



TOWARDS A SAFER KHAYELITSHA

Report of the Commission of Inquiry into Allegations
of Police Inefficiency and a Breakdown in Relations
between SAPS and the Community of Khayelitsha

AUGUST 2014

The Khayelitsha Commission of Inquiry into Allegations of Police Inefficiency in Khayelitsha and a Breakdown in Relations between the Community and Police in Khayelitsha

Honourable Mrs Helen Zille,
Premier of the Western Cape

Dear Madam Premier,

We present to you the report we have prepared arising from our investigation into the allegations of police inefficiency in Khayelitsha and a breakdown in relations between the community of Khayelitsha and units of the South African Police Service operating in Khayelitsha.

It has been a privilege to serve as Commissioners. We record our indebtedness to the Secretary and Evidence Leaders of the Commission for their dedication and unstinting support.

It is our fervent hope that the findings and recommendations contained in this report may assist in enhancing the safety of the people of Khayelitsha.

Dated this 18th day of August 2014.



Justice Catherine O'Regan

Chairperson



Advocate Vusumzi Pikoli

Commissioner

Towards a Safer Khayelitsha

**The Report of the Commission of Inquiry into
Allegations of Police Inefficiency and a Breakdown
in Relations between SAPS and the Community in
Khayelitsha**

August 2014

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Published in August 2014 by the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha

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ISBN: 978-1-920677-71-8

Text: © Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha

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Acknowledgements

Without the support, guidance and assistance of scores of people, the task of the Commission would never have been completed. We would like to thank all of those who have helped us over the last two years.

First, the Commission records its gratitude to the complainants and witnesses who brought their stories to the Commission and shared their experiences during the hearings. Their moving testimony enabled the Commission to gain an understanding of the experiences and perceptions of members of the community of Khayelitsha.

There were also many expert witnesses who gave freely of their time, and spent many hours preparing their reports and giving evidence. The Commission would especially like to thank Ms Jean Redpath who compiled two reports for the Commission and who assisted the Evidence Leaders and Secretary with numerous queries. The Commission also thanks Professor Jeremy Seekings who also responded to multiple queries from the Evidence Leaders.

The Commission also expresses its thanks to the following witnesses who prepared reports or statements, at the request of the Evidence Leaders and testified before the Commission – Ms Clare Ballard, Dr Johan Burger, Ms Josette Cole, Ms Joy Fish and Mr Johan Schlebusch, Dr Kelly Gillespie, Dr David Harrison, Mr Horatio Huxham, Professor Debra Kaminer, Mr Gareth Newham, Professor Charles Simkins and Dr Catherine Ward. The work of the Commission was greatly enriched by their expert contributions.

The Commission also acknowledges the Claude Leon Foundation, which provided support to some witnesses to enable those witnesses to provide reports and testify before the Commission. Witnesses who received assistance from the Claude Leon Foundation were Mr Andrew Faull, Ms Vicki Iggesden, Mr Jan Swart, 21st Century Pay Solutions and Dr van Eyk. The Claude Leon Foundation also provided support to Dunga Mqela Attorneys and Advocate Buurman, both of whom represented witnesses in the First Phase of the Commission's hearings.

The Commission would like to thank Mr Glenn Schooling and Mr Martin Leamy, former senior members of SAPS, who provided a comprehensive report on the documents received from SAPS relating to the three Khayelitsha police stations. Their expertise in policing was invaluable. The Commission also thanks Mr Pieter Myburgh, former station commander at Galeshewe in the Northern Cape, who provided helpful insights on his approach to policing.

The Commission also records its gratitude to all the expert witnesses who provided reports to the Commission, whether at the request of the Evidence Leaders, the complainant organisations, the South African Police Service (SAPS), the Department of Community Safety (DOCS), the City of Cape Town or the Women's Legal Centre. All their contributions have been of great assistance to the Commission.

During the course of its work, the Commission also consulted and corresponded with numerous scholars, both in South Africa and elsewhere, as well as experts in many different fields, including Ms Celia Dawson from NICRO; the Great Commission Ministries, Khayelitsha; Mr David Bruce; Ms Pharie Sefalie; Professor Ian Loader, University of Oxford; and Professor Elrena van der Spuy, UCT. The Commission would also like to thank Guy

Lamb of the Safety and Violence Initiative at UCT (SAVI) for his support of the research and submission made by Ms Pharie Sefalie.

We thank the researchers of Mthente Research and Consulting Services, in particular Mr Justin Du Toit, who conducted the survey on behalf of the Commission. We also thank the Centre for Justice and Crime Prevention, in particular Mr Patrick Burton and his team for conducting the valuable focus group research with young people in Khayelitsha. The Commission also thanks Miranda Madikana and the staff of the Scalabrini Centre of Cape Town for their advice and assistance.

The Commission was only able to gain its insight and understanding of the challenges of policing in Khayelitsha through the participation of members of SAPS and their legal representatives. SAPS gave the Commission access to thousands of pages of information that established a richly informative documentary record. The Commission expresses its sincere thanks to Brigadier Jan Solomons and Colonel Celeste Benting and their team from the Provincial Inspectorate who prepared and made most of these documents available to the Commission. We also thank Colonel Nodumo, and Colonel Nkwitshi for their help with organising the inspections in loco.

The Commission also thanks members of the National Prosecuting Authority, Advocate Rodney De Kock (DPP, Western Cape), Advocate Nicolette Bell, Advocate Bronwyn Pithey, Mr Lindsay Louthier, Ms Rochelle Harmse and Ms Sarita Nilraj for providing information and assisting the evidence leaders. The Commission also thanks Ms Joy Van Der Heyde of the DOJ, Mr Yayi, the Court Manager of the Khayelitsha Magistrates' Court and the staff of the court, including Ms Bekwa, who assisted the Commission in obtaining access to charge sheets, and providing space for the Commission's team to work at the Court while gathering the information.

The Commission was also assisted by the provincial Department of Health. We express our gratitude to Professor Househam and his team for their willingness to provide statements, conduct research and field numerous queries from the Evidence Leaders.

The Commission also records its gratitude to Ms Fiona Stewart for her unfailing support.

The work of the Commission was supported by the Department of Community Safety, whose staff assisted with administrative arrangements. In particular, the Commission would like to thank Dr Gilbert Lawrence for ensuring that his staff were available to assist the Commission. We would also like to thank Mr Gideon Morris, Mr Deon Oosthuizen, Ms Bianca Brophy and Ms Juliet Lackay, as well as administrative staff at DOCS, who negotiated the many administrative and financial needs of the Commission. We would also like to thank Mr Bhekithemba Simelane, Mr Patrick Njozela and Mr Jerome Norris for their assistance.

The Commission also thanks Ms Jodie Geyer from Trigon Travel for the efficient travel arrangements for members of the Commission and witnesses.

The Commission's offices in Library Building were made available at no charge for nearly two years. We thank Mr Alistair Graham from the VPUU for providing us with these comfortable offices in the heart of Khayelitsha.

We thank the City Manager, Mr Achmat Ebrahim for the City's assistance in the Commission. We especially thank Ms Antoinette Markram and Mr Sisa Ngondo who ensured that the Commission was able to hold all its hearings at Lookout Hill. The City also arranged for the exhibition "An African Tale of the Mother City" to be displayed in the hall during the first month of the Commission's hearings. We thank the curators and staff of the exhibition who

were available to guide visitors through the exhibition, which tells the story of the founding of Khayelitsha in the final years of apartheid. We also thank Mr Patrick Nqadini, Mr Gert Bam, Mr Thembinkosi Siganda, Mr Richard Bosman, Mr Kevin Cole and Mr Christopher Möller, as well as the Khayelitsha Fire Department.

The Commission thanks the staff at Lookout Hill, Mr Xabiso Mswakali, his team, and the security officials of the Centre, as well as the Malibongwe Restaurant.

The Commission is grateful for the ever-watchful eyes of Mr Shafiek Ebrahim from DOCS and Mr Owen Sibeko from the City of Cape Town, Disaster Management who coordinated and provided the security requirements at the Commission's hearings. In this respect, we would also like to thank Mgebe Security who provided us with day and night time security guards at Lookout Hill, and Mr Lungile Goodman Mazula who was the constant security presence at the Commission's offices for two years. Additional security and backup was arranged with the City's Safety and Security Directorate, Mr Richard Bosman, and the Metro Police. Backup support was also provided by the SAPS, especially from Lingeletu West. For a short period, graduates from Chrysalis Academy provided perimeter security at the hearings.

Transcription, interpretation and the technical sound requirements at the hearing were provided through the efficient and helpful services of Veritas International. Ms Iris van der Poll and Ms Thabisa Mkosa, and their transcribing and delivery staff, ensured that the Commission was provided with daily transcripts of the hearings. The simultaneous interpretation, provided in the main by Ms Nondumiso Ncisana, ensured that members of the community attending the hearings could participate fully in the hearings. Sound equipment, interpretation booths and the sound technical services were provided by Mr Neil Gordon and his team. Our thanks to them for their friendly and efficient service.

The Commission thanks Mr Sandile Gomo who made sure that the Commission's sittings proceeded in an orderly and courteous manner.

Catering was provided at the hearings for participants and Commission members. The Commission thanks the Social Justice Coalition for its contribution to the catering costs. Catering was provided by the Khayelitsha-based Learn to Earn Trust. The Commission thanks Ms Genevieve Kruger and her team for their reliable service and delicious meals.

The Commission also thanks the Cape Town Trauma Centre who provided a trauma support worker to provide counselling and support to witnesses during the first phase of hearings, and to Nonceba Counselling for assisting some of the complainants who approached the Commission.

At the outset the Commission adopted an approach of transparency and communication and decided to do this primarily through the hosting of its website: www.khayelitshacommission.org.za. The Commission was able to post its notices, legal mandate, information concerning the Commission's processes, daily transcripts and witness statements. Most of the documentary record and all the hearing transcripts will be made available on this website. The Commission thanks Webfactory for the design and maintenance of the website. We especially want to thank Mr Rushdi Salie, Mr Dale Wyngaard, Mr Warren Visser and Ms Kelly Bolt for their consistent attention and support.

The Commission thanks Thembele Printers for the design and printing of its banners, pamphlets and posters, and Ms Nozi Twala for arranging for teams of young people to distribute over 200 000 pamphlets in the community.

We also thank Compress and, in particular, Mr Francois van Schalkwyk, for agreeing to take on the ambitious project of designing, laying out and printing the Commission's final report within very short time frames. We also thank Mr Tommy Prins for his cheerful assistance with the printing and scanning of documents for the Commission, often at unusual hours of the day.

Mr Yasser Booley took photographs of the Commission members and during the inspection in loco, many of which add colour to the Commission's website and final report. The cover photograph was also taken by Mr Booley. We also thank the other photographers whose pictures appear in this Report for allowing us to use their work.

The Commission would also like to thank the legal representatives of all the parties before the Commission for their work in assisting the Commission with its work. We acknowledge their dedication and almost unfailing good humour during the many long hot summer days of the hearings in Khayelitsha.

Finally, we would like to acknowledge the dedication and commitment to the Commission of Inquiry of the complainant organisations, the Social Justice Coalition, the Treatment Action Campaign, Equal Education, Ndifuna Ukwazi and the Triangle Project. In particular, the Commission thanks Mr Joel Bregman and Mr Welcome Makele for assisting members of the community to attend the daily hearings, as well as facilitating the inspection in loco in Khayelitsha.

Abbreviations

Abbreviation	Definition
CAS	Crime Administration System
CCCF	Cluster Crime Combating Forum
CCTV	Closed circuit television camera
CIAC	Crime Information Analysis Centre
CIO	Crime Information Officer
Civilian Secretariat	Civilian Secretariat for Police Service as contemplated under section 208 of the Constitution and established under section 4 of the Civilian Secretariat for Police Service Act, 2 of 2011.
Civilian Secretariat Act	Civilian Secretariat for Police Service Act, 2 of 2011.
CIVOC	Civilian Oversight Committee established in terms of section 64J of the South African Police Service Act, 68 of 1995
Commission	The Commission of Inquiry into allegations of police inefficiency in Khayelitsha and a breakdown in relations between the Community and the Police in Khayelitsha
Commissioners	Commissioners of the Commission of Inquiry, Justice Catherine O'Regan (chairperson) and Advocate Vusumzi Pikoli
Community Safety Act	Western Cape Community Safety Act, 3 of 2013 (Western Cape). A number of the provisions of this Act were brought into force on 1 November 2013 (see Proclamation 14/2013 published in Western Cape Provincial Gazette 7188 on 18 October 2013)
Complainant organisations	Social Justice Coalition, the Treatment Action Campaign, Equal Education, the Triangle Project and Ndifuna Ukwazi
Complaint	Complaint in terms of section 206(5)(a) of the Constitution and section 66(2)(a) of the Constitution of the Western Cape lodged by the complainant organisations on 28 November 2011, Record Bundle 1(1)(c), File A, Item 2, and Record Bundle 7(1)(A), item 2.a.
Constitution or South African Constitution	Constitution of the Republic of the South Africa, 1996
CPA	Crime pattern analysis
CPF	Community Police Forum, established in terms of section 18 of the South African Police Service Act, 68 of 1995
CPP	Community Peace Programme
CSC	Community Service Centre
CSF	Community Safety Forum
CTA	Crime Threat Analysis
DCCO	Detective Court Case Officer
DLP	Detective Learning Programme
DOCS	Department of Community Safety, Western Cape
DOJ	Department of Justice and Constitutional Development (until May 2014), now Department of Justice and Correctional Services
DPP	Director of Public Prosecutions, Western Cape
DPW	Department of Public Works
DSC	Detective Service Centre

Abbreviation	Definition
Domestic Violence Act	Domestic Violence Act, 116 of 1998
ECMS	Electronic Case Management System
EHW	Employee Health and Wellness Programme, SAPS
EMS	Emergency Medical Services
EPP	Expanded Partnership Programme
EPWP	Expanded Public Works Programme
Evidence Leaders	Advocate Nazreen Bawa and Advocate Thembalihle Sidaki
FCL	Forensic Chemistry Laboratory
FCS Unit	Family Violence, Child Protection and Sexual Offences Unit
FLASH	Firearms, Liquor and Second-hand goods
FPO	Forensic Pathology Officer
FPS	Forensic Pathology Services
Harare Police station	SAPS police station located at Steve Biko Road, Harare, Khayelitsha
HOOC	Hands off our children campaign,
HRM	Human Resource Management
IB	Information Book
ICD	Independent Complaints Directorate established under section 50(1) (a) of the SAPS Act (now repealed)
IMEI	International Mobile Equipment Identity
IPID	Independent Police Investigative Directorate
IPID Act	Independent Police Investigative Directorate Act, 1 of 2011
KBF	Khayelitsha Business Forum
KDF	Khayelitsha Development Forum
Homestead Project for Street Children	The Bridge at Elukhuselweni Child and Youth Care Centre
Khayelitsha Site B Police station	Khayelitsha police station located at Bonga Drive, Site B, Khayelitsha
Lingeletu West Police station	Lingeletu West police station located at Makabeni Street, Lingeletu West, Khayelitsha
LCRC	Local Criminal Record Centre
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Inter-sexed
Mthente	Mthente Research and Consultancy Services
NDP	National Development Plan 2030 (the NDP)
NHW	Neighbourhood Watch
NICRO	The name used by the organisation, NICRO
NPA	National Prosecuting Authority
NPC	National Planning Commission
OB	Occurrence Book (SAPS 10)
OPCAT	United Nations Optional Protocol to the Convention on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (2002), entered into force in 2006. South Africa signed in 2006.
OPUS	Optimal Performance Utilization Strategy
PCC	Policing Complaints Centre, a sub-directorate of the Directorate: Monitoring and Evaluation in the DOCS
PEP	Performance Enhancement Process
PERSAL	Personnel and Salary System in the Public Service

Abbreviation	Definition
PERSAP	Personnel Support System for SAPS
PFMA	Public Finance Management Act 1 of 1999
PNP	Policing Needs and Priorities
POP	Public Order Policing Unit
POSS	People Orientated Sustainable Strategy
Premier	Premier of the Western Cape, Helen Zille
Proclamation	Proclamation 9 of 2012 published in Provincial Gazette (Western Cape) No. 7026 dated 24 August 2012 which established the Commission.
Provincial Commission Act	Western Cape Provincial Commission Act, 10 of 1998
Public Service Act	Public Service Act, 104 of 1999
RAG	Resource Allocation Guide
ROC	Resolving of Crime, detective training course
SANCO	South African National Civic Organisation
SAPS	South African Police Service
SAPS Act	South African Police Service Act, 68 of 1995
SASSA	South African Social Security Agency
SCCF	Station Crime Combating Forum
Schooling and Leamy report	Report prepared for the Commission by retired Major General Glenn Schooling and retired Colonel Martin Leamy
Secretariat or Civilian Secretariat	Civilian Secretariat for Police Service established in terms of Civilian Secretariat Act and section 208 of the Constitution
Secretary	Secretary to the Commission, Ms Amanda Dissel
SJC	Social Justice Coalition
SMS	Short message service
SSBC	Safety and Security Sector Bargaining Council
TAC	Treatment Action Campaign
Task Team Report	Report prepared by the SAPS Task Team under the leadership of Major General Rapudi appointed by the then Divisional Commissioner of the National Inspectorate, Lieutenant General Tshabalala in July 2012.
The Task Team	The task team appointed by Lieutenant General Tshabalala and headed by Major General Rapudi to investigate the Complaint
THRR	Theoretical Human Resource Requirement
TMC	Traffic Management Centre, Goodwood
TRT	Tactical Response Team
UCT	University of Cape Town
Urban Areas Act	Natives (Urban Areas) Consolidation Act, 25 of 1945, as amended
UWC	University of Western Cape
VISPOL	Visible policing
VPUU	Violence Protection through Urban Upgrading
Western Cape Commission Act	Western Cape Provincial Commission Act, 10 of 1998
WLC	Women's Legal Centre

SUMMARY

- [1] The Khayelitsha Commission was asked by the Premier of the Western Cape to investigate complaints of allegations of inefficiency at the three Khayelitsha police stations (Khayelitsha Site B, Lingeletu West and Harare) as well as an alleged breakdown in the relationship between the Khayelitsha community and members of the South African Police Service (SAPS) based in Khayelitsha. The Premier appointed the Commission in August 2012 in response to a complaint she received from a group of non-governmental organisations, the Social Justice Coalition, the Treatment Action Campaign, Equal Education, the Triangle Project and Ndifuna Ukwazi (“the complainant organisations”), who asserted that there were “widespread inefficiencies, apathy, incompetence and systemic failures of policing” in Khayelitsha.
- [2] The Commission approached its mandate on the basis that its task was investigative in character, not adjudicative. Moreover, the Commission considered that its work was primarily forward-looking in that, if it did identify inefficiencies or a breakdown, it was to provide recommendations to remedy the inefficiencies or breakdown. In this sense the task of the Commission was quite different from a criminal or civil trial that seeks to determine whether the conduct of a person or organisation gives rise to criminal or civil liability. The investigative and forward-looking character of the Commission’s mandate was key in determining the processes adopted by the Commission. Another key determinant was the fact that the Commission sought to act in accordance with the constitutional values of accountability, responsiveness and openness. The Commission’s procedures were adopted by way of a system of Notices which were published on its website (www.khayelitshacommission.org.za) and provided to the parties before the Commission. The Notices determined, amongst other things, the procedures of the Commission, the issues to be traversed by the Commission, the admission of documents to the documentary record, hearing plans for sittings, including times for cross-examination, and the admission of expert witnesses. The general practice of the Commission was to afford parties an opportunity to propose revisions to its procedures before they were finally adopted.
- [3] The work of the Commission was delayed for approximately a year by a court application challenging the Commission’s establishment and powers. A unanimous Constitutional Court dismissed the case on 1 October 2013. Since then, the Commission has held two phases of public hearings at the Lookout Hill Hall in Khayelitsha. The first took place between January and March 2014, and the second in May 2014. The Commission heard closing arguments on 29 May. The transcripts of the public sittings of the Commission are available on its website. More than 100 witnesses testified before the Commission in approximately 40 days of hearings.
- [4] The Commission has collated a very substantial documentary record which is available electronically on its website that includes documents and statements from, amongst others, SAPS, the complainant organisations, the Department of Community Safety (DOCS) in the Western Cape, the City of Cape Town, the Independent Police Investigative Directorate (IPID), and the Civilian Secretariat for Policing Service. The record is in electronic format

and has never been printed or paginated. The record is in thirteen Bundles, and the index to those Bundles is also electronic and available on the Commission's website.

- [5] The Commission has examined a wide range of aspects of policing in Khayelitsha, given that the complainant organisations asserted that there was a systemic failure of policing in Khayelitsha. The Commission's investigation has focussed on the three Khayelitsha police stations and the Khayelitsha Family Violence, Child Protection and Sexual Offences Unit (the FCS Unit) as these were the units of SAPS in respect to which the complaints related. The issues investigated by the Commission include –

- the history, demographics and socio-economic conditions of Khayelitsha;
- recorded crime levels in Khayelitsha over the last decade;
- the manner in which visible policing is undertaken in Khayelitsha, including the question of patrols in informal neighbourhoods;
- the response of SAPS to calls for assistance;
- the efficiency of the Community Service Centres (CSCs) at the three police stations, and the burdens borne at the CSCs in relation to the attestation of documents;
- the quality of the investigation and detection of crime undertaken by detectives at the three police stations and the FCS unit;
- the co-ordination between SAPS and the prosecutors at the Khayelitsha Magistrates' Court, particularly in relation to SAPS' role in ensuring that dockets are delivered to the court;
- the number of cases struck off the roll or withdrawn in the Khayelitsha Magistrates' Court either because of incomplete police investigation or because the dockets have not been brought to court;
- the manner in which crime scenes are protected and investigated in Khayelitsha;
- the system of crime intelligence at the three Khayelitsha police stations;
- the use of the City's CCTV cameras for the detection and prevention of crime in Khayelitsha;
- the experience of policing in Khayelitsha of vulnerable groups, including LGBTI people and foreign nationals;
- the eight individual complaints annexed to the complaint forwarded by the complainant organisations to the Premier in November 2011;
- other individual complaints made by members of the public, which the Commission has investigated by calling for dockets from SAPS;
- the role played by SAPS in the partnership established to assist survivors of sexual violence, located at the Khayelitsha Thuthuzela Care Centre;
- the manner in which specific policing challenges are addressed in Khayelitsha, including vigilante or vengeance attacks by members of the community, youth gangs, domestic violence, and illegal liquor outlets;
- arrest and detention of people in the holding cells of the Harare and Khayelitsha Site B police stations;
- the extent of the perception of corruption in the SAPS units in Khayelitsha;
- the manner in which complaints made against members of SAPS based in Khayelitsha have been handled by SAPS, DOCS and IPID;
- SAPS' internal systems for inspecting police stations, and the steps taken following on such inspections;
- the role of Community Police Forums in Khayelitsha, their effectiveness, and factors that constrain their effectiveness;

- levels of staffing at the three police stations and the FCS Unit, and the SAPS methodology for allocating human resources to police stations;
 - human resource issues including absenteeism, performance evaluation or performance enhancement, as SAPS calls it, discipline, recruitment and the filling of vacant senior posts;
 - the infrastructure at the three Khayelitsha police stations;
 - SAPS' station performance management tool, the EUPOLSA index;
 - SAPS' use of information technology; and
 - the role of other organs of state who have oversight responsibilities over SAPS, especially DOCS, and the relationship between SAPS and DOCS.
- [6] It is clear to the Commission that policing in Khayelitsha is profoundly challenging. Deep levels of poverty, poor levels of infrastructure and very high crime rates make Khayelitsha a particularly difficult place for SAPS to operate.
- [7] The Commission has concluded that there are inefficiencies at the three Khayelitsha police stations and at the Khayelitsha FCS Unit. The Commission has identified a wide range of inefficiencies but the key findings of inefficiency include –
- there are no established guidelines for patrols of informal neighbourhoods, and by and large, these do not seem to take place in Khayelitsha, partly because of personnel shortages, and partly because there is no requirement that they should take place;
 - many crimes reported to the three Khayelitsha police stations and the FCS Unit are not investigated properly or at all. Moreover, feedback is very rarely provided to complainants or bereaved family members relating to the progress of criminal investigations. Cases are often withdrawn or struck off the roll in the Khayelitsha Magistrates' Court because of incomplete police investigation or because dockets are not brought to court. The Commission considers the quality of detective services at the three police stations to be close to a crisis point. There are many reasons for the failure in the detective branches including far too few detectives carrying far too many dockets, especially at Khayelitsha Site B, Harare and the FCS Unit as well as under-trained and inexperienced detectives who are unable to function effectively in the difficult circumstances in Khayelitsha;
 - the system of crime intelligence is not functioning according to SAPS national guidelines at any of the three Khayelitsha police stations;
 - crime scene management in Khayelitsha is often not in accordance with the prescribed protocol, partly because of environmental difficulties but also because of the lack of basic equipment and training;
 - management at the three police stations, the cluster office and the FCS Unit is ineffective, this is illustrated by the fact that although widespread inefficiencies have been identified in policing at these SAPS units by the SAPS Provincial Inspectorate over a number of years, they have not been properly and successfully addressed by managers;
 - SAPS has no strategies in place to deal with two acute policing challenges in Khayelitsha – (a) vigilante or vengeance attacks by community members on people perceived to be criminals; and (b) youth gangs;
 - SAPS does not comply with the obligations imposed upon it by the Domestic Violence Act in relation to incidents of domestic violence in Khayelitsha;
 - SAPS makes no effective use of the CCTV cameras located in Khayelitsha for the purpose of prevention and detection of crime;
 - Suspects are often detained in breach of the 48-hour rule at the three police stations, and at times, arrests are made despite there being no reasonable suspicion that the person arrested has committed a crime; and

- SAPS in Khayelitsha is an unreliable partner in a range of team networks, particularly the network centred at the Thuthuzela Care Centre that seeks to assist care for survivors of sexual violence and further the prosecution of perpetrators of family violence, sexual offences and child abuse, and the Khayelitsha Magistrates' Court network that seeks to promote co-ordination between various stakeholders to ensure the successful prosecution of crime.
- [8] The Commission has also concluded that there is a breakdown in relations between the Khayelitsha community and the SAPS members stationed in Khayelitsha. In reaching this conclusion, it should be noted that the Commission does not find that there is an irretrievable or irreparable breakdown, but a breakdown that is characterised by a significant level of distrust amongst members of the community in Khayelitsha. Reasons for the breakdown, in the view of the Commission, include the following –
- Khayelitsha's difficult history and the burden of poverty it still bears;
 - widespread perceptions that SAPS does not respond promptly to calls for assistance; and does not investigate crime properly or at all;
 - Community Police Forums in Khayelitsha have not contributed significantly to improving relations between the community and SAPS for a variety of reasons;
 - complaints against members of SAPS in Khayelitsha have not been dealt with thoroughly, fairly or promptly, by either SAPS or IPID (and its predecessor the ICD) – and there is a worrying pattern whereby most complaints are found to be unsubstantiated after very little investigation even where the complaints are very serious and involve injury to a member of the public caused by a SAPS member;
 - many SAPS members do not act consistently with an understanding that policing is a “service”, and members of the public are often not treated with respect by SAPS members;
 - vulnerable groups such as LGBTI people and foreign nationals report particularly high levels of discourteous and discriminatory treatment by SAPS members;
 - there appears to be a worrying perception at least in some quarters that some members of SAPS in Khayelitsha are corrupt; and
 - each SAPS station performance tool does not include any measure to assess community perception and attitudes to SAPS.
- [9] In the light of its conclusions, the Commission has made a range of recommendations. Key recommendations include –
- Each Khayelitsha police station adopt a Community Policing Commitment in consultation with members of the community in which SAPS pledges, amongst other things, that its members will treat people with respect, to respond to calls for assistance within specified times; to provide feedback relating to the process of criminal investigations regularly to complainants; to conduct visible policing patrols in both formal and informal neighbourhoods, as well as providing support to Neighbourhood Watch patrols; recognise that vengeance or vigilante attacks by community members constitute criminal offences and will be dealt with by SAPS accordingly. Each member of SAPS must pledge to work to support the Commitment and systems of discipline and reward should reinforce it.
 - SAPS adopt a procedural justice model of policing in Khayelitsha in which SAPS acknowledges that the manner in which policing is performed is important to building a relationship of trust with members of the public, and that accordingly, SAPS will take steps to ensure that every interaction between a member of SAPS and a member of the public will be respectful of the rights of the member of the public; that policing strategies will be assessed to ensure that they are procedurally just; and that SAPS will treat its own members fairly and with respect.

- The establishment of an oversight and monitoring team to ensure that the inefficiencies identified at the three Khayelitsha police stations are eradicated. The team will comprise senior SAPS officers from the province, the police stations, the cluster command and a member of DOCS as well as an independent policing expert from civil society or academia. The team will report both to the SAPS National Commissioner and to the Western Cape legislature.
- A change management process for leadership within the Khayelitsha cluster, the Khayelitsha FCS Unit and the three Khayelitsha police stations to develop a 3 – 5 year strategic plan to address inefficiencies and the breakdown in relations between the community and SAPS in Khayelitsha.
- A strategic review of detective services in Khayelitsha by the Provincial Commissioner, as well as the urgent redeployment of at least five experienced detectives to Harare and Khayelitsha Site B police stations, as well as backlog teams to be allocated to all three police stations and the FCS Unit.
- The review of the SAPS mechanism for determining human resource allocation (the THRR) to be initiated by the National Commissioner immediately. The allocation system that is adopted must be published in the SAPS Annual Report and be available to key oversight agencies, including Parliament, the Civilian Secretariat, and provinces.
- The review of the SAPS station performance chart to ensure that it contains external measures of public confidence in SAPS, and reduces its weighting of crime reduction targets.
- Various proposals relating to human resource management, including provision of isiXhosa language training for SAPS members in Khayelitsha who do not speak isiXhosa, accelerated processes for appointing senior managers in Khayelitsha to avoid long periods where acting leaders are in place; and close oversight of disciplinary processes at the three Khayelitsha police stations and the FCS Unit by the cluster.
- The development of provincial guidelines in relation to the visible policing of informal neighbourhoods.
- The development of a policing strategy to deal with vengeance or vigilante attacks in Khayelitsha based on the premise that such attacks constitute criminal offences, aimed at preventing such attacks and prosecuting perpetrators of such attacks;
- The establishment of a multi-sectoral task team to address the problem of youth gangs in Khayelitsha to be convened by DOCS;
- A provincial task team to survey community attitudes to liquor licensing, unlicensed liquor outlets and the distribution of liquor generally in residential neighbourhoods with a view to developing a policy to regulate liquor outlets;
- Various recommendations to improve the policing of domestic violence;
- A recommendation that SAPS appoint a strategic task team in the province to investigate the use of information technology in relation to identified issues;
- Review of the procedures by which complaints against members of SAPS are dealt with both by SAPS and IPID, and in particular that complaints against members of SAPS in Khayelitsha be investigated by the Khayelitsha cluster office rather than the police stations or units operating in Khayelitsha;
- A memorandum of understanding to be entered into between DOCS and SAPS to facilitate DOCS carrying out its constitutional mandate to monitor police conduct and oversee police efficiency and effectiveness, especially to regulate police station visits by DOCS and the investigation of complaints of police inefficiency by DOCS;
- An investigation by SAPS, the City of Cape Town and the Metro Police at the optimal use of CCTV cameras in Khayelitsha take place as a matter of urgency; and

- SAPS takes steps urgently to improve the physical infrastructure of the Lingeletu West police station; and also prioritises providing further office space to the Harare and Khayelitsha Site B police stations.
 - SAPS build the Makhaza police station as a matter of urgency, and ensure that the building of the Makhaza police station will result in a considerable increase in SAPS in greater Khayelitsha, and not merely a reallocation of personnel from Harare to Makhaza.
- [10] The Commission reminds those who read this report that the most important consideration in assessing this report is the need to improve the safety of people who live and work in Khayelitsha. The Commission urges readers to debate its recommendations in the light of what will promote the safety of the residents of Khayelitsha rather than unrelated and irrelevant concerns. The Commission hopes that the shared object of enhancing the safety of Khayelitsha residents will be the only object that informs the response to this report both at national and provincial level and within SAPS itself.
- [11] The Commission points out that the fact that there are serious inefficiencies in the three Khayelitsha police stations and the Khayelitsha FCS Unit does not mean that there are not many committed and diligent members of SAPS posted in Khayelitsha who are seeking to perform their duties to the best of their ability with available resources. The Commission accordingly requests that those who read the report should bear in mind that the Commission has, as its mandate requested, focussed on identifying the inefficiencies of policing in Khayelitsha. That there are such inefficiencies does not mean that there are not aspects of policing that are efficiently performed, nor that there are not members of SAPS, of every rank, who strive to provide a professional policing service in Khayelitsha.
- [12] It is also clear from the painful testimony heard by the Commission that members of SAPS in Khayelitsha have not provided many of the residents of Khayelitsha with professional, respectful and efficient service. That is simply not acceptable. All inhabitants of South Africa are entitled to a police service that will protect and secure them. The task may be hard, but the obligation is clear.



VOICES FROM THE COMMISSION

My management accepts and welcomes any intervention from anybody to better the service to the community and we really look forward to the outcome of this Commission so that we can see and evaluate how can we better the service to the various communities that we serve because we will not only use the outcome of this Commission for the three police stations but we will look broader in the Western Province itself to all 150 police stations.

Lieutenant General Lamoer, Provincial Commissioner

I think all communities should acknowledge that SAPS cannot do this alone.

Phumeza Mlungwana (SJC General Secretary)

[In our] lives as gays and lesbians the police are the most important people in our lives, because you must know that we have a problem in our community, we also have problems in our homes, and therefore that is the most important place to us because they are objective, they don't take sides so the SAPS or police are very important to us.

Ms Funeka Soldaat, Free Gender

I then met that detective and 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 [the perpetrator] 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 that 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.

Ms Vuyiswa Mpekweni

No one walked to school alone because there would be a 100% chance that the gangs would take you down. If we walk in groups sometimes they would not rob us, only harass us. If they came to rob us and we were in a group, we could run in different directions and the gangsters would not be able to catch all of us.

Mr Sifiso Zitwana, SJC

We do try and work together but if we could just remove politics from the issues of crime and violence in Khayelitsha. Our biggest issue in Khayelitsha is involving politics in our crime and violence issues because crime is not a political issue, it is a problem that we all experience here in Khayelitsha.

Mr Welcome Makele, SJC

Accountability has to start at the top. It cannot start elsewhere. In Khayelitsha, I believe, as the previous witnesses said, the station commander is responsible. If the station commander does not hold people accountable the members who serve under her or him, then there is a problem. If the cluster commander doesn't hold people accountable then there is a serious problem. Similarly if the provincial commissioner doesn't hold people accountable there is a serious problem.

Mr Zackie Achmat, Ndifuna Ukwazi

But I will tell you, because I am young, I am in my early forties here in the township, we talk when we're having beers, we talk about what is the quickest measure to get your thing back when it is stolen ... Just give him a few knocks and get it back before you go the long route of the police and that. I am just saying these are the things we say. I am not saying they are right, but I don't hear these conversations saying 'because the police can't do but I just want my thing now; I don't want it to go via the commission, the court.'

Mr Tyhido, KDF

Sometimes you would get to the police station or a police officer if they were called out and you would realise that there is a new person and you will see a little bit of eagerness on their side to do their job correctly and when you get to the police station in three or four months and you meet that person again they you realise okay that guy's already just as demoralised as the rest of the group. ... So my perception ... of the work of the police in Khayelitsha ...there was just no sticking to the ethics of what is expected of their profession.

Ms Sonja Basson, social worker, Khayelitsha Homestead Projects for Street Children

I felt very helpless and traumatised. I do not understand what happened to my case. My husband is back at home and I am very scared of him. I tried to protect myself with a protection order, but that has not worked. I do not understand how the police and the court have allowed the case to be dismissed, and for my husband to just move back into my house, just because of a lack of a signature on a form. They have my statement and my daughter's statement.

Ms ND

It is of fundamental importance to acknowledge that the community is still reaching out to the SAPS and has a dire need to forge mutually beneficial partnerships. As community participation and support is a cornerstone of the philosophy of community oriented policing, SAPS should embrace the opportunity created by the complaint to reach out to the community.

Task Team Report, August 2012

I think for us at Khayelitsha we dread when public holidays come because invariably you will find more assaults, you will find on a Monday morning you have more murders than you have at any other day ... looking at those matters there's a very large percentage where it is alterations that occur whilst people were drinking together, an altercation at a shebeen and people are not in their full senses.

Ms Harmse Senior Public Prosecutor at Khayelitsha

A chain is as long as its weakest link and the weakest link in this instance is the FCS who are not attending and/or investigating cases and/or investigating cases comprehensively because of alleged lack of time.

Mrs D Mogale, cited by Dr Josias, Site Co-ordinator of Khayelitsha Thuthuzela Centre, 21 May 2013 letter to SAPS

I grew up in the township in the 1960s. A policeman was the first person you run to if there was something wrong. A policeman in your streets. That, of course, broke down in the later years in Apartheid, and now it seems to have broken down completely. And that needs to be revived. That idea that a policeman is the safest person you can run to within the community.

Professor Gobodo Madikizela 7802 (15 May 2014)

What the community, as I understand policing, what a community is expecting from the police, is the basic service, I want to feel safe. I want to walk the streets at night. I want to travel from work to home and not be robbed. And I want to send my children to school and they mustn't get involved in a fight. That is the basic thing the community want from the police. So if you say that there's a breakdown in the community relationship with the police, it's those things that matter. You cannot talk about there's a good relationship with the community, and they don't feel safe. ... So what the police in Khayelitsha must do, they must emphasise the basic, basic, basic policing.

Brigadier van Zyl

The sheer volume of work simply chased me away.

James van der Westhuizen (on being a detective)

You know in the movies, when you see in the movies ... you see a team descending to a crime scene, attending to a docket, but here you have a team of dockets descending on a detective.

Brigadier Dladla, station commander Khayelitsha Site B

Khayelitsha demands too much from a person that works in Khayelitsha; you don't rest.

Brigadier Mlenga, former station commander at Khayelitsha Site B

I became involved in the campaign to stop vigilantism because people will be cheering when young black people were killed, and no one seems to mind because they were so-called 'criminal'. People cheering like their favourite soccer team had scored a goal. Children were ululating. This is a clear sign of black self-hatred. When you are squashed into a tight corner you find fault with an easy target. Vigilantism is the easiest, shortest option by people that are in desperation.

A young Khayelitsha resident cited by Dr Gillespie on vigilantism

“

It shocked me when I saw it once but then I saw it again and again and again where the police just come into a shop, in a Somali shop they don't do that with Xhosa owners but they do that with Somalis.”

Ms Dwane from Equal Education

I just want you to take into perspective if I have an individual that carries 150 murder dockets and he slips up with one or two dockets and now I have to discipline him in such a manner that through the disciplining he might be losing his next promotion that is around the corner then I am going to lose the detective.

Colonel Marais

“

When arriving at these scenes, you usually almost catch the people in action, but with the arrival of the marked vehicles they disappear into the structures. Witnesses don't want to identify anyone. It's like it's being committed by ghosts. So no one wants to step forward to say I can identify [the perpetrators]. There are just no witnesses, no one saw anything.

Colonel Nel

At one level Khayelitsha ... can be viewed as a living spatial symbol of the thinking, attitudes and kind of Apartheid urban-planning logic that prevailed in the late 1970s and 1980s. At another level it is also a testament to the power of the human spirit, and of social agency and determination in the making of place in the city, especially for those classified black Africans under Apartheid.

Ms Cole

”

”





Members of the Commission: From Right: Justice Catherine O'Regan (Chairperson), Khangelani Rawuza, Advocate Vusumzi Pikoli, Advocate Nazreen Bawa, Advocate Thembalihle Sidaki, Amanda Dissel

CHAPTER ONE

INTRODUCTION

- [1] On 28 November 2011, lawyers representing the Social Justice Coalition, the Treatment Action Campaign, Equal Education, Free Gender,¹ the Triangle Project and Ndifuna Ukwazi (the complainant organisations) wrote to the Premier of the Western Cape requesting her to appoint a Commission of Inquiry into policing in Khayelitsha. The letter asserted that there were “widespread inefficiencies, apathy, incompetence and systemic failures of policing” in Khayelitsha.² The complainant organisations alleged that members of the Khayelitsha community routinely experience violations of their constitutional rights, including the rights to equality, human dignity, life, freedom and security of the person, privacy, movement, property, housing and access to courts.³ They identified a range of systemic problems in the functioning of the South African Police Service (SAPS) in Khayelitsha, including poor investigation of crime, failure to provide feedback to complainants, insufficient visible policing (especially in informal settlements) discourteous and even contemptuous treatment of members of the public.⁴ The organisations annexed a schedule describing eight cases that, according to them, were illustrative of the problems with policing in Khayelitsha.⁵ They stated that they anticipated that the Commission’s recommendations would have “positive, tangible results for the community with respect to levels of safety and access to justice.”⁶
- [2] The Premier forwarded the letter to the Provincial Commissioner of Police for the Western Cape, Lieutenant General Lamoer, requesting him to comment. Copies of her letter were sent to the former Minister of Police, Mr Mthethwa, and the acting National Commissioner of Police.⁷ An exchange of correspondence followed. Some months later, in June 2012, after receiving reports prepared by one of the Deputy Provincial Commissioners, Major General Jephta (dated 7 June 2012)⁸ and the Provincial Commissioner (dated 27 June 2012)⁹ respectively and shortly after her appointment on 12 June 2012, the National Commissioner, General Phiyega, requested the former Divisional Commissioner of the National Inspectorate, the late Lieutenant General Tshabalala, to investigate the complaint. Lieutenant General Tshabalala in turn appointed a task team under Major General Rapudi (the Task Team) to investigate the complaint. The Provincial Commissioner was informed of the appointment of the Task Team and subsequently met with its members on 5 July 2012.¹⁰ Amongst other things, the Task

1 Free Gender subsequently withdrew from the complaint process. See letter dated 6 December 2011, contained in the High Court Record, Record Bundle 1(3), HZ 10. See also Chapter 7 at paras 71 – 75, providing a summary of Ms Funeka Soldaat’s testimony.

2 Record Bundle 1(1c), File A, Item 1C. The Complaint in terms of section 206(5)(a) of the Constitution and section 66(2)(a) of the Constitution of the Western Cape (the Complaint) at para 4 of Record Bundle 1(3), AL38, p 356. The covering letter to the Complaint is at Record Bundle 7(1), File A, Item 2a and forms part of the record of the High Court case, Record Bundle 1(3), AL38, p 352.

3 Id. at para 48.

4 Id. at paras 63 – 67.

5 Record Bundle 7(1), File A, Item 2a, Annexure B at 37.11 – 37.19. The eight cases are individually considered in Chapter 6 of this report.

6 Record Bundle 1(3), AL38, p 356 at para 7.

7 This letter too formed part of the High Court Record, Record Bundle 1(3), AL38, letter dated 9 December 2011, p 347.

8 This letter too formed part of the High Court Record; See Record Bundle 1(3), AL48A, pp 488 – 493.

9 Record Bundle 1(3), AL48B, pp 494 – 503.1.

10 Record Bundle 1(3), Affidavit of General Lamoer at paras 70 – 71, pp 91 – 92 and para 75, p 93.

Team visited the three police stations located in Khayelitsha¹¹ and met with representatives of the complainant organisations during July 2012.¹² The Task Team Report was prepared in August 2012 and forwarded to the National Commissioner.¹³ That Report was not provided to the Premier or to the complainant organisations at that time.¹⁴ Given the absence of any clear response from SAPS, the Premier decided to appoint this Commission.¹⁵ After obtaining the approval of the Provincial Executive Council, the Commission was appointed on 24 August 2012.¹⁶

- [3] In addition to the concerns raised in the complaints of the complainant organisations, the Premier was concerned about the murder of suspected criminals by members of the community in Khayelitsha.¹⁷ In March 2012, there were reports of the murder of eight suspected criminals by community members.¹⁸ The Member of the Executive Council for Community Safety in the province sought an explanation from the Provincial Commissioner.¹⁹ On 22 May 2012, the Premier also sought a response from both the National and Provincial Commissioners, saying that the murders of suspected criminals by the community “lent credence to the alleged breakdown of trust” between the community of Khayelitsha and SAPS.²⁰ On 28 May 2012, a member of the community, Mr Nkwame Cedile, issued a press statement in the form of an open letter to the Premier stating that he had chosen to commence a fast to provoke a discussion about vigilante killings.²¹ The complainant organisations also furnished the Premier with a supplementary complaint dated 5 June 2012, which was forwarded to the Provincial Commissioner.²² In her affidavit filed in the High Court proceedings, the Premier says that she appointed the Commission in the light of the complaints she had received from the complainant organisations and the “plague of vigilante killings”.²³
- [4] The Commission was appointed under section 1 of the Western Cape Provincial Commission Act, 10 of 1998 (the Western Cape Commission Act)²⁴ in terms of the power conferred upon the provinces in terms of section 206(3) of the South African Constitution.²⁵ The terms of reference of the Commission are as follows –

“To investigate complaints received by the Premier relating to allegations of -
 (a) inefficiency of the South African Police Service stationed at Site B, Bonga Drive, Khayelitsha; Steve Biko Road, Harare, Khayelitsha and Makabeni

11 Record Bundle 1(3), AL87, pp 684 – 710.

12 The visits occurred during 9 – 13 July 2012 and the meeting with the complainant organisations took place on 11 July 2012. Record Bundle 1(3), Affidavit of General Lamoer at paras 76 – 77, pp 93 – 94.

13 Record Bundle 1(3), AL87, pp 684 – 710.

14 Record Bundle 1(3), Affidavit of Premier Zille at para 157, p 1185.

15 Id. at paras 157 – 160, pp 1185 – 1187.

16 Proclamation 9 of 2012 published in Provincial Gazette (Western Cape) No 7026 dated 24 August 2012 (the Proclamation). Record Bundle 1(1c), File A, Item 1C.

17 Affidavit of Premier Zille in High Court Record at paras 21 – 22, pp 1132 – 1133, para 26, p 1134, para 87, pp 1161 – 1162 and para 90, p 1163 of Record Bundle 1(3).

18 Affidavit of Dr Lawrence, head of the provincial Department of Community Safety, Record Bundle 2(3), File 13, Item 6 at para 37, p 11; and Affidavit of Premier Zille in High Court Record, Record Bundle 1(3) at para 87, pp 1161 – 1162.

19 Affidavit of Dr Lawrence, Record Bundle 2(3), File 13, Item 6 at para 37, p 11.

20 See letter dated 22 May 2012, contained in High Court Record, Record Bundle 1(3), AL42 at para 3. See also Affidavit of Dr Lawrence, Record Bundle 2(3), File 13, Item 6 at para 38, p 11.

21 Mr Cedile’s Statement is included in the High Court Record, Record Bundle 1(3), AL46, pp 481 – 483, and mentioned in Premier Zille’s Affidavit, Record Bundle 1(3) at paras 102 – 104, pp 1166 – 1167.

22 High Court Record, Record Bundle AL46, pp 416 – 480 and Affidavit of Dr Lawrence, Record Bundle 2(3), File 13, Item 6, at para 39, p 12.

23 Affidavit of Premier Zille in High Court Record at para 26. Record Bundle 1(3), at para 26, p 1134.

24 Record Bundle 1(1c), File A, Item 3A.

25 Section 206 of the Constitution is set out in Chapter 2 below at para 2.

- Street, Lingeletu West, Khayelitsha and any other units of the South African Police Service operating in Khayelitsha, Cape Town, (“Khayelitsha”); and
- (b) a breakdown in relations between the Khayelitsha community and members of the South African Police Service stationed at the aforesaid police stations in Khayelitsha, or operating in Khayelitsha.”²⁶

Photo 1: Community Service Centre, Harare police station



- [5] The Commission has two members: Justice Catherine O’Regan the chairperson and Advocate Vusumzi Pikoli. Ms Amanda Dissel was appointed Secretary to the Commission; and Adv Nazreen Bawa and Adv Thembalihle Sidaki were appointed Evidence Leaders. The Proclamation required that the Commission’s enquiry include an investigation into the allegations made by the complainant organisations, as well as an investigation into the reasons for and causes of the inefficiency and breakdown in relations, if found to exist. The Commission was required to compile a written report containing its findings and recommendations as to how any inefficiency in the delivery of police services or a breakdown in relations between the community of Khayelitsha and SAPS, if found, may be alleviated or remedied. The Commission was initially given six months to complete its mandate.
- [6] The Commission commenced work immediately. It identified offices in the Library building in Harare, Khayelitsha, which were opened to the public on 11 September 2012. On 6 September 2012, the Commission issued Notice 1, which set out its provisional working methods of the Commission.²⁷ Paragraph 3 of that notice stated that –
- “This set of provisional procedures has been drafted in view of the fact that the Commission is conducting an inquiry and not conducting a trial. The Commission is not determining whether anyone should face criminal

²⁶ Section 4 of the Proclamation. Record Bundle 1(1c), File A, Item 1C.

²⁷ Record Bundle 1, File 1(d), File B, Item 1.

prosecution nor whether anyone is civilly liable for any breach of the law. Evidence that comes to light during the proceedings of the Commission is not admissible in any civil or criminal proceedings, except where the person concerned has been charged with an offence in terms of section 4 of the Western Cape Provincial Commissions Act, 10 of 1998.”²⁸

Notice 1 indicated that the work of the Commission would be divided into two phases and proposed that the hearings for the first phase would be held in October and November 2012. The proceedings of the Commission were regulated by Notices throughout its operation.²⁹

- [7] On 6 September 2012, the Commission wrote to the National Commissioner, the Provincial Commissioner and the Station Commanders of the three Khayelitsha police stations informing them of the appointment of the Commission and its terms of reference and seeking their co-operation in providing information and documents.³⁰ The addressees were asked to furnish the requested information by 5 October 2012. Apart from an acknowledgement of receipt from Major General Jephtha on behalf of the Provincial Commissioner on 7 September 2012,³¹ no response was received to these letters. Upon enquiry, on 16 October 2012, the Commission was provided with a letter written by the State Attorney dated 8 October 2012,³² which had not previously been received by the Commission, in which the State Attorney informed the Commission that it was acting on behalf of SAPS (nationally and provincially) and stated that SAPS would be engaging with the Premier in relation to the work of the Commission in terms of the Intergovernmental Relations Framework Act, 13 of 2005. On 22 October 2012, the Secretary to the Commission wrote to the State Attorney noting that the preliminary hearing of the Commission was due to be held on 29 October 2012, that the information requested from SAPS, which was germane to the mandate of the Commission, had not been provided to the Commission and that if it were not provided by 24 October 2012, the Commission would be compelled to issue subpoenas to ensure that the material was placed before it.³³
- [8] The Commission learnt subsequently that the Minister of Police had objected to the appointment of the Commission and had written to the Premier during August and September 2012 to express his objection. Further correspondence was apparently exchanged between the Minister and the Premier between August and October 2012.³⁴
- [9] When no documentation was provided to the Commission by 30 October 2012, the Commission issued and served subpoenas on the Provincial Commissioner and the three station commanders in terms of section 3(1) of the Western Cape Commissions Act calling upon them to produce documents and information. On 5 November 2012, the Minister of Police launched proceedings in the High Court for an order restraining the Commission from issuing and giving effect to the subpoenas, and directing it to suspend its activities pending a decision on a final review application to set aside the Premier’s decision to appoint the Commission.³⁵ The application for interim relief was argued in the High Court on 13

28 Id. at para 3.

29 Chapter 3 contains a fuller account of the working methods of the Commission and a discussion of the various notices.

30 Record Bundle 1(3), AD2, pp 1059 – 1060.

31 Record Bundle 1(3), AL76, pp 623 – 624.

32 Record Bundle 1(3), AD4, pp 1067 – 1068.

33 Record Bundle 1(3), AL7, pp 1071 – 1072.

34 Record Bundle 1(3), AL59, pp 535 – 536, AL60 pp 537 – 549, AL 62 pp 550 – 552, AL63 p 553, AL64 pp 554 – 556, AL65 pp 557 – 559, AL66 pp 560 – 562, and HZ45 pp 1449 – 1452, AL68 pp 572 – 575, AL71 pp 583 – 586, AL72 pp 587 – 591 and HZ48 pp 1457 – 1459.

35 The Record before the High Court forms part of the Record before the Commission at Record Bundle 1(3). The National Commissioner and Provincial Commissioner were the second and third applicants, the Civilian Secretariat

December 2012. On 14 January 2013, by a majority, the High Court dismissed the application for a temporary interdict.³⁶

- [10] The Minister of Police and other applicants then sought leave to appeal directly to the Constitutional Court against the judgment of the High Court, as well as direct access to the Constitutional Court on additional and related issues. After hearing argument on 6 August 2013, the Constitutional Court handed down judgment on 1 October 2013 refusing both the application for leave to appeal and the application for direct access. The Court concluded that the Minister's assertion that the Premier's decision to establish the Commission was inconsistent with the Constitution and invalid and was "without merit and must be dismissed".³⁷
- [11] The Commission did not halt its work while the litigation proceeded before the High Court and the Constitutional Court, because no interdict was ever granted restraining the work of the Commission. Nevertheless, as the participation of SAPS was important for the work of the Commission, it refrained from holding public hearings. Given the delays occasioned by the litigation, the Premier extended the deadline for the submission of the Commission's report, first to August 2013, then to April 2014. Thereafter, further extensions were granted to July 2014, to 8 August 2014 and finally to 29 August 2014. Once the Constitutional Court handed down judgment on 1 October 2013, the Commission proceeded to schedule a further preliminary hearing to discuss and determine the procedures to be followed to perform its mandate. Hearings for the first phase were held between January and April 2014, and for the second phase in May 2014. Final oral argument was addressed to the Commission on 29 May 2014.
- [12] This report is divided into four parts: the first contains four chapters analysing the Commission's terms of reference, the working methods of the Commission, the history and context of Khayelitsha and the legislative framework of SAPS. The second part contains seven chapters. The first of these contains an analysis of the initial individual complaints lodged by the complainant organisations. Thereafter the next six chapters in the second part provide an overview of the documents and evidence before the Commission. Chapter 7 contains an overview of the evidence of the testimony of individual witnesses in Phase One that includes the testimony tendered by members of the complainant organisations. Chapter 8 contains an overview of the expert evidence admitted in Phase One. Chapter 9 contains an overview of the evidence of the documents provided and testimony given on behalf of key government agencies that work with SAPS in Khayelitsha. Chapter 10 contains a summary and analysis of the key documentary evidence received from SAPS and Chapter 11 contains an overview of the testimonial evidence provided by SAPS witnesses. Chapter 12 contains an overview of the expert reports and testimonial evidence in Phase Two. The third section of the report contains two chapters: Chapter 13 describes the inefficiencies in the functioning of SAPS in Khayelitsha identified by the Commission as well as the reasons for them, and Chapter 14 concludes that there is a breakdown in the relations between SAPS and the community in Khayelitsha and provides reasons for that breakdown. The final section, Chapter 15, provides the Commission's recommendations.

of Police was the fourth applicant, and the station commanders of the three Khayelitsha police stations were the fifth to seventh applicants.

36 The High Court Judgment is at Record Bundle 1, File 1(d), Item 12 and Item 12A.

37 *Minister of Police and Others v Premier, Western Cape and Others* 2014 (1) SA 1 (CC) at para 71.

Part One



CHAPTER TWO

UNDERSTANDING THE TERMS OF REFERENCE: A MECHANISM OF ACCOUNTABILITY AND OVERSIGHT

- [1] The terms of reference of the Commission are set out in Proclamation 9 of 2012 published in the Provincial Gazette of the Western Cape.¹ The Proclamation contains three key instructions for the Commission –
- (a) Firstly, it stipulates the subject matter of the Commission’s mandate as follows –
 - “To investigate complaints received by the Premier relating to allegations of –
 - (a) inefficiency of the South African Police Service stationed at Site B, Bonga Drive, Khayelitsha; Steve Biko Road, Harare, Khayelitsha and Makabeni Street, Lingeletu West, Khayelitsha and any other units of the South African Police Service operating in Khayelitsha, Cape Town, (“Khayelitsha”); and
 - (b) a breakdown in relations between the Khayelitsha community and members of the South African Police Service stationed at the aforesaid police stations in Khayelitsha, or operating in Khayelitsha.”²
 - (b) Secondly, the Proclamation provides that the Commission must investigate the allegations, and “the reasons for, and causes of, the inefficiency and breakdown in relations, if found to exist”.³
 - (c) Thirdly, the Proclamation states that the Commission must prepare a written report containing the findings of the Commission and “recommendations as to how any inefficiency in the delivery of police services, or a breakdown in relations between the community of Khayelitsha and the South African Police Service, as may be found by the Commission to exist, may be alleviated or remedied”.⁴ It continues by stating that the recommendations “must include appropriate recommendations for the Province to consider when it makes recommendations to the Minister of Police, as contemplated in section 206(5)(b) of the Constitution.”⁵

A. THE CONSTITUTIONAL FRAMEWORK

- [2] The Commission was established by the Premier of the Western Cape. The language of the terms of reference is drawn from section 206(5)(a) of the Constitution, and interpreting the Commission’s mandate requires an understanding of the powers conferred upon provinces by section 206 of the Constitution, as well as an understanding of the constitutional purpose of those powers. Section 206 is entitled “Political Responsibility” and provides that –

1 Proclamation 9 of 2012 published in Provincial Gazette (Western Cape) No 7026 dated 24 August 2012 (the Proclamation). Record Bundle 1(1c), File A, Item 1C.

2 Id. at para 4(1).

3 Id. at para 4(2).

4 Id. at para 4(3)(b).

5 Id. at para 4(4).

- “(1) A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.
- (2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.
- (3) Each province is entitled –
- (a) to monitor police conduct;
 - (b) to oversee the effectiveness and efficiency of the police services, including receiving reports on the police services;
 - (c) to promote good relations between the police and the community;
 - (d) to assess the effectiveness of visible policing; and
 - (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.
- (4) A provincial executive is responsible for policing functions –
- (a) vested in it by this Chapter;
 - (b) assigned to it in terms of national legislation; and
 - (c) allocated to it in the national policing policy.
- (5) In order to perform the functions set out in subsection (3), a province –
- (a) may investigate, or appoint a Commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
 - (b) must make recommendations to the Cabinet member responsible for policing.
- (6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.
- (7) National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
- (8) A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective co-ordination of the police service and effective co-operation among the spheres of government.
- (9) A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions.”

[3] Section 206(1) makes plain that policing is, by and large, a national competence and that a member of Cabinet, the Minister of Police, is responsible for policing and must determine national policing policy, after taking into account provincial policing needs and priorities.⁶ Section 207 provides that the National Commissioner of the police service is appointed by the President, and exercises control over the police service in accordance with the national policing policy set by the Minister of Police.

[4] Yet responsibility for policing is not an exclusive national power, for both Part A of Schedule 4, and aspects of sections 206 and 207, make plain that provinces have a responsibility for policing as well. Part A of Schedule 4, which provides a list of the functional areas of concurrent national and provincial legislative competence, indicates that Police is a concurrent area of national and provincial competence “to the extent that the provisions of Chapter 11 of the

6 *Minister of Police and Others v Premier, Western Cape and Others* 2014 (1) SA 1 (CC) at para 30.

Constitution confer upon the provincial legislatures legislative competence”.⁷ As Moseneke DCJ, on behalf of a unanimous Constitutional Court, held in the challenge brought by the Minister of Police and Others to the establishment of this Commission, the key provisions in relation to this provision are subsections 206(3) and (5).⁸

- [5] Moseneke DCJ held that, although a provincial executive does not control the police service –

“it has a legitimate interest that its residents are shielded from crime and that they enjoy the protection of effective, efficient and visible policing. That explains why the province has the authority and duty to raise its concerns on policing in the province with the Minister. Thus the entitlements accord with the province’s duty to respect, protect and promote fundamental rights of its residents.”⁹

According to the Constitutional Court, the object of section 206(5), the provision in terms of which this Commission is established, is “to safeguard these entitlements over policing within a province”.¹⁰ Accordingly, Moseneke DCJ concluded –

“... the competence to appoint a provincial Commission of inquiry into police inefficiency and its alleged dysfunctional relations with any community is part of a constitutionally-mandated scheme through which provinces are entitled to monitor and oversee the police function within their area of remit. Section 206(5) targets a Commission of inquiry as one of the mechanisms of accountability and oversight available to a province.”¹¹

The Court further concluded that a Commission of inquiry established in terms of section 206(5) has “the implied power to subpoena members of the police service to attend its hearings, testify before it and produce documents and other evidence that may be lawfully required of members of the Police Service.”¹²

- [6] Moseneke DCJ responded to an argument that the Commission’s terms of reference were overbroad and vague as follows –

“... the inquiry relates to complaints that are geographically confined to only three police stations in Khayelitsha and other police units operating in the same neighbourhood. The terms of reference relate to the complaints made to the Premier. Their nature and extent are well documented and have been served on or made known to the Minister, Commissioner and other parties affected by the work of the Commission.”¹³

- [7] It is clear from this reasoning that the terms of reference relate, in the main, to the complaints made by the complainant organisations relating to systemic inefficiencies in policing as referred to in Chapter 1.¹⁴ In this regard, Moseneke DCJ reasoned –

7 Id. at para 31.

8 Id. at paras 31 – 33.

9 Id. at para 37, footnote omitted. The province’s duty to respect, protect and promote fundamental rights arises from section 7(2) of the Constitution.

10 Id. at para 38.

11 Id. at para 41. See also *Ex parte Chairperson of the National Assembly: in re Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996 1997 (2) SA 97 (CC)* at para 168.

12 Id. at para 57.

13 Id. at para 68. See also *Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Amended Text of the Constitution of the Republic of South Africa 1996 1997 (2) SA 97 (CC)* at para 168.

14 See Chapter 1 above at para 1.

“There is nothing in the relevant constitutional scheme to propose that the complaints envisaged in section 206(5) must be limited to specific incidents and cannot permissibly raise broader and systemic concerns about policing function in the specific community. Even so, the terms of reference appear to be limited to an investigation of the functioning of the police service rather than the structural problem of crime in Khayelitsha.”¹⁵

- [8] In construing our terms of reference, the Commission has noted that the key executive responsibilities of the provincial executive for policing are (a) to monitor policing; (b) to oversee the effectiveness and efficiency of the police service; (c) to promote good relations between the police and community; (d) to assess the effectiveness of visible policing; and (e) to liaise with the Minister of Police with respect to crime and policing in the province.¹⁶
- [9] The dual focus of the Commission’s terms of reference are to investigate “complaints of inefficiency” in the SAPS in Khayelitsha, and a “breakdown in relations between the Khayelitsha community” and members of SAPS stationed in Khayelitsha or operating in Khayelitsha. These two concerns arise directly from the executive responsibility of the provincial government for policing which, in terms of section 206(3)(b) of the Constitution has the responsibility “to oversee the effectiveness and efficiency of the police service” in the province, and to “promote good relations between the police and the community”.
- [10] Accordingly, underlying the authority given to the province to oversee the effectiveness of SAPS, and to promote good relations between SAPS and the community, is a constitutional vision of a police service that is to be both efficient and trusted by the community it serves. In construing our terms of reference the constitutional distinction of competences between organs of state and spheres of government is an important starting point. There is however another part of the Constitution which is as important, Chapter 2. Section 12 of our Constitution states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence whether from a public or private source. Everyone who lives and works in Khayelitsha thus has a right to safety and the protection and fulfilment of their rights was at the forefront of the work of the Commission. In turn, the province has a role in holding SAPS accountable for its actions, by monitoring SAPS and overseeing its efficiency. The principle of accountability for public power is a fundamental value of our Constitution,¹⁷ and mechanisms to ensure the accountability of public power are found throughout its text.¹⁸
- [11] Yet what is also clear from section 206(5) is that a Commission of inquiry appointed within its terms does not fall outside the distribution of competences between the three spheres of government as mandated by the Constitution. Should a Commission of inquiry find that there are inefficiencies in policing, or a breakdown in relations between the police and a community, it may make recommendations to the province as to how the inefficiencies or relationship dysfunction should be addressed. In turn, the province may forward the Commission’s conclusions and recommendations to the national Minister as part of the provincial duty which arises from section 206(5) of the Constitution to provide recommendations to the Minister of Police.¹⁹ This mechanism is consistent with the constitutional framework which

¹⁵ Id. at para 69.

¹⁶ See section 206(3)(a) – (e) of the Constitution.

¹⁷ Section 1 of the Constitution.

¹⁸ *Minister of Police and Others v Premier, Western Cape and Others* 2014 (1) SA 1 (CC) at para 52.

¹⁹ Section 206(5) requires the provincial government to make recommendations to the Minister arising from its investigation of complaints.

makes plain that it is the Minister of Police who is responsible for national policing policy,²⁰ which need not be uniform across all provinces, but may differ in the light of different policing needs and priorities across provinces.²¹

- [12] In summary, the function of this Commission of Inquiry is best understood, in the words of the Constitutional Court, “as one of the mechanisms of accountability and oversight”.²² It must borne in mind that SAPS is established “to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”²³ SAPS must also act to promote the founding values of the Constitution, which include “human dignity, the achievement of equality and the advancement of human rights and freedoms”, “the rule of law” and a democratic system of government “to ensure accountability, responsiveness and openness”.²⁴

B. THE ALLEGED “INEFFICIENCIES” AND “BREAKDOWN”

- [13] The task of the Commission is to investigate complaints received by the Premier relating to allegations of inefficiency of SAPS in Khayelitsha and an alleged breakdown in relations between the Khayelitsha community and members of SAPS. The founding document that determines the scope of its enquiry is therefore the complaint forwarded to the Premier in November 2011, briefly discussed in Chapter 1 above.²⁵ Paragraph 4 of that complaint alleged that there were “widespread inefficiencies, apathy, incompetence and systemic failures of policing” in Khayelitsha.²⁶ Later in the complaint, it was stated that the SAPS in Khayelitsha were inefficient in a variety of respects, including poor investigation of crime, failure to provide feedback to complainants, inadequate visible policing, especially of informal settlements and discourteous and even contemptuous treatment of residents of Khayelitsha.²⁷ These general complaints of systemic inefficiencies and failure were underpinned by eight specific complaints that were set out in an annexure to the complaint.²⁸ What is clear from a reading of the complaints is that the complainant organisations alleged that there were deep systemic inefficiencies in policing in Khayelitsha and that the eight individual complaints provided representative examples of the consequences of those deep systemic inefficiencies. The Constitutional Court also recognised that the complaints related to systemic inefficiencies, and SAPS did not suggest otherwise during the public sittings of the Commission.

(a) The meaning of “inefficiency” and “breakdown”

- [14] One of the questions the Commission had to consider was what is encompassed by the use of the words “inefficiency” and “breakdown” in its terms of reference. As noted above, the Constitution requires provinces to oversee the “effectiveness and efficiency” of the police

20 Section 206(1) of the Constitution.

21 Section 206(2) of the Constitution.

22 *Minister of Police and Others v Premier, Western Cape and Others* 2014 (1) SA 1 (CC) at para 41.

23 Section 205(3) of the Constitution.

24 Section 1 of the Constitution.

25 See Chapter 1 at para 1.

26 Record Bundle 1(1c), File A, Item 2, p 13.

27 *Id.* at paras 64 – 65.

28 Record Bundle 7(1), File A, Item 2a, annexure B to the complaint, pp 37.11 – 37.19.

Photo 2: Police dockets awaiting review under the "brought forward" system, Khayelitsha Site B



and to “promote good relations between the police and the community”. Clearly, the use of the words “inefficiency” and “breakdown” in the Commission’s terms of reference, and in section 206(5)(a) of the Constitution relate directly to the obligations borne by the province to oversee effectiveness and efficiency of the police, and to promote good relations between the police and the community. It will be helpful to look at the import of each word separately.

(a) “Inefficiency”

- [15] In relation to the definition of “inefficiency” in the Commission’s terms of reference, the Commission is of the view that it is not necessary to establish “a breakdown in law and order” in Khayelitsha or a failure by the police to function at all, as counsel for SAPS often suggested during the proceedings. There are two reasons for the Commission’s view that “inefficiency” is less serious than was sometimes contended. The first is a functional one, resting on an understanding of why the Constitution empowers the establishment of a Commission of inquiry at all. On an interpretation of “inefficiency” that would only be met when SAPS was so dysfunctional as to have led to a breakdown in law and order, it might be argued that a province could not appoint a Commission of inquiry until the task of policing was being so badly performed that it could be said no longer to be functional at all. It would mean that all would have to be lost, or nearly lost, before the province could act. Such an interpretation would deprive the province of an important constitutional tool to ensure oversight and accountability until too late in the day. The constitutional power is there to ensure oversight and accountability to avoid a complete breakdown in so important an institution as the police. If it is to be able to avoid such a breakdown, it must be able to invoke the provision before the breakdown has happened.
- [16] The second reason is a textual one. Our ordinary understanding of “inefficiency” does not mean completely broken or failed. “Inefficiency”, is defined in the Shorter Oxford English Dictionary as the “want of efficiency; or the inability to effect something” and “efficiency”

and “efficient”, in turn, as “making or causing to be productive of effects; and, of persons, as adequately skilled and active”.

- [17] The Commission, therefore, is of the view that its mandate in relation to “inefficiency” is to determine whether SAPS operating in Khayelitsha are adequately skilled and active to enable them to meet the objects of the police as set out in the section 205(3) of the Constitution, duly cognizant of the founding values of the Constitution. In addressing its mandate, the Commission accepts that the police may be efficient in some respects, yet inefficient in others: SAPS is a human institution, after all. If the purpose of the Commission is to serve as a mechanism of accountability and oversight, in relation to “inefficiency”, the Commission’s task is to inform the provincial government of any inefficiencies in the operation of SAPS in Khayelitsha that are serious enough to warrant action from either provincial or national government. The question for the Commission is thus whether, on the Record before it, it has identified inefficiencies in the operation of SAPS in Khayelitsha, such as would require attention of the provincial government or of the national Minister of Police and National Commissioner, or both.

(b) “Breakdown”

- [18] When section 206(5)(a) refers to a “breakdown in relations between the police and any community”, it is emphasising an aspect of policing that is particularly important in the light of South Africa’s history. The role of policing under *apartheid* was a particularly oppressive one that today imposes a burden on SAPS that it may not avoid. The Preamble of our Constitution reminds us that our constitutional democracy was established after a long struggle for justice and freedom; a struggle in which millions suffered and in which many lost their lives. Our Constitution seeks to “heal the divisions of the past, and establish a society based on democratic values, social justice and fundamental human rights” in which “every citizen is equally protected by law” and in which “the quality of life of all citizens” is improved.²⁹ This powerful language in the Preamble is one of the reasons that the Constitution has been hailed as a “transformative” Constitution, and one which seeks fundamental change in our society.
- [19] Every institution of government needs to bear this constitutional project in mind in determining its mandate and its conduct: none more so than SAPS. Given that SAPS’ institutional predecessor was complicit in the enforcement of unjust *apartheid* laws on a daily basis, SAPS must define itself in contradistinction to its predecessor. The relationship between the *apartheid* police and the black communities they policed was often hostile and fraught. When the Constitution emphasises the importance of “promoting good relations between the police and the community”, as it does in sections 206(3) and 206(5)(a), it does so mindful of this history. It is one of the many provisions in the Constitution that is best understood as an avowal of “never again”. Never again shall we allow communities to be oppressed unjustly by state law enforcement agencies. Never again shall we tolerate a relationship of hostility and hatred between the institutions of the state and the people of our country.
- [20] In determining its mandate, it is important that the Commission understands the constitutional purpose that underpins both section 206(3) and 206(5)(a). That purpose is to ensure that a constructive, mutually respectful relationship is forged between residents of a neighbourhood and the police who operate in that neighbourhood. That relationship is important not merely because it will foster good policing, which it will. It is important because it is based on the Preamble and vision of our Constitution: a transformed society founded on human dignity, the achievement of equality, freedom and fundamental human rights.

29 Preamble to the Constitution.

- [21] As in the case of “inefficiency”, it might be possible to suggest that a “breakdown” has occurred only if the relationship between the police and the community is so irretrievably damaged that no resident will enter a police station or lay a charge. Again, however, it is our view that such an interpretation of “breakdown” would deprive the constitutional framework of its purpose. If a Commission finds that the relationship between a community and the police is damaged, characterised by wide levels of distrust, even if there are some in the community who still trust the police, and even if it cannot be said, to borrow a concept from family law, that the relationship is irretrievably broken down, that is a moment for action by the responsible authorities to improve the situation, to take steps to foster the mutually respectful and constructive relationship the Constitution clearly expects. For there to be a finding of a “breakdown”, only when the relationship is beyond repair, would deprive our constitutional system of an important “canary in the mine” mechanism to warn those in government of the need for steps to be taken to address the problem before all is lost.

C. THE SCOPE OF THE RECOMMENDATIONS

- [22] The Proclamation requires the Commission, if it concludes on the Record before it that there is inefficiency in the operation of SAPS in Khayelitsha, and/or a breakdown in the relationship between SAPS and the Khayelitsha community, to make recommendations as to how the inefficiency and/or breakdown may be alleviated or remedied.³⁰ Paragraph 4(4) of the Proclamation also requires the Commission to provide “appropriate recommendations” for the Province to consider when it makes its recommendations to the Minister of Police as contemplated in section 206(5)(b) of the Constitution.³¹ In deciding on appropriate recommendations, therefore, the Commission will need to analyse the reasons, or causes, of any inefficiency or breakdown, and then determine what could be done to alleviate or remedy the problem. Depending on the nature of the inefficiency and/or breakdown, it is likely that alleviating what is causing the inefficiency and/or breakdown may require, in the first place, action not only by members of SAPS located in Khayelitsha, but also action by the Provincial Commissioner, and also action by the National Commissioner. Such a consequence is clearly contemplated in section 206 of the Constitution. Of course, any recommendations made by the Commission remain only recommendations. The role of provincial government is to consider these recommendations and, in turn, to make recommendations to the Minister of Police, in accordance with section 206(5)(b) of the Constitution, which gives effect to the relative responsibilities of the national Minister of Police and the provincial government. The responsibility for determining national policing policy rests with the national Minister of Police³² and the National Commissioner “must exercise control over and manage the police service in accordance with national policing policy and the directions” of the Minister of Police.³³ Accordingly, it may well be that, if inefficiency or a breakdown in the relations between the Khayelitsha community and the police is identified, that the Commission will recommend steps that will need to be taken by the Minister of Police in order to remedy or alleviate the problems identified. However, in addition to steps to be taken by SAPS and the national Minister there may be other steps as well that will be appropriate: steps that may be implemented by the provincial government in fulfilling the obligations of monitoring and oversight provided in section 206(3) of the Constitution.

30 The Proclamation, Record Bundle 1(1c), File A, Item 1C at para 4(3)(b).

31 Id. at para 4(4).

32 Section 206(1) of the Constitution.

33 Section 207(2) of the Constitution.

D. SUMMARY: THE APPROACH TO THE TERMS OF REFERENCE

- [23] The Commission will therefore proceed, firstly, to investigate whether, on the Record before it, it can be said that there are inefficiencies in the manner in which SAPS members operate in Khayelitsha. It shall do this by considering the various complaints of systemic failure in policing in Khayelitsha and determine whether, on the Record before it, these complaints are established. Secondly, the Commission will investigate whether there is a breakdown in the relationship between the SAPS and the community of Khayelitsha by asking whether that relationship is characterised by high levels of distrust between a significant portion of the community and SAPS.
- [24] In addressing these questions, the Commission will bear in mind that the overall function of the Commission is to serve as a “mechanism of accountability and oversight”. The key constitutional function of such a mechanism is to provide those responsible for SAPS with information on key aspects of the functioning of SAPS in Khayelitsha so that, if inefficiencies are established, or a breakdown in the relationship between the police and the community is found, those responsible can take the necessary steps to address the situation.

CHAPTER THREE

THE WORKING METHODS OF THE COMMISSION

- [1] The Commission determined its working methods after careful consideration of its terms of reference, and the governing constitutional and legislative framework. As set out in Chapter 2 above,¹ the complainant organisations allege that there are systemic failures of policing in Khayelitsha; exemplified by the individual complaints that they outlined in their initial complaint. Accordingly the Commission considered that it had to decide whether there are inefficiencies in policing in Khayelitsha, and if there are, whether the reasons for them are systemic.
- [2] The Commission also considered how to determine whether there has been a breakdown in the relationship between the community and SAPS. In approaching this question, as described in Chapter 2 above,² the Commission decided that the question is not whether there has been a total breakdown in relations between SAPS and the community of Khayelitsha, but whether that relationship is damaged, or characterised by high levels of distrust, even if there are some in the community who still trust the police.
- [3] The Commission resolved that in order to fulfil its mandate, it was necessary for it to undertake a comprehensive and careful investigation of the manner in which SAPS operates in Khayelitsha. This investigation required the Commission not only to obtain documentation and information from SAPS to assess how it operates in Khayelitsha, but it also required the Commission to afford the complainant organisations, and other members of the Khayelitsha community, as well as the many institutions, both governmental and civic, whose work relates to issues of crime and security in Khayelitsha, an opportunity to approach the Commission to describe their experience of SAPS in Khayelitsha.
- [4] In determining how best to fulfil its mandate, the Commission reviewed the practice and process of commissions of inquiry in South Africa and in the Commonwealth to identify appropriate working methods.

A. ESTABLISHMENT OF OFFICE AND PERSONNEL OF COMMISSION

- [5] The Commission deemed it important that it be located in Khayelitsha, hence offices were obtained in the new Library building in Harare, situated at 42 Ncumo Street, Harare, Khayelitsha. The offices were open to receive complaints from the public from 11 September 2012 to 9 November 2012, and again from 21 October – 29 November 2013 when additional staff members were present to assist with statement taking. The offices were ordinarily open daily from September 2012 until the end of June 2014. The Commission established a

¹ See Chapter 2 at para 13.

² Id. at paras 18 – 21.

website to ensure that its proceedings were well publicised, transparent and accessible (www.khayelitshacommission.org.za). Residents were invited to come to the Commission's offices between Monday and Saturday to "give evidence about your experiences with the police in Khayelitsha". Approximately 95 statements were taken from members of the public as a response to this call.

- [6] The Commission's team consisted of the two Commissioners, the two evidence leaders, and the Secretary of the Commission.³ In addition, an office administrator was appointed. Mr Menoe initially filled this role, until he resigned to take up a permanent appointment in Johannesburg in mid-2013. Thereafter Mr Rawuza was appointed as the office administrator. In addition, the Commission was fortunate to obtain the assistance of pupil advocates from the Cape Bar, who assisted the Commission with the taking of statements from members of the community, and with legal research and administrative tasks. Those who assisted on a voluntary basis, include: Adv Alexander, Adv C Bosman, Adv L Bosman, Adv Enslin and Adv Montzinger. The following pupil advocates were paid a moderate daily rate for the assistance they provided: Adv Abass, Adv Brink, Adv Cronje, Adv Davis, Adv Filton, Adv Mannel, Adv Marais, Adv Nagia-Luddy, Adv Naidoo, Adv Nyathi, Adv Pakade, Adv Seria and Adv Smith. In addition the Commission appointed Ms Nyembezi to offer administrative support. The Commission also received assistance from several volunteers in fulfilling administrative tasks: Mr Shaw, Mr de la Harpe, Ms Bawa, Ms Samuels, Ms Booley and Ms Behardien as well as three legal interns from the UK: Ms Mahony, Ms Bliss and Ms Keating. Finally Ms Brink was contracted to assist the Commission with the final editing and proof reading of the Report. The Commissioners wish to thank all these people for the assistance provided.
- [7] The Commission held regular meetings in Cape Town, although due to travel commitments of the Commissioners, the meetings were sometimes held by telephone conference.

B. PUBLIC OUTREACH

- [8] The Commission devised a public outreach process to inform the public, particularly the residents of Khayelitsha, of its mandate. It distributed 200 000 pamphlets in isiXhosa and English in Khayelitsha setting out its mandate and providing the location of its offices.⁴ The evidence leaders, Secretary to the Commission and administrator met with journalists and gave several radio interviews on various radio stations including community radio stations, such as Bush Radio and Radio Zibonele, broadcasting in Khayelitsha. Advertisements were placed in local newspapers (City Vision, Daily Voice, Vukani, Cape Times and Cape Argus) publicising the establishment and mandate of the Commission. Posters were printed and distributed to hospitals, clinics, public transport terminals, shopping malls and to community organisations operating in Khayelitsha. The Commission also issued regular press statements concerning its work.⁵
- [9] The Secretary and evidence leaders of the Commission wrote to and/or met with a wide range of government agencies relevant to its mandate in Khayelitsha, including –
- The Senior Magistrate and Court Manager at the Khayelitsha Magistrates' Court;
 - The Head of DOCS;

3 Proclamation 9 of 2012 published in Provincial Gazette (Western Cape) No 7026 dated 24 August 2012 (the Proclamation) at para 1 – 3. See Record Bundle 1(1c), File A, Item 1C.

4 Copies of the pamphlet are annexed as AD10 and AD11 to the affidavit of Amanda Dissel. High Court Record, Record Bundle 1(3), pp 1078 – 1079.

5 The press statements are available on the Commission's website (www.khayelitshacommission.org.za).

- The Chief Director and Provincial Secretariat of DOCS;
- The Directorate: Police Monitoring and Evaluation, DOCS, Western Cape Government;
- The Civilian Secretariat for the Police Service;
- The Acting head of IPID in the Western Cape;
- The Director of Public Prosecutions in the Western Cape and senior prosecutorial staff including the senior prosecutor and other staff members in Khayelitsha and elsewhere;
- Representatives of the Head of the Department of Justice and Constitutional Development (as it was till 2014) in the Western Cape;
- The Speaker of the Provincial Legislature in the Western Cape;
- The Office of the Family Advocate in the Western Cape;
- The City Manager of the City of Cape Town and various other employees of the City including the Head of the City of Cape Town Metro Police;
- The Chairperson of the Western Cape Community Policing Forum;
- The Head of Department of the Department of Health in the Western Cape;
- The Head: Emergency Medical Services and the Provincial Manager: Operations, Emergency Medical Services, Western Cape Government Health;
- Director: Forensic Pathology Service, Department of Health, Western Cape Government;
- The Assistant Director: Facility Manager, Forensic Pathology Service Laboratory: Tygerberg, Department of Health, Western Cape Government;
- Deputy Director, Forensic Pathology Service, Department of Health, Western Cape Government;
- Professor/Head of Division/Chief Specialist Division of Forensic Medicine, Department of Pathology Faculty of Medicine and Health Sciences, University;
- The Head of the Khayelitsha Thuthuzela Care Centre;
- The Municipal Councillors for the Khayelitsha Wards;
- Firefighters based at the Khayelitsha fire station;
- School Principals;
- The Head of the Department of Social Development;
- The Head, Urban Renewal Programme at the City of Cape Town;
- The Head, Economic Development at the City of Cape Town; and
- The Head, Sport and Recreation Department at the City of Cape Town.

[10] The Commission's team also met and/or engaged with others, including the following –

- The Chief Executive Officer, Khayelitsha Hospital;
- Mr Williams, University of the Western Cape;
- Professor Brian O'Connell, University of the Western Cape;
- Mr Botha, Professional Associate of the Public Leadership Forum, School of Public Leadership, Stellenbosch University;
- Mr Giles, Psychologist;
- Police Reservists;
- Various academics from the University of Cape Town;
- Professor Pumla Gobodo-Madikizela, Senior Research Professor, University of the Free State;
- Mr Cartwright, Manager at FAMSA;
- Probation Officers from the Department of Social Development; and
- Representatives of BOSASA and Nonceba Family Counseling.

[11] Meetings were also held between members of the Commission's team and key members of civil society in Khayelitsha, including –

Photo 3: The Commissioners, Catherine O'Regan and Vusumzi Pikoli, inspecting closed docket at Lingeletu West police station during the inspection in loco



- Councillors from the three sub-councils (9, 10 and 24) in Khayelitsha;
- The Khayelitsha Development Forum (KDF);
- The main taxi association in Khayelitsha (CODETA);
- The South African National Civics Organisation (SANCO);
- Representatives from COSATU;

- Representatives from faith-based organisations in Khayelitsha;
- Attorneys who practice in Khayelitsha;
- Community-based organisations in Khayelitsha;
- Members of CPFs in Khayelitsha;
- Representatives from the complainant organisations;
- Chief Executive Office and representatives from National Institute for Crime Prevention and Reintegration of Offenders (NICRO);
- Representatives of the University of Cape Town's Khayelitsha Schools Improvement Initiative; and
- Representatives of Khayelitsha Football for Hope Centre.

- [12] At these meetings, members of the Commission team explained the mandate of the Commission, and emphasised that the Commission was seeking information to assist it to determine whether there were inefficiencies in policing in Khayelitsha, and whether there was a breakdown in the relationship between the Khayelitsha community and the police. All parties before the Commission were urged to provide the Commission with their views on these questions, whatever those views were.
- [13] A number of the organisations and people whom the Commission approached told the evidence leaders and staff of the Commission that they were displeased at the process that had been followed before the Commission was established. They said that they should have been consulted by the Premier before she established the Commission. These organisations included the KDF, the CPFs at the three police stations, some municipal ward councillors and SANCO. Generally, these organisations expressed the view that the Commission should not have been appointed to investigate policing in Khayelitsha, as the most pressing needs in Khayelitsha related, not to policing, but to socio-economic development. It was made clear to the evidence leaders and staff of the Commission that these organisations did not wish to assist the Commission to achieve its objectives, nor did they wish to participate in the proceedings of the Commission or encourage residents of Khayelitsha to do so.⁶
- [14] The Commission took the view that it would not close its doors to organisations that expressed these views at the outset. Indeed, later in the process, several of the organisations that had initially opposed the work of the Commission approached the Commission to assist it with its work. The Commission recognised that its establishment became a highly contested political issue. Its view was then, and still is, that it should stand aloof from the political contestation that arose and should continue its work, on the basis that the primary consideration that it should take into account in determining the manner in which it carried out its mandate, was the right to safety and security of those who live and work in Khayelitsha.
- [15] In addition the Commission requisitioned both a community survey and focus group discussion to address key issues falling within its terms of reference. A public procurement process was followed to identify a suitable agency to conduct the survey. The survey's results form part of the Record before the Commission and are dealt with in greater detail in Chapter 8 below.⁷ In addition, the Commission received public submissions from a range of organisations, including –
- The Civil Society Reform Initiative (Community Law Centre);
 - Khulumani Support Group;
 - NICRO;

6 See the Minutes of a Khayelitsha CPF meeting held on 24 October 2012 annexed to the Affidavit of Bongani Siko as BS2. Record Bundle 1(3), pp 2279 and 2286 – 2291.

7 Mthente Survey, Record Bundle 10(1.1), Item 11.

- Scalabrini Centre of Cape Town;
- The South African Human Rights Commission;
- Ms Vicki Igglesden; and
- The Law Society of the Cape of Good Hope.

A brief description and the contents of their submissions may be found in Appendix A.

C. THE USE OF NOTICES TO REGULATE THE PROCEEDINGS OF THE COMMISSION

- [16] In order to notify those interested in the work of the Commission as to how its proceedings were to be managed, the Commission adopted a system of the publication of Notices. In this regard, the Commission notes that section 8 of the Western Cape Commissions Act, 10 of 1998 (Western Cape Commissions Act), permits a provincial Commission to determine and control its own internal arrangements, proceedings and procedures, subject to the provisions of Act. Notice 1, entitled Provisional Working Methods of the Commission, was published on 6 September 2012.⁸ As soon as the website of the Commission was established, all Notices were published on the website. In addition all Notices issued prior to the commencement of the public hearings were distributed to the parties before the Commission by email.
- [17] Notice 1 set out the provisional working methods of the Commission. It stated that the Commission intended to divide its work into two phases: the first phase would involve an investigation into allegations of inefficiency in the SAPS in Khayelitsha and the alleged breakdown in the relationship between the community and SAPS in Khayelitsha; the second phase would obtain expert evidence on the issues raised in the Commission's terms of reference.⁹
- [18] Notice 1 also indicated that SAPS would be requested to provide relevant information by 5 October 2012 and that the complainant organisations would be given additional time to lodge further information till the same date.¹⁰ The Notice also called on other interested parties to indicate to the Commission if they wished to place evidence or submissions before the Commission to notify the Commission by 21 September 2012, and to lodge such evidence or submissions relating to Phase 1 by 5 October 2012.¹¹
- [19] Notice 1 also stated that the Commission's Khayelitsha offices would be open from 11 September – 12 October 2012 to afford members of the public an opportunity to make statements to the Commission relating to its terms of reference.¹² Notice 2 extended the dates on which the Commission's offices were open to the public to 9 November 2012 to afford more time to community members to make statements to the Commission.¹³
- [20] The Notice also indicated that the Commission would publish a Notice shortly containing a provisional list of procedures to be followed by the Commission which would cover a range of issues including, applications to lead evidence in rebuttal, applications for confidentiality of witnesses' names or testimony and applications for the right to cross-examine.¹⁴ That Notice

⁸ See Record Bundle 1(1d), File B, Item 1.

⁹ Id. at para 4.

¹⁰ Id. at para 5.

¹¹ Id. at para 6.

¹² Id. at para 7.

¹³ Record Bundle 1(1d), File B, Item 2 at para 3.

¹⁴ Id. at para 4.

was subsequently published as Notice 3 on 6 October 2012.¹⁵ Notice 1 also provided that the Commission would publish a notice containing a provisional list of issues to be investigated by the Commission in Phase 1.¹⁶ That Notice was subsequently published as Notice 4 on 19 October 2012.¹⁷

- [21] The Notice also announced that a preliminary hearing would be held on 15 October 2012 in which parties would be given an opportunity to propose amendments to the provisional working procedures, and provisional list of issues published by the Commission.¹⁸ The Notice also contained a provisional timetable for the proceedings of the Commission.¹⁹
- [22] As provided for in Notice 2,²⁰ the date of the preliminary hearing was shifted to 29 October 2012 to allow for the gazetting of the preliminary hearing. Section 2(4) of the Western Cape Commissions Act provides that notice of all sittings of the Commission must be gazetted. Accordingly, notice of the preliminary hearing was gazetted.²¹ The preliminary hearing, like all subsequent hearings, was held at the Hall at Lookout Hill, Spine Road in Ilitha Park, Khayelitsha.
- [23] Notice 2 set out the agenda for the preliminary hearing²² which included the provisional rules issued by the Commission in terms of Notice 3 relating to the rules governing the admission of evidence by the Commission, the provisional rules regulating the proceedings published in Notice 3 as well, the provisional timetable set out in Notice 2,²³ the provisional list of issues to be addressed by the Commission in Phase 1 as set out in Notice 4, and the rules governing media coverage of the sittings of the Commission.²⁴ Parties who had applied to appear before the Commission were permitted to lodge submissions on these issues.
- [24] A preliminary hearing was held on 29 October 2012, although SAPS was not represented. SAPS had not responded to the Commission's request for documentation and information, as described in Chapter 1,²⁵ and on 30 October 2012, the Commission issued subpoenas calling on SAPS to provide it with information relevant to its mandate. Thereafter, SAPS launched the application described in Chapter 1 above,²⁶ and the sittings of the Commission as proposed in Notice 3 did not take place.
- [25] After the Constitutional Court handed down its judgment on 1 October 2013 dismissing SAPS' application to have the establishment of the Commission set aside, the Commission issued Notice 5 on 18 October 2013. Notice 5 was in similar terms to Notice 1. It provided that the Commission's offices in Harare would once again be open to the public from 21 October to 29 November 2013 to afford an opportunity to members of the public to make statements to the Commission in relation to its mandate.²⁷ It afforded parties who wished to place evidence before the Commission an opportunity to notify the Commission of their intention to do so by 1 November 2013.²⁸

15 Record Bundle 1(1d), File B, Item 3.

16 Record Bundle 1(1d), File B at para 10.

17 Record Bundle 1(1d), File B, Item 4.

18 Record Bundle 1(1d), File B, Item 1 at para 11. See further discussion of the rules of evidence and procedure below.

19 *Id.* at para 19.

20 Record Bundle 1(1d), File B, Item 2 at para 6.

21 Provincial Gazette 7043 of 12 October 2012. Record Bundle 13(1)(1.2), File B1, Item 13.

22 Record Bundle 1(1d), File B, Item 2 at para 7.

23 *Id.* at para 9.

24 *Id.* at para 7(c).

25 See Chapter 1 at para 7.

26 See Chapter 1 at paras 9 – 10.

27 Record Bundle 1(1d), File B, Item 6 at para 4.

28 Record Bundle 1(1d), File B, Item 5 at para 5.

- [26] Notice 5 indicated that the Commission's second preliminary sitting would be held on 13 November 2013 at Lookout Hill, with an agenda similar to the agenda that had been set out in Notice 2 in respect of the first preliminary hearing.²⁹ On 18 October 2013, the Commission issued Notice 6, which contained revised provisional procedures to be followed by the Commission, effectively replacing much of what was contained in Notice 3.³⁰ We deal with a number of these procedures in the next section. The agenda for the preliminary hearing permitted parties to comment and propose revisions to those procedures, as well as to the list of issues that had been published in Notice 4.³¹
- [27] Notice 5 also contained a provisional timetable of sitting dates for Phase One of the Commission's work,³² and a provisional timetable for Phase Two.³³ Both these timetables were agenda items for consideration at the preliminary hearing. Notice 5 also stipulated that all witness statements and documentary evidence relating to Phase One of the Commission's work had to be lodged with the Commission by 15 November 2013.³⁴
- [28] Notice 7 was published on 20 November 2013. It recorded which parties had been admitted to appear before the Commission.³⁵ A revised list of issues for Phase One was published as Annexure A to Notice 7 following on representations made at the preliminary hearing.³⁶ The Notice confirmed that the procedures set out in paragraphs 3 – 20 of Notice 6 had been adopted by the Commission to regulate its proceedings.³⁷ The Commission also gave notice that it would hold inspections in loco during the week of 21 – 24 January 2014.³⁸ Notice 7 also recorded that the Record in the proceedings brought by the Minister of Police to have the establishment of the Commission overturned in the High Court and the Constitutional Court were to form part of the Record before the Commission.³⁹ Finally, Notice 7 announced that a second preliminary hearing would be held on 25 November 2013 to further arrange for the exchange of documents between the parties.⁴⁰
- [29] In terms of Notice 6, parties before the Commission had to notify the Commission of the experts they intended to call in Phase 2. On 13 December 2013, the Commission issued Notice 8 identifying which expert witnesses had been admitted to appear before the Commission.⁴¹
- [30] On 20 December 2013, the Commission issued Notice 9 which provided the programme for the inspections in loco to be held on 21 and 22 January 2014. The programme for the inspections in loco had been determined by the evidence leaders in consultation with the legal representatives of SAPS and the complainant organisations. Notice 9 also contained the hearing plans for the sittings to be held from 23 – 31 January.⁴² In terms of the procedures set out in Notice 6, it gave parties the date by which they had to apply to cross-examine the witnesses scheduled to appear according to the hearing plan. Applications to cross-

29 Record Bundle 1(1d), File B, Item 6 at para 8. For Notice 2, see Record Bundle 1(1d), File B, Item 2, at para 7.

30 Record Bundle 1(1d), File B, Item 7.

31 Record Bundle 1(1d), File B, Item 9a.

32 Record Bundle 1(1d), File B, Item 6, at para 11.

33 *Id.* at paras 16 – 18.

34 *Id.* at para 12.

35 Record Bundle 1(1d), File B, Item 9a at para 1.

36 *Id.* at para 2 and Annexure A.

37 *Id.* at para 3.

38 *Id.* at para 4.

39 *Id.* at para 5. For the High Court Record, see Record Bundle 1(3). The Commission did not receive a full version of the Record before the Constitutional Court and it therefore is not included in the Record before the Commission.

40 *Id.* at para 6. See also Notice PN. 370/2013, Provincial Gazette 7193, 1 November 2013, Record Bundle 1(1d), File B, Item 9a.

41 Record Bundle 6(1), File 4, Item 9b.

42 Record Bundle 6(1), File 4, Item 9c.

examine had to indicate the questions that were to be asked, and estimate the time that cross-examination would take.⁴³

- [31] On 20 January 2014, the Commission issued Notice 10 which provisionally admitted all the documents circulated in Record Bundles 1 – 7 to the Record before the Commission, but gave parties an opportunity to oppose their admission, explaining why they did so.⁴⁴ The Commission also revised the rules for cross-examination, which had been provided for in paragraph 8 of Notice 6.⁴⁵ Notice 10 also made provision for interrogatories.⁴⁶ The process for interrogatories required parties to identify documents or information sought from other parties to the Commission. The Commission determined whether it would be in the interests of justice to request the information in the light of the Commissions' terms of reference. Thereafter, requests for documentation or information were made to the relevant party by the Commission in writing, and copies were sent of such requests to the party that lodged the interrogatory.⁴⁷
- [32] On 24 January 2014, the Commission issued Notice 11 which contained revisions to the hearing plan for the week 23 – 31 January 2014, indicating the allocations of time for cross-examination, as well as a provisional hearing place for the week 3 – 7 February 2014.⁴⁸ Notice 12 was issued on 31 January 2014 containing the revised hearing plan, with allocated times for cross-examination for the week 3 – 7 February 2014, and the provisional hearing plan for the week 10 – 21 February 2014.⁴⁹ Notice 14 was issued on 15 February 2014 admitted Bundle 9 to the Record, and providing the revised hearing plan for the week 17 – 21 February 2014.⁵⁰ Notice 14 also provided an amended timetable, which provided for additional hearings in March.⁵¹
- [33] On 9 February 2014, the Commission issued Notice 13, indicating that all documents in Bundles 1 – 8 had been admitted to the Record, and affording parties an opportunity to object to the admission of documents contained in Bundle 9.⁵² It also provided the revised hearing plan for 10 – 21 March 2014, showing allocated times for cross-examination. Paragraph 8 of Notice 13 also afforded parties an opportunity, as set out in rule 12 of Notice 6, to object to any document or evidence admitted to the Record being made public. Notice 15 admitted the documents contained in Bundle 10, and provided provisional hearing plans for the 17 and 18 March as well as 24 March to 1 April 2014.⁵³ There were no objections lodged to the admission of any document or evidence admitted to the Record.
- [34] Notice 16, published on 2 April 2014, contained the provisional list of issues for Phase 2 and gave parties an opportunity to propose revisions to the list of issues.⁵⁴ Notice 17, published on 11 April 2014, contained the final list of issues for Phase 2 that had taken into account proposals received from the parties.⁵⁵ Notice 18, issued on 6 May 2014, provided the hearing

43 Id. at para 3.

44 Record Bundle 13(1), File 1.2, Item 9d at paras 2 – 6.

45 Id. at para 7.

46 Id. at para 8.

47 The interrogatories received by the Commission are in Record Bundle 6(1), Item 5, pp 1 – 43; Record Bundle 8(1), File 1.4, Item 2, pp 1 – 3; Record Bundle 11(1), File 1.3, Item 3, pp 1 – 12; Record Bundle 11(1), File 1.3, Item 4, p 1 – 5.

48 Record Bundle 13(1), File 1.2, Item 9e.

49 Record Bundle 13(1), File 1.2, Item 9f.

50 Record Bundle 13(2), File 1.2, Item 9h at paras 6 – 7 and Annexure A.

51 Id. at Annexure B.

52 Record Bundle 13(1), File 1.2, Item 9g at paras 6 – 7.

53 Record Bundle 13(1), File 1.2, Item 9i at para 8 and pp 4 – 5.

54 Record Bundle 13(1), File 1.2, Item 9j.

55 Record Bundle 13(1), File 1.2, Item 9k.

plan for the Phase 2 hearings held in the week of 12 to 16 May 2014, as well as the admission of expert witnesses, and provided for the lodging of closing submissions for the closing hearing of the Commission on 29 May 2014.⁵⁶ Notice 19 was issued by the Commission on 30 May 2014. It admitted the materials in Bundle 11 – 13 to the Record of the Commission and provisionally indicated how the materials in the Record before the Commission would be archived.⁵⁷ Notice 20 was issued on 20 August 2014 admitting a revised Bundle 13 to include closing arguments, exhibits and other documents.

D. KEY ASPECTS OF THE RULES GOVERNING EVIDENCE AND PROCEDURE – NOTICE 6

[35] As set out above, Notice 6 regulated the proceedings in relation to the admission of documents and evidence, as well as the procedures of the Commission. Key provisions in Notice 6 included – ⁵⁸

- documents, including official reports, media reports, were admitted without sworn or affirmed statements from their authors, subject to the right of other parties to object to their admission;⁵⁹
- parties did not have an automatic right of cross-examination of witnesses selected to testify before the Commission – applications to cross-examine had to be made to the Commission once the provisional hearing plans were published;⁶⁰
- provision was made for applications for witnesses to testify in camera, or for their names to be kept confidential;⁶¹
- provision was made for resolution of procedural disagreements by way of agreement between the parties before the Commission;⁶²
- procedural applications could be made informally by letter, email or memorandum addressed to the Secretary of the Commission;⁶³
- the Commission issued hearing plans in advance of each week of hearings;⁶⁴ and
- the rules for media access to the hearings.⁶⁵

E. COMPILATION OF THE DOCUMENTARY RECORD

[36] Paragraphs 3 – 6 of Notice 6 made plain that the Commission would receive documents into the Record without requiring them to be proved in oral evidence by witnesses. This rule was adopted in order to expedite the work of the Commission and to avoid unnecessary costs. Parties before the Commission were afforded an opportunity to object to the admission of

⁵⁶ Record Bundle 13(1), File 1.2, Item 9l.

⁵⁷ Record Bundle 13(1), File 1.2, Item 9m.

⁵⁸ The Commission received unsigned statements and signed statements from SAPS for all statements made by SAPS but for those made by Brigadier Rabie, Brigadier Seimela, Colonel Reitz, Colonel Green, Colonel Harri, Colonel Wiese, Colonel Nel, Mr Busakwe and Mr Kabeja. For the most part, we will refer to the statements contained in Record Bundle 5(4).

⁵⁹ Record Bundle 1(1d), File B, Item 7 at paras 4 – 6.

⁶⁰ Id. at paras 8 – 11.

⁶¹ Id. at para 12.

⁶² Id. at paras 13 – 16.

⁶³ Id. at para 17.

⁶⁴ Id. at para 18.

⁶⁵ Id. at para 20.

any documents to the record but had to provide good cause for their objection. As appears from the discussion of the content of Notices, above, the process of provisional admission, followed by a period for objection, followed by final admission of documents to the Record was managed by the Notice process.

- [37] In all, 13 Bundles of documents were admitted to the Record. By and large, each Bundle is divided, in the first place, by the name of the party or institution that tendered the documents in the Bundle. Parties that tendered information to the Bundles included the Commission itself, through its evidence leaders; SAPS, the complainant organisations, DOCS, the City, IPID, the DPP, the Civilian Secretariat and the WLC. The documentary Record before the Commission therefore comprises the 13 Bundles of documents. The Commission worked in electronic format, and the complete documentary record has never been produced in print format. Parties were issued with memory sticks containing the Record Bundles. The Record has therefore never been paginated. References to the documentary record are cited as “Record Bundle x”. Some of the documentation published as part of the Record before the Commission has been redacted by the parties to remove the names of any person or persons alleged to have committed a criminal offence. The Commission has made reasonable endeavours to check that documents in the Record have been redacted correctly.

F. PUBLIC SITTINGS OF THE COMMISSION

- [38] Public hearings were held at Lookout Hill at Spine Road in Ilitha Park, Khayelitsha for the first phase between January and April 2014, and for the second phase from 12 – 16 May 2014 with final argument being addressed to the Commission on 29 May 2014.⁶⁶ The hearings were well attended by the community of Khayelitsha, members of SAPS and other interested parties. The Commission sought to ensure that the hearings were conducted in a courteous, collegial and co-operative manner. To ensure the proceedings were concluded expeditiously, hearings generally ran from 9am – 5pm. Simultaneous translation of the proceedings in English and isiXhosa was provided. An exhibition telling the story of Khayelitsha’s establishment in the 1980s was set up in the hall at Lookout Hill during the first phase of the hearings.⁶⁷
- [39] The Commission Record also includes the transcripts of its public sittings. Three preliminary sittings were held on 29 October 2012, 13 November 2013 and 29 November 2013. Sittings in the first phase lasted 31 days: 23 and 24 January 2014, 27 – 31 January 2014, 3 – 7 February 2014, 10 – 14 February 2014, 17 – 21 February 2014, 17 and 18 March 2014, 24 – 28 March 2014, 31 March and 1 April 2014. Five days of sittings were held in the second phase (12 – 16 May 2014), as well as a final day of closing arguments on 29 May 2014. An index to the transcripts of the sittings (other than the preliminary hearings) is annexed to this report, as Appendix B. That index includes not only references to the pages of the transcript in respect of each witness, but also refers to any statement or expert report admitted to the documentary Record of the Commission in relation to each witness that testified. References to the transcript of hearings are referred to as Transcript and the page number of the transcript as well as the date on which it was recorded.

⁶⁶ Two witnesses gave evidence via video conferencing, which took place in Cape Town.

⁶⁷ The exhibition was entitled “An African Tale of the Mother City” and was done in partnership with St George’s Cathedral.

G. ASSESSMENT OF SAPS DOCUMENTATION – THE SCHOOLING AND LEAMY REPORT

- [40] One of the challenges faced by the Commission was reviewing the documents provided by SAPS. The Commission was fortunate to obtain the assistance of two senior retired SAPS members, Mr Glenn Schooling and Mr Martin Leamy, who were able to assist it by reviewing the documents received from SAPS. Their report is referred to as the “Schooling and Leamy report” and is discussed in Chapter 10.⁶⁸

H. FEEDBACK ON COMPLAINTS

- [41] The Commission received complaints from a wide range of members of the public. Where possible, the Commission requested the dockets relating to the complainants case from SAPS and provided feedback to complainants.⁶⁹ In relation to the complaints lodged with the Commission by the complainant organisations, the Commission provided the relevant information to the legal representatives of the complainant organisations.

I. CONCLUSION

- [42] The Commission team endeavored at all times to work in a responsive and transparent manner. Its proceedings were conducted on the basis that the Commission’s enquiry was an investigative not adversarial one. The written rules of procedure devised by the Commission served a twofold purpose: parties were afforded an opportunity to comment in relation to the rules; and clear guidelines were provided as to manner in which the Commission would proceed. The admission of written documentation, and the limitations placed on cross-examination enabled the Commission to complete its hearings expeditiously and cost effectively.

⁶⁸ See Chapter 10 at paras 10 – 30.

⁶⁹ Record Bundle 13(1), Item 1.5.

CHAPTER FOUR

UNDERSTANDING THE CONTEXT OF KHAYELITSHA

A. INTRODUCTION

- [1] Khayelitsha (which means “new home”) is situated on the southeastern edge of the City of Cape Town approximately 30 kilometres from the city centre, its geographical location serving as a constant reminder of *apartheid*. Khayelitsha was established in 1983, the last area of the city to be formally set aside for African residents during the period of *apartheid*. At the time that it was established, only the most rudimentary of town planning processes had been completed, and almost no houses had been built. The contents of this chapter are drawn in the main from expert reports provided to the Commission prepared by some of South Africa’s leading social scientists. All of these expert witnesses also testified before the Commission.

B. GEOGRAPHY

- [2] In his report, Mr Bhekithemba Simelane, the Deputy Director of Policy and Research in DOCS, Western Cape, explained the geography of Khayelitsha to the Commission.¹ As the maps of Khayelitsha he provided, which are annexed to this report as Appendix C1 and C2, illustrate, Khayelitsha is roughly triangular in shape, bounded in the west by Mitchell’s Plain and Swartklip Road, in the south and east by the Indian Ocean and Baden Powell Drive (R310), and in the north by the N2. The northeastern edge borders on a wetland which limits further development, and the southern edge borders on the sand dunes adjacent to the False Bay coast.
- [3] The main areas of Khayelitsha, roughly in order of their development, include Site C, Site B, Ilitha Park, Lingeletu West, Green Point, Mandela Park, Harare, Endlovini, Makhaza, Kuyasa and Enkanini. The main arterial roads in Khayelitsha are the following:
- Japhta K Masemola Road (M9) runs east from the western boundary of Khayelitsha, then turns south and runs through the centre of Khayelitsha, and then east and connects with Baden Powell Drive on the southeastern boundary.
 - Walter Sisulu Road (M45) runs from Japhta K Masemola Road in the north, crosses Spine Road and Steve Biko Road, and intersects with Baden Powell Drive on the eastern boundary.
 - Spine Road (M32) runs from Mitchell’s Plain in the West, crosses Mew Way, Walter Sisulu Road and Japhta K Masemola Road and turns north at the eastern boundary of Khayelitsha to intersect with the N2 highway.

¹ Simelane statement, Record Bundle 4(1), File 2, Item 8 and maps at Record Bundle 7(1), File G, Items 8a and 8b, and Transcript at 75 – 101 (23 January 2014).

- Steve Biko Road runs from Swartklip Road in the west, crosses Mew Way, Walter Sisulu Road and ends at its intersection with Japhta K Masemola Road.
- Mew Way (M44) runs from the intersection with the N2 in the north-west, south and east along the western and southern boundaries of Khayelitsha till it intersects with Baden-Powell Drive on the eastern boundary.

A suburban railway line runs diagonally south and east across Khayelitsha and there are five railway stations (from west to east named as follows): NoLungile, NoNqubela, Khayelitsha, Kuyasa and Chris Hani. The main taxi rank is situated in Site C on Japhta K Masemola Road close to the intersection with Mew Way. A second taxi rank is found in the south-east in Makhaza, on the corner of Japhta K Masemola Road and Fukutha Road. There are two major shopping malls, one in Khayelitsha Town Centre and the other in Makhaza. The Khayelitsha Hospital is situated on Steve Biko Road near to the intersection with Walter Sisulu Road. The Magistrates' Court is situated on Walter Sisulu Road in Lingeletu West, between Spine Road and Steve Biko Road. These major roads are illustrated in Appendix C1.

- [4] There are three police stations. The oldest Khayelitsha police station is situated on Bonga Drive in Site B (the Khayelitsha Site B police station). The areas it serves include Site B and Site C, as well as the TR, RR and BM informal settlements. The other two police stations are Harare, which is situated on Steve Biko Road, and serves Harare as well as the southeastern neighbourhoods of Kuyasa, Makhaza, Enkanini and a large part of Endlovini. The third is Lingeletu West, situated on Makabeni Road, which serves the central areas of Khayelitsha including Ilitha Park and a smaller section of Endlovini. The areas of the three police stations are illustrated on the map in Appendix C2.
- [5] Khayelitsha is bounded on its north, west and southern perimeters by informal settlements: Endlovini and Enkanini in the south, and BM Section and areas of Site C in the north and west. It has a range of established formal suburbs including Graceland, Ilitha Park and Ikwezi Park in the centre of Khayelitsha. Many of the formal areas are fringed by informal settlements, but formal areas are also interspersed with sections of informal housing.

C. HISTORY

- [6] Understanding Khayelitsha requires an understanding of its historical roots, which stretch back into the *apartheid* era. The history of Khayelitsha was comprehensively explained in a report prepared by Ms Josette Cole who has worked in Khayelitsha for many years.² Core to *apartheid* policy were stringent and unjust restrictions on the movement of African people, and, in particular, on their rights of residence in the cities. This aspect of *apartheid* policy was known as influx control and the key piece of legislation that enforced it was the Natives (Urban Areas) Act, 25 of 1945 (Urban Areas Act).³
- [7] Those restrictions were particularly oppressive in Cape Town. In 1955, just seven years after the National Party came to power, the Secretary of Native Affairs, Dr W Eiselen introduced the Coloured Labour Preference Policy. The line, drawn in a roughly southeasterly direction through what was then the Cape Province, demarcated the area of operation of this policy,

2 Ms Cole is the Executive Director of the Development Action Group (DAG) and a Research Associate for the Centre for Archive and Public Culture at the University of Cape Town. Ms Cole's Expert Report is at Record Bundle 7(1), File H, Items 9a and 9b, and her slide presentation, admitted as Exhibit JC2 is at Record Bundle 8(8), Item 2. The transcript of her testimony is at Transcript at 183 – 228 (24 January 2014).

3 The name of this legislation changed during the course of its legislative life. We have opted to use the name given to the legislation when it was first enacted.

and came to be known as the “Eiselen line”. The principle was that the areas to the west and south of the Eiselen line were to be areas where “coloured” people would obtain preference in the labour market, the consequence being that Africans would face particularly harsh mechanisms to ensure that they did not settle in these areas.

- [8] A consequence of the adoption of the Eiselen line, on the one hand, and the enforcement of the Urban Areas Act, on the other, was the exclusion of African people from the City of Cape Town. Repressive measures during the 1950s and 1960s limited the migration of rural people to the City, but by the early 1970s the flow of people, particularly from the poverty-stricken Eastern Cape, began to increase. The Soweto Student Uprising in June 1976 gave voice to an emerging resistance movement around the country. Yet, the government under the leadership of Prime Minister BJ Vorster refused to abandon oppressive measures used to suppress dissent. In early 1977, the government announced that it intended forcibly to remove three informal settlements that had sprung up in Bellville, east of Cape Town (Modderdam, Unibel and Werkgenot). Despite numerous pleas for the eviction plan to be stayed, in August 1977 the demolition of these three areas was implemented by bulldozers protected by a large cohort of South African Police. Thousands of people were rendered homeless. The demolitions were followed shortly afterwards by the death of Stephen “Steve” Bantu Biko in detention, and the widespread banning and detention of organisations and people sympathetic to his Black Consciousness Movement on 19 October 1977.
- [9] Ms Cole, in her report, indicated that “[a]fter 1977, things were never the same. Lessons learnt and the solidarity networks that emerged became the building blocks for growing open defiance...”⁴ Crossroads, an informal settlement in the south east of the City had been granted “emergency camp” status by the *apartheid* government, and it thrived and grew. It became a symbol of resistance to *apartheid*. Over the next few years, a fiercely contested process to negotiate the future of Crossroads took place. In 1979, government announced its plans to build New Crossroads, a little further away from the City. Houses built in New Crossroads were the first houses to be built for Africans in the City of Cape Town since the 1960s. These plans were received with mixed feelings. The next five years saw ongoing struggles by African people to win the right to live in Cape Town. Ms Cole referred to this struggle, in her testimony as a struggle waged to establish “the right to the City”.⁵ It took place across the City but especially in Crossroads, Nyanga and KTC⁶ against an *apartheid* government that see-sawed between harsh repression and negotiation and co-option.
- [10] In March 1983, the government announced the establishment of a new “high density township” to be located on the eastern perimeter of the City, east of Mitchells Plain, bordered in the South by the Indian Ocean, and in the north by the N2 highway. This was the genesis of Khayelitsha. Speaking in Parliament in 1983, the Dr Piet Koornhof, described the purpose of the development of Khayelitsha as follows –

“It is necessary for the orderly development of the Cape Peninsula that provision be made for the consolidated housing needs of the Black people in the Metropolitan Area of the Cape. For this purpose, the development of the Drift Sands/Swartklip area to the East of Mitchell’s Plain should be undertaken without delay and funds will be made available to ensure that the development of the residential area can be started as soon as possible, on an imaginative scale. To promote these objectives no further filling in between or increasing

4 Record Bundle 7(1), Item 9a, p 11.

5 Transcript at 190, 192 and 195 (24 January 2014).

6 KTC was an informal settlement near Nyanga.

of the density of the existing Black residential areas in the Cape Peninsula (including Mfuleni and Kaya Mandi in Stellenbosch) should take place.”⁷

- [11] According to the information provided by Dr Koornhof to Parliament the African population of Cape Town in June 1982 was estimated to be 226 224 of whom two thirds were legally resident in the area.⁸ Dr Koornhof announced that the first phase of township development in Khayelitsha would consist of 1000 plots of 170m². A tin hut would be erected on each plot for each family. The value of the hut was put at R1010 in 1983 figures. One tap would be provided for each four plots, one bucket toilet per family, high-mast street lighting and a refuse removal service. The proposed infrastructure included a school, a clinic, a mobile post office, two public telephones, a mobile shop and a bus service. Construction began in May 1983 and by August 1983, 439 people were living in Khayelitsha.⁹ The government’s initial prediction was that Khayelitsha would become home to approximately 120 000 people.¹⁰ By 1985, 5000 homes had been built and the population had grown to about 150 000 people.¹¹
- [12] The plans for Khayelitsha were met with opposition from a range of quarters. Two urban planners, Professors David Dewar and Vanessa Watson, noted in a newspaper opinion article that the creation of a “new town” like Khayelitsha was not a new departure. The *apartheid* government had already established “new towns” for the “coloured” community, particularly Atlantis and Mitchell’s Plain both of which were situated more than 20km from the City. They noted that the distant location of Khayelitsha would mean higher construction costs than areas closer to the city centre. Presciently, they asserted that –
- “...Khayelitsha has absolutely no chance of becoming a booming “city” in the true sense of the word, the more so because it will be populated almost entirely by low-income people. The essence of the concept of a city is that it contains a full range of living, working and recreation opportunities and that each part of the city and, each resident, can benefit from facilities that cannot be supported by local areas operating in isolation.
- ... it has been explicitly developed as a dormitory suburb. Khayelitsha will be dependent upon large-scale daily commuters to Cape Town, The cost of this, both to the inhabitants and to society at large, will be enormous. ... Further, many working parents will have to leave home around 4.30am to get to work on time and will have return only late in the evening, travelling under extremely difficult conditions. The effect of this in terms of fatigue, destruction of family and community life ... inadequate parental supervision, crime etc. will be all pervading.”¹²
- [13] The opposition to the development of Khayelitsha coalesced in a campaign “Asiyi e Khayelitsha” and was one of the issues around which the United Democratic Front mobilised after its launch in August 1983. By September 1984, the *apartheid* government had to admit that its attempts to enforce its influx control and Coloured Labour Preference Policies in the Western Cape were failing. Thereafter, the Prime Minister PW Botha announced that the Coloured Labour Preference Policy would be rescinded and in 1986, the infamous Urban Areas Act was repealed.¹³

7 Hansard columns 891 – 893, 30 March 1983.

8 Hansard column 730, 18 March 1983.

9 Hansard column 1951, 24 August 1983.

10 Professor Seekings’ Expert Report, Record Bundle 5(1), Item 5, at pp 6 – 7.

11 Id. at p 7.

12 *Cape Argus* 30 June 1983.

