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INFORMATION NOTE

TO : OFFICE OF THE NATIONAL COMMISSIONER
THE EXECUTIVE LEGAL OFFICER
LIEUTENANT GENERAL J MOLEFE
PRETORIA

FROM : OFFICE OF THE PROVINCIAL COMMISSIONER:
WESTERN CAPE
LT. GEN A H LAMOER
WESTERN CAPE PROVINCE

REFERENCE : 4/14/2/3(201100090)

DATE : 2012-06-26

COMPLAINTS REGARDING ALLEGED POLICE INEFFICIENCY AND A BREAKDOWN IN POLICE-COMMUNITY RELATIONSHIP IN KHAYELITSHA, CAPE TOWN

1. BACKGROUND:

The above-mentioned matter was received by this office on 2011-12-09 and it was learned that it was also forwarded to the Office of the National Commissioner. This office on 2012-01-06 also received a letter from the Office of Lieutenant General Rasegatla for a report on the above-mentioned complaint.

This office acknowledged receipt to both the Office of the Premier and Lieutenant General Rasegatla.



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The complaint was also referred to the Office of the Executive Legal Officer, Lieutenant General Molefe, requesting his comment on the complaint and the intention to institute a Commission of Enquiry into the alleged police inefficiency and breakdown in police-community relations. On this correspondence to the Office of the Executive Legal Officer an E-mail was received from the Executive Legal Officer indicating that the matter was discussed with the Acting National Commissioner and that the matter has been noted.

On 2012-05-21 a letter was received from the Office of Lieutenant General Tshabalala, the Divisional Commissioner for Inspectorate, requesting a comprehensive report on the complaint of the Social Justice Coalition.

On 2012-06-07 a comprehensive report was compiled and forwarded to the Office of Lieutenant General Tshabalala in regard to the stance of the Province on the allegations in the document of the Social Justice Coalition.

Owing to the fact that it was reported to the Office of the Premier that the matter was referred to the Office of the National Commissioner, the Office of the Premier referred a request for progress to the Office of the Executive Legal Officer, Lieutenant General Molefe.

The letter to Lieutenant General Molefe with additional confirmations of the allegations in the complaint and request of the Social Justice Coalition was referred to the Province for a comment by the Provincial Commissioner.

2. **COMMENT:**

- 2.1 The document was perused to determine the specific allegations against the South African Police Service, Western Cape.
- 2.2 The paragraphs of the complaint document implicating the police are highlighted below:



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- 2.2.1 Paragraph 5 determines that; while this complaint is directed at the inefficiency of policing in Khayelitsha and the breakdown in relations between the police and the local community, it also refers to the manner in which policing functions interface with the broader administration of justice in Khayelitsha.
- 2.2.2 Paragraph 6 determines that; 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 to function optimally.
- 2.2.3 Paragraph 9 determines that; since 2003 the civil society organizations have held more than one hundred demonstrations, pickets, marches and other forms of protest against the continued failures of the Khayelitsha Police. The organizations have also submitted numerous petitions and memorandums to various levels of government in this regard. There have been sustained and coordinated efforts from various sectors of the Khayelitsha community for action to be taken by government agencies, including the police, to improve the situation.
- 2.2.4 Paragraph 48 determines that; members of the Khayelitsha community routinely experience violations of their rights in dealing with the police. The police also violate laws founded upon the fundamental rights such as the Children's Act and PIE Act.
- 2.2.5 Paragraph 49 determines that; the systemic failure of the Khayelitsha Police, to prevent, combat and investigate crime, take statements, open cases and apprehend criminals also violates the requirements that all public administration be conducted professionally, ethically, impartially and with the effective, economic and efficient use of human, material and financial resources.
- 2.2.6 Paragraph 51 determines that; the issues raised in this complaint are not limited to Khayelitsha and that many hundreds of thousands of people across the country are victims of crime every year.

