster, meets monthly (this structure consists of the Department of Correctional Services, SAPS, Home Affairs, SA National Defence Force, Justice, Transport and Social Development; the Metro Police is also represented on this Structure)

133.3. Issues affecting Khayelitsha are discussed within the Provincial Joint Structure "from time to time". For example, the protest action in Khayelitsha in 2011 received the attention of this Structure.

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133.4. SAPS convenes *izimbizos* with the Khayelitsha community from time to time where issues of concern to the residents are aired.

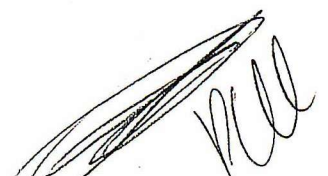
133.5. Over and above the two aforesaid structures, other formal settings also exist within which concerns regarding Khayelitsha are considered.

134. As to the steps the National Commissioner had already taken in response to the Premier's requests, the Minister confirmed the following:

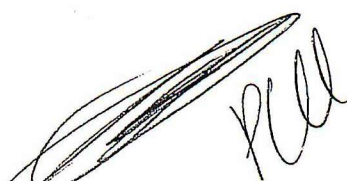
134.1. The National Commissioner issued standing instructions to the SAPS to investigate and consider the issues, as she was of the view that a full police investigation was required. Depending on the outcome, if necessary, a more formal enquiry would be conducted in which the police would be assisted by persons outside of SAPS.

134.2. The National Commissioner instructed the National Inspectorate of SAPS to investigate fully all the complaints lodged by the Premier.

134.3. As to the *modus operandi* of the National Inspectorate in this regard, the Minister confirmed as follows:

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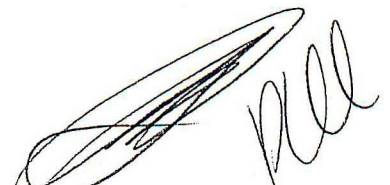
- 134.3.1. The National Inspectorate would be assisted by the Provincial Inspectorate and investigate the complaints of inefficiency and the breakdown of relations between SAPS and the Khayelitsha community as set out in the documentation provided by the Premier.
- 134.3.2. The National Inspectorate would deliver a report to the National Commissioner for her consideration.
- 134.3.3. The terms of reference for the inspection by the National Inspectorate included meeting with the relevant civil society organisations, including but not limited to the organisations represented by WLC; obtaining details of the complaints from these organisations, and investigate those complaints fully (in particular in respect of the relations between SAPS and the Khayelitsha community; whether victims of crime have been viewed with the necessary dignity; whether SAPS members had refused to open cases when requested to do so by community members and the extent to which SAPS had failed to apprehend perpetrators of crime.)

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134.3.4. The National Inspectorate would conduct the investigation by convening a Panel consisting of duly qualified police personnel, which Panel would produce a report within one month (or a period to be specified by the National Commissioner). The Panel would facilitate meetings with members of the Khayelitsha community and involve the complainants and the civil society organisations as far as possible during the course of this investigation. Having received the Panel's report, the National Inspectorate would make recommendations to the National Commissioner. In cases where police officers were found to violate police regulations and standing orders, I would see to the prosecution of these police officers. A senior provincial deputy would be responsible for ensuring that the Panel had the requisite support and co-operation.

134.4. The timelines for the Panel had already been developed and the Minister indicated he was happy to share the timeline with the Premier.

135. The Minister pointed out that this proposed action plan would have been instituted in August 2012, but was delayed by the Premier's appointment of

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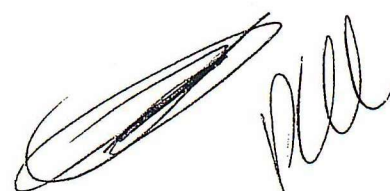
the Commission. Finally, the Minister indicated his willingness to convene a follow-up meeting as requested in the Premier's 11 October letter (these meetings would be between the Minister, the MEC and The Premier). I attach hereto as annexure "**AL67_A**" a copy of the "draft workplan", setting out the terms of reference, composition and work schedule of such an independent policing panel, which the National Commissioner's office was busy formulating in July/August.