13 Abolition of Influx Control Act, 68 of 1986.

- [14] Conflict between the government and African residents of the western Cape continued in 1985. Many residents remained opposed to moving to Khayelitsha, but in March 1985 one local leader, Mr Hoza, announced that he and a group of 12 000 residents would move to Site C in Khayelitsha¹⁴ and on 15 April 1985 the move began. Many residents of settlements such as Crossroads, Nyanga East and KTC continued to refuse to move to Khayelitsha. Political contestation continued to grow, and in June 1985 the government declared a state of emergency that lasted three months.
- [15] The following year saw further oppression and conflict. Ms Cole spoke in her report of the “fires of 1986”.¹⁵ She described the attacks on community leaders by members of the security forces and local residents, wearing bits of white cloth, the so-called “witdoeke”. Many residents became “refugees” fleeing the violence, and sheltering in community halls. The destruction of the informal settlement of KTC was described in Ms Cole’s report as follows –
- “Nothing could stop the second attack on KTC which began on 9 June 1986 when “witdoeke” gathered at the WCDB¹⁶ office in Nyanga, next to the former Crossroads Complex. Eyewitness account described a systematic attack that began with the Zolani Centre where many of the “refugees” were staying, and then moved onto KTC where they burnt and looted houses while members of the security forces stood by, watched and did nothing to stop the attack. The destruction ... continued into the following day. In the aftermath, former residents of areas like KTC and the Crossroads Complex ended up once again scattered across Cape Town – some going to Khayelitsha, some to homes in the townships, others deciding to rebuild new settlements in and around Gugulethu and Nyanga East.”¹⁷
- [16] Khayelitsha was conceived and founded in this violent and repressive environment. As Ms Cole testified the consequences of this history have never been fully explored.
- “At a less visible level it left behind untold, and as yet unexplored, psychic wounds and unarticulated resentments. These lie deep in the hearts and memories of thousands of black African citizens in the city, many of whom, together with their families, voluntarily or involuntarily resettled in Khayelitsha where they, once again were faced with rebuilding a sense of home and place in the city.”¹⁸
- [17] Ms Cole described how the period between 1988 and 1994 saw a continuation of the violence and contestation in Khayelitsha. This contestation was between rival political groupings, as well as between rival taxi organisations. As early as 1989, the Progressive Federal Party politician, Jan van Eck, described the situation in Khayelitsha as a “crisis” and called for intervention. One of the causes of the conflict was the first local government elections that took place in Khayelitsha in 1988 under the contested *apartheid* system of Black Local Authorities. Both the holding of the elections and their results were widely disputed, however, and remained the source of conflict in the years that followed. On 1 March 1990, according to Ms Cole, eight of the 20 town councillors together with five Khayelitsha residents appeared in

14 AP News Archive (6 April 1985) “Leaders of some Crossroads squatters agree to move” available on line at <http://www.apnewsarchive.com/1985/Leaders-Of-Some-Crossroads-Squatters-Agree-To-Move-With-AM-South-Africa/id-48d22816e3b90cc483f33cb5ec1d6823> accessed on 23 July 2014.

15 Record Bundle 7(1), File H, Item 9a, pp 28 – 31.

16 Western Cape Development Board.

17 Id. at p 30.

18 Id.

the Wynberg Magistrates' Court on 7 charges of murder and 3 of attempted murder, arising from incidents which occurred on or near election day, 6 September 1989.¹⁹

- [18] Ms Cole concluded her report with the following remarks –

“At one level Khayelitsha ... can be viewed as a living spatial symbol of the thinking, attitudes and kind of Apartheid urban-planning logic that prevailed in the late 1970s and 1980s. At another level it is also a testament to the power of the human spirit, and of social agency and determination in the making of place in the city, especially for those classified black Africans under Apartheid.”²⁰

- [19] In our view, the history of Khayelitsha and its genesis in the final days of *apartheid* is important to an understanding of the task of policing in Khayelitsha as it enters its fourth decade. It is noticeable that a repeated theme of the history of the 1980s in particular was the role of the security forces, being the South African Police and the Defence Force, both in pursuing the objects of the *apartheid* government, and often as being perceived to be complicit in social conflict and encouraging contestation among rival political groups. This history imposes a particular burden on SAPS to demonstrate its fairness, even-handedness and respect for the residents of Khayelitsha in order to win the trust of the community. Unlike police services in other parts of the world,²¹ SAPS cannot draw on a reservoir of good will that historical acceptance of the legitimacy of police work creates.

D. DEMOGRAPHICS

- [20] Several witnesses before the Commission addressed the question of the demography of Khayelitsha.²² Census 2011 was conducted on the night of 9 – 10 October 2011. Professor Charles Simkins, a leading South African demographer who served on the Statistics Council for a decade, told the Commission that the Census provides an estimate of the total population of Khayelitsha as 398 182, with a standard of error of 3.5%.²³ On these figures, one can conclude with 95% certainty that the population of Khayelitsha was between 370 000 and 426 000 in 2011.²⁴ In the 2001 Census, the population of Khayelitsha was estimated at 329 013, which implies an average rate of growth between 2001 and 2011 of just under 2% per annum.²⁵ If we assume the same growth going forward, then the 2014 population of Khayelitsha would be between 400 000 and 450 000.
- [21] Although several witnesses, including SAPS, suggested sharply different figures, Professor Simkins told the Commission that the Census 2011 figures should be accepted as a “substantially accurate” estimate of the population of Khayelitsha.²⁶ Professor Simkins, described the process followed by Census 2011. He said that the initial survey resulted in an undercount of the population as a whole, which was corrected by a post-enumeration survey of 600 of

19 Id. at p 38.

20 Id. at p 41.

21 Record Bundle 12(7). See, for example, the situation in Britain as recorded in the recent independent report on policing “*Policing for a better Britain: Report of the Independent Police Commission*” (2013) at 53.

22 Ms Cole, for example, suggested that the population of Khayelitsha may be as high as one million people. Transcript at 205 (24 January 2014).

23 Professor Simkins' Expert Report, Record Bundle 4(1), File 1, Item 2, at p 10.

24 Id. at p 11.

25 Id. at p 10.

26 Transcript at 339 and 351 – 352 (27 January 2014).

Photo 4: Pathway into an informal neighbourhood in Khayelitsha



the 100 000 enumeration areas.²⁷ He testified that the process followed by Census 2011 is scientifically accepted and is a model followed in several other countries.²⁸ Professor Jeremy Seekings, Professor of Political Science and Sociology at UCT and Director of the Centre for Social Science Research, confirmed Professor Simkins' testimony on this score.²⁹

- [22] To test the reliability of the Census 2011 results in Khayelitsha, the Commission obtained figures from the South African Social Security Agency (SASSA) of the number of social grants paid in December 2013 in Khayelitsha.³⁰ According to SASSA, approximately 11 000 old age pensions were paid to pensioners, about 87 000 child grants and about 10 000 disability grants were paid in Khayelitsha in that month. Professor Simkins considered these figures to be consonant with the population figures provided by Census 2011.³¹ The Commission also obtained the tenth day of schooling enrolment figures for the 2014 school year from the Western Cape Department of Education for the schools in Khayelitsha. This figure showed a total enrolment of 56 362.³² This figure, according to Professor Simkins, was low given the Census 2011 figures and the number of child grants paid. In his view, one would expect approximately 22% of the population to be school-going, which would produce a figure of 87 000, so the number provided by the Education Department is lower than would be expected given a base population of 400 000.³³ This anomaly could be explained by the

27 Transcript at 335 (27 January 2014).

28 Transcript, pp 350 – 351 (27 January 2014).

29 Professor Seekings' Expert Report, Record Bundle 5(1), Item 5 at p 2; and Transcript at 370 (27 January 2014).

30 Record Bundle 8(8), Item 3a, Exhibit JS2; Record Bundle 8(8), Item 3, Exhibit JS1, at slide 5.

31 Professor Simkins told the Commission that according to Census 2011, 3% of the population of Khayelitsha are over 60 years of age, which would imply that 12 000 people would be eligible for the old age grant on a base population of 400 000; that usually about 5% of the population between 18 and 64 would be eligible for disability which on a base population of 400 000 would be 13 000; and that there would be about 130 000 children in Khayelitsha with most of the families qualifying for child grant, so a number of 87 000 provided by SASSA was in the predictable range. Transcript at 340 – 341 (27 January 2014).

32 Transcript at 342 (27 January 2014).

33 Transcript at 341 (27 January 2014).

number of children attending schools outside Khayelitsha, as well, perhaps as a relatively higher number of children not attending school at all. In any event, it does not suggest that the Census 2011 has under-counted the population of Khayelitsha. Finally, figures furnished by the Independent Electoral Commission recorded 152 000 registered voters in ten of the twelve wards covering Khayelitsha, a figure that is also consonant with the results published by Census 2011.³⁴ Accordingly, the Commission concludes that the Census 2011 total population figures for Khayelitsha should be accepted as substantially accurate.

- [23] Census 2011 reports that just over 50 000 of the approximately 118 000 households in Khayelitsha live in a brick or concrete house on a separate stand and approximately 65 000 live in informal dwellings.³⁵ Khayelitsha accounts for less than one third of all informal households in Cape Town as a whole.³⁶ 27% of households in informal residential areas consist of a single person with the mean household size for formal and informal residential areas being 3.2 and 2.7 respectively.³⁷ As elsewhere in South Africa, there has been a drop in household sizes, perhaps as a result of the availability of more housing, and also perhaps as a result of changes in family structures and relationships.³⁸
- [24] Census 2011 also establishes that Khayelitsha is ethnically and linguistically homogenous with 98.7% of the population describing themselves as Black/African and 89.8% specifying isiXhosa as their home language. The next most common home language is English, reported by 3.4% of the population.³⁹
- [25] Professor Simkins noted that approximately 28.2% of the population is between the ages of 0 and 14 years of age, 68.8% of the population between 15 and 59 years and 3% of the population over 60 years. He noted that the population age groups between 20 and 24, and 25 and 29 are substantially in excess of the neighbouring age groups, which, he testified, is characteristic of urban populations and indicates net in-migration amongst young adults.⁴⁰ Professor Simkins provided the equivalent figures for Motherwell in the Eastern Cape and Orange Farm in Gauteng, which showed a similar pattern.⁴¹ Professor Simkins also sought to analyse the migration trends operating in Khayelitsha. His consideration of different data sets led him to suggest that “a very old South African phenomenon – oscillating migration between town and country – is at work in contemporary Khayelitsha”.⁴²
- [26] The mean years of schooling of the Khayelitsha population is 8.55. Less than 5% of the Khayelitsha population has any tertiary qualification and more than 50% have not completed grade 12.⁴³ The official unemployment rate of people aged 15 and above was 38% in 2011.⁴⁴ Worrying as these figures are, Professor Simkins noted that this was better than the unemployment figures for Motherwell and Orange Farm.⁴⁵ Even more worrying is the fact that youth unemployment rates are higher than the average for all other age groups. So according

34 Transcript at 365 (27 January 2014). The information was provided at the Commission's request by Ms Yalezo from the Electoral Commission on 24 January 2014. See Record Bundle 8(8), Item 3a, Exhibit JS2.

35 Professor Simkins' Expert Report, Record Bundle 4(1), File 1, Item 2 at p 10; and Professor Seekings' Expert Report, Record Bundle 5(1), Item 5, at pp 6 and 8.

36 Professor Seekings' Expert Report at Record Bundle 5(1), Item 5 at p 6.

37 Id. at p 13.

38 Id.

39 Professor Simkins' Expert Report, Record Bundle 4(1), File 1, Item 2 at p 11.

40 Id. at 14.

41 Id.

42 Id. at p 18.

43 Id. at p 18 – 19.

44 Id. at p 20.

45 Id.

to the official figures more than 50% of young men up to the age of 23 are unemployed in Khayelitsha, and more than 40% of young men up to the age of 26 are unemployed.⁴⁶

- [27] Although Professor Simkins identified questionable aspects of the Census 2011 data concerning income, he suggested that the most reliable measure of monthly income suggested that the median monthly income was R2116 for employed men and R1526 for employed women.⁴⁷ In this regard, it is notable that although Khayelitsha has a better education profile than Motherwell and Orange Farm, as well as a higher employment rate, it has the lowest median wage of the three areas. According to Professor Simkins, this is explained by low wages in the Western Cape, caused perhaps by the fact that the segment of the labour market in which Khayelitsha residents participate is “very over-crowded”.⁴⁸
- [28] The Office of the President set out three poverty lines in its Development Indicators in 2010. The lowest represents the cost of food alone necessary to sustain a household which is calculated at R283 per person per month in 2008 figures; the middle rate represents the cost of food plus the minimum income needed to sustain the necessities of life and is calculated at R388 per person per month; and the highest represents the income needed to meet the food minimum based on actual expenditure patterns. It is R524 per person per month.⁴⁹ The income of 75% of households in Khayelitsha fell below the top poverty line.
- [29] Professor Simkins concluded his report by stating that “[t]he conditions ... can only be described as wretched.”

E. SOCIAL AND ECONOMIC CONDITIONS

- [30] Professor Jeremy Seekings testified on the social and economic conditions in Khayelitsha. He suggested that despite the overall picture as an impoverished community, Khayelitsha is better understood to have an increasingly differentiated set of neighbourhoods, some of which are poor as a result of unemployment, but all of which have close ties to the state through some combination of public housing, public services, employment and social grants.⁵⁰
- [31] He noted that more than half of approximately 118 000 households in Khayelitsha live in informal homes, despite the fact that an average of almost 3000 formal houses per year were provided by the state in the late 1990s and 2000s.⁵¹ Just over half of all households own their own homes. Only 12% said they paid rent for their accommodation, a very low proportion of rent-paying households for urban centres in South Africa.⁵²
- [32] There has been a significant expansion in service delivery to Khayelitsha households since 1996. Between 1996 and 2011, the number of households using flush or chemical toilets doubled, as did the number of households using electricity and the number with water on site. However, given that the number of households almost doubled in the same period, there are still many households without access to basic services. In summary, 81% of households

⁴⁶ Id. at p 22.

⁴⁷ Id. at p 31.

⁴⁸ Transcript at 353 – 354 (27 January 2014).

⁴⁹ National Planning Commission: Office of the Presidency *Development Indicator* 2010 at p 26. Available under the tab reports in the resource centre on: www.thepresidency-dpme.gov.za (last accessed 4 August 2014). Professor Simkins' Expert Report at Record Bundle 4(1), File 1, Item 2, at p 35.

⁵⁰ Professor Seekings' Expert Report at Record Bundle 5(1), Item 5, at p 2.

⁵¹ Id. at p 8.

⁵² Id.

Photo 5: Public toilets



had access to weekly refuse collection and used electricity, 72% had flush toilets connected to sewerage, 62% had access to water in the house or in the yard.⁵³

- [33] Inadequate sanitation, in particular, has been a source of dissatisfaction and protest. Census 2011 revealed that in 2011, 8000 households in Khayelitsha reported using bucket toilets and 12 000 had no toilet at all. In June 2013, the City reported that 11 000 portable flush toilets had been made available by the City for use in informal houses across the City, but mostly in Khayelitsha. The City also operates approximately 5000 shared communal chemical toilets in many Khayelitsha neighbourhoods that are meant to be cleaned regularly.⁵⁴ During the Commission's inspection in loco it was shown rows of such toilets in BM Section, many of them locked. The Commission was told that residents lock the toilets to prevent them from becoming blocked and unusable. Indeed, several of the unlocked toilets seen by the Commission were in an unusable condition. The City states that at least some informal settlements are built on land with a high water table that makes it impossible to install municipal waterborne sewerage systems.⁵⁵
- [34] Street lighting is another contested issue. High-mast lights are installed in many areas of Khayelitsha, but a repeated refrain in the evidence of community members before the Commission related to lights that are not working. The City blames vandalism for the failure of lighting, including illegal cable theft.⁵⁶ There is no doubt that inadequate lighting is a security issue and will be returned to later in this report.

⁵³ Id.

⁵⁴ Id. at p 9.

⁵⁵ Statement of Mr Bosman, Executive Director of the Directorate of Safety and Security, City of Cape Town, Record Bundle 4(2), File 8 at para 129 and letter to the Commission from the City Manager, Mr Ebrahim, dated 23 April 2014 at Record Bundle 12(4), Item 1, p 5 – 6.

⁵⁶ Professor Seekings' Expert Report at Record Bundle 5(1), Item 5, at p 10. See report of Mr Bosman, Head of the City's Safety and Security Directorate, Record Bundle 4(2), File 8 at para 146 and below Chapter 9 at para 120.

- [35] There are 33 public primary schools, 19 public secondary schools and a handful of independent schools in Khayelitsha.⁵⁷ School attendance peaked at 85 000 in 2001 but has since dropped, which, according to Professor Seekings may be a result of the smaller age cohort now of school-going age.⁵⁸ The issues of school safety and youth gangs will also be considered in greater detail below.
- [36] For many of its residents, Khayelitsha serves as a threshold to the City: 69% of adults resident in Khayelitsha were born in the Eastern Cape according to Census 2011. This proportion drops in relatively more prosperous areas such as Mandela Park, Graceland and Eyethu, where close to half of adult residents were born in the Western Cape.⁵⁹ Correlatively, in the newer informal settlements, nearly every adult was born in the Eastern Cape (so, in Enkanini, 88% of adults were born in the Eastern Cape, and in Endlovini 93% of adults were born in the Eastern Cape).
- [37] Professor Seekings points to “a striking contrast” between the distribution of income in Khayelitsha and the rest of Cape Town. The Census 2011 data suggest that the median household income in Khayelitsha was R20 000 per annum, compared to R40 000 per annum, for Cape Town as a whole.⁶⁰ Professor Seekings calculated that between 32% and 46% of all households in Khayelitsha live “in severe poverty”.⁶¹
- [38] Professor Seekings reported on the results of survey conducted in Khayelitsha in 2005 that investigated the barriers to self-employment. The dominant perceived hindrance to establishing a small business was shown to be fear of crime. 66% of respondents indicated that they would not start a business because they feared being robbed if they did so.⁶²
- [39] Although many residents of Khayelitsha are poor, Census 2011 reported that 73% of households had access to television and 33% had access to the internet, often via a mobile phone. Almost every household in Khayelitsha had a member with a cell phone.⁶³
- [40] Health remains an issue of great concern. The prevalence of HIV/AIDS is very high, with 31% of young women and 8% of young men being HIV positive. By the end of 2009, 13 500 people were receiving publicly funded anti-retroviral treatment at ten sites throughout Khayelitsha.⁶⁴

F. CRIME IN KHAYELITSHA

- [41] Ms Redpath⁶⁵ analysed the crime data for Khayelitsha. The number of crimes recorded in Khayelitsha since 2003/2004 (when two of the three police stations were established) are set out in Table 1:

⁵⁷ Id. at p 11.

⁵⁸ Professor Seekings' Expert Report at Record Bundle 5(1), Item 5, at p.11. And see the discussion of this issue at para 22 above.

⁵⁹ Id. at p 12.

⁶⁰ Id. at p 14.

⁶¹ Id. at p 15.

⁶² Id. at p 19.

⁶³ Id. at p 21.

⁶⁴ Id. at p 21.

⁶⁵ Ms Redpath is a research fellow at the Western Cape Community Law Centre. Her report, in the form of an affidavit, is at Record Bundle 7(1), File H, Item 10.

Table 1: Recorded Crimes in Khayelitsha Reporting Areas, 2003/2004 – 2012/2013⁶⁶

	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013
Robbery with aggravating circumstances	1484	1678	1639	2168	1890	1429	1249	1222	1571	1932
Sexual Crimes	588	681	736	618	613	555	631	643	648	617
Theft of Motor Vehicle and motorcycle	272	321	302	347	386	335	405	340	295	244
Theft of or from motor vehicle	215	246	226	256	179	185	357	474	411	404
Shoplifting	159	134	90	169	141	305	370	320	469	387
Commercial crime	103	178	141	166	155	226	191	246	273	362
Burglary at non-residential premises	62	41	70	210	134	172	236	294	247	357
Kidnapping	62	30	18	20	4	11	17	41	71	83
Attempted murder	395	304	223	230	187	179	188	225	264	342

- [42] The overall figure of reported crime is marginally less in 2012/2013 than it was in 2003/2004, although the population has grown considerably since then. The figures show a sharp drop in 2005/2006, followed by a slight increase in 2006/2007, and then another drop in 2007/2008 and 2008/2009 when the rate began to increase again, though with a drop once again in 2010/2011.

Table 2: Total Number of Crimes Recorded in Khayelitsha Precincts⁶⁷

	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013
Total number of crimes: Khayelitsha, Lingeletu West, Harare	16 500	16 025	13 793	14 659	12 935	12 269	13 401	13 102	14 690	15 795

- [43] Over the same time period, crimes dependent on police action have increased significantly, year on year, quite differently to the reported crime rate.

Table 3: Total Number of Crimes Dependent on Police Action in Khayelitsha⁶⁸

	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013
Total number of crimes dependent on police action	21	645	720	1082	1509	1686	2248	2319	3042	3 016

- [44] The number of murders in Khayelitsha also shows a different pattern. Unlike the reported crime rate, the number of murders rose in 2005/2006 and 2006/2007 before dropping sharply in 2007/2008, and sharply again in 2008/2009. The figures stayed relatively stable in 2009/2010 before rising slightly in 2010/2011 and rising sharply in 2011/2012.

Table 4: Total Number of Murders in Khayelitsha Precincts⁶⁹

	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011	2011/ 2012	2012/ 2013
Total number of murders in Khayelitsha	358	344	410	430	383	283	290	310	360	354

66 Ms Redpath' Expert Report, Record Bundle 7(1), File H, Item 10, Figure 12, p 17.

67 Id. Figure 6, p 11.

68 Id. at Figure 7, p 12.

69 Id. at Figure 9, p 14.

Figure 5: Police Stations with Highest Number of Murders

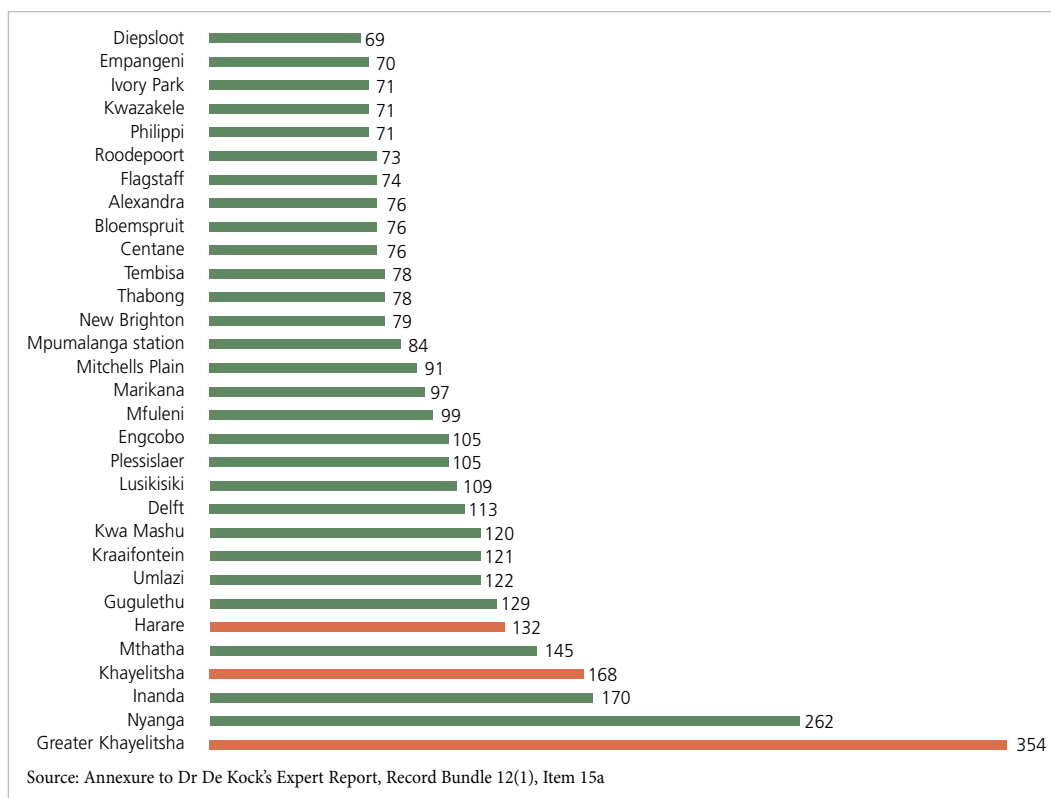


Figure 6: Police Stations with Highest Number of Sexual Offences

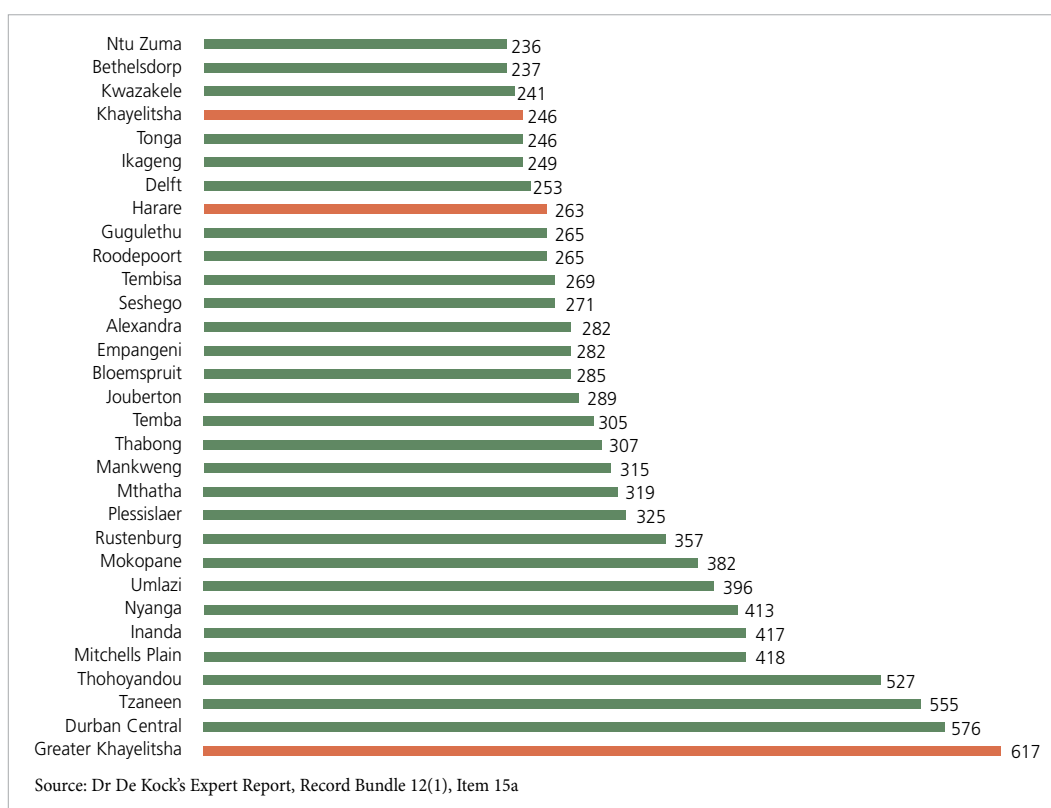


Figure 7: Police Stations with Highest Number of Assault with Intent to Commit Grievous Bodily Harm

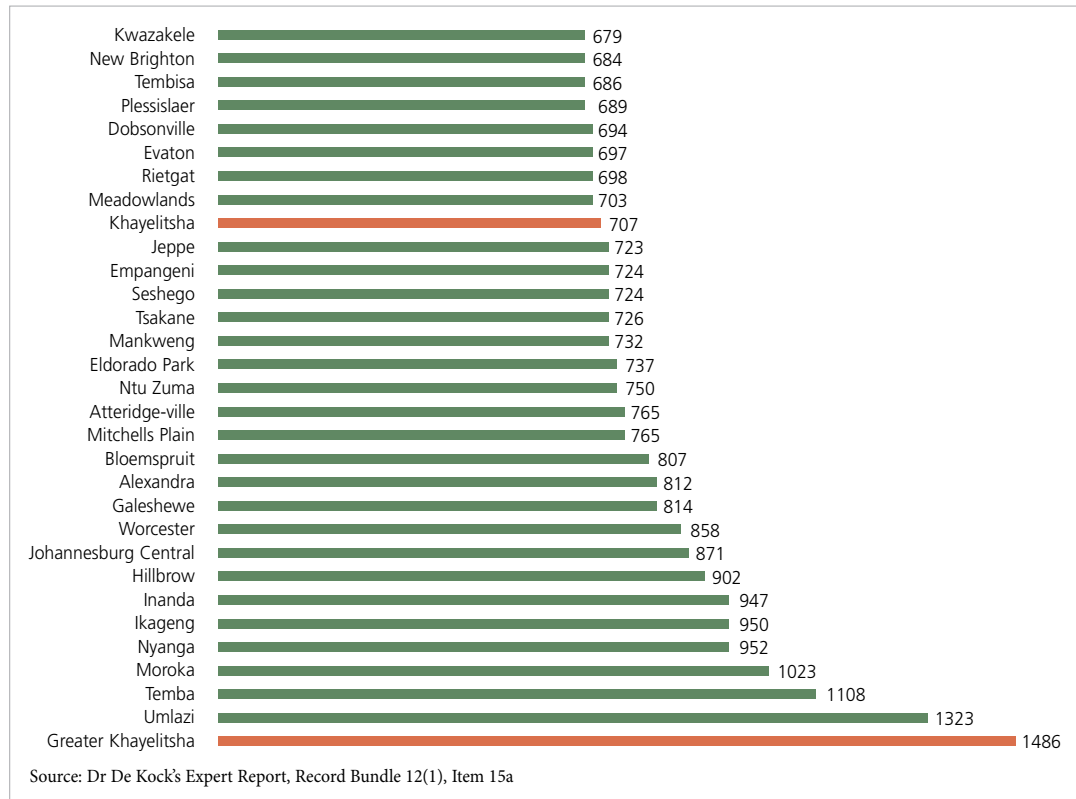
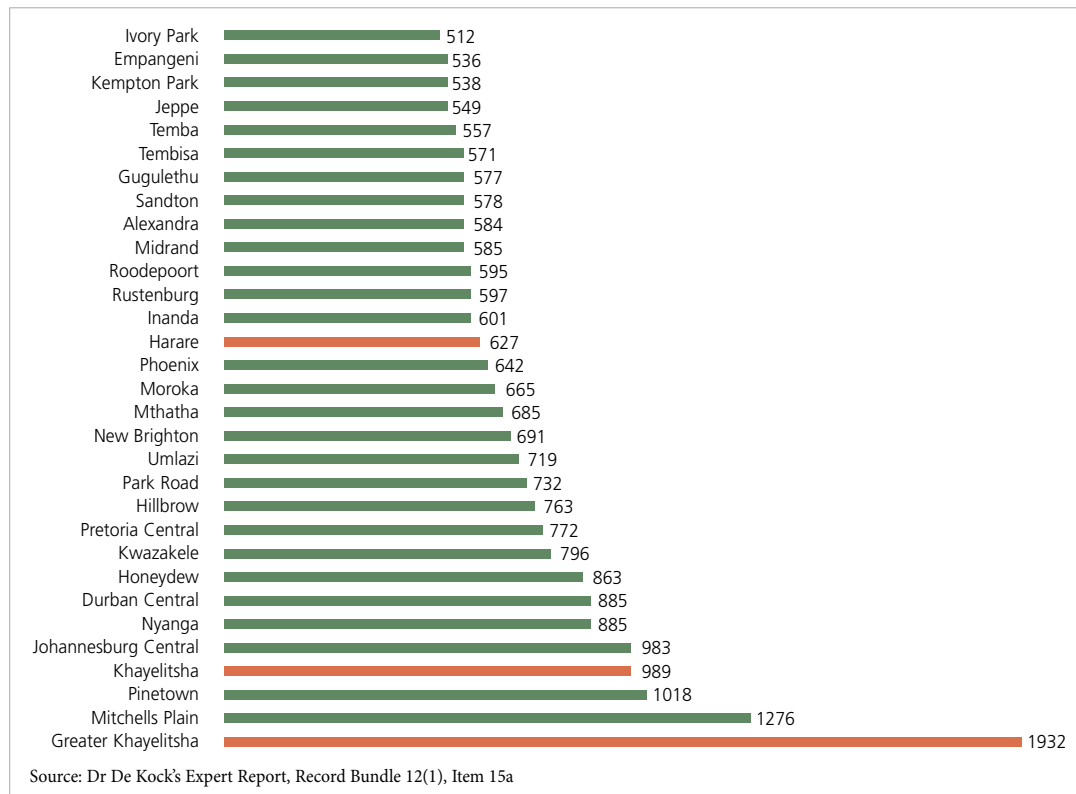


Figure 8: Police Stations with Highest Number of Aggravated Robbery



- [45] In her testimony, Ms Redpath suggested that murder rates are the most reliable measure of crime and may be used as a “proxy” for contact crime. She testified that in her view the difference between the reported crime rates in Khayelitsha and the murder rates, suggest that crime, other than murder, may be under-reported. This suggestion finds strong support in the report of the Mthente survey, described in Chapter 8. That survey suggested that approximately 40% of all crime in Khayelitsha is unreported.⁷⁰ She also noted that the decrease in reported crime is sharpest in less serious offences, such as common assault and ordinary theft. She argued that these are types of crime that may be less likely to be reported, due to their less serious nature. On the other hand, she testified, the more serious contact crimes such as aggravated robbery, sexual crimes and kidnapping show an increase in number. She also noted that crimes affecting businesses, such as non-residential burglary, shoplifting and commercial crimes also showed an increase. Ms Redpath also suggests that one of the first signs of an increase in public confidence in SAPS in Khayelitsha would be an increase in the number of reported crimes.⁷¹ Indeed she said it would be “clear” if there were to be a drop in the crime rate and the number of ordinary crimes were to go “through the roof”.⁷²
- [46] Khayelitsha has the third worst number of murders in the country, after neighbouring Nyanga and Inanda in KwaZulu-Natal.⁷³ Dr De Kock⁷⁴ provided a report in Phase Two of the Commission’s proceedings in which he analysed the crime rate in Khayelitsha compared to other areas in the country.⁷⁵ He concluded that if the crime rates of all three Khayelitsha police stations were combined, “Greater Khayelitsha” has the highest numbers of murders, attempted murders, sexual offences, assault with intent to do grievous bodily harm and robbery with aggravating circumstances nationwide.⁷⁶
- [47] The police stations with the highest number of reported murders, sexual offences, assault with intention to do grievous bodily harm and aggravated robbery are provided in Figures 5, 6, 7 and 8. Included in each of the figures is the combined reported crime for all three Khayelitsha police stations under the rubric “Greater Khayelitsha”.
- [48] If one looks at Khayelitsha Site B only, it has the third highest number of murders in the country, fourth highest number of attempted murders and third highest number of robbery with aggravating circumstances. Harare has the fifth highest number of murders.⁷⁷ Dr De Kock concluded that the crime situation in Khayelitsha, from a comparative perspective, has deteriorated over the last decade.⁷⁸
- [49] Dr De Kock also provided the Commission with the rates of increase and decrease in reported crimes in Khayelitsha. See Table 9.

70 See Chapter 8 at para 5. See also the Mthente survey at Record Bundle 10(1), File 1.1, Item 11, at p 33.

71 Transcript 1210 – 1211 (3 February 2014).

72 Id. at 1210.

73 Affidavit of Dr Lawrence, head of DOCS, Record Bundle 2(3), File 13, Item 6 at para 20.

74 Dr De Kock is an independent consultant and analyst of crime, violence and crowd behaviour. His Expert Report is at Record Bundle 12(1), Item 15.

75 Id. at paras 68 – 129.

76 Id. at paras 90 – 92.

77 Table 1 to Dr De Kock’s Expert Report, Record Bundle 12(1), Item 15a.

78 Dr De Kock’s Expert Report, Record Bundle 12(1), Item 15 at para 93.

Table 9: Annual Increase/Decrease in More Policable Crimes in South Africa, Western Cape, and Greater Khayelitsha Over the Past Decade

More policeable crime category	Geographic Area	Annual % increase/decrease								
		04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13
Robbery aggravated	Greater Khayelitsha	13,1	-2,3	32,3	-12,8	-24,4	-12,6	-2,2	28,6	23,0
	Western Cape	-5,1	-1,5	17,6	-4,4	-12,5	-1,5	-2,3	12,6	21,4
	South Africa	-5,1	-5,6	5,7	-6,5	2,6	-6,3	-10,8	0,3	4,6
Common robbery	Greater Khayelitsha	40,8	-35,3	-18,0	-28,9	-16,0	9,0	-14,0	13,4	29,7
	Western Cape	-11,1	-29,3	-7,4	-1,4	-1,6	12,3	9,8	6,9	11,7
	South Africa	-4,9	-17,7	-4,8	-8,7	-8,9	-2,9	-4,6	-3,5	1,1
Murder	Greater Khayelitsha	-3,9	19,2	4,9	-10,9	-26,1	2,5	6,9	16,1	-1,7
	Western Cape	-5,6	2,6	4,8	-1,6	-17,3	-3,1	1,6	-0,5	12,2
	South Africa	-5,2	-1,3	3,5	-3,7	-1,8	-7,2	-5,3	-2,1	4,2
Attempted murder	Greater Khayelitsha	-23,0	-26,6	3,1	-18,7	-4,3	5,0	19,7	17,3	29,0
	Western Cape	-31,5	-25,5	10,2	-9,9	-4,2	-3,3	26,7	7,7	40,9
	South Africa	-18,5	-16,2	-2,0	-6,7	-2,6	-4,9	-11,0	-1,1	10,1
Burglary/ housebreaking: Residential	Greater Khayelitsha	-4,8	-21,8	-15,2	2,1	9,9	9,0	-12,0	0,1	14,1
	Western Cape	-13,1	-12,7	5,2	-1,8	1,3	0,9	1,2	1,8	11,2
	South Africa	-7,7	-4,9	-4,9	-4,7	-3,7	4,0	-3,5	-0,8	6,8
Burglary/ housebreaking: Business	Greater Khayelitsha	-33,9	70,7	200,0	-36,2	28,4	37,2	24,6	-16,0	44,5
	Western Cape	-24,0	-11,2	27,4	5,1	-1,8	10,5	0,3	1,5	12,1
	South Africa	-13,3	-3,0	7,5	7,8	11,1	2,5	-3,7	1,4	5,1
Theft of motor vehicle	Greater Khayelitsha	18,0	-5,9	14,9	11,2	-13,2	20,9	-16,0	-13,2	-17,3
	Western Cape	-11,1	3,9	5,6	-4,1	-16,5	-7,2	-9,4	-4,7	6,2
	South Africa	-13,6	-6,3	-10,8	10,0	-1,9	10,3	1,8	6,0	7,0
Theft out of/ from motor vehicle	Greater Khayelitsha	14,4	-8,1	13,3	-30,1	3,4	93,0	32,8	-13,3	-1,7
	Western Cape	-10,4	-6,3	-2,9	-5,5	-5,8	18,2	3,1	5,3	7,9
	South Africa	-13,6	-6,3	-10,8	-10,1	-1,8	10,3	1,8	6,0	7,0

Source: Dr De Kock's Expert Report, Record Bundle 12(1), Item 15a

- [50] This table shows a dramatic and worrying increase in aggravated robbery, common robbery and attempted murder in Khayelitsha, out of kilter with national rates.
- [51] In the light of this evidence, the Commission concludes that the residents of Khayelitsha are faced with extremely high levels of serious contact crime, which include murder, sexual offences and aggravated robbery. It also concludes that reported crime rates, particularly of offences such as common robbery and theft, probably significantly understate the number of such crimes that take place in Khayelitsha, by as much as 40%. Although the rate of crime has diminished when calculated on a per capita basis given the increase in the population of Khayelitsha, the actual number of crimes that are happening has, overall, only dropped marginally since 2003/2004. The Commission concludes that it is not surprising, given these levels of crime, that a very high proportion of residents in Khayelitsha feel unsafe.

E. CONCLUSION

- [52] Understanding the history, location and social and economic conditions of Khayelitsha is central to an understanding of the task of policing Khayelitsha. Khayelitsha was conceived and established in the final contested days of *apartheid*, but most of its development has taken place during the democratic era. Twenty years into our democracy, Khayelitsha remains a gateway to the City of Cape Town for many poor migrants from the Eastern Cape. Although service delivery has markedly improved in Khayelitsha in the last twenty years, there is much to be done. Most residents still live in informal housing, and many still have no access to water, sanitation or electricity within their households. Unemployment is widespread, and particularly acute amongst young people. The consequence is significant, but not uniform, poverty. Khayelitsha has very high rates of contact crime, which mean that people feel unsafe much of the time. Feeling unsafe, coupled with the debilitating effects of deep poverty, make Khayelitsha an especially hard environment for all who live and work there. Nevertheless, it is important to understand that Khayelitsha is made up of a patchwork of neighbourhoods, with different conditions and varying levels of its socio-economic disadvantage. Perhaps most importantly the history of Khayelitsha in the early years was one of conflict and violence, in which the South African Police, the predecessor of SAPS was implicated in a manner that did not forge a relationship of trust between the police and the residents of Khayelitsha. This history casts a long shadow over the present.

CHAPTER FIVE

UNDERSTANDING THE INSTITUTIONAL FRAMEWORK AND FUNCTIONING OF THE SOUTH AFRICAN POLICE SERVICE

A. THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

(a) The Constitutional Framework

- [1] As mentioned in Chapter 2 above,¹ SAPS is established in terms of Chapter 11 of the Constitution. Chapter 11 regulates the Security Services, which includes the defence force, the police, and the intelligence services.² Chapter 11 commences with governing principles formulated as follows –

“The following principles govern national security in the Republic:

- (a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.
- (b) The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.
- (c) National security must be pursued in compliance with the law, including international law.
- (d) National security is subject to the authority of Parliament and the national Executive.”³

- [2] Section 199(1) of the Constitution provides that the security services will consist, amongst other things, of “a single police service”. There are three further important provisions in section 199: the first provides that the security services “must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic”;⁴ the second provides that no member of the security services may in the performance of their functions “prejudice a political party interest that is legitimate in terms of the Constitution” or “further, in a partisan manner, any interest of a political party”;⁵ and the third provides that “[t]o give effect to the principles of transparency and accountability, multi-party parliamentary committees

1 See above Chapter 2 at paras 2 – 4.

2 Section 199(1) of the Constitution.

3 Section 198 of the Constitution.

4 Section 199(5) of the Constitution.

5 Section 199(7) of the Constitution.

must have oversight of all security services ...”⁶ These three provisions are important because they establish that members of the security services, including the police, must act lawfully and in accordance with the Constitution, that members of the security services must act dispassionately in relation to the activities of political parties, and must neither favour nor prejudice any political party in carrying out their duties, and that the security services are subject to the principles of transparency and accountability, enshrined in section 1 of the Constitution.

- [3] The objects of the police service, as set out in section 205(3) of the Constitution, are “to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.” As described in Chapter 2 above,⁷ political responsibility for the police service is largely but not entirely borne by the national executive. Provincial governments have specific and important powers to monitor police conduct, oversee the effectiveness and efficiency of the police service in their provinces and to maintain good relations between the community and the police.

(b) South African Police Service Act, 68 of 1995

- [4] Section 205(2) of the Constitution provides that national legislation must “establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively”. The key piece of national legislation is the South African Police Service Act, 68 of 1995 (the SAPS Act). It provides for the establishment of SAPS,⁸ the appointment of the National and Provincial Commissioners,⁹ and a Board of Commissioners, consisting of the National and the Provincial Commissioners tasked with promoting co-operation and co-ordination in SAPS.¹⁰ Section 11 provides that the powers of the National Commissioner shall include developing a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year;¹¹ the power to determine the fixed establishment of SAPS and the number and grading of posts,¹² and to determine the distribution of the numerical strength of SAPS, after consultation with the Board of Commissioners.¹³
- [5] Provincial Commissioners have “command of and control over” the SAPS in the relevant province,¹⁴ may establish and maintain police stations and units in the province and determine the boundaries of such stations and units,¹⁵ and, crucially, shall determine the distribution of the strength of the SAPS “under his or her jurisdiction in the province among the different areas, station areas, offices and units”.¹⁶ We note the tension between section 12(3) relating to the Provincial Commissioner’s power to determine the distribution of personnel within a province, and section 11(2)(b), the National Commissioner’s power to determine the fixed establishment of SAPS. We return to this in Chapters 13 and 15.

6 Section 199(8) of the Constitution.

7 See Chapter 2 at paras 3 – 5.

8 Section 5 of the SAPS Act.

9 Section 6 of the SAPS Act.

10 Section 10(2) of the SAPS Act.

11 Section 11(2)(a) of the SAPS Act.

12 Section 11(2)(b) of the SAPS Act.

13 Section 11(2)(c) of the SAPS Act.

14 Section 12(1) of the SAPS Act.

15 Section 12(2)(b) of the SAPS Act.

16 Section 12(3) of the SAPS Act.

- [6] The SAPS Act also regulates the appointments, terms and conditions of service and termination of services of members of SAPS.¹⁷ It provides that the National Commissioner shall determine a uniform recruitment procedure for SAPS¹⁸ and determine the training that members shall receive.¹⁹

(c) Civilian Secretariat for Police Service

- [7] The Constitution also provides that a Civilian Secretariat for Police Service must be established by national legislation, which, the Constitution provides must “function under the direction of the Cabinet member responsible for policing”.²⁰ National legislation was enacted in 2011 to give effect to this constitutional prescript, the Civilian Secretariat for Police Service Act, 2 of 2011 (the Civilian Secretariat Act).²¹ The Civilian Secretariat Act repealed section 2 of the SAPS Act which had provided that the Minister must establish a secretariat for safety and security and the current Civilian Secretariat replaced the former Secretariat for Security Services. Section 2 also previously provided that provincial government may establish provincial secretariats. The Civilian Secretariat Act established the Civilian Secretariat for Police Service²² (the Civilian Secretariat) as a designated department at national level²³ and provides that the Civilian Secretariat must “exercise its powers and perform its functions without fear, favour or prejudice in the interest of maintaining effective and efficient policing and a high standard of professional ethics in the police service”.²⁴ The use of this language makes it clear that the Civilian Secretariat has an independent mandate, and requires a degree of autonomy and institutional independence from SAPS consistent with its role.²⁵ The mandate of the Secretariat is carried out in the main by the advice it provides to the Minister of Police in the exercise of his or her powers and the performance of his or her duties and functions.²⁶ The role of the Secretariat as a mechanism for accountability is also made plain in the Preamble to the Civilian Secretariat Act that provides, in part, that –

“...WHEREAS every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources;

...

AND WHEREAS there is a need to promote democratic accountability, transparency and openness within the police service and to ensure co-operation between the police service and the communities it serves...”

- [8] The objects of the Civilian Secretariat include the exercise of civilian oversight over the police service,²⁷ the implementation of a partnership strategy to mobilise role-players and

17 Chapter 9 of the SAPS Act.

18 Section 27(1) of the SAPS Act.

19 Section 32 of the SAPS Act. Section 11(2)(e) provides that the National Commissioner shall establish and maintain training institutions and centres for the training of students and of members.

20 Section 208 of the Constitution.

21 The Civilian Secretariat for Police Service Act was enacted on 1 December 2011, save for the sections that provide for the Civilian Secretariat to become a designated department and the Secretary of Police to become the accounting officer of the Civilian Secretariat. These only came into force on 1 April 2014.

22 Section 4(1) of the Civilian Secretariat Act and section 2(1)(a) of the SAPS Act.

23 Section 4(2) of the Civilian Secretariat Act with effect from 1 April 2014.

24 Section 4(4) of the Civilian Secretariat Act.

25 *Competition Commission of South Africa v Pioneer Hi-Bred International Inc and Others* 2014 (2) SA 480 (CC) at para 16.

26 Section 3(1)(a) of the SAPS Act and section 6(1)(h) and (i) read with section 5(b) and (c) of the Civilian Secretariat Act.

27 Section 5(a) of the Civilian Secretariat Act.

stakeholders to strengthen service delivery by the police service to ensure the safety and security of communities,²⁸ the co-ordination of the functions and powers of the Civilian Secretariat in the national and provincial spheres of government,²⁹ and the provision of guidance to community police forums and associated structures and to facilitate their proper functioning.³⁰

- [9] The functions of the Civilian Secretariat include monitoring the performance of the police service and regularly assessing the extent to which the SAPS has adequate policies and effective systems and to recommend corrective measures,³¹ monitoring the utilisation of the budget of the police service to ensure compliance with any policy directives or instructions of the Minister,³² monitoring and evaluating compliance with the Domestic Violence Act, 166 of 1998³³ (the Domestic Violence Act) and assessing and monitoring the ability of the police service to deal with complaints against its members.³⁴ The Civilian Secretariat Act also provides that the Civilian Secretariat should conduct quality assessments of the police service and monitor and evaluate its performance,³⁵ identify problem areas for early intervention,³⁶ and recommend steps for improved service delivery and police effectiveness.³⁷
- [10] Chapter 4 of the Civilian Secretariat Act provides that the Member of the Executive Council of a province responsible for policing in the province must establish a provincial secretariat with a mandate that aligns with the mandate of the Civilian Secretariat and supports the Civilian Secretariat.³⁸ It further provides that provincial secretariats must align their plans and operations in the province with the plans, policies and operations of the national Civilian Secretariat and “integrate” its provincial strategies and systems with those of the national Civilian Secretariat.³⁹ Importantly, the Civilian Secretariat Act provides that the provincial secretariat shall, inter alia, establish competencies to monitor and evaluate the implementation of policing policy in the province,⁴⁰ evaluate and monitor police conduct in the province,⁴¹ and promote community relations.⁴² Dr Lawrence testified that a provincial secretariat has been established in the Western Cape by the province prior to the coming into force of the Civilian Secretariat Act and once the Act came into force it was deemed to be a provincial secretariat under the Act.⁴³
- [11] The national Civilian Secretariat became a national department with effect from 1 April 2014,⁴⁴ with the Secretary as the accounting officer of the Civilian Secretariat for purposes

28 Section 5(e) of the Civilian Secretariat Act.

29 Section 5(g) of the Civilian Secretariat Act.

30 Section 5(i) of the Civilian Secretariat Act.

31 Section 6(1)(a) of the Civilian Secretariat Act.

32 Section 6(1)(b) of the Civilian Secretariat Act.

33 Section 6(1)(c) of the Civilian Secretariat Act.

34 Section 6(1)(j) of the Civilian Secretariat Act.

35 Section 6(2)(b)(i) of the Civilian Secretariat Act.

36 Section 6(2)(b)(ii) of the Civilian Secretariat Act.

37 Section 6(2)(b)(iv) of the Civilian Secretariat Act.

38 Section 16 of the Civilian Secretariat Act.

39 Section 17(1)(a) and (b) of the Civilian Secretariat Act.

40 Section 17(2)(a)(i) of the Civilian Secretariat Act.

41 Section 17(2)(a)(ii) of the Civilian Secretariat Act.

42 Section 17(2)(b)(i) of the Civilian Secretariat Act.

43 Transcript at 1723 – 1724 (5 February 2014). Section 2(1)(b) of the SAPS Act as amended by the Independent Police Investigative Directorate Act 1 of 2011 provides that a provincial government may establish a provincial secretariat to be called the Provincial Secretariat for Police: provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.

44 Letter from the Civilian Secretariat to the Commission dated 19 May 2014, Record Bundle 13(3) Item 41; section 4(2) of the Civilian Secretariat Act came into effect.

of the Public Finance Management Act 1 of 1999 (PFMA).⁴⁵ Given the importance of the mandate of the Civilian Secretariat, and its close relevance to the mandate of the Commission, the Commission wrote to the Civilian Secretariat on 14 September 2012, shortly after the Commission was established, inviting the Civilian Secretariat to participate in the proceedings of the Commission. The Commission notes however, that the Civilian Secretariat was one of the applicants that joined with the Minister of Police in seeking to set aside both the establishment of the Commission and the subpoenas issued by the Commission. Once the Constitutional Court's judgment had been handed down on 1 October 2013, in a letter dated 17 October 2013, the Commission again asked the Civilian Secretariat to provide information relevant to the mandate of the Commission. The Evidence Leaders of the Commission met with the Secretary for the Police Service, Ms J Irish-Qhobosheane, who is head of the Civilian Secretariat, on 7 November 2013. Thereafter, on 18 November 2013, the Civilian Secretariat provided a range of useful documents to the Commission explaining its mandate and work.⁴⁶ In addition, on 19 May 2014, the Civilian Secretariat responded to questions tendered by the Commission in a letter addressed to the Civilian Secretariat.⁴⁷ The Commission considers that both the National Secretariat and the Provincial Secretariat have important roles to play as outlined in their respective statutory mandates.

(d) Community Police Forums

- [12] Importantly, as well, the SAPS Act provides for Community Police Forums (CPFs).⁴⁸ Section 18 provides that the SAPS shall –

“... liaise with the community through community police forums and area and provincial community boards ... with a view to –

- (a) establishing and maintaining a partnership between the community and the Service;
- (b) promoting communication between the Service and the community;
- (c) promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing;
- (d) improving the rendering of police services to the community at national, provincial, area and local levels;
- (e) improving transparency in the Service and accountability of the Service to the community; and
- (f) promoting joint problem identification and problem-solving by the Service and the community.”

- [13] The responsibility for establishing CPFs rests with the Provincial Commissioner.⁴⁹ The SAPS Act requires CPFs to be “broadly representative” of the local community.⁵⁰ The SAPS Act also permits the establishment of sub-forums by the CPF.⁵¹ Station Commanders shall be members of the CPF, and any sub-forums established at his or her police station, and may also designate other SAPS members to serve on the CPF or sub-forum.⁵² In addition to CPFs, the

45 Section 4(3) of the Civilian Secretariat Act.

46 Record Bundle 1(11), Item 2 and annexures.

47 Record Bundle 13(3), Items 40 and 41. The Commission's letter was erroneously dated 5 May 2013. It should have been 2014.

48 CPFs were introduced by section 221(1) of the Interim Constitution (Act 200 of 1993) which provided for the establishment of CPFs in respect of police stations. The role of a CPF is delineated in the SAPS Act.

49 Section 19(1) of the SAPS Act.

50 Id.

51 Section 19(2) of the SAPS Act.

52 Section 19(3) of the SAPS Act.

SAPS Act provides for the establishment of Community Police Boards at both cluster level⁵³ and provincial level.⁵⁴

- [14] The SAPS Act provides that CPFs “shall perform the functions it deems necessary and appropriate to achieve the objects contemplated in section 18” of the Act for CPFs.⁵⁵ The SAPS Act also provides that the Minister shall “make regulations to ensure the proper functioning of community police forums”.⁵⁶ Finally, the SAPS Act provides that a CPF shall elect two of its members to serve as chairperson and vice-chairperson,⁵⁷ determine its own procedure and keep minutes of its meetings,⁵⁸ and that members shall render their services on a voluntary basis and so have no claim for compensation for the services they render.⁵⁹
- [15] SAPS have adopted interim Regulations for CPFs and Boards.⁶⁰ In addition, the Western Cape in 2004 adopted a Uniform Constitution for CPFs in the province.⁶¹ DOCS in the Western Cape has developed an Expanded Partnership Programme (EPP) which provides for resources to be paid to CPFs if certain identified tasks are performed.⁶² These are matters to which we return later in this report.⁶³

(e) Independent Police Investigative Directorate (IPID)

- [16] Section 206(6) of the Constitution provides that –

“On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.”

- [17] To give effect to this provision, the Independent Police Investigative Directorate Act, 1 of 2011 (the IPID Act) was enacted by Parliament. It came into effect on 1 April 2012. Its Preamble contains a reference to section 206(6) of the Constitution and states, in addition, that –

“AND WHEREAS there is a need to ensure effective independent oversight of the South African Police Service and Municipal Police Services;

AND WHEREAS Chapter 2 of the Constitution provides for the upholding and safeguarding of fundamental rights of every person, ...”

- [18] The IPID Act establishes the Independent Police Investigative Directorate (IPID) at national level with provincial offices.⁶⁴ IPID replaced the previously established Independent Complaints Directorate (the ICD), which had been established under the now repealed Chapter 10 of the SAPS Act. According to the IPID Act, IPID must function independently of SAPS⁶⁵ and

53 Section 20 of the SAPS Act. In fact, the Act provides for “area” community police boards. However, “areas” were disestablished by the SAPS and were replaced by clusters. See the discussion below.

54 Section 21(1) of the SAPS Act.

55 Section 22(1) of the SAPS Act. The objects of CPFs are set out at para 12 above.

56 Section 22(2) of the SAPS Act.

57 Section 23(1)(a) of the SAPS Act.

58 Section 23(1)(c) of the SAPS Act.

59 Section 23(2) of the SAPS Act.

60 GN R384, published in Government Gazette 22273 of 11 May 2011. A copy of the regulations is contained in Record Bundle 2(3), File 10, Item 25.

61 Record Bundle 2(3), File 10, Item 26; See the discussion of the Uniform Constitution in the statement of Affidavit of Mr Loonat, Record Bundle 2(1), File 1.2, Item 2.

62 Record Bundle 2(3), File 10, Item 37.

63 See Chapter 7 at paras 136 – 151.

64 Section 3(1) of the IPID Act.

65 Section 4(1) of the IPID Act.

all organs of state are required to assist IPID to maintain its impartiality and to function effectively.⁶⁶ The objects of the IPID Act include ensuring the independent oversight of SAPS and municipal police services,⁶⁷ providing for the impartial and independent investigation of identified criminal offences allegedly committed by members of SAPS and municipal police services,⁶⁸ making disciplinary recommendations in respect of members of SAPS and municipal police services resulting from investigations conducted by IPID,⁶⁹ the Directorate and enhancing accountability and transparency by SAPS and municipal police services.⁷⁰

- [19] Section 28 of the Act provides that IPID must investigate the following types of complaints: any deaths in police custody,⁷¹ deaths as a result of police action,⁷² any complaint relating to the discharge of an official firearm by a police officer,⁷³ rape by a police officer, whether the police officer is on or off duty,⁷⁴ rape of any person while that person is in police custody,⁷⁵ any complaint of torture or assault against a police officer in the execution of his or her duties,⁷⁶ corruption matters,⁷⁷ and any other matter referred to IPID by the Executive Director,⁷⁸ the Minister of Police or an MEC or the Secretary for Police.⁷⁹ In addition it may also investigate matters relating to systemic corruption involving the police.⁸⁰ The IPID Act provides for the appointment of investigators⁸¹ and grants them powers of investigation, including powers of entry, search, seizure and arrest.⁸²
- [20] Section 29 of the IPID Act provides that a Station Commander, or any member of SAPS, must notify IPID of any matters referred to in section 28(1)(a) – (f) immediately upon becoming aware of the incident, and within 24 hours thereafter provide a written report to IPID.⁸³

B. THE CURRENT POLICING POLICY DEBATE

- [21] There are a series of policy documents issued by government that are germane to the policy debate concerning policing in South Africa. They are –
- the National Crime Prevention Strategy (1996);⁸⁴
 - the White Paper on Safety and Security (1998);⁸⁵
 - Chapter 12 of the National Development Plan 2030;⁸⁶ and

66 Section 4(2) of the IPID Act.

67 Section 2(b) of the IPID Act.

68 Section 2(d) of the IPID Act.

69 Section 2(e) of the IPID Act.

70 Section 2(g) of the IPID Act.

71 Section 28(1)(a) of the IPID Act.

72 Section 28(1)(b) of the IPID Act.

73 Section 28(1)(c) of the IPID Act.

74 Section 28(1)(d) of the IPID Act.

75 Section 28(1)(e) of the IPID Act.

76 Section 28(1)(f) of the IPID Act.

77 Section 28(1)(g) of the IPID Act.

78 Head of IPID appointed under section 6 of the IPID Act.

79 Section 28(1)(h) of the IPID Act.

80 Section 28(2) of the IPID Act.

81 Section 22 of the IPID Act.

82 Section 24 of the IPID Act.

83 Section 29(1) of the IPID Act.

84 Record Bundle 1(7), Items 11A, 11B and 11C.

85 The White Paper is not in the Record Bundles, but is available at http://www.policesecretariat.gov.za/downloads/white_paper_security.pdf (last accessed on 10 August 2010).

86 Record Bundle 1(7), Item 43.

- the Green Paper on Policing (2013).⁸⁷

(a) The National Crime Prevention Strategy and the 1998 White Paper

- [22] The National Crime Prevention Strategy was geared towards the development of integrated programmes across a range of government departments to promote safety and security. The 1998 White Paper provided a comprehensive policy framework to underpin the National Crime Prevention Strategy. The White Paper focussed on law enforcement, crime prevention and institutional reform. It developed the concept of social crime prevention, which would involve local government in developing strategies to prevent crime.

(b) Chapter 12 of the National Development Plan 2030 “Building Safer Communities”

- [23] The NDP starts from the principle that personal safety is a human right necessary for human development, an improved quality of life and enhanced productivity.⁸⁸ It proposes a vision of South Africa in 2030 in which all South Africans feel safe, at home, school and work and “the police service is a well-resourced professional institution staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence and respect the rights of all to equality and justice.”⁸⁹ The Commission accepts that the vision set out in the NDP sets an appropriate goal for us to work towards.
- [24] The NDP provides five priorities to achieve this vision –
- Strengthen the criminal justice system;
 - Make the police service professional – the NDP proposes linking the SAPS Code of Conduct to promotion and discipline, and adopting a two-tier recruitment track for SAPS;
 - Demilitarisation of the police – the NDP concludes, that a “para-military police force does not augur well for a modern democracy” and suggests that the culture of the police should be to build an “ethos associated with a professional police service” so that the community see the police as “a resource that protects them and responds to people’s needs.”
 - Increasing rehabilitation of prisoners and reducing recidivism; and
 - Building safety using an integrated approach.⁹⁰
- [25] The NDP emphasises the importance of the code of conduct as a tool to foster professionalism with the police service. The NDP states that disciplinary cases involving a breach of the code should be dealt with as a priority, and members of the police service charged with misconduct should leave their station immediately until the cases against them are finalised.⁹¹ The NDP proposes that a code of professional and ethical police practice be developed which should form part of the compulsory training programme of all recruits. A failure to pass the course on the code should result in suspension or dismissal. Off-duty activities of members of SAPS should also be regulated by the code.⁹²

⁸⁷ Record Bundle 1(11), Item 13.

⁸⁸ Record Bundle 1(7), Item 43, p 349.

⁸⁹ Record Bundle 1(7), Item 43, p 350.

⁹⁰ Id.

⁹¹ Id. at p 353.

⁹² Id.

- [26] The NDP also suggests that a national policing board be established with multi-sectoral and multi-disciplinary expertise to develop the code of ethics as well as to set standards for recruitment, selection, appointment and promotion of members of SAPS. The NDP also proposes that all officers undergo a competency assessment. The two-stream recruitment process should provide for direct recruitment for commissioned officers, but should not exclude non-commissioned officers selected through a “basic” stream progressing into the core of commissioned officers.⁹³ The NDP also proposes that the National Commissioner and Deputy National Commissioners should be selected by the President, following a selection process run by a selection committee who should recommend candidates, after interview, on the basis of objective criteria. The NDP also proposes a renewed focus on the training and skills of detectives, particularly in the fields of forensics, ballistics and crime scene analysis.⁹⁴
- [27] The NDP proposes the demilitarisation of the police service, noting that since 2000 the police service has started “resembling a paramilitary force”.⁹⁵ Further, the NDP suggests that the arguments that underpinned the greater militarisation of the police service “are inconsistent with the police’s mandate in a modern democracy” and “neglect the challenges of developing greater competence and skills in the police.”⁹⁶ It is inserted in the NDP that “the police will earn public respect if they are efficient and effective, and display a professional approach to combat crime.”⁹⁷
- [28] Finally, the NDP states that an effective response to violent crime “requires a holistic approach to community safety”.⁹⁸ It warns that high levels of violent crime “pose a daunting challenge to all spheres of government”.⁹⁹ It notes that the National Crime Prevention Strategy of 1996 was never fully institutionalised and was replaced in 2000 by the National Crime Combating Strategy.¹⁰⁰ This strategy, according to the NDP, has stretched SAPS beyond its capacity and given it an “impossible mandate” and “disenchanted police officers with fragile authority and legitimacy”.¹⁰¹

(c) The Green Paper on Policing (2013)

- [29] The latest policy document on policing is the Green Paper on Policing published in June 2013, which the Civilian Secretariat for Police provided to the Commission.¹⁰² The Green Paper sets out the developments in policing in South Africa in the last twenty years and reviews the 1998 White Paper on Safety and Security.¹⁰³ Like the NDP, the Green Paper acknowledges that personal safety is a fundamental human right.¹⁰⁴
- [30] The Green Paper notes that in 2011/2012, detectives constituted 19% of the total SAPS staff complement, and detective services utilised 16% of the SAPS budget.¹⁰⁵ It also notes fluctuating vacancy rates in the detective service. It reported that in the light of international

93 Id. at p 344.

94 Id. at p 355.

95 Id.

96 Id.

97 Id.

98 Id.

99 Id. at p 357.

100 Id.

101 Id.

102 Record Bundle 1(11), Item 13.

103 Id. at pp 5 – 8.

104 Id. at p 14.

105 Id. at p 33.

benchmarks SAPS has too few detectives and recommends that this issue be addressed.¹⁰⁶ The Green Paper also emphasises the need to enhance the “quality of personnel” within the detective service.¹⁰⁷ It noted that the growth in the number of detectives between 1998 and 2011, without an adequate focus on recruitment and training, has “created a legacy of police officers who are deployed without having undertaken the requisite detective training”.¹⁰⁸ The Green Paper also suggests that the role of detective management needs to be clearly defined and linked to a set of clear objectives, targets and performance indicators,¹⁰⁹ and that “inspection of dockets by detective management during the investigation should not only ensure accountability but also assist in guiding the investigation process.”¹¹⁰

- [31] The Green Paper emphasises that the local police station is “the basic unit that looks after law and order at the local level”.¹¹¹ It acknowledges that CPFs “have a critical role to play in building relations between the police and the communities they serve”.¹¹² It notes, amongst other things, that –

- SAPS must fully participate in CPF meetings at a local level;
- That CPFs must be an inclusive structure;
- That a national budget framework needs to be developed that should be managed through provincial secretariats; and
- There should be adequate training of CPFs.¹¹³

- [32] The Green Paper also proposes that cities and towns should be encouraged to establish local crime prevention strategies.¹¹⁴ One of the proposals is the introduction of the Community Safety Forum to serve “as a co-ordinating structure of government and civil society deliberations on local safety and security”.¹¹⁵ According to the Green Paper, given that local government is “the seat of service delivery”, community safety forums are “ideally positioned to provide feedback on the efficacy of policy implementation”.¹¹⁶ The Green Paper states that the role of Community Safety Forums will be more fully described in the forthcoming White Paper on Safety and Security.¹¹⁷

C. THE STRUCTURE AND FUNCTIONING OF SAPS: NATIONAL LEVEL

- [33] As set out above, the National Commissioner exercises control over and manages SAPS¹¹⁸ and does so in accordance with the national policing policy and directions determined by the national Minister of Police.¹¹⁹ The National Commissioner is responsible for many of the rules that govern SAPS. In addition, there are certain aspects of the work performed by the national

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id. at p 34.

¹¹⁰ Id.

¹¹¹ Id. at p 36.

¹¹² Id. at p 37.

¹¹³ Id.

¹¹⁴ Id. at p 68.

¹¹⁵ Id. at p 69.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Section 207(2) of the Constitution.

¹¹⁹ Section 207(1) of the Constitution.

office of SAPS that are relevant to the mandate of the Commission. They include the process of internal audit, the performance evaluation of police stations, the publication of crime statistics, the development of information technology resources to assist the work of SAPS as well as human resource management processes. Human resource processes developed by the National Office include the establishment of policies that regulate the allocation of human resources within SAPS and the assessment of the performance of individual members.

(a) Regulations, National Instructions, Standing Orders and guidelines

- [34] Chapter 8 of the SAPS Act provides for regulations; National Instructions and orders; and provincial instructions and orders. These constitute internal rules and guidelines that regulate the operation of SAPS and must be obeyed by its members. The Minister is entitled to pass regulations dealing with the exercise of policing powers and the performance of the duties and functions;¹²⁰ the recruitment, appointment, promotion and transfer of SAPS members;¹²¹ the training, conduct and conditions of service of SAPS members;¹²² the general management, control and maintenance of SAPS;¹²³ labour relations;¹²⁴ discipline;¹²⁵ the code of conduct;¹²⁶ the establishment of different categories of personnel, components, ranks, designations and appointments in the Service;¹²⁷ the fair distribution of and access to police services and resources in respect of all communities.¹²⁸
- [35] The National Commissioner may issue national orders and instructions regarding all matters which fall within her responsibility in terms of the Constitution or the SAPS Act; are necessary or expedient to ensure the maintenance of an impartial, accountable, transparent and efficient police service; or are necessary or expedient to provide for the establishment and maintenance of uniform standards of policing at all levels required by law.¹²⁹ National orders and instructions apply to all members and different National Orders and Instructions may be in effect in respect to different categories of members.¹³⁰ National Instructions govern a range of issues, including sector policing,¹³¹ the policing of sexual offences,¹³² human resource matters,¹³³ and the opening of dockets.¹³⁴

120 Section 24(1)(a) of the SAPS Act.

121 Section 24(1)(b) of the SAPS Act; Regulations 11, 16 and 17 of the Regulations for the South Africa Police (GN R203 in GG 79 of 14 February 1964) (SAPS Regulations) as amended.

122 Section 24(1)(c) of the SAPS Act; Regulations 14 and 19 – 23 of the SAPS Regulations; South Africa Police Service Employment Regulations, 2008 (GN R973 in GG 31412, 12 September 2008) at Record Bundle (1)(1c), File A, Item 8.

123 Section 24(1)(d) of the SAPS Act.

124 Section 24(1)(f) of the SAPS Act.

125 Section 24(1)(g) of the SAPS Act; Regulations 15 and 59 to 64 of the SAPS Regulations; South African Police Service Discipline Regulations, 2006 (GN R643 in GG 28985, 3 July 2006) at Record Bundle (1)(1c), File A, Item 17.

126 Section 24(1)(h) of the SAPS Act; Regulations for the South African Police Service relating to the Code of Conduct for members of the service (GN R529 in GG 27642, 10 June 2005).

127 Section 24(1)(i) of the SAPS Act.

128 Section 24(1)(aa) of the SAPS Act.

129 Section 25(1) of the SAPS Act.

130 Section 25(2) and (3) of the SAPS Act.

131 National Instruction 3 of 2013 (Record Bundle 3, File 3.22(1), File 1, Item 11) that replaced National Instruction 3 of 2009.

132 National Instruction 3 of 2008, Record Bundle 12(3), Item 12.2.

133 For example, National Instruction 2 of 2005, which regulates the advertising of vacant posts, National Instructions 6 of 2005, which regulate grade progression and promotion, and National Instruction 1 of 2005 which regulate performance evaluation for grades 1 – 12, annexed to Major General Burger Statement at Record Bundle 5(4), Item 2.

134 National Instruction 3 of 2011 (Record Bundle 12(1), Item 6j, annexed to Dr Van Eck's Statement at Record Bundle 12(1), Item 6.

- [36] In addition, orders and instructions that have a permanent quality may be issued by the Commissioner as ‘Standing’ or ‘Force Orders’.¹³⁵ These have to be obeyed by all SAPS members to whom such orders and instructions are applicable.¹³⁶ There are hundreds of Standing Orders that regulate the manner in which the work of SAPS is performed. These Standing Orders are divided between those that are general in application, Standing Orders (General), those that regulate matter such as Stores, which are referred to as Standing Orders (Stores) and those that regulate financial matters, Standing Orders (Finance). Whilst the Commission was provided with many of these Standing Orders, it was not given a complete set. An electronic version was received but some of the Standing Orders could not be opened. In addition the Commission was provided with a number of Consolidation Notices, issued under section 25 of the SAPS Act. These Notices record amendments to, repeal of and additions to Standing Orders.
- [37] Provincial Commissioners may also issue orders and instructions which are not inconsistent with the SAPS Act or the National Orders and Instructions.¹³⁷ These Provincial Orders and Instructions apply to members under the command of the Provincial Commissioner of the province concerned only.¹³⁸

(b) SAPS Code of Conduct

- [38] SAPS has adopted a Code of Conduct which provides as follows –

“The members of the South African Police Service commit themselves to the creation of a safe and secure environment for all South Africans.

In order to achieve a safe and secure environment we undertake to –

- With integrity, render a responsible and effective service of high quality which is accessible to every person and continuously strive towards improving this service;
- Utilise all the available resources responsibly, efficiently and cost-effectively to maximise their use;
- Develop our own skills and participate in the development of our fellow members to ensure equal opportunities for all;
- Contribute to the reconstruction and development of, and reconciliation, in our country;
- Uphold and protect the fundamental rights of every person;
- Act impartially, courteously, honestly, respectfully, transparently and in an accountable manner; and
- Work actively towards preventing any form of corruption and bringing those guilty of corruption to justice.”¹³⁹

It is this Code of Conduct which the NDP proposes be connected to both promotion and discipline. The NDP also proposes that the Code of Conduct be revised and updated. SAPS has also adopted a Code of Ethics contained in its Strategic Plan 2010 – 2014.¹⁴⁰

¹³⁵ Regulation 6(2) of the SAPS Regulations.

¹³⁶ Regulation 6(4) of the SAPS Regulations.

¹³⁷ Section 26(1) of the SAPS Act.

¹³⁸ Section 26(2) of the SAPS Act.

¹³⁹ The Code of Conduct was annexed to the Statement of Colonel Vermeulen Record Bundle 5(4), File 3, p 61.

¹⁴⁰ Strategic Plan 2010 – 2014, Dr Burger, Record Bundle 12(1), Item 9, p 8.

(c) Ranks

[39] At present, there are the following ranks in SAPS –¹⁴¹

- Non-commissioned officers: student constable, constable, sergeant and warrant officer; and
- Commissioned officers: Lieutenant, Captain, Major, Lieutenant Colonel, Colonel, Brigadier, Major General, Lieutenant General (appointed as Provincial Commissioner); Lieutenant General (Divisional Commissioner), Lieutenant General (Deputy National Commissioner), General (appointed as National Commissioner).

[40] The National Commissioner is the only member of SAPS to have the rank of full general. The Provincial Commissioners bear the rank of Lieutenant General, and Deputy Provincial Commissioners ordinarily bear the rank of Major General.

[41] In the years immediately following the advent of democracy, the former use of military titles to denote ranks was abandoned. Civilian titles were used instead.¹⁴² However, in approximately March 2010, the military ranks were once again introduced.¹⁴³ Station Commissioners once again became Station Commanders.

(d) Internal audit

[42] One of the key functions performed by the national office is the internal audit of individual police stations. These audits are performed in terms of the SAPS Annual Internal Audit Plan.¹⁴⁴ The purpose of such audits is to “evaluate the adequacy and effectiveness of the prevailing controls in respect of key business processes and related risks.”¹⁴⁵ Included in the documentation provided to the Commission were audit reports in respect of the Lingeletu West police station¹⁴⁶ as well as the management response to the audit.¹⁴⁷ On the last day of the hearings Lieutenant General Arno Lamoer provided the Commission with an audit report¹⁴⁸ in respect of the Khayelitsha Site B police station for the period 1 January 2013 – 30 June 2013. Its findings are discussed below.¹⁴⁹

(e) Organisational Performance: EUPOLSA – the SAPS Performance Chart – national office

[43] SAPS has developed a system to evaluate the organisational performance of individual police stations. This performance chart system is called the EUPOLSA index.¹⁵⁰ The name derives from the fact that the system was developed in the late 1990s with the support of the European

141 Transcript at 2202 – 2203 (10 February 2014); Regulation 8(1) of the SAPS Regulations.

142 Rauch, J. (2000). *Police Reform and South Africa's Transition*. Johannesburg: Centre for the Study of Violence and Reconciliation. <http://www.csvr.org.za/docs/policing/policereformandsouth.pdf> (last accessed on 5 August 2014).

143 Burger, J. (6 December 2012). *To what extent has the South African Police Service become militarised?* Pretoria: Institute for Security Studies. <http://www.issafrica.org/iss-today/to-what-extent-has-the-south-african-police-service-become-militarised> (last accessed on 5 August 2014). See paras 24 and 27 above.

144 Transcript at 6350 – 6353 (31 March 2014); Brigadier Green's Statement Record Bundle 5(4), File 3, pp 194 – 199 at para 3. Brigadier Green is the provincial head of internal audit in the Western Cape, a position she has held since February 2011.

145 Brigadier Green's Statement Record Bundle 5(4), File 3, pp 194 – 195 at para 3.

146 Record Bundle 3(3.30) at pp 191 – 256.

147 Id. at pp 257 – 322.

148 Record Bundle 11(5), Item 87, AL3.

149 See Chapter 10 at paras 62 – 65.

150 This section is drawn from the testimony and written Statements of Brigadier Heilbron and Colonel Vermeulen. Record Bundle 5(4), Item 3, pp 52 – 193; Record Bundle 11(3), File 3.1, Item 26; Transcript at 5594 – 5708 (26 March 2014).

Union. The purpose of the performance chart is to determine whether units and SAPS are complying with its constitutional mission.¹⁵¹ The performance chart system is designed and reviewed at national level, but implemented at provincial level.

- [44] Training materials provided to the Commission on the performance chart state that the aim of the chart is to assist SAPS to combat crime, and to provide “a holistic perspective” on a station’s crime combating operations.¹⁵² According to the training materials, effectiveness is defined as “the extent to which SAPS achieves its targeted results by satisfying the needs and demands of its customers. It measures quality in terms of user satisfaction with police services.”¹⁵³ Nevertheless, the performance chart contains no external measure of customer satisfaction. It defines “efficiency” as the extent to which SAPS resources are utilised optimally.¹⁵⁴
- [45] Key areas that are measured by the performance chart are crime prevention, crime reaction, crime investigation, human resource management, vehicle management and data integrity.¹⁵⁵ Crime reaction and crime prevention together weighted 45%, detective services (crime investigation) 35% and data integrity and utilisation of resources 20%.¹⁵⁶ Within crime prevention a reduction in contact crime is weighted 40%, a reduction in property related crime 30% and other crimes a total of 30%. Within the detective services there are four parameters that are measured: the detection rate, the cases to court rate, the conviction rate and the “ready” rate. Some of the parameters are scored on the basis of national targets. So, for example, in respect of crime prevention there is a national target to reduce some crimes between 4% and 7% annually and the extent to which that is achieved is scored on the performance chart.¹⁵⁷
- [46] Much of the information used for the assessment is electronically uploaded to the performance chart system from other databases, such as the CAS system, and two systems providing employee information, PERSAL and PERSAP.¹⁵⁸ The data to calculate the detective parameters are drawn from the SAPS 6.¹⁵⁹ The consequence of this reliance on other registers, as Colonel Vermeulen acknowledged when he testified, is that if the data on those registers is inaccurate, then the quality of the index will be impaired.¹⁶⁰ A further consequence is that the performance chart may create perverse incentives to enter inaccurate data into the system.¹⁶¹
- [47] During the hearing, it was suggested to Colonel Vermeulen and Brigadier Heilbron that one of the shortcomings of the Performance Chart was its failure to measure community satisfaction with SAPS, for example, by using survey data. They did not have a clear response to this question.¹⁶² This is a matter to which we return later in this report.
- [48] Information is entered into the EUPOLSA system on a monthly basis.¹⁶³ The results of the analysis are then made available to national and provincial management, as well as to police station commanders and cluster commanders, so their performance is monitored on

151 Transcript 5604 (26 March 2014).

152 “Performance Chart Learning Programme: Division Human Resource Development: Performance Chart 2012/2013” annexed to Colonel Vermeulen Statement Record Bundle 5(4), Item 3 at para 2.1, p 60.

153 Id. at p 69.

154 Id. at p 70.

155 Colonel Vermeulen Statement, Record Bundle 5(4), Item 3 at para 4, pp 52 – 53.

156 Transcript at 5615 (26 March 2014). Brigadier Heilbron Statement Record Bundle 11(3), File 3.1, Item 26 at para 5.5.

157 Id. at 5647 (26 March 2014).

158 Transcript at 5605 – 6 (26 March 2014).

159 Record Bundle 11(3), File 3.1, Item 6(c) at para 4.1.3; Transcript at 5620 (26 March 2014).

160 Transcript at 5644 (26 March 2014).

161 Id. at 5645 (26 March 2014).

162 Transcript at 5650 – 5651, 5677 – 5678 (26 March 2014).

163 Record Bundle 5(4), Item 3 at para 8, pp 55 – 56.

a monthly basis.¹⁶⁴ The monthly report also contains comparative results for the preceding five-year period.¹⁶⁵ Appropriate action can thus be initiated on a monthly basis in order to address problems that are identified.¹⁶⁶

- [49] The monthly figures also rank stations' performance against other stations in the province.¹⁶⁷ Quite often, over a short period of time, stations might move dramatically in the rankings relative to one another. The reason for this is that a station's performance is assessed in relation to its own previous performance, not on an absolute standard. Accordingly, if a station improves slightly, but other stations improve more, that station will drop down the index. A station that performs well overall but drops slightly in its performance might accordingly score lower than a poor-performing station that has improved to some extent. Brigadier Heilbron admitted that this might well be a weakness in the system. In his view, a more objective measurement is simply to gauge each station's results against its own performance, without comparison to other stations.¹⁶⁸ Performance on this index is used to evaluate the performance of station commanders, but not branch commanders or other members within a station.¹⁶⁹

(f) Crime statistics¹⁷⁰

- [50] In September each year, SAPS publishes crime data per police station for the period 1 April – 31 March for the immediately preceding year, for each of the 1137 police stations established in South Africa.¹⁷¹ The major crime categories reported on by SAPS are: murder; all sexual offences grouped together as one category; attempted murder; assault with the intent to inflict grievous bodily harm; common assault; common robbery; robbery with aggravating circumstances; arson; malicious damage to property; burglary at non-residential premises; burglary at residential premises; theft of motor vehicles and motorcycles; theft out of or from a motor vehicle; stock theft; illegal possession of firearms and ammunition; drug-related crime; driving under the influence of alcohol or drugs; all theft not mentioned elsewhere; commercial crime; shop-lifting; culpable homicide; *crimen injuria*; neglect and ill-treatment of children and kidnapping. In addition, SAPS provides four sub-categories of the category "robbery with aggravating circumstances" which are carjacking, truck hijacking, robbery at residential premises, and robbery at non-residential premises.¹⁷²
- [51] Brigadier Seimela testified before the Commission. He is the acting head of the Crime Research and Statistics component of the Department of Strategic Management.¹⁷³ The component used to fall within Crime Intelligence, but since November 2012, has fallen under Strategic Management.¹⁷⁴

¹⁶⁴ Id.

¹⁶⁵ Id. at paras 11.1 – 11.2, pp 55 – 56.

¹⁶⁶ Colonel Vermeulen Statement Record Bundle 5(4), Item 3 at para 9.3, p 55 and at para 11.3, p 57.

¹⁶⁷ Id. at para 12.2, p 57.

¹⁶⁸ Brigadier Heilbron Statement Record Bundle 11(3), File 3.1, Item 26 at para 5.4.

¹⁶⁹ Transcript at 5682 (26 March 2014).

¹⁷⁰ This section is drawn from the written statements and expert testimony of Ms Redpath in the Commission's first phase and the written statement and testimony of Brigadier Seimela. Ms Redpath's Expert Report is at Record Bundle 7(1), File H, Item 10; Ms Redpath's first phase testimony Transcript is at 1173 – 1235 (3 February 2014). Note that Ms Redpath referred to 1143 police stations while Brigadier Seimela indicated there are 1147 police stations. For consistency, we have opted to cite the number of police stations as indicated by Brigadier Rabie. Brigadier Seimela's Statement is at Record Bundle 5(4), File 5, pp 382 – 384; Brigadier Seimela's testimony is at Transcript at 4948 – 4986 (18 March 2014). Brigadier Rabie's testimony on the number of police stations is at Transcript at 5231 – 5232 (25 March 2014).

¹⁷¹ Ms Redpath Expert Report Record Bundle 7(1), File H, Item 10 at para 3.

¹⁷² Id. at paras 4 and 5; Transcript at 4952 – 4953 (18 March 2014).

¹⁷³ Id. Transcript at 4949 – 4950.

¹⁷⁴ Id.

- [52] The system of publishing crime data annually, six months in arrears, commenced in 2007, near the end of the tenure of the then Minister of Safety and Security, Charles Nqakula.¹⁷⁵ According to Brigadier Seimela, the decision to publish crime statistics annually in this fashion was in accordance with a policy decision taken by the Minister of Police.¹⁷⁶ It is an issue on which the Commission heard several expert submissions and to which we will turn again later in this report.
- [53] Brigadier Seimela explained to the Commission that the Crime Statistics component has developed a tool to monitor error rates in crime statistics; following the report of a task team on crime statistics established by the former National Commissioner, General Cele.¹⁷⁷ There are three types of error that are monitored: classification error, which arises when the information on the system does not coincide with the information in the docket; multiple charges, where only one charge is entered into the system, but in fact that are several counts or charges that are omitted; and the third relates to the non-registration of crime, where a crime is reported in the OB but not on the CAS system. The acceptable rate of error for classification errors is 10%, for multiple charges is 5%, and for non-registration of crime is 0.¹⁷⁸ Stations whose information is shown to be 95% correct are rated excellent, those whose information is between 90 and 94,9% are rated as good, those between 80 and 80,9% are rated fair, and those below 80%, poor.¹⁷⁹ Countrywide, according to Brigadier Seimela, the average rate of error is between 10 and 11%.¹⁸⁰ Again, according to Brigadier Seimela, all three Khayelitsha police stations have an 80% or better error rate, but only one is better than 90%.¹⁸¹
- [54] In order to monitor for error, the Crime Statistics component samples stations where there are significant fluctuations in reported crime, as well as stations that have previously reflected unacceptable error rates.¹⁸² Where a station is monitored, 300 dockets for the previous six months are sampled. The dockets are checked to see whether the information in them conforms with the information on the CAS, and the OB is then checked to see whether there are crimes registered there that have not been recorded on the CAS system.¹⁸³
- [55] Brigadier Seimela acknowledged that if crimes are not registered, the crime statistics will not accurately reflect the crime situation.¹⁸⁴ He also acknowledged that at times SAPS can become involved in “fighting figures” rather than fighting crime. When asked about an incident where SAPS in Khayelitsha had refused to open a docket in relation to robbery, where a cell phone had been stolen at gunpoint, without first obtaining the IMEI number of the cell phone, he said that –
- “... they should have opened a case of robbery with a firearm. That is very clear. And I’m just not sure – but I think what they are trying to do is to – sometimes they fight figures. They are not fighting crime. That’s the reason why they did not register the crime.

175 Mr Newham, Institute for Security Studies: Head of Governance, Crime and Justice Division, Expert Report, Record Bundle 12(1), Item 7, pp 34 – 35; Transcript at 7560 – 7561 (14 May 2014); Transcript at 7175 – 7176 (13 May 2014)

176 Transcript at 4984 – 4985 (18 March 2014).

177 Id. at 4958 – 4959.

178 Id. at 4959 – 4960.

179 Id. at 4961.

180 Id. at 4962.

181 Id.

182 Id. at 4959 – 4960.

183 Id. at 4959 – 4961.

184 Id. at 4972 – 4974.

What I mean is, you can have the figures going down, but crime, the crime levels are still very high. So there's a distinction between the statistics and the reality on the ground. So this time they are fighting the figures, not the reality."¹⁸⁵

- [56] Finally, he acknowledged that crimes that are not reported to SAPS at all will not be reflected in the crime statistics, and there will not be captured in any error review.¹⁸⁶

(g) Crime Administration System (CAS)

- [57] SAPS has a national electronic system for crime administration. It operates in each police station so that when crimes are reported and dockets are opened, information relating to those crime and dockets is entered onto a national file-server. This system is referred to as the CAS. Details from dockets are entered into the CAS by data capturers at each police station¹⁸⁷ and the CAS then generates a unique number for the docket. CAS numbers indicate the name of the police station where the crime is reported, a number allocated consecutively on a monthly basis at the police station, and the month and year in which the crime is reported. So, for example, a case may be allocated the number, Harare CAS 34/3/2014. That CAS number would indicate that the case was the 34th docket opened at the Harare police station during March 2014. This unique numbering system makes it possible to track dockets on the CAS database. When a case goes to court, the court will allocate the case its own number, but the charge sheet will contain both the CAS number and the court number. Similarly the CAS number is used when forensic reports are sent to the National Forensic Laboratories.

(h) Human Resource Allocation¹⁸⁸

- [58] SAPS has developed a system to allocate human resources to police stations nationally. This process is performed by a section: Organisational Development within the Division: Human Resource Management at the national level.¹⁸⁹ The process is aimed at identifying the Theoretical Human Resource Requirement (THRR) of each police station based on data obtained from the police station.¹⁹⁰
- [59] The data captured includes reported crime rates and environmental factors that facilitate or impede effective policing. Brigadier Rabie told the Commission that SAPS is only able to staff its police stations up to 70% of the level of the requirement established in the THRR process.¹⁹¹ The actual number of fixed posts approved for each police station is referred to by many members of SAPS as the Resource Allocation Guide (RAG). We consider this system more fully in Chapters 11, 13 and 15.
- [60] As mentioned above, section 11 of the SAPS Act provides that the powers of the National Commissioner shall include the power to determine the fixed establishment of SAPS and the number and grading of posts,¹⁹² and to determine the distribution of the numerical strength

¹⁸⁵ Id. at 4969.

¹⁸⁶ Id. at 4973.

¹⁸⁷ Brigadier Seimela's Statement Record Bundle 5(4), File 5, p 383, Annexure A, at para 7.

¹⁸⁸ This section draws on the expert testimony of Brigadier Rabie. Brigadier Rabie's Statement is at Record Bundle 5(4), File 6, pp 1 – 6 and Transcript at 5226 – 5401 (25 March 2014).

¹⁸⁹ Brigadier Rabie's Statement Record Bundle 5(4), File 6, p 1 at para 2.

¹⁹⁰ Id. at paras 3 – 4.

¹⁹¹ Transcript at 5257 – 5258 (25 March 2014).

¹⁹² Section 11(2)(b) of the SAPS Act.

of SAPS, after consultation with the Board of Commissioners.¹⁹³ And as also mentioned above, section 12 of the SAPS Act provides that a Provincial Commissioner has the power to determine the distribution of the strength of the SAPS “under his or her jurisdiction in the province among the different areas, station areas, offices and units”.¹⁹⁴ In practice, it appears as if the power of the Provincial Commissioner gives way to the power of the National Commissioner to determine the fixed establishment at certain police stations and units.

(i) Performance Enhancement Process of individual members of SAPS (PEP)

- [61] SAPS National Office has also designed a process whereby the performance of individual members of SAPS is evaluated (the PEP). It is regulated by National Instruction 1 of 2005.¹⁹⁵ The National Instruction provides that the Key Performance Areas of each member of SAPS will be based on his or her job description. Each employee will have a “PEP instrument” (SAPS 557) that records the content of the performance process. Supervisors must monitor the performance of employees. A PEP cycle has three stages in each year: in the first, during April – July, the supervisor and employee will discuss and agree outputs to be achieved by the employee during the year; the second and third consist in written performance appraisals, the first to be conducted between October and January, and the second between April and July, but no later than August.¹⁹⁶ The PEP rating system is a five-point scale, where 1 is the lowest rating and 5 is the highest.¹⁹⁷

D. THE STRUCTURE AND FUNCTIONING OF SAPS – PROVINCIAL LEVEL

- [62] The Commission heard the testimony of six of the seven most senior SAPS officers in the Western Cape:¹⁹⁸ Lieutenant General Lamoer, the Provincial Commissioner;¹⁹⁹ Major General Jephta, Deputy Provincial Commissioner, Operations;²⁰⁰ Major General Jacobs, Deputy Provincial Commissioner, Crime Intelligence;²⁰¹ Major General Fick, Deputy Provincial Commissioner, Physical Resource Management;²⁰² Major General Burger, Deputy Provincial Commissioner, Human Resource Management²⁰³ and Major General Molo, Provincial Head of Detectives.²⁰⁴

193 Section 11(2)(c) of the SAPS Act.

194 Section 12(3) of the SAPS Act; Transcript at 5297 (25 March 2014).

195 Record Bundle 5(4), Item 2, pp 72 – 83.

196 Id. at pp 73 – 74. See the definition of “PEP Cycle” in section 2 of National Instruction 1 of 2005.

197 Id. at 74. See the definition of “rating” in section 2 of National Instruction 1 of 2005.

198 The seventh officer who did not testify is the Head of the Directorate for Priority Crime Investigation established in terms of section 17A of the SAPS Act, whose functions have no direct relevance to the mandate of this Commission.

199 Transcript at 6485 – 6737 (1 April 2014); General Lamoer’s Statement Record Bundle 8(4), File 4.4, Item 3.15.

200 Transcript at 6256 – 6484 (31 March 2014); Major General Jephta’s Statement Record Bundle 8(4), File 4.4, Item 1(4), pp 11 – 19.

201 Transcript at 6007 – 6255 (28 March 2014); General Jacobs’ Statement Record Bundle 8(4), File 4.4, Item 1(5), pp 1 – 10.

202 Transcript at 5504 – 5594 (26 March 2014); General Fick’s Statement Record Bundle 8(4), File 4.4, Item 2(11), pp 1 – 8.

203 Transcript at 5401 – 5503 (25 March 2014); Major General Burger’s Statement Record Bundle 5(4), Item 2, pp 1 – 8.

204 Transcript at 5880 – 5992 (27 March 2014); Major General Molo’s Statement Record Bundle 8(4)(4), File 4, Item 4(20.1), pp 1 – 9.

Photo 6: SAPS control room, Khayelitsha



- [63] Each of the Deputy Provincial Commissioners reports to the Provincial Commissioner, and each bears responsibility for his or her area of command. There are three key operational areas of relevance to the mandate of the Commission and in each case the most senior officer in the Western Cape testified concerning that operational area. The three areas are Operations, Detectives and Crime Intelligence. The remaining two Deputy Provincial Commissioners testified in relation to their areas of responsibility for support services, being Human Resource Management and Physical Resource Management respectively. In addition, there are various tasks or operations that have an internal head who reports either to the Provincial Commissioner or to the appropriate Deputy Provincial Commissioner. So, for example, Brigadier Heilbron, who testified before the Commission, is the Provincial Head: Organisational Development and Management²⁰⁵ and reports to the Provincial Commissioner.

(a) Police stations and cluster offices in the Western Cape

- [64] There are 150 police stations situated in the Western Cape²⁰⁶ and 1137 police stations countrywide.²⁰⁷ The staff establishment is just over 21 000.²⁰⁸ The police stations are divided into 25 clusters in the province, each of which has a cluster commander that deals with oversight of the police stations on a day-to-day basis.²⁰⁹
- [65] Police stations are classified according to the rank of their Station Commander: so a police station may be a captain station (category A), a lieutenant colonel station (category B), a colonel station (category C1), or a brigadier station (category C2).²¹⁰ The human resources

205 Brigadier Heilbron Record Bundle 11(3), File 3.1, Item 26, pp 1 – 9; Transcript at 5596 – 5763 (26 March 2014).

206 Transcript at 6489 (1 April 2014); Transcript at 6266 – 6267 (31 March 2014).

207 Transcript at 5231 (25 March 2014).

208 Transcript at 6489 (1 April 2014).

209 Transcript at 6489 (1 April 2014).

210 Transcript at 5231 – 5232 (25 March 2014).

establishment of any police station is dependent upon the rank of its station commander.²¹¹ A Captain station will normally have up to 90 SAPS members allocated to it. A Lieutenant Colonel station will have between 91 and 180 members, a Colonel station will have between 181 and 360 members, and a Brigadier station will have more than 360 members.²¹² The Performance Measurement section of the Organisational Development Department in National Office determines the category of each police station.²¹³ As circumstances change, a police station may be downgraded or upgraded.²¹⁴

(b) Provincial Inspectorate

- [66] A department of central importance to the mandate of the Commission is the Provincial Inspectorate. The Provincial Inspectorate is responsible for the regular inspection of police stations. It operates in terms of Standing Order (General) 6.²¹⁵ The Provincial Head of the Inspectorate in the Western Cape is Brigadier Solomons.²¹⁶ Although he did not testify before the Commission, Brigadier Solomons was of invaluable assistance to the Commission in providing it with documents. The Provincial Inspectorate had at the time that Major General Jephta signed her statement 45 personnel in the Western Cape: one brigadier, 5 colonels, 11 lieutenants, 15 captains, 1 warrant officer and 12 Public Service Act personnel.²¹⁷
- [67] Major General Jephta described the core responsibilities of the Provincial Inspectorate as being to –
- determine whether there is compliance with departmental directives and policies;
 - evaluate the extent to which the Strategic Plan of SAPS is being implemented;
 - assess the effectiveness of remedial measures to rectify deficiencies in the effectiveness, efficiency and quality of service delivery by SAPS; and
 - co-ordinate and manage the investigation of complaints against SAPS members.²¹⁸
- [68] The process of station inspections is governed by Standing Order 6 which defines an “inspection” as a “process by which compliance with legislation, departmental directives, instructions, policies and procedures is monitored by employees attached to the Inspectorate...”²¹⁹ Standing Order 6 makes clear that the Provincial Inspectorate carries out inspections of police stations. In the ordinary course, the relevant Station Commander will be notified of an inspection in advance, but the Provincial Head: Inspectorate may if he or she deems it necessary conduct an inspection without prior announcement.²²⁰ Officers conducting the inspection may inspect all registers and documents,²²¹ gain access to any information or facility under the control of the relevant commander and call upon any employees of SAPS to give a full account of their actions in the performance of their duties.²²²

211 Id.

212 Id. at 5247 – 8.

213 Id.

214 Id. at 5250.

215 Record Bundle 3(3.22), File 3(1), Item 89; annexed to the Statement of Major General Jephta at Record Bundle 5(4), File 3, pp 21 – 24. Major General Jephta’s Statement, Record Bundle 8(4), File 4.4, Item 1(4), p 12 at para 4.

216 Major General Jephta’s Statement, Record Bundle 8(4), File 4.4, Item 1(4), p 12 at para 5.1; Transcript 6260 (31 March 2014).

217 Id. at para 6, p 13. By the time Major General Jephta testified this number had reduced to 44, see Transcript at 6286 (31 March 2014), as the result of the death of one of the members.

218 Id. at para 4, p 12.

219 Standing Order 6, Record Bundle 3(3.22), File 3(1), Item 89 at para 2.

220 Id. at para 6(1). Transcript at 6388 – 6389 (31 March 2014).

221 Id. at para 5(1)(b)(i).

222 Id. at para 6(3).

- [69] The officers who conduct the inspection must prepare a report that must be approved by the Provincial Head and then transmitted to the Provincial Commissioner.²²³ Upon receipt of the inspection report, the Provincial Commissioner must “ensure the implementation of suitable remedial measures to address negative trends identified” during the inspection,²²⁴ ensure the investigation of complaints of poor service delivery²²⁵ and ensure the implementation of “identified best practices” to enhance service delivery.²²⁶ Major General Jephta told the Commission that the Western Cape has ensured that all provincial components assist stations with the implementation of remedial measures.²²⁷

(c) Complaints against SAPS members by members of the public: Standing Order 101 and the Western Cape provincial “nodal point”

- [70] Complaints against members of SAPS by members of the public are regulated by Standing Order (General) 101 – The management of complaints against the South African Police Service.²²⁸ Standing Order 101 requires every police station, unit or component of SAPS²²⁹ to maintain an electronic database of all complaints, which must include the date on which complaints are received, the name and contact details of the complainant, the nature of the complaint, the name and contact details of the investigator and the outcome of the investigation.²³⁰ Once an investigator has been appointed he or she must conduct an interview with the complainant, verify the complaint and determine relevant measures to redress the complaint.²³¹ The investigator must also confirm that the complainant is satisfied with the proposed measures of redress and ensure that the complainant signs a certificate indicating whether the complainant is satisfied or not.²³² Standing Order 101 stipulates that an investigator must ordinarily complete the investigation within 19 days of receiving the assignment.²³³ Upon receipt of an investigator’s report, a commander must check that the complaint has been properly investigated and refer the complaint back for further investigation if necessary.²³⁴ Major General Jephta told the Commission that she had identified a “void” in the management of complaints, particularly in relation to the recording of complaints. Accordingly, she had developed a new system whereby a provincial nodal point was established to ensure detailed capturing of complaints, as well as follow-up of completed investigations. The nodal point thus monitors all complaints lodged against members of SAPS in the Western Cape.²³⁵ The nodal point, which is based at the provincial inspectorate, thus manages Standing Order 101 complaints, as well as incidents provided for in section 28 of the IPID Act, and allegations of non-compliance with the Domestic Violence Act.²³⁶

223 *Id.* at para 7(2).

224 *Id.* at para 5(2)(a).

225 *Id.*

226 *Id.* at para 5(2)(b).

227 Major General Jephta’s Statement, Record Bundle 8(4), File 4.4, Item 1(4), p 14 at para 9.

228 Record Bundle 3(3.22), File 3(1), Item 138; annexed to the Statement of Major General Jephta at Record Bundle 5(4), File 3, pp 25 – 30; Major General Jephta’s Statement Record Bundle 8(4), File 4.4, Item 1(4), pp 14 – 15 at para 11.

229 Standing Order 101 speaks of “business unit” which is defined to include a “division, province, component, section, cluster station, police station or unit” of SAPS.

230 *Id.* at para 3.

231 *Id.* at para 5(3)(iii).

232 *Id.* at para 5(3)(vii) read with Annexure A.

233 *Id.* at para 6(c).

234 *Id.* at para 5(4)(d).

235 Major General Jephta’s Statement Record Bundle 8(4), File 4.4, Item 1(4), p 15 – 16 at paras 13 – 14.

236 *Id.* at para 11, p 15.

E. THE STRUCTURE AND FUNCTIONING OF SAPS – CLUSTER LEVEL

- [71] The cluster is a relatively new structure in SAPS. Some time ago the system of “areas” was disestablished and some time later clusters were introduced. The role of clusters is, according to Lieutenant General Lamoer, still under review.²³⁷ Moreover, the precise role of clusters appears to vary from province to province.²³⁸ There also appears to be some uncertainty amongst senior police officers as to the precise role of the cluster. So, for example, on 2 December 2013, a person appointed to act as cluster commander of the Khayelitsha cluster wrote to the provincial office for guidance as to the role of the cluster commander.²³⁹ An email response was provided, which was the key document received by the Commission explaining the role of cluster commanders in the province at present.²⁴⁰ At present in the Western Cape, a Cluster Commander is seen primarily as having a co-ordinating and oversight function.²⁴¹ The Cluster Commander reports to the Provincial Commissioner. A Cluster Commander will ensure effective co-ordination of visible policing and detective functions in the cluster, as well as ensuring that support services are effectively supplied to the cluster stations and that operational plans are implemented.²⁴² The Cluster Commander chairs the Cluster Community Policing Forum and the Cluster Crime Combating Forum (CCCF).

F. THE STRUCTURE AND FUNCTIONING OF SAPS – STATION LEVEL

(a) Visible policing

- [72] The work of a police station is ordinarily divided into three main sections: Visible Policing (VISPOL), Detective Branch, and Support Services. Each will have a commander, who will report to the Station Commander.²⁴³ VISPOL members wear police uniforms. In a police station, VISPOL members are responsible for staffing the Community Service Centre (CSC), which used to be known as the “Charge Office”, as well as maintaining all the registers kept in the CSC, the management and control of the police cells, conducting sector patrols, providing security at any court within the station precinct, the management of the police station’s exhibit store and exhibit register (SAPS 13), the management of the firearm safe, the performance of firearm, liquor and second hand goods policing (also known as FLASH), as well as crime prevention activities. Most VISPOL members work on shifts, which means 12 hours on duty, followed by 12 hours off duty, on a four-day cycle per week.

237 Transcript at 6703 – 6704 (1 April 2014).

238 Transcript at 5317 (25 March 2014).

239 Record Bundle 4(8), Item 29.

240 Id.

241 Schooling and Leamy report Record Bundle 9(1), Item 1.1, Item 1 at paras 16 – 17; Transcript at 6186 – 6189 (28 March 2014).

242 Record Bundle 4(8), Item 29.

243 Schooling and Leamy report Record Bundle 9(1), Item 1.1, Item 1 at para 51; Transcript at 2204 – 2207 (10 February 2014).

(b) Crime investigation – the Detective Branch

- [73] Detectives do not ordinarily wear uniforms. They are responsible for the investigation and detection of crime and are supervised by a Detective Commander or Branch Commander in each police station. Police stations have a crime office or Detective Service Centre (DSC), which is staffed by detectives in many police stations working on a 24-hour shift basis.²⁴⁴ The function of the DSC is to screen dockets received from the CSC, to interview complainants, to attend immediately when crimes are reported, and to conduct crime scene management.²⁴⁵ Detectives who are working as investigating officers do not work on a shift system.

Detectives are responsible for investigating crime, collecting and recording evidence in the case docket. The management of case dockets is governed by a range of standing orders: Standing Order (General) 321 Docket Management – Case Docket (SAPS 3M), Standing Order 326 on the Filing of Dockets, Standing Order (General) 324 on the Checking of Case Dockets and Standing Order (General) 325 on the Closing of Dockets.²⁴⁶ In addition, the province reviews its detective policy yearly.²⁴⁷

(c) Support Services

- [74] The department of support services is responsible for human resource management, finance, physical resource management and supply chain management.²⁴⁸

(d) Crime Intelligence Officer (CIO)

- [75] In addition to these three components, Most large police stations will have a crime information officer (CIO) who reports to the Station Commander but whose work is of direct relevance both to VISPOL and the Detectives.²⁴⁹ The primary duties of the CIO are docket analysis, crime mapping, case linkage analysis, field-work assessment, statistical analysis and the briefing/debriefing of VISPOL shifts. This information should be correlated to show the overall crime situation faced by a particular police station within in its area of responsibility.²⁵⁰

(e) Station level registers and first and second-level inspections of registers

- [76] Each police station must keep a range of registers. Of these, the most important is the OB (or SAPS 10).²⁵¹ It is kept in the CSC and the rules regulating what needs to be entered in it are provided in Standing Order (General) 303.²⁵² That Standing Order states that –

“The Occurrence Book is the most important of all the registers used in the Service. It must contain a complete record of the history of a police station,

244 Schooling and Leamy report, Record Bundle 9(1), Item 1.1, Item 1 at para 88; Major General Molo's Statement Record Bundle 8(4), File 4.4(4), Item 20.1 at para 24.

245 Major General Molo's Statement Record Bundle 8(4), File 4.4(4), Item 20.1, para 24.

246 Id. at para 21.

247 Major General Molo's Statement Record Bundle 8(4), File 4.4(4), Item 20.1 at para 23; Policy Document: Detective Service (Draft) Annexure GENM15 Record Bundle 8(4), File 4.4(4), Item 20.5.

248 Transcript at 2204 (10 February 2014).

249 Transcript at 2205 (10 February 2014).

250 Dr De Kock Expert Report, Record Bundle 12(1), Item 15 at paras 14, 130 – 151.

251 Standing Order 303, Record Bundle 3(3.22), File 3, Item 4, Item 276 at para 1(2); Transcript at 2214 (10 February 2014); Schooling and Leamy report Record Bundle 9(1), Item 1.1, Item 1 at para 228.

252 Id.

besides serving as the control record of all other registers and the Crime Administration System (CAS).²⁵³

- [77] Standing Order 303 further describes the OB as containing “an accurate and faithful record of all crime and other matters of public interest requiring investigation and attention by the Service, as well as of the duties performed by the members of the station.”²⁵⁴ The opening of all dockets is recorded in the OB with the appropriate CAS number, as are the commencement and ending of all shifts as well as the booking out of cell phones, firearms and hand radios. Arrests are recorded in the OBs, and all reported domestic violence incidents, whether or not a docket is opened.²⁵⁵ All exhibits are recorded in the OB as well as the handing in of prisoners’ property. Complaints against the police are recorded, as are the payment of fines and bail. Also all visits by officers from other precincts or from provincial or national level are recorded. Each entry is numbered consecutively (with cross-references to relevant other entries) and the time when the entry is made is recorded, as well as the name of the member who has made the record.
- [78] In addition to the OB, the following registers are kept in the CSC: the exhibit register (SAPS 13), a register of all members reporting for duty (SAPS 15), a register of fines paid (J70), release of suspect (SAPS 328), prisoners’ property handed in (SAPS 22), reading of prisoners’ rights (SAPS 14(a)), domestic violence register (SAPS 508(b)), cell detentions’ register (SAPS 14), process register (SAP 264), warrant of arrest register (SAPS 265), a vehicle collisions register (SAPS 176) and the Information Book. Major General Jephta testified that there were between 29 and 40 registers maintained in a police station.²⁵⁶
- [79] Registers need to be checked for accuracy regularly. The process of checking a register is called an inspection, and each register is subject to both first- and second-level inspections.²⁵⁷ A first-level inspection should be done approximately every 24 hours, while a second-level inspection should be done approximately once a week.²⁵⁸ The first-level inspection will be done by the commander of the CSC or the relief commander, and will aim to check that the records made in the registers over the previous day have been accurately recorded. Registers will be cross-checked, one against the other to ensure accuracy. Second-level inspections are done by either the Station Commander or the VISPOL commander and constitute a check, primarily, on the first-level inspection process.²⁵⁹ First- and second-level inspections, when done, are entered into the OB with the name of the officer conducting them, as well as any corrections that have been made.²⁶⁰

(f) Reservists

- [80] SAPS has always had a system of volunteer police reservists who assist with policing. They are deemed to be in the employ of SAPS while on duty, although they are volunteers.²⁶¹ They

253 Standing Order 303, Record Bundle 3(3.22), File 3, Item 4, Item 276 at para 1(2).

254 Id. at para 3(1).

255 Id. Transcript at 2214 – 2215 (10 February 2014).

256 Transcript at 6355 (31 March 2014).

257 Transcript at 2216 (10 February 2014).

258 Standing Order (General) 225 (Inspections at Police stations and Premises), Record Bundle 3(3.22), File 3, Item 3, Item 215 at para 3(2); Transcript at 2216 – 2217 (10 February 2014).

259 Standing Order (General) 28 (Duties of Station Commanders), Record Bundle 3(3.22), File 3, Item 1, Item 100 at para 3(14); Standing Order (General) 301 (Registers, Books and Forms), Record Bundle 3(3.22), File 3, Item 4, Item 274 at para 5; Standing Order (General) 225 (Inspections at Police stations and Premises), Record Bundle 3(3.22), File 3(3), Item 215 at para 3(1); Transcript at 2220 – 2222 (10 February 2014).

260 Standing Order (General) 301, Record Bundle 3(3.22), File 3, Item 4, Item 274 at para 5(3); Transcript at 2218 (10 February 2014).

261 Section 48(6) of the SAPS Act.

are appointed by the National Commissioner²⁶² who may determine the requirements for recruitment, resignation, training, ranks, promotion, duties and nature of service, discipline, uniform, equipment and conditions of service of police reservists.²⁶³ The National or Provincial Commissioner may, subject to the Constitution, at any time discharge a police reservist.

- [81] The Commission was told that since 2010 there has been a moratorium on the recruitment of new reservists, as a new reservist policy is being drafted.²⁶⁴ The number of reservists countrywide has declined significantly since 2010. There are two reasons for this, according to Major General Jacobs. The first is the fact that reservists have had to undergo a certification process that includes fitness assessment, tactical shooting competence and an examination on relevant legal principles.²⁶⁵ And the second is that for a short period between 2008 and 2010, reservists received reimbursement for their services, but this was stopped in 2010.²⁶⁶
- [82] Preceding the finalisation of this policy, the regulations governing police reservists were amended with effect from 13 October 2013.²⁶⁷ In terms hereof a reservist is now defined as “a person appointed by the National Commissioner as a member of the South African Reserve Police Service to render services as a volunteer in support of the Police.”²⁶⁸ There are 18 requirements that a person has to comply with in order to be appointed a reservist. These include: being a South African citizen by birth; being between 25 years and 40 years of age; being medically mentally and physically fit; being of good and sound character; being able to speak, read and write at least two official languages, of which one must be English; allowing fingerprints and a DNA sample to be taken; being prepared to undergo such training as may be determined by the National Commissioner; being prepared to take the prescribed oath of office; understanding that his or her services may be terminated at the age of 60; completing an assessment questionnaire; providing proof of his or her residential address; not having a criminal record or any criminal or departmental cases pending against him or her (all criminal or departmental cases must be declared); and not having a tattoo which will be visible if the person wears a uniform.²⁶⁹ Any of these requirements the National Commissioner may, if he or she is satisfied that it would be in the interest of the Service, after having taken into account the age of the applicant, his or her occupation, language proficiency, social standing and the general impression he or she makes, waive any or all of the requirements.

