

151.3. A list of information and documentation requested from the Provincial Commissioner.

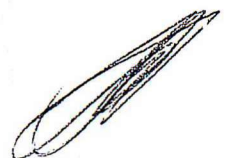
151.4. A copy of the complaint submitted by the WLC on 28 November 2011 to the Premier. (A copy of the 6 September notice is attached hereto as annexure "**AL74**".)

152. On **6 September 2012**, the Commission issued a formal notice setting out the provisional working methods of the Commission. The Commission advised as follows:

152.1. The Commission defined its terms of reference in the following terms:

"[T]o investigate complaints received by the Premier relating to complaints of inefficiency of [SAPS] stationed at three police stations in Khayelitsha as well as other units of SAPS operating in Khayelitsha, and a breakdown in relations between the Khayelitsha community and members of the SAPS". (Emphasis added)

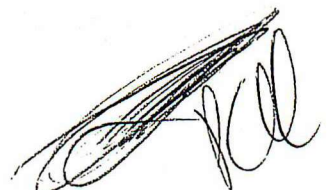
152.2. The Commission had been provided with "a copy of a complaint made to the Premier by six non-governmental organisations ... on 28 November 2011". The Commission confirmed that a copy of the complaint would be furnished to SAPS under cover of an official written notification of SAPS.



152.3. The Commission's work would be divided into two phases. During the first phase, it would investigate allegations of SAPS inefficiency in Khayelitsha and a breakdown in the relations between the Khayelitsha community and SAPS. This phase would include public hearings. Phase 2 would entail a public hearing in February 2013 to consider expert evidence on the issues raised in the Commission's term of reference.

152.4. Having been notified of the Commission's terms of reference and its provisional procedures, SAPS would be required to provide certain documentation by 5 October; whereas the complainant organisations would be asked to indicate by 21 September whether they wished to provide further evidence or written submissions to the Commission. If so, the complainant organisations would have to submit such additional evidence and/or submissions by 5 October 2012.

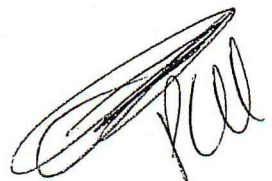
152.5. The Commission invited interested parties to notify it in writing by 21 September if they wished to place evidence or submissions before the Commission in relation to either phase of the Commission's work. By 9 October, the Commission would publish a provisional list of issues to be investigated by the Commission during its first phase.

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152.6. All evidence and submissions in respect of phase 1 were to be submitted to the Commission by no later than 5 October. Public hearings would be conducted on 12 – 16 November and 19 – 23 November.

153. As to the list of information and documentation requested from my office, I am advised and verily believe that this request went far beyond the scope of the Commission's terms of reference. In this regard, I point out that the following documentation and/or information was requested:

153.1. The names and location of units of SAPS operating in Khayelitsha "other than the three police stations mentioned in the ... terms of reference, including the names and contact details of the officers in command of such units". (These units would include the Canine Unit; the Family & Child Protection Sexual Offences Unit; the Public Order Policing Unit; the Tactical Response Units; the Emergency Response Unit and the National Intervention Unit. These units are not based in Khayelitsha; they merely operate in the Khayelitsha policing area. In respect of the National Intervention Unit, I must point out that they fall under national command control, viz. under the command of the Divisional Commissioner: Operational Response Services. I cannot simply request this information from

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the unit; I must request the information from the Divisional Commissioner. The sheer scope of this request has placed the Provincial Human Resources team under immense pressure.)

153.2. A wide range of documentation pertaining to the period 1 January 2011 – 31 August 2012 was requested not only in respect of the three relevant police stations in Khayelitsha, but also in respect of “any additional police units stationed in Khayelitsha for [the aforesaid] period”. I have already listed example of the numerous police units contemplated here. This information/documentation included:

153.2.1. The number of dockets under investigation by detective officers.

153.2.2. Information on visible policing patrols.

153.2.3. Number of vehicles allocated, as well as the operating status of those vehicles.

153.2.4. Number of cases which required ballistic analysis and time taken to receive that analysis.

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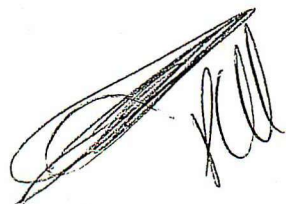
153.2.5. Number of cases requiring forensic or laboratory analysis and time taken to receive that analysis.

153.2.6. All reports completed relating to the discharge of official police firearms by SAPS members.

153.3. Any information, including charge sheets, concerning incidents of vigilante killings in Khayelitsha in the period 1 January 2011 – 31 August 2012.

154. It is readily apparent from the sheer scope of information and documentation requested – both in terms of subject matter and period of review – my office would be placed under tremendous pressure, both financially and administratively, to meet the Commission's 5 October deadline in a matter of one month.

155. In fact, I might mention that the sheer volume of information requested, the logistical challenges and the limited time period, has necessitated the employment of members of the Provincial Inspectorate to locate, collate and copy the documentation requested, as opposed to performing their usual duties.

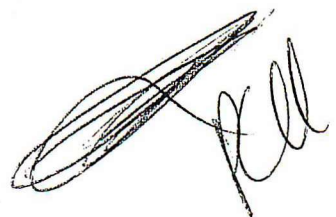
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156. The Commission similarly requested a wide-range of information from the Station Commanders of the three relevant Khayelitsha police stations, viz Lingeletu West, Khayelitsha and Harare. (In this regard I refer to the Commission's letters of 6 September addressed to the Station Commanders, annexed hereto as annexure "AL75".) Again, the Commission requested information and documentation beyond the scope of its terms of reference, inasmuch as the Station Commanders were required not only to provide certain information in respect of their own stations, but also in respect of "units of the SAPS operating in Khayelitsha other than the three police stations mentioned in the Commission's terms of reference". Such information included, *inter alia*,

156.1. The names and location of units, as well as the names and contact details of the officers in command of such units.

