

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY IN KHAYELITSHA AND A BREAKDOWN IN RELATIONS BETWEEN THE COMMUNITY AND POLICE IN KHAYELITSHA

COMPLAINANT ORGANISATIONS' HEADS OF ARGUMENT

INTRODUCTION

The Safety, Crime and Policing Context in Khayelitsha

1. Over the course of the “Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations between the Community and the Police in Khayelitsha” thousands of pages of documentary evidence, including affidavits, oral testimony and expert reports have been considered. The following cases submitted by the Social Justice Coalition, Treatment Action Campaign, Equal Education, Ndifuna Ukwazi, and the Triangle Project represent a microcosm of life in Khayelitsha and the context in which crime and policing occurs:

- 1.1 In 2009 Ntombentsha Beja, at the age of 74, was stabbed in the chest while going to a community toilet in Makhaza.¹
- 1.2 In 2010 Makhosandile ‘Scare’ Qezo was stabbed in the face while relieving himself in a bush, as there were no accessible toilets nearby.²
- 1.3 Nandipha Makeke was raped and murdered while using a communal toilet.³
- In 2009 Zanele Xaki, 15 years old from RR section, was crossing the intersection of Palma and Landsdowne to go to a toilet in the evening when she was knocked down by a car.⁴
- 1.4 In 2009 Sithembile Sitsha was killed in a hit and run accident at night while crossing Landsdowne Road.⁵
- 1.5 Thabani and his brother, Subusiso Zitwana, entered their school through broken fences during the gang wars at iQhayiya Senior Secondary School.⁶

¹ Bundle 1(5)(D) Gavin Silber Affidavit, par 66.

² Bundle 1(5)(E) Affidavit of Phumeza Mlungwana, par 91-94.

³ Bundle 1(5)(E) Affidavit of Mandla Majola, par 37-55.

⁴ Bundle 1(5)(D) Gavin Silber Affidavit, par 72.

⁵ Bundle 1(5)(E) Affidavit of Yoliswa Dwane, par 49.

⁶ Transcript of Sifiso Zitwana, pages 2021-2060.

1.6 Thandokazi Njamela nearly lost her life while buying alcohol in a shebeen.⁷

1.7 Monica Mandindi lost her daughter, Zoliswa Nkonyana, who was drinking at a shebeen.⁸

2. Every year thousands of individuals and families experience crimes involving extreme violence, including murder and rape, as well as the loss of meagre income and property through aggravated robbery. People living in informal settlements are amongst the most vulnerable in our society.
3. The evidence submitted by Dr Deborah Kaminer, Dr Genine Josias and Ms Vicky Igglesden illustrated the particular impact of crime on vulnerable people, including children; women; refugees; asylum seekers; and immigrants in Khayelitsha. Ms Funeka Soldaat related the vulnerability of the Lesbian, Gay, Bisexual, Transgender and Intersex community, particularly in public spaces.⁹
4. Sifiso Zitwana describes life in informal settlements and the additional vulnerability of people living under conditions of poverty and inequality:

⁷ Bundle 2(5) File 24 T.N.

⁸ Bundle 1(5)(E) Affidavit of Mandla Majola, par 73-81.

⁹ Bundle 4(1) 3. Kaminer Report June 2013; Bundle 6(1) 6. IgglesdonReportFinalEdited December 2013; Bundle 7(5) Dr Genine Josias (redacted statements).

“When I’m saying that another person of another race will not understand our pain of someone living in a shack, even living in a shack, just living in a shack is not safe. Also when growing up when you what the problems are in the area, that is why I’m saying people can say they understand or understand the situation but without living there they will not know what it feels like.

Living in an informal settlement area, a place with no lights, which is dark at night where sometimes you have to go and relieve yourself in the bushes. Sometimes you have to go and get water from a different street which is not your street. That is also not safe.

Also not seeing police – even if they’re not in a car but just the police to come in so that people can see or be visible. Also when there is a fire in the area the community and the fire brigades are very far from where the fire is taking place because they can’t drive through or come into the area, those things are really not safe and that is why I’m saying that people that have not lived or experience that would not know what it feels like.”¹⁰

¹⁰ Transcript of Sifiso Zitwana, pages 2021-2060.

5. Zitwana's insights illustrate the dangers posed by the location and condition, or the lack of access to services such as toilets and water. Even walking to school increases the risk of becoming a victim of violent crime. This is not simply an infringement of fundamental rights, but also increases levels of crime. The City of Cape Town describes this as situational crime. This increased burden of crime has a direct impact on the efficiency and impact of policing.

Vulnerability of people living in Khayelitsha

6. In his report to the Commission, Professor Jeremy Seekings revealed that only 38% of the Khayelitsha population live in formal housing: 15% live in backyard dwellings, which are in mostly formal areas, and 46% in shacks. All of the backyard and many of the shack dwellings are to be found in generally formal areas.¹¹
7. The median household income for Khayelitsha is only R20 000 per year, half of the R40 000 for Cape Town as a whole. At least 74% of households earn less than R1 000 per month.¹²

¹¹ Bundle 5(1) Jeremy Seekings Dec 2013, page 7.

¹² Bundle 5(1) Jeremy Seekings Dec 2013, page 14.

8. A shortage of employment opportunities leads to further frustration among the youth, causing a minority to turn to crime. The unemployment rate (including discouraged work seekers) among young adults aged 20 to 29 in Khayelitsha is 40%, compared to just 26% for Cape Town as a whole.¹³ Only 45% of these young adults have completed secondary school, according to the results of the 2011 Census, further limiting opportunities.¹⁴

9. By and large residents of Khayelitsha do not feel safe in their community: 31% of young adults do not feel safe walking in their neighbourhood during the day, and 85% do not feel safe at night. Furthermore, a lack of trust in the police resulted in 56% of respondents to a survey saying that they would not report their home being broken into.¹⁵ Young men are mainly employed in private security, and women in domestic work.¹⁶

Responsibilities of Local Government

10. The City of Cape Town recognises the relationship between safety and crime, and the vulnerability of people in Khayelitsha. In its Social Development Strategy, the City says:

¹³ Bundle 5(1) Jeremy Seekings Dec 2013, page 15.

¹⁴ Bundle 5(1) Jeremy Seekings Dec 2013, page 18.

¹⁵ Bundle 5(1) Jeremy Seekings Dec 2013, page 24.

¹⁶ Bundle 5(1) Jeremy Seekings Dec 2013, page 17

“People with low incomes often live in high densities on the periphery of the City in areas, which are vulnerable to flooding, fire and disease. These areas are often crime-ridden and, hence, more resources need to be allocated to these areas to make them safer, cleaner and prevent fires, flooding and disasters.”¹⁷

11. The City also recognises that policing alone cannot effectively reduce rising crime levels:

“The causes of crime are complex and multifaceted. Traditional policing and law enforcement cannot solve these problems alone.”¹⁸

...

The placement of communal toilets, water pipes and other utilities will be cognisant of the need to prevent opportunities for crime. In addition, the City shall situate new municipal buildings in areas that improve safety and accessibility.”¹⁹

¹⁷ City of Cape Town. (2012) “Social Development Strategy”, page 13.

¹⁸ City of Cape Town. (2012) “Social Development Strategy”, page 13.

¹⁹ City of Cape Town. (2012) “Social Development Strategy”, page 14.

12. According to the statement submitted by Mr Richard Bosman, Executive Director of the City of Cape Town's Directorate of Safety and Security, the City is trying to make Cape Town as safe as possible by enforcing the City's bylaws, such as those regulating public drunkenness and riotous behaviour; and through the use of sophisticated technology, such as CCTV cameras and portable finger print scanners.²⁰
13. This is reinforced by the Violence Prevention through Urban Upgrading (VPUU), a pilot project of the City of Cape Town. According to Bosman, the goal of this project is:

"...the transformation of the township of Khayelitsha into a vibrant, safe, and attractive place for its residents, but most importantly, into a community that is environmentally, economically and socially sustainable.

*VPUU aims not only to reduce crime and increase safety levels but to also upgrade neighbourhoods, improve social standards and introduce sustainable community projects to empower local residents."*²¹

²⁰ Bundle 4(2) File 8 – Affidavit of Richard Bosman, par 38.

²¹ Bundle 4(2) File 8 – Affidavit of Richard Bosman, par 86-87.

14. The project was started in Harare because of the unbearably high levels of murder, robbery and domestic violence in the area.²² Harare still has one of the highest levels of reported violent crimes in the country.
15. The City is also responsible for enforcing traffic rules and other bylaws.

“Bylaws are more administrative in nature. If you get a ticket for your car as an example by a traffic officer, the only time we will get involved with the court process is once you haven’t paid your ticket and a summons has been issued, because the moment a summons has been issued it develops into a formal prosecution document. So when we talk about investigation it’s not crime that they are investigating, it’s more infringements of bylaws and regulations where a barking dog, a noise nuisance, somebody complaining about cars parking in the driveway and their investigation would merely be to go out and ascertain if the offence is happening and then issue the ticket. You would then have the option to pay the fine; alternatively, if you do not wish to pay it you can then contest it and go to court.”²³

²² Bundle 4(2) File 8 – Affidavit of Richard Bosman, par 93.

²³ Transcript of Richard Bosman, pages 1900-2013.

16. According to Mr Bosman, the City has the following responsibilities related to alcohol regulation:

“...in terms of dealing with shebeens, we do assist the police in operations. The police would normally ask our law enforcement staff to assist them, to go with, and they would then not just look at a shebeen, they would look at a host of other issues. They would look at the zoning of the premises, they look at whether any illegal structures are on the premises, whether there’s any illegal work on the premises or if they are operating a business illegally. So The City would assist the police from another angle, so it wouldn’t just be the alcohol that the police would want to deal with, they would want The City to put pressure on the home owner to be more compliant also in terms of if there is any contravention of building regulations.”²⁴

17. Recognising the link between poor street lighting and increased crime at night, Bosman claims that the City has installed street lighting, where it is possible to do so, and high mast lighting to cover informal areas where there is little to no road access.²⁵

²⁴ Transcript of Richard Bosman, pages 1900-2013.

²⁵ Bundle 4(2) File 8 – Affidavit of Richard Bosman, par 134.

18. The City has also undertaken to remove bushes from crime hotspots to improve visibility in those areas. The bush clearing project, according to Bosman, is done in collaboration with SAPS, the Environmental Resource Management Department, City Parks, CPFs and sub-councils.²⁶
19. The importance of infrastructure in building safer communities is revealed by the Department of Community Safety's (DoCS) budget of R203 million on road safety.²⁷
20. Safe schools are also recognised as a priority, with the DoCS appointing members of the public to the Expanded Public Works Programme (EPWS) to "*provide basic security services at high-risk schools*". Although Dr Gilbert Lawrence admits that the programme has been held back due to "*poor control measures, lack of local ownership, and fraud*".²⁸

Effect of poor infrastructure on levels of crime

21. Brigadier Dladla testified before the Commission that, based on his experience, improving infrastructure and the living conditions of Khayelitsha residents would have a significant effect on reducing violent crime:

²⁶ Bundle 4(2) File 8 – Affidavit of Richard Bosman, par 168-169.

²⁷ Bundle 2(3) File 13 – Affidavit of Gilbert Lawrence, par 46.

²⁸ Bundle 2(3) File 13 – Affidavit of Gilbert Lawrence, par 110.

“So what I’m saying, if we can improve the infrastructure and the living condition of the people of Khayelitsha and put –electrify the houses and the streets to have lights, the people to have proper housing, not shacks; and if you have a proper house you will have a proper toilet, you don’t need to go out when you have to utilise the toilet, if you came late from work you have to fetch water there are night, so if he has water in the house you don’t have to police that, that will improve the standard of living of Khayelitsha.

And also make sure that there are facilities for the Khayelitsha youth to engage, because there are no facilities, nothing. We even have street soccer, play on the street. There is one field in Sector 6 that is run by Amandla Football Club, but it’s not enough for the people of Khayelitsha. The people of Khayelitsha need to be catered for in all respects so that they can stop being violent.

Because if you look at some of the things, some people will fight over water that is the used water that is spilled into my yard, there's nowhere

*to spill water. So if you can look at all those things it will help to reduce the violent crimes.”*²⁹

22. In his expert report to the Commission, Dr Chris de Kock linked the reduction of crime to the creation of a safer environment. In his report he used the example of Alexandra in Gauteng:

*“...in Alexandra, Johannesburg there was a street bordering an informal settlement with many toilets. When ladies went there in the middle of the night, rapist were waiting. Many years back the late Minister Steve Tshwete visited Alexandra and when he received a crime briefing he was informed about this. He personally intervened and convinced the Metropolitan Council to move the toilets closer to the shacks. This had the result of a very significant decrease in rape in Alexandra. The late Minister after that became a very strong supporter of the idea of analysis and even on various occasions asked the SAPS management to strengthen the Crime Information Analysis Centre.”*³⁰

23. The effectiveness of crime intelligence and preventing situational crime also relies on cooperation between SAPS, the City and the community. As De Kock

²⁹ Transcript of Brigadier Zithulele Dladla, page 3404.

³⁰ Chris Paul de Kock. (2014) “Is Crime Combating Intelligence Led and Is It Effective in Greater Khayelitsha?” par 19.

shows, the reduction of rape at toilets in Alexandra was effected through such cooperation.

Access to basic services in Khayelitsha and the original complaint

24. In describing the level of access to toilets in Khayelitsha the General Secretary of the Social Justice Coalition, Ms Phumeza Mlungwana, said:

“In my experience, toilets in informal settlements are not private spaces where a granny, child or any other person can undertake one of the most basic human functions...A toilet or using the bush is a place of danger where violence against the person in the form of assault, robbery and sometimes even rape and murder occur daily. Together with water access points, they are also places of ill-health.”³¹

25. In their original complaint to the Western Cape Premier the complainant organisations stated the following about Khayelitsha:

“The area suffers from extremely high levels of poverty and unemployment. Many of its inhabitants are unemployed and the majority of the unemployed are young men and women of working age.

³¹ Bundle 1(5)(E) Affidavit of Phumeza Mlungwana, par 18.

Khayelitsha is a combination of formal and informal settlements. People in formal areas live in brick homes that are connected to the electricity grid, have water and sanitation services and regular refuse removal. Many residents, however, continue to live in informal structures, commonly referred to as “shacks” or as backyarders. People who live in informal settlements and as backyarders do not have adequate housing, access to electricity, clean and safe water and sanitation services, and consistent refuse removal. As a result of living in such unhealthy an environment, there are high levels of illness, especially affecting children and the elderly.

Crime is a much more dangerous and pervasive threat for people living in over-crowded, under-serviced neighbourhoods and informal settlements than in middle-class suburbs. People living in these areas are often assaulted, robbed, raped and murdered while engaged in activities that others take for granted, such as using the toilet or accessing transport to work.²² A lack of infrastructure such as street lights and roads makes these areas far more dangerous than those that enjoy such amenities.

Community members report that girls and women are frequently beaten and raped whilst walking to and from communal toilets or fetching water from communal taps close to their homes, while domestic abuse poses a threat to the safety of many women within their own homes. Between March 2003 and March 2011 there has been a 9.36% increase in the number of reported sexual crimes reported in Khayelitsha.

Property crimes such as burglaries, theft and robbery are rife and are often not reported to the police because they do not receive the necessary attention.”³²

26. Professor Seekings confirmed that 7%, or 8 000, Khayelitsha households are forced to use bucket toilets, and 10% reported not having any access to a toilet at all. Access to basic services in general is poor, with one in three households not having access to water; one in four not having access to a flush toilet connected to a sewage system; and one in five not having access to electricity or regular refuse collection.³³

27. In her submission before the Commission, Ms Mlungwana testified that the abuse of alcohol was made worse by an abundance of taverns and shebeens. Many of

³² Complaint of 28 November 2011, Western Cape High Court Record, Bundle 1, pages 373 – 374.

³³ Bundle 5(1) Jeremy Seekings Dec 2013, page 8-9.

them are unlicensed. These places are often the scene of drunken confrontations which lead to violence and sometimes even murder.³⁴

28. In his submission to the Commission, Mr Silber identified the difficulties faced by police vans, ambulances and fire trucks due to little or no road access to the informal settlements. Often these areas can only be accessed via informal pathways that are too narrow to drive through.³⁵
29. Many areas of Khayelitsha are also in total darkness during the night. The high mast lights in the informal areas are completely insufficient. The few street lights that do exist are often not working.³⁶
30. There is also completely inadequate enforcement of the traffic laws, and Khayelitsha has the highest pedestrian mortality rate in the Western Cape.³⁷ Vehicles often speed down the busiest roads, such as Lansdowne Road, with few speed bumps or traffic lights regulate the speed or flow of traffic. Recounting his own experience, Mr Silber says:

“I have personally seen the traffic lights on the busy intersection of Mew Way and Lansdowne Road dysfunctional on a regular basis, on certain

³⁴ Bundle 1(5)(E) Affidavit of Phumeza Mlungwana, par 99.

³⁵ Bundle 1(5)(D) Gavin Silber Affidavit, par 60.

³⁶ Bundle 1(5)(D) Gavin Silber Affidavit, par 64.

³⁷ Bundle 1(5)(D) Gavin Silber Affidavit, par 69.

occasions remaining in such a state for weeks. I have seldomly seen traffic police patrolling the area. I have never seen a speed trap along any one of Khayelitsha's busy thoroughfares."³⁸

31. Based on his experience as a community activist working with the Social Justice Coalition (SJC) in Khayelitsha, Mr Zackie Achmat recognised the need for proper infrastructure and safe schools. In his statement to the Commission he said:

*"Through the campaigns for a safe community the SJC also campaigned for infrastructure to make the Khayelitsha community and all other informal settlement residents feel safe in their homes, schools and in public transport. My involvement in EE and NU taught me how dangerous schools are for learners, even though I was aware of this in the 1980s when gangs called the "Jack Rollers" targeted mainly politically active school girls for gang rape in Soweto."*³⁹

32. This Commission's terms of reference are confined to the South African Police Service (SAPS). They do not include any other agency of local or provincial government tasked with creating a safe Khayelitsha.

³⁸ Bundle 1(5)(D) Gavin Silber Affidavit, par 70.

³⁹ Bundle 8(3) Statement no. 45 – Affidavit of Zackie Achmat, par 40-41.

33. However, this Commission has an obligation to make recommendations to the Premier (which in turn must be forwarded to the Minister of Police) which will enhance cooperation between all spheres of government. Such cooperation between different arms of government will assist in respecting, protecting and advancing the fundamental rights of Khayelitsha residents such as the rights to life, dignity and freedom from all forms of violence.
34. It is with this context in mind that we turn to address the issues identified by the Commission in Notice 17.

B. OPERATIONAL ISSUES: VISPOL

Sector policing

35. The concept of sector policing is derived largely from the British model in terms of which sector policing is an integral component of community policing. It requires a policing precinct to be divided into small managerial sectors, with police officers assigned to the sectors on a full-time basis. The concept is underpinned by the belief that if officers regularly patrol their own sectors they will be able to identify problems arising in them and come up with appropriate solutions.⁴⁰

36. Sector policing was applied in South Africa in terms of a 2003 draft National Instruction on sector policing. National Instruction 3 of 2009 formalised the concept. It required that each station precinct should be divided into sectors, with each sector being patrolled by one vehicle with a passenger and a driver deployed to it. The vehicle should carry a mobile phone which should be readily available and accessible to members of the public residing in the sector. In addition, each sector should have a sector commander. However, according to Dr Johan Burger, the 2009 National Instruction created some confusion about how the concept should be applied, as the sector manager became in effect the operational

⁴⁰ Report of Dr Johan Burger, Bundle 12, expert reports, item 9, page 14.

commander of policing in the sector, rather than a community organiser and mobiliser.⁴¹

37. General Schooling and Commander Leamy in their analysis of documents provided from the Khayelitsha police stations over the period from 1 January 2010 to 31 August 2012, made the following findings in respect of sector policing:

37.1 The sector policing strategy was not bearing fruit in Lingeletu West. The SAPS 15 forms (duty rosters) they studied indicated that this was primarily due to the high absenteeism rate, resulting in insufficient members being available for deployment to each of the four sectors into which the station had been divided; and

37.2 In the Site B police station, which had been divided into six sectors, it was rarely the case that each sector was patrolled by a single vehicle.⁴²

38. The August 2012 Tshabalala Task Team report⁴³ found that:

⁴¹ Dr Burger's report, *op cit*, page 17.

⁴² Schooling and Leamy report, Bundle 9, Assessment of SAPS documents, Item 1, page 24, paragraphs 82 – 86.

⁴³ Bundle 1, Record of the Western Cape High Court, Annexure "AL87", page 684.

- 38.1 At the Khayelitsha police station the resources allocated to sector policing were decreasing as members were redeployed from sector policing to perform other functions. By August 2012 only one member and a vehicle were deployed to each of the six sectors at the station, resulting in a negative impact both on the visibility of the police in the sectors as well as on the reaction time to complaints;⁴⁴ and
- 38.2 The provincial guidelines with regard to sector policing were not being complied with at the Harare and Lingeletu West police stations (as had been demonstrated in earlier provincial inspection reports). This was as a result of a shortage of resources hampering the implementation of effective sector policing.⁴⁵
39. Dr Johan Burger in his report contended that the confusion created by National Instruction 3 of 2009 requiring sector commanders and sector teams to perform operational policing duties, resulted in sector teams duplicating the role of crime prevention units. This led to a situation where staffing for crime prevention and

⁴⁴ Tshabalala Task Team report, annexure “AL87” to the High Court Record, page 690, paragraph 7.1.

⁴⁵ Tshabalala Task Team report, High Court record, page 690, paragraph 7.1.3.

sector policing units would be “*extremely difficult to sustain*” and inevitably would result in staff shortages.⁴⁶

40. Dr Burger’s evidence concerning the strain that sector policing would place on resources is supported not only by the Schooling and Leamy report, but also by the testimony of Brigadier Dladla, the Station Commander of the Site B police station. In his evidence to the commission, Brigadier Dladla stated that he sought and obtained permission from the provincial command to allow vehicles to be redeployed from the sectors, so that crime prevention activities could be conducted over peak periods (particularly at night over weekends).⁴⁷ He also testified that the sector policing concept does not cater adequately for leave. In a shift of 23 or 24 members at any one time three members will be on leave and this is not provided for in terms of the staffing allocations to the station.⁴⁸

41. Dr Burger stated that the more recent National Instruction 3 of 2013 adopts a more realistic approach to sector policing in that it no longer refers to “*sector teams*” but instead mentions the deployment of “*operational members and resources...in accordance with the crime pattern and threat analysis to perform policing duties in the demarcated sectors to enhance service delivery.*”⁴⁹ He

⁴⁶ Dr Johan Burger’s report, page 17.

⁴⁷ Transcript, 17 February 2014, pages 3485 – 3486.

⁴⁸ Transcript, 17 February 2014, pages 3545 – 3546.

⁴⁹ Dr Burger’s report, page 18.

found this to be more acceptable than permanently maintaining sector teams. The 2013 National Instruction also appears to define the duties of the sector commander so that s/he is no longer responsible for some operational duties, such as dealing with complaints and patrols.⁵⁰

42. However, when it was put to Dr Burger in evidence that the Khayelitsha police officers who testified before the Commission did not seem to distinguish between the approach embodied in National Instruction 3 of 2009 and National Instruction 3 of 2013, he stated that in the police service it takes a long time before such changes filter down to station level.⁵¹

Is crime prevention effective?

43. Dr Chris De Kock in his report⁵² distinguished between “*more policeable*” and “*less policeable*” crime, the former (such as robberies) should be reduced if policing is effective, the latter (such as domestic violence) being less susceptible to good policing. He analysed the reported levels of robbery in Khayelitsha and stated that the very significant increases of 28.6% and 23% for the years 2011-12 and 2012-13 respectively prompted the question why this crime, which is perceived by many South Africans as the most common and the most feared

⁵⁰ Dr Burger’s report, page 19.

⁵¹ Transcript, 12 May 2014, pages 6982 – 6983.

⁵² Bundle 12, expert reports, item 15.

crime in their areas, and which is being effectively reduced nationally, “*seems to escalate out of control*” in Khayelitsha.⁵³

44. Dr De Kock stated that the policing which takes place in the three stations in Khayelitsha is “*policing by chance and luck and clearly not intelligence led policing*” (as should be the case).⁵⁴
45. Colonel Reitz, the Station Commander of the Lingeletu West police station, when confronted with the statistics reflecting increasing contact crime conceded that if crime is increasing he cannot say that he is winning the war on crime.⁵⁵
46. We concur with Colonel’s Reitz’s conclusion and contend that the crime prevention units at the three Khayelitsha police stations are not working effectively.⁵⁶

How should visible policing be conducted?

47. Professor Jonny Steinberg in his report argued that there is a tension between the two primary goals of visible policing, namely crime reduction and the

⁵³ Dr De Kock’s report, Bundle 12, page 57, paragraph 116.

⁵⁴ Dr De Kock’s report, page 83, paragraph 158.

⁵⁵ Transcript, 14 February 2014, page 3128: 9 – 12.

⁵⁶ The requirements of intelligence led policing, which we suggest should be implemented to guide crime prevention activities in Khayelitsha, are considered in greater detail in section H below.

maintenance of order.⁵⁷ He contended that the manner in which crime prevention is practised in South Africa often entailed “*unleashing*” gatherings of uniformed police in large numbers “*aggressively and in paramilitary fashion*” on township residents. This renders the police’s order maintenance functions in informal settlements difficult if not impossible,⁵⁸ as it leads to many residents’ primary experience of the police being of hostile encounters in the course of paramilitary style crime prevention actions.⁵⁹

48. Professor Steinberg testified that the objective of visible policing in informal settlements should be to ensure that when there is a disturbance or an incident that residents feel that they cannot manage themselves, they should think that they can call the police, who will come in and deal with the situation professionally. In order to achieve this it is important for police to be integrated into the ebb and flow of normal life and to get out of their vehicles and walk through settlements so as to ensure that they are in a position to respond to calls for help.⁶⁰

49. Commander Leamy testified, on the basis of his experience of being in command of the Nyanga police station, that it was possible to do foot patrols in informal settlements. What he did was to gather a patrol of about 4 or 5 members and take

⁵⁷ Professor Steinberg’s report, Bundle 12, expert reports, item 2, page 6, paragraph 3.2.

⁵⁸ Professor Steinberg’s report, page 7.

⁵⁹ Professor Steinberg’s report, page 9, paragraph 4.3.

⁶⁰ Transcript, 16 May 2014, pages 8029 – 8030. At pages 8058 – 8059 he also proposed that police consider bicycle patrols.

with them members of the community patrols (or neighbourhood watches) and patrol through informal settlements.⁶¹ Although police officers were at times reluctant to do foot patrols, he recommended that senior members of SAPS in Khayelitsha should lead from the front and go out on foot patrols with their members.⁶²

Absenteeism and leave

50. The Schooling and Leamy report noted the following trends in respect of absenteeism at the three Khayelitsha police stations:

50.1 At Lingeletu West the absenteeism level was too high, there was absenteeism on almost every shift and the SAPS 15 forms (duty rosters) were not being completed correctly;⁶³

50.2 The data integrity of the leave records at the Site B SAPS was highly questionable. Furthermore, the SAPS 15 forms and provincial inspectorate reports reflect that absenteeism was one of the main causes of insufficient vehicles and personnel being available for deployment to the six sectors in this station. On a shift consisting of 36 members it was

⁶¹ Transcript, 10 February 2014, pages 2267 – 2268.

⁶² Transcript, 10 February 2014, page 2269.

⁶³ Schooling and Leamy report, page 33, paragraphs 121 – 123.

found that on a daily basis in 2011 more than 10 people were absent. The management of sick and annual leave at the Site B station was inefficient;⁶⁴

50.3 It was most likely that absenteeism was a significant problem at Harare SAPS. The provincial inspectorate noted in 2012 that 38 members⁶⁵ had received the maximum available sick leave for the period under review.

51. The position with regard to absenteeism was exacerbated by the fact, as noted by provincial inspectorate reports in the period from 2010 to 2012, that absenteeism rates were not being properly recorded.⁶⁶

Attestation of documents

52. It was a consistent theme in the evidence of the senior officers from the three Khayelitsha police stations that the large numbers of people requiring documents to be attested placed a considerable administrative burden on SAPS and clogged up the Community Service Centres (CSCs).

⁶⁴ Schooling and Leamy report, pages 33 – 35.

⁶⁵ Out of a staff complement of approximately 169.

⁶⁶ Schooling and Leamy report, page 32, paragraph 120.

53. The problem was clearly illustrated in the 29 August 2013 audit report for the Khayelitsha police station,⁶⁷ which documented that long queues of members of the public were present at the CSC at the time of the audit. The majority of people queuing had come to the station to have documents certified. The audit report noted that the public may view the station's service delivery as insufficient and ineffective as a result of the queues and that it would have a negative impact on the morale of overworked CSC members.⁶⁸

Procedure for opening of dockets

54. The August 2012 Tshabalala Task Team report noted that the procedure for opening a docket, at all three Khayelitsha police stations, was as follows:

“8.1.13 When a complainant reports a complaint at the CSC, the complainant is referred to the Crime Office for an interview with the detective on duty to ‘verify’ whether all the elements of a crime are present and whether the incident does in fact constitute a crime. After the interview with the detective in the Crime Office, the complainant is

⁶⁷ Bundle 11, Exhibits, annexure “AL3”.

⁶⁸ Internal audit report, pages 21 – 22.

referred back to the CSC for a case docket to be opened, if a crime is found to have been committed.

8.1.4 *After the complainant succeeded in opening a case docket at the CSC, the complainant is again sent back to the Crime Office where the same detective on duty will attend to the complaint. Only after the preliminary investigation has been completed, a case docket is registered on the Crime Administration System (CAS) and is only then allocated to the detective on standby for further investigation.”⁶⁹*

55. The Tshabalala Task Team noted that not only is the procedure followed time-consuming, with complainants being sent from “*pillar-to-post*”, but it results in poor service delivery and is in contravention of National Instruction 3 of 2011 with regard to the opening of dockets.⁷⁰

56. Colonel Tobias, the former Detective Commander at the Harare police station, accepted in his evidence that the “*pillar-to-post*” procedure had been noted in a September 2011 Provincial Inspectorate report of the Harare police station and that Colonel Abels, the Acting Station Commander, had stated in November 2011

⁶⁹ Tshabalala Task Team report, annexure “AL87” to the Cape High Court Record, High Court Record, page 691, paragraphs 8.1.3 – 8.1.4.

⁷⁰ Paragraph 8.1.4 of the Tshabalala Task Team report.

that the practice had been terminated.⁷¹ However, Colonel Tobias was unable to explain why the practice still persisted over six months later in July 2012 when the Tshabalala Task Team inspected the station.⁷²

57. Colonel Raboliba, the current Station Commander of the Harare police station, accepted that it was possible for the “*pillar-to-post*” procedure to still occur, but that if it was brought to his attention, he would deal with it as it constituted a clear contravention of the relevant National Instruction.⁷³ Colonel Raboliba was unable to state when the practice had been terminated and it appears possible that it might still persist at the Harare station.⁷⁴

Recommendations

58. We propose that the Commission makes the following recommendations in respect of visible policing:

- 58.1 SAPS ensure that National Instruction 3 of 2009 in relation to sector policing be fully implemented in the three Khayelitsha stations so as to eliminate the overlap between the role of crime prevention units and

⁷¹ Transcript, 21 February 2014, pages 4481 – 4482.

⁷² Transcript, 21 February 2014, pages 4487 – 4489.

⁷³ Transcript, 17 March 2014, pages 4693 – 4694.

⁷⁴ Transcript, 18 March 2014, pages 4824 – 4826.

members of sector policing teams and to reduce the staffing demands imposed by National Instruction 3 of 2009;

- 58.2 The crime prevention units at the three Khayelitsha police stations operate in terms of the principles of intelligence led policing, dealt with in greater detail below in Section H;
- 58.3 Vispol units in Khayelitsha be required to conduct regular foot and (where possible) bicycle, horse, motor-cycle and quad-bike patrols, particularly in informal settlements. Station commanders and senior Vispol officers should regularly accompany these patrols. The patrols should be organised in consultation with CPFs and sector forums, and, where possible, should take place in conjunction with neighbourhood watch patrols organised by community members;
- 58.4 The station commanders, after consultation with the CPFs and sector forums, should be required to make undertakings at meetings, which are open to members of the public, to increase visible policing, particularly at or near crime “*hot-spots*” in both formal and informal areas. The public undertakings must be recorded in writing and contain details of how

regularly vehicle, motor-cycle, bicycle, quad-bike and foot patrols will be conducted in each sector;

58.5 An audit be conducted of all leave and attendance registers at the three Khayelitsha police stations for the past 12 months and, where these have not been completed properly, disciplinary proceedings be instituted against the responsible officers;

58.6 An investigation be conducted to determine which members of the three police stations have used their maximum available sick leave at any point in the past three years and the reasons why this has occurred. If it is established that any members have been abusing sick leave, disciplinary proceedings should be instituted;

58.7 The large number of people requiring documents to be attested at the three stations should be dealt with as follows:

58.7.1 The Visible Policing Commander should demarcate a specific area in the CSC for certification of documents and allocate members whose exclusive duties are to attend to these requests;

58.7.2 A member working within the CSC should be nominated to act as floor manager and direct members of the public to the applicable officers or queues;

58.7.3 The area dedicated to the certification of documents should be clearly marked and sign- posted;

58.7.4 Where possible, police reservists who are unable to perform active policing tasks, should be used to assist in the certification of documents.

58.8 The three Station Commanders of the Khayelitsha police stations should be directed to issue written instructions requiring National Instruction 3 of 2011 to be followed in the opening of dockets and specifically prohibiting the “*pillar-to-post*” procedure described in paragraphs 8.1.3 and 8.1.4 of the Tshabalala Task Team report; and within one month to submit to the Provincial Commissioner:

58.8.1 copies of the written instructions; and

58.8.2 details of the steps that they have taken to ensure that all members at the station are aware of, and have implemented, the instruction.

C. OPERATIONAL ISSUES: TELEPHONE RESPONSE, INCLUDING
10111

Experiences of community members

59. There were many complaints about failure the police's failure to respond or poor response times. These relate both to calls to 10111, and calls to the stations directly.⁷⁵
60. Although response time is measured on the performance chart, Brigadier Van Zyl testified about how it is possible to manipulate the chart to reflect a shorter response time.⁷⁶
61. According to Bishop Mtsolo, the response times for 10111 is "very slow".⁷⁷ As a result, he often calls the station directly instead of 10111.⁷⁸ The stations generally respond faster, and if they do not, a call to the people in charge of the station

⁷⁵ Bundle 1, File 1: Statement 5; Statement 7; Statement 27 (stating that police respond "as quickly as possible", but that it is difficult due to shortage of vehicles); Statement 31 (response time is unreasonably long in the early morning); Statement 36 (police take an hour to arrive); Statement 40 (unable to respond in a reasonable time due to lack of vehicles); Statement 51; Statement 59. See also Bundle 8, Commission of Inquiry, Expert Report, Document 5b CSSR *Interview on Experiences and Attitudes to Violence* at pages 158 and 275.

⁷⁶ Brig Van Zyl Testimony, Transcript page 4919-4920.

⁷⁷ Transcript at 117.

⁷⁸ Ibid.

produces a result.⁷⁹ Bishop Mtsolo also had access to the phone numbers of the sector commanders who, he testified, responded to his calls.⁸⁰

Mr Mahlutshana

62. Mr Madoda Mahlutshana, the school principal at Chris Hani Senior Secondary School in Khayelitsha, appeared before the Commission to provide insight into his experiences with the SAPS, in particular the Harare Police Station. In his response to Mr Sidaki's question regarding his experiences at police station level, Mr Mahlutshana stated:

"...My worst experience is when I pick up the phone or I ask my secretary to pick up the phone and try to get assistance from the Harare police station which has not been the best in terms of responses or promptness in picking up the phone and assisting in that particular aspect."⁸¹

63. Mr Sidaki later questioned Mr Mahlutshana as to whether he ever has any emergencies at the school where he has had to contact the police and if so, what were his experiences. Mr Mahlutshana responded saying there have been quite a

⁷⁹ Ibid. See also Transcript at 132.

⁸⁰ Transcript at 137.

⁸¹ Madoda Mahlutshana gave evidence to the Commission on 28 January 2014. The transcript of his evidence appears at pages 490-509 ("Mahlutshana transcript"), at page 499.

few emergencies.⁸² One such emergency was around the issue of gangsters, where a student had been stabbed and there was fighting outside the school's gate:

“You could call in to the sector police and we wouldn’t get the prompt response we would expect in the afternoon and also having alerted them that there is a need for the police to be very visible after noon and in particular on Fridays. The only reason that you will get from them at that particular time whe we had this experience was that there wer more contact crimes that wer done at that particular time so police were stessed out that they did not have resources to come and attend at that particular case.”⁸³

64. Another example given by Mr Mahlutshana was a school riot in September 2011 during which the school tried to call the police and inform them that the learners were starting to riot against the school’s administration.⁸⁴ Two policemen were sent in a van but they were overwhelmed by the learners. Mr Mahlutshana stated, *“They came in probably after 30 minutes to 40 minutes and the kids were all over*

⁸² Mahlutshana transcript page 500.

⁸³ Mahlutshana transcript page 500.

⁸⁴ Mahlutshana transcript page 501.

*and damaging the government property and creating havoc at school and so forth.”*⁸⁵

65. In his affidavit (Bundle 1(1a), Document number 7), Mr Mahlutshana states, *“Their telephone management is poor, and the phone rings and rings. It is often necessary to go there [the police station], rather than call them.”*⁸⁶ In reference to the riot in September 2011, Mr Mahlutshana said the following, “They are not prompt. In September we struggled to get them to attend when the riot was occurring and when they arrived they were only two or three police officers.”⁸⁷

Mr Xolela Mjonondwana

66. Mr Mjonondwana is the school principal at Zola Secondary School in Khayelitsha. The school falls within the jurisdiction of Site B Police Station.⁸⁸ During Mr Mjonondwana’s testimony before the Commission, Mr Sidaki asked about his experiences when he reported cases to Site B police station, Mr

⁸⁵ Mahlutshana transcript page 501.

⁸⁶ Bundle 1(1a), Document number 7 at para 5.2.

⁸⁷ Bundle 1(1a), Document number 7 at para 5.3.

⁸⁸ Bundle 1(1a), Document number 31 at para 1.

Mjonondwana responded saying, "We experienced a delay in the response, sometimes very late..."⁸⁹

67. In detailing a specific incident of an attempted burglary that had occurred at the school, Mr Mjonondwana stated that he received a call at around 01:00am or 02:00am in the morning from security guards at the school informing him that they had apprehended the suspect and they had reported the matter to the police.⁹⁰ Mr Mjonondwana went to the school at around 05:00am and the police had still not arrived. During this time they discovered that the man they had apprehended was responsible for a number of previous burglaries at the school:

*"We waited and waited for the police until 8 o'clock, after 8 he was already telling us what has happened to the goods that he was stealing...we said let us go and retrieve what we could retrieve. Whilst we were on our way out in my bakkie we met the police."*⁹¹

68. In his affidavit (Bundle 1(1a), Document number 31), Mr Mjonondwana detailed how, due to a spate of burglaries, the school was forced to employ three people to act as security guards so that they could alert the police whenever someone

⁸⁹ Xolela Mjonondwana gave evidence to the Commission on 28 January 2014. The transcript of his evidence appears at pages 509-533 ("Mjonondwana transcript"), at page 512.

⁹⁰ Mjonondwana transcript page 515.

⁹¹ Mjonondwana transcript page 515.

entered the school premises illegally during the course of the night.⁹² In one particular incident a person broke into the school in the early hours of the morning.

*"The security guard on duty contacted the police immediately as the perpetrator was still inside the building and he thought that he could be apprehended if the police arrived speedily. The police at Site B police station answered the telephone call for assistance as I called the police station directly, but failed to send a patrol van to the school in time. The perpetrator ended up stealing more equipment, and left the premises without being apprehended."*⁹³

69. In his affidavit, Mr Mjonondwana stated that the police do respond relatively quickly when they are called out during the late morning, however when they are called out in the early morning their response time is "unreasonably slow".⁹⁴

70. The slow reaction time of police and the increasing number of burglaries at the school prompted Mr Mjonondwana to arrange a meeting with Brigadier B who to his knowledge was in charge of the Site B police station.⁹⁵ Mr Mjonondwana

⁹² Bundle 1(1a), Document number 31 at para 5.

⁹³ Bundle 1(1a), Document number 31 at para 5.

⁹⁴ Bundle 1(1a), Document number 31 at para 7.

⁹⁵ Bundle 1(1a), Document number 31 at para 8.

stated, "I contacted him after an incident where a burglar had entered the school premises, had broken down two doors, and where the police, on being called, had failed to arrive at the school within a reasonable time. To my recollection they arrived hours after the telephone call was made to the police station." Brigadier B referred his complaint to another lady, however nothing came of Mr Mjonondwana's attempt to build a relationship between the police and his school. "I was never contacted by the lady to whom my complaint was referred to nor did I receive any other communication regarding my concerns in respect of the response time."⁹⁶

US (did not testify before the Commission)

71. In her affidavit (Bundle 2(5), Document number 43), US details an incident on 11 September 2011, during which her daughter was taken away by a man while she was playing with her brother outside their house.⁹⁷ US called the street committee to come with a loudhailer, who in turn called the police.

"We could see the van in the distance, but they were diverted by a robbery at a shop nearby. My neighbours went to the police and told them they urgently needed to come to my house to help find my daughter.

⁹⁶ Bundle 1(1a), Document number 31 at para 8.

⁹⁷ Bundle 2(5), Document number 43 at para 4.

*I was told that they would soon send another van. My husband then called the police again, and they again said they would send a van."*⁹⁸

72. The police eventually arrived after approximately three hours.⁹⁹ The police proceeded to tell US to go check whether her daughter was hiding inside the house. They left soon thereafter and said they would return with dogs.¹⁰⁰ US went on to state:

*"At this point, some other women from the community and I went to look for my child. We looked for her the whole night. Only at 11am the following day did we find her. She was in the bushes. She had been raped, and then murdered. Her polo neck had been pulled over her face."*¹⁰¹

Thandokazi Njamela (did not testify before the Commission)

73. On 31 October 2010, Ms Njamela was at a tavern in H Section with her friend, Nwabisa Msthana when a group of men opened fire on the people inside the

⁹⁸ Bundle 2(5), Document number 43 at para 5.

⁹⁹ Bundle 2(5), Document number 43 at para 6.

¹⁰⁰ Bundle 2(5), Document number 43 at para 6.

¹⁰¹ Bundle 2(5), Document number 43 at para 7.

tavern.¹⁰² Ms Njamela was shot 6 times and survived. Her friend died on the scene. In her affidavit, Ms Njamela stated:

*“It is as if we have no police services in Khayelitsha. I lost all hope in them a long time ago, for example, Nwabisa need not have died on that day. When she was shot she but bled out but the police took too long to get there even though the police station is not far from where we were.”*¹⁰³

Malwande Msongelwa

74. Ms Msongelwa's brother, Andisiwe was murdered on 3 September 2011. During the early hours of the morning on 4 September 2011, Ms Msongelwa and some community members were led to the scene by a known thief and small-time gangster, nicknamed Face.¹⁰⁴ They were suspicious of how Face knew the spot as there was no blood around and Andisiwe's body was lying in thick grass.¹⁰⁵ When they called the police Face ran away.¹⁰⁶ “At first the police did not come. We had recently met a policewoman...who had run a workshop for Free Gender. She had told us to call her if they ever needed help getting police to come to their

¹⁰² Bundle 2(5), Document number 23.2 at para 4.

¹⁰³ Bundle 2(5), Document number 23.2 at para 12.

¹⁰⁴ Bundle 2(5), Document number 18 at para 10.

¹⁰⁵ Bundle 2(5), Document number 18 at para 11.

¹⁰⁶ Bundle 2(5), Document number 18 at para 12.

assistance. Only after we called her did the cops come to the scene of the crime.”¹⁰⁷

75. During her testimony, Ms Msongelwa informed the Commission that the police at Harare Police Station took more than two hours to arrive on the scene. When asked by Ms Mayosi as to how long it took the police to arrive following their phone call to the policewoman they had met (General Ndlovu), Ms Msongelwa said that it took an estimated 10 minutes after their call to General Ndlovu.¹⁰⁸

Phumeza Mlungwana

76. During Ms Mlungwana's testimony before the Commission, she stated:

*“In communicating with the police stations I remember they were able to give us the different contacts of the vans, the cluster vans that you can use to report... The police suggested it is much more useful than 10111 and we have used them. They have responded in some cases but they have not responded properly or well in some cases.”*¹⁰⁹

¹⁰⁷ Bundle 2(5), Document number 18 at para 12.

¹⁰⁸ Malwande Msongelwa gave evidence to the Commission on 28 January 2014. The transcript of her evidence appears at pages 534 to 553 (“Msongelwa transcript”), at page 543-544.

¹⁰⁹ Phumeza Mlungwana gave evidence to the Commission on 24 and 31 January 2014. The transcript of her evidence appears at pages 228-271 and 902-927 (“Mlungwana transcript”), at page 264.

77. In further questioning on the usefulness of these numbers, Ms Mlungwana said:

“They [the police] said it is much more responsive, like because we kept on complaining about it and they were trying, because we are always trying not to blame and try to work with them and they said: “Look if this is not working, this is the number you should use”, and we have tried using that number. In some cases they have responded but ...in my personal experiences because I have also called the numbers when I see kids fighting, either the phone rings and there is no answer...”¹¹⁰

Ambulance response times

78. Ambulance response times have improved significantly. In 2009 they were 55 minutes, and in 2013 they were 35 minutes.¹¹¹ This was achieved together with a significant increase in the number of calls. Ms Papu testified that the increase in calls was likely related to the improvement in response time: as people became more confident in the service, they became more likely to call an ambulance rather than taking the patient to the hospital themselves.¹¹² The improvement in performance was achieved primarily through implementing new technology,

¹¹⁰ Mlungwana transcript pages 264-265.

¹¹¹ Ms Papu Testimony, Transcript pages 2578-2579.

¹¹² Ms Papu Testimony, Transcript pages 2580-2581.

including technology that allows them to track vehicles.¹¹³ This allows them to determine where calls are most likely to occur at various times and to ensure that their vehicles are in that area. It is unclear whether there is a similar system in place at the 10111 call centre.

Findings

79. **Response times to the 10111 number in Khayelitsha are unacceptably slow. These delays negatively affect the efficiency of the police, and the relationship with the community.**
80. **Responses of station phones and sector cell phones are erratic. At times they are excellent, at times they are unanswered. This too contributes negatively to police inefficiency and the relationship with the community.**

Recommendations

81. **Immediate: Station commanders should conduct regular random checks to ensure that phones at the station are answered promptly.**

¹¹³ Ms Papu Testimony, Transcript pages 2581-2582.

82. **Medium:** SAPS should investigate how to make it more difficult to manipulate the recording of response times.
83. **Medium:** If it has not already done so, SAPS should invest in a technological solution to improve the response times to 10111 calls. SAPS should work together with the provincial ambulance services to take advantage of the existing technology to track ambulance calls.

D. OPERATIONAL ISSUES: CRIME SCENE MANAGEMENT

84. The SAPS Policy 2 of 2005: Policy on Crime Scene Management was not made available to the Commission. However, a letter dated 29 May 2007, drafted by General Lamoer, who was at the time the Divisional Commissioner: Visible Policing, setting out the protocol in respect of crime scene management and conduct at the scene of a crime, was attached to the affidavit of Colonel Swart.¹¹⁴ This protocol states that it was drafted in accordance with Policy 2 of 2005.

Processing the crime scene

85. The Senior Public Prosecutor at the Khayelitsha Magistrates' Court, Advocate Harmse, stated in her affidavit to the Commission that evidence collected at the scene of crimes is not regularly used in Khayelitsha in order to secure convictions. Prosecutors rely more on *viva voce* evidence. She could not state whether this was because crime scene evidence was not available or whether crime scenes were not properly investigated.¹¹⁵
86. When Colonel Swart, the Head of Detectives at Lingeletu West, testified before the Commission, the evidence given by several Khayelitsha residents was put to

¹¹⁴ Bundle 10, SAPS, 2.2 SAPS Statements, Item 21.

¹¹⁵ Bundle 8, Commission of Inquiry, Specialist Affidavits, paras 109 – 110.

him in respect of incompetent crime scene management by SAPS members, such as failing to secure a crime scene, turning a body around without wearing gloves and failing to collect obvious evidence.¹¹⁶ Colonel Swart conceded that “*it can happen that the crime scene was not cordoned off correctly. It can be happening.*”¹¹⁷ He acknowledged in particular that it can be a problem cordoning off crime scenes in informal settlements and stated that it can be very difficult to ensure that members of the public do not enter a crime scene, particularly if there are only two or three or four police officers present and there are a lot of members of the public around.¹¹⁸

87. Colonel Marais, the Head of Detectives at Site B police station, in his evidence disputed that in general, crime scenes are not managed properly in Khayelitsha, but conceded that in certain areas it is a “*huge challenge*” to manage crime scenes properly.¹¹⁹ He testified that particularly in informal settlements it is very difficult to protect crime scenes. He also referred to an incident when a Somalian businessperson was killed in the course of a robbery and hundreds of his

¹¹⁶ Transcript, 14 February 2014, pages 3268 – 3269.

¹¹⁷ Transcript, 14 February 2014, page 3271: 17 – 19.

¹¹⁸ Transcript, 14 February 2014, pages 3272 – 3273.

¹¹⁹ Transcript, 19 February 2014, page 3861: 6 – 9.

compatriots gathered at the scene, making it impossible for the few police officers present to cordon off the area.¹²⁰

88. Colonel Marais also testified that lighting is a problem and that his detectives are not fortunate enough to have mini-generators to provide lighting.¹²¹ Generators are used at major crime scenes such as cash-in-transit robberies but otherwise police use torches and the lights of the vans or cars for purposes of lighting at crime scenes.¹²²

89. Mr Alfred Van Der Westhuizen, the Assistant Director of Forensic Pathology at the Tygerberg Forensic Pathology Laboratory stated in his affidavit that he has attended crime scenes in Khayelitsha, often prior to the forensic pathology officers (FPOs). He stated that although he had found crime scenes which had been cordoned off and the public kept at bay by the police, this was generally the exception to the rule. He stated in his affidavit that:

“7. The lack of adequate protection of crime scenes is however widespread in Khayelitsha and other areas.

¹²⁰ Transcript, 19 February 2014, pages 3861 – 3863.

¹²¹ This is a particular problem in informal settlements where lighting is poor or non-existent.

¹²² Transcript, 19 February 2014, pages 3867 – 3868.

8. *In my experience the crime scenes are not properly cordoned off, members of the public and relatives in particular are allowed to put or take off clothing and the bodies are often disturbed before the investigation is completed.*¹²³

90. Mr Kevin Jones, the Deputy-Director: Metro District Manager, Forensic Pathology Service in the Department of Health in the Western Cape, who is responsible for overseeing the management of the Tygerberg mortuary facility, confirmed Mr Van Der Westhuizen's evidence concerning the failure of SAPS to protect and cordon off crime scenes in Khayelitsha.¹²⁴ He also stated that:

90.1 often the investigating officer has left the scene by the time that the FPO arrives, leaving a relatively junior member on the scene;¹²⁵ and

90.2 often the crime scene has been contaminated and is not properly secured by the time the FPO arrives, as a result of the family having contaminated the clothing of the deceased.¹²⁶

¹²³ Bundle 2, Commission of Inquiry Documents, Specialists Affidavits, Item 4, paragraphs 6 and 7.

¹²⁴ Transcript, 3 February 2014, pages 1087 – 1088.

¹²⁵ Transcript, 3 February 2014, page 1085.

¹²⁶ Transcript, 3 February 2014, page 1086.

91. One of the trends identified by the Tshabalala Task Team in its inspection of the three Khayelitsha police stations was the failure to summons crime scene experts to crime scenes.¹²⁷
92. Dr David Klatzow, an Independent Forensic Expert, testified to the Commission that there is no excuse for not having fairly low cost and low tech equipment such as a set of halogen lights and a small generator, available at crime scenes in order to provide lighting. These could be obtained quite easily for about R5 000,00.¹²⁸
93. Dr Klatzow also stated that he had addressed the Parliamentary sub-committee on policing with regard to crime scene management and recommended that a very simple response pack should be available in every police response vehicle. It should contain protective clothing, some barrier tape and gloves, which would cost only R200,00. However, to his “*certain knowledge*”, this recommendation has not been implemented, two years later.¹²⁹
94. Dr Klatzow in his report noted that the lack of training of SAPS members in relation to collection of forensic evidence is a significant problem.¹³⁰ The matter could be addressed by having police officers complete the forensic science

¹²⁷ Task Team report, High Court record, page 693.

¹²⁸ Transcript, 13 May 2014, pages 7238 – 7240.

¹²⁹ Transcript, 13 May 2014, page 7240.

¹³⁰ Bundle 12, Expert Reports, item 17, page 7.

courses being run at the Universities of Cape Town, Witwatersrand and the Free State.¹³¹

95. Most of the SAPS officers who testified before the Commission were reluctant to acknowledge that there were any problems with regard to crime scene management in Khayelitsha. However, given the evidence of several Khayelitsha residents, which is supported by that of Messrs Van Der Westhuizen and Jones, it is clear that there are inefficiencies in respect of, in particular, the cordoning off of crime scenes. In the circumstances, this is not an issue that is likely to be addressed adequately by SAPS itself through a process of further training.

Collection and preservation of evidence

96. Dr Klatzow testified that if alcohol samples are left for lengthy periods, such as for two years or more, it may lead to results which are not acceptable as the sample deteriorates.¹³² In respect of Dr Vonita Thompson's evidence that there is a backlog in excess of 4500 forensic samples, Dr Klatzow testified that less than two years ago there was talk of discarding a large number of samples which had

¹³¹ Transcript, 13 May 2014, page 7252.

¹³² Transcript, 13 May 2014, page 7268.

been unanalysed for five years as the ability to “*analyse them and get meaningful results has diminished as the time passes*”.¹³³

97. The problem in respect of forensic samples is particularly acute at the Department of Health Laboratory in Woodstock which is responsible for conducting toxicology and blood alcohol tests.¹³⁴

98. Advocate Harmse stated that delays in obtaining forensic reports were problematic for prosecutors and that in cases involving drugs and driving under the influence of alcohol, the delays invariably result in the withdrawal of the charges or the matters being struck from the roll.¹³⁵

99. The complainant organisations propose that the Commission finds that:

99.1 The measures taken by SAPS members to secure crime scenes in Khayelitsha are inadequate. This can often lead to the contamination of evidence;

99.2 SAPS members are inadequately equipped to properly manage crimes scenes;

¹³³ Transcript, 13 May 2014, page 7249.

¹³⁴ Transcript, 13 May 2014, page 7260.

¹³⁵ Bundle 8, Commission of Inquiry, Specialist Affidavits, para 115.

- 99.3 The backlog of 4500 forensic samples in the Western Cape is severely obstructing the administration of justice.

Recommendations

100. The complainant organisations propose that the Commission makes the following recommendations in respect of crime scene management:

- 100.1 Dr David Klatzow, or a similarly qualified forensic expert, be employed on a short-term contract to oversee and train the personnel at the three Khayelitsha police stations in respect of crime scene management and thereafter to submit a report to the Provincial Commissioner on steps to be taken to address the problems identified;
- 100.2 Each response vehicle in Khayelitsha be equipped with a forensic response pack containing barrier tape, protective clothing, shoe covers and gloves;
- 100.3 The investigating officer be required to remain on the crime scene, where possible, until the arrival of the FPO;

100.4 Where lighting is required at a crime scene, this should in all instances be provided through a mini-generator and a set of halogen lights; and

100.5 SAPS conduct an assessment of the appropriate measures required in order to ensure that the lack of training of police members in matters of forensic evidence is addressed.

101. Although the functioning of the Department of health Laboratory in Woodstock falls outside the terms of reference of the Commission, it is requested that the Commissioners draw the Premier's attention to the large backlog in forensic samples that have to be processed by this laboratory and the severely adverse impact this has on the functioning of the criminal justice system in Khayelitsha. We propose that this is an issue that must be dealt with as a matter of urgency, if necessary through the establishment of a private laboratory, as suggested by Dr Klatzow.¹³⁶

¹³⁶ Transcript, 13 May 2014, pages 7259 – 7262.

E. OPERATIONAL ISSUES: DETECTIVE BRANCH

Systemic problems

102. In September 2013 inspections were conducted by the SAPS provincial inspectorate of 6 “*poor performing*” stations in the Nyanga and Khayelitsha clusters (including the three Khayelitsha stations) in order “*to determine the reasons for the poor performance on crime*”.¹³⁷

103. In each of the three stations an analysis of 100 dockets which were struck from the court roll was conducted. In all three stations the following 10 shortcomings were identified:

103.1 The instructions of the state prosecutors were not complied with for several months;

103.2 Investigating officers constantly failed to adhere to the instructions of inspecting officers;

103.3 Identification parades were not held;

¹³⁷ The September 2013 Inspection Report for Lingeletu West is in Bundle 10, Exhibits, Item 24, “MR1”.

- 103.4 Warrants were not executed and particulars of accused persons were not circulated;
 - 103.5 The availability of complainants and witnesses was not confirmed;
 - 103.6 Monthly inspections were not conducted and carried over certificates were not completed as prescribed;
 - 103.7 Brought forward dates were not adhered to and no attempt was made to address this short-coming;
 - 103.8 Investigative aids, such as identification kits and informers, were not utilised properly;
 - 103.9 Proper guidance and inspection were lacking and “*general average remarks are made by the inspecting officer*”;
 - 103.10 Cases were withdrawn due to incomplete investigations without valid reasons for the prolonged investigations.
104. The September 2013 inspection reports for each of the three Khayelitsha stations concluded the analysis of the 100 dockets in identical terms:

“The above shortcomings can be attributed to improper command and control due to the following reasons:

Inadequate disciplinary measures are taken against members who do not comply with instructions.

The lack of court ready certificates, issued by officers, in dockets to ensure that the applicable dockets are ready for court. In some instances the court ready certificates are superficial.

There is no compliance by inspecting officers on the Brought Forward (B/F) system.

The Detective Branch applies a “Firefighting” approach by dealing with new cases or where inquiries or complaints are received.

In conclusion the inspection team is of the opinion that due to the reluctance of station management to take disciplinary steps against investigating officers causes them to blatantly ignore the instructions of the Prosecutors and officers.

Another concern is that the Prosecutors give more comprehensive instructions than the officers which reflect the lack of interest in the investigation.

The non-compliance of instructions of the Prosecutors and Officers, results in cases being struck from the court roll and borders on “Defeating the ends of justice”.

It is important that the Provincial Management takes serious action against these serial non-compliers that tarnish the image of the South African Police Service while earning a salary.”

105. The shortcomings reflected in the three September 2013 inspection reports are consistent with trends identified in the August 2012 Tshabalala Task Team report and many of the reports of inspections conducted by the Provincial Inspectorate at the three Khayelitsha police stations since 2010. The weaknesses identified in these inspections can be illustrated with regard to the Tshabalala Task Team report, which conducted a random evaluation of case dockets in the archives in order to determine the quality of investigations and found, amongst other things, the following trends:

- 105.1 Witness statements were not obtained before case dockets were sent to court, leading to cases being withdrawn;
- 105.2 Case dockets were closed without stolen property with serial numbers being circulated;
- 105.3 Closed case dockets were found in the archives with exhibits still on hand;
- 105.4 Case dockets were withdrawn in court because statements by the arresting officer had not been filed;
- 105.5 Case dockets were withdrawn in court because witnesses were not summonsed;
- 105.6 Case dockets were closed without Local Criminal Record Centre (LCRC) reports being circulated; and

105.7 Case dockets were found in which finger-print forms had not been completed and sent back to the LCRC.¹³⁸

106. The shortcomings identified in the September 2013 inspection reports are similar to those found by Colonel Wiese, the cluster detective co-ordinator for the Khayelitsha cluster, in her inspections of almost 2000 dockets from the three Khayelitsha stations over a period of three years. She testified that the most common problems which she encountered in her inspections were:

*“statements not commissioned, the elements of the crimes is not reflected properly in the AI statements, witness statements outstanding, expert investigation aids not utilised, brought forward dates not adhered to, dockets not certified to court, no regular feedback to complainants, the information of deceased persons incomplete and exhibits not properly recorded on the CAS system.”*¹³⁹

107. Colonel Wiese stated that although the provincial inspectorate did not interview the cluster office before compiling its September 2013 reports, *“the report seems correct”*.¹⁴⁰ She also said that she was interviewed by Brigadier Rossouw of the

¹³⁸ Tshabalala Task Team report, Annexure “AL87” to Western Cape High Court record, page s 692 – 693, para 8.4.4.