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However, what sets Khayelitsha apart is the disproportionately high level of crime to which its residents are subjected compared to other areas, combined with the failure of the police to prevent, combat and investigate crime effectively, resulting in a breakdown in the relationship between the police and the community.

2.2.7 Paragraph 58 determines that; a comprehensive report released in 2008 by the City of Cape Town found that within the jurisdiction of the City, five of the 58 police districts accounted for over 44 percent of murders – in Nyanga (13,18 percent), Harare (Khayelitsha) (8,67 percent), Khayelitsha (8.47 percent), Gugulethu (7.58 percent) and Delft/Belhar (6.1percent). These statistics indicate that it is the Cape Flats – of which Khayelitsha makes up a majority in terms of population numbers – that bears the brunt of murders in the City.

2.2.8 Paragraph 59 determines that; while the total number of crimes reported in Khayelitsha decreased by 23,9 percent in the six years between March 2003 and March 2009, the most recent crime statistics reveal a distressing reversal of this trend. In March 2010, the total number of crimes reported increased by 8,76 percent over the preceding year, including a 13,2 percent increase in assaults, a 2,5 percent increase in homicides and 13,7 percent increase in sexual crimes. In the period from 2008/09 – 2010/11 there was a 9,5 percent increase in homicides, a 15,9 percent increase in sexual assaults and a 32,4 percent increase in attempted murders in Khayelitsha.

2.2.9 Paragraph 60 determines that; many people in Khayelitsha do not report property-related crimes, such as theft of cellphone, because there is almost no chance of being compensated or having their property retrieved. Most people are uninsured and the theft of a cellphone is not a crime to which police attach importance and consequently many of these crimes are not resolved successfully.

2.2.10 Paragraph 62 determines that; Khayelitsha was the scene of the sexual assault and murder in December 2003 of 22 year old Lorna Mlofana by a group of young men who learnt that she was HIV positive. Lorna was a leader of the Treatment Action Campaign in her area.



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At that stage the community and civil society organizations began calling upon the State to provide improved policing and services for rape victims.

- 2.2.11 Paragraph 63 determines that; the SAPS in Khayelitsha are overburdened and under-resourced. This is exacerbated by the fact that the community often suffers as a result of a lack of co-ordination between the police and the prosecuting services. Dockets are often lost, resulting in cases being struck-off the court rolls. Investigating officers and prosecutors appear not to co-operate effectively where they interfere regarding what investigations are necessary for successful prosecutions. Investigating officers often do not communicate with victims of crime regarding the progress of investigations or prosecutions, including information about court dates and bail hearings.
- 2.2.12 Paragraph 64 determines that; in addition, investigating officers routinely do not secure the presence of witnesses at trials, resulting in lengthy postponements. A further problem is that witnesses to serious crimes are not given the protection they need in order to testify without fear of retribution. Often, crucial witnesses "*disappear*" because of intimidation and threats from offenders. Victims of crime in particular young victims are also not given trauma counseling and the support that they need in order to assist them to recover from their ordeals. It often happens that bail is incorrectly granted for Schedule 6 crimes such as rape and murder. Investigations and securing of crime scenes, gathering of forensic evidence, interviewing of witnesses and other basic procedures are often ignored or performed incompetently.
- 2.2.13 Paragraph 65 determines that; there is insufficient visible policing in Khayelitsha in general and it is almost non-existent in informal settlements. Whilst it is often said that the absence of proper roads in informal settlements leads to them being inaccessible to patrol vehicles, no attempt is made to provide alternative forms of visible policing, such as foot or bicycle patrols backed up by vehicles. The absence of visible policing means that children, particularly those of school-going age, are vulnerable to criminals.