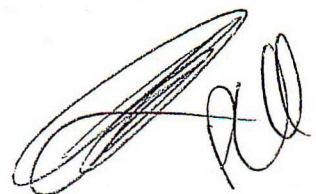
156.2. The numbers of days of staff absenteeism for the following categories: Commissioned Officers, Non-Commissioned Officers, Police Reservists and Administrative/Clerical staff.

156.3. The lists and reports of complaints referred to the ICD/IPID in respect of these units and details of them and any subsequent progress, including when and how such complaint was resolved. (I point out that a file is opened for each complaint. This information is

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not readily accessible from one source. To adhere to this request, it is necessary to locate each and every file and to make copies of the relevant documentation.)

- 156.4. Skills audit for the years 2011 and 2012.
- 156.5. Performance evaluations and staff performance management, including details of any disciplinary complaints or proceedings.
- 156.6. The number of dockets under investigation by Detective Officers in these additional police units.
- 156.7. Information on visible policing patrols.
- 156.8. Number of vehicles allocated and operating status of those vehicles.
- 156.9. Number of cases which required ballistic analysis and time taken to receive that analysis of these units. (This information is not kept at the police stations, but at the forensic laboratory in Platteklouf. Moreover, the laboratory falls under the command control of the Divisional Commissioner: Forensic Services (at national level). In order to comply with this request, officers have to travel to the

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laboratory to collect this information. Again, this request completely disregards the chain of command of the SAPS, from the National Commissioner down to the local level.)

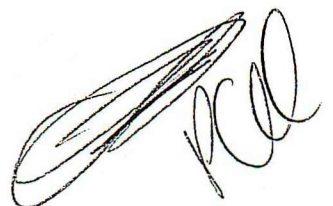
156.10. Number of cases requiring forensic or laboratory analysis and time taken to receive that analysis. (This information is also kept at the forensic laboratory in Plattekloof.)

156.11. All reports relating to the discharge of official police firearms.

157. Similarly, these Station Commanders were also required to give any information, including charge sheets, concerning incidents of vigilante killings in Khayelitsha during 1 January 2011 – 31 August 2012, notwithstanding that incidents of vigilante killings did not form the subject matter of the terms of reference or the November 2011 complaint.

158. The Commission's wide-ranging request for information and/or documentation will place an enormous burden on the relevant station commanders.

159. In a letter dated **7 September 2011**, Major General Jephtha, the Acting Provincial Commissioner, confirmed receipt of the aforesaid documentation.

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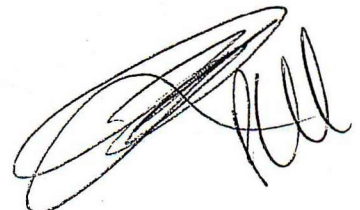
A copy of Major General Jephtha's letter is attached hereto as annexure "AL76".

160. On **16 October 2012**, the Commission issued its third notice, "Notice on Working Practice of Commission Including Evidence". (A copy of Notice 3 is attached hereto as annexure "AL77".) The notice set out the Commission's procedures in respect of the public hearings scheduled for November, including the leading of oral evidence, cross-examination of witnesses, applications of confidentiality of a witness or proceedings in camera.

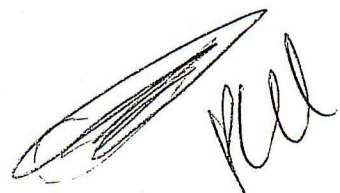
161. On **19 October 2012**, the Commission issued its fourth notice, "Provisional List of Issues for Phase 1". (A copy of Notice 4 is attached hereto as annexure "AL78") The notice contained the provisional list of issues to be considered by the Commission in Phase 1 and included, *inter alia*:

161.1. Crime statistics in Khayelitsha since its establishment in 1983 to 2012.

161.2. "Policing in Khayelitsha and in South Africa, General Overview and Context". (Emphasis added)

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- 161.3. The structure and functioning of SAPS in Khayelitsha for the period 1 January 2010 – 31 August 2012. (I am advised and verily believe that this is yet another example of the manner in which the Commission seeks to expand the ambit of its terms of reference.)
- 161.4. The command structures, operations and functioning of other police units operating in Khayelitsha.
- 161.5. Evidence related to crime based on or related to gender, sexual identity and ethnicity or nationality in Khayelitsha.
- 161.6. Complaints of inefficiency/other misconduct of officers, not only of the three Khayelitsha police stations, but also “other units of the SAPS operating in Khayelitsha made to IPID/ICD for the period 1 January 2010 – 31 August 2012”.
- 161.7. Other evidence of inefficiency received by the Commission.
- 161.8. Information concerning vigilante attacks on suspected criminals in Khayelitsha for the period 2006 – 2012.
162. In a letter dated **22 October 2012**, addressed to the State Attorney, Mr Biko, the Secretary to the Commission:

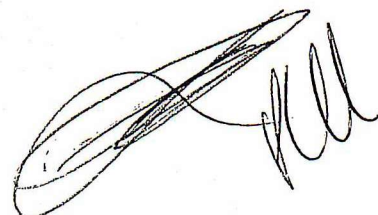
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162.1. Recorded that the Commission had not received any feedback in response to its request for information. In addition, the Commission requested further information to be delivered by 8 November. Notably, the Secretary indicated that unless the Commission receives the information initially requested by Wednesday, 24 October, it would be compelled to issue subpoenas to ensure that such information is placed before the Commission. With regard to the additional information requested in this letter, the Secretary indicated that unless an undertaking is forthcoming by 16h00 on 20 October that such information will be delivered by 8 November, this information would also be included in the subpoena. As we shall see, subpoenas were subsequently issued on Tuesday, 30 October, in respect of myself and the three station commanders.

163. The additional information requested included a wide-range of information and/or documentation. Moreover, information and/or documentation wholly unrelated to the Commission's terms of reference were included. These were:

163.1. A copy of the report and findings arising from the investigation into the alleged dumping of rape kits by members of SAPS, as reported in *Die Son* on 27 and 28 January 2011.