¹³⁹ Transcript, 24 March 2014, page 5058.

¹⁴⁰ Transcript, 24 March 2014, page 5025: 10.

Tshabalala Task Team and that its report was “*quite accurate, it’s a fair report.*”¹⁴¹

108. When giving evidence, Colonel Wiese was asked for her opinion on the state of policing in Khayelitsha. She replied as follows:

“I would like to focus on my KPAs¹⁴² per se, you know, there’s reason for – because I’m detective. What I want to say is, if the problem of the backlog can be addressed then the – all this kind of problems will be solved or dealt with without any further delay, there’s enough manpower, it’s not a question about manpower. There’s only one branch that have shortage – of the three, there’s only one branch that have a shortage of manpower. So in line with cases received they have enough people and you don’t get measure on your backlog, unfortunately. So the backlog is the thing that is drowning everybody. So I also need to mention, I’ve written a letter to the Provincial Commissioner where I’ve made recommendation that we must run a project even to get detectives from all over, run a project just focusing on the backlog of these stations. That will really assist us because we are drowning. And it is true, you have a good detective but he’s a human, he burns out, it is like that and

¹⁴¹ Transcript, 24 March 2014, page 5026: 9.

¹⁴² Key performance areas.

we need to face it, we're working with humans. So it is a bigger picture to look at."¹⁴³ [Emphasis added]

109. Colonel Wiese stated that, ideally, the number of new cases coming in to a station and the number of cases finalised each month should be equivalent.¹⁴⁴ However, on average over a period of years, the three stations have the following ratios of incoming to pending cases per month:¹⁴⁵

109.1 Harare: 847 incoming; 8805 pending (2346 investigation, 6459 court);¹⁴⁶

109.2 Khayelitsha: 966 incoming; 5822 pending (1447 investigation, 4375 court);¹⁴⁷

109.3 Lingeletu West: 652 incoming; 4595 pending (572 investigation, 4023 court).¹⁴⁸

110. Major-General Molo, the Provincial Head of Detectives in the Western Cape, testified that the most important causes of the backlog of cases in court¹⁴⁹ were:

(i) outstanding blood tests for drunken driving cases; (ii) witnesses not attending

¹⁴³ Transcript, 24 March 2014, page 5101.

¹⁴⁴ Transcript, 24 March 2014, pages 5064 - 5.

¹⁴⁵ Transcript, 24 March 2014, pages 5067 - 8.

¹⁴⁶ A ratio of over 10:1.

¹⁴⁷ A ratio of over 6:1.

¹⁴⁸ A ratio of over 7:1.

¹⁴⁹ Referred to as column 8.6 cases.

court; (iii) accused persons not attending court; and (iv) investigations not being completed by investigating officers.¹⁵⁰

111. At Khayelitsha police station, each detective carries on average 145 to 160 dockets,¹⁵¹ while at Harare the average is 133¹⁵² and at Lingeletu-West 131.¹⁵³

112. Colonel Marais in his evidence painted a stark picture of the pressure under which his detectives operate. He stated that over weekends in Khayelitsha he has two detectives on stand-by for murders. Over a typical weekend there could be up to seven murders which require the cordoning off of the crime scene, taking statements, and where possible, arresting suspects. On the Monday the investigating officer would have to attend the post-mortems and, he stated, *“The reality is there is not enough hours in a day, there is not enough days in a week, there is not enough investigators to do it.”*¹⁵⁴

113. Colonel Marais stated that the RAG was inadequate because it did not take into account the seriousness of the crimes in the various areas (for example murders require considerably more time and effort to investigate than shoplifting cases)

¹⁵⁰ Transcript, 27 March 2014, pages 5936 - 7.

¹⁵¹ Transcript, 19 February 2014, pages 3851 - 2

¹⁵² Transcript, 21 February 2014, page 4428.

¹⁵³ Transcript, 14 February 2014, page 3305: 2.

¹⁵⁴ Transcript, 19 February 2014, pages 3857 – 3859.

and how long it takes to investigate certain types of crimes and should not be based only on population and crime statistics.¹⁵⁵

114. Colonel Marais also testified that where detectives are dispatched to other units, problems arise with their dockets, as sometimes they are transferred with their dockets. However, if an investigating officer is on the personnel strength of a specific station, he or she cannot get dockets from other places. He described it as “*a huge flaw in the system*” that Khayelitsha detectives, who have been seconded to Plettenberg Bay or George, have dockets opened as Khayelitsha dockets, even though he as detective commander would never see the dockets or know what they are about (but for which he remains accountable).¹⁵⁶

115. Colonel Swart testified that the work load of detectives in Lingeletu West is very high and although his detective branch can cope, he would love to have more detectives.¹⁵⁷ Similarly, Colonel Tobias stated that his detectives, with an average of 133 dockets per investigating officer, could not give ‘*110% attention*’ to all their dockets and that he would rather have fewer dockets per detective.¹⁵⁸

¹⁵⁵ Transcript, 19 February 2014, page 3860.

¹⁵⁶ Transcript, 19 February 2014, pages 3922 – 3924.

¹⁵⁷ Transcript, 17 February 2014, pages 3361 – 3363.

¹⁵⁸ Transcript, 21 February 2014, page 4428.

116. Colonel Marais agreed with these sentiments.¹⁵⁹ He said that when detectives are overburdened with dockets it makes it difficult to discipline them for not discharging their duties properly, as they cannot be expected to carry a super-human workload.¹⁶⁰ Colonel Marais pointed out that if you have 150 dockets, there will be dockets that you neglect, as there is no way that you can get through all 150 dockets so that they all in the same condition every time.¹⁶¹

Recruitment of Informers

117. Colonel Wiese testified that although detectives are expected to recruit one informer per quarter, there is a lot of administration involved in registering an informer and their claims.¹⁶² One of the reasons that it is difficult to recruit informers in Khayelitsha, according to Colonel Wiese, is that people are scared that they going to be exposed as informers and that they then will be killed by members of the community.¹⁶³

118. Colonel Tobias confirmed that the recruitment of informers in Harare is a problem as people don't want to be seen by the community as impimpis. He stated that the national instruction requires the recruitment of one informer per

¹⁵⁹ Transcript, 24 March 2014, page 5063.

¹⁶⁰ Transcript, 24 March 2014, pages 5062 - 4.

¹⁶¹ Transcript, 19 February 2014, page 3884: 13 – 16.

¹⁶² Transcript, 24 March 2014, pages 5076 – 5077.

¹⁶³ Transcript, 24 March 2014, pages 5078 – 5079.

quarter and that each detective must have two claims per informer for each quarter.¹⁶⁴

119. Colonel Swart testified that although the National Instruction require that every detective must recruit one new informer per quarter, in his experience in all the departments he has worked in, it is not a realistic target.¹⁶⁵

Xhosa-speaking detectives

120. The need to recruit more Xhosa-speaking detectives and provide Xhosa language instruction for non-Xhosa speakers was uncontroversial and endorsed by a number of senior police officers.¹⁶⁶

Feedback to complainants

121. It was put to Colonel Wiese in cross-examination that one of the biggest complaints of Khayelitsha community members is that once they have opened a case or laid a charge with the police, they do not receive regular feedback concerning the progress of the case. Colonel Wiese conceded that there is a

¹⁶⁴ Transcript, 21 February 2014, pages 4368 – 4369.

¹⁶⁵ Transcript, 17 February 2014, pages 3349 – 3350.

¹⁶⁶ Major-General Molo, Transcript, 27 March 2014, pages 5906 – 5907 (Need for Xhosa-speaking detectives); Colonel Marais, Transcript, 19 February 2014, 4004 – 4005 (Need experienced Xhosa-speaking commissioned officers); Colonel Swart, Transcript, 17 February 2014, pages 3440 – 3442 (Support a recommendation for Xhosa courses for non-Xhosa speakers and more Xhosa speaking detectives).

problem with regard to giving feedback. She accepted that in the report, attached to her affidavit, on 86 dockets which she had inspected, in not one of the cases was she able to find that there was regular feedback to the complainants.¹⁶⁷ Colonel Wiese stated that it was possible that the investigating officer had given feedback, but in none of the dockets inspected was there any evidence of such feedback.

122. Colonel Marais testified that majority of the disciplinary steps he has taken in his time as head of detectives at the Khayelitsha police station have been in respect of detectives failing to provide feedback to complainants.¹⁶⁸

123. Colonel Swart, the Head of Detectives at Lingeletu, testified that when there is more than one complainant in the docket, the police '*slip up*' in that only one or two smsses are sent advising complainants of progress in the case and that not all the complainants are kept informed of progress in the case. It also appears that nowhere in the investigation diary or elsewhere in the docket is it clearly indicated who ought to be informed when smsses are sent out.¹⁶⁹

124. Two problems with the sms system were identified in the course of Colonel Tobias' evidence, firstly, the sms system is a very formal way of contacting

¹⁶⁷ Transcript, 24 March 2014, pages 5097 – 5098.

¹⁶⁸ Transcript, 19 February 2014, pages 3880 – 2881.

¹⁶⁹ Transcript, 17 February 2014, pages 3458 – 3459.

complainants and provides very curt feedback. Secondly, in instances where there is more than one complainant, contact is only generally made with the person whose number is on the A1 report form, unless there is another number written elsewhere in the docket.¹⁷⁰

The effectiveness of investigations

125. The extent to which detectives in Khayelitsha are failing to solve crimes is illustrated in stark terms in the evidence of Colonel Tobias, who referred to the comparative records of the Harare police station for the first quarters of 2010 and 2011, which reflected in 2010 1 472 new cases were reported, as opposed to 1 279 in 2011. In this time, however, only five guilty verdicts were secured in 2010, as opposed to six in 2011. These statistics can only mean that the detective services in Harare were failing hopelessly in their task of investigating and solving crime.

126. It is accordingly unsurprising that the Tshabalala Task Team report and the September 2013 (and subsequent) inspection reports confirm that little use is made of investigative aids, the systems for recording and storing exhibits are inadequate and the controls that should be place to prevent the theft or loss of dockets are not functioning.

¹⁷⁰ Transcript, 21 February 2014, pages 4364 – 4365.

127. The evidence of a number of Khayelitsha residents also demonstrates that the detective services in Khayelitsha are severely dysfunctional:

128. Thandokazi Njamela (1)

128.1 In December 2009 Ms Njamela was assaulted by her friend's boyfriend, Ayanda Booï. He hit her over the head with an unopened bottle of beer and knocked her unconscious.¹⁷¹ After Mr Booï had been arrested, Ms Njamela received a summons to court which informed her that Mr Booï would be appearing. Mr Booï, however did not appear and a warrant for his arrest was issued. Ms Njamela had not been informed that Mr Booï was out on bail at the time.¹⁷² Ms Njamela has not heard from the police since the court date when Mr Booï did not appear.¹⁷³ Later in 2010, Mr Booï was arrested for the double murder of his girlfriend's siblings.¹⁷⁴ Early in 2011, Ms Njamela saw Mr Booï again, he was apparently out on bail. He is known by many in the community to be a criminal and has many cases pending against him. The community is scared of him and upset that he is always released on bail.¹⁷⁵

¹⁷¹ Bundle 2(5), Document number 23 at para 4.

¹⁷² Bundle 2(5), Document number 23 at para 7.

¹⁷³ Bundle 2(5), Document number 23 at para 9.

¹⁷⁴ Bundle 2(5), Document number 23 at para 10.

¹⁷⁵ Bundle 2(5), Document number 23 at para 11.

129. Thandokazi Njamela (2)

129.1 On 31 October 2010, Ms Njamela was at a tavern with her friend when a group of men opened fire on the people inside the tavern.¹⁷⁶ Ms Njamela was shot 6 times and survived. Her friend died on the scene. The police retrieved a phone from one of the men who was shot and killed by his partners. It was alleged that the police obtained a lot of evidence from the phone.¹⁷⁷ In approximately December 2010/January 2011 the police went to Ms Njamela's home with a photo album and she identified two of the suspects. Ms Njamela was asked to testify against them and she agreed to do so. She was not provided with any details regarding the case.¹⁷⁸ About two weeks later, two policemen visited Ms Njamela at her home and advised her not to get involved in the case for her own safety. They did not provide her with any further information on the progress of the case or whether the investigation would be continued.¹⁷⁹ Ms Njamela stated that if she had been offered protection and a way to pursue the

¹⁷⁶ Bundle 2(5), Document number 23.2 at para 4.

¹⁷⁷ Bundle 2(5), Document number 23.2 at para 4.

¹⁷⁸ Bundle 2(5), Document number 23.2 at para 6.

¹⁷⁹ Bundle 2(5), Document number 23.2 at para 8

matter safely she would have done so.¹⁸⁰ To date, Ms Njamela has still heard nothing from the police regarding this case.¹⁸¹

130. Malwande Msongelwa

130.1 Ms Msongelwa's brother, Andisiwe was murdered on 3 September 2011. During the early hours of the morning on 4 September 2011, Ms Msongelwa and some community members were led to the scene by a known thief and small-time gangster, nicknamed Face.¹⁸² They were suspicious of how Face knew the spot as there was no blood around and Andisiwe's body was lying in thick grass.¹⁸³ When they called the police Face ran away.¹⁸⁴ The police took a long time to arrive and once they did, they parked quite a distance from the crowd and told the crowd to come to them. They even threatened to leave the scene unless the crowd came to them.¹⁸⁵ The police eventually came to see the body and they took statements from Ms Msongelwa and her other brother, Thuso. They informed the police of how Face led them straight to the body and the police wished to speak to Face. They went to Face's house but he was not

¹⁸⁰ Bundle 2(5), Document number 23.2 at para 9.

¹⁸¹ Bundle 2(5), Document number 23.2 at para 11.

¹⁸² Bundle 2(5), Document number 18 at para 10.

¹⁸³ Bundle 2(5), Document number 18 at para 11.

¹⁸⁴ Bundle 2(5), Document number 18 at para 12.

¹⁸⁵ Bundle 2(5), Document number 18 at para 13.

there. The police requested them to inform them if they found out about Face's whereabouts, but that the police would continue with their investigation in the meantime. Ms Msongelwa was provided with a case number. Her brother's body was only collected after 07:00.¹⁸⁶ Face came to their house two days later and spoke to Thuso. Face went to the police station and was released on the same day. *"The police brought him to our house that day, telling us that there was no case against him. The police were never in contact with my family again."*¹⁸⁷ During examination, Ms Mayosi asked Ms Msongelwa whether she ever heard anything or received feedback from the police (Harare police station) following them informing the family that there was no case against Face. Ms Msongelwa responded, *"No we never even saw them again."*¹⁸⁸ When questioned about the police at the crime scene, Ms Msongelwa stated that her brother's body was not covered and police just looked under his clothes.¹⁸⁹ When the police went to Face's house the police left the body as it was with the community members. No police officials remained at the scene. When asked whether they covered his body, Ms Msongelwa responded, *"No they did not cover his body. They did not*

¹⁸⁶ Bundle 2(5), Document number 18 at para 14.

¹⁸⁷ Bundle 2(5), Document number 18 at para 15.

¹⁸⁸ Malwande Msongelwa gave evidence to the Commission on 28 January 2014. The transcript of her evidence appears at pages 534 to 553 ("Msongelwa transcript"), at page 542.

¹⁸⁹ Msongelwa transcript page 545.

even barricade the area.”¹⁹⁰ When they returned to the scene they just waited with the police until a car came to collect the body, which was after 7am. When asked whether the police did any investigating with the community members that were around, asking them what they had seen, Ms Msongelwa responded saying, *“No they did not ask anybody. They only took statements from myself and my brother Thuso. There is no-one of the community that they approached to get a statement.”*¹⁹¹ When Ms Msongelwa went to the police station to fill out forms relating to insurance and the death certificate, the case docket could not be found. They were informed that Detective David's was off duty and they would have to wait for him before the necessary forms could be filled.¹⁹² When Ms Mayosi asked why her family never followed up on the case, Ms Msongelwa stated: *“That is because we did not want to continue to waste our time to go to the police station when the police don't even remember that case...They might have to find the docket, because if they had not forgotten about it, they would still be coming over through at our house from time to time to ask whether we have not heard anything or just maybe give us feedback as to what is happening...so we did not want to continue going to the police station and hurt ourselves knowing that*

¹⁹⁰ Msongelwa transcript page 545.

¹⁹¹ Msongelwa transcript page 547.

¹⁹² Msongelwa transcript page 547.

nothing is going to happen.”¹⁹³ Adv. Arendse went on to state on record that what was described was, *“totally unacceptable. This is so far the most egregious example of police insensitivity and incompetence where there is a crime scene; there is a body. It is not cordoned off. No evidence is taken for purposes of forensic analysis...”*¹⁹⁴ Ms Msongelwa confirmed that she lived at the same address and she still had the same number so it would have been easy for the police to get in contact with her.¹⁹⁵

131. Phumzile Welcome Makele

131.1 In this affidavit, Mr Makele speaks about other peoples’ experience through his work at SJC. Through his personal interaction with police and prosecutors, a number of issues highlighting the inefficiency and incompetence of some people working in this sector have come to light. *“Lost dockets, the failure of police to even show up in court to present evidence against criminals, the failure of police to collect evidence, and the lack of communication between law enforcement and the family members of victim are just some of the numerous issues plaguing SAPS in*

¹⁹³ Msongelwa transcript page 551.

¹⁹⁴ Msongelwa transcript page 552.

¹⁹⁵ Msongelwa transcript page 553.

Khayelitsha.”¹⁹⁶ Mr Makele goes on to state that, “*Police are failing to communicate with victims and families about developments in their cases, failing to follow up on leads, and failing to arrest suspects breaking bail conditions.*”¹⁹⁷ Mr Makele detailed a matter in which a man was brutally murdered by three men on 26 October 2013.¹⁹⁸ After having his life threatened verbally by the three men the man went to the Harare police station to open a case. When he returned home, the three men were waiting for him. The three men disembowelled him with a knife and cut off his cheeks.¹⁹⁹ The perpetrators were arrested the same day, but released less than a week later. They have threatened to return to the home and kill the deceased man's wife and her two neighbours.²⁰⁰ After several days of attempting to reach the investigating officer (“IO”), Mr Makele eventually spoke to him on 7 November 2013. The IO informed Mr Makele that the reason that the three men had been released was because he (the IO) had not shown up in court to present evidence. Mr Makele has not been able to reach the IO since that conversation.²⁰¹ Mr Makele stated that, “*Many cases are thrown out and criminals released*

¹⁹⁶ Bundle 2(5), Document number 66 at para 15.

¹⁹⁷ Bundle 2(5), Document number 66 at para 17.

¹⁹⁸ Bundle 2(5), Document number 66 at para 19.

¹⁹⁹ Bundle 2(5), Document number 66 at para 20.

²⁰⁰ Bundle 2(5), Document number 66 at para 21.

²⁰¹ Bundle 2(5), Document number 66 at para 23.

for similar reasons.”²⁰² When asked by Ms Mayosi to elaborate on one of the cases he was involved with, Mr Makele decided to talk about the case mentioned on his affidavit at para 14.4 in which seven girls were raped in Kaneni in November 2010.²⁰³ The school girls had been out partying after they had finished their exams and were raped at gun point by two men. Following their arrest, the two men were released on R1000 bail each and they were warned not to go near their victims or Khayelitsha until their case was finalised.²⁰⁴ They broke their bail conditions and moved back to Makhaza. Mr Makele called the person who was handling the case and he was informed that they will assist, however the ladies continued to receive threats. Mr Makele informed the detective but the detective did not do anything.²⁰⁵ Mr Makele escalated the matter to the detective's superior who said he would ensure that the detective went to court and argue for the bail to be withdrawn. The bail was not withdrawn and Mr Makele detailed his further, unsuccessful attempts to have the two men re-arrested.²⁰⁶ Eventually one of the men was re-arrested and Mr Makele was informed that he would appear in court on 10 September. On this day the case was postponed due to the

²⁰² Bundle 2(5), Document number 66 at para 25.

²⁰³ Phumzile Welcome Makele gave evidence to the Commission on 7 February 2014. The transcript of his evidence appears at pages 2080-2120 (“Makele transcript”), at page 2089.

²⁰⁴ Makele transcript page 2090.

²⁰⁵ Makele transcript page 2090.

²⁰⁶ Makele transcript page 2091-2093.

case docket not being at court.²⁰⁷ Mr Makele stated that they did not know where the docket was, *“The captain said that he had brought the docket to court but the court could not find it.”*²⁰⁸ The docket eventually came up in Khayelitsha court but by this time the accused had been released. *“Till today when I ask the police about a warrant of arrest, I have asked them have they gone to that place where they arrested him before, the police had not gone there yet. The guy is still walking down the streets of Gugulethu or Khayelitsha and still not arrested, both of them have still not been arrested.”*²⁰⁹ Mr Makele went on to discuss the case of the man who was murdered by three men on 26 October 2013, which he also detailed in his affidavit. The three men handed themselves over to Khayelitsha police station and informed the police that they had killed the man. They were then taken to Harare police station and as mentioned above, they were later released on bail due to the detective not appearing in court to give evidence.²¹⁰ The three men continued to intimidate the deceased man's widow, *“When I called the detective to inform them that these three guys are still threatening this lady the detective said that he will go and take a statement, he is still going*

²⁰⁷ Makele transcript page 2094-2095.

²⁰⁸ Makele transcript page 2095.

²⁰⁹ Makele transcript page 2095.

²¹⁰ Makele transcript page 2097.

today.”²¹¹ Indicating that the detective has done nothing about the intimidation. Mr Makele escalated the matter to the detective's manager at the Harare police station, the following quote details the lack of attention the case was given: *“He then asked me for all my details and I wrote them down...and he never called me. When I went back again I found the paper that I had written my contact details on, it was still in the same place where those dockets are and he could not recognise me...This time he assured me that he was going to make sure that they work on the case but till today they have not done anything to that case and those guys are still outside...This woman is still living under fear, she asked me a question whether the detective wanted her to die before he could protect them. She wanted to know whether the detective wants her to die before anything can be done about these boys.”*²¹²

132. Nontembeko Nduna

132.1 On or about 7 March 2009, Ms Nduna received a call informing her that her nine year old niece had been hit by a police car in CT.²¹³ By the time she arrived at the site the girl's body had been removed. The following day the police arrived at her home and collected statements from Ms

²¹¹ Makele transcript page 2099-2100.

²¹² Makele transcript page 2100-2101.

²¹³ Bundle 2(5), Document number 22 at para 5.

Nduna's sister-in-law and Ms Nduna. This was despite her informing him that neither of them were eyewitnesses.²¹⁴ At the trial, the magistrate agreed that they could not give any testimony and withdrew their names from the witness list. Ms Nduna, her brother and her sister-in-law have not been informed of any developments since then.²¹⁵ During Ms Nduna's testimony before the Commission, Ms Mayosi asked Ms Nduna when she last saw the police. Ms Nduna responded that the last time they saw them was when the police got the statements from them.²¹⁶ When asked whether she ever went to the police to find out about the status of the case, Ms Nduna replied: *“I changed my cell number but the mother of the child she never changed her cell phone until she died. The address and the house where we live, we never changed it. We are still in the same place. My belief is that the person investigating the case should have had some kind of relationship with the people of the deceased so that he could keep on informing them or giving them updates as to what is going on with the case, so we also just needed follow-up with the case, because we live in a community, because I know that Sesethu's [the deceased] case is not the first case that has been ignored or not solved so*

²¹⁴ Bundle 2(5), Document number 66 at para 6.

²¹⁵ Bundle 2(5), Document number 66 at para 8.

²¹⁶ Nontembeko Nduna gave evidence to the Commission on 28 January 2014. The transcript of her evidence appears at pages 534 to 553 (“Nduna transcript”), at page 563.

*I ask myself why would our family be any special or any different than any other families whose case was not – was incomplete”.*²¹⁷

133. Phumeza Mlungwana

133.1 In her affidavit, Ms Mlungwana details a number of incidents in Khayelitsha which highlight problems and inefficiencies the Khayelitsha community has experienced with the detective branch. In early 2010 a boy named Mabhuti was found dead behind her home. Site B police station was contacted but they could not remove nor cover the body until a mortuary van arrived a few hours later. Both the people who discovered and reported the body were never questioned by the police and it is unclear whether an investigation into Mabhuti's death was ever undertaken.²¹⁸ Ms Mlungwana also details a fight with bouncers from Phezulu Pub in Site B in early 2012, following which her friend, Thabo Sgiva died in hospital.²¹⁹ Ms Mlungwana and her friends reported the incident and gave statements at Site B police station the same night.²²⁰ Two suspects were arrested and identified in an ID parade at Harare police station. Ms Mlungwana and her friends were subpoenaed to

²¹⁷Nduna transcript page 563-564.

²¹⁸ Bundle 1(5), File E, Document number 30 at para 27.

²¹⁹ Bundle 1(5), File E, Document number 30 at para 28.

²²⁰ Bundle 1(5), File E, Document number 30 at para 29.

appear in court in July 2013. Ms Mlungwana contacted the IO prior to the court appearance and informed him that she and her friends feared for their safety and wanted to remain anonymous. During the conversation she was informed that the court date had been postponed to 6 August 2013. However, on that date it was again postponed and since then Ms Mlungwana has heard nothing from the police or the prosecutor.²²¹ The two bouncers that were arrested have been released and are still working as bouncers in Khayelitsha.²²² At clause 82-86 of her affidavit, Ms Mlungwana details an incident in which AT's three-year-old daughter was raped. For two days following the crime, police failed to take her statement or assist her and her child in any way. AT's neighbour even contacted the police at Site B Police Station and provided AT's address but the police failed to arrive.²²³ Following the police's inaction, community members went to the suspect's home to confront him. The suspect ran to the police station and handed himself over.²²⁴ Even though eye-witnesses had identified him as the rapist and he had turned himself in, the suspect was released two days later. He is currently out in the community and has been harassing AT. The police say there is nothing

²²¹ Bundle 1(5), File E, Document number 30 at para 30.

²²² Bundle 1(5), File E, Document number 30 at para 30.

²²³ Bundle 1(5), File E, Document number 30 at para 83.

²²⁴ Bundle 1(5), File E, Document number 30 at para 84.

that they can do.²²⁵ In her affidavit, AT states the following: *"I noticed the suspect Ntembeko following me. Feeling scared, I went to Site B police station to report the incident. Investigating Officer Louw, however, told me that the suspect wasn't following me, he told me that he had told Ntembeko not to come near me or my house and refused to take the matter further"*.²²⁶ At clauses 87-90 of her affidavit, Ms Mlungwana details an incident in May 2010, during which Moses Dibela was beaten by a number of people, including police, at a tavern. Mr Dibela opened a case of assault against the people who had beaten him, but later received an sms informing him that the case had been closed. When Mr Dibela sought an update on the matter, he was informed that the docket could not be located.²²⁷ At clauses 91-94 of her affidavit, Ms Mlungwana details an incident in May 2010, during which Makhosandile Qezo was stabbed in the face when two men tried to steal his cell phone. The community caught the alleged attacker and handed him over to Site B Police Station.²²⁸ From the outset the police did not keep Mr Qezo informed of any developments and he was not even aware of when the suspect's bail hearing was taking place.²²⁹ The IO was not present at some of the

²²⁵ Bundle 1(5), File E, Document number 30 at para 84.

²²⁶ Bundle 1(5), File E, Document number 30 at para 85.

²²⁷ Bundle 1(5), File E, Document number 30 at para 89.

²²⁸ Bundle 1(5), File E, Document number 30 at para 91.

²²⁹ Bundle 1(5), File E, Document number 30 at para 92.

hearings and could not testify that the suspect was a flight risk. The case was postponed over a dozen times. On one such occasion, the case was postponed because the IO was on holiday and failed to inform anyone.²³⁰ During Ms Mlungwana's testimony before the Commission, Ms Mayosi asked her whether she was ever questioned in relation to the Mabhuti murder during the police's investigations.²³¹ Ms Mlungwana responded: *"No. Nobody spoke to me. Nobody spoke to any member of my family. Even my neighbour who found the body and reported the body to the police was never questioned and I do not know if anything came out of that but everybody witnessed Mabhuti's body being found there and there were a couple of stories, people were saying as to what is the cause of death but I don't know what happened."*²³² While testifying at the Commission about the murder of her friend, Thabo Sgiva, Ms Mlungwana stated the following: *"I personally called the investigating officer or Investigator Cloete in Khayelitsha police station and told him that we are still willing to testify but we are scared because the bouncers or the people who murdered Thabo are still working in Khayelitsha and are still around Khayelitsha so the fear is that what happens if they target us or intimidate us in any way specifically because I work in Khayelitsha*

²³⁰ Bundle 1(5), File E, Document number 30 at para 93.

²³¹ Phumeza Mlungwana gave evidence to the Commission on 24 and 31 January 2014. The transcript of her evidence appears at pages 228-271 and 902-927 ("Mlungwana transcript"), at page 246.

²³² Mlungwana transcript page 246-247.

and I stay in Khayelitsha. He said he will deal with that but then the date was postponed because I was worried about the coming date. Time went by. There was no communication."²³³ Ms Mlungwana told the Commission that she had not been informed anything about witness protection, and had she been, *"I probably would have considered it because I didn't want - we didn't want those guys to know our identity because we see them almost every weekend. They still work in Khayelitsha."*²³⁴ Commenting on the last time the trial was postponed, Ms Mlungwana informed the Commission that the IO said, *"We can leave and then they will communicate the next court date to us and I haven't heard anything from there and to my knowledge there hasn't been a conviction on Thabo's case."*²³⁵

134. Mzoxolo Tame

134.1 In Mr Tame's affidavit he details his interaction with a detective at the Harare police station following the murder of his cousin on 19 January 2013. When Mr Tame went to the detective's office he was treated disrespectfully and spoken to in a harsh tone.²³⁶ When Mr Tame asked

²³³ Mlungwana transcript page 248.

²³⁴ Mlungwana transcript page 249.

²³⁵ Mlungwana transcript page 251.

²³⁶ Bundle 1(1a), Document number 64 at para 4-6.

when the accused would be appearing in court, *"He [the detective] told me that I would be wasting money as the deceased was caught in the act [of stealing]. I informed him that is for the court to decide not him telling me that. We argued as I felt that he was not treating us with the respect that we deserved as a bereaved, grieving family."*²³⁷ In relation to the detective's lack of communication with the bereaved family, Mr Tame stated: *"It is crucial to mention that we have not heard from Detective D since 21 January 2013. The last time I saw him was when the accused appeared for the bail application where he did not even speak to me or any other members of my family. The accused were granted bail and the court remanded the case to 26 March 2013."*²³⁸ During Mr Tame's testimony before the Commission, it came to light that he contacted the detective's superior and arranged a meeting to discuss the case. When Mr Sidaki asked why he spoke to the detective's superior, Mr Tame responded, *"Because I felt that there was no communication from the detective to update us as to what is happening around the case and the merits of the case in terms of the investigation so I felt that let me speak to his superior and then I'll get more information from the superior - his*

²³⁷ Bundle 1(1a), Document number 64 at para 7.

²³⁸ Bundle 1(1a), Document number 64 at para 10.

superior."²³⁹ Mr Tame received assurances from the detective's superior that the detective was the right person to investigate the case however, *"That was the last engagement and that was the last communication between ourselves and the Harare Police Station."*²⁴⁰ Mr Tame confirmed that he did not know what eventually happened to the case.²⁴¹ Through further evidence before the Commission it emerged that there was a change of detectives in the case.²⁴² When asked by Mr Sidaki whether he (Mr Tame) was ever informed of this change, Mr Tame confirmed that there was, *"No communication whatsoever"*.²⁴³

135. Beauty Thosolo

135.1 Ms Thosolo detailed the events surrounding her son's murder on 9 November 2010. The accused had led the police to the body of Ms Thosolo's son and one of the accused made a statement on the events of that night which was recorded by the IO.²⁴⁴ Discussing the week that the court proceedings started, Ms Thosolo states that: *"To my surprise all the suspects were released and I was not given the reasons...I then called*

²³⁹ Mzoxolo Tame gave evidence to the Commission on 24 January 2014. The transcript of his evidence appears at pages 168 to 180 ("Tame transcript"), at page 175.

²⁴⁰ Tame transcript page 176.

²⁴¹ Tame transcript page 176.

²⁴² Tame transcript page 178.

²⁴³ Tame transcript page 180.

²⁴⁴ Bundle 1(1a), Document number 49 at para 6.22-6.24.

officer C who was the detective on the case to get an explanation as to why all the accused had been released. He never answered my calls. To this date I have not gotten any explanation of what happened."²⁴⁵ In a supplementary affidavit to her affidavit of 3 November 2012, Ms Thosolo detailed a meeting she secured with a Brigadier in charge of Site B police station for the second week of March 2013, *"My aim for the meeting was to complain to the Brigadier about the conduct of the investigating officer because he never communicated anything to me, and I was always in the dark about progress in the case."*²⁴⁶ After assuring Ms Thosolo that she would be contacted by the IO, Ms Thosolo still heard nothing. Following a further meeting with the Brigadier and still no contact, Ms Thosolo phoned the Brigadier, *"He told me over the phone that if there is something that needs my attention, I will be updated. That was the last time I spoke with him."*²⁴⁷ In September 2013 the IO called Ms Thosolo. It had been nearly a year since she had last heard from him.²⁴⁸ *"The investigating officer stated that there will be court proceedings on the 13th September, which he said was not necessary for us to attend as we will receive feedback accordingly."*²⁴⁹ *"I have never received any of the*

²⁴⁵ Bundle 1(1a), Document number 49 at para 6.25-6.26.

²⁴⁶ Bundle 2(1)(1.1), Document number 49a at para 9.

²⁴⁷ Bundle 2(1)(1.1), Document number 49a at para 19.

²⁴⁸ Bundle 2(1)(1.1), Document number 49a at para 20.

²⁴⁹ Bundle 2(1)(1.1), Document number 49a at para 24.

feedback as promised, up to date."²⁵⁰ When Ms Thosolo phoned the IO on 2 November 2013 to enquire about the court proceedings, *"His response was that he does not know what took place as he could not attend the court proceedings as he was in the Eastern Cape, and he cannot help me in that regard."*²⁵¹ Following Ms Thosolo's testimony before the Commission, Mr Arendse, appearing for SAPS, stated: *"Your evidence was very clear from the night that these perpetrators entered your house pretending to be policemen, from what I can gather there does not seem to be - it doesn't seem to be a terribly difficult investigation to have undertaken; all the leads were there, the evidence was there. So we are also very, very sorry to hear this kind of thing taking place..."*²⁵²

Recommendations

136. We propose that the Commission makes the following recommendations in respect of the Detective Services.

136.1 The staffing levels for detectives in Khayelitsha must be addressed as a matter of urgency. Detectives cannot reasonably be expected to deal with

²⁵⁰ Bundle 2(1)(1.1), Document number 49a at para 25.

²⁵¹ Bundle 2(1)(1.1), Document number 49a at para 26.

²⁵² Beauty Thosolo gave evidence to the Commission on 30 January 2014. The transcript of her evidence appears at pages 859 to 890 ("Thosolo transcript"), at page 889.

case loads of 130 to 160 dockets. Senior detectives need to be reassigned from other stations immediately to cover the extreme backlog of cases in Khayelitsha, even if this is a temporary measure;

136.2 The immediate opening of new permanent detective positions at all three Khayelitsha police stations and advertising for the transfer or appointment of skilled detectives;

136.3 A skills audit must be done to determine the level of training of detectives. This must be followed by a plan to address any shortfall in training. Detectives must be trained to handle the specific types of crime prevalent in Khayelitsha. Where detectives are still found to be lacking capability following further training, these detectives must be moved to a different position within SAPS;

136.4 Effective command and control of the detective services in the three police stations must be implemented, in accordance with the recommendations set out below in section I dealing with the overall management of the three police stations;

- 136.5 Detectives should be able to communicate with residents in Xhosa or English and experienced Xhosa-speaking detectives should be recruited to Khayelitsha as a matter of priority;
- 136.6 Community members must be educated through workshops on the importance of the use of informers to assist the police;
- 136.7 Detectives should be supplied with sufficient resources, including office space and computers.

F. OPERATIONAL ISSUES: CITY OF CAPE TOWN CCTV CAMERA UNIT

137. Evidence relating to CCTV cameras was predominantly given by Mr. Kevin Cole, the superintendent managing and monitoring CCTV camera operation, Mr. Moller, the senior superintendent who manages the CCTV department, both of whom are employees of the Metro Police of the City of Cape Town, Mr. Richard Bosman, the Chief of Law Enforcement for the City of Cape Town and the Senior Public Prosecutor for Khayelitsha, Ms. Rochelle Harmse.

Location of CCTV Cameras in the greater Khayelitsha area

138. There are currently 16 CCTV cameras that focus exclusively on Khayelitsha.²⁵³

The cameras were installed in 2003 as part of the presidential urban improvement projects which was aimed at focusing and allocating resources to high crime areas for purposes of combatting crime, among other things.²⁵⁴ The SAPS crime intelligence officers identified the r hotspots where the cameras were mounted.²⁵⁵

139. Both Mr. Cole and Mr. Moller noted that the 16 cameras in Khayelitsha are located exclusively in the police precincts of Khayelitsha Site B Station and Lingeletu West Station. None are situated in the Harare Station police

²⁵³ Transcription Page 2539.

²⁵⁴ Transcription Page 1949.

²⁵⁵ Transcript Page 2535 - 2536. Details of the specific persons from the City and the SAPS who were consulted in deciding where the cameras should be located are listed on Page 2536.

precinct.²⁵⁶ Since the installation of the cameras there has not been any review of their location.²⁵⁷

140. The Commission was informed that the possibility of increasing the number of CCTV cameras and extending the camera network in Khayelitsha has merely been discussed by the City and SAPS. Though SAPS told the Commission that they would like to roll out more CCTV cameras in Khayelitsha,²⁵⁸ no concrete plan or timetable was placed before the Commission.

Maintenance of CCTV Cameras

141. The Commission was informed that of the 16 cameras in Khayelitsha, 6 are currently non-functional. Of the 6 non-functional cameras:

141.1 4 have not been functional since December 2013 because of fibre cable theft.²⁵⁹ These have not yet been fixed as the fibre cable required has to be sourced.

²⁵⁶ Transcription Page 2563. A map indicating the current locations of the CCTV cameras in the greater Khayelitsha can be found in Bundle 8, File 5 City of Cape Town, Document number 71.

²⁵⁷ Transcription 2540.

²⁵⁸ Transcription 6635

²⁵⁹ Transcription 1955

141.2 1 has had recurring problems with theft of power cables since 2011. This camera is located at the corner of Mew Way and Lansdowne Roads and ESKOM has informed the City that it is “*economically not worthwhile to keep repairing this cable.*”²⁶⁰ The City is currently considering alternatives to ensure that this camera is functional.²⁶¹

141.3 1 has been out of order since November 2013 due to illegal electrical connections that burnt out the camera. It will cost R100 000 to repair it and this has been scheduled to happen at the start of the new financial year in July (2014).²⁶²

142. The Commission was informed that once it is detected that a camera is no longer functional, the SAPS Liaison officer deployed at the TMC is informed and he/she is expected to advise the relevant police station.²⁶³ However, the Station Commander for Lingeletu West, Colonel Reitz, testified that he has never received a report from the Liaison Officer about non-functional cameras in his precinct.²⁶⁴ This raises concerns about the effectiveness of communication between SAPS and the TMC.

²⁶⁰ Moller page 2541. See also the evidence of Richard Bosman page 1934 – 1935.

²⁶¹ Cole Transcript page 2531 - 2532

²⁶² Bosman 1956.

²⁶³ Moller 2561

²⁶⁴ Reitz Page 2880

143. Mr. Moller informed the Commission that generally the cameras are repaired as quickly as possible, sometimes within a week, sometimes within a month. Ultimately, the time taken to repair a faulty camera depends on what repairs are required and whether or not parts have to be sourced.²⁶⁵ The City informed the Commission that they generally carry very limited stock because of constant changes in software and components.²⁶⁶ As a result repairs can take time to be effected.

144. The most common problem with the CCTV cameras in Khayelitsha is theft of the fibre optic cables attached to the CCTV cameras. The fibre optic cables are often stolen because they are confused with copper cables, which are much more valuable.²⁶⁷

145. In addressing the constant theft of fibre optic cables, the City began utilising fibre cables coated in different colours, to distinguish them from copper cables.²⁶⁸ The Commission was told that this solution has not been effective in reducing fibre cable theft.²⁶⁹

²⁶⁵ Moller 2559

²⁶⁶ Bosman 1957.

²⁶⁷ Moller Page 2542.

²⁶⁸ Moller Page 2542.

²⁶⁹ Moller Page 2542.

146. It can be argued that the City has not been able to identify and implement a solution that reduces theft of fibre cables, thereby failing to ensure that all the CCTV cameras located in Khayelitsha are functional at 100% level. This can be ascertained from the evidence of Mr. Bosman who informed the Commission that

It's impossible to attain 100% [camera operational rate]. Somebody

steals one copper cable; it could take out 20 of your CCTV cameras.

They move on fibre optic cable, and five cameras are out in Khayelitsha.

So 90% is regarded as an acceptable rate. (Our emphasis)

147. Furthermore, the Commission was informed that the current log sheets utilised by the City do not “*provide an accurate record of when the call was made, when the call-out was made to fix the camera, and when the camera’s actually functional again.*”²⁷⁰ As a result, it is not possible to track how long cameras have been non-functional. This has in the past affected the ability of police to rely on CCTV footage in the investigation of crime. The Commission was referred to the death of Sergeant Zakekele who was killed in a location that was monitored by a CCTV camera that was not functional at the time. It was determined that the camera had not been operational for months when the incident occurred.²⁷¹

²⁷⁰ Bosman Page 1956

²⁷¹ Bosman 1957.

148. The current proportion of functional cameras shows that the operational camera rate in Khayelitsha is 63%, which falls short of the 90% benchmark applicable to all CCTV in across the City of Cape Town.²⁷²

Usefulness of CCTV Cameras as a mechanism to prevent and detect crime

149. Mr. Cole informed the commission that CCTV cameras in Khayelitsha are monitored at a control room at the TMC in Goodwood. He further stated that if the camera monitor observes a crime, it is immediately reported to the supervisor by phone. The incident is also recorded in an incident report and the supervisor will then view the footage in question.

150. Once the crime has been brought to the attention of the supervisor, he/she is required to inform the SAPS Liaison Officer based at the TMC. SAPS has the discretion to decide what steps are necessary in responding to the footage.²⁷³

151. The Commission was informed that there is currently no definitive research that has been conducted which shows a correlation between mounting a CCTV camera and a decline in crime rates or an increase in the apprehension of perpetrators. The usefulness of CCTV cameras in crime prevention to a large

²⁷² Bosman 1953 – 1954.

²⁷³ This process is detailed from Page 2530 – 2531 of the Transcription.

extent depends on how the SAPS themselves perceive the CCTV cameras. The Station Commander of Lingelethu West²⁷⁴ informed the Commission that he had never been to the TMC in Goodwood personally. The Commission had to explain to him how the cameras are monitored and the quality of the footage. Similarly, the Station Commander of Khayelitsha Police Station had not personally visited the TMC to determine how the CCTV cameras systems function.²⁷⁵

152. CCTV cameras in Khayelitsha are predominantly being utilised in a reactive manner through monitoring and detection of crime. Once crime is detected on the cameras SAPS is immediately alerted²⁷⁶ and the resources deployed to the TMC indicate that SAPS merely intends to use the camera in detecting crime only and to some extent this function is being utilised. It is however not clear if the Liaison Officer always informs the relevant station when a crime is observed on camera. The communication does not appear to be effective.²⁷⁷

153. The use of CCTV camera footage reactively by the detective branch in detection of crime can be determined through some of examples placed before the Commission where CCTV footage was used:

²⁷⁴ Transcription Page 2881

²⁷⁵ Transcription

²⁷⁶ Transcription Page 2543

²⁷⁷ Transcription Page 2880

153.1 Colonel Swart confirmed that CCTV cameras have been used in the detection of crime as SAPS receive calls from the TMC informing him that there is a crime being committed at a certain location. He mentioned that in one incident SAPS was informed of a crime, which resulted in the arrest of the perpetrators.²⁷⁸

153.2 Mr. Cole narrated one incident in which CCTV was utilised by the SAPS in a gang fight where young boy was murdered. This incident was caught on camera at the corner of Palmer and Lansdowne Road.²⁷⁹ SAPS members informed Mr. Cole that an arrest was made in the case through the zooming capability of the CCTV cameras.²⁸⁰ Mr. Cole further informed the Commission that SAPS do indeed request camera footage where crime has been captured.²⁸¹

154. In addition, it is not clear what the collection rate is of the footage where a crime incident is captured on camera by SAPS. The evidence of the Senior Prosecutor was that her office is often told that there is either no camera at the spot where the crime was committed or that it was non-functional.

²⁷⁸ Swart Page 3468

²⁷⁹ Cole Transcript 2534

²⁸⁰ Transcription Page 2535.

²⁸¹ Transcription Page 2549.

155. The use of CCTV cameras proactively, for example, gathering intelligence for crime prevention purposes, is simply characterised as a possibility by Mr. Moller.²⁸² It is also something that SAPS itself have not engaged with as there are currently no crime intelligence officers deployed to the TMC.

156. Furthermore, the Commission was also informed that the usefulness of CCTV cameras is to a certain extent affected by the availability of lighting and adequate infrastructure. Lighting is necessary because it enables and increases visibility of the cameras' footage. Infrastructure enables monitors of cameras to follow a moving crime scene through different locations which is near impossible in informal settlements where perpetrators easily disappear due to the lack of adequate infrastructure.²⁸³

Use of CCTV footage in Court

157. Mr. Cole stated that he is required to give evidence in criminal trials where evidence contained on CCTV footage has been placed before court. He attends

²⁸² Transcription Page 2544.

²⁸³ Transcription Page 2546.

such hearings roughly once or twice a month. He has however never testified in any of the Khayelitsha Courts²⁸⁴

158. The Senior Prosecutor, Ms. Harmse, informed the Commission that it would be useful to have footage in prosecution of crime. However she was not aware of any case where CCTV footage from the cameras in Khayelitsha has been used at the court.²⁸⁵ She further stated that prosecutors have often inquired as to whether there is CCTV footage of crimes.²⁸⁶

Recommendations

159. We propose that the following recommendations be made with regard to the use of CCTV cameras:

159.1 All Khayelitsha station commanders and Mr. Richard Bosman must immediately set up a meeting with the City of Cape Town to discuss how the CCTV cameras can be better utilised in crime prevention and crime investigations. All parties need to discuss the fact that many have not been properly mounted, many are not operational, many are located in unsuitable positions and many more cameras need to be installed.

²⁸⁴ Cole Transcription 2539

²⁸⁵ Transcription Page 1865

²⁸⁶ Transcription Page 1865

Following this meeting a plan needs to be created and implemented immediately to ensure proper and effective utilisation of the CCTV cameras in Khayelitsha.

- 159.2 Key members at the two police stations with CCTV cameras mounted in their policing precincts must visit the TMC to understand how the cameras are used, including zooming in and recording of footage with incidents of crime. The members should include the station commanders, the detective commanders and the crime intelligence officers.
- 159.3 Key SAPS members at each of the police station in Khayelitsha must be trained on the effective use of CCTV cameras in crime prevention, detection and intelligence;
- 159.4 SAPS and TMC must devise a communication plan that facilitates the effective flow of information between the applicable station and officers deployed at the TMC.

G. OPERATIONAL ISSUES: LIAISON WITH MAGISTRATES' COURT

Attendance of witnesses at court

160. Advocate Rochelle Harmse, who has been the senior public prosecutor at the Khayelitsha Magistrate's Court since November 2011, stated in an affidavit furnished to the Commission that a number of matters are postponed several times primarily because either dockets are not in court or witnesses are not present.²⁸⁷ Although the Khayelitsha Courts do experience problems with accused not being present, the availability of witnesses who are required for the successful prosecution of most crimes in Khayelitsha, is of greater concern.²⁸⁸ The reasons why witnesses do not come to court include that their mobile telephone numbers change, SAPS is unable to issue subpoenas (this is exacerbated by the geographical layout of Khayelitsha, the absence of street names, house numbers and addresses not always being accurate and foreigners and refugees being reluctant to testify as they fear victimisation).²⁸⁹

²⁸⁷ Bundle 8, Commission of Inquiry Specialist Affidavits, para 30.

²⁸⁸ Bundle 8, Commission of Inquiry Specialist Affidavits, para 62.

²⁸⁹ Bundle 8, Commission of Inquiry Specialist Affidavits, paras 63 - 67.

161. In her oral evidence Advocate Harmse confirmed the trend, identified in the Tshabalala Task Team Report, of witnesses not being summonsed to court, resulting in the withdrawal of cases.²⁹⁰

162. Advocate Harmse stated in her affidavit that it is crucial that witnesses appear in court as most of the time it is only their evidence that is available to ensure a conviction. She suggested that further particulars be obtained in relation to witnesses, such as the details of relatives or friends who have fixed addresses and through whom the witnesses can be traced when required so that prosecutions are not hampered because the witnesses' mobile phone numbers have changed or they have moved. In relation to foreign nationals she suggested that a communication system be put in place in co-operation with the Department of Home Affairs.²⁹¹

163. In her oral evidence Ms Harmse suggested that list of people who can assist in contacting the complainant be incorporated into the docket statement, to cater for situations where the investigating officer has difficulty in tracing the complainant.²⁹²

²⁹⁰ Transcript, 6 February 2014, 1879: 13 – 16.

²⁹¹ Bundle 8, Commission of Inquiry Specialist Affidavits, para 127.

²⁹² Transcript, 6 February 2014, pages 1888 – 1889.

Dockets

164. Advocate Harmse stated in her affidavit that it is a daily occurrence that dockets which are required are not at court.²⁹³ She noted that it is recurring problem that cases are withdrawn because of incomplete police investigations and dockets not being brought to court.²⁹⁴

165. In her oral evidence Advocate Harmse said that the problem of dockets not being at court is a long-standing problem which was certainly present when she took up her appointment at Khayelitsha in November 2011. The problem has been raised at the monthly case flow management meetings attended by stakeholders in the criminal justice system at Khayelitsha on numerous occasions. After the matter gets raised there would be a measure of improvement – as a result of it being brought to the attention of the station or branch commanders – but thereafter the pattern would return to normal and the problem would recur.²⁹⁵ She described the problem as systemic, and it is not, as far as she has been able to observe, limited to any particular investigating officers.²⁹⁶ The issue is limited to the district

²⁹³ Bundle 8, Commission of Inquiry Specialist Affidavits, para 51.

²⁹⁴ Bundle 8, Commission of Inquiry Specialist Affidavits, para 113.

²⁹⁵ Transcript, 6 February 2014, pages 1816 – 1817.

²⁹⁶ Transcript, 6 February 2014, page 1900.

courts as in the regional courts the dockets are not returned to police stations but kept in a safe at court.²⁹⁷

166. The issue of dockets not coming to court was raised with the Khayelitsha Cluster Commander, General Ndlovu, particularly in relation to FCS dockets, as in many of the rape matters on the district court roll the investigations were not being finalised and then the dockets were not coming to court.²⁹⁸ This meeting took place in early 2012.²⁹⁹ The matter was also raised with the Detective Cluster Commander, Colonel Wiese, and after these interventions she would find for a short period there was an improvement in the situation.³⁰⁰

167. The problems with the investigation of cases by the FCS unit resulted in many cases being withdrawn or struck off the roll because of incomplete investigations.³⁰¹

168. Advocate Harmse testified that there was a vast difference in quality of support that she received as a prosecutor from the FCS unit in Khayelitsha as opposed to Mitchell's Plain (where she had served prior to taking up her appointment in

²⁹⁷ Transcript, 6 February 2014, page 1834.

²⁹⁸ Transcript, 6 February 2014, pages 1834 – 1835.

²⁹⁹ Transcript, 6 February 2014, page 1876.

³⁰⁰ Transcript, 6 February 2014, pages 1835 – 1836.

³⁰¹ Transcript, 6 February 2014, pages 1836 – 1837.

Khayelitsha)³⁰² and the problem with dockets in Khayelitsha is more serious than she had experienced previously in Mitchell's Plain.³⁰³

169. Advocate Harmse testified that it would be necessary to improve the SAPS liaison system with the court in order to ensure that dockets do come to court timeously. She stated:

“123. Firstly the liaison officer and DCCO need to be equipped with the resources to be able to access both the SAPS network so that they are able to ascertain the status of a docket.

124. They would also crucially need to have access to the DoJ network so that they would be able to know in advance what matters are on the roll. This would be beneficial in ensuring that dockets do indeed get provided to the prosecutors at least three days prior to a matter being enrolled. Similarly to what I have stated in relation to the resourcing of the DCCO, the liaison officers should in practical terms also

³⁰² Transcript, 6 February 2014, page 1838.

³⁰³ Transcript, 6 February 2014, page 1845.

have access to the post-mortem reports and other laboratory reports.

125. Access to the EDMS would greatly assist the prosecution task but the system which is currently in place at the SAPS police stations cannot be accessed by the prosecution. Ideally the SAPS members and the NPA should both have access to the electronic docket system. This could alleviate a number of difficulties that are still being encountered as electronic dockets could then be assessed by the prosecutor before a trial date and would alleviate the plight of absence dockets at court.”³⁰⁴

170. Advocate Harmse testified that once matters reach the stage at which the accused pleads, they experience reasonably high rates of success in prosecutions in the Khayelitsha courts. The challenges they experience are in getting matters to the stage where the police investigation is complete and the charges can be put to the accused.³⁰⁵

³⁰⁴ Bundle 8, Commission of Inquiry Specialist Affidavits, para 123 – 125.

³⁰⁵ Transcript, 6 February 2014, pages 1872 – 1873.

171. Advocate Harmse in her oral evidence considered the summaries of information obtained from charge sheets in cases heard in court 1 in 2011 from cases 1 to 100.³⁰⁶ The spreadsheet set out details of seventeen of the 100 cases in which the matters were either withdrawn or struck off the roll. The spreadsheet reflected that the cases in which the charges were withdrawn or struck off the roll involved matters of murder, attempted murder, rape, robbery with aggravating circumstances, which are typical of the cases that would appear in court 1.³⁰⁷ The reasons for the withdrawal or striking off of the cases reflected on the spreadsheet included incomplete investigations, DNA results outstanding and post-mortem reports outstanding.³⁰⁸

172. A consideration of the other schedules contained in bundle 4, folder 6, in respect of both court 1 and court 2 for periods in 2010, 2011, 2012 and 2013, reveals a similar pattern of a substantial number of cases being struck off the roll or having the charges being withdrawn as a result of incomplete police investigations or dockets not being brought to court.

173. Captain Pillay, who has served as the Detective Court Case Officer at the Khayelitsha Magistrate's Court since January 2010, stated in his evidence that

³⁰⁶ Bundle 4, Folder 6, Item 4.

³⁰⁷ Court 1 deals with the more serious cases.

³⁰⁸ The spreadsheet also included the fact that the docket had not been brought to court on more than one occasion amongst the reasons for the withdrawal or striking off.

there is no problem with regard to new dockets, which are on the court roll for the first time, coming to court.³⁰⁹ He also confirmed that there is no problem with regard to regional court case dockets not coming to court.³¹⁰

174. In relation to district court dockets, Captain Pillay conceded that the system works but ‘*we always have a problem with dockets that are not at court but if I receive my list for request for dockets those dockets will come to court.*’³¹¹ He estimated that there were approximately three dockets a day that did not come to court.³¹² He also admitted that it does happen that if the dockets do not come through, this leads to cases being struck off the roll.³¹³

175. When it was put to him by Commissioner O’Regan that the problem of dockets not coming to court was a serious indictment of police inefficiency, Captain Pillay replied that the police are working under pressure and ‘*you are always going to have a problem with dockets not coming to court*’.³¹⁴

176. In the course of his oral evidence, Captain Pillay handed-up a document, exhibit “DP1”, which considered a random sample of the cases contained in the schedule of cases which were struck off the roll or the charges were withdrawn, discussed

³⁰⁹ Transcript, 20 February 2014, page 4058: 15 – 18.

³¹⁰ Transcript, 20 February 2014, page 4072: 3 – 10.

³¹¹ Transcript, 20 February 2014, page 4053: 13 – 15.

³¹² Transcript, 20 February 2014, page 470: 14 – 23.

³¹³ Transcript, 20 February 2014, page 4067: 4 – 13.

³¹⁴ Transcript, 20 February 2014, pages 4162 – 4163.

above in relation to the evidence of Advocate Harmse.³¹⁵ Advocate Sidaki noted that Captain Pillay's report had been compiled with reference to the dockets and not the relevant charge sheets.³¹⁶ Commissioner O'Regan indicated that SAPS should be given the opportunity to go through the spreadsheets more carefully, to examine the charge sheets and to indicate to the Commission whether there are errors in the Sidaki schedule. Commissioner O'Regan left it to SAPS to conduct this exercise.³¹⁷

177. Captain Pillay also produced the registers in which matters are noted that are postponed for further investigation, in which the next court date is entered and then the court liaison officer signs for the docket and takes it back to the station.³¹⁸

178. Commissioner Pikoli noted from the registers that there were a number of instances where the column 'next court date' was not filled in and there were also a number of instances where there is no signature for the docket on the part of the court liaison officer. There were also instances when the prosecutor had not signed off.³¹⁹ Captain Pillay conceded that it would be possible for him not to

³¹⁵ Transcript, 20 February 2014, pages 4077 – 4078.

³¹⁶ Transcript, 20 February 2014, page 4135: 8 – 17.

³¹⁷ Transcript, 20 February 2014, pages 4136 – 4137.

³¹⁸ Transcript, 20 February 2014, pages 4060 – 4061.

³¹⁹ Transcript, 20 February 2014, pages 4068 - 4069.

know where a docket is if the relevant column remains blank throughout³²⁰ and that the purpose of the register is to keep control over dockets.³²¹

179. Captain Pillay conceded that if he kept postponement dates (for all the cases) in his register, he would be able to establish from it what dockets are needed for a specific court date. He does not do this.³²²

180. Commissioner O'Regan put it to Captain Pillay that it appeared from a docket raised with him in evidence by Advocate Sidaki that the register system used by his office was not working, as his office was unable to establish from the registers whether the docket was with the further particulars office or not. Despite having had two days to establish where the docket was, he was unable to do so.³²³

181. Captain Pillay stated that he reported directly to Colonel Wiese, the cluster commander in charge of detectives in Khayelitsha and that he supplied her with a weekly list of all dockets that he screens and dockets that are not at court three days before the matters are placed on the roll.³²⁴

³²⁰ Transcript, 20 February 2014, page 4070: 1 – 5.

³²¹ Transcript, 20 February 2014, page 4147: 2 – 8.

³²² Transcript, 20 February 2014, page 4148: 8 – 19.

³²³ Transcript, 20 February 2014, pages 4166 – 4168.

³²⁴ Transcript, 20 February 2014, pages 4097 – 4098.

182. Captain Pillay testified that he only generally became aware that a docket was not present at court on the morning when the prosecutor came through to him and stated that he needed the docket. He would receive a list of outstanding dockets close to 09h00 in the morning when courts start, and would then begin phoning around to establish where the dockets were.³²⁵

183. Captain Pillay conceded that he only sees the dockets when they come to court for the first time when he screens them to establish whether there is a *prima facie* case. It then goes to the prosecutor but he never sees them again.³²⁶ His office does not run a register with court dates in which the cases coming up on a particular date are reflected.³²⁷ However, on the information available to him, he could compile a register of court dates and circulate it to the detectives in the police stations in the week before the matters came up.³²⁸

184. Colonel Wiese in her evidence accepted that the issue of dockets not coming to court or arriving late is a problem that dates back to before she took up her post and is still an existing problem.³²⁹

Recommendations

³²⁵ Transcript, 20 February 2014, pages 4100 – 4101.

³²⁶ Transcript, 20 February 2014, page 4155: 5 – 11.

³²⁷ Transcript, 20 February 2014, pages 4155 – 4156.

³²⁸ Transcript, 20 February 2014, pages 4156 – 4157.

³²⁹ Transcript, 20 February 2014, pages 5008 – 5011.

