

organisations who have filed confirmatory affidavits) reflect that she, like the Mayor, attempted to engage with all parties in a constructive fashion.

187.2 After Commissioner Phiyega took office in June 2012, the complainant organisations delivered a memorandum to the Premier urging her to establish the commission of inquiry, as SAPS had already been given ample opportunity to comment on the complaint (the open letter of 14 June 2012 is annexure “MM7”). The Premier would not agree to this and insisted that Commissioner Phiyega be given an opportunity to respond to the claim.

187.3 In the course of all SJC's interactions with the Premier, it was clear that she wished to give SAPS every opportunity to investigate and respond to the complaints.

187.4 The Minister's claim that the Task Team has been stymied by on-going work of the Commission is also incorrect. The decision on whether to appoint the Commission was put on hold by the Premier in June in order to allow the Task Team to conduct its investigation. This investigation was completed in early August 2012, as is apparent from annexure “AL87”. There is no evidence that it has been doing on-going work which is being duplicated by the Commission.

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188. AD PARAGRAPH 22.1

The claim that the complaints have been largely dealt with is discussed above in the section entitled *The History of the Complaint*.

189. AD PARAGRAPH 22.2

189.1 The Minister neglects to state that the complaints were also directed to the Provincial Commissioner and the Minister of Justice and Constitutional Development, in addition to the parties named. The allegation that the complaint was made in respect of the entire criminal justice system has been considered above.

189.2 I, and the other members of the complainant organisations whose confirmatory affidavits are attached, have seen no evidence that the Commission is investigating the entire criminal justice system. There are some aspects of policing that inevitably overlap with the prosecution of crimes, but, as is apparent from the correspondence between Advocate De Kock and Advocate Bawa, annexures “RD1” to “RD3” to Advocate De Kock’s affidavit, the Commission is investigating criminal prosecutions only for the purpose of establishing whether the police investigations of the cases were adequate.

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189.3 The close relationship between the prosecution of crime and police investigations is recognised in the Task Team report, which refers to a number of instances in which prosecutions have been withdrawn as a result of poor investigations and the Task Team has directed that the matters be reinvestigated.

189.4 Both the Minister and the Provincial Commissioner assert that crime is multi-faceted and that SAPS in Khayelitsha faces many difficulties in carrying out its work because socio-economic issues, such as inadequate housing and infrastructure lie at the root of the high levels of crime experienced. We agree that policing cannot be viewed in isolation.

190. AD PARAGRAPH 22.4

190.1 If the CPFs functioned as they were meant to, they would be valuable forums for the police and others working in this sector to interact with the community. Members and leaders of SJC participate regularly in street committees and meetings of the South African National Civic Organisation ("SANCO"). Both of these organisations are affiliated to the CPFs. These leaders include Angy Peter, Nomlungiso Qezo, Sifiso Zitwana (who is the chair of the Street Committee in his area) and Welcome Makele. SANCO participated in several marches demonstrating against the levels of crime in Khayelitsha.

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- 190.2 However, people have the right to approach a number of statutory bodies to lodge complaints against the police. In the experience of SJC members, the CPFs in Khayelitsha are scarcely functional, politically aligned and biased in favour of the police. The dysfunctional nature of the CPFs is illustrated by the attempt made, on 18 November 2010, by Gavin Silber and Joel Bregman, representing SJC, to request help with the service delivery protests at a CPF meeting. They were fobbed off by the CPF and told to raise the issue in a month's time at the next meeting.
- 190.3 The CPFs are in any event not the correct forum at which to raise the deeply systemic problems addressed in the complaint. For example, the issue of pervasive corruption and under resourcing of the police in Khayelitsha cannot be resolved at the level of the CPF.
- 190.4 The SJC specifically asked the Premier to appoint a commission of inquiry in terms of section 206(5) of the Constitution because it was felt that this was the most appropriate vehicle to address the situation.
- 190.5 The SJC members' experience that the CPFs are not functioning well is confirmed by the findings of the Task Team in annexure "AL87".

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191. AD PARAGRAPH 22.5

The statement that the complaints do not evidence any breakdown in relations between SAPS and the community of Khayelitsha is unfounded. This issue has been dealt with above.

192. AD PARAGRAPH 22.6

The vigilante attacks have been dealt with above.

193. AD PARAGRAPH 23

193.1 SJC members, including Joel Bregman, Wanda Bici and Thandokazi Njamela attended the summit referred to by the Minister in October 2011. The summit was hosted by MEC Plato. Its purpose was to enable members of the community to raise concerns concerning the justice system and to workshop ways of creating safer communities in a holistic manner.

193.2 A number of agencies were represented and gave presentations about the work that they do in Khayelitsha. Attendees then broke into groups where topics were discussed, complaints were raised and recommendations jotted down. Many of the concerns raised in the formal complaint were raised by members of the community at the summit, as is confirmed by Joel Bregman.

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193.3 Although the formal complaint had not been lodged at the time of the summit, on 4 October 2011 a memorandum demanding an independent inquiry into the criminal justice system in Khayelitsha was submitted by complainant organisations to the Minister of Justice and Constitutional Development, as has been described above.

193.4 It is not correct that the substance of the memorandum was not raised at the summit. I invite the Provincial Commissioner to provide the SJC with minutes from the summit.

194. AD PARAGRAPH 29

194.1 The claim concerning the role of the CPFs has been discussed above. The complainant organisations are not always invited to CPF meetings. Members of the SJC sometimes attend these meetings, but they are largely ineffectual and, as presently constituted, are of little value in addressing crime.

194.2 The complainant organisations have a long history of raising the issues relating to policing in the criminal justice system in Khayelitsha with a range of officials and structures, without receiving any substantive response. The approach to the Premier to establish a commission of inquiry was a last resort, after many years of campaigning for the issues to be investigated and addressed properly. In this context, claim that the

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complainant organisations should have raised the issues through the CPF structures is without foundation. In any event, the SJC has a constitutional and political right to campaign and raise issues as it sees fit.