136. In her written response of **19 October 2012** (annexure "**AL68**"), the Premier:

136.1. Indicated that she had forwarded a copy of the Minister's letter of 12 October to the WLC so as to provide comment on the Minister's request for a postponement of a Commission of Inquiry, as well as the proposed plan of action.

136.2. The Minister's proposed plan raised a number of preliminary questions and/or concerns in respect of which the Premier sought clarity. These included:

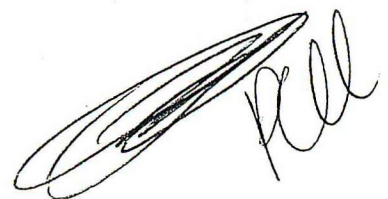
136.2.1. To whom the National Commissioner issued standing instructions, as well as the current status of that investigation. (Here the Premier referred to a meeting

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between the complainants and SAPS in July, following which there has been no further action on the part of SAPS.)

136.2.2. The Premier queried the proposed composition of the investigative panel, inasmuch as its members would be drawn exclusively from SAPS personnel. According to the Premier, the "complex legal and social factors at play" and the "alleged fear that some quarters of the affected public have expressed in having to testify to SAPS". The Premier proposed that the Panel should consist rather of a diverse, more representative group, or at least one of them should have a legal background.

136.3. The Premier was concerned about duplication between the work of the National Inspectorate and the proposed Panel, inasmuch as they would have separate terms of reference and be required to deliver reports. While the Panel was to deliver its report and recommendation within one month, the Premier pointed out that no timeframe had been set for the National Inspectorate on the matter to the National Commissioner. The Premier questioned why the Panel could not provide its report and recommendations directly to the National Commissioner.

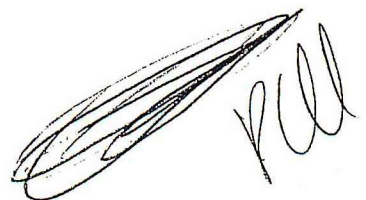
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136.4. The Premier was of the view that the one-month period for the Panel's investigation was unrealistic, thereby setting up the Panel to fail. The Premier suggested a period of between four to six months.

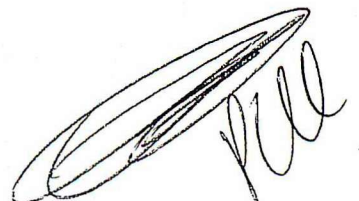
136.5. The Premier criticized the fact that the report would only be made available to the National Inspectorate and/or the National Commissioner. The Premier was of the view that the Panel would have no credibility unless its full report and procedures be made public.

136.6. The Premier was also critical of the fact that evidence already gathered by the Commission from affected residents would not be presented to the Panel, thereby rendering the work of the Commission to date meaningless.

137. On **23 October 2012** (annexure "**AL69**"), the Premier reiterated her October request for further information and clarification by the Minister. The Premier also attached a written response from the WLC (dated **22 October**) (annexure "**AL70**") in response to the Minister's letter of **11 October**. The WLC's position can be summarised thus:

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- 137.1. The Ministry and SAPS had “failed to respond to [their clients’] numerous requests to engage on the questions of crime prevention, policing and the broader criminal justice system”. (Emphasis added)
- 137.2. Their clients had yet to receive a response from the National Commissioner after they “granted her an extension to conduct an investigation due to her demonstration of good faith when she sent members of the SAPS National Inspectorate in July 2012”.
- 137.3. A breach of trust allegedly existed between “members of the community and the broader criminal justice system, in particular the police (including the City of Cape Town)”. This breach of trust was attributed mainly to “ineffective and inefficient policing, as well as (at times) unlawful conduct by police”.
- 137.4. Their clients queried the legitimacy of a proposed action plan in terms of which SAPS would investigate their own conduct, consider and remedy the issues raised in the complaints.
- 137.5. In order to make “an informed decision whether or not to accede to the Minister’s request”, the WLC requested a wide range of information, including:

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137.5.1. "A commitment to clear and firm timelines".