185. We propose that the Commission makes the following findings in respect of liaison with the Magistrates' Courts:

185.1 Complainants in criminal cases be required, as a matter of course, to furnish a list of people, together with their contact details, who can assist in contacting them if the investigating officer is having difficulty tracing them. The existing form SAPS3M(a) can be used for this purpose;³³⁰

185.2 The DCCO at the Khayelitsha Magistrates' Court be required, every Wednesday, to circulate to the detective commanders at the three Khayelitsha police stations, a complete list of the cases on the roll for the Khayelitsha district courts the following week;

185.3 In every instance where a docket is not at court on time at the Khayelitsha district courts, formal disciplinary proceedings be instituted against the relevant investigating officer and the superior officer responsible for the supervision of that docket;

185.4 The originals of all forensic and post-mortem reports should be retained at the laboratories at which they are compiled until they are required at court, at which point they should be passed on directly to the prosecutor

³³⁰ Affidavit of Jan Swart, page 6, Bundle 12, Expert Reports, Item 23.

responsible for the matter. SAPS should be given copies (either electronic or print) of the reports at the time at which they are produced;

185.5 SAPS is directed to investigate the feasibility of prosecutors and detectives being granted access, to the extent appropriate, to one another's electronic databases. The investigation is to be finalised within six months.

H. OPERATIONAL ISSUES: CRIME STATISTICS, CRIME INTELLIGENCE AND CRIME INFORMATION OFFICERS

186. This section addresses two issues: the publication of crime statistics, and the use of crime intelligence.

Crime Statistics

187. Notice 17 asks whether “*the system for the publication of crime statistics annually, and not at other times, is efficient, reliable, consonant with the constitutional values of accountability, responsiveness and openness and promotes the trust of the community.*” The evidence demonstrates that the annual release of statistics is unhelpful, and possibly even counter-productive. More regular release of statistics would lead both to better policing, and improved relations with the community.

188. The experts who considered this issue – Dr Chris De Kock, Mr Gareth Newham and Andrew Faull – supported the same twin recommendation:

188.1 National or provincial crime statistics should be released quarterly, together with analysis, and with a previous release to analysts; and

188.2 Station crime statistics should be provided as often as possible.

National crime statistics

189. At present, national crime statistics are released annually, approximately six months after the end of the annual period.³³¹ This approach is both unhelpful, and reflective of a culture of secrecy within SAPS. As Gareth Newham points out, crime stats “*are just numbers. They belong to the public. The public pay for those numbers to be collected so they can see what the crime problem is. But they’re released six months out of date, when they’re completely historical. So that reflects this idea that we can’t share information.*”³³²

190. When released in this manner, national statistics are unhelpful. They also tend to drive pressure on the police to respond primarily to crime statistics. In addition, if the statistics are released without any contextual analysis, they can also be misleading. An increase which can be explained by a cause unrelated to the police could be interpreted as indicating a police failure.

³³¹ De Kock Testimony, Transcript pages 7175-7176.

³³² Transcript page 7515, lines 19-25. See also page 7533, lines 2-6 (“If you do these crime stats once a year and it’s six months out of date, it can only ever be of historical interest. And then the secrecy around it, and this idea of never releasing it, just drives the suspicion in the communities that you can’t trust them.”)

191. In his testimony, Dr Chris De Kock recounted the history of the release of crime stats since the early 1990s.³³³ During that period SAPS released statistics annually, quarterly, monthly and placed a moratorium on releasing statistics. In Dr De Kock's view, the monthly releases were too frequent and failed to provide a sufficiently broad view on crime.³³⁴ As Newham put it: *"[W]hen you're talking about a national level or even a Provincial level, it's not going to be helpful to see the stats every month necessarily. You can't – you know, you can't sort-of suddenly respond to an increase in house robberies across an entire Province, for instance, or the whole country."*³³⁵

192. The optimal arrangement is to release the crime statistics quarterly, together with a contextual analysis that is provided to independent analysts prior to the public release. This allows both the police and the media to understand the statistics when they are released, and not to focus solely on what may be misleading changes in crime rates.³³⁶ This may require an increase in the capacity of the central crime statistics division of SAPS.³³⁷

³³³ Transcript page 7161-7163.

³³⁴ Transcript page 7162, lines 4-8 (*"But those monthly releases were like a tennis game you find now this month it's down, next month it's up, the next month it's down, next month it's up and nobody can make any sense and it's not contextualised. I think it was bad and it was then stopped."*)

³³⁵ Transcript page 7546-7547.

³³⁶ De Kock Testimony, Transcript page 7163, lines 6-13 (*"I think quarterly because point No. 1 you need a very big capacity to release quarterly contextualised reports and you can't just dump the statistics. We must think that that may be very damaging to South Africa if you just dump statistics without any explanation and it goes up it*

Recommendation

193. **Medium term: SAPS must release national and provincial crime statistics every three months. The statistics should be accompanied by a contextual analysis that attempts to explain the shifts in crime trends and patterns. The statistics should be released to a group of independent analysts at least one week prior to their release to the public. The media and public should be informed of the names of the independent analysts to allow them to contact them for comment.**

Station-level Statistics

194. While frequent release of national or provincial statistics are unhelpful, regular release of local crime statistics can be extremely helpful. Newham explained the potential impact of regular release of statistics as follows:

“when communities have information, they don’t necessarily have to rely on the police. So if you are in this precinct and every month on the first day of the month you go to the police station or you go on the Internet,

will damage this country when it comes to tourism and a whole lot of issues. So you have to contextualise it”). See also Newham Testimony, Transcript page 7546-7547.

³³⁷ De Kock points out that the capacity of his former division has been significantly cut since it was able to produce quarterly, contextualised reports. De Kock Testimony, Transcript page 7163, lines 13-15.

and you see the crime stats. If you live in New York you can see the crime stats every week, updated for the last week.

Then you can say, right, I'm a small business owner, I can see business burglaries or business robberies going up. The first thing you can do is get together with other small business owners in your area and you can tighten security, you can put burglar bars up or whatever.”³³⁸

195. Newham related the experience of Bogota in Colombia which had experimented with regular release of crime information. The result had been both an increase in trust between the police and the community, a significant reduction in crime, and improvements in other social challenges.³³⁹ “*The availability of this data*”, Newham argues, “*allowed for different localities to experiment with different interventions, many of which did not require police involvement.*”³⁴⁰

196. De Kock reaches a similar conclusion.³⁴¹ He notes that, while there is a national policy that national statistics should only be released annually, there is no obstacle to the regular release of local statistics. In his view, it would assist in

³³⁸ Transcript page 7531, lines 12-23.

³³⁹ Newham Report, Bundle 12, pages 35-36.

³⁴⁰ Ibid.

³⁴¹ De Kock Testimony, Transcript pages 7531-7532.

crime reduction if station commanders released information about crime trends and crime hotspots regularly to the community:

“what the station commander or station commissioner can do is to tell the community we have hotspots of this here, hotspots of that there, this is the time of day that this is occurring, this is because you park your vehicle there and you don’t see that it’s locked or there’s no security you can’t park your vehicle there. This happened when people go and drink and that place it stays open too late then people drink too much and they start a fight. You can do that in quite a lot of detail except names, you can’t give them names but you can give it to the committee there’s nothing that stops a station commander giving that to the community.”³⁴²

197. Faull supported the need for the regular release of crime statistics. As he put it:

“[F]irstly it would encourage people to report crime more which would make reported crime go up but it would forge stronger relations with police and help us understand the crime challenges better. But it would also make everybody in the community know where the danger currently is, where we need to introduce interventions. It just seems like an obvious measure to help bring people together to challenge needs in the

³⁴² Ibid.

moment rather than seven or eight months after the fact when the data doesn't mean anything really."³⁴³

198. At present, station-level crime statistics are only presented at CPF meetings that occur monthly. While that is a start, there are several material shortcomings. First, it appears from the minutes of the CPF meetings that the police merely provide the statistics: the number of crimes. They do not provide any analysis of the crime – hotspots, *modi operandi*, suspect descriptions and so on. Second, the statistics are only provided monthly, and often less than monthly when CPF meetings are not held regularly. Third, there is nothing in the record to suggest that the CPFs distribute the information to the community.

199. The police already have access to the crime statistics. International experience and expert opinion suggests that merely providing those statistics to the community in a useful and accessible form will have a significant effect on crime and community relations, without any significant additional expenditure. It is also necessary to co-ordinate with other service providers – such as the ambulance services³⁴⁴ – that have statistics that would be useful for SAPS.

³⁴³ Faull Testimony, Transcript pages 7982-7983.

³⁴⁴ See also the testimony of Ms Papu, Transcript page 2581-2582 (“[W]e have a tracking system. In fact with the new system which will enhance we will know where exactly our vehicles are, what speed they are travelling. Even if you open the door while you are in motion it will indicate to us, but more specially now the SAPS are going to gain from that technology because in some of the monthly meetings instead of just talking about

Recommendation

200. **Immediate:** The station commanders of the three Khayelitsha stations should provide crime statistics and information on a weekly basis to the community. This can be done by posting them on a notice board at the police station, on the internet, or in any other form. The statistics should include information about hot spots, crime trends, and possible suspect descriptions.
201. **Medium Term:** The station commanders of the three Khayelitsha stations, and the relevant provincial officials should interact with other roleplayers – the NPA, metro police and universities – to assist in the regular analysis and distribution of station-level crime statistics on a regular basis. In addition, SAPS should ensure – together with these roleplayers – that the impact of the release of crime information is measured, analysed and optimised. The results of this programme in Khayelitsha should be used to inform SAPS policy nationally.

complaints we will be able to advise them to say: “Guys, this is the area where we are actually getting most assaults” and then you will actually find that in those areas that there is a shebeen that is open and all those things and those are the statistics that we are going to share with the SAP and secondly the SAP might have the number of people that have died in the areas, but what they will not have is people that actually died on the way to hospital, which we can be able also to share that information with them so that when they look at their statistics also they can also be able to use our statistics to improve their service also.”)

Crime Intelligence

202. In this section, we discuss the issue of crime intelligence as follows:

202.1 The importance of crime intelligence and how it should be collected and employed;

202.2 The state of intelligence-led policing in the three Khayelitsha stations; and

202.3 Recommendations.

Importance and Nature of Crime Intelligence

203. The proper use of crime intelligence is vital to effective and efficient policing.

Crime intelligence allows you to direct your resources in an effective way – it tells you where, when and how crimes are being committed. Armed with that information, the police can deploy both visible policing and detective resources to combat the most pressing threats to community safety. *“Policing should always be, and especially in South Africa, should be intelligence-based.”*³⁴⁵

³⁴⁵ Dr De Kock Testimony, Transcript page 7131.

204. Police commanders acknowledged the importance of crime intelligence during the Commission's hearings. For example, Colonel Tobias testified: "*What is needed is, we can [always] do with more intelligence, it will make us work better, it will make the place a safer place, there could be more preventative measures, we can do proactive policing*".³⁴⁶

205. De Kock,³⁴⁷ Newham³⁴⁸ and Faull³⁴⁹ confirmed that it would be possible to reduce crime without more resources if the Khayelitsha police properly followed the principles of intelligence-led policing.

206. The basis for this intelligence is not informers. 95% of intelligence-led policing relies on "*intelligence that you get from your victim which is reported to the police, which is recorded in the statements and which is recorded in your records of the police station.*"³⁵⁰

³⁴⁶ Col Tobias Testimony, Transcript page 4606.

³⁴⁷ Dr De Kock Testimony, Transcript page 7150

³⁴⁸ Newham Testimony, Transcript page 7541.

³⁴⁹ Faull Testimony, Transcript page 7994-7998.

³⁵⁰ Dr De Kock Testimony, Transcript page 7131.

207. To do intelligence-led policing properly, there are two vital structures in a police station: the Crime Intelligence Officer (“**CIO**”)³⁵¹ and the Station Crime Combatting Forum (“**SCCF**”). The CIO has three “*non-negotiable*” tasks.³⁵²

207.1 Crime mapping: “*Crime mapping is used to determine the exact location of crime and specifically concentrations of crime, called crime hotspots.*”³⁵³ It relies on the information stored in the Crime Administration System (“**CAS**”). Using CAS, it is also possible to create a crime pattern, which considers the time at which crimes are committed, and correlates it with relevant geographic features.³⁵⁴ Crime mapping is possible in informal areas.³⁵⁵

207.2 Case linkage analysis: this involves scrutinising “*all case dockets per crime category to see if there are any commonalities in terms of victims, targets, perpetrators or Modus Operandi*”.³⁵⁶ The CIO needs to develop and maintain a matrix with the relevant data which can then be analysed to identify patterns.

³⁵¹ Also referred to as the CIAC.

³⁵² De Kock Report at para 136.

³⁵³ Ibid at para 132.

³⁵⁴ Ibid at para 133.

³⁵⁵ Ibid at para 136; De Kock Testimony, Transcript at page 7140.

³⁵⁶ De Kock Report at para 137.

207.3 Field work: CIOs “*should not be office bound and only rely on the information in the dockets and on the systems*”.³⁵⁷ They should visit crime scenes, interview witnesses and members of the public, and interview investigators.³⁵⁸ As Dr De Kock explained: “[Y]ou have to go to that hotspot, at that certain place at that certain time to see what is happening there why is this a hotspot at this time of the evening.”³⁵⁹

208. The information generated by the CIO, through these basic functions “*should literally lead all the policing in a station (including the crime intelligence gathering/collection function)*.”³⁶⁰

209. In addition to the three non-negotiable functions, CIOs should also perform two further functions:

209.1 Briefing and debriefing: CIOs need to inform shifts about current crime patterns, and obtain information about crimes that were committed from returning shifts.³⁶¹

³⁵⁷ Ibid at para 142.

³⁵⁸ Ibid.

³⁵⁹ De Kock Testimony, Transcript at page 7141.

³⁶⁰ De Kock Report at para 151.

³⁶¹ Ibid; De Kock Report at paras 144-145.

209.2 Crime statistics: The **least important** function of the CIO is to analyse crime statistics. According to De Kock: “*a police service should fight crime with crime statistics, and not fight crime statistics.*”³⁶² CIOs are not trained as statisticians, and a focus on stats – increases or decreases in crime rates or ratios – will prevent police from focusing on the core elements of crime intelligence.

210. In order to make use of the work of the CIO, the station must hold an SCCF meeting at least once a week. All the senior officers of the station should be present.³⁶³ The meeting must consider the Crime Threat Analysis (“**CTA**”)³⁶⁴ which should be “*critically discussed and operationalized by the station’s operational management.*”³⁶⁵ This means understanding the specific crime challenges and determining what the police and other role players can do to address the challenge. The steps should be minuted and the results should be discussed at the next SCCF meeting.

³⁶² De Kock Report at para 146.

³⁶³ De Kock Testimony, Transcript at 7143.

³⁶⁴ Also referred to as Crime Pattern Analysis.

³⁶⁵ De Kock Report at para 15.

211. Importantly, “[t]here should be no focus on logistics, no focus on the running of the station, the ordinary day-to-day running because then those issues become paramount.”³⁶⁶ *The Blueprint for Crime Combating Forums at Station, Cluster, Provincial and National Level*³⁶⁷ accurately describes the role of the SCCF.

212. If CIOs are performing their non-negotiable functions, and the station is holding SCCF meetings according to the guidelines, the station can be said to be engaging in intelligence-led, or problem-oriented policing. The alternative to intelligence-led policing is what Dr De Kock called “*policing by chance*”:

*“policing by chance, policing by chance you patrol the area, you police the area and here and there you by chance arrest somebody because there is no focus on specific threats. The consequence of that is that especially your more policeable crimes will increase quite dramatically because it won’t be reduced, it won’t even be kept at the same level. You can’t have reduction if you don’t have focus.”*³⁶⁸

³⁶⁶ De Kock Testimony, Transcript at 7143. See also Brig Van Zyl Testimony, Transcript page 4913 (“*The crime combating forum meetings at the station. Those meetings are there for a – it’s meetings where they analyse the crime situation. It’s not meant to be training meetings, sensitising meetings.*”)

³⁶⁷ Exhibit CDK1.

³⁶⁸ Transcript page 7149.

Intelligence-led Policing in Khayelitsha

213. Dr De Kock conducted a detailed analysis of 58 sets of SCCF minutes that were supplied to the Commission.³⁶⁹ Despite repeated requests, SAPS did not provide CTAs.³⁷⁰ Dr De Kock was therefore unable to analyse the quality of those documents.

214. Dr De Kock's conclusions with regard to the SCCF minutes are extremely worrying. He found:

214.1 No mention of CTAs;

214.2 In Harare and Khayelitsha, no mention of hotspots or linkage analysis;

214.3 In Lingeletu West, the hotspots identified were too large, and the type of crime too general to be helpful;

³⁶⁹ They covered the period January-March 2012, and a few in the remaining months of 2012. 2012 was selected in order to avoid any concerns about releasing operational information.

³⁷⁰ The only document provided was what purported to be a cluster CTA. However, as Dr De Kock pointed out, "*this is not the type of operational document the CTA is supposed to be, for the simple reason that it appears or is presented on the 4/10/2013 which is a good six months after the period which it is supposed to cover.*" De Kock Report at para 159.

- 214.4 The minutes indicate that the CTAs that are prepared are “*at most a table of statistics-usually just a few case numbers or a few crimes with figures behind it for the past weekend or week*”;³⁷¹
- 214.5 None of the meetings were purely about crime, and some are titled “*SCCF and Station management meeting*”;³⁷² and
- 214.6 There is an undue focus on arrest and crime reduction targets, rather than the use of intelligence.³⁷³

³⁷¹ De Kock Report at para 154.9.

³⁷² Ibid at para 154.11. The testimony of various commanders confirmed that the police see no difficulty in discussing these matters at SCCF meetings. See Col Marais Transcript page 3979; Col Tobias Testimony, Transcript page 4531 (“*We had a lot of drunken drivings. But if you look at the SCCF, you must see it in a broader context. We are not looking at one scenario, we’re looking at the safety of the community of Harare. We’ve got accidents, a lot of accidents in Harare area. So where do you start with accidents, Commissioners? You start with the drunken drivings. If you can curb them maybe you will have lesser people of Harare being injured due to accidents or killed due to accidents and stuff like that.*”); Brig Dladla Testimony, Transcript page 3690; Col Tobias Testimony, Transcript page 4560.

³⁷³ Ibid at para 154.12-13 (“*Crime combating meetings should never be about statistics and targets and that no more crime can occur because then we are going to be in the red. Or that if we can arrest somebody for a crime that is generated by police action (e.g. drugs) then it will indicate that we are really working hard. Crime statistics will automatically reduce if we use crime information.*”) See also Col Tobias Testimony, Transcript page 4528:

“COMMISSIONER: So there is a target for police-initiated arrests?

COL TOBIAS: That’s right.

COMMISSIONER: In other words, ones which aren’t based on charges laid by members of the public, but are initiated by the police?

COL TOBIAS: By the police, yes.

COMMISSIONER: Exactly. And would the fact that it’s here in the SCCF indicate that there was probably a target problem; in other words, you had to be pursuing this because you weren’t going to make your targets? Would that be something that would come up in an SCCF meeting?

COL TOBIAS: Yes, that would come up. It will be discussed daily and to see how we can progress.”

215. The only positive aspects of Dr De Kock's analysis were that station commanders attended the SCCF meetings were serious about the correct registration of crime.³⁷⁴

216. De Kock concluded the following from his analysis:

*“[T]he CIO/CIAC at station level either do not compile the CTA/CPA, or if they compile this according to their functions they do not present it to the SCCF”;*³⁷⁵ and

*“[T]he policing in the three stations which form Greater Khayelitsha is policing by chance and luck and clearly not intelligence led policing which SAPS claim as their doctrine”.*³⁷⁶

217. De Kock concludes that if the minutes are an accurate reflection of how police are using crime intelligence, it will be *“impossible to effectively combat the crime in Greater Khayelitsa and in all probability crime reductions and increases have nothing to do with policing in this area, but are a result of external factors.”*³⁷⁷

Or, as he put it in his testimony: *“especially your more policeable crimes will*

³⁷⁴ Ibid at para 154.14.

³⁷⁵ Ibid at para 157.

³⁷⁶ Ibid at para 158.

³⁷⁷ Ibid.

increase quite dramatically because it won't be reduced, it won't even be kept at the same level. You can't have reduction if you don't have focus."³⁷⁸

218. It appeared from the cross-examination of Dr De Kock that SAPS' primary response to his evaluation of the shortcomings in crime intelligence was to contend that police did not need to engage in the type of intelligence analysis activities he identified as they knew the hotspots from experience. The following extract from the cross examination is revealing, both for the attitude of SAPS, and Dr De Kock's response:

"MR MASUKU: Because I mean, sure it wouldn't surprise you that the police that testified actually know where the hot spots are. They don't need a CCF meeting to know where the hot spots are. They know where the hot spots are, because they walk around the community?"

DR DE KOCK: They walk around the community.

MR MASUKU: Yes, they don't need – in order for them to do the policing, they do not need the blue print of a CCF meeting?

³⁷⁸ De Kock Testimony, Transcript at 7148-7149.

DR DE KOCK: I must say that's the first time I hear about that, how you police like that.

MR MASUKU: In fact it was the first time we hear that there is policing by chance.

DR DE KOCK: Because I can't – ja, but I can't see how you can police, especially a quite a station like this, with the size of this station with the number of people walking here, (indistinct) walking, I mean I'm sure you get a lot of information. People tell you a lot of things and so on, but you don't have an idea of the pattern. That to me is very strange. It's like me coming here and then I say, I'm going to the police and I walk down the street and people will tell me, if they trust me they will tell me.

219. Newham and Faull concurred with De Kock's view: experience is not a substitute for proper intelligence. Newham acknowledged that experience is valuable, but cautioned that *"it's one thing you knowing it, and another thing having to share that knowledge in a very concrete way with all your other components of the police station, for instance. ... [U]sing statistics and maps and concrete ways of sharing that information means that you're all on the same page And that can*

*only be shared if you have very real data to make everybody agree that we need to do this collectively.*³⁷⁹

220. Faull also confirmed that this is a common attitude within SAPS. He related the following experience that is particularly revealing:

*“I think those kind of attitudes are dangerous. I think there are people at stations, at many stations who are invested in the idea of evidence-based policing. I refer to being in briefings over the last couple of years where a crime analyst will stand in front of a parade of uniformed officials who are about to go out on patrol and he will say, we’ve had – these crimes were clustered in this part of the precinct and we know that these people are committing crime, but then I gave them a car with the patrol officials and we absolutely ignore, I mean almost always ignore that information and everybody reverts to randomised controls, I mean random patrols.”*³⁸⁰

221. The precise nature of the problem in crime intelligence is unclear. But there can be no doubt that: (a) crime intelligence is not being used to its full potential in the three stations; and (b) improving the use crime intelligence would make the

³⁷⁹ Newham Testimony page 7542-7543.

³⁸⁰ Faull Testimony, Transcript page 7999-8000.

police in Khayelitsha more efficient. Accordingly, it is appropriate for this Commission to make recommendations.

Recommendations

222. The precise cause of the difficulties identified above are unclear. However, the major problem appears to be a simple failure to follow the proper procedures relating to the development of CTAs, and operationalising them in the SCCF. This is probably caused by a combination of lack of training (of CIOs and station commanders) and a failure to understand the role and importance of the CTA and SCCF, a lack of resources in crime intelligence, and a culture that has not internalised the value of intelligence-based policing and relies on experience over evidence.

223. The Complainant Organisations support the recommendations made by Dr De Kock, as amended below. Accordingly, we submit that this Commission should make the following recommendations with regard to crime intelligence.

Recommendations

224. **Immediate: Station managers should be trained on the proper use of crime intelligence. Station commanders should comply strictly with the *Blueprint***

for SCCFs when chairing SCCF meetings. Station commanders should make it a priority to convince all their members that they must rely on proper intelligence, not merely on experience.

225. A meeting must be convened by SAPS and attended by the City of Cape Town, VPUU, SAPS, emergency services, the complainant organisations and any other interested parties, to develop a single map for Khayelitsha which incorporates road numbers, house numbers and other easily identifiable markers. This map can be used as a tool to identify, *inter alia*, crime hot spots, victims of crime, witnesses of crime and perpetrators of crime. This map can be used by all stakeholders in the fulfilment of their respective functions and ensure that all parties are working off of a single, updated and user friendly map.

226. **Immediate:** The implementation of intelligence-led policing should be included in the evaluation of stations and station commanders. The evaluation should focus on the quality of CTAs, and the way that they are operationalised in SCCF meetings.

227. **Immediate:** CIOs should be instructed to, and measured on, whether they perform the three non-negotiable functions: crime mapping; linkage

analysis; and fieldwork. They should also be required to brief and debrief shifts. They should be informed that the collation of crime statistics is a secondary function.

228. **Immediate:** An in depth assessment should be performed by SAPS to determine why there appear to be no proper CTAs, and why the SCCFs are not operationalising intelligence. It should consider whether additional training and/or resources are required for CIOs or other personnel.
229. **Short:** The results of the assessment should be implemented, including, if necessary motivations for additional training and resources.
230. **Medium:** Research should be conducted on how to conduct intelligence-led policing in areas such as Khayelitsha. That research should consider best practice in other areas in South Africa and internationally. The results should be made public.
231. **Long:** The results of the initiatives relating to crime intelligence should be measured by SAPS or other roleplayers. That data should be used to inform changes in crime intelligence throughout SAPS.

I. OPERATIONAL ISSUES: MANAGEMENT OF POLICE STATIONS

Is the management of the three police stations efficient?

232. General Schooling and Commander Leamy,³⁸¹ who conducted an extensive investigation of the documents furnished to the Commission from the three police stations, mainly covering the period from 1 January 2010 to 31 August 2012,³⁸² and including an examination of occurrence books, information books and domestic violence registers, concluded as follows:

“283. The training of Vispol members with regard to domestic violence is not sufficient as registers are not being filled in correctly. Commissioned officers need to be given refresher training in respect of their duty to conduct first and second level inspections.

284. The basic command and control elements of first and second level inspections at Harare SAPS are also not functioning effectively; this represents a sweeping pattern, between all three Khayelitsha SAPS stations, of ineffective supervision by the responsible commanders. Cumulatively this represents a dysfunctional

³⁸¹ Bundle 9, Commission of Enquiry, Item 1.

³⁸² Schooling and Leamy Report, paragraph 7.1.

overall picture of the greater Khayelitsha area, with SAPS commanders not able to effectively have sight of the factual situation their respective stations are operating under. There is, therefore, no opportunity to exercise effective command and control. If the basic inspections are not run correctly, this will handicap the SAPS from carrying out their basic crime prevention duties, exacerbated by ineffective accountability processes.”³⁸³

233. General Schooling and Commander Leamy’s finding that there has been a failure of command and control, the fundamental management principle applied at the three Khayelitsha police stations, is supported by the reports of the provincial inspectorate furnished to the Commission.³⁸⁴

234. The breakdown in basic command and control is not unique to Khayelitsha. Mr Gareth Newham in his report,³⁸⁵ refers to a SAPS internal report produced by its

³⁸³ Schooling and Leamy Report, paragraphs 283 - 284. At paragraphs 214 to 215 of their report they explain that first level inspections should take place at least once every 24 hours. They are usually conducted by the commander of the relief shifts and ensure that all registers, books and dockets are correctly filled in. Second level inspections should take place at least once a week and are normally conducted by the head of visible policing or the commander of the CSC. They serve to ensure that the first level inspections have been properly conducted and any problems identified have been addressed.

³⁸⁴ See for example, Bundle 3, 3.30, Khayelitsha, inspection report of 5 September 2011, page 23, paragraphs 3.3.5 – 3.3.7; Bundle 3, SAPS documents, 3.30, Lingeletu West, inspection report of 19 August 2011, pages 149 – 150, paragraphs 3.6 – 3.6.1; Bundle 3, SAPS documents, 3.30, Harare, inspection report of 26 September 2012, page 346, paragraph 5.2, read together with paragraphs 214 – 241 of the Schooling and Leamy report.

³⁸⁵ Bundle 12, expert reports, Item 7, page 39.

Policy Advisory Council,³⁸⁶ based on visits by a group of retired police generals to 75% of all police stations country-wide and which found, “*endemic problems of poor management, inadequate training and resource distribution resulting in worrying levels of police service delivery, misconduct and corruption*”. The Policy Advisory Council concluded that:

*“Many of the problems of the police are the direct result of a breakdown in command and control and a lack of supervision . . . in most instances poor service delivery, maladministration, ill-discipline and corruption have at its core the lack of supervision and control.”*³⁸⁷

235. The inadequacy of the training of the senior management in the three Khayelitsha police stations was graphically illustrated in the evidence of Colonel Swart, the Head of Detectives at Lingeletu West, who acknowledged that he himself needed further training:

“I would love to do more management skills at the office. My whole life I was working outside and suddenly I must manage a whole lot of

³⁸⁶ South African Police Services, 2008, Policy Advisory Council report for November 2007 to October 2008, Pretoria.

³⁸⁷ Policy Advisory Council report for November 2007 – October 2008, page 48, quoted in Newham, *op cit*, page 39.

documents, give feedbacks – a lot of training. I can't work even a computer or laptop, I struggle to type and all that stuff. I would love to have training on that more."³⁸⁸

236. Colonel Swart had attended two management courses in the 10 years he had held a management position at SAPS. However, he was doubtful whether training in computers would assist him in his work.³⁸⁹

237. General Schooling and Commander Leamy attribute the breakdown in command and control, in the first instance, to the station commanders not ensuring that first and second level inspections are conducted properly. If the station commanders are unable to address the problems, the cluster command should ensure that this is done. If the cluster command fails to deal with the situation, the provincial command should step in and take control of the situation. As the problems had been persisting for years, there was no way that the Provincial Commissioner could have been unaware of them. The situation was such that the institution of disciplinary proceedings against the station and cluster commanders should be considered.³⁹⁰

³⁸⁸ Transcript, 17 February 2014, page 3434: 10 – 15.

³⁸⁹ Transcript, 17 February 2014, pages 3434 – 3436.

³⁹⁰ Transcript, 10 February 2014, page 2309 – 2312.

The cluster command structure

238. General Schooling and Commander Leamy state in their report that the functions of the cluster command include:

238.1 Co-ordination of visible policing in the cluster;

238.2 Co-ordination of the detective services;

238.3 Rendering effective support services; and

238.4 Ensuring that operational plans are acted upon.³⁹¹

239. The cluster commander is responsible for inspecting the “*practice of policing, i.e. parades, registers, exhibit management, detention management, registering of crime and identifying areas of non-compliance to acts relating to liquor and firearms, domestic violence, child justice and children, second hand goods, etc.*”

The cluster commander must also ensure that 24 hour and monthly inspections are conducted.³⁹²

³⁹¹ Schooling and Leamy report, paragraph 17.

³⁹² Schooling and Leamy report, paragraphs 18 and 19. The report relies on an email dated 2 December 2013, sent from SAPS in response to a request from the Commission of Enquiry for a document setting out the roles

240. Schooling and Leamy note that it does not appear that – with the exception of the Cluster Detective Co-ordinator, Colonel Wiese - the Cluster Command is performing any monitoring or oversight inspections in respect of the three Khayelitsha stations (apart from producing reports relating absenteeism).³⁹³

241. The Schooling and Leamy report also noted long periods of absenteeism by senior and junior officers and clerks within the cluster structure³⁹⁴ and the frequent periods of leave taken by the Cluster Commander in 2012 and 2013.³⁹⁵ They stated that the frequent turnover of senior commanding officers and support personnel at cluster level *“leads to a breakdown in continuity in command and control within the cluster structure and ultimately leads to inefficiency.”*³⁹⁶

242. Their report also stated that the cluster command failed to provide the Commission with any documentation which indicated that it had done any assessment of visible policing or sector policing in the three Khayelitsha stations.³⁹⁷

and responsibilities of the cluster commander to the stations within the cluster. This email is to be found in Bundle 4, Cluster Commander, Item 29

³⁹³ Schooling and Leamy report, paragraphs 218 – 220.

³⁹⁴ Schooling and Leamy report, paragraph 253.

³⁹⁵ Schooling and Leamy report, paragraph 256.

³⁹⁶ Schooling and Leamy report, paragraph 258.

³⁹⁷ Schooling and Leamy report, paragraphs 265 – 266.

243. Colonel Marais stated in his evidence that the crime intelligence received from the cluster command is not effective.³⁹⁸

244. General Schooling testified that the Cluster Commanders should be visiting the stations within the cluster on a weekly basis, not only for inspection purposes but also to build the morale of members at the stations.³⁹⁹

245. Commander Leamy testified that the Heads of Visible Policing and Support Services in the cluster command were the officials who should have been, but were not, doing inspections at the three stations.⁴⁰⁰

246. Colonel Wiese, the Cluster Detective Commander, testified that the cluster command lacks any operational mandate and that the senior officers appointed to the cluster command have little or no support. For example, she testified that she shares an email and that when she is out of office her telephone is unanswered.⁴⁰¹ However, she stated that there is a review being undertaken of the cluster command structure and its lack of operational mandate, as after a three year

³⁹⁸ Transcript, 19 February 2014, page 3957.

³⁹⁹ Transcript, 10 February 2014, pages 2226 – 2227.

⁴⁰⁰ Transcript, 10 February 2014, pages 2294 – 2295.

⁴⁰¹ Transcript, 24 March 2014, page 4990.

period it is becoming apparent that, “*things are not working as its supposed to be regarding we don’t have any powers.*”⁴⁰²

Proposed findings

247. The complainant organisations propose that the Commission makes the following findings in respect of the management of the three Khayelitsha police stations:

247.1 There are substantial failings in the management of the three police stations. In particular, inadequate first and second levels inspections have resulted in a failure of command and control at the three stations;

247.2 There is little evidence that the cluster command, with the exception of the Cluster Detective Commander, Colonel Wiese, is making any meaningful contribution to the management of the three police stations.

Proposed recommendations

248. We propose that the Commission makes the following recommendations in respect of the management of the three Khayelitsha police stations:

⁴⁰² Transcript, 24 March 2014, pages 4990 – 4991.

- 248.1 The Provincial Commissioner be held accountable for the failure of command and control at the three Khayelitsha police stations and for failing to take action with regard to identifying the problems at an earlier stage;
- 248.2 The Provincial Commissioner be required to personally identify which cluster and station commanders are responsible for the breakdown in command and control at the three police stations and institute disciplinary proceedings where appropriate;
- 248.3 The Provincial Commissioner personally intervene and ensure that:
- 248.3.1 command and control is established in the three Khayelitsha stations; and
 - 248.3.2 first and second level inspections are conducted regularly and properly, all records and registers are kept in good order and that dockets are managed effectively;
- 248.4 The Provincial Commissioner conduct a comprehensive review of the capacity of the cluster commander, the three station commanders and their senior managers to lead a turnaround in policing in Khayelitsha. He

must specifically investigate the reasons for the poor performance of the Lingelethu-West police station, as indicated by the performance chart, after Colonel Reitz was appointed as station commander. Any senior managers who are unsuitable or incapable of implementing the turnaround strategy should be transferred out of Khayelitsha;

248.5 A skills audit be conducted of the senior management at the three stations, to identify shortcomings in the skills and training of the senior officers at the three stations and to address these shortcomings through intensive training where necessary;

248.6 The value of the cluster command structure be reassessed by SAPS in light of its failure to make any substantial contribution to the management of the three Khayelitsha police stations;

248.7 A long-term objective should be to make better use of technological aids to management. However, this is an issue that needs to be addressed by SAPS nationally and it must be acknowledged that even better resourced

police services operating in less demanding conditions struggle to harness effectively the benefits which can be provided by technology.⁴⁰³

⁴⁰³ 2013 Independent Police Commission of the United Kingdom report, Bundle 12, pages 172 – 176.

J. CORRUPTION AND CRIMINALITY

249. In this section, we address the problem of corruption and criminality⁴⁰⁴ in Khayelitsha in three parts:

249.1 The nature and extent of corruption;

249.2 The causes of corruption; and

249.3 Recommendations.

Nature and extent

250. Corruption and criminality in the police is an “*international phenomenon*”.⁴⁰⁵ All police services struggle with corrupt and criminal members. As Punch puts it: “*[Corruption] is a constantly recurring feature of policing. [It] is an inherent and near universal facet of policing*”.⁴⁰⁶

⁴⁰⁴ In the interest of brevity, we use the word “corruption” to refer to all forms of corruption and criminality.

⁴⁰⁵ Grobler Testimony, Transcript page 7283.

⁴⁰⁶ M Punch *Police Corruption: Deviance, accountability and reform in policing* (2009, 1st ed), quoted in Grobler Report, Bundle 12 at para 19.

251. The South African Police Service is no different – there is clear evidence of corruption and criminality within SAPS.⁴⁰⁷ According to the Global Corruption Barometer, 83% of South Africans believe the police are corrupt.⁴⁰⁸ 36% of surveyed South Africans admitted to paying bribes.⁴⁰⁹ 892 police members were charged with corruption and related charges in 2012/2013.⁴¹⁰ IPID received 120 reports of corruption in that period, and 6728 charges.⁴¹¹

252. And Khayelitsha is not an exception to the international and national reality. The evidence shows that all the ordinary types of corruption and criminality evidenced in SAPS as a whole are present in Khayelitsha. There is evidence of serious misconduct,⁴¹² bribery,⁴¹³ defeating or obstructing the ends of justice,⁴¹⁴ sabotaging prosecutions,⁴¹⁵ drug-related criminality,⁴¹⁶ drunkenness,⁴¹⁷

⁴⁰⁷ Grobler Report, Bundle 12 at

⁴⁰⁸ Grobler Report at para 23.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ Ibid at paras 26-27.

⁴¹² Ibid at paras 32-34.

⁴¹³ Ibid at paras 46-54.

⁴¹⁴ Ibid at para 35.

⁴¹⁵ Ibid at paras 37-42.

⁴¹⁶ Ibid at para 62.

⁴¹⁷ Ibid at paras 64-65.

relationships with gangs,⁴¹⁸ socialising with criminals,⁴¹⁹ theft,⁴²⁰ rape and sexual assault,⁴²¹ and assault and abuse of power.⁴²²

253. The residents of Khayelitsha are extremely concerned about police corruption.

According to the Mthenthe Report,⁴²³ a belief that the police are corrupt was the third most cited reason for not reporting a crime, after “do not trust the police” and “other”.⁴²⁴ In Site B, 10.7% of respondents cited corruption; in Harare, 12.2%; and in Lingeletu West 7.4%.⁴²⁵ Of course, perceptions of corruption also feed distrust of the police – the most cited reason for not reporting a crime.

254. The CJCP Synthesis Report also identifies high levels of concern about corruption amongst young people in Khayelitsha.⁴²⁶ The report – which consolidates the results of a number of focus groups – finds:

⁴¹⁸ Ibid at paras 67-69.

⁴¹⁹ Ibid at para 71.

⁴²⁰ Ibid at paras 75-78.

⁴²¹ Ibid at para 83.

⁴²² Ibid at paras 90-95.

⁴²³ In questioning Dr Grobler, Commissioner O'Regan put to her that the Mthenthe Report did not suggest that corruption was a major concern in Khayelitsha. Transcript page 7293. This is not borne out by a careful reading of the Mthenthe Report. The Commissioner cited the fact that 60-66% of respondents indicated dissatisfaction with the police, but that corruption was not cited as one of the reasons. However, respondents were only asked about police corruption when asked why they did not report crime. Corruption was the third most prominent reason given for not reporting crime.

⁴²⁴ Mthenthe Report (Bundle 10, Commission of Inquiry, File 1) at Table 12, page 38. VOCS also found that police corruption was a reason for not reporting crime. Mthenthe Report at page 39. See also the testimony of Mr Du Toit Transcript pages 4309 and 4320 (21 February 2014).

⁴²⁵ Police corruption was also cited as a reason for not reporting recent crime, although it was lower down the list. Mthenthe Report at Table 11, page 38.

⁴²⁶ Bundle 6, Commission of Inquiry, Expert Reports.

*“Common across all groups were reports of corruption, bribery, and misconduct, all of which serve to substantially undermine the public’s faith and trust in the SAPS. This could take various forms, but a sufficient number of first-hand experiences of both complicity in, and corruption, were raised to suggest that this is a major impediment to both police efficiency, and trust in the police, in Khayelitsha.”*⁴²⁷

255. The learners in the focus group described bribing police with alcohol, and the need to befriend police.⁴²⁸ *“These experiences”*, the authors explain, *“all combine to create the perception of the SAPS in Khayelitsha as corrupt and ineffective. One learner suggested that the only way to stay safe, was to befriend a police officer and pay him or her bribes, as that was the only way that they would stay safe.”*⁴²⁹ There was also a perception that reporting corruption was pointless as no action would be taken.⁴³⁰ Corruption was also cited as a reason for failing to respond to complaints,⁴³¹ and as a reason police fail to deal with known perpetrators.⁴³²

⁴²⁷ Ibid at 16.

⁴²⁸ Ibid.

⁴²⁹ Ibid at 17.

⁴³⁰ Ibid.

⁴³¹ Ibid at 19.

⁴³² Ibid at 28.

256. Perhaps the clearest indication of the problem of corruption appears in this extract:

*“Across all the FGDs, individuals were able to cite examples of corruption and bribery, primarily between the police and taxi drivers, and police and shebeen owners, but pervasive to the general community as well. In some instances, the police are seen as being openly complicit in some criminal activity”.*⁴³³

257. As these surveys demonstrate, corruption (and perceptions of corruption) affects both the relationship between the police and the community, and the efficiency of the police. The community will not trust police that are perceived to be corrupt. And corrupt police will not be effective or efficient at combatting or preventing crime.

258. Given the clandestine nature of corruption, it is impossible to accurately estimate its extent. But it is certain that corruption is a serious problem in Khayelitsha (as it is throughout SAPS) and that addressing it directly will improve both community relationships and police inefficiency.

⁴³³ Ibid at 28.

Finding

259. **Corruption and criminality amongst SAPS members is a serious problem in Khayelitsha, as it is throughout SAPS and police services across the globe. Corruption not only makes the police inefficient, it often means the police are creating, rather than preventing crime. Corruption has seriously damaged the relationship between the police and the community as many residents of Khayelitsha believe the police are corrupt.**

Causes of corruption

260. In order to determine how to tackle corruption, it is necessary to have a basic understanding of its causes. To begin, it must be stressed that corruption is not a case of “bad apples”. As both Grobler⁴³⁴ and Newham⁴³⁵ testified, it is common refrain in police departments across the globe, including SAPS, that there are only a few bad apples that need to be dealt with. This is false. Corruption is an unavoidable part of policing – the nature of the institution makes corruption and criminality inevitable.

⁴³⁴ Grobler Report at paras 18-20; Grobler Testimony, Transcript pages 7282-7283.

⁴³⁵ Newham Report at 15-16; Newham Testimony, Transcript page 7547.

261. Given the nature of police corruption, arresting police officers on its own is not an effective means to combat police corruption and criminality. While the arrest of corrupt officers should be welcomed, it is a reactive strategy that, on its own, will do little to address the problem.⁴³⁶ Proactive measures are required to tackle the underlying causes of corruption. As Newham put it: “[T]he problem of police abuse in South Africa will not be solved by simply charging or dismissing individual police officials once they are caught breaking the law or acting outside of the SAPS regulations. A far more comprehensive approach is required to reduce the levels of police abuses that currently exist.”⁴³⁷

262. Grobler identifies a number of causes or “risk factors” that make corruption possible.⁴³⁸ These include factors related to:

262.1 Individual personality: Members who have relationship problems, drug or alcohol addictions, or are predisposed to dishonesty are more likely to be corrupt.

262.2 The task environment: Policing, by its nature, is largely unsupervised and affords policemen a large degree of power over people.⁴³⁹

⁴³⁶ Grobler Testimony, Transcript pages 7321-7322; Newham Testimony, Transcript 7548-7549.

⁴³⁷ Newham Report at 16.

⁴³⁸ Grobler Report at pages 41-42; Grobler Testimony, Transcript at 7294-7296.

262.3 Police culture: There is a culture of silence in the police (“the Blue code of silence”)⁴⁴⁰ that allows corruption to thrive, coupled with an “us v them” mentality and a sense of impunity.

262.4 Organisational and managerial factors: These factors generally relate to poor management, whether as a result of incompetence, lack of knowledge, bureaucratic impediments, lack of political will, complicated disciplinary procedures or other related factors.

262.5 Flaws in recruitment and training: The lack of strong ethics training and weak recruiting also contributes to corruption.

263. Not all of these are within the police’s immediate control, but a huge amount can be done to reduce corruption. We now turn to the recommendations.

Finding

264. Police corruption is caused by a variety of factors, many of which are present in Khayelitsha. Several of these factors are within the control of SAPS. SAPS can take action to decrease corruption within its ranks.

⁴³⁹ See Newham Report at page 16.

⁴⁴⁰ See Newham Report at page 22 (“*This is a strong informal agreement amongst police officials that no officer will report the misconduct of a fellow officer, or cooperate with any investigations against them.*”)

Recommendations

265. The recommendations can be usefully separated into those steps that can be taken at station level, provincial level and national level.

Station level

266. While tackling police corruption requires a unified effort at a national level, there are steps that individual station commanders can take to address the issue. These include:

266.1 Insisting on professional behaviour. As Grobler notes, insisting on professionalism: *“instils pride, once you have a better level of professionalism you are more proud about your work”* and therefore less likely to engage in corrupt behaviour.⁴⁴¹

⁴⁴¹ Transcript page 7297. See also Newham Transcript page 7550 (*“Well, I mean, the first thing is to – is to – they would usually have – they would, in the past, sometimes have station lectures, so at least once a month the Station Commissioner calls all the people together, most of them, and has a lecture and talks about the importance of professionalism, what it means to be a police official, and is an example of what a professional police officer is, and lives that ethos, and uses the code of conduct as a guide and expects everybody around them, their own managers, to do that.”*)

266.2 Behaviour profiling and dealing properly with alcohol and drug abuse, including random drug testing;⁴⁴²

266.3 Lifestyle surveillance to determine whether officers have unexplained access to excessive amounts of money or assets;⁴⁴³

266.4 Inform the community about the code of conduct and what they can expect from the police.⁴⁴⁴

267. Newham pointed out that it is often difficult to address corruption simultaneously throughout a whole organisation. He suggested that it may be helpful to start small:

“So sometimes what happens is, there’s initial acknowledgement of the problem, they start looking into it, they suddenly realise that it’s a bit too big to deal with, and then they back off.

What you should be doing at that stage is then breaking it down and saying, if it’s a whole agency working in a city or country, then you start working in certain areas and you do it slowly over

⁴⁴² Transcript page 7297.

⁴⁴³ Transcript page 7297-7298.

⁴⁴⁴ Newham, Transcript page 7551.

time. You don't try and just suddenly go full force, the whole lot. But you've got to start doing it somewhere."⁴⁴⁵

268. Khayelitsha presents an excellent opportunity to test the impact of some of the above-mentioned reforms.

Provincial level

269. There are limited steps that the provincial commissioner can take, given the hierarchical nature of SAPS. General Lamoer is already doing good work in combatting corruption. However, there are two steps he can take: (a) provide training to both commanders and rookies about what corruption is and how to combat it;⁴⁴⁶ and (b) support station commanders in their initiatives to deal with corruption.

National level

270. The Complainant Organisations submit that there are two primary steps that should be taken at national level to address corruption: a commission of inquiry, or a public review of police corruption; and the re-establishment of an independent anti-corruption unit.

⁴⁴⁵ Newham, Transcript page 7554.

⁴⁴⁶ Grobler, Transcript page 7228.

271. While the problem of corruption and its causes are well understood, a commission or review is vital for several reasons. First, there needs to be a co-ordinated response to corruption across SAPS as an organisation.⁴⁴⁷ A commission or review would consolidate the recommendations and develop a clear plan to tackling the problem.

272. Second, while the nature and causes of corruption and criminality are understood, they have not been internalised by SAPS. As the evidence demonstrates, SAPS continues to treat the issue of corruption as one of a few bad apples. While that is an important first step,⁴⁴⁸ a commission would help to break the hold that idea has over SAPS and pave the way for more systemic solutions.

273. Third, the political will to tackle corruption is currently lacking. A commission of inquiry could create the political space necessary to take measures to address corruption. As Grobler put it: *“the idea is to get it into the public domain, keep it in the public domain so that there’s enough pressure on police management and the politicians to start doing something about it”*.⁴⁴⁹

⁴⁴⁷ Grobler Report at para 133.

⁴⁴⁸ Newham Testimony, Transcript page 7553.

⁴⁴⁹ Grobler Testimony, Transcript page 7304. See also Newham Testimony, Transcript at page 7554-7555 (Newham expressed qualified support for the idea of a commission of inquiry. He noted that a large commission might not be necessary if the right people at senior level took the necessary steps. However, he does acknowledge that a commission may be a useful vehicle.)

274. The other major recommendation is that SAPS needs to establish a highly specialised, independent, well-resourced anti-corruption unit.⁴⁵⁰ Both Grobler⁴⁵¹ and Newham⁴⁵² strongly recommended the establishment of such a unit. Newham explained the effect that the previous anti-corruption unit had had:

*“I was working in Hillbrow Police Station at a time when [the unit was] quite active, and a lot of police officials would admit to me that they were not taking as many opportunities as they had in the past because they had suddenly seen colleagues in uniform being handcuffed and arrested and taken to the local office of the anti-corruption unit, sometimes for taking bribes of R10,00 and losing their jobs and – so it had a very strong deterrent effect.”*⁴⁵³

275. Such a unit is international best practice, and police insiders believe it will go a substantial way to addressing the problem of corruption.⁴⁵⁴

276. In addition to those two major recommendations, the Complainant Organisations support the remainder of the recommendations made by Grobler in her report.

⁴⁵⁰ Grobler Report at para 174.

⁴⁵¹ Grobler Testimony, Transcript page 7301;

⁴⁵² Newham Testimony, Transcript pages 7551-7552.

⁴⁵³ Newham Testimony, Transcript page 7552.

⁴⁵⁴ Grobler Report at para 174.

K. OPERATIONAL ISSUES: ARREST AND DETENTION

Arrest for reasons other than suspected commission of a crime

277. The Tshabalala Task Team report noted that the number of suspects who are detained, not charged, and then later released was of concern, as the reasons for the release often indicated that the suspects could not be linked with crimes:

“This creates the impression that members are arresting and detaining suspects without the prerequisite of a reasonable suspicion that the suspects committed the crimes in question, exists.”⁴⁵⁵

278. The Tshabalala Task Team report also stated that the number of arrests for possession of dangerous weapons was inflated by arresting people for possession of pocket knives. These cases would subsequently be withdrawn by the prosecutor with the remark that the accused did not constitute an immediate danger to anyone.⁴⁵⁶

279. The Schooling and Leamy report also noted a large number of arrests and detention for minor offences (such as riotous behaviour) at the Lingeletu West

⁴⁵⁵ Tshabalala Task Team report, annexure “AL87” to the High Court Record, High Court Record, page 692, paragraph 8.3.2.

⁴⁵⁶ High Court Record, page 697, paragraph 8.7.1.

police station. The suspects would be locked-up overnight and released the following morning on an admission of guilt fine for minor offences which should not have led to their detention in the first place.⁴⁵⁷

280. The situation is exacerbated by the evidence of Colonel Tobias, who testified that for all police initiated crimes (such as possession of drugs, firearms and shebeen control), arrest targets were set and if the targets were not met, SAPS members would be required to intensify their efforts. The minutes of a SCCF meeting indicated that the Harare SAPS was having difficulties meeting its targets for illegal possession of firearms and drunken driving. Colonel Tobias testified that this was a matter which would be discussed daily “*to see how we can progress*”.⁴⁵⁸

Detention for longer than 48 hours

281. Section 35(d) of the Constitution guarantees the right of everyone who is arrested for allegedly committing an offence to be brought before a court not later than 48 hours after arrest or on the first court day after the expiry of the 48 hour period.

⁴⁵⁷ Bundle 9, Commission of Enquiry documents, paragraph 213.

⁴⁵⁸ Transcript, 17 March 2014, pages 4526 – 4528.

282. The Schooling and Leamy report noted that an examination of the SAPS 328 forms, relating to the release of suspects from detention, revealed that the 48 hour period had been subject to abuse at the three Khayelitsha stations. The SAPS 328 forms were generally not filled in correctly and in many cases the actual time of detention or release was not recorded. They state that this “*may be an error or a deliberate ploy so that the SAPS 328s do not reflect that persons are being detained for more than 48 hours.*”⁴⁵⁹

283. General Schooling and Commander Leamy also found that a number of the SAPS 328s for the Harare detention cells indicated that a number of detainees were only released after the 48 hour detention time had expired in direct contravention of section 35(1)(d) of the Constitution:

*“A mere perusal of the SAPS 328s would have indicated that this was happening yet no senior management appears to have taken steps in relation thereto.”*⁴⁶⁰

284. General Schooling in his oral evidence testified that the SAPS 328s reflected that some detainees were detained on a Thursday and only charged on a Tuesday.⁴⁶¹

⁴⁵⁹ Schooling and Leamy report, paragraph 212.

⁴⁶⁰ Schooling and Leamy report, paragraph 212.

285. The Tshabalala Task Team report supports the Schooling and Leamy findings with regard to the abuse of the 48 hour period within which to charge or release suspects:

“3.3 It was also found that suspects are generally not charged within 48 hours. The provision made by the Criminal Procedure Act for a police officer to detain a suspect for 48 hours was created to enable the police to finalize an investigation and to positively link a suspect to a crime. On perusal of the case dockets where suspects were detained, not charged within 48 hours and then later released, it was found that there was no reasonable suspicion that linked the suspects with the crimes committed.”⁴⁶²

286. General Schooling in his oral evidence confirmed that the SAPS 328 forms examined by him and Commander Leamy were consistent with the above finding in the Task Team report.⁴⁶³

287. Captain Pillay in his evidence confirmed it happened once or twice a month that a suspect would be brought to the Khayelitsha courts and that when the prosecutors

⁴⁶¹ Transcript, 10 February 2014, page 2266: 4 – 6.

⁴⁶² Tshabalala Task Team report, annexure “AL87” to the High Court Record, High Court Record, page 692, paragraph 8.33.

⁴⁶³ Transcript, 10 February 2014, page 2267: 10.

screened the dockets they would find that the 48 hour period had already expired. The case would then not be placed on the court roll, the suspect would be released and a summons would be issued in order to ensure his or her subsequent appearance at court.⁴⁶⁴

288. Given the above evidence it is unsurprising that the August 2013 final audit report, Risk Based and Compliance Audit Review for the Khayelitsha police station,⁴⁶⁵ found that a significantly high number of civil claims pertaining to unlawful arrests were lodged against the station in the period from 1 January to 30 June 2013. The report reflected that four civil claims were lodged against SAPS for a total of R534 000,00 in damages for unlawful arrests and detentions. The audit identified the root cause of the problem as a “*lack of evidence and arrest procedures not followed*”. The audit recommended that disciplinary action should be taken against members who failed to comply with Standing Order (General) 341 in relation to arrest and the treatment of an arrested person. Management agreed with the finding and agreed to arrange a lecture to sensitise the relevant members with regard to unlawful arrests and the relief and CSC commanders were instructed to manage detainees in custody more effectively.⁴⁶⁶

⁴⁶⁴ Transcript, 20 February 2014, pages 4058 – 4060.

⁴⁶⁵ Bundle 11, Exhibits, Item 87, “AL3”.

⁴⁶⁶ Exhibit “AL3”, pages 19 – 20.

289. Schooling and Leamy note that the responsibility to charge or release detainees within the 48 hour period is shared between Vispol members and detectives. The duty to charge a suspect lies with the detectives while the Vispol members are responsible for releasing suspects from detention if they have not been charged within the 48 hour period.⁴⁶⁷

Recommendations

290. We propose that the Commission makes the following recommendations in respect of the arrest and detention procedures at the Khayelitsha stations:

290.1 An audit be conducted of the SAPS 328 forms for all three Khayelitsha police stations for the past two years, together with the screening records at the Khayelitsha Magistrate's Court, to determine all the cases in which people have been detained for longer than 48 hours in contravention of section 35(1)(d) of the Constitution;

290.2 SAPS be directed to inform all the people identified in subparagraph one in writing that: (i) they have been detained unlawfully; (ii) they are entitled to seek compensation from SAPS; and (iii) they are advised to consult with an attorney or the Legal Aid Board in this regard;

⁴⁶⁷ Schooling and Leamy report, paragraph 211.

290.3 Disciplinary action be instituted against all the members responsible for the unlawful detention of those people identified by the audit, together with the relevant relief commanders, CSC commanders and detective commanders who failed to comply with their oversight obligations;

290.4 Colonel Wiese be directed to conduct intensive training courses at each of the three Khayelitsha police stations with regard to:

290.4.1 The need to only arrest people who are reasonably suspected of the commission of a crime;

290.4.2 The unlawful nature of arrest targets;⁴⁶⁸

290.4.3 The unlawful handling of arrested persons;

290.4.4 The interpretation of and practical implementation of the “48 hour rule.”

⁴⁶⁸ Colonel Wiese dealt with the importance of only arresting suspects on the basis of a reasonable suspicion in her oral evidence at Transcript of 24 March 2014, pages 5079 – 5083.

L. SPECIFIC CHALLENGES: YOUTH GANGS

291. In their complaint submitted to the Premier in November 2011, the complainant organisations stated that:

291.1 While high levels of crime affect all community members, they particularly impact on *children, girls*, women, the elderly amongst other vulnerable groups.⁴⁶⁹

291.2 Victims of crime, in particular young victims, are not given trauma counselling and the support that they need in order to assist them to recover from their ordeals.⁴⁷⁰

291.3 There is insufficient visible policing in Khayelitsha in general, and it is almost non-existent in informal settlements. The absence of visible policing means that children, particularly those of school-going age, are vulnerable to criminals.⁴⁷¹

⁴⁶⁹ Complaint, para 61.

⁴⁷⁰ Para 64, *supra*.

⁴⁷¹ Para 65, *supra*.

291.4 The police fail to communicate clearly and regularly with victims, their families and other stakeholders⁴⁷² (including, for example, schools and school principals).

292. In her testimony, Dr Kaminer found that *‘the available evidence suggests to us that children in this community are being incubated in violence, if we can use a term that was coined by an American scholar, which means that they are having to go through their kind of developmental process within a very violent saturated environment, and that has very particular psychological impacts.’* The effect of having lived in such an environment is that children in Khayelitsha are witnesses to, and victims and perpetrators of, violence.⁴⁷³

293. In this section we demonstrate that the complaints, as they relate to youth gang violence and the lack of safety in schools, are justified and that police inaction in these areas has contributed to the perpetuation of a cycle of violence in Khayelitsha.

294. In June 2011, the West Cape News reported that parents and community leaders in Khayelitsha were increasingly concerned about gang related violence, and

⁴⁷²Para 66, *supra*.

⁴⁷³Dr Debbie Kaminer gave evidence to the Commission on 30 January 2014. The transcript of her evidence appears at pages 796-827 (“Kaminer transcript”) at page 801.

reported that 20 stabbings (two of which were fatal) occurred in that month.⁴⁷⁴ In her report submitted to the Commission, Dr Kaminer concluded that ‘*gang warfare between teenagers in the streets and outside schools is common, frequently resulting in deaths and serious injury.*’⁴⁷⁵

295. Yoliswa Dwane (on behalf of Equal Education (“EE”)) told the Commission that gang violence is one of the main forms of violence affecting the youth in Khayelitsha, and said that ‘*this form of violence cannot be ignored*’. Youth gangs, their existence and operations, are described in her statement as follows:

‘Gangs exist and operate within the Khayelitsha community. From what I have gathered from the youth that I work with various gangs operate within the Khayelitsha community and they are territorial. The gang members vary in age from age 10 right up to 21 years old and older. The level of organisation and sophistication and violence depends on the gangs with preferred weapons ranging from knives and pangas to guns. Gangs will engage in all sorts of violent crimes ranging from robbery, highjacking, assault, kidnapping, rape and murder.’⁴⁷⁶

⁴⁷⁴Bundle 8(8), Exhibit number 4 at page 3.

⁴⁷⁵Bundle 8(8), Exhibit number 4 at page 10.

⁴⁷⁶Her statement is in the record at Bundle 1(5), File E, Document number 38 at para 40.

296. Ms Dwane testified that gangs in Khayelitsha are not being silenced, instead, over the past few years, the gangs have grown in size and strength, and are continuing to expand.⁴⁷⁷

297. SAPS has failed to adequately respond to the youth gang phenomenon that has emerged in Khayelitsha in recent years. This can be attributed, at least in part, to the failure by leadership of the various stations to understand youth gangs as they exist in Khayelitsha, and the violence perpetrated by these gangs.