195. AD PARAGRAPH 30

I note that the Minister does not allege that the SJC or any of the complainant organisations were invited to the Department of Justice and Constitutional Development workshops, nor does he disclose what was discussed or when these workshops took place.

196. AD PARAGRAPH 31

196.1 The Task Team report, annexure “AL87”, notes that following the August 2011 Free Gender conference against hate crimes (which took place in Khayelitsha at Site B Hall), Free Gender offered to assist by training and sensitising police officials with regard to the handling of gender based violence and crimes. The Task Team established that the proposals were submitted to the provincial office of SAPS on 5 December 2011, but no response was received and the initiative has not been implemented.

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196.2 The August 2011 conference was the precursor to the conference which took place on 3 and 4 August 2012, referred by the Minister in his affidavit. I attended the 2011 conference, together with approximately 100 members of the complainant organisations, which was addressed by Mr Zackie Achmat. Although the Minister claims that every station has a performance plan based on the national plan and that the police have to make provision for the CPFs to be part of developing the station operational plan, the Task Team report makes it clear that the CPFs are not performing this function in Khayelitsha.

196.3 The withdrawal of Free Gender as a complainant has been necessitated by the need for Free Gender to have an on-going working relationship with SAPS. The organisation was concerned that this working relationship might be jeopardised by its role as a complainant.

197. AD PARAGRAPH 37

It is not correct that the complainant organisations made no attempt to engage the President or the Minister on a political level or the National Commissioner on an operational level. This issue has been dealt with above in the section entitled *The History of the Complaint*.

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198. AD PARAGRAPHS 40 TO 40.6

These issues are dealt with elsewhere in this affidavit.

199. AD PARAGRAPH 40.7

199.1 The complainant organisations have referred matters to the statutory bodies charged with dealing with police misconduct, to no avail. Two complaints were raised with ICD in 2010 and a meeting was held with IPID in July 2012 at the time that the Task Team was investigating the complaints. SJC also directed a request to IPID for documents on 30 August 2012 (annexure “**MM36**”), to which no response has been received.

199.2 The 2010 complaints to the ICD were transferred to the Provincial Inspectorate. When Mr Bregman and others from the complainant organisations met with the IPID in July 2012, they were told that the IPID was launching an investigation into police corruption in Khayelitsha.

200. AD PARAGRAPH 40.9

200.1 The Commission was not dealing with just eight cases. The eight cases referred to in the original complaint were cited as examples of the systemic breakdown in policing in Khayelitsha. These examples reflect

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the concerns of the members of the complainant organisations, who predominantly live in Khayelitsha. They are representative of a broad cross section of the Khayelitsha community. The SJC does not claim to speak on behalf of the entire Khayelitsha community, but simply on behalf of our members, supporters and partners. However, the SJC does not hesitate to act in the public interest or in the interest of people who cannot act in their own name because they fear that criminals will violently intimidate or harass them and their families.

200.2 In the Provincial Commissioner's affidavit the allegation is made that the SJC consists of people who do not reside in and around Khayelitsha and are accordingly not mandated to speak for the Khayelitsha community (for example at paragraph 197).

200.3 The SJC has approximately 2000 members (this is excluding supporters), with 14 branches, 13 of which are in Khayelitsha. It also has over 100 partner organisations based on Khayelitsha. I estimate that more than 90% of the organisation's members live in Khayelitsha. The other complainant organisations include TAC and Equal Education. TAC has more than 17 branches in Khayelitsha and has a history of working in the areas dating back to 1999. TAC is deeply rooted in the community and has organised over 100 marches, demonstrations and other public events in Khayelitsha since 1999. Equal Education has more than 1000 members in Khayelitsha and is organised at almost



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every single high school in the township. The other complainant organisations work in Khayelitsha on an on-going basis.

200.4 In any event, as stated in the confirmatory affidavit of Zackie Achmat, it is vital for a non-racial, free and equal society that people from all races and classes share the lives of people in Khayelitsha. Murder in Khayelitsha is not murder on another planet, it is a crime committed against all people in South Africa. The assertion that people who might live outside Khayelitsha must remain silent about the class, race and gender equality there is unworthy of a Minister who is under an obligation to uphold the Constitution.

201. AD PARAGRAPH 43(a)

The WLC sent the Provincial Commissioner and the MEC a copy of the original complaint dated 28 November 2011. The impression created that the supplementary complaint (of 22 June 2012) is a different complaint to that lodged in November 2011 is incorrect. The initial complaint was amplified and supplemented on 4 April and 5 June 2012. On 14 June 2012 an open letter from the SJC was delivered to the Premier requesting her to establish the Commission. A copy of this letter is annexed marked "MM7".



202. AD PARAGRAPH 44

No explanation is given for the failure of the Applicants to respond in any substantial way to the complaint in the period between November 2011 and June 2012, when the current National Commissioner was appointed. Neither is any explanation given for the failure to comply with the five deadline extensions granted by the Premier. The Applicants failed to comply with the requirement that they perform all constitutional obligations diligently and without delay in terms of section 237 of the Constitution.

203. AD PARAGRAPH 49

The claim that the only inference to be drawn is that the decision of the Premier was dictated by the demand of the complainants is unwarranted. This issue has been considered above.

204. AD PARAGRAPH 58

This allegation is denied.

205. AD PARAGRAPH 63

The fact that the CPF was elected in 2006 means that the term of office of the CPF executive committee has lapsed – it is required to be elected at every annual



general meeting, in accordance with the Western Cape toolkit for setting up a CPF.

206. AD PARAGRAPHS 66 TO 66.2

The allegations in these paragraphs are denied.

207. AD PARAGRAPH 67

The failings with regard to the policing of sexual offences in Khayelitsha are dealt with further in the affidavits of Zarina Majiet and Lillian Artz, filed together with this affidavit.

208. AD PARAGRAPH 69

In light of the findings made by the Task Team, the Minister cannot reasonably contend that it was inappropriate to establish the Commission or that there has not been a breakdown in relations between SAPS and the community of Khayelitsha.

209. AD PARAGRAPH 70.1

209.1 The urgency is self-created.

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209.2 There is no evidence provided as to who is pursuing complaints through structures such as CPFs. Given the dysfunctional nature of the CPFs, it is unlikely that such complaints are being seriously addressed.