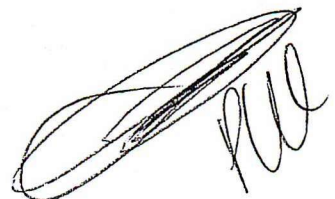
137.5.2. Whether the Minister and the National Commissioner would allow their clients to make recommendations as to the terms of reference, "including on the systemic nature of the criminal justice system as it relates to SAPS and other agencies".

137.5.3. Whether the Minister and the National Commissioner would consider the participation of independent civil society nominees to assist the National Inspectorate in conducting an enquiry and to make recommendations.

137.5.4. Whether public hearings would be held as part of the SAPS Panel's investigation.

137.5.5. Whether the Minister and the National Commissioner would consult with the Premier, the Prosecuting Authority and the Ministry of Justice and Constitutional Development in finalising terms of reference.

137.5.6. Whether the City's Safety and Security Directorate would fall within the scope of the SAPS Panel investigation, in

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light of the National Police Commissioner's oversight powers under the SAPS Act.

137.5.7. Whether the SAPS Panel investigation would extend to the role of the City of Cape Town and other levels of government in programmes and infrastructure development, which would increase safety and assist in police work.

137.5.8. Whether the full report with its recommendations would be made public?

138. The WLC 22 August letter clearly indicates that the complainants were concerned not only with alleged SAPS inefficiency and breakdown in relations between SAPS and the Khayelitsha community, but the criminal justice system as a whole, including, notably, the Metro Police.

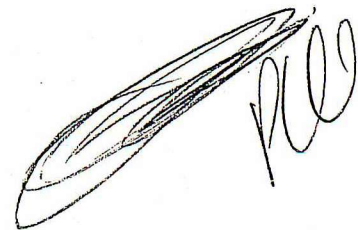
139. In his written response of **24 October 2012** (annexure "**AL71**"), the Minister reiterated his view that the Premier's appointment of the Commission was unconstitutional, irrational, and in breach of the Inter-Governmental Relations Framework Act. The Minister also expressed his disappointment that, instead of dealing with the Minister's request to suspend the Commission, the Premier had instead posed a number of questions. The

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Minister pointed out that the appropriate person to consider these questions was, in fact, the National Commissioner. However, the Minister expressed his certainty that the National Commissioner would consider the issues raised by the Premier, and once discussed with members of her management, issue additional instructions to accommodate the Premier's concerns.

140. The Minister underscored that the fact that the Commission was continuing with its work unabated, undermined his ability to engage with the Premier as to the proposed SAPS investigation and the Premier's attendant concerns, as well as issuing directions to the National Commissioner.

141. Moreover, the Minister recorded that the Commission had addressed correspondence to the State Attorney in its capacity as representative of SAPS, the National Commissioner and the Minister himself. The Commission had demanded information and documents from SAPS and had threatened to issue subpoenas to secure the requested information, if necessary. The Minister confirmed further, that he had been advised that the Commission had also communicated with other organs of state. This suggested to the Minister that the Commission was extending its reach into other areas of the criminal justice system. The Minister was at pains to point out that, if this is correct, it appears that the Premier may have exceeded her powers, inasmuch as the JCPS cluster was the forum in

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which such matters pertaining to the entire criminal justice system must be raised.

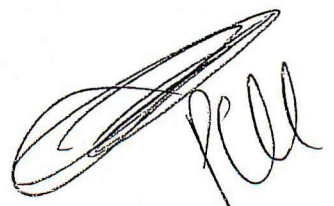
142. The Minister also explained that the appointment of the Commission of Inquiry caused the National Commissioner to halt the investigation, which would have been completed otherwise.

143. In the circumstances, the Minister requested the Premier to either postpone the work of the Commission or withdraw its appointment by no later than Friday, 26 October 2012, failing which the Minister would have no alternative but to institute proceedings.

144. In her written response of **26 October 2012** (annexure "**AL72**"), the Premier declined the Minister's request, on the basis that:

144.1. The only logical conclusion for the National Commissioner's suspension of the SAPS investigation undertaken in July 2012, was that the establishment of the Commission of Inquiry rendered further investigation "unnecessary".

144.2. It was irrational to propose that the Commission work should be suspended so as to allow SAPS to commence an investigation "again from scratch".