G. SAPS IN KHAYELITSHA

(a) Khayelitsha cluster

- [83] The Khayelitsha cluster office, according to General Jacobs, was established in 2009.²⁷⁰ It contains eight police stations: the three Khayelitsha police stations, Macassar, Lwandle, Somerset West, Gordon’s Bay and Strand. Prior to 2009, the three Khayelitsha police stations

262 Section 48(2) of the SAPS Act.

263 Section 48(1) of the SAPS Act.

264 Major General Jacobs’ Statement Record Bundle 8(4), File 4.4, Item 1(5), p 8 at para 14.7.

265 Major General Jacobs’ Statement Record Bundle 8(4), File 4.4, Item 1(5), p 8 at para 14.7.1; Transcript at 6074 – 6075 (28 March 2014);

266 Id. at para 14.7.2; Transcript at 6074 (General Jacobs, 28 March 2014).

267 South African Reserve Police Service Regulations as amended in GN R765 in GG 36922, 15 October 2013.

268 Id. at regulation 1.

269 Id. at regulation 3(1).

270 General Jacobs’ Statement, Record Bundle 8(4), File 4.4, Item 1(5), p 3 at para 8.1.

fell within a police management structure known as a Zone.²⁷¹ One of the documents provided to the Commission had listed the responsibilities of the Cluster Commander as including: effective co-ordination of visible policing in the cluster, effective co-ordination of detective services in the cluster, ensuring the rendering of effective support services to SAPS in the cluster; ensuring that operational plans are attended to in the cluster; and acting as chairperson of the CCCF.²⁷² Other responsibilities of the Cluster Commander include attending to complaints, ensuring the effective management of SAPS 13 stores (Exhibit Stores) and monitoring the daily deployment of human resources within the cluster. As mentioned above, the precise role of Cluster Commanders is under review within SAPS.²⁷³

- [84] At the Khayelitsha cluster, there are several specialist units: the Tactical Response Team (TRT) which consists of 36 operational personnel who assist police stations in the cluster, as well as the Family Violence, Child Protection and Sexual Offences Unit (the FCS Unit) and an Operational Centre, which is responsible for ensuring that urgent complaints are responded to speedily.²⁷⁴

(b) “Other units operating in Khayelitsha”

- [85] The Commission’s terms of reference require it to investigate the three police stations in Khayelitsha, as well as “any other units of SAPS operating in Khayelitsha”. Accordingly, the Commission requested SAPS to identify the other SAPS units that operate in Khayelitsha. SAPS identified a range of different units including in respect of Visible Policing: the Railway Police; the Flying Squad, Cape Town; the Dog Unit, Maitland; Public Order Policing, Faure; the TRT, Khayelitsha; and in respect of Detectives, the FCS Unit, Khayelitsha (the FCS Unit); the Local Criminal Record Centre (LCRC), Mitchell’s Plain; and the Stock Theft Unit, Malmesbury.²⁷⁵ Of these units, the Unit that has been the subject of the most serious complaint, and accordingly, the closest analysis by the Commission, is the FCS Unit.²⁷⁶

(c) Police stations in Khayelitsha

- [86] Until 2004, there was only one police station in Khayelitsha, situated in Site B. In 2004, two further police stations were established, one in Harare and the other in Lingeletu West. To avoid confusion, the first police station will be referred to as Khayelitsha Site B police station, as many of the residents of Khayelitsha refer to it in that way.
- [87] Each of the three police stations is divided into sectors for sector policing. Khayelitsha Site B has six sectors, and Lingeletu West and Harare each have four sectors, each of which has a sector manager.²⁷⁷

271 Id. at para 8.2.

272 Schooling and Leamy report, Record Bundle 9(1), File 1.1, Item 1 at para 17. Also the original email memorandum which the Schooling and Leamy report relied on Record Bundle 4(8), Item 29.

273 See above at para 72.

274 Major General Jacobs’ Statement Record Bundle 8(4), File 4.4, Item 1(5), p 6 at para 12.

275 Record Bundle File 3.1.

276 See below.

277 Major General Jacobs’ Statement Record Bundle 8(4), File 4.4, Item 1(5), p 4 at para 10.

Part Two



CHAPTER SIX

THE ORIGINAL INDIVIDUAL COMPLAINTS

- [1] As set out in Chapter 1,¹ in their complaint dated 28 November 2011, the complainant organisations asserted there were “widespread inefficiencies, apathy, incompetence and systemic failures of policing” in Khayelitsha.² The letter identified a range of systemic problems in the functioning of the SAPS in Khayelitsha, including poor investigation of crime, failure to provide feedback to complainants, insufficient visible policing, especially in informal settlements, discourteous and even contemptuous treatment of members of the public by members of SAPS in Khayelitsha. In addition, the organisations annexed a schedule describing eight cases that, according to the organisations, were illustrative of the problems that they assert characterise policing in Khayelitsha.³ Given that the Commission’s terms of reference “are to investigate complaints received by the Premier relating to allegations of inefficiency” of the SAPS in Khayelitsha, the Commission sets out in this brief chapter its investigation into the eight complaints contained in the original letter to the Premier and identifies patterns that these eight complaints illustrate that are relevant for the Commission’s investigation of the systemic problems of policing which are the gravamen of the complaint made by the complainant organisations.
- [2] The eight complaints were set out in Annexure B to the original letter of complaint of 28 November 2011. Included in Annexure B was a letter dated 5 October 2010 from the Director of Public Prosecutions, Western Cape (DPP) to the former MEC for Community Safety, Mr Fritz, addressing the complaints.⁴ In addition to the aforementioned letter of complaint and dockets provided by SAPS, the Commission addressed a letter dated 12 October 2012 to the DPP, inter alia, requesting information in relation to the eight complaints.⁵ The DPP responded in a letter dated 26 February 2013.⁶ Each of the complaints will be discussed briefly and separately. At the end of the chapter, the Commission will provide its brief conclusions following on its investigation of the eight complaints.

A. THE EIGHT COMPLAINTS

(a) Ms Zoliswa Nkonyana

- [3] Ms Nkonyana was murdered on 6 February 2006. According to the complainant organisations, she was murdered because she was a lesbian and had refused to use a men’s toilet in a shebeen in Khayelitsha.⁷

1 See Chapter 1 at para 1.

2 Record Bundle 1(1c), File A, Item 2 at paras 48 and 49.

3 Annexures to the complaint of 28 November 2011 Record Bundle 7(1), File A, Item 2a, pp 37.11 – 37.19.

4 Id. at pp 37.29 – 37.33

5 Record Bundle 2(1), File 1.4, File 1, Item 1.

6 Record Bundle 2(1), File 1.4, File 1, Item 4.

7 Record Bundle 7(1), File A, Item 2a, pp 37.11 at para 1.

- [4] The case is referred to in the Task Team Report, which describes the murder as follows –
- “Zoliswa Nkonyana was found lying in Zingisa Street, E-Section, Khayelitsha by her stepfather Mr Gladwell Madindi. He took her to Site B Day Hospital, Khayelitsha. On their arrival Zoliswa Nkonyana was declared as dead by the doctor. It was apparent from evidence on the scene and from witnesses who saw what happened that the deceased was stabbed and stoned to death with knives and bricks and concrete bricks. It appeared from the statements that the deceased and her friend were drinking at a Tavern ... in E Section, Khayelitsha. The deceased and her friend got into an argument with two other girls. The argument then proceeded to the outside of the Tavern where a group of boys also joined the argument. These boys then assaulted the deceased and her friend and chased them further down the street where they tripped the deceased and she fell to the ground. The deceased was then thrown with bricks and stabbed with knives.”⁸
- [5] The trial of those accused of her murder did not take place for more than four years. According to the complainant organisations, the trial was postponed more than 45 times.⁹ According to the DPP an enquiry in 2009 indicated that save for two occasions, all the postponements were at the request of the accused persons or their legal representatives.¹⁰ A similar assertion was made in the DPP’s letter to the Commission dated 26 February 2013, where it was indicated that save for three occasions the postponements were occasioned by the accused and their legal representatives.¹¹ The DPP further advised that when the matter was drawn to his attention, a Deputy Director of Public Prosecutions was appointed to intervene and provide a prosecution plan and devise a “continuous trial” strategy, including ensuring the availability of the defence counsel. The Deputy Director attended the trial to ensure an effective prosecution.¹²
- [6] The complainant organisations also allege that –
- the main state witness was threatened by the accused and was forced to flee to the Eastern Cape but no witness protection was provided;¹³
 - four of the accused escaped from the holding cell at the Khayelitsha Magistrates’ Court on 15 September 2010;
 - a police sergeant was subsequently arrested for defeating the ends of justice in aiding their escape;¹⁴ and
 - two of the accused were released after more than five years in custody because their initial statements were found to be inadmissible, on the ground that as minors they should have been interviewed in the presence of their guardians.¹⁵
- [7] More than four years passed before four young men were convicted of Ms Nkonyana’s murder and sentenced to 18 years’ imprisonment, with four years suspended for five years. According to the DPP, the matter was postponed on five occasions in order for pre-sentencing reports to

8 Task Team Report (the Task Team Report), annexed to the Affidavit of General Lamoer in the High Court Record, Record Bundle 1(3), AL 87, p 694.

9 Record Bundle 7(1), File A, Item 2a, pp 37.11 at para 3.

10 Id. at p 37.30.

11 Record Bundle 2(1), File 1.4, File 1, Item 4, p 17. Of the 30 postponements attributable to the defence the most frequent reasons were due to legal representatives being ill, absent without explanation or withdrawing from the case.

12 Record Bundle 7(1), File A, Item 2a, p 37.31.

13 Id. at p 37.11 at para 4.

14 Id. at para 5.

15 Id. at para 6.

be obtained and for leading of evidence. The matter was finalised on 1 February 2012.¹⁶ The Commission requested a copy of the docket which was provided.¹⁷

- [8] Mr Achmat testified in relation to the prosecution that resulted from Ms Nkonyana's murder.¹⁸ He criticised the manner in which the case was handled. He spoke of the excessive delays in the prosecution of the matter, and the fact, as mentioned above, that two young people were incarcerated for nearly five years as accused persons in the matter, before the charges were withdrawn against them, because their statements proved to be inadmissible. He also mentioned the fact, again as mentioned above, that a member of the police service assisted some of the perpetrators to escape from the court, and the fact that he did not know whether that person had ever faced charges for that act.¹⁹
- [9] The DPP stated that the National Prosecuting Authority had done everything within its power to bring this matter to finality²⁰ and that SAPS co-operated with the prosecutor during the investigation and subsequent trial.²¹

(b) Mr Makhosandile "Scare" Qezo

- [10] Mr Qezo was stabbed in the face on 1 May 2010 during an attempted robbery.²² The assailant was apprehended and beaten by community members and handed over to SAPS when they arrived. The assailant was charged with assault with intention to do grievous bodily harm.
- [11] The assailant appeared in court on 10 May 2010 and was granted bail of R500. At the next two court hearings, the assailant did not attend and a warrant for his arrest was issued. He was rearrested on 25 August 2010 but SAPS did not inform the complainant that the assailant had been rearrested.
- [12] On 25 August 2010, the assailant appeared at court, and was again released on bail of R500 after producing a medical certificate indicating that he had suffered a head injury and could not attend court on the previous dates.²³
- [13] At this point, a conflict of fact exists on the record before the Commission, as the complainant organisations indicate that the investigating officer was not at court and so did not inform the court that the accused was a flight risk. The docket however suggests otherwise. The case was then postponed a further ten times between October 2010 and November 2012.
- [14] According to the DPP the matter was postponed 29 times.²⁴ When the matter was investigated by the Task Team in July 2012, the docket was at the Magistrates' Court, so the Team concluded that "the case did in fact receive the necessary attention".²⁵ The Commission called for the docket, having obtained the docket number from the Task Team Report.²⁶ From that docket, it appeared that the criminal trial concluded, more than two and a half years after the offence

16 Record Bundle 2(1), File 1.4, File 1, Item 4, p 18.

17 Record Bundle 6(8), Item 2. CAS Khayelitsha 56/02/06, which was not the CAS number contained in the Task Team Report.

18 Transcript at 2370 – 2374 (10 February 2014).

19 Id. at 2372.

20 Record Bundle 7(1), File A, Item 2a, p 37.31

21 Record Bundle 2(1), File 1.4, Item 4, p 19.

22 Record Bundle 7(1), File A, Item 2a, pp 37.12 – 37.13 at para 9.

23 Record Bundle 7(1), File A, Item 2a, p 37.32.

24 Record Bundle 2(1), File 1.4, Item 4, p 20.

25 The Task Team Report Record Bundle 1(3), AL 87, p 694.

26 Id. The docket number is Khayelitsha CAS 8/5/2010.

was committed, on 12 November 2012. The accused was convicted, and sentenced to five years, fully suspended for five years.

(c) A young boy from Taiwan, Site C, whose name was withheld

- [15] This complaint related to the rape of a 7-year old boy in Taiwan section, Site C on 8 April 2010. According to the complainant organisations, despite assurances to the family that the accused would not be released on bail, the accused was released on bail on 28 May 2010, without opposition from the prosecutor.²⁷
- [16] According to the DPP, the prosecutor had initially decided to oppose bail but then exercised his discretion and opted not to do so as the accused had a fixed address and work, appeared not to be a flight risk, there was no independent corroboration for the complainant's version and the medical evidence was inconclusive.²⁸ There is uncertainty as to the question whether bail conditions were set when the accused was granted bail on 28 May 2010. In one letter, the DPP said that no bail conditions were set on 28 May 2010,²⁹ but in a later letter, the DPP said that bail conditions were set on that date.³⁰
- [17] According to the complainant organisations, the family alleged that the accused "tried to intimidate and threaten the victim and his family, shouting that he would kill them and set their home alight."³¹ The father went to SAPS to lay a charge of intimidation, but, according to the complainant organisations, the charge was not added to the existing docket, and the accused was not arrested.
- [18] The DPP states that the prosecutor was made aware of the allegation of intimidation as statements were filed in the main docket. Intimidation constituted a breach of the bail conditions set by the Court, so the State brought an application for the bail to be revoked. A formal bail application was held and the Magistrate ruled that the accused should remain in custody. The DPP confirmed that no separate docket was opened and no prosecution was instituted on the intimidation charge.³²
- [19] Again, according to the complainant organisations, the family was informed on 20 September 2010 that the docket had been lost and the case was accordingly withdrawn.³³ According to the DPP on that date the docket was not brought to court but the J15 does not indicate that the docket was lost at any stage.³⁴
- [20] The Task Team investigated the matter, and found that the child had been found by a social worker to be unfit to testify. Accordingly, on 4 March 2011, the Senior Public Prosecutor decided, given the fact that the child was not able to testify, that the matter should be provisionally withdrawn, and reassessed in five years' time. The docket was placed on the "brought-forward" system for April 2016. The Task Team concluded that the case had been properly investigated.³⁵

27 Record Bundle 7(1), File A, Item 2a, pp 37.13 – 37.14 at paras 17 – 21.

28 Record Bundle 7(1), File A, Item 2a, p 37.32 at para 3.

29 Id.

30 Record Bundle 2(1), File 1.4, Item 4, p 22.

31 Record Bundle 7(1), File A, Item 2a, p 37.14 at para 20.

32 Record Bundle 2(1), File 1.4, Item 4, p 22.

33 Record Bundle 7(1), File A, Item 2a, p 37.14 at para 21.

34 Record Bundle 2(1), File 1.4, Item 4, p 23.

35 The Task Team Report Record Bundle 1(3), AL 87, p 694.

Photo 7: Public walkway in Harare



- [21] The Commission called for the docket, having obtained the docket number from the Task Team report.³⁶ The docket was provided and has been perused by the Commission. Given that it is a “live” docket which may yet result in a prosecution, the Commission is of the view that it is not appropriate to disclose the details that it found in the docket.
- [22] The Commission records that Mr Bregman, who works for the SJC spoke positively about his engagement with the investigating officer in this case, saying that the investigating officer “did her utmost” to support the victim and his family, “showed true concern and compassion” and was in constant communication keeping the family up to date with developments.³⁷

36 The docket number is Khayelitsha CAS 126/04/2010. The docket will not be published with the Commission’s record as it is a “live” docket as the prosecution is not complete.

37 Record Bundle 1(5), File D, Item 2 at para 33.

(d) Ms Adelaide Ngongwana

- [23] Ms Ngongwana, an elderly woman in her 70s, was shot in the leg on a Sunday morning, 3 October 2010, by police officers who were apparently chasing a suspect in a stolen car.³⁸ According to the complainant organisations, Ms Ngongwana was originally told by members of SAPS that she would have to walk to hospital. The account continues –

“In tears, Ngongwana managed to convince one of the officers to assist her to the car. Despite being just shot in the leg, she was forced to walk to the police car.”³⁹

- [24] A complaint was laid with the Independent Complaints Directorate (the ICD)⁴⁰ in October 2010 on behalf of Ms Ngongwana alleging that the police did not conduct themselves in a proper manner in dealing with the incident and that ICD had not been informed of the shooting.⁴¹ According to the complainant organisations, the ICD concluded that the SAPS conduct that had resulted in Ms Ngongwana being shot had not been improper. Also the ICD did not consider the complaint concerning the treatment of Ms Ngongwana.
- [25] The Task Team investigated this complaint and found that Ms Ngongwana had been shot during cross fire between SAPS members and suspects who were driving a car reported to be stolen. Two dockets were opened in relation to the incident, and were found by the Task Team to have been closed “undetected”. The Task Team concluded that the cases had been poorly investigated.⁴²
- [26] Ms Ngongwana sadly passed away in April 2011, before the Commission was established. During the hearings of the Commission, Mr Lehlo, Western Cape Provincial Director of Investigations at IPID, and formerly Provincial Head of the ICD, responded to questions put by counsel for the complainant organisations regarding this complaint.⁴³ However, he was unable to provide information during his testimony as he did not have the information concerning the complaint with him, but undertook to investigate and report back to the Commission.
- [27] Thereafter, on 4 April 2014, Mr Lehlo provided written answers to the Commission in which he stated, in the barest of terms, that the ICD had referred the complaint to the Provincial Commissioner to be dealt with in terms of section 53(2)(a) of the SAPS Act.⁴⁴ The Commission called for the two dockets.⁴⁵ After perusing the dockets, the Commission agrees with the Task Team that the dockets contain no evidence of any proper investigation undertaken by the investigating officer at the Khayelitsha police station. Both dockets appear to relate to the same incident. Although the supervising detective in both dockets requested the investigating officer to obtain statements from the police officers who were involved in the shooting incident, such statements do not appear in the docket. No hospital report is contained in the docket, nor is there any statement from Ms Ngongwana. Moreover, although the supervising detective requested the investigating officer to check whether any bullet was

38 Record Bundle 7(1), File A, Item 2a, p 37.14 – 15, paras 22 – 26.

39 Id. at para 23.

40 The Independent Complaints Directorate was the predecessor of IPID. See Chapter 5 at para 18 above. See also the IPID file in relation to this complaint Record Bundle 4(5), File 3, Item 2, pp 28 – 58.

41 Record Bundle 4(5), File 3, Item 2, p 30.

42 The Task Team Report, Record Bundle 1(3), AL 87, p 694 – 696.

43 Transcript at 1533 – 1548 (5 February 2014).

44 Letter from IPID dated 4 April 2014 Record Bundle 13(5), Item 1. Section 53(2)(a) formed part of Chapter 10 of the SAPS Act which was repealed by the IPID Act. Record Bundle 4(5), File 3, Item 2, p 36.

45 Khayelitsha CAS 115/10/2010 and 116/10/2010, Record Bundle 7(4), File 4.2(2), Items 12 and 13, pp 439 – 462.

extracted from Ms Ngongwana's leg, this does not appear to have been done. Nor is there any indication on the dockets that the matters were referred to the ICD.

- [28] The Commission has not been provided with any evidence of any investigation by SAPS in terms of section 53(2)(a) of the SAPS Act into the circumstances of the shooting. There is also no indication that any steps were taken, subsequent to the Task Team report concluding that the matter had been poorly investigated. Mr Bregman mentioned this incident in his statement and attached a report from the SAPS Provincial Inspectorate which he received seven months after the complaint had been lodged.⁴⁶ The Inspectorate report concluded that police had been returning fire, and had accidentally injured Ms Ngongwana and that the matter should be regarded as closed. Mr Bregman noted that Ms Ngongwana had not been contacted by the Inspectorate to inform her of the outcome of the investigation. He also said that the report "offered no explanation" of the decision to shoot, and failed to deal with the insensitive manner in which Ms Ngongwana was treated following her injury. He also noted that there was no apology or any attempt to ensure that Ms Ngongwana had received appropriate medical treatment.

(e) Ms Angy Peter

- [29] Ms Angy Peter laid a complaint concerning what appeared to have been the reckless use of firearms by members of SAPS near Site C in Khayelitsha on 3 October 2010.⁴⁷ This was the same day on which Ms Ngongwana was shot (see previous complaint). This shooting also took place near the Site C taxi rank. Her account of the incident is as follows –

"At approximately midday today I was in a taxi that was driving towards Site C taxi rank in Khayelitsha. As we were driving a Quantum taxi passed us going very fast. It was being pursued by two police vehicles, one a van, the other one a sedan. Apparently the taxi had failed to stop after a road accident. The police were firing live shots at the taxi, which contained at least one passenger. There was a policeman holding a pistol out of the window of each vehicle. I saw a policeman in the sedan fire a shot out of the window while the car was moving. The bullet smashed into the window of the Quantum. The taxi rank was very busy and there were lots of people around. When the firing began people started running and screaming. The Quantum stopped at the taxi rank; we pulled into the other side.

I got out of the taxi and saw a man approximately 30 years old, sitting down. He had been shot in the back. The police had stopped and many people crowded around. The police would not allow anyone to see or speak to the wounded man. They prevented anyone from getting near him. A second man, approximately in his late twenties, approached the police and told them he had also been shot. Thirty minutes later an ambulance arrived for the man who had been shot in the back. Witnesses said that a third person had been shot as well, by the garage, and had been taken in another ambulance. When I returned to the scene this afternoon a group of people said that the police had taken away the taxi"⁴⁸

46 Mr Bregman's Statement Record Bundle 1(5), File D, Item 2 at paras 42 – 44 and Annexure JB3 to Mr Bregman's Statement Record Bundle 1(5), File D, Item 2.3, pp 39 – 40.

47 Record Bundle 7(1), File A, Item 2a, 37.15 – 37.16 at paras 27 – 32.

48 Id. at pp 37.15 – 37.16 at paras 28 – 29.

- [30] According to the complainants a complaint was laid with the ICD but was dismissed by the ICD seven months later on the basis that the police were justified in using firearms.⁴⁹ The ICD dealt with this complaint under the same CCN number as the complaint relating to Ms Ngongwana referred to above.⁵⁰ The ICD correspondence register provided to the Commission does not reflect that a letter was sent to the Social Justice Coalition justifying the use of firearms.⁵¹ However, the SAPS report dated 25 January 2011, contained in the ICD file, does indeed reach that conclusion and ignores the fact that the discharge of the firearm was not reported to the ICD. The complaint was investigated by the Task Team, who perused the docket and concluded that the charge had been withdrawn by the Public Prosecutor owing to poor investigation. The Task Team returned the docket to the investigating officer with an instruction to finalise the queries of the Prosecutor.⁵² The Commission called for and received the docket.⁵³ The docket indicates that a member of SAPS was charged with attempted murder but the charges were withdrawn and the docket returned to SAPS for further investigation in July 2011. The Commission reviewed the docket in June 2014 at which stage the last entry in the investigation diary was October 2012 which states further investigation was required. Because this is a pending docket, it has not been included in the Commission's public record.

(f) Ms Nandipha Makeke

- [31] According to the complaint lodged by the complainant organisations, Ms Makeke was raped and murdered in 2005 when she was 18 years old.⁵⁴ Ms Makeke was an activist who had joined the Treatment Action Campaign, one of the complainant organisations, at the age of 14. According to the complaint, one of the accused, a known gang leader, intimidated and threatened colleagues of Ms Makeke during the trial. One of her colleagues' homes was broken into, and another was stabbed by an assailant suspected of being part of the same gang. An interim protection order was obtained from the High Court to prevent the gang leader intimidating and harming colleagues of Ms Makeke.⁵⁵
- [32] The Task Team investigated the complaint and found that two people had been convicted of charges related to the murder and rape of Ms Makeke in the Khayelitsha Magistrates' Court on 7 March 2008. One was sentenced to 15 years for murder and 5 years for being an accomplice to rape, and the other to 15 years for rape and 5 years as an accomplice to murder. The Task Team concluded that the matter had been properly investigated.⁵⁶
- [33] The Commission called for this docket as well.⁵⁷ According to the DPP the matter was delayed on numerous occasions due to the absence of witnesses.⁵⁸ The DPP also told the Commission that the matter had been withdrawn because the witnesses did not want to proceed with the case, but the Commission considers that this statement is an error as it does not accord with the outcome of the case.

49 Id. at 37.17 at para 32.

50 See para 34 of Chapter 9 below which explains the procedures followed when ICD/IPID open files; Record Bundle 4(5), File 3, Item 2, pp 40 – 41.

51 Record Bundle 4(5), File 3, Item 2, p 51.

52 Task Team report, Record Bundle 1(3), AL 87, p 696.

53 Khayelitsha CAS 117/10/2010.

54 Record Bundle 7(1), File A, Item 2a, 37.17 – 37.18 at paras 33 – 36.

55 Id. at p 37.18, para 36.

56 Task Team Report Record Bundle 1(3), AL 87, p 696.

57 Harare CAS 692/12/2005. Record Bundle 7(4), File 4.2, File 1, Item 33, pp 462 – 628.

58 Record Bundle 2(1), File 1.4, Item 4, pp 26.

- [34] Although the case took three years to be finalised, the docket demonstrates a thorough investigation of this crime and reveals that at least one of the perpetrators was a member of one of the Western Cape prison gangs. The Makeke family attended at least the first day of hearings of the Commission.⁵⁹ Mr Achmat, in his testimony, cast doubt on the quality of the police investigation,⁶⁰ particularly in the light of the number of postponements, occasioned in some instances by the docket not being available. He also said that the police never visited the family to inform them of the progress of the investigation and prosecution.⁶¹

(g) Ms Lorna Mlofana

- [35] According to the complaint, on 13 December 2003, Ms Mlofana was assaulted, raped and murdered in a shebeen toilet.⁶² Ms Mlofana lived openly with HIV and was a member of the Treatment Action Campaign, and active in their campaigns.
- [36] Two men were convicted of crimes relating to her murder in the High Court and in February 2006, one was sentenced to life imprisonment for murder, and a concurrent ten years for rape and the other was found guilty of attempted murder and sentenced to an effective seven years. The first accused appealed against his sentence, and it was reduced to eight years imprisonment of which three years were suspended for five years. He was then released.
- [37] The complaint states that the family of Ms Mlofana was not informed of the appeal on sentence, nor of the fact that one of the perpetrators had subsequently been released. The complainant organisations also assert that there was poor handling of forensic evidence in the case, that a bloody shoe was not sent for DNA analysis until after the defence had closed its case.⁶³
- [38] According to the DPP, the prosecutor only became aware that the police officer who arrested the first accused had seized a pair of shoes at a very late stage during the trial. There was no reference to the shoes in the docket.
- [39] The Task Team investigated the case, found that two perpetrators had been sentenced, and concluded that the matter had been properly investigated.⁶⁴
- [40] Mr Achmat also testified in relation to this prosecution.⁶⁵ He asserted that the campaign for the establishment of the Commission arose as a result of the manner in which this murder was investigated and prosecuted. He was critical, amongst other things, of the investigation methods, the extensive delays and postponements in the trial, and the failure of the police to inform Ms Mlofana's family of the progress in the prosecution.
- [41] The Commission called for and received the docket.⁶⁶ The Commission has perused the docket. The DPP also provided the Commission with a copy of the judgment delivered on 13 February 2007 in the appeal.⁶⁷ It is apparent from the judgment that the two perpetrators who had been convicted on 8 December 2005 appealed against their convictions and sentences. The Second Appellant did not proceed with the appeal. The First Appellant (the first accused)

59 Transcript at 27 – 28 (23 January 2014).

60 Transcript at 2368 (10 February 2014).

61 Id.

62 Record Bundle 7(1), File A, Item 2(a), p 37.18 at paras 37 – 40.

63 Id. at para 40.

64 The Task Team Report, Record Bundle 1(3), AL 87, p 696.

65 Transcript at 2361– 2366 (10 February 2014).

66 Khayelitsha CAS 1587/12/2003. Record Bundle 7(4), File 4.2(2), Item 56, pp 1499 – 1776.

67 Record Bundle 2(1), File 1.4, Item 4, p 27.

appealed against his convictions of murder and rape for which he had been sentenced to life imprisonment and ten years' imprisonment respectively. The appeal against the conviction of murder succeeded and was substituted with a conviction of assault with intent to do grievous bodily harm. A new sentence of 8 years imprisonment was imposed, three years of which was suspended for five years.⁶⁸ The DPP indicated that the shoes had never been sent for forensic examination and that a positive DNA report could have strengthened the case against the first accused on the charge of murder, as there were discrepancies in the oral evidence.⁶⁹

(h) Ms Nokuzolo Mantshantsha

- [42] This complaint related to the demolition of a home in DT informal settlement in Khayelitsha and concerned the conduct of the Cape Town Metropolitan Police Department and Law Enforcement Officers, not SAPS.⁷⁰ According to the complainant's statement, Ms Mantshantsha's home had been marked with an "X" a few days earlier, which indicated that it had been unlawfully erected and would be dismantled. According to the complainant organisations, Ms Mantshantsha's home was dismantled without a court order, and without fourteen days' notice to her. Moreover, many of her possessions were destroyed in the process. The complainant organisations say that this case is an example of the illegal manner in which evictions are carried out.
- [43] The Task Team noted that the case was never referred to the police, so a CAS number was never allocated.⁷¹ This complaint falls outside the Commission's mandate, which is restricted to the operation of SAPS within Khayelitsha. The DPP indicated to the Commission that the Senior Public Prosecutor had no knowledge of this complaint.⁷²

B. CONCLUSIONS IN RESPECT OF THE EIGHT INDIVIDUAL COMPLAINTS

- [44] No-one could read the above list of complaints without a deep sense of dismay. Three of the complaints concern the brutal murders of young women, two of the three cases also involving rape. Two of the cases concern community members who were shot by members of SAPS in Khayelitsha while going about their daily business and one relates to the alleged rape of a young child.
- [45] Yet, four of the eight cases, including the three murder cases, resulted in convictions, which the Commission finds encouraging. Nevertheless, each of the convictions was achieved only after significant delay: the shortest period being just less than three years and the Commission considers this pattern of delay to be a matter of grave concern. The Commission is conscious that there may be many reasons for the delay, some of which are not the responsibility of the police. Where significant delays arise, even if only partly due to dilatory or poor investigations by SAPS, that is a matter of grave concern. In this regard, the Commission notes that the Task Team made no adverse comments at all about the delays occasioned, even when they were excessive, in cases that were finalised, tending only to conclude that if there was a conviction,

68 *Ntumbukane & Another v The State* (Case no: A310/2007 dated 13 February 2007), Record Bundle 2(1), File 1.4, Item 4 pp 39 – 50.

69 *Id.* at p 27.

70 Record Bundle 7(1), File A, Item 2(a), p 37.19 at paras 41 – 44.

71 The Task Team Report, Record Bundle 1(3), AL 87, p 696.

72 Record Bundle 2(1), File 1.4, Item 4, p 28.

the matter had been “properly investigated”. This failure to comment on serious delays, is in the view of the Commission, a signal of a worrying complacency about the inevitability of delays in the criminal investigation process. Delays in criminal investigations are a matter of concern, and should be treated as such by SAPS. This is a matter to which we will return later in this report.

- [46] There are five other issues of concern, in addition to the problem of delay already mentioned, which the Commission draws from its investigation of these cases –
- It is noticeable that in several of the cases, court proceedings only came to fruition after the campaign waged by the complainant organisations was well under way. It is not possible to be certain on the record before the Commission whether there is a causal link between the successful, but dilatory, prosecution of these cases and the campaign waged by the organisations. Whether or not such a link exists, the Commission wishes to make plain that it should not be necessary for members of the community to have to launch protest campaigns to obtain justice.
 - The Commission also notes with grave concern that the two incidents where community members were “caught in the crossfire” in shooting incidents have not, at the time of writing as far as the Commission is aware, been properly investigated. At the time that these two cases were investigated by the Task Team, both cases displayed “poor investigation” which required the Task Team to instruct investigating officers to improve their work. The case dockets do not reflect that any instruction to that effect was given despite the remarks in the Task Team report. These two cases are also suggestive of a willingness to turn a blind eye to police wrongdoing, and a failure by complaints systems and oversight bodies, in this case the ICD, to pursue investigations into injuries caused to innocent bystanders with adequate diligence and concern. The Commission is concerned at what appears to be a failure to investigate thoroughly the circumstances that resulted in innocent bystanders being injured in circumstances where SAPS members used their firearms in busy public spaces. We cannot help but wonder whether, if these incidents had taken place near a transport hub in the City centre itself, there would have been such a lackadaisical attitude to their investigation.
 - In all these cases, the complainants complain of a failure on the part of SAPS to keep them informed of the process of investigations and criminal trials. It is almost as if SAPS members see no need to inform bereaved family members of the progress of the criminal investigation. Such an attitude is unacceptable.
 - In several of the cases, there are allegations that family members and friends of victims were threatened by accused persons during the conduct of the criminal investigation and trial. No criminal charges resulted from these allegations of intimidation. The Commission considers that SAPS should take such complaints extremely seriously and not turn a blind eye to them. Trust in the criminal justice system entitles complainants, their families, friends, and witnesses to be able to continue to go about their business without fear of intimidation.
 - A perusal of the dockets shows a pattern of weak investigation. This is not invariably present, but these eight cases suggest that it happens. Criminal investigation is a craft, and like many human crafts it is one that improves with practice, training and guidance. There is evidence on these dockets that not all criminal investigators in Khayelitsha are skilled in and attentive to their craft.

These issues will be revisited later in this report.

CHAPTER SEVEN

OVERVIEW OF INSPECTIONS IN LOCO AND INDIVIDUAL WITNESSES IN PHASE ONE

- [1] As set out in Chapter 3 above, the Commission held 31 days of hearings in Phase One. During these 31 days, 87 witnesses testified. Appendix B contains an Index providing the names of witnesses who testified in Phase One, and Phase Two with page references to their testimony in the Transcript, references to the Record Bundles where their statements are to be found, as well as Record Bundle references to any Exhibits admitted during their testimony. It is not possible to provide a comprehensive summary of all the testimony before the Commission, but the Commission considers it important to provide an overview of it. Before doing so, we should like to express our appreciation to all the witnesses for their candour and courage in testifying. All the witnesses were reminded that the proceedings were being held in public, that their evidence might be made public both in the media and in the Commission's report and indicated that they had no objection to both their identities and testimonies being made public. To the extent that this report contains only a brief overview of the testimony led before the Commission, we remind readers that a full transcription of the hearings is readily available on the Commission's website: www.khayelitshacommission.org.za.
- [2] This Chapter shall start with a brief description of the inspections in loco held by the Commission, then turns to an overview of the testimony of individual witnesses given in Phase One. That part of the Chapter divides the witnesses into five groups –
- members of the community: in this section we deal not only with witnesses who gave oral testimony, but also with some witnesses who provided statements to the Commission but did not testify in person;
 - community activists;
 - community leaders or elders;
 - people who work or have worked in Khayelitsha; and
 - community police forums.

The next Chapter, Chapter 8, will discuss the testimony of the expert witnesses in Phase One. It is followed by Chapter 9 which describes the evidence of key government agencies in Khayelitsha who work with SAPS or whose work is closely affected by SAPS, including DOCS, the City, IPID, the Thuthuzela Care Centre, the National Prosecuting Authority (NPA) and the provincial Department of Forensic Pathology. Thereafter Chapter 11 deals with the testimony of SAPS witnesses. As mentioned, time and space do not permit us to discuss each witness's testimony in the detail we would like. As a consequence we have selected the testimony of some witnesses for fuller discussion. Making this selection was hard, but we thought it necessary in order to avoid over-burdening the report. We hope that the accounts of the selected witnesses will make plain why their testimony was selected for inclusion in the Report. This should not in any way detract from the value of the contribution made by other

witnesses who participated in the Commission's proceedings or who had provided written statements.

A. INSPECTIONS IN LOCO

(a) Khayelitsha

- [3] On Tuesday 21 and Wednesday 22 January 2014, the Commission conducted inspections in loco in Khayelitsha. Parties admitted to appear before the Commission were able to identify places they wished the Commission to visit during the inspections in loco. The venues and programme for the inspections in loco were confirmed in Notice 9.¹ The programme was varied after the issue of Notice 9, and the final programme is to be found in Appendix E. The purpose of the inspections in loco was to visit different neighbourhoods in Khayelitsha to obtain an understanding of Khayelitsha and the context in which policing takes place. During the inspections in loco, the commissioners were accompanied by the Evidence Leaders and the Secretary of the Commission, lawyers representing parties before the Commission, as well as community members, members of SAPS and journalists. At times the venues were too cramped to accommodate everyone participating in the inspections in loco, especially at the three police stations, but where possible everyone was permitted to observe the inspection.
- [4] On 21 January 2014, the Commission visited the three police stations which are the focus of this report, the Khayelitsha Site B police station which is located on Bonga Drive, Site B, the Lingeletu West police station, situated on Makabeni Drive, Lingeletu West and the Harare police station, on Steve Biko Drive, Harare. The Commission also visited the offices of the Khayelitsha Cluster Command, which shares the same premises as the Khayelitsha Site B police station, the latter also being the accounting station for the Cluster. At each police station, the Commission saw the Community Service Centre (the CSC), the offices where detectives work, the exhibit store,² the holding cells,³ the archiving rooms for dockets and files, the victim support rooms and the firearm safe. In the afternoon, the Commission visited TR Section and the Site C Taxi Rank.
- [5] On the evening of 21 January 2014, the Commission conducted an evening inspection in Khayelitsha, which involved a walk through TR section, BM Section and Greenpoint. Most areas visited on the evening inspection consisted of informal housing, not well serviced by roads. The Commission was able to inspect the banks of chemical toilets provided by the City for use of the residents of the area. Many of the toilets were locked, but unlocked toilets inspected by the Commission were mostly in an unusable and unhygienic condition. The Commission was able to see the taps that are situated throughout the informal areas. In contrast to the toilets, most of the taps were functioning. There were no queues for water. The Commission also obtained an impression of the quality of light produced by the high mast lighting that is installed throughout Khayelitsha. We also observed several lights that were not functioning. Both the unsanitary condition of chemical toilets and inoperative high mast lights remain hotly contested issues in Khayelitsha.
- [6] On 22 January 2014, the Commission visited Enkanini in Makhaza, one of the newest areas of Khayelitsha, where members of the local street committee met us. In Enkanini, a

1 See Chapter 3 at para 18, 29 and 30 and for Notice 9, Record Bundle 6(1), File 4, Item 9c.

2 Save at Lingeletu West where there is no exhibit store.

3 Save at Lingeletu West where there are no holding cells.

neighbourhood with informal houses, the City is supplying a system of portable toilets for use inside people's homes, and the Commission was able to see the toilets, and the manner in which these are serviced and replaced. The Commission was also shown an open football field to the south of the railway line, between the Kuyasa and Chris Hani railway stations where we were informed that vengeance killings had taken place on several occasions. The Commission also visited Harare Park and a new Astroturf football field, erected as part of the 2010 World Cup, as well as the pathway that runs through the park and links the transport hub of central Khayelitsha to Harare. The Commission was shown the Violence Protection through Urban Upgrading (VPUU) box erected next to the pathway to improve the safety of pedestrians. The Commission was also shown an open field, which forms part of the same pedestrian route, near Hlobo Street in Ilitha Park. In the middle of this field we saw several large concrete bunkers, that had no apparent civic purpose but were used, we were told, by robbers.⁴ Finally, the Commission visited the intersection of Pama Road and Thandazo Road in Site B, a place where there is an abandoned building, apparently used by criminals as a hideout. We were also told that the intersection of this road is an area where youth gangs fight regularly.

- [7] During these inspections, the Commission was able to meet and talk to members of the public, and members of SAPS, quite openly. The Commission ruled that the content of those conversations would not constitute evidence before the Commission and would not formally be included in the record.
- [8] The Commission is of the view that the inspections in loco held in Khayelitsha were helpful and expresses its gratitude to those Khayelitsha residents and members of SAPS who made the inspections possible. The inspections enabled the Commissioners to appreciate, to some extent, the challenges SAPS faces in Khayelitsha. As important, however, the Commissioners were able to obtain some small sense of what daily life is like for our fellow citizens who live in the informal areas of Khayelitsha.

(b) Traffic Management Centre

- [9] On Monday morning, 3 February 2014, the Commission visited the Traffic Management Centre (the TMC) in Goodwood. Present at the inspection in loco, were the Evidence Leaders, Secretary to the Commission, as well as the lawyers representing the parties before the Commission. At the TMC, the system of closed circuit television cameras (CCTV) used in the City was explained to the Commission. The inspection in loco was supplementary to the documentary reports and statements from the City explaining the camera system,⁵ as well as the testimony of Mr Bosman,⁶ Head of the Directorate of Safety and Security of the City of Cape Town, Mr Cole, Superintendent, Cape Metro Police Service responsible for CCTV and Mr Möller, Senior Superintendent, Cape Metro Police.⁷
- [10] The Commission also had an opportunity to see how the 24-hour monitoring of camera footage of cameras located all over the City is done. The monitoring centre has banks of large screens or consoles. Each console is divided into twelve parts, each showing footage from a camera located somewhere in the City. Two monitors watch each console. If they

4 The City Manager informed the Commission by letter dated 23 April 2014 that the concrete bunkers had been used by City Parks to store tools but were removed once the issue was raised by the Commission. Record Bundle 12(4), Item 1, pp 24 – 25.

5 Mr Cole's Statement Record Bundle 8(5), Item 2; Mr Bosman's Statement Record Bundle 4(2), File 8 at paras 45 – 58.

6 Transcript at 1901 – 2013 (6 February 2014).

7 Transcript at 2528 – 2565 (11 February 2014).

see something untoward happening, they are able to use controls to zoom in on the screen to magnify the scene. A SAPS team is permanently attached to the monitoring centre, but unfortunately the head of that team was absent on the morning of the inspection in loco, although a junior member was present. Should a monitor display a crime in progress, an urgent message is sent to the relevant SAPS unit to respond to the crime. The footage is automatically stored and may be used in evidence if requested. While the Commission was in the monitoring room, we observed the aftermath of an in-transit robbery of a truck and how SAPS were called to the incident. The Centre has two monitoring halls: in one, the cameras placed along the major highways in the City to ensure smooth traffic flow are monitored, and in the other, the cameras located throughout the City with the twin purposes of deterring and detecting crime are monitored. The City has 150 cameras for the detection of crime that are monitored at Goodwood, of which 16 are located in Khayelitsha.⁸ The cameras were installed in Khayelitsha in 2003,⁹ and paid for by national government.¹⁰ Since 2003, no further cameras have been installed.¹¹ There are a total of 886 CCTV cameras in the City. 360 are under the control of the Metro Police, the rest relate to transport and highway management, between 200 and 250 of these relate to the integrated rapid transport system.¹² The use of CCTV cameras is an issue to which we will return in Chapter 9.

- [11] The Commission found the visit to the TMC to be useful, and wishes to express its gratitude to the City for facilitating the inspection in loco.

(c) Provincial Command Centre

- [12] On 7 April 2014, the Commission visited the provincial Command Centre in the City of Cape Town at the invitation of SAPS. Present were the Commissioners, the Evidence Leaders, the Secretary of the Commission, the legal representatives of the complainant organisations, the province and the City, as well as SAPS' legal representatives. The Commission was shown how the provincial Command Centre monitors crime reports made from around the province. Immediate decisions are made as to interventions by provincial teams, such as the Tactical Response Team (TRT), the Public Order Policing unit (POP) and any other specialist teams. When major events are happening in the province, such as the opening of Parliament, or the holding of elections, police operations to ensure safety and security are managed from the Command Centre.
- [13] The Commission found the visit to the provincial Command Centre to be useful, and wishes to express its gratitude to SAPS for facilitating the inspection in loco.

B. OVERVIEW OF TESTIMONY OF INDIVIDUAL WITNESSES

- [14] During Phase One of its hearings, the Commission heard oral testimony from seventeen individual members of the community.¹³ Three will be discussed under the subheading

⁸ Mr Cole's Statement Record Bundle 8(5), Item 2, paras 7 and 21.

⁹ Id. at para 8.

¹⁰ Id. at para 10.

¹¹ Id. at para 7.

¹² Transcript at 2565 (11 February 2014).

¹³ Ms Bontshi, Mr Nteza and Ms Ntsholo Transcript at 140 – 164 (24 January 2014); Mr Tame Transcript at 166 – 180 (24 January 2014); Ms Simelela and Mr Simelela Transcript at 273 – 329; Mr Magadla Transcript at 329 – 332 and

“community elders and leaders”.¹⁴ In addition to the testimony of these witnesses, however, the Commission has admitted to the Record a large number of statements taken from community members.¹⁵ These include the eight original complaints discussed in Chapter 6, several supplementary complaints identified by the complainant organisations, either to the Premier or to the Task Team, four complaints submitted by the Women’s Legal Centre (WLC)¹⁶ as well as approximately 75 statements filed by the complainant organisations,¹⁷ and more than 95 statements collected by the Commission.¹⁸ A list with a brief description of all the individual complaints is to be found in Appendix D. It was not possible for the Commission to call all the witnesses who had made statements, and so the Evidence Leaders and the legal representatives of the complainant organisations selected the witnesses who did testify. In this chapter, we will largely focus on the testimony that was led at the hearings, but there will be a brief discussion of eight of the written statements, in respect of which no witness testified at the hearings.

(a) Testimony concerning vengeance attacks

- [15] Ten of the witnesses¹⁹ testified in some way about vengeance or vigilante violence. Because of the seriousness of vengeance violence in Khayelitsha, and its relevance to the mandate of this Commission, the evidence heard concerning it will be set out in some detail.

(i) Testimony concerning killing of Mr Andile Ntsholo

- [16] The Commission heard evidence of two murders, that appear to have been vengeance killings, from family members of the murder victims. In the first case, three members of the Ntsholo family²⁰ testified concerning the murder of a family member, Andile Ntsholo.²¹ Ms Nomakhuma Bontshi was the main witness. Andile Ntsholo was her nephew, the child of her deceased sister. Andile Ntsholo was an orphan as his father was also deceased. Ms Bontshi lives in Philippi. She told the Commission that on 18 May 2012 she received a phone call from her niece, who told her that the community were calling her to a meeting in B Section in Khayelitsha concerning her nephew, Andile Ntsholo.²² Ms Bontshi was collected from her home in a car driven by a man she did not know. She was collected together with several other relatives. They were taken to the house in B Section where her nephew lived. There was a group of people in the house, whom Ms Bontshi thought were residents of Khayelitsha. She said she knew some of them, as they were friends of her sister, her nephew’s mother who

424 – 457 (27 January 2014); Ms Nduna Transcript at 554 – 581 (28 January 2014); Ms Mpekweni Transcript at 845 – 858 (30 January 2014); Ms Thosholo Transcript 859 – 888; Ms Ntsilane Transcript at 891 – 897 (30 January 2014); Ms Ncaphancapha Transcript at 1015 – 1058; Mr Hendricks Transcript 1061 – 1073 (31 January 2014); and Mr Gqeku Transcript at 2061 – 2080 (7 February 2014).

14 Bishop Mtsolo Transcript at 107 – 138 (23 January 2014); Mr Mahluthshana Transcript at 490 – 509 (28 January 2014); and Mr Mjonondwana Transcript at 509 – 533 (28 January 2014).

15 Appendix D to the Report which contains a list of all the individual complaints.

16 Record Bundle 1(9), Items 1 – 4.

17 Record Bundle 2(5), File 2, Items 1 – 72 and Record Bundle 4(4), Items 73 – 74 for redacted community statements filed by the complainant organisations. Not all the redacted community statements would fall within sub-category of “community members”, some fall within other categories contained in the Chapter.

18 Record Bundle 1(1), File 1.a, Items 1 – 83; Record Bundle 2(1), File 1.1, Items 79 and 84; Record Bundle 8(1), File 1.1, Items 85 – 87; Record Bundle 9(1), File 1.2, Items 88 – 91 and Record Bundle 10(1), File 1.2, Items 92 – 96. Again not all the community statements collected by the Commission fall within sub-category “community members” in this chapter, some fall within other categories contained in the chapter.

19 Ms Bontshi, Mr Nteza, Ms Ntsholo, Mr Tame, Ms Simelela, Mr Simelela, Mr Magadla, Ms Ncaphancapha, Mr Hendricks, and Mr Gqeku.

20 Ms Bontshi, Mr Nteza, Ms Ntsholo. Transcript at 140 – 164 (24 January 2014); Record Bundle 1(1), File 1.a, Items 66, 66A and 66B.

21 Lingeletu CAS 320/05/02012. Record Bundle 1(2), Items 62 – 64, which contain media articles dated 20 – 21 May 2012 of the killing of Andile Ntsholo.

22 Transcript at 142 (24 January 2014).

had died. Ms Bontshi and her relatives were asked to sit down, and then the people who had gathered told them that they wanted them to remove her nephew from Khayelitsha because he was stealing cell phones.²³ Ms Bontshi also testified that there were accusations that her nephew used drugs, and that children were coming to the house (perhaps to obtain drugs, though that was not clear) and the community members were afraid for their children.²⁴ Ms Bontshi and her relatives told the community members that they would make arrangements to have her nephew removed from Khayelitsha.²⁵

- [17] After the meeting, Ms Bontshi and her relatives were given a lift home in a different vehicle.²⁶ In the early hours of the following morning, 19 May 2012, Ms Bontshi received another call telling her that her nephew's body had been found in a field in B Section and that he had been burnt to death.²⁷ Ms Bontshi went immediately to the place where the body was found which was close to her nephew's home. Ms Bontshi testified that when she saw the body, she "was heartbroken and ... was asking myself the question why would people be so cruel."²⁸ There were people congregated around the body, some of whom, Ms Bontshi testified, had been present the previous evening at her nephew's home.²⁹ It remained unclear to Ms Bontshi who had murdered her nephew, other than it appeared to have been a vengeance murder committed by members of the community. The police did come to Ms Bontshi's home to ask about the murder the following day, but Ms Bontshi does not know if any criminal prosecution resulted from the murder of her nephew.³⁰ The Commission called for and examined the docket relating to this case. The Investigating Officer responded to the call and arrived while the body was on the scene. After interviewing witnesses, he could find no eyewitnesses to the murder. Nothing further appears to have happened.

(ii) *Testimony of Mr Mzoxolo Tame*

- [18] Mr Mzoxolo Tame also testified to the death of a family member as a result of a vengeance attack, Mr Tame testified about his experiences of the police following the murder of his cousin.³¹ Mr Tame lives in Ilitha Park, and works in the information technology department of the South African Social Security Agency.³²
- [19] According to him, on Sunday 20 January 2013 in the evening, he received a call to tell him that his cousin might have been killed at Harare on the previous night. He hurried to the Harare police station to make enquiries. He was told to come back the following day. On Monday 21 January 2013, he went to the Harare police station where he met the detective investigating the case concerning the death of his cousin. The detective was on his way to court. Mr Tame inquired about his cousin's death. According to Mr Tame, the detective responded "in a very harsh tone". According to Mr Tame, the detective said "that lightie was caught with his body halfway through a window of a house breaking in and was 'moered'."³³ The detective informed Mr Tame that there were three accused persons who were the owners and occupiers of the house who had caught the deceased allegedly breaking into the house. The detective also informed Mr Tame that the "whole community" had participated in assaulting the deceased.

23 Id. at 145.

24 Id. at 146.

25 Id. at 146.

26 Id. at 150.

27 Id. at 152.

28 Id. at 154.

29 Id. at 154 – 155.

30 Id. at 156.

31 Record Bundle 1(1), File 1.a, Item 64, Transcript at 166 – 180 (24 January 2014).

32 Transcript at 167 (24 January 2014).

33 Record Bundle 1(1), File 1.a, Item 64 at paras 5 – 6. Transcript at 171 (24 January 2014).

Mr Tame then asked when the case would come to court, but the detective told him that he would be wasting money to acquire lawyers as the deceased “had been caught in the act”.³⁴

- [20] Mr Tame stated that “I felt that [the detective] was not treating us with the respect that we deserved as a bereaved, grieving family. [The detective] is a police official in the public service and I believe that he should be neutral and sympathetic towards us...”³⁵ Mr Tame attended the bail hearing of the three persons accused with the murder of his cousin. They were all granted bail.
- [21] After the bail hearing, Mr Tame did not hear anything further from the police, so he called the supervisor of the detective with whom he had spoken. The supervisor told him that the detective who had been allocated to the case was the “right person” to have been allocated the case, and “that he is a good person to investigate the case”.³⁶
- [22] After the meeting with the supervisor, Mr Tame testified that he had heard nothing further from the police. He did not know what happened to the criminal case relating to the murder of his cousin. He concluded his testimony in the hearing by saying that, SAPS “think they are doing the community a favour in attending to the community’s enquiry I think their attitude is not that of public servants, because I think that they are lacking the understanding of a public servant, that they are a public service police ...”.³⁷ Counsel for SAPS chose not to cross-examine Mr Tame, but placed on record the fact that the investigating officer originally allocated to the case had been removed in April 2013 and replaced with an investigating officer described as “probably the best and most successful investigating detective at Harare” but that he had 382 pending dockets to investigate.³⁸ Counsel also indicated that the unacceptable manner in which Mr Tame had been treated had been referred for disciplinary action. An undertaking was given that the investigation of this case would be prioritised.³⁹ As Mr Tame’s details were in the docket, Counsel indicated that there was no reason why he should not be kept informed of the investigation.⁴⁰
- [23] The Commission called for and obtained a copy of the docket.⁴¹ From the docket it appears that the matter had been remanded four times by July 2013. The last remand was for “further investigation”. As this is a “live” docket, nothing further will be said, but it is clear that the matter is still pending more than two years after the murder took place. The Commission contacted Mr Tame in June 2014 by email. He replied and said that “after numerous phone calls”, he had managed to contact the investigating officer in March 2014 who told him that the blood samples had been sent for forensic analysis which would take four months. Mr Tame had heard nothing further from SAPS since March 2014. He had also not been informed as to whether the disciplinary proceedings that SAPS legal representatives had indicated would take place had ever taken place.⁴² He ended by saying that he hoped justice would prevail in the matter so that his family could close “this chapter”.

34 Id. at para 7.

35 Id.

36 Transcript at 176 (24 January 2014).

37 Id. at 177.

38 Id. at 178.

39 Id. at 179.

40 Id.

41 Harare CAS 379/01/2013.

42 Record Bundle 13(1), File 1.5, Item 22.1.

(iii) Testimony of Ms Nomamerika Simelela and Mr Mayedwa Simelela

- [24] Ms Nomamerika Simelela and her uncle, Mr Mayedwa Simelela, also testified about a vigilante attack.⁴³ They had both been arrested as a result of a vigilante killing but deny any responsibility for it. According to Ms Simelela, early in the morning of 13 June 2013, Ms Simelela and her boyfriend went to the Khayelitsha Mall to draw money because Ms Simelela intended to travel that day to a funeral in the Eastern Cape.⁴⁴ On their way back, near Mandela Park,⁴⁵ they met a group of boys who robbed them of R2700, a cell phone and a jacket. Ms Simelela then called her uncle who arrived in a vehicle to help her. They found the boys close to the Mall. One of them was wearing the jacket that had been stolen. Her uncle told the boys that they could either choose to be taken to their parents so that the stolen money could be refunded, or they could be taken to the police station.⁴⁶ The boys said that they should be taken to their parents who would refund the money. They fetched the mother of one of the boys in Tafelsig, and then went to 21 Section in Khayelitsha. While they were there, according to Ms Simelela, another large group of boys arrived, who pulled the two boys they had apprehended from the car. The large group of boys attacked and stabbed the two perpetrators to death. While this was happening, Ms Simelela and her uncle left the scene. Ms Simelela went to the funeral in the Eastern Cape. When asked why she did not initially call the police, Ms Simelela replied –

“... we did not call the police ... because ... we were sure that they had the money because it was only five minutes ago that the incident had taken place and we only wanted the money and the cell phone because we wanted to go home [to the Eastern Cape] at that stage”.⁴⁷

- [25] However, Ms Simelela testified that they did not recover the money or the cell phone. She explained that the group of boys who had killed the perpetrators said that they were doing so because they had just fought with the children from 21 Section.⁴⁸ Ms Simelela, her uncle and her brother were arrested on 17 June 2013 and charged with the murder of the two boys. Eventually, after several remands, on 22 November 2013, the case was withdrawn against them. SAPS told the Commission that the investigation was still pending.⁴⁹

(iv) Testimony of Mr Pule Hendricks

- [26] The Commission also heard the evidence of Mr Pule Hendricks, who was convicted of kidnapping and assault with intent to do grievous bodily harm in the Western Cape High Court in respect of a vigilante attack.⁵⁰ He lives in D Section in Khayelitsha. During March 2012, he was with a group of friends at a friend's home when they were called outside because a robbery had just happened.⁵¹ He and his friends caught one of the robbers, who, according to Mr Hendricks, had just robbed a young girl who lives in D Section of, amongst other things, her ID book. The person they apprehended told them that they, the robbers, lived in V Section in Site B, and that he could take them there.⁵² According to Mr Hendricks, the

43 Record Bundle 2(4), Items 1 and 2; Transcript at 297 – 329 (27 January 2014).

44 Transcript at 299 (27 January 2014).

45 Id. at 301.

46 Id. at 300.

47 Id. at 303 – 304.

48 Id. at 306.

49 Id. at 307. The Commission did not receive the docket for this case. Record Bundle 13(1)(1.4), File 3, Item 9.

50 Record Bundle 7(6), Item 1; Transcript at 1061 – 1073 (31 January 2014); *S v Mvabasa* Case No: SS 62/2012 (delivered 14 May 2013 (per Nyman AJ); Record Bundle 1, File 1.d, File B, Items 14 and 15; Record Bundle 8(1), File (1.5), Item 2 at para 6.

51 Transcript at 1064 (31 January 2014).

52 Id.

Photo 8: The inspection in loco on 21 January 2014 – crossing a railway bridge in Site C



person they had apprehended took them to various places but they did not find the ID book. They put the perpetrator in the boot of their car and took him back to the home of the girl who had been robbed.⁵³ There a group of community members had gathered. Mr Hendricks testified that he told the girl's father that he should call the police because of the large crowd that had gathered⁵⁴ and that he and his friends then left. Later they heard that the crowd had killed the perpetrator.⁵⁵

(v) *Testimony of Mr Magnus Persson*

[27] Another witness, not a resident of Khayelitsha, who testified about a vengeance attack by a crowd was Mr Magnus Persson.⁵⁶ Mr Persson is a Swedish citizen who was serving an internship with the Social Justice Coalition (the SJC) during the period that the Commission was holding hearings in Khayelitsha.⁵⁷ He testified that on 14 January 2014, he was with a group of colleagues from the SJC when they stopped to have lunch at the Site C taxi rank. He stayed in the minibus while his colleagues went to get lunch. Suddenly, he heard a commotion and when he turned around he saw a man stumbling towards him, covered with blood, being chased by a crowd.⁵⁸ Mr Persson stated that he immediately knew what was happening because he had read about vengeance attacks by crowds in Khayelitsha.

“It was really close and there were approximately among 40 – 50 people but it is really hard to tell actually because there were a lot of people coming chasing him, but there was also a lot of people hanging around at the restaurant having lunch and there was a lot of commotion in general, but when he fell down there

53 Id. at 1066.

54 Id. at 1067.

55 Id. at 1067 – 1068.

56 Mr Persson's Statement Record Bundle 7(11), Item 76; Transcript at 2648 – 2666 (11 February 2014).

57 Id. at 2649.

58 Id. at 2651.

the members of the community in the mob continued to assault him and there was one weapon that I saw. It was a big piece of wood and one of the guys kept on just smashing, smashing him on the head with the piece of wood when he was lying there and there was obviously blood everywhere and there was some more people as well kicking him in the head and just stomping him on the stomach and so on, so it was quite brutal and I was right there. but the fact of the matter is that as they were beating him there was a police car parked ... only a few metres away.”⁵⁹

- [28] According to Mr Persson, the police who were in plain clothes were having lunch at the restaurant and they did not immediately get up and try to intervene. The crowd dragged the victim a little way away out of the sight of Mr Persson, but he could still hear the shouts and the blows. He described the crowd as making two noises: “for example, when they smashed him in the head with the piece of wood, you would hear that the crowd would cheer, and it wasn’t only cheers of joy and laughter, it was also like people who were actually really upset and afraid”.⁶⁰ About ten or fifteen minutes later, another police car arrived, with uniformed police in it, and the police climbed out and went into the crowd, where they rescued the victim and took him with them in their car. He was able to walk with them, so did not seem to be fatally injured.⁶¹
- [29] In addition to evidence concerning vengeance attacks, several of the witnesses who testified before the Commission testified as to the inadequacy of police investigation of crime and the failure of police to keep family members informed of the progress of investigations and prosecutions.

(b) Testimony concerning police inefficiencies or failures

(i) *Ms Vuyiswa Mpekweni*

- [30] Ms Vuyiswa Mpekweni both made a statement to the Commission⁶² and testified.⁶³ She is 52 years old, works as a domestic worker and lives in Makhaza. She told the Commission that in October 2007, she had been woken in the middle of the night by a woman telling her to come urgently to her niece’s house in 36 Section, Makhaza. When they arrived at the house, which was an informal house, they could see that it had burnt down. The police had cordoned off the area. It appeared that the door to the house had been secured with a wire so that the inhabitants could not escape, and that petrol had then been poured around the house and lit. Four people, Ms Mpekweni’s niece and three children, a boy aged 17 years and two girls aged 9, died in the blaze.⁶⁴ The next day, Ms Mpekweni heard that her niece’s husband had gone to the Harare police station to confess to having committed the murders.⁶⁵ The person who had confessed to the murders appeared in court once, but apparently the docket was mislaid on that day, and he was released.⁶⁶ He then moved to Johannesburg, and the matter has not been pursued. When Ms Mpekweni went to the police station to tell them that the perpetrator had moved to Johannesburg, the investigating officer asked Ms Mpekweni to find the address of

⁵⁹ Id. at 2652.

⁶⁰ Id. at 2653.

⁶¹ Id. at 2655.

⁶² Record Bundle 1(1), File 1.a, Item 47.

⁶³ Transcript at 845 – 858 (30 January 2014).

⁶⁴ Transcript at 849 – 850 (30 January 2014).

⁶⁵ Record Bundle 1(1), File 1.a, Item 47 at para 3; Transcript at 851 (30 January 2014).

⁶⁶ Transcript at 852 (30 January 2014).

the perpetrator in Johannesburg. Ms Mpekweni described how she had gone to the police station with a photograph that she had obtained of the perpetrator to assist the police as follows –

“I then met that detective and 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 [the perpetrator] 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 that 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.”⁶⁷

- [31] Ms Mpekweni said that she had not heard from the police since 2008, and that she had not been back because –

“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.”⁶⁸

- [32] The Commission obtained the CAS number⁶⁹ and at the hearing on 30 January 2014 asked SAPS to make the docket available.⁷⁰ The docket was again requested on 3 June 2014 and the Commission was advised on 9 July 2014 that the matter is pending and that the docket was with the prosecuting authorities. SAPS provided a copy to the Commission. The Commission was informed in July 2014, that a suspect had been arrested and had appeared in the Khayelitsha Magistrates’ Court in connection with this case. As the matter is pending the docket has not been included in the Commission’s record.

(ii) *Ms Beauty Thosholo*

- [33] Another witness who testified was Ms Beauty Thosholo.⁷¹ Ms Thosholo lives in Site B and she testified that on 9 November 2010 she was at home with her daughter, Thandi, who was 14 years old, and her son, Lethabo, who was 22.⁷² Ms Thosholo went to bed early but her son was cooking, as he had come home from work late and her daughter was studying for exams. They heard a knock at the door.⁷³ When Ms Thosholo asked who was there, the reply came “the police”. Ms Thosholo was shocked and she opened the door, but it was not the police.⁷⁴ About six or seven people pushed their way into the house and they asked for her son, Lethabo. They were carrying glasses with alcohol, as if they had come from the shebeen. Her son denied that he was Lethabo, and the intruders pointed a firearm at him. Ms Thosholo testified that she called out of in fear “Lethabo” and asked what was happening. The assailants dragged Lethabo out of the door. Lethabo was screaming but they put him in a car. Ms Thosholo ran to her brother’s house for help. She found out later that the assailants had taken her television set and DVD machine, as well as cell phones.⁷⁵ The police were called, and a large contingent

67 Id. at 855.

68 Ms Mpekweni indicated that by “Truth Commission” she meant this Commission. Id. at 856.

69 Harare CAS 1131/10/2007.

70 Transcript at 858 (30 January 2014).

71 Record Bundle 1(1), File 1.a, Item 49; Transcript at 859 – 888 (30 January 2014).

72 Transcript at 859 – 860 (30 January 2014).

73 Id. at 861.

74 Id.

75 Id. at 865.

of police arrived.⁷⁶ After the investigation it became clear that Lethabo had been killed by a group of men that were friends of his new girlfriend's former boyfriend. Lethabo's body was found near Monwabisi Beach.⁷⁷ Within days of the death of Lethabo, Ms Thosholo testified, the police were aware of the names and addresses of the murderers and five suspects were charged.⁷⁸ Initially Ms Thosholo was kept informed by the detective handling the case of the progress of the prosecution,⁷⁹ but that detective left Khayelitsha and the docket was handed to another detective, to whom Ms Thosholo was introduced by the first detective. However, once the new detective took over the docket Ms Thosholo did not hear what was happening with the prosecution.⁸⁰ When she testified at the Commission, Ms Thosholo still did not know what was happening. She told the Commission that –

“...none of my family members are okay. My family is still saying that if the law cannot take its course then they want to avenge my son's death. When I have told them that they must calm⁸¹ down because I have heard of another place which is called the Commission and for now I am still in that Commission and I am just waiting to hear what is going to happen.”⁸²

- [34] Mr Arendse, on behalf of SAPS, had no questions for Ms Thosholo but undertook to investigate and discover what had happened to the criminal prosecution.⁸³ Some days after Ms Thosholo testified SAPS informed the Commission that the criminal trial of the five men accused of Lethabo Thosholo's murder had been enrolled for hearing in the Western Cape High Court and would be heard on 14 February 2014. The Commission told Ms Thosholo what it had heard. Ms Thosholo subsequently telephoned the Commission to advise that she had attended at the High Court and though the matter had postponed, she was aware of the next Court date and was grateful to the Commission for informing her of the hearing date.

(iii) *Ms Nokuzola Ncaphancapha*

- [35] Several witnesses testified about the problem of youth gangs. One of them was Ms Nokuzola Ncaphancapha.⁸⁴ Ms Ncaphancapha lives in Harare and she testified that in June 2012 her son who was then 17 years old became reluctant to go to school because he felt he was not safe because of the youth gangs in the school.⁸⁵ Ms Ncaphancapha arranged for him to move to a new school in the hope that it would mean that he could continue with his education, but at the new school the same problems arose. Ms Ncaphancapha testified that she went to speak to the school principal, to the Western Cape Department of Education and to the station commander at the Harare police station, Colonel Abels, who was about to be transferred away from Harare. The Education Department told her that –

“... they cannot do anything outside the school premises. Their responsibility is the safety inside so on the way to and from school is only in the police's hands. If the police don't intervene then 'sad luck'; that is where I lost hope.”⁸⁶

76 Id.

77 Id. at 872.

78 Id. at 873 – 874.

79 Id. at 877.

80 Id. at 887.

81 Error in transcription at 889 line 7, “come” should read “calm”.

82 Id. at 888.

83 Id. at 889.

84 Record Bundle 1(1), File 1.a, Item 55; Transcript at 1015 – 1058 (31 January 2014).

85 Transcript at 1017 (31 January 2014).

86 Id. at 1018.

- [36] Ms Ncaphancapha testified that her son stayed home after July 2012 and testified that her son's friends also left school in 2012.⁸⁷ In 2013 however, her son obtained a place in a school in Makhaza, which was safer than his previous schools, though many of this friends did not, and so they stayed home.
- [37] Ms Ncaphancapha testified in some detail to the grave problems caused by the youth gangs in the community and the fear which people feel when they see groups of gang members approaching.⁸⁸ Ms Ncaphancapha also testified that she went to the chairperson of the Harare Community Police Forum (CPF) who told her that if she got a letter from the South African National Civic Organisation (SANCO) she could go to the Taxi Association to ask them to help her.⁸⁹ The Chairperson of the CPF told her that things were not well at the police station; that on that day, there were supposed to be 19 members of SAPS on duty, but that only 7 had reported for work.⁹⁰ Ms Ncaphancapha and some of the other women from her neighbourhood did approach the Taxi Association who told them that they could not work with the Harare police station.⁹¹ She described the meeting she had with the Taxi Association but testified that in the end the Taxi Association did not come to operate in her area.⁹² One of the reasons that the Taxi Association did not come to operate in her area, she testified, was because the principal of the High School had told them to stay away apparently because some parents had complained that the taxi drivers were beating the children.⁹³ She also testified that since September 2013, the situation had improved.⁹⁴ When asked if she has faith in SAPS, she indicated that: "No, I don't."⁹⁵

(iv) Testimony of Mr Thembani Gqeku

- [38] Mr Thembani Gqeku also testified.⁹⁶ Mr Gqeku was formerly a professional boxer, who lives with his family in Enkanini. He has lived in Khayelitsha since 1998. He testified about the lack of electricity and lighting in the area and having to use a portable toilet at night because it is not safe to go to the communal toilets.⁹⁷
- [39] Mr Gqeku told the Commission that he had visited a house in his neighbourhood that sells alcohol on the evening of 18 July 2009. During the evening, his wife called him and told him that the police were raiding shebeens in the area. He went outside to speak to his wife, and at that time the police vehicles arrived. He went inside to warn the patrons of the shebeen that the police were coming, and many left, including Mr Gqeku.
- [40] In the early hours of the following morning, Mr Gqeku told the Commission, a crowd gathered outside his house and began to throw stones at it. According to Mr Gqeku the people in the crowd accused him of having called the police to raid the shebeen the previous evening and the crowd threatened either to burn his house down or to shoot him.⁹⁸ Mr Gqeku said that he was able to identify three of the people in the crowd as being members of a family who lived nearby. His wife stopped him from going outside to confront the crowd, but he called the police. At first, the police did not answer the phone. When they finally answered the phone,

⁸⁷ Id. at 1020.

⁸⁸ Id. at 1027 – 1028.

⁸⁹ Id. at 1023 – 1024.

⁹⁰ Id. at 1024.

⁹¹ Id. at 1025 – 1026.

⁹² Id. at 1030.

⁹³ Id. at 1054.

⁹⁴ Id. at 1031.

⁹⁵ Id. at 1032.

⁹⁶ Transcript at 2061 – 2077 (7 February 2014); Record Bundle 2(5), File 2, Item 5.

⁹⁷ Record Bundle 2(5), File 2, Item 5 at para 3.

⁹⁸ Transcript at 2062 – 2064 (7 February 2014)

they told him they would come but they did not arrive. After 6 am, when the crowd had dispersed, he went to the police station to lay a charge of intimidation.⁹⁹ The officer on duty asked him whether he had approached the street committee and refused to open a case until he had been to the Street Committee.

- [41] On 19 July 2009 Mr Gqeku reported the incident to the Street Committee. The street committee told Mr Gqeku that they would give the family who had been part of the crowd who had thrown stones at Mr Gqeku's house till the end of week to apologise to Mr Gqeku. The Street Committee said that if no apology was tendered, Mr Gqeku should return to the Street Committee and the Street Committee would go to the family. The Street Committee then said that as the incident involved a shooting or gangs, it was a matter for SAPS. The Street Committee provided him with a letter for the Station Commander at the Harare police station.¹⁰⁰ Mr Gqeku took the letter to the police station and was able to open a case. He received an SMS from SAPS and a detective was assigned to investigate.¹⁰¹
- [42] Though one of the accused was arrested, Mr Gqeku was not told. When he later enquired about it at the police station he was sent to the court. At court he saw the accused outside, inferring that he was either released or had been given bail. Mr Gqeku had not been informed of that either.¹⁰²
- [43] Despite repeated attempts by Mr Gqeku, going back and forth between the court and police station, he was not able to ascertain what had happened to the matter and he was not provided with feedback by SAPS. Mr Gqeku was informed by a person at court that the case had not come to court and "that there was something suspicious about this case" as the accused were released from the police station whereas it should have gone to court. When he made further enquiries at the police station he was told by a SAPS member to "get out of the police station" if he did not want trouble.¹⁰³ In effect after receiving an SMS he got no further feedback from SAPS about his matter.¹⁰⁴
- [44] The Commission called for and received the docket which indicates that the crime was first reported on 24 July 2009. The charge is one of malicious damage to property. Statements were taken from witnesses and suspects identified by the complainant, were arrested. However the charge was withdrawn on 27 July 2009 although the docket does not explain why. The case was re-opened in late 2013. Because this is a pending docket, it has not been included in the Commission's public record.

(c) Allegations of police inefficiency where witnesses did not testify in person

(i) *Ms M Xholi*

- [45] Ms M Xholi did not testify but the Commission records the contents of her statement. According to the complainant organisations, Ms Xholi and her son were assaulted and arrested by members of the SAPS at her home in Khayelitsha.¹⁰⁵ The complainant organisations raised her complaint with the Task Team. According to the Task Team report, the docket¹⁰⁶ was

99 Record Bundle 2(5), File 2, Item 5 at paras 5 – 7.

100 Id. at paras 7 – 8.

101 Id. at para 9. Harare CAS 720/7/2009.

102 Id. at para 10.

103 Transcript at 2072 (7 February 2014).

104 Record Bundle 2(5), File 2, Item 5 at paras 13 and 14.

105 Record Bundle 7(1), File A, Item 2a, p 37.50.

106 Lingeletu West CAS 594/05/2012.

transferred to the IPID on 31 May 2012 for further investigation.¹⁰⁷ The matter was raised with Mr Leholo who reported that the IPID Western Cape had conducted a full investigation and recommended to the DPP that a prima facie case of assault with intent to do grievous bodily harm and kidnapping had been found. The two perpetrators are police officials based at Harare police station. IPID recommended that disciplinary steps be instituted against the two perpetrators in terms of Regulation 20 of the SAPS Disciplinary Regulations. In a letter dated, 5 November 2012, IPID was informed that disciplinary steps had been completed against the two officers, both of whom had been found guilty. One was given a final written warning and the other was given a written warning.¹⁰⁸ According to the Record before the Commission, the docket was referred to the DPP on 17 July 2012, but the Commission is unaware of whether a prosecution resulted. The Commission requested this docket on 6 June 2014 and was informed by SAPS that the docket was in the possession of IPID. The docket was also requested from IPID, without success.

(ii) *Mr SJ*

- [46] Another case is the case of Mr SJ, who also did not testify.¹⁰⁹ Mr SJ's brother was shot dead during a robbery at his house in January 2012. The family identified the suspects and informed the police. The police arrested one of the suspects who pointed out his accomplices, and who had in his possession the cell phone of the deceased. The case was brought to court, but since then there have been numerous postponements. On some occasions when Mr SJ went to court on the appointed day he found that the docket had not been brought to court. He would then call the investigating officer to ask him to bring the docket to court. The investigating officer was changed in early 2013, but the case has still not been finalised. Mr SJ stated in his affidavit –

“All I want is to see justice is done in this matter and that the matter is properly handled and investigated by the police so that we as the family can rest assured of how my brother was killed. Closure is very important to family.”¹¹⁰

(iii) *Mr SVL*

- [47] Mr SVL works at the Masikhanye Food Garden, which supplies food to the elderly and people living with HIV. He made a statement to the Commission but did not testify. He stated that the Food Garden had reported many cases to the police but had received no satisfactory response.¹¹¹ In 2012, they reported two cases of cable theft and one of theft of a bakkie to the Harare police station. Mr SVL wrote to the Captain of the Harare police station indicating his dissatisfaction with the progress of the cases, and had received no response from him. The Commission obtained the dockets in respect of the two stolen cable cases.¹¹² In both cases, the police had gone to the crime scene and taken statements from the complainant. In one case, the investigator indicated that no suspects were identified. In the other case, a suspect was pointed out to the police and arrested and detained, but subsequently released as there were apparently no links to the case.¹¹³

107 High Court Record, Record Bundle 1(3), AL87, 696 – 697.

108 Mr Leholo's Statement Record Bundle 7(8), Item 4 at paras 96 – 101.

109 Record Bundle 1(1), File 1.a, Item 80.

110 Id. at paras 18 and 22.

111 Record Bundle 1(1), File 1.a, Item 3.

112 Harare CAS 291/06/2012 Record Bundle 7(4), File 4.2, File 1, Item 5, pp 74 – 79; and CAS 500/07/2012 Record Bundle 7(4), File 4.2, File 1, Item 6, pp 80 – 93.

113 CAS 500/07/2012 Bundle 7(4), File 4.2, File 1, Item 6, p 87.

(iv) Ms NZ

- [48] Ms NZ also made a statement to the Commission, but did not testify.¹¹⁴ She stated that she had been notified that her brother's body had been found under a railway bridge on 2 August 2012, and that he had been killed by a train. At the police station, she was told to go to Tygerberg Mortuary to identify the body, but when she got there, the staff would only show her the covered body of her brother. She was told that the body was 'destroyed' so they could not identify the body by his physical features. She went back to hospital, together with the investigating officer to obtain a DNA test, which could be used to identify the body. The investigating officer did not immediately tell her when the results would be available. On later enquiry, he told her that she must wait three or four months for the results of the DNA test, "but, he said there was an option if I want the results quicker which costs money. He gave me the address and the R1300 and said I would have to wait only two weeks for the result. I do not have the money."
- [49] She went to her ward counsellor, who facilitated a meeting between herself and the investigating officer and the station commander. She then gave a statement to the police for the first time. She contacted the police again asking about the DNA test, but the call was cut off. Ms NZ approached the Commission as she was concerned as she wanted to make funeral arrangements to bury her brother, but wanted to confirm his identity first.
- [50] The Commission obtained and perused the docket.¹¹⁵ The docket does contain the application for DNA which was sent off for further analysis, but the results were never collected from the laboratory, and not communicated to the complainant. The investigation diary, which has only three entries, reveals that there was virtually no investigation, with a one year gap between one entry on 17 October 2012 and another on 27 November 2013.¹¹⁶
- [51] The Commission followed up this matter with the SAPS Provincial Inspectorate, which in correspondence on 13 August 2014 advised the Commission that a new detective has been assigned to this case, and that a charge of murder has been added to the charge of culpable homicide. They said that witness' statements, crime scene photographs and the post mortem report have been obtained. The initial difficulty with the chain statements relating to the DNA analysis has been rectified and the results were expected within the week.¹¹⁷ They undertook to keep the complainant informed.

(v) Ms BS

- [52] Another distressing case was that reported by Ms BS,¹¹⁸ whose brother and girlfriend were burned in a shack fire in October 2011, and who later died of their injuries. According to Ms BS, the police were called to assist and arrived on the scene. The police said that the fire had been intentionally started by a small fire made at the shack entrance.
- [53] Once an investigator was assigned to the case, the complainants told him who they thought the suspects were in the case. A few days after the incident, the complainant went to the investigating officer. He told her there was no evidence, and therefore no case. "He told us if we suspect anything else we must come and tell him". The complainant's family did their own investigation, but found the suspect had moved. They had also heard that the suspect had

¹¹⁴ Record Bundle 1(1), File 1.a, Items 13 and 13A.

¹¹⁵ Harare CAS 28/08/2012.

¹¹⁶ Summaries of undiscovered dockets. Harare File 4, Item 28. (Though referenced it is not part of the Commission's public record).

¹¹⁷ Record Bundle 13(1.4), File 3, Item 10.1.

¹¹⁸ Record Bundle 1(1), File 1.a, Item 41.

talked about the murder and even kept a diary of the event. She did not go back to the police to report this –

“...because as a family we had lost faith in them. We don’t think they will do anything about it anyway”. Ms BS further said, “It feels like nobody cares, as if it is just dogs that died in the fire.”

She says she has not heard from the police since her brother’s funeral.¹¹⁹

(vi) *Ms MN*

[54] MN is a young woman who was kidnapped by her former boyfriend in June 2008 and forcibly detained at his residence at the Cape Town Peninsula University where he raped her repeatedly over a period of two days. She was finally able to alert her family who called the police to her rescue. A charge was opened against the suspect at Khayelitsha Site B police station and he was arrested.¹²⁰ She used to receive regular updates from the investigating officer until he stopped calling.

[55] In 2011 the suspect came to her house. He was drunk and asking for forgiveness. MN went to the police station and reported his visit. At the police station, she was told that the charges had been withdrawn against the suspect and he is free to go wherever he wanted, and there is nothing the police can do about it. She was told that the original investigating officer had left the police station. She had not been informed of the name of the new investigating officer, nor that charges against the suspect had been withdrawn. She did not know why the case had been withdrawn against the man who had previously kidnapped her and raped her. She said that she lives in fear while the suspect walks free in the street, and she believes that the police have failed her.

(vii) *Ms DG*

[56] Many of the complaints deal with police failure to take action or to investigate a case. In the case of Ms DG¹²¹ she was accosted and assaulted by a man while walking home at night. He attempted to strangle her and beat her repeatedly. He only stopped when two men arrived on the scene and assisted Ms DG, and they themselves began to beat the perpetrator. A police van that was driving past was stopped. Ms DG was put into one van, and the perpetrator into another. Ms DG was taken to Khayelitsha Hospital, and from there transferred to Tygerberg Hospital. Her injuries were so severe she required repeated surgery on her face and jaw. No police official visited her while in hospital to take a statement. When she was released from hospital she visited the Khayelitsha Site B police station to find out what had become of the perpetrator. She was informed that the police had been sent to the scene to break up a fight. She said, “The officers that had taken the man who assaulted me into their van had apparently also just dropped him off at the hospital. So, I came to understand that no case had been opened.”¹²² She was not then informed that she could open a charge against him.

[57] As a result of this treatment, she says further, “I am very angry at the police for the way my assault was handled. I feel unsafe all the time in Khayelitsha and the man who assaulted me nearly beat me to death, and he has not been punished.”¹²³ She also stated that, “I do not see

119 Id. at para 12 –13.

120 Record Bundle 2(5), File 2, Item 25. CAS 1770/06/2008.

121 Record Bundle 2(5), File 2, Item 4.

122 Id. at para 12.

123 Id. at para 14.

what the purpose of the police in Khayelitsha is, if they cannot even deal with a case like this, where the perpetrator was in their custody and there were two witnesses.”¹²⁴

(viii) Ms ND

- [58] Ms ND obtained a final protection order against her husband to stop him physically and sexually abusing her.¹²⁵ She called Harare police station on three occasions for help after receiving this protection order, but they “only took my details over the phone, and never sent a police van or officers to house.” The police would only arrive the following day when “it was already too late.”¹²⁶
- [59] She had resolved not to call Harare police station again, but to call 112 instead. Some months later her husband again started abusing her and tried to force her to have sex with him. She called the 112 number to lay a complaint. Her husband grabbed her house keys and locked her and the children in the house and said he would go to the police station himself. The Harare police arrived about ten minutes later. They rescued Ms ND from the house and took her to Harare police station where she made a statement. The police took Ms ND to the Thuthuzela Care Centre for examination and treatment, and arrested her husband later that night. He was later released on R500 bail.
- [60] The matter went to court on several occasions, but Ms ND was not given information about the reasons for the postponement or when she would be required in court. Finally, someone from the Thuthuzela Care Centre informed her not to go to court unless she was called. After his next appearance in court, her husband came to see her and thanked her for withdrawing the case against him. She tried to follow this up with the investigating officer. At first the investigating officer told her he was on leave, and when he got back to work, he was too busy to speak to her. He did not call her back.
- [61] Ms ND went to the court to find out more information, but was not assisted there. Finally, she approached the Rape Crisis Centre for help. After finding out the information, they informed Ms ND that the matter had been withdrawn because the police officer arresting her husband had not signed his name on the right papers, so there was no record of who had arrested her husband.¹²⁷ In exasperation Ms ND states –

“I felt very helpless and traumatised. I do not understand what happened to my case. My husband is back at home and I am very scared of him. I tried to protect myself with a protection order, but that has not worked. I do not understand how the police and the court have allowed the case to be dismissed, and for my husband to just move back into my house, just because of a lack of a signature on a form. They have my statement and my daughter’s statement.”¹²⁸

(d) Summary of complaints

- [62] The Commission has prepared a schedule of frequently recurring issues raised in the 170 complaints that it has admitted to the record. 76% of complainants said that they had received poor service from SAPS, 43% complained that SAPS did not investigate the crime they had reported, 44% complained of the failure of police to keep victims, family members and witnesses informed of the progress of criminal investigations and prosecutions, 18%

¹²⁴ Id. at para 15.

¹²⁵ Record Bundle 1(9), Item 2.

¹²⁶ Id. at para 7.

¹²⁷ Id. at para 34.

¹²⁸ Id. at para 35.

complained of SAPS' failure to respond promptly to calls for help, 7% complained that docket were not at court, and 8% were complaints of police assault or brutality.

Table 1: Summary of Complaints Submitted

	No of complaints	Docket not taken to court	Poor service	No feedback about the case	Assaulted/ shot by police	Police did not investigate	Failure to respond/late response	Reported to the police
LRC Statements	75	5	57	40	6	19	12	39
	%	7%	76%	53%	8%	25%	16%	52%
COI Statements	92	6	70	34	8	52	18	76
	%	7%	76%	37%	9%	56%	20%	82%
WLC Statements	4		3	3		3	2	4
	%		75%	75%		75%	50%	100%
Total	171	11	130	77	14	74	32	119
%		7%	76%	45%	8%	43%	18%	69%

C. COMMUNITY ACTIVISTS AND MEMBERS OF COMPLAINANT ORGANISATIONS

- [63] The Commission heard the testimony of eight community activists, all of whom are members of one of the complainant organisations or other non-governmental organisations active in Khayelitsha.¹²⁹ Many of them are office bearers in the organisations. Their testimony will be briefly described in this section of the report.

(a) Ms Phumeza Mlungwana

- [64] Ms Phumeza Mlungwana, the General Secretary of the SJC, was one of these witnesses.¹³⁰ Ms Mlungwana is 25 years old and was born in Khayelitsha where she has lived all her life. Her mother works on a wine farm and her father is a maintenance worker at the N1 City Mall. Ms Mlungwana testified that the SJC was formed in the aftermath of the xenophobic violence that wrecked South Africa in 2008.¹³¹ It has more than 2000 members in 11 branches, 10 being in Khayelitsha.¹³² She describes the SJC as “a democratic membership-based social movement”.¹³³ In her testimony, she stated of the SJC –

“We strive to promote the rule of law; promote accountability and transparent¹³⁴ governance but promote active citizenship where communities are able to stand up for their rights and use the law in order to advance their social standing. We do that in different forms. We do that through education of our members but also of our communities. We do that through research, office research and community research. We also do that through advocacy employing different

¹²⁹ Ms Mlungwana Transcript at 228 – 272 (24 January 2014); and 902 – 927 (31 January 2014), Ms Soldaat Transcript at 452 – 490 (28 January 2014); Ms Msongelwa Transcript at 534 – 553 (28 January 2014); Ms Dwane Transcript at 756 – 794 (30 January 2014); Mr Zitwana Transcript at 2022 – 2080 (7 February 2014); Mr Makele at Transcript 2081 – 2119 (7 February 2014); Mr Achmat Transcript at 2351 – 2407 (10 February 2014) and Mr Bregman Transcript at 2411 – 2470 (10 February 2014).

¹³⁰ Record Bundle 1(5), File E, Item 30; Transcript at 228 – 262 (24 January 2014) and 902 – 927 (31 January 2014).

¹³¹ Record Bundle 1(5), File E, Item 30 at para 8.

¹³² Id. at para 9; Transcript at 232 (24 January 2014).

¹³³ Id. at para 9.

¹³⁴ The Transcript reads “transpiring”, but it seems to be an error, it should read “transparent”. Transcript at 231 (24 January 2014).

forms of communicating with Government. I am talking about protests, petitions, pickets, letters and memorandums and ... we have two primary campaigns in which we try and communicate our work ... one is cleaner, safe sanitation and access to water for everyone, and our second major campaign is justice for all.”¹³⁵

- [65] Ms Mlungwana spoke of the ubiquitous nature of robbery in Khayelitsha in her testimony. She said –

“One thing, robbery in Khayelitsha is something more; you get robbed. You go into the shop; you get robbed. You go into school, you get robbed; you go into work. I have been robbed a couple of times going to school.”¹³⁶

- [66] Ms Mlungwana testified that she first witnessed an act of vigilantism in her neighbourhood when she was 13 years old – a man who had been caught breaking into a house was stripped and beaten by members of the community in the street.¹³⁷ She testifies that acts of vigilantism continue to be committed in her neighbourhood to this day. Ms Mlungwana defines vigilantism “as community members or individuals taking the law into their own hands [and] is caused by a lack of faith that justice will be done through policing and the court system.”¹³⁸

- [67] Ms Mlungwana also testified that police response to crime is inadequate. She told of the body of a young boy being found behind her home. He had been killed by being stabbed, yet his body was not found for five days after he died.¹³⁹ When the police removed the body, they did not, according to Ms Mlungwana, conduct any investigation to apprehend the perpetrators. They neither questioned Ms Mlungwana, nor any member of her family, nor the person who found the body. They simply removed the body.¹⁴⁰

- [68] Ms Mlungwana also testified about the problems of youth gangs. Two of her brothers became involved with the gangs and her younger brother had to stay out of school because of the risk that he would be attacked.¹⁴¹ She stated that “every day we know kids are going to fight. We know which hot spots they are going to fight. I have seen a lot of kids being stabbed, murdered even in front of our offices in Khayelitsha.”¹⁴² She added –

“...the kids will fight but if a police van is coming they will quickly like put, throw away or hide the weapons and then move back to where the spectators are so police would come obviously speeding in their car and then the group will disperse but immediately when the police leave again the fight is going to start ...”.¹⁴³

- [69] Ms Mlungwana also asserted the importance of establishing a good working relationship with the police. “I think all communities should acknowledge that SAPS cannot do this alone.”¹⁴⁴ On shebeens, Ms Mlungwana suggested that SAPS should close down all illegal shebeens,¹⁴⁵ although she did acknowledge that illegal shebeens are a source of income for families.¹⁴⁶

135 Transcript at 231 (24 January 2014).

136 Transcript at 243 (24 January 2014).

137 Record Bundle 1(5), File E, Item 30 at para 26.

138 Id.

139 Id. at para 27; Transcript at 246 – 247 (24 January 2014).

140 Id.

141 Record Bundle 1(5), File E, Item 30 at paras 31 – 33; Transcript at 252 – 253 (24 January 2014).

142 Transcript at 252 (24 January 2014).

143 Id. at 253.

144 Id. at 255.

145 Id. at 256.

146 Id. at 257.

- [70] Towards the close of her testimony, Ms Mlungwana said that she wanted Khayelitsha to be as safe as Rondebosch. She wanted –

“... the police service in Khayelitsha to understand what they are dealing with, to understand the nature of different communities they are dealing with, to understand both informal settlements and formal areas and the challenges that exist in those communities...”¹⁴⁷

(b) Ms Funeka Soldaat

- [71] Ms Funeka Soldaat, a founder member of Free Gender,¹⁴⁸ was another community activist who testified before the Commission. Free Gender was originally one of the complainant organisations, but withdrew from the group once it had established a working relationship with SAPS facilitated by the Deputy Minister of Police.¹⁴⁹ Ms Soldaat testified “it was the first time that we could move beyond the desk of the police officer and move to the next level”.¹⁵⁰
- [72] Free Gender was founded in 2008 and its aim is “to promote and defend the rights and interests of particularly lesbian and bisexual ... community in the wider Cape Town area, specifically Khayelitsha”.¹⁵¹ Ms Soldaat testified that one of the main reasons that Free Gender was established was because of the levels of ignorance about various forms of sexuality and sexual identities in Khayelitsha, and the fact that this ignorance manifests in a bad attitude and even anger towards the lesbian, gay, bisexual and transgender (LGBT) community. She said: “A section of the Khayelitsha community tends to unfairly view LGBT persons as social outcasts”.¹⁵² She also notes that members of the LGBT community have been targeted for corrective rape, sexual assault and many other crimes.¹⁵³
- [73] Ms Soldaat has been a resident of Khayelitsha since 1990.¹⁵⁴ She has lived and worked in different parts of Khayelitsha and as a community activist, she says, she has “interacted with people from all walks of life”.¹⁵⁵ In her testimony, she told of her experience of policing in Khayelitsha after she had been raped in 1995. When she went to the police station, she was told to wait because there was no van. Eventually two police officers dropped her at the hospital. At the hospital, she was told that she should have brought a letter from the police saying she had been raped. She then had to walk from the hospital to the police station to obtain the letter.¹⁵⁶ When she arrived back at the police station, the police officers did not assist her, but simply looked at her in a strange way so that Ms Soldaat concluded that they “were not really considering what I was there about, but they were considering my sexual orientation, or the way I look”,¹⁵⁷ so she left the police station and did not pursue the criminal charge.
- [74] In her statement, Ms Soldaat said that many, if not most, police officers in Khayelitsha are homophobic –

“They often exhibit extreme aversion to LGBT persons who report crimes or visit the police stations. I have been subjected to these attitudes and worse at

147 Id. at 259 – 260.

148 Record Bundle 2(1), File 1.1, Item 84; Transcript at 452 – 490 (28 January 2014).

149 Transcript at 460 – 461 (28 January 2014) Record Bundle 4(9), Item 3.58.

150 Id. at 460.

151 Record Bundle 2(1), File (1.1), Item 84 at para 1.

152 Id. at para 4.

153 Id. at para 6.

154 Id. at para 3.

155 Id.

156 Transcript at 454 – 455 (28 January 2014).

157 Id. at 455.

all Khayelitsha Police stations. This has had the effect of discouraging LGBT persons from reporting crime to the police.”¹⁵⁸

- [75] Ms Soldaat stated at the end of her evidence that there was still much to be done to improve the attitude of SAPS. She said that during 2013 a poster had been designed to be put up in CSCs to publicise the rights of LGBT people.¹⁵⁹ The poster was still awaiting the approval of the Provincial Commissioner, according to Ms Soldaat.¹⁶⁰ Ms Soldaat closed her testimony with the following words, in response to a question by the Commission –

“[In our] lives as gays and lesbians the police are the most important people in our lives, because you must know that we have a problem in our community, we also have problems in our homes, and therefore that is the most important place to us because they are objective, they don’t take sides so the SAPS or police are very important to us.”¹⁶¹

(c) Ms Yoliswa Dwane

- [76] The next community witness was Ms Yoliswa Dwane, the head of Policy Communication and Research at Equal Education, one of the complainant organisations.¹⁶² Ms Dwane was born in Dimbaza in the Eastern Cape. Dimbaza was made famous by the acclaimed anti-apartheid documentary, *Last Grave at Dimbaza*, which publicised the appalling consequences of forced removals perpetrated in the name of *apartheid*.¹⁶³ Ms Dwane came to Cape Town and Khayelitsha in 1999. She has lived in TT Section in Site B since, save for some years at university.
- [77] In February 2008, Ms Dwane was a founder member of Equal Education, which is a membership based, non-profit organisation whose objective is to work and campaign to achieve quality and equality in education in South Africa.¹⁶⁴ Equal Education has approximately 1500 members in 80 schools around South Africa.¹⁶⁵ The majority of Equal Education’s members live in Khayelitsha.¹⁶⁶
- [78] Ms Dwane testified that she had only once been the victim of crime in Khayelitsha, when she was robbed at knife-point of her new mobile phone. She called 10111 but when the police came they would not pursue the group of robbers immediately.¹⁶⁷ Ms Dwane also testified that she knew many people from Equal Education who had been victims of violent crime. She also described two instances of theft at the Equal Education offices. She said that although the crimes were reported at the local police station, no detectives came to investigate the place where the theft had occurred.¹⁶⁸
- [79] Like many other witnesses, Ms Dwane spoke of the grave problem of youth gangs in Khayelitsha. She stated that there are four main youth gangs, the Vatos, the Vuras, the Italians and the Russians.¹⁶⁹ The gangs are territorial in nature, that is, membership is determined by

158 Record Bundle 2(1), File (1.1), Item 84 at para 18.

159 Transcript at 468 – 469 (28 January 2014).

160 *Id.*

161 *Id.* at 489.

162 Record Bundle 1(5), File E, Item 38; Transcript 756 – 794 (30 January 2014).

163 Record Bundle 1(5), File E, Item 38 at paras 7 – 8.

164 *Id.* at para 26.

165 *Id.* at para 28.

166 *Id.* at para 29.

167 *Id.* at para 36.

168 *Id.* at paras 37 – 38.

169 Transcript at 763 (30 January 2014).

where a young person lives. So, she testified, the Italians are in Site B and Site C, while the Vuras are in Harare, and the Vatos are mainly from Kuyasa and Khayelitsha centre.¹⁷⁰ She noted that gangs have preferred certain types of weapons including knives, pangas and guns. She also said that gangs engage in all types of violent crimes including robbery, assault, kidnapping, rape and murder.¹⁷¹ She also identified certain places where the youth gangs concentrate their activities. Those places included Makhaya Park, the area adjacent to Esangweni High School, under the bridge in Site B near Masiyile High School, the bridge near Kuyasa, the open field near Thembalihle High School, opposite Sizimisele High School and Greenpoint Park.¹⁷²

- [80] Ms Dwane also testified that some school principals have called in the taxi associations to deal with the gangs, who “beat up those kids with sjamboks, rubber sjamboks but we don’t believe that it is ... the correct approach”.¹⁷³ Like Ms Mlungwana, she testified that if police were called to gang fights, they would arrive, the gangs would disperse, the police would leave, and once the police had left the gangs would continue with their fighting.¹⁷⁴ Ms Dwane also testified that the youth gangs operating in Khayelitsha are quite different to the gangs that are operating in Manenberg and Mitchell’s Plain.¹⁷⁵ Gangs in Manenberg are often connected to organised crime and drugs in her opinion, while the gangs in Khayelitsha are more about identity –

“These fights actually are about claiming their space and their identity within these communities and also trying to show off that they are actually more powerful than the other groups”.¹⁷⁶

- [81] She suggested that the low levels of visible policing create opportunities for gang members “to terrorise” members of the public in Khayelitsha.¹⁷⁷ She stated that police do very little to investigate crimes that are reported to them.¹⁷⁸
- [82] Ms Dwane also testified to the harms caused by illegal shebeens. She testified that the police do not close them down.¹⁷⁹ She also said that she thought that alcohol contributed to violence. She also said that “tik” was an increasing problem in Khayelitsha.¹⁸⁰
- [83] Finally, Ms Dwane testified about the manner in which some police members deal with Somali traders. She says that she has seen police seizing some food and cool drinks from the traders without paying.

“[I]t shocked me when I saw it once but then I saw it again and again and again where the police just come into a shop, in a Somali shop they don’t do that with Xhosa owners but they do that with Somalis.”¹⁸¹

170 Record Bundle 1(5), File E, Item 38 at para 41.

171 Id. at paras 40 – 42.

172 Id. at para 41.

173 Transcript at 764 (30 January 2014).

174 Id. at 765

175 Id. at 770.

176 Id.

177 Record Bundle 1(5), File E, Item 38 at para 46.

178 Id. at para 48.

179 Transcript at 772 (30 January 2014).

180 Id. at 772 – 773.

181 Id. at 781.

(d) Ms Malwande Msongelwa

- [84] Another community activist who testified was Ms Malwande Msongelwa.¹⁸² Ms Msongelwa is an employee of the SJC, where she works as a community advocate.¹⁸³ Ms Msongelwa is 30 years old and lives in a brick house in Makhaza with her daughter, her mother and her two brothers.¹⁸⁴ Ms Msongelwa testified about how the police responded to the murder of her brother. On 3 September 2011, Ms Msongelwa was attending a birthday party very close to her home. At about 2am, she heard from an acquaintance (X) that something had happened at a nearby bus stop, which might have involved her brother. In a grassy area behind the bus stop they found her brother's body. He had been stabbed. They asked X who was there how he had known. They were suspicious of X. Ms Msongelwa called 10111 to ask for the police to come urgently, but they did not come.¹⁸⁵ So then Ms Msongelwa called a senior police officer whom she had met at a community workshop. Thereafter the police arrived. According to Ms Msongelwa, it took the police two hours to arrive from when she initially called, but only ten minutes after she had called the senior police officer.¹⁸⁶ Initially the police parked at a distance from where the crowd had gathered around the deceased but finally they were willing to come to the scene. When they heard what had happened, the police then wanted immediately to interview X, the person who had told them about the incident at the bus stop. The police then left the scene without any crime scene protection, and without leaving a police officer behind, in order to find X and interview him.¹⁸⁷ The police took statements from Ms Msongelwa and her brother, but thereafter never contacted them to inform them of the process of the investigation. In her testimony, Ms Msongelwa said that "the police do not care about people. They don't care about what happens to a person. The police don't care."¹⁸⁸ She indicated that she did not trust the police and stated –

"... in our areas no-one trusts the police. a lot of people ... get injured or ... robbed and they don't report cases because they know that the police will not take care of their cases and they will not be solved. Nothing will happen to them."¹⁸⁹

(e) Mr Sifiso Zitwana

- [85] Another young community activist was Mr Sifiso Zitwana.¹⁹⁰ Mr Zitwana was born in 1991 in Durban and he lives in Khayelitsha where he has lived since 1999.¹⁹¹ He has five siblings of whom he is the second oldest. His mother left Cape Town in 2002 to return to the Eastern Cape and he was raised by his older sister, who is eleven years older than him. His mother died in 2010.¹⁹² In his statement, he says that he has never known his father, and that he grew up in Khayelitsha, "played soccer in the bushes and in the summer we would go to the beach on Baden Powell Drive."¹⁹³

182 Record Bundle 2(5), File 2, Item 18; Transcript, 534 – 553 (28 January 2014).

183 Transcript at 537 (28 January 2014).

184 Record Bundle 2(5), File 2, Item 18 at para 3.

185 Transcript at 539 (28 January 2014).

186 Id. at 544.

187 Id. at 545.

188 Id. at 548.

189 Id. at 549.

190 Record Bundle 2(5), File 2, Item 72; Transcript at 2022 – 2080 (7 February 2014).

191 Record Bundle 2(5), File 2, Item 72 at paras 6 – 9.

192 Id. at para 16.

193 Id. at para 11.

- [86] In his statement, he describes being robbed of money on the way to school.¹⁹⁴ He said that –

“No one walked to school alone because there would be a 100% chance that the gangs would take you down. If we walked in groups sometimes they would not rob us, only harass us. If they came to rob us and we were in a group, we could run in different directions and the gangsters would not be able to catch all of us.”¹⁹⁵

Later in his oral testimony, he added that at first he was afraid of going to school but that later he got used to the situation.¹⁹⁶

- [87] In 2008, his older sister found work in Hermanus and he took over the responsibility of raising his younger brothers. He was then 17 years old. In his statement to the Commission, he described this as follows –

“I was never trained to be a parent but I took responsibility and remembered how my mother [and sister] looked after us. I would wake up at 6.00 with an alarm, wake my brothers, help wash them, make sure that they are dressed properly in uniform, make them breakfast and we would leave for school together at 7.30am.

We would have no lunch because after school I would come home to cook mngqusho (samp and beans). I would get them to wash their school shirts to wear the next day and then allow them to play with their friends. At 18:00 they would come home hungry and I would give them duties to cook. It was very hard for me to supervise them to do homework. After 20:30 they could watch TV until 21:30 or sometimes 22:00.

On Saturdays we would sleep late and wake up at 10:00, then all of us would wash our clothes, spring clean the house, cook lunch and then go out to play with our friends. We never felt completely safe. You could not go out at night unless you were with a group of friends.”¹⁹⁷

- [88] Mr Zitwana explained that his two younger brothers then became involved in the youth gangs. From 2011, his brothers began to tell him of the youth gangs at their school and the fact that they were frightened to go to school.¹⁹⁸ By the end of 2011, his brothers had become involved in the gangs and, said Mr Zitwana, “I lost control of them”.¹⁹⁹ The principal of the school called him in to say that his brothers had become bad students so Mr Zitwana went to see a social worker. The social worker spoke to one of his brothers and tried to persuade him to leave the gangs, but he said that he would need protection if he left “because the gang does not allow members to leave”.²⁰⁰

- [89] His younger brothers nevertheless then decided to leave the gang and in order to gain protection went on the local radio station to announce this, Radio Zibonele. Despite being approached, the police said they were unable to assist in protecting them from reprisals from gang members, saying that it was a matter for their parents, and “good luck”.²⁰¹ Fearing for his brothers’ safety, Mr Zitwana then sent his brothers to the Eastern Cape to his mother’s

¹⁹⁴ Id. at para 12.

¹⁹⁵ Id.

¹⁹⁶ Transcript at 2032 (7 February 2014).

¹⁹⁷ Record Bundle 2(5), File 2, Item 72 at paras 17 – 19.

¹⁹⁸ Id. at para 21.

¹⁹⁹ Id. at para 22.

²⁰⁰ Id. at para 23.

²⁰¹ Id. at paras 23 – 27.

traditional home, although his brothers did not want to go, they knew that it was for their own safety.²⁰²

[90] Mr Zitwana also testified about the Neighbourhood Watch in his area. He said that there had been a Neighbourhood Watch in 2009, but that its members acted harshly by hitting people who did not obey their rules.²⁰³ Accordingly, the community rejected the Neighbourhood Watch as a result and it was suspended.

[91] Mr Zitwana also spoke about the effect of vengeance violence in the community and on children in particular.²⁰⁴ He remembered vigilante attacks that he witnessed as a child and hearing people shout “hold him, hold him, hold him”. He said that –

“...as a child you also run after the person and we also just start pulling on the person while the adults are hitting him, so the children are also helping. In fact the children help to make sure that the person falls on the ground.”²⁰⁵

He agreed with the testimony of Dr Debbie Kaminer in relation to the effect that the violence has on members of the community.²⁰⁶

[92] In his statement, when speaking of the difficulties caused by the use of communal toilets in informal settlements, Mr Zitwana stated that “[s]omeone who is not a Black person cannot understand how painful this is, and this is what later led me to struggle for decent sanitation and dignity.”²⁰⁷ When questioned about this by his lawyer at the hearing, he explained –

“When I’m saying 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 [see] what the problems are in the area, that is why I’m saying people can say they understand ... the situation but without living there they will not know what it feels like.”²⁰⁸

(f) Mr Welcome Makele

[93] Mr Welcome Makele also testified.²⁰⁹ Mr Makele was born in the Eastern Cape in 1985. He has five siblings: three brothers and two sisters.²¹⁰ He now lives in BM Section in Khayelitsha and works as a community support officer for the SJC.²¹¹ He works on the Justice for All campaign and has worked on issues relating to safety and security in Khayelitsha. He has monitored court cases, spoken to members of the community about their experiences of crime and policing and attended dozens of protests at various places lobbying for improvements to the criminal justice system in Khayelitsha.²¹² In his statement, he identifies some of the problems of policing in Khayelitsha to include: “[l]ost 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 victims.”²¹³ Mr

202 Id. at para 28.

203 Transcript at 2024 – 2025 (7 February 2014).

204 Id. at 2027 – 2030.

205 Id. at 2030.

206 Id. at 2029.

207 Record Bundle 2(5), File 2, Item 72 at para 14.

208 Transcript at 2034 (7 February 2014).

209 Record Bundle 2(5), File 2, Items 9 and 66; Transcript at 2081 – 2119 (7 February 2014).

210 Record Bundle 2(5), File 2, Item 66 at para 6.

211 Transcript at 2081 – 2082 (7 February 2014).

212 Record Bundle 2(5), File 2, Item 66 at paras 9 – 13.

213 Id. at para 15.

Makele stated that he did not suggest that all members of the police service perform poorly and do not care about their jobs.²¹⁴ He asserts that he has encountered hardworking members of the police.²¹⁵

- [94] Mr Makele also testified to two incidents where he was a victim of crime.²¹⁶ In the first, seven young boys, all of whom were carrying guns, robbed him of money he had just withdrawn from an automated teller machine as well as his cell phone and in the second, two men grabbed the bag he was carrying which contained several books, and his identity document.
- [95] When he went to the police station to report the first incident, the SAPS member in the CSC refused to register a crime, because Mr Makele could not provide the IMEI number of his cell phone. They told him that if he did not have that information he could not open a case.²¹⁷ He related –

“You must remember that this was the first time I had been pointed with seven guns. After I left the police station I was traumatised because I did not get any help.”²¹⁸

- [96] Mr Makele also testified about attending crime summits in Khayelitsha. He said that good resolutions were taken at the summit, but were not implemented.²¹⁹ He stated that it was necessary “to remove politics from the issues of crime and violence in Khayelitsha”, saying that people focus on politics and not on the needs of community members.²²⁰
- [97] Mr Makele also testified about an incident involving a rape of seven women in Makhaza in 2010. The alleged perpetrators were released on bail, and then threatened the young women who had laid the rape charges. The young women approached the SJC for assistance.²²¹ Mr Makele called the detective to report that the young women were being threatened by the perpetrators but the detective initially did nothing about it.²²² This is another example of the intimidation of complainants by accused people who have been released on bail, where the police take no steps to assist the complainants.²²³ Mr Makele did not give up. He pursued the matter. The issue was raised in court, and the alleged perpetrators denied the incident and stated they lived in Gugulethu and not Makhaza, so their bail was not estreated. Thereafter, the alleged perpetrators threatened the young women again, and at that stage the alleged perpetrators failed to arrive at court. Mr Makele then went looking for the perpetrators and found one of them at a tavern in Gugulethu. He called the police and the perpetrator was arrested, but when he appeared in court his docket was missing, and so he was released.²²⁴ The rape case has never been finalised, nearly four years later.
- [98] Like several of the other community leaders, Mr Makele testified that he had been able to establish a good relationship with senior members of SAPS in Khayelitsha which meant that he was often assisted when he requested help, but he acknowledged that ordinary residents in Khayelitsha would not have such preferential treatment.²²⁵ When asked what needed to be

214 Id. at para 16.

215 Id.

216 Record Bundle 2(5), File 2, Item 9 at paras 4 – 8; Transcript at 2083 – 2086 (7 February 2014).

217 Record Bundle 2(5), File 2, Item 9 at para 6.

218 Transcript at 2084 (7 February 2014).

219 Id. at 2088.

220 Id. at 2089.

221 Id. at 2090.

222 Id.

223 See, for other examples, Chapter 6 above at paras 6 and 31.

224 Transcript at 2089 – 2095 (7 February 2014).

225 Transcript at 2108 (7 February 2014).

done to improve the quality of the police service in Khayelitsha, Mr Makele spoke of the high workloads borne by detectives.²²⁶ He also thought that police in Khayelitsha needed access to trauma counselling.²²⁷

(g) Mr Zackie Achmat

- [99] Mr Abdurrazack (Zackie) Achmat also testified.²²⁸ Mr Achmat is currently the Director of one of the complainant organisations, Ndifuna Ukwazi. Mr Achmat was born in Baragwanath Hospital, Soweto in 1962 while his parents who were garment workers were living in Vrededorp, Johannesburg.²²⁹ He grew up in a working class neighbourhood in Johannesburg. He became involved in politics early in his life, and was arrested as a fifteen year old in 1977.²³⁰
- [100] Mr Achmat was a founder member of the Treatment Action Campaign (TAC), another of the complainant organisations, which was established on 10 December 1998.²³¹ He testified that the TAC has its roots in Khayelitsha and has approximately 20 branches in Khayelitsha today.²³² He testified that the rape of Lorna Mlofana²³³ was a seminal event in relation to the campaign for the Commission to be established.²³⁴ He spoke of the poor quality of investigation that was done in the case, as well as the many postponements that happened.²³⁵ Mr Achmat also testified about the murder of Nandipha Makeke²³⁶ and the prosecution that followed²³⁷ and the shortcomings in the police investigation of it.²³⁸ He also criticised the manner in which the murder case relating to the murder of Ms Zoliswa Nkonyana was handled.²³⁹
- [101] Mr Achmat emphasised the importance of accountability in the police service. He asserted that –

“Accountability has to start at the top. It cannot start elsewhere. In Khayelitsha, I believe, as the previous witnesses said, the station commander is responsible. If the station commander does not hold people accountable the members who serve under her or him, then there is a problem. If the cluster commander doesn’t hold people accountable then there is a serious problem. Similarly if the provincial commissioner doesn’t hold people accountable there is a serious problem.”²⁴⁰

²²⁶ Id. at 2101.

²²⁷ Id.

²²⁸ Record Bundle 8(3), Item 45; Transcript 2351 – 2407 (10 February 2014).

²²⁹ Record Bundle 8(3), Item 45 at para 7.

²³⁰ Transcript at 2354 – 2355 (10 February 2014).

²³¹ Id. at 2358.

²³² Id. at 2359 – 2360.

²³³ One of the initial complaints, see Chapter 6 above at paras 35 – 41.

²³⁴ Id. at 2361 – 2362.

²³⁵ Id.

²³⁶ One of the initial complaints, see Chapter 6 above at paras 31 – 34.

²³⁷ Transcript at 2366 – 2368 (10 February 2014).

²³⁸ Id. at 2368.

²³⁹ This was another of the initial complaints, see Chapter 6 above at paras 3 – 9. Id. at 2370 – 2372.

²⁴⁰ Transcript at 2377 (10 February 2014).

(h) Mr Joel Bregman

- [102] The last community activist to testify was Mr Joel Bregman.²⁴¹ Mr Bregman has worked for the SJC since 2010, and is currently a senior researcher in the Policy, Communications and Research Department, focussing primarily on the Justice for All Campaign.²⁴² He has been responsible for taking statements from members of the community concerning their experiences of policing, courts and prosecutors in Khayelitsha.
- [103] Mr Bregman testified positively about some of his experiences of policing in Khayelitsha. As mentioned in Chapter 6 above, he spoke positively about the investigating officer in a case involving the rape of a young boy.²⁴³ He also spoke positively about a meeting attended by SJC members with the Khayelitsha Site B police station on 27 February 2012.²⁴⁴ Mr Bregman also testified positively about his meeting with the Task Team during July 2012, although the SJC and complainant organisations were not furnished with a copy of the Task Team report when it was published.²⁴⁵ They only received the report during the litigation when it was annexed to Lieutenant General Lamoer's affidavit.
- [104] Mr Bregman also commented in one of his statements lodged with the Commission that dealing with senior officers of SAPS is a different experience to dealing with more junior members in the service.²⁴⁶ In this regard, his experience is similar to that of other community leaders or activists.²⁴⁷ This is a worrying phenomenon, because, although it is encouraging that senior officers treat community activists and leaders well, it is deeply discouraging that the same leaders and activists find that junior members of SAPS treat them with less respect than their elders.
- [105] However, Mr Bregman testified about other experiences he had had with police in Khayelitsha that were not positive. First, Mr Bregman also mentioned the shooting of Ms Ngongwana in his statement, a matter dealt with in Chapter 6.²⁴⁸ Then he spoke about the failure of SAPS to turn up to a meeting organised on 7 July 2012 by the Khayelitsha CPFs.²⁴⁹ Thirdly, Mr Bregman also spoke of the issue relating to the alleged rape perpetrators who had broken their bail conditions, about which Mr Makele also testified.²⁵⁰ In his statement, Mr Bregman also described an incident where community members claimed that SAPS members had assaulted people in a shebeen.²⁵¹
- [106] In his testimony before the Commission and in one of his statements, Mr Bregman spoke of his understanding and experience of CPFs in Khayelitsha.²⁵² The first meeting he mentioned took place on 19 November 2010. Its purpose was to discuss what response should be taken to the violent service delivery protests that were taking place.²⁵³ Mr Bregman was concerned because the response of the Khayelitsha CPFs was that this was an issue that should be taken

241 Record Bundle 1(5), File D, Item 2; Record Bundle 2(5), Item 41, Record Bundle 9(2), Item 41A; Transcript at 2411 – 2470 (11 February 2014).