209.3 In addition, widespread service delivery complaints reflect dissatisfaction with service delivery across the province including Khayelitsha.

209.4 In any event, the complainant organisations have a constitutional right to submit complaints to the Premier, regardless of the actions taken by other citizens dissatisfied with policing in Khayelitsha.

209.5 The “*further breakdown of law and order in the greater Khayelitsha area*” referred to by the Minister implicitly acknowledges that there has been a breakdown which should be investigated by a Commission of Inquiry.

210. **THE AFFIDAVIT OF PROVINCIAL COMMISSIONER LAMOER**

211. **AD PARAGRAPH 4.1**

I refer to annexures “AL16” and “AL17” together with annexure “AL13”, agendas of the weekly meetings between the Provincial Commissioner and Dr Lawrence, the head of department of the Provincial Department of Community Safety, in which the issues raised in the complaint are tabled. The alleged failure

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to raise the complaint in various statutory bodies has been dealt with above.

212. AD PARAGRAPH 4.2

212.1 The Provincial Commissioner's statement that there was extensive interaction in 2010/2011 between his office and *inter alia* the complainant organisations contradicts the claim by the Minister that the complainant organisations had failed to take up the complaint with the appropriate statutory structures before lodging it with the Premier. I have no knowledge of this intensive interaction between the Provincial Commissioner's office and the complainant organisation in 2010/2011. He is invited to furnish details of this interaction in his replying affidavit.

212.2 Although the complainant organisations have repeatedly raised the issues around policing in Khayelitsha with a range of officials and bodies over a period of many years, as has been detailed above, there was no substantive response from the Provincial Commissioner or any of the other relevant officials or institutions, prior to the appointment of the Commission in August 2012. Until this point we were simply fobbed off. In addition, none of the meetings or attempts to engage made before and during the era of MEC Fritz are raised by the Minister or the Provincial Commissioner.

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213. AD PARAGRAPHS 15 AND 16

If the Provincial Commissioner is unable to state categorically how many MINMEC meetings were convened over the period, or annexe complete minutes of these meetings, little credibility can be attached to his claim that the subject matter of the complaint was never discussed at the meetings concerned.

214. AD PARAGRAPHS 20 AND 21

The agendas attached are of primarily of meetings between Dr Gilbert and the Provincial Commissioner. MEC Plato is rarely recorded as being present. In any event, Annexures “AL12” to “AL26” are incomplete, and appear to be no more than a random sample of the agendas and minutes of the standing meetings. The claim that the issues raised in the complaint were never discussed at these meetings has been dealt with above.

215. AD PARAGRAPHS 22 AND 24

Given the findings of the Task Team concerning vigilantism in Khayelitsha, it reflects poorly on the understanding and performance of functions of all the parties concerned that the problem of vigilantism in Khayelitsha was not raised and vigorously dealt with at these meetings and interactions.

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216. AD PARAGRAPH 26

The allegations in this paragraph are denied for the reasons set out above.

217. AD PARAGRAPHS 28 AND 29

217.1 The copy of the Crime Intelligence report, annexure “AL30” attached is incomplete and the Applicants cannot expect to rely on what could well be a misleading extract without annexing the full document. The extract in any event states that the crime profile in Khayelitsha has not changed over the past 12 years. In 1999 Khayelitsha was declared one of 14 presidential stations. These stations were the largest generators of crime across the country.

217.2 The Provincial Commissioner attempts to undermine the extent of murder, attempted murder, robbery and other social contact crimes (including rape) that have remained constant over the past 12 years, by dis-aggregating the more recent statistics between the three different police stations in the Khayelitsha area.

218. AD PARAGRAPH 32

In a report dated March 2010, the then Provincial Commissioner Petros stated that additional police stations were to be established in Khayelitsha and Mitchell's Plain within a year. A copy of this report is annexed marked

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“**MM38**”. In the circumstances the residents of the area are justifiably sceptical about the claim that *“two further police stations will be established in Khayelitsha within the next two to three years.”*

219. AD PARAGRAPHS 34 TO 38

I submit that little reliance can be placed on the Khayelitsha policing statistics, given that the Task Team has found evidence of suspect data integrity and manipulation of performance evaluation data.

220. AD PARAGRAPH 40 AND 41

Statistics for the Khayelitsha police cluster, which includes prosperous areas such as Strand, Gordon’s Bay and Somerset West, do not accurately reflect standards of policing in Khayelitsha.

221. AD PARAGRAPH 45

The allegations in this paragraph are denied for reasons which have been set out above.

222. AD PARAGRAPHS 47 TO 106

The allegations made in these paragraphs have largely been dealt with above in the section entitled *Introduction*. The contents of these paragraphs are denied

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insofar as they are inconsistent what has been stated above.

223. AD PARAGRAPH 59

223.1 At the time of the meeting in Khayelitsha on 29 March 2012, the Minister had been in possession of the complaint for almost four months and yet he neglected to place the issues raised in the complaint on the agenda for discussion with community leaders in Khayelitsha. The Applicants also failed to do this at any of the other community meetings held in Khayelitsha over the relevant period.

223.2 SJC members attended this meeting on 29 March 2012 where the Minister arrived late and the engagement with the community was at best perfunctory. This is dealt with above.

224. AD PARAGRAPH 61

224.1 It appears from the sequence of events annexed as “AL44” that no opportunity was provided at this meeting for members of the Khayelitsha community to raise substantive issues with the SAPS leadership attending the “*public participation programme*”.

224.2 In any event, few of the individuals present at this “*public participation programme*” who had not been involved in organisations campaigning around the issues, would have had the broad understanding of the

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systemic nature of the shortcomings in policing in Khayelitsha necessary to engage fully with SAPS. None of the complainant organisations were invited to participate in this "*public participation programme*" despite the complaint having been made six months earlier and the issues raised being well-known to SAPS at the time.

225. AD PARAGRAPH 62

225.1 The allegations made in this paragraph are corrected in the affidavit of Major General Burger who points out that the meeting referred to was arranged by him, not the SJC. Although Major General Burger refers to and purportedly confirms the minutes of the meeting, these minutes are not attached to his affidavit.