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- 163.2. The respective resource allocation for the following police stations in respect of the 2004 – 2012 financial years: Durbanville, Sea Point, Fish Hoek, Hanover Park, Nyanga, Grassy Park, Kensington, Mitchell's Plain. (This information was also requested in respect of the three Khayelitsha stations that form part of the subject matter of the Commission).
164. I am advised and verily believe that another instance of the Commission exceeding its powers is apparent from its request of the Department of Community Safety to conduct oversight visits at the three police stations referred to in the Commission's terms of reference.
165. On **12 October 2012**, I received a request from the HOD of the Department of Community Safety, informing of their intention to conduct police oversight audits of several police stations in Cape Town. (A copy of the 12 October letter is attached as "**AL79**").
166. In my written response of **17 October** (annexure "**AL80**"), I requested that oversight visits to stations be conducted after the festive season ends, viz. after 15 January 2013. I explained that, given the operational strain on station management during the SAPS' festive season operations commencing on 15 October 2012, the SAPS provincial management had decided to cease all training, inspections and meetings in order for stations

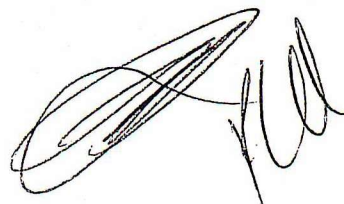
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to cope with operational demands. I point out, that the incidents of crimes increase dramatically over the festive season. For this reason, SAPS has put in place a festive season operations plan in an attempt to reduce crime and increase visible policing.

167. On **19 October 2012**, the Chief Director: Civilian Oversight, Mr G Morris, responded, requesting me to reconsider his request in general and in particular to the three Khayelitsha police stations that form the subject matter of the Commission's terms of reference. The Chief Director explained that:

"The Department was requested by the Commission of Inquiry into allegations of police inefficiency in Khayelitsha and a breakdown in relations between the community and the police in Khayelitsha to conduct oversight visits at the Lingeletu-West, Harare and Khayelitsha police stations. It is our intention to visit these stations from 23 to 25 October 2012." (A copy of this letter is attached as annexure "**AL81**").

168. In my written response of **23 October 2012**, I reluctantly acceded to oversight visits to police stations, notwithstanding the festive season operation requirements. But, I declined the Department's request for oversight visits to the Khayelitsha, Harare and Lingeletu-West police stations at the behest of the Commission of Inquiry. The Commission of Inquiry should submit such a request to the State Attorney. (A copy of my letter is attached hereto as annexure "**AL82**".)

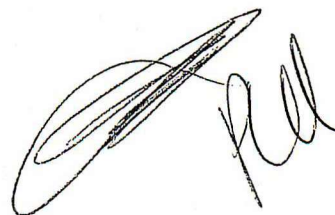
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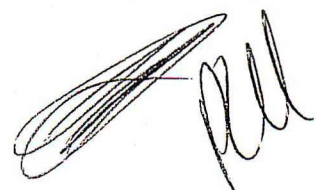
169. I point out that the Department of Community Safety did conduct a police oversight audit of Lingeletu-West on 31 August 2012. It is unclear, therefore why a further inspection was required less than a month later. In this regard, I attach as annexure "**AL82\_A**" a copy of the Chief-Director: Civilian Oversight dated 6 August 2012, enclosing the itinerary of police oversight audits for the month of August.

## **VII. COMMISSION ISSUES SUBPOENAS**

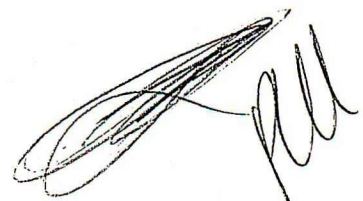
170. On **30 October 2012**, the Commission served subpoenas in terms of section 3(1)(a) and section 3(2)(b)(iii) of the Western Cape Provincial Commissions Act, No 10 of 1998 (the "*WC Commissions Act*") on the station commanders of the three respective police stations in Khayelitsha, referred to in the Commission's terms of reference, as well as myself. (Copies of the subpoenas served on Brig Dladla (Station Commander at Khayelitsha Police Station Site B); Col Raboliba (Station Commander at Harare Police Station, Khayelitsha) and Col Reitz (Station Commander at Lingeletu-West Police Station, Khayelitsha) are attached as annexure "**AL83**" - "**AL85**", respectively. A copy of the subpoena served on me is attached as annexure "**AL86**").
171. The subpoenas demand information and/or documentation that would not in the normal course be released to the MEC:

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- 171.1. Firstly, information and/or documentation that is of an operational nature. (This would include unreleased crime statistics. Any member who releases such information would be liable to be charged with unauthorised disclosure of information in terms of section 70 of the SAPS Act.)
- 171.2. Secondly, information and/or documentation relating to internal matters. (This would include attendance records of police officers, records of disciplinary trials and shooting incidents. Release of such information in pending cases would prejudice the SAPS members concerned and compromise subsequent proceedings, if any).
172. In terms of the subpoenas, the station commanders are required to appear before the Commission of Inquiry at its public hearing on 12 November and to produce before the Commission on 12 November such books and/or documents in written or electronic format and/or objects in their possession or in their custody or control, as listed in the subpoena. A reading of the subpoenas, reveal that the items listed therein track the items listed in the Commission's notice of 6 September 2012. But, in many instances, the documents requested in the subpoena exceed the scope of that which was requested in September, inasmuch as copies of such documents are now being requested in respect of additional financial years. For example:

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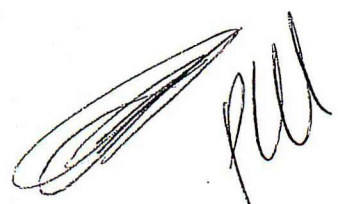
- 172.1. In respect of the occurrence books from the respective police stations, the Commission now seeks copies of such documents in respect of the additional period of 1 July – 31 August 2012. (Entries in the occurrence books relate to any and all occurrences at the police stations, such as arrests, payment of admission of guilt fees, staff on duty for any particular shift, complaints etc. On average, each of these stations' records would consist of at least 14 occurrence books.)
- 172.2. In respect of books and/or documents reflecting other complaints made at the police station under their respective command about police conduct that were not referred to the ICD/IPID, the Commission now seeks such information in respect of the additional period 1 January 2008 – 31 December 2010.
- 172.3. In respect of the minutes of meetings with the Community Policy Forum in relation to the police station under their command, the Commission now seeks such minutes for the additional period 1 January 2008 – 31 December 2010.
- 172.4. In respect of books and/or documents relating to skills audit conducted for the police station under their command, the

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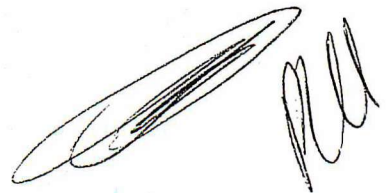
Commission now seeks such documentation for the additional period of 1 January 2010 – December 2010.