242 Record Bundle 1(5), File D, Item 2 at paras 4 and 22; Record Bundle 9(2), Item 41A at para 2.

243 See Chapter 6 above at para 22.

244 Record Bundle 1(5), File D, Item 2 at para 34.

245 Transcript at 2424 – 2425 (11 February 2014).

246 Record Bundle 1(5), File D, Item 2 at para 37.

247 For example: Ms Soldaat at paras 71 – 75 above, Mr Makele at paras 93 – 98 above and Bishop Mtsolo at para 109 below.

248 See Chapter 6 at paras 23 – 28.

249 Record Bundle 1(5), File D, Item 2 at paras 76 – 78.

250 In relation to Mr Makele's testimony see paras 93 – 98 above, and Transcript at 2089 – 2095 (7 February 2014). In relation to Mr Bregman's testimony, see Record Bundle 1(5), File D, Item 2 at paras 79 – 87.

251 Record Bundle 1(5), File D, Item 2 at paras 93 – 96.

252 Transcript at 2415 – 2418 (7 February 2014); Bundle 9(2), Item 41A at paras 11 – 16.

253 Bundle 9(2), Item 41A at para 12.

forward by the Khayelitsha Development Forum (the KDF), a non-governmental body, which, it appeared to Mr Bregman, had no mandate to address policing or safety issues. The KDF is seen by some as a political body aligned to the African National Congress. Mr Bregman stated that it seemed that the CPFs did not consider that they were the relevant forum to deal with policing issues. Mr Bregman testified that he left the meeting “quite disheartened”.²⁵⁴

- [107] Mr Bregman testified that early on the SJC formed the view that the CPFs were “limited in their ability to make the changes” that the SJC deemed necessary.²⁵⁵ There was a sense that “CPFs had both been co-opted ... by the SAPS that they lacked independence but also that the police didn’t respect the structures and didn’t provide them with the support that they required to carry out their jobs.”²⁵⁶ Nevertheless, Mr Bregman admitted that the SJC could have done more to engage with the CPFs²⁵⁷ and in his final statement to the Commission stated the following –

“The Commission is forward looking and one of its key aims, from our perspective, is to begin to rebuild relationships and reconcile differences. The SJC is undertaking to restart our relationship with the CPFs in Khayelitsha and we will be registering with them soon.”²⁵⁸

D. COMMUNITY ELDERS AND LEADERS

- [108] The Commission heard testimony from four witnesses who can perhaps be described as community elders or leaders. They are Bishop Mtsolo, National Presiding Bishop in the Litha Methodist Church;²⁵⁹ Mr Madoda Mahluthshana, principal of Chris Hani Senior Secondary School;²⁶⁰ Mr Xolela Mjonondwana, principal of Zola Secondary School²⁶¹ and Mr Bubele kaBeja, a member of the KDF,²⁶² who testified together with Mr Ndithini Tyhido, who is also a member of the KDF.

(a) Bishop Mtsolo

- [109] Bishop Mtsolo has lived in Khayelitsha since 1990,²⁶³ although his parents moved to Site C in Khayelitsha in 1985 shortly after Khayelitsha was established.²⁶⁴ He is the National Presiding Bishop of the Litha Methodist Church of South Africa, and chairperson of the Western Cape Christian Ministers Forum.²⁶⁵ Bishop Mtsolo started by saying that he had a “good working relationship” with the SAPS at Lingeletu West and Harare,²⁶⁶ and that he did not wish to “vilify the police” but thought it was his duty “to cooperate with the Commission and thereby

254 Transcript at 2416 (7 February 2014).

255 Id. at 2417.

256 Id. at 2417 – 2418.

257 Bundle 9(2), Item 41A at paras 31 – 34.

258 Id. at para 33. Transcript at 2436 – 2437 and 2453 (11 February 2014).

259 Record Bundle 1(1), File 1.a, Item 33; Transcript at 107 – 138 (23 January 2014).

260 Record Bundle 1(1), File 1.a, Item 7; Transcript at 490 – 509 (28 January 2014).

261 Record Bundle 1(1), File 1.a, Item 31; Transcript at 509 – 533 (28 January 2014).

262 Record Bundle 5(4), File 8, Item 17; Record Bundle 9(1.2), Item 89; Transcript at 4176 – 4258 (20 February 2014).

263 Record Bundle 1(1), File 1.a, Item 33; Transcript at 107 – 138 (23 January 2014).

264 Record Bundle 1(1), File 1.a, Item 33 at para 3.

265 Id. at para 1.

266 Id. at para 5.

assist the police to improve its service to the community”.²⁶⁷ He stated that crime was rampant in Khayelitsha and that the police “are battling to deal with the situation”.²⁶⁸ He spoke of the problems of youth gangs²⁶⁹ and drugs.²⁷⁰ Bishop Mtsolo stated that he thought police were poorly equipped,²⁷¹ did not respond quickly when the 10111 emergency number was called,²⁷² often did not answer police station telephones,²⁷³ and that investigation of crime takes excessively long.²⁷⁴ He also thought there was a need for more police in Khayelitsha²⁷⁵ and an improvement in the relationship between SAPS and the community.²⁷⁶ He urged the police to keep the names of people who inform them of criminal activities confidential.²⁷⁷

(b) Mr Madoda Mahlutshana

- [110] Mr Mahlutshana is the principal of the Chris Hani Senior Secondary School, situated on the corner of Japhta K Masemola and Cekece Roads in Makhaza. Chris Hani Secondary School is a no-fee public school with approximately 1300 children between grades 8 and 12. Most of the learners come from Makhaza. Mr Mahlutshana said that the most worrying crime issues at his school were gangsterism, vandalism, burglary and drug usage.²⁷⁸ In his statement, he said that his experience of SAPS had been both good and bad.²⁷⁹ On the good side was the fact that SAPS was supportive of the school and that he had regular meetings with the local sector commander who also sits on the school’s safety committee; SAPS also does random drug inspections three times a week; SAPS responds to the burglar alarm when it goes off; and SAPS knows of the problems with gangs, especially on Friday afternoons, “they are often here”.²⁸⁰ On the negative side, Mr Mahlutshana testified that the school had had four or five burglaries in the last three years, but that SAPS had apparently made no progress in the criminal investigations relating to those burglaries.²⁸¹ He also complained that SAPS telephone management was poor,²⁸² with the phone often not answered; that SAPS did not respond promptly when called and “we need them morning and afternoon, especially on Fridays and they are not always able to attend because, they say, they have too few resources”.²⁸³
- [111] In his testimony, Mr Mahlutshana spoke of the gang culture amongst youth in Khayelitsha and how the fighting happens at school, and after school. The gang members are armed with knives, pangas and other dangerous weapons that they hide in their uniform. Some of the young people who carry weapons say they do so for self-protection.²⁸⁴ According to Mr Mahlutshana, the school has worked hard to deal with the problem, holding meetings with parents, and the local CPF; confiscating weapons found on the school premises, and

²⁶⁷ Id. at para 6.

²⁶⁸ Id. at para 7.

²⁶⁹ Id. at para 15; Transcript at 113 – 115 (23 January 2014).

²⁷⁰ Id. at para 13.

²⁷¹ Id. at paras 22 – 26; Transcript at 118 (23 January 2014).

²⁷² Id. at paras 27 – 28; Transcript at 116 – 117 (23 January 2014).

²⁷³ Id. at 27 – 28.

²⁷⁴ Id. at para 29.

²⁷⁵ Transcript at 117 (23 January 2014).

²⁷⁶ Record Bundle 1(1), File 1.a, Item 33 at para 32.

²⁷⁷ Transcript at 118 (23 January 2014).

²⁷⁸ Transcript at 493 (28 January 2014).

²⁷⁹ Record Bundle 1(1), File 1.a, Item 7 at para 3.

²⁸⁰ Id. at para 4.

²⁸¹ Transcript at 499 (28 January 2014).

²⁸² Id. at 499 – 500.

²⁸³ Record Bundle 1(1), File 1.a, Item 7 at para 5.4.

²⁸⁴ Transcript at 494 (28 January 2014).

disciplining children who bring weapons in breach of the school code of conduct.²⁸⁵ Mr Mahlutshana said that the school “had a mini-museum ... where we store all these knives”.²⁸⁶ Mr Mahlutshana spoke positively of the CPF in his area, saying that it supported the school safety committee.²⁸⁷ Mr Mahlutshana also testified that his school was one of the schools that was “controlling and managing” the gang situation.²⁸⁸ He deplored the gang culture as it –

“really affects the learning and teaching. So we would really want to have a clear strategy from the SAPS, also the community, on how the schools are being supported to move forward and eliminate this because it just destabilises the schools.”²⁸⁹

(c) Mr Xolela Mjonondwana

[112] The second school principal to testify was Mr Xolela Mjonondwana, principal of Zola Secondary School, in Thembokwezi, between Site C and Mandalay, on the north-western edge of Khayelitsha, which falls within the jurisdiction of the Khayelitsha Site B police station.²⁹⁰ Mr Mjonondwana testified that his school did not have a problem with gangsterism or with drug abuse by its learners,²⁹¹ but said that the school had had a spate of burglaries since 2012, all of which were reported to the Site B police station. He provided details of six burglaries in which computer equipment and other technological equipment was stolen.²⁹² Mr Mjonondwana suspected that the burglaries were being committed by the same person, possibly someone from the school community.²⁹³ Accordingly, he installed cameras in the building and employed security guards. They apprehended a learner who was handed to SAPS but he did not know what happened to the case against the learner. On a second occasion, the security guards having apprehended a person breaking into the school at night, called the police, who did not arrive.²⁹⁴ The slow response time of the police and their failure to successfully investigate the burglaries at the school led Mr Mjonondwana to arrange a meeting with the station commander of Khayelitsha Site B police station, but “nothing came of the attempt to build the relationship between our school and the police.”²⁹⁵

[113] On the early morning of 25 September 2012, the security guards caught yet another suspected burglar on the school premises.²⁹⁶ They called the police at about 03h00. According to Mr Mjonondwana, in the process of arresting and restraining the suspect, the security guards assaulted him. Of this Mr Mjonondwana said –

“While I believe that assaulting the suspect was not in line with the rule of law, I do not see how this man would have been restrained and kept in custody until the police arrived.”²⁹⁷

285 Id. at 495.

286 Id. at 496.

287 Id. at 503.

288 Id. at 506.

289 Id. at 508 – 509.

290 Record Bundle 1(1), File 1.a, Item 31 at para 1; Transcript at 509 – 533 (28 January 2014).

291 Transcript at 521 (28 January 2014).

292 Record Bundle 1(1), File 1.a, Item 31 at para 1(a) – (f).

293 Id. at paras 4 – 6.

294 Id.

295 Id. at para 8.

296 Id. at paras 11 – 14.

297 Id. at para 12.

- [114] The police did not arrive, and Mr Mjonondwana was called to the school at about 05h00.²⁹⁸ The burglar then confessed that he had been responsible for most of the burglaries at the school, and that he had sold the computer equipment to traders nearby.²⁹⁹ Accordingly, some hours later, when the police still had not arrived, Mr Mjonondwana and the security guards decided to ask the suspect to show them to whom he had sold the stolen equipment. As they were about to depart, the police arrived and Mr Mjonondwana explained to the police what had happened and that they were about to take the suspect to the place where he had sold the stolen equipment. The police allowed them to take the suspect, and did not accompany them.³⁰⁰ At the business premises pointed out by the suspect, they recovered four flat screen LCD monitors. The suspect then directed them to another premises where he said he had sold other equipment.³⁰¹ When they arrived there, the suspect escaped from their custody. They went to the police station to lay a charge, but know of no progress in the case.³⁰² Since this incident, Mr Mjonondwana testified they have not had further problems with burglaries at the school.³⁰³
- [115] The Commission requested, received and perused dockets in the cases of: Khayelitsha CAS 57/05/2012;³⁰⁴ CAS 504/05/2012;³⁰⁵ CAS 635/07/2012;³⁰⁶ and CAS 783/08/2012.³⁰⁷ The Commission did not obtain dockets in the cases of CAS 787/07/2012 and CAS 424/4/2012. In the case of CAS 57/05/2012, it appeared that there had been very little investigation and no arrests were made. In respect of CAS 504/05/2012, there has been some investigation and a suspect had been arrested and brought before court on several dates. The last entry in the copy of the docket that the Commission saw was 13 November 2012. There was a note in the investigation diary to obtain a further statement from the witness and to file an identification statement. In respect of CAS 635/07/2012, the police tried to obtain fingerprints, but without success. The docket was closed for lack of evidence. In respect of CAS 783/08/2012 the case was similarly closed for lack of evidence. None of the dockets seem to apply to the incident described in paras 113 – 114 above.

(d) Other school principals

- [116] The Commission also received statements of several other school principals in Khayelitsha which are available in the record: Ms Ayanda Mbava of Iqhayiya Secondary School,³⁰⁸ Ms Nokuzola Malgas of Manyano Secondary School,³⁰⁹ Mr Andile Magadla of Siphamandla Senior Secondary School,³¹⁰ and Mr Bernard Hlongwane, principal of Bulumko High School.³¹¹ All expressed concern about youth gangs.

298 Id. at para 13.

299 Id. at para 14; Transcript at 514 – 518 (28 January 2014).

300 Id. at para 16.

301 Id. at para 17.

302 Id. at paras 18 – 21.

303 Transcript at 520 (28 January 2014).

304 Record Bundle 7(4.2), Item 31, pp 855 – 866.

305 Record Bundle 7(4.2), Item 32, pp 867 – 900.

306 Record Bundle 7(4.2), Item 42, pp 1095 – 1112.

307 Record Bundle 7(4.2) Item 46, pp 1223 – 1241.

308 Record Bundle 1(1), File 1.a, Item 27.

309 Id. at Item 40.

310 Id. at Item 52.

311 Id. at Item 72.

(e) Mr Bubela kaBeja and Mr Ndithini Tyhido

[117] The final community leaders to testify were Mr Bubele kaBeja and Mr Ndithini Tyhido of the Khayelitsha Development Forum (the KDF).³¹² Mr kaBeja is an executive member of the KDF responsible for matters of justice and population development.³¹³ Mr kaBeja says in his statement that the Department of Justice and Constitutional Development supports the KDF Justice and Constitutional Development portfolio, though he did not specify in what way.³¹⁴ Mr kaBeja has been a member of the KDF for 15 years. Mr Tyhido is the chairperson of the KDF and has been a member of the KDF for 14 years.³¹⁵ According to Mr kaBeja's statement, the KDF "is a voluntary organisation, established by the community of Khayelitsha to champion and campaign for the socio-economic development and upliftment of Khayelitsha."³¹⁶ Mr Tyhido described the KDF –

“... as a conduit for development in Khayelitsha. It is composed of various stakeholders that would mean non-governmental organisations, religious formations, the women, the youth, political parties and parties in and outside government and other stakeholders.”³¹⁷

[118] Mr Tyhido stated that the KDF has functional and effective ward-based structures in all the twelve wards of Khayelitsha.³¹⁸ The KDF also has a range of sector forums including a Safety and Security Forum, a Youth Development Council, a Religious Forum, an Education Forum, a Business Forum, a Disability Forum, a Women's Forum and an Arts, Culture and Heritage Council.³¹⁹ All elected ward councillors serve *ex officio* on the KDF. Mr Tyhido testified that there “is a serious, very cordial relationship between KDF and the police in Khayelitsha on any matter”,³²⁰ as well as a very close relationship with CPFs.³²¹ Mr Tyhido also said that the KDF was campaigning for more resources for the police in Khayelitsha.³²²

[119] Mr Tyhido also testified about vigilante violence in Khayelitsha. He said it was clearly wrong, and that an education campaign was needed to address it.³²³ He also said –

“But I will tell you, because I am young, I am in my early forties here in the township, we talk when we're having beers, we talk about what is the quickest measure to get your thing back when it is stolen ... Just give him a few knocks and get it back before you go the long route of the police and that. I am just saying these are the things we say. I am not saying they are right, but I don't hear these conversations saying because the police can't do but I just want my thing now; I don't want it to go via the commission, the court.”³²⁴

[120] In his statement, Mr kaBeja complained that the KDF had not been consulted by the Premier before establishing the Commission, which –

312 Transcript at 4176 – 4258 (20 February 2014); Record Bundle 5(4), File 8, Item 2, pp 1 – 8; and Record Bundle 9(1), File (1.2), Item 89.

313 Transcript at 4180 (20 February 2014).

314 Record Bundle 5(4), File 8, Item 2 at para 7.

315 Transcript at 4195 (20 February 2014).

316 Record Bundle 5(4), File 8, Item 2 at para 1.

317 Transcript at 4184 (20 February 2014).

318 Id.

319 Id. at 4184 – 4185. Record Bundle 5(4), File 8, Item 2 at para 6 where additional forums are mentioned including a Human Settlement Forum, a Social Development Forum, a Sport Development Forum, and a Health Forum.

320 Id. at 4193.

321 Id. at 4194.

322 Id. at 4197.

323 Id. at 4198 – 4203.

324 Id. at 4203.

“fuelled the perception that the voices, views and opinions of the people of Khayelitsha are somehow less important than those of the views of funded NGOs whose involvement in Khayelitsha has only been recent.”³²⁵

[121] Mr kaBeja also stated that the work of the SAPS in Khayelitsha –

“is not the same as that in affluent areas but is conducted in a hostile socio-economic environment. In that context, policing is fraught with difficulties. However those difficulties are not evidence of police inefficiency.... The focus on policing fails to appreciate the depressed socio-economic conditions of the community that the SAPS must operate in.”³²⁶

[122] In his testimony before the Commission, Mr kaBeja stated that it was the position of the KDF that “[t]here can be no effective policing under sub-humane conditions”,³²⁷ that “the lack of access to basic services is a major contributing factor to crime”,³²⁸ and that “the resource allocation by both the Province and the City remains skewed away from poor areas like Khayelitsha”.³²⁹ On behalf of the KDE, he recommended that the building of a new police station in Makhaza be expedited,³³⁰ that the Department of Community Safety “resource and upscale” Neighbourhood Watches,³³¹ and that the province revives the Bambanani project as well as the “Hands Off our Children” project.³³²

E. PEOPLE WHO WORK IN KHAYELITSHA

(a) Ms Sonja Basson

[123] The Commission heard the testimony of Ms Sonja Basson, former head of the Homestead Project for Street Children in Site B.³³³ Ms Basson is a social worker, with 21 years’ experience. For 9 years, until mid-2013, she worked as the Social Work Manager at The Bridge at Elukhuselweni Child and Youth Care Centre which was originally situated in Silumko Street, E Section, Khayelitsha, but in about 2008, it moved to near Pama Road, in D Section.³³⁴ The Centre is one of the Homestead Projects for Street Children care centres. For ease, The Bridge at Elukhuselweni will be referred to as the Khayelitsha Homestead Centre in this report. The Homestead Projects for Street Children is a non-profit organisation that focuses on reintegrating street children into their families and communities.³³⁵ It has existed for 30 years and has eight projects including the Khayelitsha Homestead Centre.³³⁶

[124] The Khayelitsha Homestead Centre offers a residential care programme for up to 75 children who need care in terms of the Children’s Act, 38 of 2005. The programme offers psychosocial

325 Record Bundle 5(4), File 8, Item 2 at para 3.2.

326 Id. at para 18.1.

327 Transcript at 4180 (20 February 2014).

328 Id. at 4180.

329 Id. at 4181.

330 Id. at 4182.

331 Id.

332 Id.

333 Record Bundle 1(1), File 1.a, Item 5; Transcript at 967 – 1014 (31 January 2014).

334 Transcript at 967 (31 January 2014).

335 Record Bundle 1(1), File 1.a, Item 5 at para 2.

336 Id. at para 3.

care, reintegration into the education system, and provides therapeutic interventions as required, using sport, art and cultural activities.³³⁷

- [125] The Centre is located within the jurisdiction of the Lingeletu West police station. In her testimony, Ms Basson described the difficulties the Centre encountered when it moved to Pama Road. The land had been acquired and building plans had been passed, but when the builders arrived on site, threats of violence arose from the community.³³⁸ Ms Basson said that when this happened –

“... we had to go back to the negotiation table to KDF and KBF³³⁹ and SANCO and negotiate and negotiate and negotiate so in the end it was actually that there was conflict in D section and that they didn’t trust the ward representative at that stage and the whole time they said to us just wait until the elections is over and we get a new councillor in place and then you can start building again.”³⁴⁰

- [126] According to Ms Basson, the building process was stopped for nearly eighteen months and builders refused to come back to the site because they had been threatened and it had severe implications for the Centre. The building costs increased from R8 million to R13 million. Ms Basson said that they had approached the police for assistance, but they did nothing about it. Eventually they appointed a local security company from D section.³⁴¹

- [127] In her statement Ms Basson suggested her problems with the police included the lack of response by police particularly in crisis situations; police lacking “enthusiasm” and demonstrating “no or little work ethic”; and a lack of police visibility.³⁴² She elaborated on the issue of low morale during her testimony as follows –

“Sometimes you would get to the police station or a police officer if they were called out and you would realise that there is a new person and you will see a little bit of eagerness on their side to do their job correctly and when you get to the police station in three or four months and you meet that person again then you realise okay that guy’s already just as demoralised as the rest of the group. So my perception ... of the work of the police in Khayelitsha ...there was just no sticking to the ethics of what is expected of their profession ...”³⁴³

- [128] Ms Basson also spoke of the emerging problem of youth gangs. She said that the problem escalated towards the end of 2011 and became a major problem.³⁴⁴

“It started with small groups of rival youths which were not addressed and now there are two huge gangs, known commonly as the “Vatos” and the “Italians”. When we have seen these gangs becoming violent we always call the police and it has been a minimum of 20 times already since November 2011,³⁴⁵ but most times they do not respond to our calls...”³⁴⁶

337 Id. at para 4.

338 Transcript at 970 – 971 (31 January 2014).

339 Khayelitsha Business Forum.

340 Transcript at 970 (31 January 2014).

341 Id. at 972.

342 Record Bundle 1(1), File 1.a, Item 5 at para 6.

343 Transcript at 977 (31 January 2014).

344 Id. at 979.

345 Ms Basson’s Statement was made in September 2012.

346 Record Bundle 1(1), File 1.a, Item 5 at para 12.

- [129] She testified that the gang members would run with a variety of weapons: knives, guns, sjamboks, pieces of steel pipe, anything that you can sharpen was used, even a fork.³⁴⁷ The Centre has had to relocate some of their boys when they had been threatened by gangs or had chosen to leave gangs.

“Boys cannot freely detract from gangs without serious repercussions, including physical harm.”³⁴⁸

- [130] Ms Basson also described the murder of one of the young boys resident at The Homestead on 17 April 2012.³⁴⁹ A gang fight was taking place outside the Centre, and the young boy climbed out a window to see what was happening. He was stabbed to death outside the gates of the Centre. The Centre staff carried his body into the dining room of the Centre. When the police arrived an hour later, they took statements from the boys and all the staff. They could not cordon off the road where the murder had taken place, but cordoned off the dining room where the young boy’s body had been laid. The police made no progress with investigations, as far as Ms Basson is aware, but the next day members of the taxi association arrived with sjamboks. I was not at the Centre at the time, but was called there by staff members.

“I had to physically run and hold onto the taxi to get them to stop because they wanted to attack any male youth who could possibly be a gangster and they were threatening boys under my care as well. The taxi driver and the three men with him were so worked up they looked crazy.”³⁵⁰

- [131] Ms Basson also testified that members of the SAPS misapply provisions of the Child Justice Act, 75 of 2008, so as to avoid taking any steps to deal with criminal behaviour by children.³⁵¹

- [132] In her view, the problems faced by the SAPS cannot entirely be blamed on a lack of resources –

“I do not believe that the problems, such as the lack of service delivery by the police, experience at Lingeletu West police station is related to a lack of resources. You can make it work even without resources. We do it here at The Homestead on a daily basis where we house 50 boys and our programmes need to run successfully without essential resources such as trauma counsellors. The dedication and commitment of the staff to make things work is what drives these programmes forward. If I have to give an opinion on what resources may be lacking at Lingeletu West I would say it would be a lack of performance management systems; such as a record of how long it took to lay a charge in the charge office by an individual. There may also be a lack of knowledgeable and/or experienced police officers. This may well account for their demoralisation.”³⁵²

- [133] Ms Basson spoke highly of several other state agencies in Khayelitsha, particularly the Thuthuzela Care Centre based at the Khayelitsha Hospital,³⁵³ and the Khayelitsha Magistrates’ Court, and in particular, of Ms Nyanga, a magistrate working with children’s issues.³⁵⁴ She did comment however that although prosecutors make recommendations for diversion, there are no support structures available in Khayelitsha to support diversion programmes.

347 Transcript at 980 (31 January 2014).

348 Record Bundle 1(1), File 1.a Item 5 at para 14.

349 Id. at paras 34 – 36; Transcript at 982 – 984 (31 January 2014).

350 Record Bundle 1(1), File 1.a Item 5 at para 36.

351 Id. at paras 11 and 26; Transcript at 991 – 992 (31 January 2014).

352 Record Bundle 1(1), File 1.a Item 5 at para 27.

353 Id. at para 29.

354 Id. at para 30.

[134] Finally, Ms Basson testified that the boys at The Centre have a negative attitude towards the police in Khayelitsha. They refer to them as “boere” and “blou baaie”, and the police are not associated with protection and caring.³⁵⁵ She finished her written statement by saying –

“The police should be trustworthy and reliable. We need to have the assurance that when we call upon them they will protect us, as they should be seen as our protectors.”³⁵⁶

(b) Manager of Shoprite, Khayelitsha Mall

[135] The Commission also obtained a statement from the manager of Shoprite at the Khayelitsha Mall, although he did not testify in person.³⁵⁷ At the time he made the statement in 2012, he had been manager of the store for three years. He described four armed robberies in the store that happened between January and October 2012. Each robbery was reported to the Lingeletu West police station. It was clear from camera footage in the store that all four of the robberies had been perpetrated by the same group of seven young men who adopted the same *modus operandi* each time.³⁵⁸ Despite this evidence, the police had, according to the manager, been unable to solve the crimes. Moreover, when they arrived at the store, their demeanour, according to the manager, was “unsympathetic”,³⁵⁹ despite staff at the store being traumatised by having been held up at gunpoint. The manager also testified that the Makhaza Shoprite appeared to have been targeted by the same gang,³⁶⁰ as well as other stores in the Khayelitsha Mall.³⁶¹

The Commission obtained and perused several of the dockets arising out of theft and robberies at Shoprite Checkers –

- LW 102/01/2012: A week after a robbery took place at Shoprite Checkers one of the three suspects was arrested. There were several postponements in this matter due to the docket not being at court on the day of the hearing. The last entry on the copy of the docket available to the Commission was on 23 July 2012.
- 556/09/2012: In this matter a suspect was arrested with the aid of camera footage obtained. Although the docket contains a note indicating that the investigation was complete, the matter was withdrawn from court on 20 July 2013. No reason was provided for this despite the investigating officer being requested by his supervisor to obtain the reason. No reason for the withdrawal is recorded in the docket.
- Docket 462/03/2012: An informer provided the names of possible suspects to SAPS but they could not be traced and no arrests were made in connection with this matter.

F. COMMUNITY POLICE FORUMS (CPFs)

[136] The Commission heard testimony from seven witnesses who had been directly involved as members of CPFs. Five of them had served as members of CPFs in Khayelitsha, and two were members of the Provincial Community Policing Board: Mr Hanif Loonat, the former

³⁵⁵ Id. at para 40.

³⁵⁶ Id. at para 40.

³⁵⁷ Record Bundle 1(1), File 1.a, Item 36.

³⁵⁸ Id. at paras 2 – 3.

³⁵⁹ Id. at para 10.

³⁶⁰ Id. at para 12.

³⁶¹ Id. at para 16.

chairperson of the Western Cape Provincial Community Police Board (the Provincial Board),³⁶² as well as the testimony of another senior provincial CPF representative, Mr Faisal Abrahams.³⁶³ The latter two gave evidence jointly.³⁶⁴

(a) Mr Chumile Sali

- [137] Mr Chumile Sali, a former member of the Harare CPF,³⁶⁵ stated that he was elected to serve as the secretary of the Harare CPF in September 2011 but was only able to serve in the position for four months, because he was then offered a job in Gauteng.³⁶⁶ He stated that when he read about the establishment of the Commission, his reaction was that it “was long overdue”.³⁶⁷ According to Mr Sali, the CPF had been dysfunctional in the period preceding his term of office.³⁶⁸ During his tenure, the CPF was not provided with an office or stationery, and absence of support, he said, demoralises the CPFs.³⁶⁹ He spoke of how they used to try to arrange with SAPS for them to collect CPF members so they could attend meetings but that often SAPS came late which was demoralising.³⁷⁰ He also mentioned that the string of acting station commanders at Harare police station at the time that he was a member of the CPF was a “bad experience”.³⁷¹
- [138] He was told that one of the other witnesses, Ms Ncaphancapha,³⁷² who when desperately trying to resolve the issue of her son’s attendance at school in the face of gang violence, had been advised by the chairperson of the CPF to go to the taxi association.³⁷³ He said that that was the wrong thing for a CPF member to do and should not have happened, “as a CPF member you are supposed to uphold human rights”.³⁷⁴ He also testified as to his concerns about vigilantism and its contribution to creating a cycle of violence.³⁷⁵ He provided the Commission with a very graphic and distressing video clip of a vengeance attack by a crowd on a young man allegedly in Khayelitsha that was circulated to him on a social networking site.³⁷⁶ The Commission ruled that the video clip may not be shown during the hearings.

(b) Mr Sipho Jafta

- [139] The Commission also heard the testimony of Mr Sipho Jafta,³⁷⁷ who is the Chairperson of the Lingeletu West CPF, a position he has held since November 2010. He has been a member of the CPF since 2008, and prior to that was an active member of the SANCO.³⁷⁸ He is employed by the Department of Health in the City of Cape Town.

362 Record Bundle 2(1), File 1.2, Item 2.

363 Record Bundle 2(1), File 1.2, Item 1.

364 Transcript at 1393 – 1472 (4 February 2014).

365 Record Bundle 7(1), File G, Item 11; Transcript at 1334 – 1386 (4 February 2014).

366 Id. at paras 2 – 3.

367 Transcript at 1336 (4 February 2014).

368 Id. at 1341.

369 Transcript at 1341 – 1342 and 1351; Record Bundle 7(1), File G, Item 11, para 12.

370 Transcript at 1342 (4 February 2014).

371 Id. at 1343.

372 For an account of Ms Ncaphancapha’s evidence, see paras 34 – 36 above.

373 Transcript at 1349 (4 February 2014).

374 Id.

375 Id. 1353.

376 Transcript at 1354 – 1355 (4 February 2014). The Commission decided, consistent with its ruling during the hearing, that the video clip should not be made available on its website.

377 Record Bundle 9(1), File 1.2, Item 91; Transcript at 2764 – 2821 (12 February 2014).

378 Id. at paras 2 – 5.

- [140] Mr Jafta says that although initially the relationship between the CPF and SAPS was not good, it has improved and now there is “a good relationship” between the police station and the CPF.³⁷⁹ The CPF has regular meetings with the police, attended either by the station commander or a senior officer sent by the station commander.³⁸⁰ Yet the CPF receives complaints from the community about SAPS relating to a range of issues and including complaints that the telephone at the police station is not answered; that police response times are too slow; that sometimes police are seen as being “too cosy and friendly” with crime perpetrators; that the police treat members of the public with disrespect; that the police display a lack of passion for their work, especially young police officers; and that police lack training in various aspects of policing and community relations.³⁸¹ Mr Jafta also agreed that youth gangs are a problem. He mentioned certain schools that had a particular problem with gangs³⁸² and asserted that addressing the violent behaviour of youth gangs was important for fostering safety and security in Khayelitsha.³⁸³ He also spoke of an incident during the matric ball of Masiyile High School where rival gangs engaged in a fight that resulted in the death of a school boy.³⁸⁴
- [141] With regard to vigilantism, Mr Jafta stated that he had worked hard to establish good relationships in the community so that “when there is an incident about to take place or taking place that I would arrive at that place in a hurry.”³⁸⁵ He added that the community knows that when he arrives “it is also easier that the police will come”.³⁸⁶

(c) Mr Bonisile Busakwe

- [142] Mr Bonisile Busakwe, the chairperson of the Harare CPF, also testified.³⁸⁷ He was elected chairperson on 28 April 2013 and has only been involved with the CPF since then. He has attended a DOCS induction workshop on CPFs.³⁸⁸ He also reported that members of the community had complained to him about telephones not being answered in the police station³⁸⁹ and that people believe that the police respond more quickly to him as chairperson of the CPF than to ordinary members of the community.³⁹⁰

(d) Mr Bongani Siko

- [143] Mr Bongani Siko also testified.³⁹¹ He is the chairperson of the Khayelitsha Site B CPF. He has lived in Site B, Khayelitsha since 1989 and started working with the police in 1998 when the Khayelitsha Community Police Forum was first established.³⁹² In his statement, he said that –

379 Id. at para 9.

380 Id. at para 10.

381 Id. at para 13; Transcript at 2788 – 2789 (12 February 2014).

382 Id. at 2784 – 2786.

383 Id. at 2786.

384 Record Bundle 9(1), File 1.2, Item 9 at para 14.

385 Transcript at 2792 – 2793 (12 February 2014).

386 Id.

387 Record Bundle 9(1), File 1.2, Item 90; Record Bundle 5(4), File 8, Item 3, pp 1 – 38; Transcript at 2668 – 2723 (12 February 2014).

388 Record Bundle 9(1), File 1.2, Item 90 at paras 5 – 8.

389 Id. at para 9.

390 Id. at para 10.

391 Record Bundle 5(4), File 8, Item 4, pp 11 – 156; Transcript at 4265 – 4298 (20 February 2014) and 5103 – 5115 (24 March 2014).

392 Transcript at 4265 – 4266 (20 February 2014).

“...the Communities of Khayelitsha, Harare and Lingeletu West are very disappointed that the Premier failed to consult any of the CPFs or the sub-forums about the alleged perception of police inefficiencies and breakdown in community trust of the SAPS, before she appointed the Commission.”³⁹³

- [144] He described the functioning of the Khayelitsha CPF as having six sub-forums, one in each sector.³⁹⁴ He stated that one of the main reasons that CPFs do not function optimally is because of the lack of resources available to them.³⁹⁵

(e) Mr Mhleli Mgxaji

- [145] The final CPF member from Khayelitsha to testify was Mr Mhleli Mgxaji.³⁹⁶ Mr Mgxaji is the Cluster Chairperson of the Khayelitsha Cluster CPF.³⁹⁷ He has had a long experience of CPFs in Khayelitsha, having served as chairperson of the Khayelitsha Site B CPF for many years. Like Mr Siko, Mr Mgxaji also complained that the Premier had established the Commission without consulting him, or the CPFs in Khayelitsha.³⁹⁸ He asserted that there is a strong partnership between the community and SAPS and that therefore the Premier did not properly apply her mind before appointing the Commission.³⁹⁹ In his testimony before the Commission, Mr Mgxaji pointed to the problem of funding of CPFs.⁴⁰⁰

(f) Mr Hanif Loonat and Mr Faisal Abrahams

- [146] In addition to the five members of Khayelitsha CPFs who testified before the Commission, the Commission also heard evidence from Mr Hanif Loonat and Mr Faisal Abrahams, both of whom have extensive experience of serving on CPFs in other parts of the country, and both of whom have served on the Provincial Board.⁴⁰¹ Mr Abrahams is currently a member of the Bishop Lavis Cluster CPE, and a member of the Provincial Board.⁴⁰² Mr Loonat has been involved with CPFs since they were established in the mid-1990s,⁴⁰³ and is formerly chairperson of the Provincial Board, having been appointed in 2011.⁴⁰⁴ They testified at the same time.
- [147] Mr Loonat described in his testimony how CPFs function in the Western Cape.⁴⁰⁵ He said that the Western Cape had been successful in establishing CPFs, more so than some other provinces.⁴⁰⁶ Mr Loonat explained that CPFs need to be established “from the bottom up”,⁴⁰⁷ starting with street committees that establish neighbourhood watches, then sector forums (or sub-forums), and then the CPF for a police station precinct. The chairpersons of sector

393 Record Bundle 5(4), File 8, Item 4, p 3 at para 5; Transcript at 4267 – 4268 (20 February 2014).

394 Transcript at 4269 – 4270 (20 February 2014).

395 Record Bundle 5(4), File 8, Item 4, pp 11 – 156 at para 10.

396 Record Bundle 5(4), File 3, Item 5; Transcript at 5993 – 6006 (27 March 2014).

397 The SAPS Act does not speak of Cluster Policing Forums, but of Area Community Police Boards, see section 20. Areas were disestablished by SAPS some time ago. Cluster community police forums have replaced Area Policing Boards. So far as the mandate of the Commission is concerned, nothing turns on this change.

398 Record Bundle 5(4) File 8, Item 1 at p 2 at para 1.1.

399 Id. at p 8, at para 8.

400 Transcript at 5995 – 5996 (27 March 2014).

401 Record Bundle 2(1), File 1.2, Items 1 and 2; Transcript at 1393 – 1471 (4 February 2014).

402 Id. at Item 1 at para 1.

403 Id. at Item 2 at para 4.

404 Id. at para 3; Transcript at 1394 (4 February 2014).

405 For the full discussion in his statement see Record Bundle 2(1), File 1.2, Item 2, pp 9 – 24 at paras 1 – 42.

406 Transcript at 1401 (4 February 2014); Record Bundle 2(1), File 1.2, Item 2 at p 25.

407 Transcript at 1398 (4 February 2014); Record Bundle 2(1), File 1.2, Item 2 at para 43.

forums will serve on the CPF for the precinct and, in turn, the chairpersons of the CPFs will serve on the Cluster Forum, and the Cluster Forum will be represented on the Provincial Board.⁴⁰⁸ The number of sub-forums in each CPF is determined by the number of sectors there are in the relevant police station precinct.⁴⁰⁹ Organisations that wish to be involved in the CPF must “register” with SAPS by informing the sector managers of their area.⁴¹⁰ Mr Loonat also provided the Commission with a copy of the “Uniform Constitution of CPFs” that was adopted in the Western Cape in the 2010.⁴¹¹ Mr Loonat supports the idea of a constitution for CPFs, although he had some reservations about the Uniform Constitution that was adopted.⁴¹² In his view, it gives the police too much power over CPFs, including the right to dissolve CPFs in certain circumstances.⁴¹³ Moreover, the Constitution does not prevent the SAPS from withdrawing support to the CPFs.⁴¹⁴

- [148] Mr Loonat also testified that the regulations⁴¹⁵ require each CPF to adopt a community safety plan for their police station, together with the station commander.⁴¹⁶ When he was told that a review of the minutes of the Khayelitsha CPFs did not disclose discussions around an annual safety plan, he was not surprised⁴¹⁷ because in his experience, he said, often the station commander draws up a safety plan and gets it “rubber-stamped” by the CPF chairperson.⁴¹⁸
- [149] Mr Loonat also described an initiative held in Easter 2012 in Khayelitsha to try to reduce the amount of crime over the long weekend.⁴¹⁹ A group of neighbourhood watches organised patrols throughout Khayelitsha with the support of SAPS. Both Mr Loonat and Mr Abrahams were involved. The initiative was a success. In 2011, there had been 23 murders in Khayelitsha over the Easter Weekend. In 2012, there was one. Mr Abrahams said that although SAPS support for the initiative started well, by the end of the weekend it had dissipated.⁴²⁰
- [150] Mr Loonat and Mr Abrahams explained that in order for CPFs to function effectively they need to be provided with resources, which must include an office, a telephone or cell phone and a computer.⁴²¹ They also explained that there is a lacuna in the legislative framework at present as to who is responsible for providing CPFs with resources. In their view, it should be the provincial department, given the responsibilities of provincial governments set out in section 206(3) of the Constitution.⁴²² However, they also indicated that they did not completely approve of the new Extended Partnership Programme (the EPP) introduced by DOCS.⁴²³ In particular, they were concerned that the money provided to CPFs in terms of the EPP was not sufficient to enable the CPFs to function properly.⁴²⁴ Mr Loonat, in his statement

408 Id.

409 Id.

410 Id. at 1399.

411 Record Bundle 2(1), File (1.2), Item 2a, Annexure A.

412 Record Bundle 2(1), File (1.2), Item 2, pp 7 – 9 at paras 17 – 20.

413 Id. and see section 24 of the Uniform Constitution.

414 Id.

415 GN R384 published in Government Gazette 22273, 11 May 2011. A copy of the regulations may be found in the Record Bundle 1(1.c), File A, Item 11.

416 Transcript at 1402 (4 February 2014).

417 Id. at 1403 – 1404.

418 Id. at 1403.

419 Transcript at 1412 – 1414 (4 February 2014); Record Bundle 2(1), File (1.2), Item 2, pp 32 – 34 at paras 71 – 77; Mr Joseph “Report of Walk-About / Joint Patrol of Neighbourhood Watches in the Khayelitsha Policing Precinct for the Easter Weekend Activities between 5 April 2012 until 9 April 2012” Record Bundle 4(3), Item 1.

420 Transcript at 1413 – 1413 (4 February 2014).

421 Id. at 1422.

422 Id. at 1423 – 1424; Record Bundle 2(1), File (1.2) Item 2, pp 10 – 12 at paras 1 – 6.

423 Id. at 1429.

424 Id. at 1431 – 1433.

to the Commission also said there was not sufficient consultation with CPFs as to the targets set for them in the EPP.⁴²⁵ He also suggested that the EPP requires the CPF to become “the police of the police”, an approach with which he disagrees.⁴²⁶ In his testimony, Mr Abrahams also asserted that it was necessary to train CPFs to function properly and that training should include meeting management and financial skills.⁴²⁷

- [151] Finally, Mr Loonat expressed the view that the function of policing should not be driven by “political agendas” and “community interests should not be held to ransom by or sacrificed to political agendas”.⁴²⁸ He commented that he had recently attended a safety imbizo in Khayelitsha attended by SAPS where he noted that when “people confronted the police, they were accused of playing politics. When a community member raises a genuine concern, his accused of being politically motivated, and the complaints which should be dealt with get ignored or watered down”.⁴²⁹

G. CONCLUSION

- [152] As is the case with the individual complaints considered in Chapter 6, it is not possible to read the testimony and statements of individual members of the Khayelitsha community without dismay. Many of the witnesses who testified were visibly distressed when they told of the criminal offences that they or their family members had experienced. Many were further distressed or angered by the treatment that they received from members of SAPS when they went to report the crimes and sought SAPS’ assistance.
- [153] The Commission identifies the following issues of concern, several of which we have already identified in Chapter 6 –
- Many individuals complained of SAPS’ failure to investigate the offences that they had reported properly or at all.
 - Many individuals complained that SAPS failed to provide them with feedback on the progress of investigations or prosecutions.
 - Many individuals suggested that SAPS members do not treat members of the community with respect or concern, that SAPS members appear to have a poor work ethic and that senior managers do not seem to be able to address these issues.
 - The evidence suggests that many members of SAPS discriminate unfairly against LGBTI people in Khayelitsha. The evidence also suggests that although senior members of SAPS are often courteous to community members, more junior members are often not courteous.
 - There were repeated complaints about the failure of SAPS to patrol in informal neighbourhoods, as well as a complaint that there were too few patrol vehicles in Khayelitsha generally. There were also many complaints about SAPS’ failure to respond quickly to distress calls, and to answer telephones.
 - Many of the witnesses raised concerns about youth gangs, and SAPS’ failure to adopt a clear strategy to address the violent activities of young people.
 - It is clear from the evidence received from individual members of the community that the practice of vengeance attacks and killings of people suspected to be criminals by groups

⁴²⁵ Record Bundle 2(1), File (1.2) Item 2, pp 44 – 45 at paras 112 – 113.

⁴²⁶ Id.

⁴²⁷ Id. at 1439.

⁴²⁸ Record Bundle 2(1), File (1.2) Item 2, p 47 at para 119.

⁴²⁹ Id. at p 48 at para 124.

of community members is widespread. Many witnesses expressed concern about these practices. It also seems clear that although these practices may often be spontaneous, they may not always be so. Several witnesses also suggested that taking the law into your hands is perceived by some members of the community to be a more effective way to obtain the return of property that has been stolen than going to the police even though many accept that this approach is wrong. It also appears that SAPS often does not respond to vengeance attacks by persistently seeking to bring perpetrators to account.

- The evidence of the individual community members also painted a picture of the high levels of violence that those who work and live in Khayelitsha experience, and the consequential feeling they have of being unsafe in their homes, schools and public spaces. The evidence showed that many children are victims of violent crimes, and most children feel unsafe travelling to school each day and going anywhere alone within Khayelitsha, especially at night.
- The evidence also suggests that people who live and work in Khayelitsha feel that the levels of robbery are extremely high, and that people often do not report robbery to SAPS because they believe there is no purpose in doing so. Accordingly it appears likely that the recorded levels of robbery are inaccurate and substantially under-stated.
- The evidence of the members of the CPFs generally painted a picture of organisations whose effectiveness fluctuates, dependent in part on who are the members of the CPF at any given moment, on the relationship with the SAPS leadership at the relevant police station, and on available resources.

CHAPTER EIGHT

OVERVIEW OF EXPERT TESTIMONY IN PHASE ONE

- [1] The Commission heard 15 expert witnesses in the first phase.¹ The evidence provided by Mr Bhekithemba Simelane,² Ms Josette Cole,³ Professor Charles Simkins⁴ and Professor Jeremy Seekings⁵ was outlined in Chapter 4 above,⁶ and some key aspects of the evidence provided by Ms Jean Redpath⁷ were outlined in Chapter 4 and Chapter 5.⁸ The Mthente report, to which Mr Justin Du Toit and Ms Lefko-Everett testified is described⁹, together with the testimony of the remaining expert witnesses in Phase One.

A. ASSESSMENT OF BREAKDOWN IN RELATIONSHIP BETWEEN COMMUNITY OF KHAYELITSHA AND SAPS – THE MTHENTE SURVEY

- [2] The Commission formed the view that in order to determine the second issue contained in the terms of reference of the Commission – whether there had been a breakdown in the relationship between the Khayelitsha community and SAPS – it would be helpful to commission an independent survey of attitudes to policing in Khayelitsha.
- [3] Accordingly the Commission called for tenders on the provincial procurement system for such a survey. A series of proposals were received, and Mthente was selected to conduct the survey. The survey was conducted in December 2013 and January 2014. The survey was admitted as evidence before the Commission and the key personnel who were involved in conducting the survey testified in the first phase of the Commission's proceedings.¹⁰ Mthente were asked to survey community attitudes in Khayelitsha including the rate of reporting of crime and levels of satisfaction and trust of SAPS in Khayelitsha.¹¹ Just over 1800 residents of Khayelitsha were sampled, which produced a 95% confidence level in the survey results with a margin of error of 2.28%.¹² Surveys were conducted face-to-face in transport hubs across Khayelitsha and were followed by focus groups.

1 Mr Simelane, Ms Cole, Professor Simkins, Professor Seekings, Professor Kaminer, Dr Harrison, Mr Burton, Ms Redpath, Ms Igglesden, Professor Artz, Mr Schooling and Mr Leamy, Ms Vetten, Dr Gillespie and Mr Du Toit.

2 Chapter 4 at paras 2 – 5 above. See Mr Simelane's statement, Record Bundle 4(1), File 2, Item 8; Record Bundle 7(1), File G, Items 8a and 8b; Transcript at 75 – 107 (23 January 2013).

3 Record Bundle 7(1), File H, 9(a) and (b); Record Bundle 8(8), Item 2, Exhibit JC2; Transcript at 184 – 228 (Friday 24 January 2014).

4 Record Bundle 4(1) File 1, Item 2; Transcript at 332 – 357 (27 January 2014).

5 Record Bundle 5(1), Item 5; Record Bundle 8(8), Item 3, JS1; Transcript 358 – 424 (27 January 2014).

6 See Chapter 4 at paras 2 – 40.

7 Record Bundle 7(1), File H, Item 10; Transcript at 1173 – 1235 (3 February 2014).

8 See chapter 4 above, paras 41 – 45 and chapter 5 above, paras 50 – 56.

9 See below at paras 2 – 15.

10 Record Bundle 10(1), File 1.1, Item 11; Transcript at 4299 – 4331 (21 February 2014).

11 Record Bundle 10(1), File 1.1, Item 11 at pp10 – 11.

12 Id. at p 17.

- [4] 41.3% of all respondents in the survey had personally been a victim of crime in the last year in Khayelitsha.¹³ This is a very high rate of victimisation. The most common crimes experienced by respondents were armed robbery (334 respondents had experienced this), common robbery (190 respondents) and what was loosely referred to as gangsterism (106 respondents).¹⁴ Surprisingly, the survey reported relatively low levels of crimes of sexual violence and domestic violence.¹⁵ During his evidence, Mr Du Toit accepted that the low reporting of sexual violence may have been partly affected by the public space where interviews were conducted.¹⁶ Ms Vetten who testified later also confirmed that the fact that the interviews were held in public spaces would likely have resulted in the under-reporting of domestic violence.¹⁷
- [5] Of those respondents who had been victims of crime, 75% of those who lived in the precinct of Lingeletu West said they had reported it, while 60% of those in Harare had done so and only 54% in Khayelitsha Site B.¹⁸ The survey results suggested that only 6 out of every 10 crimes are reported in Khayelitsha.¹⁹
- [6] More affluent respondents who live in formal housing and are employed are more likely to report crime.²⁰ Some types of crime are less likely to be reported than others, such as crimes related to gangsterism, common assault and homophobia,²¹ 30% of respondents who said they had not reported crime said they had not done so for fear of victimisation by perpetrators, and 31.5% had said they had not reported crime because of lack of trust in SAPS.²²

*Table 1: Reasons for Non-Reporting of a Recent Crime*²³

REASON FOR NON-REPORTING *	Khayelitsha	Harare	Lingeletu	Total
Afraid of being victimised by perpetrators.	35.6%	25.4%	34.1%	30.9%
Do not trust the police.	36.2%	20.8%	51.2%	31.5%
Police are corrupt.	2.3%	3.8%	2.4%	2.8%
Police are ineffective.	4.0%	21.5%	2.4%	10.0%
Cases are thrown out of court.	–	–	–	–
Accused is back on the street after the crime.	1.1%	2.3%	0.0%	1.4%
Cases are gang-related.	–	–	–	–
Offense not serious.	0.6%	3.1%	0.0%	1.4%
Police do not investigate/arrest.	3.4%	1.5%	7.3%	3.1%
Perpetrators are back on the street.	18.4%	21.5%	9.8%	18.9%
Total (N)	174	130	41	359

*Percentage of total responses for multiple response item, N=345

- [7] 61% of respondents who did report crimes to SAPS evaluated SAPS' response as either poor or very poor (see Figure 1).²⁴

13 Id. at p 29.

14 Id. at p 32.

15 Id. at p 33.

16 Transcript at 4307 (21 February 2014).

17 Transcript at 2478 (11 February 2014).

18 Record Bundle 10(1), File 1.1, Item 11 at p 33.

19 Id.

20 Id.

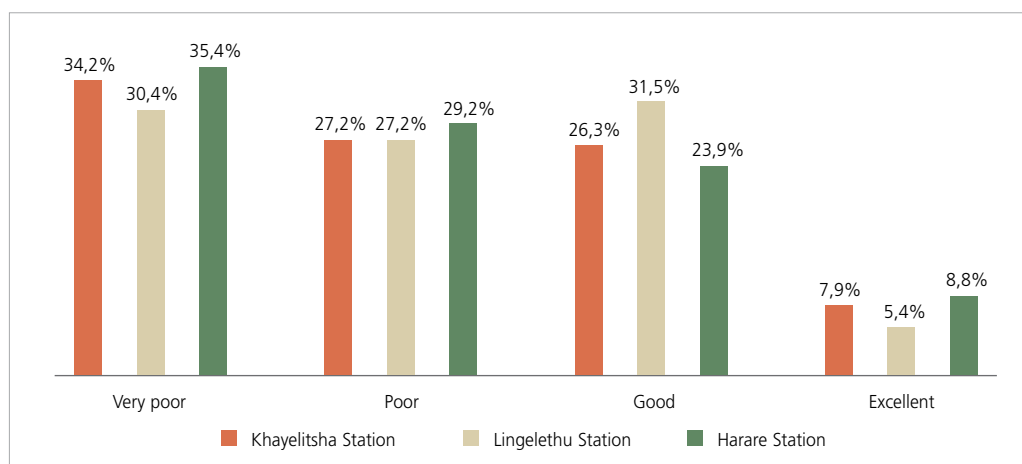
21 Id. at pp 33 – 34.

22 Id. at pp 37 – 38.

23 Id. at p 38.

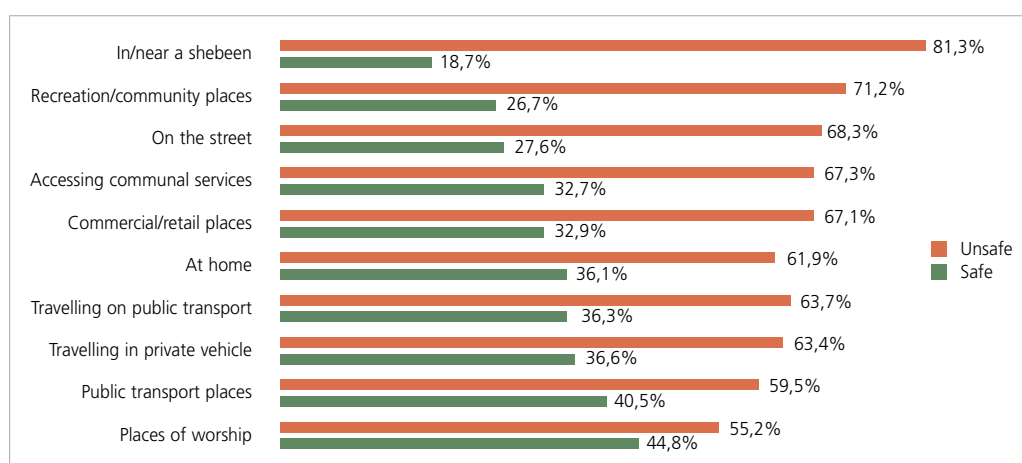
24 Id. at p 36.

Figure 2: Evaluation of Police Responses to Crime Reports, by SAPS Station (Mthente Survey)²⁵



- [8] The level of satisfaction with SAPS performance in Khayelitsha as reported in the Mthente survey contrasted sharply with the 2011 Victims of Crime Survey in the Western Cape which suggested that 66.1% of residents were satisfied with SAPS, although this proportion had declined from 71.1% in 2010.²⁶
- [9] Perceptions of safety in Khayelitsha were very low. Eight of ten respondents did not feel safe in their own community.²⁷ More than 50% of respondents described a wide range of public and private spaces, including places of worship, transport hubs, retail locations, and recreational spaces, as unsafe even during the day.²⁸ An alarming 62% of respondents feel unsafe in their homes during the day.²⁹ Reasons for feelings of unsafe include “the police aren’t concerned enough about us as a community and they don’t protect us”, and “people are always being robbed”.³⁰ Feelings of unsafety increased at night.

Figure 3: Feelings of Safety at Location in Khayelitsha During the Day³¹



²⁵ Id. at p 37.

²⁶ Id.

²⁷ Id. at p 8.

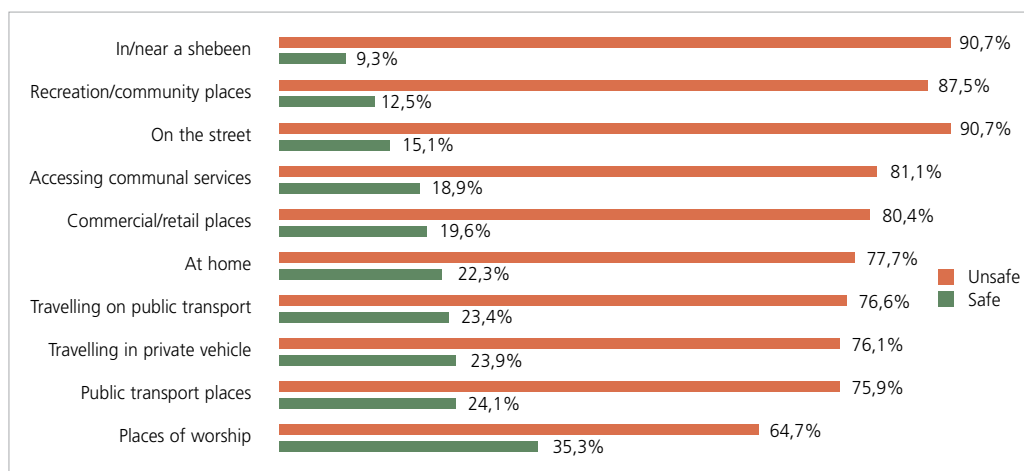
²⁸ Id.

²⁹ Id. at p 42.

³⁰ Id. at p 39.

³¹ Id. at p 41.

Figure 4: Feelings of Safety at Location in Khayelitsha at Night³²



- [10] SAPS was rated negatively on a range of survey items –
- 62.6% of respondents disagreed with a statement that police in Khayelitsha are trained and able to fulfil their tasks;
 - 61.2% disagreed with the statement that police in Khayelitsha do what they are required to do;
 - 55.3% disagreed with the statement that police in Khayelitsha are polite; and
 - 56.4% disagreed with the statement that the police in Khayelitsha are efficient.³³
- [11] In post-survey focus groups, SAPS in Khayelitsha was described as “never on time”, “very unprofessional and disrespectful” and “apathetic”.³⁴
- [12] Just under half of survey respondents had heard of CPFs but of those that had heard of CPFs, 80% had had no dealings with them.³⁵ Of those who had dealt with CPFs, 90% described them as helpful.³⁶ It should be noted, however, that the respondents who reported the CPFs to have been helpful constituted less than 10% of those surveyed.
- [13] Respondents were asked about their attitudes to vigilantism, and whether it was ever a justified response to crime, a large majority, 73.3%, said that vigilantism was not justified.³⁷ Focus groups explained that vigilante groups “never have enough evidence”, “never conduct thorough investigations”, and are themselves “committing a crime”.³⁸ Some participants in focus groups suggested that vigilante violence occurs as a result of police inefficiency.³⁹

32 Id.

33 Id. at p 44.

34 Id.

35 Id. at p 45.

36 Id.

37 Id. at p 46.

38 Id.

39 Id.

Table 5: Attitudes about Community Police Forums and Vigilantism⁴⁰

VIGILANTISM	Khayelitsha		Harare		Lingeletu		Total	
	Yes	No	Yes	No	Yes	No	Yes	No
Is vigilantism ever justified (N = 1,806)	27.0%	73.0%	26.4%	73.6%	26.6%	73.4%	26.7%	73.3%

- [14] The Mthente Survey confirms that there is a higher rate of crime in Khayelitsha than the crimes reported to SAPS suggest, given that approximately 40% of crimes are unreported, according to the survey. The survey also indicated that residents of Khayelitsha feel unsafe in their own homes at all times of the day, as well as in most public spaces. It indicated high levels of distrust of the police in Khayelitsha, and high levels of dissatisfaction with the service provided by the police in Khayelitsha. Of great importance is the fact that it also indicated that the majority of residents do not consider vigilante action is justified. This is an encouraging result, for it suggests that the majority of residents in Khayelitsha want criminal conduct to be dealt with in a fair manner, and consistently with the rule of law.
- [15] The Mthente survey therefore is consistent with the tenor of the complaints made by the complainant organisations. The survey provides an empirical basis for concluding that dissatisfaction with SAPS is not limited to the members of the complainant organisations, but is a widely shared view of policing in Khayelitsha amongst the residents of Khayelitsha.

B. THE IMPACT OF VIOLENCE AND CRIME ON CHILDREN

(a) Professor Debra Kaminer – the effects of violence on child development

- [16] Professor Kaminer, an Associate Professor in the Department of Psychology Child Guidance Clinic at the University of Cape Town, testified to the corrosive effects of raising children in a violent environment.⁴¹ She stated that children in Khayelitsha –

“are being incubated in violence ... which means that they are having to go through their ... developmental process within a very violence-saturated environment, and that has very particular psychological impacts...”⁴²

She told the Commission that exposure to violence does not produce negative mental health responses in every child, and whether it does will depend on the individual child, their family and environment.⁴³ She also said that there are two patterns of negative psychological impact that commonly arise from exposure to violence in childhood. The first involves an internalised response and the second an externalised one. Children who internalise their response to violence “experience feelings of distress which can be expressed through post-traumatic stress disorder, feelings of fear and anxiety or depression”.⁴⁴ Children who externalise their response to violence do not necessarily feel distressed “but they act out their traumatised

⁴⁰ Id. at p 47.

⁴¹ Record Bundle 4(1), File 1, Item 3; Record Bundle 8(8), Item 4, Exhibit DK1; Transcript at 796 – 826 (30 January 2014).

⁴² Transcript at 801 (30 January 2014). A grammatical error in the transcription has been corrected.

⁴³ Id. at 808 – 809.

⁴⁴ Id. at 808.

through behaviours, through aggression, other behavioural difficulties like maybe truanting from school, substance use and so on.”⁴⁵

- [17] Professor Kaminer also stated that research shows that repeated exposure to violence results in the normalisation of violence “as a socially and morally acceptable, appropriate and even honourable way of resolving conflicts and of achieving goals.”⁴⁶ Commenting on photographs that suggest children witness, and even participate in, incidents of vigilante violence in Khayelitsha, she said that such experiences in childhood would constitute “a very powerful way of normalising violence as a way of resolving conflicts.”⁴⁷ She referred to a recent youth study conducted in Khayelitsha⁴⁸ that found that repeated exposure to community violence increases the risk “of young people actually experiencing committing violence as something that is pleasurable and socially rewarding particularly if it happens within a group as in gang violence.”⁴⁹ She also noted that clinical experience and research indicate that one of the ways children cope with exposure to “chronically and inescapably violent” environments, is “emotional disconnection or disengagement, not having empathy for other people and terminal thinking, which is the belief that you are not going to live to be a grown up.”⁵⁰ Such responses, she testified, “feed into an ongoing cycle of violence and create the risk of developing a new generation of violent offenders.”⁵¹

(b) Dr David Harrison – the epigenetic effect of harmful environments

- [18] Dr Harrison, who is a medical doctor, former CEO of Lovelife, and currently CEO of the DG Murray Trust then testified, also on the issue of child health.⁵² He explained the developing understanding of the effect the environment has on our epigenetic constitution, that environmental factors affect our genes⁵³ and noted that the first three or four years of life are critical for our life’s trajectory.⁵⁴ If children do not grow up in a safe and nurturing environment in their early years, there is a serious risk that they will not be able to grow and thrive.⁵⁵ Toxic stress in early childhood “appears to switch off some key parts of the brain ... particularly the frontal system”⁵⁶ which is important for insight, self-regulation and reasoning.⁵⁷ Accordingly, he argued that it was important for there to be a three-pronged strategy. First, good quality health care for babies and infants must be provided, secondly, it is important that teenagers are given a sense of “real and imminent opportunity” in society, and, thirdly, there needs to be a sound criminal justice system in place.⁵⁸

45 Id.

46 Id. at 813.

47 Id. at 814.

48 Id. Weisburf, D., Mastrofski, S.D., Greenspan, R. and Willis, J.J. (2004). *The Growth of Compstat in American Policing*, Police Foundation Reports. Cited in expert report of Andrew Faull, Bundle 12(1), Item 22. Transcript 7964 – 8021 (16 May 2014).

49 Transcript at 814 (30 January 2014).

50 Id.

51 Id.

52 Record Bundle 4(1), File 1, Item 1; Transcript at 828 – 844 (30 January 2014).

53 Transcript at 831 (30 January 2014).

54 Id. at 834.

55 Id. at 834 – 835.

56 Id. at 835.

57 Id. at 835 – 836.

58 Id. at 837 – 839.

(c) Mr Patrick Burton – focus group survey of the attitudes of young people to crime and policing in Khayelitsha

- [19] Mr Burton is the Executive Director of the Centre for Justice and Crime Prevention.⁵⁹ He was requested by the Commission to conduct a study to investigate young people's perceptions of crime, violence and policing in Khayelitsha.⁶⁰ He conducted a research programme using qualitative methodology, based on four focus groups consisting of youth in Khayelitsha. In all, 75 young people participated in the focus groups.⁶¹ A significant proportion of all participants had been direct victims of violence.⁶² Participants identified schools as an area where they feared crime.⁶³ Moreover, participants identified walking to school as unsafe.⁶⁴ The risk of being robbed or attacked while walking to school was an issue that emerged in the testimony of several of the witnesses for the complainant organisations, described in the previous chapter.⁶⁵ Furthermore, the research also suggested that most of the crime experienced by young people is not reported to the police⁶⁶ and that the areas that young people see as dangerous, are not necessarily seen as crime hotspots by the police, and one of the reasons for this is that because crimes are not reported, police are not aware of them.⁶⁷ This is an issue that will be returned to later in this report when we discuss the issue of youth gangs.⁶⁸ When asked of their perceptions of SAPS, participants pointed to the absence of visible policing.⁶⁹ According to Mr Burton –

“the theme of police complicity in crime and perceived misconduct and what came out very, very strongly is that, and this permeated all aspects of the research, we're not going to report crime because we need to be friends with the police officer and be able to provide him or her with something in order for them to act.”⁷⁰

- [20] The participants' view of the police was they were not able to help. Mr Burton quoted from one of the participants who told the following story –

“I was robbed coming from Site B and then after I got robbed a police van came by. I stopped it and told them that I had just got robbed. They were still on the main road [the perpetrators] between Site B and Khayelitsha. When we told them there they are the police officer said they don't have a gun with them so they cant go to them. We just sat on the pavement until the perpetrators left.”⁷¹.

- [21] According to Mr Burton the overall consensus was that the participants do not and would not bother reporting crime or violence to the police.⁷² The issue of vigilante violence was also explored with the groups. The report comments that participants accepted that vigilante

59 Record Bundle 7(1), File H, Items 7.1, 7.2 and 7.3; Transcript at 928 – 966 (31 January 2014).

60 Record Bundle 8(8), Item 5, Exhibit PB1.

61 Transcript at 932 (31 January 2014).

62 Id. at 931 – 932.

63 Id. at 936 – 937.

64 Id. at 939.

65 Ms Phumeza Mlungwana see Chapter 7 above at paras 55 – 61 and Transcript at 228 – 272 (24 January 2014); Mr Sifiso Zitwana see Chapter 7 above at paras 76 – 83, Transcript at 2022 – 2080 (7 February 2014).

66 Id. at 938.

67 Id. at 938 – 939.

68 See Chapter 13 below at paras 120 – 128.

69 Id. at 940.

70 Id.

71 Id. at 942.

72 Id. at 944.

violence happened, and quoted from a young woman who described her complex emotional response to seeing vigilante violence as follows –

“When you see people get robbed and people get raped, when you know the crime happened to people that you know and you see that person actually getting beaten up you don’t really feel sorry for them. Even though you wish they don’t beat him to death but you hope, you feel like, you’re also so angry. I was robbed, my sister was raped.”⁷³

- [22] The research ended by asking the participants in the focus groups to envisage a different Khayelitsha: two contrasting suggestions were put forward. One was “[a] place where government officials are not greedy and a place where people value the importance of education”; and the other was a place where SAPS “use violence to control the community.”⁷⁴

C. FOREIGN NATIONALS’ EXPERIENCE OF POLICING IN KHAYELITSHA

- [23] Ms Vicki Igglesden testified on non-South Africans’ experience of policing in Khayelitsha.⁷⁵ Ms Igglesden is a social anthropologist who works and researches in the field of refugee rights.⁷⁶ She told the Commission that estimates of the number of foreign nationals living in Khayelitsha are “somewhat arbitrary.”⁷⁷ The 2011 Census suggested 2477 foreign nationals reside in Khayelitsha (0.6% of the population). They had lived in South Africa for an average of 6.5 years and had worked or lived in Khayelitsha for an average of 4.5 years.⁷⁸
- [24] Ms Igglesden presented a report based on a survey conducted in December 2013 at the request of the Commission. The Commission had found foreign nationals reluctant to testify before the Commission for fear of reprisals. Accordingly, Ms Igglesden was requested to prepare a study that would enable the Commission to have some understanding of foreign nationals’ experience of policing in Khayelitsha. The interviewees themselves requested anonymity from Ms Igglesden. According to Ms Igglesden, this was because they feared “repercussions” if their names were known.⁷⁹
- [25] According to Ms Igglesden, foreign nationals from the African continent, many of them refugees, have been living and trading in Cape Town in appreciable numbers since the mid-1990s. Whereas in the early years the refugee populations were predominantly of Angolan and Congolese origin, Ms Igglesden states that most of the refugee population in Khayelitsha is of Somali or Ethiopian origin.⁸⁰ Many of these non-nationals are traders, especially spaza shops, and they are accordingly often targets of crime.⁸¹ Ms Igglesden conducted interviews with 20 foreign nationals who had experiences with the police in Khayelitsha. The individuals

73 Id. at 946.

74 Id. at 947.

75 Record Bundle 6(1), File 3, Item 6; Transcript at 1304 – 1376 (4 February 2014).

76 Transcript at 1304 (4 February 2014).

77 Ms Igglesden’s testimony on this score accorded with that of Professor Simkins who testified that the Census 2011 almost certainly undercounts foreign nationals. Transcript at 388 (27 January 2014). See also Ms Igglesden’s testimony, Transcript at 1313 (4 February 2014).

78 Record Bundle 6(1), File 3, Item 6, p 1.

79 Transcript at 1321 (4 February 2014).

80 Record Bundle 6(1), File 3, Item 6, p 10.

81 Id. at p 11.

interviewed were predominantly male, and of Somali origin, but included two Burundians and one Eritrean.⁸²

- [26] According to Ms Igglesden, interviewees reported high levels of dissatisfaction with the police.

“Concerns were expressed with regard to police attendance at the scene of a crime, with barriers to registration of criminal incidents, with lack of follow-up once a crime has been registered, and with the process of investigation. Successful prosecution was very rarely reported.”⁸³

- [27] She also testified that her survey reported high levels of secondary victimisation of foreign nationals reporting crime perpetrated by police officials. Abuse of foreign nationals by police officials included discriminatory language, theft of traders’ property, malicious damage to traders’ property and extortion.⁸⁴ Not surprisingly, as a result, interviewees expressed high levels of distrust with SAPS as an institution.⁸⁵ However, Ms Igglesden noted that the interviewees did report some positive experiences of policing in Khayelitsha.⁸⁶

D. VENGEANCE ATTACKS OR VIGILANTISM IN KHAYELITSHA

- [28] Dr Kelly Gillespie is a senior lecturer in the Department of Social Anthropology at the University of the Witwatersrand. She was asked by the Commission to prepare a report on the issue of vigilante violence, or “mob justice” in Khayelitsha.⁸⁷ The report contains information gathered over a month of ethnographic research in Khayelitsha at the end of 2012 and in early 2013, as well as from a literature review.⁸⁸ Ethnography is a qualitative social science research method that combines individual and focus group interviews, life histories and participant observation, which involves the researcher engaging in informal conversations and observations of life on the field site.⁸⁹ Dr Gillespie testified that she had interviews and conversations with about fifty people from all over Khayelitsha.⁹⁰
- [29] According to Dr Gillespie, “mob justice” is not unique to Khayelitsha, rather it has a long history in South Africa and elsewhere.⁹¹ She also testified that the meaning of “vigilantism” has changed in South Africa. In the 1940s and 1950s, it had positive connotations and was understood as a form of “informal policing”,⁹² but by the 1980s it had changed its meaning and had come to connote violent, organised and conservative groupings operating within black communities, often understood to be acting to “neutralise” groups opposed to the

82 Id. at p 1 and 10. Transcript at 1307 (4 February 2014).

83 Record Bundle 6(1), File 3, Item 6, p 4.

84 Id.

85 Id. p 5.

86 Id.

87 Record Bundle 6(1), File 3, Item 8; Transcript at 2597 – 2648 (11 February 2014). Dr Gillespie testified as to the difficulty of terminology in this field. Transcript at 2601 (11 February 2014).

88 Record Bundle 6(1), File 3, Item 8, p 1.

89 Id. at p 2.

90 Transcript at 2601 (11 February 2014).

91 Record Bundle 6(1), File 3, Item 8, p 3.

92 Id.

Photo 9: One of the concrete bunkers shown to the Commission during the inspection in loco that were said to be used by criminals



apartheid state.⁹³ Dr Gillespie described the practices of informal justice processes often led by street committees, sometimes called “people’s courts”.⁹⁴ She remarked in her report –

“It is important to take note of the history of these alternative legal forms in Khayelitsha because they make clear that there has been a tradition of autonomous, community-led justice practice in the township since its inception. The provision of basic safety and security in Khayelitsha was instituted not through state structures, but in fact through anti-state community structures aligned to the underground political movement. As was described to me by several Khayelitsha residents who were active in street committees, these structures were highly effective in maintaining order in the township.”⁹⁵

- [30] Many Khayelitsha residents, according to Dr Gillespie, attribute the perceived increase in crime in Khayelitsha to the decline in community structures that previously maintained order in Khayelitsha.⁹⁶ Dr Gillespie identified a range of structures that are involved in informal justice in Khayelitsha.⁹⁷ The first are taxi associations, who, according to Dr Gillespie “run a formidable alternative justice system.”⁹⁸ She says that although taxi operators claim not to use violence in their system of informal justice, “most Khayelitsha residents would dispute this, even laugh at it.”⁹⁹ Taxi operators are seen by many as being more effective than the police, and are sometimes called on by school principals and parents to deal with levels of violence in Khayelitsha schools. In addition to taxi associations, Dr Gillespie also mentioned street

93 Id. at 4.

94 Id. at p 6.

95 Id. at p 6.

96 Id. at p 7

97 Id. at pp 8 –13; Transcript at 2609 (11 February 2014).

98 Record Bundle 6(1), File 3, Item 8, at p 8.

99 Id. at p 9.

patrols and street committees,¹⁰⁰ which she described as being “the most popular crime-prevention strategy” in Khayelitsha with deep historical roots.¹⁰¹ Dr Gillespie also mentioned several other structures involved in informal justice in Khayelitsha, including the South African National Civics Organisation (SANCO) and the CPFs.

- [31] Dr Gillespie testified that mob justice or vigilante attacks often happen spontaneously following on a cry of “iSela” or “Thief”.¹⁰² She suggested that it is rarely preceded by deliberation or evidence finding. Some members of the community are opposed to mob justice. Dr Gillespie quoted a young activist who said –

“I became involved in the campaign to stop vigilantism because people will be cheering when young black people were killed and no one seems to mind because they were so-called ‘criminal’. People cheering like their favourite soccer team had scored a goal. Children were ululating. This is a clear sign of black self-hatred. When you are squashed into a *tight corner* you find fault with an easy target. Vigilantism is the easiest, shortest option by people that are in *desperation*.”¹⁰³

- [32] Dr Gillespie continued: “... the police are only a small part of the problem that creates ‘mob justice’. The ‘desperation’, ‘anger’, and sense of being ‘cornered’ that residents attribute to life in Khayelitsha says as much about the condition of township life more generally – poverty, inequality, the unchanging urban condition of poor black Capetonians – as it does about the failure of the criminal justice system to protect residents.”¹⁰⁴
- [33] During her testimony, Dr Gillespie also spoke of the high levels of violence within Khayelitsha,¹⁰⁵ testimony that accorded with that of Professor Kaminer.¹⁰⁶ She also spoke of the deep distrust that residents of Khayelitsha have of the police. “[A]lmost every person I spoke to... there is a sense that when you go to the police it is very likely that nothing will be done ...”¹⁰⁷

E. DOMESTIC VIOLENCE

(a) Professor Lillian Artz

- [34] Professor Artz is an associate professor at the Gender, Health and Justice Research Unit in the Faculty of Health Science at the University of Cape Town.¹⁰⁸ She is an expert on domestic violence, sexual offences, sex work and women’s rights to freedom and security.
- [35] Professor Artz testified that obtaining accurate prevalence rates of domestic violence is difficult for four main reasons.¹⁰⁹ Firstly, “domestic violence” as a separate offence does not appear in official crime statistics, instead it is included with assault, murder and other

100 See Chapter 7 above at paras 38 – 44 for the testimony of Mr Gqeku regarding street committees.

101 Id. at pp 10 – 11.

102 Id. at p 13. Transcript at 2617 (11 February 2014).

103 Id. at p 14.

104 Id.

105 Transcript at 2602 – 2603 (11 February 2014).

106 See above paras 16 – 18.

107 Transcript at 2608 – 2609 (11 February 2014).

108 Record Bundle 1(5), File E, Item 40; Transcript at 2120 – 2190 (7 February 2014).

109 Record Bundle 1(5), File E, Item 40 at para 12.

offences; secondly, there is under-reporting of domestic violence; thirdly, the police tend to refer domestic violence cases directly to magistrates courts and not record them; and fourthly the poor and inconsistent recording of domestic violence complaints by the police.¹¹⁰

- [36] Professor Artz pointed to section 2 of the Domestic Violence Act, 116 of 1998 (the Domestic Violence Act) which imposes specific duties on the police in relation to dealing with domestic violence.¹¹¹ According to Professor Artz, SAPS have adopted a National Instruction (7/1999) to regulate the proper implementation of SAPS' obligations in terms of the Domestic Violence Act.¹¹² "Domestic violence" is defined broadly in the Act to include physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, entry into the complainant's home without consent, where the parties do not share the same residence, and any other controlling or abusive behaviour.¹¹³
- [37] Professor Artz explained that, in terms of the National Instruction read with the Domestic Violence Act, SAPS police stations in Khayelitsha (like all police stations) should have the following information in their possession –
- Domestic Violence Incident Forms (SAPS 508(a));
 - Domestic Violence Register (SAPS 508(b));
 - a file with a copy of every protection order and warrant of arrest that is received in accordance with the Registration and Record Control procedure provided for in National Instruction 7/1999; and
 - records of any complaints made against SAPS in Khayelitsha in relation to the implementation of the Domestic Violence Act.¹¹⁴

Professor Artz testified that the National Instruction was "comprehensive" and "very useful".¹¹⁵

- [38] According to Professor Artz, the purpose of the Domestic Violence Incident Form (SAPS 508(a)) is to ensure that SAPS members "fully document their response to every incident of domestic violence ... whether or not a criminal offence has been committed and then it must be filed on a monthly basis."¹¹⁶ Professor Artz said that if the forms were correctly kept it would be "informing us of the nature of assistance that victims of domestic violence are getting at our police stations. "It should help us start to map what those referral strategies were, what decisions are taken, whether she or he was assisted to get medical assistance, assistance to secure belongings."¹¹⁷ The Domestic Violence Register (SAPS 508(b)) should be a "summary of what is contained in the 508(a))"¹¹⁸ However, according to Professor Artz, despite the clear language of National Instruction 7/1999, the completion of SAPS 508(a) Incident forms does

¹¹⁰ Id.

¹¹¹ Record Bundle 13(1)(1.3), File A, Item 27. Section 2 of the Domestic Violence Act reads as follows –
"Duty to assist and inform complainant of rights

2. Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported –
(a) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;
(b) if it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and
(c) if it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable."

¹¹² National Instruction 7/1999, Record Bundle 2(3), File 10, Item 22.

¹¹³ Section 1 of the Domestic Violence Act.

¹¹⁴ Record Bundle 1(5), File E, Item 40 at para 19.

¹¹⁵ Transcript at 2163 (7 February 2014).

¹¹⁶ Id. at 2135.

¹¹⁷ Id. at 2135 – 2136.

¹¹⁸ Id. at 2137.

not always happen.¹¹⁹ Indeed, she says that sometimes the Register is completed, but not the forms¹²⁰ and even the maintenance of SAPS 508(b) Domestic Violence Registers “is not a standard practice throughout South Africa”.¹²¹

- [39] The National Instruction also imposes certain other obligations –
- It requires a file (or docket) to be maintained of every protection order and warrant of arrest issued in terms of the Domestic Violence Act and received in the police station;¹²²
 - Section 4(3) states that if an incident of domestic violence is called into a CSC, a vehicle must be dispensed without unreasonable delay to attend to the matter;
 - Section 10(1) provides that every complainant must be given a notice to set out the key provisions of the Domestic Violence Act, and the legal remedies that are available to a complainant, that are set out in section 10(2); and
 - Every station commander must, in terms of section 14, keep a record of the number of complaints received of members under his or her command in respect of failures to comply with the National Instruction or the provisions of the Domestic Violence Act, as well as a record of disciplinary proceedings as a result, and any steps taken.
- [40] According to Professor Artz, the most accurate information appears to be in the Domestic Violence Registers (SAPS 508(b)).¹²³ The ICD has continually reported that SAPS 508(a) forms are not being completed.¹²⁴
- [41] Professor Artz then presented key findings of two studies conducted on behalf of Mosaic, a community-based organisation that has been operating in Khayelitsha for 18 years with a focus on preventing and reducing domestic violence.¹²⁵ Both studies investigated the attrition of domestic violence cases¹²⁶ because it appears that many domestic violence victims, once they have applied for a protection order, do not take steps to finalise the protection order. The first study in 2008 surveyed 365 domestic violence applicants over a three-month period in Khayelitsha, Bellville, Wynberg.¹²⁷ The second study, reported in 2011,¹²⁸ was done of 503 applicants from Bishop Lavis, Paarl, Cape Town and Wellington.
- [42] Key results in the first study were that 55% of respondents were told to get a protection order, but only 19% were told they could lay a criminal charge and in only 5% of cases was the offender arrested.¹²⁹ These results were replicated in the second study, in which 28.9% of respondents were told that in addition to a protection order they may lay a criminal charge, but 64.3% of respondents were not told that they could lay a criminal charge.¹³⁰ In addition, in the second study, 87.3% of victims were not given a notice containing information relating to their rights as a victim of domestic violence.¹³¹

119 Id. at 2137.

120 Id.

121 Record Bundle 1(5), File E, Item 40 at para 20. Transcript at 2139 (7 February 2014).

122 Section 12(6) of National Instruction 7/1999.

123 Transcript at 2139 (7 February 2014).

124 Id.

125 Record Bundle 1(5), File E, Item 40 at paras 4–6. See also the Statement of Ms Majiet, the Operations, Implementation Manager at the Mosaic Training, Service and Healing Centre for Women confirming the Statement of Professor Artz at Record Bundle 8(3), Item 42.

126 Transcript at 2140 (7 February 2014).

127 Transcript at 2139 (7 February 2014).

128 Artz, L. & Jethas, D. (2011) *Reluctance, Retaliation and Repudiation: Attrition of Domestic Violence Cases in the Western Cape*. South Africa: OSF.

129 Record Bundle 1(5), File E, Item 40 at para 28.

130 Id. at para 31.

131 Id. at paras 28 and 31(b). This was not a question asked in the first study.

- [43] Another key result in the first study was that in 15% of cases there was no return of service of the interim protection order because the respondent fled the scene or refused to sign the return of service.¹³² The figure in Khayelitsha for no return of service on the interim protection order was particularly high at 31% (27 of the 87 Khayelitsha respondents).¹³³ Professor Artz stated that in her understanding of the Domestic Violence Act personal service is not necessary, although SAPS members appear to think that it is.¹³⁴ Professor Artz also identified individual concerns that arose in relation to Khayelitsha respondents as including: being told “to come to court for protection”; being told to go to court on Monday when an incident happened on the weekend; not being assisted with finding shelter; the failure of the police to arrest for previous incidents; and being told to track down the respondent before the police would arrest him or her or serve the order.¹³⁵
- [44] Professor Artz also testified that anecdotal evidence from Mosaic’s experience of dealing with domestic violence victims in Khayelitsha indicated that in some cases the police fail to effect warrants of arrest for the breach of protection orders; fail to dispatch vehicles when there is a report of domestic violence; lack knowledge about the Act; fail to refer victims to shelters; fail to keep victims informed of the progress of rape and assault cases; and erroneously refer people to Mosaic for issues Mosaic does not handle.¹³⁶
- [45] Professor Artz stated that “there are unmistakeable issues with the levels of knowledge and/or the respect for the relevant legislation and instructions governing the policing of domestic violence ... in Khayelitsha.”¹³⁷ Not surprisingly, then, the ICD information confirms a pattern of non-compliance with the Domestic Violence Act by members of SAPS in Khayelitsha.¹³⁸

(b) Ms Lisa Vetten

- [46] Ms Lisa Vetten is a Research Associate at the Wits Institute for Social and Economic Research (WISER).¹³⁹ In compiling her report, Ms Vetten drew on a range of documents from the Commission’s Record, including monitoring reports compiled by DOCS and the Civilian Secretariat, as well as a review of selected months of the domestic violence register (SAPS 508(b)) maintained by Harare police station. She testified that the SAPS 508(b) registers provided by the two other Khayelitsha Police stations (Lingeletu West and Khayelitsha Site B) “could not be considered as they did not provide sufficient information on which to base reliable and valid conclusions.”¹⁴⁰ In the case of Khayelitsha, the SAPS 508(b) Register was simply not fully completed.¹⁴¹
- [47] Ms Vetten testified that in 1999 South Africa’s female homicide rate was six times the global average, with half of those deaths caused by women’s intimate male partners. This translates into four women killed every day in South Africa by their partners.¹⁴² In 1999, the prevalence of female homicide in South Africa was 8.8 per 100 000 people. By 2009, it had dropped

132 Id. at para 30.

133 Id. at para 31(f).

134 Transcript at 2144 (7 February 2014).

135 Record Bundle 1(5), File E, Item 40 at para 32.

136 Id. at para 33. See also the Affidavit of Ms Majiet, the Operations, Implementation Manager at the Mosaic Training, Service and Healing Centre for Women confirming the affidavit of Professor Artz at Record Bundle 8(3), Item 42.

137 Id. at para 38.

138 Id. at para 39.

139 Record Bundle 7(7), Item 5; Transcript at 2471 – 2526 (11 February 2014).

140 Record Bundle 7(7), Item 5, at para 1.4.

141 Transcript at 2503 (11 February 2014).

142 Record Bundle 7(7), Item 5, at para 3.1; Transcript at 2473 (11 February 2014).

slightly to 5.5 per 100 000, which was still five times the global average.¹⁴³ Murder rates have fallen in South Africa in the same period, but the rate at which women are killed by people other than their intimate male partners has, according to Ms Vetten, gone down much faster than the rate at which women are killed by their male partners.¹⁴⁴

- [48] It is more difficult to be certain of the extent of domestic violence short of murder, as it is a crime that is widely considered to be under-reported.¹⁴⁵ Ms Vetten pointed to a 2010 study in Gauteng in which 18.13% of women in Gauteng reported an incident of violence by an intimate partner.¹⁴⁶ In the national South African Stress and Health survey, domestic violence emerged as the most common form of violence experienced by women reported by 13.8% of women as opposed to 1.3% of men.¹⁴⁷ Given these figures, it is likely that only a tiny proportion of domestic violence incidents are reported to the police.¹⁴⁸ Even where an incident is reported to the police, it may well not be registered as a crime on the Crime Administration System (CAS). In a 2007 report to Parliament, SAPS stated that 45 454 domestic violence incidents were reported during the report period, but of these only 17 633 resulted in criminal charges.¹⁴⁹
- [49] Like Professor Artz, Ms Vetten testified on the obligations of SAPS both in terms of the Domestic Violence Act and National Instruction 7/1999.¹⁵⁰ Ms Vetten also explained that the Firearms Control Act, 60 of 2000, contains a range of provisions that are relevant to the Domestic Violence Act. A conviction for “any offence involving violence or sexual abuse of physical or sexual abuse in a domestic relationship” or for breaching a protection order will render a person ineligible for the competency certificate required to obtain a firearm.¹⁵¹ In terms of the Firearms Control Act regulations, the Registrar of Firearms may consider any of these circumstances as grounds for an investigation into the fitness of an applicant to own a firearm. According to Ms Vetten, the Domestic Violence Register (SAPS 508(b)) may be a crucial source of such information.¹⁵²
- [50] Like Professor Artz, Ms Vetten pointed to the worrying fact that SAPS does not comply scrupulously with its obligations in terms of the Domestic Violence Act and National Instruction 7/1999. She pointed to the fact that despite the fact that section 18(5)(b) of the Domestic Violence Act requires the National Commissioner of SAPS to provide Parliament with biannual reports outlining complaints against police officers in terms of the Act, and other relevant information, the first such report was only submitted to Parliament in 2007, following pressure by a non-governmental organisation.¹⁵³ Until 1 April 2012, the ICD was tasked with monitoring police stations to ensure compliance with the Domestic Violence Act. Ms Vetten presented figures from ICD reports between 2006 and 2009, showing that of the police stations visited to monitor compliance, in all but one six month period, the majority were not fully compliant. The ICD visited between 245 and 522 stations per annum.¹⁵⁴ Ms

143 Id. at 2473.

144 Id. and Record Bundle 7(7), Item 5 at para 3.4.

145 Transcript at 2475 (11 February 2014).

146 Record Bundle 7(7), Item 5 at para 3.4.

147 Id. at para 3.3.

148 Id. at para 3.5.

149 Id. at para 3.6.

150 Id. at para 4.6.

151 Section 9(2)(h) and (l) of the Firearms Control Act, 60 of 2000.

152 Record Bundle 7(7), Item 5 at 4.9.

153 Id. at 5.1.

154 Id. at 5.2, Table 1.

Vetten comments in this report that the transfer of responsibility from the ICD to the Civilian Secretariat seems to have produced less stringent oversight.¹⁵⁵

- [51] Ms Vetten also examined the DOCS oversight reports for 2008/2009 where she found that they reported a discrepancy between the SAPS 508(a) and SAPS 508(b) forms in all three Khayelitsha police stations. There was a 4% discrepancy in Khayelitsha, a 21% discrepancy in Lingeletu West, and a 47% discrepancy in Harare.¹⁵⁶
- [52] Ms Vetten then examined the registers that had been provided by SAPS at the request of the Commission. In addition to the disturbing fact that the samples of registers provided by both Khayelitsha Site B and Lingeletu West were so incomplete as to be unreliable,¹⁵⁷ she noted several additionally troubling features from the Harare registers that she could peruse –
- Nearly all the entries in the Register (SAPS 508(b)) corresponded with the opening of a docket, which, according to Ms Vetten suggests that not all domestic violence incidents reported are being recorded in the Register, contrary to the National Instruction;¹⁵⁸
 - Of the 416 incidents reported in the Occurrence Books (SAPS 10), only 19 had been recorded in the Register (SAPS 508(b)). And of those 19, 17 had resulted in charges being laid, again suggesting that only the more “serious” cases are being entered in the Register.¹⁵⁹
 - From her perusal of the Register, Ms Vetten concluded that incidents may not be recorded contemporaneously. In some cases, later incidents are registered before earlier incidents.¹⁶⁰
- [53] Ms Vetten also testified that, despite widespread failure to comply with the Domestic Violence Act and National Instructions, there are police stations that are fully compliant. When asked what would make the difference, she responded –

“It has a lot to do with station culture and who is in charge. If you have a commander and senior managers who do take the Act seriously who are checking, who are making consequences follow, who are ensuring that training is happening, who are liaising with community organisations, then this is not difficult, but for those where the general attitude is this is a nuisance, it’s just lots of forms to fill in, women waste our time because they just withdraw the charges, domestic violence is not a proper crime, it’s social work, this is stopping us from getting on with the real crime of murder and cash in transit heists, then that’s going to translate into how officers approach their cases, so it’s I do think a lot of it has to do with how senior management views it and then the kind of culture they cultivate in the station around domestic violence.”¹⁶¹

F. CONCLUSION

- [54] The evidence provided by the expert witnesses in the first phase of the proceedings confirmed many of the conclusions reached in relation to the evidence considered in Chapter 7 above.
- There are low levels of trust in SAPS. This was confirmed by the Mthente research, by the report prepared by Ms Igglesden on foreign nationals’ perceptions of SAPS in Khayelitsha,

¹⁵⁵ Id. at para 6.2. Transcript at 2511 – 2512 (11 February 2014).

¹⁵⁶ Record Bundle 7(7), Item 5, at para 6.4.

¹⁵⁷ See para 46 above.

¹⁵⁸ Id. at para 6.9.

¹⁵⁹ Id. at para 6.10.

¹⁶⁰ Id. at para 6.11.

¹⁶¹ Transcript at 2516 – 2517 (11 February 2014).

Mr Burton's focus group study of young people's attitudes to police in Khayelitsha and Dr Gillespie's ethnographic research.

- Many crimes are not reported in Khayelitsha. The Mthente survey suggested that only 60% of crimes are reported, and some crimes are persistently under-reported, such as common assault, crimes related to "gangsterism" and homophobic crimes. The under-reporting of homophobic crimes confirms Ms Soldaat's evidence, discussed in Chapter 7.
- Vengeance attacks, or vigilantism, are common in Khayelitsha. Yet nearly 75% of residents do not consider them to be appropriate ways of dealing with crime according to the Mthente survey, and similar results were found by Mr Burton.
- The evidence also indicates the extent to which residents of Khayelitsha feel "unsafe" in their homes and public spaces, as illustrated by the Mthente survey and Mr Burton's focus group study.
- Residents of Khayelitsha, including young children, are exposed to alarming levels of violence which are harmful to them, physically, psychologically and developmentally, as the evidence of Professor Kaminer and Dr Harrison explained.
- The evidence confirmed the high rates of crime, particularly, robbery that affect all people who live and work in Khayelitsha.
- There are worryingly high perceptions of corruption amongst SAPS members in Khayelitsha, as Mr Burton's focus group survey suggested.
- The manner in which SAPS in Khayelitsha respond to domestic violence incidents was also shown to be worrying in the evidence presented by Professor Artz and Ms Vetten.

CHAPTER NINE

OVERVIEW OF DOCUMENTS AND TESTIMONY OF KEY GOVERNMENT DEPARTMENTS WITH RESPONSIBILITY FOR KHAYELITSHA

- [1] The Commission heard evidence of 15 witnesses¹ who work for key government departments with a responsibility for Khayelitsha: the Western Cape Department of Community Safety (DOCS), the Independent Police Investigative Directorate (IPID), the National Prosecuting Authority (the NPA), the Khayelitsha Thuthuzela Care Centre, the provincial Forensic Pathology Service, Emergency Medical Services (EMS), the City of Cape Town, and the Violence Prevention through Urban Upgrading Project (VPUU). In addition, many of these departments provided the Commission with extensive documentation in response to the Commission's request. Whilst the Regional Head of the Department of Justice and Constitutional Development (the DOJ) was requested to provide information to assist the Commission, and invited to make submissions to the Commission, no response was received to the Commission's request in this regard.² However, the Regional Manager facilitated access to Khayelitsha court records.³ In this chapter, we shall outline briefly both the documentary materials provided to the Commission by each of these bodies, as well as describe the testimony provided on their behalf.

A. DEPARTMENT OF COMMUNITY SAFETY

(a) Documentary record

- [2] As explained in Chapter 2 above, DOCS has a specific constitutional mandate in relation to policing in the province in terms of section 206(3) of the Constitution.⁴ Moreover, DOCS has established a provincial secretariat within DOCS,⁵ which bears the mandate conferred upon provincial secretariats by the Civilian Secretariat Act, as discussed in Chapter 5, above.⁶ Accordingly, given the importance of the mandate of DOCS for the work of the Commission,

1 Dr Josias Transcript 582 – 753 (29 January 2014); Mr Jones Transcript 1076 – 1104 (3 February 2014); Ms Thompson & Dr Wadee Transcript 1104 – 1173 (3 February 2014); Mr Njozela Transcript 1236 – 1266 (3 February 2014) and 1269 – 1303 (4 February 2014); Mr Leholo Transcript 1477 – 1590 (5 February 2014); Dr Lawrence Transcript 1591 – 1741 (5 February 2014) and 1742 – 1804 (6 February 2014); Ms Harmse Transcript 1802 – 1900 (6 February 2014); Mr Bosman Transcript 1901 – 2013 (6 February 2014); Mr Cole & Mr Möller Transcript 2527 – 2565 (11 February 2014); Mr Papu & Mr Dexter Transcript 2566 – 2596 (11 February 2014); Mr Giles Transcript 2724 – 2763 (12 February 2014); Ms Mtwana 2822 – 2866 (12 February 2014) and 4032 – 4047 (20 February 2014);

2 Record Bundle 13(1), File 1.4, File 9, Item 3.

3 Record Bundle 2(1), File 1.4, File 2, Items 9 – 15.

4 See Chapter 2 above at paras 3 – 12.

5 Section 16, read with section 34(2) of the Civilian Secretariat Act; See Dr Lawrence's Statement, Record Bundle 2(3), File 13, Item 6 at para 97 where he states that the existing Western Cape's functional secretariat was confirmed as the provincial secretariat for police on 31 May 2013.

6 See Chapter 5 above at paras 7 – 16.

the Commission wrote to DOCS in October 2012 requesting a range of documents that it considered relevant to its mandate.⁷ DOCS provided the Commission with an un-indexed range of documents,⁸ which was supplemented both prior to and during the hearings. They included –

- Policing Needs and Priorities for the Province for 2009/2010 – 2012/2013.⁹ These are important documents as the Constitution requires them to be taken into account when the national Minister of Police sets national policing policy;¹⁰
- DOCS oversight monitoring reports in respect of the Lingeletu West police station in September 2012,¹¹ Khayelitsha Site B and Harare in February 2013,¹² and for all three police stations in October 2013,¹³ as well as monitoring reports for a range of other police stations in the province¹⁴ and the Civilian Secretariat's National Monitoring Tool for police stations;¹⁵
- In relation to Community Police Forums (CPFs): the DOCS Expanded Partnership Programme (EPP) conceptual framework 2013;¹⁶ a copy of the Uniform Constitution for CPFs in the Western Cape;¹⁷ a 2011 report on the study of the functionality of CPFs;¹⁸ the DOCS CPF Training Toolkit Manual;¹⁹ the DOCS CPF structure interview forms for 2013/2104;²⁰ the EPP Snapshot, September 2013;²¹ the EPP snapshot for the Khayelitsha police stations, showing the aspects of the EPP that had been met by the CPFs in the three police stations in a six-month period;²² the SAPS provincial instruction relating to implementation of the EPP;²³ a memorandum of agreement relating to the EPP between DOCS and the Khayelitsha Site B CPF dated May 2013;²⁴ the CPF Monthly Performance Reports for September 2013 for Khayelitsha Site B,²⁵ Harare,²⁶ and Lingeletu West;²⁷ EPP reports on the three police stations in July/August 2013;²⁸ the EPP comparative graphs for September 2013;²⁹
- Community Safety Barometer Precinct reports for the three Khayelitsha police stations compiled in 2011/12;³⁰

7 Record Bundle 2(1), File 1.4, File 3, Items 16 to 22 reflect the correspondence exchanged to obtain information/documentation from DOCS.

8 Id. at Item 19.1, Annexure KC1, pp 26 – 34.

9 Record Bundle 2(3), File 5, File b, Items 48 – 51.

10 Section 206(1) of the Constitution.

11 Record Bundle 2(3), File 9, Item 9.17.

12 Record Bundle 2(3) File 9, Item 9.15 (Khayelitsha Site B) and Item 9.16 (Harare).

13 Record Bundle 2(3), File 13, Items 2(a) and 2(b), 3(a) and 3(b) and 4(a) and 4(b).

14 Record Bundle 2(3), File 10, Items 3 – 13 (reports in respect of Durbanville (2012), Sea Point (2013), Hout Bay (2011), (2012) and (2013), Simon's Town (2012), Nyanga (2011), Philippi East (2013), Grassy Park (2011), Kensington (2013), and Mitchell's Plain (2012)).

15 Record Bundle 2(3), File 9, Item 9.8.

16 Record Bundle 2(3), File 10, Item 37.

17 Record Bundle 2(3), File 7, File 1, Item 65; and also File 10, Item 26.

18 Record Bundle 2(3) File 7, Item 66.

19 Record Bundle 2(3), File 10, Item 38(a) – (g).

20 Record Bundle 2(3), File 10, Items 16 and 17.

21 Record Bundle 2(3), File 11, Item 3.

22 Record Bundle 2(3), File 12, Items 11 and 12.

23 Record Bundle 2(3), File 11, Item 2.

24 Record Bundle 2(3), File 10, Item 27.

25 Record Bundle 2(3), File 11, Item 4.

26 Record Bundle 2(3), File 11, Item 5.

27 Record Bundle 2(3) File 11, Item 6.

28 Record Bundle 2(3), File 9, Items 9.12 (Khayelitsha Site B, August 2013), 9.13 (Harare, August 2013) and 9.14 (Lingeletu West, July 2013).

29 Record Bundle 2(3), File 11, Item 7.

30 Record Bundle 2(3), File 4(1), Items 32, 33 and 34.

- Safety Audit reports compiled in respect of 13 police stations in the province by DOCS in 2009;³¹
 - Safety Barometer Studies for six areas of the Western Cape conducted in 2010;³²
 - Safety Barometer Studies conducted for ten areas of the Western Cape in 2011;³³
 - Domestic Violence Act: 2013 Domestic Violence Act audits conducted by the provincial secretariat on the three Khayelitsha police stations;³⁴ and four reports on the implementation of the Domestic Violence Act, compiled by DOCS Directorate of Compliance Monitoring and Investigation – one in 2009, two in 2010 and one in 2011;³⁵
 - Policing complaint reports for the period April 2008 to June 2013, quarterly reports assessing complaints against SAPS received by DOCS,³⁶ as well as the DOCS, Directorate Compliance Monitoring and Investigation Complaints Management Policy,³⁷ and summaries of complaints against SAPS received by DOCS for 2011, 2012 and 2013 (the summaries have been redacted in the record);³⁸
 - two reports on sector policing in the province compiled by DOCS Directorate of Compliance Monitoring and Investigation in 2009 and 2011 respectively;³⁹
 - four reports relating to community outreach meetings held in Khayelitsha on 21 and 22 October 2010 respectively;⁴⁰
 - correspondence on police to population ratios with SAPS⁴¹ and the Resource Allocation Guide;⁴²
 - reports on the DOCS watching briefs project;⁴³
 - Western Cape Provincial Parliament Standing Community on Community Safety, transcript of proceedings on the occasion of the visit of the SAPS National Commissioner and other senior officers, 27 August 2013;⁴⁴
 - the crime statistics for Khayelitsha for the years 2003/4 – 2011/12;⁴⁵
 - DOCS Annual Performance Plan 2013/2014;⁴⁶
 - The “reward-a-cop” programme;⁴⁷ and the
 - School safety programme.⁴⁸
- [3] DOCS was admitted as a party before the Commission, and was represented throughout the proceedings by counsel.⁴⁹ In addition, DOCS lodged a lengthy affidavit deposed to by Dr

31 Record Bundle 2(3) File 3a and 3b, File 1, Items 1 – 13. The audit report for Khayelitsha related to the whole of Khayelitsha (File 3a, File 1, Items 4a and 4b). The other police stations involved were Bishop Lavis, Delft, Gugulethu, Kleinvele, Mbekweni, Manenberg, Mitchells Plain, Muizenberg, Nyanga, Paarl East, Philippi and Philippi East.

32 Record Bundle 2(3), File 3(a) and 3(b), File 2, Items 14 – 20. Barometer Studies 2010 for Atlantis, Bishop Lavis, Delft, Mitchells Plain, Nyanga and Paarl East.

33 Record Bundle 2(3), File 3(a) and (b), File 3. Barometer Studies 2011 for Cape Town (City Bowl) (Item 21), Gugulethu (Item 22), Harare (Item 23), Khayelitsha (Site B and Site C) (Item 24), Kraaifontein (Item 25), Manenberg (Item 26), Philippi (Item 27), Kleinrivier (Item 28), Kuilsrivier (Item 29), and Mfuleni (Item 30).

34 These are to be found in several places in the Record at Record Bundle 2(3), File 8, Items 3 and 4; Record Bundle 2(3), File 10, Items 23 and 24; and Record Bundle 2(3), File 13, Item 5.

35 Record Bundle 2(3), File 1, File 1, Items 9 and 10; Record Bundle 2(3) File 8, File B, Items 6 and 7.

36 Record Bundle 2(3), File 2, File 3, Files a – f, Items 4 – 24.

37 Record Bundle 2(3), File 2, File 1, Item 2.

38 Record Bundle 2(3), File 8, File A, Items 5.1 – 5.53.

39 Record Bundle 2(3), File 1, File 4, Items 5 and 6.

40 Record Bundle 2(3), File 1, File 3, Items 1 – 4; Record Bundle 2(3), File 4, File 2, File B, Items 40, 41 and 42.

41 Record Bundle 2(3), File 6, File 3, Items 54, 54a – c and 55.

42 Record Bundle 2(3), File 11, Items 9 – 22. See also Transcript at 1617 (5 February 2014).

43 Record Bundle 2(3), File 6, File 1, Items 58 and 59.

44 Record Bundle 2(3), File 12, Items 6a – 6d.

45 Record Bundle 2(3), File 9, Item 9.22.

46 Record Bundle 11(2), Item 4.

47 Record Bundle 6(3), Items 1 – 11.

48 Record Bundle 11(2), Items 1 – 3.

49 Record Bundle 1, File 1.d, Item 9a at para 1.

Gilbert Lawrence,⁵⁰ who has been head of the Department since July 2007. Dr Lawrence also testified before the Commission.⁵¹

(b) Dr Gilbert Lawrence

- [4] Dr Lawrence explained that section 7(2) of the Public Service Act, 104 of 1999, read with schedule 2 of the Act, provides for the establishment of provincial departments of community safety and all nine provinces have established them, albeit sometimes with different names.⁵² Dr Lawrence testified that the mandate of the Department derives from a range of sources, including section 206(3) of the Constitution. He also noted that DOCS is tasked with performing the functions of the Provincial Secretariat for Safety and Security in terms of section 2 of the SAPS Act, (now the provincial Secretariat for Police).⁵³
- [5] He said that DOCS has five main areas of responsibility, called “programmes”: internal processing, with an annual budget of just under R40 million; increasing safety for communities by improving police performance through oversight, with a budget of R21.5 million; increasing safety by enhancing active citizenship, with a budget of R64 million; road safety with a budget of R203 million; and maximizing the safety contribution of Western Cape government institutions and assets, with a budget of just under R60 million.⁵⁴ Dr Lawrence noted that the mandate of DOCS is in line with Strategic Objective 5 of the province: “increasing safety to drive an objective of safety and security broadly with diverse stakeholders”.⁵⁵ Four goals were identified within the Strategic Objective: maximising the safety contribution of the Western Cape government; optimising civilian oversight; optimising road safety; and designing and establishing institutions to make “safety everyone’s responsibility”. The second of these, optimising civilian oversight, was elaborated to include the objective of determining how the province could “use its legislative power to monitor and exercise oversight over SAPS and other law enforcement agencies, in a way that aligns with the whole-of-society approach to safety.”⁵⁶
- [6] According to Dr Lawrence, community involvement, transparency, public understanding and active citizenship are key elements of the “whole-of-society” approach to safety that underpins Strategic Objective 5.⁵⁷ Emphasis is placed on partnerships with community bodies, which according to Dr Lawrence, is consistent with the National Development Plan’s emphasis on “building community participation in community safety”.⁵⁸
- [7] Accordingly, DOCS seeks to mobilise communities against crime by, amongst other things, recruiting and training Neighbourhood Watch volunteers, recruiting police reservists, establishing new stakeholder forums and supporting existing ones, and aligning community anti-crime structures with CPFs.⁵⁹ In particular, DOCS, in light of its duty under section

50 Record Bundle 2(3), File 13, Item 6.

51 Transcript at 1591 – 1741 (5 February 2014) and Transcript 1742 – 1804 (6 February 2014).

52 See Dr Lawrence’s Statement, Record Bundle 2(3), File 13, Item 6 at para 43.

53 Id. at para 44. The legislative scheme here is a little complex: section 2(1)(b) of the SAPS Act, 68 of 1995, provided, until its repeal by the Civilian Secretariat for Police Service, Act 2 of 2011 on 1 December 2011, for provincial Secretariats for Safety and Security. Just over a year after section 2(1)(b) was repealed, a new section 2 was introduced into the SAPS Act by section 36 of the IPID Act 1 of 2011. The new section 2 provides that provinces will establish provincial Secretariats for Police. See Chapter 5 above at paras 7 – 8.

54 Record Bundle 2(3), File 13, Item 6 at para 46.

55 Id. at para 55.

56 Id. at para 57. The whole of society concept is not new. Evidence was heard from Dr Holtmann regarding this point (Record Bundle 12(1), Items 12 and 12a; Bundle 12(2), Exhibit 103).

57 Id. at para 59.

58 Id.

59 Id. at para 60.

206(3)(c) “to promote good relationships between the police and the community”, envisions a number of strategies including the strengthening of existing structures, such as CPFs, rolling out new Neighbourhood Watches and Community Safety Forums, creating new structures such as the Western Cape Safety Advisory Committee⁶⁰ and setting up the Western Cape Security Partnership.⁶¹

- [8] Dr Lawrence also explained that as DOCS had been “frustrated by difficulty in obtaining facts and figures from the Provincial Commissioner and National Minister”,⁶² it had commissioned a number of studies into crime. One such survey involved a study of all 149 policing precincts in the province, with 13 000 household surveys, and wide ranging consultations.⁶³ This study informed the development of the Policing Needs and Priorities Report 2011/2012.⁶⁴ The report acknowledged that neither SAPS, nor any government department, nor civil society organisations would be able to address the challenge of crime on its own, so it was necessary “to synergise ... strategies and resources.”⁶⁵ The report disaggregated priorities in each of the policing precincts in the province, and in respect of Khayelitsha, Harare and Lingeletu West stated that armed robbery, illegal firearms and housebreakings were the three priority crimes identified by residents.⁶⁶ The report also recorded that 55% of respondents in the Khayelitsha cluster stated police response times were poor.⁶⁷
- [9] Dr Lawrence provided details in his affidavit of the role of the provincial Department of Social Development which provides funding to a range of projects in Khayelitsha including the Nonceba Family Counselling Centre, the Mosaic Training, Service and Healing Centre which for the past 16 years has provided 24-hour counselling to victims of domestic violence and sexual violence;⁶⁸ and NICRO which aims to re-integrate offenders into society and divert adults from incarceration.⁶⁹ The Department of Social Development also funds a range of non-governmental organisations in Khayelitsha including four Ikamva Labantu Centres, the Baphumulele Children’s Home and the Homestead Project for Street Children.⁷⁰
- [10] In his affidavit, Dr Lawrence also set out the background to the enactment of the Western Cape Community Safety Act, 3 of 2013.⁷¹ One of the relevant factors, according to Dr Lawrence, is what he described as “recalcitrance” on the part of SAPS in relation to DOCS’ requests for information from SAPS.⁷² He states that DOCS had not been provided with a copy of

60 This Committee is established in terms of sections 25 – 28 of the Western Cape Community Safety Act, 3 of 2013 (Western Cape). These provisions of the Act were brought into force on 1 November 2013 (see Proclamation 14/2013 published in Western Cape Provincial Gazette 7188 on 18 October 2013) as stated above, Record Bundle 2(3), File 12, File a, Item 7.

61 Record Bundle 2(3), File 13, Item 6 at para 61.

62 Id. at para 63.

63 Id. at para 64. The report on the 149 stations is Secretariat for Civilian Oversight. (2011/2012). “*Western Cape Government: Community Safety. Report on the Level of Satisfaction of Clients and Victims of Crime at 149 Police stations in the Western Cape Province*”, Record Bundle 2(3), File 5, Item 52.

64 Record Bundle 2(3), File 5, Item 50.

65 Record Bundle 2(3), File 13, Item 6 at para 66. See Policing Needs and Priorities report 2011/2012, Record Bundle 2(3), File 5, Item 50 at p 9.

66 Record Bundle 2(3), File 13, Item 6 at para 67. See Policing Needs and Priorities report 2011/2012, Record Bundle 2(3), File 5, Item 50 at p 55 – 56.

67 Id.

68 The Commission received a written affidavit from Ms Zarina Majiet, the Operations Implementation Manager of Mosaic; Record Bundle 8(3), Item 42. She confirmed the affidavit of Professor Artz.

69 Record Bundle 2(3), File 13, Item 6 at para 69. For research on domestic violence undertaken on behalf of Mosaic, see the testimony and report of Professor Artz, above Chapter 8 at paras 34 – 45. The Commission also received a submission from NICRO; Record Bundle 1(1)(b), File F, Item G,

70 Record Bundle 2(3), File 13, Item 6 at para 70. See also, in relation to the Homestead Project for Street Children, Ms Basson’s testimony, above Chapter 7 at paras 123 – 134.

71 Record Bundle 2(3), File 13, Item 6 at paras 72 – 93.

72 Id. at para 86; See also the exchange of correspondence at Record Bundle 2(3), File 11, Items 9 – 22.

SAPS' Resource Allocation Guide despite repeated requests.⁷³ This is a matter to which we return later in this report. Dr Lawrence also complained that SAPS fails to assist DOCS by, for example, refusing to provide information, repeatedly ignoring requests for information, delaying in producing information, providing inadequate and, at times, inaccurate information, by "passing the buck" – that is telling DOCS to go to a different SAPS office to obtain the information and by arbitrarily declaring that information sought is "operational".⁷⁴

- [11] Dr Lawrence also testified that there are problems with the implementation of the Civilian Secretariat Act.⁷⁵ One of the problems is that the regulations to the Act have not yet been promulgated. Also, at the time he attested to his affidavit, only two provincial secretariats had been established (in Gauteng, and the Western Cape), provincial civilian secretariats were not functional and no meeting of provincial secretariats had taken place.⁷⁶

(i) *The EPP – CPFs*

- [12] Dr Lawrence described the province's Expanded Partnership Programme (the EPP),⁷⁷ which was initiated in the province in September 2011.⁷⁸ The purpose of the EPP, according to Dr Lawrence, is "to strengthen community participation in community safety" and sets minimum standards for delivery of CPFs.⁷⁹ The EPP envisages regular meetings with members of the community, newsletters, and recording of complaints.⁸⁰ According to Dr Lawrence, funding CPFs has increased from a "donation" of R1500 – R2000 per annum, to R30 000 per annum per CPF.⁸¹ However, as apparent from the evidence this did not mean that CPFs received R30 000. On the contrary, under the EPP, the payment to any particular CPF is based on the performance of the CPF in terms of prescribed benchmarks. DOCS reported the following in relation to the funding of CPFs through the EPP, with particular reference to the three Khayelitsha CPFs: In the 2011/2012 financial year a total amount of R31 668.03 was paid to 30 CPFs. Of this amount the Lingeletu West CPF (which was one of the 32 CPFs that formed part of the pilot project) received R1593.36, the other two Khayelitsha stations got nothing. For the 2012/2013 financial year DOCS spent R344 163.39 in respect of 38 CPFs. Lingeletu West CPF received R13 311.39; Harare got R7450 and Khayelitsha Site B an amount of R4937.50. For the 2013/2014 financial year DOCS spent R 647 578 in relation to the EPP for 92 CPFs. Of this amount the Lingeletu West CPF received R10 321.94; Harare CPF earned R5787.71 and Khayelitsha Site B an amount of R11 587.50.⁸² During the latter period DOCS reported that "the 3 Khayelitsha CPFs show a 67% compliance on average, thus these CPFs are largely compliant with the EPP, and its activities".⁸³ The expenditure on the EPP is thus a very small amount of the R21 582 000 of the DOCS budget allocated to monitoring and evaluation.⁸⁴ Whilst Dr Lawrence accepted that CPFs do not have sufficient funding, he also indicated that constitutionally there was no obligation on DOCS to fund

73 Id.

74 Record Bundle 2(3), File 13, Item 6 at para 87.

75 Id. at paras 94 – 98.

76 Transcript at 1726 (5 February 2014).

77 The EPP is contained at Record Bundle 2(3) File 10, Item 37.

78 Record Bundle 2(3), File 13, Item 6 at para 101.

79 Id. at para 102.

80 Transcript at 1634 (5 February 2014). See also Dr Lawrence's Statement, Record Bundle 2(3), File 13, Item 6 at para 104.