225.2 It is not accordingly not possible to comment on the agenda or what was discussed at this meeting, other than to state that to the best of my knowledge and the knowledge of the members of the complainant organisations who have confirmed the contents of this affidavit, that none of the complainant organisations were invited to this meeting.

225.3 I note that Major General Burger does not suggest that anyone apart from SAPS representatives, representatives of the CPFs and the Cluster Police Board attended this meeting.

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225.4 Although the Provincial Commissioner states that complaints were directed at the City Metro police at this meeting, no action was taken in this regard. It was an abdication of the responsibilities of the relevant SAPS officials to have simply have washed their hands of these complaints, particularly given the context of the complaints raised by the complainant organisations concerning the conduct of the Metro Police and the City's Anti-Land Invasion Unit in effecting illegal demolitions and evictions.

225.5 In terms of Section 64L of the South African Police Services Act 68 of 1995 ("the SAPS Act"), the National Commissioner is given extensive powers to ensure that municipal police maintain national standards for policing. It is apparent from the founding papers that, despite having received these complaints, Major General Dladla and Major General Burger made no attempt to ensure that the standards of policing required by the SAPS Act were maintained by the Metro Police.

226. AD PARAGRAPH 63

It is apparent from annexure "**AL45**", contrary to what is claimed by the Applicants, that the issue of policing in Khayelitsha and the establishment of a commission of enquiry, was raised in the Western Cape Legislature and that the Premier responded on or about 5 June 2012 by saying that she would make a decision on the establishment of a commission of enquiry, one way, or the other,

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within *"the next week or so"*.

227. AD PARAGRAPH 70

227.1 I refer to the reports of Major General Jephta and the Provincial Commissioner, annexures **"AL48 A"** and **"B"** respectively. The substance of these reports concerning the complaint are contradicted by the Task Team report, annexure **"AL87"**. It is apparent from the National Commissioner's conduct after she was appointed to her office in June 2012 that she effectively rejected these reports. The following issues arise from the reports:

227.1.1 In the Provincial Commissioner's report, at paragraph 8, he refers to a meeting held on 28 February 2012. This meeting was held at the request of SCJ as part of their engagement with SAPS concerning policing in Khayelitsha and as part of their general education programme, to educate their members concerning the criminal justice system. I attended this meeting, as part of the SCJ delegation, together with approximately twenty-five other SCJ members. SAPS were represented by, amongst others, Brigadier Dladla, Colonel Marais (the head of detective services in Khayelitsha) and Warrant Officer Louw, of the FCS ("the Family Violence Child Support & Sexual Offences") unit in Khayelitsha (a copy of the contemporaneous notes of this meeting

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made and confirmed by Joel Bergman of the SCJ are attached marked "MM39". It is apparent from the notes that a frank exchange took place. The SAPS representatives were open about the systemic problems facing the police. In response to questions asked by the SJC members, Colonel Marais described how Khayelitsha police have five thousand dockets, three thousand five hundred of which are currently in court, equating to one hundred and forty dockets per investigating officer. The presentation indicated that there are seven detectives working in the FCS unit, across all three of the Khayelitsha police stations. There are psychological support systems, but many police, especially men, are not keen to use these services because they do not want to be seen as "*babies*". There are more than enough vehicles available, but they break down often because of the terrain. Trainee policemen are allowed to use guns, if they have undergone training. The police want the City to build roads, lights and infrastructure to make their work easier. Police say that many cases are struck off the roll because witnesses do not turn up.

227.1.2 Paragraph 10.1 of the Provincial Commissioner's Report confirms that SJC has had a number of engagements with the Lingeletu station and the Khayelitsha cluster management. It is clear that, contrary to what is claimed in the Founding Affidavits,

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the SJC is engaging with SAPS at a local level in an on-going fashion with regard to a range of issues including: registration of cases; powers of arrest; bail and bail conditions; and court procedures. These are issues which the SJC and TAC, and the other complainant organisations, face on a daily basis. TAC's engagement with SAPS in Khayelitsha pre-dates that of the SJC and continues, in a similar vein, to the present day.

227.1.3 The claim in paragraph 12.2 of the Provincial Commissioner's report that the SJC has not been brought the issues raised in the complaint to the attention of the police in the Khayelitsha cluster or the SAPS Provincial Inspectorate is untrue. On numerous occasions since 2004 the complainant organisations have given the Site B station commanders and other police in Khayelitsha memoranda raising issues concerning cases which were current at the time. These memoranda and other protests have been dealt with above in the section entitled "*The History of the Complaint*".

227.1.4 The further content of these two reports will be dealt with, to the extent necessary, in response to the relief sought in Part B of the Notice of Motion.

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228. AD PARAGRAPH 75

I note that the Provincial Commissioner requested the Task Team to broaden the scope of its investigation to investigate "*any other*" aspects that they may consider helpful in improving the overall quality of service delivery in Khayelitsha.

229. AD PARAGRAPH 76

Despite the expanded scope of the Task Team inquiry, they appear not to have investigated the quality of policing provided by the City's Metro Police.

230. AD PARAGRAPH 77

230.1 I attended the meeting between the Task Team and SJC representatives on 11 July 2012, together with representatives from the other complainant organisations and Ms Bornman from the WLC. The meeting was constructive and the representatives from the complainant organisations left hopeful that the issues raised in the complaint would be addressed meaningfully. This was the first response that we had had from any official in the SAPS to the complaint, (apart from the attempt from Colonel Wiese to arrange a meeting in December 2011, referred to above, which was not followed up on by SAPS).

230.2 In the course of the meeting, the representatives of the complainant

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organisations undertook to provide the Task Team with details of the individual cases in the complaint and the Task Team undertook to view the problems based on the complaint in a systemic light, to keep an open mind in to the establishment of a commission of inquiry.

230.3 The complainant organisations pointed out that they had been working on the issues raised for approximately ten years and had been doing so with a sense of urgency and consistency. Our members living in Khayelitsha were intensely aware that the situation was at a crisis point.