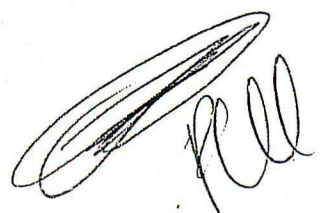
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144.3. While the Premier did express a willingness to consider the Minister's request at their meeting on 9 October, she did so on the basis that the Minister would provide her with SAPS' proposed plan of action. Instead of providing "full details", the Minister only gave a broad outline of a proposed process.

144.4. Given the Minister's unwillingness to provide further details, the Premier could not consider the suspension and/or termination of the Commission of Inquiry.

144.5. By threatening legal action, the Minister was employing "bullying tactics", paying scant regard to the Province's constitutional role of oversight of SAPS. The Premier reiterated that, at every step, she had sought to exercise this oversight role in conformance with her inter-governmental co-operation obligations.

144.6. While the Premier took note of the Minister's advice that the Commission had exceeded their mandate in approaching other organs of state, the Premier stated that she was "sure this will be pointed out to them". The Premier took issue with the Minister's suggestion that because of alleged conduct by the Commission itself, the Premier acted outside of her constitutional powers.

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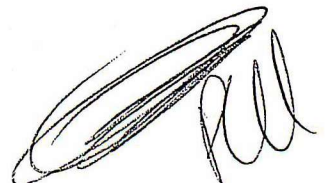
144.7. Given the lack of independence of the proposed SAPS investigative panel, the Premier was of the view that there was no compelling reason for her to suspend and/or terminate the Commission's work.

V. OTHER ATTEMPTS BY SAPS TO INVESTIGATE AND ADDRESS THE COMPLAINT

145. It is suggested by the Premier that SAPS did nothing for some eight months regarding the November 2011 complaint. But that is simply not true.

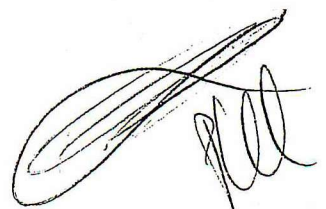
146. I have already referred to the National Commissioner's appointment of a Task Team to investigate the complaint. As I have explained, it was improper for me to report directly to the Premier upon receipt of her complaint in December. For that reason, I referred the matter to the National Commissioner's office. But that is not where my office left the matter.

147. Upon receipt of the November complaint, I forwarded a copy of the complaint to the Cluster Commander of the Khayelitsha Cluster for comment. In his letter of **6 February 2012**, Col Wiese, the Detective Co-ordinator for the Khayelitsha Cluster, recorded his office's attempts to engage the complainants in an attempt to identify the exact nature of the complaints, as well as to agree to an interim solution to address any

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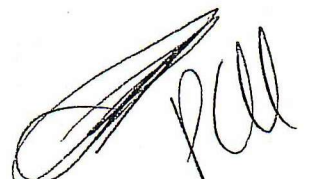
perceived problems. (A copy of Col Wiese's letter is attached as annexure "AL73". Due to a typographical error, the letter is dated 6 February 2011) Col Wiese advised as follows:

- 147.1. His office extended an invitation to the complainants on 2 February 2012 to attend a meeting at Khayelitsha Cluster on 6 February. The purpose of the meeting would be to provide more specifics, as it was difficult if not impossible for SAPS to comment on and defend itself against the vaguely framed points in the complaint.
- 147.2. The loosely worded nature of the complaint impaired, if not precluded, SAPS' ability to comment on the issues raised in the complaint. For example, Col Wiese was of the view that it would have been particularly useful if specific cases in which problems were experienced could be singled out, or certain problematic individuals or instances be identified, or a specific time period or geographical area of the greater Khayelitsha area could be identified.
- 147.3. Not one of the complainants attended the meeting. Accordingly, the points were never discussed. (The meeting was attended by the Provincial Chairperson of the CPF; the Provincial Head: Legal Services as well as representatives of the Cluster.)

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147.4. The Chairman of the Provincial CPF confirmed that they, in their official capacity as channel between the community at large and the SAPS, were “uninvolved in the compilation of the complaint and unaware of the exact and specific nature of it”.