81 Id. at para 103.

82 Exhibit HL1, Annexure E, Record Bundle 10(3), Item 17; See Transcript at 1754 – 1755, 1761 (6 February 2014); see also Record Bundle 2(3), File 12, Item 8.

83 Record Bundle 2(3), File 9, Item 9.5 at p 29.

84 Transcript at 1747 (6 February 2014). DOCS's total budget for the 2013/2014 year is R388 million of which R41 million is budgeted for Safety Promotion and Crime Prevention. This latter amount will increase to R81million for the 2014/2015 financial year. See also Letter from Dr Lawrence 6 March 2014, Record Bundle 11(2), Item 1 at para 3.

CPFs because they are not created in terms of provincial legislation but under the SAPS Act.⁸⁵ We revert to this below. Dr Lawrence also testified that DOCS has been consistently supporting Neighbourhood Watches since 2006. Under section 6 of the Community Safety Act, registered Neighbourhood Watches will receive training and equipment.⁸⁶

- [13] Dr Lawrence mentioned that DOCS has supported other preventative programmes, such as the Chrysalis Youth Academy, the Violence Prevention through Urban Upgrading (VPUU) and the Youth Work Placement programme.⁸⁷
- [14] Dr Lawrence also described the initiative held over the Easter weekend in 2012 to reduce crime in Khayelitsha.⁸⁸ The three Khayelitsha CPFs had initiated the project, and drew together members of Neighbourhood Watches from across Khayelitsha, and even from other parts of the City, members of DOCS, as well as SAPS.⁸⁹ Dr Lawrence noted that although the weekend had started well, with good participation from SAPS, by the end of the weekend, many of the patrols could not proceed because SAPS members were not available.⁹⁰ DOCS plays a key role in oversight of SAPS conduct.

(ii) *Bambanani Project*

- [15] Dr Lawrence also discussed the Bambanani project, which had operated under the government's Expanded Public Works Programme (EPWP). He testified that when he arrived in DOCS (in 2007), there were some serious governance issues that had attracted the attention of a provincial special audit.⁹¹ Some of the problems related to the Bambanani project, so they had to redesign the project to remove the audit risks. The problems included fraud, "double-dipping" and irregular record-keeping.⁹² The new Bambanani programme involved the employment of community members, still under the EPWP, to provide basic security services at high-risk schools, including access control. He testified that over the years the persons who participated in this programme have been mostly older persons, usually women who got paid a stipend of R70 per day.⁹³ To address the problems experienced previously, DOCS and the Western Cape Department of Education had entered into an agreement in April 2013 to assume joint ownership of the programme.⁹⁴ Measures have been put in place to prevent risks of cronyism and 'double-dipping'.⁹⁵ According to Dr Lawrence, this project has provided so far for 70 community members to be attached to 20 schools in Khayelitsha.⁹⁶

(iii) *Complaints*

- [16] One of the constitutional responsibilities of DOCS, according to Dr Lawrence, involves receiving complaints from the public concerning SAPS and ensuring that they are investigated

85 Transcript at 1773 (6 February 2014); Transcript at 1769 (6 February 2014).

86 Record Bundle 2(3), File 16, Item 6 at para 106.

87 Id. at para 107. See also Letter from Dr Lawrence 6 March 2014 at Record Bundle 11(2), Item 1 elaborating on crime prevention programmes.

88 Transcript at 1645 (5 February 2014). See also testimony of Mr Loonat and Mr Abrahams, above Chapter 7 at paras 146 – 151.

89 Bundle 4(3), File 13, Item 8 and Record Bundle 7(2), File 13, Item 8a.

90 Transcript at 1646 (5 February 2014).

91 Id. at 1639.

92 Id. See also Dr Lawrence's Statement, Record Bundle 2(3), File 13, Item 6 at para 110.

93 Transcript at 1777 (6 February 2014).

94 Record Bundle 2(3), File 13, Item 6 at para 111. See Memorandum of Understanding in the record, Record Bundle 2(3), File 10, Item 19; Record Bundle 2(3), File 9, Item 9.5. DOCS further advised the Commission that the School Safety Project only operates at 201 of the 1550 schools in the Western Cape Province due to budgetary constraints.

95 Id. at para 112. See also further documentation provided by DOCS on the Schools Safety project in Record Bundle 11(2), Items 2 and 3.

96 Transcript at 1639 and 1643 (5 February 2014).

and resolved.⁹⁷ SAPS, however, placed an obstacle in the way of DOCS performing this role when, in March 2010, the Provincial Commissioner gave an instruction to senior SAPS members in the province that “all complaints in the Western Cape” must be forwarded to an office, “a Nodal Point” established by the Provincial Commissioner.⁹⁸ A similar letter was sent to Dr Lawrence as head of DOCS on 15 March 2010, in which it was stated that the “Provincial Nodal Point is responsible for receiving, investigating and recording all complaints.”⁹⁹ The letter concluded by stating that –

“the following procedure will therefore apply with immediate effect with regard to complaints received against SAPS in the Western Cape

- 5.1 Written complaints which have been received by your office must be forwarded in writing to the Provincial Head: Inspectorate ...;
- 5.2 Correspondence to the Provincial Inspectorate should, as far as possible, be signed and forwarded by the relevant Head of Department or Office Manager;
- 5.3 requests for physical inspections at stations and access to case dockets must also be forwarded to the Nodal Point and you will be assisted as far as possible.
- 5.4 Commanders will be instructed to forward all existing investigations to the Provincial Nodal Point with a status report on each and they will receive further instructions accordingly.”

- [17] Dr Lawrence testified that he understood this letter to require DOCS to cease investigating complaints, and forward all complaints it received to the Nodal Point, under cover of a letter signed by him personally, which he said involved “a whole lot of additional bureaucracy”.¹⁰⁰ According to Dr Lawrence, his understanding of the letter was that: “Absolutely we were not allowed to”¹⁰¹ investigate complaints directly any more. Dr Lawrence testified that the new system caused delays, and that DOCS had to send reminder letters to SAPS, and –

“it got to the point where we were sending Excel sheets of complaints that had not yet been responded to, so that meant certainly from the public’s perception who were making these complaints we were no more than a postbox and in a sense were not able to quickly and rapidly reply in terms of what was happening to their complaint”.¹⁰²

(iv) Divergence of views between DOCS and SAPS regarding section 206(3) of the Constitution

- [18] Dr Lawrence testified to the divergence of views between DOCS and SAPS as to the constitutional responsibilities of DOCS imposed by section 206(3) of the Constitution. This divergence is apparent in the view SAPS took of DOCS’ responsibility to investigate complaints against SAPS in its letter of 15 March 2010, just set out, but according to Dr Lawrence it was also apparent from several other exchanges between SAPS and DOCS. The first of these arose from a letter sent by Dr Lawrence to the Provincial Commissioner dated 28 May 2012 in which DOCS requested SAPS support for an independent investigation by

⁹⁷ Transcript at 1597 (5 February 2014).

⁹⁸ This instruction (exhibit GL1) was dated 15 March 2010 and was addressed to all Deputy Provincial Commissioners, Cluster Commanders, and Station Commanders in the province. See Record Bundle 9(6), Item 7 which contains exhibits GL1 – GL10.

⁹⁹ Exhibit GL1, Record Bundle 9(6), Item 7.

¹⁰⁰ Transcript at 1595 (5 February 2014).

¹⁰¹ Id. at 1597.

¹⁰² Id. at 1598.

DOCS into “the alleged failure (by SAPS) to arrest and to confiscate a firearm from a SAPS members who had contravened the Domestic Violence Act”.¹⁰³ The Provincial Commissioner responded on 19 June 2012 in the following terms –

“In terms of section 206(3) of the Constitution read with section 206(5) there is no obligation based on the MEC’s office to conduct an investigation and give instruction to SAPS how their duties and functions must be conducted.

The Department has a duty to liaise between communities and SAPS and to forward any complaint to the office of the Provincial Commissioner concerned where community members are complaining against SAPS. Only when there is no co-operation or feedback given to the MEC’s office, may section 206(3) be evoked to establish a broken relationship or with the purpose to call for a Commission of enquiry that will prove that police service delivery is totally broken down; and not isolated cases as indicated.

Considering the above factors it is the view of the Office that the Department is placing itself as an authority/inspectorate of the Department to advise SAPS what to do with regard to matters that comes from the members of the public instead of requesting or giving the Provincial Commissioner time to conduct an investigation based on the report received.

This office disagrees with the view of the Department to impose terms to SAPS, contrary to the spirit enshrined in section 206(3) and 206(5), as the purpose therein of the Legislature was to give the MEC a facilitating power on behalf of the National Ministry of the SAPS and thus it is only the National Ministry and the National Commissioner who may impose terms and conditions as to how the police may perform its conduct. (See section 207(2) for ease of reference).”¹⁰⁴

- [19] Dr Lawrence testified that “this letter came out of the blue because the letter was now ... directly challenging our interpretation ... of 206(3)...”¹⁰⁵ Another example of SAPS’s divergent understanding of section 206(3) was provided. On 25 July 2013, the MEC for Community Safety wrote to the Provincial Commissioner asking for “information on the number of lost and stolen SAPS dockets in the Western Cape” for the years 2009/2010, 2010/2011 and 2011/2012.¹⁰⁶ The Provincial Commissioner responded on 3 September 2013 with a brief letter asking the purpose for which the information was required.¹⁰⁷ During his testimony, Dr Lawrence said that he could not understand this response from the Provincial Commissioner and could “only surmise that the police didn’t want to give us the information”.¹⁰⁸
- [20] A third example was also provided by Dr Lawrence: this related to a complaint that DOCS had received from a member of the public who stated that a member of SAPS had threatened her with arrest for a crime that she denies. DOCS took a statement from the complainant who averred that she had an independent witness who would corroborate her complaint. DOCS wrote to SAPS on 11 June 2013 asking SAPS to investigate the docket and to instruct the

103 This letter was admitted as an Exhibit marked GL3. See Record Bundle 9(6), Item 7 for Exhibits GL1 – GL10.

104 Exhibit GL4, Record Bundle 9(6), Item 7.

105 Transcript at 1600 (5 February 2014).

106 Exhibit GL5, Record Bundle 9(6), Item 7.

107 Exhibit GL6, Record Bundle 9(6), Item 7.

108 Transcript at 1602 (5 February 2014). This was not put to Dr Lawrence. For the sake of completeness the Provincial Commissioner responded to the MEC on 1 October 2013 indicating that two police stations have problems with lost dockets (Nyanga and Prince Albert). This letter was tendered as an exhibit by Lieutenant General Lamoer. See Exhibit AL11, Record Bundle 11(5), Item 95.

relevant SAPS member not to arrest the complainant. According to the letter, DOCS made the recommendation “to ensure that the SAPS promote an impartial standard of investigations and does not arrest a person who may be innocent”.¹⁰⁹ SAPS responded in the following terms –

“The allegations made against the investigating officer in this matter are being investigated by the Inspectorate.

However, it has to be brought to your attention that the investigation of a criminal matter is the responsibility of SAPS.

It is also SAPS’ prerogative to obtain statements which are related to investigation. Such statements will only be taken by the investigating officer in the case.

Your instruction pertaining to the investigation is considered an operational matter and thus not the responsibility of your Department.

Investigation into the matter will continue as deemed appropriate.”¹¹⁰

- [21] Dr Lawrence’s response was that DOCS did not consider this to be an “operational” matter but a complaint, something which DOCS has a mandate to pursue.¹¹¹ Dr Lawrence accepted that DOCS does not have any mandate in relation to “operational” issues, but asserted that this was a question of oversight relating to a complaint, not an operational matter.
- [22] As mentioned earlier, Dr Lawrence also complained that DOCS had been unable to obtain a copy of SAPS’ Resource Allocation Guide. They had requested it formally and informally, as well as in a standing committee of the provincial legislature, but it had never been provided.¹¹² He also complained about SAPS’ practice, discussed in Chapter 5, of only publishing crime statistics nationally annually in September for the year that began the preceding March 1.¹¹³ He stated “we need real-time statistics to know what is happening right now.”¹¹⁴

(c) Mr Patrick Njozela

- [23] Mr Patrick Njozela also testified on behalf of DOCS. Mr Njozela is the Head of the Policing Complaints Centre (PCC), a sub-directorate of the Directorate: Monitoring and Evaluation of DOCS, a position he has held since January 2008.¹¹⁵ Prior to working for DOCS, Mr Njozela worked for the Independent Complaints Directorate (ICD) established under the SAPS Act. Mr Njozela testified that in pursuing investigations, he had visited each of the Khayelitsha police stations approximately 20 times.¹¹⁶ Mr Njozela described how the Police Complaints Centre produces quarterly reports of complaints received against members of SAPS.¹¹⁷
- [24] Mr Njozela explained that prior to 2010, when complaints were received from members of the public, the Police Complaints Centre would investigate them, if necessary, by visiting police

109 Exhibit GL7, Record Bundle 9(6), Exhibits, Item 7.

110 Exhibit GL8, Record Bundle 9(6), Item 7.

111 Transcript at 1605 (5 February 2014).

112 Id. at 1618.

113 Id. at 1632.

114 Id.

115 Transcript at 1237 (3 February 2014); Record Bundle 4(1), File 2, Item 6 at para 1.

116 Transcript at 1238 (3 February 2014).

117 For copies of the quarterly reports for 2008 – 2013, see Record Bundle 2(3), File 2, File 3, File a – f, Items 4 – 24. See also Transcript at 1245 – 1246 (3 February 2014).

stations unannounced.¹¹⁸ However, since March 2010,¹¹⁹ when the Provincial Commissioner set up the Nodal Point and instructed that all complaints be forwarded to it, the Police Complaints Centre “is sort of operating like the post office where we refer all cases to SAPS”.¹²⁰ His jurisdiction to investigate complaints had been, he said, “extremely narrowed”.¹²¹ Another of the consequences of the March 2010 letter, was that the joint complaint meetings that used to be held between DOCS, SAPS, and the ICD had ceased.¹²²

- [25] Mr Njozela stated that most of the complaints received by DOCS related to lack of communication, poor investigation, poor response, and complaints that members of the law enforcement agencies had acted unacceptably, or even criminally.¹²³ Mr Njozela testified that, in his experience, although the three Khayelitsha police stations did not generate the most complaints in the province, “they will feature in the top ten”.¹²⁴
- [26] Mr Njozela testified that serious complaints should not be referred back to the very police station where the serious complaint may have been made but that there be some independent investigation of such complaint and where complaints are referred back to police stations care should be taken that they are investigated with diligence and impartiality.¹²⁵
- [27] In response to a question as to whether there was a significant difference in the way in which the complaints were resolved, prior to 2010 to post-2010, Mr Njozela testified that when DOCS had investigated complaints, before 2010, the rate of substantiation was as high as 80%,¹²⁶ but that since 2010 when SAPS conducted the investigations, the complaints rate had dropped significantly.

B. THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)

(a) Documents

- [28] In response to a request from the Commission, IPID furnished the Commission with a Bundle of documents. These documents included –
 - Reports of investigations into complaints against members of the three Khayelitsha police stations: there were 26 such investigations in respect of Khayelitsha Site B; 20 such investigations in respect of Harare; and 19 in respect of Lingeletu West.¹²⁷
 - Annual reports of the Independent Complaints Directorate (the ICD) for the years 2009/2010, 2010/2011, 2011/2012 and 2012/13.¹²⁸
 - Monthly reports of IPID for the periods April 2012 – March 2013.¹²⁹

¹¹⁸ Transcript at 1238 (3 February 2014).

¹¹⁹ Record Bundle 4(1), File 2, Item 6 at paras 15 – 16. See also the SAPS letter of 15 March 2010 setting out the new procedure to be followed; exhibit GL1, Record Bundle 9, File 6, Item 7.

¹²⁰ Transcript at 1240 (3 February 2014).

¹²¹ Id. at 1241.

¹²² Id. at 1247. See also Record Bundle 4(1), File 2, Item 6 at para 19 – 20. For minutes of those meetings, see Record Bundle 2(3), File 2, Items 25 – 29.

¹²³ Record Bundle 4(1), File 2, Item 6, at para 11.

¹²⁴ Transcript at 1242 (3 February 2014).

¹²⁵ Id. at 1265.

¹²⁶ Transcript at 1302 (4 February 2014).

¹²⁷ Record Bundle 1(8), File 1, Items 1 – 67.

¹²⁸ Record Bundle 1(8) File 2, Items 1 – 4.

¹²⁹ Record Bundle 1(8), File 4, Items 1 – 13.

- IPID Standard Operating Procedures for 2012 and 2013, as well as ICD Standard Operating Procedures.¹³⁰
- Staffing information for IPID from 2008 – 2014, including vacant posts for the same period, and identified scarce and critical skills over the same period.¹³¹

(b) Mr Thabo Leholo

- [29] Mr Leholo who testified before the Commission is the Acting Head of IPID in the Western Cape.¹³² He is also the Director of Investigations of the Western Cape IPID.¹³³ He was initially employed by the ICD in November 2006 and at the time the ICD was disestablished in April 2012, he was the Provincial Head of the ICD, Western Cape. Mr Leholo testified that when the ICD was disestablished, those employed by it, were automatically employed by IPID.
- [30] As explained in Chapter 5, above,¹³⁴ IPID is established in terms of the IPID Act. It replaced the ICD that was established in terms of Chapter 10 of the SAPS Act. That chapter of the SAPS Act was repealed with effect from 1 April 2012 when the IPID Act came into force. So until 31 March 2012, the ICD was responsible for investigating serious misconduct of members of SAPS in terms of Chapter 10 of the SAPS Act, but from 1 April 2012, IPID took over that responsibility in terms of the IPID Act. The mandate of the two organisations is, however, not identical. IPID's mandate is set out in section 28 of the IPID Act. It must investigate deaths in police custody, deaths as a result of police action, any complaint relating to the discharge of an official firearm by a member of SAPS, rape by a member of SAPS whether on or off duty, rape of any person while in police custody, any complaint of torture or assault against a member of SAPS in the execution of his duties, corruption matters initiated by the IPID executive director, Minister of Police, MEC or Secretary of Police and any other complaints referred to IPID by the Minister of Police or an MEC or the Secretary of Police. IPID may also investigate matters of systemic corruption involving the police.¹³⁵
- [31] The mandate of the ICD was somewhat different. It was based on section 222 of the interim Constitution that had required the establishment of “an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of [SAPS] are investigated in an effective and efficient manner.”¹³⁶ Chapter 10 of the SAPS Act, prior to its repeal, had provided that the ICD could on its own authority, or upon the receipt of a complaint, investigate any misconduct or offence allegedly committed by a SAPS member, and, where appropriate refer such investigation to the SAPS Commissioner concerned.¹³⁷ The range of issues that could be investigated included criminal activities and any conduct or behaviour by a SAPS member in breach of the SAPS Standing Orders or Police Regulations. Section 53(8) had required the National or Provincial Commissioner to inform the ICD of any deaths in police custody or deaths as a result of police action.
- [32] The final annual report of the ICD was submitted for the year ending 31 March 2012. Mr Leholo pointed out that in the report, the Deputy Minister of Police had acknowledged the challenges that had been faced by the ICD, which included the late or non-reporting of deaths

130 Record Bundle 1(8), File 5, Items 1 – 5.

131 Record Bundle 1(8), File 6, Items 1 – 22.

132 Transcript at 1477 – 1590 (5 February 2014), statement of Mr Leholo at Record Bundle 7(8), Item 4.

133 See Statement of Mr Leholo at Record Bundle 7(8), Item 4, at para 1.

134 See Chapter 5 at paras 16 – 20.

135 Section 28(2) of the IPID Act.

136 Id. at para 8, and see section 222 of the Interim Constitution of the Republic of South Africa Act, 200 of 1993.

137 Id. at para 9, and see section 53(2)(a) of the SAPS Act, 68 of 1995 (prior to repeal).

and priority crimes, the lack of implementation by SAPS of the ICD recommendations and the “limited footprint” of the ICD.¹³⁸ The Deputy Minister announced that the new IPID legislation would have “the teeth” it needs, and would “shift the focus from being a complaints-driven body to one that, in conducting its investigations, addresses systematic problems within the police service, and a body that recommends appropriate interventions.”¹³⁹

- [33] The IPID is a national structure, which functions in all nine provinces. It functions independently of SAPS. The Executive Director, who is appointed for a five-year term, which may be renewed only once, heads the National Office.¹⁴⁰ Mr Leholo also noted that the IPID Act marked a change in the operational methodology. Monthly meetings are held with the Civilian Secretariat and the SAPS provincial inspectorate, which constitutes the Consultative Forum contemplated in section 15 of the IPID Act.¹⁴¹ In contrast to the ICD, the IPID Act obliges the National or Provincial Commissioner to institute disciplinary proceedings within 30 days, if the IPID recommends that this be done.¹⁴² Another key difference between the ICD and the IPID, is that the IPID must investigate the matters listed in section 28 of the IPID Act, and may not refer them back to SAPS for investigation. The ICD, on the other hand, could refer matters back to SAPS in terms of section 53(2)(a) of the SAPS Act. The IPID Act also imposes obligations upon senior members of SAPS to report section 28 matters to IPID immediately.¹⁴³ A failure to report is a criminal offence.¹⁴⁴
- [34] Mr Leholo explained that IPID (and the ICD before it) opens a file for each complaint received, and allocates it a unique CCN reference number. All information relating to that complaint are kept on that file.¹⁴⁵ The Commission requested the ICD/IPID to provide it with all complaints made in respect of SAPS members based at the three Khayelitsha police stations for the period 1 April 2010 – 31 August 2013. Mr Leholo explained that he had complied with this request, and provided the Commission with a tabulated summary of each complaint.¹⁴⁶ In addition to 65 complaints that had been completed in relation to the three police stations, Mr Leholo testified that there were a further 40 complaints under review.¹⁴⁷ Under the ICD Operating Procedure complaints were classified from I – IV to indicate the seriousness of the complaint. IPID classifies the issues in terms of the categories (a) – (g) as found in section 28 of the IPID Act.¹⁴⁸
- [35] Mr Leholo testified that approximately 50 of the 60 complaints received by the ICD in respect of the three police stations were referred back to SAPS to be dealt with, as contemplated in section 53(2)(a) of the SAPS Act.¹⁴⁹ He testified that when that happened the ICD closed its file and marked it “unsubstantiated”.¹⁵⁰ In some cases, the ICD would request a report from

138 Id. at para 12. See also ICD Annual Report 2011/2012, Record Bundle 1(8) File 2, Item 3 at p 8.

139 Id. See also ICD Annual Report 2011/2012, Record Bundle 1(8) File 2, Item 3 at pp 8 – 9.

140 Section 6(3)(b) of the IPID Act.

141 See statement of Mr Leholo at Record Bundle 7(8), Item 4, at para 30. It is worth noting that section 15 only provides for the Executive Director and the Secretary for Police to serve on the consultative forum, though they may invite any other person to the Forum.

142 Section 30 of the IPID Act. See also statement of Mr Leholo at Record Bundle 7(8), Item 4 at para 31.

143 Section 29 of the IPID Act.

144 Section 33(3) of the IPID Act.

145 Record Bundle 7(8), Item 4 at para 46.

146 Id. at para 47.

147 Id. at para 50.

148 Id. at para 52.3.

149 Transcript at 1498 (5 February 2014).

150 Record Bundle 7(8), Item 4 at paras 56 – 57.

SAPS as to the outcome of its investigation, but this did not always happen, and reports were not always furnished in response to such request.¹⁵¹

- [36] During his testimony, Mr Leholo's attention was drawn to one of the cases listed in his schedule. The case concerned a series of complaints lodged by a non-governmental organisation, Embrace Dignity, on behalf of sex workers. The first complaint related to an incident on Baden Powell Drive on the southern edge of Khayelitsha. According to the ICD records, a group of sex workers were standing on the side of the road when two police vehicles drew up with two members of SAPS in each. The SAPS members forced the sex workers to pull down their clothing and "show them their private parts". The complaint stated that the SAPS members "do this every day when they pass". The complaint also referred to an occasion when a male client assaulted a sex worker, and the CSC at Khayelitsha Site B refused to open a criminal case on her behalf. After investigation the ICD referred the matter back to SAPS for investigation. The ICD report concluded that the sex workers "are being victimised by the police members and that the conduct of the police towards them is improper and unacceptable." The ICD report concluded by referring the matters to the Provincial Commissioner, stating that "disciplinary investigations must be instituted against the involved members", and they must "be charged in terms of the relevant regulations", "the outcome of the investigation must be communicated to the ICD within 30 days of the date of this letter", and SAPS must inform the complainant of progress of the investigation.¹⁵² The ICD report concluded that the matter was closed "unsubstantiated" consistent with Mr Leholo's testimony that that is how the ICD dealt with matters that it referred to SAPS to investigate.¹⁵³ However, it is a matter of concern to the Commission that there is no information on the file as to whether a report was ever received from SAPS, despite the ICD recommendation that SAPS should report back to the ICD within 30 days. When this was put to Mr Leholo, he could provide no explanation.¹⁵⁴
- [37] In response to the Commission's request, IPID also provided information regarding its staffing establishment. Mr Leholo noted that most of the investigators employed are previously members of SAPS but that this is not invariably so.¹⁵⁵ Mr Leholo also testified that the Western Cape office of IPID had 20 investigators to deal with their mandate. He said that the limited number of investigators was "a challenge".¹⁵⁶
- [38] During cross-examination, Mr Leholo was asked about the case of Ms Ngongwana.¹⁵⁷ On 3 October 2010, Ms Ngongwana was shot in an incident where she was caught in the cross-fire between SAPS members and alleged criminals in Site C. The shooting incident was referred to the ICD, who referred it back to SAPS for investigation in terms of section 53(2)(a) of the SAPS Act. SAPS concluded their investigation with the laconic remarks: "... the suspect first shot at the police and the police returned fire. The matter can be regarded as concluded".¹⁵⁸
- [39] A further issue raised with Mr Leholo during cross-examination was the narrow scope of section 28 of the IPID Act, and the fact that it did not seem to fit neatly with section 206(6) of the Constitution, which contemplates a broader jurisdiction for the independent complaints body.¹⁵⁹ Its terms are as follows –

151 Id. at para 60 – 61.

152 Record Bundle 1(8), File 1, Item 29 at pp 96 – 98.

153 See para 35 above.

154 Transcript at 1508 – 1512 (5 February 2014).

155 Record Bundle 7(8), Item 4 at para 66.

156 Transcript at 1502 (5 February 2014).

157 See Chapter 6 above at paras 23 – 28.

158 Transcript at 1536 (5 February 2014); IPID response to cross-examination questions Record Bundle 13, File 5, Item 1 at para 6.

159 Transcript at 1553 – 1556.

“On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.”¹⁶⁰

- [40] In terms of section 18(4) of the Domestic Violence Act, prior to its amendment by Act 1 of 2011 which came into effect on 1 April 2012, the failure by a member of the SAPS to comply with an obligation imposed in terms of the Domestic Violence Act or the National Instructions referred to in section 18(3) of the Domestic Violence Act constituted misconduct as contemplated in the SAPS Act, and the ICD had to be informed of any such failure reported to the SAPS. Thus the ICD was mandated to deal with any failure to assist or protect victims of domestic violence, as required by the Domestic Violence Act until 1 April 2012 – whereafter it became the task of the Civilian Secretariat. Unless the ICD directed otherwise in any specific case, the SAPS had to institute disciplinary proceedings against any member who allegedly failed to comply with an obligation. Every six months the ICD had to submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a), and set out the recommendations made in respect of such matters. The National Commissioner of the SAPS in turn had to submit a report to Parliament every six months regarding steps taken as a result of recommendation made by the ICD. Mr Lehlo was not aware of reports or documentation pertaining to the three Khayelitsha police stations in relation to any transgressions of the Domestic Violence Act.¹⁶¹ He said that during the period 1 April 2010 to 1 April 2012, there were no complaints arising from the Domestic Violence Act emanating from the three Khayelitsha police stations, lodged with the ICD during the relevant period.

C. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT (DOJ)

- [41] On 8 February 2013, the Commission wrote to Advocate Hishaam Mohamed, who is the Regional Head of the Department of Justice and Constitutional Development in the Western Cape, requesting permission to consult with the Court Manager at the Khayelitsha Magistrates’ Court to “help the Commission understand issues relating to policing” and to gain access to records of finalised Court cases.¹⁶² The response to this letter, dated 11 February 2013, was that the Department “deem it prudent” not to permit the Commission to consult the Court Manager or to have access to records until the outcome of the appeal brought by the Minister of Police and Others against the refusal of an interim interdict.¹⁶³ On 1 November 2013, after the appeal had been dismissed by the Constitutional Court, the Commission wrote to Advocate Mohamed, once again requesting permission to consult with the Court Manager, and to enable the Commission to obtain access to finalised court records.¹⁶⁴ No written response was received to this letter, and the Commission followed up with a telephone call on 8 November 2013 and a further letter dated 12 November 2013.¹⁶⁵ On 15 November 2013 the Secretary of the Commission spoke to Advocate Mohamed who gave permission for the Commission to consult with the Court Manager and to have access, amongst other things, to finalised

¹⁶⁰ See section 206(6) of the Constitution.

¹⁶¹ Record Bundle 7, File 8, Item 4 at paras 84 – 88.

¹⁶² Record Bundle 2(1), File 1.4, File 2, Item 7.

¹⁶³ *Id.* at Item 8.

¹⁶⁴ *Id.* at Item 9.

¹⁶⁵ *Id.* at Item 10.

charge sheets and court books.¹⁶⁶ A meeting was held on 19 November 2013 at the Khayelitsha Magistrates' Court attended by Ms Dissel, the Secretary of the Commission, Mr T Sidaki, one of its Evidence Leaders, as well as Ms Van der Heyde and Ms Bekwa of the Magistrates' Court.¹⁶⁷ On 21 November 2013, Advocate Mohamed wrote to the Commission allowing the Commission access to the finalised court records, as requested.¹⁶⁸ The Commission replied on 29 November arranging to visit the Magistrates' Court on 1 and 2 December, and indicating what records it would be seeking.¹⁶⁹ In addition, under cover of a letter dated 25 April 2014, the Commission provided Advocate Mohamed with a copy of Notice 17 ("Final List of Issues for Phase Two"). In this letter a number of issues was specifically identified in respect of which the Commission sought input from the DOJ.¹⁷⁰ The Commission received no response.

- [42] On 1 and 2 December 2013, Ms Dissel and Mr Sidaki attended the Magistrates' Court and made copies of charge sheets for Court 1, which is the "channelisation" court dealing with first appearances, remands and referrals to other courts. The Commission's team found that finalised charge sheets are archived by the number allocated to the charge sheet, on a chronological basis. To draw a sample of finalised charge sheets from Court 1, they drew five batches of charge sheets. One batch was drawn from 2010, two each from 2011 and 2012, and one from 2013. In relation to Court 2 they drew three batches of charges sheets, one each for 2011, 2012 and 2013. Each batch related to 100 consecutive cases.¹⁷¹ The number of charge sheets filed as withdrawn or struck off within each group of 100 cases indicates what proportion of cases were struck off or withdrawn in each batch of 100.¹⁷² The Commission team selected Court 1 because it is the channelisation court for serious crimes and all the cases finalised in this court will have been processed either by remand to another court for trial, or by a withdrawal, or being struck off the roll, as it is not a trial court. The Commission team selected Court 2 because it is the court that deals with, amongst other things, drunken driving cases, which are cases initiated by police action, and dependent on forensic laboratory results.
- [43] The Commission team created spread sheets of the charge sheets showing in each case the charge sheet number, the docket number, the relevant police station, the nature of the charge, the date of first appearance, the date finalised, the manner finalised (withdrawn or struck off), the reasons for the matter being withdrawn or struck off, as well as the number of times according to the charge sheet that a docket was not brought to court, and finally indicating the number of postponements.¹⁷³
- [44] A summary of the spreadsheets for Court 1 is to be found in Table 1. Reading that summary, and the spreadsheets upon which it is based is alarming. For it becomes apparent that, in very serious cases, a high proportion of matters are being withdrawn by prosecutors because cases are either not being investigated, or because dockets are not brought to court. The vast majority of the charges were serious contact crimes including murder, rape, robbery with aggravating circumstances, kidnapping, child abuse and assault with intention to do grievous bodily harm. The spreadsheets indicate that between 16% and 36% of serious cases are withdrawn

166 Record Bundle 2(1), File 1.4, File 2, Item 11.

167 See description of meeting in Commission's letter to Advocate Mohamed, dated 19 November 2013, Record Bundle 2(1), File 1.4, File 2, Item 13.

168 Record Bundle 2(1), File 1.4, File 2, Item 14.

169 *Id.* at Item 15.

170 Record Bundle 13(1), File 1.4, File 9, Item 3.

171 The charge sheets are filed in batches of up to a hundred case numbers; for example case 1 of 2012 to case 100 of 2012. Only finalised matters are in the boxes.

172 Index to Charge Sheets, Record Bundle 4(6).

173 Record Bundle 4(6), File 1, Items 1 – 10. The actual redacted charge sheets are at Record Bundle 5(2), Items 1 – 10.

or struck off in each batch because of incomplete police investigation or the repeated failure to bring dockets to court. Matters are postponed many times before they are withdrawn or struck off. It should be borne in mind that the cases will not have been forwarded to the court unless a SAPS member has considered them to be ready for prosecution, perpetrators have been identified and apprehended, and there is a case for them to answer.

- [45] A summary of spreadsheets for Court 2 is to be found in Table 2. Reading this summary gives similar cause for dismay. It is clear that many cases involving charges of drunken driving are withdrawn because dockets are not brought to court or because police investigation is incomplete. One of the main reasons that police investigation is incomplete is the unavailability of laboratory reports in relation to blood samples.
- [46] The Commission called for the dockets related to these charge sheets and examined a sample. The results of this sample are reproduced at Chapter 10. The docket sample supports the Commission's conclusions based on the examination of the spread sheets that an alarming number of cases are withdrawn or struck off the roll in the Khayelitsha Magistrates' Court because of inadequate police investigation, or because SAPS do not bring dockets to court. This information is proof of serious inefficiencies in the three Khayelitsha police stations, a matter to which we will return in Chapter 13. During the course of the evidence tendered by Captain Pillay, the Detective Court Case Officer (DCCO) at the Khayelitsha Magistrates' Court, SAPS was invited to examine the spreadsheets and charge sheets and revert to the Commission before 1 April 2014 if they disputed the spreadsheets. SAPS did not revert to the Commission.

Table 1¹⁷⁴

COURT 1 Each batch was drawn from a sample of 100 consecutive cases for each year.	2010	2011 (first batch)	2011 (second batch)	2012 (first batch)	2012 (second batch)	2013
Cases withdrawn or struck off	30	16	24	28	35	36
Average number of postponements before withdrawn or struck off	5.56 times	5.81 times	6.13 times	5.82 times	4.63 times	3.5 times
Struck off or withdrawn due to incomplete police investigation	23	15	18	15	22	22
Docket not at court	13	2	9	14	14	13
Serious contact crime (murder, attempted murder, rape, assault GBH, robbery with aggravating circumstances, kidnapping or child abuse)	27	16	18	20	33	28

Table 2¹⁷⁵

COURT 2 Each batch was drawn from a sample of 100 consecutive cases for each year.	2011	2012	2013
Cases withdrawn or struck off	23	22	13
Average number of postponements before withdrawn or struck off	2.74 times	2.45 times	3.31 times
Struck off or withdrawn due to incomplete police investigation	6	12	7
Docket not at court	16	6	6
Serious contact crime (murder, attempted murder, rape, assault GBH, robbery with aggravating circumstances, kidnapping or child abuse)	6	2	5
Involved driving with excessive quantity of alcohol in blood	6	11	0
Subpoenas or summons not served	1	4	0

174 This data is drawn from the spreadsheets at Record Bundle 4(6).

175 This data is drawn from the spreadsheets at Record Bundle 4(6).

D. NATIONAL PROSECUTING AUTHORITY (NPA)

(a) Documents and correspondence

[47] On 12 October 2012, the Commission wrote to the provincial Director of Public Prosecutions (DPP), the head of the NPA in the Western Cape, requesting permission for the Evidence Leaders to interview the senior prosecutors in the Khayelitsha Magistrates' Court, as well as requesting information and documents.¹⁷⁶ The information sought included information relating to the eight original complaints discussed in Chapter 6, as well as –

- information concerning several additional complaints, information on the successful prosecution of perpetrators of vigilante attacks;
- whether prosecutions in the Khayelitsha Magistrates' Court are hampered by lost or mislaid dockets;
- whether the establishment of a strong room at the Court would assist in avoiding delays caused by lost dockets, as well as information as to whether in the opinion of prosecutors;
- members of Khayelitsha SAPS secured crime scenes properly, whether they secured the timeous attendance of witnesses at trial;
- whether witnesses who fear intimidation are protected; and
- whether there are delays experienced in obtaining forensic reports for prosecutions, such as ballistic reports, blood and DNA testing.¹⁷⁷

[48] On 26 February 2013, the DPP responded to the Commission's letter.¹⁷⁸ The DPP provided some information relevant to the individual complaints, which is summarised in Chapter 6 above.¹⁷⁹

[49] With regard to the issue of "lost" dockets, the DPP replied that "the inability of SAPS to ensure the timely arrival of dockets at court has been the focal point of meetings for a long time."¹⁸⁰ The DPP reported that the Khayelitsha prosecutors had reached an agreement with SAPS that dockets should be at court three days before the trial date, as it enables the prosecutor to prepare. The DPP commented that the problem was not peculiar to Khayelitsha but is "a recurrent challenge at most courts".¹⁸¹ He stated that SAPS provides a variety of reasons for the failure of dockets to be delivered to court including that the dockets "are locked in an office", that the investigator has "worked night shift" and is not on duty, and that "there is no vehicle to transport the dockets to court".¹⁸² The DPP also stated that in order to solve the problem, arrangements had been made to provide SAPS with court rolls a week in advance, which had improved the situation to some extent. The placement of a DCCO at Khayelitsha Magistrates Court, had according to the DPP, improved the situation.¹⁸³ The letter stated that "naturally prosecutions are adversely affected in Khayelitsha as a result of dockets that are not brought to court timeously". In cases where a matter has been enrolled, if the court refuses a postponement, it "will inevitably result in the withdrawal of the case. This almost always

¹⁷⁶ Record Bundle 2(1), File 1.4, File 1, Item 1.

¹⁷⁷ *Id.* at pp 7 – 10. The additional cases included the rape of a minor in Harare; the assault of Mrs M Xholi and her son, and the assault of Ms T Njamela.

¹⁷⁸ Record Bundle 2(1), File 1.4, File 1, Item 4.

¹⁷⁹ See Chapter 6 above at paras 2, 5, 14, 18, 19, 33, 38, 41, and 43.

¹⁸⁰ Record Bundle 2(1), File 1.4, File 1, Item 4 at p 15. This is elaborated upon in the evidence of the senior prosecutor, Ms Harmse, whose Statement is at Bundle 8(1), File 1.3, Item 13; Transcript at 1812 – 1900 (6 February 2014).

¹⁸¹ Record Bundle 2(1), File 1.4, File 1, Item 4.

¹⁸² *Id.*

¹⁸³ *Id.* at p 16.

has dire consequences if the accused have been denied bail. ... Statistics are not kept of cases struck off the roll.”¹⁸⁴

- [50] As to prosecutions of perpetrators of vigilante murders, the DPP responded, rather obviously, that the DPP “does not necessarily receive all matters that are labelled ‘mob killings’. The prosecution only receives the dockets where an arrest is effected.”¹⁸⁵ The DPP mentioned six cases that were under way: one where the trial was proceeding in the High Court, two where the trial was pending in the High Court, one enrolled in the Regional Court and two under investigation.¹⁸⁶
- [51] As to the suggestion of a “strong room” for dockets, the DPP responded that there is a strong-room system in operation for dockets in the regional court, but that due to the “vast” numbers of district court criminal dockets, it would not “be feasible”.¹⁸⁷ In addition, the DPP also stated that –

“the infra-structure for an electronic docket system is lacking. Stakeholders have introduced an ECMS system (Electronic Case Management System) which is not operational yet. This will link the court to the SAPS system. This system is however in its infancy and its efficacy cannot be predicted at this stage”.¹⁸⁸

The Commission has no doubt that this is a crucial issue that needs to be addressed with the utmost urgency, as will appear from what is said below in relation to the inefficiencies of getting dockets to court.

- [52] The DPP also said that “securing the attendance of witnesses at court proves a serious challenge.”¹⁸⁹ He added that “the temporary nature of dwellings in a large part of the community has the consequence that police officers find it challenging to serve subpoenas” and “the police are almost never notified of such relocation of witnesses.”¹⁹⁰ The DPP also commented on the lack of a reliable numbering system of informal dwellings, as well as the fact that people frequently lose cell phones, or have them stolen, making contacting people difficult. This issue is a matter of great importance to improving efficiency, and we return to it later in its report.
- [53] With regard to the intimidation of witnesses, the DPP said that the Witness Protection Programme is explained to witnesses, but they are generally reluctant to participate in it, because of the effects on their lives.¹⁹¹ Finally, the DPP said that it is “hackneyed” that all courts in the Western Cape experience “severe challenges” in obtaining forensic, DNA, blood-alcohol reports.¹⁹²
- [54] The DPP gave permission to the Evidence Leaders to meet with the senior prosecutors including the Senior Public Prosecutor at Khayelitsha Magistrates’ Court, Ms Rochelle Harmse, from whom a statement was obtained.¹⁹³

¹⁸⁴ Id. at p 21.

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ Id. at p 22.

¹⁸⁸ Id.

¹⁸⁹ Id. at p 23.

¹⁹⁰ Id. at p 23.

¹⁹¹ Id.

¹⁹² Id. at p 24.

¹⁹³ Record Bundle 8(1), File 1.3, Item 13.

(b) Ms Rochelle Harmse

- [55] Ms Harmse is the Senior Public Prosecutor at the Khayelitsha Magistrates' Court.¹⁹⁴ She has held this position since November 2011.¹⁹⁵ Previously, she was the Senior Public Prosecutor at the Mitchell's Plain Magistrates' Court.¹⁹⁶ She has been a prosecutor since 1993.¹⁹⁷
- [56] Ms Harmse explained that there are six district courts in the Khayelitsha Magistrates' Court and four regional courts. Of the six district courts, court 1 is the "channelisation" court, which deals with first appearances of accused person in matters that will eventually be heard by a regional court or the High Court. Court six is the back-log court which deals with trials that have been on the roll for more than 6 months.¹⁹⁸
- [57] According to Ms Harmse, there are monthly case-flow management meetings at the Khayelitsha Court that are attended by representatives from the DOJ, the NPA, SAPS, Legal Aid, the Department of Social Development, the Department of Correctional Services, the Department of Health, NICRO and the Thuthuzela Care Centre.¹⁹⁹ The DOJ convenes the meetings, which are chaired by the Senior Magistrate.²⁰⁰ In addition to the local case-flow meetings, there are also provincial case-flow management meetings, and High Court case-flow management meetings.²⁰¹ Ms Harmse provided copies of the minutes of some of these meetings.²⁰² An examination of those minutes makes it clear that the issue of dockets not arriving at courts was repeatedly raised.²⁰³ Ms Harmse testified that sometimes after the meetings the delivery of dockets would improve, "for a short space of time", and then things "tend to go back to the way it was before".²⁰⁴

(i) District Court

- [58] As to the issue of dockets being delivered to the court by SAPS, Ms Harmse described it as "an on-going issue",²⁰⁵ one which is regularly addressed at case-flow meetings. Indeed Ms Harmse described it as "a perennial problem and on an almost daily basis it is still so that dockets are not at court".²⁰⁶ She also testified that the problem of dockets not arriving at court was more serious in Khayelitsha than had been her experience in Mitchell's Plain.²⁰⁷ The effect of a docket not being at court is that the case is delayed or struck off the roll. She testified that court dockets should be at court three days in advance of the enrolment date,²⁰⁸ as it allows a prosecutor to prepare in advance, and see if anything is missing from the docket before the trial commences.²⁰⁹ However, in her experience this does not happen.²¹⁰ She described that there are three SAPS liaison officers at the Court who are responsible for ensuring that the dockets are there. Once the case has been dealt with, the dockets are returned to them. The

194 Transcript at 1812 – 1900 (6 February 2014).

195 Id. at 1813.

196 Record Bundle 8(1), File 1.3, Item 13 at para 2.

197 Id.

198 Id. at para 8.

199 Id. at para 10.

200 Id. at paras 11 – 12.

201 Id. at paras 15 – 17.

202 Exhibit RH1, Record Bundle 9(6), Items 10(a) – (h).

203 Transcript at 1820 – 1827 (6 February 2014).

204 Id. at 1877.

205 Record Bundle 8(1), File 1.3, Item 13 at para 28.

206 Id.

207 Transcript at 1845 (6 February 2014).

208 Record Bundle 8(1), File 1.3, Item 13 at para 32.

209 Id.

210 Id. at para 33.

remand date is listed in the docket when it is returned, so SAPS will know when the docket is needed at court again. Moreover, the prosecutor will make entries in the investigation diary (which is part C of the docket) as to what is needed from the investigating officer in order to ensure the trial may proceed.²¹¹

- [59] The court roll is provided to the DCCO a week in advance to ensure that the investigating officers are informed to bring the dockets to court.²¹² Each day a list of the dockets that are not at court for the following day is prepared and provided to the DCCO. The task of the DCCO is then to try to obtain the dockets to avoid the matter having to be postponed. There are two DCCOs at Khayelitsha Magistrates' Court, one allocated to the regional courts and the other to the district courts.²¹³ The two DCCOs share a vehicle, which according to Ms Harmse means that the DCCO for the district courts only gets to use the vehicle when the other DCCO is not using it, as the other DCCO is a more senior SAPS member.²¹⁴ Ms Harmse thought there was a need for an additional DCCO. The problem of missing dockets does not arise in the regional court, she testified, because once a matter is enrolled for trial in the regional court, the dockets are kept at the Court in a "strong room". Ms Harmse also testified that although the DCCO has been issued with a laptop, he does not have access to the DOJ Electronic Case Management (ECM) system. She suggested that this be changed. In her view, if the DCCO had access to the ECM system he could see well in advance what matters were enrolled.²¹⁵
- [60] Ms Harmse testified that it was not her experience that matters are struck off the roll in Khayelitsha because of the absence of a post-mortem report.²¹⁶ The problem of missing post mortem reports, she said, "is not of the same magnitude as missing case dockets".²¹⁷ However, obtaining forensic reports from other forensic laboratories is "more of a challenge".²¹⁸ Ms Harmse testified that she sometimes requests laboratory results directly from the laboratory, and that they normally comply with her requests. She added that when the report arrives, she often finds that the report was completed some time before "but the report has not found its way into the case docket".²¹⁹ She also added that the system whereby reports should be delivered to the provincial "Nodal Point" still has not resulted in laboratory reports finding their way into the docket.²²⁰
- [61] Ms Harmse was shown the results of the study that the Commission team did on withdrawn and struck-off charge sheets, discussed above, and confirmed that "it is a recurring problem at the courts that cases are withdrawn because of incomplete police investigation and dockets not being at court".²²¹ She was not able to provide exact figures on the scale of the problem of dockets not making it to court, witnesses not attending or incomplete investigations as these statistics are simply not available for the Khayelitsha court.²²²

211 Id. at para 36.

212 Id. at para 38.

213 Id. at para 41.

214 Id. at para 46.

215 Id. at para 43 Transcript at 1842, 1886 -1887 (6 February 2014).

216 Id. at para 52.

217 Id.

218 Id. at para 53.

219 Id. at para 54.

220 Id. at para 55.

221 Id. at para 113.

222 Transcript at 1874 (6 February 2014).

(ii) Failure of witnesses to attend court

[62] Ms Harmse also acknowledged that the failure of witnesses to attend court is a problem.²²³ She said there were a number of reasons why witnesses do not attend court: cell phone numbers change,²²⁴ subpoenas can be difficult to serve, especially in the informal areas of Khayelitsha,²²⁵ and foreign nationals are “extremely reluctant to come to court”.²²⁶ She said that although the Witness Protection Programme is explained to witnesses they often do not want to make use of it.²²⁷

(iii) Quality of investigations

[63] On the quality of investigations evident from her perusal of dockets, Ms Harmse testified that it is clear from the dockets that they are looked at by senior officers, but, “what does not seem to occur is that the docket is being checked to ensure that the instructions are in fact being carried out”.²²⁸ This was borne out by the Commission’s inspection of the case dockets, which showed that there was routine failure to comply with the instructions of supervising officers.

(iv) Vengeance attacks

[64] Ms Harmse also acknowledged that vigilantism “is an increasing problem in Khayelitsha”. She added that from a prosecutor’s perspective, “these cases are extremely challenging as there are often multiple defendants and no witnesses who are prepared to testify ... it is extremely difficult to ascertain who in fact committed the crime.”²²⁹ She also stated that communities “are protective of individuals that are arrested in relation to these crimes”. Potential witnesses are “fearful of the actions of the community” if they testify.²³⁰ Indeed, she said, it is not uncommon for there to be protests in cases where members of the community are charged with vigilante violence.²³¹

(v) CCTV Cameras

[65] As to the use of CCTV camera footage in prosecutions in Khayelitsha, Ms Harmse said that she was not aware of any of the City of Cape Town Traffic Management Centre footage ever being used in a criminal prosecution.²³²

(vi) Youth gangs

[66] There is also an increase in gang activity, according to Ms Harmse. She said that the gangs are not organised gangs, and the accused are juveniles. She described it as “a rapidly growing problem that requires more intensive redress from a wider network of stakeholders, i.e., education, health, social services, policing, local government and prosecution.”²³³

(vii) Inquests

[67] She also testified that there are a large number of inquests outstanding for a range of reasons. She noted that a SAPS “Cold Squad” is addressing the problem. She said the number of outstanding inquests is under regular discussion at the monthly case-flow meeting.²³⁴

223 Id. at para 62.

224 Id. at paras 64 – 65.

225 Id. at para 66.

226 Id. at para 67.

227 Id. at para 68.

228 Id. at para 77.

229 Id. at para 81.

230 Id. para 82.

231 Id. para 83.

232 Id. at para 90.

233 Id. at para 95.

234 Id. at paras 105 – 108.

(viii) Crime Scene Management

- [68] As to crime scene management, Ms Harmse testified that in her experience, exhibits from crime scenes are rarely used in criminal prosecutions in Khayelitsha where successful prosecutions are mostly dependent on “viva voce evidence of witnesses”.²³⁵

(ix) FCS Unit

- [69] Ms Harmse also testified that there was a particular problem with the FCS Unit. She said that the investigating officers appear to be overburdened.²³⁶ She said that many of their cases were withdrawn or struck off the roll.²³⁷ When asked she testified that the problem at Khayelitsha was, in her experience, far worse than the FCS Unit operating in Mitchell’s Plain.²³⁸

(x) Alcohol abuse and contact crime

- [70] In her testimony before the Commission, Ms Harmse commented that there is “a huge correlation between alcohol abuse, particularly over weekends”²³⁹ and contact crime. She said –

“I think for us at Khayelitsha we dread when public holidays come because invariably you will find more assaults, you will find on a Monday morning, you have more murders than you have at any other day during the week...”²⁴⁰

E. THUTHUZELA CARE CENTRE

- [71] Dr Genine Josias, the principal medical officer of the Khayelitsha Thuthuzela (which means comfort) Forensic Centre (formerly the Simelela Centre), made a statement to the Commission and testified.²⁴¹ Dr Josias has been head of the Centre since 2004. She told the Commission that the Thuthuzela Centre model represents “a radical approach” to rape care management. Survivors of sexual assault are provided with one centre where their statements can be taken by police officers, they are attended by clinical forensic examiners who provide immediate medical care and take forensic samples, as well as social workers who assess their circumstances and counsellors who provide immediate “containment: trauma counselling”.²⁴² The Thuthuzela Centre is located at the Khayelitsha Hospital. Dr Josias stressed that the model only works well “if there is full and complete commitment by all stakeholders”.²⁴³ Accordingly the Centre works closely with a range of actors: the provincial Departments of Health and Social Development, the City of Cape Town Health Department, SAPS, and non-governmental organisations such as Rape Crisis, Nonceba Family Counselling and Mosaic.²⁴⁴
- [72] The Centre works closely with SAPS, and especially the FCS Unit. Her first observation of the FCS Unit was that it is “poorly managed”.²⁴⁵ Secondly, she considers it to be “under-staffed”²⁴⁶

²³⁵ Id. at paras 109 – 110.

²³⁶ Transcript at 1836 – 1838 (6 February 2014).

²³⁷ Id. at 1837.

²³⁸ Id. at 1838.

²³⁹ Id. at 1869.

²⁴⁰ Id.

²⁴¹ Record Bundle 1(1), File (1a), Item 53, with annexures 53(a), 53(b) and 53(c); Transcript at 594 – 753 (29 January 2014).

²⁴² Record Bundle 1(1), File (1a), Item 53, at para 2. Transcript at 596 (29 January 2014).

²⁴³ Record Bundle 1(1a), Item 53 at para 2.

²⁴⁴ Id. at para 4; Transcript at 608 – 609.

²⁴⁵ Record Bundle 1(1a), Item 53 at para 7.

²⁴⁶ Id. at para 8.

and that insufficient counselling is provided to its members.²⁴⁷ Dr Josias testified that the number of SAPS members attached to the FCS Unit in Khayelitsha had dropped significantly over the years, as much as by 50%.²⁴⁸ Thirdly, she thinks that many of its members are “burnt out”, because they are overworked and carrying too many dockets.²⁴⁹ As a result, according to Dr Josias, the members of the FCS Unit are “irritable”, and that she has to “calm them down” so that they can take statements from perpetrators.²⁵⁰ She said that although SAPS has an Employee Health and Wellness programme (EWP), the members of SAPS do not want to use it because, she says, they think it will be used against them in promotion processes, and because they will be seen to be “weak” and unable to handle police work.²⁵¹ That this was a perception held by SAPS members was both confirmed²⁵² and rejected by SAPS witnesses.²⁵³

- [73] The situation has become so serious that on 21 May 2013, the site co-ordinator of the NPA, Mrs B Mogale, on behalf of the Khayelitsha Thuthuzela Forensic Centre wrote to the provincial head of the FCS Unit, Colonel Harri, and to the head of provincial detectives, Major-General Molo, to raise the Centre’s concern about the serious shortage of FCS officers in Khayelitsha.²⁵⁴ In the letter she stated –

“As you know, a chain is as strong as its weakest link and the weakest link in this instance is the FCS who are not attending [meetings] and/or investigating cases comprehensively because of alleged lack of time as a result of overwork due to staff s shortages. This matter has been brought up at a number of meetings we have held. We have now resolved to raise it collectively to a higher level/ authority because it appears that it is not being adequately attended or taken seriously for whatever reason.

As the KTFC collective, we quite often have to deal with very irate and traumatised rape survivors, parents and community members who either see rape perpetrators back in the community or whose cases have been postponed numerous times or withdrawn because of incomplete investigation by the police.

....

The feeling amongst the community is that all this talk about seriousness about dealing with sexual offences is only that, cheap point scoring talk. People feel abandoned and let down by the system. What is the point of arresting people only to release them because of the failure of the police to follow up on investigations? Unfortunately it is the foot soldiers like us who deal with these cases on the ground who bear the brunt of their frustrations. To be honest we also feel that our efforts are being undermined. ... We kindly appeal to you to attend this matter a serious matter of urgency.”²⁵⁵

- [74] Dr Josias testified that there had been no marked improvement following this letter. SAPS had allocated an additional captain to the Khayelitsha FCS Unit, but no additional investigators.

247 Id.

248 Transcript at 718 (29 January 2014); Exhibit GJ1, Record Bundle 8(8), Item 6.

249 Transcript at 613 and 617 – 621.

250 Id. at 621.

251 Id. at 622.

252 Colonel Harri, Transcript at 5795 (27 March 2014); Brigadier Dladla, Transcript at 3679 – 3680 (18 February 2014); Colonel Raboliba, Transcript at 4779 (18 March 2014).

253 Major General Burger, Transcript at 5418 – 5419 (25 March 2014).

254 Transcript at 646 (29 January 2014).

255 Transcript at 645 – 648 (29 January 2014).

Indeed, three of the existing investigators were tasked with dealing with old cases, so the effect was to take away from the team to deal with incoming cases.²⁵⁶ Dr Josias did testify that Colonel Harri, who is the provincial head of the FCS Unit “has an open-door policy” and that she could phone her in the middle of the night if she is unable to locate an investigating officer.²⁵⁷ “It is good”, she said, “that we can talk to her but at the end of the day we don’t see results on the ground because ... our FCS Unit is understaffed, grossly understaffed”.²⁵⁸

[75] For the Centre to work optimally it is necessary for the Centre to hold regular stakeholder meetings.²⁵⁹ SAPS agreed to participate in the meetings, but according to Dr Josias “too often” the SAPS representative fails to attend, and also does not send acceptable and timeous apologies.²⁶⁰ Dr Josias also complained of SAPS’ poor response times. Although there is an agreement in terms of which SAPS should arrive at the Centre within 30 minutes, it often fails to arrive within that stipulated time.²⁶¹ Dr Josias testified that she finally laid a disciplinary complaint against one member of the FCS Unit who had taken six hours to arrive, despite repeated phone calls to ask him to arrive. At the disciplinary hearing, where a shop steward represented the SAPS member, it was said that the member was “unfairly” singled out and that other members had also arrived late. Dr Josias’ response was that “poor response to our calls is endemic among the Khayelitsha SAPS generally, and among the officers on call at the FCS Unit, however we pointed that this particular detective was notorious for not responding to calls”.²⁶²

[76] When it was put to her by SAPS counsel that it was difficult to recruit people to the FCS Unit, her response was that it was also difficult to recruit people to the Thuthuzela Centre because of the distressing nature of the work. However, Dr Josias said –

“... that is why you have supervisors and managers and CEOs. That is why you look at your numbers. That is why you have strategic planning. That is why you have statistics and if you find you don’t have enough members you must ask yourself why; what is wrong with the unit; are we giving them enough support. That is how you plan. That is what you expect management to do. That is why management gets paid more than people at the coalface. That is their job.”²⁶³

[77] Dr Josias also mentioned that during May 2010, Simelela (as Thuthuzela was then known) had decided to collect queries received from rape survivors concerning any of the Centre stakeholders. A blank form was created entitled “Simelela partner query” to record queries about stakeholder performance. Between May 2010 and July 2011, 24 queries were recorded against stakeholders and *all* of them related to the FCS Unit. In her testimony, Dr Josias related that many of these queries related to the fact that the FCS Unit failed to inform complainants of the progress of the criminal investigation and prosecution.²⁶⁴ Copies of the complaints were provided to the management of the FCS Unit, but although Simelela were told that the complaints were mentioned at morning parades, Dr Josias does not know if any “concrete measures” were put in place to address the repeated problems.²⁶⁵

256 Id. at 650.

257 Id. at 718.

258 Id.

259 Id. at 610.

260 Record Bundle 1(1a), Item 53 at para 10; Transcript at 611 (29 January 2014).

261 Transcript at 599 and 614; Exhibit GJ1, Record Bundle 8(8), Item 6.

262 Record Bundle 1(1a), Item 53 at para 13.

263 Id. at 721.

264 Transcript 629 – 643 (29 January 2014); Record Bundle 1(1a), Item 53, Annexure A which contains copies of the queries.

265 Id. at paras 14 – 15.

Photo 10: The victim-friendly room at one of the three Khayelitsha police stations



- [78] Dr Josias described two incidents that are cause for grave concern that have occurred in recent years. The first related to the dumping of forensic samples in rape kit boxes in Delft, and the other related to a failure to identify a serial rapist operating in the Endlovini area of Harare.
- [79] Dr Josias testified how much care Thuthuzela puts into the taking of forensic samples.²⁶⁶ Sexual Assault Evidence Collection boxes (or “rape kits”) have been designed and produced, each with a unique bar code, into which all forensic samples are put, and duly marked with the bar code. Included in the kit is a copy of the medical examiner’s report (the J88). When the kit has been completed, it is given to the investigating officer to ensure its delivery to the Forensic Science Laboratory for analysis. The rape kit has to be registered in the exhibits register at the Police station (the SAP 13), and then signed out and taken to the laboratory.²⁶⁷ Dr Josias testified that sometimes they run out of the rape kits, which creates quite a problem, and they have to improvise.²⁶⁸ At other times, they are provided with rape kits that have passed their expiry dates.²⁶⁹
- [80] During the course of 2011, according to Dr Josias, it came to her attention that several of these kits, bearing the name of the Khayelitsha Thuthuzela Centre had been found, dumped, in a field in Delft. Soon after Dr Josias became aware of this, a journalist from Die Son contacted her. He then wrote a story on the incident.²⁷⁰ Dr Josias testified that the members of the Centre found the dumping of the rape kits to be “very disturbing, disappointing and shocking”.²⁷¹ As she explained, “what it meant was that all the work that had been put into

²⁶⁶ Transcript at 601 – 607 (29 January 2014).

²⁶⁷ Id. at 608.

²⁶⁸ Id. at 602.

²⁶⁹ Id. at 603.

²⁷⁰ Id. at paras 16 – 19. The stories were published. See Annexures B and C to Dr Josias’ Statement. Record Bundle 1(1a), Items 53(b) and 53(c); Transcript at 655 – 663 (29 January 2014).

²⁷¹ Id. at para 20.

collecting that forensic evidence, the meticulous methods used, the resources and skills employed to do so and precious times spent by all concerned went to waste”. It also meant, of course, that prosecutions in the cases to which the dumped kits related could not proceed. Whatever the explanation for this incident, Dr Josias, was of the view that it demonstrated “a serious weakness in the system where no tracking was done with regards to the chain of evidence of clients.”²⁷² Although Dr Josias heard that a provincial task team was appointed to investigate the incident, no feedback was ever provided to Thuthuzela as to the outcome of that investigation.

- [81] The second incident referred to by Dr Josias related to the discovery that a serial rapist was operating in the Endlovini neighbourhood. She noticed, during the course of 2010, four or five rape cases of little girls had taken place over a period of time.²⁷³ All of the little girls had been seriously assaulted and raped. All the cases were referred to Red Cross Hospital for specialised medical examination and repair under anaesthesia. According to Dr Josias, –
- “...the first were raped in a similar manner; they had been individually lured away into a bushy area in the Endlovini informal settlement. To me, even as someone who has never received training in police investigation, it was apparent that the *modus operandi* in the perpetration of these rapes was similar. They all presented similar facts. It seemed to me that we were dealing with the case of a serial rapist.”²⁷⁴
- [82] Dr Josias then gathered all the information about the cases and advised the head of the FCS Unit of her suspicions. She called a meeting with all of the Centre’s stakeholders and requested the head of the FCS Unit to attend. He sent one of the officers from the Unit. At the meeting the FCS Unit member called her suspicions into question and refused to take her seriously. “Quite frankly,” said Dr Josias, “we had expected some more leadership and guidance from the Captain of the FCS Unit but instead found someone who was obdurate.”²⁷⁵
- [83] Dismayed by this response, Dr Josias decided to contact the Provincial Commissioner personally, at the time, Lieutenant General Petros. She told him of her suspicions and she said to him: if “these were little white girls, all stops would have been pulled out.”²⁷⁶ She also said she would go to the media if SAPS did not act. The Provincial Commissioner thanked her for her report and said he would send a senior member of the SAPS provincial team to her house. The next day a Deputy Provincial Commissioner came to her home with senior members of the FCS Unit and a task team was set up to investigate the rapes.²⁷⁷
- [84] Thereafter, the Thuthuzela Centre worked closely with the task team, contacting them whenever a survivor of a sexual assault with a similar history presented at the Centre. It took eighteen months for the perpetrator to be arrested. By that time twenty rapes and one murder had taken place.²⁷⁸ The perpetrator was linked to all the cases by DNA evidence, according to Dr Josias.²⁷⁹ “What was so devastating,” said Dr Josias, “was the manner in which the Khayelitsha FCS police (the FCS Unit in this instance) dismissed us outright and never wanted to entertain the fact that a serial rapist could be responsible.”²⁸⁰ Dr Josias also

272 Id.

273 Transcript at 698 – 706 (29 January 2014).

274 Record Bundle 1(1a), Item 53 at para 26.

275 Id. at para 28.

276 Id. and Transcript at 701.

277 Record Bundle 1(1a), Item 53, at para 29.

278 Id. at para 31.

279 Id. at para 32.

280 Id. at para 33.

testified that the serial rape incident indicated that there is a need for a range of role-players to participate in the fight against crime. So, for example, the rapes were taking place in the bushes around Endlovini. She suggested that there should have been more visible policing, and also surveillance cameras to monitor the area,²⁸¹ and that the bushes should have been cleared by authorities when it became clear that it was a dangerous area.²⁸² In oral evidence Dr Josias indicated that she had raised it at Simelela partnership meetings. The SAPS task team that was established had meetings with a range of stakeholders including the City and they had informed Dr Josias that they had requested that the City remove the bushes.²⁸³

F. PROVINCIAL DEPARTMENT OF HEALTH: FORENSIC PATHOLOGY SERVICE

[85] The Commission received statements from four witnesses who are involved in Forensic Pathology Services in the province: Ms Vonita Thompson, who is the Director, Forensic Pathology Services (FPS) in the Western Cape Department of Health;²⁸⁴ Professor Shabbir Wadee, who is a forensic pathologist and Head of the Division of Forensic Medicine, Department of Pathology, Faculty of Medicine, University of Stellenbosch, a position he has held since 1997;²⁸⁵ Mr Kevin Richard Jones who is the Deputy Director: Metro District Manager, FPS in the Western Cape Department of Health, who oversees both the Salt River and Tygerberg Mortuaries, and who has held his position for the past six years;²⁸⁶ and Mr Alfred Van der Westhuizen, the Assistant Director of Forensic Pathology in the Tygerberg Forensic Pathology Laboratory.²⁸⁷ In addition, the Commission received a Bundle of spreadsheets from FPS, providing information about deaths in Khayelitsha from unnatural causes that resulted in post mortem examinations for the years 2008 – 2013.²⁸⁸ Three of these four witnesses testified before the Commission (Ms Thompson, Professor Wadee and Mr Jones).

(a) Testimony of Mr Jones, Ms Thompson and Professor Wadee

[86] The testimony of these three witnesses is closely related, and it will be helpful to describe it together.

(i) *Crime scene management and transporting the body to the morgue*

[87] Mr Jones stated that in the vast majority of cases, the bodies of people who have died from unnatural causes in Khayelitsha are taken to the Tygerberg Mortuary.²⁸⁹ He described that when a murder takes place, SAPS is normally the first to be called to the crime scene. Thereafter Emergency Medical Services (EMS) are called, which is the ambulance service

281 Id. at para 37 – 39.

282 Id. at para 37; Transcript at 705 – 706 (29 January 2014).

283 Transcript 706 (29 January 2014). For the sake of completeness the City informed the Commission in a letter dated 22 April 2014 that there had been no request from a task team to for bushes to be removed in the Enkanini area. The City did confirm however that SAPS had identified certain hotspots and requested that the City clear the bushes. Enkanini was included in the areas so identified as hotspots.

284 Record Bundle 2(1), File 1.2, Item 3; Transcript at 1104 – 1173 (3 February 2014).

285 Record Bundle 4(1) File 2, Item 7; Transcript at 1104 – 1173 (3 February 2014).

286 Record Bundle 4(1), File 2, Item 5; Transcript at 1076 – 1104 (3 February 2014).

287 Record Bundle 2(1), File 1.2, Item 4.

288 Record Bundle 1(6). These spread sheets were discussed by Ms Thompson in her statement, see Record Bundle 2(1), File 1.2, Item 3 at para 23. See also annexures to her statement, contained in the same file.

289 Record Bundle 4(1), File 2, Item 5 at para 5. See also testimony of Professor Wadee, Transcript at 1124 (3 February 2014).

with paramedics, and they are responsible for declaring the person dead, thereafter, the Forensic Pathology Officer (FPO) is called to bring the body to the mortuary.²⁹⁰ Another key responsibility of an FPO, according to both Mr Jones and Professor Wadee “is to be the eyes and ears” of the Forensic Pathologist at the crime scene.²⁹¹ The FPOs do not do blood splatter analysis and other scientific crime scene analysis as that is the responsibility of SAPS, and is done ordinarily by the SAPS LCRC.²⁹² It is SAPS’ responsibility to protect a crime scene and to ensure that it is not contaminated until the investigation of the scene is complete.²⁹³ Mr Jones testified, however, that it is not uncommon for FPOs to find the crime scene contaminated, and not properly secured when they arrive.²⁹⁴ Ms Thompson also testified that securing of the crime scene is “an ongoing issue”.²⁹⁵

- [88] According to Mr Jones, the FPS records show that in 80% of cases their reaction time is within 40 minutes of a call being received.²⁹⁶ However, Mr Jones also stated that as there are two vehicles per shift at the Tygerberg and Salt River Mortuaries, sometimes pressure of work means that it is not possible for FPOs to get to the crime scene from the inception of the investigation.²⁹⁷ The investigating officer is meant to brief the FPO at the crime scene but often, according to Mr Jones, when the FPO arrives the investigating officer will already have left the crime scene.²⁹⁸ According to both Mr Jones and Professor Wadee this is not best practice.²⁹⁹ However, it sometimes occurs because of pressure of work on the SAPS investigator who may need to attend to another crime scene, but it may also be because the SAPS investigator has chosen to leave the crime scene and return to the police station.³⁰⁰
- [89] Mr Jones also testified that the relationship with SAPS was “cordial” and that often SAPS will assist FPOs to find crime scenes, and provide them with security, especially where the crime scenes are in informal areas.³⁰¹ Sometimes however SAPS does not provide the necessary support and backup to FPOs. Mr Jones testified that when this happened, there are mechanisms to inform SAPS, which he has followed, but he has never received feedback from SAPS as to whether any steps have been taken against SAPS members who have failed to provide adequate assistance.³⁰²

(ii) *Conducting the autopsy and preparing the post-mortem report*

- [90] Once at the mortuary, the autopsy or post-mortem is conducted by a Forensic Pathologist, normally within three days of the body being brought to the mortuary.³⁰³ Bodies are then ordinarily released for internment five days after admission.³⁰⁴ There is a SAPS liaison officer stationed at the mortuary who informs the relevant station commanders as to the autopsies

290 Id. paras 6 – 7.

291 Transcript at 1082 and 1135 (3 February 2014).

292 Record Bundle 4(1), File 2, Item 5 at para 10; Transcript at 1084 (3 February 2014).

293 Record Bundle 4(1), File 2, Item 5 at para 14.

294 Transcript at 1086 –1087 (3 February 2014). See also the statement of Mr Van der Westhuizen at Record Bundle 2(1), File 1.2, Item 4, paras 6 – 8

295 Transcript at 1137 (3 February 2014).

296 Record Bundle 4(1), File 2, Item 5 at para 8.

297 Id. at para 11.

298 Id. at para 12. Transcript at 1085 (3 February 2014).

299 Transcript at 1087 (3 February 2014).

300 Record Bundle 4(1), File 2, Item 5 at para 12; Transcript at 1086 (3 February 2014). See also Statement of Ms Thompson, Record Bundle 2(1), File 1.2m Item 3 at para 16.

301 Record Bundle 4(1), File 2, Item 5 at para 13.

302 Id. at para 15.

303 Record Bundle 2(1), File 1.2m Item 3 at para 29.

304 Id.

that are to take place.³⁰⁵ Best practice requires the investigating officer to attend the mortuary, but often investigating officers do not attend. Professor Wadee testified that the value of the investigating officer attending the autopsy is that they can provide the forensic pathologist with information about the incident, which can be of assistance in determining the cause of death.³⁰⁶ Indeed, Professor Wadee testified that in the best of all possible worlds, the forensic pathologist would attend at the crime scene, but that pressure of work, coupled with the short supply of forensic pathologists in Cape Town, made that impossible.³⁰⁷

- [91] One of the reasons that SAPS members do not attend autopsies is that the SAPS email system does not always work, according to Mr Jones, and so the station commanders do not receive notice of the autopsies timeously or at all.³⁰⁸ Mr Jones suggested that it would be helpful if the post-mortem notification could be sent, either by email or SMS, directly to the investigating officer concerned.³⁰⁹ However, as Mr Jones, noted, most investigating officers do not have SAPS email addresses so cannot receive email communications.³¹⁰ Ms Thompson testified that sometimes SAPS sends a member to attend the post-mortem other than the investigating officer, but, she said this is of no use as the person did not attend the crime scene and cannot provide the forensic pathologist with information relevant to the cause of death.³¹¹ Professor Wadee also testified about the difficulty of contacting individual members of SAPS, who do not have email addresses, and do not always have cell phones.³¹²
- [92] Professor Wadee also testified that SAPS members often do not complete the SAPS 180 form completely or legibly. This form provides detail of the crime, and assists the forensic pathologist when conducting the autopsy.³¹³ Particularly when SAPS members do not attend the autopsy, a complete SAPS 180 form is of assistance to the forensic pathologist.
- [93] According to Ms Thompson the forensic pathologist completes the post-mortem report ordinarily within seven days of the body's being admitted to the mortuary.³¹⁴ A cause for delay in finalising post-mortem reports is the delays experienced in obtaining toxicology and blood analysis from the National Forensic Chemistry Laboratories in Woodstock.³¹⁵ There are four National Forensic Laboratories countrywide: one in Johannesburg, one in Pretoria, one in Durban and the other in Woodstock. All are experiencing backlogs and delays. In some cases Ms Thompson testified that reports are outstanding for as long as six years³¹⁶ and involving as many as 4500 toxicology results, a number, which according to Ms Thompson, is still unfortunately increasing.³¹⁷ Ms Thompson testified that, in response to the problem, a criminal justice review project at national level had resulted in the negotiation of a service level agreement between the national Department of Health, which is responsible for the Forensic Laboratories, the NPA and SAPS to outline deliverables and time frames.³¹⁸ Project

305 Id. at para 20. See also Jerome Norris statement which details duties of the SAPS Liaison officer Record Bundle 1(1), File 1.a, Item 67 at para 5.

306 Record Bundle 4(1) File 2, Item 7 at para 11.

307 Id. at para 8.

308 Id. at para 21.

309 Id. at para 24. See also testimony of Ms Thompson, Transcript at 1118 (3 February 2014).

310 Record Bundle 4(1), File 2, Item 5 at para 26.

311 See Mr Jones' statement at Record Bundle 2(1)(1.2) Item 3, at para 21. See also statement of Professor Wadee, Record Bundle 4(1) File 2, Item 7 at para 19.

312 Transcript at 1129 (3 February 2014).

313 Id. at 1129 – 1130; and 1148 – 1150.

314 Record Bundle 2(1), File 1.2, Item 3 at para 29.

315 See Mr Jones' Statement at Record Bundle 4(1), File 2, Item 5 at para 18. See also Ms Thompson's Statement at Record Bundle 2(1), File 1.2, Item 3 at para 29.

316 Record Bundle 2(1), File 1.2, Item 3 at para 30.

317 Transcript at 1115 (3 February 2014).

318 Id. at para 32. Transcript at 1114 (3 February 2014).

managers have been appointed to re-prioritise cases that have been delayed. According to Mr Jones, although it is possible to request that an analysis be done on an expedited basis, the backlog is so extensive that priority requests also take a long time.³¹⁹ This is a worrying issue to which we will return later in this report.

- [94] Once the post-mortem report is complete, it should be collected by the investigating officer and placed in the docket. However, according to Mr Jones, there have been many occasions where that did not happen, so an arrangement was made with the Provincial Commissioner's office for post-mortem reports to be collected from both the Tygerberg and Salt River mortuaries weekly and taken to the provincial office, who inform the investigating officers that the reports were ready for collection.³²⁰ However, Mr Jones reported that investigating officers still come to the FPS requesting duplicate post-mortem reports.³²¹ Mr Jones testified that reports are scanned and maintained electronically on their secure system, but that courts require the original copies of post-mortem reports. Mr Jones thought that it should be possible to find an electronic solution to ensure timeous and efficient delivery of post-mortem reports to SAPS.³²² In this regard, Ms Thompson testified that one of the challenges for government, is that different government departments cannot access each other's databases.³²³ She suggested that an integration, or at least common access to, key information in the databases of EMS, FPS, SAPS, and hospitals would be useful, "with the requisite protocols to protect sensitive information".³²⁴ She also testified that it would be particularly helpful for FPS to be able to access CAS numbers on the SAPS system.³²⁵
- [95] Ms Thompson informed the Commission that the mortuaries had previously fallen under the aegis of SAPS, but that in 2006, the FPS was established, and took over responsibility for the mortuaries.³²⁶ The National Health Act, 61 of 2003, makes provision for the establishment of provincial forensic pathology services, and regulations have been promulgated in terms of the Act, which together with Guidelines, regulate the forensic pathology service.³²⁷ The FPS is responsible for determining the cause of death in homicide cases, as well as providing testimony to court on the cause of death.³²⁸
- [96] Like Mr Jones, Ms Thompson testified that SAPS and FPS have to work together in homicide cases, and suggested that on an individual case level their working relationship could be "improved".³²⁹ Ms Thompson noted that SAPS does not provide its members with specialist courses in forensic pathology and suggested that a formal course in forensic pathology would assist SAPS members to understand crime scene management better, and to ensure the safe and uncontaminated collection of forensic samples at crime scenes.³³⁰ Professor Wadee also expressed the view that SAPS members lacked basic training in forensic pathology, and that better training would improve their collection of evidence, and their protection of crime scenes.³³¹

319 Record Bundle 4(1), File 2, Item 5 at para 10.

320 Transcript at 1088 – 1089 (3 February 2014).

321 *Id.*

322 *Id.* at 1093. See also Professor Wadee's Statement at Record Bundle 4(1) File 2, Item 7 at para 35.

323 Record Bundle 2(1), File 1.2m Item 3 at para 27.

324 *Id.* at para 27.

325 Transcript at 1118 (3 February 2014).

326 Record Bundle 2(1), File 1.2, Item 3 at para 4. Transcript at 1107 (3 February 2014).

327 Record Bundle 2(1), File 1.2, Item 3 at para 5. Regulations Regarding The Rendering Of Forensic Pathology Service (GN R636 in GG 30075 of 20 July 2007).

328 Record Bundle 2(1), File 1.2, Item 3 at para 6.

329 *Id.* at para 8.

330 *Id.* at para 11.

331 Transcript at 1128 (3 February 2014).

- [97] Ms Thompson reported that FPS participates in regular monthly meeting with other role-players involved in dealing with murder cases. Organisations that attend the meetings include EMS, the City of Cape Town Metro Police, Provincial Traffic, DOCS, representatives from the national Department of Health Forensic Laboratories and SAPS.³³² Ms Thompson testified that there are attendance problems at the meetings. She said that SAPS often send different people to attend the meeting, with the result that issues that have stood over from the previous meeting cannot adequately be addressed.³³³ In addition, in August 2009, FPS entered into a formal memorandum of understanding with SAPS to regulate their relationship. A procedure manual has been developed “to address operational aspects” but that it has not yet been implemented as it has not yet been signed by SAPS.³³⁴
- [98] Ms Thompson advised the Commission in a letter dated 25 July 2014 that as at the end of May 2014 for the Western Cape province there was a backlog of 1435 toxicology cases. She also provided a table, Table 3, reflecting the backlog for blood alcohol tests as at the end of May 2014, as provided to her by the Forensic Chemistry Laboratory.³³⁵

Table 3

Month	Blood Alcohol received by Forensic Chemistry Laboratory Drunken Driving	Blood Alcohol received by Forensic Chemistry Laboratory Post Mortem	Blood Alcohol outstanding Drunken Driving	Blood Alcohol outstanding Post Mortem	Toxicology received by Forensic Chemistry Laboratory	Outstanding Toxicology
Jan-14	1109	551	16 946	2295	49	1533
Feb-14	923	411	17 201	2503	34	1483
Mar-14	1028	411	16 603	1991	14	1445
Apr-14	1108	419	15 612	1601	29	1436
May-14	1276	465	15 827	1123	23	1435

- [99] In the light of evidence before the Commission an Evidence Leader met with representatives of the Forensic Chemistry Laboratory on 25 June 2014.³³⁶ It falls under the control of the Director Forensic Pathology Services in the national Department of Health. The Forensic Chemistry Laboratory is distinct from the Forensic Science Laboratory which is based in Platteklouf and falls under SAPS. It attends to, amongst other things, ballistic analyses and DNA analyses. The Forensic Chemistry Laboratory in Cape Town services the three Khayelitsha Police stations. It conducts analyses and provides reports in respect of blood alcohol samples and toxicology samples.
- [100] The representatives from the Forensic Chemistry Laboratory were asked to provide comment on their responsibilities and relationship with SAPS. The Commission was provided with a copy of a Memorandum of Understanding relating to blood analysis protocol entered into by SAPS, NPA and the DOJ, which came into effect on 19 July 2013.³³⁷ Its purpose is to provide “an efficient cross-departmental system consisting of manual and automated interventions that will lead to the accurate and timely provision of evidence to the courts in respect of persons who are accused of driving under the influence of alcohol.”³³⁸ The Commission was also provided with information relating to blood alcohol samples received from the three

332 Id. at para 12 – 14. Transcript at 1109 (3 February 2014).

333 Transcript at 1111 (3 February 2014).

334 Id. at para 13. Transcript at 1108 (3 February 2014).

335 Letter dated 25 July 2014 Record Bundle 13(10), Item 4.

336 Adv Sidaki met with Mr Topliss (Cape Town Lab Section Head: Blood Alcohol Department) and Mrs Grove (Director: Forensic Pathology Services, based in Pretoria) joined in by tele-conference. Record Bundle 13(10), Item 6.

337 Id.

338 Id.

Khayelitsha police stations, from 1 January 2006 to 26 June 2014 as well as the number of outstanding toxicology cases.³³⁹ As at July 2014 there are 1245 blood alcohol samples from Khayelitsha awaiting analysis.

G. EMERGENCY MEDICAL SERVICES (EMS)

- [101] Another key partner for SAPS at crime scenes is EMS. The Commission obtained a written statement from Mr Pumzile Papu, the Provincial Ambulance Chief for the Western Cape Department of Health, whose offices are in the EMS building in Pinelands.³⁴⁰ Mr Papu, together with Mr Dexter Timm, the provincial communication manager for the EMS, testified during Phase One of the Commission's hearings.³⁴¹
- [102] Mr Papu stated that ambulance services for Khayelitsha operate from the Khayelitsha Hospital. There are satellite deployment points in Khayelitsha including the Site B Day Hospital, the Site B Fire Station, and also the three police stations. There are between 18 and 20 ambulances operating in Khayelitsha daily.³⁴² There are a variety of different emergency numbers to call ambulances, including 10111 (the SAPS emergency number), 107 (the City of Cape Town emergency number), 112 (the cell phone emergency number) and the EMS call centre on 10177.³⁴³
- [103] As of 1 April 2014 a computerised system has been installed, so that the location and availability of ambulances are recorded on an electronic system.³⁴⁴ When calls are received they are graded either as life-threatening (Priority 1), or emergency cases that are not life-threatening (Priority 2). The response time for Priority 1 cases is 15 minutes.³⁴⁵ When an ambulance is responding to a Priority 1 call, it may not attend to other calls. However, an ambulance responding to a Priority 2 call may take on other cases at the same time.³⁴⁶
- [104] Mr Papu told the Commission that between December 2010 and September 2012, a total of 2854 ambulance call-outs were made in Khayelitsha. Of those 948 were trauma calls.³⁴⁷ From October to December 2012, there were 211 ambulance call-outs in Khayelitsha of which all were trauma cases, and during 2013, there were 702 call-outs, all but one being trauma cases.³⁴⁸
- [105] Mr Papu identified four sets of circumstances which impede the ability of EMS personnel to attend to patients in Khayelitsha: the first is where a vigilante crime has happened or is happening; the second is where EMS personnel become targets of criminals in Khayelitsha; the third is during community protests, when ambulances may be stoned or prevented from entering certain areas; and the fourth is where patients are disorientated, drunk or highly belligerent and resist treatment or behave aggressively towards EMS personnel.³⁴⁹ Mr Papu

339 *Id.*

340 Record Bundle 7(1), File G, Item 10; Record Bundle 9(1), File 1.3, Item 10a read together with Dexter Timm's Statement Record Bundle 9(1), File 1.3, Item 14.

341 Transcript at 2566 – 2596 (11 February 2014).

342 Record Bundle 7(1), File G, Item 10 at paras 8 – 9.

343 *Id.* at para 12. Transcript at 2567 (11 February 2014).

344 Bundle Record 7(1), File G, Item 10 at para 14.

345 *Id.* at para 15.

346 *Id.* at para 17. Transcript at 2568 (11 February 2014).

347 Record Bundle 7(1), File G, Item 10 at para 20. See also annexures PP(2)(a), PP(2)(b) and PP(2)(c) attached to Mr Papu's Statement.

348 *Id.* at para 24. See also annexure PP4 to Mr Papu's Statement.

349 *Id.* at paras 30 – 39.

testified that community members have sometimes threatened or attacked EMS personnel when they have been treating a patient who has been the subject of a vigilante attack.³⁵⁰

- [106] In an attempt to ensure the safety of EMS personnel, SAPS and EMS have agreed guidelines whereby at the beginning of each shift, SAPS will be approached to advise as to whether there are dangerous conditions that would put EMS members at risk in any particular area. Based on this intelligence, zones are declared “red”, “yellow” or “green”. A “red” zone is considered to be highly dangerous, and a “no-go” zone under all circumstances. No ambulance may enter a red zone without SAPS authorisation.³⁵¹ A “yellow” zone is a “go area” but generally only with a SAPS escort.³⁵² A “green” zone is also a “go area”, and no escort is necessary, but EMS personnel are still urged to take care to ensure safety.³⁵³ The status of zones is updated every four hours.³⁵⁴
- [107] Mr Papu testified that the relationship between EMS and SAPS “has on the whole been functional”.³⁵⁵ There have, however, been incidents when SAPS was not available or delayed in responding to calls for assistance from EMS.³⁵⁶ Furthermore, EMS has target response times for critical cases, and sometimes ambulances have not been able to wait for SAPS in order to meet the targets, although at all times EMS practice is not to enter an area where the ambulance crew feel unsafe.³⁵⁷
- [108] According to Mr Papu there are two forums where SAPS and EMS meet in relation to Khayelitsha. The first is a monthly meeting at the Khayelitsha Site B police station to discuss relevant issues, including the safety of EMS personnel. Mr Papu was not sure when he made his statement whether these meetings are still held.³⁵⁸ The second is the monthly meetings hosted by the FPS, discussed above. He said that EMS had a very good relationship with FPS.³⁵⁹
- [109] Mr Timm correlated the data relating to all trauma related incidents from 2009 till 2013 for Khayelitsha. Most of the trauma incidents are “weapons and gunshot other”. He presented the annual trauma calls for the period 2009 to 2013 for Khayelitsha broken down into annual figures. In 2009 there were 2297 trauma calls; in 2010 there were 2719; in 2011 there were 2231; in 2012 it increased to 4205 and in 2013, 5027. In 2009 the average response time in minutes to those calls was almost 55 minutes but by 2013 had reduced to 35 minutes. The increase in the use of ambulances in Khayelitsha was attributed to an improvement in their response times, as he thought people had gained greater confidence in the ambulance service.³⁶⁰

350 Id. at paras 30 – 34. Transcript at 2572 (11 February 2014).

351 Record Bundle 7(1), File G, Item 10 at paras 41 – 42.

352 Id. at para 43.

353 Id. at para 44.

354 Id. at para 46. Transcript at 2570 (11 February 2014).

355 Record Bundle 7(1), File G, Item 10 at para 49.

356 Id. at para 50.

357 Id. at para 51.

358 Id. at para 56 – 57.

359 Transcript at 2593 (11 February 2014).

360 Transcript at 2578 – 2580 (11 February 2014).

H. CITY OF CAPE TOWN

(a) Documentation

[110] On 23 October 2012, the Commission wrote to the City Manager of the City of Cape Town requesting certain information from the City relevant to the Commission's mandate.³⁶¹ On 8 February 2013, the City Manager responded providing much of the information.³⁶² The City was also represented by attorneys and counsel during the proceedings of the Commission.

[111] The documentation provided by the City included –

- Documents relating to Violence Prevention Through Urban Upgrading (VPUU), a project supported by the City that is based in Khayelitsha,³⁶³ including an overview of the VPUU and its annual reports;³⁶⁴
- A copy of the Khayelitsha Community Trust deed;³⁶⁵
- Maps of high mast and street lighting in Khayelitsha;³⁶⁶
- The Master Plan for an Integrated CCTV system for the City and service and repair records for CCTV cameras located in Khayelitsha;³⁶⁷
- City of Cape Town reports to the Civilian Oversight Committee (CIVOC) established for the City Metro Police in terms of section 64J of the SAPS Act;³⁶⁸
- City of Cape Town Annual Reports for 2006/2007, 2007/008, 2008/2009, 2010/2011;³⁶⁹
- Maps of Khayelitsha for 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2011;³⁷⁰
- Map showing location of CCTV cameras in Khayelitsha;³⁷¹
- Cape Metro Police Department, Annual Plan 2012 – 2013;³⁷²
- The Integrated Development Plan for the City of Cape Town 2012 – 2017;³⁷³
- Spatial Development Framework for the City of Cape Town, May 2012;³⁷⁴ and
- The City of Cape Town's plan for Khayelitsha.³⁷⁵

[112] In addition, the City Manager provided several detailed letters setting out responses to enquiries from the Commission.³⁷⁶ Moreover, two witnesses provided statements to the Commission on behalf of the City: Mr Richard Bosman, Executive Director of the Safety and Security Directorate of the City³⁷⁷ and Mr Kevin Cole, the Superintendent of the CCTV operation at the TMC, Goodwood and who is responsible for supervising the CCTV cameras

361 Record Bundle 1(10), File 2, Item 10a.

362 Id. at Item 10.

363 Record Bundle 1(10), File 1, Items 1 – 8.

364 Record Bundle 1(10), File 2, Item 18; Record Bundle 2(2), Items 4.1 to 4.10.

365 Record Bundle 1(10), File 1a, Items 9(a) and 9(b).

366 Record Bundle 1(10), File 2, Item 13.

367 Record Bundle 1(10), File 2, Item 15 and File 3, Items 20 – 22.

368 Record Bundle 1(10), File 4, Items 23 – 50.

369 Record Bundle 1(10), File 5, Items 53 – 57.

370 Record Bundle 1(10), File 6, Items 62 – 70;

371 Record Bundle 8(5), Item 71.

372 Record Bundle 1(10), File 5, Item 51.

373 Record Bundle 12(4), Item 2.

374 Record Bundle 12(4), Item 4.

375 Record Bundle 12(4), Item 5.

376 See, in particular the letter from the City Manager dated 8 February 2013, Record Bundle 1(10), File 2, Item 10; and the letter dated 23 April 2014, see Record Bundle 12(4), Item 1.

377 Record Bundle 4(2), File 8. Transcript at 1901 – 2013 (6 February 2014).

in Khayelitsha.³⁷⁸ Both gave oral evidence, the latter testified together with Mr Christopher Möller, Senior Superintendent, City Metro Police.³⁷⁹

(b) Mr Richard Bosman

- [113] Mr Bosman heads the City's Safety and Security Directorate which has six Departments: Traffic, Law Enforcement, Metro Police, Fire and Rescue, Disaster Management and the 107 Call Centre,³⁸⁰ a position he has held since April 2009.³⁸¹ Mr Bosman explained that the Directorate has divided the City into four zones for each of these operational units: North, South, East and West. Khayelitsha falls into the East area,³⁸² and the City has established a traffic office in Khayelitsha (opposite the police station in Lingeletu West), two fire stations – one in Site C, on the corner of Japhta K Masemola Road and Mew Way, and the other in Mandela Park,³⁸³ as well as an office for law enforcement and Metro Police.³⁸⁴

(i) Metro Police

- [114] Mr Bosman told the Commission that the City of Cape Town established its Metro Police in 2001 in terms of Chapter 12 of the SAPS Act.³⁸⁵ The functions of the Metro Police are regulated by section 64E of the SAPS Act and include traffic policing, the policing of municipal by-laws and regulations and the prevention of crime. However, the Metro Police do not investigate crime or deal with the reporting of crime.³⁸⁶ From time to time, the Metro Police work together with SAPS to perform targeted joint operations, such as search and seizures.³⁸⁷ Mr Bosman stated that there is a good working relationship between SAPS and the Metro Police.³⁸⁸ He also said that the City and SAPS work closely together when large events are planned in the City, such as the opening of Parliament, the Soccer World Cup in 2010 or the memorial held in honour of former President Mandela.³⁸⁹ During the Commission's inspection in loco at SAPS' Provincial Command Centre, SAPS members described how major events are planned and managed by SAPS, with the co-operation of the City.

Recruitment

- [115] In his testimony, Mr Bosman indicated that recruitment of members to the Metro Police was of crucial importance. In his view, a matriculation certificate was necessary, because members of the Metro Police have to testify in court. He also said that psychometric testing is useful as it is important to ensure that the Metro Police do not employ people who have difficulty dealing with conflict, or have anger management issues. It is also important, he suggested, that people who are employed accepted that "there's a right and a wrong".³⁹⁰ He said that the recruitment process should be approached on the basis that "if I recruit you now I want to

378 Record Bundle 8(5), Item 2. Transcript at 2527 – 2565 (11 February 2014).

379 Transcript at 2539 (11 February 2014).

380 See Statement of Mr Bosman at Record Bundle 4(2), File 8 at para 1.

381 Id. at para 7.5.

382 Transcript at 1917 (6 February 2014).

383 Record Bundle 4(2), File 8 at para 69.

384 Transcript at 1917 (6 February 2014).

385 Id. at para 16. See Transcript at 1924 (6 February 2014).

386 Record Bundle 4(2), File 8 at para 26. Transcript at 1926 (6 February 2014).

387 Record Bundle 4(2), File 8 para 38.2.

388 Id. at para 62.

389 Transcript at 1916 (6 February 2014).

390 Id. at 1976 – 1977.

keep you for the next 20 or 30 years, because that's going to be your career".³⁹¹ He also said that given high levels of unemployment, "you can have your pick of people".³⁹²

(ii) *Patrolling of informal neighbourhoods*

- [116] Mr Bosman was asked, whether in the light of his policing experience, he thought it would be possible to conduct visible policing patrols in informal areas in Khayelitsha. He thought it would be possible to do so, but it would have to be foot patrols.³⁹³ Given that it would be foot patrols, SAPS members would be more vulnerable, and therefore there would need to be adequate back up and sufficient numbers. "You would have to strategise around it properly", he said.³⁹⁴ He also pointed out the importance of familiarising members of SAPS with the neighbourhoods they are to police. He mentioned that the fire services spent a considerable amount of time introducing new members of the service to the area, so that they know the layout, and the names and nicknames for areas. The Fire Service refers to this as "familiarisation tours".³⁹⁵

(iii) *CCTV cameras*

- [117] Mr Bosman also informed the Commission about the City's CCTV cameras that are installed in Khayelitsha. As set out in Chapter 7 above, there are 16 cameras, which are monitored by the TMC in Goodwood.³⁹⁶ He told the Commission that the location of the cameras was determined in consultation with SAPS³⁹⁷ and that currently there are no plans to erect further CCTV cameras in Khayelitsha in the city's ten-year plan for rolling out CCTV cameras in other parts of the City.³⁹⁸ Mr Bosman told the Commission that there are 14 cameras in Mitchell's Plain, 14 in Sea Point and 80 in the City Centre.³⁹⁹ In all there are 350 CCTV cameras operated by the City, not including the cameras on transport routes.⁴⁰⁰
- [118] The City has a ten-year Master plan for rolling out CCTV cameras which has been approved by Council, and is subject to an annual review.⁴⁰¹ According to the City's Master plan CCTV cameras are strategic and valuable tools in both preventing and combating crime. It states that –

"International research has shown that one CCTV camera is as effective as ten patrolmen and has the added advantage of the footage which may be stored and retrieved when required for evidential or prosecution purposes."⁴⁰²

Even though there are no cameras located in Harare,⁴⁰³ there are currently no plans to erect further CCTV cameras in Khayelitsha.

391 Id. at 1977.

392 Id. at 1978.

393 Id. at 2001.

394 Id.

395 Id. at 2001 – 2002.

396 See Record Bundle 4(2), File 8, at para 45. See also Transcript at 1933 (6 February 2014); Mr Cole's Statement Record Bundle 8(5), Item 2 at paras 7 and para 21; Transcript at 2530 (11 February 2014).

397 Transcript at 1934 and 2550 (11 February 2014); Mr Cole's Statement Record Bundle 8(5), Item 2 at paras 6 and 8.

398 See Record Bundle 4(2), File 8, at para 45.4; Mr Cole's Statement Record Bundle 8(5), Item 2 at para 11.

399 Id. at para 47 and 49.

400 Id. at para 48.

401 Transcript at 1549 (6 February 2014); Record Bundle 1(10), File 2, Item 15.

402 Record Bundle 1(10), File 2, Item 15, p 4.

403 Transcript at 2563 (11 February 2014).

(iv) Law Enforcement

[119] In addition to the Metro Police, the City has a law enforcement component. There are approximately 800 staff employed in that component.⁴⁰⁴ The law enforcement component is responsible for the enforcement of by-laws, and has several specialised units, including a metal theft unit, a liquor enforcement unit and an anti-land invasion unit.⁴⁰⁵ It also employs building and health inspectors.⁴⁰⁶ With regard to liquor licences, and both legal and illegal taverns or shebeens, Mr Bosman told the Commission that the City does not have authority to enforce national or provincial liquor laws, although the City does regulate the hours that liquor may be sold.⁴⁰⁷ He also said that the law enforcement liquor unit works closely with SAPS FLASH unit (Firearms, Liquor and Second-hand goods).⁴⁰⁸

(v) Fire-fighting services

[120] Mr Bosman testified that there are instances when the Fire Department is attending to fires that its hoses are cut or items are stolen from the fire engines.⁴⁰⁹ The City thus asks SAPS to assist to ensure the safety of the Fire Department, but SAPS is not always willing or able to assist.⁴¹⁰ In this regard, Mr Bosman stated that SAPS' relationship with the fire department "needed to be developed".⁴¹¹

[121] When asked of the experience of his Directorate in Khayelitsha, he indicated that Khayelitsha includes a range of different neighbourhoods, "the largest part of Khayelitsha", he said, "is a normal urban area that has the normal crime that you pick up in Wynberg, in Constantia, in Muizenberg."⁴¹² He acknowledged however that policing informal areas of Khayelitsha presents challenges, but that they are not insurmountable.⁴¹³ He felt that the improvement in the environmental infrastructure would make the task of policing easier.⁴¹⁴

(vi) 107 emergency number

[122] Mr Bosman testified that there was a need for a single emergency number, rather than the system currently in operation in which there are a range of emergency numbers including the City's 107 emergency number, SAPS' 10111 and the cell phone companies' 112.⁴¹⁵

[123] In the second part of his testimony, Mr Bosman dealt with areas of the City's responsibility beyond the mandate of the Safety and Security Directorate: lighting, sanitation, water supply and other services, as well as the VPPU project.

(vii) Water and sanitation services

[124] As mentioned elsewhere in this Report, the issue of adequate sanitation is a contested and troubling issue in Khayelitsha. According to Mr Bosman, the national Department of Water Affairs' 2012 Report found that 100% of informal households in the City have access to adequate sanitation.⁴¹⁶ This does not mean that every household in the City has its own

404 Record Bundle 8(5), Item 2 at para 83.

405 Id. at para 63.

406 Transcript at 1927 (6 February 2014).

407 Id. at 1930 – 1931.

408 Id. at 1921 – 1932.

409 Id. at 1918.

410 Id. at 1918.

411 Record Bundle 4(2), File 8 at para 77.

412 Id. at 1938.

413 Id. at 1938.

414 Id.

415 Id. at 1973.

416 Record Bundle 4(2), File 8 at para 114.

toilet facilities. Mr Bosman testified that the City aims to provide one toilet for every five households in Khayelitsha.⁴¹⁷ He told the Commission that according to Census 2011 only 19 000 households are serviced at a level worse than 1:5. The City has also introduced portable flush toilets, which are located in individual homes, and serviced three times a week by the City to avoid residents having to use public toilets in public spaces.⁴¹⁸ More than 17 000 portable flush toilets have now been provided to homes.⁴¹⁹ The City's annual budget for water and sanitation services in informal settlements is R521 million, which has grown from R123 million in 2006/2007.⁴²⁰ Mr Bosman testified that there are areas where it is not possible to install "full flush toilets", for example, in areas of extremely high density, under power lines, on landfill sites, on road or railway buffers, or in flood plains.⁴²¹ He told the Commission that 82% of informal settlements in the City are affected, either partially or fully, by these restrictions.⁴²² The City's provision of water standpipes in informal settlements has grown rapidly, and now exceeds its target of one standpipe to 25 households.

(viii) Electrification

- [125] According to Mr Bosman, the City has also made progress in providing electricity to households across the City. The current budget for electrification is R292 million which has grown from R71 million in 2006/2007.⁴²³ Approximately 30 000 subsidised electricity connections have been provided across the City since 2006.⁴²⁴
- [126] However, despite this significant improvement in service provision, Mr Bosman acknowledged that there are certain informal areas where certain services can simply not be provided due to prevailing local conditions.⁴²⁵

(ix) High-mast lighting

- [127] Mr Bosman also described the high-mast lighting system in Khayelitsha. He said that areas are only provided with high mast lighting where it is not possible to install street lighting, because there are no roads.⁴²⁶ Another reason for the erection of high-mast lighting is where there are high voltage overhead cables, which affects a stretch of Spine Road.⁴²⁷ The high-mast lights have a light radius of 175m – 200m. The City continues to roll out high-mast lighting in Khayelitsha each year.
- [128] One of the issues before the Commission was the fact that community members complained that high-mast lights were often out of order, and sometimes took months to fix. In response to this complaint, Mr Bosman stated that the City experiences problems of vandalism and theft in relation to the lights,⁴²⁸ as well as difficulties when maintaining lights "due to community resistance".⁴²⁹ One of the main causes of the resistance is a demand that workers from other parts of the City may not work on projects in Khayelitsha.⁴³⁰ Mr Bosman told

417 Id. at paras 114 – 115.

418 Id. at para 116.

419 Id. at para 117 – 18.

420 Id. at para 123. See also the details provided by the City Manager in his letter dated 22 April 2014, Record Bundle 12(4), Item 1 at pp 5 – 6.

421 Record Bundle 4(2), File 8 at para 127.

422 Id. at para 129.

423 Id. at para 122.

424 Id. at para 126.

425 Id. at para 127.

426 Id. at para 134.

427 Id. at para 141.

428 Id. at para 146.

429 Id. at para 151 and 153.

430 Id.

the Commission that the City has a dedicated unit attending to maintenance of high-mast lights. He also said that the use of illegal electricity connections can interfere with the maintenance of the lights.⁴³¹ He told the Commission that there is currently a 90% “burning” rate on high-mast lighting (the “burning” rate refers to the number of functioning lights as a percentage of the number of installed lights) and 75% rate on street lighting in sub-council 9 in Khayelitsha.⁴³² He indicated that routine maintenance is ordinarily completed within 14 days, but where there has been theft or vandalism it can take up to 60 days to fix the lighting, if the necessary materials are unavailable.⁴³³

(x) Informal neighbourhoods: planning and numbering of shacks

- [129] Mr Bosman also told the Commission that the unplanned nature of most informal settlements in Khayelitsha create difficulties for service delivery and the City is trying to embark on programmes, such as upgrading, in a manner that will make informal neighbourhoods easier to service.⁴³⁴ He said that the City numbers informal dwellings from time to time, but often the numbering is changed, or new dwellings are erected that do not have numbers.⁴³⁵

(xi) Bush clearing

- [130] Mr Bosman testified that a bush clearing project is implemented and monitored by the City’s Urban Renewal Program. One of its aims is to provide a safe and secure environment. The Program clears bushes in crime hotspots to improve visibility. The project is implemented in partnership with SAPS, City Parks and CPFs.⁴³⁶ He told the Commission that the Program commenced in 2011, and completed its work in June 2013, by which time all the overgrown bushes at crime hot spots in Khayelitsha had been cleared.⁴³⁷ The City plans to continue with this project, and will employ 66 people from Khayelitsha to work on it.⁴³⁸

(xii) Violence Prevention through Urban Upgrading (VPUU)

- [131] Mr Bosman stated that the VPUU project was launched in Khayelitsha in about 2005. It is a City project aimed at reducing violent crime and improving social conditions in Cape Town communities.⁴³⁹ The project was launched with the assistance of the German Central Minister for Economic Co-operation and Development (PMZ) and the German Development Bank.⁴⁴⁰ VPUU not only aims to reduce crime and increase safety levels but also to upgrade neighbourhoods, improve social standards and introduce sustainable community projects to empower local residents.⁴⁴¹
- [132] A final question put to Mr Bosman pointed to the fact that he appeared to have a more constructive relationship with SAPS than DOCS. It was suggested to him that this may be because he has an “operational” relationship with SAPS rather than an oversight one.⁴⁴² Mr Bosman agreed. He pointed out that SAPS has an oversight role over the Metro Police in

⁴³¹ Id. at para 148.

⁴³² Id. at para 149.

⁴³³ Id. at para 157.

⁴³⁴ Id. at para 163.

⁴³⁵ Id. at para 165.

⁴³⁶ Id. at para 169.

⁴³⁷ Id. at para 172.

⁴³⁸ Id. at para 174.

⁴³⁹ Id. at para 84.

⁴⁴⁰ Id. at para 86.

⁴⁴¹ Id. at para 89.

⁴⁴² Transcript at 2010. (6 February 2014)

that they approve the Metro Police Annual Plan, but he also pointed to the importance of individual relationships.⁴⁴³

I. VIOLENCE PREVENTION THROUGH URBAN UPGRADING (VPUU)

[133] The Commission also received statements from and heard the testimony of two employees of VPUU: Mr Chris Giles,⁴⁴⁴ and Ms Nontutuzelo Mtwana.⁴⁴⁵

(a) Mr Chris Giles

[134] Mr Giles told the Commission that his role in VPUU is the development of a social crime prevention strategy which is one of the five components of the VPUU's work. The five components are: safety design through built interventions (Situational Crime Prevention), which involves constructing public facilities, called "safe nodes" which can become used by residents, and make an area feel safer; the second is social crime prevention which involves the establishment of Neighbourhood Watches; the third is Operation and Maintenance which ensures that new public spaces are used and maintained; and the fourth is community participation which seeks to create ways for local leaders to guide the VPUU project and keep communities involved of progress; and the fifth is Knowledge Management which aims to gather information and make it accessible to interested parties.⁴⁴⁶

[135] Mr Giles testified that the goal of VPUU "is to build safe and sustainable neighbourhoods by reducing social, cultural, economic and institutional exclusion ... in one sentence, to improve the quality of life".⁴⁴⁷ He indicated that the VPUU works closely with the community and identified leadership structures.⁴⁴⁸

[136] He emphasised the important role played in crime prevention by safety volunteers, and he suggested that ways should be found to encourage people to volunteer and acquire the skills necessary to be part of an intelligence-driven team. He also proposed that it was necessary to fund neighbourhood watches properly.⁴⁴⁹

[137] In response to a question on the VPUU planning processes and pursuit of its recommendations, he responded as follows –

"... of all the crucial partners, the SAPS at the moment are the furthest from implementing these [recommendations]. None of us are perfect, I don't wish to say that, ... but in my view the police are the least engageable the least accessible and one of the most needed."⁴⁵⁰

443 Id.

444 Record Bundle 8(3), Item 44. Transcript at 2724 – 2763 (12 February 2014) Exhibit CG1 Record Bundle 10(3), Item 38.

445 Record Bundle 8(3), Item 43. Transcript at 2822 – 2866 (12 February 2012) and 4032 – 4047 (Thursday 20 February 2014). Ms Mtwana also testified in the second phase. See Transcript at 7575 – 7621 (Thursday 15 May 2014).

446 Record Bundle 8(3), Item 44 at para 4.

447 Transcript at 2726 (12 February 2014).

448 Id. at 2727.

449 Id. at 2744.

450 Id. at 2745.

(b) Ms Nontutuzelo Mtwana

[138] Ms Mtwana is a Volunteer and Safety Co-ordinator at VPUU in Khayelitsha. She has worked in Khayelitsha since 1989, and for VPUU since 2003. Her role is to lead and develop the Safety Volunteers project.⁴⁵¹ Ms Mtwana explained to the Commission that there are three important role-players in relation to the informal policing networks with whom she works: the CPFs, the Neighbourhood Watches and Street Committees.⁴⁵² She also emphasised the importance of a good working relationship between informal policing networks and SAPS.⁴⁵³

[139] Ms Mtwana described how VPUU worked with the Khayelitsha CPFs.⁴⁵⁴ The VPUU seeks to assist the CPFs by attending meetings. She indicated that the attendance at meetings and holding of meetings can be inconsistent.⁴⁵⁵ At times a CPF may function well, and then it may lapse. She also told the Commission, that in her experience, the successful functioning of a CPF depends on who its current members are. She stated that “CPF’s tend to be dominated by political parties and organisations. The Harare CPF is dominated by African National Congress (ANC) members. The Site B CPF has more members from Congress of the People (COPE). The Lingeletu West CPF appears to be unaffiliated...”⁴⁵⁶ She added that being politically unaffiliated as a CPF has “a number of benefits”. Unaffiliated CPFs tend to be more stable and focussed. She said –

“I believe that this is due to the fact that ... individuals on the forum focus on improving safety and security within their community, and direct political considerations tend not to influence their decisions. However, there is a sense that issues aired in politically dominated CPFs will quickly be reported to the dominant political party and its allies. This makes the police hesitant to act contrary to the CPFs political will, despite what might be required, because of the risk that political action will be taken against them.”⁴⁵⁷

[140] Ms Mtwana described Neighbourhood Watches as groups of volunteers who go on patrols through their neighbourhoods at night or on weekends.⁴⁵⁸ She told the Commission that VPUU currently has 150 volunteers in Harare, 200 in Site B and approximately 80 in Lingeletu West.⁴⁵⁹ When a Neighbourhood Watch sets off on patrol, briefings are conducted by co-ordinators, but very rarely by SAPS.⁴⁶⁰ In her view, SAPS sector commanders should brief patrols both to emphasise that patrolling is a serious undertaking, and to ensure that patrollers are given accurate and up-to-date information. Members of SAPS very rarely accompany the patrols of Neighbourhood Watches, something that Ms Mtwana thinks needs to change.⁴⁶¹ Ms Mtwana stated that Neighbourhood Watches act as a deterrent to crime, but that SAPS does not take them seriously enough.⁴⁶² In her view, SAPS should work more closely with Neighbourhood Watches.

451 Record Bundle 8(3), Item 43 at paras 2 – 4.

452 Id. at para 5.

453 Transcript at 2825 (12 February 2014).

454 Id. at 2832.

455 Id. at 2833.

456 Record Bundle 8(3), Item 43 at para 8. See also Transcript at 4035 (20 February 2014).

457 Record Bundle 8(3), Item 43 at para 9.

458 Id. at para 13.

459 Id. at para 14.

460 Id. at para 15.

461 Id. at para 17.

462 Id. at para 11.

- [141] Ms Mtwana stated that Street Committees also play an important role in policing in Khayelitsha. Street Committees have a history stretching back to the struggle against *apartheid*, and generally Street Committees are seen as “belonging” to the ANC-aligned South African National Civics Organisation (SANCO).⁴⁶³ Ms Mtwana asserted that it is important that Street Committees should serve all members of the community, regardless of political affiliation.⁴⁶⁴ She testified that Street Committees are established in between 50 and 70% of Khayelitsha.⁴⁶⁵ Informal settlements she said “Street Committees operate in a less structured way”.⁴⁶⁶
- [142] Street Committees deal with a range of community issues, including complaints of marital abuse, housing issues and abandoned children. Street Committees may object to a Neighbourhood Watch functioning in their area, and if they do, “will reject the Neighbourhood Watch, and even assault them, to prevent them from doing their work”.⁴⁶⁷ She said that the relationship between the Street Committees and SAPS is not good, unless Street Committees are integrated into CPFs.⁴⁶⁸
- [143] Ms Mtwana stated, in summary, that SAPS does not work well with informal community policing structures, such as Neighbourhood Watches.⁴⁶⁹
- [144] Ms Mtwana questioned the quality of police management in Khayelitsha. She suggested that there is a need “to investigate the requirements and qualifications for becoming a police manager ... especially at station and sectoral level”.⁴⁷⁰ She testified that her experience was that only “when the VPUU Neighbourhood Watches, and other forms of informal policing, are supported by truly skilled and experienced sector commanders, or stations commissioners, can they become truly effective.”⁴⁷¹
- [145] As to police institutional culture, Ms Mtwana stated that it was her experience that “there is an insufficient appreciation for the human rights of the people the officers are meant to serve and protect”.⁴⁷² “SAPS must discard its militaristic culture,” she said, “and begin to understand its role as a servant of the people.”⁴⁷³ Ms Mtwana also noted that the failure to provide police patrols in informal settlements renders residents vulnerable, and also leads to frustration.⁴⁷⁴

463 Id. at para 23.

464 Id. at para 23.

465 Id. at para 29.

466 Id. at para 26.

467 Id. at para 28.

468 Id. at para 30.

469 Id. at para 36.

470 Id. at para 38; Transcript at 4039 (20 February 2014).

471 Record Bundle 8(3), Item 43 at para 39.

472 Id. at para 44; Transcript at 4042 (20 February 2014).

473 Record Bundle 8(3), Item 43 at para 45.

474 Id. at para 57.

CHAPTER TEN

OVERVIEW OF SAPS DOCUMENTS

- [1] This chapter deals with the documentary record provided by SAPS, and has seven sections. The first contains a discussion of the compilation of the documentary record from SAPS, what was requested and what was received. The second section contains a summary of the conclusions of a report prepared by two senior retired policemen, Mr Glenn Schooling and Mr Martin Leamy, who, at the request of the Commission, assessed the documents the Commission had received from SAPS and prepared a report for the Commission. The third section considers a report by the Task Team, appointed by the late Lieutenant General Tshabalala in July 2012, to investigate the complaints made by the complainant organisations in relation to the three Khayelitsha police stations, the fourth part examines inspection reports of the three police stations prepared by the SAPS Provincial Inspectorate; the fifth part deals with reports prepared by the SAPS Internal Audit Department; and the sixth considers a report prepared by the provincial head of the Family Violence, Child Protection and Sexual Offences Unit (the FCS) concerning the performance of the Khayelitsha FCS Unit. In the seventh and last section of this chapter, there is a discussion of the analysis done by the Commission of the dockets it received from SAPS, which totalled more than 400.