230.4 In light of the engagement with the Task Team, the complainant organisations agreed to approach the Premier and request her to extend the deadline of 20 July 2012 by which the National Commissioner was expected to respond to the complaint, subject to the following conditions:

230.4.1 The members of the Task Team would not close their minds to an idea of a commission of inquiry;

230.4.2 An invitation would be extended to the National Commissioner to come to Khayelitsha, to meet with the complainant organisations and to address members of the community and to hear their concerns;



230.4.3 The complainant organisations would provide the National Commissioner with additional information about their work, dating back almost ten years, around the complaint.

230.5 At the time, the complainant organisations were cautiously optimistic about the outcome of the engagement with the Task Team. There appeared to be a very real prospect of senior SAPS representatives co-operating in a constructive fashion to address the issues raised in the complaint. It subsequently transpired that our optimism was misplaced:

230.5.1 The National Commissioner failed entirely to respond to the invitation to address Khayelitsha residents; and


230.5.2 We had no further substantive interaction with the Task Team or any other senior SAPS representatives (apart from requests for information concerning dockets and case numbers directed to Mr Bregman which he furnished to the best of his ability. Mr Bregman's last communication with the Task Team was on or about 20 July 2012, when he furnished Brigadier Rossouw with the case number for the Lorna Mlofana case).

230.6 I note from paragraph 27 of the National Commissioner's affidavit that she travelled to Cape Town on 18 July 2012 to address issues relating to policing in Khayelitsa. Unfortunately, she made no attempt to meet with

or address Khayelitsha residents or the complainant organisations in the course of her visit.

231. AD PARAGRAPH 79

The Provincial Commissioner is highly evasive about the date on which the Task Team completed its report, stating only that it was furnished to the National Commissioner in "*August*". The precise date on the report itself is illegible, but it states in paragraph 4 under the heading "*Overview of crime situation n the Khayelitsha Area*", that the overview was outstanding and that Task Team was waiting for information from Doctor De Kock of Crime Intelligence. An extract from the Crime Intelligence Report is attached to the founding papers as annexure "**AL30**". It is dated 3 August 2012. From this, one can safely infer that the Task Teams' report was completed by no later than 3 August 2012. This evasiveness is indicative of a need to conceal the fact that the Task Team report was available to the Minister and the National Commissioner in early August, prior to the Premier taking her decision to establish the Commission. In the circumstances, the Applicants' failure to communicate, or engage, with the Premier following the completion of the report is indefensible. The Task Team also stated that the complainant organisations would be provided with a copy of its report once it had been completed. The first time that I and other members of the complainant organisations saw this report was after receipt of the papers in this application in November.



232. AD PARAGRAPH 87

The attempt to summarise the WLC letter, annexure “AL53”, in the sub-paragraphs which follows paragraph 87 is incomplete and I refer to the letter, the content of which speaks for itself.

233. AD PARAGRAPH 89

The Provincial Commissioner refers to the report of the SAPS Executive Legal Officer outlining his involvement in the matter between November 2011 and July 2012. The Provincial Commissioner fails to attach this report to his affidavit. He is invited to include the report in his replying affidavit. If he fails to do so, this Court will be requested to draw the inference that the report confirms that the Applicants deliberately failed to comply with their obligations to cooperate with the Premier.

234. AD PARAGRAPH 92 TO 93

234.1 I did not attend the meeting between the Premier and the complainant organisations on 6 August 2012. The complainant organisations were represented by Ms Angy Peter (SJC), Ms Yoliswa Dwane (Equal Education), Mr Joel Bregman (SJC), Ms Jayne Arnott (Triangle Project), Mr Zackie Achmat (Ndifuna Ukwazi), and Mr Mike Hamnca (TAC). The representatives were accompanied by Ms Bornman of the WLC.

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234.2 At the outset of the meeting, the Premier asked the complainant organisations whether they heard from SAPS or the Task Teams since the expiry of the deadline on 31 July 2012. They confirmed that they had not. The Premier stated that she also had not heard from SAPS. It is correct that the complainant organisations confirmed that:

234.2.1 They had heard nothing further from SAPS after having addressed SAPS' requests for information as set out above;

234.2.2 They believed that it was imperative that a commission be established to address the root causes of the on-going acts of vigilantism.

235. AD PARAGRAPHS 96 AND 97

The allegations contained in this paragraph are denied for reasons set out above.

236. AD PARAGRAPH 99

I note that the Applicants took no action between the National Commissioner's letter of 7 August 2012 and the media statement issued on 22 August 2012. In the circumstances, the Premier had no alternative but to take a decision on the establishment of the Commission without any substantive input from SAPS.

237. AD PARAGRAPH 106

The claim that the SJC's media statement put paid to the Premier's position that the vigilante killings were linked to SAPS inefficiency is inconsistent with the quote furnished in support of this allegation.

238. AD PARAGRAPH 108.3

238.1 The statement that the Premier's decision to establish the Commission was without any rational basis is insupportable:

238.1.1 The Premier's decision is reinforced by what is stated by the Minister in his letter of 27 August 2012, annexure "**AL59**", where he noted that he was concerned about crime, particularly gender based violence in the Khayelitsha district and he acknowledged the "*urgency and seriousness of the matter*".

238.1.2 By the time the Minister wrote his letter of 27 August, he had been in receipt of Colonel De Kock's Crime Intelligence report (annexure "**AL30**") and the Task Team report (annexure "**AL87**") for several weeks. The Minister failed to make these reports available, either to the Premier or to the complainant organisations, in circumstances where they demonstrate the extent of the breakdown in policing in Khayelitsha. The Minister

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confirms having “*received a report and a briefing relating to the matter from the National Commissioner of Police*” in his letter of 27 August 2012.