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- 2.2.14 Paragraph 66 determines that; 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. The police also fail to communicate clearly and regularly with victims, their families and other stakeholders.
- 2.2.15 Paragraph 67 determines that; the lack of policing and patrols around shebeens, both legal and illegal, fuels crime. Alcoholism is one of the most serious health problems and causes of crime in Khayelitsha and elsewhere in the country.
- 2.2.16 Paragraph 71 determines that; the terms of reference of the Commission of Inquiry should provide for an investigation into at least the following aspects of policing in Khayelitsha:
- 2.2.16.1 An evaluation of its effectiveness;
 - 2.2.16.2 An assessment of the suitability of the priorities, personnel, training, resources, systems, policies and community engagement practices employed;
 - 2.2.16.3 The causes of the breakdown in relations between the Khayelitsha community and the police;
 - 2.2.16.4 The establishment of the reasons for the inefficiencies at the interface between policing and the broader administration of justice;
 - 2.2.16.5 The measures necessary to redress the inefficiencies and other problems identified, including a social crime prevention strategy; and
 - 2.2.16.6 The time-frames for the implementation of its recommendations.
- 2.2.17 Paragraph 73 determines that; although this complaint relates to Khayelitsha specifically, many of the issues are relevant to other poor and working class areas in the city and the province.



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The civil society organizations thus urge the Provincial Executive to consider instituting a similar enquiry into an area that also experience disproportionately high levels of crime and where access to justice is inadequate, such as Hanover Park, Mitchells Plain or Manenberg.

3. The additional letter from the Social Justice Coalition Commission requesting the Premier of the Province to proceed with the institution of a Commission of Enquiry against the Police in the Khayelitsha area confirmed the allegations in their previous complaint document. The following comments relating to the Police were noted:
 - 3.1 That crime in the area has continued to flourish and the fear of the residents is increasingly turning to frustration and violence. There is no surprise that the community has taken the law into their own hands in the form of mob justice.
 - 3.2 That Khayelitsha has experienced a steady increase in the number of murders during the 2010/2011 period.
 - 3.3 That when they try to report crime they are turned away from the Police Station or treated very poorly by the officers.
 - 3.4 That when crimes are reported Police often don't arrive at the scene at all.
 - 3.5 That when Metro Police are in the area, they are only there to illegally evict them and destroy their homes.
 - 3.6 That there is indication that illustrates that the trust between the community, the Police and the Criminal Justice System is broken.
4. Taking the above into consideration, it is evident that the complainants are making a number of allegations of which no specific names, cases, times and places are mentioned. The allegations are vague and are made against a number of departments in the province and nationally. In some paragraphs only general comments are made about crime and crime statistics.

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In one case they request an inquiry into policing in Khayelitsha and then in the other paragraphs they request a commission of inquiry for other stations in the province and areas with similar problems in the country. In the other paragraphs they move away from gender related issues to crimes against children, burglaries, thefts and robberies. It should be noted that Khayelitsha Cluster consists of eight stations and the complaint document only refers to Khayelitsha and does not mention as to whether it is the whole cluster or only Khayelitsha Police Station.

5. Owing to the fact that the allegations were vague, too wide and did not contain specific time, date and names of members complained about, the Cluster Commander of Khayelitsha, Major General Ndlovu, invited all the complaining parties on the document to a meeting at Khayelitsha Lecture Room on 2011-12-06. For the purpose of the meeting the Cluster Commander invited the Station Commanders of Khayelitsha Cluster, members of the Provincial Police Board, members of the Local Police Forums and officials from Provincial Legal Services.
6. On the date and time of the meeting none of the complainants pitched up for the meeting. When the representative of Free Gender Organization was called to determine as to why they are not at the meeting, Ms Funeka Soldaat indicated that they are not part of the complaint. The representative of the Social Justice Coalition wanted to know as to what is the agenda of the meeting, and also wanted more information about the meeting as if he does not know that they are one of the complainants on the documents. Owing to this, the Cluster Commander could not confirm the specifics of the complaint and the requests of the complainants to take the necessary steps.
7. It needs to be mentioned that, according to our information, amongst all the Departments mentioned in the complaint document, the South African Police Service is the only Department which gave the complainants an opportunity to discuss the matter.