A. COMPILATION OF THE RECORD

- [2] As mentioned in Chapter 1 above, the Commission wrote to the station commanders of the three Khayelitsha police stations on 6 September 2012, shortly after the Commission was established, informing them of the establishment of the Commission and providing a copy of the Commission's terms of reference.¹ The Commission also wrote to the Provincial Commissioner in similar terms² and the National Commissioner of SAPS.³ In these letters, the Commission requested a range of information from SAPS that it considered would assist it to carry out its mandate, and requested that the information be provided by 5 October 2012. Again, as set out in Chapter 1 above, save for a formal acknowledgement from Major General Jephta on behalf of the Provincial Commissioner, the Commission received no acknowledgement or response to its letters.⁴ The Commission also wrote to the Cluster Commander on 24 October 2012, again, in similar terms.⁵
- [3] When the Commission did not receive any of the requested documents from SAPS, it wrote again to the three station commanders, and the Provincial and National Commissioners on 22 October 2012, stating that the preliminary hearing of the Commission was to be held on 29 October 2012, and giving SAPS till 24 October to provide the information.⁶ In that

1 See Chapter 1 above at para 7. Copies of the letters are to be found in the High Court Record, Record Bundle 1(3), AL 75, p 615 – 622.

2 High Court Record, Record Bundle 1(3), AL75, p 615.

3 High Court Record, Record Bundle 1(3), AD2, p 1059.

4 See the Statement of the Secretary of Commission, Ms Dissel, in High Court Record, Record Bundle 1(3), p 990 at para 58.

5 High Court Record, Record Bundle 1(3), AD3, p 1061.

6 High Court Record, Record Bundle 1(3), AD7, p 1072.

letter, the Commission supplemented, to a small extent, the information sought.⁷ After an exchange of correspondence with the SAPS attorneys of record that is described in the High Court Record,⁸ the Commission issued subpoenas against the three station commanders and the Provincial Commissioner on 30 October 2012.⁹ As set out in Chapter 1 above, following the service of the subpoenas, the Minister of Police and other applicants sought relief in the High Court including, amongst other things, an order setting aside the subpoenas. The relief was refused by the Western Cape High Court, and the applicants sought leave to appeal to the Constitutional Court, as well as direct access to that Court seeking similar relief. On 1 October 2013, the Constitutional Court dismissed both the application for leave to appeal and the application for direct access. Thereafter, the Commission wrote to the State Attorney on 7 October 2013 proposing a meeting between the Evidence Leaders and the State Attorney to discuss arrangements for the disclosure of the documents, originally sought from the station commanders, cluster commander and Provincial Commissioner in 2012, and which had now been amplified in light of further information at the Commission's disposal. Over the following months, arrangements were made for delivery of most of the documents sought by the Commission.

- [4] The information sought from SAPS can be summarised as follows. In relation to the individual police stations –
- (a) personnel information, mostly for the period 1 January 2010 – 31 August 2013 –
 - (i) the names and service numbers of commissioned, non-commissioned officers and reservists, including names and details of detectives at each of the police stations;
 - (ii) disclosure of the members of SAPS at each station who have driver's licences;
 - (iii) the approved (as well as financed and actual) establishment level of each police station, including rank level, with reference to the Resource Allocation Guide (RAG) and the RAG itself;
 - (iv) the number of vacant posts at each police station;
 - (v) the number of days of staff absenteeism at each police station, as reflected in attendance registers (SAPS 15s) and leave registers (SAPS 26s);
 - (vi) the number of dockets under investigation by each detective;
 - (vii) any skills audit conducted in respect of the members of SAPS at each police station; and
 - (viii) performance evaluations for staff members at each of the police stations, including the bi-annual performance enhancement process (PEP);
 - (b) copies of key registers kept at each police station, again generally for the period 1 January 2010 – 31 August 2013, including –
 - (i) occurrence books;
 - (ii) information books;
 - (iii) domestic violence registers (SAPS 508(b)); and
 - (iv) SAPS 328 forms;
 - (c) the performance plan and station operational plan for each of the police stations;
 - (d) information concerning complaints lodged against SAPS members at the three police stations, including –
 - (i) complaints referred to and from the IPID in terms of s 29(1) of the IPID Act between 1 April 2012 and 31 August 2013 (as the IPID only came into existence on 1 April 2012), and documents relevant to those complaints;

7 High Court Record, Record Bundle 1(3), Statement of Ms Dissel, p 993 at para 67.

8 Id. at paras 68 – 76.

9 High Court Record, Record Bundle 1(3), AL83 – AL86, pp 642 – 683.

- (ii) complaints referred to ICD between 1 January 2010 and 31 March 2012;
- (iii) all complaints received that were not referred to either ICD or IPID; and
- (iv) details of criminal prosecution arising out of the carrying-out of SAPS duties of any member of SAPS attached to any of the three police stations between 1 January 2010 and 31 August 2013;
- (v) details of disciplinary proceedings.
- (e) the annual crime statistics for each police station for the periods 1 January 2008 – 31 August 2013;
- (f) minutes of meetings of the CPFs of the three police stations for the period 1 January 2008 – 31 August 2013;
- (g) copies of all standing orders, national orders and instructions in force for the period 1 January 2010 – 31 August 2013;
- (h) documents relating to performance evaluation of police stations for the period 1 January 2010 – 31 August 2013, including SAPS 6 forms and performance charts, as well as the station performance ranking of each police station for the relevant period;
- (i) all reports prepared by the National Inspectorate or Provincial Inspectorate of SAPS in relation to the three police stations in the period 1 January 2010 – 31 August 2013;
- (j) documents relating to visible policing patrols and sector policing for the period 1 January 2010 – 31 August 2013, including sector profiles and a breakdown of personnel per sector;
- (k) the disclosure of the number of vehicles allocated to each of the three police stations, and the operating status of those vehicles, and any accident reports relating to them;
- (l) information relating to the acquisition of forensic reports for evidence purposes, including –
 - (i) the number of ballistic analyses required in the period 1 January 2010 – 31 August 2013, and the time taken to obtain such analyses;
 - (ii) the number of forensic or laboratory analyses required in the period 1 January 2010 – 31 August 2013, and the time taken to obtain such analyses;
- (m) information relating to the discharge, and/or loss, of police firearms for the period 1 January 2010 – 31 August 2013;
- (n) information relating to incidents of vigilante violence or other forms of informal justice in Khayelitsha for the period 1 January 2010 – 31 August 2013, including relevant dockets;
- (o) information relating to identified resource constraints adversely affecting the operations of SAPS at the three police stations;
- (p) information relating to awards, bonuses or commendations of members of SAPS attached to the three police stations;
- (q) the number of members of SAPS attached to the three police stations who have made use of the SAPS Employee Health and Wellness Programme in the period 1 January 2010 – 31 August 2013; and
- (r) any reports prepared at the three police stations in response to the complaints lodged by the complainant organisations in the period between 1 January 2008 and 31 August 2013.
- (s) details of other SAPS units operating in Khayelitsha and the names and contact details of their officers;
- (t) all policy documents at the police station relating to vigilantism.

[5] The information requested from the Cluster Commander repeated many of the requests made to the station commanders (see items (a), (c), (d), (e), (f), (g), part of (h), (j), (k), (l), (m), (n) and (q) above). Seeking such information both for the three Khayelitsha police stations and for the Cluster Command Office.¹⁰ In addition, it asked for –

10 Record Bundle 13(1), File 1.4, File 2, Item 6. Annexure A being the documents originally requested from the Cluster Command.

- (a) staffing information, as set out in para (a) of the previous paragraph in relation to the Cluster Office;
 - (b) information concerning any reports prepared by the Cluster Commander in response to the complaints lodged by the complainant organisations in the period between 1 January 2008 and 31 August 2013;
 - (c) any guidelines or reports on provincial policing priorities applicable during period 1 January 2010 and 31 August 2013;
 - (d) correspondence between the Cluster Commander's office and the provincial Commissioner's office between 2010 and 2012 on any matter of relevance to the Commission's terms of reference;
 - (e) any guidelines or reports defining the role of the Cluster Command vis à vis the three police stations in the period 1 January 2010 – 31 August 2013;
 - (f) any reports of inspections of the three police stations performed by the Cluster Office in the period 1 January 2010 – 31 August 2013;
 - (g) any reports on the state of the Victim Support Centres at the three police stations during the period 1 January 2010 – 31 August 2013;
 - (h) any reports on the effectiveness of bicycle and/or foot patrols in Khayelitsha;
 - (i) the 2002 SAPS Vigilantism Prevention Strategy for the Western Cape; and
 - (j) details of the programmes implemented by SAPS together with the Khayelitsha Development Forum in the period 1 January 2010 – 31 August 2013.
 - (j) study of cases regarded by the Cluster Command Office to be "Bundu Court" executions and details of the 78 incidents during the period April 2011 to June 2012 that referred to for the Khayelitsha area and in respect of which murder dockets had been opened and are being investigated.
- [6] The information requested from the Provincial Commissioner included the information requested from the Station Commander in respect of paras (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (s) as well as the information requested in paras (b) and (c), of the previous paragraph from the Cluster Commander. In addition, the following information was sought –
- (a) reports and correspondence between the Provincial Commissioner's office and the provincial MEC for Community Safety in relation to matters of relevance to the Commission's terms of reference for the period 2009 – 2013; and
 - (b) any correspondence or reports made by the Provincial Commissioner to the committees of the Provincial Legislature for the period 2008 – 2013 in relation to matters relevant to the Commission's terms of reference; and
 - (c) Minutes of all meetings with the Area Community Police Board and the Provincial Community Police Board for the period 1 January 2010 – 31 August 2013 including copies of any invitations sent to any of the Respondents in case number 21600/12 before the Western Cape High Court to attend CPF meetings and to which was referred in paragraph 29 of the affidavit of the Minister of Police in case number 21600/12 as well as documentation relating to workshops organised by the DOJC for the CPFs of Khayelitsha and/or the community of Khayelitsha during the period 1 January 2010 to 31 August 2013 and to which was referred in paragraph 30 of the affidavit of the Minister of Police in case number 21600/12;
 - (d) Reports prepared or received in response to complaints raised by the complainant organisations for the period 1 January 2008 to 31 August 2013;
 - (e) Police station audits conducted at the behest of the Provincial Police Commissioner for the three Khayelitsha police stations during the period 1 January 2008 – 31 August 2013;

- (f) Agendas and minutes of the meetings of the Provincial Joints Structure during the period 1 January 2010 – 31 August 2013 insofar as they relate to Khayelitsha and/or the three Khayelitsha police stations;
 - (g) Reports and findings arising from any investigation relating to the incident referred to in Die Son on 27 and 28 January 2011;
 - (h) All books and/or documents relating to the manner in which resources were allocated to the three Khayelitsha police stations and resource constraints encountered affecting the work at the Khayelitsha police stations or any other police unit operating in Khayelitsha for the period 1 January 2008 – 31 August 2013;
 - (i) The respective RAG for the following police stations for the period 1 January 2008 – 31 August 2013 respectively: Durbanville; Sea Point; Camps Bay; Fish Hoek; Hanover Park; Nyanga; Grassy Park; Kensington; Mitchells Plain; Lingeletu West; Khayelitsha police station Site B; and Harare;
 - (j) The number of civil actions (and amount paid out by SAPS) in relation to civil claims instituted against SAPS provincially and in relation to the three Khayelitsha police stations or arising from a police unit operating in Khayelitsha for the period 1 January 2010 to 31 August 2013;
 - (k) Documents relating to meetings held by Minister of Police and/or the National Commissioner and/or the Provincial Commissioner of Police in Khayelitsha relating to policing in Khayelitsha during period 1 January 2010 to 31 August 2013;
 - (l) Documents relating to meetings of the President's Coordinating Council pertaining to policing in Khayelitsha for the period 1 January 2010 to 31 August 2013, including but not limited to any minutes taken in respect of the meetings;¹¹
 - (m) Documents relating to the SCOPA meeting of 22 August 2012 as referred to in paragraph 25 of the affidavit of Minister Mthethwa in case number 21600/12 before the Cape High Court;¹²
 - (n) Document relating to the meetings held between the National Commissioner of Police and the community of Khayelitsha (both personally and via their representatives on the Khayelitsha CPFs) during the period 1 January 2010 to 31 August 2013 including those to which reference was made in paragraph 5 of the National Commissioner's affidavit in case number 21600/12 before the Cape High Court.
- [7] In addition to the documents requested from SAPS set out above, the Commission requested other documents either before or during the course of the proceedings. These documents included information relating to the number, date, place and rank of SAPS members killed in Khayelitsha during the period 1 January 2010 – 31 August 2013 the annexures to the Task Team report; the minutes of Station Crime Combating Forums (SCCF) from each of the three police stations, as well as the minutes of the Cluster Crime Combating Forum (CCCCF); the number of juvenile victims of crime and arrested for crime; evidence of armed gangs in Khayelitsha and policing of gangs; records relating to all confirming sense of protection orders; details of designated domestic violence officers; station operational plans; crime threat analyses prepared in respect of the three police stations; a range of dockets, including those relating to most of the original complaints received by SJC and given to the Premier, those emanating from further complaints received both by the Commission and the complainant organisations, those relating to the charge sheets examined by the Commission, and those

11 The Commission did not persist with this request.

12 The Commission did not persist with this request.

relating to the investigation of a series of vigilante attacks, prepared by the Cluster Commander for the period 1 April – June 2012.¹³

- [8] SAPS responded to these requests by providing many of the documents requested, although not all of them, and not within the time-frames stipulated by the Commission, nor in one batch. Throughout the hearings in Phase One, there were repeated procedural discussions between the Commissioners and SAPS' legal representatives concerning outstanding documents. Indeed, some of the documents were only made available in the last days of the hearings held in Phase One. The late provision of information inevitably hampered, at times considerably, the work of both the Commission's Evidence Leaders and the legal representatives of the complainant organisations. The late supply of documents by SAPS was unfortunate and regrettable. Nevertheless, the Commission acknowledges that SAPS was requested to provide a vast amount of information. The Commission also records its gratitude to both Brigadier Solomons and Colonel Benting of the Provincial Inspectorate, who worked closely with Commission staff to ensure that many of the documents requested were made available.
- [9] A detailed index of the information obtained from SAPS is to be found in the Record.¹⁴ The Commission estimates that SAPS provided in excess of 50 000 pages of documents. In order to assist the Commission assess the information obtained from SAPS, the Commission was fortunate to obtain the assistance of Mr Glenn Schooling and Mr Martin Leamy, both former senior members of SAPS. Mr Schooling retired from SAPS in 2008, at which time he was serving as Deputy Provincial Commissioner in the Western Cape, responsible for Operations, with the rank of Major General. During his career, Mr Schooling also served as a station commissioner. Since his retirement he has remained involved with policing issues: he currently serves as a member of the Durbanville Community Police Forum and also as a member of the Civilian Oversight Committee of the Cape Town Metro Police, a civilian oversight body appointed in terms of section 64J of the SAPS Act.¹⁵ Mr Martin Leamy also retired in 2008 from SAPS. At the time he retired, he held the rank of Lieutenant Colonel and had more than 30 years of service in SAPS. His experience included serving as CSC Head and Acting Station Commander at Nyanga police station and Operational Commander at Phillipi police station.¹⁶

B. THE "SCHOOLING AND LEAMY REPORT"

- [10] Mr Schooling and Mr Leamy were provided with access to the documents that SAPS had provided to the Commission during the period December 2013 – January 2014 and asked to review and assess the documents in light of the Commission's mandate. Their written report is in the Record, and was circulated both to SAPS and the other parties to the Commission.¹⁷ It is referred to in this Report as the Schooling and Leamy report. In addition, Mr Schooling and Mr Leamy testified in the hearings held in Phase One.¹⁸ There is much of value and interest

13 Record Bundle 8(4), File 4.1, Item 3.23; see also Consolidated Indexes to the Record for SAPS which provides details of all the additional information provided. Record Bundle 13(1), File 1.4, File 11 contains letters requesting information from SAPS.

14 See the Consolidated Indexes to the Record for SAPS.

15 Mr Schooling's curriculum vitae is to be found at Record Bundle 9(1), File 1.1, Item 1A.

16 Mr Leamy's curriculum vitae is to be found at Record Bundle 9(1), File 1.1, Item 1B.

17 Record Bundle 9(1), File 1.1, Item 1.

18 Transcript at 2197 – 2351 (10 February 2014).

in the Schooling and Leamy report, but it is not possible to summarise it all here. Accordingly, we identify the key conclusions that are relevant to the mandate of the Commission.

- [11] It is important to note as well that the Schooling and Leamy report points out that not all the documentation requested by the Commission was furnished. In particular, most of the information provided by SAPS related only to the period ending 31 August 2012, not 31 August 2013. There were some important exceptions to this, particularly in relation to inspection reports prepared by the Provincial Inspectorate. It will become plain from the discussion of these inspection reports below, that they suggest there has not been a material change in the performance of three police stations since the end of August 2012. It should also be noted that during the preliminary hearing, SAPS' legal representatives were informed that if SAPS did not provide the documents for 2013, unless SAPS established otherwise, the Commission would presume that circumstances had not changed in the year between August 2012 and 2013.¹⁹ At no stage during the proceedings, did SAPS lead evidence to suggest that there had been a relevant and material change in circumstances at the police stations since August 2012. Finally, we note that in several cases, often with agreement of the Evidence Leaders, whilst SAPS made available voluminous documentation, the Commission only had regard to samples of the documents requested, particularly when the documents were bulky.²⁰ Again the Commission has proceeded on the presumption that the snapshot samples provided by SAPS provide an accurate reflection of the documents requested.

(a) Personnel at the three police stations – duty arrangements

- [12] One of the issues raised in the Schooling and Leamy report are the challenges created by what is referred to as “duty arrangements”. A duty arrangement arises when a member who is stationed at one police station (and part of the fixed establishment there) is seconded to another station or unit to perform duties there, but with no adjustment to the staffing levels at the station to which he or she is formally attached.²¹ Most duty arrangements appear to be at the instance of the Provincial Commissioner,²² which is consistent with the Provincial Commissioner's powers in terms of section 12(3) of the SAPS Act.²³ The Schooling and Leamy report suggests that the high level of duty arrangements in place at the three Khayelitsha police stations, at least in the period under review and based on the documents perused, may be impeding efficient performance at the three Khayelitsha police stations. The Report states that duty arrangements “interrupt planning” and have a detrimental effect on station service delivery.²⁴ The Report refers to a letter written by the Khayelitsha Site B station commander to the Provincial Commissioner in which he complains of a shortage of personnel, caused in part by the fact that 16 of his operational members have been deployed on “duty arrangements” elsewhere.²⁵ The report notes that 23 members of the Lingeletu West establishment are on duty arrangements elsewhere.²⁶

19 Transcript for the Preliminary Hearing, 25 November 2013, Record Bundle 2(1), File 1.3 at pp 123 – 124.

20 This was so particularly in relation to the Occurrence Books, the Information Books, the Domestic Violence Registers and the SAPS 15 documents.

21 Record Bundle 9(1), File 1.1, Item 1 at paras 55 – 57.

22 Id. at para 57.

23 See Chapter 5 above at para 5.

24 Record Bundle 9(1), File 1.1, Item 1 at paras 54 – 55.

25 Id.

26 Id. at para 63, and in respect of Site B, see para 74.1.

(b) Personnel – absenteeism

- [13] One of the issues that the Commission sought to investigate was the extent of absenteeism at the three police stations. SAPS generally considers any member who is not on duty to be “absent” even if there are legitimate reasons for the absence, such as the member attending a course, or being on leave, or sick leave.²⁷ It is in that sense that “absenteeism” is used in this report. This report will refer to absences, which appear to be without reason, as “unexplained absenteeism”. The Schooling and Leamy report concludes, on the basis of both the first-tier information provided to the Commission, particularly shift duty rosters (SAPS 15s), and on the second-tier information reflected in inspection reports, that periods of absenteeism and leave are not accurately recorded.²⁸ Nevertheless, the Report suggests that, particularly in the light of the SAPS 15s, the level of absenteeism at all three police stations appears to be high.²⁹ It is not possible for the Commission to assess accurately the extent of the problem of unexplained absenteeism at the three police stations, but it is noted that the testimony of the three police station commanders and a number of the inspection reports prepared by the Provincial Inspectorate also support a conclusion that there is an unexplained absenteeism problem.³⁰

(c) Personnel – evaluation of individual members

- [14] As described in Chapter 5, individual members of SAPS are evaluated using a Performance Enhancement Process (PEP). The PEP is updated quarterly, with results submitted to Provincial Office annually. An individual member’s PEP affects his or her annual pay increase, incentives and possible promotion. The Report notes that after a perusal of more than half the PEP documents provided for the end of 2011, that there were several incomplete documents. Moreover, most of the documents were not counter-signed. The Schooling and Leamy report therefore concludes that –

“The PEP is not being conducted efficiently by SAPS personnel and their managers at the three police stations. Most PEP documents are not correctly filled in and signed. Standards are not set, or are incomplete. Each assigned task (i.e. quality, quantity and time) is generally not clear.”³¹

The Report notes that a failure to complete PEP properly detrimentally affects members because of its impact on salary increments and promotions. The issue of performance evaluation is discussed again below.³²

(d) Personnel – discipline

- [15] The Schooling and Leamy report concludes, after examining the disciplinary records, that the disciplinary process at least at Khayelitsha Site B and Lingeletu West is not being conducted efficiently.³³ Moreover, disciplinary proceedings are characterised by long delays which as the report notes, “are worrisome as ... [it] does not instil confidence in the public

27 Task Team Report, Record Bundle 1(3), AL87 at para 10.2.1. See also the testimony of Brigadier Dladla at Transcript 3547 – 3548 (17 February 2014).

28 Record Bundle 9(1), File 1.1, Item 1 at paras 119 – 120.

29 Id. For Lingeletu West see para 121, for Site B see para 128, and for Harare see para 132.

30 Transcript at 4718 – 4778 (17 March 2014); 3547 (17 February 2014); 3736 (18 February 2014); 2946 – 2947 (13 February 2014).

31 Record Bundle 9(1), File 1.1, Item 1 at para 177.

32 Id. at para 176.

33 Id. at para 183 – 189.

that the SAPS disciplinary regime operates effectively.”³⁴ Whilst the Schooling and Leamy report do not discuss the disciplinary process at the Harare police station, it is apparent from the documentation provided³⁵ and the evidence of the Station Commanders that similar problems beset Harare.

(e) Personnel – criminal prosecutions

- [16] The report analyses the information provided concerning criminal prosecutions initiated against members of SAPS at two of the three police stations.³⁶ Between the year 2010/2011 and August 2012, there were 31 cases initiated against members of Lingeletu West.³⁷ Of these, there were six convictions, nine withdrawals, one nolle prosequi, 2 were concluded on the basis of a J534³⁸ and 13 are pending. Two of the convictions were for corruption. At Site B, in the period between 2010/2011 and 2013, there were 87 criminal prosecutions against members of SAPS. Of these, there appear to have been 3 convictions (one for corruption), 31 withdrawals, and 37 are pending.
- [17] The report also notes that, at least in relation to Khayelitsha Site B, there appears to have been fewer referrals to the ICD/IPID than there should have been in relation to these cases.³⁹

(f) Operational issues – sector policing

- [18] As set out in Chapter 5⁴⁰ and discussed below in Chapter 13,⁴¹ sector policing is now regulated by National Instruction 3/2013. In their report, Mr Schooling and Mr Leamy note that there are problems with sector policing in Khayelitsha. They note that an examination of the SAPS 15s indicates that at Lingeletu West and Khayelitsha Site B there are rarely shifts in which vehicles are allocated to each sector, because there are not enough SAPS members available to conduct the shifts.⁴² They also raised concerns about SAPS 15s reflecting that vehicles are being deployed with only one member, not two.

(g) Operational issues – docket management

- [19] The Schooling and Leamy report describes docket management at the three police stations as “highly problematic”.⁴³ The Report identifies incomplete investigations and the failure to bring dockets to court as the main problems, but it also points to outstanding forensic reports, including DNA, blood samples and post-mortem reports as contributing to the withdrawal of cases. The Report concludes that the DCCO and the detective supervisors and branch commanders are failing to manage dockets efficiently.
- [20] The Report also notes the very high number of dockets borne by individual detectives. The report notes that of the 50 detectives at Harare police station, 21 carried more than 200

34 Id. at para 189.

35 Record Bundle 3(3.30), File 3.

36 The authors were unable to analyse the information provided by Harare Police station.

37 Record Bundle 9(1), File 1.1, Item 1 at paras 191 – 197.

38 The J 534 written notice is used in cases of minor offences as one method of securing the presence of an accused at court proceedings and is coupled with the option of the payment of an admission of guilt fine.

39 Record Bundle 9(1), File 1.1, Item 1 at paras 201, 204, 207 and 209.

40 See Chapter 5 at para 35 and paras 86 – 87.

41 See Chapter 13 at paras 8 – 11.

42 Record Bundle 9(1), File 1.1, Item 1 at para 83 and 86.

43 Id. at para 95.

dockets each.⁴⁴ At Khayelitsha Site B, 14 detectives carried more than 100 dockets each, and two carried more than 200.⁴⁵ At Lingeletu West, 15 detectives are carrying more than 2994 dockets between them.⁴⁶ The report states that determining what is an acceptable number of dockets depends on the nature of the crimes being investigated. According to the report, “no detective should have to deal with more than 50 murders or rapes.”⁴⁷

- [21] A further problem identified in the report, is the increasing number of cases on hand particularly at two of the three police stations. The number grew at Lingeletu West from 2169 in 2010/2011 to 2994 at the end of August 2012;⁴⁸ and from 4909 at Harare in 2010/2011 to 5390 at the end of August 2012.⁴⁹ This growth in the backlog of cases is a serious problem, and is returned to later in this report.⁵⁰

(h) Cell management – release of detainees (SAPS 328s)

- [22] SAPS 328 is the form on which the release of suspects from detention is recorded. Mr Schooling and Mr Leamy examined the SAPS 328s requested from the three police stations. In their report, they conclude that –

“... a perusal of the SAPS 328s reveals that the period of 48 hours within which the SAPS has to detain and charge a suspect has been subject to abuse. The SAPS 328s are, generally, not being filled in correctly. Administratively, many mistakes are made ... in that too many cases are recorded without the actual time of detention or release being record. This may be in error or a deliberate ploy so that SAPS 328s do not reflect that persons are being detained for more than 48 hours.”⁵¹

The Report also notes that there is “a disproportionate number detained on a Thursday and released on a Monday, or detained for more than 48 hours.”⁵²

(i) Record-keeping – Occurrence Books, Information Books and Domestic Violence Registers

- [23] As mentioned in Chapter 5, the Occurrence Book is the most important register in a police station.⁵³ The Commission was provided with access to a large number of Occurrence Books from all three Khayelitsha police stations for the period 1 January 2010 to 31 August 2013. It was arranged that these could be inspected at the SAPS nodal office and copies made of extracts of them on request. Given the volume of Occurrence Books provided, the Evidence Leaders initially decided that one week of each year would be copied and considered.⁵⁴ Mr Schooling and Mr Leamy however advised that they needed to have access to extracts of one full month of Occurrence Books for each police station. The month of September 2012 was selected and the Occurrence Books for that period, where available, were copied

44 Id. at para 98.

45 Id. at para 99.

46 Id. at para 101 – 102.

47 Id. at para 99.

48 Id. at para 101.

49 Id. at para 110.

50 Id. at para 101.

51 Id. at para 212.

52 Id.

53 See Chapter 5 at para 76.

54 Record Bundle 3, File 3.2, Record Bundle 6(5), File 3.2.

and provided to Mr Schooling and Mr Leamy. After examination of the September 2012 Occurrence Book they concluded in relation that at Lingeletu West the Occurrence Book for September 2012 was well maintained; and that first and second-level inspections were done.⁵⁵ As far as Khayelitsha Site B is concerned,⁵⁶ they concluded that the Occurrence Book was reasonably well maintained, that first-level inspections are regularly done, but are not always of good quality. However they noted only one second-level inspection done in the month they inspected, which they viewed as insufficient.⁵⁷ In relation to Harare, the Report concludes that first-level inspections were poorly done and many registers did not appear to be looked at during inspections.⁵⁸ Moreover, “the closest thing to a second-level inspection is the Station Commander reading and checking the occurrence book occasionally. There is no indication that other registers are checked at second level.”⁵⁹

- [24] With reference to the samples of the Domestic Violence registers (SAPS 508b), Mr Schooling and Leamy concluded that there was a lack of control over the Domestic Violence registers, with the same errors being repeated, the registers were being incorrectly completed or simply left not completed and the procedural actions required under National Instruction 7/1999 are not being followed.⁶⁰

(j) Management issues – first- and second-level inspections

- [25] Mr Schooling and Mr Leamy considered oversight and monitoring at the different levels at SAPS. As described in Chapter 5 above,⁶¹ the commander of the relief shifts should ordinarily perform first-level inspections every 24 hours to ensure that all registers and dockets have been properly completed; and second-level inspections should be performed either by the station commander or the VISPOL commander at least once a week to ensure that the first-level inspections have been done. In addition there should be some inspections conducted by the cluster command, SAPS provincial office and the Provincial Inspectorate. The report concludes in respect of Khayelitsha Site B that first and second-level inspections are “either not being conducted by the responsible commanders, or the quality of the inspections is not of an adequate level” to rectify errors;⁶² and at Lingeletu West, that there is “a clear pattern of failing to sufficiently and regularly complete first and second-level inspections”.⁶³ The Schooling and Leamy report reached a similar conclusion in relation to Harare.⁶⁴

(k) Station performance evaluation

- [26] The Schooling and Leamy report analysed both the station performance evaluation of the three police stations for 2010 and 2011, as well as the ranking of three Khayelitsha police stations relative to other police stations in the Western Cape.⁶⁵ The ranking is done on the

55 Record Bundle 9(1), File 1.1, Item 1 at para 232.

56 See the detailed analysis produced by Mr Schooling and Mr Leamy of the Site B Occurrence Book for September 2012, at Record Bundle 9(1) File 1.1, Item 1F.

57 Record Bundle 9(1), File 1.1, Item 1 at para 231.

58 Id. at para 233.3.

59 Id. at para 233.4.

60 Record Bundle 9(1), File 1.1, Item 1 at paras 238 – 241.

61 See Chapter 5 above at para 43 – 49.

62 Record Bundle 9(1), File 1.1, Item 1 at para 225.

63 Id. at para 223.

64 Id. at para 284.

65 Id. at paras 152 – 167. For the original data provided to the Commission, see Record Bundle 3, File 3.31.

EUPOLSA index.⁶⁶ The report notes that the Lingeletu West overall score for the 2010/2011 year was 60.64%, at which time its ranking was 93rd out of the 149 stations in the Western Cape; in 2011/2012 its overall score was 60.54% and its provincial ranking dropped to 120th; in the first half of 2012 (ending September 2012) its score was 61.44% and its ranking improved to 103rd. In the 2010/2011 year, Khayelitsha Site B scored 67.57%, and was ranked 50th in the Western Cape; in 2011/2012, it scored 64.9% and dropped to 93rd; and in the first half of 2012, it scored 64.78% and improved its ranking to 77th. In 2010/2011 Harare scored 60.17% in 2011, and was ranked 98th, in 2011/2012, it scored 56.45% and was ranked 135th; in the first half of 2012, it scored 60.11% and its ranking was 111th.⁶⁷

- [27] The Commission observes two aspects of the relative rankings that should be noted: First, all three stations have in a relatively short space of time shifted in their relative rankings quite noticeably, both positively and negatively. So, for example, Site B ranked 50th out of 149 police stations in the Western Cape at the end of the 2010/2011 year, but it dropped 43 places (that is a third of the way down the rankings) one year later at the end of the 2011/2012 year. Just six months later it had climbed 16 places to 77th. Secondly, significant shifts in ranking can take place even if the actual percentage score achieved by the station does not vary much, so Lingeletu West dropped from 93rd to 120th from 2010/2011 to 2011/2012, but its score barely changed (from 60.65% to 60.54%). It was explained to the Commission that this is because the ranking is a comparative ranking of relative performance: that is if one station improves a little, but all the others improve a lot, even if their overall scores are less than yours, you will be behind them in the rankings. Similarly, if its ranking drops significantly, but so do other police stations it may not drop in the rankings. Indeed Brigadier Heilbron told the Commission that the issue of dropping the use of comparative rankings is under discussion in the Office of the Provincial Commissioner.⁶⁸ The use to which such comparative relative rankings should be put is also discussed below.

(I) Role of Cluster office

- [28] The Schooling and Leamy report noted the extensive periods of leave taken by the Cluster Commander during 2012 and 2013.⁶⁹ For the past few years the post of Cluster Commander has for the most part been occupied by acting appointments. During the hearings, the Commission learnt that the former Cluster Commander had been ill, and was transferred after only having served a short period. At the time of writing this report, the Commission has learnt through the press that a new Cluster Commander has been appointed to the Khayelitsha Cluster.
- [29] The Schooling and Leamy report also refers to a report prepared at cluster-level dealing with the issue of vigilante violence in Khayelitsha. The Report is a digest of dockets opened between 1 April 2011 and 30 June 2012 in Khayelitsha concerning cases of community assaults or killings of people perceived to have committed crimes. This report was referred to in the Task Team report, as the “Bundu Court” report.⁷⁰ In their report, Mr Schooling and Mr Leamy note that “it is an indication that the Cluster Commander was seriously concerned with increasing vigilantism/Bundu courts in Khayelitsha.”⁷¹

⁶⁶ See description of the EUPOLSA index at Chapter 5 above at paras 43 – 49.

⁶⁷ Record Bundle 9(1), File 1.1, Item 1 at para 165.

⁶⁸ Transcript at 5720 (26 March 2014).

⁶⁹ Id. at para 256.

⁷⁰ Record Bundle 8(4), File 1, Item 3.23.

⁷¹ Record Bundle 9(1), File 1.1, Item 1 at para 272.

(m) Conclusion

- [30] Mr Schooling and Mr Leamy concluded their report by saying that there is inadequate and inefficient training of SAPS members, especially detectives, but also of VISPOL members in relation to domestic violence registers. Finally they note –

“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 overall picture of the greater Khayelitsha area If the basic inspections are not run correctly, this will handicap the SAPS from carrying out their basic crime prevention duties ...”.⁷²

C. THE TASK TEAM REPORT

- [31] As explained in Chapter 1,⁷³ the Task Team Report⁷⁴ was prepared at the request of the National Commissioner following her receipt of the complaint made by the complainant organisation. The team was appointed by the late Lieutenant General Tshabalala, and headed by Major General Rapudi. Brigadier Van Zyl, who was one of the members of the Task Team, testified before the Commission.⁷⁵ Brigadier Van Zyl told the Commission that the Task Team was established on or about 3 July 2012⁷⁶ and comprised Major General Rapudi, Brigadier Rossouw and Brigadier Van Zyl.⁷⁷
- [32] The Task Team consulted the SAPS provincial management, including Lieutenant General Lamoer on 5 July 2012. According to Brigadier Van Zyl, at that meeting, Lieutenant General Lamoer encouraged them to look more broadly at “service delivery as a whole” in the three police stations.⁷⁸ Between 9 and 13 July 2012, the Task Team conducted inspections of the three police stations, and also analysed previous inspection reports. However, Brigadier Van Zyl emphasised that the Task Team report should not be seen as an “inspection report,” as it was not conducted in terms of Standing Order 6 (General)⁷⁹, but rather as the investigation of a complaint,⁸⁰ or as “a fact-finding mission”.⁸¹
- [33] The Task Team met with the complainant organisations on 11 July 2012, finding them co-operative, open and willing to discuss the issues⁸² (in contrast to the comment in the Provincial Commissioner’s report of 7 June 2012 that the complainant organisations had not been willing to attend a meeting),⁸³ and described the meeting as “very fruitful”.⁸⁴ The Task Team also consulted the chairpersons of the CPFs of the three police stations, as well

72 Id. at 284.

73 See Chapter 1 above at para 2.

74 The Task Team Report is contained in the High Court Record, Record Bundle 1(3), AL 87, pp 684 – 710.

75 Transcript at 4859 – 4947 (18 March 2014). See also Brigadier van Zyl’s Statement, Record Bundle 11(3), File 3.1, Item 25.

76 Transcript at 4861 – 4862 (18 March 2014).

77 Id. at 4863.

78 Id. at 4864.

79 Record Bundle 3 (3.22), File 3(1), SO General, Standing Orders 001 – 101, Item 89.

80 Transcript at 4868 (18 March 2014).

81 Id. at 4889 – 4901.

82 Record Bundle 1(3), AL87, pp 685 – 710 at para 2.3.

83 Record Bundle 1(3), AL48A at pp 488 – 494 at paras 8 and 12.

84 Record Bundle 1(3), AL87 at para 2.4.

as representatives of other community organisations. Mr Bregman also testified that the meeting with the Task Team was a ‘positive experience’.⁸⁵

- [34] The Task Team Report notes that Free Gender withdrew from the complaint “as they opted to establish a dialogue with the Cluster Commander, Detective Service, Khayelitsha.” This act, in the view of the authors of the Report, “confirms why partnerships between specific role players in the community and the SAPS is considered to be a fundamental requirement for effective policing”.⁸⁶ The report continued –

“it is of fundamental importance to acknowledge that the community is still reaching out to the SAPS and has a dire need to forge mutually beneficial partnerships. As community participation and support is a cornerstone of the philosophy of community oriented policing, SAPS should embrace the opportunity created by the complaint to reach out to the community.”⁸⁷

- [35] Having met the CPFs in Khayelitsha, the Report concluded that, “the contribution that the CPFs are making to improve police-community relationships in the Khayelitsha area “is questionable, primarily because of lack of participation by representatives of all community structures and inadequate involvement in community projects ... launched by SAPS.”⁸⁸ The Report pointed to a poor relationship between the Khayelitsha Site B police station and its CPF, as well as problems with the Harare CPF.⁸⁹ It noted that the Lingeletu West CPF was functioning better. The Report also expressed concern at the fact that SAPS did not attend the Khayelitsha Safety Seminar on 7 July 2012 that had been jointly organised by the CPFs.⁹⁰ According to the Report, the CPFs were opposed to the complainant organisations, because they comprised people “not residing in the area” and instead, the CPFs supported the Khayelitsha Development Forum (the KDF).⁹¹
- [36] The Report states that sector policing is not being properly implemented at all three police stations because of a shortage of personnel. It noted that at Khayelitsha Site B, one vehicle often covers two sectors. “This has a negative impact on both the visibility of police presence in the sectors as well as on reaction time to attend to complaints.”⁹² In his testimony, Brigadier Van Zyl stated that absenteeism at the three stations was “very high”; “if you visit a station you will find that more or less 30% of the personnel that is supposed to be there are not there”,⁹³ but he added that there are many legitimate reasons for the absenteeism.⁹⁴
- [37] The Report criticised the manner in which dockets are opened at the CSCs at all three police stations. The procedure that is followed involves a complainant making a preliminary statement at the CSC, then being referred to the Detective Service Centre (DSC), what used to be referred to as “the Crime Office”, for an interview with a detective to “verify” whether all the elements of the crime have been established. Then the complainant is referred back to the CSC where a docket will be opened. Then the complainant is referred back to the DSC to be dealt with by the same detective. The report referred to this procedure as being sent “from

85 Id. Transcript at 2423 – 2424 (11 February 2014).

86 Id. at para 3.3. See also discussion in Chapter 1 above at footnote 1.

87 Record Bundle 1(3), AL87 at para 3.6.

88 Id. at para 6.2.

89 Id. at para 6.4 and 6.6.

90 Id. at para 6.7.

91 Id. at para 6.10

92 Id. at para 7.1.

93 Transcript at 4895 – 4896 (18 March 2014).

94 Id. at 4896.

Figure 11: A football field in Enkanini visited by the Commission where community members said vengeance murders often taken place



pillar to post”, and noted that it was inconsistent with the procedure prescribed in National Instruction 3/2011, in particular, paras 2(1)(a) – (c), and paras 3(1) – (4) of the Instruction.⁹⁵

- [38] The Report also noted that not all complaints received from Radio Control (10111) are referred to patrol vehicles. Complaints received should immediately be captured on the Incident Report System, but the Task Team found that sometimes incidents are only captured after the complaint has been attended, and also found that the Occurrence Book does not reflect all complaints received. The Report concludes that “[t]he data integrity of the police reaction time as indicated by the Performance Chart is thus questionable owing to the poor record-keeping of the complaints received”.⁹⁶ Indeed, in his testimony, Brigadier Van Zyl suggested that the manner in which the 10111 complaints were recorded might have been to “improve reaction time” for record purposes.⁹⁷

- [39] As to arrest and detention of suspects, the Report commented that –

“the large numbers of suspects that are detained, not charged and then later ... released on a SAPS 328 is however of concern.... [and] creates the impression that members are arresting and detaining suspects without the prerequisite of a reasonable suspicion that the suspects committed the crime in question, exist.”⁹⁸

The Report also notes that arrests appear to be inflated, in order to improve performance on the Performance Chart, with charges then withdrawn by the Prosecutor.⁹⁹

⁹⁵ Record Bundle 1(3), AL87 at para 8.1.4. National Instruction 3/2011 is annexed to the Affidavit of Dr van Eyk Record Bundle 12(1), Item 6j.

⁹⁶ Record Bundle 1(3), AL87 at para 8.2.3.

⁹⁷ Transcript at 4920 (18 March 2014).

⁹⁸ Record Bundle 1(3), AL87 at para 8.3.2

⁹⁹ Id. at para 8.7.1.

- [40] Given that many of the complaints raised by the complainant organisations related to the quality of detective work, the Task Team examined the quality of dockets at the police stations. The Task Team concluded in its report that investigation by detectives “does not result in any extraordinary achievements or successes. Very little impact is made on serious crimes such as armed robberies and housebreakings.”¹⁰⁰ The Team’s examination of archived dockets established the following trends –
- Witness statements are not obtained before dockets are sent to court, which results in charges being withdrawn;
 - Case dockets are closed without the circulation of the serial numbers of stolen property;
 - Exhibits are not disposed of when dockets are closed;
 - Cases are withdrawn because there are no statements from arresting officers in the docket;
 - Cases are withdrawn because witnesses have not been summonsed;
 - Crime scene experts are not always summoned to crime scenes;
 - Dockets are closed without LCRC reports being received; and
 - SAPS 69 (fingerprints) were not completed and sent to the LCRC.¹⁰¹
- [41] The Task Team also investigated the disciplinary records of members of SAPS at the three police stations. One of the most worrying conclusions contained in the report is the following –
- “An analysis of the disciplinary steps taken since January 2011 against employees attached to the three police stations ... revealed that a large number of members are subjected to disciplinary steps, some members even repeatedly. This also indicates that, notwithstanding steps taken against employees, it does not seem to have a positive effect on the discipline as the non-compliance to departmental directives and procedures seems to continue. It also does not serve as a deterrent or remedial measure to address poor discipline and incidents of misconduct.”¹⁰²
- [42] The report records that between January 2011 – June 2012, 429 members had been disciplined at Khayelitsha Site B, which the report said “is extremely high”.¹⁰³ In the same period at Harare, 281 members were disciplined, and at Lingeletu West, 312 members.¹⁰⁴
- [43] The Task Team also looked at the number of complaints against members at the three police stations, and noted, worryingly, that the number of complaints lodged had increased in 2012 over 2011. At Khayelitsha Site B, 15 complaints were lodged in 2011, and 16 were lodged in the first 6 months of 2012; at Harare, there were 21 complaints during 2011, and 21 in the first half of 2012; and at Lingeletu West, there were 18 in 2011, followed by 10 in the first half of 2012. A high proportion of the complaints related to negligence or misconduct.¹⁰⁵
- [44] The Report also states that the buildings at the three police stations do not provide adequate accommodation. It concludes that the shortage of space does not seem to have a direct influence on service delivery; nevertheless it “might have an indirect effect on service delivery because of poor self-esteem, low morale and a negative attitude of the police personnel.”¹⁰⁶

¹⁰⁰ Id. at para 8.4.2.

¹⁰¹ Id. at para 8.4.4.

¹⁰² Id. at para 9.2.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id. at para 9.3.1

¹⁰⁶ Id. at para 10.4.4. See also the testimony of Brigadier Van Zyl on this issue at Transcript at 4884 – 4886 (18 March 2014).

- [45] The Task Team concluded, in somewhat of a circumlocution, that the SAPS “cannot claim that the services that are rendered to the community in Khayelitsha is of such a standard that the community does not have any reason for complaining,”¹⁰⁷ but also said it would be unreasonable to say there was a total breakdown in police–community relations. It found that SAPS was performing its “core function”.¹⁰⁸ Indeed in his testimony, Brigadier Van Zyl said “the same shortcomings identified at [the three police] stations is also prevalent at other stations”.¹⁰⁹ He also described the problems at three police stations, as being problems of “basic policing”¹¹⁰ and “not so serious”.¹¹¹
- [46] The Task Team made a range of recommendations, including –
- that a need assessment by SAPS Employment Health and Wellness Psychological Services (EHW) be performed to enhance employee wellness.¹¹²
 - That feedback be provided to the individual complainants;¹¹³
 - That a seminar be arranged with the National Commissioner and relevant community leaders to improve the CPFs and establish partnerships with the community;¹¹⁴
 - That regular community surveys be performed to determine the level of service from SAPS experienced by the community.¹¹⁵
- [47] In his testimony, Brigadier Van Zyl stated that the third and fourth of the above recommendations had not been carried out, to his knowledge. He thought the reason for that was “that events overtook this whole exercise”.¹¹⁶ Even though the Task Team report was annexed to the affidavit of Lieutenant General Lamoer in the High Court proceedings, it emerged during the evidence in the first phase of the Commission’s proceedings that senior management of the Khayelitsha police stations (Station Commanders and Detective Commanders) had been provided with a copy of the Task Team report for the first time on the eve of giving evidence to the Commission.

D. INSPECTION REPORTS

- [48] SAPS Standing Order 6 regulates the conduct of inspections by the Provincial, and National, Inspectorate.¹¹⁷ It establishes the Inspectorate as a Division of SAPS,¹¹⁸ defines an inspection as “a process by which compliance with legislation, departmental directives, instructions, policies and procedures is monitored by employees attached to the Inspectorate...”¹¹⁹ and provides that the Provincial Head of the Inspectorate reports to the Provincial Commissioner.¹²⁰ The reports provided to the Commission were nearly all prepared by the Provincial Inspectorate. The Standing Order provides that all reports prepared by the Provincial Inspectorate must be

107 Record Bundle 1(3), AL87 at para 11.1.

108 Id. at para 11.2.

109 Transcript at 4871 (18 March 2014).

110 Id. at 4887.

111 Id. at 4891.

112 Record Bundle 1(3), AL87 at para 11.7.2.

113 Id. at para 11.7.3.

114 Id. at para 11.7.4.

115 Id. at para 11.7.5.

116 Transcript at 4888 – 4889 (18 March 2014).

117 For the text of the Standing Order, see Record Bundle 3(3.22). File 3, ‘File 1’, Item 89.

118 Id. at para 3.

119 Id. at para 2.

120 Id. at para 3(3).

approved by the Provincial Head of the Inspectorate¹²¹ and then submitted to the Provincial Commissioner. Upon receipt of an inspection report, the Provincial Commissioner must “ensure the implementation of suitable remedial measures to address negative trends identified”¹²² and “ensure the implementation of identified best practices ... to enhance the rendering of an effective and efficient service delivery”.¹²³

- [49] In most cases, notice will be given of inspections, unless the Provincial Head deems it necessary to perform an unannounced inspection.¹²⁴ During an inspection, an employee of the Inspectorate may access any information or facility under the control of the commander of the unit being inspected, may call upon any member to provide a full account of his actions and may request assistance from the unit, which may not, without good reason, be refused,¹²⁵ although the standing order does provide that inspections should be conducted in a manner that causes as little disruption as possible.¹²⁶
- [50] The Commission requested the station commanders of the three Khayelitsha police stations to provide copies of inspection reports prepared by the National or Provincial Inspectorate in relation to their police stations in the period 1 January 2010 – 31 August 2013. The Commission was provided with the following reports of inspections conducted by the Provincial Inspectorate –
- An inspection of Khayelitsha Site B conducted by the Provincial Inspectorate from 29 August – 2 September 2011;¹²⁷
 - An inspection of Khayelitsha Site B conducted by the Provincial Inspectorate from 13 – 17 August 2012;¹²⁸
 - An inspection of Harare conducted by the Provincial Inspectorate from 13 – 15 September 2011;¹²⁹
 - An inspection of Harare conducted by the Provincial Inspectorate from 13 – 17 August 2012;¹³⁰ and
 - An inspection of Lingeletu West conducted by the Provincial Inspectorate from 2 – 5 August 2011.¹³¹
- [51] Finally, the Commission was informed that there had been a series of inspections of six “poor-performing” stations in the Western Cape between September 2013 and January 2014. The six stations were chosen on the basis of their high rates of contact crime,¹³² and included the three Khayelitsha police stations. The inspection reports received in respect of the three police stations were –
- An inspection of Lingeletu West in terms of Project 6 conducted from 10 – 16 September 2013;¹³³

121 Id. at para 7.

122 Id. at para 5(2)(a).

123 Id. at para 5(2)(b).

124 Id. at para 6(1).

125 Id. at para 6(3).

126 Id. at para 6(4).

127 Record Bundle 3(3.30), File 1, Item 2.

128 Record Bundle 3(3.30), File 1, Item 4.

129 Record Bundle 3(3.30), File 3, Item 3.

130 Record Bundle 3(3.30), File 3, Item 1.

131 Record Bundle 3 (3.30), File 2, Item 3.

132 See the testimony of Colonel Reitz, station commander of the Lingeletu West police station, Transcript at 2919 (13 February 2014).

133 Exhibit MR 1, Record Bundle 10(3), Item 24.

- A follow up inspection at Lingeletu West in terms of Project 6 conducted from 10 – 17 October 2013;¹³⁴
- A further follow up inspection at Lingeletu West in terms of Project 6 conducted on 13 January 2014;¹³⁵
- An inspection of Khayelitsha Site B in terms of Project 6 conducted from 10 – 16 September 2013;¹³⁶
- A follow up inspection of Khayelitsha Site B in terms of Project 6 conducted on 10 January 2014;¹³⁷
- An inspection of Harare in terms of Project 6 conducted from 10 – 16 September 2013;¹³⁸
- A follow-up inspection of Harare in terms of Project 6 conducted from 10 – 17 October 2013;¹³⁹
- A second follow-up inspection of Harare in terms of Project 6 conducted on 14 January 2014.¹⁴⁰

- [52] When an inspection report has been provided to a station commander, he or she is given an opportunity to respond, and the Commission was provided with copies of these responses, in some cases, as well.¹⁴¹ During the evidence of Colonel Wiese, the Khayelitsha cluster detective co-ordinator, she also provided the Commission with a response she prepared to the docket analysis contained in the Project 6 reports of September 2013.¹⁴²
- [53] It is not possible to describe the contents of all these reports. The inspection reports mentioned listed in paragraph 50 are more detailed and comprehensive in their approach than those referred to in paragraph 51, although they do not follow a uniform approach. Issues examined include sector policing, the maintenance of registers in the CSC, operations such as road blocks and patrols, the management of dockets by detectives, human resource issues, such as absenteeism, discipline management, as well as partnerships with CPFs and Neighbourhood Watches. The Commission wishes briefly to highlight some of the issues of primary concern that emerge from the inspection reports.
- [54] An inspection of Lingeletu West was conducted in August 2011.¹⁴³ The report of that inspection notes that job descriptions had not been completed in respect of 96 of the 172 SAPS members at the station for the purposes of the performance evaluation system and no reason was provided for this shortcoming by the station management.¹⁴⁴ It also found that disciplinary processes were not being promptly completed.¹⁴⁵ Some cases that had arisen in 2008 were still outstanding, more than three years later.¹⁴⁶ The report also notes that not all

134 Exhibit MR2, Record Bundle 10(3), Item 25.

135 Exhibit MR3, Record Bundle 10(3), Item 26.

136 Record Bundle 13(2), Item 12.13.

137 Exhibit, Record Bundle 13(2), Item 12.12.

138 Exhibit, Record Bundle 13(2), Item 12.18.

139 Exhibit, Record Bundle 13(2), Item 12.16.

140 Exhibit, Record Bundle 13(2), Item 12.15.

141 Lingeletu West Station Commander Response to August 2008 inspection Record Bundle 3(3.30), File 2, Item 1, pp 97 – 113; Lingeletu West Station Commander Response to August 2011 inspection Record Bundle 3(3.30), File 2, Item 4, pp 174 – 190; Lingeletu West Station Commander response to Performance audit May 2012 Record Bundle 3(3.30), File 2, Item 6, pp 257 – 322; Harare Station Commander's response to September 2011 inspection Record Bundle 3(3.30), File 3, Item 4, pp 384 – 412; Khayelitsha Station Commander response to September 2011 inspection Record Bundle 3(3.30), File 1, Item 1, pp 1 – 19; Khayelitsha station commander response to August 2012 inspection Record Bundle 3(3.30), File 1, Item 3, pp 54 – 65.

142 Exhibit AW1, Record Bundle 11(5), Item 52, dated 20 November 2013. See also Transcript at 5015ff (24 March 2014).

143 Record Bundle 3(3.30), File 2, Item 3.

144 Id. At para 3.2.1.

145 Id. At para 3.3.1.

146 Id.

periods of absence are recorded properly on PERSAP, and first- and second-level inspections of attendance registers are not being properly conducted.¹⁴⁷ A range of shortcomings were identified in the keeping of registers in the CSC.¹⁴⁸ It was also noted that reported crime levels had not dropped, which produced a risk of vigilante action, bundu courts and a “lack of trust in the police”.¹⁴⁹ An inspection of dockets found that the instructions of prosecutors were not followed in some cases, and that in other cases, charges had been withdrawn because of outstanding “chain of evidence” statements.¹⁵⁰ Moreover, the report noted that there is no indication in the dockets inspected as to how often feedback is given to complainants.¹⁵¹

- [55] An inspection was conducted at Khayelitsha Site B police station in August 2012. The inspection report noted, in respect of partnership policing, that there were no minutes for the CPF meetings for the months of May and June 2012, that sector forum members were not attending CPF meetings and that the station’s relationship with the CPF was “a poor partnership”.¹⁵² The Inspectorate recommended that the relationship with the CPF be improved and that minutes of CPF meetings be filed for inspection purposes.¹⁵³ However, in the Group 6 inspection that took place just over a year later, in September 2013, the report states that there was no proof of partnership policing between April and June 2013, and there were no minutes or files available.¹⁵⁴ The August 2012 report identified a range of shortcomings with detective services,¹⁵⁵ including non-compliance by investigating officers with instructions of supervising officers, as well as non-compliance with prosecutor’s instructions, dockets that could not be located, “prolonged” investigations, and poor guidance by supervising officers.
- [56] An inspection was also conducted at Harare in 2012 and the report notes with concern the number of members that form part of the establishment of Harare but are not stationed there but elsewhere on the basis of “duty arrangements”.¹⁵⁶ According to the report, Harare has been allocated 113 members for their Visible Policing component, but it actually had (at the date of the report) 102 members, a shortfall of 11, or 10%. In relation to detectives, Harare was allocated 54, but only had 35, a shortfall of 19, which is more than a third, something the report describes as “a huge shortage”.¹⁵⁷ The same report noted that there had been 24 detectives disciplined during 2011 (remembering that there are in fact only 35 detectives at Harare), of whom 18 were disciplined for failing to attend post-mortems.¹⁵⁸ The report also notes that all the detectives were rated as a “3” on the personnel evaluation system, a matter to which we will return later in this report.¹⁵⁹ The report also noted the shortage of informers, commenting that only just over 12.5% of the annual budget for informers had been spent.¹⁶⁰ Most importantly, however, the Report drew attention to the poor quality of crime investigation by detectives, as evidenced in a review of 93 dockets.¹⁶¹ A wide range of problems was identified including poor and incomplete investigation, matters

147 Id. at 3.5.1.

148 Id. at 5.1 – 5.9.

149 Id. at 5.17.13.

150 Id. at 7.10.

151 Id. at 7.11.

152 Record Bundle 3(3.30), File 1, Item 4 at para 2.1.

153 Record Bundle 13(2), Item 12.3 at para 3.1.

154 Id. at para 2.11.1 and 2.11.2.

155 Record Bundle 3(3.30), File 1, Item 4 at para 16.

156 For a discussion of duty arrangements, see para 12 above.

157 Record Bundle 3(3.30), File 3, Item 1 at para 2.7.

158 Id. at para 4.1.

159 Id. at para 4.2.

160 Id. at para 3.22.

161 Id. at paras 4.3 - 4.8.

withdrawn because of “long-outstanding” blood reports, no attempts to execute warrants of arrest, and no circulation/notification to other police stations of warrants of arrest, and incomplete statements in the docket. Moreover the report noted that cases are “dragged” out by investigating officers who do not attend to queries made by prosecutors. The report commented that the number of undetected and withdrawn cases concerning contact crimes is a “concern”.¹⁶²

[57] In September 2013, Harare was selected, together with Khayelitsha Site B and Lingeletu West as part of a group of six police stations in the province with high contact crime rates and subjected to inspection. The focus of the inspection reports in Project 6 is partnership policing and the detective service. A total of 100 dockets that had been struck from the court roll were perused at Harare and the following shortcomings were identified –

- Prosecutor’s instructions not complied with over several months;
- The constant failure of investigating officers to implement instructions of inspecting officers;
- The failure to hold identification parades;
- The failure to execute warrants of arrest, and to circulate them;
- No confirmation by investigating officer of availability of complainant and witnesses;
- Monthly inspections of dockets not conducted as prescribed;
- “Brought forward” dates not adhered to;
- Investigative aids not used promptly, e.g. ID kits, informers;
- Proper guidance by supervising officer not provided;
- Cases withdrawn due to incomplete investigation.¹⁶³

[58] The report concluded that these shortcomings were due to “improper command and control” arising from inadequate disciplinary measures taken against members for non-compliance with instructions; the absence of “court-ready” certificates in dockets; no compliance by supervising officers with the “brought-forward” diarising system; and the adoption of a “fire-fighting” approach to investigations where only new cases were investigated, or cases where complaints were made.¹⁶⁴ The report concluded by saying that: “the non-compliance with instructions of the prosecutors and officers results in cases being struck from the court roll and borders on ‘defeating the ends of justice’”¹⁶⁵ and urged Provincial management to take serious action against those who repeatedly failed to comply with instructions as they “tarnish the image of SAPS while earning a salary.”¹⁶⁶

[59] The September 2013 Group 6 report in respect of Khayelitsha Site B also reported on the inspection of 100 case dockets and the report reached the same conclusions that it had reached in respect of Harare, as set out above. The Project 6 survey of Lingeletu West, which was also conducted in September 2013, also examined 100 dockets and reached the same conclusions in respect of that Detective Branch as well.¹⁶⁷

[60] Whilst SAPS provided these reports, the officers who conducted the inspections were not called to provide evidence. However, one can sense from the strong language used in the report, the exasperation of the officers conducting the inspection. Like those officers, the

¹⁶² Id. at para 4.9.

¹⁶³ Record Bundle 13(2), Item 12.18 at 3.4.

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Record Bundle 13(2), Item 12.13, at para 3.4.

Commission is deeply concerned by what appears to be an inability to correct errors identified in successive inspection reports at all three police stations in Khayelitsha.

- [61] The Commission concludes that the system of inspections undertaken by the Provincial Inspectorate in terms of Standing Order 6 is an extremely valuable method of oversight and management of police stations. It is noted, in this regard, that Mr Schooling and Mr Leamy were of the view that the inspections had been competently performed at all three police stations. The worrying issue for the Commission is the fact that despite the fact that problems are identified in inspection reports, including serious staffing shortcomings caused by duty arrangements, these problems do not seem to be resolved by station management nor does there appear to have been any cluster or provincial management intervention subsequent to the Inspectorate Reports being furnished to the Provincial Commissioner. The Commission accepts that one cannot expect police stations to be “perfect”, but the purpose of conducting inspections is, as Standing Order 6 makes clear, to “ensure the implementation of suitable remedial measures to address negative trends identified during evaluations”¹⁶⁸ and the Provincial Commissioner is tasked with ensuring that this happens. A careful consideration of the inspection reports provided by SAPS that have been conducted in respect of the three police stations suggests that the problem lies, not in the failure to identify shortcomings, but in the failure to rectify them. Again, this is a matter to which we shall turn later in this report.

E. SAPS INTERNAL AUDIT REPORTS

- [62] In addition to the inspection reports prepared by the Provincial Inspectorate, the Commission was provided with three internal audit reports, two in respect of Lingeletu West in 2011 and 2012,¹⁶⁹ and one in respect of Khayelitsha Site B.¹⁷⁰ Internal Audits are conducted in accordance with the Internal Audit Plan for each year. The two Lingeletu West audits examined nine police stations in eight provinces and one Public Order Policing Unit. They focussed on Visible Policing and Operational Response. Because of the narrowness of their focus, and the breadth of the stations examined, they will not be considered further in this report.
- [63] It will be useful to consider the internal audit report in respect of Khayelitsha Site B dated 29 August 2013 in a little more detail. No similar report exists in respect of either the Harare or Lingeletu West police station. It was provided to the Commission on the very last day of the hearings, after the Evidence Leaders had noticed a reference to it in the statement of Brigadier Green and requested the report.¹⁷¹ It had not been made available to the Commission when the Station Commander for Khayelitsha Site B gave evidence. He did not mention the audit report during his evidence, though it is evident from the report that he had responded to its findings. According to the internal audit report, the purpose of the Internal Audit is to determine “all applicable strategic and operational risks in relation to VISPOL, Detective

¹⁶⁸ Record Bundle 3(3.22), File 3, File 1, Item 89, at para 5(2)(a).

¹⁶⁹ Record Bundle 3(3.30), File 2, Items 5 and 6; and 257 – 302. Both these reports are composite in the sense that they cover more than one police station. Both focussed on Visible Policing, and Operational Response, in respect of nine police stations (Meadowlands in Gauteng, Mfuleni and Lingeletu West in the Western Cape, Jozini in KwaZulu-Natal, Moakeng in the Free State, Klerksdorp in the North West, Bushbuckridge in Mpumalanga, Rosedale in the Northern Cape and Botlokwa in Limpopo as well as the Public Order Policing Unit in uThukela, KwaZulu-Natal (see Item 5 at para 1.4; Item 1.6 at para 1.4).

¹⁷⁰ Exhibit AL3, Record Bundle 11(5), Item 87.

¹⁷¹ Brigadier Green’s statement is at Record Bundle 5(4), File 3, pp 194 – 199, at para 4; Record Bundle 13(1), File 1.4, File 11, Item 70.

Service, Support Service and Crime Intelligence” at the relevant police station.¹⁷² Internal audit has a three-fold category for its ratings: Effective, Some/Major improvement needed and Unsatisfactory. Khayelitsha Site B was rated in the middle category “Some/Major improvement needed”.¹⁷³ Each area that is examined is assessed either as Critical (material and could severely impair ability to continue operations – action to be taken immediately); Significant (may be material in accomplishing objectives – corrective action to be taken in 6 – 12 months); or Housekeeping (immaterial to objectives, should be resolved in due course).¹⁷⁴

- [64] The Internal Audit report identified several risks as “critical” including, inadequate safeguarding of case dockets, as they are kept in park homes that are not always locked, so dockets are unattended;¹⁷⁵ inadequate investigation of serious crime (murder), which may compromise SAPS’ image;¹⁷⁶ and access control to the main entrance is not properly controlled, which creates a risk of unauthorised access and risk to safety of SAPS members at the station.¹⁷⁷ During his testimony, Brigadier Dladla, the station commander at Khayelitsha Site B informed the Commission that the electric gates at the station were now working.¹⁷⁸
- [65] It also found several issues to be “significant” including the high number of “duty arrangements”, that is, members formally attached to the police station, who perform duties elsewhere;¹⁷⁹ the high number of claims for civil arrest (four civil claims were instituted for wrongful arrest in the period between 1 January and 30 June 2013);¹⁸⁰ long queues in the Community Service Centre, which may lead the public to view the SAPS service as ineffective and inefficient;¹⁸¹ and the number of personnel attached to the station is too low to serve the public.¹⁸²

F. THE FCS UNIT INSPECTION REPORT

- [66] The Commission was provided with one inspection report relating to the Khayelitsha FCS Unit.¹⁸³ The inspection was not conducted by the Provincial Inspectorate, but conducted on 6 and 7 June 2013, by a five-member team headed by Colonel Harri, the head of the provincial FCS Unit. The report is extremely critical of the performance of the Khayelitsha FCS Unit. The authors found there to be a worrying backlog of unsolved cases at the Unit,¹⁸⁴ and noted that previously detectives from other units had been sent to the FCS to assist eliminating backlogs, but that this was not sustainable in the long-term. The report identified a range of problems with record-keeping in relation to a range of registers, including the Instruction Book, the after-hours operations register and the Training Register.¹⁸⁵ It concluded that the “Khayelitsha FCS is the worst performing unit and is bringing the whole FCS component down,”¹⁸⁶ “that the unit is not performing well, although they receive fewer cases than [other

172 Internal Audit of Khayelitsha Site B police station, Record Bundle 11(5), Item 87 at para 1.2.

173 Id. at para 1.5.

174 Id. at para 1.6.

175 Id. at para 3.9.

176 Id. at para 3.10.

177 Id. at para 3.1.

178 Transcript at 3608 (18 February 2014).

179 Record Bundle 11(5), Item 87 at para 3.4.

180 Id. para 3.5.

181 Id. at para 3.6.

182 Id. at para 3.7.

183 Record Bundle 11(5), Item 72.

184 Id. para 6.4 – 6.5.

185 Id. at para 8.2.

186 Id. at para 6.5.

units]”,¹⁸⁷ “that the unit needs ‘new blood’ ... willing to work”¹⁸⁸ and that management of the unit “continues to be in a pathetic state”.¹⁸⁹

G. DOCKET ANALYSIS

- [67] The Commission received copies of more than 400 dockets from SAPS,¹⁹⁰ a list of these dockets is to be found in Appendix F. The Commission received only one original docket that was returned to SAPS on 30 June 2014. The dockets can be divided into four groups: dockets in respect of individual complaints raised either by the complainant organisations or by individuals who approached the Commission in person, dockets arising from the charge sheet analysis contained in Chapter 9, dockets relating to the “Bundu Courts” report prepared in respect of the Khayelitsha stations, and annexed to the Task Team Report, and a miscellaneous collection of dockets which were requested because the Commission became aware of them during its investigation, either from media reports or from other sources.
- [68] The staff of the Commission read and prepared summaries of most of the dockets received. Where the docket requested related to a person who had approached the Commission to complain about SAPS, the Commission provided a written report to the individual concerned providing information about the status of the investigation as reflected in the docket.¹⁹¹ The Commission also analysed a sample of the charge sheet dockets and the complaint dockets to assess the manner in which they had been investigated by SAPS for the purposes of this report. All the dockets referred to in the “Bundu Court” reports were read to assess the quality of the investigation. The results of the Commission’s analysis are set out below.

(a) Charge sheet dockets

- [69] The Commission called for the dockets related to the charge sheet survey, described in Chapter 9 at paras 41 to 46. The SAPS furnished copies of the dockets during February 2014. There was a total of 245 “charge sheet” dockets provided to the Commission. As indicated in Chapter 9, the charge sheet dockets related to cases that had been struck from the roll or withdrawn, and so, by definition, there were problems with the quality of investigation in most of them. Because the Commission staff had perused and analysed all the charge sheets in these cases, it was considered unnecessary to analyse all the dockets received. Instead, a sample of dockets was analysed in order to ensure that the charge sheet information was accurate and to identify trends. It was found that there were no serious inconsistencies between the sampled dockets and the charge sheets.
- [70] Several of the dockets were used in the questioning by Evidence Leaders of the detective commanders of the three police stations. One such case, Lingeletu West, CAS 308/11/2010, involved 3 counts of attempted murder, in which an unlicensed firearm was used.¹⁹² Four suspects had been arrested. The following shortcomings were identified –

¹⁸⁷ Id. at para 10.

¹⁸⁸ Id.

¹⁸⁹ Id. at para 11.

¹⁹⁰ See Appendix F to the report which sets out the dockets requested by the Commission.

¹⁹¹ The redacted feedback letters may be found at Record Bundle 13(1), File 1.5.

¹⁹² Transcript at 3413 (17 February 2014).

- the docket was opened in November 2010, and withdrawn in June 2011. The investigation was incomplete at the time the case was withdrawn, and since June 2011, the matter has not been re-enrolled.
- The case was struck off the roll in respect of one accused person who had been kept in custody beyond the 48-hour period.
- The police failed to bring the docket to court on three occasions.

- [71] Another case, Khayelitsha CAS 714/01/2013, involved domestic violence, and a charge of assault with intent to do grievous bodily harm against a woman, where the complainant was a seven-year old child. The police failed to bring the docket to court and the matter was struck off the roll. In answering questions concerning this case, Colonel Marais conceded that there was a systemic problem of dockets not going to court.¹⁹³ He described the failure to bring dockets to court as often being attributable to “plain negligence”.¹⁹⁴
- [72] An analysis of the charge sheets also indicated the fact that many prosecutions for driving under the influence of alcohol are failing in Khayelitsha. This fact appears from Table 2 published in Chapter 9, at para [add]. Colonel Tobias, former detective commander at Harare police station, was questioned about one of the dockets that reflected this trend, CAS 763/09/2010. He acknowledged that laboratory reports take a very long time.¹⁹⁵ In this case, the results took fourteen months, but SAPS had failed to pursue the matter even once the results became available.¹⁹⁶ The failure to prosecute people for driving under the influence of alcohol countrywide has received attention in the national press, see a report in the Sunday Times published on 5 January 2014.¹⁹⁷
- [73] The sample of ten dockets from each police station produced the results set out in Table 1.

Table 1: Analysis of Sample of Charge Sheet Dockets

Station	No. of dockets	Failure to follow b/f dates	Failure to bring to court	Failure to warn witnesses	Failure to follow inspecting officer's instructions
Harare	10	6	2	-	10
Lingeletu West	10	5	5	-	9
Khayelitsha, Site B	10	7	6	-	8
Total	30	18	13	-	27

- [74] In addition, we note that in many cases, complainants or witnesses identified suspects, but investigation of the cases was inexplicably not finalised. A large number of cases are withdrawn because of the failure to obtain laboratory reports. There is little indication in the dockets that inspecting officers are providing adequate guidance to investigating officers. Where instructions are given in the investigation diary, they are rarely implemented. Most noteworthy, perhaps, is the lack of initiative demonstrated on the part of investigating officers in doing ordinary detective work. A further worrying feature is the widespread failure to provide any feedback to complainants.

(b) “Bundu Court” report dockets

- [75] The Task Team referred to a report of “Bundu Court” or vengeance killing cases prepared by the Cluster Commander. The Commission requested and was given this document which

¹⁹³ Transcript at 3896 (19 February 2014).

¹⁹⁴ Id. at 3984.

¹⁹⁵ Transcript at 4536 (17 March 2014).

¹⁹⁶ Id. at 4541.

¹⁹⁷ Record Bundle 6(6), Item 167.

comprises an analysis of so-called “Bundu Court” cases dealt with by the three police stations between 1 April 2011 to June 2012.¹⁹⁸

Table 2: “Bundu Court” Cases Dealt with by the Three Police Stations in Khayelitsha between 1 April 2011 to June 2012

No. of cases	No. of dockets	Offence	Victim's Charges/ criminal record	Suspects arrested	Outcome	Failure to follow prosecutor's instructions	Failure to follow inspecting officer's instructions	Failure to follow b/f dates	Failure to bring to court
Total No. of cases mentioned in 'Bundu Courts' document	78								
Dockets not given to Commission	7	Murder (x7)							
Wrong CAS number (also not given to Commission)	1								
Duplicated cases	5								
Dockets not related to 'bundu court'	3	Murder x3							
Dockets analysed (includes non vigilante cases)	66	58 = murder 2 = double murder 2 = triple murder 1 = Murder & kidnapping 3 = attempted murder	13	31	2 convictions 2 Struck off roll 2 nolle prosequi 3 inquest court 2 High Court 4 withdrawn, incomplete investigation 3 provisionally withdrawn	23	42	14	3

- [76] Five of the cases listed in the “Bundu Court” report were duplicates.¹⁹⁹ One of the cases listed refers to the incorrect case number, and six other dockets were not provided to the Commission, so the Commission could not analyse them.²⁰⁰ In addition, three of the dockets do not arise from vigilante or vengeance attacks: two appear to be gang related and in the third a motorist was struck by a stone thrown by protestors, causing his vehicle to overturn and he died of his injuries.²⁰¹ We have included these three cases for purposes of analysis.
- [77] Copies of the “Bundu Court” report dockets were not made available to the parties to the Commission, as many of them were still pending and they were provided to the Commission with the request that they not be discovered. 58 of the dockets related to the murder of one person, two dockets related to the murder of two people and a further two cases to the murder of three people. There were several incidents where a second or third victim had been assaulted or chased by members of the community, but had managed to escape. However, these charges were not included in the murder dockets provided, nor in the “Bundu Courts” report. In addition to the cases resulting in the death of the victim, there was one charge of

¹⁹⁸ Record Bundle 8(4), File 4.1, Item 3.23.

¹⁹⁹ Id. at numbers 25, 66, 67, 70 and 71 of the document.

²⁰⁰ Id. at numbers 6, 8, 11, 13, 14, 21 and 55.

²⁰¹ Id. at numbers 33, 36 and 45.

murder and kidnapping, where a person had been abducted and killed.²⁰² There were also three cases of attempted murder, where the victims had survived the assault.

- [78] Suspects were arrested in 31 cases (47% of the 66 dockets). The number of suspects arrested varied between one and seven. It was not always possible for the Commission to identify how many suspects were arrested as their names were redacted from the document. However, in many cases, we could assess how many people had been arrested from the “Bundu Courts” report.
- [79] In 35 cases (53%), suspects had not been arrested. In many of these cases, no suspects were identified. It was often the case that the investigating officer would try and identify witnesses to the killing, but no one would come forward as a witness. Alternatively, even where there were witnesses to the killing, no one would identify suspects. Sometimes the police would arrive on the scene of an assault or a murder and find a crowd either in the process of assaulting or burning the victim, or standing around a person. More worrying, however, were the few cases where witnesses indicated that they could identify suspects, but no arrests were made.
- [80] In each case, the investigation officer is meant to obtain a profile of the deceased. The “Bundu Court” report reflected that 13 of the deceased victims has pending or finalised criminal matters against them. Several of the deceased had been convicted of crimes. Many had also had charges withdrawn against them.
- [81] The Commission was given copies of the “Bundu Court” report dockets towards the end of January 2014, so it is possible that the outcome in the cases may have changed since the copies of the dockets were provided to the Commission. There were 66 dockets and in only two of them had convictions resulted (3% of cases) by the time the Commission reviewed the dockets. In the first, Khayelitsha CAS 491/07/2011, the original charge was murder, and the accused was convicted of kidnapping and assault with intent to commit grievous bodily harm, and sentenced to five years’ imprisonment suspended for a period of five years.²⁰³ In the other, Lingeletu West CAS 360/3/2012, five people had originally been arrested for murder but four were charged.²⁰⁴ They were all acquitted of murder in the Western Cape High Court.²⁰⁵ Three were convicted of kidnapping, and all four of assault with intent to do grievous bodily harm. All were sentenced to periods of imprisonment that were wholly suspended on certain conditions.²⁰⁶ Mr Pule Hendricks who testified before the Commission was one of those convicted.²⁰⁷ The Commission is aware of another case that was on trial in the High Court in 2013 but has been unable to ascertain the outcome of the matter at the time of writing the report. It arises from Harare CAS 313/3/2012.
- [82] There were three cases awaiting decision by the Inquest Court, and two cases had been referred to the High Court, apparently for prosecution. One case had unfortunately been provisionally withdrawn by the High Court as the witnesses had disappeared.²⁰⁸ A *nolle prosequi* had been issued in two cases. In one of these cases, there was no *prima facie* evidence to link the

202 Harare CAS 32/11/2011, number 60 of Record Bundle 8(4), File 4.1, Item 3.23.

203 Record Bundle 8(4), File 4.1, Item 3.23, number 15. Open docket not in the Record.

204 Open docket not in the Record.

205 See *The State v Mzwanele Mvabaza & Others*, unreported judgment in the Western Cape High Court, Case: SS 62/2012, also at Bundle 1(1)(d), Items 14 and 15. Also, see the Statement of accused No 2, Mr Hendricks at Bundle 7(6), Item 1 and Transcript at 1061 – 1073 (31 January 2014).

206 See the sentence Judgment of Nyman AJ, pp 10 – 14, Bundle 1(1d), Item 15.

207 See his testimony at Chapter 7 above, para 24, see his Statement at Record Bundle 7(6), Item 1 and Transcript at 1061 – 1073 (31 January 2014).

208 Harare CAS 431/01/2012, Record Bundle 8(4), File 4.1, Item 3.23, number 62. Open docket not in the Record.

suspect to the case.²⁰⁹ In the other case,²¹⁰ there were some serious flaws in the investigation. Three suspects had been arrested and charged. One of the suspects had handed himself into the police. There was a long delay in the investigating officer obtaining the post mortem report and other forensic evidence. The investigation officer had been told to hold an identity parade, but had not done so almost a year later, when he then said that he could not trace the witnesses. Several more instructions were given to the investigating officer, until finally in January 2014 he signed an affidavit to state that the witnesses could not be traced. The investigating officer had been reprimanded several times for not following instructions.

- [83] Twelve of the cases had been struck from the court roll, mainly because the investigation was still incomplete. In these cases there were several items of evidence still outstanding, including post mortem reports, crime scene photographs, witness statements, and profile of the deceased. In one case, a matter was struck off the roll, even though the murder weapon had been found at someone's house after a suspect had pointed out where he had hidden the weapon.²¹¹ It appeared that no blood analysis had been conducted on the weapon.
- [84] Seven of the matters had been withdrawn or provisionally withdrawn by the court, due to incomplete investigation. The status of the remaining matters was unclear, though some of them still had court dates in the docket. It appeared that many cases had simply not been investigated or brought before court.
- [85] There were many cases where there seemed to be no attempt to investigate the case at all. Sometimes the investigating officer would visit the scene of the crime, find no witnesses, and leave the matter there.²¹² In one case, there was no serious attempt to speak to community members about the murder, there were no scene of crime photographs, no follow up statements with family members, and no profile of the deceased. There were frequent instructions from supervisors to follow up the investigation that went ignored, and at one stage a gap of 18 months between one entry and the next.²¹³ There were other cases where it seemed that the investigation started well, but would peter off after a few weeks, and then seemingly lie ignored.
- [86] One of the problems common across many dockets was the failure by the investigating officer to follow instructions from the senior public prosecutor or the senior supervising officer. Though it was not always possible for the Commission to distinguish instructions given (and often ignored) by the senior public prosecutor from those given by the police, our study of the dockets indicate that investigating officers failed to follow instructions of the SPP in at least 23 dockets, and those of senior police officials in at least 42 cases (64%). Sometimes the compliance with instructions was delayed until the next time that the docket was brought forward for inspection, sometimes it was delayed for even longer, and at other times it appeared that there was no attempt to follow instructions at all. The Khayelitsha CAS 7/04/2011 is good example of this.²¹⁴ There are instructions given by the public prosecutor, and numerous remarks by senior officials to follow up on instructions. A note on 28 March 2012 states, "You keep on noting instructions always and not doing the real work. When are you going to comply with SPP's instructions dated 2011 – 11–06?". On 18 April 2012, the

209 Record Bundle 8(4), File 4.1, Item 3.23, number 17, Khayelitsha CAS 465/08/2011. Open docket not in the Record.

210 Lingeletu West CAS 138/11/2011, Record Bundle 8(4), File 4.1, Item 3.23, number 41. Open docket not in the Record.

211 Record Bundle 8(4), File 4.1, Item 3.23, number 36. Khayelitsha CAS 732/5/2012. Open docket not in the Record.

212 For example, Record Bundle 8(4), File 4.1, Item 3.23, number 47. Lingeletu West CAS 320/05/2012. This matter was also considered by the Commission during the hearings. See the transcript of the evidence of the Ntsholo family at Transcript 140 – 164 (24 January 2014). Open docket not in the Record.

213 Record Bundle 8(4), File 4.1, Item 3.23, number 50, Harare CAS60/06/2011. Open docket not in the Record.

214 Record Bundle 8(4), File 4.1, Item 3.23, number 1. Open docket not in the Record.

Brigadier from the Inspectorate writes a note to the investigating officer, “Kindly comply with ...PP’s queries dated 6/11/11.” The IO was asked to give reasons for the failure to comply and to provide the steps taken to ensure compliance. Further instructions were given on 12 June 2012 to “Attend to the SPP instruction this time around”. Further note on 26 September 2012, “You need to discuss this matter urgently with the SPP as to all outstanding queries dated 6/11/2011”. And then finally, a note on 4 November 2013 to say “Previous instructions of Colonel ...not even noted (or) complied with. Expedite immediately.” Unfortunately, from our reading of the docket, did not disclose any compliance with instructions, and the matter was struck from the roll.²¹⁵

- [87] In one matter, the investigating officer went on leave or was away for a whole year when the docket lay untouched.²¹⁶ In another case, there is a note to the investigating officer that he must learn to acknowledge instructions.²¹⁷ In another case, the investigating officer notes that he has been unable to comply with instructions due to his extreme case load.²¹⁸
- [88] A system of for diarising dockets for a future date when they will be ‘brought forward’ again for the attention of investigating officers is the basis of docket management and supervision. There are many brought-forward dates noted in the dockets the Commission perused. A failure to conform with the brought-forward dates was apparent in at least 14 dockets, though the problem is more pervasive than that, as can be seen from the number of dockets where investigating officers failed to comply with instructions.
- [89] The failure on the part of the investigating officer to bring a docket to court occurred in three cases. As discussed in Chapter 9, dockets are frequently struck from the roll as a result of their not being brought to court on time, or not at all.

(c) Dockets relating to individual complaints received by Commission

- [90] The Commission received 71 dockets that related to the individual complaints that it received. Dockets were requested only where complainants could provide the CAS number. 44 of the complaint dockets originated from Khayelitsha Site B (62%), 18 from Harare (25%) and 9 (13%) from Lingeletu West. The complainants in each case had either approached the Commission directly or had complained to the complainant organisations. A random sample of 25 of these dockets were analysed by the Commission to assess the quality of the investigation undertaken by the investigating officers. As Table 3 illustrates, in 76% of cases the investigating officer failed to trace or identify suspects. In 89% of cases, there was a failure to provide feedback to the complainants or the bereaved family. In 92% of cases there was a delay in finalising the cases. These delays were often inordinate.

²¹⁵ Open docket not in the Record.

²¹⁶ Record Bundle 8(4), File 4.1, Item 3.23, number 22, Khayelitsha CAS 531/11/2011. Open docket not in Record.

²¹⁷ Record Bundle 8(4), File 4.1, Item 3.23, number 21, Lingeletu West CAS 138/11/2011. Summary at Undiscovered Lingeletu West Cases File 3, No 21. Open docket not in Record.

²¹⁸ Record Bundle 8(4), File 4.1, Item 3.23, number 57. Harare CAS 306/10/2011. Open docket not in Record.

Table 3: Complaints Made Against SAPS

Police station	Failure to trace suspect	Failure to collect evidence	Failure to provide feedback to the complainant	Delay finalising the investigation	Failure by commanders and docket inspectors to provide guidance to the investigating officer
Khayelitsha	8	10	10	10	10
Harare	9	10	7	9	10
Lingeletu West	2	4	5	4	4
Total (n = 25)	19 (76%)	24 (96%)	22 (88%)	23 (92%)	24 (96%)

- [91] The analysis of the dockets provided to the Commission endorsed the findings of both the Task Team and the reports of the Provincial Inspectorate of the three police stations concerning the quality of investigation undertaken by detectives at the three police stations. The detective work is of a very poor quality. In many cases, no proper investigation of crime takes place at all. Evidential tools are rarely used. Instructions given to investigating officers by prosecutors and supervising officers are often ignored, sometimes for months. The Commission notes that the poor quality of investigations is evident in even the most serious crimes, such as murder.

CHAPTER ELEVEN

OVERVIEW OF TESTIMONY GIVEN BY MEMBERS OF SAPS

- [1] This chapter contains a discussion of the testimony of the SAPS members who testified, save where that testimony has been discussed in earlier chapters.¹ It commences with an overview of the testimony of the station commanders and detective commanders of the three Khayelitsha police stations, and then sets out the testimony of four police officers who have worked at cluster level, the DCCO, the Cluster detective co-ordinator, and two SAPS members who have served as cluster commanders. Then the testimony of Brigadier Leon Rabie is discussed.² Brigadier Rabie is Section Head, Performance Management, Organisational Development in the Division of Human Resource Management in the national office. As Section Head, Performance Measurement, he is responsible for designing the tool for guiding human resource allocation, the Theoretical Human Resources Requirement (THRR), which is related to what is called by members of SAPS as the Resource Allocation Guide (RAG). Finally, the chapter provides an overview of the testimony of senior members of the provincial office including four Deputy Provincial Commissioners, the provincial head of the FCS Unit and the Provincial Commissioner.
- [2] 23 SAPS witnesses testified before the Commission –
- Colonel Reitz, station commander at Lingeletu West;³
 - Brigadier Dladla, station commander at Khayelitsha Site B;⁴
 - Colonel Raboliba,⁵ station commander at Harare, who testified jointly with his predecessor as Harare station commander,
 - Colonel Nel;⁶
 - Lieutenant Colonel Swart, detective commander at Lingeletu West;⁷
 - Colonel Marais, detective commander at Khayelitsha Site B;⁸ and
 - Colonel Tobias, detective commander at Harare.⁹
- [3] SAPS witnesses from the Khayelitsha cluster were –
- Captain Pillay, one of the DCCOs at the Khayelitsha Magistrates' Court;¹⁰
 - Colonel Wiese, the cluster detective co-ordinator;¹¹ and

1 See in particular testimony of Brigadier Seimela in relation to crime statistics, which was discussed in Chapter 5 at paras 50 – 56, and the testimony of Brigadier Heilbron and Colonel Vermeulen, which was also discussed in Chapter 5 in relation to the Station Performance index (the EUPOLSA index), at paras 43 – 49.

2 Transcript at 5226 – 5401 (25 March 2014); Record Bundle 5 File 4, Item 6 at pp 1 – 111.

3 Transcript at 2867 – 3249 (13 and 14 February 2014).

4 Transcript at 3472 – 3828 (17 and 19 February 2014).

5 Transcript at 4612 – 4859 (17 and 18 March 2014).

6 Id.

7 Transcript at 3249 – 3472 (14 and 17 February 2014).

8 Transcript at 3829 – 4030 (19 February 2014).

9 Transcript at 4332 – 4611 (21 February 2014).

10 Transcript at 4048 – 4176 (20 February 2014).

11 Transcript at 4987 – 5102 (24 March 2014).

- Brigadier Mlenga and Major General Goss,¹² both of whom were former cluster commanders in Khayelitsha (Brigadier Mlenga had also served as station commander at the Khayelitsha Site B police station prior to Brigadier Dladla).
- [4] SAPS witnesses from head office in Pretoria were –
- Brigadier Van Zyl,¹³ Head of Inspections, National Inspectorate, who was a member of the Task Team and whose evidence was described in Chapter 10 above,¹⁴ although there is a short supplementary account of his evidence in this chapter;
 - Brigadier Seimela,¹⁵ who is attached to the Crime Research and Statistics component, whose evidence was discussed in Chapter 5, and
 - Brigadier Rabie,¹⁶ Section Head, Performance Measurement and Organisational Development, whose testimony is discussed in this chapter.
- [5] There were nine witnesses from the Provincial Office –
- Colonel Harri,¹⁷ the provincial head of the FCS Unit;
 - Brigadier Heilbron,¹⁸ provincial head: Organisational Development and Strategic Management;
 - Colonel Vermeulen,¹⁹ attached to the provincial office for station performance management (the testimony of Brigadier Heilbron and Colonel Vermeulen was outlined in Chapter 5);²⁰
 - Major General Molo,²¹ head of Detectives in the province;
 - Major General Burger,²² Deputy Provincial Commissioner, Human Resource Management;
 - Major General Fick,²³ Deputy Provincial Commissioner, Physical Resource Management;
 - Major General Jacobs,²⁴ Deputy Provincial Commissioner, now responsible for Crime Intelligence, formerly responsible for Operations;
 - Major General Jephta,²⁵ Deputy Provincial Commissioner, Operations; and
 - Lieutenant General Lamoer,²⁶ Provincial Commissioner.
- [6] Again it is not possible to provide a comprehensive account of the testimony of the SAPS witnesses, only a brief account of each is provided. The documentary record contains the written statements made by each of these witnesses, and the transcript contains the full text of their testimony.

12 Transcript at 5116 – 5224 (24 March 2014).

13 Transcript at 4859 – 4947 (18 March 2014).

14 See paras 50 – 56.

15 Transcript at 4947 – 4986 (18 March 2014).

16 Transcript at 5226 – 5401 (25 March 2014).

17 Id. at 5764 – 5878 (27 March 2014).

18 Id. at 5594 – 5763 (26 March 2014).

19 Id.

20 See paras 43 – 49.

21 Transcript at 5880 – 5992 (27 March 2014).

22 Id. at 5402 – 5503 (25 March 2014).

23 Id. at 5505 – 5594 (26 March 2014).

24 Id. at 6007 – 6255 (28 March 2014).

25 Id. at 6256 – 6484 (31 March 2014).

26 Id. at 6485 – 6737 (1 April 2014).

A. THE THREE POLICE STATIONS

(a) Colonel Michael Reitz – Station Commander Lingelethu West²⁷

- [7] Colonel Reitz has been a member of SAPS for 37 years. He first became a station commander in 1989.²⁸ He served as head of VISPOL at Lingelethu West from 2005 – 2007, and then became station commander in April 2010, after a brief stint as station commander at Kensington Police station.²⁹ Colonel Reitz testified that, at the time he testified, there were 167 SAPS members stationed at Lingelethu West,³⁰ although the Lingelethu West RAG allocation is 166.³¹ 107 of these members were deployed in Visible Policing, 30 in the detective branch and 20 as support staff. In addition, there are nine commissioned officers attached to the police station. He considered he had sufficient numbers for visible policing³² and sufficient officers,³³ although, he said, that like all station commanders, he would like more personnel.³⁴ He estimated each detective to be carrying 120 – 130 dockets,³⁵ which he thought they could handle.³⁶
- [8] Colonel Reitz acknowledged that the morale of some of the SAPS members stationed at Lingelethu West was low, noting that many of the SAPS members came from the Eastern Cape and they want to go back there. Being away from families, he said, affects morale.³⁷
- [9] When asked about the number of members allocated to his station but who had been relocated elsewhere on “duty arrangements”, he said –
- “... you must understand that in the structure that we are working if it comes from a higher command you must comply with it and surely they are all aware of what is going on in Lingelethu West, Harare and so taking people from here, they must have reason on their side, who is doing it must have some way to justify it”.³⁸
- [10] Colonel Reitz also admitted that policing in informal neighbourhoods is difficult. He said –
- “... you need to walk in there, you need to park your vehicle outside in the street and then another thing that is really difficult is the numbering of houses in the areas. It is difficult because if you don’t know the area very well, ..., you will find difficulty to find the specific address in a very short time ...”.³⁹
- [11] Colonel Reitz also described how the annual performance plan for a police station is developed. He provided copies of the annual performance plans for the years 2010/2011, 2011/2012 and 2012/2013 attached to his statement.⁴⁰ He observed that the change in the Western Cape

27 Record Bundle 5(4), File 1; and Transcript at 2867 – 3249 (13 – 14 February 2014).

28 Transcript at 2868 (13 February 2014).

29 Id. at 2868 – 2869.

30 Id. at 2891.

31 Id. at 2900.

32 Id. at 2886.

33 Id. at 2897.

34 Id. at 2903.

35 Id. at 2904.

36 Id. at 2905.

37 Id. at 2945 – 2946.

38 Id. at 3037 (14 February 2014).

39 Id. at 3015.

40 Record Bundle 5(4), File 1, pp 4 – 181; Transcript at 3030 (13 February 2014).

SAPS provincial strategy from the People Oriented Sustainable Strategy (POSS)⁴¹ that was introduced by Provincial Commissioner Petros in 2003 to the OPUS (Optimal Performance Utilisation Strategy) did not make a significant difference to his station's performance plan.⁴²

- [12] He did complain about the infrastructural facilities of the police station: the absence of holding cells and an exhibit store, the fact that there is no space to hold parades at the beginning and end of shifts, and the fact that office space is cramped.⁴³
- [13] During his testimony, Colonel Reitz indicated that there were five CCTV cameras in the Lingeletu West precinct, but that he did not know if they were all working, and that the SAPS Liaison Officer stationed at the Goodwood TMC did not inform him if cameras were out of order.⁴⁴ He was also not aware of any camera footage ever having been used as evidence in a criminal prosecution in Lingeletu West.⁴⁵ Colonel Reitz also described the process of inspections, including the Project 6 inspections, at some length.⁴⁶
- [14] In cross-examination, Colonel Reitz was asked about the performance of the Lingeletu West police station on the station performance chart. He was told that, according to Colonel Vermeulen, the Lingeletu West police station had slipped from 58th position in 2007/2008 to 125th in 2012/2013.⁴⁷ Colonel Reitz said that he was managing the station with the resources he had to the best of his ability.⁴⁸ He thought that Colonel Vermeulen would be able to explain what this drop meant. He said that "you can ask [Colonel Vermeulen] how many times did station commanders feel that the performance chart is not a real reflection of what has been done ..."⁴⁹ As was mentioned in Chapter 5, Brigadier Heilbron acknowledged that the comparative rankings based on the station performance index might be a weakness in the system, and that, in his view, it is more reliable simply to monitor a particular station's own performance.⁵⁰ On this basis, we note that the efficiency rate of the Lingeletu West police station dropped from 60.01 in 2007/2008 to 53 in 2012/2013.⁵¹

(b) Lieutenant Colonel Barend Swart – Detective Commander (Lingeletu West)⁵²

- [15] Lieutenant Colonel Swart has been a member of SAPS since December 1977. He has served as Detective Commander at Lingeletu West since it was established in 2004.⁵³ During his testimony, Lieutenant Colonel Swart told the Commission that he had been specially requested to go to Khayelitsha as a detective by Major General Molo, who had said to him, "come and help the people in Khayelitsha".⁵⁴ He remarked that some years ago, Khayelitsha

41 A copy of the POSS strategy is to be found in Record Bundle 9(1), File 1.1, Item 1C.

42 Transcript at 3031 (13 February 2014). See a PowerPoint presentation on the OPUS Strategy admitted as Exhibit MR7, Record Bundle 10(3), Item 30.

43 Transcript at 3098 – 3099 (14 February 2014).

44 Id. at 2879 – 2880.

45 Id. at 2880 – 2881.

46 Id. at 2910 – 2947.

47 Id. at 3215 – 3216. Record Bundle 5(4), File 3 at para 12.2.

48 Transcript at 3219 (14 February 2014).

49 Id. at 3218.

50 Record Bundle 11(3), File 3.1, Item 26 at para 5.4.

51 Record Bundle 5(4), File 3 at para 12.2.

52 Record Bundle 10(2), File 2.2, Item 21; Transcript at 3250 – 3471 (14 February 2014 and 17 February 2014).

53 Record Bundle 10(2), File 2.2, Item 21 at paras 1 – 3.

54 Transcript at 3265 (14 February 2014).

was considered to be “a dropping zone” by SAPS where people were sent who were not wanted elsewhere.⁵⁵

- [16] He told the Commission that he has 30 detectives, which is one more than the RAG proposes for Lingeletu West.⁵⁶ Attached to his statement was a docket audit for Lingeletu West performed on 7 February 2014. According to the audit, there are 3982 open dockets at the police station, with each detective carrying an average of 131 dockets and each detective is allocated an average of 25 new dockets per month.⁵⁷ He acknowledged that he would like more personnel.⁵⁸ Lieutenant Colonel Swart indicated that SAPS members are reluctant to become detectives, because of the long working hours, and because they prefer to work on the shift system which pays better and gives them more days off in a month.⁵⁹ He testified that when he had become a detective it was something to be proud of, but he felt that that was no longer the case in SAPS, with most SAPS members not wanting to be detectives.⁶⁰ He said that in his team he has both good and bad members⁶¹ and thought that there should be more Xhosa-speaking detectives which would assist with investigations,⁶² and training in isiXhosa for members who do not speak it.⁶³ He also commented that the detectives under his command require more training, particularly in relation to specific crimes.⁶⁴
- [17] Lieutenant Colonel Swart also testified to some of the difficulties of detective work in Khayelitsha. He spoke of the difficulty of securing crime scenes, particularly in informal areas.⁶⁵ He also stated that it could be difficult to follow up complainants when they lose their cell phones.⁶⁶ He also testified about the difficulty of recruiting members of the community in Khayelitsha to register as informers, because people are reluctant or scared to be registered.⁶⁷ Lingeletu West has 21 informers on its books.⁶⁸ Lieutenant Colonel Swart also mentioned the difficulty of obtaining laboratory reports for cases of drunken driving. He said that he had 1100 pending dockets on charges of drunken driving, stretching back to 2009, where the laboratory reports are outstanding. The samples are sent to the national Department of Health forensic laboratory in Woodstock.⁶⁹
- [18] Lieutenant Colonel Swart also described how the Performance Evaluation system (PEP) of individual members works. He described that each member is assessed on a range of key performance areas, on a scale of 1 – 5, where 1 is poor and 5 is excellent. He said that any mark lower than “3” means that a member is not performing well.⁷⁰ He stated that he rates himself “3”. When asked why, he said that “3 is enough for me”,⁷¹ and that in his ten years at Lingeletu West he had never scored more than “3”. One of the reasons he gave for not scoring more than “3” is that there are too few informers at the police station, (see previous

55 Id. at 3266.

56 Record Bundle 10(2), File 2.2, Item 21 at para 5.

57 Id. at para 28. Transcript at 3304 – 3305 (14 February 2014).

58 Transcript at 3362 – 3363 (17 February 2014).

59 Record Bundle 10(2), File 2.2, Item 21 at para 34.

60 Transcript at 3264 (14 February 2014).

61 Id. at 3266.

62 Record Bundle 10(2), File 2.2, Item 21 at para 33.

63 Transcript at 3441 – 3442 (17 February 2014).

64 Record Bundle 10(2), File 2.2, Item 21 at para 34.

65 Transcript at 3272 – 3273 (14 February 2014).

66 Id. at 3280.

67 Id. at 3351 (17 February 2014).

68 Id. at 3349.

69 Id. at 3357 – 3358.

70 Id. at 3375.

71 Id. at 3380.

paragraph), which impairs his ability to score a “3”.⁷² He also testified that of the 30 detectives in his unit, all but two or three receive a PEP score of “3”, with the remainder receiving a “2”. No one scores higher than “3”.⁷³ Lieutenant Colonel Swart suggested that a “3” is “a very good rating”.⁷⁴ He then added –

“...if I want a four on my PEP as a team leader, I must give all the people a four, and I’m thinking that I deserve a three, and then as a team leader, I will give all my people a three, except the people who don’t comply with instructions ... they must get less than a three. You hear what I’m saying, as a team leader, I cant give me a three and all the other people a two, but as a team leader I will give myself a three, and I will give all my people under my command also a three. But if I’m willing to give myself a four, I must give my members under my command also a four.”⁷⁵

- [19] On the subject of management training, Lieutenant Colonel Swart testified that he would like more management skills. He said –

“... all my life I was working outside and suddenly I must manage a lot of 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.”⁷⁶

- [20] He also dealt with the issue of disciplinary procedures against SAPS members for misconduct or poor performance. He said that in his view, management at Lingeletu West were “taking a lot of” disciplinary steps against members,⁷⁷ but that it is not always appropriate to take negative disciplinary steps, sometimes members should just be informed if they have made an error in order to ensure a positive attitude amongst detectives.⁷⁸
- [21] When questioned on the issue of feedback to complainants, Lieutenant Colonel Swart admitted that SAPS may “slip up” where there is more than one complainant on a docket, as the practice is only to inform one complainant by SMS of the name of the investigating officer. He suggested that section A1 in the docket which contains the name and statement of the founding complainant, should perhaps be amended to capture the names and contact details of all complainants in a case.⁷⁹

(c) Brigadier Zithulele Dladla – Station Commander Khayelitsha Site B⁸⁰

- [22] Brigadier Dladla is from Weenen in KwaZulu-Natal, and he joined SAPS in 1987. He became station commander at Khayelitsha Site B in April 2011.⁸¹ Brigadier Dladla also served as acting cluster commander for the Khayelitsha cluster for six months.⁸²

72 Id. at 3384.

73 Id. 3408 – 3409.

74 Id. at 3409.

75 Id. at 3409 – 3410.

76 Id. at 3434.

77 Id. at 3330.

78 Id.

79 Id. at 3458 – 3459.

80 Record Bundle 5(4), File 3, Item 9 pp 204 – 235; Transcript at 3471 – 3828 (17 – 19 February 2014).

81 Transcript at 3474 (17 February 2014).

82 Id. at 3494.

- [23] Brigadier Dladla asserted that his station was short of personnel. He said he needed more personnel for visible policing,⁸³ because it was “impractical” to conduct foot patrols in informal areas with the personnel he had, and, he said, it was necessary to conduct foot patrols in informal areas, which are congested.⁸⁴ Maybe more personnel, he testified, would “help me to access these inaccessible areas like RR, like Taiwan, your BM, your YAB sections”.⁸⁵ When asked about Neighbourhood Watch patrols, or “patrollers”, he indicated that he was concerned that at times some patrollers assaulted members of the community which was unacceptable.⁸⁶ He said –

“I have been trying to explain to the patrollers that we must not take the law into our own hands, we are working with the police and we must not do that. It was the same even with the – if you listen to the people, the community, they say they want taxi drivers because they can give to the people, they can assault the people, but is not supposed to go like that.”⁸⁷

- [24] He also said he needed more detectives because the detectives at his station are overloaded. He said that on average detectives were carrying 165 dockets,⁸⁸ which is too many to manage efficiently.⁸⁹ In his view, 60 is a manageable number.⁹⁰ In one of the memorable metaphors heard during the proceedings, he said –

“You know in the movies, when you see in the movies ... you see a team descending to a crime scene, attending to a docket, but here you have a team of dockets descending on a detective.”⁹¹

- [25] When asked by SAPS’ counsel whether he had raised the shortage of personnel with the Provincial Commissioner, he confirmed that he had, but he said, “the Provincial Commissioner is also gagged by the RAG ... gagged by the RAG like me...”⁹² Brigadier Dladla also testified that the number of reservists at the police station had declined in recent years, and that now he has only 136 active reservists.⁹³

- [26] Brigadier Dladla also explained that it is important to enhance visibility at crucial times, such as weekend nights. He described the situation as follows –

“... On a Saturday night if you go ... to close a shebeen that is operating that has 60 – 100 people, you can’t do it with a vehicle and two members, you have to have enough people to close that shebeen We’re talking about illegal shebeens, people who are trading without licenses. So if you ... find a lot of people ... with four members, they’re going to walk all over you, the people there. So it’s better to have numbers so that you can prevent injuries to people. People, when they realise that there’s few police officials, they say, we can take a chance here, and we end up using live ammunition which is not necessary...”⁹⁴

83 Id. at 3505.

84 Transcript at 3646 – 3647 (18 February 2014).

85 Transcript at 3505 (17 February 2014)

86 Id. at 3666.

87 Id. at 3666.

88 Transcript at 3513 (17 February 2014).

89 Id. at 3515.

90 Transcript at 3675 (18 February 2014).

91 Transcript at 3506 (17 February 2014). The transcript reads “ascending” but this is a transcription error, Brigadier Dladla used the verb “descending”.

92 Id. at 3508 (17 February 2014). The RAG is the Resource Allocation Guide.

93 Id. at 3543.

94 Id. at 3518.

- [27] Brigadier Dladla also testified about vigilante murders. He said that in the past vigilante murders had often followed on informal justice processes where “somebody would be tried and given a sentence”, but that now it tends to be “a spur of the moment” action.⁹⁵ He said that SAPS was trying to address the issue in meetings with the community but –

“...we are serving the poor people who – where R20 ... means a lot, so if you take his money and he shouts a thief, people will respond just like that. So we really wish people can change from that but it’s difficult, but we’ll keep on engaging our communities to try and change from that ...”⁹⁶

- [28] As to crime scenes, Brigadier Dladla explained that it could be difficult to cordon off a crime scene in some areas, especially informal settlements. Sometimes it is necessary to move people from their houses, and this can be very challenging.⁹⁷ He also testified about the difficulties of life in Khayelitsha, and how the fact that people have to use public toilets, because they do not have toilets in their own homes, or the fact they have to fetch water from communal taps, renders them vulnerable to crime.⁹⁸ Before Brigadier Dladla was posted at Khayelitsha, he was the station commander in Wynberg and he acknowledged that the conditions for policing in Khayelitsha are more challenging, which requires the allocation of more resources.⁹⁹
- [29] Brigadier Dladla confirmed that SAPS has difficulty at Khayelitsha Site B obtaining informers. He said that the difficulty arises from the perception that an informer is an “*impimpi*”.¹⁰⁰ An “*impimpi*” is seen as a traitor or turncoat and so has a stigma attached to it, a stigma that is recognised countrywide. He suggested it might be helpful to use a different word that emphasises that a person is assisting the police, not being an “*impimpi*”.¹⁰¹
- [30] As to the infrastructure of his police station, Brigadier Dladla stated that the facilities in the CSC were not adequate, that it becomes too congested and that there are not enough cubicles to take statements in private.¹⁰² He also told the Commission there was not sufficient office space, because the FCS Unit and the LCRC now occupy space that had originally been intended for the police station.¹⁰³
- [31] When asked about the comment in the Schooling and Leamy report as to the inadequate manner in which first- and second-level inspections are conducted at his police station, Brigadier Dladla said, “that is an administration part, it does not lead to poor service delivery.”¹⁰⁴
- [32] Brigadier Dladla was also asked about the perception that it was harmful to a career for a SAPS member to approach the EHW. He responded by saying that it is not SAPS policy to prejudice members who use EHW, either in promotion processes or otherwise.¹⁰⁵ He also said he had never heard it said in a promotion meeting that a person should be overlooked because they had used the services of EHW. However, he said –

“... in the police, we want to be brave, including myself. We don’t want to be seen as weak. I can tell you, I’ve worked all these areas where there is – I’ve been

95 Id. at 3521 – 3522.

96 Id. at 3522.

97 Transcript at 3586 (18 February 2014).

98 Id. at 3593.

99 Id. at 3594 – 3595.

100 Id. at 3677.

101 Id. at 3678.

102 Id. at 3536 – 3537 (17 February 2014).

103 Id. at 3538.

104 Id. at 3552.

105 Id. at 3680 (18 February 2014).

dealing with blood, blood, blood but I've never attended any session. I've been offered but I don't see the need. Fortunately the provincial office has said now we must force people to go."¹⁰⁶

- [33] Brigadier Dladla also noted that if it was reported at his Station Crime Combating Forum (SCCF) meetings that one of the high-mast lights was not functioning, he would instruct one of his officers to write to the City.¹⁰⁷ He noted, "[y]ou know, when the letter comes from us, it becomes better, they respond quicker and the lights are rectified, but it's not our duty as the police."
- [34] Brigadier Dladla was reminded of the provisions of paragraph 1 of Standing Order 28, which regulates the duties of station commanders. That paragraph states that the duties and responsibilities of station commanders are "to manage and maintain the operational and support functions in order to ensure an effective and efficient policing service to the community in his or her policing area." He was asked what he understood the paragraph intended when it referred to an "effective and efficient policing service".¹⁰⁸ He responded by saying that it meant "that we must do our work in such a way that we satisfy our clients, and ... we manage our resources in a way that it will reduce the cost and it will also make sure that they last longer, and give a proper service to the community."¹⁰⁹
- [35] At the end of his testimony, his counsel asked Brigadier Dladla how he had felt about testifying before the Commission. He responded –

"I liked it because I could state my case, I could say when I believe there's a lot of people that are interested in the Commission so that gives us a chance to tell them that we want their co-operation, we want to work with them, we are against vigilantism, we want to assist them. They mustn't wait out there, they must come in and work with us so that we can solve the problems earlier before they become big."¹¹⁰

(d) Colonel Johan Marais – Detective Commander Khayelitsha Site B¹¹¹

- [36] Colonel Marais joined SAPS in Grahamstown in 1983, and was appointed Colonel in 2000. Prior to his appointment as detective commander at Khayelitsha Site B in January 2011, he served as station commander in Grassy Park from 2007 – 2011.¹¹² He told the Commission that he was asked to move to Khayelitsha to head up the detective branch by Major General Molo because "there was a crisis at the Khayelitsha detective service".¹¹³ Lieutenant General Lamoer also confirmed that he had identified Colonel Marais as "a seasoned detective" who should move to Khayelitsha.¹¹⁴ Colonel Marais told the Commission that in the period before he had arrived, there had been acting detective commanders at Khayelitsha Site B for three or four years.¹¹⁵ When he arrived at Khayelitsha, he found the unit in disarray with demotivated

¹⁰⁶ Id. at 3679 – 3680.

¹⁰⁷ Id. at 3683 – 3684.

¹⁰⁸ Id. at 3745.

¹⁰⁹ Id. at 3746 – 3747.

¹¹⁰ Transcript at 3818 – 3819 (19 February 2014).

¹¹¹ Id. at 3829 – 4030.

¹¹² Id. at 3832 – 3833.

¹¹³ Id. at 3833.

¹¹⁴ Transcript at 6512 (1 April 2014).

¹¹⁵ Transcript at 3937 (19 February 2014).

people who were carrying too many dockets.¹¹⁶ He recognised that rectifying the situation was going to be a long process.¹¹⁷ Colonel Marais explained that he reorganised the detective unit into specialist teams, for example, a murder team, a robbery team, and a team investigating cases against government officials.¹¹⁸

- [37] According to Colonel Marais there are 58 detectives at Khayelitsha Site B, including the crime office and the commissioned officers,¹¹⁹ of whom approximately 34 are docket-carrying detectives, the others being assigned to the crime office or other duties.¹²⁰ There are 5000 open dockets in the branch, which means that each docket-carrying investigator has between 145 and 160 dockets.¹²¹ Colonel Marais explained that the nature of the crime affects the amount of work needed on a docket, so that a common assault case might be completed within two hours, whereas a murder docket can take from a few days to three weeks.¹²² He said that some of his murder investigators are carrying as many as 150 murder dockets, which is “definitely not ideal”.¹²³ Colonel Marais said that he did not have enough detectives.¹²⁴ He also spoke of the problems of the backlogs, partly created, he said, when detectives leave the unit and their pending cases are reallocated to other detectives.¹²⁵
- [38] To illustrate the problem caused by the shortage of personnel, Colonel Marais described a weekend that he had been on duty at Khayelitsha Site B, when seven murders were committed.¹²⁶ Ordinarily, he explained, investigating a crime scene takes three to four hours, but often, a detective will be called from one scene to another before he has finished with the first scene. He summarised the weekend as follows –

“That whole weekend that investigating officer, those two investigating officers, were busy running from crime scene to crime scene to crime scene, following up leads, we assist them with the other members. On Monday morning, I don’t think it was even 6 o’clock, I received a call from a very senior officer – I am not at liberty to mention his name maybe after that I may not have a job – but he phones me and he says to me why is that seven dockets not properly written up and I nearly flipped because I know what was put into those cases, I know how much times was spent on those crime scenes. For the whole Friday night, for the whole Saturday night and also the Sunday this detective ran on these seven cases or these two detectives ran on these seven cases. The Monday morning someone from provincial management wants to know why is these dockets not written up.”¹²⁷

- [39] As to the difficulty of securing crime scenes, Colonel Marais testified –

“There is a huge challenge in certain areas to manage crime scenes properly. There is a difference between a robbery in Durbanville and a robbery in Taiwan in Site C with regard to cordoning of the specific environment. When we are in

116 Id. at 3834.

117 Id. at 3835.

118 Id. at 3836 – 3837.

119 Id. at 3842.

120 Id. at 3851.

121 Id. at 3851.

122 Id. at 3852.

123 Id.

124 Id. at 3853.

125 Id. at 3854.

126 Id. at 3856 – 3859.

127 Id. at 3857 – 3858.

Site C specifically we are between the shacks; you have got to evacuate people from their homes to try and cordon off the area, so that nobody can interfere with what is happening on the scene. So you have got to tell someone at 2 o'clock in the morning go out of your home, you cannot sleep here, or stay in your home the whole time, you are not allowed to come out because we have got a crime scene here and the crime scene is right in front of your door and if you step out then you are in the crime scene so rather come out of the house or stay out the whole time. ... I have attended many, many crime scenes and the biggest problem we have is in the informal settlements where it is very difficult to protect a crime scene properly...".¹²⁸

- [40] Colonel Marais also mentioned the difficulty of securing crime scenes involving the residences or businesses of foreign nationals, because the police find it very difficult to stop friends and relatives interfering with the scene.¹²⁹ He also said that crime scene protection is almost impossible when it is raining.¹³⁰ Colonel Marais also mentioned that lighting of crime scenes is a challenge in informal areas at night, and suggested that equipping police vehicles with a small generator and lamps would assist greatly.¹³¹
- [41] On the issue of vigilante killings, Colonel Marais indicated that in his view most vigilante killings that are taking place in Khayelitsha in the present era occur on the spur of the moment and are not planned.¹³² He also said that it is very difficult to obtain witnesses who are willing to testify to vigilante murders.¹³³ Colonel Marais also stated that he had used a witness protection programme only twice since he had been in Khayelitsha.¹³⁴ And like Brigadier Dladla, he acknowledged the difficulty of recruiting informers in Khayelitsha.¹³⁵ He explained this by saying that people "don't want to get involved", they are "scared to become involved" in case it causes trouble for them.¹³⁶
- [42] With regard to feedback to complainants, Colonel Marais also commented that people losing cell phones or changing their cell phone numbers might adversely affect the SMS system.¹³⁷
- [43] Colonel Marais testified that he had a substantial number of Xhosa-speaking non-commissioned officers, but that he has relatively few Xhosa-speaking commissioned officers. He agreed that it would be helpful if SAPS were to provide Xhosa lessons for those members who do not speak isiXhosa.¹³⁸
- [44] Colonel Marais described how difficult it is to discipline members for poor performance when they are as over-burdened as his detectives are. He said –

"I just want you to take into perspective if I have an individual that carries 150 murder dockets and he slips up with one or two dockets and now I have to discipline him in such a manner that through the disciplining he might be

128 Id. at 3861.

129 Id. at 3863 – 3864.

130 Id. at 3867.

131 Id. at 3867.

132 Id. at 3869.

133 Id. at 3873.

134 Id. at 3874.

135 Id. at 3966.

136 Id. at 3972.

137 Id. at 3879 – 3880.

138 Id. at 4004 – 4005.

losing his next promotion that is around the corner then I am going to lose the detective.”¹³⁹

- [45] He mentioned that the names of some of his best detectives have been linked with cases in which there has been poor investigation, and he suggested that given the workload his detectives are bearing this is not surprising.¹⁴⁰ He also told the Commission that he thinks that the SAPS performance chart is flawed because it fails to measure so much of the work that police do.¹⁴¹ As to performance evaluation, he suggested that of the 200 000 members of SAPS in the country, 180 000 will be evaluated as a “3”.¹⁴² In this regard, he said –

“... everyone is going to say it’s fine I’ll take the three, I’m average, I am okay because if I take a three I’ll get an increment...”¹⁴³

- [46] Colonel Marais said there were a number of reasons that dockets did not get to court, including a detective being off work ill, with his dockets locked in his filing cabinet, not accessible by other members.¹⁴⁴ He also said that “plain negligence” was another reason that dockets did not arrive at court.¹⁴⁵ However, he emphasised that it is only a small proportion of all dockets that do not arrive in court, so that the problem should not be overstated.¹⁴⁶
- [47] In response to a question relating to the failure of SAPS to attend the stakeholder meetings convened by the Department of Justice to ensure the smooth operation of the criminal justice system,¹⁴⁷ Colonel Marais said that he had appointed a SAPS member to attend the meetings, but that he accepted that SAPS was not always represented at the meetings.¹⁴⁸ Nevertheless, he testified this was not necessarily a problem as, he said, “we don’t need a meeting to talk to each other”.¹⁴⁹
- [48] With regard to EHW, Colonel Marais suggested that it would be helpful if there could be an EHW counsellor attached to each big station. He explained that there is one per cluster at present, but that at times the waiting lists can be long, and then members get referred to other clusters.¹⁵⁰

(e) Colonel Gert Nel and Colonel Tshotleho Raboliba – former and current Station Commanders of Harare¹⁵¹

- [49] Colonel Nel and Colonel Raboliba testified together. Colonel Nel was station commander at Harare from September 2008 until September 2011, and Colonel Raboliba is currently station commander having been appointed in September 2012.¹⁵² During the year that elapsed

139 Id. at 3881.

140 Id. at 3887.

141 Id. at 3892 – 3894.

142 Id. at 3897.

143 Id. at 3897.

144 Id. at 3983.

145 Id. at 3984.

146 Id. at 3990.

147 See the testimony of Ms Harmse in Chapter 9 above at paras 56 – 71.

148 Transcript at 3997 – 3998 (19 February 2014).

149 Id. at 3999.

150 Id. at 4012 – 4013.

151 Statements of Colonel Raboliba at Record Bundle 5(4), File 1, Item 3; and the Statement of Colonel Nel at Record Bundle 11(3), File 3.1, Item 24; and Transcript at 4612 – 4859 (17 March 2014 and 18 March 2014). Exhibit TR1, statement of agreed (and not agreed) facts dated 17 March 2014, Record Bundle 11(5), Item 45.