298. For example, Col Reitz, the station commander of the Lingeletu-West Police Station, demonstrated a failure to fully grasp the nature and extent of youth gang violence.⁴⁷⁸ He stated that ‘*most of the time there is no crime that is committed,*’⁴⁷⁹ suggesting that youth gang members are just ‘naughty boys, standing around corners.’⁴⁸⁰ This is in spite of Mr Jafta’s evidence that two schools, Bulumko and Qhayiya, in the Lingeletu West precinct are particularly problematic in terms of gang violence and are notorious for gang fights.⁴⁸¹

⁴⁷⁷Dwane Transcript page 763.

⁴⁷⁸Col. Reitz gave evidence to the Commission on 13 and 14 February 2014. The transcript of his evidence can be found from pages 2867- 3249 (“Reitz transcript”).

⁴⁷⁹Reitz transcript page 2962.

⁴⁸⁰Ward transcript page 722.

⁴⁸¹Sipho Jafta, the chairperson of the Lingeletu West Community Policing Forum gave evidence to the Commission on 12 February 2014. The transcript of his evidence can be found on pages 1764-2821 (‘Jafta transcript’), at page 2785.

299. When asked to comment on Col. Reitz' description of youth gangs in Khayelitsha, Dr Ward stated that the youth gangs and their activities in Khayelitsha are far more serious than Col. Reitz' understanding. To this she added *'people are dying and getting injured, and that immediately makes it serious.'*⁴⁸²

300. Gangsterism in Khayelitsha differs from its counterpart in the Cape Flats. Whereas gang activity in the Cape Flats (including, for example, Mannenberg, Mitchell's Plain and Bonteheuwel) focus around drugs and organised crime, the gangs in Khayelitsha are about *'identity,'* a *'sense of belonging.'*⁴⁸³

301. Notwithstanding the above, gang violence in Khayelitsha is closely tied to the abuse of alcohol and drugs, particularly methamphetamine (*'tik'*), which, as stated by Ms Yoliswa Dwane, *'has become a popular and cheap drug among township youth who then drop out of school and become violent criminals to sustain their drug addiction.'*⁴⁸⁴ Again, in his evidence, Col. Reitz showed an inability to understand the nature of youth gangs, and related criminal activity

⁴⁸²Ward transcript page 7224.

⁴⁸³Dwane transcript, page 770.

⁴⁸⁴Bundle 1(5), File E, Document number 38 at para 50.

when he stated that he was unable to comment on the existence of any link between gang activity and the use of drugs.⁴⁸⁵

302. It appears that the policing of youth gangs and related violence in Khayelitsha has not been intelligence/information led, and consequently, inroads have not been made into curbing youth gang related violence.

303. In his expert report submitted to the Commission, Dr Chris De Kock states that *‘crime combatting can only be effective if the what, where, when, how, why, and who of crime are known.’*⁴⁸⁶ What follows is evidence that in some instances, the elements required for combatting youth gang violence are known (in some cases, this information has been provided to the police by community members), however, it appears that an effective policing strategy has not been developed, nor is one being implemented to properly respond to and address the problem of youth gangs in Khayelitsha.

304. With regard to the *‘where,’* Ms Yoliswa Dwane told the Commission that it cannot be said that there are any areas in Khayelitsha that are *‘gang-free,’*⁴⁸⁷ she was able to identify the following areas (hotspots) as those that attract gangs that

⁴⁸⁵Reitz transcript page 2964.

⁴⁸⁶Bundle 12(1), Document 15 at page 5, para 6.

⁴⁸⁷Yoliswa Dwane gave evidence to the Commission on 30 January 2014. The transcript of her evidence appears at pages 756 to 794 (“Dwane transcript”) at page 762.

attack school going youth, and where the activities of such gangs are concentrated:

304.1 Makhaya Park;

304.2 The area surrounding Esangweni High School;

304.3 Under the bridge in Site B near Masiyile High School, Megabro and the railway line;

304.4 The bridge near Kuyasa;

304.5 The open field near Thembelihle High School;

304.6 Opposite Sizimisele High School;

304.7 Greenpoint Park.

305. Mr Mahlutshana explained that at his school, Chris Hani Senior Secondary School in Makhaza, in-fighting among gang members occurs within and outside

the school premises.⁴⁸⁸ The same can be said of other schools in Khayelitsha, including Bulumko and Qhayiya in Lingeletu West.⁴⁸⁹

306. In addition to the ‘*where*’ of gang activity having been identified, it was found that the ‘*who*’ in terms of the names and members of the gangs operating in Khayelitsha are known and are ‘*easily identified and identifiable*.’⁴⁹⁰ At the time of giving evidence, Ms Dwane explained that the main gangs operating in Khayelitsha are the Russians, the Vurahs (mainly in Site C), the Italians (mainly in Site B and Site C) and the Vatos (mainly from Khayelitsha and Kuyasa).⁴⁹¹ Girls are also involved in the gangs who have formed their own sub groups, for example ‘Italian Girls.’⁴⁹²

307. In terms of the ‘*when*’ of youth gang activity, it was found on numerous occasions in testimony before the Commission that gang activity, in the form of gang fights, mainly occurs before and after school, especially on Friday afternoons.⁴⁹³

⁴⁸⁸Madoda Mahlutshana gave evidence to the Commission on 28 January 2014. The transcript of his evidence appears at pages 491 to 509 (“Mahlutshana transcript”) at page 594.

⁴⁸⁹Jafta transcript page 2785.

⁴⁹⁰Bundle 1(5), File E, Document number 38 at para 51.

⁴⁹¹Dwane transcript page 763.

⁴⁹²Dwane transcript page 769.

⁴⁹³Dwane transcript, page 764; Bundle 1(1a), Statement number 7 at para 5.4; Mjonondwana transcript page 526; Mahlutshana transcript page 500 – 501.

308. In addition to the identity factors noted above, Mr Zitwana's evidence provided insight into the 'why' aspect as he explained the reasons why his brothers joined youth gangs:

*'I asked Sibusiso, I asked him, I struggled getting an answer out of him but a real answer I got it out of Thabane, who is the younger one. Thabane told me, Boetie that there are two things, you can either be a victim even if you have not done anything or, the second one, you can defend yourself. So what he was saying is that if you don't join they're going to assault you whether you have joined or not because the gang in Site B will not know whether you are a gang or not. As long as you live in Green Point they say that you are a Vato. So what they decided is that they must join the gang, the Vato gang, so that even if the Vuras come they can have the protection of the Vatos. So they joined because if you live in one area, you belong to this group, if you belong to that area, you belong to that group.'*⁴⁹⁴

309. There was evidence that the police are apathetic and fail to respond to youth gang related activities, further suggesting that even if a policing strategy has been developed to address the type of youth gang violence in Khayelitsha, it is not

⁴⁹⁴Sifiso Zitwana gave evidence to the Commission on 7 February 2014. The transcript of his evidence appears at pages 2021-2060 ("Zitwana transcript") at page 2036.

being implemented effectively. Ms Dwane gave evidence of SAPS members sitting in their cars and ‘doing nothing’ after being informed of a crowd of 15 or 16 young men carrying knives and pangas approaching EE members after a march on Human Rights Day, 2012. It is worth noting that these SAPS members were in the same vicinity as the gangs.⁴⁹⁵

310. In addition, Mr Mahlutshana gave evidence of his encounters with SAPS in responding to gang related violence. Like Ms Dwane’s experience, the SAPS in Harare have failed to respond to gang fights at and around Mr Mahlutshana’s school, including an emergency situation where a learner was stabbed. The following extract from Mr Mahlutshana’s evidence explains the issues relating to the police response with reference to the specific instance of the stabbed learner:

‘MR SIDAKI: ...Do you ever have any emergencies at the school where you have to contact the police and if so what has been your experience in that regard?’

MR MAHLUTSHANA: We did have quite a few emergencies, one of the emergencies was around the issue of gangsters where we had to call in the police and we could find that learners, one of the learners was stabbed or there was an in-fighting outside the gate and you could call in

⁴⁹⁵Bundle 1(5), File E, Document number 38 at para 45.

*to the sector police and we wouldn't get the prompt response we would expect in the afternoon and also having alerted them that there is a need for the police to be very visible after noon and in particular on Fridays. The only reason that you will get from them at that particular time when we had this experience was that there were more contact crimes that were done at that particular time so police were stressed out they did not have resources to come and attend at that particular case.*⁴⁹⁶

311. Mr Mahlutshana commended the Harare Community Policing Forum and described it as a '*pillar of support*' and a '*visible backbone*'. In the absence of police response and police visibility at his school, about 10 to 15 volunteers from the Harare Community Policing Forum are visible at Chris Hani Senior Secondary School and, in the words of Mr Mahlutshana, '*have added value in terms of normalising the situation and taking control in terms of gangsters and drugs.*'⁴⁹⁷

312. In some instances, where the SAPS in Khayelitsha has responded, the steps taken by them to act against gang members or perpetrators of gang violence are not effective. An example was made by Ms Dwane of the police failing to respond adequately to the gang fights at Masiyile School. She explained that fights occur

⁴⁹⁶Mahlutshana transcript page 500 – 501.

⁴⁹⁷Mahlutshana transcript page 503.

on a daily basis at the school, which is a five minute walk away from the police station in Site B. The tactic employed by the police to deal with the fighting is to drive a police van towards the fighting. However, this only serves to disperse the youths involved, who then throw away their weapons, and continue to fight for hours after the police have left the scene.⁴⁹⁸

313. Mr Zitwana also spoke of the police's inability to address gang activity as it was happening. He explained that on one Friday evening, a group of approximately 50 youths from the Vura gang approached his house to allegedly kill his brothers Thabane and Sibusiso, who were members of the rival gang, the Vatos. Despite arriving at the scene, the police failed to conduct any form of investigation, nor did they use the opportunity to find information on the gangs. Mr Zitwana described the police conduct as follows: *'[w]hat the police did, all they did they just came out, looked where the incident was taking place or took place. They then went back into their vans and then they said that they were chasing after these gangsters but that is as far as I know, that the police left chasing after the gangsters but I don't know anything after that and also the police didn't ask me any questions or asked me to make a statement.'*⁴⁹⁹

⁴⁹⁸Dwane transcript page 765.

⁴⁹⁹Zitwana transcript page 2041.

314. The result of the lack of police visibility and their failure to respond when criminal activity was in progress was to create many opportunities for ‘*gangs and criminals to terrorise community members with impunity,*’ and gangs are given an ‘*opportunity to escape and evade justice*’.⁵⁰⁰

315. The effects of gang violence on school going youth are immeasurable. An immediate result of gang violence in Khayelitsha is that when such ‘*violence erupts, many children who live outside the area in which the violence will have occurred are prevented from attending school, and those who do [attend] live in fear of being caught in the crossfire.*’⁵⁰¹ The nature and extent of the violence coupled with the lack of an effective and immediate response by SAPS limits the affected children’s ability to access education, and consequently limits their constitutionally protected right to a basic education.⁵⁰²

316. In her statement, NN explains the effects of school gangs on her 17 year old son and how this has affected his education. Her son was attacked by gang members and witnessed one of his friends being killed by certain gangsters.⁵⁰³ As a result of the trauma and on-going violence, NN’s son was transferred to another school

⁵⁰⁰Bundle 1(5), File E, Document number 38 at para 46.

⁵⁰¹Bundle 1(5), File E, Document number 38 at para 42.

⁵⁰²In *Governing Body of the Juma Masjid Primary School & Others v Ahmed Asruff Essay N.O. and Others* (2011) ZACC 13 (CC), the Constitutional Court held that access to schooling was a necessary component for the achievement of the right to a basic education (at para 43).

⁵⁰³Her statement is in the record at Bundle 1(1a), Statement number 55.

and eventually dropped out of school because *‘he was feeling unsafe to walk to and back from school.’*⁵⁰⁴ The school principal explained that he was unable to control gang activity beyond the school premises and after looking to the taxi associations for assistance, the police at the Harare Station failed to respond positively to NN’s requests for assistance.

317. NN’s statement highlights the effects of gangsterism on Khayelitsha school learners and how this has impacted on their right to education. She says:

*‘My concern is that our children have a right to education and as a result of lacking protection from government, they have quit school. I am pleading with the government to meet the Khayelitsha community halfway in resolving the problem of gangsterism in our areas. Our children are now denied their right to education because they are not being protected from the gangsters.’*⁵⁰⁵

318. Related to the above, Dr Kaminer relayed the story of a grade 10 pupil from Bulumko High School who was not able to write an exam paper during a week of intense gang activity because she had *‘been beaten and threatened with being stabbed by Vata – Sloko gang members in E Section while on her way to school in*

⁵⁰⁴Bundle 1(1a), Statement number 55 at para 4.

⁵⁰⁵Bundle 1(1a), Statement number 55 at paras 10 - 12.

*the morning.*⁵⁰⁶ Dr Kaminer's report includes evidence of gang fights resulting in *'a high spike in class absenteeism and school drop outs due to learners' fears of being attacked on the way to school.*⁵⁰⁷

319. As Mr Mahlutshana stated in his evidence, gang violence affects both learning and teaching. He identified the need to have a *'clear strategy from SAPS...on how the schools are being supported to move forward and eliminate [gangs in schools] because it just destabilises schools. When there's gangsters at school one day is a whole lost and it spills over and there's instability that is created by that.*⁵⁰⁸ (emphasis added)

320. Dr Kaminer found that the police play an important role in reducing victimisation and identified visible policing as an effective deterrent in reducing victimisation. In responding to Adv. Masuku's question about whether the police can play a role in avoiding the exposure to the forms of violence referred to in her paper (including gang violence), Dr Kaminer answered in the affirmative and said:

'They can certainly, I think, play a role in reducing the amount of victimisation of children that is happening and I think that they can do that through some things we have already heard about this morning.

⁵⁰⁶Bundle 8(8), Exhibit number 4 at page 4.

⁵⁰⁷Bundle 8(8), Exhibit number 4 at page 4.

⁵⁰⁸Mahlutshana transcript page 509.

Through prompt and efficient investigation of crimes and violence against children in the community which will enable offenders to be arrested and prosecuted and removed from the community and cannot re-victimise other children or adolescents, I think that is an important role for the police to play and also as mentioned this morning, a visible police presence particularly in areas where you repeatedly have reports about youth being victimised by other youth at particular schools, at particular times of day, I think visible police presence will be a very effective deterrent which would reduce victimisation.’⁵⁰⁹ (emphasis added)

321. Dr Kaminer added that *‘if there was a police presence and a sense that the criminals who had victimised the family and the neighbours previously were not left to be in the streets and do whatever they wanted with impunity I think that would certainly create a sense of safety for those children and reduce the likelihood that they would re-experience symptoms and the likelihood that they would be re-victimised.’⁵¹⁰*

322. Dr Kaminer’s evidence corroborated the views expressed by Dr Ward who acknowledged the importance of visible policing and police action in that *‘if the police see something happening, they should immediately act on it, otherwise, you*

⁵⁰⁹Kaminer transcript page 823.

⁵¹⁰Kaminer transcript page 820.

*know, if you drive a van down the road and pass crimes that are happening, you give criminals a very clear message that it's okay for them to do that. So high visibility policing and hot spot policing would be – would be two of the things that can happen.*⁵¹¹

Findings

323. In the light of the evidence (both documentary and testimonial) contained in the record of the Commission's proceedings, it cannot be said that an effective policing strategy has been developed and implemented to address the problems arising out of youth gangs in Khayelitsha.

Recommendations

324. In her expert report submitted to the Commission, Dr Ward identified various strategies for police to effectively decrease gang crime. This includes targeting the most dangerous gang members, hotspots or drug dealers. She warns against suppressing gang activity through the 'whole-hearted' enforcement of the Prevention of Organised Crime Act⁵¹² (which criminalises gang activity) as this may result in a uniting of the gangs against law enforcement officials, as was the

⁵¹¹Ward transcript page 7216.

⁵¹²121 of 1998.

case in El Salvador. Instead, Dr Ward suggests, as a suppression strategy, that the adult members of the gangs should be deterred and dealt with because *‘young gang members are significantly less likely to leave the gang if the gang has adult leaders.’*⁵¹³

325. We propose the following specific recommendations to address the problem of youth gangs in Khayelitsha. Firstly, increased police visibility and police patrols around the identified hotspots and ‘problem’ schools on a daily basis in the mornings between 7am and 8am (when learners are going to school) and at the end of the school day, particularly on Friday afternoons.⁵¹⁴

326. Secondly, specialised and focused police training on how to effectively prevent, combat and investigate the type of gang activity that has emerged in Khayelitsha. Included in this training must be a focus on how to effectively police and control crowds of young people, given that some gang fights can involve up to 100 young people.⁵¹⁵ Dr Ward’s evidence supported the call for specialised policing as a response to gang violence. She noted that *‘a highly specialised form of policing’* would be required, because essentially the police would be required to *‘deal with a large group of armed young people and that would need large groups of police*

⁵¹³Bundle 12(1) Document number 8 at page 6; Dwane transcript, page 764; Bundle 1(1a), Statement number 7 at para 5.4; Mjonondwana transcript page 526; Mahlutshana transcript page 500 – 501.

⁵¹⁴Dwane transcript page 767.

⁵¹⁵Dwane transcript page 770.

*who are especially trained to deal with large armed groups and that's possibly not the function and the training of an ordinary policeman or police women.*⁵¹⁶

Having noted that '*reducing deprivation lies outside the domain of policing, and rather in the hands of those responsible for education, housing, health care and creation of employment opportunities,*' Dr Ward emphasised that it is '*critical that the police, in such a deprived context, actually perform, and do not become yet another failed state institution.*⁵¹⁷ In the area of gang violence, evidence has revealed that the police have not performed well in terms of responding to, and investigating gang related violence. As a policing strategy, Dr Ward noted that displacing gangs is not sufficient, children carrying weapons should be arrested, the weapons must be disposed of, and the child involved must then be diverted into a diversion programme.⁵¹⁸

327. Thirdly, Dr Ward recommends the implementation of a school-based programme which has been led by police officers in the USA called the 'Gang Resistance and Training Programme' ('GREAT'). In this programme, police officers would deliver skills-training sessions to primary and high school learners (as well as offering a holiday programme and a family skills training programme). The skills

⁵¹⁶Ward transcript page 7217.

⁵¹⁷Bundle 12(1) Document number 8 at page 2.

⁵¹⁸Ward transcript page 7231.

that are taught are intended to help learners resist joining gangs.⁵¹⁹ In her evidence, Dr Ward elaborated on what a ‘GREAT’ type programme would entail and the implications of this programme in Khayelitsha:

327.1 Firstly, police officers would have to be trained to deliver the programme. In addition, ancillary staff who are capable of running a family skills training programme and holiday camps for children would be a considerable investment.

327.2 The GREAT programme would have to be adapted for Khayelitsha’s context. This would entail running a pilot programme as a test in Khayelitsha. Dr Ward noted that the proposed programme would need considerable investment, of both cash and of human resources.⁵²⁰

328. Dr Ward noted that *‘programmes that successfully prevent delinquency can successfully prevent children’s involvement in gangs,’* and accordingly *‘reduce their risk of injuries related to gang violence’*. In this regard, she recommends the introduction of carefully planned outreach programmes that reach out to

⁵¹⁹Bundle 12(1) Document number 8 at page 3.

⁵²⁰Dr Ward gave evidence to the Commission on 13 May 2014. The transcript of her evidence appears at pages 7213 to 7236 (“Ward transcript”) at pages 7215 - 7216.

young gang members and offer hope in terms of disengaging young people from gangs.⁵²¹

329. Fourthly, given that although central, the police are not the only role players in addressing gangs and gang activity, Dr Ward found that a multi-disciplinary task team consisting of the police as well as social services and education would be absolutely crucial in addressing the rife gang activity in Khayelitsha. In this regard, Dr Ward agreed to Justice O'Regan's proposition of an '*urgent task team*' given that '*one couldn't really devise a strategy without putting together a kind-of multi-disciplinary team with SAPS, the City, Province, [and] a range of different people with different expertise.*'⁵²² Essentially, according to Dr Ward, gang prevention is '*a whole of society thing...it's not policing only.*'⁵²³

330. Further to the above recommendation, Dr Ward added that the involvement of various community stakeholders, including community policing forums is crucial to responding to gang violence. She recommended a community response to gangs and suggested the need to have the community speaking '*with a unified voice*', through, for example, community marches to 'say no to gang violence',

⁵²¹Bundle 12(1) Document number 8 at page 8.

⁵²²Ward transcript page 7222 - 7223

⁵²³Ward transcript page 7228.

and having prayer vigils at places where people have died or been injured in gang violence.⁵²⁴ Specific measures include:

- 330.1 Focused engagement by the police with community members (through the CPFs, the use of informers or other community structures) to identify the gangs and gang members.⁵²⁵
- 330.2 A rehabilitation program for arrested youths, and alternative rehabilitation programs for younger children (aged 10).⁵²⁶
- 330.3 A concerted effort should be made to deal with the abuse of drugs and alcohol in the community as these aggravate the socio-economic woes that are the reality for the majority of unemployed youth in Khayelitsha.⁵²⁷
- 330.4 Because gang membership and participation in Khayelitsha largely revolves around identity formations, Dr Ward recommended that recreational opportunities be created and a functioning school system that

⁵²⁴Ward transcript page 7229.

⁵²⁵Dwane transcript page 770.

⁵²⁶Dwane transcript page 792.

⁵²⁷Bundle 1(5), File E, Document number 38 at para 58.

allows children to succeed, because both of these allow children to form alternative pro-social identities.⁵²⁸

⁵²⁸Ward transcript page 7226.

M. SPECIFIC CHALLENGES: VENGEANCE KILLINGS/ ATTACKS

331. In their opening statement before the Commission in January 2014, the complainant organisations stated that:

*“Trust and faith in the police, in their ability to protect residents from harm, to combat crime, to investigate once a crime has taken place has eroded in Khayelitsha. The brutal acts of vigilantism that have claimed dozens of lives in recent years are a shocking end result of this erosion.”*⁵²⁹

332. The abovementioned issues are endemic in Khayelitsha, as demonstrated by the personal experiences of Khayelitsha residents and members of the complainant organisations.

333. It will be demonstrated below from the evidence that was placed before the Commission that a breakdown in relations between the community and the police in Khayelitsha has occurred, and is a catalyst of vengeance attacks in Khayelitsha. The prevalence of vigilante actions in Khayelitsha, community experiences with vigilantism, other factors that contribute to the prevalence of vigilantism, and the varying responses of SAPS to vigilante action will be explored.

⁵²⁹ Legal Resource Centre Opening Statement before the Commission of Inquiry, 28 January 2014 at para 8.5.

334. Vigilantism, in the context of Khayelitsha, is at its heart a reaction to the oppressive and pervasive levels of crime. As Professor Gobodo-Madikizela explains, *“people take the law into their own hands because they feel they can no longer rely on what they perceive to be a weak and ineffective police system. The community views their violent actions from the perspective of self-defense.”*⁵³⁰

335. Perpetrators of vigilante action are most often ordinary community members. Men, women, and children all participate. The victims of vigilantism are generally young men between the ages of 18 and 30. In ‘The Bundu Courts Report’, it was found that the majority of victims were guilty or suspected of theft.⁵³¹

336. Vigilante action has been present in the Khayelitsha community since Khayelitsha came into being in about 1983. At that time, the targets of attacks were police informers. These attacks were politically motivated, and meted out after consideration by organized street committees. Today, vigilantism in Khayelitsha is generally far less planned, and there are varying motives for such action.⁵³²

⁵³⁰Bundle 12 (1) Document number 8, page 13.

⁵³¹Bundle 8(4:1) Document number 23.

⁵³²Bundle 6(1) Document 8 pages 4-5.

337. Vigilante action is most often characterized by spontaneous action, and is taken with little evidence or planning. A trigger, most often a cry for help in response to the commission of a crime, will prompt the swift action of many community members in the surrounding area. Victims of lethal vigilante attacks will likely be killed only minutes after being apprehended.⁵³³

338. Notwithstanding the above, it is worth emphasizing that not all vigilante attacks are spontaneous. Evidence before the Commission has revealed the fact that some acts of vigilantism are more thoroughly planned. Ms. Nomamelika Simelala's evidence is an example of such planned action. In her testimony, Ms. Simelela explained that she and several family members went out in search of a group of young men who had robbed her and her boyfriend of a jacket, R2700, and their cellphones. After the perpetrators had been apprehended, Ms. Simelela encountered another group of community members who were also searching for the same group of men, who were allegedly responsible for a murder earlier in the day. This second group had planned their attack, and subsequently murdered the young men as punishment for the murder.⁵³⁴ The SCCF minutes, discussed below, also clearly reflected that SAPS recognised and were attempting to deal with organised community structures that were responsible for vigilante actions.

⁵³³Bundle 6(1) Document 8 page 13.

⁵³⁴Nomamelika Simelela gave evidence at the Commission on 27 January 2014. The transcript of her evidence appears at pages 297-332 ("Simelela transcript") at pages 299 to 300.

339. The fact that not all vigilante attacks are spontaneous was also confirmed by Professor Gobodo-Madikizela as is evident from this interaction between herself and Advocate Bawa:⁵³⁵

PROF GOBODO-MADIKIZELA: Sorry – can you repeat the last question. It seems what?

MS BAWA: Whether it's a spontaneous crowd responding or whether it's a planned event that we are going to go after somebody through a Bundu Court process, the trigger is always an act of criminality.

PROF GOBODO-MADIKIZELA: Yes.

MS BAWA: Or a perceived one of the perpetrator.

PROF GOBODO-MADIKIZELA: Oh, yes, absolutely. And the important thing is that once the crowd gets into action, that is a crowd action, and sometimes it may be planned, but there is – there is a trigger, there is a criminal who's been identified.

⁵³⁵ Transcript, page 7806 to 7807

340. It must be noted that, due to the spontaneous nature of many vigilante attacks, not all victims are guilty of the crimes for which they are being punished. As Dr. Gillespie describes: *“There are cases in which the wrong person is caught and punished, but the immediacy of the punishment often occurs because of the obviousness, the overwhelming evidence at hand...”*⁵³⁶

341. In her statement, Ms. Bontshi, whose nephew was burned to death in a vigilante execution, describes the organized nature of the lead-up to his murder. Initially, the community members involved in the execution simply wanted Ms. Bontshi and her family to force their nephew to leave the community. The community intended to evict him that day, as they felt he posed a threat to youth in the area. Ms. Bontshi’s nephew was murdered before he could be moved to another area. Community members present during the planned eviction maintain that it was another group that killed the young man.⁵³⁷

342. There is no consensus among community members regarding the justification of vigilante attacks in Khayelitsha. Dr. Gillespie explains that while *“some are convinced that it is the best way to stop crime...others are horrified by it.”* This statement is supported by the findings of a survey conducted by Mthente Research and Consultation Services. Just over a quarter (26.7%) of survey

⁵³⁶Bundle 6(1) Document 8 page 13.

⁵³⁷Bundle 1(1a) Document 66a pages 3-6.

respondents in Khayelitsha believe that vigilantism is justified.⁵³⁸ Dr. Gillespie expresses the view that there is a sense that vigilantism is understandable given the dire socioeconomic conditions in which people live, coupled with inefficient law enforcement agencies, including the SAPS.⁵³⁹

343. Evidence before the Commission has revealed that vigilantism is common in Khayelitsha, and many community members have participated in such attacks. This is demonstrated in the affidavit of TB, whose brother was murdered in a vigilante attack after being caught attempting to break into a house in the Khayelitsha Site-B police precinct. TB stated: “*Because of the prominence of vigilantism, [my brother’s] murderers could be anyone, even one of my neighbours.*”⁵⁴⁰

Prevalence of vengeance attacks in Khayelitsha

344. The frequency of vigilantism in Khayelitsha is difficult to measure due to the fact that vengeance attacks are not classified separately. As a result of SAPS’ record keeping practices, numerous dockets are lost or mislabeled. A general picture of the frequency of vigilantism was provided when, in 2012, the Khayelitsha Cluster Commander commissioned a report to look into cases of vigilante murders in

⁵³⁸ Bundle 10(1.1) Document 11 page 46.

⁵³⁹ Bundle 6(1), Document 8 page 13.

⁵⁴⁰ Bundle 2(5), Redacted Community Statements, Document number 70, page 4 at para 17-18.

Khayelitsha. This report, known as ‘The Bundu Courts Report’, identified 78 cases of “vigilante” killings in Khayelitsha between April 2011 and June 2012.⁵⁴¹ During the course of this Commission’s proceedings, SAPS has backtracked on this figure, claiming that certain cases were improperly identified as “vigilantism”. Regardless of the validity of SAPS’ claim, the findings are a testament to the widespread nature of vigilantism in Khayelitsha.

345. From the evidence before the Commission, it is patently clear that despite their reluctance to classify vigilante killings as such, they are nevertheless aware of the prevalence of this problem within the Khayelitsha policing precincts. Whilst cross examining Professor Gobodo-Madikizela, Advocate Bawa made the following references to discussions that occurred at Station Crime Combating Forum meetings in 2012:⁵⁴²

MS BAWA:And I want to read to you three extracts which came out of the Station Crime Combating Forum meetings in 2012.

And it says:

“There was a Bundu Court at Site C where two suspects were badly

⁵⁴¹Bundle 8(4:1) Document number 23.

⁵⁴² Transcript, page 7805 to 7806. The SCCF minutes are in Bundle 8(4); 4.2 File number 9

assaulted, but they were saved by the police. I heard that the mother of the other suspect will come and open the case. There is a planned meeting for today at 6h00, but the venue is unknown. Criminal Intelligence will find out.”

And then, a further extract says:

“Murders are a problem, Bundu Courts are a problem. Still the Sekweze imbizas are held. MPA are helping in charging the people involved.

Late on Sunday the information indicated that there were people that were about to be executed but they were saved by the police. Bundu Courts need to be monitored at Harare. Five murders in Section 6. The suspects are unknown. At Site C there was a Bundu Court. It happened during the day and the deceased was from the Harare area.”

And then one statement which is attributed to the Colonel of the Lingeletu West Police Station:

“We need to do something about burglary cases.”

That’s the gist of it. Then he says:

“We don’t want to end up having Bundu Courts again.”

And a further one done by the Intelligence Officer, that says:

“The community is still looking for the boy who was involved. We can expect vigilante attacks.”

346. It is clear from these minutes that, not only was SAPS aware of the prevalence of vigilante killings within their policing precincts in Khayelitsa, but that they knew of the link between these killings and the prevalence of certain crimes. SAPS members knew that these killings occur as a direct result of increased crimes known or perceived to have been committed. Given this knowledge, SAPS’ failure to develop and implement any strategies to respond to vigilante attacks is even more remarkable.

347. The ‘Bundu Courts Report’ makes no mention of non-lethal “vigilante” attacks. These non-lethal attacks are more common than “vigilante” murders. They often go unreported, and, when reported are simply classified as assaults.

348. Phumeza Mlungwana of the Social Justice Coalition provided one example of such an attack:

“Scara Qezo is a member of the Social Justice Coalition [who] was robbed and stabbed next to the N2. Community members got hold of one of the perpetrators. Someone called the police and he was arrested.... It’s not like communities immediately see somebody doing something wrong and discuss we’re going to kill you; we’re going to beat you. It works with emotions and frustrations and I don’t think it’s organised...I don’t think the intention is to kill.”⁵⁴³

349. Furthermore, the Bundu Courts Report revealed that numerous victims of vigilantism had pending cases and arrest warrants issued against them. This demonstrates the failure of SAPS and the criminal justice system to protect the community from dangerous criminals. The murders of these repeat offenders are indicative of the consequences of police inaction and incompetence. The findings of this report lend weight to the complaints of community members. A variety of cases, including case numbers 63, 74, 77, and 78 contained in the report demonstrate the extent of this problem.

350. Another example is of Mr. Khalibhoti Mkhosana. Mr. Mkhosana was killed in a “vigilante” murder in Harare in January 2012. At the time of his death, Mr. Mkhosana had 7 criminal charges against him, including murder, rape, assault,

⁵⁴³Phumeza Mlungwana gave evidence to the Commission on 24 and 31 January 2014. The transcript of her evidence appears at pages 228-271 & 902-927 (“Mlungwana transcript”) at page 910.

and arson. There were two warrants of arrest issued, both stemming from cases the cases that he committed in Harare. His murder trial had last convened in January 2010.⁵⁴⁴

351. During 2002 a SAPS vigilantism prevention strategy for the Western Cape was drafted. This strategy provided for the implementation of a register which required that all incidents of vigilantism be recorded in that register. It emerged during the testimony of Lingeletu-West Station Commander Colonel Reitz that this is not currently being practiced at Khayelitsha Police Stations.⁵⁴⁵

352. The common nature of vigilantism was further highlighted during Professor Gobodo-Madikizela's testimony. Over the course of three days, while she was conducting interviews in Khayelitsha there were *"four incidents of vigilante violence, in which people were killed"*⁵⁴⁶

353. Various community statements submitted to this Commission specifically address vigilante violence and issues related thereto. These statements cover a range of issues, including the nature of vigilante attacks, justifications for distrust in the police, and SAPS members' responses to vigilante actions.

⁵⁴⁴Bundle 8(4:1) Document number 23, page 36 at para 63.

⁵⁴⁵ Colonel Reitz gave evidence at the Commission on 13 & 14 February 2014. The transcript of his evidence appears at pages 2867 to 3249 ("Reitz transcript") at page 3177.

⁵⁴⁶ Professor Gobodo-Madikizela gave evidence to the Commission on 15 May 2014. The transcript of her evidence can be found from pages 7772 to 7820 ("Gobodo-Madikizela transcript") at page 7775.

Breakdown in relations

354. As mentioned above in the complainant organisations' opening statement, a host of factors have resulted in Khayelitsha residents losing trust in SAPS. The individual statements of community members speak to the levels of distrust in the police in Khayelitsha, and provide insight into why some Khayelitsha residents resort to vigilantism instead of calling SAPS.

355. SAPS' inefficiency and poor response time to complaints has severely damaged faith in the police's ability to protect the community, arrest criminals, and prevent crime. Poor record-keeping practices make it impossible to determine the exact response time of SAPS to individual complaints, but numerous community members have attested to the fact that the police take anywhere from one to six hours to arrive at the scene of a crime. In most cases, criminals have long since left the scene by the time the police arrive.

356. Zola Secondary School Principal, Mr. Xolela Mjonondwana testified before the Commission about his experience with police response time in relation to the apprehension of a burglar at his school. After numerous unsolved robberies at Zola Secondary School, security guards finally managed to apprehend the perpetrator. After subduing the burglar between 1AM and 2AM, the guards

promptly called the police shortly thereafter. By 10AM, the police had still not arrived. Mr. Mjonondwana decided to take the criminal to Nyanga, where he (the criminal) had been selling stolen items. It was only as Mr. Mjonondwana was leaving to investigate matters on his own accord that he encountered a police van.⁵⁴⁷

357. Police corruption, criminality, and misconduct have all damaged SAPS-community relations in Khayelitsha. According to Dr. Grobler's Report to the Commission, *"There were nearly 130 criminal complaints against police officers in Khayelitsha over a 3 year period. Half were lodged in 2012."*⁵⁴⁸ In terms of IPID's Annual Report, there were 47 complaints of misconduct lodged against SAPS members in 2012/2013.⁵⁴⁹ Despite high levels of reported corruption, criminality, and misconduct, little action has been taken by SAPS to deal with alleged police offenders.

358. A common complaint regarding police misconduct is that police officers will refuse to open dockets.⁵⁵⁰ Numerous complaints about this phenomenon emerged in the evidence of the Commission. In her affidavit, NS, whose son was executed by vigilantes in the Harare police precinct, discussed her own experience with

⁵⁴⁷Bundle 1(1) File 1a, Document number 31 page 7, para 16.

⁵⁴⁸Bundle 12(1) Document number 11 page 10, para 29.

⁵⁴⁹Bundle 12(1) Document number 11 page 11, para 32.

⁵⁵⁰Bundle 12(1) Document number 11 page 12, para 34.2.

this element of misconduct. NS went to the scene of her son's murder and managed to speak to a detective. The detective advised NS and her husband that they should not pursue the case, as they would be placing themselves in danger. As NS explains she *"got the feeling that the police were not interested in following this case and were trying to persuade me to just accept what happened."*⁵⁵¹

359. Though ensuring that accused persons do not receive bail is not SAPS' primary responsibility, it is the responsibility of Investigating Officers to put sufficient evidence to the presiding judicial officer to prevent those who pose threats to society from being released. The unreasonable granting of bail is of critical importance to the Khayelitsha community. In Dr. Gillespie's affidavit, she states that *"the community loses interest in the police and in the court. Especially around the issue of bail. Nobody knows who makes this decision and why the arrested are being released. There are serious cases, like murder and child rape, where the perpetrator is released."*⁵⁵²

360. A pattern has emerged in terms of which it has been the experience of many in the Khayelitsha community that criminals are arrested one day and released the next. AP described a vigilante attack she witnessed. The day after two men

⁵⁵¹Bundle 2(5) Redacted Community Statements File, Document number 35 page 2, para 8.

⁵⁵²Bundle 6(1) Expert Reports file, Document number 8 page 10.

raped two young girls, a crowd managed to apprehend the perpetrators. The two men were quickly beaten to death. *“The police weren’t contacted [because] the community feels that the police do not care...even if the criminals had been arrested they would have immediately been dropped off in the main road again or released the following day.”*⁵⁵³

361. UZ stated that *“The reputation of the police in my community is that they will arrest criminals...but will release them back into the community the following day without filing cases against them.”* Dr. Gillespie points out that there is a strong sense in Khayelitsha that reporting someone to the police could easily backfire, as criminals are often walking free on the streets soon after being arrested.⁵⁵⁴

362. There is insufficient visible police presence in Khayelitsha, particularly in informal settlements. This has generated a *“culture of impunity,”*⁵⁵⁵ emboldening both criminals and potential vigilantes. The lack of visible policing creates the perception that the community is alone in its fight against crime. As noted by Professor Gobodo-Madikizela, *“this lack of enforcement of rules is at the heart of many testimonies presented to the Khayelitsha Commission: police are never there, even when they are within visible distance of a crime, they rarely take*

⁵⁵³Bundle 2(5) Redacted Community Statements file, Document number 46 page 2, para 9.

⁵⁵⁴Bundle 6(1) Expert Report file, Document number 8 page 10.

⁵⁵⁵Bundle 12(1), Document number 24 page 14.

immediate action, and when they do take action, the criminals are released or the case struck off the roll."⁵⁵⁶ Despite this, according to Professor Gobodo-Madikizela people have indicated that they "*want the police to be visible, otherwise they will take the law in their hands.*"⁵⁵⁷

363. The failure of many SAPS Investigating Officers to properly keep victims, family members of victims, and other stakeholders updated on the status of investigations has led many Khayelitsha residents to feel helpless in their search for justice and answers.

364. Like many others, TB suffered as a result of the failure of SAPS officials to keep him informed about the status of the investigation into his brother's vigilante murder. This statement describes his grievance: "*[The police] told me they had arrested some people in connection with [my brother's] murder, and would call to let me know more details...I am still waiting for that call.*"⁵⁵⁸

365. Another factor contributing to the breakdown of relations between the community is poor investigation by the police. Dr. Gillespie provides insight into the context of the inefficient investigation. Dr. Gillespie explains that: "*the lack of faith in the formal criminal justice process seems to pivot around the problem of*

⁵⁵⁶Bundle 12(1), Document number 24 page 13.

⁵⁵⁷Gobodo-Madikizela transcript page 7819.

⁵⁵⁸Bundle 2(5) Redacted Community Statements file, Document number 72 page 4, paras 17 – 18.

evidence. Residents feel that they know who committed a crime, who the problem people are in the township, yet the burden of criminal procedure only complicates and mistrusts that knowledge. The police are seldom competent enough to provide the kind of trustworthy evidence that courts require for prosecution. The burden of evidence in criminal courts is substantial, and often requires the presence of witnesses."⁵⁵⁹

366. Social Justice Coalition member Mr. Phumzile Welcome Makele describes his experiences with various cases involving poor police investigation, incompetence and negligence. In one specific case, detectives repeatedly failed to present evidence in court against three men guilty of committing a vigilante murder, despite being informed that the victim's girlfriend was being threatened by the same three men. Makele explained in his affidavit that this is a common occurrence in Khayelitsha: *"[this woman's] struggle is one faced by many who live in Khayelitsha. Many cases are thrown out and criminals are released for similar reasons."*⁵⁶⁰

367. Khayelitsha residents are often treated with disrespect and disdain during interactions with SAPS members. One resident, Mr. Mzoxolo Tame, explained that this *"negative treatment by police has left a bad feeling in our family toward*

⁵⁵⁹Bundle 6(1) Document number 8 page 10.

⁵⁶⁰Bundle 2(5) Redacted Community Statements file, Document number 66 page 6, para 25.

*the police...The community feels in a similar way.”*⁵⁶¹ Poor treatment and disrespect at the Community Service Centers towards Khayelitsha residents is dehumanizing and humiliating, and generates both distrust in the police, and trauma in the recipients of such treatment.⁵⁶²

368. All of the abovementioned inefficiencies in policing in Khayelitsha have led to an erosion of trust in SAPS and the criminal justice system in Khayelitsha. This breakdown has in turn played a role in some Khayelitsha community members resorting to vigilante action.

Other factors responsible for vigilantism

369. In the preamble to the South African Police Service Act (“the SAPS Act”)⁵⁶³ it is stated that:

“there is a need to provide a police service throughout the national territory to –

ensure the safety and security of all persons and property in the national territory;

⁵⁶¹Bundle 1(1) file 1a, Document number 64 page 3, para 15.

⁵⁶² Gobodo-Madikizela transcript pages 7816-7817.

⁵⁶³No. 68 of 1995.

uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;

ensure co-operation between the Service and the communities it serves in the combating of crime;

*reflect respect for victims of crime and an understanding of their needs...*⁵⁶⁴

370. It is clear from the evidence before the Commission that Khayelitsha residents have not received the standard of policing entitled to them under the Constitution and in terms of the SAPS Act. High levels of crime are in a large part symptomatic of a poorly trained police service that is under resourced, inefficient, and incapable of or unwilling to perform its mandated duties. Professor Gobodo-Madikizela notes that *“few can deny that the grievances shared by the people of Khayelitsha regarding crime and its lack of control by the police contributes significantly to the complex set of factors that lead people to engage in angry and sometimes violent demonstrations.”*⁵⁶⁵

⁵⁶⁴ Complaint, para 27.

⁵⁶⁵ Bundle 12(1) Document number 24 at page 6.

371. To say that the poor standard of policing in Khayelitsha is the only factor contributing to crime (and in turn vigilantism) would be an oversimplification of a highly complex and contentious issue. Crime is in many ways a symptom of severe poverty and desperation. Both socioeconomic factors and infrastructural factors contribute to the extremely high crime rate in Khayelitsha.⁵⁶⁶

372. Infrastructural challenges such as limited access to informal settlements and poor lighting pose challenges for the police and contribute to high levels of crime. The limited police presence in informal areas does not justify negligent and incompetent policing. Alternative access routes and alternative methods of accessing informal settlements must be sought.

373. The desire to retrieve stolen goods often fuels the actions of vigilantes. In Khayelitsha, there is a widely held perception that *“the police should a) punish and b) retrieve stolen goods. This results in a sense of futility insofar as it is regarded as pointless to report incidents to the police because they will not be able to retrieve stolen goods. The difference between the well off and the poor is that the former have insurance. The poor have greater expectations in the police and these are not fulfilled.”*⁵⁶⁷

⁵⁶⁶Bundle 12(1) Document number 18 at page 8 para 26.

⁵⁶⁷Bundle 12(1) Document 18 page 6, para 19.

374. In his affidavit, Mr. Pule Hendricks, who was arrested on charges of kidnapping and murder in the case of an act of vigilantism, explained one of his justifications for not calling the police. Mr. Hendricks stated that the police are not effective at catching thieves in that *“police go out and look for the accused...but cannot find them. Police do react to robberies, it is not effective, the criminals disappear...We did not take [the victim] to the police because we wanted to get the...stuff back.”*⁵⁶⁸

375. Other witnesses before the Commission provided different evidence to Mr. Pule Hendricks’ claim that police go and search for robbers. In her affidavit, HM provided evidence regarding her experiences with the Community Service Center when she attempted to report a theft. *“I went to open a case at Site B police station. When I arrived the police advised me that they cannot open a case because I had not caught the robbers.”*⁵⁶⁹

376. Under constant threat of victimization by criminals, community members have a desire to take back control of their lives and bring a sense of safety to their community. This desire to take back control and send a message to criminals is often a factor in vigilante attacks. Professor Gobodo-Madikizela states that *“in [her] research on “necklace” murders, [she] concluded that the collective*

⁵⁶⁸Bundle 7(6) Document 1 page 7, para 35.

⁵⁶⁹Bundle 2(5) Redacted Community Statements, Document 14.1 page 1, para 6.

*violence of the “necklace” murders seemed to bestow on actors a capacity to be in control in the face of helplessness, frustration and a feeling of dehumanisation and humiliation. [She] suggest[s] that a similar dynamic operates with at least some of the vigilantism witnessed in Khayelitsha.”*⁵⁷⁰

377. Central to Professor Gobodo-Madikizela’s testimony before the Commission was the notion that constant exposure to violent acts such as vigilantism has a profound impact on victims, witnesses, and participants, noting that in Khayelitsha, exposure to vigilantism begins at a young age. Both Mr. Sifiso Zitwana⁵⁷¹ and Ms. Phumeza Mlungwana⁵⁷² gave evidence of their exposure to vigilantism as children. Dr. Debbie Kaminer states that this exposure can lead to a variety of consequences, including Post Traumatic Stress Disorder and depression.⁵⁷³ Professor Gobodo-Madikizela explains that exposure to vigilantism can result in *“a cycle that makes victims transform into perpetrators”*⁵⁷⁴ Furthermore, the *“lack of safety, lack of security, and being constantly on guard against theft, rape, assault, murder, and with no appropriate response from the police, is traumatic”*.⁵⁷⁵ The lack of safety and high crime experienced by many Khayelitsha residents is a form of trauma in and of itself.

⁵⁷⁰Bundle 12(1), Document 24 page 11.

⁵⁷¹Bundle 2(5), Redacted Community Statements file, Document number 72 page 2, para 11.

⁵⁷²Bundle 1(5), File E, Document number 30 page 6, para 26.

⁵⁷³Bundle 4(1) Expert Reports file, Document number 3 page 11.

⁵⁷⁴Gobodo-Madikizela transcript page 7809.

⁵⁷⁵Gobodo-Madikizela transcript page 7793.

Thus, the failures of the police play a role in the cycle of trauma and violence that pervades Khayelitsha.

378. SAPS members themselves are exposed to unreasonably stressful and traumatic daily circumstances while working in Khayelitsha. *“In a proposal made to the Secretariat of Police...it was suggested that, particularly in communities that suffer high rates of crime and violence, the police service suffers from [such exposure].”*⁵⁷⁶

Taxi organisations and neighbourhood watches

379. A variety of alternatives to SAPS have come to be relied upon by many Khayelitsha residents in the wake of a loss of trust in the Police.

380. Some Khayelitsha residents hold the perception that the police do not resolve issues when they are reported. Khayelitsha residents experience the police as *“very violent and yet ineffective”*⁵⁷⁷ and that *“[b]ecause people have lost faith in street committees and the police, people in Khayelitsha turn to taxi organisations.”*⁵⁷⁸

⁵⁷⁶Bundle 12(1) Document number 12 pages 8-9, para 11.4

⁵⁷⁷Bundle 6(1) Expert Report file, Document number 8 page 10.

⁵⁷⁸Bundle 6(1) Expert Report file, Document number 8 page 8.

381. Taxi organisations have a reputation for being successful in finding stolen goods and getting compensation out of perpetrators. Though they resort to violence during the course of their investigations and interrogations, taxi drivers are considered by some Khayelitsha residents to be a trusted and reliable criminal justice provider. Evidence before this Commission has revealed that school principals and parents have on various occasions called taxis into schools to deal with high levels of violence.⁵⁷⁹

382. One Khayelitsha resident is quoted as saying: *“[a]s a result of police inefficiency, most of the time the community of Khayelitsha takes justice into their own hands...An alternative to reporting to the police is going to taxi drivers and reporting crime to them. Taxi drivers are now the go to group. They are quick to respond...”*⁵⁸⁰

383. Along with taxi organisations, a number of small, “hyper-local justice committees” have emerged to provide a policing role in some parts of Khayelitsha. Dr. Gillespie describes one *“in a section of Site C...called Mayitshe (Let It Burn)...It is a group of older men who have imposed a 9pm curfew in their*

⁵⁷⁹Bundle 6(1) Expert Report file, Document number 8 pages 8-10.

⁵⁸⁰Bundle 10(1) File 1.1, Document number 11 page 46.

*area. They are known for being able to find and beat muggers. They also can help retrieve stolen items for a small fee.”*⁵⁸¹

SAPS’ varied responses to vigilantism in Khayelitsha

384. The reactions of SAPS members to acts of vigilantism vary greatly. In many cases SAPS members tacitly permit vigilantism. This tacit permission is demonstrated in Dr. Gail Super’s report, it is noted that taxi associations are “*in control of vigilante actions...The taxi associations even went as far as imposing a curfew after 21:00 in the evening. Everyone, including the police, was very happy with the decrease in crime*”.⁵⁸²

385. In certain cases, Khayelitsha police officers have reportedly stood by and done nothing at the scene of vigilante attacks. Mr. Magnus Persson, an intern at the Social Justice Coalition, testified about witnessing such an event. While approximately 50 community members were beating a man suspected of stabbing and attempting to rob a pregnant woman, two police officers sat at the scene of the attack and ate lunch. They did nothing to prevent the assault from taking

⁵⁸¹Bundle 6(1) Expert Report file, Document number 8 at page 11.

⁵⁸²Bundle 12(1) Document number 18 at page 5.

place. The assault only came to an end when another police van came to the scene.⁵⁸³

386. SAPS members have also been known to actively participate in acts of vigilantism. MMD provided an affidavit to the Commission expressing his own personal experience with vigilantism. MMD alleges that he was falsely accused of stealing R4000 from a shebeen owner. This accusation led community members to attack him in an attempt to force him to return the money that he had allegedly stolen. When the police arrived, MMD stated that rather than stopping the attack, they “*also began asking where the money was and started hitting me as well*”.⁵⁸⁴

387. It was revealed during the testimony of numerous SAPS personnel, including that of former Harare Head of Detectives Colonel Andrew Tobias, that SAPS in the Western Cape currently has no standing order or strategy in place to deal with and respond to vigilantism.⁵⁸⁵ Without a strategy in place, there is nothing to prevent continued inconsistencies in the response of SAPS members to incidents of vigilante violence.

⁵⁸³Bundle 7(11) Document number 76.

⁵⁸⁴Bundle 2(5) Redacted Community Statements file, Document number 2 at page 2.

⁵⁸⁵Colonel Andrew Tobias gave evidence to the Commission on 21 February 2014 and on 17 March 2014. The transcript of his evidence appears at pages 4332-4611 (“Tobias Transcript”) at page 4508.

Findings

388. In the light of the evidence contained in the record of the Commission's proceedings, it cannot be said that an effective policing strategy has been developed and implemented to address the problem of vengeance killings and/or attacks (sometimes referred to in the record as vigilante murders or "bundu courts") which have been occurring in Khayelitsha in recent years.

389. The evidence before the Commission demonstrates that although there are a number of other contributing factors to vigilante or vengeance attacks and murders in Khayelitsha, one of these factors is clearly that members of the Khayelitsha community experience the disrespectful, discourteous, dismissive attitude of SAPS members when they report crimes as humiliating and an affront to their dignity. This, coupled with the general lack of police visibility at the scene of criminal incidents, their failure to respond timeously or at all to victims of crime, their failure to communicate with members of the community who should properly be communicated with has led to vigilantism or vengeance attacks being a manifestation of a breakdown in trust between the community and the SAPS units operating in Khayelitsha.

Recommendations

390. The specific recommendations to address vengeance killings and/or attacks (including what is sometimes referred to as vigilante murders or “bundu courts”) are set out below:

390.1 The development and implementation of an intelligence led policing strategy to address vigilantism and vigilante action in Khayelitsha. Such intelligence led policing would entail careful planning and communication by SAPS with community members through education and information sharing to obtain an informed understanding of the police’s role in responding to and investigating vigilante action. In addition, central to such intelligence led policing would be increased visible policing in areas that are known as ‘sites’ or ‘grounds’ for vengeance attacks and murders.

390.2 In order to effectively deal with vigilantism and to deter participation in such action, the police must, as a necessary measure, ensure that steps are taken to arrest and charge those involved in vigilante action. Evidence before this Commission has showed that SAPS’ failure to seriously respond to and investigate vigilante violence by bringing perpetrators into the criminal justice system enables further and continued vigilante violence.

390.3 The re-introduction of the “Community Peace Programs” (that were implemented between 1997 – 2009) referred to in Professor Cartwright’s testimony would go a long way toward improving relations between the community and SAPS in Khayelitsha by providing a legitimate and accountable communal restorative justice platform.⁵⁸⁶ These programs, in the form of “peace committees” recognise that *“people living in a poor and under-resourced community have the knowledge and the capacity to make a significant contribution to the safety and quality of life of their community without either depending on the police to solve all their problems or resorting to vigilantism and violence in order to ‘deal with’ their safety problems themselves.”*⁵⁸⁷

390.4 With regard to the infrastructural challenges, streetlights should be erected throughout Khayelitsha. Along with this, there should be programmes of community dialogue aimed at establishing a sense of pride within the Khayelitsha community.⁵⁸⁸ Additionally, infrastructure development within Khayelitsha must be sustained and further developed

⁵⁸⁶Professor John Cartwright gave evidence to the Commission on 15 May 2014, together with Julie Berg and Guy Lamb. The transcript of their evidence appears at pages 7622-7665. The Peace Committees are discussed between pages 7627 – 7633.

⁵⁸⁷Bundle 12(1) Document number 3 at pages 4 – 5.

⁵⁸⁸ Bundle 12(1), Document 24 at page 14.

in order to make residents feel safe, and to ensure that police maintain a visible presence and respond timeously to reports of crime.⁵⁸⁹

390.5 In response to the residents' desire to retrieve stolen goods, a Victim's Compensation Fund should be established to help support victims of theft in areas like Khayelitsha. This will hopefully lead to a decreased desire by community members to track down suspected thieves and commit vigilante attacks.⁵⁹⁰

390.6 Noting the traumatic effects of witnessing, experiencing and participating in vigilantism, Professor Gobodo-Madikizela believes that the problem of vigilantism should be considered and treated as an illness and "a public health issue."⁵⁹¹

390.7 In dealing with police trauma, the Secretariat of Police has proposed that strategies to improve policing should *"include a significant focus on building resilience and skills for the management of post-traumatic stress and other stressors."*⁵⁹² Ms. Clare Ballard recommends *"that training be provided to detectives around the identification and self-management of*

⁵⁸⁹ The Complainant organisations hosted workshops with SJC branch members from Khayelitsha to brainstorm recommendations. This was one of the recommendations made.

⁵⁹⁰ Bundle 12(1) Document number 18 page 11, para 37.

⁵⁹¹ Bundle 12(1) Document number 24 page 14.

⁵⁹² Bundle 12(1) Document number 12 pages 8-9, para 11.4

*trauma and burnout, debriefing and counselling being by no means the only way to deal with these conditions. It may be helpful for the SAPS to work with a range of mental health specialists in developing a variety of strategies for tackling burnout and trauma.*⁵⁹³

390.8 Dr. Gobodo-Madikizela recommends that an overhaul of the police service take place. Youth from the Khayelitsha community should be recruited. This will hopefully increase the investment of SAPS officials in doing their job properly, and increase the morale of Khayelitsha residents.⁵⁹⁴

390.9 Two cases dealing with vigilante attacks, namely *S v Mvabaza and Others*, 2013 (“Mvabaza”) and *S v Dikqwaci and Others* (“Dikqwaci”), provide insight into the type of sentencing that may be suitable for perpetrators of vigilante violence. In Mvabaza and Dikqwaci, the accused perpetrators were sentenced to varying lengths of imprisonment. The sentences were wholly suspended, but subject to certain conditions in order that the accused to remained out of prison. These included compensation to family members of victims; the requirement that the accused not be convicted of a related offense during the period of their

⁵⁹³ Bundle 12(1), Document number 10 at page 6, para 4.3

⁵⁹⁴ Bundle 12(1), Document number 24 at page 14

probation; participation in treatment, development, and support programs for criminals; court-ordered and monitored sobriety; community service; and monitoring by the Department of Correctional Services. The two judgments highlight that it is vital that sentences be severe enough to send a message that vigilante action is taken seriously by the criminal justice system, whilst simultaneously understanding the context in which such actions occur so as to promote trust in the criminal justice system. Importantly, with regard to the context of vigilante action and the characters of the accused in the *Mvabaza* case, Nyman AJ found that despite their adverse conditions, the accused “*strove to be decent people who did not submit to the temptation of joining gangs and resorting to criminal conduct to improve their material conditions. Their convictions arise from conduct carried out with righteous intentions. In their eyes, they believed that they had committed heroic deeds.*”⁵⁹⁵ The convictions and periods of correctional supervision should, however, be severe enough to reflect the gravity of crimes committed.

390.10 Finally, it is recommended that a special Task Team or Unit headed by an experienced senior detective, be formed within SAPS whose role will be to give special focus to the prevention and curbing of bundu court

⁵⁹⁵ *S v Mvabaza and Others*, Sentencing Judgment, 7 June 2013 (unreported) at page 8, paragraph 18.

practices in Khayelitsha; prioritise the prevention of vigilante attacks; and their investigation where they have occurred and give particular attention to bringing those who mete out these forms of *'justice'* to face the might of the law. Such efforts will however not succeed unless the police's overall effectiveness at policing, community relations and crime prevention are improved.

N. HOMOPHOBIC CRIMES

391. The complainant organisations stated in their complaint that while the high levels of crime affect all community members in Khayelitsha, they particularly impact on children, girls, women, the elderly and groups vulnerable to hate crimes such as refugees, asylum seekers, immigrants, lesbian, gay, bisexual, transgender and intersex people.

392. According to a report dated 30 October 2013 by Human Rights Watch (“HRW”),⁵⁹⁶ black lesbians and transgender men in South Africa experience discrimination, harassment and violence at the hands of private individuals and sometimes state agents. The abuse they face may be verbal, physical, or sexual and may even result in murder. This is supported by one of the specific cases referred to by the complainant organisations in their complaint as a demonstration of the systemic issues complained of, namely the brutal murder of Zoliswa Nkonyana on 4 February 2006 allegedly because she was openly lesbian.

393. The HRW’s report resulted from research conducted by it in economically marginalised black communities in South Africa arising from reports of violence documented by LGBTI organisations over the last two decades suggesting that for historical reasons black lesbians and transgender men living in townships,

⁵⁹⁶ Bundle 1(5), File E, Document number 39

peri-urban and rural areas and informal settlements are among the most marginalised and vulnerable members of South Africa's LGBTI population. The HRW undertook research in South Africa between February 2009 and August 2010, follow-up conversations in October 2011 with activists and individuals concerning specific cases, and previous research on the experiences of lesbians, bisexual women and transgender men.

394. In this context, the HRW examined police inaction and unwillingness to provide services to lesbians and transgender men and how this contributes to their vulnerability. The organisation also looked at the lack of faith among lesbians and transgender men in the police, from whom many fear secondary victimization more than they expect protection. The HRW found that such concerns are not without justification as in several instances the police themselves had perpetrated abuse and even violence.

395. The HRW found that as is the case with sexual abuse in the broader population, the fear and stigma attached to sexual assault makes it probable that such crimes against black lesbians and transgender men are particularly underreported. The few who do report abuse and violence often face hostility and discrimination from police and sometimes from other service providers. This finding reflects the prevailing circumstances in Khayelitsha as is evident from the testimony of Ms

Funeka Soldaat to the Commission.⁵⁹⁷ More is said about her evidence below.

396. One of the lesbians interviewed by HRW in the course of its research was a woman who went by the name of Audrey from Khayelitsha. She had been raped twice. When asked if she considered reporting the rape to the police, Audrey said:

'You don't want to go to the police if something happens to you – especially when you're a lesbian, especially if you use the name lesbian. They look at your chest. You see it in their faces, there's something on their face that says "freak". They call us "girl-man", "woman-man." They don't know what a lesbian is.'

