



MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

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Premier of the Western Cape
Ms H Zille
Office of the Premier of the Western Cape
P/Bag X 9043
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12 October 2012

Dear Premier Zille

**MEETING TO DISCUSS THE APPOINTMENT BY YOU OF A COMMISSION OF
INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY IN KHAYELITSHA
AND OF A BREAKDOWN IN RELATIONS BETWEEN THE COMMUNITY AND
THE POLICE IN KHAYELITSHA**

Thank you for attending the meeting which was arranged by the two of us to discuss the above Commission of Inquiry and for your subsequent letter dated 11 October 2012. I also wish to record my deep gratitude to you for the cordial manner in which the discussions took place.

I do not, at this stage, intend to canvass any of the issues raised by us during our meeting. I shall, however, do so, at a later stage, should it become necessary.

During the meeting your legal adviser, Ms Fiona Stewart, asked very pertinently (and I quote) "if we agree to postpone the commission, what process will be put in place." I have interpreted that question to suggest that you do indeed have an open mind on the matter and are prepared to consider postponing the work of the commission. If this happens, then it will not be necessary for me to explore other legal avenues open to me.

In the light of this, I, firstly, want to thank you for your willingness to engage with me on the issue and, secondly, in the light of that generosity, wish to share with you the plan that SAPS has developed to address the concerns raised by you about policing in Khayelitsha.

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I do so without prejudice to any rights which I may have in the matter and purely in an effort to resolve amicably, in the same spirit of goodwill, a potential intergovernmental dispute.

However, before dealing with the steps which the National Commissioner will take to address the concerns raised by the social movements which approached you, I do need to record that the Khayelitsha district does receive regular attention. You are, no doubt, aware that the provincial joint structure which is an extension of the national JCPS Cluster meets once a month. This structure consists of the Departments of Correctional Services, South African Police Service, Home Affairs, South African National Defence Force, Justice, Transport and Social Development. The Metro Police are also represented on this structure. I am informed that issues affecting Khayelitsha are discussed within this structure from time to time. For example, the protest action in Khayelitsha, last year, received the attention of this structure. I am also informed that the South African Police Service convenes izimbizo with the community of Khayelitsha from time to time where issues of concern to the residents of Khayelitsha are aired. There are also other formal settings within which the concerns regarding Khayelitsha are considered. I now turn to the steps which will be taken.

The National Commissioner had met with you and had taken note of your concerns and the complaints lodged with you. She had also taken note of your correspondence to her and the National Commissioner concluded that it was necessary to address those concerns.

In order to do so, the National Commissioner issued standing instructions to the police to investigate and to consider the issues. The National Commissioner reasoned that a full police investigation is needed and that at a later stage, if necessary, a more formal inquiry in which the police will be assisted by persons outside of the South Africa Police Service appointed by the National Commissioner will be conducted. I concur with the National Commissioner.

The National Commissioner instructed the South African Police Service's National Inspectorate to investigate fully all the complaints lodged with you by the complainants. This instruction will be confirmed by the National Commissioner. The National Inspectorate will be assisted fully by the provincial inspectorate and will investigate the complaints of:

- i. Allegations of inefficiency of the South African Police Service stationed at Site B, Bonga Drive, Khayelitsha; Steve Biko Road, Harara, Khayelitsha and Makabeni Street, Lingalathu West, Khayelitsha; and
- ii. The status of relations between the South African Police Service and the residents of Khayelitsha.

The National Inspectorate will deliver a report to the National Commissioner. Upon receipt of that report, the National Commissioner will decide what further steps to take in connection with the issues complained about.

The terms of reference for that investigation are as follows:

- 1) The National Inspectorate must immediately meet with the civil society organisations, including, but not limited to, the Social Justice Coalition, the

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Treatment Action Campaign, Unequal Education, Triangle Project and Mdifuna Ukwazi.

- 2) The National Inspectorate must obtain full and precise details of the complaints from those organisations.
- 3) The National Inspectorate must investigate those complaints fully and particularly the following areas:
 - Relations between SAPS and the community in Khayelitsha;
 - The state of policing service delivery from SAPS to the people of Khayelitsha as far as public safety is concerned;
 - Whether victims of crime have been treated with the necessary dignity;
 - Whether SAPS members have refused to open cases when requested to do so by the community members;
 - To what extent SAPS have failed to apprehend perpetrators of crime.

In order to take the request for an investigation seriously, the National Inspectorate will proceed in the following manner:

- Convene a panel consisting of police personnel with sufficient experience to investigate the issues relating to non-delivery of policing services to the people of Khayelitsha as alleged by the civil society organisations.
- Ensure that the panel produces a report within a one month period or a period to be specified by the National Commissioner.
- Facilitate meetings with members of the public living or working in Khayelitsha.
- As far as is possible, involve the complainants, and civil society organisations which have complained to ensure openness and transparency. For that purpose the panel must devise a methodology which will facilitate those organisations' participation in the investigation.
- After receiving the report of the panel, the National Inspectorate must make recommendations based on the panel's report.
- Prosecute police officers where it finds that there are grounds for non implementation of police regulations and standing orders.
- The SAPS must provide logistical support and a senior provincial deputy must have the responsibility of ensuring the panel has the support and cooperation which it will require.

The Panel that is referred to above will need to:

- Ensure the proper investigation of all complaints of a breakdown of relationships between the police in Khayelitsha and the communities they serve;
- Oversee the investigation into the relationship between SAPS and other criminal justice partners including government and civil society partners;
- Review how victims of crime are treated by members of SAPS;

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- Review whether there has been a systemic failure on the part of the Khayelitsha police to prevent, combat and investigate crime, take statements, open cases and apprehend criminals.
- Hear submissions from members of the community and any other interested parties.
- A member of the Secretariat will be attached to the panel to record the process and provide support to the panel; and

The panel must provide a report with recommendations within a one month period or as the National Commissioner may decide.

During our meeting, you indicated that you would seek legal advice on the matters raised by both the National Commissioner and myself. Your legal representative indicated that before considering those issues we should provide you with details of the steps we intend taking.

Those steps are set out above. I may add that this plan of action would have been instituted in August 2012 already, but was delayed by your appointment of the Commission of Inquiry. The timelines for the Panel have already been developed in August 2012 and I would be happy to share these with you.

In addition to the above, I would like to interact with you and your MEC for Community Safety, Mr Dan Plato, from time to time, in accordance with the principles of co-operative government, to ensure that any concerns which the Western Cape Provincial Government may have about policing in the Western Cape are addressed. I would also be happy to have the follow up meeting you refer to in your letter dated 11 October 2012. I will ask my office to liaise with your office in this regard.

You mentioned that you would consider the issues raised by me and that you would revert to me. I look forward to hearing from you at your earliest convenience.

Yours sincerely



EN MTHETHWA
MINISTER OF POLICE