152 Transcript at 4621 (17 March 2014).

between Colonel Nel leaving Harare and Colonel Raboliba being appointed, acting station commanders were appointed to serve at Harare police station.¹⁵³

- [50] Colonel Nel testified that he has had 30 years' experience in SAPS, and that his experience at Harare was like "a police university."¹⁵⁴ Colonel Nel told the Commission that serving as station commander at Harare could not be compared to his experience as a station commander in other police stations, which included Strand, in terms of workload and experience.¹⁵⁵ Harare, he said, is a "very demanding police station", because of the size of the area that it covers, its location and the fact that almost 40% of the residents of the area live in informal areas which are very "labour intensive" to police.¹⁵⁶ Both Colonel Nel and Colonel Raboliba thought that Harare police station had too few SAPS members.¹⁵⁷ One of the reasons for this is that vehicles cannot police informal areas, and a foot patrol requires between six and ten members.¹⁵⁸ The policing of informal areas, given a shortage of personnel, was, according to Colonel Nel, "neglected".¹⁵⁹ Both Colonel Nel and Colonel Raboliba agreed that it was not impossible to conduct foot patrols in informal areas, but that it required sufficient personnel.¹⁶⁰
- [51] Colonel Nel testified that he was so concerned about the shortage of personnel allocated to him in terms of the RAG that he had spent many evenings poring over satellite maps of Harare, counting informal dwellings to try to increase the number of members Harare would be allocated.¹⁶¹
- [52] Colonel Raboliba also pointed to the size of the Harare policing precinct, that it covers not only Harare, but also Makhaza, which is situated several kilometres away from the police station itself.¹⁶² He noted that a decision had been taken to build a new police station in Makhaza, which would improve the situation.
- [53] Colonel Nel was asked about his experience of vigilante killings and assaults in Harare. He stated that he had not encountered informal justice structures at Harare in terms of which a group of people, "in an organised fashion", imposed a sanction on a person perceived to have committed a crime. Instead, he asserted that the incidents of vigilantism he had encountered were "spur of the moment" attacks, often resulting from a victim of crime calling for help.¹⁶³ Colonel Raboliba gave a similar account of how vigilante murders happen.¹⁶⁴
- [54] Colonel Nel explained that investigation and prosecution of vigilante attacks is difficult –
- "When arriving at these scenes, you usually almost catch the people in action, but with the arrival of the marked vehicles they disappear into the structures. Witnesses don't want to identify anyone. It's like it's being committed by ghosts. So no one wants to step forward to say I can identify [the perpetrators]. There are just no witnesses, no one saw anything."¹⁶⁵

153 Id. at 4701.

154 Id. at 4623.

155 Id. at 4627 – 4628.

156 Id. at 4623 – 4624.

157 Id. at 4625, 4642 and 4644.

158 Id. at 4624.

159 Id. at 4625.

160 Transcript at 4787 – 4788 (18 March 2014).

161 Id. at 4732.

162 Transcript at 4645 – 4647 (17 March 2014).

163 Id. at 4632.

164 Id. at 4651.

165 Id. at 4637.

- [55] Colonel Nel testified that until 2010 there had been an active CPF operating in Harare, but that the chairperson at the time, Mr Andile Lili, had been appointed a councillor and so was no longer eligible to be a CPF member.¹⁶⁶ The CPF was left without a chairperson, and it had become dysfunctional, so when Colonel Nel left the police station there was no functioning CPF.¹⁶⁷ Both Colonel Nel and Colonel Raboliba testified that Harare is a politically active area and that they both met regularly with leaders from the area, even those who were not CPF members.¹⁶⁸ Colonel Raboliba noted that SANCO, in particular, was dominant in Harare.¹⁶⁹ Colonel Nel also testified that from time to time his members had patrolled with Neighbourhood Watches in Harare.¹⁷⁰
- [56] Colonel Raboliba told the Commission that when he was appointed in September 2012, the CPF had only two members, and that an election was held in February 2013 to appoint a new CPF.¹⁷¹ Colonel Raboliba said that his relationship with the new CPF that had been elected was good.¹⁷²
- [57] Colonel Raboliba was also asked about the role of DOCS in investigating complaints. He testified that it was his understanding that in accordance with a letter from the Provincial Commissioner circulated in 2010, all complaints had to be centralised at the SAPS provincial nodal point.¹⁷³ The consequence of this was that DOCS was no longer entitled to investigate complaints by visiting the police station and inspecting registers.¹⁷⁴
- [58] Colonel Raboliba also testified concerning vacancies relating to senior positions at the Harare police station. He informed the Commission that the position of detective commander had been vacant since January 2013 when Colonel Tobias had left, but that an appointment of a new detective commander had just been made which would take effect on 1 April 2014.¹⁷⁵ He also told the Commission that a support services head for the police station had also just been appointed, and that that position had also been vacant for over a year.¹⁷⁶
- [59] Colonel Raboliba testified to the fact that detectives at Harare are overburdened,¹⁷⁷ although Colonel Nel suggested that detectives at other large police stations might be similarly burdened.¹⁷⁸ One of the consequences of overburdening detectives is that senior officers often consider it inappropriate to discipline detectives for failing to comply with instructions of inspecting officers because they recognise that the detectives are carrying a very heavy load.¹⁷⁹
- [60] Colonel Raboliba acknowledged that the perception that it was prejudicial to use the EHW existed in SAPS.¹⁸⁰ He also acknowledged the difficulty faced by SAPS members in recruiting informers in Harare. He said that members of the community do not want to be seen

166 Id. at 4653.

167 Id. at 4653 – 4654.

168 Id. at 4652 and 4656 – 4657.

169 Id. at 4652 and 4664.

170 Id. at 4658 – 4659.

171 Id. at 4664.

172 Id. at 4665.

173 Id. at 4667.

174 Transcript at 4790 – 4793 (18 March 2014).

175 Id. at 4763.

176 Id. at 4764.

177 Id. at 4752.

178 Id. at 4773.

179 Id. at 4771.

180 Id. at 4779.

“associating with the police”, because they fear they may be attacked by community members if they do.¹⁸¹

(f) Colonel Andrew Tobias – Detective Commander Harare police station¹⁸²

- [61] Colonel Tobias joined SAPS in 1987. He served as detective commander at the Harare police station from March 2007 until the end of 2012, when he was appointed detective commander at Stellenbosch Police station. Once he left Harare, the post of detective commander was not filled for 15 months, a new detective commander having only been appointed on 1 April 2014.
- [62] Colonel Tobias told the Commission that he had not applied for the position of detective commander at Harare, but that he had been asked by a senior police officer, now the provincial commissioner in Mpumalanga to go to Harare as detective commander.¹⁸³ He told the Commission that when he arrived at Harare, the station commander told him that there was a problem with absenteeism in the detective service and that there were shortcomings with regard to crime scene management.¹⁸⁴
- [63] At the time Colonel Tobias left, Harare police station had 38 detectives, five of whom were captains, and the balance non-commissioned officers.¹⁸⁵ Colonel Tobias agreed that the average number of dockets per detective was 133, as had been calculated in the 2011 Provincial Inspectorate report, which the Provincial Inspectorate considered to be “unmanageable”.¹⁸⁶ He also acknowledged that detectives were receiving on average 30 new dockets per month.¹⁸⁷ Colonel Tobias acknowledged that he could have used more detectives.¹⁸⁸ He also noted that Harare had been allocated 14 student detective constables as part of its staff complement. Although he noted that he was not ungrateful to be allocated students, he explained that having students in the unit –
- “... places a much heavier burden on the existing detectives because [they have] to train and mentor that person in other words he has to work with that person and with his own load and I have also requested that I want warrant officers...”.¹⁸⁹
- [64] Colonel Tobias was questioned about the 2011 Provincial Inspectorate Report. The Report contains a table setting out information concerning the number of dockets opened at Harare in the first quarter of 2010 and the first quarter of 2011. In the first quarter of 2010 there were 1472 reports of new crimes, and in the first quarter of 2011 there were 1279. In the first quarter of 2010, 736 cases went to court, approximately 30% of new cases, and in the first quarter of 2011, 607 went to court, approximately 23% of new cases. In the first quarter of 2010, there were 5 convictions, and in the first quarter of 2011, there were 6 convictions in respect of the cases that went to court. Accordingly of the cases that went to court in the first quarter of 2010, there were convictions in 4.19% of cases, and in the first quarter

181 Id. at 4780 – 4781.

182 Record Bundle 11(3), File 3.1, Item 23; Transcript at 4332 – 4611 (21 February 2014 and 17 March 2014).

183 Transcript at 4335 – 4336 (21 February 2014).

184 Id. at 4340.

185 Record Bundle 11(3), File 3.1, Item 23, pp 1 – 2.

186 Transcript at 4428 (21 February 2014). Record Bundle 3(3.30) File 3, Item 1, pp 366 – 441, at para 4.5.1.

187 Transcript at 4428 (21 February 2014).

188 Id. at 4414.

189 Id. at 4503

Photo 12: Docket storage room, Lingeletu West police station



of 2011, there were convictions in 3.38% of cases. When it is recalled that the cases that go to court constitute only a small percentage (30.44% and 23.44% in the first quarter of 2010 and 2011 respectively) of the cases reported in each quarter, there are in all convictions in only about 0.5% of cases that are reported.¹⁹⁰ Colonel Tobias confirmed this interpretation of figures contained in the Provincial Inspectorate report.¹⁹¹ Colonel Tobias also explained the comment in para 4.6.1 of the 2011 Report that “the increasing number of dockets in column 8.6 is a concern”.¹⁹² Column 8.6 refers to referred to court, but not finalised, he explained.¹⁹³

- [65] Colonel Tobias told the Commission that he thought the appointment of the DCCO, Captain Pillay, had been a good idea, and that his appointment had made a “massive difference”.¹⁹⁴ He testified that most dockets were at court, but that there were occasions when a docket was not sent to court.¹⁹⁵
- [66] Colonel Tobias was also questioned about the e-docket system, in terms of which dockets are scanned into an electronic database, so that should a docket be mislaid, its contents are recoverable from the database.¹⁹⁶ Colonel Tobias testified that the system was implemented at Harare during 2012.¹⁹⁷ He was asked why, if that was so, why cases from Harare were still being struck from the roll in the Khayelitsha Magistrates’ Court during 2013. He responded that the e-docket system did not work properly, and that there were technical difficulties with it.¹⁹⁸

¹⁹⁰ Record Bundle 3(3.30) File 3, Item 1, pp 366 – 441 at para 4.6, p 397; Transcript at 4430 – 4431 (21 February 2014).

¹⁹¹ Id. at 4431.

¹⁹² Record Bundle 3(3.30) pp 366 – 441, at para 4.6.1, p 397

¹⁹³ Transcript at 4437 – 4439 (21 February 2014).

¹⁹⁴ Id. at 4346.

¹⁹⁵ Id. at 4349 – 4353.

¹⁹⁶ Transcript at 4519 (17 March 2014).

¹⁹⁷ Id. at 4519.

¹⁹⁸ Id. at 4522 – 4523.

- [67] On feedback to complainants, Colonel Tobias testified that National Instruction 29/2011 required there to be a feedback form in each docket, where investigating officers record feedback provided to complainants. He said that he required all his investigating officers to comply with the National Instruction.
- [68] Colonel Tobias also testified to the difficulty of recruiting informers in Harare. He said that members of the community do not want to be seen as “*impimpi*” so are reluctant to register as informers.¹⁹⁹
- [69] On being referred to the SCCF minutes of January 2012, he acknowledged that there were problems with the maintenance of the Domestic Violence Register (SAPS 508b).²⁰⁰
- [70] Colonel Tobias also asserted that vigilante murders in Harare are “spur of the moment” events, not planned by an informal community tribunal.²⁰¹ Like Colonel Nel, Colonel Tobias told the Commission that vigilante murders are difficult to investigate, because it is difficult to find witnesses who are willing to testify.²⁰² However, he also told the Commission that there had been some convictions relating to vigilante murders in Harare during his time as detective commander there.²⁰³
- [71] Colonel Tobias was also shown one of the dockets that had been requested by the Commission, a matter that had been withdrawn by the prosecutor. It concerned a charge of driving under the influence of alcohol on 25 October 2010.²⁰⁴ When the person was arrested, he was found to have no driver’s licence in his possession. A perusal of the docket showed that the case had been referred to court on 17 January 2011, postponed to 18 April 2011, and postponed again to 29 June 2011, when it was withdrawn. It had been postponed on the previous occasions because the laboratory results had not been received and it was withdrawn because the results still had not been furnished. Five months later on 17 November 2011, SAPS received the laboratory report, which showed there to have been 0.13g of alcohol per 100ml of blood.²⁰⁵ The matter was referred to the prosecutor for the issue of summons, but on 27 January 2012, the prosecutor returned the docket with a note stating that there was no statement in the docket confirming when the blood sample had been taken. The inspecting officer instructed the investigating officer to comply with the prosecutor’s request and issued a “brought forward” date of 8 May 2012, but by that date nothing appeared to have happened. Thereafter, the docket reflects a further entry dated 21 May 2013, over a year later, asking that the matter be followed up, but no further entries appear in the docket. The Commission was furnished with a copy of the docket in February 2014.²⁰⁶ When the docket was shown to Colonel Tobias, he agreed that the right procedure had not been followed, and that the “brought-forward” system had failed.²⁰⁷

199 Id. at 4368 – 4369 (21 February 2014).

200 Id. at 4526 (17 February 2014).

201 Id. at 4371 (21 February 2014).

202 Id. at 4381.

203 Id. at 4382.

204 Harare CAS 763/9/2010.

205 Transcript at 4532 – 4542 (21 February 2014).

206 Id. at 4542.

207 Id.

B. KHAYELITSHA CLUSTER

(a) Captain Dhanabalan Pillay – DCCO, Khayelitsha Magistrates' Court²⁰⁸

- [72] Captain Pillay joined SAPS in 1985, and has been a detective since 1995.²⁰⁹ He was stationed as a Detective Court Case Officer (DCCO) at Khayelitsha Magistrates' Court from January 2010 till March 2014, when he was promoted to detective branch commander at Macassar Police station.²¹⁰ Captain Pillay testified that he reports directly to the Cluster detective co-ordinator, Colonel Wiese,²¹¹ to whom he provides weekly reports. The duties of a DCCO are set out in Annexure D to a SAPS circular entitled "Integrated Case Flow: Screening Protocol with Directorate of Public Prosecutions" dated 28 October 2009.²¹²
- [73] Captain Pillay told the Commission that when he was appointed DCCO, it was a new position, established to "ensure better docket quality, enhanced docket flow and efficient communication the SAPS, National Prosecuting Authority and the Department of Justice",²¹³ He explained that there are four "liaison officers" at the Magistrates' Court who are responsible for liaising between prosecutors and investigating officers and ensuring that dockets are directed to the correct courts.²¹⁴ This system has been in place for many years. The post of DCCO, however, is a new post, established only in 2010.²¹⁵
- [74] He explained to the Commission that both new and old dockets are delivered to court by detectives. New dockets, where the case is enrolled for the first time, are recorded in a register by the SAPS liaison officer at the court; and old, or returning dockets, are recorded in a different register. There is a 'new' docket register and an 'old' docket register for each police station, so in all there are six registers.²¹⁶ When a docket is returned to an investigating officer, it is signed for by the liaison officer in the record, and the date to which it has been remanded is noted.²¹⁷
- [75] Captain Pillay also explained that when a docket has been entered into the register, the liaison officer forwards it to him. He then screens the docket to ensure that there is a prima facie case and he checks that it contains all necessary warning statements, witness' statements, J88 medical reports, laboratory reports, arrest information and bail information.²¹⁸ He completes a screening sheet in relation to each docket.
- [76] Captain Pillay also stated that he meets daily with the senior public prosecutor, now Ms Harmse, to try to ensure that dockets are in court.²¹⁹ Each morning he is provided with a list of dockets that are not at court,²²⁰ and he then contacts the relevant investigating officer

208 Record Bundle 10(2), File 2.2, Item 22; and Transcript at 4048 – 4176 (20 February 2014).

209 Transcript at 4049 – 4050 (20 February 2014).

210 Id. at 4049. Note the transcript erroneously reflects Captain Pillay's appointment, as being to Makhaza Police station, but there is no such police station in existence yet.

211 Transcript at 4097 (20 February 2014).

212 Record Bundle 8(4), File 4.4, File 9, Item 20.8.

213 Record Bundle 10(2), File 2.2, Item 22, para 2; Transcript at 4051 (20 February 2014).

214 Transcript at 4065 and 4143 (20 February 2014).

215 Id. at 4051.

216 Id. at 4054.

217 Id. at 4060.

218 Record Bundle 10(2), File 2.2, Item 22, para 3.3; Transcript at 4056 – 4057 (20 February 2014).

219 Id. at 4052.

220 Id. at 4162.

or detective commander to try to ensure the dockets are brought to court.²²¹ He can identify the relevant investigating officer because he has a laptop and access to the SAPS CAS system. The problem only arises, by definition, with 'old' dockets that are returning for a remand date, not with 'new' dockets.²²² The problem also does not arise with cases enrolled in the regional court, because once a case has been remanded for trial in the regional court, the dockets are retained in a strong room at the Magistrates' Court.²²³ The working rule is that dockets that are due for a court date should be delivered to court three days before the court date,²²⁴ but that does not always happen.²²⁵ Captain Pillay estimated that on average three dockets are missing each day in court.²²⁶

- [77] When asked whether he kept a calendar of the docket remand dates so that he can draw lists in good time to ensure dockets are at court, Captain Pillay said he did not.²²⁷ He also said that he did not check on the CAS what dockets were going to be needed in the court on a weekly basis.²²⁸ Instead, he waited each morning for a list to be brought to him by the prosecutors before he started making an effort to get the absent dockets to court. Often that proved too late to get the dockets to court in time.
- [78] Captain Pillay provides weekly reports to Colonel Wiese, his commanding officer in accordance with the prescripts set out in the provincial circular.²²⁹ Several of those weekly reports were made available to the Commission,²³⁰ which indicated the dockets that had either not been delivered to court all, or had been delivered late, in the relevant week. For the week ending 31 January 2014, for example, the report showed that there were 214 new cases in court, 385 old cases, and 46 dockets that had been late or had not arrived at court at all, (9 from Lingeletu West, 21 from Harare, and 16 from Khayelitsha Site B).²³¹
- [79] Captain Pillay also told the Commission that one of the Khayelitsha Magistrates had decided to visit each of the three police stations in Khayelitsha to explain to SAPS members how important it is for dockets to arrive at court.²³² The fact that the Magistrate did this suggests that dockets' not being brought to court was perceived to be a matter of concern to the Magistrates in Khayelitsha.

(b) Colonel Alma Wiese – Khayelitsha Cluster Detective Co-ordinator²³³

- [80] Colonel Wiese has 31 years' service in SAPS and she has served as cluster detective co-ordinator in the Khayelitsha cluster office since October 2011.²³⁴ She explained that the system of cluster offices is still a relatively new concept for SAPS, and that it replaced an earlier

221 Id. at 4126. See also Transcript at 4162 where Captain Pillay admitted that every day he receives lists of dockets that have not been delivered (20 February 2014).

222 Transcript at 4058.

223 Id. at 4072.

224 Id. at 4061.

225 Id. at 4066 – 4067.

226 Id. at 4070.

227 Id. at 4155 – 4156.

228 Id. at 4154.

229 Record Bundle 8(4), File 4.4, File 9, Item 20.8 at para 13.

230 Exhibits DP2(a), DP2(b) and DP2(c) in Record Bundle 10(3), Items 40(a), (b) and (c). See also Transcript at 4097 – 4098 (20 February 2014).

231 Exhibit DP2(a), Record Bundle 10(3), Items 40(a).

232 Transcript at 4075, at 4138 – 4140 and at 4159 – 4160 (20 February 2014).

233 Record Bundle 5(4), File 4, Item 40; Transcript at 4987 – 5102 (24 March 2014).

234 Transcript at 4989 (24 March 2014); Record Bundle 5(4), File 4, Item 40 at para 3.

system of area offices.²³⁵ She told the Commission that a cluster office ordinarily comprises a senior officer as cluster commander, a detective co-ordinator and a VISPOL co-ordinator, but with almost no support below them.²³⁶ She also mentioned, for example, that the cluster office has one email address that is used for all three senior officers. Every email that is received is printed out, and taken to the cluster commander who decides to whom it should be given. The result is that sometimes email messages take time to be received, or even go astray.²³⁷

- [81] She also said that although cluster offices had been created, there were not clear guidelines as to their responsibilities.²³⁸ When she took office in October 2011, it was not clear what the role of a cluster detective co-ordinator should be, and one of her first tasks was to identify key performance areas for the post.²³⁹ What was clear, was that the post carried no operational mandate, in the sense that she was not entitled to instruct any detective commander at any of the police stations within the cluster as to how to perform his or her work, even though the detective commander would be junior in rank to her.²⁴⁰ The provincial office does have such powers. She was of the view that the lack of operational authority hampered the work of cluster offices and she told the Commission that the function of cluster offices is currently under review within SAPS.²⁴¹ Colonel Wiese told the Commission that cluster offices had fewer powers than area offices used to have, as area offices had had operational authority over police stations.²⁴²
- [82] Colonel Wiese explained that one of the key aspects of her role is to obtain feedback from detective commanders of the police stations within the cluster. The Khayelitsha cluster contains eight police stations: the three Khayelitsha police stations as well as Macassar, Strand, Somerset West, Lwandle and Gordon's Bay. She thus obtains weekly reports from detective commanders, as to the number of cases received during the week, the number of cases taken to court, the number of bail applications attended, the number of tracing operations conducted, the number of NPIS photographs taken, the number of SMS bundles sent and the number of autopsies attended.²⁴³ Colonel Wiese also holds weekly case flow meetings with the detective commanders in the cluster and she provided copies of the minutes of those meetings.²⁴⁴
- [83] Colonel Wiese also receives weekly feedback from the DCCOs at the three courts in the cluster (Khayelitsha, Strand and Somerset West), an issue discussed above. She admitted that the issue of getting dockets to court was a problem that had existed when she arrived in the cluster office, and still existed.²⁴⁵ But she also said that this was a problem in other courts as well, both within the Khayelitsha cluster, and outside it.²⁴⁶ Like Captain Pillay and Colonel Marais, she noted that sometimes when dockets were noted as missing, they were subsequently found at the Magistrates' Court itself.²⁴⁷ She also testified that she had joined the Khayelitsha Magistrate, Mr Sass, and the Khayelitsha Court Manager, Mr Yayi, when they had

235 Transcript at 4889 – 4890 (24 March 2014).

236 *Id.* at 4990.

237 *Id.* at 5043 – 5046.

238 *Id.* at 4990.

239 Record Bundle 5(4), File 4, Item 40 at para 3.

240 *Id.* and Transcript at 4991 (24 March 2014).

241 *Id.* at 4991.

242 *Id.* at 4991 – 4992.

243 *Id.* at 4995. See also annexure to Colonel Wiese's statement providing information on the weekly feedback for the period 2011 – 2013. Record Bundle 5(4), File 4, Item 40, pp 96 – 195.

244 Record Bundle 5(4), File 4, Item 40, pp 8 – 95.

245 Transcript at 5008 – 5009 (24 March 2014).

246 *Id.* at 5014 and 5050.

247 *Id.* at 5010 – 5012.

visited the three police stations. She had been delighted that they had undertaken the visits,²⁴⁸ but she also admitted that the fact that Mr Sass wanted the meeting was a sign that there was a problem, even if it also created an opportunity.²⁴⁹

[84] Colonel Wiese also inspects 180 dockets per month. The dockets are selected by the branch commanders and brought to the cluster office for her to inspect. She provided the Commission with a report on her docket inspections.²⁵⁰ In her testimony, she said the most common problems in the 2000 dockets she had inspected in Khayelitsha, included –

- the failure to commission statements properly;
- statements not including the essential elements of crimes;
- witness statements outstanding;
- investigation aids not utilised;
- ‘brought-forward’ dates not adhered to;
- no regular feedback to complainants; and
- exhibits not properly recorded on the CAS system.²⁵¹

[85] Colonel Wiese was asked what was being done to improve the manner in which dockets are investigated, and whether detectives are being disciplined for a failure to investigate dockets properly. She confirmed that detectives were being disciplined at the three stations.²⁵² However, she also agreed that it was difficult to discipline detectives who are carrying very large numbers of dockets.²⁵³

[86] Colonel Wiese also noted that one of the problems at the stations was the very high number of dockets that were being “rolled over”, that is not being resolved, and therefore remaining under investigation. She referred to these as column 7 dockets (drawn from the police station evaluation form, SAPS 6).²⁵⁴ She noted that at Khayelitsha Site B, which has 62 detectives, there were 1447 dockets under column 7, while Harare, with 48 detectives, have 2346 under column 7.²⁵⁵ She also referred to the number of dockets under column 8.6 (that is the dockets that have been sent to court, but not finalised) as a problem. She noted that the Provincial Commissioner has introduced a plan to address both the column 7 and column 8.6 dockets, which, in a sense reflect the “backlog” in order to reduce the number of such dockets.²⁵⁶

[87] Colonel Wiese also testified about the relationship that had been established with Free Gender, in which regular meetings which either she chairs or a senior SAPS member from the Nyanga cluster.²⁵⁷

[88] Colonel Wiese also indicated that there was a problem with detectives attending autopsies, which was a matter she monitors in her weekly meetings.²⁵⁸ She referred to a letter circulated by the Provincial Commissioner in which he said that it was desirable, but not compulsory, for investigating officers to attend autopsies. The letter also said that if an inspecting officer did not attend an autopsy, the investigating officer should discuss the merits of the case with

248 Id. at 5011 – 5012.

249 Id. at 5048 – 5049.

250 See annexure to Statement at Record Bundle 5(4), File 4, Item 40. Her docket inspections are in three batches – pp 196 – 243; pp 244 – 296; and pp 296 – 369.

251 Transcript at 5058 (24 March 2014).

252 Id. at 5062.

253 Id. at 5063.

254 Id. at 5064. See Exhibit AW2 which contained some written answers to questions posed to Colonel Wiese, including the information concerning Column 7 and 8.6 dockets at three police stations. Record Bundle 11(5), Item 53.

255 Id.

256 Id. at 5065 and 5073.

257 Id. at 5029 and 5039.

258 Id. at 5071. See minutes of weekly meeting dated 10 October 2011 at para 3.5, Record Bundle 5(4), File 4, p 15.

the pathologist before the autopsy is conducted.²⁵⁹ She agreed that it would be useful for her to monitor not only failure to attend autopsies, but also the question whether the investigating officer had discussed the merits of the case with the pathologist before the autopsy was conducted as instructed by the Provincial Commissioner.²⁶⁰

- [89] Colonel Wiese was also asked about the number of informers, as it was noted that the minutes of her weekly meetings that the number of informers had decreased.²⁶¹ Colonel Wiese recorded that the PEP requires detectives to recruit one informer per quarter, and, if they do not do so, they are given a 1 or 2 on that aspect of their performance evaluation.²⁶² She commented that even if a detective can recruit an informer, registering and claiming reimbursement for the informer is an administrative challenge.²⁶³ She concurred with other police members who had testified that members of the public are frightened of working with the police.²⁶⁴ “People are scared they’re going to be exposed as an informer, and then they will be killed in the community.”²⁶⁵

- [90] When asked what she would do to solve the situation in the detective branches at the three Khayelitsha police stations, Colonel Wiese replied –

“So the backlog is the thing that is drowning everybody. So I also must mentioned, I’ve written a letter to the Provincial Commissioner where I’ve made the 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. This 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 we need to face it, we’re working with humans.”²⁶⁶

(c) Brigadier Aaron Mlenga and Major General Goss – former Cluster Commanders, Khayelitsha²⁶⁷

- [91] Brigadier Mlenga joined SAPS in 1980. He became station commander in Khayelitsha in 2006, and served simultaneously as station commander and acting cluster commander in Khayelitsha from approximately May 2009 until March 2010, when Major General Goss was appointed cluster commander.²⁶⁸ Brigadier Mlenga left Khayelitsha in 2011 when he moved to Wynberg as station commander, and then as cluster commander.²⁶⁹ It emerged in the hearings that when Brigadier Mlenga was transferred to Wynberg there were a range of disciplinary charges pending against him in relation to his management of the Khayelitsha Site B police station.²⁷⁰ Major General Goss also joined SAPS in 1980. He served as cluster commander in Khayelitsha for a year between 2010 and 2011. Major General Goss now serves as cluster commander for the Cape Town cluster.²⁷¹

259 Transcript at 5072 (24 March 2014).

260 Id. at 5074.

261 Transcript at 5076. See also minutes of weekly meeting dated 10 October 2011 at para 3.10, Record Bundle 5(4), File 4, p 18.

262 Transcript at 5077 (24 March 2014).

263 Id.

264 Id. at 5078.

265 Id. at 5078.

266 Id. at 5100 – 5101.

267 Record Bundle 11(3) File 3.1, Item 27, and Transcript at 5116 – 5224 (24 March 2014).

268 Transcript at 5190.

269 Id.

270 Id. at 5191 – 5192. Lieutenant General Lamoer Transcript at 6660 – 6661 (1 April 2014).

271 Id. at 5119 – 5120.

- [92] Major General Goss was replaced by an acting cluster commander, General Strydom.²⁷² Thereafter, according to Major General Goss, at least four senior officers served as acting cluster commander in Khayelitsha.²⁷³ The position of cluster commander was again vacant at the time that the Commission held its hearings,²⁷⁴ but the Commission was informed that an appointment would be made shortly.
- [93] Brigadier Mlenga testified that when he arrived at Khayelitsha in late 2006, he realised that the murder rate was a serious issue.²⁷⁵ Secondly, he identified low morale amongst the SAPS members at the police station to be a challenge.²⁷⁶ When asked, he said he concluded that there was a problem of low morale from several factors: the high crime rate, the high absenteeism rate amongst his personnel and the number of complaints received from the community about the poor level of service delivery by SAPS.²⁷⁷ He explained that low morale amongst members was not surprising because it is stressful to work as a SAPS member in Khayelitsha.²⁷⁸
- [94] Major General Goss also testified to the problem of vigilantism in Khayelitsha. He said that the province had provided four or five rapid response vehicles to establish a rapid response team, so that when SAPS received a call saying that a vigilante attack was in progress, they could get there quickly.²⁷⁹ Brigadier Mlenga told the Commission that he was not aware of the 2002 SAPS vigilantism prevention strategy,²⁸⁰ but acknowledged that vigilantism was an issue in Khayelitsha during his period of service there.
- [95] Brigadier Mlenga testified that CPFs were often “organised along political lines”²⁸¹ and that had caused some difficulties during his time in Khayelitsha Site B. The CPF at his police station had been SANCO-dominated, but he learnt that there had been a split in SANCO in terms of which some members had become loyal to a different political party, COPE, and that some members of his CPF were closer to COPE than SANCO.²⁸²
- [96] Major General Goss also testified that SAPS has not determined the role of cluster commanders in a written document, although he said that would be desirable.²⁸³ He said that the role is not the same as the role of former Area or District commanders who had had operational authority over police stations within their area. The role of cluster commander is an oversight role, but without operational authority.²⁸⁴ Both Brigadier Mlenga and Major General Goss, who are currently serving as cluster commanders, commented on the lack of resources provided for cluster commanders to perform their responsibilities.²⁸⁵

272 Id. at 5187.

273 Id.

274 Id. at 5188.

275 Id. at 5121.

276 Id.

277 Id. at 5122.

278 Id. at 5123.

279 Id. at 5138.

280 Id. at 5160.

281 Id. at 5208.

282 Id.

283 Id. at 5213.

284 Id. at 5213.

285 Id. at 5221 – 5223.

C. NATIONAL OFFICE

(a) Brigadier Leon Rabie – Section Head, Performance Management, Organisational Development, SAPS Head Office, Pretoria²⁸⁶

- [97] Brigadier Rabie has been a member of SAPS for 27 years.²⁸⁷ He currently serves as the section head in the Performance Management section of the Organisational Development Department, based in Pretoria. It is his responsibility to “develop and maintain a procedure to calculate the human resources requirements of police stations in SAPS.”²⁸⁸ A system has been developed to calculate the number of posts per grade required to perform the duties at each police station. The number of posts calculated on this basis is referred to as the Theoretical Human Resource Requirement (THRR).²⁸⁹ Brigadier Rabie explained that the system uses –

“... weighted averages, ratio analyses, standard times, time percentages and time standards (required) of specific elements of tasks or activities performed at the police station in question. For example, the total number of tasks or activities that are performed at a specific function, the time required to complete those activities, taking contingency factors (i.e. absence/leave from duty) into account and external, environmental factors, (e.g. the size of the station’s area and its population density) determine the theoretical human resource requirement for the specific function.”²⁹⁰

- [98] Brigadier Rabie explained that data is gathered from each police station regularly to be used in the calculation of the THRR.²⁹¹ The information is entered onto a “generic data input sheet”.²⁹² Once the data is received, the THRR is calculated on the basis of the criteria set out in a document entitled “Calculation of the THRR for Clusters, Police stations, Satellite Police stations and Contact Points.”²⁹³ A contingency allowance for absenteeism for all forms of absenteeism is added at the rate of 22.12% together with an additional contingency of 5%.²⁹⁴ Once the THRR of police stations has been calculated, it is consolidated to determine the national requirement for police stations in terms of numbers and rank levels.²⁹⁵ Brigadier Rabie emphasised that the SAPS budget does not permit all the posts identified as necessary in terms of the THRR to be filled,²⁹⁶ and that on average each police station receives 68% of its calculated THRR.²⁹⁷ Brigadier Rabie acknowledged that the consequence of under-staffing to this extent has a deleterious impact on policing.²⁹⁸
- [99] Brigadier Rabie told the Commission that the current allocation of SAPS members to the 1137 police stations nationally totals 117 524 posts, which constitutes 59% of the total funded

286 Record Bundle 5(4), File 6, Item 13; Transcript at 5226 – 5401 (25 March 2014).

287 Transcript at 5228 (25 March 2014).

288 Record Bundle 5(4), File 6, Item 13 at para 2. Transcript at 5228 (25 March 2014).

289 Record Bundle 5(4), File 6, Item 13 at para 2.

290 Id. at para 3.

291 Id. at para 5.1.

292 A copy of the 2012/2013 generic data input sheet is attached to Brigadier Rabie’s statement as Annexure A, see Record Bundle 5(4), File 6, Item 13, at pp 7 – 26.

293 See Annexure B to his statement: Record Bundle 5(4), File 6, Item 13, at pp 27 – 111.

294 Record Bundle 5(4), File 6, Item 13 at paras 5.2 and 5.3.

295 Id. at para 5.4.

296 Id. at para 5.4.

297 Id. at para 5.5.

298 Transcript at 5388 – 5389 (25 March 2014).

fixed establishment of SAPS for 2013/2014.²⁹⁹ Brigadier Rabie also told the Commission that the number of members of SAPS had grown from approximately 120 000 in 2012 to approximately 200 000 in 2013, but that Treasury has indicated that this growth will not be able to continue, and that the establishment number had therefore to be stabilised.³⁰⁰ He also said that the proportion of SAPS members allocated to police stations, rather than to specialised units, or to provincial or national office has stayed relatively stable.³⁰¹

- [100] Brigadier Rabie further explained that once the fixed establishment has been approved, then a distribution per police station is issued, which contains the number of posts, and the ranks of those posts (that is the number of posts that will be provided for in the budget, as opposed to the “theoretical” human resource requirement). This budgeted distribution, or fixed establishment, used to be referred to as the Resource Allocation Guide (RAG). The Commission notes that many of the SAPS members who testified before the Commission still referred to the RAG. According to Brigadier Rabie, the RAG (or fixed establishment as it is now called) is not the same as the THRR, as the fixed establishment only reflects the number of posts that could be established in terms of the SAPS budget and the medium-term expenditure framework.³⁰²
- [101] Brigadier Rabie also said that the type of police station is determined by its needs and that once the type has been determined, its staffing is finalised, so a Brigadier (or category C2) police station gets more resources than a Captain (or category A) police station.³⁰³ Brigadier Rabie also explained that in terms of Treasury guidelines, it is not permissible to place a Brigadier in a Captain station, as it would be considered irregular expenditure.³⁰⁴ The grading of a police station has specific staffing implications: so a Colonel station (C2) must have three Lieutenant Colonels, in the three senior positions in the station.³⁰⁵ He also told the Commission that a decision has been taken nationally that all police stations must be open 24 hours per day, which has staffing implications, for example, 16 people are required to run a CSC on a 24-hour basis.³⁰⁶ Brigadier Rabie also noted that in small stations, graded as A, the detective service is not provided on a 24-hour basis, but that at larger stations it is.³⁰⁷ Brigadier Rabie testified that the minimum number of posts for a police station that operates 24 hours is just fewer than 60.³⁰⁸
- [102] Brigadier Rabie explained how the data received from the police stations is used to calculate the THRR in relation to detectives. The number of detectives required is calculated on the basis of the number of crimes reported at a police station, and crimes are differentiated according to the amount of time required for their investigation. So, according to the calculation method, a detective may be allocated four cases of murder, or robbery with aggravating circumstances per month, or five cases of attempted murder or culpable homicide.³⁰⁹ Brigadier Rabie explained that this meant that if a police station had eight murders per month, it would require two detectives to deal with those murders according to the THRR.³¹⁰ Once the

299 Transcript at 5231 (25 March 2014).

300 Id. at 5239.

301 Id. at 5241.

302 Record Bundle 5(4), File 6, Item 13 at para 5.7. See also Transcript at 5235 – 5236 (25 March 2014).

303 Transcript at 5232 – 5233 (25 March 2014).

304 Id. at 5259.

305 Id. at 5261.

306 Id. at 5232 – 5233.

307 Id. at 5267.

308 Id. at 5341.

309 Id. at 5280 – 5281. See also Annexure B, Record Bundle 5(4), File 6, Item 13, at pp 53 and 79.

310 Id. at 5281.

number of detectives, based on the reported crime has been calculated, a contingency of 27% is added, to deal with absenteeism for training, annual leave and fatigue.³¹¹

[103] Brigadier Rabie also explained that certain supplements are made for environmental factors, such as distance from a court, or mountainous areas that make travel difficult.³¹² One of the environmental factors that results in a supplement is the proportion of residents in the policing area who are living in informal houses. If between 1% and 2.5% of the population lives in informal dwellings, the police station establishment is increased by 1%. If 10% of the population live in informal dwellings, the establishment is increased by 5%. 5% is the maximum supplement provided for informal dwellings, even if 50% of the residents of a police station precinct live in informal dwellings, as is the case in Khayelitsha Site B and Harare.³¹³ It was suggested to Brigadier Rabie that this would mean that police stations with large numbers of informal housing would tend to be under-policed. He accepted that such considerations might require a revision of the system.³¹⁴ The calculation of posts is done in respect of operational posts, and once that number has been calculated, it is topped up with a command structure, which is calculated according to a fixed ratio.³¹⁵ Brigadier Rabie also told the Commission that backlogs are not taken into account in calculating the THRR, because they should be temporary and permanent posts cannot be funded to solve a temporary problem.³¹⁶

[104] Brigadier Rabie told the Commission that if a new police station is established at Makhaza, the approach to staffing that station will start from the fact that the workload of Harare will diminish, and that Makhaza should therefore be provided with the members of SAPS at Harare who had previously been notionally performing the work required by Makhaza, with the consequent reduction in the number of police members allocated to Makhaza. He added –

“But it’s not a pure 50/50 split. It doesn’t work like that because you have ... a management structure that you have to take into consideration. But the current reality is, given the current scenario, if you are going to split that station and create another police station you will have to do that with the resources that we have available.”³¹⁷

[105] Brigadier Rabie emphasised that a Provincial Commissioner always has the power in terms of section 12(3) of the SAPS Act to override the fixed establishment, and deploy more resources to a particular station that needs them, as long as the basic staffing requirements of each police station are maintained.³¹⁸ His greatest area of discretion is in relation to what Brigadier Rabie referred to as “the production core”, that is the junior officers or non-commissioned members who are performing operational duties in each police station.³¹⁹ According to Brigadier Rabie, the Provincial Commissioner could choose to staff the three Khayelitsha police stations, even within the current fixed establishment, at 100% of the THRR by moving members from police stations where the circumstances are less exigent.³²⁰ The consequence, however, would be that other stations would be staffed at a lower level.

311 Id. at 5282 – 5289.

312 Id. at 5289 – 5290.

313 Id. at 5291.

314 Id. at 5292.

315 Id. at 5294 – 5295 and 5330 – 5331.

316 Id. at 5301 – 5302.

317 Id. at 5244.

318 Id. at 5251 – 5253.

319 Id. at 5261 – 5262.

320 Id. at 5262 – 5263.

- [106] Brigadier Rabie explained to the Commission that the allocation to provinces is done based on the THRR.³²¹ He showed the Commission a letter from SAPS national office to the Provincial Commissioner setting out the distribution of the fixed establishment for police stations and clusters in the Western Cape for the 2012/2013 year.³²² According to that letter the establishment was 16 965 posts. The letter also contained an annexure providing a proposed distribution of posts per police station and cluster.³²³ It should be noted that this number only reflects the allocation to police stations and cluster offices, not to the province and specialised units.
- [107] Brigadier Rabie indicated that SAPS has developed a project to correct for imbalances of personnel between the provinces. He indicated that the Western Cape is one of the three provinces that is understaffed relative to other provinces, so that it has approximately 94% of its established posts, whereas at least one province has 125% of its established posts. Brigadier Rabie indicated that an attempt is being made to reduce this disparity, to reach a situation where all provinces are equally resourced, but that this will take some time.³²⁴ He said of the Western Cape, “it is obvious they are lagging behind in terms of getting ... on par with the other provinces”.³²⁵
- [108] Brigadier Rabie acknowledged that the integrity of the THRR process is dependent on the integrity of the data provided by the police stations.³²⁶ He also acknowledged that it would never be 100% perfect.³²⁷ He also stressed that there is no reason for the THRR to be “a secret”, that everyone should be able to have access to the information.³²⁸
- [109] Brigadier Rabie was provided with a list of police stations showing the number of police members allocated to the police station and the ratio of the population resident in the area to police members.³²⁹ According to that document, Harare had 634.5 residents per member of SAPS, Khayelitsha Site B, 688.02 residents per SAPS member and Lingeletu West had 275.03. The overall statistic for greater Khayelitsha was 433.04. These numbers contrasted with other areas of Cape Town, so Claremont had 130.79 residents per SAPS member, Stellenbosch had 140.54, Sea Point 118.76 and Wynberg 80.89. All of these stations are C1 or C2 police stations.³³⁰ Brigadier Rabie suggested that it was not possible to draw any conclusions by only looking at the police to population ratio. He did however acknowledge that –
- “... maybe there is a need for us to revisit the model in the sense that we must make provision for these unique issues that are sometimes very difficult to quantify and build into a model.”³³¹
- [110] Brigadier Rabie explained that the fact that Khayelitsha Site B was declared a presidential station in 2004 had the effect that it was staffed up to 100% of its resource needs, rather than at a lower level.³³² At the time that it was declared a presidential station, it was the only police station in Khayelitsha. Brigadier Rabie suggested that the Provincial Commissioner could

321 Id. at 5256.

322 Exhibit LR 1(b), Record Bundle 11(5), Item 57.

323 Exhibit LR 2, Record Bundle 11(5), Item 58.

324 Id. at 5321 – 5326.

325 Id. at 5325.

326 Id. at 5273.

327 Id. at 5276.

328 Id. at 5353.

329 Exhibit LR 7, Record Bundle 11(5), Item 63.

330 Transcript at 5368 (25 March 2014).

331 Id. at 5386.

332 Id. at 5389.

continue to staff the three Khayelitsha police stations at 100% of THRR if he chose to, by exercising the power conferred by section 12(3) of the SAPS Act.³³³

(b) Brigadier Hermias Corneleus Van Zyl – Section Head: Inspections, National Inspectorate³³⁴

[111] Brigadier Van Zyl has been in SAPS for forty years, and he is currently section head inspections in the national inspectorate.³³⁵ He was a member of the Task Team that prepared the report for the National Commissioner that was discussed in Chapter 10.³³⁶ Those aspects of his evidence will not be repeated here.

[112] Brigadier Van Zyl told the Commission about Project 54, a project initiated to assess the 54 worst performing stations in the country, as measured on the EUPOLSA index,³³⁷ and to provide advice to the National Commissioner as to how to turn these stations around. The 54 stations identified for inclusion in this report consisted of the six worst performing stations in each province. The six stations identified in the Western Cape did not involve any of the three Khayelitsha police stations.³³⁸ Brigadier Van Zyl told the Commission that the report was classified, but that he thought it could be declassified.³³⁹ The Commission asked for the Project 54 report to be made available to the Commission but it was not.

[113] When asked whether he thought there had been a breakdown in the relationship between the Khayelitsha community and SAPS, Brigadier Van Zyl responded as follows –

“What the community, as I understand policing, what a community is expecting from the police, is the basic service, I want to feel safe. I want to walk the streets at night. I want to travel from work to home and not be robbed. And I want to send my children to school and they mustn’t get involved in a fight. That is the basic thing the community want from the police. So if you say that there’s a breakdown in the community relationship with the police, it’s those things that matter. You cannot talk about there’s a good relationship with the community, and they don’t feel safe. ... So what the police in Khayelitsha must do, they must emphasise the basic, basic, basic policing.”³⁴⁰

D. PROVINCIAL OFFICE

(a) Colonel Sonja Harri – Provincial Co-ordinator, FCS Unit³⁴¹

[114] Colonel Harri was appointed provincial co-ordinator of the FCS Unit in 2010, at the time that national office decided to reintroduce FCS Units countrywide.³⁴² She reports to Major

333 Id. at 5390 – 5390.

334 Record Bundle 11(24); Transcript at 4859 – 4947 (18 March 2014).

335 Transcript at 4860 – 4861 (18 March 2014).

336 See Chapter 10 above at paras 32 – 46.

337 Transcript at 4937 (18 March 2014). See also the discussion of the EUPOLSA index in Chapter 5 at paras 43 – 49.

338 Transcript at 4892 – 4893 (18 March 2014). In respect of Project 54, see also the testimony of Lieutenant General Lamoer at Transcript 6542 – 6543 (1 April 2014), as well as Exhibit AL2, Record Bundle 11(5), Item 86.

339 Transcript at 4940 (18 March 2014).

340 Id. at 4894.

341 Record Bundle 5(4), File 3, Item 8 at pp 200 – 203; and Transcript at 5765 – 5878 (27 March 2014).

342 Record Bundle 5(4), File 3 Item 8, pp 200 – 203, at para 2.

General Molo, the Provincial Head of Detective Services.³⁴³ At provincial office, she has no support staff, save for one clerk.³⁴⁴ The Western Cape never disestablished FCS Units, despite the fact that the national office decided to close them down in other provinces in the mid-2000s.³⁴⁵ National office reintroduced FCS Units in 2010 and instructed that an FCS Unit be established in each cluster, which meant that 25 units had to be established in the Western Cape. The existing FCS investigators in the Western Cape were re-deployed to the new cluster-based FCS Units.³⁴⁶ The mandate of the FCS Unit is set out in National Instruction 3 of 2008.³⁴⁷ It does not include domestic violence, nor does it include murder.³⁴⁸ The units attend cluster crime combating forums, and although they fall under the command of the Provincial Head of Detective Services, they “sort of also account” to the cluster commanders, according to Colonel Harri.³⁴⁹

- [115] Colonel Harri said in her statement that the placement of members into the Khayelitsha FCS Unit was delayed because “the unit did not perform well”.³⁵⁰ Two officers of the existing unit were redeployed to general detective work and a third was appointed a commander of another FCS Unit, so the unit was left with only two officers. Members that were involved in disciplinary matters and poor performers were also relocated away from the Unit in an attempt to improve its performance.³⁵¹ However, a recruitment drive to supplement its members failed to identify any new members from Khayelitsha stations, and so members who had been recruited from other clusters were placed in Khayelitsha. Colonel Harri testified that the difficulty in recruiting members was a particular problem for Khayelitsha, one not experienced at other units.³⁵² Nevertheless, Colonel Harri acknowledged that there had been a time when the Khayelitsha FCS Unit had performed better, though she was not certain of the precise period.³⁵³
- [116] Colonel Harri stated that since 2010 provincial management has undertaken annual inspections of the Khayelitsha FCS Unit. The Commission was provided with one of these reports, not attached to Colonel Harri’s statement on the day she testified, which was very late in the process.³⁵⁴ No other reports were provided, despite the fact that Colonel Harri testified that there were other inspections undertaken both by provincial office³⁵⁵ and national office.³⁵⁶ Colonel Harri said that on several occasions teams have been sent to assist the Unit to deal with their column 7 and column 8.6 dockets.³⁵⁷ These are dockets that have not been finalised, and are considered as a “backlog”.
- [117] Colonel Harri also testified that the Khayelitsha FCS Unit had lacked a permanent commander for several years until the end of 2013, although she did not provide precise dates.³⁵⁸ She told

343 Transcript at 5766 – 5767 (27 March 2014).

344 Id. at 5797 – 5798.

345 Id. at 5768 – 5769. See also the testimony of Lieutenant General Lamoer Transcript at 6511 – 6512 (1 April 2014).

346 Id. at 5770 – 5771 (27 March 2014).

347 Id. at 5772.

348 Id. at 5815 – 5817.

349 Id. at 5773.

350 Record Bundle 5(4), File 3, Item 8, pp 200 – 203 at para 2. Transcript at 5827 – 5828 (27 March 2014).

351 Id.

352 Id. at 5836.

353 Id. at 5851 – 5852.

354 Record Bundle 5(4), File 3, Item 8, pp 200 – 203 at para 3. Transcript at 5868 (27 March 2014). The report was discussed in chapter 10, above, at para 66, and can be found at Record Bundle 11(5), item 72.

355 Transcript at 5836 – 5837 (27 March 2014).

356 Id. at 5828.

357 Id. at 5811.

358 Id. at 5846 – 5848.

the Commission that a commander, at the rank of Lieutenant Colonel, had been appointed in late 2013.³⁵⁹ She also told the Commission that the Unit was short of members but that six new members had been identified and were waiting placement in the Unit, as well as an officer.³⁶⁰ At the time that she testified before the Commission, the Khayelitsha FCS Unit had three officers and 14 members.³⁶¹ Some of the existing team have been allocated to a “Cold Squad” dealing with old dockets.³⁶² Colonel Harri testified that there were not sufficient members attached to the Khayelitsha FCS Unit. According to the RAG, she said, there should be an additional six members and an additional officer, that there should be 20 members, not 14 working there, and four officers, not three.³⁶³ She was also of the view that the RAG itself did not allocate sufficient members to the Khayelitsha FCS Unit.³⁶⁴

- [118] In Colonel Harri’s view, it would make sense to appoint a satellite FCS Unit for the Helderberg Basin (that is Somerset West, Lwandle, Gordon’s Bay and Strand) and let the Khayelitsha FCS Unit focus only on the three Khayelitsha police stations.³⁶⁵ She acknowledged that there was “room for improvement” in the Khayelitsha FCS Unit. She said, “...if we get the correct people there can be a very big improvement...”³⁶⁶
- [119] Colonel Harri was appointed to manage the investigation of the serial rapist case, referred to in the evidence of Dr Josias in Chapter 7.³⁶⁷ The serial rapist, who was finally caught, prosecuted and convicted, was sentenced to 11 life sentences, according to Colonel Harri.³⁶⁸ Colonel Harri acknowledged that the fact that the FCS Unit had not identified that there was a serial rapist operating in Endlovini was a problem itself.³⁶⁹ She told the Commission that the FCS Unit does not have crime intelligence capacity in the way that police stations do³⁷⁰ and suggested that the appointment of a crime intelligence officer to the Unit would be valuable.³⁷¹
- [120] Colonel Harri was asked about the FCS Unit’s interaction with the Thuthuzela Care Centre. She said that Dr Josias was “a stalwart” who had been with the Centre (previously the Simelela Centre) for a very long time.³⁷² When asked about the complaints that Dr Josias had forwarded to the Khayelitsha FCS Unit between May 2010 and July 2011, she said she had never received them and when she had checked with the Unit, they also could not recall receiving them.³⁷³
- [121] She agreed with Dr Josias that there was low morale in the Khayelitsha FCS Unit, which she suggested had arisen because of the nature of the cases dealt with and because the unit is understaffed,³⁷⁴ although she said that other units are “coping well”.³⁷⁵ She said that it appears to her that the members were almost “unsensitised, if that is the correct word, that is, ... going

359 Record Bundle 5(4), File 3, Item 8 at para 3. Transcript at 5777 (27 March 2014).

360 Id. at para 3.

361 Transcript at 5777 (27 March 2014).

362 Id. at 5778.

363 Id. at 5780 – 5781.

364 Id. at 5854.

365 Id. at 5854, and at 5786 – 5787.

366 Id. at 5793.

367 Record Bundle 5(4), File 3, Item 8 at para 4.

368 Id.

369 Transcript at 5860 (27 March 2014).

370 Id. at 5862.

371 Id. at 5873. The transcript answer is incorrectly attributed to Ms Mayosi.

372 Id. at 5791.

373 Id. at 5795 – 5796.

374 Id. at 5794.

375 Id. at 5858.

Photo 13: Detectives' office, Khayelitsha police station



through the motions ..”³⁷⁶ She told the Commission that National Instruction 3/2008 requires members of the FCS Unit to go for counselling biannually, but she added –

“... you must also remember there is the mentality in the police that cowboys don’t cry. And a lot of them don’t like to be referred to EHW for counselling; they feel that ...there is a file against me, ... if I feel stressed that a file is being opened and it will be kept against them.”³⁷⁷

- [122] Colonel Harri explained how sexual offence cases are dealt with when they are reported. When a case is reported to a police station, the police station will contact the Unit who will send an investigating officer to attend to the case. In the meantime, the complainant will be taken to the victim-friendly room that should be available at all police stations.³⁷⁸ FCS Unit members take statements from complainants. There is always a member of the Unit on duty, 24 hours a day.³⁷⁹ Dr Josias testified that there was an agreement that an investigating officer from the FCS Unit would arrive within 30 minutes of being called by the Thuthuzela Care Centre,³⁸⁰ but Colonel Harri denied knowledge of such an agreement.³⁸¹

- [123] She also testified that one of her biggest concerns with the manner in which investigating officers pursue investigations at the Khayelitsha FCS Unit related to their failure to complete the SAPS 508(a), which indicates the services that are available to complainants in cases.³⁸² She agreed that this constituted a “serious failure of investigation” because it means that complainants are not empowered to know where they stand.³⁸³

376 Id. at 5856.

377 Id. at 5794 – 5795. See also at 5857 – 5858.

378 Id. at 5773 – 5775.

379 Id. at 5775.

380 Transcript at 599, 613 – 614 (29 January 2014).

381 Transcript at 5807 – 5808 (27 March 2014).

382 Id. at 5837 – 5838.

383 Id. at 5838.

- [124] Colonel Harri also discussed the issue of the “dumped” rape kits in Delft, and said that as far as she was aware, the kits had been dumped by a SAPS member who had since died.³⁸⁴ She could not explain how the rape kits, which are exhibits, could go missing without being noticed.³⁸⁵ She agreed that the fact that the exhibits had gone missing indicated a failure in the docket management system of inspections and brought-forward dates.³⁸⁶ Colonel Harri also acknowledged that in 2013, there had been a shortage of rape kits nationally.³⁸⁷
- [125] When questioned as to whether the rank of the head of the FCS Unit in the province should be higher than a Colonel, she laughed, but said that it would not be possible because the detective services had been “downgraded” and is now to be headed by a brigadier, so it would not be possible for the head of the FCS unit to be a higher rank, as the FCS Unit head reports to the head of detectives in the province.³⁸⁸

(b) Major General David Molo – Provincial Head of Detective Service³⁸⁹

- [126] Major General Molo joined SAPS in 1978.³⁹⁰ Of his 35 years in the service of SAPS, 30 of those have been in the detective services.³⁹¹ Since 2008, he has served as provincial head of detectives in the Western Cape. Prior to that, from 2006 – 2008, he served as cluster commander in Khayelitsha.³⁹² In terms of the provincial policy document on detectives, the provincial head is directly accountable to the Deputy Provincial Commissioner for crime detection and the Divisional Commissioner of the Detective Service for the effective and efficient functioning of all components and units of the Detective Service in the province.³⁹³
- [127] Major General Molo informed the Commission that there are 60 detectives in the Khayelitsha Site B police station, as stipulated in the RAG,³⁹⁴ of whom 53 are investigators,³⁹⁵ 48 detectives at Harare of whom 44 are investigators, 8 short of the number provided for in the RAG, and 32 at Lingeletu West, three more than provided for in the RAG.³⁹⁶ Somewhat surprisingly, and without explanation as to why this should be so given that Harare has too few detectives, even in terms of the RAG, in his statement he said that the resources allocated to Harare “are relatively adequate to meet the basic challenges of crime investigation”.³⁹⁷ Under cross-examination, however, he acknowledged that there was a shortage of detectives³⁹⁸ and admitted that it would be desirable to increase the number of detectives right across the province, especially in neighbourhoods with informal housing.³⁹⁹
- [128] He explained that there are two main training courses for detectives: the first is a 2-week training programme in basic crime investigation; and the second is a course called “Resolving

384 Id. at 5799 – 5800.

385 Id. at 5825.

386 Id. at 5827.

387 Id. at 5805.

388 Id. at 5877 – 5878.

389 Record Bundle 8(4), 4.4, File 9, Item 20.1; Transcript at 5880 – 5992 (27 March 2014).

390 Transcript at 5880 (27 March 2014).

391 Id. at 5880 – 5881.

392 Record Bundle 8(4), 4.4, File 9, Item 20.1 at para 1.

393 Transcript at 5948.

394 Id. at 5885.

395 Record Bundle 8(4), 4.4, File 9, Item 20.1 at para 11.

396 Id. at para 14.

397 Id. at para 13.

398 Transcript at 5910 – 5911.

399 Id. at 5913.

of Crime” (ROC).⁴⁰⁰ He told the Commission that all the detectives in the three Khayelitsha police stations have completed the two-week course, but that in respect of Site B and Harare there were 51 detectives who were yet to complete the ROC course.⁴⁰¹ He did not indicate whether there were still investigators at Lingeletu West who had to complete the ROC course.

- [129] In his testimony, Major General Molo told the Commission that the three detective commanders at the three police stations (Lieutenant Colonel Swart, Colonel Marais and Colonel Tobias) were all very experienced detectives, who had been chosen because of the challenges of Khayelitsha, and their level of experience.⁴⁰² He also indicated that SAPS had difficulty in recruiting Xhosa-speaking detectives to the Western Cape.⁴⁰³
- [130] He also told the Commission that there are 35 vehicles for detectives attached to the Khayelitsha Site B police stations, 27 at Harare and 17 at Lingeletu West, which, given that the principle is that there should be a vehicle for every two detectives, is adequate.⁴⁰⁴ He also said that every detective is allocated a laptop, but at present there are only 51 laptops, though additional laptops are on order.⁴⁰⁵ Finally, he said that there are 12 cell phones allocated to the branch commanders, and detectives on stand-by duty, and that cell phones are only allocated to those detectives on standby duty.⁴⁰⁶
- [131] Major General Molo stated that he did –
- “not accept a generalised statement that the police in Khayelitsha are inefficient. The area presents very unique and serious challenges. For example, there are specific guidelines relating to crime scene management that do not apply in Khayelitsha because of the environmental factors. There are no streetlights in some areas, no proper roads, overcrowding of informal settlements and people. Informal settlements often burn in summers and in winter they get flooded. These factors do not stop crime. Often they encourage it.”⁴⁰⁷
- [132] Major General Molo elaborated in his testimony on the difficulty of crime scene management in informal neighbourhoods.⁴⁰⁸ Firstly, he commented on the difficulty of managing crime scenes at night where there is no electricity, so there is no lighting. Secondly, he raised the problem of having to leave a car some distance away because there are no roads, and the need, therefore, for a third detective to guard the car when it is left.⁴⁰⁹ Thirdly, he mentioned the difficulty of cordoning off crime scenes, which sometimes means that several small homes have to be cordoned off, which is difficult, as people need to come and go from their homes.⁴¹⁰
- [133] Major General Molo told the Commission that one of the challenges for policing in Khayelitsha arises from the “push and pull factors” that operate there, in the sense that many of the residents of Khayelitsha have moved to Khayelitsha from the Eastern Cape to look for work, and if they do not find work, they move back to the Eastern Cape.⁴¹¹ If, in the

400 Record Bundle 8(4), 4.4, File 9, Item 20.1 at para 6.

401 Id. at paras 7 and 11.

402 Transcript at 5887 – 5889 (27 March 2014).

403 Id. at 5906 – 5907.

404 Record Bundle 8(4), 4.4, File 9, Item 20.1 at para 8.

405 Id.

406 Id. at para 9.

407 Id. at para 25.

408 Transcript at 5883 (27 March 2014).

409 Id.

410 Id. at 5884.

411 Id. at 5882.

meantime, they have become involved in crime, or been a witness to a crime, it can be difficult for investigators ensure their presence at court.⁴¹²

- [134] Major General Molo also mentioned the case of the serial rapist in Endlovini, which Dr Josias had outlined in her testimony. Surprisingly, he told the Commission that his office had already identified the fact that a serial rapist was operating, had called for the dockets and established an investigating team before Dr Josias raised the issue with the Provincial Commissioner.⁴¹³ Major General Molo also testified that at the request of the Provincial Commissioner he met with Dr Josias at her home and told her that an investigation team was already in place.⁴¹⁴ Major General Molo's testimony appears directly to contradict the evidence of Dr Josias. According to Dr Josias, the Khayelitsha FCS Unit denied that a serial rapist was operating, which had caused her to call the Provincial Commissioner. The Commission notes that Major General Molo's account was never put to Dr Josias by SAPS' counsel. The Commission also notes that Major General Molo's testimony was also contradicted by the testimony of Major General Jacobs who, when asked whether crime intelligence had picked up the fact that a serial rapist was operating in Endlovini, answered, "No, I think we were not – we were not tuned into that one."⁴¹⁵ It was also contradicted by the testimony of Colonel Harri who, in response to a question whether crime intelligence had picked up the fact of the serial rapist, said "they were supposed to pick it up already, they didn't pick it up."⁴¹⁶ Colonel Harri also told the Commission that she subsequently led the team that investigated the serial rapes, which suggests that she would have known what had happened.⁴¹⁷ The Commission notes that the testimony of Dr Josias, whom the Commission considered to be an honest and credible witness dedicated to her work in Khayelitsha, was firmly corroborated by the evidence of Major General Jacobs and by the testimony of Colonel Harri. However, the Commission also notes that, probably because of the forward-looking nature of the Commission's investigation, Dr Josias' account was not squarely put to Major General Molo in cross-examination, nor was the evidence of Colonel Harri. (Major General Jacobs testified after Major General Molo.) In the circumstances, the Commission will make no determination in respect of this matter. However, the Commission nevertheless considers the contradiction between the testimony of Major General Molo and the evidence of the three other witnesses before the Commission to be an issue that may well require further investigation by SAPS. For this reason, we have asked the Secretary of the Commission to draw this paragraph, as well as the passages in the relevant testimony, to the attention of the Provincial Commissioner.
- [135] Major General Molo was questioned on his assessment of the problems that face detectives in Khayelitsha and whether they are unduly over-burdened. Although he initially demurred and suggested that it was not "a big issue",⁴¹⁸ his attention was drawn to the SAPS 6 statistics, provided to the Commission by Colonel Wiese, which showed that a very large number of dockets is accumulating, especially in Harare and Site B, in columns 7 and 8.6, "the backlog" columns.⁴¹⁹ He informed the Commission that he had appointed a team to investigate the problem and see what can be done.⁴²⁰ When asked what he thought were the biggest driver

412 Id.

413 Id. at 5892 – 5893.

414 Id. at 5893 – 5894.

415 Id. at 6226 – 6227 (28 March 2014).

416 Id. at 5872 (27 March 2014). See also her testimony at 5861 where she says that the serial rapist "was not picked up" by the FCS Unit.

417 Id. at 5863.

418 Id. at 5920.

419 Colonel Wiese's testimony at Transcript 5064 (24 March 2014); see Major General Molo's testimony on this issue at Transcript 5923 – 5928 (27 March 2014).

420 Id. at 5926 – 5927.

of backlogs, he identified four: delays in obtaining laboratory reports in relation to blood samples, the failure of witnesses to come to court, the failure of accused persons to come to court, and incomplete investigations by investigating officers.⁴²¹ In his view, dockets' not being sent to court was not a big problem.⁴²²

- [136] General Molo acknowledged that the e-docket system was not operational in any of the police stations in the Western Cape.⁴²³ He agreed with the testimony of Colonel Tobias that the current system of scanning dockets to maintain an electronic version of the docket was not successful.⁴²⁴

(c) Major General Hendrik Burger – Deputy Provincial Commissioner, Human Resources Management⁴²⁵

- [137] Major General Burger has served in SAPS for 35 years, and was appointed Deputy Provincial Commissioner for Human Resource Management in July 2009.⁴²⁶ In his statement, Major General Burger explained that when the national office has determined the provincial allocation of human resources, (in the manner explained by Brigadier Rabie),⁴²⁷ he is largely responsible for allocating the resources within the Western Cape.⁴²⁸ Major General Burger furnished a copy of the RAG Personnel figures for the three Khayelitsha police stations.⁴²⁹ He told the Commission that the fixed establishment of a police station as determined by national office is not "tampered with" in the province, save to a very small extent.⁴³⁰
- [138] Major General Burger set out the procedure followed for filling vacant posts. This procedure is governed by National Instruction 2 of 2005, which regulates the advertising of posts,⁴³¹ National Instructions 2 of 2008 and 6 of 2005, which regulate grade progression and promotion for certain posts,⁴³² National Instruction 3 of 2003 dealing with assessment for levels 13 – 15,⁴³³ and National Instruction 4 of 2010 dealing with appointment to posts in levels 13 – 15.⁴³⁴ He explained that there are entry-level SAPS Act members who start with a two-year training programme as students in college who are then attached to police stations as constables,⁴³⁵ as well as appointments of external candidates at more senior levels, mostly professionals, such as social workers, lawyers and other skilled recruits.⁴³⁶ Entry-level recruits are recruited annually.⁴³⁷
- [139] In 2014, approval has been given by national office for the province to recruit 668 entry-level recruits.⁴³⁸ He told the Commission that the province is getting more than 50% of all

421 Id. at 5936 – 5937.

422 Id. at 5937.

423 Id. at 5939.

424 Id. at 5941.

425 Record Bundle 5(4), File 2, Item 4; Transcript at 5402 – 5503 (25 March 2014).

426 Transcript at 5402 (25 March 2014).

427 Record Bundle 5(4), File 2, Item 4.

428 Id. at para 3.

429 Id. para 30 and annexure GENB 16.

430 Transcript at 5456 (25 March 2014).

431 Record Bundle 5(4), File 2, Item 4 at para 8 and annexure GENB1.

432 Id. at para 8 and annexure GENB 2 and GENB 3.

433 Id. at para 8 and annexure GENB 4.

434 Id. at para 8 and annexure GENB 4.

435 Transcript at 5404 and 5406 (25 March 2014).

436 Id. at 5404 – 5405 and 5412 – 5413.

437 Id. at 5407.

438 Id. at 5407.

recruits allocated countrywide in order to rectify the relative under-staffing of SAPS in the province.⁴³⁹ Major General Burger also informed the Commission that the retention rate of SAPS especially amongst the lower ranks is high, and normally, unless members are dismissed for criminal activity or ill discipline, it is a career for life.⁴⁴⁰ In the view of the Commission, this means that entry-level recruitment decisions are of vital importance to SAPS and should be taken very carefully.

- [140] Major General Burger was asked whether the two-tier entry into SAPS, as proposed in Chapter 12 of the National Development Plan (NDP), had been implemented. He said that as far as he was aware, ordinary operational police members were not recruited on a two-tier basis, but only through the entry-level recruitment process he had described.⁴⁴¹
- [141] Major General Burger said that the process involved fingerprinting candidates, psychometric testing, fitness testing, and medical tests, as well as interviews. He said that a new system had been adopted this year in terms of which candidates will be put on “parade” at public meetings in front of the community “so that they can be seen”,⁴⁴² as well as “a boot camp” where candidates will be assessed over a two-week period.⁴⁴³
- [142] Major General Burger also explained that many of the terms and conditions of employment in SAPS are regulated by bargaining agreements entered into in the Safety and Security Sector Bargaining Council (the SSBC).⁴⁴⁴ In particular, hours of work are regulated in terms of the SSBC agreement 5 of 2002.⁴⁴⁵ He also testified that one of the issues agreed at the SSBC was the fact that after seven years’ service at level 5 (constable), a member will be promoted to level 6 (sergeant), if there are sufficient funds available for promotion. However, for two years, there had not been sufficient funds, so, in effect, there had been a “moratorium” on promotions from constable to sergeant.⁴⁴⁶ The province was currently in the process of approving the promotion of approximately 1000 constables to sergeant.⁴⁴⁷
- [143] Major General Burger also explained the process for filling of vacant posts. The Commission had noticed that several senior posts in Khayelitsha had been vacant for long periods of time, such as the Cluster Commander, and the Station Commander and Branch Commander at Harare. Major General Burger told the Commission that vacancies could not be advertised within SAPS without permission from national office, which can take time to obtain.⁴⁴⁸
- [144] Major General Burger furnished a copy of the National Instructions relevant to the SAPS Employee Health and Wellness programme.⁴⁴⁹ He asserted that “nothing...will ever be held against” a SAPS member for partaking in any program of the EHW.⁴⁵⁰ It was drawn to his attention, though, that paragraph 10 of National Instruction 3 of 2003 which refers to the Employee Assistance Programme (which is the SAPS counselling service) deals with confidentiality as follows –

439 Id. at 5408 – 5409; see also the testimony of Brigadier Rabie at 5325 (25 March 2014).

440 Id. at 5409.

441 Id. at 5413.

442 Id. at 5410.

443 Id.

444 Record Bundle 5(4), File 2, Item 4 at paras 2 and 10. Transcript at 5415 (25 March 2014).

445 Id. at para 10 and Annexure GENB 6.

446 Transcript at 5434 – 5435 (25 March 2014).

447 Id. at 5435.

448 Id. at 5439.

449 Record Bundle 5(4), File 2, Item 4 at para 11 and Annexure GENB 7.

450 Transcript at 5418 (25 March 2014).

“A counsellor must treat all information provided to him or her as confidential, and may not divulge such information to the commander, supervisor or manager of an employee, any other employee or any other person: Provided that information reasonably required for the purposes of the participation of the commander, supervisor or manager in the development of the remedial plan in accordance with paragraph 9, may be provided to him or her.”⁴⁵¹

- [145] It was pointed out that the proviso to this paragraph permits disclosure of confidential information without the consent of the relevant SAPS member.⁴⁵² Major General Burger stated that in practice the consent of the member would be obtained, but acknowledged that it might assist in building confidence in the counselling process if paragraph 10 were to be supplemented by a clause making it plain that there could be no breach of the confidentiality of the counselling process without the consent of the SAPS member concerned.⁴⁵³
- [146] Major General Burger also explained that discipline is governed by the SAPS Discipline Regulations of 3 July 2006.⁴⁵⁴ Disciplinary action taken against SAPS members is recorded in a disciplinary register. Major General Burger also informed the Commission that there are specific national directives regulating the process of skills audits which are done for every police station, and co-ordinated by provincial office.⁴⁵⁵ Leave, according to Major General Burger, is regulated by National Instruction 2 of 2004,⁴⁵⁶ as well as Head Office Directive 4/9/1, dated 6 June 2006.⁴⁵⁷
- [147] Major General Burger told the Commission that National Instruction 1 of 2005 regulates the Performance Evaluation Process (PEP) for individual members of SAPS.⁴⁵⁸ He also said that incentives, decorations, medals and awards for members of SAPS are regulated by National Instruction 3 of 2006.⁴⁵⁹ In addition, he mentioned that the province makes awards in a variety of categories annually, including Best Detective of the Year award and Station Commander of the Year award.⁴⁶⁰ Major General Burger testified that he thought it was not surprising that the majority of SAPS members are rated a “3” on the PEP.⁴⁶¹

(d) Major General René Fick – Deputy Provincial Commissioner, Physical Resource Management⁴⁶²

- [148] Major General Fick joined SAPS in 1979.⁴⁶³ She was appointed Deputy Provincial Commissioner responsible for Physical Resource Management in December 2011.⁴⁶⁴ She is responsible for overseeing the effective and efficient management of three components – financial services and administration, supply chain management and technology management – within SAPS in the Western Cape.⁴⁶⁵ The first component is responsible for salaries,

451 Record Bundle 5(4), File 2.

452 Transcript at 5457 – 5459 (25 March 2014).

453 Id. at 5460.

454 Id. at para 15 and Annexure GENB 8.

455 Id. at para 23, and Annexures GENB 11 – 14 (national directives on skills audits).

456 Id. at para 21 and Annexure GENB 9.

457 Id. at para 21, and Annexure GENB 10.

458 Id. at para 28 and Annexure GENB 15.

459 Id. at para 25.

460 Id. at para 27.

461 Transcript at 5467 (25 March 2014).

462 Record Bundle 5(4), File 5, Item 11; Transcript at 5505 – 5594 (26 March 2014).

463 Transcript at 5506 (26 March 2014).

464 Record Bundle 5(4), File 5, Item 11 at para 1.

465 Id. at para 2. Transcript at 5507 (26 March 2014).

financial accounting, budget management and loss management; the second for acquisition management and property management, including fixed property and vehicles; and the third for information technology, including infrastructure and systems.⁴⁶⁶

(i) *Budgets*

[149] She explained that SAPS in a national department with one accounting officer, who is the national commissioner.⁴⁶⁷ Each year police stations, units and components are given an opportunity to indicate their needs (other than human resources) for the coming financial year, and during March or April the provincial office prepares a planned expenditure budget that is forwarded to national office.⁴⁶⁸ Thereafter, an amount is allocated by the national office.⁴⁶⁹ Sometimes the allocation can take place quite late in the new financial year.⁴⁷⁰

[150] She provided a chart showing the financial resources allocated to each of the three Khayelitsha police stations for the 2010/2011, 2011/2012, 2012/2013 and 2013/2014 financial years.⁴⁷¹ These allocations are for expenditures other than capital expenditures and human resource expenditures,⁴⁷² which fall within the purview of national office.⁴⁷³ According to the chart –

- Khayelitsha Site B received R7 198 300 in 2010/2011 and R7 830 800 in 2013/14;
- Harare R4 523 350 in 2010/2011 and R4 300 400 in 2013/2014;
- Lingeletu West R3 988 900 in 2010/2011 and R3 782 100;
- Both Harare and Lingeletu West thus received less in 2013/2014 than they did in 2010/2011 while Khayelitsha Site B received almost 10% more in 2013/2014 than it did in 2010/2011; and
- The overall figure for the three police stations was R15 710 550 in 2010/2011 and R15 913 300 in 2013/2014, showing an increase of less than 2% over the four-year period.

[151] In her testimony, Major General Fick explained that the decision not to pay reservists, as well as the establishment of the Public Order Policing Unit would have reduced the resources allocated to the three police stations over this period, as staff would have been deployed to the Public Order Policing Unit from the police stations.⁴⁷⁴

(ii) *Buildings and improvements*

[152] Major General Fick also explained that all requests for capital improvements, including renovations and upgrading, are dealt with in terms of the User Asset Management Plan, which the province compiles annually and which includes a priority list. The Plan is submitted to National Supply Chain Management who produce a national priority list.⁴⁷⁵

[153] Major General Fick told the Commission that the Khayelitsha Site B police station is owned by the state and that the new administration block at the station was completed in 2010. It houses detectives, the FCS Unit, and the cluster office. Site B has requested six “park homes” or “containers” which are on the priority list for 2014/2015 but not yet approved.⁴⁷⁶ Harare police station is also state-owned. It is not on any priority list for repair or upgrade, although it

466 Record Bundle 5(4), File 5, Item 11 at paras 3 – 5.

467 Transcript at 5508 (26 March 2014).

468 Id. at 5512.

469 Record Bundle 5(4), File 5, Item 11 at paras 9 – 10.

470 Transcript at 5513 (26 March 2014).

471 Record Bundle 5(4), File 5, Item 11 at para 11.

472 Transcript at 5514 – 5 (26 March 2014).

473 Id. at 5541.

474 Id. at 5527 – 5528.

475 Record Bundle 5(4), File 5, Item 11 at para 14.

476 Id. at para 16.

has requested 3 “park homes” which have been prioritised for the 2014/2015 financial year.⁴⁷⁷ Lingeletu West police station is held by leasehold. Major General Fick told the Commission that national office had put a bar on all expenditure for leasehold property or extensions to leasehold property.⁴⁷⁸ Province has decided a new police station is required and it is number 11 on the provincial priority list for capital works. The station has requested a “park home” to serve as a holding cell, which is receiving attention.⁴⁷⁹

[154] Major General Fick informed the Commission that the building of a new police station for Makhaza currently falls within the top 20 on the national priorities list for 2014/2015 and that the building of it is in the planning stages.⁴⁸⁰ She provided details of the site for the proposed police station, on the corner of Dibana and Cekeca Streets.⁴⁸¹ She told the Commission that funds for the building of Makhaza had not yet been secured from national office, as the site had not yet been acquired from the City of Cape Town, but that process was expected to be approved during March 2014.⁴⁸² She told the Commission that the building of the Makhaza police station was the fourth Western Cape priority on the national list for 2014/2015 behind Dysseldorp, Gugulethu and Tafelsig.⁴⁸³ Major General Fick indicated that there were no plans to build any other stations in Khayelitsha.⁴⁸⁴

[155] During her testimony, Major General Fick explained that it was difficult to get funding for capital improvements, and even for routine maintenance.⁴⁸⁵ One of the ways that it was possible to deal with space constraints was by acquiring “park homes” or “containers”. She said –

“Now for me it is not the ideal, I don’t like park homes. I don’t like containers, it doesn’t create the correct image. This is my personal view. ... But unfortunately there is no other option and we must go – and I must indicate that park homes currently the ones that is on contract now is an improvement on what we previous had, they are carpeted, they have aircons, they come with electricity and all of that but it is still not the ideal. But we are in a situation where we don’t have state-owned facilities available, and there is no money available for extending on leaseholds so this was ... the quick-fix solution now, ... park homes.”⁴⁸⁶

[156] Major General Fick explained that shortage of accommodation is a “huge problem” throughout the province, and acknowledged that it was a problem at all three of the police stations in Khayelitsha.⁴⁸⁷ She told the Commission that one of the factors driving need for space was a moratorium, introduced shortly after 1994, in terms of which no records, including dockets, may be destroyed.⁴⁸⁸ She said only the national cabinet could lift the moratorium.⁴⁸⁹

[157] She also said that one of the problems with accommodation is caused by the fact that when a new building is built it is only possible to design it to accommodate existing needs, as

477 Id. at para 17.

478 Transcript at 5589 (26 March 2014).

479 Record Bundle 5(4), File 5, Item 11 at para 18.

480 Transcript at 5544 (26 March 2014).

481 Id. at 5547. See also Aerial map Annexure F5 7, Record Bundle 12(4), Item 7.

482 Id. at 5543.

483 Id. at 5544.

484 Id. at 5546.

485 Id. at 5515 – 5518.

486 Id. at 5518 and 5577 – 5579.

487 Id. at 5522.

488 Id. at 5521.

489 Id.

completing a building takes time, those needs have often changed by the time the building is completed. The new administration block at Khayelitsha Site B, she cited as an example, took six to seven years from planning to completion, and by the time it was completed, it was already too small.⁴⁹⁰

- [158] Major General Fick was also asked about a piece of land adjacent to the Lingeletu West police station owned by the City which SAPS had originally requested to lease or purchase, in order to provide more facilities to the police station, particularly parking.⁴⁹¹ She said that this issue had been a “low point”, because the land had been requested, and had been approved by the City, but the Department of Public Works had overlooked the approval, and by the time it came to its attention, the SAPS’ prohibition on further leasehold had come into effect, so the land was eventually allocated to another state agency.⁴⁹²

(iii) Vehicles

- [159] A vehicle budget is provided annually by national office. Each year, police stations, clusters, units and components are consulted on their vehicle needs, including any requests for specific vehicle types. Major General Fick told the Commission that prior to 2012, there was no documentary process underlying this needs assessment by individual police stations.⁴⁹³ Province prepares a final list for acquisition, which is forwarded to the National Supply Chain Management for procurement.⁴⁹⁴

- [160] There is a fixed schedule for vehicle allocation, which includes the following principles –

- a vehicle for the station commander;
- one vehicle for every eight administrative members in stations with fewer than 80 members, and one for every twelve administrative members for stations with more than 80 members;
- one vehicle for every two members actively performing investigations or other policing tasks;
- one vehicle for every 4 – 6 members performing crime prevention duties; and
- one vehicle for transporting prisoners.⁴⁹⁵

- [161] According to Major General Fick, Khayelitsha Site B has 62 granted vehicles, but 70 actual vehicles; Harare has 46 granted vehicles, but 44 actual vehicles and Lingeletu West has 32 granted vehicles but 35 actual.⁴⁹⁶ She told us that Harare was short of vehicles because the number of detectives had increased, and that five vehicles were on order for Harare.⁴⁹⁷

- [162] Provincial Supply Chain Management monitors the state of vehicles. Province has twelve car maintenance garages responsible for repairing and servicing SAPS vehicles, but the main garage that services the Khayelitsha fleet is located in Maitland.⁴⁹⁸ She acknowledged that Maitland was “slightly under target” in terms of its performance, particularly in relation to major repairs.⁴⁹⁹ Major General Fick told the Commission that if a station were having a

490 Id. at 5522 and 5580 – 5581.

491 Id. at 5587 – 5590.

492 Id. See also the correspondence from the City Manager at Record Bundle 12(4), Item 8, Annexure FS9 and FS10.

493 Id. at para 22.

494 Id. at para 23.

495 Id. at para 24.

496 Id. at para 25.

497 Id. at para 26.

498 Transcript at 5559 (26 March 2014).

499 Id. at 5560.

problem with its vehicles, her department would assist the station by seeing if vehicles can be reallocated within the province to address the issue.⁵⁰⁰

(iv) Information Technology

[163] Major General Fick was asked about access to email by SAPS members at police stations. She told the Commission that SAPS does not have a policy that every SAPS member will have an email addresses. She said that it was not a budget constraint issue, and that she had currently requested an audit on emails in the province.⁵⁰¹ It was pointed out to her that one of the repeated complaints heard by the Commission related to the difficulty of communicating with SAPS members, but she said again that there was no policy on email addresses for SAPS members.⁵⁰²

[164] With regard to Internet connectivity, she indicated that although all detectives had been provided with laptops, 3G cards are currently only being rolled out to branch commanders.⁵⁰³ She said that cabling of the three Khayelitsha police stations with network points had been identified as a priority so that detectives would be able to obtain access to the Internet on their laptops.⁵⁰⁴ Lingeletu West raised a problem for cabling, because it could not be approved because of its leasehold status, so the province was looking for a Wifi solution.⁵⁰⁵

(v) Performance assessment of support services by province

[165] The provincial department also conducts performance assessments of the support services at police stations in the province. Major General Fick provided the Commission with comprehensive assessments for Khayelitsha Site B for the years 2010/2011, 2011/2012 and 2012/2013; Harare for the years for the years 2009/2010 and 2010/2011; and Lingeletu West for the years 2009/2010 and 2010/2011.⁵⁰⁶

[166] Major General Fick explained that in conducting inspections in the supply chain management environment, the province was monitoring compliance with policies, norms and standards.⁵⁰⁷

(vi) Floodlights for crime scenes

[167] Major General Fick was asked about the provision of floodlights for crime scenes, as several detectives had pointed out the difficulty of lighting crime scenes at night in areas where there are no streetlights. She responded that they had approved the provision of mobile flashlights to the Hout Bay police station, as it had faced similar difficulties, but there had been no application from the three Khayelitsha police stations.⁵⁰⁸

(vii) Adequacy of financial resources

[168] Major General Fick told the Commission that in her view the financial resources provided to the three Khayelitsha police stations were adequate for their work. She explained that financial resources “follow” human resources.⁵⁰⁹ In other words, the number of SAPS members in a station or unit will be the primary driver of resources allocated to that station or unit.⁵¹⁰

⁵⁰⁰ Id. at 5534.

⁵⁰¹ Id. at 5537 – 5538.

⁵⁰² Id. at 5538 – 5539.

⁵⁰³ Id. at 5539.

⁵⁰⁴ Id. at 5539 – 5540.

⁵⁰⁵ Id. at 5540.

⁵⁰⁶ Record Bundle 5(4), File 5, Item 11 at pp 9 – 269.

⁵⁰⁷ Transcript at 5575 (26 March 2014).

⁵⁰⁸ Id. at 5573 – 5574.

⁵⁰⁹ Id. at 5530, 5557 and 5567.

⁵¹⁰ Id. at 5523.

(e) Major General Peter Jacobs – Deputy Provincial Commissioner, Crime Intelligence⁵¹¹

- [169] Major General Jacobs served as station commander of the Khayelitsha police station from 2003 to 2006, when it was only the police station in Khayelitsha⁵¹² and as Deputy Provincial Commissioner, Operational Services from April 2012 till December 2013.⁵¹³ In January 2014, he was appointed to his current post of Deputy Provincial Commissioner, responsible for Crime Intelligence.⁵¹⁴
- [170] As head of Operational Services, he was responsible for visible policing at all 150 police stations and 25 clusters in the provinces, as well as specialised uniform personnel units, such as the Public Order Police (POPS), and the 10111 call centre.⁵¹⁵
- [171] Major General Jacobs described the good relationship between SAPS and DOCS that existed while he was station commander,⁵¹⁶ and in particular, the DOCS Bambanani project, which recruited community members to act as patrollers in Khayelitsha. He also testified that it was in that period that the KDF was formed and developed to play a role in urban renewal.⁵¹⁷ He told the Commission that the withdrawal of funds from the Bambanani project by DOCS after 2009 constituted a “demobilisation”.⁵¹⁸ Major General Jacobs explained that the Bambanani project had four pillars: community mobilisation, public engagement, capacity building and monitoring of security structures.⁵¹⁹ Bambanani also had a project known as “Hands off our children” or HOOC, where schools were issued with rubber bands with the initials “HOOC” as a public awareness issue.⁵²⁰ When asked, Major General Jacobs could not point to any correspondence or documentation that expressed SAPS’ concern at the termination of the Bambanani project.⁵²¹ Major General Jacobs was told that Dr Lawrence, the head of DOCS in the province, had testified that the Bambanani programme had been halted because of “double-dipping”.⁵²² Major General Jacobs suggested that it would have been better to keep the programme going but correct the financial difficulties with it.⁵²³
- [172] Major General Jacobs was asked whether he thought that a decline in the influence of SANCO might have had an effect on overall levels of social cohesion as Brigadier Mlenga had testified, and he accepted that there had been a decline, and did not disagree with the proposition.⁵²⁴
- [173] One of the issues raised with Major General Jacobs was the question as to which government department should fund CPFs, and whether the current legislative and policy framework was adequate to provide for this issue.⁵²⁵ He agreed that it was an important issue that needed a clear resolution.⁵²⁶ He also acknowledged that the number of reservists had declined, but asserted that it was necessary because it was important that reservists be volunteers

511 Record Bundle 5(4), File 3, Item 5; Transcript at 6007 – 6255 (28 March 2014).

512 Record Bundle 5(4), File 3, Item 5 at para 2.

513 Transcript at 6008 (28 March 2014).

514 Id.

515 Id. at 6010.

516 Id. at 6022.

517 Id.

518 Id.

519 Id. at 6029.

520 Id. at 6030.

521 Id. at 6136 – 6137.

522 Id. at 6137. See also Dr Lawrence’s testimony discussed in Chapter 9 at paras 4 – 22.

523 Id. at 6138.

524 Id. at 6035 – 6037.

525 Id. at 6040 – 6044.

526 Id. at 6050.

and not paid.⁵²⁷ He told the Commission that the new reservist policy had still not been implemented.⁵²⁸ When it was put to him that the draft policy would make it difficult to recruit reservists, because of the conditions it imposed for recruitment, his response was that some conditions were necessary to avoid problems experienced in the past.⁵²⁹

- [174] Major General Jacobs also described the development of the People Oriented Sustainable Strategy (POSS),⁵³⁰ which he said had three key elements. The first was to prioritise the five stations with the highest rates of violent crime (Mitchell's Plain, Nyanga, Gugulethu, Kuils River and Khayelitsha), to resource those police stations as fully as possible, and then to provide additional police stations to those areas, to make them more manageable.⁵³¹ He also described the new policy, OPUS (Optimal Performance and Utilisation Strategy).⁵³² This strategy initially identified the 23 stations that were contributing more than 50% of all violent crime for special attention. The number of stations grew to 33.⁵³³ Major General Jacobs testified that there was no major difference in focus between the two strategies, in a sense, they should be understood as the same strategy in different stages of development.⁵³⁴
- [175] Major General Jacobs also described the Automated Vehicle Location system (the AVL), which tracks 96% of all SAPS vehicles.⁵³⁵ Vehicles are monitored from clusters, and printed every day for the police stations within the cluster.⁵³⁶
- [176] On crime intelligence, Major General Jacobs told the Commission that the Khayelitsha and Nyanga cluster had the biggest crime intelligence capacities of all clusters.⁵³⁷ He acknowledged that informers are core to successful police work, but that it remained an area where the police "could do better".⁵³⁸ He admitted that it might be a good idea to change the name from "informer" with its overtones of "impimpi".⁵³⁹
- [177] Major General Jacobs was asked how provincial management had responded to the Task Team report, and although he said some things had been done, he could point to no documentation providing clarity as to the response of provincial management.⁵⁴⁰
- [178] Major General Jacobs was also asked whether it would not be appropriate for the province to develop "a broad general strategy" to address vigilantism. He responded that he did not think a strategy was necessary, in his view, the community needed to be mobilised as they had been previously.⁵⁴¹
- [179] Major General Jacobs told the Commission that there are about 1400 unlicensed shebeens operating in Khayelitsha⁵⁴² and, according to information the Commission obtained

527 Id. at 6074.

528 Id. at 6215.

529 Id. at 6217 – 6218.

530 Record Bundle 9(1.1) Item 1C. Transcript at 6017 and 6023 – 6026 (28 March 2014). See also Record Bundle 9(1.10), Item 1 at paras 23 – 30.

531 Id. at 6024.

532 Id. at 6058.

533 Id. at 6059.

534 Id. at 6062.

535 Id. at 6067 – 6070.

536 Id. at 6070.

537 Id. at 6080.

538 Id. at 6084 and 6225 – 6226.

539 Id. at 6226.

540 Id. at 6087 – 6098.

541 Id. at 6132.

542 Id. at 6172.

information from the Western Cape Liquor Board, there are 35 licensed liquor outlets.⁵⁴³ He was asked what plan SAPS had to deal with unlicensed liquor outlets. He pointed out that the provincial Department of Economic Affairs was responsible for dealing with liquor licences (other than distribution licences) and that it had a section responsible for liquor control.⁵⁴⁴ He also mentioned what he called a “challenge” relating to the provincial liquor legislation, which created a rebuttable presumption in relation to the quantity of liquor present at the premises of a shebeen.⁵⁴⁵ As to strategy, he told the Commission that SAPS was looking in particular at methods of distribution of alcohol to unlicensed shebeens.⁵⁴⁶ He also said that each weekend a “liquor officer” would determine which shebeens would be targeted, but commented that it is very difficult to close an unlicensed shebeen permanently.⁵⁴⁷

- [180] Major General Jacobs was also asked about the time that it took to fill senior positions, such as the cluster commander position in Khayelitsha.⁵⁴⁸ He acknowledged that delays do take place.⁵⁴⁹ Major General Jacobs was asked why it would have been that the acting cluster commander at Khayelitsha would have had to write to Colonel Vermeulen in December 2013, to ask what the role of cluster commander was, but he said he was not aware of the correspondence.⁵⁵⁰
- [181] Major General Jacobs was also asked about the delay in building a police station at Makhaza. It was pointed out to him that a report had been prepared in 2004 proposing the building of Makhaza, at which stage it had been the second highest priority in the province. He commented that procuring land for the new police station had been a challenge.⁵⁵¹ He also said that a satellite station had been tried in Site C, but that it had not been a success.⁵⁵² One of the problems with satellite stations, he testified, was the unavailability of a CAS system to record crimes in such stations.⁵⁵³
- [182] Major General Jacobs explained that SAPS has developed an operational system which it enables it to identify early warnings of crime threats. These early warnings are generated by Crime Intelligence and then distributed by the Provincial Command Centre.⁵⁵⁴ SAPS then has a range of operation units to respond to crime, such as the Public Order Police (POPS), the Railway Police and the Flying Squad.⁵⁵⁵ The 24-hour Provincial Command Centre is also linked to a 24-hour emergency call centre that responds to calls on the emergency number 10111.⁵⁵⁶ The Command Centre will dispatch teams where necessary to identified crime situations.⁵⁵⁷

543 Transcript at 6885 (12 May 2014).

544 Id. at 6174 – 6175.

545 Id. at 6176 and 6181.

546 Id. at 6179 – 6181.

547 Id. at 6181.

548 Id. at 6184.

549 Id. at 6185.

550 Id. at 6191.

551 Id. at 6193 – 6195.

552 Id. at 6200 – 6201.

553 Id. at 6001.

554 Record Bundle 5(4), File, Item 5 at para 14.1.

555 Id. at para 14.2.

556 Id. at para 14.3.

557 Id. at para 14.5.

(f) Major General Sharon Jephta – Deputy Provincial Commissioner, Operations Officer⁵⁵⁸

[183] Major General Jephta joined SAPS in 1981.⁵⁵⁹ She was appointed Deputy Provincial Commissioner: Operations Officer in 2012, where she was responsible for three components including the Provincial Inspectorate,⁵⁶⁰ described above at Chapter 5.⁵⁶¹ In March 2014, Major General Jephta took up the post of Deputy Provincial Commissioner for Operational Services (the post just vacated by Major General Jacobs).

(i) *Inspections of police stations*

[184] Major General Jephta explained that stations are chosen for inspection by the SAPS provincial management, by the Provincial Inspectorate based on their performance and/or as a result of requests from a cluster or station commander.⁵⁶² Once the stations to be inspected in a year have been identified, an annual plan is developed and the stations are ordinarily informed in advance of the proposed inspection.⁵⁶³ Stations are informed, according to Major General Jephta, in order to avoid hampering service delivery.⁵⁶⁴ She also said that she was against unannounced inspections not only because of the disruption they could cause, but also because very often all the relevant information about a police station is recorded in registers, particularly the Occurrence Book.⁵⁶⁵ Approximately 55 inspections are held per year and 45 follow-up inspections.⁵⁶⁶ Major General Jephta testified that there is a difference between inspections of police stations and visits to police stations.⁵⁶⁷ The former is a comprehensive process that results in a report, and the latter looks at operational issues.⁵⁶⁸ Visits are ordinarily unannounced. On rare occasions, unannounced inspections are conducted when it is thought that a visit might reveal inefficiencies that would otherwise not be detected.⁵⁶⁹

[185] Major General Jephta stated that the Western Cape has three inspection teams: two based in Cape Town, and one in George, all of whom conduct full inspections, which normally takes two weeks.⁵⁷⁰ Major General Jephta told the Commission that once provincial management has received an inspection report, an action plan is developed in terms of which provincial components assist stations to rectify defects.⁵⁷¹

[186] In addition, to inspections, the Provincial Inspectorate also conducts station visits at any time of the day, to communicate with Relief officials who are not available during normal inspections, to check the operational readiness, and to evaluate service delivery.⁵⁷² Major General Jephta also told the Commission that national office has introduced a system whereby senior SAPS personnel conduct annual inspections, not as comprehensively as the Provincial Inspectorate, of those stations that are not going to be inspected by the Provincial

558 Record Bundle 5(4), File 3, pp 11 – 30; Transcript at 6256 – 6484 (31 March 2014).

559 Record Bundle 5(4), File 3 at para 3.

560 Transcript at 6259 (31 March 2014).

561 See Chapter 5 above at paras 28 – 30.

562 Record Bundle 5(4), File 3 at para 7.

563 Id. at para 8.

564 Transcript at 6269; and 6358 – 6359 (31 March 2014).

565 Id.

566 Id. at 6267.

567 Id. at 6442 – 6443.

568 Id.

569 Record Bundle 5(4), File 3 at para 8; Transcript at 6270 (31 March 2014).

570 Id. at para 9; Transcript at 6271 (31 March 2014).

571 Id. at para 9.

572 Id. at para 10.

Photo 14: Detectives' office, Khayelitsha police station



Inspectorate in any year.⁵⁷³ Major General Jephta furnished the two documents explaining this process, called “Quality Assurance Factory Visits”.⁵⁷⁴

- [187] Major General Jephta explained that she would receive the inspection reports at the time she was conducting the biannual evaluation of the cluster commander of the relevant police stations.⁵⁷⁵ She told the Commission that the decision to use inspectorate reports as part of the evaluation of cluster commanders had been an innovation in the Western Cape, and that it has resulted in a marked improvement.⁵⁷⁶ General Jephta was asked what the effect of there having been no permanent cluster commander in the Khayelitsha cluster would have had on this process, and she said that acting cluster commanders would also have had performance agreements and been assessed on the basis of the inspection reports,⁵⁷⁷ though she admitted that it would impair the quality of the process, as a cluster commander needs time to fully get to grips with their tasks.⁵⁷⁸ She also told the Commission that, in turn, when cluster commanders evaluated the performance of station commanders, they would use the inspection reports.⁵⁷⁹
- [188] She told the Commission that the responsibility for taking remedial action was the responsibility of the relevant line managers.⁵⁸⁰ It was put to Major General Jephta that Standing Order 6 contemplates that “the relevant Divisional Commissioner and Provincial Commissioner must ensure the implementation of suitable remedial measures to address negative trends

573 Transcript at 6286 – 6287 (31 March 2014).

574 Exhibits SJ1 and SJ2, Record Bundle 11(5), Items 73 and 74.

575 Transcript at 6261 and 6273 (31 March 2014).

576 Id. at 6279 – 6280.

577 Id. at 6277 – 6278.

578 Id. at 6447 – 6448.

579 Id. at 6346 – 6347.

580 Id. at 6261 – 6262; and at 6342 – 6345.

identified during evaluations”⁵⁸¹ and she responded that the “provincial commissioner is not able to do everything in the province” so he delegates his powers to the station commander and cluster commander,⁵⁸² but she did accept that according to Standing Order 6, the ultimate responsibility lay with the Provincial Commissioner.⁵⁸³ She also explained that the divisional commissioner refers to the divisional commissioner for the inspectorate at national level.⁵⁸⁴

- [189] Major General Jephta testified that there had been a significant improvement in the performance of police stations since 2012,⁵⁸⁵ that compliance levels generally were better,⁵⁸⁶ that exhibit stores were in better order, and that the service chain in the CSC had improved.⁵⁸⁷ She acknowledged that the situation was not yet “on standard” and that there was room for further improvement.⁵⁸⁸
- [190] Major General Jephta told the Commission that she disagreed with the conclusion reached in the Schooling and Leamy report that the levels of command and control at the three Khayelitsha police stations were poor.⁵⁸⁹ She said that the report had looked at administrative command and control, and, “yes, that area is not totally on standard”,⁵⁹⁰ but it does not mean that there is no command and control. She said that the report of Mr Schooling and Mr Leamy did not address “operational command and control”.⁵⁹¹ Major General Jephta also testified that the mandate of the Provincial Inspectorate is different to the mandate of the Commission, and the content of the inspection reports cannot be used to find that the police in Khayelitsha are inefficient or that there is a breakdown in the relationship between SAPS and the community.⁵⁹²

(ii) Service delivery complaints

- [191] In addition to inspections, the Provincial Inspectorate is also responsible for managing service delivery complaints by members of the public against SAPS.⁵⁹³ As set out in Chapter 5, service delivery complaints are managed in terms of Standing Order 101.⁵⁹⁴ Major General Jephta described the process that is followed in investigating complaints under Standing Order 101, including the tight time frames that are prescribed in the Standing Order.⁵⁹⁵
- [192] Major General Jephta explained to the Commission that when she had been appointed Deputy Provincial Commissioner: Operating Officer, she had identified a “void” in the management of complaints, “in particular the data capturing thereof” and had accordingly established a new methodology for the handling of complaints.⁵⁹⁶ She told the Commission that there was no reliable system for recording complaints, as complaints were dealt with in various places, including by deputy provincial commissioners, without ever being recorded.⁵⁹⁷ The

581 See Standing Order 6 at para 5(2)(a). Transcript at 6264 – 6265 (31 March 2014).

582 Id. at 6265.

583 Id. at 6345.

584 Id. at 6266.

585 Id. at 6279 and at 6450.

586 Id. at 6279.

587 Id. at 6450.

588 Id. at 6279.

589 Id. at 6280.

590 Id. at 6281.

591 Id.

592 Id. at 6338.

593 Record Bundle 5(4), File 3 at para 11.

594 See Chapter 5 above at paras 32 – 33.

595 Transcript at 6413 – 6417 (31 March 2014).

596 Record Bundle 5(4), File 3 at para 13.

597 Transcript at 6333 – 6334 (31 March 2014).

new method involved the creation of an interview room where “walk-in” complainants are interviewed, the revision of electronic databases to capture the details of complaints, and a system to ensure complaints are followed up.⁵⁹⁸ The complaints nodal point is open 24 hours a day, and awareness of the nodal point is promoted through door-to-door campaigns. Media are monitored daily to identify complaints against SAPS members. Complaints are also received from a range of sources including the National Commissioner, the Presidential Hotline, the Minister of Police, the MEC for Community Safety, the South African Human Rights Commission and the Department of Community Safety.⁵⁹⁹

- [193] Major General Jephta told the Commission that the new methodology she had introduced did not coincide with the letter sent by the Provincial Commissioner in 2010 instructing that all complaints, including those provided to DOCS, be forwarded to the “nodal point”. This instruction had preceded her time as Deputy Provincial Commissioner: Operations Officer.⁶⁰⁰
- [194] Major General Jephta told the Commission that in 2010, 1928 complaints had been received for the whole province, of which 69 related to the three Khayelitsha police stations (34 for Khayelitsha Site B, 19 for Harare, and 16 for Lingeletu West). In 2011, 1844 complaints were received, of which 72 related to the Khayelitsha police stations (22 for Khayelitsha Site B, 31 for Harare and 19 for Lingeletu West), and in 2012, 2501 complaints were received, 92 in respect of the Khayelitsha stations (29 for Khayelitsha Site B, 39 for Harare and 24 for Lingeletu West).⁶⁰¹ During her testimony, General Jephta provided a list showing the number of Standing Order 101 complaints received by the “nodal point” in relation to the 150 police stations in the Western Cape in 2012/2013.⁶⁰² The list showed that the three Khayelitsha police stations did not receive the highest number of complaints in the province.⁶⁰³
- [195] Major General Jephta told the Commission that the “nodal point” has regular meetings with the provincial office of IPID.⁶⁰⁴ Recommendations made by IPID are registered at the nodal point and they ensure that the recommendations are followed and that feedback is provided to IPID.⁶⁰⁵ Major General Jephta provided the Commission with a batch of seven documents that illustrated the relationship between IPID and the “nodal point”.⁶⁰⁶ These included –
- a letter from the Provincial Commissioner to all units setting out the new IPID procedures that had to be followed;⁶⁰⁷
 - a letter National Commissioner dated 21 September 2013 to all SAPS unit commanders regulating the implementation of IPID disciplinary recommendations,⁶⁰⁸ which makes it clear that the implementation of IPID recommendations is to be monitored in the performance evaluation system;
 - a letter from the provincial IPID to the Civilian Secretariat, as well as SAPS, containing a report verifying the implementation of IPID recommendations by SAPS in the Western Cape in the 2012/2013 as at August 2013 (recording a total of 173 recommendations

598 Record Bundle 5(4), File 3 at para 13.

599 Id. at para 14.

600 Transcript at 6333 (31 March 2014).

601 Record Bundle 5(4), File 3 at para 14.

602 Exhibit SJ10, Record Bundle 11(5), Item 82; Transcript at 6329 – 6332 (31 March 2014).

603 Transcript at 6332 (31 March 2014).

604 Transcript at 6291 – 6292 (31 March 2014).

605 Id.

606 Exhibits SJ3 – SJ9, Record Bundle 11(5), Items 75 – 81.

607 Exhibit SJ7, Record Bundle 11(5), Item 79. Transcript at 6295 – 6302 (31 March 2014).

608 Exhibit SJ3, Record Bundle 11(5), Item 75; and Transcript at 6312 – 6313 (31 March 2014).

from IPID to SAPS for disciplinary steps, and that steps had been taken in respect of 75, declined in respect of 55, and 48 were still pending);⁶⁰⁹

- documents relating to a specific matter to illustrate the process. The case concerned a docket opened in Lingeletu West (CAS 373/09/2013) that was investigated by IPID – the IPID recommendation to SAPS dated 24 October 2013,⁶¹⁰ a letter dated 29 October 2013 from the “nodal point” to the head of the Philippi Railway Police requesting him to consider disciplinary steps against a member in light of the IPID recommendation and requiring a report within two weeks,⁶¹¹ and the follow up letter from the “nodal point” to SAPS dated 28 February 2014 stating that no steps had been taken against the officer as he had acted in self defence;⁶¹² and
- an extract from a schedule of recommendations referred by SAPS to IPID, relating to the three Khayelitsha police stations, indicating what information is captured.⁶¹³

[196] Major General Jephta noted that SAPS finds that there is a considerable delay in IPID finalising complaints. In the case referred to in the previous paragraph (Lingeletu West CAS 373/09/2013), the incident had occurred in August 2012, but the IPID recommendation was dated November 2013.⁶¹⁴

[197] It was also noted from the schedule contained in Exhibit SJ9, that at times there is a significant delay in SAPS reporting matters to IPID.⁶¹⁵ Major General Jephta responded that it might take some time after the reporting of an incident for SAPS to identify the suspect, but that without further investigation of the individual matters she could not respond firmly.⁶¹⁶

[198] It was put to Major General Jephta that the fact that most complaints against members of SAPS are investigated by their own colleagues, at their own police stations, might give rise to a perception that complaints are not investigated in a fair and neutral fashion.⁶¹⁷ Major General Jephta responded that the SAPS system was “sufficient” and that station commanders who are “very trusted” would address any distrust.⁶¹⁸ It was pointed out to Major General Jephta that, despite the fact that Standing Order 101, requires a certificate to be signed by complainants to say that they are satisfied with the steps that have been taken,⁶¹⁹ such certificates are not ordinarily signed at the three Khayelitsha police stations,⁶²⁰ which General Jephta said constituted a failure to comply with Standing Order 101. It was also put to Major General Jephta that Brigadier Dladla had implemented a practice at Khayelitsha Site B police station in terms of which he wrote to individual complainants when investigations were completed, to report on the investigation of the complaint. Major General Jephta acknowledged that this was a good practice.⁶²¹

609 Exhibit SJ5, Record Bundle 11(5), Item 77; and Transcript at 6309 – 6312 (31 March 2014).

610 Exhibit SJ6, Record Bundle 11(5), Item 78; and Transcript at 6318 – 6326 (31 March 2014).

611 Exhibit SJ4, Record Bundle 11(5), Item 76.

612 Exhibit SJ8, Record Bundle 11(5), Item 80.

613 Exhibit SJ9, Record Bundle 11(5), Item 81; and Transcript at 6302 – 6306 (31 March 2014).

614 Transcript at 6323 (31 March 2014).

615 Id. at 6327 – 6329.

616 Id. at 6328.

617 Id. at 6434.

618 Id.

619 See Chapter 5 above at para 70 and also Standing Order 101, annexed to the Affidavit of Major General Jephta at section 5(3)(vii).

620 Id. at 6435.

621 Id. at 6438 – 6439.

(iii) Information technology

- [199] Major General Jephta told the Commission that some of the burdens borne by SAPS could perhaps be eased by smart use of information technology.⁶²² She mentioned the large number of registers maintained in CSCs that could perhaps be more easily maintained electronically. She also spoke of the desirability of having technology in a police vehicle that would enable them to complete information about complaints quickly and efficiently. She mentioned that the Seattle police in the United States of America had such a technology.⁶²³
- [200] Major General Jephta was asked whether introducing email for all SAPS members would be a good starting point.⁶²⁴ She responded that “too many emails in an environment” might lead to a lack of control,⁶²⁵ although she accepted that email might be a useful mechanism for disseminating information to SAPS members.⁶²⁶

(iv) Response to complaint by complainant organisations

- [201] Major General Jephta was asked about the letter she had sent to Lieutenant General Tshabalala on 7 June 2012.⁶²⁷ In that letter, she summarised the complaint received from the complainant organisations dated 28 November 2011 and then said that a meeting had been called with the complainant organisations on 6 December 2011, but that they had not arrived for the meeting.⁶²⁸ She also stated that according to the provincial office, there was no breakdown in the relationship between the community and SAPS in Khayelitsha because there are “functioning” CPFs at all the stations, and the Cluster Board “is on top of matters”.⁶²⁹ The letter concluded by stating that as –

“the complaining parties are not coming forward to give clarity on their complaints and allegations, it is recommended that the matter be left to them to come back to the police if they intend proceeding with the allegations. The matter is thus regarded as finalised at this stage until we hear from the complainants again.”⁶³⁰

- [202] Major General Jephta was asked on what basis she had made the statement in her letter that there were functioning CPFs at all three police stations, particularly given that the inspection reports prepared by the Provincial Inspectorate suggested otherwise, at least insofar as Khayelitsha Site B and Harare were concerned.⁶³¹ The 2011 Harare inspection report concluded that there was no functioning CPF at Harare at all. Major General Jephta reported that her letter had been based on “interaction with the station commanders” and not on the inspection reports.⁶³² She also mentioned that the report had been compiled by legal services, and not by her.⁶³³ It was also put to Major General Jephta that when the Task Team visited the three police stations the following month, their conclusions did not coincide with the

622 Id. at 6355 – 6357.

623 Id. at 6356.

624 Id. at 6402.

625 Id.

626 Id. at 6403 – 6404.

627 Annexure AL48A to the Affidavit of Lieutenant General Lamoer in the High Court Record, Record Bundle 1(3), AL48A. Transcript at 6360 – 6373 (31 March 2014).

628 Annexure AL48A to the Affidavit of Lieutenant General Lamoer in the High Court Record, Record Bundle 1(3), AL48A at paras 7 – 8.