397. It would appear this is still the case among SAPS in Khayelitsha. In her statement Ms Soldaat stated that her experience over many years is that Khayelitsha police are unable or incapable of providing help and protection to LGBT persons both before crimes are perpetrated against them as well as when they present themselves as survivors of these crimes.⁵⁹⁸ She said further that:

⁵⁹⁷ Her statement is in the record at Bundle 2:1.1. She gave evidence before the Commission on 28 January 2014.

⁵⁹⁸ Para 9

397.1 Khayelitsha police appear to lack the energy, will and interest to provide a service to LGBT persons.⁵⁹⁹

397.2 They do not have the experience and skill to deal with telephone complaints. They are abrupt, harsh, unwilling to listen, judgemental and lack empathy.⁶⁰⁰

398. According to Ms Soldaat she and her colleagues at Free Gender have observed over the years that many if not most police officers in Khayelitsha are homophobic. They often exhibit an extreme aversion to LGBT persons who report crimes or visit the police stations. She herself has been subjected to these attitudes at Khayelitsha police stations. This has the effect of discouraging LGBTI persons from reporting crime to the police.⁶⁰¹ For these reasons Ms Soldaat concluded that from her and her colleagues' observations and experiences over many years, Khayelitsha police are inefficient and deliver poor quality of service to most residents especially the LGBTI community.

399. In her evidence before the Commission, Ms Soldaat gave a harrowing account of how she was treated by SAPS in Khayelitsha after she was raped by a group of boys in 1995.

⁵⁹⁹ Para 10

⁶⁰⁰ Para 11

⁶⁰¹ Para 18

399.1 When she arrived at the Lingelethu West police station she was told to wait as there was no van;⁶⁰²

399.2 After some time two policemen put her in the back of their van and took her to Site B Hospital. They left her outside and she had to walk inside by herself;⁶⁰³

399.3 Inside the hospital she was told by a nurse that she was supposed to have brought a letter with her from SAPS indicating that she had been raped. It was night time. She then walked from the hospital to the Khayelitsha Site B police station. When she arrived there it was full of complainants as it was a Saturday night;⁶⁰⁴

399.4 There were a few police officers sitting at their desks. They asked her who she was and she told them. The police officer who attended to her took time observing her from head to toe, and asked what had happened. She told him that she had been raped. Instead of taking a statement from her, he left her there and went to speak to other police officers. He did not return but another officer did. He asked her the same questions. After a while she surmised the officers were more interested in

⁶⁰² Transcript of 28 January 2014; page 4545; line 19

⁶⁰³ Transcript of 28 January 2014; page 455; line 1

⁶⁰⁴ Transcript of 28 January 2014; page 455; lines 1 to 12

considering her sexual orientation, or the way she looked;⁶⁰⁵

399.5 She left the police station without laying a complaint;⁶⁰⁶

399.6 She went home and slept. She did not want anything to do with the police station and felt that *'my life was now a disaster.'*⁶⁰⁷

399.7 She later got help from Rape Crisis who provided her with counselling and connected her to an investigating officer. She returned to Khayelitsha Site B police station and this time they opened a case;⁶⁰⁸

399.8 Even as the police officer was taking down her statement, she did not trust what he was doing;⁶⁰⁹

399.9 She last spoke to a police officer regarding the case on that day.⁶¹⁰ The police never contacted her again.

400. It is apparent from her evidence that this incident traumatised Ms Soldaat and that because of the attitude and conduct of the police she experienced secondary

⁶⁰⁵ Transcript of 28 January 2014; page 455; lines 13 to 24

⁶⁰⁶ Transcript of 28 January 2014; page 455; line 25

⁶⁰⁷ Transcript of 28 January 2014; page 456; line 2

⁶⁰⁸ Transcript of 28 January 2014; page 456; line 23

⁶⁰⁹ Transcript of 28 January 2014; page 456; line 22

⁶¹⁰ Transcript of 28 January 2014; page 457; line 4

victimization at their hands. Her faith in the police was shaken by the manner in which they responded to her complaint and treated her.

401. The next incident which occurred to her friend in 2003 did nothing to restore her faith in the police.⁶¹¹

401.1 After the stabbing of her friend Babalwa by a group of boys Ms Soldaat accompanied Babalwa to Groote Schuur Hospital for treatment;⁶¹²

401.2 After Babalwa came out of the hospital Ms Soldaat accompanied her to Khayelitsha Site B to lay a complaint;⁶¹³

401.3 The attitude and reaction of the police did not surprise Ms Soldaat. The police officer asked Babalwa what happened and she told him. As she was giving her name the police officer was smiling. Babalwa was not smiling.

401.4 They were told that they were supposed to have brought a paper from GSH. When they returned with the paper from the doctor the following day, Babalwa was told to go to Harare to meet another police officer.

⁶¹¹ Transcript of 28 January 2014; page 457; line 7 to page 459 line 12

⁶¹² Page 457 line 16

⁶¹³ Page 458 line 2

When they went there this police officer did not turn up for the meeting.⁶¹⁴

401.5 They returned to Khayelitsha Site B where Babalwa was asked if she knew who stabbed her and she said yes. Babalwa and Funeka were then put in the back of a bakkie that did not have a canopy and were driven by the police to Mandela Park where the incident had occurred. The boys who had stabbed Babalwa were not there. The police left Babalwa and Funeka there. They walked from Mandela Park to Makhaza where they lived. They never went back to the police.⁶¹⁵

402. Ms Soldaat stated that she did not have any further interaction with the police.

After two lesbians were murdered in Khayelitsha in 2005 and 2006 many lesbians lived in fear until the organisation Free Gender was started in 2008.⁶¹⁶

403. It would appear however that lesbians in Khayelitsha still experience difficulties regarding the attitudes of SAPS members towards them as lesbians. Their exposure to secondary victimization at the hands of the police still remains real.

⁶¹⁴ Page 458 line 12

⁶¹⁵ Page 458 line 20 to page 459 line 3

⁶¹⁶ Page 459 lines 11 to 15

404. In 2012 one of the members of Free Gender went to lay a charge at a police station in connection with a rape. When she got to the police station she was taken to Simelela (now known as the Thuthuzela Centre) where she met a police officer who started mocking her; she was with her partner and the police officer was more interested in understanding how their relationship works rather than giving her the assistance she needed in the circumstances.⁶¹⁷

Findings

405. Ms Soldaat testified that there are still high levels of crime committed against the lesbian community in Khayelitsha and that, due to their previous experiences members of the lesbian community do not trust SAPS. Although Free Gender as an organisation has a good relationship with SAPS, most of the lesbians in Khayelitsha struggle to trust SAPS. The lack of trust in SAPS is more prevalent among masculine lesbians and effeminate gay men.

406. In the light of the evidence contained in the record of the Commission's proceedings, it cannot be said that an effective policing strategy has been developed and implemented by SAPS to address the problem of attacks, including assault, rape and murder of gay, lesbian, transgendered and intersexed people living or working in Khayelitsha which have been occurring in Khayelitsha in

⁶¹⁷ Page 461 lines 4 to 12

recent years.

Recommendations

407. Homophobia, like racism and xenophobia, is a form of bigotry that has no place in South Africa's constitutional dispensation.

408. It is as important to extinguish xenophobia and homophobia from SAPS culture as it is important to root out racism. SAPS must be part of the solution, not part of the problem. In circumstances where the safety and security of citizens and inhabitants of this country, indeed their very lives, are in jeopardy because of sexual orientation or the country from which they originate, SAPS must be seen in the communities where these prejudices prevail to be leading the charge in stamping them out, and making sure that there are seen to be consequences for all those who practice these forms of bigotry to the detriment of others.

409. In this regard, it is also recommended here that SAPS must develop policies and implement strategies that seek to combat homophobia within SAPS itself, and to address the challenges of lack of safety and security experienced pertinently and peculiarly by members of the LGBTI community living in Khayelitsha. This could be in the form of compulsory educational classes and sensitivity training, and/or through creating working relationships with LGBTI groups operating in

Khayelitsha.

410. SAPS must lead education campaigns in all community structures where it has a presence, for instance CPFs and community imbizos, about xenophobia and homophobia. Due to the prevalence of the murders of gay people and the ‘corrective’ rapes of lesbians in communities such as Khayelitsha, SAPS must prioritise this campaign and give these crimes priority status. SAPS must be seen to have adopted a zero-tolerance campaign to bigots who practise homophobia, xenophobia and other forms of unlawful discrimination within the Khayelitsha community. In order to do that, SAPS must root out these elements within its own ranks.
411. SAPS strategies must identify and deal with gangs of mostly young men who victimise and sometimes murder lesbians and gays.
412. To the extent that it may be of use for crime combatting measures, police should record homophobic-related crimes as its own statistic, as they should do for xenophobic-related crimes. The prevalence of such crimes, their locations and other details will assist police intelligence in understanding the scope of the problem and if the crimes are connected, and ultimately in combatting and preventing such crimes.

413. Because police are often the first point of contact a victim of crime may have with the State, police should be in a position to refer victims of homophobic-crimes for counselling or other services.

O. XENOPHOBIC CRIMES AND CRIMES AGAINST FOREIGN NATIONALS

414. The complainant organisations stated in their complaint that high levels of crime in Khayelitsha particularly impact on vulnerable groupings that are susceptible to hate crime. One such grouping in Khayelitsha are foreign nationals, who include refugee and asylum seekers.

415. According to the 2011 national census, there are 2 477 foreign nationals living in Khayelitsha (0.6% of the total population). The Commission heard that foreign nationals “*have been living and trading in Cape Town townships and informal settlements such as Khayelitsha in appreciable numbers since the regularization of the South African refugee regime in the mid-1990s. Whereas in the early period the refugee populations in the area under review were predominantly of Angolan and Congolese origin. In the current era the refugee population in Khayelitsha is predominantly of Somalian and Ethiopian origin.*”⁶¹⁸

416. Khayelitsha is a densely populated community with very high levels of urban poverty, violent crime, unemployment, and, visible entrepreneurial and innovative spirit.⁶¹⁹ In such an environment entrepreneurial persons who are

⁶¹⁸ Bundle 6, Commission of Inquiry, Expert report, Vicki Igglesden Report, Page 7

⁶¹⁹ Bundle 7, Commission of Inquiry Documents, File H-Expert Reports, Josette Cole Report, Page 7.

perceived by perpetrators of crime as being financially well off compared to other members of the community would likely be targets of crime.⁶²⁰ Foreign nationals, by virtue of their status as such, are particularly vulnerable criminal targets.

417. Crimes against businesses including looting and attacks are not exclusively xenophobic. Such crimes are however generally understood to be xenophobic in origin when targeted against foreign owned businesses and other foreign targets. These crimes have been experienced in increasing numbers by foreign shop-owners in the last 10 years in South Africa.⁶²¹ In February 2012, the Western Cape Provincial Commissioner informed Parliament that approximately 70% of business robberies (or robberies of spaza shops) in the Western Cape are against foreign national shopkeepers.⁶²²

418. In this regard, the Provincial Commissioner further informed Parliament that *“police intelligence officers at the Khayelitsha police station reported that foreign traders –most of whom were Somali-made up 96.5 percent of business robbery victims in the stations’ jurisdiction, despite owning only 50 percent of shops in the area. South African nationals, by contrast, owned the other 50*

⁶²⁰ Bundle 6, Commission of Inquiry, Expert report, Vicki Igglesden Report, Page 8.

⁶²¹ Bundle 6, Commission of Inquiry, Expert report, Vicki Igglesden Report, Page 8.

⁶²² Bundle 2, Legal Resource Centre Documents, Document No. 37, Paragraph 70.

*percent of shops but made up only 3.5 percent of victims. Forty percent of business robberies involved attempted murder or murder.*⁶²³

419. This was confirmed by Ms. Iggelsden who stated in her report to the Commission that as Somalis and Ethiopians dominate the spaza-shop business environment, it is apposite that they feature prominently in any account of crime victimization.⁶²⁴

420. With this context in mind, this section evaluates the evidence before the Commission in order to ascertain whether the SAPS have developed and implemented an effective police strategy that addresses xenophobic attacks as well crimes against foreign nationals. It is not argued here that the SAPS must develop policing strategies that are specific to each foreign grouping in Khayelitsha, but that for policing to be effective and efficient there is a very basic need to understand the needs and contexts of all the diverse populations within its policing precinct. This will enable the SAPS to adequately respond to the high presence of violence against foreign nationals particularly business robberies.

421. In her statement made to the Commission Ms Phumeza Mlungwana painted a bleak picture of the treatment of traders who are foreign nationals not only by

⁶²³ Bundle 2, Legal Resource Centre Documents, Document No. 37, Paragraph 70.

⁶²⁴ Gastrow 2012, states that ‘Police intelligence officers at the Khayelitsha police station reported that foreign traders—most of whom were Somali—made up 96.5 percent of business robbery victims in the station’s jurisdiction’. Pp33---34 as cited in Bundle 6, Commission of Inquiry, Expert report, Vicki Igglesden Report, Page 8

members of the Khayelitsha community but also by SAPS members themselves.⁶²⁵

422. According to Ms Mlungwana since the nationwide xenophobic attacks of 2008 Somali traders in Khayelitsha have continued to suffer violent attacks, robbery and blackmail. Members of this vulnerable community constitute the primary victims of business crime in the area.

423. Ms Mlungwana referred the Commission to the study conducted by Vanya Gastrow and Roni Amit called “**Elusive Justice: Somali Traders’ Access to Formal and Informal Justice in the Western Cape**” (“Elusive Justice”)⁶²⁶ which found that:

“In an address to Parliament in February 2012, the Western Cape Provincial Commissioner of Police stated that nearly 70 percent of business robbery victims in the province were foreign national spaza shopkeepers.

“Police intelligence officers at the Khayelitsha police station reported that foreign traders — most of whom were Somali — made up 96.5 percent of business robbery victims in the station’s jurisdiction, despite owning only 50

⁶²⁵ Bundle 1(5); File E; statement number 30; paragraphs 63 to 70; page 359

⁶²⁶ Attached as “**PM1**”; Bundle 1(5); File E; statement number 31.

percent of shops in the area. South African nationals, by contrast, owned the other 50 percent of shops but made up only 3.5 percent of victims. Forty percent of business robberies involved attempted murder or murder.”

424. The study shows greater community sympathy in Khayelitsha towards Somali traders following the xenophobic violence. However, the study is a severe indictment of the role of SAPS Khayelitsha dealing with the Somali traders.

425. Ms Mlungwana told the Commission of an incident relayed to her by Mr Welcome Makele.

425.1 On 3 February 2013, SAPS officers arrived at a Somali owned spaza shop in Makhaza, Khayelitsha. They identified themselves as police and said they were searching for guns. They had no search warrant but the owner and his employee let them inside, not wanting to argue with police.

425.2 Once inside the back of the shop, the officers proceeded to destroy property in the search for money eventually stealing R5000 in cash and R2800 in airtime vouchers. When the owner of the shop tried to stop the police from robbing him, police punched him in the head leaving him with a swollen and bruised face. The officers wore gloves so as not to leave fingerprints.

425.3 A member of the public took down the number plates of the SAPS vehicles used in this case of aggravated robbery and a case was opened at Harare police station. The incident left its victims justifiably scared that the police who robbed them would further victimise them.

426. Ms Mlungwana told the Commission that the SJC followed-up the matter and the progress of the investigation with Major-General Ndlovu, the Cluster Commander for the area; however as at the date of her affidavit, no-one had been charged for the crime.

427. According to Ms Mlungwana Somalis and other immigrants, asylum-seekers and refugees are a marginalised group in Khayelitsha with little recourse to justice and an easy target for corrupt SAPS officers and criminals.

428. Evidence relating to xenophobic crime and crimes against foreign nationals was also given by Ms Vicki Igglesden.⁶²⁷ Her evidence was based on research conducted in December 2013 through interviews with 21 Somali, Burundian and Eritrean males who run businesses in Khayelitsha. Fifteen of the interviewees were spaza shop owners, ten of whom stated that they owned at least one shop.

⁶²⁷ Foreign nationals' experience of policing in Khayelitsha, Vicki Igglesden

429. Like other community members that testified before the Commission, foreign nationals relayed negative experiences with the SAPS in Khayelitsha. Some of these experiences include but are not limited to the following:

429.1 Difficulties in registering cases with the police Stations once they have suffered and reported a crime;⁶²⁸

429.2 Rape complaints are unwilling to report sexual offences to police in part because they perceive the police as ineffective in arresting, investigating and managing rape cases⁶²⁹

429.3 Failure by police to give any feedback or communicate with victims of crime about progress made in either investigations, court dates or bail hearings,⁶³⁰

429.4 Lack of visibility of police around both their place of business and residence;⁶³¹

⁶²⁸ Transcription Page 1308

⁶²⁹ Bundle 1, Women's Legal Centre, Affidavit of ET

⁶³⁰ Transcript Page1308

⁶³¹ Transcript Page 1311

429.5 Inability to effectively deal with and police gangs in Khayelitsha.⁶³²

430. The evidence before the Commission demonstrates that there are aspects of what appear to be police inefficiencies that are uniquely experienced by foreign nationals in Khayelitsha. These experiences include:

430.1 A large number of robberies in the three police station area are robberies of foreign owned spaza shops.⁶³³ The Commission was informed that foreign victims of such crime reported that when they sought assistance from the SAPS during a robbery, police sometimes informed them that they were afraid to attend to crime scenes. This was because the SAPS themselves feared being attacked by armed gangs that often rob spaza shops.⁶³⁴

430.2 When foreign nationals are victims of crime and report to a police station to open a criminal case they are informed by the SAPS officials attending to them that their cases cannot be registered because they are foreign.⁶³⁵ The Commission was informed that foreign nationals experience prejudice when reporting crimes to the SAPS, some were told that

⁶³² Transcript Page 1315.

⁶³³ Transcript Page 3438. The Commission heard that robberies of Somali and Ethiopians nationals happen at an enormous rate (Tobias). See also Transcription 3270.

⁶³⁴ Iggelsden Transcript Page 1307.

⁶³⁵ Page 1308

*“you’re a foreigner, go home, or this is my country, this is not your law, it’s up to me to decide what to do, you’re just a foreigner.”*⁶³⁶

430.3 Foreign nationals reported that they often do not report criminal cases to the SAPS because they are afraid of secondary victimisation. The Commission was informed that in some instances when SAPS members are called to a crime scene by foreign nationals they prioritised searches for either undocumented immigrants or illegal firearms while neglecting to attend to the reported crime.⁶³⁷ The Commission heard that in *“one case there was an exceptional situation where a group of people in a shop suffered secondary victimisation on three levels, they were robbed, there was an armed robbery, they called the police, the police arrived, the first thing the police did was look for illegal firearms, they didn’t find it, one of the shop workers had been shot, the community called an ambulance, when the paramedics arrived the police refused the injured person medical assistance, they refused to allow the paramedics to attend to him, and when the community responded, the community started to protest against police action they then allowed the medical attention to be given to the injured person, and they took the rest of the people in the shop to the police station on the issue of illegal firearms. They were*

⁶³⁶ Page 1311 -1312

⁶³⁷ Page 1310

*convinced or they said they were convinced there was an illegal firearm and they took them away to the police station. That left the shop unattended for 24 hours which is a further stress and anxiety in terms of robbery, looting, etcetera, for the shop.”*⁶³⁸

430.4 The Commission was also informed that there are disagreements between SAPS and shop owners about shop closure time. This has created substantial antagonism between police officers and shop owners, and has inadvertently created opportunities for SAPS members to abuse their powers and further victimise foreign nationals.⁶³⁹

430.5 The Commission also heard that the “*manner in which police search the premises of foreign nationals, specifically business premises, is frequently of concern.*” Searches are said to be unjustified and often associated with these unjustified searches are the police officials being responsible for malicious damage to the property/business premise of foreign nationals.”⁶⁴⁰

431. SAPS witnesses in their testimony stated that they encounter problems when dealing with foreign nationals. The Commission heard that foreign nationals are

⁶³⁸ Transcription Page 1310. See also Transcription Page 1315 – 1316.

⁶³⁹ Page 1314

⁶⁴⁰ Transcription 1315

not co-operative with police in their investigations. They also generally refuse to participate in identity parades or facial identification processes.⁶⁴¹

432. The Commission was informed that some of the service providers that the Khayelitsha Police Station interacted with included organisations that have a focus on foreign nationals. An example of such an organisation is ARRESTA that among other things aims to educate South Africans about foreign nationals in order to stop xenophobia.⁶⁴²

433. The Commission also heard that SAPS members experience some difficulty in interacting with and policing cases that involve foreign nationals. Some of these problems include:

433.1 Difficulty in co-ordinating crime scenes which involve foreign nationals. To illustrate this point SAPS members gave examples of cases where foreign nationals were victims of armed robbery. One of those examples included two Somali men who were attacked and shot by armed robbers. Police were called and they attended the crime scene accordingly. While they were busy cordoning off the crime scene “literally” hundreds of Somalis arrived at the crime scene which was

⁶⁴¹ Brigadier Dladla Transcription 18 February 2014 Page 3567.

⁶⁴² Transcription Page 3491.

reportedly the trend when a Somali national was a victim of crime. The Somali persons that had arrived at the crime started carrying out “stuff” from the crime scene and police were not effective in preventing this as there were only 6 to 8 officials who were outnumbered as there were over 200 Somali nationals at that scene. As there was a shooting, there was blood all over the crime scene with other Somalis selling cigarettes on the side. He was very emphatic about how difficult it was to contain crime scenes where foreign nationals are involved.⁶⁴³

433.2 Secondly, the Commission was informed that the other difficulty experienced by SAPS that relate to foreign nationals is the close proximity of spaza shops. These shops are not well protected - they do not have burglar bars or strong doors etc. The Commission was advised that this has led to the illegal possession of firearms by foreign business owners.⁶⁴⁴

433.3 The Commission also heard that there is language barrier between SAPS and the Somali community as there are currently no SAPS members that speak Somali. Often interpreters have to be used when the Somali

⁶⁴³ Transcription Page 3863. See an additional example on Transcription page 3864.

⁶⁴⁴ Transcription Page 3950. The Commission was informed that only citizens are allowed to apply for and legally possess a firearm, see Transcription page 1330 – 1331.

nationals report to SAPS for assistance and the officials have no way of verifying the information being passed to the person seeking assistance.⁶⁴⁵

434. The Commission was informed that “*national, provincial, local levels, political discourse on foreign nationals has to improve enormously. When there’s a problem with attacks on foreign nationals its’ all about embarrassment, embarrassment, what will the world believe about South Africans but the issue should be these are people who have human rights, it’s nothing to do with embarrassment, it’s about upholding human rights.*”⁶⁴⁶

435. SAPS members have held forum/talks where they interacted with foreign persons⁶⁴⁷ and Somali business people.⁶⁴⁸ These talks are not necessarily for the provision by SAPS of protection to business owners, rather they aim to conscientise them about safety measures they themselves can adopt to effectively protect their businesses.⁶⁴⁹ Further engagements with SAPS and the Somali community were geared towards co-operation between the two in order to ensure

⁶⁴⁵ Transcription Page 3950

⁶⁴⁶ Transcription Page 1329

⁶⁴⁷ Transcription Page 5133

⁶⁴⁸ Transcription Page 3950

⁶⁴⁹ Transcription Page 3950

that SAPS is able to rapidly respond when crimes against Somalis happen.⁶⁵⁰

Findings

436. Based on the evidence placed before the Commission, it is evident that there exists a breakdown in the relationship and trust between the sizeable constituency of foreign national business owners and SAPS in Khayelitsha. Foreign nationals have experience inefficient and at times xenophobic service when they interact with the SAPS. This failure by SAPS to carry out their mandate and treat foreign nationals with respect by treating their cases with concern, further creates the impression among them that there is little to be gained from pursuing a matter with SAPS.

437. The police as an institution of government have to and must be seen to be even handed. In addition, it is imperative for them to have strategies in place that pay particular attention to vulnerable groupings residing in their police precincts. As the Commission heard vulnerable groupings themselves must see from both the actions and strategies of the police that they are serious about their challenges and needs.⁶⁵¹

⁶⁵⁰ Transcription Page 3438

⁶⁵¹ Transcription Page 1327

438. When one considers the evidence placed before the Commission, it cannot be said that the police have any strategies that are geared towards addressing the challenges of foreign nationals and their businesses where applicable, apart from meetings and discussions. It was indeed identified by the SAPS that one of the major contributors of crime in Khayelitsha is business robberies of spaza-shops owned by foreign nationals. They have also identified language barriers and possession of illegal firearms as problems that they struggle with almost on a day to day basis.

Recommendations

439. SAPS must develop policies and implement strategies that seek to combat xenophobia within SAPS, and to address the challenges of lack of safety and security experienced pertinently and peculiarly by foreign nationals.

440. These must include strategies on how the following issues/concerns can be addressed:

440.1 Small gangs that specialise in robbing spaza-shops that are foreign owned.

- 440.2 Language barriers between members of SAPS and foreign persons seeking assisting at police stations.
- 440.3 Increased possession of illegal firearms by foreign business owners seeking to protect themselves.
- 441. SAPS must employ permanent residents and naturalised citizens from other African countries, particularly Somalia, to combat institutional xenophobia, promote diversity and ensure sensitive handling of cases that involve foreign nationals.

P. DOMESTIC VIOLENCE

442. Section 2 of the Domestic Violence Act (“the DVA”) imposes duties on SAPS members in relation to domestic violence complainants. Two sorts of duties apply to the police: one dealing with the provision of various policing services to victims of domestic violence; and the other relating to the proper keeping of records, with the second set of duties providing evidence of compliance with the first.

443. These duties include supporting complainants to find suitable shelter or obtain medical treatment; as well as providing complainants with written information about their rights, in the language of their choice. In addition, officers are required to explain the contents of the notice to complainants and inform them of available criminal and civil remedies. Police officers are further obligated to serve notice on the abuser to appear in court⁶⁵²; serve protection orders⁶⁵³; arrest an abuser who has breached a protection order, or committed a crime⁶⁵⁴ (even without a warrant)⁶⁵⁵; remove weapons from the abuser, or from the home⁶⁵⁶; and

⁶⁵² Section 8(4)(c).

⁶⁵³ Section 13.

⁶⁵⁴ Section 8(4)(b).

⁶⁵⁵ Section 3.

⁶⁵⁶ Section 9.

accompany the complainant to collect personal items from her/his residence⁶⁵⁷.

444. To support the provisions contained in the DVA the police issued National Instruction 7/1999 to further delineate the police's obligations. In March 2006, the *National Policy Standard for Municipal Police Services Regarding Domestic Violence* was also gazetted.

445. Section 12 of the National Instruction sets out all aspects of the police's duties to maintain records of domestic violence incidents.

446. All domestic violence incidents which are reported to a police station must be recorded in the Domestic Violence Register (SAPS 508(b)) and it is the responsibility of the station commander to ensure that an accurate record is kept of all domestic violence incidents.

447. If a complainant arrives at a police station to lay a criminal charge resulting from a domestic violence incident and indicates that the incident was first reported at an office of a municipal police service the member must –

447.1 request the complainant to hand over the copy of the Report of Domestic Violence Incident-form (SAPS 508(a)) which was furnished to him or her

⁶⁵⁷ Section 7(2)(b).

by the member of the municipal police service. If the complainant does not have a copy thereof, the member must contact the particular office of the municipal police service to get a copy thereof;

447.2 record the incident of domestic violence in red ink in the Domestic Violence Register (SAPS 508(b));

447.3 in Column 6 (Pocket Book reference Column) of the Domestic Violence Register, record the monthly serial number of the relevant entry in the Domestic Violence Register of that specific office of the municipal police service (as captured on the copy of the SAPS 508(a)); and

447.4 open a docket and have it registered on the CAS system.

448. Members must fully document their responses to every incident of domestic violence on a "Report of Domestic Violence incident"-form (SAPS 508(a)) regardless of whether or not a criminal offence has been committed. A file with reference 39/4/2/3 must be opened every month and all the forms SAPS 508(a) which are completed during that month, must be filed in it. The month concerned must be recorded after the reference number.

449. If a member attends a scene of domestic violence and no charges are laid or arrests made, the member must record the reasons why this was not done in his or her Pocket Book (SAPS 206).
450. Certified copies of protection orders and of the warrants of arrest a provided for in the DVA, will be forwarded by the clerk of the court to the Community Service Centre of the complainant's choice. Particulars of the protection order must be entered in the appropriate columns of the Domestic Violence Register (SAPS 508(b)) where an entry has already been made in respect of the complainant. Where no entry exists, a new entry must be made.
451. A copy of every protection order and warrant of arrest that is received, must be filed in a separate file (under reference *39/4/311*) which must be opened in accordance with the Registration and Record Control Procedure which forms part of the Record Classification System. Every file must be allocated a case number to facilitate finding it. The number of the case must correspond with the number appearing in the index system created as set out in the fourth paragraph under section 16.2 of the Registration and Record Control Procedure. These files must be kept in a place which is accessible after hours, to ensure that they are readily available for checking purposes in the event of an alleged breach of the protection order.

452. Disposal of the aforementioned files must take place in accordance with the approved disposal authorization.

453. Given the role of firearms in the perpetration of domestic violence, the Firearms Control Act, 60 of 2000 (“FCA”) was cross-referenced with the DVA to provide additional protection to victims of such violence. Provisions in the FCA preclude certain persons from being granted the competency certificate necessary for obtaining a firearms license. Section 9(2) sets out the grounds which prohibit persons from being considered competent:

453.1 Is not a fit and proper person or has been declared unfit to possess a firearm;

453.2 Is not of stable mental condition or inclined to violence;

453.3 Is dependent on any intoxicating or narcotic substance;

453.4 Has been convicted of any offence involving violence or sexual abuse or physical or sexual abuse in a domestic relationship;

453.5 Has been convicted of any offence related to firearms, alcohol, drugs or intimidation; and

453.6 Has been convicted for breaching a protection order in terms of the DVA.

454. In terms of section 14 of the FCA Regulations, the Registrar may consider any of these circumstances as grounds for an investigation into the fitness of an applicant to own a firearm. It is then the responsibility of the station's Designated Firearms Officer to furnish the Registrar with information regarding whether or not a protection order has been issued against the applicant; whether or not the applicant has been visited by a police official concerning allegations of violence in the applicant's home; or whether in the past five years the applicant has been reported to the police or social services for alleged threatened or attempted violence or other conflict in the applicant's home or elsewhere. Both the SAPS 508(a) and the Registers are a crucial source of information in this regard. However, the value of these preventive measures is undermined if records are not being maintained in the manner prescribed.

455. Such records are also relevant to assessing the risk particular perpetrators pose to their intimate partners and could be used to inform protective interventions for abused women living with, or separated from particularly violent men. Where women have died at the hands of their partners, such records are also relevant to aggravation of sentence - if not other aspects of criminal proceedings (such as where accused persons claim they have no history of violent behaviour towards

their intimate partners). Conversely, such records are crucial in matters where women have killed intimate partners following a long history of abuse.⁶⁵⁸

456. These records are not only relevant to criminal proceedings but may also have a bearing on civil matters such as divorce and custody, or damages claims.

457. Finally, the existence of such records also provides a defence to those officers charged with misconduct arising from failure to comply with the DVA.

Findings

458. The findings which appear below are derived from the evidence of Ms Lisa Vetten and Professor Lilian Artz.

459. As noted in section 12(1) and (3) of the National Instructions, all domestic violence incidents must be recorded in both the SAPS 508(a) and 508(b), implying that the number of incidents recorded by both should be equal. A lack of correspondence between the total number of 508(a) forms and the number of entries contained in the registers is found the Western Cape DCS' monitoring report for 2008/09. In this period, the discrepancy between the 508(a) and 508(b) was 4% for Khayelitsha, 21% for Lingeletu and 43% for Harare (DCS 2009:

⁶⁵⁸ See *S v Engelbrecht* Case No 64/2003 (WLD), for example.

24).⁶⁵⁹

460. In 2010 the Western Cape DCS monitored 20 stations in the province. Their report of March 2010 notes that of the stations monitored, Khayelitsha was the only station which failed to provide the Department with information about the number of officers trained on the Domestic Violence Act (DCS 2010: 8). Harare claimed to have trained 30 (23%) of its 128 officers and Lingeletu 63 (45%) of its 140 officials⁶⁶⁰. The same 2010 report also singles out Harare and Khayelitsha as the only two of the 20 stations unable to account for their 508(a) forms and the 508(b) registers.

461. Thirteen of the 20 stations (including Harare, Lingeletu and Khayelitsha) were listed as maintaining victim support rooms that are unsuited to counselling victims of domestic violence (it is unknown what evaluation criteria were used in arriving at this conclusion). Harare and Khayelitsha are also included amongst the seven stations identified as having no police officials trained to provide victim support. Again, Harare, Lingeletu and Khayelitsha feature in the list of nine stations whose community police fora do not exercise any oversight of their stations' management of domestic violence matters.

⁶⁵⁹ Calculations provided by the author, based on data contained on page 24 of the report.

⁶⁶⁰ Calculations provided by the author.

462. The Western Cape DCS repeated its monitoring in July and August 2010, focusing on 19 stations in the province, including Lingeletu and Khayelitsha. On this occasion, Khayelitsha was able to supply figures for the number of its officers trained on the DVA: 75 (32%) of 234. Lingeletu's staff component had increased since the previous audit to 166 while the number of trained staff had not (63 or 38%).⁶⁶¹ This audit also noted that Lingeletu had neither a victim support room nor volunteers able to assist the SAPS with domestic violence matter.

463. Registers provided by Harare which covered the 36-month period 1 January 2010 – 31 December 2012 suggested that they were not being maintained in accordance with the prescripts of the National Instructions. With a handful of exceptions, entries for March 2012, for example, all concluded with the opening of a docket. Given data which suggests that the majority of domestic violence complainants do not lay charges, it is fair to assume that the majority of domestic violence reports are not being documented by the Harare SAPS.

464. It is also clear that cases are not being recorded at the time of their reporting. This is evident from those sections of the register where the dates of cases do not follow in chronological order and later dates precede earlier entries. In some instances multiple entries have been made in the same handwriting, even though

⁶⁶¹ Calculations provided by the author.

the particular incidents were dealt with by different officers. Entries 15 -25, dated 2 February 2011 to 9 February 2011, as well as entries 37 – 42 (12 February- 15 February 2011) provide but one illustration of this practice.

465. In light of the evidence contained in the record of the Commission’s proceedings, it cannot be said that the provisions of the DVA are being fully complied with by the SAPS units operating in Khayelitsha.

466. The abovementioned failures of the police to comply with the requirements of the DVA have had devastating consequences for many victims of domestic violence in Khayelitsha. Some of these failures are highlighted in the evidence of Kuyasa resident, Ms. Nomfanekiso Ntsilane who has been the victim of repeated and brutal assaults at the hands of her husband. In May 2011, Ms. Ntsilane obtained a protection order against her husband.⁶⁶² Despite the protection order having been issued against him, Ms. Ntsilane’s husband continues to abuse her. Ms Ntsilane provided evidence of one of her many domestic violence incidents in August 2012, where she expressed that “*[he] got drunk and badly assaulted me at our home... I sustained a fractured knee cap and as a result I am still limping and suffering from pain.*”⁶⁶³

⁶⁶²Bundle 1(1), Commission of Inquiry Redacted Statements, item 54, page 1, paragraph 1.

⁶⁶³Ibid at page 1, paragraph 3.

467. The failure of the police to enforce her protection order has left Ms. Ntsilane feeling constantly unsafe: *“I have a great fear that my husband is going to increase his drunkenness as we are approaching the festive season. I always call the police whenever he assaults me and the police always arrest him at night but release him in the early hours of the morning. I am not sure if this is a correct procedure, and fear that one morning he may come and kill me and my children while sleeping at our home.”*⁶⁶⁴

468. In section 13 of the DVA, either a peace officer, the clerk of the court or the sheriff is allowed to serve the court documents on the respondent. According to Professor Artz, her research has shown that in practice court documents like the interim protection orders (“IPOs”) are served by either a police official or the sheriff of the court and in many cases there is no service or improper service on the respondent. This approach amounts to fragmented service delivery as effective implementation of the DVA is dependent on a number of role-players successfully interacting with one another to get the job done.

469. A particularly critical finding emerged in the work of Artz and Jefthas (2011). 30% of the research participants (n=129), when asked who served the order, noted that neither the sheriff of the court, nor the police performed this task. Of

⁶⁶⁴Ibid at page 2, paragraph 3.

these 129 cases, 87.5% (n=113) of the applicants reported that their orders were never served. What is alarming in the context of this research is that of the applicants who reported that their IPOs had not been served on their abusers (n=113), 34% listed a systemic reason for the lack of service. Among these reasons were the following: (i) there was no police van available to go serve the order; (ii) the sheriff failed to serve the order even though the applicant paid for this service; (iii) the police did not serve the order before the return date; and (iv) the police gave up trying to find the respondent, because respondent fled/moved away.

470. Research evidence suggests that the SAPS are not fully aware of the provisions contained within the FCA (removal of firearms) nor the in DVA. In section 7 of the DVA, the Court is given the discretion to grant an order to seize a firearm from a respondent if it is satisfied that the safety, health and wellbeing of the applicant is potentially at risk. The granting of such an order is however contingent upon the Court being satisfied on the evidence before it, either that: (i) the respondent has threatened or expressed the intention to kill or injure himself or herself or any other person in a domestic relationship; or (ii) possession of such a dangerous weapon is not in the best interest of the respondent or any other person in a domestic relationship as a result of the respondent's:

470.1 state of mind or mental condition;

470.2 inclination to violence; or

470.3 use of or dependence on intoxicating liquor or drugs.

471. The weakness in this section are as a result of the following:

471.1 removal of a firearm after a final protection order has been granted is not mandatory;

471.2 removal of the firearm is at the courts discretion;

471.3 the removal of the firearm only stays in effect for as long as the protection order is in effect, and may be returned to the owner;

471.4 there is no mandatory inquiry into the respondent's firearm licence;

471.5 it often requires knowledge on the part of the applicant to bring the issue of the firearm to the court's attention and in so doing, initiating the process which may see the firearm removed; and

471.6 unless the specific offence referred to in the protection order explicitly mentions the use of a firearm, it is unlikely that the court would raise the issue of whether the respondent actually owns a firearm during the hearings.

472. Artz and Jefthas (2011) explain that the problem with the provision lies in its discretionary nature. It is therefore not mandatory for dangerous weapons and firearms to be seized and removed from the respondent. Magistrates are not automatically required to consider whether there is a necessity to grant an order for a firearm to be seized. The DVA also does not make it mandatory for the court to hold an inquiry into the respondent's firearm licence. In addition, in instances where an application for a protection order is withdrawn, the firearm, if legally owned by the respondent is then returned to the respondent. In light of research which has shown that the reasons for withdrawals are complex and multifaceted (including economic or family pressures to withdraw a protection order), the withdrawal of an order may have nothing to do with the applicant believing that she is safe in the relationship or that the abuse in the relationship has in any way diminished. The threat of the use of the weapon in a domestic dispute still exists.

Recommendations

473. The following are extrapolated from the recommendations of Ms Vetten and Professor Artz, both of whose views and recommendations on domestic violence the complainant organisations associate themselves with.

474. On the basis of the provisions of sections 206(2) and (3) of the Constitution which enable provincial legislatures to make different policies based on the particular needs and priorities of provinces, Ms Vetten makes the following recommendations:

474.1 Adaptation of the DVA audit tool –The Civilian Secretariat of Police has designed a tool to audit compliance with the DVA which, it is suggested, should be adapted by the Western Cape Department of Community Safety (WCDCS). In its current form, the tool does not capture the nuances of implementation. For instance, it does not allow for the monitor to check correlation between the number of 508(a) forms and the number of 508(b) entries; the quality of inspection; or the number of infractions observed and how they are subsequently dealt with. It is recommended that WCDCS make changes in consultation with those institutions intimately familiar with the content of the DVA and its

application. It is also suggested that some visits monitoring compliance be unannounced.

474.2 Strengthening oversight –It is necessary to ensure that oversight comprises more than the description and cataloguing of what is (not) being done. Thus: the number and outcome of disciplinary proceedings instituted by individual stations must be reported to the WCDCS which would, in turn, be required to check their correspondence with the findings of the revised DVA audit tool.

474.3 It is recommended that the WCDCS explore with SAPS the development of policy guiding responses to non-compliance with the DVA. This could include the development of guidelines for dealing with different forms of misconduct in relation to non-compliance with the DVA (e.g. failure to comply with record-keeping obligations; failure to respond to complaints; failure to arrest), as well as contributing to the standardisation of corrective measures and sanctions.

475. If not already stipulated, it is recommended that the WCDCS identify time frames in which they are required to report on the findings of their audits to individual stations, as well as time frames in which station commissioners must report on the

steps taken to address identified shortcomings on the implementation of the DVA. Ideally, the WCDCS ought to follow up this report with an unannounced visit in order to verify reported changes at first-hand.

476. The WCDCS should report on the findings of their visits to the Western Cape Provincial Legislature which, in turn, should call the provincial Police Commissioner, as well as individual station commanders, to account for any observed deficiencies in the DVA's implementation. Such sessions should also be open to organisations and community members so that they too may make submissions on their local police station's implementation of the DVA.
477. An avenue of complaint for the general public was lost in the transfer of oversight from the then-ICD to the CSP. It is proposed that WCDCS investigate the feasibility of establishing a complaints mechanism specifically around domestic violence and widely advertise its existence.
478. Training for Khayelitsha SAPS –The exact number of members trained in Khayelitsha around the DVA and victim empowerment is unknown. It is recommended that all three stations be audited in this regard (including all tiers of SAPS management) and a range of training programmes put in place to address deficiencies. These should also equip police officers to engage with a diversity of

domestic violence complainants, including those with disabilities, as well as members of the LGBTI community. Such programmes should not only attempt to increase the number of those trained but should also be appropriately targeted to prevent indiscriminate training. The training should also be situated within a framework that allows for the monitoring of its application –including senior members of management.

479. An important inclusion for training of SAPS members should be sessions focusing specifically on how to correctly complete all the relevant paperwork when recording a reported incident of domestic violence. Attention should be directed at the proper way to complete the SAPS 508(a) and SAPS 508(b). Training in this regard should highlight for members the importance of completing the forms in the correct manner and should emphasise the possible ways in which the information on the forms about the incident could be used; also how to properly file the form and all other documentation used to record incidents of domestic violence.

480. Regarding training, Professor Artz notes that the number of police that attended a training course on Family Violence, Child Protection and Sexual Offences across all provinces totalled 1114 in the 2009/2010 reporting year. This is obviously inadequate. The Khayelitsha police must be (re)trained on (a) the substantive law

on domestic violence; (b) the National Instructions, regulations and forms; (c) the recording and documentation of domestic violence cases; (d) investigation skills with respect to domestic violence; (e) the service of protection orders; and (f) the treatment of vulnerable complainants.

481. Particular attention needs to be paid to: (a) Minimum standards of information that must be imparted to each complainant of domestic violence; (b) Extra-judicial Interventions when a child is affected by or at risk of domestic violence; (c) Service of protection orders; (d) The filing and execution of suspended warrants of arrest; (e) Proceeding with the investigation of cases where there is *prima facie* evidence of an offence, regardless of complainant withdrawal; (f) After hours complainants (when the courts are closed/after - hours applications to bail magistrates); (g) The management of cases where members of the SAPS are implicated in domestic violence cases/have a protection order issued against them; and (h) Being fully compliant with the duties imposed on the police by the DVA.

482. Ms Vetten recommends that CPF members also attend some of this training in order to understand the police's duties in relation to domestic violence. Any course including members of the CPF must also contain a component exploring the role the CPF could potentially play in oversight of the station's

implementation of the DVA. To complement this, it is recommended that the WCDCS and the provincial CPF examine how this local-level oversight could be integrated into provincial oversight.

483. It is also recommended that provincial policy be developed around the victim friendly rooms based at police stations. This should establish what skills, qualifications experience or other relevant criteria are required for those who work in the rooms; how such individuals are to be selected, their training, management and supervision; and the scope and nature of their role, including any potential reimbursement for their efforts. Clear referral pathways by the police to the staff of the victim friendly room need to be carefully delineated and adherence to these assessed by the revised DVA audit tool.

484. Professor Artz makes the following general recommendations as areas that need attention:

484.1 Addressing the impact of crime statistics her view is that effectively addressing the issue of domestic violence is hampered by a lack of knowledge on the true extent of the problem in the country. Because domestic violence does not feature as a distinct category in reported crime statistics, it is difficult to determine the true number of cases

reported to the SAPS and entering the justice system. Up-to-date statistics are of vital importance as they, in allowing a more accurate reflection of the problem of domestic violence, influence decision-making, from both government and civil society, with regard to the allocation of resources and spending on the design and implementation of strategies aimed at addressing the issue.

484.2 Professor Artz therefore recommends that: a) at both a legislative and policy level, the SAPS be required to record and report annually the number of domestic violence cases at station level, and that these numbers then be collated to shed light on statistics on a district, provincial and national level; b) official reported crime statistics include *domestic violence* as a separate criminal offence; and c) in the meantime, all domestic violence (criminal) dockets should be clearly marked as ‘domestic violence’ somewhere on the docket.

484.3 Without the proper resources in place, effective implementation of the DVA is virtually impossible. The DVA provisions increase the policing duties of the SAPS. However, the added responsibility has not been accompanied by a suitable allocation of necessary resources. Proper resource allocation and infrastructure development towards implementing

the DVA is only possible where adequate consideration has been given to the national, provincial and local budgets.

484.4 In this regard, the SAPS must ensure that a proper budgetary analysis of all their tasks and responsibilities under the Act is undertaken, and that such costing is accounted for within their annual budgets.

485. Professor Artz' specific recommendations, which the complainant organisations support, appear below:

485.1 Clarification and in service training about the service of protection orders is urgently required. There is currently some uncertainty about whether "personal service" or "no personal service" is required and what that means in practice. This is particularly problematic when the *complainant* herself is the only adult in the household at the time of service.

485.2 SAPS members should therefore be made aware of the implications of improper service to respondents, particularly as it relates to the attrition of domestic violence cases which occur as a direct result of the failure to serve documents correctly and timeously.

- 485.3 In the medium term, it is recommended that the section 13 of the DVA be amended to limit the number of role-players tasked with serving documents to respondents and thus eliminate the fragmented nature of the current practice.
- 485.4 There is a particular urgency to reinforce procedures in relation to dealing with complaints of domestic violence committed *by* SAPS members (including in relation to the removal of firearms, where members are criminally charged with domestic violence related incidents or where they have breached a protection order against them).
- 485.5 Members should be aware of the range of offences created by the FCA (for example, handling of a firearm while under the influence of alcohol). The provisions of the FCA must also be strictly applied in domestic violence cases, including laying ancillary charges relating to firearms and initiating section 102 FCA inquiries where appropriate.
- 485.6 It is recommended that the firearms provisions in the DVA be more carefully scrutinised in light of compelling empirical evidence, which suggests that there are very real dangers to victims of abuse where the respondents have access to a firearm, be redrafted to (1) make enquiries

regarding ownership of or access to a firearm mandatory; (2) afford better legal protections to victims even in instances where the case is withdrawn.

- 485.7 All domestic violence (criminal) dockets should be clearly marked as ‘domestic violence’ somewhere on the docket. This includes all cases where the accused and the complainant are in a “domestic relationship” as defined by the DVA.
- 485.8 Any interventions in terms of the DVA should be noted in the docket for future reference. This may include, for example, where the complainant is advised on how to obtain a protection order or has obtained a protection order.
- 485.9 Any previous history of domestic violence committed by the suspect towards the complainant *must* be detailed in the docket as well as on the relevant DV Incident Report form [SAPS 508(a)]. Where the information has not been obtained as part of the complainant’s initial (A1) statement, police members should establish this by means of a supplementary statement.

485.10 Where criminal charges are withdrawn with a view to initiating a section 102 inquiry, this information should be clearly noted in the docket.

485.11 Police members must identify instances where the complainant is at high risk of intimidation and take appropriate steps, for example, referral to victim support services and opposing bail where the suspect is arrested. This should also be noted in the docket (i.e. 'high risk').

485.12 Strict compliance with Standing Orders on closing of dockets in relation to cases involving domestic violence (for instance, an assault where the complainant and the accused are in a "domestic relationship" as defined by the Domestic Violence Act).

486. A clear distinction should be made between cases where a protection order is in place and those where the complainant has not obtained an order against the suspect. Where no protection order is in place, the charges would relate to common law offences such as assault (common) or assault GBH, rape, etc. Where there is a protection order, and the complainant is alleging a breach of the order, the charge would be one of contravention of section 17(a) of DVA. A further charge may be added where the breach of the order also constitutes a criminal offence.

487. Research has shown that when complainants go to the magistrate's courts first, then bring the protection order to the station, the SAPS members do not see any point in filling out the SAPS 508(a), as they were not the point of first report of the incident. The 508(a) assumes that the police are the first point of reporting. The SAPS 508(a) needs urgent revision. The form must be amended to reflect the possibility that the complainant has sought either a protection order or other provision of service. In absence of this, it looks like the SAPS have not complied with their duties.

488. The SAPS 508(b) on the other hand, should be filled out "progressively", not just by reporting officer. This needs to be understood by SAPS members as this breaks the recording chain. In addition, there is information that is required by the Register SAPS 508(b) that members can only really get from the court. This then gives the impression that the SAPS are not completing the Register.

489. The SAP 508(a) form must also be amended to include:

489.1 A section where the complainant signs the form in addition to the signature of the SAPS member.

489.2 A section where it can be verified that the complainant has been informed of his/her rights under the DVA.

- 489.3 A section denoting whether (i) the accused is in possession of a firearm or dangerous weapon; and (ii) whether the complainant would like that firearm removed.
- 489.4 A section to indicate that the complainant is a person with a disability.
490. Should a criminal charge be laid, a copy of the SAPS 508(a) should be put into the docket.
491. Members must be given *more detailed instructions* about how (and why) to fill out the DV Incident Reports (SAPS 508a's) and the DV Registers (SAPS 508b's). It is also crucial that the reasons for recording domestic violence incidents are clearly articulated to members, and that they receive training on how to optimally utilise these records.
492. It is recommended that the SAPS attach a copy of the FORM 1 to SAPS 508(a), with the complainant's signature on FORM 1. The complainant then gets a clean FORM 1 and SAPS has copy of her signed FORM 1.
493. Organisations involved in assisting victims of domestic violence, and that provide other services related thereto, for example, MOSAIC, Nonceba Family Counselling Centre and Rape Crisis, must be properly funded and supported by

the Province.

494. The re-introduction of the “Community Peace Programs” (that were implemented between 1997 – 2009) referred to in Professor Cartwright’s testimony would go a long way toward improving relations between the community and SAPS in Khayelitsha by providing a legitimate and accountable communal restorative justice platform.⁶⁶⁵ The mediation of domestic violence related issues should be included in the scope of matters to be addressed by the community peace committees.

⁶⁶⁵Professor John Cartwright gave evidence to the Commission on 15 May 2014, together with Julie Berg and Guy Lamb. The transcript of their evidence appears at pages 7622-7665. The Peace Committees are discussed between pages 7627 – 7633.

Q. SEXUAL VIOLENCE

495. The complainant organisations complained that community members reported that girls and women are frequently beaten and raped whilst walking to and from communal toilets or fetching water from communal taps close to their homes, while domestic abuse poses a threat to the safety of many women within their own homes.

496. This section addresses the adequacy and effectiveness of SAPS response sexual violence in Khayelitsha.

497. The evidence before the Commission is that between March 2003 and March 2011 there was a 9.3% increase in the number of reported sexual crimes in Khayelitsha.⁶⁶⁶ In the period from 2008/9 – 2010/11 there was a 15.9% increase in sexual assaults in Khayelitsha.⁶⁶⁷ These statistics accounted only for reported crimes and therefore did not reflect the true crime rates; nor did they account for the fact that for certain crimes such as rape the actual crime rate is likely to be an order of magnitude greater than the reported rate.⁶⁶⁸

⁶⁶⁶ Complaint para 55

⁶⁶⁷ Complaint para 59. See footnote 24 thereof which refers to the South African Police Crimes Statistics, 2003/2004 – 2010/11.

⁶⁶⁸ Complaint para 60

498. In her statement made to the Commission Professor Lilian Artz referred the Commission to the 2012 *Crime Research and Statistics* from the South African Police Service⁶⁶⁹ which shows that reported cases of “sexual crimes” in Khayelitsha have significantly decreased since 2004 from 588 reported offences in the April 2003-March 2004 period to 249 reported cases in the April 2011-March 2012 period. Drawing on the nominal figures provided by the SAPS, this reflects a 58% decrease in reported incidents. The statistics also show a 90% decrease in reported cases of neglect and ill-treatment of children (although this may be a result of more specialised services, like the FCS’s taking up cases) and a 48% decrease in kidnapping cases from the periods April 2003-March 2004 to April 2011-March 2012.

499. As correctly pointed out by Professor Artz, however, “*low numbers*” of reporting do not actually mean that sexual offences are declining in Khayelitsha or that efforts towards crime prevention are becoming more effective. Reduced levels of reporting (and recording) of these cases could reflect a number of things, such as that:

499.1 rape complainants are reluctant to report sexual offences (which may be due, in part, to community perceptions that the police are ineffective in

⁶⁶⁹ Retrieved at: www.saps.gov.za/statistics/reports/crimestats/2012/provinces/w_cape/pdf/khayelitsha.pdf

arresting, investigating and managing rape cases);

499.2 the police are turning complainants away and/or discouraging them from reporting incidents (thus incidents may be reported, but no charges are laid by the police);

499.3 station level “*quotas*” are being placed on the number of rape cases that the police will accept (by means of dissuading complainants from filing charges);

499.4 sexual offences are being “*reclassified*” as other (lesser) offences as a result of the promulgation of the Criminal Law (*Sexual Offences and Related Matters*) Amendment Act 32 of 2007;

499.5 complaints are being withdrawn by either the police or by complainants shortly after reporting and before being reflected in the CAS system;

499.6 cases are not being registered on the CAS system at all; or

499.7 cases are being referred directly to the Family Violence, Child Protection and Sexual Offences (“*the FCS*”) Unit without first being registered at the Khayelitsha station(s).

500. Evidence of the FCS Unit was placed before the Commission principally by Colonel Sonja Harri who occupies the position of Provincial Commander: Family Violence, Child Protection and Sexual Offences Unit.⁶⁷⁰ She reports to the Provincial Head of Detective Services, currently General Molo. Dr Jenine Josias of the Thuthuzela Centre also testified how the Thuthuzela Centre interfaces with the FCS Unit and other stakeholders in the provision of its services, the main objective of which is to provide holistic care to sexual violence and domestic violence survivors under one roof; to reduce secondary victimization and increase the conviction rates of perpetrators.

501. In 2010 the instruction came from SAPS National that each cluster must have an FCS unit. There are 25 clusters in the Western Cape and the FCS units are attached to the different clusters. A FCS unit then serves all the police stations in that particular cluster. The Khayelitsha FCS Unit serves the eight police stations in the Khayelitsha cluster which include stations in the Helderberg Basin.

502. FCS units attend cluster meetings and they account to the cluster commanders at their cluster crime combatting forums with regards to cases that they are handling. All specialised units, including the FCS fall under the direct command of the Provincial Head: Detective Services.

⁶⁷⁰ She gave evidence to the Commission on 27 March 2014. The transcript of her evidence appears at pages 5765 to 5878 (“Harri transcript”)

503. The process when a survivor presents with a complaint at a CSC is that as soon as she states that there has been a rape or sexual assault there is a protocol in place with regards to how the complaint must be handled. The survivor must immediately be taken out of the CSC to a private room. There are or should be victim-friendly rooms located at the FCS unit.
504. Most stations have counsellors available to them. Their role at the stage where a survivor is reporting a complaint is to provide support to the survivor, to try to calm and stabilise the survivor. The FCS unit will then be contacted and it is there that the survivor's A1 statement will be taken.
505. The FCS unit operates on a 24 hour basis. There are always officers or members on standby. The station therefore will contact the FCS unit detective on standby and inform him/her of the case. If the survivor has not been taken to the doctor as yet, the investigating officer will come to the station to meet the survivor and take her to a hospital.
506. The detective who is called by the station can be of the rank of constable, warrant officer or captain. Their ordinary working hours are from 8am to 4pm, and if a detective is on standby he will be on standby from 4pm onwards.

507. Friday to Monday are typically extremely busy periods for all units including the FCS. As to how many members are on standby in any given unit depends on the size of the groups and the availability of members in to group due to issues such as sick leave, maternity leave and so on.

508. The Khayelitsha cluster has fourteen members⁶⁷¹ and three commissioned officers. The three officers are made up of one lieutenant colonel and two captains. The lieutenant colonel is the commander of the FCS Unit and she was appointed late last year. The Khayelitsha cluster FCS unit also has two forensic social workers. In comparison the Nyanga cluster has four officers and nineteen non-commissioned members in its FCS unit.

509. Three or four of the fourteen non-commissioned members in the Khayelitsha FCS Unit handle cold squad, i.e., they deal with old dockets in addition to working on standby and responding to new FCS cases. In the view of Col Harri there are too few members in the Khayelitsha FCS unit for these members to be dealing exclusively with the backlog of old cases to the exclusion of working on standby and responding to new cases.

⁶⁷¹ According to Col. Harri by members it could be either a constable, a warrant officer, or a sergeant. Harri transcript page 5777 line16

510. The commander of the unit, being the lieutenant colonel, is supposed to be available twenty four hours a day seven days a week. In addition to that are the different groups working normal hours and on those on standby twenty four hours a day seven days a week.

511. According to Col Harri the human resources at the Khayelitsha cluster FCS are not sufficient. There is a shortage of six members. The Khayelitsha FCS unit should have 24 members made up of 20 non-commissioned members and 4 officers. In addition to this capacity, there should be a satellite unit for the Helderberg Basin itself, because the Khayelitsha cluster is characterised by vast distances between hospitals, doctors and courts in responding to the sexual assaults which occur in the cluster. The majority of sexual assault cases which the FCS unit must respond to originate in the greater Khayelitsha area rather than in the Helderberg Basin. In these circumstances the more effective response would be to dedicate substantially more resources to Khayelitsha.

512. One of Col Harri's responsibilities includes performing inspections of the FCS units in the province. In her office her staff consists of herself, the coordinator of forensic social workers and a clerk only.⁶⁷² The process of undertaking these inspections is that at the beginning of the year Col Harri draws up an inspection

⁶⁷² Harri transcript page 5798 line 3

list looking at the performance of the units and identifying which units need to be inspected. The list is then submitted to General Molo for his approval and also sent to the national head of FCS for her information. The inspections are then conducted by Col. Harri herself who will enlist the assistance of some unit commanders and, where there is more than one officer at a unit, an officer or officers from that unit. The inspections are conducted in accordance with National Instruction 6.

513. Col Harri's office therefore exercises oversight over the FCS units. The inspection reports produced by her are submitted to General Molo and to the Provincial Commissioner's office. Once the PC is satisfied with a report it will then go out to the specific FCS unit for its response to the findings in the report. If the inspection reports are requested by the national head of FCS units, they are submitted to her via the office of the PC.

514. In her evidence Col Harri identified the following challenges facing the Khayelitsha FCS Unit:

514.1 FCS unit members suffer from low morale because of the nature of the cases that they deal with and also because the unit is understaffed. Although the national instruction regulating the Unit requires that unit

members including the officers go for debriefing sessions every six months this is often not observed.

514.2 There is a mentality within in the police that '*cowboys don't cry*', and many members do not like to be referred to Employee Health and Wellness for counselling. This evidence corroborated views expressed by Dr Josias who testified in regard to the EHW program that '*...as a worker if like promotion possibilities come up, it's not supposed to be used against you but it is used against you because then you're being seen, especially in the police, as being weak you can't handle it, you can't cope so you cannot get another rank. So they don't go...*'⁶⁷³

514.3 Over the last three years, due to the poor performance of FCS Khayelitsha, teams have had to be sent to assist the Unit either with their column 7 dockets and tracing of suspects, making sure that the investigations are done, or those dockets in column 8.6 that were struck from the court roll to see what was outstanding, get the necessary information and ensure that those cases were back on the court roll. Sending these teams to Khayelitsa FCS means taking members from other units to assist the FCS which has its own implications for those

⁶⁷³ Josias transcript page 622 line 11

units.