173. The Commission also served a subpoena on me, requesting me to produce the documentation and records referred to in its 6 September notice, as well as the supplementary request of 22 October. For reasons already canvassed above, I am advised and verily believe that the subpoena is unlawful and *ultra vires* the powers of the Commission.
174. In having to comply with the overbroad scope of the subpoenas, the SAPS has suffered (and continues to suffer), material prejudice. Valuable and limited resources must be diverted from the core business of the SAPS so as to locate, copy and collate the information requested by the Commission.
175. The fact that the Commission's initial request and subsequent subpoenas overlap with the most challenging time of the year from the SAPS' perspective only compounds the prejudice. The annual peak of crime levels occurs during the festive season, viz. October – February. In an attempt to combat and prevent crime during the festive period, the SAPS have put in place an extensive operational plan. This includes a marked increase in visible policing. But in order to comply with the Commission's subpoenas, both the station commanders and I must divert scarce human resources

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from our respective operational plans. Ironically, this prejudices the very community for whose benefit the Premier purported to establish the Commission of Inquiry.

176. Both at provincial management level and at station level personnel across the board have to be redirected from their usual functions such as human resources management, finance management, supply chain management, investigation (detectives), administration and visible policing.
177. For example, I am advised by Col. Reitz (Lingulethu-West) that just last week, he was required to redirect three police officers from vehicle patrols as part of the station's visible policing functions to attend to the information requested in the subpoena.
178. In order to understand the burden upon police administration at station level, I must point out that members of the community are reliant on the SAPS for services that one would not normally associate with policing. Thousands of community members visit these police stations every month to Commission affidavits and certify documentation for purposes of social grant applications, identity document applications and the like.
179. Compliance with the subpoenas also has substantial financial implications for the SAPS' already limited budget. Over and above the opportunity cost

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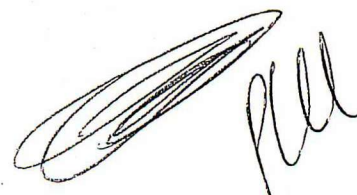
of redirecting scarce resources from the SAPS' core function, these costs include: travelling costs (SAPS members now have to travel to courts to locate dockets; attend on the forensic laboratories to obtain information (required under para 3.20 – 3.21 of the station commanders' subpoenas)); making telephone calls; holding consultations with the relevant persons, and copying vast amounts of documentation. These costs have simply not been budgeted for.

180. Finally, the subpoenas demand the release of crime statistics, notwithstanding the fact that under standing orders we are prohibited from releasing such statistics prior to publication by the Minister.

#### VIII. ANALYSIS OF NOVEMBER 2011 COMPLAINTS

181. Having set out the factual background of this matter, I analyse the November 2011 complaints. I deal first with the broad complaints, as well as the eight case studies contained in the November 2011 complaint. These complaints are best analysed with reference to the report prepared by the head of the Task Team, Divisional Commissioner of the Inspectorate, Lt Gen Tshabalala, dated August 2012, a copy of which is attached as annexure "AL87".

182. The Task Team's *modus operandi* and findings are significant, inasmuch as they demonstrate the *bona fides* of the SAPS and the SAPS' commitment

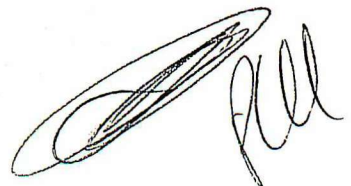




to addressing concerns expressed by the Provincial Government and members of the community. As detailed below, the Task Team investigated the more general complaints, notwithstanding their lack of any specificity. They did so by conducting audits of dockets and other records at the three police stations in Khayelitsha.

183. The *modus operandi* and the findings of the Task Team demonstrates that the National Commissioner acted in the utmost good faith when she assured the Premier that her office would conduct a thorough investigation and put in place a comprehensive turn-around strategy in partnership with the City and the Province. It is regrettable that the National Commissioner was not allowed to conclude these investigations and report back to the Premier as she had intended. It is readily apparent that the SAPS expended substantial resources to investigate these complaints, only for their efforts to be duplicated by a Commission of Inquiry.

184. I do not deal specifically with the "supplementary facts" contained in the Premier's correspondence to me on 5 June 2012, as the "supplementary facts" furnished by the WLC do not appear to form part of the Commission of Inquiry's terms of reference. That is further borne out by the fact that the Commission's initial notification addressed to the SAPS attached only a copy of the November 2011 complaint.

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185. As detailed elsewhere, the complaints contained numerous allegations of police inefficiency in such general terms as to preclude any immediate and meaningful response from the SAPS. But the complainants held up eight case studies to demonstrate such inefficiency, which has allegedly resulted in a "complete breakdown in the relationship between the police and the community".

186. Notably, the complaint underscores that it is not directed solely at the SAPS, stating that:

"[I] also relates to the manner in which policing functions interface with the broader administration of justice in Khayelitsha. Accordingly, the SAPS (National and Western Cape), the Department of Justice and Constitutional Development, the Department of Correctional Services and the National Prosecuting Authority are all implicated to the extent that their officials are involved in the prosecution or prevention of crime in Khayelitsha".

