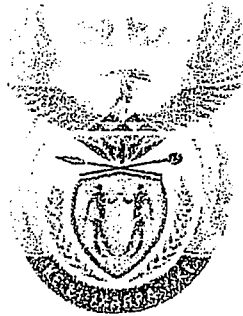


"AL 64"



MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X455 PRETORIA 0061, Telephone (012) 385 2800, Fax (012) 383 2819/20, Private Bag X5080 CAPE TOWN 8000, Tel (021) 457 7071 Fax (021) 461 7033

(YOUR REF: PM 1 [2011] / 4980)

Premier: Western Cape
Private Bag X 9043
Cape Town
8000

25 September 2012

Dear Premier Zille

**COMPLAINTS REGARDING ALLEGED POLICE INEFFICIENCY AND A BREAKDOWN
IN POLICE-COMMUNITY RELATIONS IN KHAYELITSHA, CAPE TOWN: COMMISSION
OF INQUIRY**

I refer to the meeting that has been set up between your office and my office regarding the Commission of Enquiry into Khayelitshe. I am sorry that I am only writing to you only now which was due to my having to attend to various urgent matters and also to the release of the national crime statistics last week.

I also want to express my commitment to us meeting to address this issue. I am aware that you had previously suggested dates which, unfortunately, coincided with the date on which the Cabinet Lekgotla was to be held or were dates which were unfortunately not available to me. I could not, therefore, meet with you on those dates but I am looking forward to the meeting that has been scheduled for 9 October 2012.

A handwritten signature in black ink, appearing to be 'P. M. M.' or similar, written in a cursive style.

While I think that some of the issues can be discussed in this meeting, I also feel I need to point out certain matters which I would request you to consider and which, we may want to explore further when we meet.

It is evident from the complaint submitted to you by the Women's Legal Centre (and which forms the basis of the inquiry) that it involves the investigation of crimes or suspected crimes.

As you are well aware, the Court in the matter of *City of Cape Town v Premier, Western Cape, and Others* 2008 (6) SA 345 (C) at paragraph [84] stated that the commission-appointing power of the Premier can only be used for legitimate purposes, which does not include the investigation of crime. The Court in that matter went on to say that:

"The investigation of criminal conduct as a primary task by a Commission of Inquiry is inherently undesirable for the reason that it leads to a blurring of the functions of the Executive and the police". [93]

The reason for the Court having said so relates to the independence of the police and the National Prosecuting Authority that are vital components in a democratic State. It is also for this reason that the Court stated that it was undesirable for a Judge to become politically entangled in matters where there is potential for a blurring of constitutional powers, functions, and priorities. The fact that Justice O'Regan is a retired Judge, does not detract from this proposition. In this regard, I respectfully submit that the appointment of Justice O'Regan has the potential to infringe on the doctrine of separation of powers, particularly in relation to the recommendation-power part of the terms of reference of the inquiry established by you.

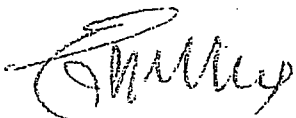
The above, and other, concerns that I have with the appointment of the Commission of Inquiry, I am hoping to raise with you at the proposed meeting between us. Accordingly, in view of our constitutional and statutory duty to avoid inter-governmental disputes, I hereby wish to accord you the opportunity to first, meet with you to discuss this matter, and with a view to avoiding an inter-governmental dispute, alternatively with a view to resolving such a dispute/s, and second, to confirm that the Commission will not conduct formal hearings



pending the resolution of any disputes/differences we may have, or which may arise at or from the pending meeting between us.

You will be aware of the provisions of s 41 of the Inter-Governmental Relations Framework Act 13 of 2005 which provides, *inter alia*, that I may declare any dispute between us a formal inter-governmental dispute by notifying you of such declaration in writing, but that before I do so, I must, in good faith, make every reasonable effort to settle such dispute, including the initiation of direct negotiations either with you directly or through an intermediary. At this stage, it is my honest desire to avoid this state of affairs, and I would accordingly wish that we discuss these matters when we meet on 9 October 2012. I would also appeal to you that you in the meantime put the work of the Commission of Inquiry on hold, pending our meeting.

Yours sincerely



**E N MTHETHWA, MP
MINISTER OF POLICE**