514.4 These deficiencies impact on the quality of the investigations conducted by the FCS unit, with the result that some cases are struck from the roll or withdrawn because police investigations are incomplete.

514.5 FCS investigators pursue unstructured, unfocused and therefore ineffective investigations.

515. An inspection conducted in June 2013 revealed serious problems with the Khayelitsha FCS Unit. According to the inspection report for this period, the following findings were made⁶⁷⁴:

515.1 Members are always reminded to register informers but they do not. The recruitment of informers is included in members' job descriptions which they agreed upon. The fact that members fail to recruit informers is evident in the unit's performance.⁶⁷⁵

515.2 The two officers at the unit are not managing the office effectively. At each forum that they get they complain but fail to mention the number of times the Provincial Commander had to step in to ensure that their

⁶⁷⁴ Bundle 11 (5); 72 'SH1' 27 March 2014

⁶⁷⁵ Para 5.5, page 6

column 8.6 dockets are reduced. This exercise is not sustainable as members from other units have to be taken from their work to assist Khayeltisha every time.⁶⁷⁶

515.3 Khayelitsha FCS is the worst performing unit and is bringing the whole FCS component down. The unit also needs to arrange for a debriefing. Although there are exceptions to this, the officers and members need to realise that they will not be able to keep management hostage with their negativity and non-performance.⁶⁷⁷

515.4 The officers do not follow up on their own instructions that they give in dockets. Too many complaints are still being received from Khayelitsha and Strand Courts.⁶⁷⁸

516. The inspection of registers revealed that:⁶⁷⁹

516.1 A photo-album is available but has fallen into disuse.

516.2 A lecture register is not being utilised on a daily basis. Guidance given with regard to this register on 17 May 2012 has not been complied with.

⁶⁷⁶ Para 6.5, page 7

⁶⁷⁷ Para 6.5, page 7

⁶⁷⁸ Para 7.2 page 8

⁶⁷⁹ Para 8.2 page 8

Members do not sign acknowledgement of instructions/correspondence/guidance received.

516.3 The after-hours register is in disarray. The dates are not in sequence and the maintenance of the register needs attention. Most of the operations are being conducted by the members without an officer participating. The unit has two officers currently and they should take turns participating in operations and give guidance to members. Once again the guidance that was given at the previous inspection has been ignored.

516.4 The HIV-register is in place but is not being utilised properly.

516.5 As for the fingerprint register, registers 2 and 3 have a number of SAP69s outstanding since 2008 in column 11. Although regular inspections are being done monthly, their quality needs attention.

516.6 Both officers are not writing up their diaries properly. No reference numbers of CAS number are quoted in their diaries of administrative duties conducted by them or meetings attended by them.

517. The inspectors led by Col Harri concluded that *'The unit is not performing well; although they receive fewer cases than Nyanga and Goerge FCS units. The unit*

needs 'new blood' that are willing to work.'

Findings

518. In these circumstances, a finding of ineffectiveness in the FCS unit's response to sexual offences in Khayelitsha is the only logical conclusion. It is clear from repeated findings without any improvement that the unit is operating inefficiently. The people who are at the receiving end of this inefficient and ineffective service delivery are those who can least afford it, namely survivors of sexual violence.

519. Given this evidence and other testimonial and documentary evidence before the Commission, it cannot be said that an effective policing strategy has been developed and implemented to address the problem of sexual violence in Khayelitsha.

520. With these basic and ongoing challenges, the FCS Unit has had not had capacity to develop and implement an effective strategy for responding to sexual violence in Khayelitsha; nor has the unit succeeded in working with other stakeholders and partners in dealing with crimes of sexual violence in Khayelitsa.

Recommendations

521. The complainant organisations support the adoption of the following recommendations made by Ms Lisa Vetten in her report to the Commission:

521.1 The FCS Unit is not adequately staffed, judging from their docket load. This under-staffing must be addressed as a matter of priority to ensure that its effects do not cloud evaluation of the Unit's performance.

521.2 Additional, new detectives should also not be inexperienced as this will only compound the challenges facing the Unit.

521.3 All FCS detectives must complete depression, trauma and burnout inventories. Where individuals score highly on these scales, careful thought needs to be given to their continued well-being, including allowing individuals to consider taking on different duties in the Unit for a time, or even transferring into different work altogether. In addition, given the stigma attached to seeking psychological assistance, it is recommended that mandatory training be provided to detectives around the identification and self-management of trauma and burnout, debriefing and counselling. It may be helpful for the SAPS to work with a range of mental health specialists in developing a variety of strategies for tackling

burnout and trauma.

522. Given the conclusion in 2013 inspection report for the FCS Unit that *“(m)anagement of the unit continues to be in a pathetic state,”* the provincial office must take decisive action to improve this state of affairs. It is recommended that some form of assessment be undertaken to identify the reasons for this and managers either be provided with the necessary support and training, or be subjected to corrective, disciplinary action.

523. More frequent inspections of the FCS unit should be conducted until the Unit has managed to turn around its performance and outputs. In this regard, an inspection of this Unit should be conducted for each quarter for at least a period of three years, or until performance improves, whichever occurs sooner. Notably, the inspection report was only provided to relevant parties some six months after the inspection. This delay is far from ideal and the province needs to implement a speedier approach to relaying findings to Units and following up on measures taken to address problems.

524. Training must be provided to all SAPS members working in the FCS Unit and dealing directly with survivors in the skills of listening and being empathetic to victims; taking statements from children; providing protecting for child survivors.

Whilst these may be viewed as basic skills they are critical to ensure that there is no secondary victimisation of survivors through contact with the FCS Unit.

525. Social workers need to be available at the stations to assist with child victims.
526. As was demonstrated from the evidence of Col Harri, the provincial office itself needs to be capacitated with human resources and other support in order to enable it to be effective in performing its critical monitoring and oversight functions.
527. The evidence before the Commission was that a co-ordinating structure with various stakeholders has already been established by the Thuthuzela Care Centre, but that the FCS Unit does not participate in these meetings. One way to address non-attendance is to make these meetings compulsory for FCS managers and an aspect of their performance rating.
528. Again, any recommendation that is adopted should be reviewed within a year of its implementation to assess its effectiveness, as well as any unintended consequences of the recommendation.

R. SPECIFIC CHALLENGES: THE ROLE OF ALCOHOL AND OTHER DRUGS IN CONTACT CRIME

529. Notice 17 asked the experts to consider whether: (a) alcohol plays a role in the rate of serious contact crime in Khayelitsha; (b) if so, whether there is an effective police strategy to address it; and (c) whether the provisions of the Western Cape Liquor Act 4 of 2008 (“WCLA”) might have an adverse effect on the policing of informal liquor outlet.

The role of alcohol

530. The Complainant Organisations submit that the evidence demonstrates that alcohol in itself, and the sale of alcohol in informal liquor outlets, contributes to serious violent crime in Khayelitsha. According to some estimates, there are as many as 1 400 shebeens in Khayelitsha, and only 133 licensed liquor outlets.⁶⁸⁰ The alcohol problem is, clearly, fuelled primarily by illegal liquor outlets.

Finding

531. The Commission should make the following finding:

⁶⁸⁰ Maj Gen Jacobs Testimony, Transcript page 6172.

531.1 Alcohol and illegal liquor outlets are a significant contributor to contact crime in Khayelitsha.

Policing Shebeens

532. The evidence demonstrates that the police engage in large, paramilitary operations to shut down shebeens.⁶⁸¹ As Professor Steinberg points out, this approach is unhelpful and harms the police's relationship with the community and their ability to respond to complaints.⁶⁸² As he put it when testifying before the Commission:

*“If 99% of the time it's okay, when suddenly one noticed armed men come in very aggressively and closing them down it's precisely the sort of police action which damages the relationship between the community and the police.”*⁶⁸³

533. While acknowledging that shebeens are a problem, he advocated a more reasonable and predictable approach to dealing with shebeens that asks *“precisely what about the pattern of drinking in that area is causing crime and target[s]*

⁶⁸¹ Mr Giliomee Testimony, Transcript page 6891; Maj Gen Jacobs Testimony, Transcript page 6181.

⁶⁸² Steinberg Report, Bundle 12, Document 2 at paras 3.7-3.9.

⁶⁸³ Prof Steinberg Testimony, Transcript page 8034.

*very carefully, through talk and negotiation, exactly how drinking patterns should be reshaped and what role should [police] play there.*⁶⁸⁴

534. According to Giliomee, an alternative tactic for dealing with shebeens is an entrapment operation in terms of s 252 of the Criminal Procedure Act 51 of 1977. In his view, entrapment operations lead to the collection of better evidence, and therefore are more likely to lead to prosecution.⁶⁸⁵ Major General Jacobs highlighted the difficulties that SAPS face in prosecuting illegal liquor outlets.⁶⁸⁶

535. Giliomee also noted a general problem with the policing of shebeens. Shebeens have a very low entry level; they do not require a lot of capital or skills to open a shebeen. That means that, *“when you’ve got a lot of unemployment in the area, like the area we’re talking now, once you close one illegal outlet, there is three other families that see the opportunity and you’ll go back and there’s three other. Where you close down one, there is a number of others taking that place and I think, I’m not a policeman, never was, but I think that must be very demoralising.”*⁶⁸⁷

⁶⁸⁴ Ibid at 8034-8035.

⁶⁸⁵ Giliomee Testimony, Transcript pages 6892-6893.

⁶⁸⁶ Maj Gen Jacobs Testimony, Transcript pages 6174-6178.

⁶⁸⁷ Ibid at page 6893.

536. However, if the shebeen that is shut down is replaced by one less likely to permit underage drinking, fighting other forms of crime, it will be a victory for the police.

Findings

537. Accordingly, the Complainant Organisations submit the Commission should make the following findings and recommendations with regard to the policing of shebeens:

537.1 The use of large-scale paramilitary operations to raid shebeens harms relationships with the community and is ineffective as a method to deal with unlicensed liquor sales.

Recommendations

538. We propose that the Commission make the following recommendations with regard to shebeens:

538.1 **Immediate: SAPS should avoid the use of large-scale, paramilitary operations to raid or shut down shebeens unless absolutely necessary to preserve order.**

538.2 **Immediate:** SAPS should, instead, focus on entrapment operations directed at the prosecution of the worst shebeen owners that are engaged in, or associated with, other forms of crime.

538.3 **Medium:** SAPS should work together with the Western Cape Liquor Authority and other relevant roleplayers to develop a strategy for the legalisation of shebeens.

The WCL Act

539. With regard to the third question, the evidence of Mr Giliomee was unambiguous: shebeens should be licensed, and the current zoning rules make that impossible in Khayelitsha. He succinctly summarises the need to license shebeens as follows:

“[O]nce you’ve got a licensed outlet, that outlet is on your system. That license holder can be invited to meetings, to training sessions. That license holder will form part of the Liquor License Forum, which is chaired by the South African Police officer responsible for liquor in that area. So it’s easier to influence such a liquor license holder to stick to the rules. Stick to the rules of not serving to under 18s. Stick to the rules of closing at a certain time at night and that sort of thing than having

unlicensed, unregulated liquor traders where you've got no control, no education, it's very difficult to regulate such an outlet."⁶⁸⁸

540. Major General Jacobs supported this approach.⁶⁸⁹

541. Giliomee also confirmed that, in his view, unlicensed liquor outlets are associated with social ills like organised crime and drugs. Licensing them may also reduce those crimes.⁶⁹⁰

542. However, under the WCLA liquor outlets can only be licensed in areas that have been zoned for business. Very few areas in Khayelitsha are zoned for business. Mr Giliomee recommends the creation of high street zones where liquor outlets would be located.⁶⁹¹

543. In order to achieve the goal of licensing currently unlawful shebeens, it is necessary to either: (a) amend the WCL Act to permit liquor outlets in residential

⁶⁸⁸ Mr Giliomee Testimony, Transcript page 6889. See also Giliomee Report (Bundle 12, Document 13) pages 5-6.

⁶⁸⁹ Maj Gen Testimony, Transcript pages 6172-6173 ("MS BAWA: ... I was told that we rather licence them than leaving them unlicensed. Do you agree with that approach, that the licensed outlet is better to regulate than an unlicensed outlet?

MAJ GEN JACOBS: I would agree. I think, firstly, it would operate within the law. That's the one thing. They stand to – there's compliance requirements that they would have. They could – if they're licensed, they could get the big companies, SA Breweries and Coke and all this, sponsors their 'fridges and all of those things, so there's a kind-of – once they lose that, they lose – we've done a few examples where we've closed, under the old Act, you could close them for 14 days. If you compile a Section 141 report, you close them for 14 days and they come back, how can we comply, how can we ensure – so, kind-of there is a notion that if you legalise you can better monitor.")

⁶⁹⁰ Ibid at 6890.

⁶⁹¹ Ibid at 6886.

areas; or (b) re-zone areas of Khayelitsha to business areas. These actions need to be taken by Province or the City respectively.

544. The Complainant Organisations support the proposal of a process of licensing currently unlicensed liquor outlets. Shebeens are an inherent part of life in Khayelitsha – they cannot be legislated or policed out of existence. It is necessary to regulate them in order to begin ensure that they obey the rules regarding the sale of liquor, and to decrease the amount of other crime that occurs there. High streets are one way to achieve that.

545. In the interim, it is appropriate for SAPS, working with the WCLA, the City and other roleplayers, to provide a form of informal regulation. Mr Giliomee was sceptical of this suggestion because, in his view, it had been unsuccessful in Gauteng.⁶⁹² The main problem appeared to be that it was impossible to take action against unlawful shebeens because they had been granted interim permits to operate for a long time.

546. While that is a legitimate concern, the Western Cape could learn from the Gauteng experience. It is surely possible to structure the regime in a way that does not prevent the authorities' ability to act if it becomes necessary. It need not

⁶⁹² Ibid at 6894.

be a formalised permit system that could give rise to claims of legitimate expectation.

547. The Complainant Organisations have in mind the type of approach described by Prof Steinberg in evidence:

“You know I’ve seen police station commanders use very creative and intelligence in subtle ways of regulating shebeens which were formerly illegal and usually it involves developing a partnership with the shebeen owner and with the resident structures around it. Sitting down and finding out what is distasteful about that shebeen, what sort of practices around it generates crime and what aren’t. Once those discussions happen in the open and some sort of informal rules of how a shebeen operates are acceptable to all they become much easier to implement simply because it’s happened openly and transparently, residents around it being involved, there is some question of a shebeen owner (indistinct). Policing shebeens is very, very hard particularly in the circumstances you’re talking about and it requires spontaneous and on the ground intelligence from a police leader to look at different to solutions in

*different cases. But I have seen very careful and clever thinking around illegal shebeens in various parts of the country.”*⁶⁹³

548. The Complainant Organisations submit that the Commission should make the following findings and recommendations:

Findings

548.1 **The inability to license shebeens in most areas of Khayelitsha because few areas are zoned for business contributes significantly to the number of unlicensed shebeens, and the criminal problems associated therewith. The large number of unregulated and unlicensed shebeens increases the burden of serious and violent crimes such as murder, attempted murder, rape, assault GBH and domestic violence. This places an immense strain on police resources and requires a different approach to be planned and implemented.**

Recommendations

548.2 **Short: A task team should be established consisting of representatives from the WCLA, the City, SAPS and any other**

⁶⁹³ Prof Steinberg Testimony, Transcript page 8042.

relevant state or non-governmental organisation to investigate law reforms to deal with the current inability to bring unlicensed liquor outlets into the legal regime.

- 548.3 **Immediate:** In the interim, SAPS should – in consultation with the WCLA, the City, shebeen owners and NGOs – adopt an informal regulatory approach that sets clear and reasonable rules for shebeens, and focuses law enforcement operations only on those that break those rules.

S. SCHOOL SAFETY

549. Dr Kaminer found that children in Khayelitsha ‘*are exposed to violence in multiple domains, with few safe spaces that they can access.*’⁶⁹⁴ School premises are not exempt from this violence. Dr Kaminer added that ‘*school grounds and access to routes to school are experienced by many children as dangerous at a life threatening level, resulting in school avoidance and drop-out.*’⁶⁹⁵

550. In her statement, Ms Dwane notes that ‘*the high incidences of violent crime affect school going youth as much as it affects other population groups, if not more.*’⁶⁹⁶ (emphasis added)

551. The elements of criminality in Khayelitsha schools manifest in the form of gang violence among learners, vandalism and burglary, drug usage, the rape of school girls on their way home from school and other crimes.⁶⁹⁷

552. With regard to burglaries at schools, it has been found that SAPS’ response and investigation of these types of cases has been inadequate. The evidence given by

⁶⁹⁴Bundle 8(8), Exhibit number 8 at page 10.

⁶⁹⁵Bundle 8(8), Exhibit number 4 at page 10.

⁶⁹⁶Bundle 1(5), File E, Document number 38 at para 34.

⁶⁹⁷Mahlutshana transcript page 493; Mjonondwana transcript page 524.

the school principals of Chris Hani Senior Secondary and Zola Secondary School, Mr Mahlutshana and Mr Mjonondwana,⁶⁹⁸ respectively, speak to these issues.

553. Mr Mahlutshana's evidence revealed two problematic areas in this regard. The first is in relation to poor communication and telephonic response by SAPS. Mr Mahlutshana stated: *'[m]y worst experience is when I pick up the phone or I ask my secretary to pick up the phone and try to get assistance from the Harare police station which has not been the best in terms of responses or promptness in picking up the phone and assisting in that particular aspect.'*⁶⁹⁹ The second problem area relates to the reporting of burglary incidents at Chris Hani Senior Secondary School and the poor investigation thereof. Mr Mahlutshana made mention of 6 – 7 break-ins at his school in the past four years where many important school resources were stolen. He expressed his grievance as follows: *'[a] particular case you would make leads and ask the police to follow through on what you have been given as information and there will be no outcome and some of the cases I don't know where did they end up at the end of their investigation and so forth.'*

554. Similarly, Mr Mjonondwana of Zola Secondary School raised the issue of burglaries in his school where overhead projectors, desktop computers, LCD

⁶⁹⁸Xolela Mjonondwana gave evidence to the Commission on 28 January 2014. The transcript of his evidence appears at pages 509 to 533 ("Mjonondwana transcript").

⁶⁹⁹Mahlutshana transcript page 409.

screens from the computer labs, gas bottles, buckets and kitchen utensils to the value of R100 000.00 were stolen.⁷⁰⁰ Again, the police response to these burglaries was dismal. The private security guards at Zola Secondary School called the Site B police station between 1am and 2am one morning to report that they had apprehended the burglar and called on the police to arrest him. However, police officers only arrived at the school after 8am, six hours after the initial call was made.⁷⁰¹

555. Counsel for SAPS conceded that the police response to burglary at Chris Hani Senior Secondary School depicts ‘*an unsatisfactory situation.*’ This has contributed to the loss of confidence by the community in the SAPS, and in SAPS’ ability to ‘*deal with criminality affecting schools,*’ as recorded in the following exchange between Adv. Masuku and Mr Mahlutshana:

‘MR MASUKU: ... do you think that the evidence that the community of Khayelitsha has lost confidence in the SAPS, the issue of gangs for example, the fact that you’ve had six or seven burglaries which is quite concerning and there is no report back on that. Is it your view that there is now a loss of confidence by the community in the SAPS?’

⁷⁰⁰Mjonondwana transcript page 523.

⁷⁰¹Mjonondwana transcript page 515.

MR MAHLUTSHANA: Yes if you could go back to my school parents at the meetings they will have that particular sense that really police are not doing enough and they don't have confidence in them to be able to deal with the issues of criminality that is affecting our community.

MR MASUKU: Yes because I mean it's not right that a school is burgled six or seven times, reports are made to the police and in certain instances leads are given to the police and you tell us that there has no feedback and no convictions, that is an unsatisfactory situation.

*MR MAHLUTSHANA: Yes my statement based solely on that one because of what we have experienced and there is no other way around it.*⁷⁰² (emphasis added)

556. Although not a school itself, the EE offices located in Elonwabeneni have also been the site of theft, without a positive response from the SAPS. As recorded in Yoliswa Dwane's statement, *'[i]n 2012, two separate incidences of theft occurred on the EE premises in which computers and kitchen appliances were stolen. Despite reporting the incidences at the local police station, no investigators were sent to assess the property where the theft occurred, or conduct further*

⁷⁰²Mahlutshana transcript, page 505 – 509.

*investigations.*⁷⁰³ EE members (including school-going youths) and EE employees have also been victims of crime on their way to and back from the EE offices, and again, have experienced a lack of response from the SAPS when reporting the incidences of crime, thus leading to a ‘*general apathy toward reporting incidences of crime, save for what is needed to obtain information for insurance claims.*’⁷⁰⁴

557. In addition to break-ins, another issue threatening safety in schools is school riots. School riots were addressed in Mr Mahlutshana’s evidence who noted that the police were unable to assist in that they took long to respond, and the two police officers who were sent were insufficient to deal with the riots. Mr Mahlutshana explained this incident as follows:

‘[T]here were riots at our school in September 2011 we tried to call police and inform them that the kids were starting to riot against the administration of the school and so forth and they sent in a van and that particular two policemen were overwhelmed by those learners in their space of doing riots. They came in probably after 30 minutes to 40 minutes and the kids were all over and damaging the government property and creating havoc at school and so forth. In those particular

⁷⁰³Bundle 1(5), File E, Document number 38 at para 37.

⁷⁰⁴Bundle 1(5), File E, Document number 39 at para 38.

*instances if they, I would say they couldn't help us at the time that we wanted them to assist us.*⁷⁰⁵

Findings

558. In the light of the evidence contained in the record of the Commission's proceedings, it can be said that school safety raises serious concerns from the perspective of learners' rights to education, as well as the rights of all in the school community to safety.

559. It is apparent from the evidence on the record that SAPS has not developed or implemented an effective strategy to deal with the issues arising around school safety.

Recommendations

560. It was suggested by various witnesses that the occurrence of crime in and around schools could be decreased through police visibility in the morning (before school) and in the afternoon (at the end of the school). For example, Mr Mjonondwana, the school principal of Zola Secondary School said the following:

⁷⁰⁵Mahlutshana transcript page 501.

*'MR MJONONDWANA: It happens that, I don't think it is, there's enough visibility. I mean if I were to speak for the safety of our own learners round about half past seven till a quarter past 8 if there can be visibility of the police in the morning and in the afternoon around about half past two to quarter past three just to be visible around the area it can serve as a deterrence to anyone who might be intending to commit crime. Just for the record again towards the end of last year round about the school one of our girls was actually a victim of rape moving from school to home so the visibility of the police could actually help to deter such criminal activity.*⁷⁰⁶

561. Mr Sifiso Zitwana also highlighted the need for more police visibility and patrols, and added that the lack of police visibility has resulted in school children travelling in fear and that this fear is something that they have come to accept, however, this should not be the case.

'MS MAYOSI: Have you seen patrolling or did you see them at the time?

MR ZITWANA: I was young but I do know a police van but I don't recall seeing the police at that time patrolling. I remember [my] sister knew this, she would always tell me that when you are going to cross the

⁷⁰⁶Mjonondwana transcript page 526.

bus stop or walk past the bus stop you must make sure you walk in a group to ensure that you will not get robbed. Sometimes my sister would walk with us so that she can help us to cross the road but sometimes because she was taking an early we were going by ourselves as children but what we were doing, we were going in groups to make sure that these guys cannot get hold of us.

MS MAYOSI: So were you scared going to school?

MR ZITWANA: In the beginning I was scared of going to school but as time went by I started getting used to the situation and then I also used to walk with my brothers until we all got used to it. We also knew the tricks how to overcome this because we knew that if you walk in a group then they can't touch you.

We even sometimes had a trick that if you have money you must put it in your socks or sometimes you must put a hole in your grey trousers and you put your 50 cents or your rand in the whole in your pants so even if they search you they would find no money.

MS MAYOSI: So this is a situation that all school children had to accept that they would have to go and try to survive without the help of the police?

*MR ZITWANA: Well, now that I have life experience it's better but at that time that situation was a situation that we had to accept but now I wouldn't say that people have to accept it but at that time I had to accept it because if you didn't accept it you would have to stay at home and not go to school. If you couldn't accept you would just have to stay there and not go anywhere. But right now with what I know I would not agree that it is a situation that any child should get used to.*⁷⁰⁷ (emphasis added)

562. The specific recommendations to improve school safety in Khayelitsha are as follows:

562.1 Each school requires a safety plan to ensure that schools '*are not breeding grounds for gangs and criminals.*' This will involve interaction with the Department of Education and the Department of Social Development.⁷⁰⁸

⁷⁰⁷Zitwana transcript page 2032.

⁷⁰⁸Bundle 1(5), File E, Document number 39 at para 56.

562.2 The allocation of a police officer to each school to ensure that weapons (and the like) are not allowed into schools would go a long way in ensuring that schools remain safe and that school principals have contact in emergency situations.⁷⁰⁹

562.3 Installation of CCTV cameras around schools.⁷¹⁰

562.4 Any strategy that seeks to address school safety must provide for random patrols and search and seizures to be conducted at schools. This was found to be effective at Chris Hani Senior Secondary where two random search and seizures were conducted in 2013 with specialised police units (and dogs) who were able to search learners and confiscate prohibited items.⁷¹¹ This also contributed toward raising awareness and served as a deterrence mechanism.

562.5 Funding of under-resourced community-based violence prevention programmes.⁷¹²

563. The ‘School Safety Committee’ at the Chris Hani Senior Secondary School in Khayelitsha attributed a part of its success in its attempt to ‘*curb the issue of*

⁷⁰⁹Dwane transcript page 783.

⁷¹⁰Dwane transcript page 783.

⁷¹¹Mahlutshana transcript page 503 – 504.

⁷¹²Kaminer transcript page 817.

gangsterism’ and other issues relating to safety to the involvement of both the CPF and SAPS (more particularly, the sector commander of the Harare Police Station).⁷¹³ SAPS’ assistance in this regard included facilitating meetings, availing themselves at the School Safety Committee meetings and providing contact details.⁷¹⁴ It is recommended that the same support provided by the CPF and SAPS to Chris Hani Senior Secondary be provided to other schools in Khayelitsha through including SAPS participation in School Safety Committees as a compulsory undertaking in the abovementioned School Safety Plan and any other police strategy that addresses school safety.

564. Recommendations relating to other organs of state:

564.1 An out-of-school care programme for primary and secondary school pupils.⁷¹⁵

564.2 A scaled-up community service programme for post-school youths including apprenticeships.⁷¹⁶

564.3 A parenting support program especially for young mothers especially for young mothers and single-parents.⁷¹⁷

⁷¹³Mahlutshana transcript pages 496 – 498.

⁷¹⁴Mahlutshana transcript pages 498.

⁷¹⁵Bundle 1(5), File E, Document number 30 at para 153.3

⁷¹⁶Bundle 1(5), File E, Document number 39 at para 153.4

⁷¹⁷Bundle 1(5), File E, Document number 39 at para 153.5

T. SPECIFIC CHALLENGES: FIREARMS

Reports relating to the loss and/or disappearance of official police firearms

565. The Schooling and Leamy report noted that the Commission was only provided with one report from the cluster command on the loss of a firearm for the period covering 1 January 2010 to 31 August 2013. The firearm in question was lost by a constable who is attached to the Tactical Response Team of SAPS. However, according to the cluster command's personnel records the constable was not a SAPS member deployed to the cluster command at the time of the loss.⁷¹⁸

566. Schooling and Leamy state that they are not sure whether this can be interpreted to mean that the cluster command has control over all weapons for SAPS units operating in Khayelitsha. If so, this would mean that according to official records, only one firearm was lost and/or disappeared from all other units operating in Khayelitsha over the stated period and no firearms were lost and/or disappeared in respect of SAPS members for the cluster command.⁷¹⁹

567. In light of the lengthy period of request, should the above interpretation be correct Schooling and Leamy find the result to be “*surprising*”. In their experience it is

⁷¹⁸ Schooling and Leamy report, paragraph 276-277

⁷¹⁹ Schooling and Leamy report, paragraph 279.

unlikely for only one firearm to be lost or stolen over the said period. Schooling and Leamy attribute this to, “*either a case of under-reporting or the inability of a cluster command office to keep accurate records of the loss and/or disappearance of official firearms at the cluster command and/or other units of SAPS.*” If true, this highlights “*very serious inefficiency*”.⁷²⁰

Proposed recommendations

568. We propose that the Commission makes the following recommendations:

568.1 An audit be conducted of the records at all three Khayelitsha police stations and the cluster command office for the past two years to determine the extent of lost and/or stolen firearms in line with Standing Orders and National Instructions;

568.2 A record system is introduced (if not already in existence) and maintained at each individual station and the cluster command office to ensure that each station commander and the cluster commander has adequate and sufficient control over access and use of firearms. Practically, this would require every individual who has been issued with a firearm to report to station management on a bi-weekly basis; and

⁷²⁰ Schooling and Leamy report, paragraph 280-281.

568.3 Each station commander and the cluster commander is tasked with sending the Provincial Commissioner a monthly report detailing the number of firearms issued to their station/cluster, the number of firearms issued out to personnel and details of whether any firearms have been lost or stolen.

U. STATION SPECIFIC CHALLENGES

Lingelethu-West Police Station

569. Since being appointed as a station commander in April 2010 Colonel Reitz has made numerous requests for a container to be used a temporary holding cell. On 1 November 2010 Col Reitz sent a letter to Lt Col Smooks, from the Khayelitsha Accounting Store, requesting a container for use as a temporary holding cell. The lack of a proper holding cell was deemed to be, “very unhealthy and not user friendly to the general public and is also a very big escape and safety risk.”⁷²¹

570. Without proper holding facilities arrested persons are taken to the Community Service Centre (CSC) before being transported to the Harare Police Station for detention.

571. According to Col Reitz the container would allow police officers to temporarily detain arrestees, for an hour or two, without having to take them through the CSC. This would reduce the risk of harm to members of the public and police officers, as well as the potential risk of escape.

⁷²¹ Bundle 5, SAPS Documents, File 2 – Annexure to Statement of Major General Burger: Application for temporary holding cell.

572. In letter to the Provincial Commissioner's office on 31 January 2013, Col Reitz lays out the history of his correspondence requesting a container for use as a temporary holding cell.⁷²² The application was evidently turned down on 23 December 2010. Col Reitz claims that after further correspondence in which he assured Property Management that the container will not be used as an overnight holding cell and will only hold detainees for an hour or two before they are transferred to the Harare Police Station cells, procurement was approved on 2 August 2011. However, Col Reitz failed to get approval to convert the container into an office to process and detain arrestees, and made a further application to the PC Financial Services: Budget Section on 10 December 2012.

573. On 5 September 2013 Col Reitz sent an email to Lt Col Smooks offering to fund the conversion of the container from the stations budget. This followed an email from Lt Col Smooks to Col Reitz on 3 September 2013 informing him that the project had been cancelled as it was "not funded".⁷²³

574. In his testimony before the Commission on 13 February 2014 Col Reitz mentioned that the station still did not have a holding cell.⁷²⁴ According to Col Reitz, he was informed that it was "*not constructive in terms of the regulations to*

⁷²² Bundle 5, SAPS Documents, File 2 – Annexure to Statement of Major General Burger: Application for conversion of a container into a safe office/temporary detaining facility.

⁷²³ Bundle 5, SAPS Documents, File 2 – Annexure to Statement of Major General Burger: Lingeletu-West Application.

⁷²⁴ Transcript, 13 February 2014, page 2945.

*convert it [a container] to a holding cell.”*⁷²⁵ In order to mitigate the risks to police officers and members of the public Col Reitz claimed that, “*the instruction that was given from me is that when an arrest is made the arrested person must be taken straight to Harare cells, not to bring to the charge office because as I said it is a risk for escape, it is a risk for the members, it is a risk for the clients in the CSC.*”⁷²⁶

575. Col Reitz also testified that there was not enough space at the Harare Police Station for the Investigating officers from Lingeletu-West to interview detainees: “*I then need to get an office from them. If it is there in the cells there is a room where you can do the things, you need to wait for others...*”

Recommendations

576. We propose that the Commission makes the following recommendations in respect of the Lingeletu-West Station:

576.1 The current facilities at Lingeletu-West Station need to be expanded.

⁷²⁵ Ibid.

⁷²⁶ Ibid.

576.2 The station needs a permanent and properly equipped holding cell in order to improve service delivery and to reduce the risk of harm to both police officers and members of the public.

Harare Station

577. On 14 September 2012, the then acting Station Commander of Harare Station, Colonel Abels, wrote a letter to the Deputy Provincial Commissioner for operational services, Brigadier Dyanti, detailing some of the constraints faced by the Harare Police Station.⁷²⁷ In that letter he wrote, “*the Harare SAPS building does not provide for sufficient accommodation to all personnel. Storage facilities with regard to exhibits, archive material (still moratorium on) also have a bearing on the space at the station.*”

578. In his letter, Col Abels, states that the building of the new Makhaza Police Station has been approved and will help relieve the Harare Police Station when it is completed.

579. In his testimony before the Commission Colonel Raboliba, current station commander of the Harare Police Station, stated that the construction of the new

⁷²⁷ Bundle 5, SAPS Documents, File 2 – Annexure to Statement of Major General Burger: Khayelitsha Cluster Resource Documents.

police station would most likely commence in January 2015.⁷²⁸ This is three years after Col Abels' first acknowledgement that the building of the station had been approved.

Recommendation

580. We propose that the Commission makes the following recommendation in respect of the Harare Police Station:

580.1 The building of a new police station at Makhaza should be fast tracked in order to reduce pressure on the Harare Police Station, and improve service delivery to the residents of Khayelitsha.

Site B Station

581. Brigadier Dladla raised limited accommodation at the Site B station as an issue affecting policing at his station. This need is particularly heightened at the Site B Station because it houses other units. The relevant section of Brigadier's evidence is as follows: *"[i]t is a problem, accommodation is a challenge because the – if you look at the new building that we had, Khayelitsha used to operate from the old buildings that are there, and the park homes, there were three more*

⁷²⁸ Transcript, 17 March 2014, page 4567.

containers that were utilised as offices, and then the new building was opened in 2012, somewhere in September, that building was initially planned to be an administration block, but it ended up housing the cluster office, I think they are utilising five offices, the local criminal record centre which is good, because you are taking service to the people, but accommodation is a problem. The FCS are also housed there, which is also good, because one must look, LCRC was based in Somerset West, for them to come and attend cases in Khayelitsha they had to drive from Somerset West to Khayelitsha, now it's better, they are at my station, they are only responsible for the three stations.”⁷²⁹

582. In addition, Brigadier Dladla noted that the way in which the CSC is structured is limits the ability to provide a decent, private service. In his testimony, Brigadier Dladla suggested the CSC's in Milnerton and Mfuleni as examples of CSC's that he would appreciate in his station. The problems experienced as a result of the CSC in its current form are summarised in Brigadier Dladla's evidence:

583. *“the community service centre is so congested the privacy is not enough so to what we have we make use of that, we try as far as possible to attend to the people and try and move those who need confidential things to be done, to be attended confidentially, and move them away, but as the Commission and saw we*

⁷²⁹ Transcript, 17 February 2014, pages 3537 – 3538.

only have two cubicles where you can take statements, if two or three people coming to report cases, fortunately it's cases that are – do not – that we deal with in the community service centres, are not cases that are – that need – that are sexual offences, but still maybe if I dream that one day I will get a proper CSC, that will be wide and when I come it's the clients that are coming to certify documents they can still stand in a line, but still not congested like it's happening.”⁷³⁰

Recommendations

584. We propose that the Commission makes the following recommendations in respect of the Site B Police Station:

584.1 The current facilities at the Site B Station need to be expanded, taking into account the additional cluster units housed at the Site B Station.

584.2 The community service centre must be redesigned so as to eliminate the issues raised by Brigadier Dladla.

584.3 Taking into account the accommodation restraints at the Site B Station, and the administrative and financial burden placed on the Site B station

⁷³⁰ Transcript, 17 February 2014, pages 3536 – 3537.

as a result thereof, it must be investigated whether the cluster command offices can be relocated elsewhere in Khayelitsha.

V. RELATIONSHIP WITH MEMBERS OF THE COMMUNITY

585. In their complaint to the Premier in November 2011, the complainant organisations stated that a breakdown in relations between SAPS and Khayelitsha residents had occurred. The community has lost confidence in the ability of the police to protect them from crime and to investigate crimes once they had occurred.

586. Both the testimonial and documentary evidence of community witnesses before this Commission supported community members' complaints that:

586.1 The community often suffers as a result of a lack of coordination between the police and the prosecuting authorities. Dockets are often lost, leading to cases being struck-off the court roll.

586.2 Investigating officers fail to properly communicate with victims of crime regarding the progress of investigations or prosecutions.

586.3 Victims of crime are not provided with trauma counselling and the support needed to recover from their ordeals.

586.4 Bail is incorrectly granted for serious crimes including rape and murder.

586.5 Basic investigation procedures, such as securing crime scenes, gathering forensic evidence, and interviewing witnesses, are often ignored or performed incompetently.

586.6 Victims are often treated discourteously, even contemptuously, when reporting crimes.

587. Community witness after community witness gave evidence to the Commission of the ways in which they were failed by police in the Khayelitsha police stations after they or their families had been direct victims of serious crimes and they reported these to the police.

588. In her evidence Malwande Msongelwa told the Commission how the police responded after her brother Andisiwe's murder.⁷³¹

588.1 After she arrived at the scene where her brother's body lay she called the police. The nearest police station is Harare, which she estimated is some 20 to 25 minutes' drive away. The police did not arrive until more than two hours later, and only after she had called and reported the matter to a General Ndlovu whose contact details she had obtained at a workshop organised by Free Gender.

⁷³¹ On 28 January 2014; Transcript age 537 to 553

- 588.2 After they arrived the police stopped a distance away from the scene where Malwande stood together with community members who had gathered, and demanded that Malwande and the community members go to them in their van.
- 588.3 When they finally got out of their van the police asked Malwande what had happened. The police failed to conduct any further investigation in terms of asking questions about potential witnesses, or looking for a murder weapon at the scene.
- 588.4 After they were told that Andisiwe had been stabbed, the two SAPS members approached Andisiwe's body and lifted his shirt in search of the stab wound. They asked Malwande if she knew who had done this and she gave them the name of a man she suspected
- 588.5 After asking her if she knew where the suspect lived, they drove with her to the suspect's home. The police did not collect her brother's body; they did not cover him; and he was left as they had found him with the community members. The area was not barricaded or clearly identified as a crime scene to limit or prevent access to it. When they did not find

the suspect at his home the police returned with Malwande to the scene where her brother's body lay.

588.6 Another police van arrived later to collect her brother's body from the scene.

588.7 A few days later the police returned to her home. They did not enter her house. Her other brother who was with her at home went outside to the police van, where he was told by the SAPS members there that they had interviewed the man whom Malwande suspected of the crime and he had nothing to do with it.

588.8 Malwande has not since heard from the police about the investigation into Andisiwe's death.

588.9 She has not approached the police to inquire about the investigation because she thinks that the police do not care about people in Khayelitsha. She does not trust the police at all.

588.10 It was her evidence that if the police want to have the support of the people they have to respect the members of the community.

589. In her evidence Nontembeko Nduna told the Commission why she has no faith in the police.⁷³²

589.1 She lives in a shack in Khayelitsha. To get to the toilet she has to walk in the dark for 15 minutes, which is dangerous. After seven at night she has to walk to the N2 to relieve herself, because the communal toilets will be closed or locked. People regularly get robbed and raped on that path and there is no police visibility. This would improve the safe use of public toilets at night.

589.2 On the 7th of March she left her two children at home to visit a relative in Hermanus. She was informed telephonically by her brother that her niece had been knocked down by a police van, driven at the time by a policeman. The car had not stopped and dragged the child in the road. This was the fifth time a police car hit a child that year. The community attacked the bus and the police responded with rubber bullets. After the fight they removed the body of the child from under the police van.

589.3 Afterwards she was contacted by the police for a statement, which she gave to the police. At the time of the accident, her niece was walking with her cousins (Nontembeko's children). None of these children was

⁷³² Transcript page 554 to 581

offered trauma counseling by the police. Her children were traumatized, it was difficult for them to walk down the street because they became afraid of cars.

589.4 She and her sister-in-law (the mother of the dead child) appeared in court on two occasions. The whole experience was very upsetting for her and her sister. At the last appearance she and her sister in law explained that they had not witnessed the accident and asked to be excluded from the witness list.

589.5 Since that court appearance, Nontembko and her family have not heard from the investigating officer or any member of SAPS about what has occurred in the case. The mother of the child never recovered emotionally from the loss of her child. She eventually died from a disease related to stress, never having heard what happened to the policeman who ran over her child.

589.6 Nontembeko told the Commission that this incident as well three others (one of which included theft by members pf SAPS) have led her to lose faith in the police.

590. In his evidence MT told the Commission of the indifference with which the police in Khayelitsha treated him and his family's concerns after the death of his cousin.⁷³³

590.1 He received a phone call on the 19th of January 2013 and was asked to come to Harare. He was told his cousin was believed to have been killed.

590.2 Subsequently, he went to the Harare police station whereby the police confirmed that a case had been opened. He was given the case number and returned the following day. He was directed to the detective in charge. When MT asked this detective about the case, the detective's response was harsh and dismissive of him. As a family member he wanted to know what had happened.

590.3 The detective said that there were three suspects who had been arrested for the murder of his cousin and that they had been granted bail. He asked for legal assistance, but the detective said such assistance would be of no use because his cousin had been killed breaking into a house. MT's response was that this was for the courts to decide.

⁷³³ On 24 January 2014; Transcript page 1666 to 180

590.4 According to MT, the detective did not treat him in a respectful manner. He was busy attending to other matters whilst at the same time talking to MT.

590.5 Since bail was granted MT has not been contacted by the police. He therefore approached a superior of the detective, who gave him more information on the case. He had heard nothing since about the case.

590.6 MT testified that the police do not understand what their basic responsibility towards the community is, and that their attitude is one of indifference to community members affected by crime.

591. In her evidence VSM told the Commission that she was awoken in the middle of the night of 28 October 2007 to be taken to her cousin's shack.⁷³⁴

591.1 Someone had poured petrol on the house. The front door of the house had a wire on it which was there to keep people inside from being able to escape. All four inhabitants of her cousin's shack had been burnt to death. Two of them were nine years old.

⁷³⁴ On 30 January 2014; Transcript page 846

591.2 The father of the children turned himself in to the police and confessed to having burnt the house. He appeared in court where the magistrate said that he could not be kept because the docket was gone. However, the magistrate told him he could not go too far because they might find the docket.

591.3 Eventually the docket was recovered, but the perpetrator had unfortunately disappeared.

591.4 To this day VSM does not know what happened to perpetrator. She later found out that he had heard he had gone to Johannesburg and she went to the police with this information.

591.5 The investigating officer who attended to her tasked her with finding out where exactly in Johannesburg the perpetrator was, '*because Johanneburg is big.*'

592. The effect of this response is best described by VSM herself, in her interaction with Advocate Sidaki:⁷³⁵

⁷³⁵ Transcript page 855 to 856

MS MPEKWENI: *Okay. At this time it was already late this year that they found Mphumzi. Because we could see that nothing was happening to the case I took a picture of Mphumzi, I had taken this picture because it was a picture he had taken with one of my sister's kids. I took it to the police station. When I got there I told them that my case was being handled by Detective Swart. I was informed that he was no longer there, there was another investigative officer. I then met that detective and I gave him this picture. I told him that I had not heard anything about this case. The detective then asked me if I knew where in Johannesburg Mphumzi was. I told him that I didn't know exactly where but I heard that he was in Johannesburg, and the detective said to me I should try and investigate exactly where in Johannesburg he was, because Johannesburg is big. That day I left just like that, but my heart was broken, because at this time he was making me do the work of the police.*

MR SIDAKI: *And did you ever receive any feedback from the police thereafter about the case?*

MS MPEKWENI: *They never came back to me since 2008, till today.*

MR SIDAKI: *And did you ever go back to the police thereafter to follow*

up on the case?

MS MPEKWENI: I have never gone back, ever since they asked me to investigate exactly where he was in Johannesburg, that is where I lost trust in the police and told myself that I was leaving it. However I had not given up because sometimes I would feel the pain and remember these kids. I never went back to the police but when there was the Truth Commission and this thing came back to me and I decided to go to the Truth Commission.

MR SIDAKI: By the Truth Commission you are referring to this Commission, correct?

MS MPEKWENI: Yes, I am referring to this Commission.

Findings

593. In light of the evidence contained in the record of the Commission's proceedings, it cannot be said that the SAPS units operating in Khayelitsha are responsive to the community's needs and concerns. In this regard , it is evident that SAPS members are not receptive to complaints or issues raised with them by members

of the Khayelitsha community and some SAPS members treat the community with contempt, disrespect and discourteousy.

594. The evidence shows that many members of SAPS operating in Khayelitsha do not provide reliable, courteous and regular feedback to members of the community who have laid criminal charges in Khayelitsha.

595. The evidence before the Commission which supports these findings is also corroborated by the conclusions reached by Mthente Research and Consulting Services in the community perception survey they conducted into policing in Khayelitsha.⁷³⁶ They found, *inter alia*, that:⁷³⁷

595.1 Survey respondents perceive there to be little progress in arrests or convictions in recent cases, and evaluate SAPS responses negatively.

595.2 Although about 40 percent of respondents who reported recent crimes to SAPS indicated that police had taken a statement, many felt that “nothing” has been done, and in fewer than one in ten cases, respondents stated that the police had made an arrest, a first court appearance had taken place, or a perpetrator had been convicted. than 60 percent of

⁷³⁶ Bundle 10(1); 1.1; 11

⁷³⁷ Conclusions, page 48 to 50 of their report; at paragraphs 5.1 to 5.12

those who reported crimes to the police described the SAPS response as either poor or very poor – far more negative evaluations that SAPS generally receives throughout the rest of the province.

596. The main reasons for non-reporting of recent crimes are distrust of the police, and a fear of victimisation by perpetrators.

596.1 Close to a third of respondents who did not report recent crimes cited a lack of trust in the police as their main reason, and this rose to more than 50 percent in the Lingeletu precinct specifically. Further, half of non-reporting respondents attributed this to either fear of victimisation by perpetrators, or perpetrators being back out on the street.

597. Khayelitsha residents feel fundamentally unsafe in their own community.

597.1 Less than a third of respondents - across a range of demographic, geographic and socioeconomic sub- groups – felt safe in Khayelitsha. Few public places are thought to be safe, even during the daytime, and simply being in the street was identified as one of the most dangerous sites both in daytime and at night. Nine in ten respondents feel unsafe in the street at night – a rate far higher than elsewhere in the province.

598. Evaluations of SAPS performance in Khayelitsha are overwhelmingly negative.

598.1 Results of both the community perception survey and post-survey qualitative focus groups suggest that Khayelitsha residents evaluate SAPS officers working in the suburb negatively, in terms of capability and training, professionalism, efficiency and treatment of members of the public. Interview participants referred to instances in which they were treated derisively by SAPS officers when going to stations to report crimes.

Recommendations

599. In his evidence to the Commission, Andrew Mclean made helpful recommendations aimed at ensuring that the police treat the residents of Khayelitsha with respect and fairness. He identified this element as the key to building trust in and the legitimacy of SAPS.⁷³⁸

600. Mclean referred the Commission to the results of criminological research conducted by Tyler and colleagues in the US which shows that victim satisfaction with police performance is significantly more related to the level of respect and concern shown by officers, than to the outcome of the police investigations, and

⁷³⁸ Andrew McLean's Report, Bundle 12, Expert Reports, item 15

that people's motivations to not break the law and to cooperate with the police are shaped more by feelings that the police have legitimate authority, and share the same values, than they are by people's perceived risk of being caught or punished.⁷³⁹

601. According to Mclean this work has led to the development of a 'Procedural Justice' model for enhancing police legitimacy.

602. It is recommended that this model of procedural justice be adopted and implemented in Khayelitsha as a critical first step in repairing SAPS - community relations, and rebuilding the trust and faith in the work of the police without which there can be no legitimate and effective policing.

603. The procedural justice model is premised on the belief that people, in their dealings with the police and other legal authorities, value just and decent treatment, and transparent and fair decision making, over concrete outcomes. Fair and decent treatment promotes feelings of procedural justice and promotes trust. These in turn increase the legitimacy of the police. Enhanced legitimacy can lead to increased public cooperation and compliance with the law.

⁷³⁹ P3, 'The Greater Manchester Police Procedural Justice Experiment', College of Policing, 2013.

604. Mclean explained further that by and through the way in which they treat people, police officers talk to them about their inclusion and position within society. If the police treat people fairly then they encourage people to believe that they are on the same side and share similar outlooks and goals. Treating people unfairly has the opposite effect.

605. Although the research to which Mclean referred the Commission was done in a very different context to Khayelitsha, its findings are worth considering and implementing in a context such as Khayelitsha. Given that a key claim of the procedural justice model is that police ‘effectiveness’ in fighting crime is less important than fairness, dignity and respect in building trust, legitimacy and respect for the rule of law, and that it is the infringement of these very values which is at the heart of the complaints before this Commission, this Commission must recommend that SAPS give urgent consideration to the training of police officers in, among others, communication skills and other components of the procedural justice model for implementation in Khayelitsha.

606. Referring to a trial run of the procedural justice model conducted in Manchester in 2013 where officers were placed in a treatment group whilst others were in a control group, Mclean told the Commission that “officers in the treatment group were more likely than those in the control group to: hold positive views about

delivering quality of service; recognise the value of building empathy and rapport with victims; and report making decisions that involved victims in the process.”

In a realistic role-play exercise post-training, officers in the treatment group scored significantly higher than those in the control group when independently assessed on a ‘quality of interaction’ scale. A survey then found that victims who interacted with officers who had been on trial had improved perceptions of the police.

607. Maclean suggested that SAPS consider trialling communication skills training for police officers in Khayelitsha and evaluate its impact with a view to wider roll-out if effective.

The role of reservists

608. The Commission heard that reservists are meant to function as “*force multipliers that assist in crime prevention activities. They perform the tasks of ordinary members. They usually have an allocated amount of hours to work per month. They are called up by the VISPOL head. Mostly they work under the guidance of*

*the VISPOL head. Most of the reservists are willing to be deployed at any time. The importance of their role cannot be over emphasized.”*⁷⁴⁰

609. From the evidence before the Commission, however, it is clear that additional capacity has not been established. In fact, the contrary is correct. The evidence highlights that the reservists’ capacity within the three stations in Khayelitsha has drastically decreased. This is also exacerbated by the moratorium on the recruitment of reservists and to some extent the stringent requirements for qualifying as a reservist have also played a role.

610. Additional capacity through the use of reservists has not been established. The Lingeletu West station has a large reservist staff but only a minority are active. A number the reservists are also are not authorised drivers and some have not completed courses.⁷⁴¹

611. At the Khayelitsha Station the “*reservists declined from 222 in 2010 and 230 in 2011 to 185 in 2012. The SAPS 15’s (Duty Rosters) provided indicate that very few of the reservists report on-duty for voluntary hours. The Inspection report (August 2012) recorded that out of the 187 Reservists recorded for Site B SAPS,*

⁷⁴⁰ Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of saps documentation, Page 16.

⁷⁴¹ Item 3.30 para 5.22 p 160; 2009-2010: 20; 2010-2011: 34 (Item 3.3 P. 178 might be for the said period but it is not clear on the page from which period it actually is); 2011-2012: 46 – as cited by Schooling and Leamy in Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of saps documentation, Page 18.

99 were inactive,⁷⁴²mainly due to the seizure of their payment.⁷⁴³ The Khayelitsha SC took personal responsibility for monitoring the process to discharge these inactive reservists. This inefficiency impacts on the capacity to use reservists for crime prevention operations in Khayelitsha.”⁷⁴⁴

612. When asked about the declining numbers of reservists in his policing precinct, Brigadier Dladla informed the Commission that “the majority of them are only doing their set hours that they must perform per month, unlike in the past. Khayelitsha used to be a force with the reservists, they would come and work, but now you have – there’s very few that are working more than their required 16 hours that they have to work per month. It’s very few, but in the past there used to be a lot of reservists.”⁷⁴⁵

613. Brigadier Dladla further informed the Commission that a number of issues were contributing towards the decline of the recruitment of reservists, including the moratorium on the payment of reservists.⁷⁴⁶

⁷⁴² Item 3.30 Inspection: Khayelitsha SAPS: Western Cape 13 until 17 August 2012 para 2.7.1 page 74

⁷⁴³ Ibid para 2.7.1 page 74

⁷⁴⁴ Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of saps documentation, Page 20 – 21.

⁷⁴⁵ Transcription 3544

⁷⁴⁶ Transcription 3543 - 3545

614. Despite Harare SAPS having had fewer reservist staff when compared with Site B and Lingelthu West stations and they have managed to deploy a number of them, there is a significant decrease in the total reservists at the station.⁷⁴⁷
615. There are also no reservists who form part of the cluster command.⁷⁴⁸ No effective use of reservists in in sector commanders where properly trained and selected reservists could be usually to assist the sector commanders.⁷⁴⁹
616. The Commission was further informed that in 2010 a moratorium was placed on the appointment of reservists.⁷⁵⁰ This moratorium lead to the termination of payment of reservists as there was going to be a policy put in place that was aimed at creating a governance structure for reservists in the South African Police. Further that a policy had been developed and finalised, however there were no official directives regarding the recruitment of reservists.⁷⁵¹
617. Additionally the Commission heard that the current legal regulatory framework as set out in the regulations as amended on the 15th October 2013, had very stringent

⁷⁴⁷ Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of saps documentation, Page 22 – 23.

⁷⁴⁸ Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of saps documentation, Page 67.

⁷⁴⁹ Transcription 6931 - 6932

⁷⁵⁰ Transcription Page 6931.

⁷⁵¹ Transcription Page 6932.

requirements on who qualified to be a reservist.⁷⁵² This was because only persons who were South Africa citizens through birth qualified to be reservists which excluded foreign nationals.⁷⁵³ This exclusion limits the diversity of police including the requirement that a reservist must be employed when considering the high levels of unemployment in Khayelitsha. Additionally the appointment of reservists is currently one that the National Commissioner makes, a practice which is contrary to the legal framework that allows for this decision to lie with the Provincial Commissioner.⁷⁵⁴

618. Ms Mtwana informed the Commission that police visibility in Khayelitsha can be increased to some extent through the participation of reservists in community patrols which as far as she knew was not happening as neighbourhood watches are currently patrolling without any support from SAPS.⁷⁵⁵

619. This use of reservists in increasing police visibility was also supported by Mr. Mtsolo who informed the commission that: *“As I request that we need more police especially more reservists, I believe that those reservists can do better in our community. The visibility I was talking about, we don’t want to see after two*

⁷⁵² Transcription Page 6932

⁷⁵³ Transcription Page 6932

⁷⁵⁴ Transcription 6698

⁷⁵⁵ Transcription Page 2841 - 2840

*hours there is a van that was just passing and then after another two hours a van was just passing.*⁷⁵⁶

Recommendations

620. Prioritisation of a new National Instruction regarding recruitment of Reservists.

621. The Commission heard that the recruitment policy has been developed by the Minister of Police and that it was recently announced that it has been finalised. There are however no official directives that had been given to authorise the continuation of the recruitment of reservists.⁷⁵⁷

622. It is recommended that this Commission should require that the new National Instruction and associated directives must be finalised and implemented with immediate effect.

623. There must be reservists present and operating at both sector and cluster command levels.

624. The regulations setting out who qualifies as a reservist must be done in a manner that is constitutional and not arbitrarily excluding persons such as foreign

⁷⁵⁶ Transcription Page 134

⁷⁵⁷ Transcription Page 6694 - 6695

nationals and unemployed persons. Instead any persons seeking to be a reservist should apply to the SAPS and their application must be decided on their merit in terms of SAPS guidelines as well constitutional values.

Community Policing Forums

625. Community Policing Forums (“CPFs”) were established in South Africa as part of the transformative project to ensure better service delivery of policing services after apartheid, and to promote a *“more democratic and human rights oriented form of policing.”*⁷⁵⁸ According to Mr. Hanif Loonat, former chairperson of the Western Cape Community Police Board, the vision was that CPFs would *“provide an avenue for representatives of community organisation and the police to work together without mistrust and antagonism.”*⁷⁵⁹ Among other things, it was hoped that police legitimacy would be boosted through the CPFs providing an opportunity for communities to become involved in policing, and that the lack of trust and communication between the communities and SAPS would be addressed through the CPFs providing a direct and accountable link between the two.⁷⁶⁰ The need for CPFs as a platform to transform policing in South Africa

⁷⁵⁸ Minaar: The Changing face of Community Policing in South Africa post 1996, Acta Criminologica, page 194 [2.2010].

⁷⁵⁹ Bundle 2, Commission of Inquiry, Specialist Affidavits, item 2, page 5, para 10.

⁷⁶⁰ Bundle 2, Commission of Inquiry, Specialist Affidavits, item 2, page 5, paras 10 -11.

was particularly important given that prior to 1994, communities did not have an oversight role over the police.

626. Mr. Andrew McLean provided further insight into the notion of community policing as a concept and strategy. Community policing rests on the “*belief that citizens understand their own security needs and issues in their locality, have a right to have a say in how they are policed, and have a responsibility to support efforts to improve community safety ... [community policing] is also underpinned by the view that in a democracy, the police should be accountable to police for their performance.*”⁷⁶¹

627. Despite the above visions of community policing in South Africa, the CPFs operating in Khayelitsha have, for the most part, failed to fulfil their functions, and, as concluded by the Tshabalala Task Team, the “*constitutional structures established by the Constitution to enhance police – community relations, is not functioning effectively and optimized in the Khayelitsha area.*”⁷⁶²

628. ***Communication between the Community Police Forums and the community***

⁷⁶¹ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 7.

⁷⁶² Task Team report, High Court record, page 690, para 6.12.

629. The February 2014 Mthenthe Report⁷⁶³ provides insight into the Khayelitsha residents' levels of awareness and engagement with the CPFs. According to the findings of this report, most Khayelitsha residents do not engage with CPFs, but, the few who do have found the CPFs to be more helpful than SAPS, "*particularly in terms of responding more quickly to crime than SAPS.*"⁷⁶⁴

630. When asked about the extent to which the respondents who had participated in the survey for the Mthenthe Report were familiar with, had interacted or engaged with CPFs, the respondents were relatively evenly split in terms of knowledge of CPFs. 48.6% of the respondents indicated that they had heard of such organisations and 51.4% of them indicated that they had not.⁷⁶⁵ Of those who had heard about the CPFs, most (80.5%) had not dealt with the organisations, although 19.5% had. Of the 19.5% of the respondents who had dealt with the CPFs, the sentiments were that CPFs "*arrive then and there when you call them,*" they "*arrive before the police when there is a problem*" and "*interrogate criminals until they tell them where they have hidden the stolen goods.*"⁷⁶⁶

⁷⁶³ Mthenthe Report, Bundle 10, Commission of Inquiry, item 1, page 8.

⁷⁶⁴ Mthenthe Report, Bundle 10, Commission of Inquiry, item 1, page 8. For example, Mr Mahluthshana (principal of Chris Hani Senior Secondary School in Harare commended the Harare CPF and gave evidence that in the absence of prompt police response and police visibility at his school, the CPF has been a "*pillar of support*" and "*visible backbone.*" [Transcript, 28 January 2014, page 503.]

⁷⁶⁵ Mthenthe Report, Bundle 10, Commission of Inquiry, item 1, page 45

⁷⁶⁶ Mthenthe Report, Bundle 10, Commission of Inquiry, item 1, page 45.

631. The Mthenthe Report indicated that some survey respondents had joined or resorted to organising with other community members as a safety measure. These included street / traditional committees (9.6%), neighbourhood watches (8%) and CPFs (6.3%) and vigilante groups (2.4%).⁷⁶⁷

632. With regard to the specific precincts, the Mthenthe Report found that 7.4% of the survey respondents had formed part of the Site B CPF, 5.1% had formed part of the Harare CPF and 5% had formed part of the Lingeletu – West CPF.⁷⁶⁸

633. Therefore, according to the Mthenthe Report, although just over half of the survey respondents were aware of CPFs, CPFs are not used by a large majority of the respondents. As noted by Mr. McLean, the findings in the Mthenthe Report indicate that the CPFs in Khayelitsha do not have “*a membership that engages regularly with their communities, and are not clear about their role and responsibilities.*”⁷⁶⁹

634. In her testimony, Ms. Phumeza Mlungwana gave insight into the reasons why community members, community leaders and organisations are discouraged from engaging the CPF and participating in CPF meetings. Ms. Mlungwana noted that CPF meetings are irregular and many scheduled meetings do not always take

⁷⁶⁷ Mthenthe Report, Bundle 10, Commission of Inquiry, item 1, page 45.