187. The object of the complaint is stated thus:

"[N]ot to single out a particular organ of state, to simply criticise or place blame, or to target those working in Khayelitsha or the Western Cape. By calling for a Commission of Inquiry to investigate the criminal justice system in Khayelitsha in its entirety, the expectation is that its findings will identify the nature and extent of the problems that are undermining the ability of these organs of state to function optimally." (At para 6)

188. Of course, in the Premier's letter addressed to me on 9 December 2011 (annexure "**AL38**" attached above), she described the "nub of the complaint" as follows:

"Members of the Khayelitsha community routinely experienced violations of [their] rights ... in their dealings with the police. ...

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[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 ..." (At para 48-50 of the complaint.)

**A. Complaint: Alleged Breakdown in Relations**

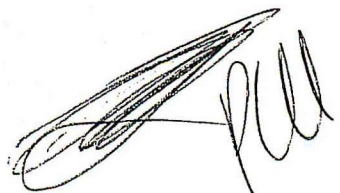
189. The complainants based the alleged breakdown in relations between the SAPS and the Khayelitsha community on the following:

189.1. SAPS and the Metro Police are overburdened and under-resourced.

189.2. Lack of co-ordination exists between the police and the prosecuting services, resulting in cases being struck off the roll.

189.3. Investigating officers do not communicate with victims regarding the progress of investigations or prosecutions, including information about court dates and bail hearings.

189.4. Members of SAPS fail to conduct proper investigations, resulting in unnecessary postponements during criminal trials. Investigations

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and securing of crime scenes, gathering of forensic evidence, interviewing witnesses and other “basic procedures” are “often ignored or performed incompletely”.

189.5. SAPS fail to secure the presence of witnesses at trial. Witnesses of serious crime are not given the necessary protection resulting in the “disappearance” of witnesses for fear of intimidation.

189.6. Bail is incorrectly granted in cases of schedule 6 crimes, such as rape and murder.

189.7. There is a lack of trauma counselling for victims of crime, particularly young victims.

189.8. There is insufficient visible policing in Khayelitsha. As already pointed out elsewhere, the SAPS’ ability to conduct visible policing operations are hamstrung by the lack of a proper road infrastructure, lack of adequate street lighting, and the density of informal housing. The complainants dismiss this consideration, citing the failure to provide alternative forms of visible policing, such as foot or bicycle patrols.

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189.9. When crimes are reported, victims are “often treated discourteously, sometimes with contempt. The community has lost confidence in the ability of the police to protect them from crime, and to investigate crimes once they have occurred. Many crimes go unreported, as members of the community see little point in reporting them”.

189.10. There is a lack of policing and patrols around “shebeens”.

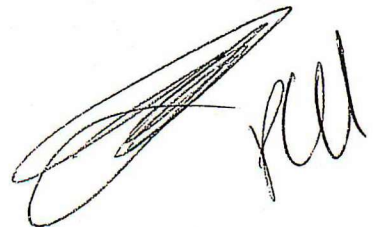
190. I point out that much of the aforesaid complaints relate to a general dissatisfaction with the functioning of the criminal justice as a whole, as opposed to police inefficiency alone. Some complaints clearly fall beyond the power of the SAPS, such as the release of accused on bail.

191. Admittedly, the Task Team concluded that members of the community are inconvenienced by a cumbersome process for the reporting of crimes at the stations. Complainants have to speak with several officers, each responsible for a separate aspect of the process, viz. recording the complaint; considering whether the complaint merits opening a docket; opening a docket and finally designating an officer to investigate the complaint. These findings of the Task Team evidence their independence and thoroughness, especially considering that the complainants did not

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raise the inefficiency of the reporting process. While this aspect relates to efficiency, it does not support the notion of a breakdown in relations.

192. In respect of the arrest and detention of suspects, the Task Team concluded that the SAPS members in general comply with the principles that govern the arrest and detention of persons prescribed by the National Commissioner's instructions.
193. As to the prevention and combating of crime, the Task Team concluded that sector policing (a strategy designed to prevent crime and strengthen police-community relations); is "fully implemented" in the Khayelitsha area in accordance with National Instruction 3 of 2009: Sector Policing.
194. Moreover, as to the SAPS' failure to employ alternative policing methods such as foot and bicycle patrols, the Task Team concluded that these alternative methods are "high risk activities given the infrastructure of the area". Instead, the Task Team recommended that the SAPS, in cooperation with the community, develop a new approach.
195. The Task Team further confirmed that various officers attached to the three Khayelitsha stations and the Cluster Office "regularly make use" of the local radio station in Khayelitsha to share information and reach out to the community.

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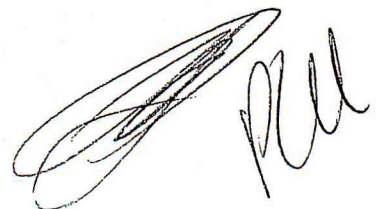


196. While it is so that the Task Team questioned the contribution that the CPF is making to improve police-community relationships in the Khayelitsha area, this finding was attributed primarily to the lack of participation by representatives of the relevant community structures and inadequate involvement in community projects and community awareness programmes launched by the SAPS. But the Task Team made positive findings about the CPF in Lingulethu-West, inasmuch as they found evidence that both the members from that station and the CPF are involved in awareness campaigns conducted in the policing area.

197. The Task Team found a lack of contact between the CPF and the Social Justice Coalition (the "SJC") (one of the complainant organisations), and a perception on the part of the CPF that the SJC are comprised of people who do not reside in and around the Khayelitsha area and are thus not mandated to speak for the Khayelitsha community. Moreover, based on interaction between with the complainant organisations (including the SJC), the Task Team concluded that:

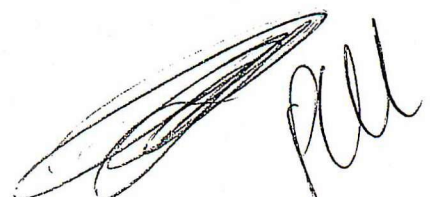
"They are also not involved in the CPF structures and that uncertainty exists regarding the primary purpose, mandate and functions of the CPF structures".

