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WOMEN'S LEGAL CENTRE

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TO: The Western Cape Provincial Executive

CARE OF:

Ms H Zille

Premier of the Western Cape

By E-mail: premier@pgwc.gov.za

AND BY HAND

AND TO:

Ms F Stewart

Legal Services

Department of the Premier

By email: Fiona.Stewart@pgwc.gov.za

AND BY HAND

Trustees: Shereen Mills (Chairperson) Shaamela Cassiem Teboho Molebatsi Alison Tilley Mary Vilakazi

Patrons: Judge K O'Regan, Yasmin Carrim, Lebogang Malepe

Attorneys: Jennifer Williams (Director) Hoodah Abrahams-Fayker Stacey-Leigh Manoek Nonandi Diko, Zingisa Zenani, Sanja Bornman

Jody-Lee Fredericks (Legal Advisor)

Staff: Ingrid Johnson Aretha Louw Estelle Malgas Nwabisa Ntshibelo Nomhle Magwaza

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4 April 2012

Dear Honourable Premier and Ms Stewart

RE: SUPPLEMENT TO COMPLAINT IN TERMS OF SECTION 206(5)(a) OF THE CONSTITUTION, AND SECTION 66(2)(A) OF THE CONSTITUTION OF THE WESTERN CAPE: POLICE INEFFICIENCY AND A BREAKDOWN IN POLICE-COMMUNITY RELATIONS IN KHAYELITSHA, CAPE TOWN

Our meeting with yourselves on 6 March 2012, and the subsequent electronic communications between the writer and Ms Stewart refer.

Please find enclosed the following documents, as agreed:

1. Supplement to our clients' complaint in terms of section 206(5)(a) of the Constitution and section 66(2)(a) of the Constitution of the Western Cape;
2. The statement of Lungiswa Geca
3. The statement of Ganikhaya Yekani
4. The statement of Lusanada Kokolo
5. The confirmatory statement of Tobile Funani, in support of Lusanada Kokolo

Please note that the statements are not in their original form, but have been retyped for ease of reading. In the event that you require sight of the original statements, we are in possession of the originals and will furnish you with such originals immediately upon your request.

We trust that you will find this in order, and we look forward to your response in due course.

Yours faithfully

WOMEN'S LEGAL CENTRE


SANJA BORNMAN



THE SOCIAL JUSTICE COALITION

THE TREATMENT ACTION CAMPAIGN

EQUAL EDUCATION

TRIANGLE PROJECT

NDIFUNA UKWAZI

LODGE THIS SUPPLEMENT TO THEIR COMPLAINT IN TERMS OF SECTION 206 (5)(a) OF THE CONSTITUTION AND SECTION 66(2)(a) OF THE CONSTITUTION OF THE WESTERN CAPE, TO:

THE PREMIER OF THE WESTERN CAPE PROVINCE

INTRODUCTION

1. This submission serves to supplement the original complaint, submitted by civil society organisations active in Khayelitsha to the Premier of the Western Cape Province ("the Premier") on 28 November 2011, of police inefficiency and a breakdown in relations between the police and the community of Khayelitsha.
2. On 6 March 2012 a meeting was held between representatives of the civil society organisations and the Premier, legal advisor to the Premier, and the mayoral committee member for Safety & Security, to discuss whether, in the event of a Commission of Inquiry being established, its terms of reference should include the conduct of the Cape Town Metropolitan Police Department ("CTMPD"). The civil society organisations maintain that it is necessary for the terms of reference to include the conduct of the CTMPD in order to understand fully the Khayelitsha

community's loss of confidence in the criminal justice system. In paragraph 70 of the complaint the following observation was made:

"The CTMPD is a fundamental part of the policing problems being experienced by Khayelitsha residents. The general demeanour of its members and their many acts of unlawful evictions and destruction of property in informal settlements are a violation of the constitutional and other legal obligations [of residents]. They are a source of terror to people living in informal settlements rather than a force for good. It is accordingly imperative that the commission's terms of reference be broad enough to allow it to investigate the effectiveness of both the SAPS and the municipal police."

3. It was agreed, in consultation with the Premier's legal advisor, Ms Fiona Stewart, that the civil society organisations would submit ten further statements dealing with unlawful conduct by members of the CTMPD before 30 April 2012.
4. However, since the meeting on 6 March 2012, there have been a number of vigilante attacks in Khayelitsha that have resulted in the deaths of nine people. The Premier has correctly identified these "mob justice" killings to be a direct consequence of the breakdown in relations between the police and the community of Khayelitsha.
5. The Premier has accordingly called for the Commission of Inquiry to be established without further delay. Given the urgency of the matter, it was agreed that the civil society organisations would submit three, rather than ten, statements dealing with the actions of members of the CTMPD in unlawfully evicting residents of informal settlements in Khayelitsha and destroying their property.