⁷⁶⁸ Mthenthe Report, Bundle 10, Commission of Inquiry, item 1, page 42.

⁷⁶⁹ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 46.

place.⁷⁷⁰ She highlighted further issues regarding the CPFs' poor interaction and communication with the community through CPF meetings, “[t]hey were supposed to listen to community challenges and be able to communicate those challenges to the police and vice versa ... But some of the people who have attended those meetings a lot of times that has never really happened you get there and it’s people kind of defending [the police] instead of having a community platform where you tackle and discuss challenges and possible or positive ways forward.”⁷⁷¹

[In]effectiveness of the CPFs in Khayelitsha

635. It became apparent, through evidence before this Commission that there is a widely held perception that the CPFs in Khayelitsha are dysfunctional and ineffective, and that this has contributed to the low participation in CPFs as a platform for addressing crime related issues. For example, in his testimony, Bishop Mtsolo stated that although he was aware of the CPFs, it had become clear to him that the CPFs “were completely ineffective and incapable of fulfilling their mandate to achieve effective crime control, reduce fears of crime and also

⁷⁷⁰ Transcript, 31 January 2014, page 924.

⁷⁷¹ Transcript, 31 January 2014, page 924.

*improve police service.”*⁷⁷² It was for this reason that Bishop Mtsolo established a Neighbourhood Watch in Ilitha Park.

636. Bishop Mtsolo testified that CPFs are currently not fulfilling their functions and emphasised the need to have functioning CPFs. He stated that “[i]f the police forum working with the police can be effective enough and also to take the complaints of the people to our society that would be good, but it is needed that the police forum must do their job. They must not be there just for other things. They must be concerned about the crime rate.”⁷⁷³

637. Ms. Mlungwana shared Bishop Mtsolo’s sentiments, adding that CPF meetings were fruitless, and as a result the SJC eventually “gave up” and no longer participated in these meetings.⁷⁷⁴ In response to this issue, Mr. McLean found that it was striking that the complainant organisations are not engaged with the CPFs – “it seems that the expertise and potential resources of civil society, as well as the full range of government actors is not being harnessed effectively.”⁷⁷⁵

638. Mr. Chumile Sali, former secretary of the Harare Station CPF also highlighted aspects of the CPFs’ dysfunctionality. His previous position exposed him to the

⁷⁷² Transcript, 23 January 2014, page 111.

⁷⁷³ Transcript, 23 January 2014, page 138.

⁷⁷⁴ Transcript, 31 January 2014, page 925.

⁷⁷⁵ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 37.

*“inside operations of the police and to the relations (and lack thereof) of the police with the community.”*⁷⁷⁶ He noted that CPFs ought to play a pivotal role in creating and maintaining police-community relations, however, the lack of resources makes fulfilling this role extremely difficult.⁷⁷⁷ Issues relating to the CPFs’ lack of resources are addressed below.

639. In his evidence, Mr. Loonat stated that the absence of chairpersons at cluster meetings and the cancellation of meetings adds to the dysfunctionality of the CPFs, in his view, *“[i]f there wasn’t any meeting, I think there is a great dysfunctionality within the Khayelitsha cluster.”*⁷⁷⁸

640. The above findings and perception of the CPFs as expressed by community members and former members of CPF structures are supported by the findings contained in the Tshabalala Task Team Report. After having interviewed the chairpersons of the CPFs at the three Khayelitsha stations, the Tshabalala Task Team found that the *“contribution that the CPFs are making to improve police-community relations in the Khayelitsha area questionable, primarily because of the lack of participation by representatives of all the relevant community structures and inadequate involvement in the community projects and community*

⁷⁷⁶ Bundle 7, Commission of Inquiry, Specialist Statement 11, para 3.

⁷⁷⁷ Bundle 7, Commission of Inquiry, Specialist Statement 11, para 12.

⁷⁷⁸ Transcript, 4 February 2014, page 1410.

awareness programs launched by the SAPS."⁷⁷⁹ The Tshabalala Task Team made the following findings in respect of the CPFs:

640.1 in respect of the Khayelitsha Station:

640.1.1 the poor relationship between the management of the Khayelitsha Police Station and the Khayelitsha CPF is not conducive for effective co-operation and partnership policing. For example, Mr Siko, Acting Chairperson of the Khayelitsha Station CPF raised his concern that the CPF is not recognised by the management;

640.1.2 neither the CPF Constitution or minutes of each of the stations could be produced by either the Police Stations or the CPF;⁷⁸⁰

640.2 in respect of the Harare Station:

640.2.1 the Harare Station was also found to be not functioning well;

⁷⁷⁹ Task Team report, High Court record, page 688, para 6.2.

⁷⁸⁰ Task Team report, High Court record, page 688, para 6.4.

640.2.2 despite weekly meetings being held, the value that these meetings are contributing to any objective could not be established;⁷⁸¹

640.3 in respect of all three stations:

640.3.1 there is no or very little interaction between the Station CPF's and the Khayelitsha Cluster and the Provincial CPF structures.

641. Although the Task Team Report reported that the Lingeletu – West CPF has a good co-operative relationship with the station management,⁷⁸² the current chairperson of the Lingeletu – West CPF, Mr. Sipho Jafta, raised various concerns about police responsiveness, their contribution toward solving crimes in partnership with the CPF and providing the CPFs with any informed solutions. Of particular concern was the sector commander's approach to the Lingeletu - West CPF, as Mr. Jafta stated, *“the sector commander would come to the meeting sometimes, and sometimes would give a report, and sometimes would not give a report at all, and sometimes the sector commander would not attend the*

⁷⁸¹ Task Team report, High Court record, page 688, para 6.6.

⁷⁸² Task Team report, High Court record, page 688, para 6.5.

meetings.”⁷⁸³ The lack of valuable contribution from SAPS’ side of the partnership limits the CPFs ability to perform effectively.

642. Another issue limiting the CPFs ability to perform effectively is that the CPFs in Khayelitsha are dominated by political parties. This was noted by Ms Nontutuselo Mtwana of the VPUU who mentioned that the affiliation with political parties, particularly in the Harare Station (dominated by COPE) and the Site B Station (dominated by the ANC) is detrimental to their effectiveness.⁷⁸⁴

643. Fundamental to the CPFs’ ability to perform effectively and efficiently is that they must have a safety plan, developed by all the relevant stakeholders. Mr. Bubele kaBeja, who is responsible for the Justice and Constitutional Portfolio of the Khayelitsha Development Forum and has been involved in the CPF structures in Khayelitsha,⁷⁸⁵ informed the Commission that he was not aware of the annual plans or strategies pertaining to the CPFs, and that he had not been invited to contribute to these plans, despite his “close relationship” with the CPFs.⁷⁸⁶ This suggests that the provisions of section 64C(2)(g) of the SAPS Act,⁷⁸⁷ have not been complied with. In terms of this section, “[a]n annual police plan must be developed by the Executive Head of the municipal police service after

⁷⁸³ Transcript, 12 February 2014, page 2771.

⁷⁸⁴ Bundle 8, Legal Resource Centre, item 43, pages 2 – 3.

⁷⁸⁵ Bundle 5, SAPS, File 8, page 6, paragraphs 11 – 12.

⁷⁸⁶ Transcript, 20 February, pages 4194 & 4262.

⁷⁸⁷ South African Police Services Act, 68 of 1995.

consultation with the South African Police Force (SAPF) and relevant Community Police Forums (CPFs).”

SAPS and CPF Information Sharing

644. In order for the CPFs to function properly and to fulfil their mandate, it is essential that there be an exchange of information between the CPFs and their respective stations about, *inter alia*, crime patterns in the communities. Mr Loonat found that a breakdown in this communication causes a great disservice to the community concerned because “*it is a proven fact that 70% of your crime[s] are resolved with information that comes from the community and the community relay this information through your CPFs, then if there is no partnership, or there is no relationship, you are actually cutting off an integral part of the partnership in the combatting of crime in that area.*”⁷⁸⁸

645. The Task Team Report noted that the SAPS did not support the Khayelitsha Safety Seminar that was arranged by the three Khayelitsha CPFs on 7 July 2012. The purpose of the seminar was, *inter alia*, to “*discuss ways to integrate departmental plans and enhance partnerships between the community and crime prevention agencies with the view to formulate a local safety plan.*”⁷⁸⁹ This was a

⁷⁸⁸ Transcript, 4 February 2014, page 1412.

⁷⁸⁹ Task Team report, High Court record, page 689, para 6.7.

missed opportunity by SAPS to share information with the CPFs and community members.

Resources

646. Mr Abrams identified various problems with the Extended Partnership Programme (“EPP”). He stated that although the EPP could be a useful tool to bring about transformation, it would appear that there is no accountability or auditing mechanism in respect of the money provided by DoCS to the respective CPFs, and that the money emanating from the EPP is not sufficient for the types of activities in which the CPFs are engaged.⁷⁹⁰

647. This is particularly prejudicial to poorer communities which do not have access to personal resources and equipment to support their activities. Mr Sali’s evidence supported this conclusion. In his statement, he noted that in Khayelitsha, most members who serve in the CPFs are unemployed and are “*unable to fulfil their constitutional role due to a lack of resources.*”⁷⁹¹ For example, Mr Sali mentioned that the members serving the Harare Station did not have transport and that this CPF was not even allocated with an office or stationary,⁷⁹² and, as he stated in his testimony “*it kills the purpose of a CPF if there are no resources, no*

⁷⁹⁰ Transcript, 4 February 2014, page 1431.

⁷⁹¹ Bundle 7, Commission of Inquiry, Specialist Statement 11, para 12.

⁷⁹² Bundle 7, Commission of Inquiry, Specialist Statement 11, para 12.

offices, no vehicles.”⁷⁹³ An important issue highlighted by Mr. Sali is that night patrollers are not supported by the police, through police vans or the like, and the lack of support from the police demoralises the CPFs.

CPF Independence and Oversight Function

648. Another challenge limiting the Khayelitsha CPFs’ ability to function effectively is that they are largely dependent on their respective stations to function, and consequently, cannot properly perform their monitoring and oversight functions. As noted by Mr. Loonat, where there is an absence of independence, “*what happens is that we [CPFes] cannot serve our communities in the manner expected.*”⁷⁹⁴

Recommendations

649. We propose that the Commission makes the following recommendations to improve the functioning of the Community Policing Forums in Khayelitsha:

649.1 CPF meetings must be regularised and held on a definite week and day of the month. This will assist with ensuring that meetings are more accessible to the public. The standard process proposed by Mr Loonat

⁷⁹³ Transcript, 4 February 2014, page 1351.

⁷⁹⁴ Transcript, 4 February 2014, page 1471.

could be used in this regard. In terms of this process, sub-forum meetings are held in the first week of the month, all CPF meetings are held in the second week; all cluster meetings are held in the third week and the Provincial meeting is held in the fourth week.⁷⁹⁵

649.2 All CPF agendas should be produced timeously ahead of meetings and circulated to as large a group of stakeholders as possible. Minutes of the meeting must be produced in such a way as to provide sufficient detail for those not at the meeting.⁷⁹⁶

649.3 Regular quarterly reports on the CPFs' progress should be produced and disseminated.⁷⁹⁷

649.4 As advised by Mr. Loonat, the chairpersons of the respective Khayelitsha stations should attend the SCCF meetings.⁷⁹⁸ This is important to ensure that there is an exchange of information between the CPFs and the station about, *inter alia*, crime patterns.

649.5 Ongoing training must be provided by the City and DoCS to CPF members. Mr. Abrams suggested that the training should focus on

⁷⁹⁵ Transcript, 4 February 2014, page 1401.

⁷⁹⁶ Sean Tait's Report, 12, Expert Reports, item 19, page 11 paragraphs 30 – 31.

⁷⁹⁷ Sean Tait's Report, 12, Expert Reports, item 19, page 11 paragraph 33.

⁷⁹⁸ Transcript, 4 February 2014, page 1410.

ensuring that members understand their roles and functions. Elected treasurers, project officers or managers should undergo specialised training on how the CPFs financial affairs should be managed.⁷⁹⁹ Training on the Public Finance Management Act should be incorporated into such training.⁸⁰⁰ In addition, CPF members must be provided with training and support for capacity – building, including advocacy skills, monitoring and evaluation, communication, secretarial training and conflict resolution. According to Mr Tait, training courses on these aspects have already been developed in partnership with DoCs and are readily available.⁸⁰¹

649.6 At the least, all CPFs should have the following resources: an office; a telephone (or cellphone); a computer (for recording and collecting their data); internet access; resources to enable the CPFs to disseminate newsletters within the community; two-way radios; torches and bicycles.⁸⁰²

649.7 A thorough understanding of the dual nature of the CPF role (as an independent monitoring and oversight body, as well as a partnership)

⁷⁹⁹ Transcript, 4 February 2014, pages 1421 - 1422.

⁸⁰⁰ Transcript, 4 February 2013, page 1433.

⁸⁰¹ Sean Tait's Report, 12, Expert Reports, item 19, page 12, paragraphs 34.

⁸⁰² Transcript, 4 February 2013, page 1422.

needs to be built on both sides through the training of both SAPS and the CPFs.⁸⁰³

649.8 The following measures need to be taken increase the capacity and representation of CPFs:

649.8.1 Because the effectiveness of CPFs is largely determined by their membership, the formal nomination and election procedure must be followed. This procedure provides that registered organisations in sectors nominate individuals for election to sector community police sub-forums, and the Chairs of these sub-forums become members of the station-level CPF. This procedure seeks to address the allegations that have been made to the Commission that Station Commanders sometimes “hand-pick” CPF members who are deemed to be supportive of SAPS.⁸⁰⁴

649.8.2 The capacity of the CPFs must be built through a new initiative to revitalise the CPFs, and where necessary, some must be

⁸⁰³ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 44.

⁸⁰⁴ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 45.

reconstituted to ensure representation and the involvement of key community organisations.⁸⁰⁵

649.8.3 A simple offer to join the CPFs has not proved to be sufficient. SAPS management must constantly build community participation, if need be through bilateral engagements.⁸⁰⁶

649.8.4 Importantly, the CPFs in Khayelitsha must proactively respond to the offer made by Ms. Mlungwana to build co-operation between SAPS and the community in a transparent form through convening public meetings with the community, SAPS, and the CPFs.⁸⁰⁷

649.9 A neutral respected third party convenor for CPFs must be appointed to address the CPFs' reliance and dependence for SAPS (i.e. reliance on SAPS to organise meetings, provide meeting space and transport for CPF members). According to Mr. Mclean, in crisis situations where the police-community relationship is strained, such as in Khayelitsha, a third party could play a valuable convening role until the situation improves.

⁸⁰⁵ Andrew McLean's Report, Bundle 12, Expert Reports, item 15, paragraph 47.

⁸⁰⁶ Sean Tait's Report, 12, Expert Reports, item 19, page 10, para 28.

⁸⁰⁷ Transcript, 31 January 2014, page 926.

Mr McLean proposed the DoCS or a mutually respected NGO as third parties to fulfil this third party role.⁸⁰⁸

649.10 The introduction of Community Score Cards (“CSCs”) should be considered to monitor and evaluate the performance of the SAPS and CPFs and to increase accountability and responsiveness. The purpose of the CSCs is to “*increase the voice of marginalised communities in the delivery of policing, and provide a focal point for police-community dialogue.*”⁸⁰⁹ CSCs have the benefit of providing an opportunity for engagements between the community and police about addressing various issues and are, according to Mr. Mclean, cheaper to administer and analyse, less time-consuming and more sustainable than surveys.

649.11 A multi-stakeholder response to improving safety in Khayelitsha in the form of a “Khayelitsha Community Safety Forum and Plan” must be developed with input from the CPFs at cluster level, the SAPS, the DoCS and other departments in the Western Cape Government and the City of Cape Town.⁸¹⁰

⁸⁰⁸ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraphs 48 – 49.

⁸⁰⁹ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 58. A proposal on how CSCs work and an example of a community – police score card are attached to Mr Mclean’s report as “annexure 1” and “annexure 2”, respectively.

⁸¹⁰ Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 60.

649.12 In addition to the “Khayelitsha Community Safety Forum and Plan,” a plan must be developed at station level to inform the work of the relevant forum attached to that station. This plan must be developed jointly between the SAPS and the community on priority issues.⁸¹¹

649.13 A public constituency of support for community safety must be built through improving communications and the flow of information between the SAPS, CPFs and the community. This could include, for example, providing feedback on the investigation of cases and information about the right to bail and its application through workshops and/or local radio.⁸¹²

649.14 Conflict resolution and the provision of skilled mediators must be made available to the CPFs and station management.⁸¹³

The Department of Community Safety

650. We submit that the Department of Community Safety (DoCS) does not engage communities as citizens with rights to whom it is accountable. For example, in developing the priorities, needs and resource allocation for communities it

⁸¹¹ Sean Tait’s Report, 12, Expert Reports, item 19, page 11, paragraph 32.

⁸¹² Andrew McLean’s Report, Bundle 12, Expert Reports, item 15, paragraph 68.

⁸¹³ Sean Tait’s Report, 12, Expert Reports, item 19, page 12 paragraphs 35.

organises a one day formal meeting where the Minister and SAPS make formal presentations and “CPF Chairpersons would also have a word”. There is no indication that documentation, draft and a report on the previous year is made available to communities for scrutiny and active interrogation in workshops. The DoCS Annual Meeting with the Khayelitsha Cluster is a ritual rather than an open, accountable and responsive planning process taking into account the genuine needs of the community.

651. The Expanded Partnership Programme (EPP) suggests that its “fundamental purpose is to strengthen community participation in community safety” while setting “minimum standards for delivery of every CPF”.⁸¹⁴ The uniform standard of “delivery” requires significant knowledge capacity to plan, organise and administer programmes that enhance police efficiency, prevent crime and conducts oversight over SAPS. In addition, the EPP requires skills to produce newsletters, update and consult websites and generally communicate with schools; religious organisations; civic bodies; NGOs such as Rape Crisis, Mosaic and the Thuthuzela Centre; and businesses in Khayelitsha. Regrettably, the uniform funding standard and fails to meet the constitutional requirement of

⁸¹⁴ Bundle 2(3) File 13 - Affidavit of Gilbert Lawrence, par 101-102.

prioritising the needs of the most vulnerable exposed to crimes of extreme violence.⁸¹⁵

652. The failure of DoCS to discharge its constitutional mandate of open, accountable and responsive government leads to a distrust by the community and inefficiency by SAPS.

Recommendations

653. The enhancement of CPF capacity must be undertaken immediately in consultation with the CPFs, SAPS and the complainant organisations.

654. The DoCS budget must reflect a progressive realisation with an equitable distribution of resources based on the needs of working class communities, vulnerable to violent crime.

⁸¹⁵ Bundle 2(3) File 13 - Affidavit of Gilbert Lawrence, par 102-105.

W. GOVERNANCE

Findings

655. Robust, independent oversight is vital for the efficient performance of all police functions.

656. There has been a failure of oversight with regard to several issues that have arisen at the Commission, including: the allocation of human resources within SAPS, and the level of unpunished police misconduct.

657. There is a strong legislative and constitutional system of oversight in place. However, IPID and the Civilian Secretariat are not funded sufficiently to perform their mandated tasks. The CPFs lack the necessary independence to perform meaningful oversight. DOCS and SAPS in the Western Cape have not co-operated sufficiently to allow DOC to perform its oversight role to its full extent.

Recommendations

658. **Immediate:** As a general rule, the work and reports of the Civilian Secretariat should be publicly accessible.
659. **Short:** DOCS and SAPS in the Province should co-operate so that DOCS can exercise its constitutional oversight function in the Province effectively and efficiently. They should conclude a memorandum of understanding that allows DOCS all access necessary to provide independent oversight, to the extent consistent with SAPS's operational requirements.
660. **Medium:** Funding for both IPID and the Civilian Secretariat should be increased.

X. MANAGEMENT ISSUES: PERFORMANCE MANAGEMENT AND INSPECTIONS

Performance Charts

661. SAPS has established a Performance Chart that ranks stations according to a variety of factors. We do not intend to summarise the functioning of the Performance Chart. Instead, we will focus on where it falls short and how it could be improved.

662. The Complainant Organisations largely agree with the detailed and helpful assessment of Andrew Faull. Faull concludes that, while the Performance Chart is necessary and in many ways admirable,⁸¹⁶ it is deficient in certain key respects. The underlying concern that informs many of Faull's more specific criticisms is that the Performance Chart does not measure outcomes – it does not measure public satisfaction with the police, or public feelings of fear or safety.

663. The content of the Performance Chart implicitly reflects the role we believe the police should play. If it is focused on reducing crime rates, the police will try to reduce crime rates, even if that involves manipulating statistics and encouraging under-reporting. If the Chart measures the degree to which the public are

⁸¹⁶ Faull Report (Bundle 12, Document 22) page 2.

confident in the police, the police will act in a way that is likely to increase public confidence. It is precisely because the Performance Chart is such a powerful tool in defining the role of the police and shaping police behaviour that it is vital to use the correct measures in order to direct police in the most productive fashion and avoid creating perverse incentives.

664. The Performance Chart measures outputs (direct police action), rather than outcomes (the result of those actions). Its definition of “effectiveness” assumes that an increase in output will result in the desired outcomes. But, as Faull notes, this definition is “*based on assumptions of what the public wants, but is decided in the higher echelons of police management and government. The fact that The Commission is sitting is an indication that the SAPS has missed the target on this one, what it considers “effectiveness” to be is not what the communities of Khayelitsha consider it to be.*”⁸¹⁷

665. The measured outputs can have negative outcomes. Crime rates can be manipulated by refusing to register crimes – while this appears as a decrease in crime rates, in reality it damages police-community relations.⁸¹⁸ Arrest targets can be met by unnecessary arrests that do not decrease crime, but do damage

⁸¹⁷ Ibid at page 16.

⁸¹⁸ Ibid page 17.

public perceptions of, and relationships with, the police.⁸¹⁹ Faull concludes, unambiguously, that the Performance Chart (as currently structured) creates perverse incentives for SAPS members.⁸²⁰

666. Faull makes the vital point – supported by several other experts⁸²¹ – that the way that police treat the public is of immense importance to the effectiveness of the police:

“It matters less for feelings of public confidence and trust that police catch a criminal offender, as it does that a victim (and offender) feel they have been treated fairly, respectfully and without bias. If they believe this to be the case, they are more likely to trust police and to obey the law in the absence of police.”⁸²²

667. A measure in the Chart that encouraged and rewarded improvements in procedural justice or procedural fairness would go a long way to improving both police-community relations, and the effectiveness of the police. Faull suggests a number of surveys that could fill that role.⁸²³ The precise type of survey will depend on resource constraints and issues of practicality, but it is vital that SAPS

⁸¹⁹ Ibid pages 17-18.

⁸²⁰ Ibid page 18.

⁸²¹ Newham, McLean, Steinberg

⁸²² Faull Report (Bundle 12, Document 22) page 20 (emphasis added).

⁸²³ Ibid page 19.

amend the Performance Chart to include measures of public trust and procedural fairness.⁸²⁴

668. The Chart does weight police performance with regard to the relative seriousness or importance of crimes – contact crimes are given more weight than other crimes.⁸²⁵ However, Faull suggests that the Chart could be improved by introducing a Crime Harm Index, which measures the seriousness of crime types (rather than the broader categories) based on the length of the sentence.⁸²⁶ Another approach is a “risk model” that looks at the factors in each station that increase the risk of crime.⁸²⁷

669. Beyond the issues that the Chart measures, it is vital that SAPS use the evidence that is gathered to solve problems. The Performance Chart is only the first step – if the data that is gathered is not used to constantly perform and alter policing priorities and strategies, then it is being wasted. Faull’s analysis of the evidence demonstrated that it was unclear whether SAPS was engaging in the following practices:

⁸²⁴ Ibid page 22.

⁸²⁵ Faull Report (Bundle 12, Document 22) page 29.

⁸²⁶ Ibid.

⁸²⁷ Ibid page 30.

- “a) *Very regular problem solving meetings are held involving station, cluster and provincial commanders;*
- b) *Whether current meetings allow for the immediate provision of additional resources where needed to promote rapid problem solving;*
- c) *Whether such meetings include the systematic testing and monitoring of interventions in order to grow institutional knowledge;*
- d) *Whether SAPS operational planning is “evidence based” rather than founded on misguided common sense, coercive thinking about crime and policing.”⁸²⁸*

670. To the extent that these practices are not being followed, SAPS should immediately begin to shift towards this type of evidence-based policing that takes

⁸²⁸ Faull Report (Bundle 12, Document 22) page 12. See also page 23 (“[I]t is unclear to what extent the SAPS is actively involved in research and reflection relating to its work, scientifically testing and measuring the impacts of its actions on the challenges it attempts to tackle. In this regard, the Performance Chart is an important component of measuring police performance, but it is only the foundation. It should be complemented by a deeper, ongoing engagement with the interventions that are put in place, and the documenting of their successes and failures. Over time, the resulting pool of evidence would allow the SAPS to more readily intervene in spaces of disorder and to restore feelings of safety and confidence among residents.”)

full advantage of the data it generates.⁸²⁹ This is clearly linked to the proper use of crime intelligence, and the regular release of station-level crime statistics discussed earlier. Khayelitsha should be used as a test case to develop the systems for full use of evidence-based policing.

671. With regard to the ranking of stations using the Performance Chart, Faull concluded that the way the Chart was structured rendered the ranking largely arbitrary.⁸³⁰ While he accepted that there may be some limited role for the ranking in terms of identifying need, it should not be used to send resources to a station that performed badly compared to its baseline, but is otherwise performing well.⁸³¹ He suggested that it would be far more helpful to compare stations in groups of similar stations.⁸³²

672. In sum, the Performance Chart is a good start, in line with some international practice. But the Chart has not kept up with recent developments in other jurisdictions. As a result, there are several areas in which the Chart itself, and the way it is used by SAPS should be improved. Those improvements have the

⁸²⁹ The evidence discussed earlier with regard to the use of crime intelligence suggests that SAPS has a culture of “experience-based” policing, where data is subsidiary to common sense. This is dangerous and limits the value of tools such as the Chart.

⁸³⁰ Faull Report (Bundle 12, Document 22) page 26.

⁸³¹ Faull Testimony, Transcript page 7992 (“*I think in that sense the ranking can be – it’s a nice tool to have, it’s something nice to look at but it’s not something that must be privileged as a way to say Rondebosch is in the red, so we need to attack – we need to put all our resources into Rondebosch, because Khayelitsha is going to still be in much greater need.*”)

⁸³² Faull Report (Bundle 12, Document 22) page 27.

potential to have a significant impact on the performance of the police, their relationship with the community, and the way that police understand their role in a democracy.

673. The Chart is, necessarily, an extremely complicated tool. While amendments are needed, they should be instituted gradually after careful consideration and experimentation. Khayelitsha offers an excellent opportunity to test and perfect changes to the Performance Chart before those changes are implemented in other stations. The process should include close consultation with members of the community.⁸³³

674. Accordingly, the Complainant Organisations recommend that the Commission makes the following findings and recommendations:

Findings

The SAPS Performance Chart is a useful and well-constructed tool. However, it does not take account of recent developments in international best practice and police theory. Those failures create perverse incentives for the police which negatively affect police efficiency and the relationship between the police and the community in Khayelitsha, as well as the rest of the country.

⁸³³ Faull Testimony, Transcript page 7990-7991.

Recommendations

Short: SAPS should establish a collaborative process, together with members of the community and other roleplayers, to review the content of the Performance Chart in light of international best practice. The focus should be to move away solely from measuring outputs, to measuring outcomes. In particular, SAPS should consider: (a) adding a measure of public satisfaction or procedural fairness; (b) adding measures of complaints and use of force; and (c) measuring the type of crime, or the nature of the station's environment in more detail. The review should use the Khayelitsha stations (and possibly other stations) as a test sites where the effects of the alterations to the Chart can be carefully evaluated.

Short: Starting in Khayelitsha, provincial leaders and cluster and station commanders should be trained in how to use the data and results generated in the Performance Chart. SAPS management should encourage the regular and detailed use of evidence to drive police strategy and operations. The results of these changes in Khayelitsha should be carefully tracked, in order to determine best practice which can be used in other stations.

Long: The results of the reviews to the content and use of the Performance Chart in Khayelitsha should be used to alter the Performance Chart for all stations.

Inspections

675. The conduct of inspections is regulated by Standing Order 6 (“SO6”) which sets out the functions and responsibilities of the Inspectorate.⁸³⁴

676. In SO6 the word inspection is said to mean the process by which compliance with legislation, departmental directives, instructions, policies and procedures is monitored by employees attached to the Inspectorate. It excludes inspections conducted by line functionaries in the execution of the day to day management responsibilities.⁸³⁵

677. The purposes for which inspections are conducted include determining whether departmental directives, instructions, policies and procedures are complied with;⁸³⁶ assessing on a regular basis the effectiveness of any remedial measures implemented to rectify any deficiencies in the effectiveness, efficiency and quality of service delivery by the Service.⁸³⁷

⁸³⁴ Bundle 3; File 3.22; SO General

⁸³⁵ Clause 2

⁸³⁶ Clause 4(b)

⁸³⁷ Clause 4(f)

678. The Inspectorate must report to the National Commissioner on the effectiveness, efficiency and quality of service delivery by the Service.⁸³⁸

679. There is nothing in SO6 that prohibits the conduct of un-announced visits to police stations for the purposes of inspections. On the contrary, this is expressly permitted by the Standing Order, which provides in section 6(1) thereof that Divisional-, Provincial-Commissioners and Station commanders as well as Unit Commanders must be informed of the date on which scheduled inspections and evaluations will be conducted, provided that, where the Divisional Commissioner: Inspectorate or the relevant Provincial Head: Inspectorate deems it necessary, unannounced evaluations and inspections may be conducted without prior notification.

680. In her evidence before the Commission Major General Jephta⁸³⁹ made it clear that unannounced visits to police stations for the purposes of conducting inspections are not performed in the ordinary course. When asked why this was so she answered as follows:⁸⁴⁰

MAJ GEN JEPHTA: Commissioner, we inform the stations about the inspections so that we – so that the station commander can plan, and that

⁸³⁸ Clause 4(d)

⁸³⁹ On 31 March 2014

⁸⁴⁰ Transcript page 6269

we do not hamper service delivery and we do not infringe on planned operations. We know that stations have got programmes and if we suddenly just come on to them, they have got to deviate from their programme.

They might have planned to have a community engagement and we land up unannounced, Commissioner, then they can't have the community engagement. Or they would have had an operation that was planned for which money was put aside and spent, and if we should land up there and start doing the inspection they will not be able to execute such an operation and it will then be fruitless expenditure, or if executed they would not reach the purpose of that operation.

681. In response to a question regarding the circumstances under which the Inspectorate would deem it necessary to conduct unannounced evaluations and inspections, Major General Jephta responded that *'We would have that on request from management, senior management, or on the request of a station commander or a cluster commander.'*⁸⁴¹ She then stated that since her command of the Inspectorate from 1 April 2012, it had not been deemed necessary to conduct any such unannounced evaluations and inspections of the three police stations in

⁸⁴¹ Transcript page 6270

Khayelitsha.

682. The value of announced visits to police stations for the purposes of conducting inspections cannot be overstated. The negative impact of an inability to conduct unannounced visits by an organ of state or bod tasked with performing a monitoring function can best be demonstrated by the evidence to the Commission of Mr Patrick Njozela, the Head of the Policing Complaints Directorate, a sub-directorate of the Directorate Monitoring and Evaluation of the Department of Community Safety.⁸⁴² He testified that since 2010, following an instruction from the then Provincial Commissioner that no spontaneous visits would be permitted at police stations for the purposes of inspections, the DOCS inspectorate now functions like a *‘postbox’*. According to Mr Njozela, given that one of the aims of the DOCS inspectorate is to improve the levels of service delivery in policing agencies, it was fair to say that the post 2010 arrangement limits or hampers DOCS’ ability to perform that function.⁸⁴³

683. The evidence of Ms Ballard further demonstrated the value of unannounced inspections by a body which has a monitoring role. In this regard, she said:⁸⁴⁴

“Certainly, an unannounced inspection – and this is not an original assertion I’m drawing on the commentators (indistinct) Convention against Torture, the

⁸⁴² On 3 and 4 February 2014.

⁸⁴³ Transcript page 1271

⁸⁴⁴ Transcript page 7339

remarks from country reports from the subcommittee and the Committee on the Prevention of Torture and on a number of established guidelines to the inspection of places of deprivation of liberties. Certainly not novel ideas by any stretch but the value of unannounced visits has been stressed time and time again. Why, well because it reduces the opportunity for any kind of forward planning, political inference, tampering etc., it provides an ideal snapshot of conditions of detention at any given time. You will see that the value of the snapshot picture is highlighted in my section of the UK.”

684. In order to improve the effectiveness of the monitoring and oversight functions with which DOCS (by virtue of the SAPS Act) and the Provincial Inspectorate headed by Major General Jephta are tasked, we propose that this Commission recommend that a certain number of inspections be performed on an unannounced basis. Major General Jeptha testified that the Inspectorate conducts or plans for 55 inspections per year and 45 follow up inspections. In this regard, this Commission should recommend that at least one inspection per year conducted at each of the Khayelitsha police stations must be unannounced, and that at least one follow-up inspection a year must also be unannounced.

685. The delay between the time an inspection is actually conducted and when a report of findings and remedial actions is actually produced has furnished the time that a

report is submitted has also arisen before the Commission. In this regard, Commissioner Pikoli referred Provincial Commissioner Lamoer to the fact that Col. Harri and her inspectors conducted an inspection of the FCS Unit in June 2013 and yet a report was only produced in December. The Provincial Commissioner was asked if it normally took that long for reports to be produced after an inspection. The Provincial Commissioner stated that reports are supposed to be finalised within a short space of time after an inspection; and stated that he did not know the reasons for the delay. He conceded that such a delay impacts on service delivery.

686. To address this issue this Commission must recommend that inspection reports must be issued to stations no later than one month after an inspection, giving the station commanders a period of one month within which to respond regarding remedial actions to be taken. This will ensure that inefficiencies are not institutionalised, when findings are addressed with the urgency that they deserve with the aim of delivering improved policing services to the people of Khayelitsha.

687. In response to a question from the Commission, Lt Gen Lamoer explained that there are basically three monitoring and evaluation bodies that look after SAPS. There is the Auditor-General which looks at specific issues such as budget and

value for money. Then there is internal audit which looks more at risk. The third layer is the inspectorate which looks at compliance with the prescripts and policies of SAPS. The Provincial Commissioner stated that in his view all three levels *'are very important and it really enhances our management of the province and also enhance what we can put in place in the province to better the service to the people of this province.'*

688. They do not appear to be having this desired effect however, because the effectiveness of the inspections conducted by the provincial inspectorate has come into question at the Commission. In this regard the Commissioner Presiding expressed this concern as follows to Lt General Lamoer: *'I think that Adv Pikoli and I are of the view that it is appropriate to determine what has been done as a result of these reports particularly, I may say, General, because what's quite clear to the Commission is that shortcomings have been identified in report after report after report and it's not clear to us at this stage what happens when shortcomings are identified.'*

689. Whilst the inspectors have been effective in identifying inefficiencies and calling for remedial action, these inefficiencies recur and no remedial action appears to be taken, even in instances where disciplinary action has been recommended. Whilst inspections are occurring, they do not seem to be having an impact insofar

as improving efficiencies and output at police stations. This has a severe impact on the delivery of services to the people of Khayelitsha. The result is the failure to deliver effective policing services, a failure for which the Provincial Commissioner was willing to apologise before this Commission when he said: *'I am prepared to apologise for the lack of services rendered to address the crime problems in the Khayelitsha area.'*

690. The system of inspections regulated by SO6 does not appear to be having an impact, and the reason for that is because it is not being implemented at all levels of management within SAPS. Findings are made and no consequences follow therefrom both in terms of implementing remedial actions and in terms of taking action where there is a failure to implement remedial actions. When the system is properly implemented, on receipt of an inspection report the relevant Divisional Commissioner and Provincial Commissioner must ensure the implementation of suitable remedial measures to address negative trends identified during inspections within the time frames identified in the reports; and ensure the implementation of identified best practices within his province to enhance the rendering of an effective and efficient service delivery. It is clear that this is not happening in respect of the negative trends identified in the three Khayelitsha stations over years, in inspection report after another.

691. It is recommended that after the Inspectorate has made findings in a police station, it must in its report implement a system of prioritising the most pressing findings in each police station as well as the most urgent negative trends to address. SO6 stipulates that the Division: Inspectorate must on a regular basis assess the effectiveness of any remedial measures implemented to rectify any deficiencies in the effectiveness, efficiency and quality of service delivery. No time period is stated for the regularity of these assessments. It is recommended that they must occur every six months, and that the Provincial Commissioner must account publicly for the results of these assessments in relation to the three police stations in Khayelitsha.

Y. HUMAN RESOURCES

692. The question of human resources can be broken into five sub-issues:

692.1 The adequacy of officers in Khayelitsha;

692.2 The distribution of officers through the Province and the Republic;

692.3 The training of officers; and

692.4 The promotion and disciplining of officers.

The Adequacy of Human Resources

693. The most basic question with regard to human resources is: Are there enough officers at the three Khayelitsha stations? If the answer is No, it is also necessary to consider the reasons there are insufficient officers in Khayelitsha.

694. There was no debate in the testimony before the Commission that the three Khayelitsha stations did not have enough officers. As counsel for SAPS stated:
“all of [the station commanders] had on a regular basis said that that they were

*under resourced and therefore it was insufficient, and they wanted more personnel, more vehicles.”*⁸⁴⁵

695. When Brigadier Dladla was asked why his station was allocated so few members compared to Wynberg, he answered: *“I don’t know that is why I said I don’t agree with the RAG I want more members.”*⁸⁴⁶ Colonel Reitz said that the personnel shortage was more acute in Khayelitsha than elsewhere,⁸⁴⁷ and said: *“I need more detectives to deal with the case load”*.⁸⁴⁸ The following exchange between Mr Arendse and Colonel Nel is typical:

“MR ARENDSE: Okay. The lack of resources or your – you weren’t obviously completely happy with the allocation. Did that hinder or hamper or somehow undermine the efficiency or effectiveness of policing in the Harare precinct?”

⁸⁴⁵ Transcript page 5502.

⁸⁴⁶ Brig Dladla Testimony, Transcript page 3596.

⁸⁴⁷ Transcript page 3203 (*“COL REITZ: My opinion in all the stations that I’ve worked there is personnel shortages, it’s...*

COMMISSIONER: Is it not more acute in Khayelitsha, more serious here in Lingeletu West or much the same everywhere?”

COL REITZ: If you look into the area they’re working I think it is more serious here”.

⁸⁴⁸ Transcript page 3202.

*COL NEL: Not in the least, Commissioner. I think, as I said before, with what we had I think we did well. I just feel that should I have had more, we could have done more.*⁸⁴⁹

696. It is not necessary to determine the precise degree of under-resourcing. It is beyond doubt that Khayelitsha does not have enough Vispol members to patrol and respond to complaints, enough detectives to deal with all the dockets, or enough CIOs to provide adequate intelligence. This undeniably contributes to inefficiency and the breakdown of relations between the police and the community.

Finding

697. There is a serious shortage of human resources at the three Khayelitsha stations. This is a significant contributor to the inefficiency of the stations, and the breakdown in relations between the police and the community.

The Unequal Distribution of Human Resources

698. Of course, if all stations in the Western Cape were equally poorly resourced, the lack of police officers may not be an explanation for the state of affairs in

⁸⁴⁹ Col Nel Testimony, Transcript pages 4628-4629.

Khayelitsha. While the previous section focussed on whether there are adequate personnel available in Khayelitsha for SAPS to perform its functions, this section emphasises the unequal distribution of resources: (a) between different areas within the Western Cape; and (b) between the Western Cape and other provinces. It reveals that the Khayelitsha stations are amongst the least resourced stations in the least resourced province.

699. The unfair allocation of resources appears from the evidence of Brigadier Rabie and Jean Redpath. Brigadier Rabie provided the allocation of human resources according to the THRR. Using the figures he provided and the data from the 2011 census, the Complainant Organisations calculated the relative distribution of resources between the Khayelitsha stations and other stations in the Western Cape. The table⁸⁵⁰ demonstrated that even on a theoretical allocation that did not take account of resource constraints, SAPS did not allocate resources appropriately.

700. While Khayelitsha had an average of 433 people per police officer,⁸⁵¹ stations in historically white suburban areas such as Claremont, Sea Point, Steenberg, and

⁸⁵⁰ Exhibit LR1.

⁸⁵¹ The exact numbers were: Harare 634.95; Site B 388.02; and Lingeletu West 275.03. This table used a direct population:police ratio. Jean Redpath used a police per 100 000 ratio. The numbers are therefore different. However, the discrepancies remain similar.

Muizenberg⁸⁵² all had less than 300 people per policeman. Stations in other historically black areas such as Gugulethu and Nyanga had more than 400 people per police officer. These are all similar sized stations, yet those in privileged areas are significantly better resourced than those in under-privileged areas. While this was not a comprehensive evaluation of the figures provided, the pattern is extremely disturbing.

701. That pattern is confirmed by Redpath's analysis of the actual (rather than theoretical) distribution of resources. According to Redpath's report, Harare is the least-resourced station in the Western Cape. Khayelitsha is 134 on the list, and Lingeletu West is at 91. By contrast, formerly white suburbs such as Claremont, Simon's Town, Strand, Fish Hoek, all appear in the top half of the list. As Redpath puts it: *"township areas are among the least resourced per capita in the Western [Cape] ... despite being amongst the most difficult to police. Unless SAPS wishes to argue that the burden of policing is indeed lowest in Harare, Lwandle, Belhar and Nyanga, and thus the lowest resourcing per capita in these areas is fair, these results alone demonstrate the flaw in the SAPS*

⁸⁵² The numbers in these areas are 130.79, 118.76, 294.33 and 255.07.

approach”.⁸⁵³ Or, in Commissioner O’Regan’s words: “*This is very close to an apartheid list.*”⁸⁵⁴

702. Redpath proposed an alternative formula for calculating the proper distribution of human resources within the province. Unlike the THRR formula, this does not calculate the absolute requirement of a station, but how to fairly distribute the resources assigned to the province amongst the 149 stations.⁸⁵⁵ According to that formula, Harare would require an extra 252 policemen, and Site B an extra 129 policemen in order for the distribution of provincial resources to be fair.⁸⁵⁶ That is a massive re-allocation of resources, and demonstrates the extent of the problem.

703. Of course, some discrepancies are justified. As Brigadier Rabie pointed out, small stations require a minimum number of members to operate, and will therefore have a high ratio of police to population. Similarly, areas such as Cape Town city centre that have small permanent populations but large daily or nightly influx of people will appear to have high police to population ratios. While this may explain the position of some stations, it does not explain the consistent

⁸⁵³ Redpath Report (Bundle 12, Document 1) page 2.

⁸⁵⁴ Redpath Testimony, Transcript page 6803.

⁸⁵⁵ Redpath Testimony, Transcript page 6777.

⁸⁵⁶ Redpath Report (Bundle 12, Document 1) page 16. Lingeletu West would stay the same.

pattern of high-crime, low-income, historically black areas being significantly under-resourced compared to low-crime, high-income, historically white areas.

704. General Lamoer himself acknowledged that this position was irrational:

“MR HATHORN: ... General, my sense is that there is something fundamentally irrational about the way that the RAG or the THRR, as it is now termed, is calculated, if it produces results such as it does comparing Lingeletu West with Claremont. Are you in agreement with me?

*LT GEN LAMOER: I’m in agreement, I mean, that’s what I explained just now, Chair.”*⁸⁵⁷

705. In addition to the unfair distribution of resources within the Western Cape, the evidence shows that the Western Cape is amongst three provinces that receive significantly below the national average allocation of members.⁸⁵⁸ According to Brigadier Rabie’s estimation, 94% of established posts in the Western Cape are

⁸⁵⁷ Gen Lamoer Testimony, Transcript page 6603-6604.

⁸⁵⁸ Rabie Testimony, Transcript page 5318 and 5321.

filled, compared to an average of 106% nationwide. Some provinces are staffed up to 125%.⁸⁵⁹

706. SAPS has initiated a normalisation project to address the problem. In 2012 it assigned 60% of incoming constables to the Western Cape to attempt to address the problem.⁸⁶⁰ However, as Brigadier Rabie acknowledged: *“if you take into account the analysis that we’ve done it is obvious that [the Western Cape is] lagging behind in terms of getting [it] on par with the other provinces.”*⁸⁶¹

707. The Complainant Organisations submit that there can be little doubt that the allocation of resources to the Western Cape, and the allocation of resources within the Western Cape, unfairly privileges rich, historically white areas, over poor, historically black and coloured areas. That distribution is not only discriminatory, it is irrational because the areas with the highest burden of crime are afforded the fewest police per population. As noted earlier, the unfair distribution of resources undoubtedly contributes to both inefficiency and a breakdown of relations between the community and the police.

⁸⁵⁹ Ibid page 5325.

⁸⁶⁰ Ibid at 5318.

⁸⁶¹ Ibid at 5325.

Finding

708. The allocation of human resources to the three Khayelitsha stations (and other demographically similar stations in the Western Cape) is irrational and discriminatory. The Khayelitsha stations are allocated significantly fewer members than stations of similar size in affluent, historically white areas. This contributes to inefficiency and a breakdown of relations between the police and the community.

Explanations for the Irrational Allocation

709. In order to know how to address this imbalance, it is necessary to consider why SAPS managed to produce such a pronounced and irrational distribution of resources. It appears there are three reasons:

709.1 Flaws in the THRR model;

709.2 The failure of stations to provide accurate information; and

709.3 Confusion or disagreement about the relative powers and responsibilities of the National and Provincial commissioners.

710. The THRR model is clearly an extremely careful attempt to evaluate the policing needs of various stations. It is a complex exercise.⁸⁶² The Complainant Organisations do not doubt that the model was developed in good faith. Nor do we believe there is any intent to disadvantage certain areas.

711. However, the results of the model indicate that there is a problem. As Redpath explained, *“the best test of the SAPS THRR method is common-sense. Does the method accurately and fairly distribute resources on the basis of burden of policing?”*⁸⁶³ When considered after the fact, the model is clearly producing distorted results. Brigadier Rabie acknowledged that producing the model was a matter of *“trial and error, some things work and some things don’t work. Some things give you the right answer.”*⁸⁶⁴ He also expressed his willingness to consider changes to the model.⁸⁶⁵

712. In that light, there are a few areas in which the model may be altered in order to better reflect the true burden of policing:

⁸⁶² Birg Rabie Testimony, Transcript page 5380 (*“I want you to understand that this is not a simple exercise, it’s very complex, taking into consideration the variables that we are working with and all the things that we have to take into consideration so, and what we are putting on the table, what we’ve put on the table it took us round about 10, 15 years to get to where we are now and it’s a difficult exercise.”*)

⁸⁶³ Redpath Report (Bundle 12, Document 1) page 2.

⁸⁶⁴ Rabie Testimony, Transcript page 5380-5381.

⁸⁶⁵ Ibid (*“So I will support if there’s any proposals in this regard, we will consider it but we would like to be part of the process then to clearly define how exactly are we going to address those proposals.”*)

- 712.1 The model does not prioritise the policing of contact crime over property crime. Presumably the explanation for this is that its goal is to provide the ideal number of resources, so prioritisation is unnecessary. However, because provinces tend not to significantly deviate from the THRR, the result is that stations with high property crime rates, but low contact crime can receive more resources than stations with high contact crime rates. The model is meant to be a purely theoretical one, but it has real practical implications for the distribution of resources. For that reason, it should consider prioritising contact crime.
- 712.2 Second, property crime is more likely to be reported in rich areas than in poor areas because residents of rich areas are more likely to be insured. This doubly skews resources in favour of rich areas. Because it is a rich area, property crime is likely to be higher relative to contact crime, and they receive additional resources to address the property crime problem.
- 712.3 Rich areas are more likely to have private security guards, reducing the need for visible policing. Yet the model fails to take that into account.

712.4 Although the model considers unemployment rates and informal housing, it caps the impact those factors can have, and arguably underestimates the degree to which they contribute to the burden of policing.

713. These are merely examples of how the model could be altered to address the current irrational results it produces. What is needed is a thorough re-evaluation of the model, with outcomes in mind. The model should produce outcomes that are logically and morally defensible. At present, it fails that test.

714. There is another, related flaw in the current model. It is so complex, and so secret, that virtually nobody, even within SAPS understands how it works.⁸⁶⁶ This is a serious problem. If people do not understand it, they cannot critique it. Redpath rightly stressed the value of transparency and simplicity in her evidence.⁸⁶⁷ Although it may not be possible to develop a model as simple as that proposed by Redpath, increased transparency in the calculation of human resources both within SAPS and externally would go a long way to avoiding the type of misallocation the Commission has observed. The United Kingdom's allocation of resources is a laudable example.

⁸⁶⁶ Redpath Testimony, Transcript page 6766.

⁸⁶⁷ Ibid at 6767-6768.

715. The second explanation for the irrational results is the quality of the information provided by stations. The model largely relies on information supplied by station commanders. If the information is inaccurate, the results will be inaccurate – “*garbage in, garbage out*”.⁸⁶⁸ Brigadier Rabie repeatedly bemoaned the quality of information he received from some stations, and accepted that this affected the validity of the model’s outputs.⁸⁶⁹

716. He indicated that his unit was (or should) taking steps to address the issue, either by collecting the information themselves, or by training Commanders to collect more accurate information.⁸⁷⁰ In the province, the office for Organisational Development actively checks the information supplied by station commanders.⁸⁷¹ This should be supported. However, the unit should not take over the function in a way that detracts from the transparency of the allocation.

717. The third explanation for how these discrepancies arise is a misunderstanding of the roles of the national and provincial offices with regard to the allocation of resources. According to Brigadier Rabie, the Provincial Commissioners have significant leeway to determine how to distribute the resources they are assigned:

⁸⁶⁸ Huxham Testimony, Transcript page 7926. Although, as Redpath noted the flaws in the design of the model mean that accurate information alone will not solve the problem. Redpath Testimony, Transcript page 6828 (“*even if you got your unemployment rate exactly right, you had the exactly correct proportion of the population which is living in informal settlements you had all of those things, the exactly correct information, I would say you would still get garbage on the other end.*”)

⁸⁶⁹ For example, Brig Rabie Testimony, Transcript page 5272-5274 and 5377.

⁸⁷⁰ Ibid at 5275 and 5377.

⁸⁷¹ See, for example, Lamoer Testimony, Transcript page 6505-6506.

*“when we do the allocations to the provinces we cater that they can staff all the stations equally on let’s say 70% but the Provincial Commissioner has got the prerogative to prioritise certain stations above others and then based on that they can move as long as they stay within the theoretical calculated limits.”*⁸⁷²

718. In his view, the THRR is necessary to: (a) determine the allocation of resources between provinces; and (b) provide a guide to Provincial Commissioners on how to distribute their resources. While there may be certain minimum requirements, the Provincial Commissioner should have a fair degree of latitude.

719. General Lamoer had a very different understanding of his role. He expressed it as follows:

*“with the new allocation of posts, they will then say at Western Cape you get so many posts and so many posts. The distribution of that posts is automatically already earmarked for a specific police station. Because, as I stated earlier, it’s all about what funds are going with that.”*⁸⁷³

⁸⁷² Rabie Testimony, Transcript page 5297.

⁸⁷³ Gen Lamoer Testimony, Transcript page 6506.

720. In the Provincial Commissioner's view, he only has the power to allocate additional resources on a temporary basis – not to the permanent establishment of the station:

*“The utilisation of my staff, yes that is my responsibility. I can shift people to do a specific task in a specific area, but I can't shift the funded posts to that. That means in simple terms, Chair, Khayelitsha, for argument sake, have 100 people, they are struggling with 100 people. With the input from the station commander, with the request from the station commander, I can say I will give you the 50 members but on a short-term basis, just to address a specific crime threat. But those members will never be able to be placed permanently at that specific station.”*⁸⁷⁴

721. This is a fundamentally different understanding. If Brigadier Rabie believes that crime-fighting priorities will be dealt with by the Provincial Commissioner, and the Provincial Commissioner believes he can only make limited, temporary alterations to the THRR, a failure to send police where they are needed seems inevitable.

⁸⁷⁴ Ibid page 6507. See also ibid at page 6601 (*“But we must remember what we put in is being developed at a national level and when they send it back to us, this is what we get, and that is what we dispute continuously with them because we believe that stations where there's a higher prevalence of crime needs to have more resources.”*)

722. The Complainant Organisations submit that Brigadier Rabie is correct. Section 12(3) of the South African Police Service Act 68 of 1995 reads: “A *Provincial Commissioner shall determine the distribution of the strength of the Service under his or her jurisdiction in the province among the different areas, station areas, offices and units.*” There is nothing in that section to suggest that the power is limited to temporary allocations. While the Provincial Commissioner may be bound by national policy with regard to – for example – the minimum number of members for a station, he has significant power to distribute resources.

723. It is vital that, as a matter of urgency, SAPS clarify that Provincial Commissioners have the necessary power to affect not only temporary allocations, but also the permanent establishment of stations.

724. Accordingly, the Complainant Organisations submit that the Commission should make the following findings and recommendations.

Findings

725. The formula used to determine the Theoretical Human Resource Requirement fails to take into account the special needs and dynamics of areas such as Khayelitsha. As a result, it produces results that favour richer, better developed urban areas, over poorer, less developed townships, like Khayelitsha. This

contributes to inefficiency and a breakdown of relations between the community and the police.

726. The information inputted into the THRR formula is not always accurate. This results in inaccurate and unhelpful results, particularly in developing areas with large transitional and informal populations, such as Khayelitsha. This contributes to inefficiency in Khayelitsha.

727. There is confusion within SAPS about the role and powers of the Provincial Commissioner to determine the permanent establishment of stations. General Lamoer is incorrect to believe he cannot determine the permanent establishment. This imaginary limitation prevents the much-needed redistribution of human resources to Khayelitsha. That leads inevitably to inefficiency and a breakdown of relations between the police and the community.

Recommendations

728. **Immediate: Provincial Commissioner Lamoer should re-distribute SAPS's human resources in the province according to his powers in terms of s 12(3) of the Constitution. He should use that power to devote significantly more resources to the three Khayelitsha stations.**

729. **Immediate:** SAPS should publish the full formula used to determine the THRR, together with an explanation that would be accessible to the average interested lay person.
730. **Short:** The National Commissioner should convene a task team to re-evaluate the THRR formula in light of the findings of this Commission. In particular, it should consider how the results will affect the theoretical requirements for stations such as Khayelitsha.
731. **Ongoing:** Both the national and provincial offices should continue with their efforts to ensure the accuracy of information used in the THRR formula. This should include training of station commanders about the functioning of the THRR, starting with the Khayelitsha stations and other similar stations.

Recruitment and Training

Findings

732. There are problems with the recruitment and training of new recruits in SAPS generally. There are also difficulties with the availability of ongoing training for members.

733. The lack of adequate training of policemen contributes to inefficiency of police in Khayelitsha.⁸⁷⁵

Recommendations

734. **Immediate:** SAPS should alter its budgeting process to allow sufficient time to process fresh applications to join SAPS each year.

735. **Immediate:** During basic training, recruits should not be allowed to repeat a subject more than three times.

736. **Medium:** SAPS should begin investing in the necessary resources to provide training to recruits in languages other than English.

737. **Medium:** SAPS should include training for numeracy and literacy in its basic training course.

738. **Medium:** As far as possible, all trainers should have relevant police experience.

⁸⁷⁵ Transcript page 7862; Van Eyk Report (Bundle 12, Document 6) page 11.

739. **Medium:** SAPS – either at provincial or cluster level – should conduct a skills audit at Khayelitsha to determine what skills are lacking, and where the most effective areas for training would be.

Z. FINANCIAL RESOURCE ALLOCATION AND MANAGEMENT

740. The Commission has identified two broad issues regarding financial management:

740.1 The effect and utility of the systems for the allocation of financial resources to the three Khayelitsha stations; and

740.2 The sufficiency of various resources assigned to the stations.

741. We consider each in turn.

Systems for allocation of financial resources

742. Notice 17 identifies the following questions related to the system of financial allocation:

“(a) *Are the systems that are in place for determining resource allocation to the SAPS units operating in Khayelitsha appropriate and effective? If not, what should be changed given the need to ensure equitable allocation of resources within SAPS to the three stations in Khayelitsha?*

- (b) *Should there be greater transparency as to how resource allocation takes place within SAPS? What are the considerations that should inform a consideration of this question?*
- (c) *Are resources allocated according to internal guidelines and managed accordingly.*
- (d) *Whether it would be desirable for DOCS, in the exercise of its monitoring and oversight role in terms of section 206(3) of the Constitution, to offer inputs with respect to the determination of resource allocation to SAPS units operating in Khayelitsha. If so, how should such inputs be taken into account by SAPS national and provincial management in the determination of resource allocation to SAPS units operating in Khayelitsha?*

743. Before we consider these issues, we must mention outstanding information that has made it impossible to do a complete evaluation of the extent and fairness of physical resourcing in Khayelitsha. The Schooling and Leamy Report found that the budgets of the three stations had decreased in real terms over a five year period. General Fick explained that this apparent decrease had been caused by an array of innocent factors such as the cessation of payments to reservists and

contract workers, once-off payments for furniture and a backlog in hospital bills.⁸⁷⁶ General Fick undertook to provide the detailed figures to allow the Commission and the Complainant Organisations to evaluate her explanation.⁸⁷⁷ She has not done so. The Complainant Organisations are, therefore, unable to assess the validity of her explanation. For the purposes of these heads, we accept it as accurate, but we again call for General Fick to provide the relevant documentation.

744. While generally the systems for the management of physical resources seem acceptable, the Complainant Organisations submit that there are three general areas in which those systems could be improved:

744.1 The sole use of human resources to determine physical resources;

744.2 The determination of needs according to budget and the failure to conduct an “ideal needs” assessment for physical resources; and

744.3 The limits on the construction or leasing of property; and

744.4 The moratorium on the destruction of records.

⁸⁷⁶ Gen Fick Testimony, Transcript at page 5526-5528.

⁸⁷⁷ Ibid at 5528-5529.

745. First, General Fick testified that the distribution of physical resources is done primarily according to formulae based on the allocated human resources. As she put it: *“the generator of expenses are human resources and human resources cannot follow physical resources, we need to equip humans and we need to provide them with what they need to perform so that is why physical resources will always follow human resources.”*⁸⁷⁸ She later qualified that statement to indicate other factors taken into account, but it appears that the primary question remains the number and type of members at the station.⁸⁷⁹

746. For example, the number of vehicles assigned to the station will depend on the number of police officers assigned to the station. Stations can motivate for special allocations, but that is seen as a deviation from the normal approach. The result is that all stations are more or less equally equipped.

747. However, not all stations are equal or require equal resources. The use of human resources as a starting point means that physical resources are generally not used to attempt to cater for the particularly difficult circumstances that a station may

⁸⁷⁸ Gen Fick Testimony, Transcript at page 5523. See also *ibid* at pages 5556-5557; and pages 5565-5566 (*“whether it’s a detective in Khayelitsha carrying 20 dockets, and it’s a detective in Camps Bay with two dockets, I still have to give that detective a vehicle, I still have to give that detective a firearm, I still have to give him a bullet proof, I still have to give him fuel, so those are, that is why we look at the staff establishment.”*)

⁸⁷⁹ Gen Fick Testimony, Transcript at page 5566: (*“we look at issues such as base line allocations, we look at the expenditure planning and their operational lease that they’ve identified, we look at specific spending priorities that they might have indicated, we look at committed funds, those will be for issues such as needs that they’ve identified and that we have committed ourselves to secure the funding and then we also look at of course the staff establishment”*)

face. If the human resources are unfairly and irrationally distributed (as argued earlier), high crime areas like Khayelitsha will not be afforded additional resources to compensate.

748. Physical resources may not always assist in policing – if there are not enough members to man additional vehicles they will serve little purpose. But it does seem that the allocation of physical resources, while primarily based on the number of members, should take account of the nature of the crime situation in a particular station. That should go beyond ad hoc requests, which may not be made and can be denied. Rather, SAPS should investigate a systemic solution that links physical resources not only to human resources, but also to conditions.