198. The Task Team concluded further that:

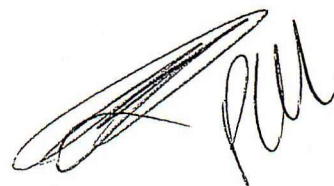
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"The [SAPS] cannot claim that the services that are rendered to the community in Khayelitsha is of such a standard that the community does not have any reason for complaining. On the other hand, it will also be unreasonable for any Non-Governmental Organisation...to make a statement that 'there is a total breakdown in police-community relations'". (At para 11.1)

199. The Task Team highlighted that the three police stations are operating in "a socio-economic environment, which can be regarded as [a] breeding ground for lawlessness". But their report concludes that: "despite the challenges that the SAPS are facing in the area the SAPS is executing its core function".
200. Finally, I say that the collaboration since December 2011 between Free Gender (a former complainant), and the SAPS in Khayelitsha demonstrates that the SAPS is responsive to concerns of civil society organisations. I am advised by Colonel Wiese that several initiatives are underway in collaboration with a former complainant, Free Gender, so as to address their concerns and to improve the relationship between the SAPS and the Khayelitsha community. These initiatives include the following:
- 200.1. Amendment of operational plans pursuant to a decision taken at a meeting held with Free Gender in Nyanga cluster on 19 April 2012 to make provision for the inclusion of gender-based violent offences as priority crimes.

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- 200.2. Sensitisation of members of the SAPS to hate crimes involving sexual orientation.
- 200.3. A proposal by Free Gender was forwarded to the national SAPS office for attention and consideration.
- 200.4. Partnership is promoted through scheduled regular meetings between SAPS and Free Gender.
- 200.5. On 28 November 2011, members of SAPS policed a protest organised by Free Gender at Khayelitsha Magistrates Court to raise awareness on gender-based violence. This protest march was well publicised in both the electronic and print media.
- 200.6. On 8 December 2011 an interdepartmental open day was held in Khayelitsha between the SAPS and community organisations.
- 200.7. On 4 February 2012 a memorial service organised in honour of Zoliswa Nkonyana was attended by Khayelitsha Cluster office. On that occasion an undertaking was given by SAPS to treat these hate crimes as priority crimes. The public was asked not to take law

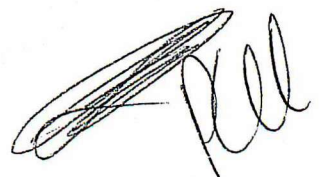
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into their own hands when dealing with criminals but to report them to the SAPS.

**B. Specific Cases cited by Complainant Organisations**

201. During the meeting between the Task Team and the complainant organisations, the latter handed over a list of case dockets. It was alleged that, in these cases, the complainants were dissatisfied with the attention their cases received from the SAPS. The Task Team evaluated the dockets to determine the reason for the complainants perceiving that their cases did not receive sufficient attention.
202. The Task Team concluded that some of the complainants had cause for dissatisfaction as some cases were not investigated thoroughly and had to be reopened for further investigation. But the Task Team pointed out that these cases "are not the norm or the standard of investigation that has been found in general". Moreover, the Task Team was of the view that the reasons for the poor investigation could be the result of "police members [who] have become truncated by the circumstances and by the heavy work load that they are continuously facing". (At para 11.3)

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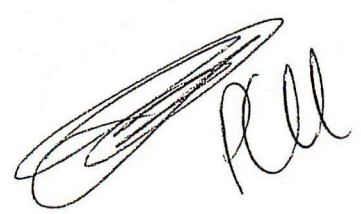
i. The case of Zoliswa Nkonyana

203. To the best of my knowledge, the case of Zoliswa Nkonyana was not raised with the SAPS by the complainants before they lodged the complaint with the Premier.
204. The complaint related to delays in the prosecution of this case. The reasons cited for the delay related to the fact that the family changed attorneys and the addition of new witnesses. Concerns were also expressed about the failure to obtain DNA samples.
205. Having perused the docket, the Task Team concluded that all the necessary statements had been taken. The docket was withdrawn by the Public Prosecutor on 11 October 2011 after consultation with the victim and her mother. The report concludes as follows:

“The investigation was found to have been conducted properly. Despite the concern that DNA samples were not obtained, this was not the reason for the withdrawal of the case docket”. (At para 8.5.1)

ii. Makhosandile “Scare” Qezo

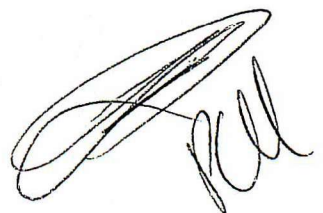
206. This complaint concerns the prosecution of Mr Qezo’s alleged attacker, Mr Gubeni.

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207. The nub of the complaint is that the SAPS failed to inform the SJC and the complainant when the accused was re-arrested, as a result of his failure to appear in court on three occasions. The granting of bail was also criticised.
208. The fact that the SAPS were able to re-arrest the accused must go some way to counter the notion of inefficiency. As for the granting of bail, the complaint here is directed at the criminal justice system, as opposed to the SAPS.
209. Because the docket was at Court, the Task Team could not investigate the matter more fully.

**iii. Rape of a minor in Taiwan, Khayelitsha**

210. This complaint concerns the prosecution of an alleged rapist of a minor resident of Kayelitsha. The complaint cites the State's failure to oppose bail on the basis that "the victim was safe". The release of the accused was said to have traumatised the victim and his family. The accused, when released on bail, allegedly tried to intimidate the victim and his family.
211. While the complaint states that the police was initially reluctant to open a case of intimidation, the complaint acknowledges that the police did in fact do so, albeit under the same case number.

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212. Finally, it is alleged that on one occasion, "someone" had forgotten to take the docket to court. The complaint concludes by stating that the case was provisionally withdrawn "because the victim was not able to testify".