CONTEXT

6. Annexure B to the original complaint dealt with the involvement of the CTMPD, the Anti-Land Invasion Unit ("ALIU") and Law Enforcement ("LE") officials in the unlawful eviction and demolition of the home of Khayelitsha resident Ms Nokuzola Mantshantsha.

7. The CTMPD, LE and Traffic Services fall under the City of Cape Town's ("the City's") Safety and Security Directorate ("the Directorate") and the ALIU is a specialised unit within this body. Many of the complaints received by the civil society organisations refer to members of the CTMPD, ALIU and LE working together. This results, in the minds of community members, in blurring of who and what constitutes the City's police service, as the CTMPD works in conjunction with ALIU and LE when conducting evictions and demolitions.
8. The statements received by the civil society organisations reflect a fundamental disregard for the requirements of the Prevention of Illegal Evictions from and the Unlawful Occupation of Land Act 19 of 1998 ("PIE") on the part of the CTMPD and other officials within the Directorate. There is a consistent pattern, in informal settlements across Khayelitsha, of residents having been evicted and having had their homes demolished without court orders, in violation of residents' rights in terms of section 26 of the Constitution and PIE. This is graphically reflected in the statements of Ms Lungisa Geca (A), Mr Ganikhaya Yekani (B), Mr Lusanda Kokolo (C) and Mr Tobile Funani (D), annexed to this supplementary complaint.
9. The statements record that, in addition to breaking the law by evicting people without a court order, City officials have knowingly destroyed residents' homes while their possessions were still inside.
10. The role of the Directorate's officials in illegal evictions, and in turn, in causing a break-down in the relationship between itself and community, is further borne out by the case of *Momasa and 6 others v Anti-land Invasion Unit of the City of Cape Town & The City of Cape Town* (which is *sub judice* before the Cape High Court and wherein the applicants have obtained an interim order). A copy of the Notice of Motion and the Founding Affidavit in this matter was made available to the participants of the meeting on 6 March 2012.

CONCLUSION

11. The unlawful conduct of members of the Directorate has been fundamental to the loss of confidence in the criminal justice system in Khayelitsha. If the terms of reference of the Commission of Inquiry do not include the conduct of members of the Directorate, there is no prospect of the Commission being able to achieve its objective of establishing the causes of the breakdown in relations between the police and the community of Khayelitsha.

Name of Interviewer: Joel Bregman
Contact Number: 072-769-0100
Branch of Interview:
Date of Interview: 24/11/10

Introduction Questions

Name: Lungiswa Geca
Age: 35
Gender: Female
Marital Status: Married
Children:
Phone Number: 078-334-1154
Address: BM 516, Site B
I authorize the use of my name publicly: Yes

Statement of Understanding:

I understand that my testimony may be used to demonstrate health and safety concerns in Khayelitsha via SJC publications and/or advocacy initiatives. I understand that I am not required to discuss any information I do not want to discuss. I understand that I may ask that my testimony be kept anonymous. I understand that I am not getting money or an award for this interview.

Signature: _____

Topics Disclosed (circle AFTER the interview is completed):

Physical Assault Robbery Sexual Assault Rape
Road/Pedestrian Health Related Other: Police

Testimony :

The same day as Gem's, my house was taken down, in early September. There was no X. L.E. didn't say anything. The just said the L.E. officials they must being breaking down the house. The provided no documentation. The extension that they broke down had been finished. It was attached to the main house, and it was used as a Spaza shop. It had been about 2 weeks since I finished the extension that they came and destroyed. It was the same 'team' that had taken down Glen's house. I was there when they were destroying it. There was nothing in the extension. They destroyed the materials used for the extension. Some was broken beyond repair, including some zinc sheathing.

There was no communication. No way to ask, there is no time. i asked why you are

doing this and one replied "were ready to take down this House."

After destruction I didn't rebuild it until last Thursday, 18 November and I am still busy rebuilding it. I've herd rumour, but can't confirm that there is an informer in the community who calls law enforcement to come and destroy. I didn't go to the Street Committee either during the first extension or the current rebuild. My daughter was traumatised by the experience and today when she saw police, L.E. she got a shock and was scared.