239. AD PARAGRAPH 111

In the Premier’s letter of 28 August 2012, she sets out (in paragraph 37) her reasons for not explicitly including the City of Cape Town’s Metro Police Service within the terms of reference of the Commission. Although the SJC is critical of this decision and we regard it as unfortunate that the Metro Police were not explicitly included within the Commission’s terms of reference (as this would facilitate an investigation into all aspects of policing in Khayelitsha), we accept that the Premier has a broad discretion to establish a commission of inquiry in terms of section 206(5)(a), read with 127(2)(e), of the Constitution. While we do not agree with the reasons given by her for this omission, we accept that it was not unreasonable for her to do so. In any event, given the oversight powers granted to the National Commissioner over municipal police in terms of section 64L of the SAPS Act, the Commission does have authority to investigate whether SAPS has complied with its legislative oversight functions.

240. AD PARAGRAPH 112.1

Given that the complaint was addressed specifically to policing in Khayelitsha, it was entirely appropriate for the Premier to refer the matter to the Provincial

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Commissioner for investigation and comment. It was also appropriate for the Premier to inform the Minister and the National Commissioner of the matter, by copying them in on the correspondence and allowing them to comment insofar as they deemed it appropriate.

241. AD PARAGRAPH 113

I am unable to respond to the allegations contained in this paragraph as the Provincial Commissioner has failed to attach the Minister's letter of 30 August 2012 to his affidavit, despite the claim that the letter is attached as annexure "AL61". The SJC's rights in this regard are reserved.

242. AD PARAGRAPH 114

I note that none of the complainant organisations were not invited to the meeting between the Premier and the Minister on 9 October 2012, despite the Premier's attempt to have us included.

243. AD PARAGRAPH 118

The SJC endorses what is stated by the Premier at paragraphs 3, 4 and 5 of her letter of 8 October 2012, annexure "AL65", concerning the investigation of crime, the purpose of the Commission, and the appointment of Justice O'Regan to the Commission.

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244. AD PARAGRAPH 120

At the 9 October 2012 meeting the Minister did more than express concerns that the alternative mechanisms within the inter-governmental relations framework had not been utilised by the Premier. In a letter from the Premier to the SJC's attorneys dated 16 October 2012, a copy of which is annexed marked "MM40", she stated that the Minister and the National Commissioner had made it clear to her that they regarded the establishment of the Commission to be an act of aggression and that they did not believe that a commission of inquiry was warranted.

245. AD PARAGRAPHS 122 TO 123

The National Commissioner fails to deal with the unreasonable nature of the SAPS' response to the Premier, who faced sustained pressure from the complainant organisations to make a decision on the establishment of a Commission without further delay.

246. AD PARAGRAPH 122

The National Commissioner's denial that the Premier had afforded her a reasonable opportunity to deal with the concerns raised ignores the SAPS' inaction for a period of six months between December 2011 and June 2012 and their failure to deal with the complaints in any substantive manner thereafter.

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247. AD PARAGRAPH 123

247.1 The National Commissioner's claim that she did not have enough time to complete her work and that she had been overly optimistic in her time estimates, overlooks the fact that she had had access to the Task Team report since early August 2012. This report confirmed the complaint of a systemic breakdown in policing in Khayelitsha.

247.2 Given the National Commissioner's statement that in light of the complexity of the issues she had required more time, it is inexplicable that she failed to communicate this fact to the Premier after the expiry of the 31 July deadline or in her letter of 7 August 2012.

248. AD PARAGRAPHS 128 AND 129

I refer to what has been stated above with regard to the Metro Police.

249. AD PARAGRAPH 131

I note that even on 11 October 2012, the Premier was open to the possibility of suspending the work of the Commission, if the Applicants were prepared to commit themselves to an independent, workable and effective investigation of the issues raised by the complaint.

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250. AD PARAGRAPHS 132 TO 133

250.1 Annexure “**AL67**” is an unsigned draft letter dated 11 October 2012 of the letter sent from the Minister to the Premier. A copy of the signed letter, dated 12 October 2012 is attached marked “**MM41**”. The signed letter differs in some of its detail from the draft annexed as “**AL67**”.

250.2 Annexure “**AL67**” proposed an internal police investigation. A number of issues concerning the procedure proposed by the Minister were raised by the complainant organisations in a letter from the WLC to the Premier on 22 October 2012, a copy of which is annexed to the founding papers as “**AL70**”. These issues included:

250.2.1 The breach of trust that exists between members of the community and the criminal justice system, in particular the police;

250.2.2 Concerns about the legitimacy of SAPS investigating their own conduct; and

250.2.3 Accordingly, the complainant organisations requested clarification concerning the following issues:

250.2.3.1. A commitment to clear and firm timelines;



- 250.2.3.2. Whether the complainants organisations would be permitted to make recommendations on the terms of reference of the inquiry, including the systemic nature of the problems in the criminal justice system;
- 250.2.3.3. Whether independent civil society nominees would be permitted to assist SAPS national inspectorate in conducting the inquiry;
- 250.2.3.4. Whether public hearings would be held;
- 250.2.3.5. 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 the terms of reference;
- 250.2.3.6. Whether the ambit of the inquiry would extend to the police's oversight powers over the City's Safety's and Security Directorate in terms of section 64L of the SAPS Act;
- 250.2.3.7. Whether the investigation would extend to the roll



of the City and other levels of governments in infrastructure development and other programmes designed to increase safety and assist police work;

250.2.3.8. Whether the identity and safety of members of the community who participated in the inquiry would be protected;

250.2.3.9. Whether the report would include dissenting views (if they existed); and

250.2.3.10. Whether the report would be made public.

250.3 The complainant organisations requested a response to the queries raised by Friday, 26 October 2012. Once more, the Applicants disregarded this deadline.

250.4 The document annexed to the founding affidavit as “AL67_A”) was never made available to the complainant organisations (or to the Premier) prior to this application being launched. This document in almost every respect satisfactorily addressed the concerns raised in the letter from the complainants’ attorney to the Premier dated 22 October 2012, annexure “AL70”. The only substantial concern that the complainant organisations would have had with the investigation

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proposed in annexure “AL67_A” relates to the lack of independence of the secretariat (which it was envisaged would be drawn from SAPS in the province).

- 250.5 The complainant organisations particularly support the fact that the National Commissioner’s office, in annexure “AL_67A”, recognised that the independent policing panel:

“Will assist SAPS in coming up with strategies to correct service delivery deficiencies and simultaneously address negative perception of its role . . .