213. The Task Team perused the docket in the presence of the investigating officer, W/O GJ Louw. On perusal, it was found that the docket had been to Court several times for bail applications. The Task Team concluded that the matter had been properly investigated. As for the provisional withdrawal of the matter, the Task Team recorded that, following an assessment of the victim, a social worker had compiled a report recommending that the child is not fit to testify. This is the reason the State could not proceed with the case at the time. The docket was placed on the SAPS' "brought forward system" for 2016/4.

iv. **Adelaide Ngongwana**

214. This complaint concerned the shooting of Ms Ngongwana during crossfire where members of the SAPS and suspects were involved in a shootout. According to the WLC, the Social Justice Coalition lodged a complaint with the Independent Complaints Directorate ("ICD"), in October 2010 on Ms Ngongwana's behalf because she was allegedly scared to lodge a complaint at the police station. Notwithstanding an ICD report, clearing the SAPS officials concerned, the complainants rejected the findings on the basis that the ICD failed to recognise the SAPS' recklessness.

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215. Having inspected the docket, the Task Team was critical of the thoroughness of the investigation. But no record could be found of the ICD complaint. When the Task Team tried to contact Ms Ngongwana, they were told by a relative that she had since passed away of natural causes.

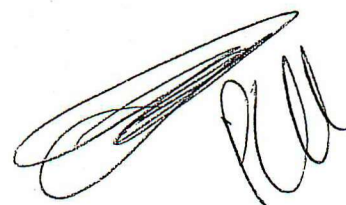
**v. Angy Peter**

216. This complaint concerned the shooting of a pedestrian during crossfire between members of the SAPS and a taxi driver who tried to flee from the SAPS.

217. The Task Team studied the docket and found that the docket was withdrawn by the Public Prosecutor owing to poor investigation. The docket was handed back the investigating officer to finalise all outstanding instructions of the Public Prosecutor.

**vi. Nandipha Makeke**

218. This complaint concerned the murder of activist Nandipha Makeke in 2005.
219. The Task Team perused the docket and found that the case docket was properly investigated.

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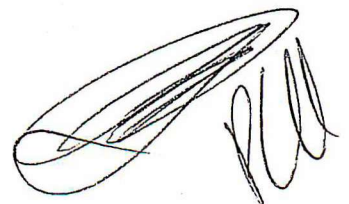
220. On 17 March 2008, the case was finalised in the Khayelitsha Regional Court. Accused no 1 was sentenced to fifteen years' imprisonment for murder and five years' imprisonment for being an accomplice to rape; Accused no 3 was sentenced to fifteen years' imprisonment for rape five years' imprisonment as co-perpetrator for murder.

**vii. Lorna Mlofana**

221. This complaint concerned the brutal rape and murder of Ms Mlofana in 2003.
222. The Task Team studied the docket. They found that the two suspects were convicted and sentenced on 8 December 2005. One of the accused was sentenced to ten years' imprisonment for attempted murder, while the other accused was sentenced to life imprisonment for murder.
223. The Task Team concluded that the docket had been properly investigated.

**viii. Nokuzola Mantshantsha**

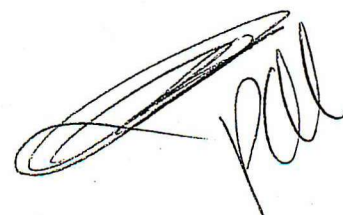
224. This case involves a number of alleged illegal evictions and demolition of houses by the City of Cape Town's Metro Police in Khayelitsha.

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IX. **VIGILANTE KILLINGS AS PURPORTED BASIS  
OF DECISION TO APPOINT COMMISSION OF INQUIRY**

225. As noted above, the Premier has attributed the recent spate of vigilante killings in Khayelitsha to the alleged breakdown in relations between the SAPS and the Khayelitsha community.
226. But this position is contradicted by a report conducted by or on behalf of the Western Cape Provincial Government: "*Vigilantism in the Western Cape*". A copy of the report obtained from the Provincial Government's official website on Saturday, 3 November is attached hereto as annexure "**AL88**". Moreover, the report evidences that the problem of vigilantism is not limited to Khayelitsha. It affects the whole of the Cape Town Metropole. It is for this reason, that the National Commissioner favoured a collaborative and broader approach, involving also the City of Cape Town. I am advised and verily believe that this demonstrates arbitrariness and irrationality on the part of the decision-maker.
227. The study evaluates vigilante killings in the Western Cape, particularly in on the Cape Flats. Khayelitsha is singled out as a case study, due to the high incidence of vigilantism.
228. According to the report, statistics show an increase in vigilantism in Khayelitsha, Phillipi East and Nyanga since 2001. The report notes that in



towns such as Mfuleni, Khayelitsha, Phillipi East, Nyanga and Delft, daily incidents of vigilantism occur. These incidents could range from 1 - 3 per day to 7 per month.

229. The report identified several hotspots for vigilantism in the Western Cape, *inter alia*:

229.1. Athlone (community versus gangs);

229.2. Gugulethu (so-called street justice);

229.3. Nyanga ("Bundu" courts; vigilante street committees);

229.4. Mitchells Plain (vigilante neighbourhood watches; religious influences/elements);

229.5. Ocean View (site 5, local community takes law into own hands);

229.6. Bo-Kaap (community versus drug dealers);

229.7. Manenburg (gangs);

229.8. Grassy Park (community versus gangs);

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229.9. Muizenberg (vigilante neighbourhood watches);

229.10. Bishop Lavis (gangs);

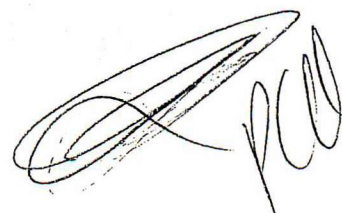
229.11. Ravensmead (gangs); and

229.12. Khayelitsha (vigilantism under the guise of neighbourhood watches;  
street committees destroying houses; self-defence organisations).

230. For purposes of the Khayelitsha case study, interviews were conducted with individuals and focus groups in Khayelitsha as to the causes of vigilante activities. The respondents cited the following factors as causes of vigilantism:

230.1. Easy bail conditions. Respondents expressed frustration at the fact that most criminals are arrested for serious crimes, but granted bail within days of their arrest. The fact that the perpetrator is free to commit other crimes while out on bail causes the community to take the law into their own hands.