749. Second, in General Fick’s testimony, she stated that stations submit their needs to her at the province to consider whether they should be approved. However, if those needs are “*unrealistic*”, she will send the needs assessment back to the station and require that they submit a new, realistic needs assessment.⁸⁸⁰ In her words: “*[I]n those instances I will go back to a station and say review because this is not realistic, this is not a need that I can incorporate in the budget.*”⁸⁸¹ On

⁸⁸⁰ Transcript, page 5514 (“*So in those instances I will go back to a station and say review because this is not realistic, this is not a need that I can incorporate in the budget.*”) See also Transcript page 5553-5554.

⁸⁸¹ Gen Fick Testimony, Transcript at page 5514. See also pages 5569-5570

MR BISHOP: But as I understood your testimony and correct me if I’m wrong when the stations are submitting their needs analysis to you, you say that if they submit something that is unreasonable or you know out of the ballpark that you tell them then no you’ve got to pull that back, so that the stations are when they’re submitting their needs to you they are already doing it with the idea of well this is the

the one hand this is a sensible approach as SAPS has to budget within available resources.

750. However, the consequence is that stations will never request resources that they know fall outside what they can reasonably expect – even if those resources are necessary to improve policing. In addition, General Fick noted that SAPS does not conduct a systematic assessment of the ideal needs of police stations.⁸⁸² It does not ask the question: if we had a limitless budget, what resources would this station need to perform optimally? It asks only: given our limited resources, what resources can we provide this station? General Fick acknowledged that such an exercise might be useful, but seemed unable to think outside the constraints of budget and “*reality*”.⁸⁸³

751. The Complainant Organisations submit that it is impossible to determine whether resources are sufficient absent a study of what the ideal resources are for a station. While there are clearly differences,⁸⁸⁴ the THRR is a model for how that exercise could be conducted. Whereas the THRR uses population and crime rates

rough budget that's available so I need to submit a needs analysis that is going to fit roughly within that budget.

GEN FICK: *Ja, ja.*

⁸⁸² Gen Fick Testimony, Transcript at page 5571. She later suggested that some of those matters are addressed on an *ad hoc* basis. Ibid at page 5572-5573 (“*In physical resources we do do that to a certain extent, and we do test the market, because for example if we look at equipment and there's a need for night vision equipment we will look at what is the best, and what is affordable and that, and not necessarily what is currently in use*”).

⁸⁸³ Gen Fick Testimony, Transcript at page 5572

⁸⁸⁴ See the issues raised by Commissioner O'Regan at Transcript page 5572.

as its primary driver, it considers a range of other factors to determine the personnel requirements of a station. Similarly, while physical resources must naturally begin with a consideration of the number of members, an idealised assessment that considered the terrain, location, crime rates and types, demographics and so on of a station would be extremely useful. It would allow SAPS to determine which stations are under-resourced and which are over-resourced, and lead to a more systematic approach to addressing existing resource shortages.

752. Third, General Fick's testimony revealed a number of smaller system issues that should be addressed:

752.1 When leasing, purchasing or constructing property, SAPS is required to work solely with the number of members that are currently assigned to that station. It cannot take into account the likelihood of growth in the station.⁸⁸⁵ General Fick conceded that this was a hindrance and that it would assist if SAPS was able to plan for anticipated growth when acquiring property.⁸⁸⁶

⁸⁸⁵ Fick Testimony, Transcript at page 5519.

⁸⁸⁶ Ibid at 5580-5581 (*"MR BISHOP: But would you agree that it would be helpful for you if it wasn't so rigid if you had some space to suggest look, if we're going to rent or build this new space we should actually get it a little bit bigger. GEN FICK: Of course it would, I mean...."*).

752.2 There is currently a moratorium on the destruction of records. This creates a huge problem at stations in terms of storage space. There does not appear to be a system in place for centralised storage.⁸⁸⁷

753. Accordingly, the Complainant Organisations submit that the Commission should make the following findings and recommendations with regard to the systems in place to determine the allocation of physical resources:

Findings

754. **The system for the allocation of physical resources is, in general, sound.**

755. **However, the sole reliance on human resources as the basis for the determination of physical resource allocation results in a failure to afford heavily burdened stations such as Khayelitsha sufficient resources. This results in inefficiency.**

756. **In addition, the failure to conduct an idealised needs assessment means it is impossible to evaluate what resources would be necessary to improve performance. This contributes to inefficiency.**

⁸⁸⁷ Ibid at 5521.

757. **The inability to cater for anticipated growth when leasing or purchasing new property means that stations are outgrown shortly after they are occupied. This contributes to inefficiency.**

758. **The moratorium on the destruction of records requires significant dedicated storage space at stations that are already short of space. This contributes to inefficiency.**

Recommendations

759. **Short:** The National Commissioner should consider removing the moratorium on the destruction of records. Alternatively, the Provincial Commissioner – or other relevant official – should arrange for centralised storage of old records in order to free up space at stations in Khayelitsha and elsewhere.

760. **Medium:** SAPS should alter its policy that prevents the purchase or lease of land beyond existing human resource requirements. It should permit purchase or lease to take account of likely future growth of the station.

761. **Medium:** SAPS should establish a task team to reconsider the way in which it distributes physical resources. The task team should consider how to take

into account the particular burden faced by a station, including the crime and demographic profile of the area when assigning physical resources.

762. **Medium:** SAPS should establish a task team to conduct an idealised needs assessment for physical resources. The assessment should seek to establish a system for determining what resources a station needs to perform optimally, absent budget constraints. The purpose of the assessment is to assess existing shortfalls, and identify key resource allocation priorities.

Resources at Khayelitsha Stations

763. Notice 17 asked the experts to address the following issues:

- 763.1 Whether there is a need for another police station;
- 763.2 Whether the station buildings are adequate, and are properly maintained;
- 763.3 Whether the vehicles are adequate and maintained effectively;
- 763.4 Whether the telephones and information technology is sufficient and maintained; and

763.5 Whether the other resources – handcuffs, bulletproof vests etc. – are adequate and maintained.

764. We address each questions in turn, except the question of information technology which is addressed elsewhere in these submissions.

Another Police Station

765. As we understand the evidence, the new police station at Makhaza has already been approved by SAPS. At the time General Fick gave evidence, SAPS was awaiting the outcome of an application to obtain the site from the City which, we are informed, has since been granted. The Makhaza station is clearly necessary and the Complainant Organisations welcome its approval. However, that comes with three caveats.

766. First, while the station has been approved, funding has not yet been secured from national.⁸⁸⁸ No station will be built until the funding is secured. In addition, it seems likely that there will be other delays in the issuing of tenders (up to one year)⁸⁸⁹ before construction can commence. The establishment of the new station has already taken 10 years. The community of Khayelitsha cannot wait any

⁸⁸⁸ Gen Fick Testimony, Transcript page 5543.

⁸⁸⁹ Gen Fick Testimony, Transcript page 5548.

longer. SAPS should prioritise and fast-track the construction and establishment of the new station.

767. Second, a new station will not necessarily entail significant additional human resources for Khayelitsha. There is a danger that resources will be moved from the existing station to Makhaza.⁸⁹⁰ For the reasons identified in the section on Human Resources, Khayelitsha requires significantly more resources, not merely a new station. SAPS should ensure that the new station does not result in any reduction of the existing staff complement of the three Khayelitsha stations.

768. Third, the construction of the new station should not be used to distract or divert from the numerous other failures of SAPS in Khayelitsha. Makhaza is not a panacea for the problems of policing in Khayelitsha. In addition to the resource constraints, there are serious problems around management, operations, culture and implementation that are detailed in the rest of these heads of argument. Constructing a new station is one of many steps necessary to fix policing in Khayelitsha.

Findings

⁸⁹⁰ Brig Rabie Testimony, Transcript page 5244-5245.

769. **The delay in constructing a fourth station in Khayelitsha has contributed to police inefficiency.**

Recommendations

770. **Medium: The station at Makhaza should be constructed as a matter of priority. Construction should begin by the end of 2014.**

771. **Long: When allocating resources for the new station, SAPS should not significantly reduce the resources currently allocated to the three Khayelitsha stations.**

Station Buildings

772. The report of Schooling and Leamy provides strong evidence that Harare and Lingeletu West stations lack adequate office space.⁸⁹¹ This was confirmed in evidence by Brigadier Dladla⁸⁹² and Colonel Reitz.⁸⁹³

⁸⁹¹ Bundle 9, File 1, Document 1E at paras 46-47.

⁸⁹² Brig Dladla Testimony, Transcript page 3608 (“MS BAWA: ... [I]t does seem that you have office space dilemmas both from your community service centre where you don’t have access to special interview rooms, you’ve only got two cubicles to take statements, some of your detectives are four in an office and some are housed in a container. I’m simply relaying it to you because you relayed this to us at the inspection and I need to just get it onto the record. BRIG DLADLA: Yes.”)

⁸⁹³ Col Reitz Testimony, Transcript page 3097-3098.

773. Colonel Fick readily acknowledged the problem of insufficient office space.

When presented with the Schooling and Leamy findings, she responded: “*Madam Chair what I would say is he could just have included almost all the other stations in this province. Accommodation is a huge problem, I don’t deny that in this three stations it is a problem even with Khayelitsha where the new building was constructed.*”⁸⁹⁴ Indeed, according to her evidence, some stations in the Province are worse off than those in Khayelitsha.⁸⁹⁵

774. The park homes and containers that SAPS uses at all the Khayelitsha stations to try to meet the space crisis are far from ideal. As General Fick put it: “*government is supposed to give hope and indicate to people there is a better life and for me containers and park homes doesn’t say that*”.⁸⁹⁶ She also acknowledged that the use of park homes and containers affects members’ morale and service delivery.⁸⁹⁷

775. SAPS does not appear to have a systemic plan to address the province-wide problem of insufficient office space. Rather, it seems that the problem is dealt with on an *ad hoc* basis – attempting to find additional space for stations when and where possible. Generally, there are insufficient resources to address the

⁸⁹⁴ Transcript pages 5521-5522.

⁸⁹⁵ Transcript page 5579.

⁸⁹⁶ Transcript page 5518, lines 5-10. See also 5577 (“*It is my view that any member operating from a container or a park home is not the ideal situation. Proper infrastructure will always be the preferred option.*”)

⁸⁹⁷ Transcript page 5578.

problem⁸⁹⁸ and a variety of administrative hurdles that slow down the acquisition of additional space, such as the cap on any new leases or extensions of leases.⁸⁹⁹

Findings

776. All three stations in Khayelitsha have insufficient office space and make use of park homes and containers. The lack of sufficient office space affects morale and productivity. The use of park homes and containers negatively affects the image of SAPS with the public. Together, these failures contribute towards inefficiency and the detrimentally affect the relationship between the police and the community.

777. The problem of insufficient office space is a problem throughout the Province and requires a systemic solution.

Recommendations

778. Short: The Provincial Commissioner should establish a task team – including representatives from the City, DOCS and the community – to prepare a plan to resolve SAPS systemic problem of office space in the Province generally, and Khayelitsha in particular. The task team should consider alternative

⁸⁹⁸ Transcript page 5579.

⁸⁹⁹ Transcript page 5589.

accommodation options other than containers and park homes, as well as opportunities for co-operation between SAPS and municipal and local government.

779. **Medium:** The task team should present a report setting out: (a) its findings for alternative accommodation options; (b) any regulatory or policy obstacles to adopting those solutions; and (c) proposed recommendations for overcoming those obstacles.

Vehicles

780. There is clear evidence that there are insufficient operational vehicles in Khayelitsha. The Schooling and Leamy Report reached that conclusion.⁹⁰⁰ Brigadier Dladla testified that more vehicles are needed in Khayelitsha Site B⁹⁰¹ and complained about the type of vehicles that he was supplied with.⁹⁰² General Fick noted that there are sufficient assigned vehicles, but that those vehicles are not always available.

⁹⁰⁰ Schooling and Leamy Report (Bundle 9, File 1, Document 1E) at paras 93, 98 and 139-147.

⁹⁰¹ Brig Dladla Testimony, Transcript page 3617.

⁹⁰² Brig Dladla Testimony, Transcript page 3617.

781. There are also a series of complaints about the length of time that vehicles spend in the garage at Maitland,⁹⁰³ although it appeared that this problem may already be in the process of being addressed.⁹⁰⁴ General Fick stated that she was happy with the performance of the Maitland garage, although it was slightly under its target.⁹⁰⁵ The major problem at the garage, according to her, was with serious repairs.⁹⁰⁶

782. However, General Fick identified poor vehicle fleet management as one of the primary cause of the vehicle difficulties experienced by the stations.⁹⁰⁷ Schooling and Leamy support this finding.⁹⁰⁸ Station Commanders – who are responsible for fleet management are often unable to optimally manage the vehicles by, for example, co-ordinating when they are sent to the garage, so that the maximum number are always available. She has proposed that there should be dedicated vehicle fleet managers at stations appointed at a high level.⁹⁰⁹ The Complainant Organisations support this proposal.

783. Obviously, the lack of vehicles – for whatever reasons – contributes to inefficiency. Visible police are unable to go on patrol or respond to complaints.

⁹⁰³ See, for example, Schooling and Leamy Report (Bundle 9, File 1, Document 1E) at para 136.

⁹⁰⁴ Brig Dladla Testimony, Transcript page 3617-3618.

⁹⁰⁵ Col Fick Testimony, Transcript page 5560.

⁹⁰⁶ Ibid.

⁹⁰⁷ Ibid at 5534-5537.

⁹⁰⁸ Schooling and Leamy Report (Bundle 9, File 1, Document 1E) at para 139

⁹⁰⁹ Col Fick Testimony, Transcript page 5536-5537. See also ibid at 5558-5559.

Detectives are unable to visit a crime scene, interview witnesses or attend court. Maintaining a sufficient number of working vehicles is vital to running an efficient police station.

Findings

784. **There are insufficient vehicles available for operations at the three stations.**

This is a result of a combination of insufficient allocation, the types of vehicles allocated, lengthy turnaround times at the central garage and poor fleet management. The lack of vehicles contributes to the inefficiency of the stations.

Recommendations

785. **Immediate: The three station commanders should immediately determine the number of additional vehicles they require, if any, and forward that request to the Provincial Office.**

786. **Medium: SAPS should appoint dedicated fleet managers to the three Khayelitsha stations. They should be afforded the necessary training, and appointed at an appropriate level. SAPS should monitor the improvement in**

fleet management at the three stations, and determine whether to appoint people to similar positions in other stations.

AA. MANAGEMENT ISSUES: INFORMATION TECHNOLOGY

787. The Commission heard that a vital first step towards building trust between a service provider and a community is the availability of systems and processes that foster effective services to those reporting for assistance.⁹¹⁰ In addition, for trust to exist, the processes and systems must be confidential and operated with integrity,⁹¹¹ reliability and effectiveness.⁹¹²

788. The evidence before the Commission demonstrates that the information systems and processes that the SAPS members and management are currently utilising are ineffective and inadequate. In this context the Commission would be justified in finding that SAPS are not making effective and adequate use of information technology because:

788.1 Lost dockets: dockets are habitually lost and unavailable to Court with cases being struck off the court rolls yet an e-docket option has not been fully implemented or evaluated;

788.2 Failure to communicate: many witnesses have testified to the failure by investigating officers to communicate with victims of crime regarding the

⁹¹⁰ Transcription Page 7925

⁹¹¹ Transcription Page 7925

⁹¹² Bundle 12, Expert Report, Horatio Huxham Report Page 6

progress of investigations, bail hearings, court dates, and other important information. This is in part because community members change cell phone numbers and SAPS lose contact with them. The occurrence of this can be limited through the utilisation of electronic systems that have been put in place through the use of RICA which allows them to receive new contacts details with an identity number;

788.3 Withdrawn dockets: case dockets are withdrawn in court because statements by the arresting officers are not filed in the case dockets. With the use of electronic documentation as will be explained below, this would simply require an investigating officer to upload the statement from their computers to the e-docket system which would immediately become available to all parties on the case.

788.4 Duplication of dockets: so called ‘ghost dockets’⁹¹³ could be avoided completely by the use of e-dockets.

788.5 Difficult or delayed communication with stakeholders due to limited access to email and related services: SAPS members do not have access to individual work email addresses; SAPS members share email

⁹¹³ Bundle 12, Expert Report, Dr Steinburg’s Report Page 6.

addresses because of inefficient and inadequate allocation of bandwidth. Further, the ratio of officers to computers hinders adequate communication.⁹¹⁴ Increased availability and access to email can allow SAPS to effectively and timeously communicate with stakeholders.

788.6 Delay by SAPS members in collecting forensic evidence: often cases are withdrawn or struck off the roll which could be emailed and received securely and confidentiality through the use of information systems.

788.7 Struggle to locate addresses: in informal settlements members of SAPS may not be able to locate complainants when a crime has been reported because of a lack of infrastructure which inadvertently delays their ability to offer responsive services to people in need. With the availability and use of GPS tracking systems, SAPS can improve their response time as there could be a potential for plotting informal areas where there are no street names or addresses.⁹¹⁵

⁹¹⁴ For example at the Cluster Commander either the secretary or the personal assistant have the daily responsibility to look through the emails and alert the cluster commander who will put a stamp on it and decide whether he/she will address or he allocate either VISPOL or detective branch⁹¹⁴

⁹¹⁵ Bundle 12, Expert Report, Dr Steinberg's Report Page 11 – 12.

788.8 Use of manual systems: the police stations are currently utilising manual systems for registers, management and oversight when available electronic options have not been considered;

Recommendations:

789. It is vital in improving the functionality of the SAPS that certain steps be taken to improve both the quality and use of information systems and processes. This position is in line with expert evidence put before the Commission relating to information technology.

790. It is submitted that the improved use of such systems will improve accountability as there will be a digital record. This will also aid in the fight against corruption, as Dr Grobler explains in her report, *“the most common examples of police members sabotaging prosecutions pertains to dockets. There are ongoing and common incidents of members “losing” dockets or stealing and selling dockets to accused individuals, as well as “trashing” dockets”*⁹¹⁶ In this context, it will no longer possible for corrupt officers to be paid to intentionally ‘lose’ dockets.

⁹¹⁶ Bundle 12, Expert Reports, Lisa Grobler’s Report Page 15.

791. **SAPS functioning as Service Providers**

792. In order for SAPS to address the inadequate information systems and processes that hinder their day to day operations, SAPS must first understand that they are there to offer service to their members of their policing precincts.⁹¹⁷

793. In this understanding, SAPS must “*make sure that the branches [are] reliable and secure. And in this case you are faced with an entity that is public-facing and needs to work timelessly, but in a secure manner.*”⁹¹⁸ In addition, Mr. Huxham notes that “*reliability of service is precondition for trust in a service, but it is not sufficient (there are additional pre-conditions required to create and sustain trust). The reliability and effectiveness of processes is therefore critical to SAPS. This implies that reliability and effectiveness of SAPS processes should be contracted (set an expectation), measured, and reported to the community*”⁹¹⁹

⁹¹⁷ Transcription Page 7926.

⁹¹⁸ Transcription Page 792.

⁹¹⁹ Bundle 12, Expert Report, Horatio Huxham Report Page 6.

794. **Strengthen and Improve Information Systems and Processes**

795. As a service provider, SAPS must make sure that their policing service that they offer the community of Khayelitsha is secure, efficient and reliable, in addition to complying with the applicable legal framework.⁹²⁰

796. In ensuring that their information systems and processes are secure, efficient and reliable SAPS must first conduct an in-depth analysis of their current systems and processes to establish in what ways their current systems are falling short, and then determine what, how and when remedial steps can be taken to address the problems. This will allow SAPS to identify issues that can be quickly and easily fixed and prioritise dealing with more substantial information technology matters.

797. This process of evaluating their current information systems would be fruitless if done by the SAPS alone.⁹²¹ It is recommended that subject matter experts must be consulted to assist with what systems SAPS should be using and how they can use them most effectively.

798. We submit that the Commission should propose that SAPS, in their process of consultation with subject matter experts, specifically seek guidance on the

⁹²⁰ Transcription Page

⁹²¹ Transcriptions Page 7955

following potential solutions to the challenges that have hindered SAPS from offering efficient and effective service:

Increase Information System Hardware

- 798.1 Ensure that all three stations have adequate bandwidth and line speeds necessary to ensure that their systems are fast and reliable.⁹²²
- 798.2 SAPS hardware systems should be assessed on a regular basis in order to determine if they are still meeting the needs of the police. If it is determined that upgrades are necessary then measures must be taken to implement these.
- 798.3 Increase and widen the provision of electronic hardware in order to enable SAPS members to complete registers electronically as opposed to completing them manually. This will substantially increase their effectiveness as they do not have to repeatedly complete registers and duplicate records which will increase their time efficiency.⁹²³ It will also assist with the problem of lost documents.

⁹²²Transcription Page 7941.

⁹²³ Transcription Page 7934. See also Bundle 12, Expert Report, Horatio Huxham Report Page 8.

Evaluation and improvement of Software Systems

798.4 Evaluate the feasibility of using distributed systems as opposed to the current centralised system where everything is located and processed in one central location which requires a sizeable amount of bandwidth. The Commission was informed by Mr. Huxham that a distributed, *“architecture is the preferred way of architecting a large corporation or a large organisation where you’ve got – you’ve got environments where you might not have the bandwidth, or you have bandwidth but the low/high latency. In that case it’s possible to create a domain within that branch or, in this case, in that station, as long as you have a secure place where you can have access control to the components that makes up that domain”*⁹²⁴

798.5 Evaluate the feasibility of linking emergency numbers such as 10111 with other emergency services. This will be most useful in cases where the police receive numerous calls and community members calling have to hold before they receive assistance. Such a system would allow for emergencies to be better distributed amongst all emergency services.⁹²⁵

⁹²⁴ Transcription Page 7941.

⁹²⁵ Transcription Page 7951.

- 798.6 Ensure that all the members of SAPS have increased access to personal SAPS email addresses enabling them to timeously and effectively communicate with stakeholders.⁹²⁶
- 798.7 Evaluate the feasibility of utilising electronic certificates as envisaged by the Electronic Communications Transaction Act 25 of 2002, which can be utilised to send and receive confidential documents and emails. For example, this will be useful in addressing the repeated problem of post-mortem reports not being collected timeously which, as the Commission heard, leads to the withdrawal of case by the prosecutors.⁹²⁷
- 798.8 Evaluate the feasibility of entering into contracts with GPS companies like Garmin or Google in order to utilise their services securely and confidentially. This will be most useful in informal settlements where SAPS reportedly struggle to locate specific locations when called out to a crime scene. Availability of such software “could allow officers to be directed to a precise location, and these could potentially assist in reducing the time spent in describing where locations are. GPS is one of the greatest tools when it comes to navigation and with some assistance

⁹²⁶ Transcription Page 7957.

⁹²⁷ Transcription Page 7946 7948.

from external partners (e.g. Google maps) there could be a potential for plotting informal areas where there is no street names or addresses.”⁹²⁸

Electronic Documentation and Systems

798.9 The feasibility of the SAPS entering into an agreement with the mobile network operators in order to obtain the current cell phone number of a complainant through their ID number. In those instances where the police are unable to contact a complaint because their number has changed, this will significantly increase SAPS’ ability to contact the witness/complainant and other role players that they must interact with in their day to day operation. ⁹²⁹

798.10 The feasibility of implementing a fully functional e-docket system to enable access to the case dockets by both SAPS members and prosecutors and avoid issues of dockets not being at court timeously or being lost. Mr. Huxham informed the Commission that in this context it will be *“highly recommended that we do have some sort of documentation management life-cycle and maintaining version control of those documents. Because it’s easy to get confused as to which one is the latest*

⁹²⁸ Bundle 12, Expert Report, Horatio Huxham Report Page 11 – 12.

⁹²⁹ For more detail on how this process works see Transcription Page 7927 - 7934

*version, or which one has been lately updated, and what has been updated.*⁹³⁰

798.11 Additionally for this to be effective, SAPS would also have to consider the feasibility of an alert programme that notifies all the role players involved in the dockets that it has been updated in order for all parties to remain appraised with the contents of the docket.⁹³¹

798.12 The use of electronic calendars by SAPS members which will enable members to get notices and updates when a task is due and improve time management for SAPS members.⁹³² The use of electronic calendars also has the capability to allow Commanders to evaluate when a task is due and whether it has been completed or not, which could decrease the amount of time spent on oversight.⁹³³

798.13 The practicality of electronic document management system which enables multiple authorised users to work on one document with version control that tracks updates to the previous version of a document. This would be useful in cases where multiple people must work and update a

⁹³⁰ Transcription Page 7958.

⁹³¹ Transcription Page 7958 - 7959

⁹³² Transcription Page 7935. Bundle 12, Expert Report, Horatio Huxham Report Page 9

⁹³³ Transcription Page 7935 – 7936.

document, instead of duplicating a file to ensure everyone has access to this, electronic document management will easily enable SAPS members to share and work on documents.⁹³⁴

798.14 The practicality of setting up a workflow management system that can track and record all activities pertaining to a particular case. As suggested by Mr. Huxham, the activities that could be recorded in such a case would include:

“Logging of outstanding activities on a case, including scheduled events like post mortems and court appearances. Logging should record both read and update access.

Recording of scheduled events for a case, e.g., post mortems and court appearances. Consideration should be given to interfacing this information with the systems where these events are primarily record (e.g., court roll).

Allowing automate ‘chasing’ of activities that are overdue or likely to cause a SLA to be breached

⁹³⁴ Bundle 12, Expert Report, Horatio Huxham Report Page 9

Queuing of activities that can be performed by a group (as opposed to assigning activities to an individual)

Support for multiple concurrent processes to be tracked on a single case simultaneously (e.g., forensic analysis, lab reporting, post mortem results)

Access for multiple role players to review, and even update, an electronic docket simultaneously

Statistics and case process metrics for the purposes of measuring, managing and reporting on performance

Identify and communicate interdependencies between processes or actions (e.g. “Contact witness A” is holding up a process that another person is relying on)”⁹³⁵

Training

798.15 Intrinsic to the information systems and processes evaluation, is the evaluation of the training needs of all the members of SAPS that would

⁹³⁵ Bundle 12, Expert Report, Horatio Huxham Report Page 8 – 9.

be necessary to enable them to utilise and understand both the current and future information systems. Simply evaluating the hardware and software needs while ignoring the needs of those that would make use of the systems and processes is an exercise in futility. This evaluation would have to establish the length and duration of training as well as the immediate, short term and long terms training needs among all levels of SAPS' members.

BB. INSTITUTIONAL CULTURE

799. In this section the institutional culture of the SAPS units operating in Khayelitsha is evaluated to determine whether this is consistent with the values and provisions of the constitution.

800. It is well recognised that as one of the most visible and powerful organs of the state, the police have a very significant and determining role to play in promoting, building and upholding democratic rights and principles.⁹³⁶ In order to evaluate SAPS' institutional cultures against the precepts of the constitution some of the constitutional values and entrenchments are set out below:

800.1 Equality, non-sexism, human dignity and the advancement of human rights are some of the founding values as entrenched in the South African Constitution.

800.2 The Bill of Rights in Chapter 2 of the Constitution is described by the Constitution as the “*cornerstone of democracy in South Africa It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.*”⁹³⁷ The state

⁹³⁶ Bundle 12, Expert reports, Gareth Newham report, Page 31.

⁹³⁷ Section 7 of the Constitution of South Africa.

is obligated to respect, protect, promote and fulfil rights as entrenched in the bill of rights. SAPS has an obligation to uphold and promote these values.

800.3 Section 195 and 198 of the Constitution of South Africa sets our principles that govern public administration and provision of security services respectively.

800.4 Section 195 states that public administration must be governed by the democratic values and principles enshrined in the constitution. Some of the principles include high standard of professional ethics must promoted and maintained, services must be provided impartially, fairly, equitably without bias and people's needs must be responded to.

800.5 Section 198 (a) provides that national security in South Africa “*must reflect the resolve of South Africans, as individuals and as a nation, to live as equals.....*”

801. While some members of SAPS promote these positive values through their work, many fail to live up to the envisaged standards. In light of the evidence before the Commission, the complaint organisations submit that the institutional cultures of the SAPS operating in Khayelitsha and at large are inconsistent with the

constitutional values set out above. Accordingly, a finding to this effect by the Commission would be justified.

802. In this section, we detail some of the evidence concerning institutional culture within SAPS that was placed before the Commission which highlights how the constitutional provisions above are undermined and violated.

Police do not perceive themselves as service providers

803. It is routinely emphasised by SAPS that the police's single most important role is the reduction of crime. What this emphasis overlooks is the fact that police must play another role: maintenance of order. The distinction between the manners in which police would conduct these two roles was described to the Commission by Dr. Steinberg.

804. If SAPS understand their most important role to be crime prevention then SAPS members are required to anticipate what criminal activities may occur in the future and prevent them from happening. In contrast, in maintaining order, the

role of police is mostly reactive in that the crime or incident has already occurred so police intervention is necessary in addressing the outcome.⁹³⁸

805. To explain the distinction and tensions in the two different roles of SAPS, Dr Steinberg explained that in crime prevention SAPS members would be required to perceive their policing precincts to be populated by a host of risks of varying levels. One of the main risks would be the people that reside in their policing precincts who partake in risky behaviours like drinking, carrying guns and other dangerous weapons, carrying cash in their pockets. Police must therefore mould the behaviours of the members in their policing precincts to ensure that they function accordingly in order to prevent crime from happening.⁹³⁹ This is in contrast to police operating as a service where police members are called upon by members of their policing precincts in need of their service, “*skills and capacities (including strong authority, possibly controlled violence), combined with more intangible facilities like emotional intelligence and the talent to read a situation.*”⁹⁴⁰

806. Describing how SAPS currently function in South Africa, Dr Steinberg states in his report that:

⁹³⁸ Bundle 12, Expert Report, Dr Steinberg’s Report Page 6.

⁹³⁹ Bundle 12, Expert Report, Dr Steinburg’s Report Page 6.

⁹⁴⁰ Bundle 12, Expert Report, Dr Steinburg’s Report Page 6.

But from our own past we have borrowed practices, also performed under the aegis of crime prevention, that are very different in nature. These entail gathering uniformed police in large numbers on weekend evenings and unleashing them, aggressively and in paramilitary fashion, on township populations. The various activities subsumed under this paramilitary policing are all justified in the name of crime prevention. For instance, young men are thrown into the back of police vans in large numbers on the grounds that they are drunk; drunk men in public are considered a prime risk factor. They are charged with public drunkenness for the sake of form, but are almost invariably released before dawn, and charges dropped. Shebeens are raided in paramilitary fashion, patrons thrown out of establishments by armed men, beer poured onto the ground in front of proprietors, and this, too, in the name of crime prevention. Young men walking the streets in pairs are rounded upon, thrown against walls and body searched – the crime prevention activity here is the search for guns. The pinnacle of crime prevention South African style is the ‘Operation’. Police obtain a cordon-and-search warrant for an entire neighbourhood or shack settlement, seal it off and move in with armoured cars. Each dwelling is visited by groups

*of armed officers who search bedrooms and kitchens and other private spaces.*⁹⁴¹

807. As long as police understand their main role to be crime prevention, the other key responsibilities of police are relegated to a lesser priority. This means that communities like Khayelitsha that routinely require police services because of high levels of crime will experience sub-standard policing that infringes their constitutional rights. The brunt of sub-standard policing is experienced by vulnerable groupings such as women, children, LGBTI persons and foreign nationals which inadvertently is a failure to protect their numerous rights as entrenched in the bill of rights including right to dignity, equality, freedom and security of the person.

Recommendation:

808. In order for SAPS to be a more effective and responsive organisation, and to improve the level of trust between them and the communities they operate in, it is vital that they understand their role to be akin to service provision. In service provision there is an emphasis on rights and perceptions of persons that make use of the service. SAPS's must take greater cognisance of this. It is submitted that

⁹⁴¹ Bundle 12, Expert Report, Dr Steinburg's Report Page 7. See also Transcription Page 8022 – 8025.

this will significantly improve the operation and service levels of SAPS as explained in how their goals and focus shift when they understand their role as a service provider. It is further submitted that this realignment of focus will actually assist the police's ability to prevent crime as the relationship between SAPS and the community will improve, which foster greater SAPS –community collaboration.

808.1 *Cowboys don't cry*

809. The Commission was informed that within the police there is a mentality that '*cowboys don't cry*' and this mentality has resulted in many members failing to seek assistance from the Employee Health and Wellness (EHW) services.⁹⁴² The Commission was informed that this is because the choice to receive trauma counselling is left entirely at the discretion of members of SAPS.⁹⁴³

⁹⁴² Transcription Page 5794 - 5795

⁹⁴³ Transcription Page 5795.

810. Within the SAPS framework there no provision mandating counselling for members who experience stressful/traumatic cases. The Commission heard that SAPS members are “...all adults. So if that member feels that he or she needs counselling they are free to go to EHW or ask the commander to make a referral for them or they can go to private institution...”⁹⁴⁴

811. With regard to the effect of having gone for counselling in terms of the EHW, the Commission was informed by Dr. Josias that ‘...as a worker if like promotion possibilities come up, it’s not supposed to be used against you but it is used against you because then you’re being seen, especially in the police, as being weak you can’t handle it, you can’t cope so you cannot get another rank. So they don’t go...’⁹⁴⁵

812. Failing to create an environment where counselling is part of the SAPS culture results in members who may need or want to make use of such services choosing not to seek counselling. Police can be exposed to extremely traumatic situations in the course of their work. It is vital that they receive the necessary mental and psychological assistance to deal with the difficulties of their job. A failure to do so must have a negative effect on the ability of police to carry out their duties to the best of their abilities, and in doing so providing the best level of service. It is

⁹⁴⁴ Transcription Page 5795

⁹⁴⁵ Josias transcript page 622 line 11

submitted that at the very least this violates a key principle of public administration, namely that it must be based on sound human resource management that maximises human potential.⁹⁴⁶ It also violates the right to dignity and health of those members that are unable to seek counselling because of the associated fall-back.

Recommendation:

813. It would be advantageous for SAPS to regulate certain instances where counselling is compulsory. Counselling must therefore be seen as a critical element of the job and as a measure by which the SAPS ensure that their members are adequately equipped to offer service without constraints of limited mental and psychological well-being, similar to sick leave that ensures that the member's physical well-being is taken care of.

814. In this regard, SAPS must draft and implement a standing order that lists the instances in which counselling should be received, by members regardless of rank or experience. It is recommended that SAPS compare with other jurisdictions and developments in mental and psychological health in determining at the very least instances where counselling would be compulsory.

⁹⁴⁶ Section 195(1)(h) of the Constitution of South Africa.

815. Given that families of SAPS members may be affected as a result of a member's work to the extent that they also may require counselling, it is recommended that counselling services be extended to immediate family members

Male dominated police service

816. The Commission was informed that there are far more male branch commanders than female branch commanders and this is also the case in the provincial detective branch where there is only one female detective commander.⁹⁴⁷ As a result, women in the SAPS have “*to produce twice as much success as [my] male colleague to get recognised and to be taken seriously as such.*”⁹⁴⁸

817. The challenges faced by women in the force were clearly elaborated by Colonel Wiese. When asked about the level of cooperation from the detective commanders of the various cluster stations, she informed the Commission that within the SAPS command, it is very challenging for a woman in SAPS to be in command over many senior male officers.⁹⁴⁹

818. In our constitutional framework, equality is both a value and a right in its own regard. Section 9 of the Constitution prohibits discrimination based on gender

⁹⁴⁷ Transcription Page 5002

⁹⁴⁸ Transcription Page 5001.

⁹⁴⁹ Transcription Page 4999.

among other grounds. As an organ of state SAPS is required to implement *“employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.”*⁹⁵⁰ It cannot be denied that in South Africa gender equality is still rife and SAPS’s failure to increase female members in the service and in management is a violation of these constitutional principles.

Recommendation:

819. SAPS must devise measures that are geared towards recruiting more female students into the police academy to ensure that the gender representation in the police improves. Additionally, SAPS must also develop gender orientated policies that ensure that women also progress in their careers in SAPS. Gender equality and development as entrenched in the constitution must be a core developmental goal within SAPS.

820. If there are instances of gender discrimination by SAPS members towards other members or the public, members must be sensitised through training and the appropriate internal disciplinary measures must be instituted.

⁹⁵⁰ Section 195 (1) of the Constitution of South Africa.

Divided Police Service

821. Historically the detective branch did not fall under the supervision of the Station Commander which changed when the new constitution was enacted.⁹⁵¹ This has fostered a division between the detectives and VISPOL, described to the Commission by Colonel Wiese as “*they talk about ‘you’ and ‘us’, so that will be VISPOL and detectives.*”⁹⁵²

822. It appears from the evidence the Commission heard that this division creates some form of tension between the detective branch and the station commander. The Commission was informed that addressing this culture of ‘them’ and ‘us’ will take time and “*as soon as your station commanders will realise that the detective branch is actually there to assist them, it will be a huge advantage to everybody.*”

823. Adding to the division, the Commission heard that when there is an advertised vacant station commander’s post, it will most likely be filled by a member from the VISPOL unit and not from the detective branch.⁹⁵³ Though it was not equivocally stated that a station commander can never be appointed from the detective branch, the Commission was told that it rarely happens. As a result detectives would always get detective related posts and promotions. This division

⁹⁵¹ Transcription Page 5000

⁹⁵² Transcription Page 5000.

⁹⁵³ Transcription Page 5000

in the SAPS and the traditional practice of hiring station commanders from VISPOL members violates the right to equality and dignity for those members overlooked because of the department they have worked in before. Additionally, it violates the principles that are set for public administration in the constitution particularly the obligation to ensure that SAPS must implement “*employment and personnel management practices based on ability, objectivity, fairness...*”⁹⁵⁴

Recommendation:

824. It goes without saying that SAPS must be fair and professional in their appointment of candidates. Additionally, those members of SAPS that are appointed for promotions must be appointed because they are qualified for the job and not because of the department they are currently or previously attached to. SAPS must therefore ensure that their appointment processes are done in a manner that is both constitutional and in line with the labour law legal framework which encourages equality and fairness in the hiring process.

Code of Silence and Secrecy within SAPS

825. In terms of evidence before the Commission, the culture of secrecy is perhaps best illustrated by the issue of how frequently crime statistics are released, as well

⁹⁵⁴ Section 195(1)(i) of the Constitution of South Africa.

as the manner in which police members who participate and co-operate in proceedings that require them to disclose information about the SAPS are viewed by others in the police.

826. In regard to crime statistics, the Commission was informed that the national crime statistics are currently released annually and approximately six months after the end of the annual period.⁹⁵⁵ Gareth Newham pointed out to the Commission that crime stats “*are just numbers. They belong to the public. The public pay for those numbers to be collected so they can see what the crime problem is. But they’re released six months out of date, when they’re completely historical. So that reflects this idea that we can’t share information. And it’s a very strong culture, it’s very closed.*”⁹⁵⁶

827. When asked why some police refused to participate in the Commission because they were afraid of ruining their standing in SAPS, Gareth Newham informed the Commission that:

“Well, when you have that culture you can be negatively construed to be anti- the police. So if you speak openly about pretty much everything I’ve

⁹⁵⁵ Transcript pages 7175-7176.

⁹⁵⁶ Transcript page 7515, lines 19-25. See also page 7533, lines 2-6 (“If you do these crime stats once a year and it’s six months out of date, it can only ever be of historical interest. And then the secrecy around it, and this idea of never releasing it, just drives the suspicion in the communities that you can’t trust them.”)

said here today, it is unfortunately interpreted by some senior police officials as – that you’re going for – you don’t like the police, that you want to damage them and undermine their credibility, when actually the reason why we do what we do is because we understand how important the police are, and that in fact there are so many good police officials that, given the resources that we have both in terms of financing, funding, but also the individuals, who’ve got sort-of amazing experience in very difficult circumstances, we have everything we need to really see big improvements, and it’s not happening.”

828. In addition, the Commission also heard that the “informal culture of a policing organisation, often including an element termed ‘the code’ (of silence) or ‘the blue curtain’, which prohibits or discourages police from reporting the misconduct of their colleagues.”⁹⁵⁷

829. Without a doubt, the institutional culture of secrecy is contrary to the provisions of the constitution where accountability, responsiveness and openness are key

⁹⁵⁷ Bundle 12, Expert reports, Gareth Newham report, Page 27/

foundational values⁹⁵⁸, further emphasised as core principles of public administration.⁹⁵⁹

Recommendation:

830. To avoid duplication, the recommendations to the release of crime statistics discussed in crime intelligence section are not incorporated here.

831. The culture of secrecy that results in some officers being ostracised or subjected to unfair treatment because they speak openly must be addressed. SAPS must intentionally promote a culture of openness and accountability as envisaged by the Constitution.

Internally driven Performance Assessment and oversight

832. The Commission has heard at length about the manner in which SAPS members' performance is assessed. These methods include the performance charts, performance evaluations by the Inspectorate and national crime statistics.

833. These performance evaluations are generally about compliance with national instructions, standing orders and other internal rules to effectively measure if

⁹⁵⁸ Section of the Constitution of South Africa.

⁹⁵⁹ Section 195 of the Constitution of South Africa.

SAPS' internal goals are being met. It is apparent that there are no external assessments that evaluate the relationship between police and the community, and the level of trust that may exist between the two. The community's perception of the police and their relationship is something that the current performance assessment does not measure.

834. The police serve the community members of their police precinct. As such how the manner in which the community perceives, trusts and relies on them as a service provider should be a crucial aspect of performance evaluation. It is submitted that this would be in line with the principle of accountability emphasised in the constitution generally and in public administration. Therefore the exclusion of this aspect from the current evaluation is inconsistent with the principle of accountability.

834.1 **Recommendation**

835. SAPS should develop their current performance evaluation to include a community based performance evaluation. This would measure delivery of policing services and community perceptions of police particularly the “*level of courtesy and respect which the police show, the level of fairness displayed by the police, how responsive are the police when public raise concerns, how much effort do the police make to interact with the communities and there’s another set of indicators based around empowering, how empowered do communities feel to engage with the police, are they able to engage with the police, do they have the right information, but also do they feel willing to in that context.*”⁹⁶⁰

836. As the Commission heard from Andrew Mclean this could be achieved through the use of community score cards with indicators which could be a low cost way of tracking police performance and community police relations over time in a community.⁹⁶¹

⁹⁶⁰ Transcription Page 7680

⁹⁶¹ Transcription Page 7678

CC. HANDLING OF COMPLAINTS

Compliance with Standing Order 101

837. Standing order 101 regulates the management of complaints against the SAPS service. This standing order explains three stages in the handling of complaints registration, assignment and investigation. It is argued that the evidence before the Commission justifies a finding that Standing Order 101 provides a fair, objective and effective mechanism to address complaints made against members in Khayelitsha.

838. The provincial inspectorate has set out the time frames wherein a complaint must be finalised. In this regard an investigator allocated to investigate a complaint must complete the investigation within 19 days, failing which they must seek an extension.⁹⁶²

839. Following up on a vigilante docket with a 101 complaint during the hearings for the Commission, Colonel Weise informed the Commission that she had contacted the clerks at Harare Police Station about the complaint in question and had been informed that it could not be found on their records and they had gone through all

⁹⁶² Transcription 3693 - 3694

the complaint registers and could not find the complaints.⁹⁶³

840. Schooling and Leamy stated that it was apparent that Standing 101 was not being complied with.⁹⁶⁴ Dr Grobler also found that complaint files are largely not organized, incomplete, some files had comprehensive notes, others did not, and summaries taken from the complainant's statements were not consistently included in the files.⁹⁶⁵

841. Additionally, in most complaints against members before the Commission the version of events of the SAPS is accepted over that of the complainant without much investigation inadvertently causing impunity. This could be because Standing Order 101 requires a complaint lodged against a business unit to be referred to that unit to investigate one of their own errant officers. An independent investigation is necessary to ensure the effective and efficient investigation of complaints. With an investigator investigating a complaint against a member who could in future be investigating a complaint against him, fairness, objectivity and effectiveness cannot be guaranteed. As Dr Grobler explains:

⁹⁶³ Transcription Page 5037 – 5038.

⁹⁶⁴ Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of SAPS documentation, Page 3.

⁹⁶⁵ Grobler Report (Bundle 12, Document 11) paras 108-126.

“standard procedure appears to be that the police station conducts its own investigation (this is problematic on so many levels). In many cases, the investigation simply involves taking the police and the complainant’s contradictory interviews and choosing to believe the police’s reports. Even when found guilty, SAPS members tend to be either “sensitised” to be more polite or exercise more caution etc. in future, or are given a vague verbal warning. Investigations seem to focus only on the narrow issues complained about. Suggestions of police brutality, fraud etc. uncovered in the investigation itself tend not to be investigated further, if they are not part of the original complaint. There appears to be attempts at improved quality control at times during 2012, with Regional SAPS Complaints requiring more specific lists of information regarding the investigations. This appears to have led to a few cases of proven disciplinary action actually being taken against guilty members.”⁹⁶⁶

842. The capacity and human resources capability of the Provincial Inspectorate to investigate complaints appears to be limited. The Commission was informed by General Lamoer that on *“various occasions ...we instruct the Provincial Inspectorate to go and investigate some of the complaints, but we must*

⁹⁶⁶ Bundle 12, Expert reports, Dr. Grobler’s Report page 36.

*understand the capacity of the Inspectorate is not of such a nature that they can deal with all the complaints”.*⁹⁶⁷

Role of IPID in investigating complaints and police oversight

843. The Commission was informed that the IPID was created to ensure that there is total independence with the investigation of complaints.⁹⁶⁸

844. In the Task Team report⁹⁶⁹ it was stated that there was no proof that the attempted murder case laid by Ms Ngogwana (CAS 115/10/2010 and 116/10/201) had been lodged with IPID. Similarly, Schooling and Leamy in their assessment of the three stations found that there was no indication that criminal cases against SAPS members were reported to IPID. The failure to report an alleged criminal offence against a SAPS member to IPID is a criminal offence in terms of the IPID Act.⁹⁷⁰

845. Additionally, Mr. Leholo informed the Commission that SAPS does not always adhere to IPID's; in fact there was no effective way to monitor and assess adherence to this requirement.⁹⁷¹ The Commission heard that some recommendations that IPID makes to SAPS in cases that they investigate are not

⁹⁶⁷ Transcription Page 6702.

⁹⁶⁸ Transcription Page 6701 – 6702.

⁹⁶⁹ Western Cape High Court Record Page 694.

⁹⁷⁰ Bundle 9, Commission of Inquiry, Assessment of SAPS Documents, Schooling & Leamy Assessment of saps documentation, Page 3. Page 52 and 55.

⁹⁷¹ Transcription Page 1550

followed. Mr. Leholo could not provide an assessment of the extent to which the recommendations were acted on or not. This is indicative of an oversight body that is not functioning in a manner that would build trust in those lodging complaints with IPID against police members.

846. The Commission heard that number of complaints that were reported to IPID did not produce any sort of punitive measures against those members:

846.1 In 2009/2010 about 12.2% cases of complaints referred to IPID ended in dismissal. In 2013, 8.4% of these complaints ended in dismissal. This leads to the conclusion that in cases of complaints against members of SAPS, *“the most likely thing that’s going to happen to a police official facing formal disciplinary charges at a disciplinary hearing, at least one in three, 36% of the time is that there – the hearing will end with no sanction against them.”*⁹⁷²

847. Additionally, in 2012/13, of the 5 861 hearings that relates to complaints lodged against SAPS members, 2 137 cases were either withdrawn or ended in not guilty verdict.⁹⁷³ The Commission was told that this number is *“quite high, because that hearing is only held once there’s been investigation and there is prima facie*

⁹⁷² Transcription Page 7479

⁹⁷³ Transcription Page 7479

evidence that the person on a balance of probabilities has committed some breach of the police code of discipline, Disciplinary Code.”⁹⁷⁴

848. The Commission was told that the reason there are so many not guilty verdicts is unclear, but scholarly articles suggest it could be because less aggressive prosecutors are allocated to police criminality to avoid creating the impression that one agency is taking a vendetta against the other.⁹⁷⁵ However, there has been no proper survey into the complaints, prosecutions and disciplinary procedures to clearly explain these numbers.

849. It is clear that the performance of IPID can be improved. This would ensure that the community members in Khayelitsha could accept that when they lodge complaints against SAPS members: (a) steps will be taken to investigate the matters; and (b) should the investigations point to misconduct or irregular behaviour, the members will face substantial consequences.

850. In explaining the difference between ICD and IPID, Mr. Leholo informed the Commission that ICD operated in terms of 53(2)(a) of the South African Police Service Act 68 of 1995. In this section the mandate of the ICD was set out as “(1) *ICD may investigate any misconduct and acts of criminality and also may*

⁹⁷⁴ Transcription Page 7479

⁹⁷⁵ Transcription Page 7557

refer such alleged misconduct or acts of criminality and further that ICD shall investigate all cases of death in police custody and death as a result of police action.”⁹⁷⁶ IPID, on the other hand, is regulated by section 28 of IPID Act 1 of 2012, which sets the body’s mandate as investigations of deaths in police custody, deaths as a result of police action, any complaints of discharge of firearm, or any acts of (assault or torture) through the execution of police duties.⁹⁷⁷

851. It is apparent from the founding principles of ICD and IPID that the functions of IPID are very narrow. The IPID Act improperly limits the broad and discretionary oversight role that had been in place through ICD. Additionally, it is apparent from the evidence before the Commission that there is currently no investigation done by IPID into service delivery complaints as these would fall out the scope of section 28.

852. Section 206(6) of the Constitution requires an independent police complaints body established in terms national legislation to investigate any alleged misconduct or offence committed by a member of the police in the province.

852.1 As DOCS is a provincial body it is excluded as an oversight body in terms of section 206(6). Rather, it forms part of section 206(3) of the

⁹⁷⁶ Transcription Page 1480

⁹⁷⁷ Transcription Page 1480

Constitution. It is submitted that IPID is the only applicable body that meets this criteria for such an oversight body;

852.2 Further there is nothing in the reading of section 206(6) that limits the powers of this constitutionally mandated body oversight body to the limited matters listed in section 28 of the IPID Act.

853. It could therefore be concluded that the currently legal framework as established by the IPID Act fails to give effect to the requirement in s 206 (6) of the Constitution.

854. However, it is possible to interpret to s 28 broadly to allow IPID to investigate all complaints falling within the wider ambit of s 206(6). Section 2(a) of the IPID Act records that the statute's object is "*to give effect to the provision of section 206 (6) of the Constitution*". In terms of s 3(2), IPID "*must exercise its functions in accordance with this Act and any other relevant law.*"

855. Against that background, s 28 is best interpreted not to limit IPID's jurisdiction, but to limit its discretion. It must investigate all the allegations listed in s 28(1). However, it retains the power to investigate any allegation of misconduct or criminality. With respect to those less serious matters, IPID is entitled to adopt a policy to determine what type of complaints to prioritise. But it is not entitled to

refuse to investigate on the grounds that it lacks the power to do so in terms of s

28. That is a flawed interpretation of the legislation.

Role of the Department of Community Safety (DOCS) in investigating complaints and police oversight

856. Mr Njozela informed the Commission that prior to 2010 DOCS used to conduct “unannounced visits” where no prior notice of the inspection was given to SAPS management.⁹⁷⁸ After 2010, DOCS has now been compelled to first make arrangements before embarking on a station inspection or visit.⁹⁷⁹

857. The Commission heard that this was done in terms of letter from the Provincial Commissioner to the police hierarchy within the province. In summation, this letter states that: “*A nodal point for complaints against SAPS has been established and it is imperative that all complaints in the Western Cape are forwarded via this office.*”⁹⁸⁰

858. Mr. Njozela informed the Commission that this has fundamentally altered the oversight powers of DOCS. He stated that “*currently that is post 2010 we are sort of operating like the post office where we refer all the cases to SAPS, but prior to*

⁹⁷⁸ Transcription Page 1238

⁹⁷⁹ Transcription Page 1238.

⁹⁸⁰ Transcription Page 1594.

*2010 we were sort of entitled to deal with the investigation ourselves. However we still had the discretion of referring cases to SAPS but now it is not much more discretionary. We are finding ourselves compelled to refer almost everything to SAPS, apart from obviously approaching the complainant and obtaining a statement but beyond that we have to refer the matters to SAPS.”*⁹⁸¹

859. The requirement that DOCS simply forwards complaints straight to SAPS undermines its oversight efficiency. It also effects the perception of DOCS in the community; they approach DOCS with complaints that are simply sent back to SAPS to investigate. This weakens the trust that the community places in both DOCS and the police in Khayelitsha.

860. Additionally, the current state of affairs improperly divests DOCS of its vital constitutional oversight powers as set out in 206(3).

Recommendations:

Complaints

861. Standing order 101 must be amended to ensure that complaints lodged against a member of a business unit must be sent to one nodal point at the Provincial

⁹⁸¹ Transcription Page 1240. See also Transcription Page 1595 – 1596.

Inspectorate to investigate and take the necessary steps against the errant officer, with limited participation of the management of the applicable station.

862. In the event that the Provincial inspectorate does not have capacity to fully investigate complaints, the complaints should be given the discretion to refer the investigation of the complaint to other oversight bodies i.e. IPID or DOCS. Ms Ballard suggest that what would determine which oversight body should investigate which matter could be decided in terms of the gravity of the complaint, with IPID investigating the serious complaints and province investigating the rest of the complaints.⁹⁸²

863. Human and financial resources of the Provincial Inspectorate must be increased to ensure that the Inspectorate is able to receive, register, investigate and finalise complaints.

864. Set guidelines or standing orders that guide how disciplinary measures emanating from complaints are dealt with effectively and immediately. Any disciplinary measures that must be taken against a member as a result of complaints investigated and finalised must be facilitated by the Inspectorate with limited participation from the station management affected,

⁹⁸² See transcription Page 7351.

865. Members of both the business units (should Standing Order 101 continue to operate as it is) and members of the Provincial Inspectorate, should receive training on to fairly handle complaints particularly how to listen to both sides of the complaints.

866. Community members should be encouraged to report when they are not satisfied with the service of police and to follow up these complaints. SAPS must also inform the community regularly on how complaints against SAPS can be lodged. SAPS could also ensure that there is a system in place at each station to evaluate the service offered by members who attend to the stations for assistance; this could be done through exit interviews or feedbacks. This will enable SAPS to evaluate the effectiveness and efficiency of their police service. This system should be piloted in Khayelitsha, and the results measured and publicised.

DOCS Oversight:

867. The function of DOCS and its oversight role over SAPS should be clearly defined and the current framework as set out by the previous Provincial Commissioner must be done away with;

868. DOCS should effectively undertake their oversight role as envisaged by the Constitution. In particular, it must revert to the pre-2010 period where it carried

out unannounced station inspections and visits. SAPS should work with DOCS to encourage unannounced visits as a vital tool to ensure accountability and improve service delivery.

869. DOCS should receive, register, investigate and finalise complaints that they receive directly and those that are referred to them by other bodies including the Provincial Inspectorate as explained above.

IPID Oversight:

870. The mandate of IPID as captured by section 28 of the IPID Act must be widened to ensure that it is consistent with s 206(6) of the Constitution. In the meantime, IPID should interpret its mandate more broadly to include other serious complaints of police misconduct or criminality.

871. IPID must conduct an assessment of their work since inception to evaluate the number of disciplinary steps taken as a result of their investigation and cases concluded with or without a guilty verdict in order for them to establish their effectiveness. This process must subsequently be done annually in order to ensure that IPID can pick up on trends and patterns in the investigation and punitive measures resulting from complaints;

For all oversight bodies:

872. Provincial Inspectorate, DOCS and IPID should have regular meetings to compare and evaluate trends in complaints and stations or individuals against whom complaints are lodged;

873. Provincial Inspectorate, DOCS and IPID must formulate a referral system among themselves that envisages the creation of a nodal point where all complaints against SAPS are captured and reflects the responsible oversight body

CONCLUSION

874. In conclusion, the Complainant Organisations wish to acknowledge the extent to which this Commission has sought to place the interests and concerns of Khayelitsha residents at the forefront of this inquiry. It has not been a perfect process, but it has been a process in which Khayelitsha residents have been made to feel welcome, their concerns and fears have been listened to with respect and compassion and, we hope, will lead to those concerns and fears being addressed directly and forcefully.

875. Much has been learnt through the process. The evidence has demonstrated inefficiency, ineffectiveness, secrecy, and a failure to provide a police service that is democratic, accountable, and effective under professional and ethical command.

876. We now know that the Family Violence, Child Protection and Sexual Offences Unit in Khayelitsha is the worst performing unit in the province,⁹⁸³ and that the

⁹⁸³ See “SH1” in Bundle 11; Exhibit 72 in paragraph 6.5. The high levels of gender based violence, including rape, in Khayelitsha were confirmed to be a concern by Lt Gen Lamoer in his evidence at transcript page 6573.

three Khayelitsha police stations together have the highest number of reports of sexual offences (including rape) in the country.⁹⁸⁴

877. We also know that twenty years into a new constitutional dispensation apartheid era service delivery patterns live on in the unequal allocation of policing resources to working class African and Coloured communities such as Khayelitsha and Grassy Park.⁹⁸⁵

878. The Complainant Organisations were encouraged by the frank admission of Provincial Commissioner Lamoer that there is a fundamental irrationality in the allocation of resources between Khayelitsha and the wealthy, formerly white suburbs. They were further encouraged by the Provincial Commissioner's statement that the recommendations of the Commission would be welcomed because they would assist not only the vulnerable residents of Khayelitsha, but all working class communities in the Western Cape.⁹⁸⁶

879. SAPS is to be commended for proposing, through the evidence of Dr Barbara Holtmann, that the safety and policing needs of Khayelitsha residents be addressed through a "*whole society approach*" incorporating SAPS, DOCS, the Department of Social Development, CPFs and non-governmental organisations.

⁹⁸⁴ Report of Dr Chris de Kock, Bundle 12, Expert Reports, Item 15, page 46.

⁹⁸⁵ This is dealt with in section Y above.

⁹⁸⁶ Transcript of General Arno Lamoer, page 6604.

The concerns identified by Dr Holtmann have much in common with those raised by the Complainant Organisations in their November 2011 complaint and in their evidence before this Commission.

880. The Complainant Organisations have committed themselves to mobilise their members, and other Khayelitsha residents, in support of a five year campaign to improve policing, safety and the functioning of the criminal justice system in Khayelitsha. In this context, the undertakings given by Provincial Commissioner Lamoer will be invaluable. They will hopefully form the basis upon which a productive working relationship and partnership can be built. The commitments given by Commissioner Lamoer included:

880.1 An apology to victims of crime where the police demonstrably failed in their duties, and to create a memorial to Lorna Mlofana, Nandipha Makeke, Zoliswa Nkonyana and other victims of crime in Khayelitsha;

880.2 An annual public hearing in Khayelitsha, for a period of five years, to review progress with regard to the implementation of the recommendations of this Commission; and

880.3 To support the call by the Complainant Organisations for the review, after five years, by a Judge or retired Judge, of the progress made in implementing the recommendations of this Commission.

881. In this context, the Complainant Organisations request the Commission to recommend that the Minister of Police convene a Khayelitsha Safety Council, which will include the Departments of Justice and Social Development, DOCs and other Provincial Departments, including Education, Sports, Culture and Recreation and Transport, CPFs and non-governmental organisations, to develop and implement a five year safety plan for Khayelitsha, with particular emphasis on implementing the recommendations made by this Commission.

Peter Hathorn

Ncumisa Mayosi

Michael Bishop

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1. The Social Justice Coalition, Treatment Action Campaign, Equal Education, Ndifuna Ukwazi and Triangle Project wish to place on record their appreciation and admiration to the Commission of Inquiry for discharging its constitutional mandate with dignity and courtesy.
2. Ms Amanda Dissel, supported by Mr Khangelani Rawuza, demonstrated an understanding that the Commission must be driven by the voice and needs of residents of Khayelitsha through engagement and approachability, bringing her qualifications and skills to bear on its work.
3. The evidence leaders, Advocates Nazreen Bawa and Thembalihle Sidaki, engaged with every institution, organisation and person in Khayelitsha who could contribute to the work of making Khayelitsha a safer environment. Supported by young advocates from the bar they approached a forest of evidence with great efficiency and drive.
4. The Commissioners, Justice Katherine O'Regan, and Advocate Vusimzi Pikoli, created a historic forum, where the pain experience and knowledge of people living and working in Khayelitsha could be heard with empathy and understanding. Their engagement with witnesses, in particular SAPS, built an unprecedented body of

evidence, giving people in Khayelitsha and throughout South Africa a profound knowledge of safety, crime and justice.

5. A special thanks must be given to the translators and transcribers whose work allowed for the participation of every person who attended this Commission of Inquiry.