The independent panel into policing should be used as a precursor to the real turnaround strategy for SAPS in the province which eventually should be cascaded to every province in the country with respect to service deliver[y] and returning SAPS to its core mandate in the country.”

- 250.6 The questions raised by the complainant organisations concerning the Minister’s proposed national inspectorate investigation overlapped to a considerable extent with those raised by the Premier in her letter dated 19 October 2012, annexed to the founding papers as “AL68”.

- 250.7 The Applicants failed to explain why the independent and transparent

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investigation proposed in annexure “AL67_A” was never tabled for discussion with the complainant organisations or the Premier and, in its place, the Applicants proposed an internal National Inspectorate investigation as reflected in the Minister’s letter of 12 October 2012.

251. AD PARAGRAPH 134.1

I note the National Commissioner’s view that a full police investigation into the issues raised is required.

252. AD PARAGRAPH 134.3.4

The Minister states where police officers have been found by the investigating panel to have violated police regulations, he would see to their prosecution. The Minister envisages far wider prosecutorial powers than the complainant organisations requested. In the original complaint “AL38”, at paragraph 6, the complainant organisations stressed that the purpose of the complaint is not to allocate blame, but to redress the short-comings in policing in Khayelitsha.

253. AD PARAGRAPH 138

The initial complaint of November 2011 recognised that the powers of the Premier to appoint a Commission were limited to policing. However the complaint requested that the terms of reference be extended to the interface between the police and the other elements of the criminal justice system and to

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include the Metro Police and the City's Safety and Security Directorate. This was not an unreasonable request, as is recognised by the National Commissioner's office in annexure "AL67_A", where terms of reference are recommended which are closely aligned to those proposed in the November 2011 complaint.

254. AD PARAGRAPH 139

In the Minister's letter of 24 October 2012, annexure "AL71", he failed to recognise the independence of the Commission and the extent of the constitutional powers conferred upon the Premier to investigate and appoint a commission of inquiry.

255. AD PARAGRAPH 142

The claim that the appointment of the Commission had caused the National Commissioner to halt the investigation loses sight of the fact that the Task Team investigation was completed by 3 August 2012. The independent panel posed by the National Commissioner's office was never initiated. There is also no evidence that the investigation by the National Inspectorate proposed by the Minister was ever launched. In the circumstances, the claim that the Commission caused the National Commissioner to halt the investigation appears to be unfounded.

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256. AD PARAGRAPH 147.1

This issue has been dealt with above.

257. AD PARAGRAPH 147.2

257.1 The claim that the complaint is loosely worded is denied. The document is attached to the founding affidavit and speaks for itself.

257.2 The Task Team report casts serious doubt on the Provincial Commissioner's claim that the relationship between Free Gender and SAPS in Khayelitsha has proven mutually beneficial. I refer to paragraph 6.9 of the Task Team report.

258. AD PARAGRAPHS 150.4 AND 150.6

The allegations in these paragraphs are denied to the extent that they are inconsistent with what has been stated above.

259. AD PARAGRAPH 153

It is apparent from the list of documents requested by the Commission that the allegation that the information and documents requested from the Provincial Commissioner went beyond the Commission's terms of reference, is unfounded. If the reason for the failure to comply with the request for documentation was

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because of the volume of material requested, the Provincial Commissioner should simply have requested an extension of the time period within which to furnish the information.

260. AD PARAGRAPHS 155, 156 AND 177

It is apparent from these paragraphs that much, if not all, of the information requested has already been collected. Insofar as the Applicants' claim that they will be prejudiced if the interim relief brought against them is granted, such prejudice has already been suffered.

261. AD PARAGRAPH 157

The vigilante killings are symptomatic of the breakdown in relations between the police and the community of Khayelitsha that lies at the heart of the November 2011 complaint.

262. AD PARAGRAPH 161

The purported summary of the fourth notice issued by the Commission in subparagraphs 161.1 to 161.8 is not accurate. The four themes that the Commission intends addressing are set out in annexure "AL78" and speak for themselves.

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263. AD PARAGRAPH 162

I note that the Provincial Commissioner fails to attach the State Attorneys letter of 22 October 2012 to his affidavit. He is requested to do so in his replying affidavit and the SJC reserves its right to file a supplementary affidavit dealing with the letter, to the extent that this might be required.

264. AD PARAGRAPH 164

The claim that the Commission exceeded its powers is denied.

265. AD PARAGRAPH 181

The allegations in this paragraph and the paragraphs that follow, are denied. The Provincial Commissioner misrepresents the Task Team's analysis of specific cases. This issue has been dealt with above.

266. AD PARAGRAPH 184

The allegations in this paragraph are denied for the reasons given above.

267. AD PARAGRAPH 189 TO 189.10

The allegations in these paragraphs have been dealt with above in the section entitled *The History of the Complaint*. The Provincial Commissioner glosses

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over the Task Team report which is a damning indictment of the services provided by SAPS to the people of Khayelitsha.

268. AD PARAGRAPH 190

The complaint is directed at police inefficiency, which cannot be investigated in isolation from the broader criminal justice system. For example, where an accused is released on bail as a result of inadequate detective work, this is primarily a policing issue rather than a deficiency in the prosecution of crime.

269. AD PARAGRAPHS 191 TO 199

The findings of Task Team have been dealt with above in the section entitled *The Vindication of the Commission*. The allegations in these paragraphs are denied to the extent that they are inconsistent with what is stated above.

270. AD PARAGRAPH 200

I refer to what has been stated above with regard to Free Gender.

271. AD PARAGRAPH 201

271.1 It is not correct that the complaint contains only “eight case studies”.

The complaint provided 22 cases as examples of the systemic breakdown in policing. The Task Team examined 19 of these cases, not

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eight (they inexplicably omitted the three cases that related to City's Safety and Security Directorate). They also examined 78 cases of "executions" over 14 months that related to vigilante justice or in their words "*Bundu Courts*".