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 Name of Interviewer: Joel Bregman
 Contact Number: 072 769 0100
 Branch of Interview: BM
 Date of Interview: 25/11/2010

Introduction Questions:

Name: Ganikhaya Yekani

Age: 26

Gender: Male

Marital Status: Single

Children? Names/Ages:

Phone Number: 078 657 4976 or 083 768 4358

Address: BM 514

Statement of Understanding:

I understand that my testimony may be used to demonstrate health and safety concerns in Khayleitsa via SJC publications and/or advocacy initiatives. I understand that I am not required to discuss any information I do not want to discuss. I understand that I may ask that my testimony be kept anonymous. I understand that I am not getting money or an award for this interview.

Check one:

Please keep my name anonymous

I authorize the use of my name publicly

☐

☐ YES

Signature: (on original)

Topics Disclosed (circle AFTER the interview is completed):

Physical Assault

Robbery

Sexual Assault

Rape

Road/Pedestrian

Health Related

Other: **Eviction/Demolition**

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Testimony

The demolition took place two weeks before September in BM section. Not far from here, but not this home. When they demolished it there was no X. I wasn't there, I was at work. When I returned it was all demolished, all my belongings were inside it, and the structure was all broken down on top of it. My sister called me informing me my house was being demolished. A number of things were damaged, my bed, wardrobe, cupboard, food, and the structure itself.

The reason they demolished it (my sister asked Law Enforcement) was because I didn't live in the home. The reason they thought this is because in the day I sleep, and at night, I work. So when it is the day it is all quiet, they think no one is living there.

3 weeks I lived in it before it was demolished. I asked the Street Committee prior to moving in. I identified an open space. The one I liked was close to the electricity box, but I didn't have time to get to the electricity dept to connect, so I used paraffin instead. The Street Committee approved it and I built my home right there.

I already have a home (the place where the interview is taking place). The reason I decided to go out is because I am an adult because I need to fend for myself. There were 3 of us living in this room.

The one destroyed I have not rebuilt. Materials was broken. I took some but most was broken. I'm afraid of rebuilding because they will come and break it down again and it will be a waste. I know other people this has happened to in BM.

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When Law Enforcement was at my home with my sister, she tried to speak to them, they didn't listen, they just broke the house and went.

I ensure that the above testimony is what I experienced.

Signature: (on original)

S MM

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Safe & Clean Toilets Campaign
Community Testimonials
Confidential



Name of Interviewer: Angy Peter
Contact Number: 078 371 4147
Branch of Interview: BT
Date of Interview: 23/03/2012

Introduction Questions:

Name: Lusanda Kokolo
Age: 29 Gender: Male
Marital Status: Single
Children: 2
Phone Number: 073 484 9999
Address: BM 4737

Statement of Understanding:

I understand that my testimony may be used to demonstrate health and safety concerns in Khayleitsha via SJC publications and/or advocacy initiatives. I understand that I am not required to discuss any information I do not want to discuss. I understand that I may ask that my testimony be kept anonymous. I understand that I am not getting money or an award for this interview.

Check one:

Please keep my name anonymous

I authorize the use of my name publicly

☐

☐ YES

Signature: (on original)

Topics Disclosed (circle AFTER the interview is completed):

Physical Assault Robbery Sexual Assault Rape
Road/Pedestrian Health Related Other: **Eviction/Demolition**

S MM

Testimony

On 29/02/2012 when I came from work as I was working night shift. When I woke up I found my house been mark X and date of 29/02/2012 was written on it. I went to community leader and ask what is happening to my house. He said Law Enforcement is going to evict houses that have no people who are living¹.

I told him I just close the shebeen site but am staying there². He didn't have any contacts for the people who put X on my house. On 13/03/2012 Law Enforcement arrived. I was off³. They arrived and told me that they are demolishing my house. There was my bed and pool table, electricity box, my crockery. They destroyed everything. They did not give chance to take my belongings. I have been living in this house from 1991. Now I don't have place to stay but I am at home⁴. City didn't give any paper or communication. About 20 people from City came with harm and destroyed my shack.

I ensure that the above testimony is what I experienced.

Signature: (on original)

¹ Should read – 'no people who are living in them – i.e. are empty'.

² This property had for many years been operating as a shebeen, as well as being the home of Mr Kokolo. When Mr Kokolo's brother died, who had run the business, it ceased to operate and Mr Kokolo made use of it purely as a residence.

³ Off from work.

⁴ He is currently staying at his parent's home.

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I ensure that the above testimony is what I experienced.

Signature: (on original)

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