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8. Further hereto on 28 February 2012 the Social Justice Coalition requested the Station Commander of Khayelitsha Site B Police Station to come to their office and present an information session on police powers, arrests, search and seizures, bail and bail conditions, crime prevention and the investigation of crime. This session was attended and presented by Brigadier Dladla and Colonel Marais.

After this engagement another informal engagement was concluded with the Social Justice Coalition at the Khayelitsha Court in regard to bail and court procedures and the reason why it is taking so long to finalize a case in court.

9. LEGAL ASPECTS RELATING TO THE COMPLAINT:

Section 205(6) (a) of the Constitution of the Republic of South Africa read with Section 66(2) (a) of the Constitution of the Western Cape, 1997 determines that in order for the Province to execute its functions relating to the Police, "the Province may investigate or appoint a commission of inquiry into any complaints of police inefficiency or a breakdown in relations between the Police and any community."

10. INFORMATION RELATING TO THE REQUEST OF SOCIAL JUSTICE COALITION:

- 10.1 Social Justice Coalition is an NGO with offices in Lingeletu West policing area. The station and the cluster had a number of engagements with the Coalition in relation to matters regarding the registration of cases, power of arrests by the Police, bail and bail conditions and court procedures. The Coalition was a number of times invited to be part of the Policing Forums and stakeholders meetings, but they seldom attend.
- 10.2 All three stations within the greater Khayelitsha Clusters have functioning Community Police Forums and Sub-Forums and the Cluster Board is also functional.
- 10.3 The Cape Town Metro Police only have a contact point in the Harare policing area.
- 10.4 The Cluster reported the following service-delivery complaints:



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- 10.4.1 Two complaints for Khayelitsha Police Station;
- 10.4.2 Nine complaints for Harare Police Station;
- 10.4.3 Two complaints for Lingeletu West Police Station. Only one of the complaints at the Lingeletu West Police Station emanates from the Social Justice Coalition.

11. In regard to the above-mentioned, the Office of the Provincial Inspectorate reported that they received 30 complaints from the Khayelitsha Cluster of which none are from the Social Justice Coalition.

11.1 Five are still under investigation;

11.2 Ten are unfounded;

11.3 Fifteen complaints are finalized.

12. **CONCLUSION:**

12.1 The above-mentioned is a clear indication that there is no extraordinary amount of complaints against the Police in the Khayelitsha Cluster.

12.2 The allegations of the Social Justice Coalition in the two documents supplied to the Office of the Premier has not brought the complaints in the documents to the attention of the Police in the Khayelitsha Cluster, nor to the SAPS Provincial Inspectorate for investigation and a feedback on the complaints.

12.3 There is no crisis of Police inefficiency in the area and there is also no breakdown in the relationship between the community and the Police as the Cluster Board and Police Forums and Sub-Forums are fully functional and are liaising with the community on matters relating to crime prevention and the investigation of crime.

12.4 The Independent Policing Investigation Directorate in their monthly meeting with the South African Police Service never alluded to an increase in complaints against the Police in Khayelitsha area and specifically to an increase of complaints from the Social Justice Coalition.



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- 12.5 The failure of the Social Justice Coalition to report their complaints to the Police, the ICD or the Secretariat for investigation and feedback creates the impression that the complaints are unfounded.
- 12.6 The above-mentioned does not warrant the institution of a Board of Inquiry in terms of the Constitution of the Republic of South Africa.
13. It should be noted that the Western Cape Ministry of Community Safety during 2008 also requested that a Commission of Inquiry be established in regard to policing in the Stellenbosch area. After it was replied to them that there is no grounds for the establishment of such a Commission, no further correspondence was received on the matter (See attached documents).



LIEUTENANT-GENERAL
PROVINCIAL COMMISSIONER: WESTERN CAPE

AH LAMOER

Date:

2017 06-27