147.5. The Khayelitsha Cluster was unable to defend itself against the vague and generally framed allegations contained in the report. For example, Col Wiese cited an example at paragraph 55 of the complaint, viz. that “crimes such as burglaries, theft and robberies are rife and are often not reported to the police because they do not receive the necessary attention”. Col Wiese noted the inconsistency in the complaint. On the one hand, the complainants attributed the failure to report certain serious crimes to the police because they did not receive the necessary attention but, on the other hand, ignoring the simple fact that, by its very nature, unreported crime would not receive police attention inasmuch as it was unreported. Moreover, this was also contradictory to the complainants’ argument that the “drastic in reported crime” is proof of the “breakdown of policing in Khayelitsha”.

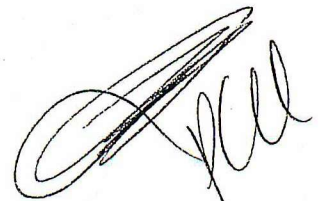
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148. Col Wiese concluded by noting that: "in the absence of specific reference to cases this office finds itself unable to meaningfully comment on the complaint".

149. As to the withdrawal of Free Gender from the complaint, I point out that they opted instead to establish a dialogue with the Cluster Commander: Detective Service, Khayelitsha. This relationship has proven mutually beneficial, as enquiries and concerns are reported to the SAPS directly, who in turn provide feedback on the issues raised by Free Gender. This, of course, underscores the SAPS' policy position that effective policing requires partnerships with specific role players in the community.

150. Major General Jephta, the Deputy Provincial Commissioner, also prepared a report regarding the matter and addressed it to the Divisional Commissioner of the Inspectorate, Lt.-General Tshabalala on 7 June 2012. (A copy of the report is attached as annexure "**AL48_A**" above) Major General Jephta reports, *inter alia*, that:

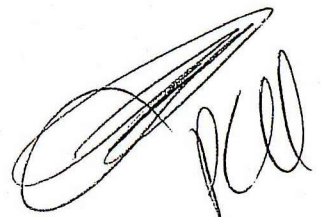
150.1. The complaint is not limited to police inefficiency in Khayelitsha, inasmuch as concerns are expressed regarding the broader administration of justice in Khayelitsha. The call for the establishment of a Commission extends to an investigation of the criminal justice system in Khayelitsha in its entirety.

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150.2. The complainants also request the Premier to consider "instituting a similar enquiry" into other areas that experience "disproportionately high levels of crime and where access to justice is inadequate such as Hanover Park, Mitchells Plain or Manenberg". (At para 4.17 of Major General Jephta's report)

150.3. The complainants make a number of general allegations of police inefficiency. These allegations lack specificity; no reference is made to names, cases, dates or location of the incidents. This made it difficult, if not impossible, to respond to the more generalised allegations.

150.4. Major General Jephta also referenced the attempts of the Khayelitsha Cluster Commander to arrange a meeting with the complainants to a meeting on 6 December 2011 referred to above. But, none of the complainant organisations showed up for the meeting. When Ms Funeka Soldaat, the representative of Free Gender, was telephoned to enquire why she was not at the meeting, she indicated that their organisation was no longer taking part in the complaint. As for the Social Justice Coalition, their representative required more information as to the purpose of the meeting, as well as an agenda.

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150.5. None of the complainant organisations had approached the cluster commander of the relevant station commanders regarding the concerns detailed in the WLC's November 2011 complaint to the Premier.

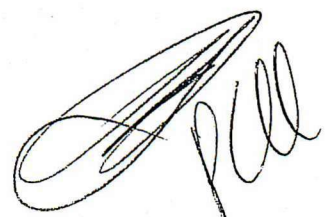
150.6. There is no breakdown in relations between the SAPS and the Khayelitsha community. There are properly functioning CPFs at all the stations in the cluster.

VI. CONDUCT OF THE COMMISSION OF INQUIRY

151. On **6 September 2012**, the Commission addressed correspondence to the National and Provincial Commissioners, attaching:

151.1. A copy of Proclamation No 9/2012, "Commission of Inquiry into allegations of Police inefficiency in Khayelitsha and of a breakdown in relations between the community and the Police in Khayelitsha" dated 24 August 2012 (the "*Proclamation*").

151.2. The Commission's notice of 6 September, setting out its proposed provisional working methods.

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