271.2 The Task Team also randomly examined, investigated or perused at least 30 more case dockets relating to the "*Quality of Investigations*". The Provincial Commissioner fails to refer to these grave cases of human rights abuses and violations of SAPS procedures.

272. AD PARAGRAPH 203

I refer to what has been stated above in the section entitled "*The History of the Complainant*".

273. AD PARAGRAPHS 201 TO 224

The allegations in these paragraphs are denied to the extent that they are inconsistent with what is stated in the section entitled *The History of the Complaint*.

274. AD PARAGRAPHS 226 TO 238

The *Vigilantism report* has been dealt with above in the section entitled *The Vindication of the Commission*. The allegations contained in these paragraphs

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are denied to the extent that they are inconsistent with what is stated in this section.

275. AD PARAGRAPH 235

The allegations contained in this paragraph are contradicted by the *Vigilantism report* relied upon by the Applicants.

THE AFFIDAVIT OF NATIONAL COMMISSIONER PHIYEGA

276. AD PARAGRAPH 5

I note that the National Commissioner states that she met with representatives of the community of Khayelitsha. However, at no stage did she meet with representatives of the SJC or any of the other complainant organisations. This was despite the invitation extended to her, through the Task Team, to meet with us. She also failed to respond to the invitation to meet with members of the broader Khayelitsha community.

277. AD PARAGRAPH 6

The ability of SJC to respond in detail to the crime reports and statistics available to the National Commissioner is hampered by the fact that only an executive summary of the Crime Intelligence report, annexure "AL30", has been annexed to the papers. Although SJC's attorney has requested a copy of the full

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report, this had not been made available to SJC by the time which this affidavit has been deposed to.

278. AD PARAGRAPH 7

I note that National Commissioner's acknowledgement of the complex and unique challenges faced by the police in Khayelitsha. Although the National Commissioner claims that crime in Khayelitsha is less amenable to normal policing methods, large parts of Khayelitsha consist of formal housing in which conventional policing methods, if diligently applied, would be no less effective than in other suburbs consisting of formal housing and business areas. The SJC acknowledges that policing in Khayelitsha is difficult, for many of the reasons cited by the National Commissioner, but this does not excuse the shockingly poor level of service provided by the police to the people of Khayelitsha.

279. AD PARAGRAPHS 9 TO 12

279.1 Although the National Commissioner refers to the external constraints on policing Khayelitsha in this paragraph, she neglects entirely to deal with the organisational shortcomings and other deficiencies identified in the Task Team report.

279.2 Given the constraints imposed by section 206(5) of the Constitution, the Premier's decision to limit the focus of the Commission into

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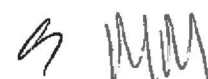
inefficiencies in policing and the breakdown in relations between the Khayelitsha community and SAPS cannot be described as arbitrary. We concur with the National Commissioner to the extent that a comprehensive understanding of the crime, safety and security issues facings residents in Khayelitsha would need to extend beyond the role of the SAPS.

280. AD PARAGRAPHS 13 AND 14

281. The concerns raised about the timing of the Commission overlook the following:

281.1 The panel proposed by the National Commissioner's office as set out in annexure "AL67_A" would have done much of its work through the festive season period, when the National Commissioner states that crime levels are at their highest.

281.2 If the procedure proposed in annexure "AL67_A" had been timeously implemented in accordance with the time-frame posed, the investigation would have been completed by 1 November 2012. Given the demanding timelines set out in the proposed plan it is likely that the independent investigation would only have completed its work substantially later in the year or in 2013.



281.3 If the only reason for the Applicants' failure to furnish the information was the alleged administrative burden, they could simply have asked for an extension until after February 2012 in order to supply the information. Their failure to make such a request confirms that the alleged administrative burden is a smokescreen – the Applicants regard the establishment of the Commission as an act of aggression and they are not prepared to co-operate with it.

282. AD PARAGRAPHS 15 TO 32

These issues have been dealt with above.

283. AD PARAGRAPH 33

I confirm that Mr Bregman of SJC had been liaising with SAPS on behalf of the complainant organisations and that after approximately 20 July 2012 he heard nothing further from SAPS after having furnished them with certain information.

284. AD PARAGRAPHS 35 AND 36

The letter of 7 August 2012, annexure **“AL54”** is self-evidently a generalised response which fails to engage with the substance of complaint made in November 2011. The further allegations in these paragraphs have been dealt with above.

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285. AD PARAGRAPHS 37 TO 38

In the National Commissioner's letter of 7 August 2012, annexure "AL54" she states that "*we received communication from the complainants and are arranging to meet and discuss the issues they raise*". This statement is false and misleading in that no such arrangements were being made as at 7 August 2012. In these paragraphs she refers only to "*proposed further contact with the complainants.*" I note that in her affidavit the National Commissioner does not claim that any further meetings had in fact been arranged with the complainant organisations.

286. AD PARAGRAPH 40

The National Commissioner fails to explain why he did not engage with the Premier after she had received the Task Team report. She also conspicuously fails to place on record when the report was completed and delivered to her or why she did not communicate with SJC or the other complainant organisations after 20 July 2012. I can only infer that the Applicants could not decide whether to proceed with the independent panel proposed in annexure "AL67", resulting in a deadlock until the Minister formulated his own proposal on 12 October 2012, as is reflected in annexure "AL67".

287. AD PARAGRAPH 41

This statement suggests that the National Commissioner supported an independent panel. It is apparent from annexure “AL67” that the Minister was in favour of an internal investigation by the National Inspectorate.



MANDLA MAJOLA

I certify that:

1. 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 to the prescribed oath;
 - 1.3 he considers the prescribed oath as binding on his conscience;
 - 1.4 the deponent thereafter uttered the words: “I swear that the contents of this declaration are true, so help me God”.

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- 2 the deponent has signed this declaration in my presence at **CAPE TOWN** on this
the *26th* day of *NOVEMBER* 2012.

h

COMMISSIONER OF OATHS
ex officio

CAROLINE EMMA SMYTH
THE OATHS
50 KREKOR STREET, CAPE TOWN
COMMISSIONER OF OATHS
PRACTISING ATTORNEY, N.G.A.

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