230.2. Lack of trust in the prosecuting system. The general consensus amongst respondents was that the community is not made aware of

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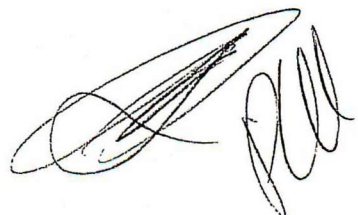
how the courts operate. They report a general mistrust in the legal system and are of the opinion that criminals should be punished more severely. Also, the community attributes the withdrawal of cases to lack of evidence and the inability of the prosecution section in Khayelitsha to prosecute criminals appropriately.

230.3. The prevalence of shebeens. Respondents are concerned about the “hundreds of shebeens” in Khayelitsha, which operate 24 hours a day. They expressed frustration and anger in this regard, given that numerous crimes are committed in and around these shebeens.

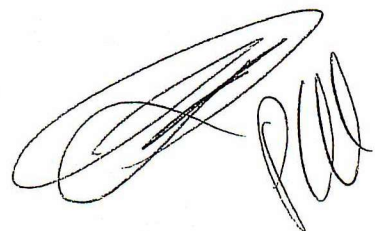
230.4. Politics. Some of the respondents attributed vigilantism to politics. When elections are imminent, political parties rally over votes and many people turn to vigilante action to win people over.

230.5. Unemployment; poverty; drug and alcohol abuse. The respondents expressed the view that these factors turn the youth into criminals and gangsters. Their criminal activities then turn the community against them – resulting in vigilantism.

231. It is noted that a number of research projects have corroborated these findings in Khayelitsha.

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232. Finally, it must be acknowledged that the report also identifies "lack of trust in the SAPS due to the political history, poor service delivery and rumours of corruption" as a possible cause of vigilantism.
233. The respondents were of the view that the SAPS slow reaction times contribute to vigilantism. But, as I have noted above, the SAPS' ability to respond to complaints is severely hampered by the lack of a proper road infrastructure; lack of adequate street signage; inadequate street lighting, as well as the high density of the informal housing. These are unfortunately factors beyond the control of the SAPS. For this reason, the National Commissioner called for a collaborative approach to deal with the community's concerns.
234. According to the study, "some of [the respondents] mentioned lack of trust in the SAPS, weak statement taking, poor detective work, no follow-up on cases, no communication between the detectives and community, as well as corruption of SAPS members" as a cause of vigilantism.
235. I take these concerns very seriously indeed, as does the Minister and the National Commissioner. But to attribute publicly - as the Premier regrettably has - the scourge of vigilantism to an alleged breakdown in relations between the SAPS and the Khayelitsha community, is not only inaccurate,

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but undermines the credibility of the SAPS and our ability to perform our functions in already challenging circumstances. This oversimplification of the problem is not supported by the Provincial Government's own study and unfairly singles out the SAPS to the exclusion of all the other contributing factors cited in the report.

236. It is also interesting to note the Khayelitsha respondents' views as to how vigilantism could be prevented. The recommendations included:

236.1. Educating the communities as to the operation of the criminal justice system;

236.2. Job creation;

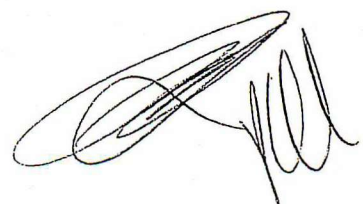
236.3. Parents should be involved in their children's activities;

236.4. Improvement of rehabilitation programmes in jail;

236.5. Severe penalties for crimes;

236.6. Shebeens should be closed down;

236.7. Communities should regain ownership of the streets;

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236.8. Increased recreational facilities for the youth;

236.9. An increase in reservists and neighbourhood watches; and

236.10. Improvement of SAPS service delivery.

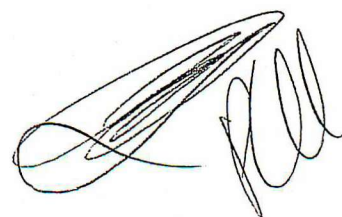
237. Significantly, when the respondents were asked how SAPS' service delivery could be improved so as to discourage vigilantism, they suggested:

237.1. Improving the SAPS' reaction time;

237.2. Increased visibility; and

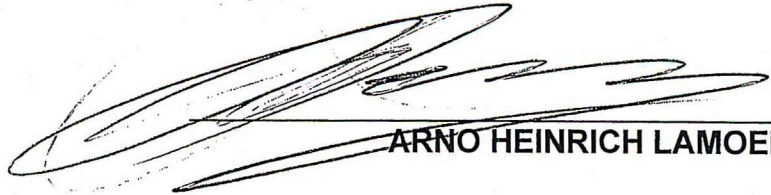
237.3. Increased resources.

238. As to an improvement of the SAPS' reaction time and increased visibility, I have already explained the unique challenges faced by the SAPS in Khayelitsha in this regard.

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**CONCLUSION**

239. For reasons set forth in the founding affidavit of the Minister, it is submitted that this Honourable Court should grant the relief sought in the notice of motion.



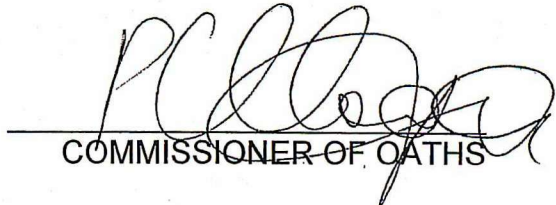
ARNO HEINRICH LAMOER

I certify that:

The deponent acknowledged to me that:

- 1.1 he knows and understands the contents of this declaration;
- 1.2 he has no objection to taking the prescribed oath;
- 1.3 he considers the prescribed oath to be binding on his conscience.

The deponent signed this declaration in my presence at the address set out hereunder on this the 4<sup>th</sup> day of **NOVEMBER 2012**.



COMMISSIONER OF OATHS

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