629 Id. at para 11.

630 Id. at para 12.

631 Transcript at 6361 (31 March 2014).

632 Id. at 6363.

633 Id. at 6364.

statement she had made in her letter.⁶³⁴ On behalf of the complainant organisations, it was put to Major General Jephta that the attitude displayed in her letter of June 2012, given the gravity of the issues raised in the complaint, was “uncaring” and “careless”,⁶³⁵ which General Jephta denied.⁶³⁶

(v) SAPS’ relationship with DOCS

- [203] Major General Jephta was asked to comment on a letter dated 19 June 2012 sent to DOCS, which had been sent with her name on it, although the Provincial Commissioner signed it. The letter related to a DOCS investigation into the issue of a firearm to a SAPS member who had contravened the Domestic Violence Act in which it had been stated that DOCS was not permitted to investigate complaints in terms of section 206(3), read with section 206(5), of the Constitution.⁶³⁷ Dr Lawrence had testified that this letter reflected the poor working relationship between DOCS and SAPS, as well as a disagreement between DOCS and SAPS as to the powers of the province under section 206 of the Constitution.⁶³⁸
- [204] Major General Jephta said that there was an agreement with DOCS on the protocol for the handling of complaints against members of SAPS.⁶³⁹ In terms of that agreement, all complaints referred to DOCS would be referred to the SAPS “nodal point” for investigation,⁶⁴⁰ although the agreement was not in writing.⁶⁴¹ Counsel for the province drew it to her attention that her testimony in this regard was inconsistent with Dr Lawrence’s testimony on behalf of DOCS and the province.⁶⁴²
- [205] Major General Jephta suggested that the Commission make a recommendation that a memorandum of understanding should be entered into between DOCS and SAPS to clarify their respective roles.⁶⁴³ She acknowledged that one of the issues that could perhaps be dealt with in such a memorandum would be an arrangement to ensure that either DOCS or the Provincial Inspectorate inspected all police stations in the province annually.⁶⁴⁴
- [206] Major General Jephta was also asked about the SAPS requirement, set out in a letter from Provincial Commissioner Petros to Dr Lawrence on 15 March 2010,⁶⁴⁵ that DOCS refer all requests for physical inspections to the “nodal point” before the inspections take place.⁶⁴⁶ Major General Jephta repeated her earlier testimony that she did not think unannounced visits were desirable or necessary.⁶⁴⁷ She testified that when SAPS conducted unannounced visits, this was generally done at the request of line management.⁶⁴⁸ She testified that she accepted DOCS oversight role in the following way –

“The independent inspection is great. DOCS have got an oversight role, they’ve got the mandate to do so. What we have only requested is that they don’t do it unannounced so that we put pressure on our people and DOCS

634 Id. at 6364 – 6365.

635 Id. at 6371 – 6372.

636 Id. at 6372.

637 Record Bundle 9(6), Item 7. See also the testimony of Dr Lawrence described in Chapter 9 above at paras 4 – 22.

638 Id. and Transcript at 6374 – 6375 (31 March 2014).

639 Transcript at 6377 (31 March 2014).

640 Id. at 6381.

641 Id. at 6379.

642 Id. at 6381.

643 Id. at 6379.

644 Id. at 6441.

645 Exhibit GL1, Record Bundle 9(6), Item 7 at para 5.4.

646 Transcript at 6382 (31 March 2014).

647 Id. at 6383.

648 Id. at 6385 – 6386.

can indicate since 2012 ... how many inspections they did.... They have got a constitutional mandate, I respect their mandate, we give them the room to do their work, the only thing that we request for service delivery and for the smooth running of the police station let's announce it, inspectorate is doing so, the standing committee is doing so, the portfolio committee is doing so, the National Council of Provinces is doing so, the Human Rights Commission is announcing those inspections to us, ...".⁶⁴⁹

- [207] Major General Jephta was also asked about a request sent to the Provincial Commissioner by the MEC for Community Safety in the Western Cape dated 25 July 2013 in which the MEC has requested information on the number of lost and stolen SAPS dockets for the years 2009 – 2012.⁶⁵⁰ The Provincial Commissioner responded to this letter on 3 September 2013 requesting “clarity” as to the “purpose for which this information is required”.⁶⁵¹ Major General Jephta said that the MEC would be entitled to ask for the information, but that the Provincial Commissioner was also entitled to ask to what use it would be put.⁶⁵² For the sake of completeness, it should be added here that on the last day of the hearings in the first phase, SAPS provided a copy of a letter written by the MEC of Community Safety on 25 September 2013, indicating that he wanted the information in terms of section 206(3) of the Constitution in order to “oversee the effectiveness and efficiency” of SAPS.⁶⁵³ The Provincial Commissioner responded to the MEC for Community Safety on 1 October 2013 indicating that two police stations had problems with lost dockets: Nyanga and Prince Albert.⁶⁵⁴ In response to a proposition that DOCS found their relationship with SAPS to be hampered by “a pattern of refusal and evasion of requests”,⁶⁵⁵ Major General Jephta responded that she disagreed, and that she had a working relationship with DOCS on a range of issues, including on the Extended Partnership Programme (EPP) for CPFs.⁶⁵⁶

(vi) Wrongful arrests

- [208] Major General Jephta told the Commission that one of the programmes she had put in place had been a training programme by the legal services department to address the issue of wrongful arrests that were resulting in a high number of civil claims against SAPS.⁶⁵⁷

(vii) Use of external experts to develop training materials

- [209] Major General Jephta also agreed that it would be helpful to use the expertise of experts outside of SAPS to produce training materials for SAPS members in specialist areas, such as domestic violence.⁶⁵⁸

(viii) Response to Task Team report

- [210] Major General Jephta was asked what the response of the Provincial management team had been to the Task Team Report.⁶⁵⁹ She said that the Deputy Provincial Commissioner had put a team together to visit the stations to address certain issues. She was asked whether any dismissals had taken place as a result of the report, and she said there had been no

⁶⁴⁹ Id. at 6387 – 6388.

⁶⁵⁰ Exhibit GL5, Record Bundle 9(6), Item 7.

⁶⁵¹ Exhibit GL6, Record Bundle 9(6), Item 7.

⁶⁵² Transcript at 6397 (31 March 2014).

⁶⁵³ Exhibit AL6, Record Bundle 11(5), Item 90.

⁶⁵⁴ Exhibit AL11, Record Bundle 11(5), Item 95.

⁶⁵⁵ Id. at 6398.

⁶⁵⁶ Id. at 6398 – 6401.

⁶⁵⁷ Id. at 6452 – 6453.

⁶⁵⁸ Id. at 6454 – 6455.

⁶⁵⁹ Id. at 6458 – 6459.

dismissals.⁶⁶⁰ It was drawn to her attention that the Minister of Police had, in his affidavit in the High Court proceedings, stated that dismissals had followed on the Task Team Report.⁶⁶¹ She stated that she did not know this to be the case.⁶⁶²

(g) Lieutenant General Arno Lamoer – Provincial Commissioner, Western Cape⁶⁶³

- [211] Lieutenant General Lamoer joined SAPS in 1980. He became Provisional Commissioner of the Western Cape in October 2010, succeeding Provincial Commissioner Petros who served from 2003 – 2010.⁶⁶⁴ Lieutenant General Lamoer told the Commission that he had had direct experience in Khayelitsha when he served as the area commissioner for the Eastern Metropole in 2001 – 2002. At that time, there was only one fully-fledged police station, Khayelitsha Site B, and there were just over 200 police officers serving in Khayelitsha.⁶⁶⁵ Lieutenant General Lamoer told the Commission that Khayelitsha was declared a presidential area in 1999.⁶⁶⁶ Today there are over 760 police officers serving the three police stations in Khayelitsha. He acknowledged that in the same period the population of Khayelitsha had also grown significantly, as had the levels of crime.⁶⁶⁷

(i) *Makhaza police station*

- [212] Lieutenant General Lamoer produced a set of documentation relating to the establishment of an additional police station in Khayelitsha to be situated at Makhaza.⁶⁶⁸ He acknowledged that, ten years ago in 2004, SAPS had identified the need for a fourth police station in Makhaza.⁶⁶⁹ He described the process that takes place to establish a new police station. Once a work-study has been done that identifies the need for the police station, the National Commissioner must approve the establishment of a new station, and then the Department of Public Works (DPW) is engaged.⁶⁷⁰ The land that has now been identified for the Makhaza police station is situated at the intersection of Dibana Road and Cekeca Road in Makhaza, erf 59037, and belongs to the City of Cape Town so DPW is negotiating with the City to acquire the land.⁶⁷¹ The process for acquiring the site is far advanced, and thereafter the site will be cleared, and then developed.
- [213] According to Lieutenant General Lamoer, the building of the Makhaza police station has been prioritised for the 2014/2015 financial year, although that does not mean it will be completed in that year.⁶⁷² Lieutenant General Lamoer told the Commission that he thought that the building of an additional police station at Makhaza would address some of the concerns that have arisen in Khayelitsha in relation to policing.⁶⁷³ However, he acknowledged it was likely that personnel would be redeployed from the police station currently serving the area,

660 Id. at 6459.

661 Id. at 6460; Record Bundle 1(3) at para 69, p 2066.

662 Id. at 6460.

663 Record Bundle 8(3), File 4.4, File 7, Item 15; Transcript at 6485 – 6737 (1 April 2014).

664 Transcript at 6486 (1 April 2014).

665 Id. at 6490 – 6491. Record Bundle 8(3), File 4.4, File 7, Item 15 at para 16.

666 Record Bundle 8(3), File 4.4, File 7, Item 15 at para 16.

667 Id. at 6492.

668 Id. at 6492 – 6493. Exhibit AL1, Record Bundle 11(5), Item 85.

669 Id. at 6494.

670 Id. at 6495.

671 Id. See also the testimony of Major General Fick above at para 154.

672 Id. at 6496.

673 Id. at 6498.

and transferred to the new station.⁶⁷⁴ According to Lieutenant General Lamoer, national office will determine the staffing needs of the new station, but the decision as to which particular members will be moved is a provincial decision.⁶⁷⁵ He acknowledged that most of the additional members are administrative members, rather than operational members.⁶⁷⁶ Lieutenant General Lamoer testified that he had no knowledge of what had caused the delay in the planning process for the Makhaza police station since 2004, and that it is not the norm for a police station to take ten years to be built.⁶⁷⁷

(ii) *Human Resource Allocation and the RAG*

- [214] Lieutenant General Lamoer was asked whether he had any discretion in relation to the distribution of staff.⁶⁷⁸ He testified that not only he, but all the provincial commissioners, have “an issue with the resource allocation guide”⁶⁷⁹ and that he could “shift people to do a specific task in a specific area”,⁶⁸⁰ but that he could not “shift the funded posts”. He added –

“That means in simple terms, Chair, Khayelitsha for argument’s sake, has 100 people, they are struggling with 100 people. 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. And that is the challenge we have when we talk about the RAG; because we want to see more people at your priority stations, that people can – that they can serve the community much better.”⁶⁸¹

- [215] Lieutenant General Lamoer told the Commission that the new strategy, OPUS, involved identifying suitable people with appropriate skills to perform specific tasks.⁶⁸² He mentioned both the appointment of Colonel Harri as the head of the FCS Unit, and Colonel Marais to be detective commander in Khayelitsha Site B.⁶⁸³ He also mentioned the plan to establish a satellite FCS Unit for the Helderberg basin, so that the investigating officers in Khayelitsha could focus on the three Khayelitsha stations.⁶⁸⁴
- [216] Lieutenant General Lamoer also told the Commission that his authority to send members on “duty arrangements”, that is to second them temporarily to other stations or units, is an exercise of his authority to affect staffing, but it is always temporary.⁶⁸⁵ He testified that the main reason for duty arrangements was to use the special skills of SAPS members in temporary teams or tasks.⁶⁸⁶ He testified that he could not permanently place a member at a station if there was not a “funded post” on the fixed establishment at that station.⁶⁸⁷ It was put to Lieutenant General Lamoer that this understanding of his authority did not coincide with the language of section 12(3) of the SAPS Act, which provides that a provincial

674 Id. at 6499 – 6500.

675 Id. at 6501.

676 Id. at 6503.

677 Id. at 6647 – 6648.

678 Id. at 6505.

679 Id. at 6507.

680 Id.

681 Id.

682 Id. at 6512.

683 Id.

684 Id. at 6513 – 4.

685 Id. at 6554, 6630 and 6661 – 6662.

686 Id. at 6662.

687 Id. at 6728.

commissioner has the power to allocate personnel not merely move personnel temporarily on duty arrangements. He agreed.⁶⁸⁸

- [217] He also confirmed Brigadier Rabie's evidence that the Western Cape is understaffed, with only 94% of its requirements, whereas the mean for the staffing levels of provinces countrywide was 103% of requirements, with some provinces as high as 125%.⁶⁸⁹ The Western Cape had a shortage of approximately 1000 SAPS members, and although it was about to receive 668 recruits, they would require two years' training and the Western Cape would remain behind.⁶⁹⁰ Lieutenant General Lamoer was asked how many of the 668 recruits would be attached to the three Khayelitsha police stations, and he undertook to provide the answer.⁶⁹¹ According to a letter provided to the Commission by SAPS' legal representatives dated 19 June 2014, five of the 668 new positions will be allocated to the three Khayelitsha police stations.⁶⁹² He explained to the Commission that National Office would allocate the 668 recruits to police stations, on the basis that the Provincial Office requested.⁶⁹³
- [218] Lieutenant General Lamoer told the Commission that he does not agree with the figures provided to him for staff establishment across the province and that he "disputes it continuously" with national office, because he believes that police stations with higher crime prevalence should have more resources.⁶⁹⁴ He agreed that the manner of evaluating the environmental difficulties created by informal neighbourhoods was inadequate, and he said that it is an issue repeatedly raised at the SAPS National Management Forum.⁶⁹⁵ He also said that the nine Provincial Commissioners had raised the issue with the National Commissioner.⁶⁹⁶ He agreed that there was something "fundamentally irrational" in the manner in which the RAG or THRR is calculated, given the differentials that it produced in policing ratios between different suburbs.⁶⁹⁷
- [219] Lieutenant General Lamoer was asked whether there was any reason why the THRR (or RAG) should not be in the public domain.⁶⁹⁸ He responded that the RAG (being the fixed establishment of every police station) was in the public domain, and was available to the MEC, the standing committee and the parliamentary portfolio committee.⁶⁹⁹ He was told that DOCS did not have the RAG, and he responded by saying that the Commission should recommend that the RAG should be made "more available"⁷⁰⁰ and that he would recommend to the National Commissioner that it be made "available to everybody".⁷⁰¹
- [220] Lieutenant General Lamoer was also asked why it took so long to fill senior posts. He indicated that delays often arose in obtaining permission from national office to advertise vacancies.⁷⁰² He was asked why it was necessary to obtain permission from national office to advertise a

688 Id. at 6654 – 6655.

689 Id. at 6630 – 6631.

690 Id. at 6631.

691 Id. at 6656.

692 Record Bundle 13(2), Item 12.9.

693 Transcript at 6729 (1 April 2014).

694 Id. at 6601.

695 Id. at 6602.

696 Id.

697 Id. at 6603 – 6604.

698 Id. at 6650 – 6651.

699 Id. at 6652.

700 Id. at 6652.

701 Id. at 6653.

702 Id. at 6656 – 6657.

funded post in the fixed establishment that was vacant and he responded that it was required by national prescripts.⁷⁰³

(iii) *The FCS Unit*

- [221] The poor performance of the Khayelitsha FCS Unit was also raised with Lieutenant General Lamoer. He said that it was receiving attention and that the post of commander of that Unit had been advertised.⁷⁰⁴ He was also asked why the inspection report of the FCS Unit had taken six months to prepare, and whether this was normal practice.⁷⁰⁵ He said it was not normal practice for such a delay to happen, but that he did not know why it had happened in this case.⁷⁰⁶ He was also asked about the lack of human resources in the provincial FCS office, and he said that the matter was being attended to, and that Colonel Harri, the head of the provincial FCS Unit, would be assisted by “one or two additional officers”.⁷⁰⁷
- [222] The shortcomings of the FCS Unit as described by Colonel Harri were also raised with Lieutenant General Lamoer, and he admitted the problems with the FCS Unit. Those shortcomings included the fact that the FCS Unit in Khayelitsha is the worst performing unit in the province,⁷⁰⁸ that the Unit had severe staff shortages,⁷⁰⁹ that morale in the Unit was low, that it is difficult to find applicants for posts in the Unit,⁷¹⁰ (a problem that is unique to Khayelitsha, according to Colonel Harri),⁷¹¹ that the quality of investigations conducted at the Unit was poor,⁷¹² that there was a problem with a backlog of cases in the Unit,⁷¹³ and that there is no crime intelligence capacity in the FCS Unit provincially.⁷¹⁴ In the light of these problems, Lieutenant General Lamoer admitted that “there are very substantial problems in the manner in which the FCS Unit” was operating.⁷¹⁵

(iv) *Vigilantism*

- [223] Lieutenant General Lamoer was asked about vigilantism. He said that vigilantism is not unique to the Western Cape or to Khayelitsha.⁷¹⁶ He said that, in his view, vigilantism is an “act of opportunism ... people start running and screaming and automatically community members react and before asking questions the act happens.”⁷¹⁷ In his view, it happens not because SAPS’ systems fail, but because people wanted “swift justice”.⁷¹⁸ He said that murders arising from community action are a small proportion of all murders, nor are such murders indicative of a breakdown in the relationship between the community and SAPS.⁷¹⁹ In this regard, Lieutenant General Lamoer was asked whether, given the role of the police under apartheid, SAPS bore a special burden to “win hearts and minds” of the community, and he agreed that SAPS did bear such a burden.⁷²⁰

703 Id. at 6657.

704 Id. at 6515.

705 Id. at 6516.

706 Id.

707 Id. at 6517.

708 Id. at 6574.

709 Id.

710 Id.

711 Id. at 6575.

712 Id. at 6576.

713 Id.

714 Id. at 6577 – 6578.

715 Id. at 6578.

716 Id. at 6519.

717 Id. at 6520.

718 Id.

719 Id. at 6522.

720 Id. at 6524 – 6525.

[224] He acknowledged that attending to vigilante attacks was a difficult police challenge that required the police to develop a strategy.⁷²¹ He accepted that there was a shortcoming in SAPS' response to vigilantism.⁷²² He also mentioned that education of the community was important, which was something that SAPS addressed with CPFs and other community structures.⁷²³

(v) *The Task Team report and the provincial response to the complaint laid by the complainant organisations*

[225] Lieutenant General Lamoer discussed the process that had been followed in response to the complaint laid by the complainant organisations.⁷²⁴ He denied that Major General Jephta was “uncaring” as had been asserted by counsel for the complainant organisations.⁷²⁵ Lieutenant General Lamoer noted that when he had met with the Task Team appointed by the late Lieutenant General Tshabalala he had asked that the Team broaden the scope of their investigation to look at other aspects “to enhance the overall quality of service delivery”.⁷²⁶

[226] Lieutenant General Lamoer told the Commission that when he received the Task Team report in November 2012, he instructed his deputy provincial commissioners to study the report, and to make the necessary interventions.⁷²⁷ He acknowledged that problems persist from inspection report to inspection report, but asserted that it was important to understand that individual performance assessment of cluster commanders and station commanders is affected by negative inspection reports.⁷²⁸

[227] Lieutenant General Lamoer said that he did not agree with the conclusion of the Task Team Report which was, in effect, that the community of Khayelitsha did have cause to complain about the level of policing.⁷²⁹

[228] Lieutenant General Lamoer was asked why the Task Team Report was confidential. He accepted that not showing the report to the relevant line managers, such as station commanders and branch commanders, or to the Provincial Inspectorate may have been “a shortcoming” in their management of the report.⁷³⁰ Like Major General Jephta, he was not aware of any dismissals having followed the Report, although the Minister of Police had stated in his affidavit in the High Court proceedings that dismissals had taken place.⁷³¹

[229] Lieutenant General Lamoer also testified that the Task Team Report was only the first phase of a process that had been intended to be a two-phase process by National Office. The second phase was to have been the appointment of a panel of independent outsiders, including members of the community, to investigate the complaints further.⁷³² He also testified that Project 6 was established as a result of the Task Team Report.⁷³³

721 Id. at 6666.

722 Id. at 6667.

723 Id.

724 Id. at 6525 – 6529.

725 Id. at 6525 and see above at para 202.

726 Id. at 6529 – 6530.

727 Id. at 6530 – 6532.

728 Id. at 6533 – 6534.

729 Id. at 6535.

730 Id. at 6673.

731 Id. at 6677.

732 Id. at 6724.

733 Id. at 6725.

(vi) Detectives in the three Khayelitsha police stations

- [230] As to the overburdening of detectives, Lieutenant General Lamoer said that branch commanders needed to look at redistributing dockets, which, according to Lieutenant General Lamoer was one of the reasons that Project 6 had been initiated, but he also acknowledged that overburdened detectives who make errors creates difficulties for the system of discipline.⁷³⁴ It was put to Lieutenant General Lamoer that two steps needed to be taken to address the problem of overburdened detectives: first, the RAG need to be reconsidered so that more experienced detectives are allocated to stations overburdened with contact crime, and secondly, backlog teams need to be established to address the backlog. He agreed.⁷³⁵
- [231] Lieutenant General Lamoer accepted the testimony of Colonel Wiese that there should be a ratio of 1:1, between existing dockets and newly opened dockets in a detective branch.⁷³⁶ According to Colonel Wiese, however, the ratio at the three Khayelitsha police stations is quite different, with the consequence that the detectives are “drowning”.⁷³⁷ Lieutenant General Lamoer indicated that the problem of the backlogs had been identified, and a budget created to address them.⁷³⁸ The manifold shortcomings of detective work at the three police stations as identified in the Project 6 inspections reports of August 2013 were quoted to Lieutenant General Lamoer.⁷³⁹ His response was that these were shortcomings that would be found in detective branches across the country.⁷⁴⁰

(vii) Project 6, Project 23, Project 31, Project 54, Project 101 and Project 290

- [232] Lieutenant General Lamoer provided the Commission with a table prepared by the Provincial Inspectorate identifying police stations that were being subjected to a higher degree of monitoring, both by national level and provincial level.⁷⁴¹ Project 54 was a national project, that ran from April 2012 to June 2012,⁷⁴² identifying the six worst performing police stations in each province and monitoring them. The six police stations in the Western Cape were Athlone, Fish Hoek, Gordon’s Bay, Gugulethu, Mfuleni and Nyanga. None of the Khayelitsha police stations fell in this group. According to Brigadier Van Zyl, there was a “comprehensive report” compiled for the National Commissioner providing a turn-around strategy to improve the 54 stations.⁷⁴³ According to Brigadier Van Zyl, the report might be classified as confidential, but he thought it could be declassified and provided to the Commission.⁷⁴⁴ Despite several requests, the only feedback received by the Commission was that it had been requested from the national Department but no response had been received.
- [233] According to Lieutenant General Lamoer, Project 54 was followed in June 2012 by Project 101, again a project of the National Inspectorate. Project 101 selected the 101 stations that have the highest levels of crime in the country.⁷⁴⁵ Both Harare and Khayelitsha Site B were included in Project 101. Thereafter the National Inspectorate launched Project 290 in June

734 Id. at 6537 – 6538.

735 Id. at 6538 – 6540.

736 Id. at 6580. See the testimony of Colonel Wiese at 5065.

737 Transcript at 6582. See testimony of Colonel Wiese at 5101.

738 Id. at 6581 – 6582.

739 Id. at 6583.

740 Id.

741 AL2, Record Bundle 11(5), Item 86. Transcript at 6542.

742 Transcript at 4891 – 4892 (18 March 2014).

743 Id. at 4892.

744 Id. at 4940.

745 Exhibit AL2 Record Bundle 11(5), Item 86; Transcript at 6543 (1 April 2014).

2013, which included the 43 police stations in the Western Cape with the highest level of crime.⁷⁴⁶ Harare and Lingeletu West were included in Project 290.

- [234] Lieutenant General Lamoer explained that the provincial inspectorate had three similar projects: Project 23, Project 31 and Project 6. Project 23 commenced in November 2012 and focussed on the police stations with the highest levels of crime in the province, which included Harare and Khayelitsha Site B. Project 31, which commenced in April 2013, also added eight further stations with high crime levels to the 23 that had been identified in Project 23, so it also included Harare and Khayelitsha Site B, and Project 6 commenced in November 2013 and included all three Khayelitsha police stations. According to Lieutenant General Lamoer, the focus of Project 6 was human resources capacity, to look at skills levels, and also backlogs in crime investigations.⁷⁴⁷ In order to address backlogs, an overtime budget of R3 million was made available to the six stations.⁷⁴⁸

(viii) Internal Audit report – Khayelitsha Site B

- [235] Lieutenant General Lamoer submitted as an exhibit⁷⁴⁹ the internal audit report of Khayelitsha Site B that was discussed in Chapter 10 above.⁷⁵⁰ He explained that the internal audit is one of three monitoring and evaluation processes: the Auditor-General, Internal Audit and the SAPS Inspectorate, both at provincial and national level.⁷⁵¹
- [236] One of the issues raised in the internal audit report is the high number of civil claims against SAPS in relation to wrongful arrest and to holding detainees for longer than 48 hours without charge.⁷⁵² Lieutenant General Lamoer explained that not only detectives bear the responsibility to ensure that wrongful arrests are not made, or that detainees are not held for longer than 48 hours, but also the CSC commander who should check the cells on every shift.⁷⁵³ He also explained that the provincial legal department had run training courses on wrongful arrest and detention.⁷⁵⁴ Lieutenant General Lamoer admitted that the amount of money paid out in civil suits related to such matters was increasing annually, not decreasing.⁷⁵⁵
- [237] The internal audit report also identified as a risk that there were insufficient police members to serve the community, calculating a ratio of 1:515. The report commented that this poor ratio resulted in low morale and overworked CSC members.⁷⁵⁶ The internal audit team worked on a population of 319 830, which it was pointed out was inaccurate, and not in accordance with Census 2011.⁷⁵⁷ In relation to the understaffing of the police station, Lieutenant General Lamoer explained that one of the reasons for a shortage of personnel at Khayelitsha Site B was that many of its members had been drawn into the provincial Tactical Response Team (TRT).⁷⁵⁸

⁷⁴⁶ Transcript at 6543 (1 April 2014).

⁷⁴⁷ Id. at 6543 – 6544.

⁷⁴⁸ Id. at 6545.

⁷⁴⁹ Exhibit AL3, Record Bundle 11(5), Item 87.

⁷⁵⁰ Chapter 10 above at paras 62 – 65.

⁷⁵¹ Transcript at 6546 – 6547.

⁷⁵² Id. at 6554.

⁷⁵³ Id. at 6556.

⁷⁵⁴ Id. at 6555. See also the testimony of General Jephtha at 6452 (31 March 2014).

⁷⁵⁵ Id. at 6557.

⁷⁵⁶ Id. at 6562 – 6563. See also internal audit report, Exhibit AL3 Record Bundle 11(5), Item 87 at para 3.7, p 23.

⁷⁵⁷ Id. at 6563 – 6564.

⁷⁵⁸ Id. at 6563.

(ix) Certification of documents in police stations

- [238] The issue of long queues in CSCs was raised with Lieutenant General Lamoer, and he acknowledged that this was a problem that had been discussed at the SAPS National Management Forum.⁷⁵⁹

(x) Relationship with DOCS

- [239] Lieutenant General Lamoer testified that SAPS had “a sound relationship” with DOCS and that he was disappointed when Dr Lawrence suggested otherwise.⁷⁶⁰ He agreed with Major General Jephtha that a memorandum of understanding to spell out the role of DOCS under section 206 of the Constitution would be helpful, particularly, as he admitted, that there is not a shared understanding between DOCS and SAPS as to that role.⁷⁶¹
- [240] Lieutenant General Lamoer accepted that unannounced visits at police stations were valuable to identify shortcomings⁷⁶² and he agreed to have a meeting with Dr Lawrence to discuss the issue further.⁷⁶³ He insisted however that it would be inappropriate for DOCS members to investigate dockets that are being investigated by SAPS members as crime investigation is a SAPS function,⁷⁶⁴ and the “rights of people” must be protected.⁷⁶⁵ On the issue of the relationship with DOCS generally, Lieutenant General Lamoer said he would sit down with DOCS to work out their relationship.⁷⁶⁶
- [241] Lieutenant General Lamoer also acknowledged that the DOCS reports of police station visits are useful⁷⁶⁷ as well as the surveys requisitioned by DOCS into community attitudes to police and policing, especially as SAPS does not conduct such surveys itself.⁷⁶⁸

(xi) CCTV Cameras

- [242] Lieutenant General Lamoer told the Commission that CCTV cameras provide assistance in addressing crime issues in areas of Cape Town.⁷⁶⁹ He also suggested that it would be good to increase “the footprint” of CCTV cameras in Khayelitsha and was willing to work with the City to identify suitable places for such cameras.⁷⁷⁰

(xii) Management and Command and Control

- [243] Lieutenant General Lamoer admitted that “command and control” is the cornerstone of SAPS success.⁷⁷¹ He also testified that station commanders are properly trained by the Station Management Learning Programme to understand all aspects of work in a police station, including detective work, so that station commanders who come from a VISPOL background learn how detectives work.⁷⁷²

759 Id. at 6559.

760 Id. at 6613.

761 Id. at 6614.

762 Id. at 6618.

763 Id.

764 Id. at 6622.

765 Id. at 6615.

766 Id. at 6624 and 6627.

767 Id. at 6677 – 6678.

768 Id. at 6680.

769 Id. at 6635.

770 Id. at 6636.

771 Id. at 6639.

772 Id. at 6687.

(xiii) SAPS' relationship with community

[244] Lieutenant General Lamoer emphasised the importance of the relationship between SAPS and the community at both police station and sector level.⁷⁷³ He agreed that increasing political contestation in the community made it more difficult for SAPS to build relationships because “every ... political person wants to push ... his or her own agenda, and we are not in that. We are there in service delivery to the community.”⁷⁷⁴ He acknowledged that the issue did not only arise in Khayelitsha or the Western Cape.⁷⁷⁵

[245] Lieutenant General Lamoer was asked whether the new draft regulations for reservists were too restrictive in relation to the people who could be reservists, in that they required individuals to be South African citizens by birth, to be under the age of 40 and to be employed.⁷⁷⁶ He accepted that the draft regulations do restrict the categories of people who may become reservists, but he pointed to provision in the regulations which permitted the National Commissioner to admit people to become reservists who do not fit the criteria. He also mentioned the problem that had arisen when reservists were reimbursed, and then demanded to become permanent members of SAPS.⁷⁷⁷

(xiv) Handling of complaints

[246] Lieutenant General Lamoer was asked about the perception that is created when a complaint against a member of SAPS is referred to one of the colleagues of that member at the same police station for investigation.⁷⁷⁸ He explained that it was a system that had been in place for many years, and that it required an officer, with the rank of Lieutenant to deal with the complaint. However he accepted the perception that it might create and pointed out that it was that perception that led to the establishment of the ICD and IPID.⁷⁷⁹ He told the Commission that sometimes the province will send a member from the Provincial Inspectorate to investigate a complaint, but noted that the Inspectorate did not have capacity to deal with all complaints, and that sometimes province will appoint a SAPS member from another station to investigate a serious complaint.⁷⁸⁰

(xv) Apology to residents of Khayelitsha

[247] Lieutenant General Lamoer was invited by counsel for the complainant organisations to apologise to Khayelitsha residents, and he responded –

“I am prepared to apologise for the lack of services rendered to address the crime problems in the Khayelitsha area.”⁷⁸¹

(xvi) Cluster command

[248] Lieutenant General Lamoer told the Commission that the role of cluster commanders is going to change. At present, cluster commanders are only responsible for monitoring oversight issues, and not for any support issues, such as discipline. The proposal is to give cluster commanders more capacity, by providing them with a supporting infrastructure (not just a Detective co-ordinator and a VISPOL co-ordinator) and one of their new tasks will be

773 Id. at 6688 – 6689.

774 Id. at 6691.

775 Id. at 6692.

776 Id. at 6696.

777 Id. at 6696 – 6697.

778 Id. at 6700 – 6701.

779 Id. 6701 – 6702.

780 Id. at 6702.

781 Id. at 6606.

to deal with discipline, rather than discipline being dealt with by station commanders.⁷⁸² He indicated that the new role of clusters would be discussed at the next National Management Forum.⁷⁸³

(xvii) Gangs

[249] Lieutenant General Lamoer told the Commission that the provincial policy on gangs that had been adopted in 2011 would apply to the youth gangs operating in Khayelitsha.⁷⁸⁴

(xviii) Conclusion

[250] Lieutenant General Lamoer told the Commission that –

“My management accepts and welcomes any intervention from anybody to better the service to the community and we really look forward to the outcome of this Commission so that we can see and evaluate how can we better the service to the various communities that we serve because we will not only use the outcome of this Commission for the three police stations but we will look broader in the Western Province itself to all 150 police stations.”⁷⁸⁵

⁷⁸² Id. at 6703 – 6704.

⁷⁸³ Id. 6704.

⁷⁸⁴ Id. at 6731 – 6732.

⁷⁸⁵ Id. at 6569 – 6570.

CHAPTER TWELVE

OVERVIEW OF THE EXPERT EVIDENCE IN PHASE TWO

[1] At the end of Phase One, the Commission issued Notice 16 provisionally identifying issues relevant to Phase Two.¹ Parties were given an opportunity to comment on Notice 16, and after receipt of comments, a revised list of issues for Phase Two was published as Notice 17.² Expert evidence was sought on the two key questions set out in the Commission's terms of reference, namely: (1) are there inefficiencies at the three Khayelitsha police stations and other SAPS units operating in Khayelitsha and (2) is there a breakdown in relations between the Khayelitsha community and SAPS members operating in Khayelitsha? In addition, expert witnesses were requested to consider a range of specific issues, which can be summarised as follows –

- Visible Policing: is sector policing working effectively and in accordance with National Instructions? Are crime prevention units working effectively? Should Visible Policing units in Khayelitsha be conducting foot patrols in addition to those conducted in vehicles? Are CSCs providing an efficient service? Are CSCs overburdened by the number of people seeking attestation of documents? Is the procedure followed for opening dockets at the three police stations in accordance with National Instruction 3 of 2011?
- Telephone response: are the telephones at the police stations, including the sector cell phones, as well as calls to 10111, answered reliably and do SAPS respond to calls in a timely fashion?
- Crime scene management: is crime scene management being effectively carried out at the three Khayelitsha police stations?
- Is the detective branch working effectively at the three Khayelitsha police stations: are detectives being required to investigate too many dockets? Is the quality of docket management satisfactory? Do detectives implement instructions of their supervising officers and/or public prosecutors? Have adequate physical resources been provided (office space, computers, telephones and internet access)? Are the systems to obtain forensic reports, including blood reports, ballistic reports, DNA reports and post-mortem reports functioning effectively? Are detectives trained adequately? Is there adequate feedback to complainants and witnesses about the progress of investigations?
- City of Cape Town CCTV Camera Unit: are the cameras a successful mechanism for the prevention and detection of crime? Do detectives in Khayelitsha use them effectively? Are there enough cameras, and are they properly located and well maintained?
- Liaison with courts: (a) Is there an efficient system to ensure that dockets are taken timeously to court? (b) Are witnesses warned of court dates and present at court? (c) Are post-mortem reports, reports from the National Forensic Laboratory and other forensic reports placed in dockets in good time? (d) Are subpoenas and summonses served efficiently?

1 Notice 16, Record Bundle 13(1), File 1.2, Item 9j.

2 Record Bundle 13(1), File 1.2, Item 9k.

- Crime statistics: (a) is the system of publication of crime statistics in relation to the three Khayelitsha police stations efficient and reliable, and (b) does it promote the relationship between SAPS and the community?
- Crime intelligence and crime information officers (CIOs): can it be said that the CIOs at the three Khayelitsha police stations are working effectively, mapping crime regularly and properly, and producing crime threat analyses regularly? Is the information they produce used to assist in crime prevention and detection? Are informers being recruited and used effectively at the three Khayelitsha police stations?
- Cluster and police station management in Khayelitsha: are the three police stations and the cluster office well managed? Are records, registers and dockets regularly and properly inspected?
- Police corruption and criminality: is there a problem of police corruption and criminality in Khayelitsha?
- Arrest and detention: can it be said that the SAPS in Khayelitsha regularly fail to comply with the Constitution, the Criminal Procedure Act, 51 of 1977 and National Instructions by arresting people without lawful reason; or detaining people for longer than 48 hours?
- Youth gangs: is there an effective policing strategy in place to deal with youth gangs in Khayelitsha?
- Vengeance killings and attacks (“vigilantism”): is there an effective policing strategy in place to deal with vengeance killings and attacks?
- Homophobic and other hate crimes: is there an effective policing policy in place for addressing the problem of homophobic attacks and or sexual assaults on gay, lesbian, transgendered and intersex people living in Khayelitsha?
- Crimes against foreign nationals and xenophobic crimes: is there an effective policing strategy in place to address such crimes in Khayelitsha?
- Domestic Violence: are the provisions of the Domestic Violence Act being observed and implemented properly by SAPS in Khayelitsha?
- The Khayelitsha FCS Unit: is the FCS Unit operating effectively in Khayelitsha? Does it work effectively with other partners such as the Thuthuzela Care Centre?
- The role of alcohol and other drugs in contract crime: can it be said that alcohol plays a particular role in relation to contact crime? Is there an effective policing strategy in place to deal with alcohol abuse and drug use in Khayelitsha?
- School safety: is there an effective policing strategy in place to deal with school safety?
- Firearms: do the police stations in Khayelitsha adequately control access to and use of firearms?
- CPFs: can it be said that CPFs are functioning effectively? Do they have adequate logistical support? Are CPFs broadly representative of the community? Are CPFs adopting and implementing projects effectively? Do they contribute to the development of safety plans? Do they hold meetings regularly attended by police and members of CPFs? Are minutes of meetings properly recorded? Do CPF chairs participate in Station Crime Combating Forums (SCCFs)?
- SAPS’ relationship with the community: can it be said that SAPS is responsive to the needs and concerns of the people of Khayelitsha? Do SAPS provide regular, reliable and courteous feedback to complainants in Khayelitsha?
- Reservists: are reservists recruited and used effectively in Khayelitsha?
- Governance issues: has there been a failure of oversight of the three police stations in Khayelitsha? Has DOCS been fulfilling its constitutional mandate in terms of section 206 of the Constitution? What is the appropriate role of the Civilian Secretariat, both at national and provincial level, in oversight of the three Khayelitsha police stations?

- Management issues: has the system of station performance management proved a useful managerial tool for assessing the performance of the three Khayelitsha police stations? Have inspections conducted by the Provincial Inspectorate in terms of Standing Order 6 proved a useful tool for identifying problems at the three Khayelitsha police stations? Should DOCS conduct unannounced visits to police stations in Khayelitsha? What is the role of the cluster office in Khayelitsha in co-ordinating and overseeing performance of the three police stations? Are SAPS internal audits a useful tool for monitoring performance of the three Khayelitsha police stations?
- Human Resource Management: is the system of allocation of human resources to the three Khayelitsha police stations working effectively? Should that system be more transparent? Are there effective practices and procedures in police for the management of human resources in Khayelitsha to regulate promotion, service termination and duty arrangements? Does the Performance Enhancement Process work effectively to improve performance of individual SAPS members in Khayelitsha? Is there a problem of absenteeism at the three police stations and, if there is, is it being handled effectively? Are the disciplinary procedures that are in place adequate and effective? Are there adequate programmes for employee wellness, including trauma counselling, available to members of SAPS in Khayelitsha?
- Physical Resource Management: is the system for the allocation of physical resources (vehicles, building repair and maintenance, cell phones, laptops, etc.) working efficiently in relation to the three Khayelitsha police stations to ensure that SAPS members have the necessary resources to function effectively? Do the three police stations have adequate built resources for their needs?
- Fourth police station: is there a need for an additional police station in Khayelitsha?
- Information technology: does SAPS make efficient use of information technology resources in respect to the management of records and dockets as well as for communication and for the investigation of crime at the three police stations in Khayelitsha?
- Institutional culture: is the institutional culture at the three Khayelitsha police stations consistent with the values of the Constitution? Does it promote or hamper the achievement of the objects of policing as stipulated in the Constitution?
- Complaints by members of the public: does the system provided for in Standing Order 101, as it is implemented, provide a fair, objective and effective mechanism to address complaints against members of SAPS in Khayelitsha? Is the IPID functioning effectively and in a manner that will build the trust of the community in relation to Khayelitsha? Is the “nodal point” working effectively in relation to Khayelitsha? What should the role of DOCS be in relation to complaints by members of the public against SAPS members in Khayelitsha?

[2] In all, 26 expert reports were received and 27 expert witnesses (some of whom had prepared joint reports) testified in the hearings held in Phase Two in the week of 12 May 2014.³ The curriculum vitae of each of the experts admitted to give evidence, as well as their full expert reports may be found in the Record.⁴ In this chapter, we set out an overview of the expert evidence received in Phase Two. Some experts provided expert reports but were not called as witnesses and their reports are also discussed briefly. We have divided the evidence into subject matter. Where a witness’ evidence straddles subject categories, the witness’ evidence is nevertheless dealt with in one section. This chapter is divided into four parts: policing policy (including the purpose of policing and the relationship between the police and communities), operational issues, (including visible policing and sector policing, detective work, crime scene

3 An index to the Transcript of hearings for the week of 12 – 16 May 2014 is included in Appendix B.

4 Most of the expert reports are to be found in Record Bundle 12(1). CVs of Expert witnesses are also to be found in Record Bundle 12(1), File A.

management and crime intelligence), management issues (station performance measurement, inspections and oversight of police stations, human resource allocation, human resource management, discipline, complaints, and the use of information technology) and specific challenges (vigilantism, corruption, gangs, and domestic violence). This structure closely follows the list of issues contained in Notice 17.

- [3] In the first part, policing policy, the evidence of the following witnesses is dealt with: Barbara Holtmann, Gareth Newham, Julie Berg, John Cartwright and Guy Lamb, Jonathan Steinberg, Nontutuzelo Mtwana, and Sean Tait. In the second part, operational issues, the evidence of the following witnesses is discussed: Johan Burger, Chris de Kock, David Klatzow and Jan Swart. In the third part, management issues, the evidence of the following witnesses is considered: Jean Redpath, Joy Fish and Johan Schlebusch, 21st Century Pay Solutions, Andrew Faull, Andrew McLean, Clare Ballard, Mulder Van Eyk and Horatio Huxham. In the final part, specific challenges, the evidence of Lisa Grobler (police corruption), Catherine Ward (gangs), Thys Giliomee (Liquor), Pumla Gobodo-Madikizela, and Gail Super (both of whom testified on vigilantism), Lisa Vetten and Lillian Artz (both of whom testified on domestic violence) is considered.

A. POLICING POLICY

(a) Dr Barbara Holtmann⁵

- [4] Dr Holtmann testified as an expert witness on behalf of SAPS. She provided a report⁶ that explained the development of a Local Safety Project for Khayelitsha in 2009,⁷ that was never implemented.⁸ The Plan was developed in respect of the Khayelitsha Site B police station⁹ by the South African Council for Scientific and Industrial Research (CSIR), in partnership with SAPS and the International Centre for Prevention of Crime and informed by a crime prevention model designed by CSIR – “Breaking the cycle of crime and violence”.¹⁰ The key principle of the CSIR model is that preventing social crime (crime associated with alcohol, sexual offences, drug-related crime and crimes committed by youth gangs)¹¹ is not a task that can be undertaken by SAPS alone, but requires an “integrated, multi-sectoral” strategy involving a range of government departments and other civil society actors. The Local Safety Plan is thus not an operational policing plan, but an integrated plan involving a wide range of government departments and other role-players. During her testimony, Dr Holtmann testified that she had continued to refine the model since 2009, and that she now saw it more as a model of “breaking the cycle of poverty and inequality” rather than one of crime and violence.¹² She also explained that the same person can be both a victim and an offender, and that the earlier in the cycle an intervention is made, the greater the return on the investment.¹³

⁵ Transcript at 7713 – 7772 (15 May 2014).

⁶ Record Bundle 12(1), Item 12.

⁷ The Local Safety Plan is to be found in Record Bundle 12(1), Item 12(a).

⁸ Record Bundle 12(1), Item 12, p 8.

⁹ Transcript at 7759.

¹⁰ Record Bundle 12(1), Item 12, p 2.

¹¹ Id. at p 1.

¹² Transcript at 7724 (15 May 2014).

¹³ Id. at 7730.

If one waits till a victim becomes an offender, there is little or no return on the expenditure on the criminal justice process.¹⁴

- [5] Dr Holtmann described the consultative process whereby the plan was developed.¹⁵ The Safety Plan begins with a safety profile for the relevant area that sets out key crime statistics as well as other relevant information obtained by research including the key drivers of crime and violence in the area. The Plan itself contains a vision for a safe community, the identification of elements of a safe place, the categorisation of elements into broad themes (environmental or infrastructural, social and economic, governance-related, issues of service delivery and criminal justice), and identifies areas for intervention. The Plan then contains a table identifying safety goals, the objectives, relevant activities, and indicators to measure achievement of the goals, and the actors responsible for taking steps to achieve the goals.¹⁶ It is important to note that the Plan is a tool for all provincial departments, and not only SAPS. According to Dr Holtmann, it should be managed not by SAPS but by DOCS and the Department of Social Development jointly.¹⁷ Safety Plans should, according to the model, be integrated into the Integrated Development Plans at local level.
- [6] The Local Safety Plan developed in respect of the Khayelitsha Site B police station precinct identified fifteen key objectives –
- support for and nurturing of caring and functional families;¹⁸
 - sporting, cultural and recreational facilities for youth;¹⁹
 - skills development programmes for youth;²⁰
 - safe schools;²¹
 - the reduction of alcohol and drug abuse;²²
 - employment opportunities;²³
 - programmes for diversion and offender reintegration;²⁴
 - effective and efficient service delivery to the community;²⁵
 - a clean and safe environment in Khayelitsha;²⁶
 - safe and accessible transport for residents of Khayelitsha;²⁷
 - improved and well-managed infrastructure in Khayelitsha;²⁸
 - a reduction in the incidence of gun violence;²⁹
 - a reduction in the incidence of business and home robberies and burglaries, as well as reducing corruption;³⁰
 - the cultivation of respect for religious and moral values in the community;³¹ and

14 Id. at 7330.

15 Record Bundle 12(1), Item 12, pp 2 – 5; Transcript at 7732 – 7734 (15 May 2014).

16 Id. at pp 6 – 7.

17 Id. at p 7.

18 Record Bundle 12(1), Item 12(a) at para 6.1.

19 Id. at para 6.2.

20 Id. at para 6.3.

21 Id. at para 6.4.

22 Id. at para 6.5.

23 Id. at para 6.6.

24 Id. at para 6.7.

25 Id. at para 6.8.

26 Id. at para 6.9.

27 Id. at para 6.10.

28 Id. at para 6.11.

29 Id. at para 6.12.

30 Id. at para 6.13.

31 Id. at para 6.14.

- fostering an organised, co-operative community.³²

The plan identified an implementation plan and monitoring and evaluation framework for each of these objectives.

- [7] Dr Holtmann told the Commission that one of the things that came out very strongly in the process that led to the Plan was the importance of having “friendly police”, as well as “trustworthy police” and “visible police”.³³
- [8] She also commented that since the development of the Local Safety Plan in 2009, one of the issues that she had addressed in her work had been the perception of “poor discipline” in SAPS, and “inadequate consequences” for police who commit offences.³⁴ She also noted that SAPS members, who work in neighbourhoods with high levels of crime and violence, are exposed to very stressful experiences and that SAPS needs to develop a focus on building resilience amongst such members, particularly by developing a focus on mental health and wellbeing.³⁵
- [9] The Commission agrees with Dr Holtmann that the prevention of social crime requires an integrated approach involving a range of government departments as well as civil society actors and organisations. In carrying out its two-fold mandate, to identify whether there are inefficiencies in policing in Khayelitsha, and/or a breakdown in the relationship between the SAPS in Khayelitsha and the community of Khayelitsha, the Commission accepts that SAPS cannot, on its own, prevent crime.

(b) Mr Gareth Newham³⁶

- [10] Mr Newham is head of the Governance, Crime and Justice Division of the Institute for Security Studies, a position he has held since 2010. He provided the Commission with a report that addressed a series of issues relevant to the Commission’s terms of reference, including an analysis of the overall performance of SAPS for the decade between 2002/2003 and 2012/2013,³⁷ the importance of the manner in which police members deal with the public and suspects, the management of misconduct by SAPS members, the endemic nature of corruption within policing agencies, the publication of crime statistics, and proposals for improving the performance of SAPS.
- [11] Mr Newham told the Commission that the fact that SAPS’ performance has shortcomings has been known for some time.³⁸ He pointed to the reports of the SAPS’ Police Advisory Council of 2007 and 2008.³⁹ This Council was composed of senior retired police officers and visited three-quarters of the police stations in the country. The Council reported that there were endemic problems of poor management, inadequate training, poor levels of service delivery, and high levels of misconduct and corruption.⁴⁰ According to the Council –

“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

³² Id. at para 6.15.

³³ Transcript at 7738 (15 May 2014).

³⁴ See Record Bundle 12(1), Item 12, at p 8.

³⁵ Id. at p 9.

³⁶ Record Bundle 12(1), Item 7; Transcript at 7464 – 7572 (14 May 2014).

³⁷ Record Bundle 12(1), Item 7.

³⁸ Id. at p 39. Transcript at 7496 – 7497 (14 May 2014).

³⁹ Record Bundle 13(7), Items 58 to 59b.

⁴⁰ Record Bundle 12(1), Item 7 at p 39.

service delivery, maladministration, ill-discipline and corruption have at its core the lack of supervision and control.”⁴¹

(i) SAPS performance between 2002/2003 and 2012/2013

- [12] Mr Newham told the Commission that measuring police performance is not straightforward.⁴² He noted that section 205(3) of the Constitution sets out the objects of the police service as being –

“to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”⁴³

The national government has adopted a series of goals, the most important of these for SAPS is the third, which seeks “to ensure that all people in South Africa are and feel safe.”⁴⁴ SAPS also seeks to measure its own performance against its own Annual Performance Plan. The 2012/2013 SAPS Annual Performance Plan identified five programmatic areas: visible policing, detective services, crime intelligence, administration and protection and security services.⁴⁵ The Annual Performance Plan contains detailed performance baselines and targets for each of these five areas. For example, the 2012/2013 Plan sought to reduce the number of serious crimes by 2% and the number of contact crimes by between 4 and 7%.⁴⁶ Mr Newham commented that indicators of the sort contained in the Plan can “contribute to problematic and abusive policing practices” as, for example, members of SAPS may arrest people “simply to achieve performance targets.”⁴⁷

- [13] Mr Newham also noted that it is generally assumed that the more resources a police service receives, the better one can expect it to perform on quantitative indicators. He noted that the SAPS budget has grown 186% over the past 10 years (see Figure 1 below), which reproduces Figure 1 from Mr Newham’s report.⁴⁸
- [14] Although the rate of increase of the SAPS’ budget has slowed in recent years, it is still receiving better than inflation increases. So, for the year 2013/2014, SAPS received a budget of R67.9 million, a 7.1% increase over the previous year, an above inflation increase. The increase in the SAPS budget over the past decade has enabled it to grow from 132 310 personnel in 2002/2003 to 197 946 in 2012/2013 (see Figure 2, also reproduced from Mr Newham’s report).⁴⁹ The number of personnel employed by SAPS has therefore grown by nearly 50% over the last ten years.
- [15] Not surprisingly the increase in personnel has resulted in an increase in “police-initiated action”, such as searches of vehicles and people (see Figure 3).
- [16] In addition, the number of arrests has increased over the same period from 1.09 million to 1.6 million (see Figure 4).⁵⁰

41 Record Bundle 13(7), Items 59b, p 48 at para 5.9.2.

42 Id. at p 5.

43 Section 205(3) of the Constitution.

44 Record Bundle 12(1), Item 7 at p 9. See also Outcome 3 of the National Development Plan.

45 SAPS Annual Performance Plan 2012/2013, Record Bundle 1(5), File B, Item 12.

46 Id. at p 18.

47 Record Bundle 12(1), Item 7 at p 6. See also the further discussion of this in the testimony of Mr Andrew Faull, Record Bundle 12(1), Item 22.

48 Record Bundle 12(1), Item 7 at p 6. The Figures reflect values contained in the South African Department of National Treasury Estimates of National Expenditure 2003/2004 to 2012/2013, Pretoria.

49 Record Bundle 12(1), Item 7 at p 7.

50 “Figure 3: SAPS Arrests for 2002/2003 to 2011/2012” in Record Bundle 12(1), Item 7, p 9.

Figure 1: SAPS Annual Budget 2002/2003 to 2012/2013

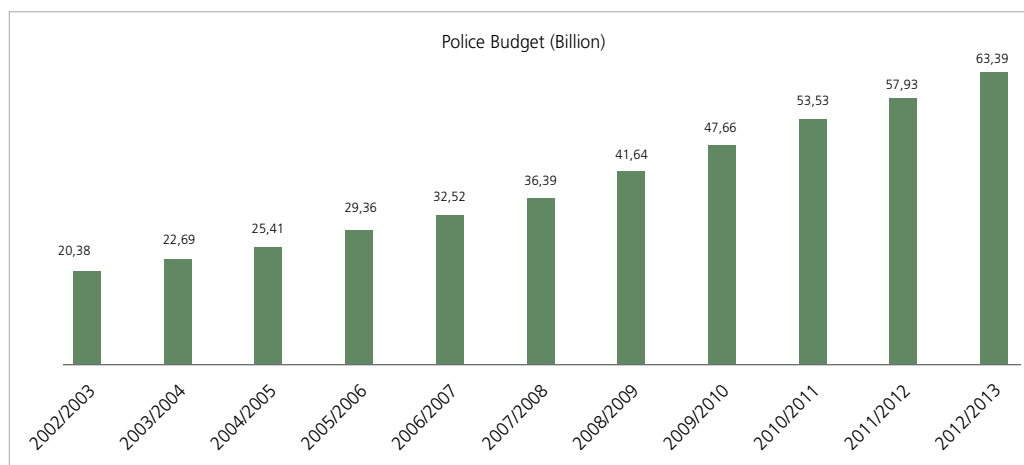
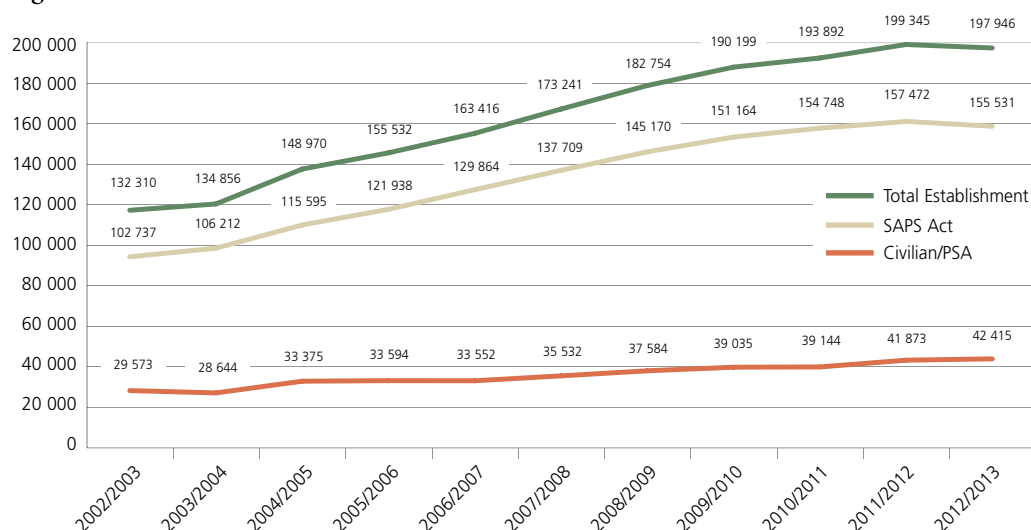


Figure 2: SAPS Personnel 2002/03 to 2012/13



- [17] Yet the heavy investment in SAPS has not produced as significant a reduction in crime as might be anticipated. The crime statistics for the years 1994/1995 – 2012/2013 show that crime peaked in 2002/2003 (2 717 784 crimes) before decreasing by 20% per annum for the following three years. However, from 2005/2006, the rate in the reduction of crimes dropped. Then in 2011/2012, the number of crimes increased slightly (by less than 1%) and increased again by 2% in 2012/2013 (See Figure 5).⁵¹ According to Mr Newham, these figures suggest that “the ability of police to control crime through using its additional resources to increase policing activities appears to have reached a limit.”⁵²

51 “Figure 4: South African crime trends 1994/95 to 2012/13” in Record Bundle 12(1), Item 7, p 10.

52 Record Bundle 12(1), Item 7, p 12.

Figure 3: SAPS Numbers of Vehicle Patrols and Searches 2002/2003 to 2011/2012

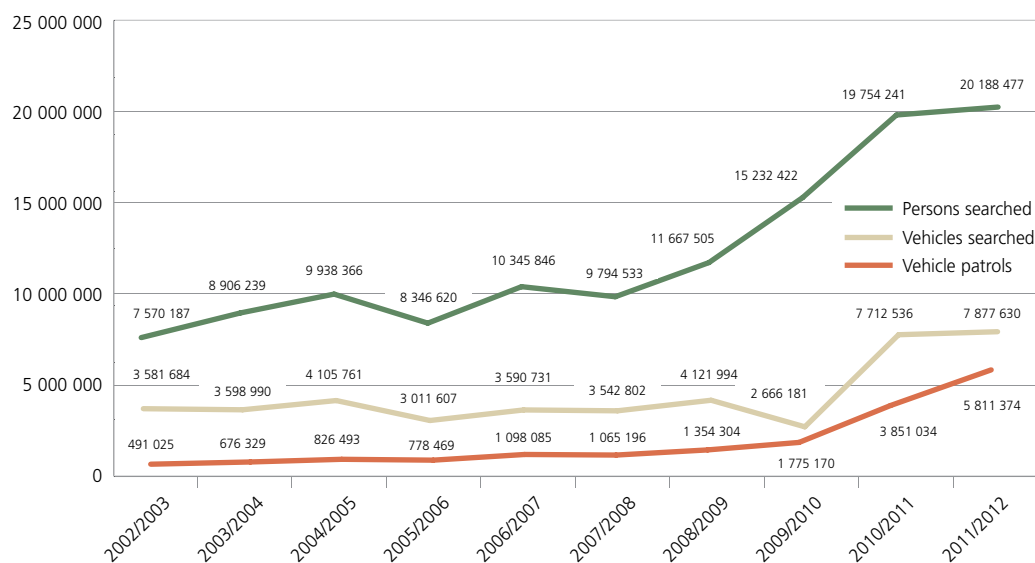
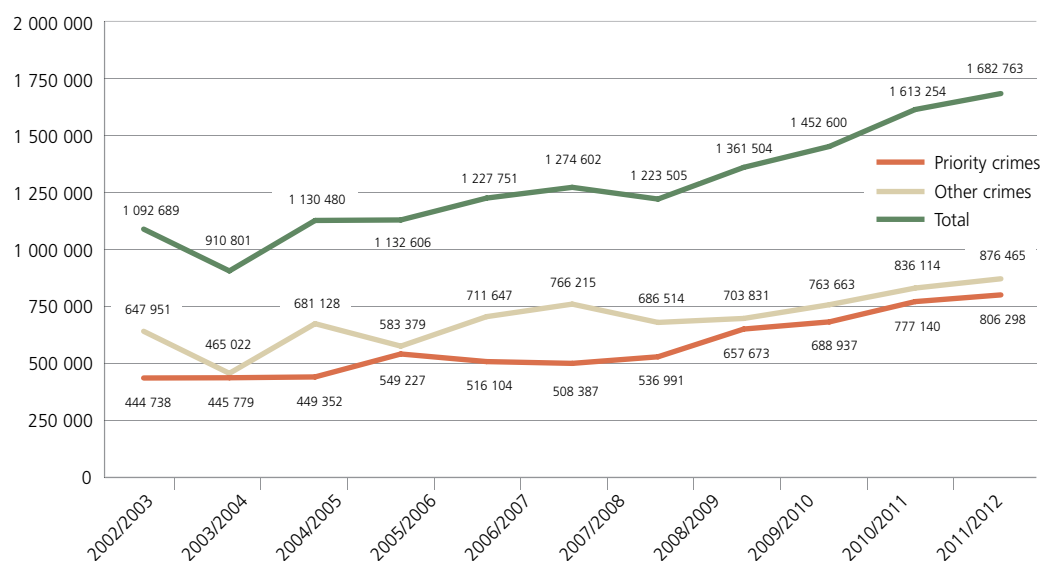


Figure 4: SAPS Arrests for 2002/2003 to 2011/2012

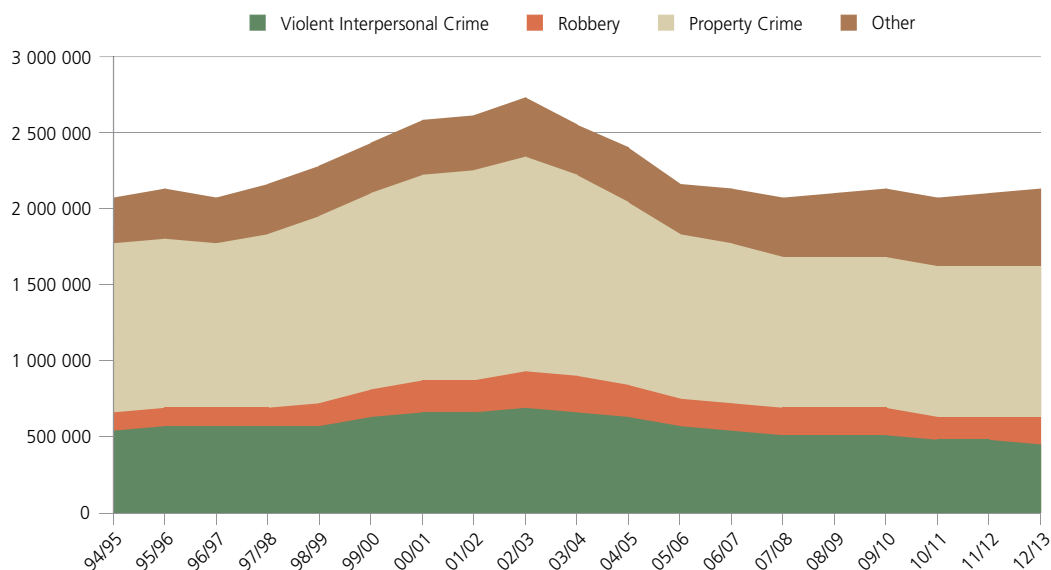


(ii) *Policing in a democracy: the importance of police treatment of suspects and members of the public*

- [18] Mr Newham told the Commission that in a democracy, one of the key objectives of the police must be “to get public trust and confidence on your side.” He said police cannot be effective without the trust of the community they are policing.⁵³ He drew the attention of the Commission to research that suggests –

⁵³ Transcript at 7465 – 7466 (14 May 2014).

Figure 5: South African Crime Trends 1994/95 to 2012/13



“that the less respectful police are towards suspects and citizens generally, the less people will comply with the law”.⁵⁴

Mr Newham suggests that there is substantial evidence that police misconduct is “widespread and systemic” in South Africa, and that this may directly contribute to the inability to reduce crime.⁵⁵ He suggested that SAPS managers have not been actively promoting adherence to the SAPS Code of Conduct.⁵⁶ He also suggested that changing to a style of policing that “seeks to build public legitimacy” may yield better results, than focusing purely on crime reduction.⁵⁷ In a nutshell, he said that –

“it’s not just what the police do, it’s how they do it.”⁵⁸

(iii) Evidence of misconduct by SAPS members

- [19] Mr Newham also provided evidence on the extent of misconduct of SAPS officials countrywide. He noted that at the birth of our democracy in 1994, the police were considered by most South Africans to be illegitimate given their role in the enforcement of apartheid laws.⁵⁹ He noted that SAPS had done much work to improve their reputation, and that by 2011, 62% of respondents in the *National Victims of Crime Survey* were satisfied with their police in their local area.⁶⁰ There are worrying counter-trends, however. According to other survey evidence the number of South Africans who think that “all or most” members of SAPS

⁵⁴ Id. at p 12. See also for the primary research, Sherman, L., Gottfresson, D., MacKenzie, D., Eck, J., Reuter, P., and Bushway, S. (1997). *Preventing Crime: What works, what doesn't, what's promising*. Report to the US Congress, Washington D.C., US Dept of Justice, <http://www.ncjrs.gov/works/>, Cited in Newham report at Record Bundle 12(1), Item 7.

⁵⁵ Record Bundle 12(1), Item 7 at p 12. See also the testimony of Mr Andrew Faull at paras 134 – 156 below.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Transcript at 7473 (14 May 2014).

⁵⁹ Record Bundle 12(1), p 13.

⁶⁰ Id. Bundle 7(3), Item 72.

are corrupt grew from 38% in 2002 to 52% in 2011,⁶¹ and 35% of all South Africans admitted to being “scared of the police”.⁶²

- [20] Mr Newham suggested that there are several sources that suggest there are worryingly high levels of police misconduct in South Africa. The first of these is the number of deaths caused as a result of police action or while in police custody. In 2012/2013, 690 people died as a result of police action or while in police custody.⁶³ In 2011/2012, 720 people died in such circumstances and in 2010/2011, 797 people died as a result of police action or while in police custody. Over the previous decade, the lowest number of deaths in these circumstances was 528 (in 2003/2004) and the highest 912 (in 2008/2009).⁶⁴ Not all deaths in police custody are as a result of direct action by the police (Mr Newham estimates 15% of deaths in custody are caused by suicide, and another 15% are a result of illness).⁶⁵

(iv) *The endemic nature of police corruption*

- [21] Mr Newham also pointed to the issue of police corruption. The Commission has had several cases of corruption drawn to its attention in the three Khayelitsha police stations.⁶⁶ Mr Newham noted that SAPS generally refers to members who are found to be corrupt as “bad apples”.⁶⁷ He told the Commission, however, that international research suggests that issues of police misconduct and corruption should not be seen as simply a problem of errant individuals, but as an endemic problem in virtually all police agencies.⁶⁸ He noted that the power given to police to interfere with the rights of citizens, coupled with wide discretion to do so, creates an environment in which police misconduct and corruption can flourish.⁶⁹ Accordingly, police agencies need to take steps to foster and enhance police integrity.⁷⁰

- [22] He referred to the research of Robert Klitgaard that suggests that –

“corruption equals monopoly plus discretion, minus accountability”.⁷¹

Mr Newham suggested that this formula enables us to see how the special features of policing make corruption “a real occupational hazard”,⁷² as police officers have a monopoly on the use of force, and the discretion to interfere with people’s rights. They are permitted to stop, search and arrest people, as well as enter private spaces and seize property and they have substantial discretion as to when to use these powers.⁷³ Moreover, there is relatively little supervision of police while patrolling the street or conducting investigations, which makes the problems of misconduct and abuse all the more difficult to control.⁷⁴

61 Id. at p 13. These figures are the results of a survey conducted by Afrobarometer, Public Agenda and Evaluation of Government, 12 March 2013. See also http://www.afrobarometer.org/files/documents/media_briefing/saf_r5_presentation1.pdf. Last accessed on 17 August 2014.

62 Mr Newham report at p 13 (Record Bundle 12(1), Item 7). See also <http://www.futurefact.co.za/futurefact-finds/235-i-am-scared-of-the-police>. Last accessed on 28 June 2014.

63 Record Bundle 12(1), Item 7, p 14.

64 Id.

65 Id.

66 See testimony of Brigadier Dladla, Transcript 3551 – 3552 (17 February 2014). See the Schooling and Leamy report Record Bundle 9(1), File 1.1, Item 1 at paras 193 and 201.

67 Record Bundle 12(1), Item 7, p 15.

68 Id. at p 16. See also Newburn, T. (1999). *Understanding and Preventing Police Corruption: Lessons from the Literature*, Police Research Series Paper 10, UK Home Office, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, p 14. See also Sherman, L. (1978). *Scandal and Reform: Controlling Police Corruption*. California: University of California Press, p xxii.

69 Id.

70 Record Bundle 12(1), Item 7, p 15.

71 Id. at p 17. See Klitgaard, R. (1984). *Controlling Corruption*. California: University of California Press.

72 Record Bundle 12(1), Item 7, p 7.

73 Id.

74 Id. at p 23.

- [23] Mr Newham suggested that the “*rotten apple*” approach tends to focus attention away from the systems and culture of an institution that enable corruption to flourish. Instead he suggested that we should accept that addressing corruption requires organisational reform.⁷⁵ According to Mr Newham, one of the key issues that should be addressed is “the institutional culture” of SAPS. He told the Commission that one of the aspects of SAPS’ institutional culture that promotes corruption is –

“... (the) strong, informal agreement amongst police officials that no officer will report the misconduct of a fellow officer, or co-operate with investigations against them.”⁷⁶

- [24] This culture is not unique to SAPS. It has been described in a range of police agencies around the world.⁷⁷ Police officials do not see the code of silence as a negative code, but rather as a sign of “group solidarity, empathy and support for colleagues in difficult circumstances”.⁷⁸ Sometimes the code of silence is reinforced by implicit or explicit threats of violence. Mr Newham referred to an incident in which a researcher was told by a SAPS member that he knew of his colleagues’ criminal actions, but that he would not tell SAPS internal investigators about the conduct, because “*those guys will kill you*”.⁷⁹

- [25] The problem of low levels of supervision of police members on the beat creates particular problems for police management. Moreover, according to Mr Newham –

“street-level police consider ‘good’ commanders to be those who identify with and protect the ranks.”⁸⁰

The result is that managers often seek to exercise their authority through “acquiescence and agreement” rather than confrontation.⁸¹

- [26] According to Mr Newham, crucial to reducing police misconduct and corruption is an effective system in terms of which offending SAPS members are held to account.⁸² He pointed to the evidence on the record before the Commission that suggests that SAPS’ disciplinary systems are not working optimally in Khayelitsha.⁸³

(v) *The publication of crime statistics*

- [27] Mr Newham explained to the Commission how crime statistics have been published in South Africa.⁸⁴ He described the experience of Bogotá, Columbia where the monthly release of crime statistics “became a fundamental building block for the reduction of serious violent crime”.⁸⁵ Local communities were able to design interventions to address crime patterns and to assess their success. He said that the approach has “improved the partnership between

75 Id. at p 21.

76 Id. at p 22.

77 See for example the New South Wales Police Service – Wood, J. R. T. (1997). *Final report of the Royal Commission into the New South Wales Police Service*. Volume 1: Corruption Corruption, Sydney: Government of the State of New South Wales, 1997. <http://www.pic.nsw.gov.au/files/reports/RCP5%20Report%20Volume%201.pdf>. Last accessed on 17 August 2014.

78 Record Bundle 12(1), Item 7, p 23.

79 Id. at p 22. See Faull, A. (2010). *Behind the Badge: The untold stories of South Africa’s police service members*. Zebra Press.

80 Record Bundle 12(1), Item 7, p 24.

81 Id.

82 Id. at p 28.

83 Id. at pp 28 – 29. He referred in particular to the Task Team Report at para 9.2 (Record Bundle 1(3), AL 87) and the Schooling and Leamy report at para 7.5.2 (Record Bundle 9(1), File 1, Item 1).

84 Record Bundle 12(1), Item 7, pp 33 – 35. See also Chapter 5 above at paras 50 – 56.

85 Id. at p 35.

government agencies, civil society organisations and communities”.⁸⁶ Mr Newham said that SAPS generally develops its plans, year after year, “with no meaningful input from the ... experience of other government departments, organisations in civil society and private sector, or community-based structures...”.⁸⁷ This, he suggested, reflects SAPS’ view that it is the sole organisation responsible for tackling crime.⁸⁸ He also said that the lack of regularly available crime statistics constrains the ability of communities to identify emerging crime threats and develop appropriate crime prevention initiatives.⁸⁹ Moreover, it makes it very difficult to assess the efficacy of crime reduction programmes.⁹⁰

- [28] Mr Newham also told the Commission that in 2012/2013, a problem had emerged, in terms of which the crime ratios released by SAPS were flawed.⁹¹ The flaw lay in the fact that the 2012/2013 figures were calculated on the basis of the 2011 Census figures which had become available during that year, but the 2011/2012 crime figures were based on the 2001 Census figures, and were not corrected to reflect the higher population.⁹² The result was that, according to Mr Newham, changes in crime rates that were provided in the 2012/2013 figures were inaccurate and misleading.⁹³ The flaw had the effect that crime rates appeared to have been better in 2012/2013 than in 2011/2012, when in fact they were not: so the murder rate was reported as having decreased on a per capita basis by 0.6% when, according to Mr Newham, it had increased by 2.8%.⁹⁴ The differences at provincial level were even more marked. So, for example, the Western Cape was said to have had a 0.5% increase in murders, when in fact it had a 10.1% increase.⁹⁵ The SAPS figures under-represented the increase (or over-represented the decrease) of all categories of crime.⁹⁶ According to Mr Newham, despite this flaw being drawn to the attention of the National Commissioner, the figures were not corrected.⁹⁷

(vi) *“Serial crises of management” and improving SAPS’ performance*

- [29] Mr Newham agreed with the National Planning Commission’s assessment that SAPS’ problems are linked to “the serial crises of top management”.⁹⁸ He told the Commission that SAPS has had five National Commissioners since 2008, one of whom was convicted of corruption, and another dismissed for reasons of maladministration.⁹⁹ He continued –

“... [W]hat that serial crisis seems to suggest is that ... senior officials in spite of evidence of wrong doing, there is no action against them or action is not consistent ... That issue creates the impression in the organisation that either political or personal loyalty is more important than hard work, honesty and qualifications when trying to go for senior positions. And that’s not a very healthy organisational culture ...”.¹⁰⁰

86 Id. at p 36.

87 Id.

88 Id.

89 Id.

90 Id.

91 Transcript at 7484 – 7487 (14 May 2014).

92 Record Bundle 12(1), Item 7, at pp 36 – 37.

93 Id. at p 37.

94 Id.

95 Id.

96 Id. at p 38 where a table showing the differences is provided.

97 Id.

98 Id. at p 39 and Chapter 12 of the National Development Plan 2030 at 393, Record Bundle 9(5), Item 54.

99 Transcript at 7483 (14 May 2014).

100 Id.

[30] Mr Newham endorsed the proposals made in the National Development Plan in order to bring about professional and ethical policing in South Africa,¹⁰¹ which he summarised as follows –

- the current Code of Conduct be included in disciplinary regulations and performance appraisal system;
- in the medium term, a code of professional and ethical police practice be developed and members should be required to pass a test on the code;
- a National Policing Board with multi-sectoral and multi-disciplinary expertise should be established to set standards for recruitment, selection, appointment and promotion;
- all officers should undergo a competency assessment and be rated accordingly;
- a two-stream system for recruitment should be developed to attract high calibre officers & recruits to both officer and non-commissioned officer ranks;
- a system of objective testing based on set standards and criteria to reward experience and competence and recruitment to officers' stream should be followed by further training and testing;
- the National Commissioner and Deputies should be appointed by the President on a competitive basis – a selection panel should select and interview candidates against objective criteria;
- training to enhance professionalism;
- the demilitarisation of the police service;
- a review of the organisational culture and subcultures of the police should be conducted to assess the effects of militarisation, demilitarisation, remilitarisation and “the serial crises of top management”.¹⁰²

(c) Mr Sean Tait

[31] Mr Tait is the Co-ordinator of the African Policing Civilian Oversight Forum (APCOF), a position he has held since 2007. Mr Tait provided the Commission with an expert report lodged on behalf of the complainant organisations concerning community policing (including sector policing), arrest and detention of suspects, and the SAPS system of discipline.¹⁰³ Mr Tait told the Commission that oversight of police in a modern democracy should be seen as multi-layered, involving three levels of control: government; social or civilian and internal.

[32] Mr Tait told the Commission that community policing underpins policing in democratic South Africa.¹⁰⁴ Sector policing, he said, implements the principle of community policing by dividing each police precinct into smaller geographical areas, managed by a sector commander who must focus on understanding the area and responding to its policing needs.¹⁰⁵ SAPS National Instruction 3/2013 regulates sector policing and provides that the objects of sector policing are, amongst other things, to prevent crime, encourage visible policing, improve response times, improve investigations and bring the police closer to the community.¹⁰⁶ A sector profile must be developed, and reviewed quarterly, in relation to each sector and should include the estimated population of the sector, the boundaries of the sector, the infrastructure, the existing community structures and crime trends in the sector.¹⁰⁷ Mr

¹⁰¹ Transcript at 7490 – 7492 (14 May 2014).

¹⁰² Record Bundle 12(1), Item 7, at p 40.

¹⁰³ Record Bundle 12(1), Item 19 and Transcript 7016 – 7083 (13 May 2014).

¹⁰⁴ Record Bundle 12(1), Item 19 at para 9.

¹⁰⁵ *Id.* at para 10.

¹⁰⁶ *Id.* at para 11.

¹⁰⁷ *Id.* at paras 13 and 14.

Tait considered the sector profiles provided to the Commission by the Khayelitsha police stations,¹⁰⁸ and concluded that they were “superficial” and often incomplete and inaccurate.¹⁰⁹

- [33] Mr Tait also acknowledged the problems that had been reported to the Commission concerning the role of Community Police Forums (CPFs) at the three Khayelitsha police stations.¹¹⁰ He noted that researchers had identified problems with CPFs for a long time.¹¹¹ Research suggests that where communities are “highly politicised, divided, hostile and fragmented” and the police service is under-skilled, the role of CPFs will be limited.¹¹² Mr Tait asserted that station management needs to build meaningful partnerships with communities and that indicators need to be developed to measure the effectiveness of community policing.¹¹³ He suggested that it is important that “more of an effort” be made to ensure representivity of membership in the CPFs.¹¹⁴ He told the Commission that a good secretariat is key to the success of a CPF. He said that as it is impossible to ensure that all CPF members attend each meeting, it is important that agendas and minutes be produced in time, and be circulated with supporting documentation to all members and interested parties in advance of CPF meetings providing sufficient detail to enable those who do not attend the meeting to know what the agenda is, and what has happened (from the minutes).¹¹⁵ CPF members should be trained to ensure that they have the skills to be effective.¹¹⁶ Mr Tait also told the Commission that in his view SAPS was far more open to community policing in the early democratic years after 1994, than it had been in the last decade.¹¹⁷ He suggested that one of the ways to promote more effective relationships between communities and SAPS was to “weight your performance areas ... around the extent to which [police managers] embrace and articulate community policing... beyond simply saying a forum exists.”¹¹⁸ He told the Commission that the White Paper on Policing and the White Paper on Safety and Security¹¹⁹ that are in draft form at present are likely to suggest ways of streamlining the relationships between CPFs, sector forums, neighbourhood watches and safety forums.¹²⁰
- [34] Mr Tait also considered the issue of arrest and detention by SAPS’ members. He stated that although he thought there was a “reasonably sound legal framework” in place, there were insufficient mechanisms of oversight, with the result that SAPS members could often arrest and detain people illegally with impunity.¹²¹ He noted that the African Commission on Human and People’s Rights had developed a set of guidelines to provide a rights-based approach to arrest and detention.¹²² He suggested that SAPS review their instructions and

108 Record Bundle 10(2), File 2.1 at para 3.18. The sector profiles have not been included in the Record Bundle as they contain sensitive information.

109 Record Bundle 12(1), Item 19 at para 15. Transcript at 7022 – 7023 (13 May 2014).

110 Record Bundle 12(1), Item 19 at paras 17 and 18.

111 Id. at paras 19 – 21.

112 Id. at para 21. See Bruce, D. (2007). *In the service of a people’s democracy*. Johannesburg: Centre for the study of Violence and Reconciliation; Bruce, D. with Newham, G. and Masuku, M. (2007). *In service of the people’s democracy: An assessment of the South African Police Service*. Johannesburg: Centre for the Study of Violence and Reconciliation. At Record Bundle 1(7), Item 9, at p 62.

113 Id. at para 24.

114 Transcript at 7026 (14 May 2014).

115 Record Bundle 12(1), Item 19 at para 30, and Transcript at 7026 – 7035 (14 May 2014).

116 Record Bundle 12(1), Item 19 at para 34.

117 Transcript at 7034 – 7035 (14 May 2014).

118 Id. at 7036.

119 These are draft White Papers which have not yet been published.

120 Transcript at 7037 (14 May 2014).

121 Record Bundle 12(1), Item 19 at para 37.

122 Id. at para 52 and Transcript at 7080 (14 May 2014), where he made plain that the Guidelines had been adopted by the African Commission since he finalised his report, but a week before he testified. The Guidelines are to be found at Record Bundle 12(1), Item 19a.

Photo 15: Khayelitsha resident



training on arrest and detention to ensure the African Commission guidelines are observed.¹²³ He also proposed that the CPFs introduce a lay visitor system to discourage illegal arrests and detentions.¹²⁴

- [35] Mr Tait also commented on the evidence placed before the Commission concerning discipline at the three Khayelitsha police stations. He suggested that police station managers should monitor disciplinary processes at the station closely. He also suggested that complaints agencies, including IPID, the South African Human Rights Commission, DOCS and the Civilian Secretariat should establish a mechanism to share information concerning complaints.¹²⁵ He also proposed that IPID should provide reasons for their findings, identify trends, and recommend proactive steps to minimise future violations.¹²⁶
- [36] Mr Tait also recommended that station management should seek to collaborate with civil society and the research community to create learning opportunities for SAPS members at the Khayelitsha stations.¹²⁷ He also proposed that the three stations should develop a code of conduct in collaboration with communities that would set the vision for policing at all three police stations.¹²⁸
- [37] Mr Tait also supported the idea that a protocol be adopted to explicate the role of DOCS as set out in section 206(3) of the Constitution. He said such a protocol should ensure “robust civilian oversight” and provide the necessary safeguards to improve the integrity of the system.¹²⁹

¹²³ Id. at para 52.

¹²⁴ Id. at para 53. Transcript at 7056 – 7057 (14 May 2014).

¹²⁵ Id. at para 57.

¹²⁶ Id.

¹²⁷ Id. at para 60.

¹²⁸ Id. at para 61.

¹²⁹ Transcript at 7083 (14 May 2014).

(d) Professor Jonathan Steinberg

- [38] Professor Steinberg provided the Commission with an expert report at the instance of the complainant organisations.¹³⁰ Professor Steinberg is an Associate Professor in African Studies and Criminology at the University of Oxford. He has been a long-time observer of policing in South Africa, and much of his work is based on his direct observation of ground-level police work in South Africa.¹³¹ He was unable to testify in person, so his testimony was heard by way of video-conference call.¹³²

(i) *The tension between reducing crime and maintaining order*

- [39] Professor Steinberg told the Commission that it is widely accepted that police pursue different goals. Two of the most important are reducing crime and maintaining order. In his view, these goals are not only different, but at times in tension with one another.¹³³ The prevention of crime requires the police to be proactive, to anticipate what is about to happen and stop it, while maintaining order requires the police to be reactive, to respond when trouble breaks out.¹³⁴ The first goal requires members of SAPS to know the area they police very well: its physical environment and its inhabitants. It requires the police to guide or shepherd people to keep them safe.¹³⁵ On the other hand, the second goal requires police to deal with people in a very different manner when called to a scene where there has been trouble. They arrive in a place that is often unstable and fragile, where they are required to deploy a host of skills, including authority, controlled violence, emotional intelligence and the ability to read the situation.¹³⁶
- [40] Professor Steinberg argued that the manner in which SAPS approaches the task of crime prevention, often impairs its ability to achieve the maintenance of order. He noted that SAPS' crime prevention practices include "a smorgasbord" of measures, some borrowed from abroad, such as crime-mapping and the identification of "hotspots" (from the USA), as well as sector policing (from the UK), and some from South Africa's *apartheid* past.¹³⁷ The practices inherited from our past include paramilitary style "swoops" over weekends, in particular, where many people are arrested in the name of crime prevention. He described such policing in the following way –

"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 Africa style is the "Operation". Police obtain a cordon-and-search warrant for an entire neighbourhood of shack settlements, seal it off

130 Record Bundle 12(1), Item 2.

131 Id. at para 1.2.

132 Transcript at 8021 – 8059 (16 May 2014).

133 Id. at paras 3.1 and 3.2. Transcript at 8022 – 8024 (16 May 2014).

134 Id. at para 3.2.

135 Id. at para 3.3.

136 Id. at para 3.4.

137 Id. at paras 3.6.1, 3.6.2 and 3.6.3.

and move in with armoured cars. Each dwelling is visited by groups of armed officers who search bedrooms and kitchens and other private spaces.”¹³⁸

- [41] He explained that there were at least three reasons why the paramilitary practices persisted in South Africa: some people approve of this “robust” form of policing as it makes them feel safe; it is relatively easy for SAPS to conduct these operations; and SAPS members are “afraid” of the communities they police.¹³⁹ However, Professor Steinberg suggested that persisting with paramilitary style policing “makes this situation of mutual fear between police and civilians a self-fulfilling prophecy”.¹⁴⁰
- [42] Professor Steinberg told the Commission that the tension between crime prevention and order maintenance is especially acute in relation to informal neighbourhoods. He acknowledged that informal neighbourhoods are difficult and uncomfortable to police¹⁴¹ and that using paramilitary-style policing methods to patrol informal neighbourhoods appears to police managers to be “the path of least resistance”.¹⁴² The consequence is that for inhabitants of informal neighbourhoods, their primary experience of police is of paramilitary style crime prevention actions. Thus, when there is a problem in the informal neighbourhood, the residents do not want to call on the police, because they do not want to initiate the paramilitary style response that they associate with the police.¹⁴³

(ii) *Vigilante practices*

- [43] According to Professor Steinberg, the pattern of crime prevention policing adopted by SAPS is one of the reasons that residents attempt to resolve matters themselves, through vigilante practices.¹⁴⁴ However, Professor Steinberg also made clear that he did not think that vigilante practices or “street justice” happens only because of the role SAPS do not play. He mentioned research in Reiger Park in Gauteng that he had conducted, where he found that the police play a role in relation to vigilante violence, by arriving once a suspect has been apprehended and punished by a crowd.¹⁴⁵ A woman told him that she was a member of the local CPE, and that SAPS provided her with the necessary protection to administer street justice.¹⁴⁶ This research demonstrated, he suggested, “that formal policing and street justice did not happen in sealed off, separate worlds.”¹⁴⁷ Professor Steinberg also referred to the research conducted by Lars Buur in New Brighton and other Port Elizabeth townships that illustrated a complex relationship between a “vigilante” group called Amadlozi, SAPS, and the African National Congress.¹⁴⁸
- [44] Professor Steinberg accepted that the relationship between SAPS and vigilante practices is not uniform. Another study, conducted by Sarah-Jane Cooper-Knock found “a more fluid and impersonal relationship between ‘street justice’ and formal policing.”¹⁴⁹ Here the research

138 Id. at para 3.7. Transcript at 8024 – 8025 (16 May 2014).

139 Id. at para 3.8.

140 Id. at para 3.8.

141 Id. at para 4.1.

142 Id. at para 4.3.

143 Transcript at 8036 – 8037 (16 May 2014).

144 Id. at para 4.3.

145 Id. at para 2.8.

146 Id. at para 2.9.

147 Id. at para 2.10. See also Steinberg, J. (2009). “Perpetually Half-Formed? State and non-State security in the work of Wilfried Schärf”, 22 *SA Journal of Criminal Justice* 162 – 175.

148 Id. at para 2.11. See also Buur, L. (2006). “Reordering Society: Vigilantism and Expressions of Sovereignty in Port Elizabeth’s townships”, 37 *Development and Change* 737 – 757, and Buur, J. (2003). “Crime and Punishment on the margins of the Post-Apartheid State”, 28 *Anthropology and Humanism* 23 – 42.

149 Id. at para 2.12. See also Cooper-Knock, S. (2014). “Your Child is Getting Killed that Side: Moving beyond ‘the mob’ in South Africa”, *African Affairs* (forthcoming).

suggested that a crowd was unlikely to injure a victim if he and his family were known, and the crowd would put an end to punishment being inflicted by calling the police.¹⁵⁰

- [45] Professor Steinberg suggested that the three research examples he cited (in Reiger Park, New Brighton and KwaMashu) suggested that “there is often a set of ties or understandings or relationships, some stable, others highly unstable, some explicit, but most implicit, between street justice and formal policing”.¹⁵¹ Professor Steinberg, who read summaries of the testimony of senior police officers, said that he was “frustrated” that there was no more said about the policing of informal settlements and of vigilante actions.¹⁵² Professor Steinberg suggested that the general pattern in South Africa was that “police get caught up in a dynamic in which they lose control of the relationship with street justice. They often end up perpetuating street justice, or, at the very least, doing very little to reduce its extent, despite their best intentions.”¹⁵³

(iii) The importance of the order-maintenance role of the police even in fragile societies

- [46] Professor Steinberg also drew to the attention of the Commission international research that emphasises the value of policing even in highly unstable and fragile societies.¹⁵⁴ He told the Commission that there is widespread consensus amongst researchers and policing experts that even in highly unstable environments “the police’s order-maintenance functions not only remain possible but become increasingly vital.”¹⁵⁵
- [47] Professor Steinberg told the Commission that a renowned policing expert has a rule-of-thumb test to measure whether police are doing a good job: “Do parents tell their kids before they go away that, if they need help, the first place they should look is the police?”¹⁵⁶ Professor Bayley says that there are, at best, fifteen countries in the world where this is so. Professor Steinberg suggested that South Africa should aspire to join this select group.¹⁵⁷
- [48] In his testimony, Professor Steinberg emphasised that if more resources were to be allocated to Khayelitsha, care should be taken that they are not used “to ramp up the sort of paramilitary practices” that he had described.¹⁵⁸ Instead, any additional personnel should be carefully employed to improve the quality of order-maintenance policing in Khayelitsha.¹⁵⁹

(e) Ms Nontutuzelo Mtwana

- [49] Ms Mtwana is the Safety and Volunteer Co-ordinator of the Violence Protection through Urban Upgrading (VPUU) project. She testified both in the first and second phase of the Commission’s hearings on behalf of the complainant organisations,¹⁶⁰ and also provided the Commission with an expert report. Ms Mtwana told the Commission that in her view, after a

150 Id. at para 2.13.

151 Id. at para 2.14.

152 Id. at para 2.5.

153 Id. at para 2.16.

154 Id. at para 5. Transcript at 8028 – 8029 (16 May 2014).

155 Id. at para 5.3.

156 Id. at para 5.5.

157 Id.

158 Id. at 8058.

159 Id. at 8058 – 8059.

160 In the first phase, see Ms Mtwana statement at Record Bundle 8(3), Item 43, and Transcript at 2822 – 2866 (12 February 2014) and 4032 – 4047 (20 February 2014). See also overview of her evidence in Chapter 9 at paras 131 – 138. For the second phase, see Ms Mtwana report, Record Bundle 12(1), Item 20 and Transcript at 7575 – 7621 (15 May 2014).

consideration of the evidence placed before the Commission in the first phase “there appears to be a problem in terms of community and police relations in Khayelitsha”.¹⁶¹ In order to address the problem, Ms Mtwana made the following recommendations –

- that SAPS enter into service level agreements with community structures, such as street committees;
- that a SAPS member with authority to make decisions about the deployment of SAPS members in Khayelitsha, be designated to attend meetings with community structures where a service level agreement is in place;
- that SAPS appoint a designated officer to provide feedback at public meetings held by CPFs;
- SAPS’ crime prevention work be planned and implemented in consultation with municipal and provincial departments with responsibility for safety and security;
- That complaints against members of SAPS be displayed on a public notice board in the CSC together with the response to the complaint and such complaints should also be part of the record at public meetings;
- That sectors be divided into smaller areas, and SAPS’ members deployed in those areas should be familiar with them – also the question of whether SAPS members patrolling areas should carry weapons should be reconsidered;
- SAPS block boundaries should be aligned with Street Committee boundaries and SAPS should encourage the establishment of Street Committees;
- SAPS crime information should be made available on a monthly basis to community structures with whom SAPS has service level agreements;
- Smart phone technology should be introduced to identify hotspots and routes.¹⁶²

- [50] Ms Mtwana also mentioned that it was important that adequate protection be provided to whistle-blowers from the community.¹⁶³ She explained that there was a perception amongst members of neighbourhood watches that if they report a person to the police, their identity will not be protected and that is a risk.¹⁶⁴ She suggested that it might be possible for SAPS to provide “anonymous information boxes” where witnesses could provide information anonymously.¹⁶⁵
- [51] As to her proposal that SAPS establish service level agreements with community structures, Ms Mtwana testified that “verbal commitments are not taking us anywhere, they are not binding”, which is why she proposed a written agreement.¹⁶⁶ She agreed that her proposal was similar to the concept of a “local neighbourhood commitment” proposed by the Independent Commission into Policing in the UK.¹⁶⁷

(f) Ms Julie Berg, Professor John Cartwright and Mr Guy Lamb

- [52] Ms Berg, Professor Cartwright and Mr Lamb provided the Commission with a joint expert report on behalf of the complainant organisations.¹⁶⁸ Ms Berg is a senior lecturer in the Centre of Criminology at the University of Cape Town. Professor Cartwright was a professor

¹⁶¹ Record Bundle 12(1), Item 20 at para 3.

¹⁶² Id. at paras 6 – 16.

¹⁶³ Id. at para 5(g).

¹⁶⁴ Transcript at 7585 (15 May 2014).

¹⁶⁵ Id. at 7585 – 7587,

¹⁶⁶ Id. at 7587.

¹⁶⁷ Id. at 7588 – 7589. See also the report of the Independent Police Commission *Policing for a Better Britain* (2013), Record Bundle 12(7), p 15.

¹⁶⁸ Record Bundle 12(1), Item 3.

of medieval literature at UCT, but since the late 1990s has become deeply involved in the field of safety and security. Mr Lamb is Director of the Safety and Violence Initiative at the University of Cape Town. They testified together before the Commission.¹⁶⁹

- [53] They commenced their report by acknowledging that South Africa has a long history of “pluralised policing”, where non-state actors have undertaken policing activities, alongside the police.¹⁷⁰ Those non-state actors include private security companies and community-based groups, such as street committees and neighbourhood watches.¹⁷¹ Ms Berg told the Commission that they preferred the term “security governance” to “policing” as it captured the range of agencies that contribute to making a community secure.¹⁷²
- [54] Ms Berg, Professor Cartwright and Mr Lamb told the Commission that it was clear that a democratic system of policing had not been fully achieved in Khayelitsha and that there are multiple non-state actors who have prominent roles in policing or security governance.¹⁷³ The focus of their report, they told the Commission, was to consider (a) the nature of the collaborative relationships between SAPS and community organisations in Khayelitsha, including CPFs, taxi organisations and Neighbourhood Watches, and (b) the role that non-state entities can play in improving safety in Khayelitsha.¹⁷⁴ The report was based on their own research and other relevant local and international research, as well as the record before the Commission.

(i) *Community Peace Programme*

- [55] The witnesses told the Commission about several community safety initiatives. Of these the most relevant was the Community Peace Programme (CPP), which operated in Khayelitsha and elsewhere from 1997 to 2002.¹⁷⁵ The CPP was established after research had shown that a major problem for communities were the plethora of relatively small problems that the police could not resolve, such as un-repaid loans and debts, insults and other nuisances. The research suggested that, if left unresolved, these small problems could lead to bigger problems and violence. To address these small problems before they escalated, the CPP established “peace committees” – dispute resolution agencies that operated in a fair, transparent and respectful manner. Members of peace committees were drawn from local communities, provided with training, and they held sessions to seek to resolve community disputes. By 2009, there were 280 peace committees operating in the Western Cape, and 43 000 dispute resolution meetings had been held. The programme was funded by Scandinavian donors initially, but the national Department of Social Development then took over the responsibility of funding the programme. However the funding was terminated in 2009, following the governing party’s national conference in Polokwane in 2008¹⁷⁶ and the CPP was terminated. Professor Cartwright told the Commission that many members of peace committees have never been paid by the national Department of Social Welfare for the work they performed as peace committee members, despite their having performed the work in terms of an agreement with the Department. According to Professor Cartwright, there were “legal processes under way”

169 Transcript at 7622 – 7665 (15 May 2014).

170 Record Bundle 12(1), Item 3, p 1.

171 Id.

172 Transcript at 7623 – 7624 (15 May 2014).

173 Record Bundle 12(1), Item 3, p 2.

174 Id. at p 2.

175 Id. at pp 4 – 5 and Transcript at 7627 – 7633 and 7651 – 7655 (15 May 2014).

176 Id. at pp 4 – 5.

to recover the money. He added that the failure to pay members of the community in this way “had left a very bad taste in the mouth of ... hundreds of people who are doing this work.”¹⁷⁷

(ii) City-based programmes

[56] Ms Berg, Professor Cartwright and Mr Lamb also pointed to two programmes adopted by the City of Cape Town that should be supported. The first is the Neighbourhood Safety Officer, modelled on the Dutch system of “buurtregisseurs”¹⁷⁸ and the second is the School Resource Officer in the Cape Town Metropolitan Police.¹⁷⁹ They argued that both these programmes support a facilitative, problem-solving and place-making function.¹⁸⁰ A Neighbour Safety Officer is a person who is dedicated to an area, and whose role is to know what is going on in an area, to assist in crime prevention and problem-solving.¹⁸¹ Professor Cartwright explained that the concept of “place-making” can simply be understood as “how do you make any given place a better place”.¹⁸²

(iii) Assessment of the record of testimony before the Commission

[57] Ms Berg, Professor Cartwright and Mr Lamb told the Commission that they had perused portions of the testimony that had been presented to the Commission. They concluded that SAPS in Khayelitsha appears “to have been providing a haphazard and substandard service”; that the behaviour of certain SAPS members in Khayelitsha “seems to have seriously undermined positive relations” between SAPS and Khayelitsha residents; and that the impact of CPFs on sustaining a more positive relationship between SAPS and the residents of Khayelitsha had been “negligible”.¹⁸³ They also observed the following trends from the Record –

- the quality of investigation of crime was poor;
- crime-scene investigation was a recurring complaint;
- repeated complaints of insufficient and sporadic communication between investigating officers and complainants;
- at times SAPS members refused to accept crime reports;
- dockets failed to be delivered to court;
- response times of the police were poor; and
- complaints of police brutality and police criminality.¹⁸⁴

(iv) “Best principles”

[58] In the light of the research that they had conducted, as well as the research of others, and a perusal of the Commission’s record, Ms Berg, Professor Cartwright and Mr Lamb proposed eight “best principles” which they considered to be relevant to policing in Khayelitsha. They explained that “best principles” are “the thinking that informs practices”, rather than practices themselves.¹⁸⁵ Those principles were –

- that a common vision as to what constitutes being safe and secure in Khayelitsha be developed in collaboration with residents;

177 Transcript at 7664 – 7665 (15 May 2014).

178 Id. at 7639 – 7640.

179 Id. at 7642.

180 Record Bundle 12(1), Item 3 at p 29.

181 Transcript at 7639 – 7641 (15 May 2014).

182 Id. at 7638. Record Bundle 12(1), Item 3, p 18 – 19.

183 Id. at p 10.

184 Id. at pp 10 – 13.

185 Transcript at 7625 (15 May 2014).

- that a “fulcrum” (a co-ordinating agency or a set of principles) be identified or established, with the aim of facilitating effective governance by different agencies;
- that a relationship of trust between SAPS and Khayelitsha residents be fostered;
- that there be recognition of the importance of honesty to creating trust;
- that regular meetings between SAPS and CPFs and contact between SAPS and other actors need to be “routinised”;
- that redundancy for weak players should be built into the collaborative system, so that, for example, community organisations might take over the problem-solving role that many envisage SAPS fulfilling;
- that community organisations be given the capacity to adopt problem-solving responses to crime and insecurity; and
- a recognition of the importance of the “whole-of-society” approach to safety and security.¹⁸⁶

(v) Recommendations

- [59] Ms Berg, Professor Cartwright and Mr Lamb proposed that Khayelitsha could be used as a pilot site for these principles to be implemented, over a three or five-year period.¹⁸⁷ In addition, they suggested that it might be appropriate to “rethink” the utility and functioning of CPFs, as research had shown that CPFs do not work well in some areas with high levels of crime.¹⁸⁸ However, they thought that the EPP was a new project that “deserves an impartial review”.¹⁸⁹
- [60] As to Neighbourhood Watches, they commented that they are problematic “when they degenerate into vigilante groups”.¹⁹⁰ They noted that DOCS had provided training to Neighbourhood Watches that focussed on their problem-solving role rather than their patrolling role.¹⁹¹
- [61] They also noted that the record showed that SAPS do not consistently provide reliable, courteous and regular feedback to members of the community. In their view, there needs to be a change in attitude in SAPS to reflect a more professional police service.¹⁹²

B. OPERATIONAL ISSUES

(a) Visible Policing

(i) *Dr Johan Burger*

- [62] Dr Burger is a senior researcher at the Institute for Security Studies in the Governance, Crime and Justice Division. He had 36 years’ service in the police, from 1968 to 2004. During that time, he served in a variety of capacities including station commander, commander of visible policing and branch commander of a uniform investigation unit. When he left the police, he

¹⁸⁶ Id. at pp 13 – 20. Transcript at 7625 – 7627 (15 May 2014).

¹⁸⁷ Id. at p 21.

¹⁸⁸ Id. at p 21.

¹⁸⁹ Id. at p 23.

¹⁹⁰ Id. at p 25.

¹⁹¹ Id.

¹⁹² Id. at p 28.

held the rank of Assistant Commissioner, and was from 1995 till 2004, head of policy and strategy development in SAPS. Dr Burger has written a book on policing in South Africa.¹⁹³

- [63] Dr Burger prepared a report for the Commission on, amongst other things, the objects of policing, community policing and sector policing, and responses to calls for assistance.¹⁹⁴ Dr Burger also testified before the Commission.¹⁹⁵

(aa) Objects of Policing

- [64] Dr Burger told the Commission that he thinks policing should be defined as –

“... those lawful activities, whether proactive or reactive, performed by the police in the process of providing their prescribed services such as reassuring the public; creating a visible deterrence; and executing their law enforcement, crime investigation and public order maintenance functions.”¹⁹⁶

- [65] Dr Burger told the Commission that the constitutional and legislative framework for policing in South Africa was largely in line with the objectives of democratic policing.¹⁹⁷ He referred the Commission to section 198 and section 205(3) of the Constitution, as well as the Preamble to the SAPS Act. He noted that the SAPS Strategic Plan for 2010 – 2014 provided a vision, mission, values and code of ethics for SAPS that was consistent with the Constitution and SAPS Act. The Strategic Plan states that the mission for SAPS is “to create a safe and secure environment for all people in South Africa”.¹⁹⁸

- [66] Dr Burger told the Commission that to the extent that section 205(3) of the Constitution stipulates that one of the objects of SAPS is to prevent crime,¹⁹⁹ it creates “an impossible mandate” for SAPS, as SAPS, on its own, cannot prevent crime.²⁰⁰ He quoted from Professor Bayley who said –

“The police do not prevent crime, a very straightforward statement. This is one of the best-kept secrets of modern time and life. Experts know it, police know it, but the public does not know it. Yet the police pretend that they are society’s best defence against crime and continually argue that if they are given more resources, especially personnel, they will be able to protect communities against crime.”²⁰¹

- [67] Dr Burger testified that the international average for ratio of police to population is two police per 1000 population. South Africa has a ratio of 2.8 police per 1000 population, which compares favourably with the international average.²⁰² He also told the Commission that there is no direct correlation between increasing resources to the police and reducing the rate of reported crime.²⁰³

193 Burger, J. (2007). *Strategic Perspectives on Crime and Policing in South Africa*: Van Schaik.

194 Record Bundle 12(1), Item 9.

195 Transcript at 6910 – 7015 (12 May 2014). See also the PowerPoint presentation he made during his testimony at Record Bundle 12(3), Item 99.

196 Id. at p 6.

197 Id. at p 7.

198 Id.

199 See Chapter 5 above at para 3.

200 Record Bundle 12(1), Item 9, at p 11.

201 Transcript at 6919 (12 May 2014). See also Bayley, D. H., & Shearing, C. D. (2001). *The new structure of policing: description, conceptualisation and research agenda*, Washington: US Department of Justice, 1.

202 Transcript at 6917 (12 May 2014).

203 Id. at 6918.

(bb) Community Policing and Sector Policing

[68] Dr Burger explained to the Commission that sector policing has evolved from community policing and that the two concepts are “largely intertwined”.²⁰⁴ He told the Commission that from 1992 SAPS undertook research into community policing that led to the drafting of *A Manual for SAPS* in 1997, which he understands still to be in use.²⁰⁵ The Manual defines community policing as –

“... a philosophy that guides police management styles and operational strategies. It emphasises the establishment of police-community partnerships and a problem-solving approach responsive to the needs of the community. It is based on the assumption that the objectives of SAPS ... can only be achieved through the collaborative effort of the SAPS, other government institutions, the organisations and structures of civil society, and individual citizens.”²⁰⁶

[69] The Manual identifies five elements of community policing –

- structured consultation between the SAPS and different communities about local problems, priorities and strategies;
- the adaptation of policing strategies to fit local circumstances and the development of a customer orientation in the rendering of service;
- the mobilisation of all resources available to the community and the police to resolve problems and promote safety and security;
- accountability of SAPS to the community through mechanisms designed to encourage transparency; and
- a changing of the policing focus from crime control to a proactive focus on the causes of crime and violence.²⁰⁷

[70] Dr Burger told the Commission that he was worried about the last of these elements, the idea that the police would be able to identify and address the underlying causes of crime and violence, by working with the community for the reason that the police are not capable of solving the many socio-economic conditions that lie at the root of most crime.²⁰⁸ In his view, the underlying problems that cause crime need to be addressed by other government structures.²⁰⁹

[71] Dr Burger told the Commission that the objects of CPFs are set out in section 18 of the SAPS Act.²¹⁰ He said that it was clear from the Act and the interim regulations²¹¹ that the burden to set up CPFs rests with SAPS.²¹² Dr Burger told the Commission that, in his view –

“... the expectation of the CPF as a structure for joint solutions to complex community problems remains idealistic and is only amplifying the ‘impossible mandate’ of the police. When this aspect of the CPF fails, as it must, chances are that it will also undermine confidence in the usefulness of these structures more generally and may lead to frustration and friction amongst those involved. These frustrations are bound to have a detrimental impact on the performance

204 Record Bundle 12(1), Item 9, p 10.

205 Id. (South African Police Service. (1997). *A Manual for the South African Police Service*, Pretoria: Department of Safety and Security.)

206 Id.

207 Id. at p 11.

208 Id.

209 Id. Transcript at 6944 – 6946 (12 May 2014).

210 Record Bundle 12(1), Item 9 at p 12.

211 See Chapter 5, above, at para 15, n 55.

212 Record Bundle 12(1), Item 9, p 13.

by CPFs of their other more reasonable responsibilities, such as working in partnership, good police community communication, accountability, etc.”²¹³

[72] Dr Burger pointed to research of the Institute of Security Studies in 2000 which concluded that CPFs “have a very limited reach”, are not representative of the communities in which they function, and are poorly placed to engage meaningfully in local safety, security and policing issues.²¹⁴

[73] Dr Burger told the Commission that in 1997 he was tasked by the National Commissioner to investigate the possible development of the sector-policing concept in South Africa.²¹⁵ Dr Burger told the Commission that one of the reasons that sector policing was designed was to address the weakness of the CPFs.²¹⁶ Dr Burger drafted guidelines for sector policing which led to a draft National Instruction in 2003, and then to National Instruction 3/2009 and National Instruction 2/2013.²¹⁷ Dr Burger explained that the sector-policing model was based largely on the British model of sector policing which was seen to be an integrated part of community policing.²¹⁸ The 1998 White Paper on Safety and Security defined sector policing as –

“... the division of areas into smaller managerial sectors and the assignment of police officers to those areas on a full-time basis. These police officers regularly patrol their own sector and are able to identify problems and seek appropriate solutions.”²¹⁹

[74] Dr Burger explained that the interaction between the sector commander and the community in the sector was based on community policing and was aimed at problem-solving.²²⁰ However, he told the Commission that over the next decade, there was a shift in emphasis from “problem-solving” to ‘operational policing’, which caused some confusion as to the concept of sector policing.²²¹ He described in careful detail the shifts in policy from the original draft guidelines, to the two National Instructions of 2009 and 2013.²²² He told the Commission that the 2009 Instruction, was too resource-intensive and that it was “never going to be possible to achieve it”.²²³ He said that the latest National Instruction 3/2013 was “more realistic”²²⁴ and aimed at clarifying the situation, but, in Dr Burger’s opinion, it may not do so.²²⁵

[75] According to Dr Burger, the 2013 National Instruction appears to have moved closer to the original understanding of sector policing. It provides for sector forums, which are forums “established in a demarcated sector to support community participation in the prevention of crime”.²²⁶ Another shift in the 2013 National Instruction lies in the fact that it does not refer to ‘sector teams’ but instead mentions the deployment of operational members and resources ... in accordance with the crime pattern and threat analysis ... to enhance service delivery.” Dr

213 Id.

214 Id. Transcript at 6923 and at 6951 (12 May 2014).

215 Record Bundle 12(1), Item 9 at p 14.

216 Transcript at 6944 (12 May 2014).

217 Record Bundle 12(1), Item 9 at p 14.

218 Id.

219 Id.

220 Id. at p 15.

221 Id.

222 Id. at pp 15 – 20.

223 Transcript at 6929 (12 May 2014).

224 Id. at 6932.

225 Record Bundle 12(1), Item 9, p 20.

226 Id. at p 18.

Burger thinks this more flexible and responsive approach is more acceptable than the earlier model.²²⁷

- [76] Dr Burger drew to the attention of the Commission the fact that under the 2013 National Instruction, the purpose of sector policing is to “prevent crime”, an objective he thinks is “idealistic”²²⁸ and “impossible”.²²⁹ He also notes that the sector policing is personnel- and resource-intensive.²³⁰

(cc) Response to Calls for Assistance

- [77] Dr Burger also explained to the Commission that the basic rule in SAPS is that all requests for assistance received by the police must be recorded, that requests for assistance should be attended to as quickly as possible, and that where a crime has been committed, the police must secure the area, arrest offenders and provide the necessary care and assistance to victims and those injured.²³¹ According to Dr Burger, SAPS Standing Order (General) 256 of 2011 provides for the duties of relief commanders, the CSC commander and the operational commander, which includes the duty to attend to calls for assistance.²³² He also told the Commission that SAPS reports on its response times in its Annual Report. Response times are provided for Alpha complaints (serious crimes in progress), Bravo complaints (crimes that have already occurred) and Charlie complaints (less serious offences).²³³

(dd) Recommendations

- [78] Dr Burger suggested that it would be helpful if the term “crime prevention” could be clarified, which would assist with understanding the role of “crime prevention units” as opposed to “visible policing” or sector units.²³⁴ He also said that the role of sector commanders needs to be clarified. He also suggested that the role of sector forums and CPFs should be reconsidered. In his view, the proliferation of sector forums and CPFs can be burdensome for attendees. He also recommends that the role of CPFs in “problem-solving” be clarified.²³⁵ Finally, he urged the establishment of Community Safety Forums (CSFs), which should be set up by municipalities and linked to CPFs which would relieve the SAPS of the burden of managing CPFs.²³⁶ He told the Commission that the structure and role of CSFs was still being developed by the Civilian Secretariat,²³⁷ but that, in his view, CSFs should replace CPFs.²³⁸

(b) Detectives

(i) Mr Jan Swart

- [79] Mr Jan Swart served in SAPS for 34 years from 1978 to 2011. For 29 of those years he worked as a detective. At the time he left SAPS, his rank was Lieutenant Colonel, and he was Unit Commander of the FCS Unit in Mitchell’s Plain. Mr Swart prepared an expert report for the

227 Id. at p 18.

228 Id. at p 19.

229 Id. at p 11.

230 Id. at p 19.

231 Id. at p 20.

232 Id.

233 Record Bundle 12(1), Item 9 at p 21.

234 Transcript at 6934 (12 May 2014) and Record Bundle 12(1), Item 9 p 24.

235 Record Bundle 12(1), Item 9, p 24.

236 Id. at p 24. Transcript at 6951 (12 May 2014).

237 Transcript at 6951 – 6956 (12 May 2014).

238 Transcript at 6953 (12 May 2014).

Commission relating to detective services.²³⁹ Mr Swart is currently serving his articles of clerkship in a law firm.²⁴⁰

- [80] Mr Swart read the transcript of the testimony of the seven police commanders who have served in leadership positions in the three Khayelitsha police stations, as well as the testimony of Colonel Harri and Colonel Wiese.²⁴¹ He was asked to comment on this testimony in the light of his experience, and make any recommendations to the Commission he considered appropriate. Mr Swart made some very detailed comments on the testimony.
- [81] Mr Swart told the Commission that instructions given by prosecutors to investigation officer, and noted in the investigation diary, tend to be more detailed, relevant and useful than those provided by inspecting officers.²⁴² He also told the Commission that investigating officers should contact complainants at least every fortnight, at least until the investigation has been completed, and an entry recording the feedback must be made in the investigation diary.²⁴³ He was of the view that the quality of oversight and management of detectives at the three police stations was not of an acceptable standard. Instructions by supervising officers are often “superficial and sparse”.²⁴⁴ Mr Swart also told the Commission in response to a question about the “dumped rape kits”,²⁴⁵ that the loss of the exhibits should have been picked up by the officers inspecting the dockets, because it should have been clear the officer should have checked for the laboratory receipt, given the nature of the J88 (medical report) that would have been in the docket.²⁴⁶ He agreed that it was a failure of the supervising officer.²⁴⁷
- [82] Mr Swart also explained that it is not possible to tell from the CAS, how many brought-forward dates have been entered into a docket. This can only be discerned from the investigation diary.²⁴⁸
- [83] Mr Swart considered the statement by Brigadier Dladla that 60 to 80 dockets were manageable to be “contentious”. He said that it was his view that if an investigating officer has more than 50 cases, work on the dockets would be “compromised”.²⁴⁹ Mr Swart told the Commission that in his view the number of dockets being investigated by detectives at the three police stations is too high, which will affect not only the quality of investigations, but also the administration of dockets, the standard of mentorship and guidance, and command and control, in general.²⁵⁰ He also suggested that the most experienced detectives should be allocated to high-volume detective branches like those in Khayelitsha.²⁵¹ On the other hand, he said that the detectives at the FCS Unit carried considerably fewer dockets.²⁵²
- [84] As to scanning of dockets to create e-dockets, Mr Swart explained that in order for the full docket to be scanned, detectives would have to scan all the work they did each day, which

239 Record Bundle 12(1), Item 23. Transcript at 7083 – 7129 (13 May 2014).

240 Record Bundle 12(1), Item 23 at para 7, p 3.

241 *Id.* at para 8, p 3.

242 *Id.* at p 4.

243 *Id.* at p 7.

244 *Id.* at p 26.

245 These were discussed in Chapter 9 above at para 80.

246 Transcript at 7093 – 7096 (13 May 2014).

247 *Id.* at 7097.

248 Record Bundle 12(1), Item 23 at p 9.

249 *Id.*

250 *Id.* at p 17.

251 *Id.* at p 18.

252 Transcript at 7102.

given the number of available scanners was not feasible. If this is not done, an e-docket will not provide an accurate reflection of the status of the docket.²⁵³

- [85] Mr Swart also commented that there is very little use of social media to trace or investigate an accused person or suspect.²⁵⁴ He was of the view that internet access and email facilities would be invaluable to detectives and should be provided.²⁵⁵
- [86] Mr Swart told the Commission that the shortage of office space hampered detective work as it is important for detectives to have private spaces to interview witnesses and complainants.²⁵⁶
- [87] Mr Swart also suggested that it might be appropriate to return to a previous system, where uniformed personnel undertook the investigation of offences such as reckless and negligent driving, shoplifting and trespassing. This system “freed up” detectives to work on more serious crime, and also served as a valuable training ground for uniformed personnel in detective work.²⁵⁷
- [88] Mr Swart also suggested that the performance of FCS Unit Commanders should not be measured on the conventional indicator of “reduction of reported crime”.²⁵⁸ He told the Commission that it is widely accepted that sexual offences remain under-reported, and that therefore it is not appropriate to measure performance on the basis of reported crime.
- [89] In conclusion, Mr Swart acknowledged that policing in Khayelitsha “presents extraordinary challenges and therefore requires exceptional police officers”.²⁵⁹ He also noted that the establishment of the Commission had created an expectation of an improvement in policing in Khayelitsha, and that it would be “the police’s response to the Commission’s recommendations that will determine the levels of the community’s satisfaction or dissatisfaction.”²⁶⁰

(c) Crime Scene Management

(i) *Dr David Klatzow*

- [90] Dr Klatzow is a forensic scientist who has been in practice for 28 years. He provided the Commission with an expert report on crime scene management and the state of the forensic laboratories at the request of the complainant organisations.²⁶¹ In order to prepare his report, he read the testimony and statements of Mr Van der Westhuizen, Ms Thompson, Mr Jones and Professor Wade.²⁶²

(aa) *Crime scene management*

- [91] He told the Commission that a reading of the evidence before the Commission revealed “a systemic problem relating to crime scene management”.²⁶³ He said that SAPS has adopted a set of standard operating procedures for crime scene management, which he had requested from SAPS but had not been furnished.²⁶⁴ During his testimony, his attention was drawn to

253 Record Bundle 12(1), Item 23 at p 13.

254 Id. at p 15.

255 Id. at p 20.

256 Id. at pp 18 – 19.

257 Id. at pp 26 – 27. Transcript at 7110 (13 May 2014).

258 Id. at p 36.

259 Id. at p 38.

260 Id. at p 39.

261 Record Bundle 12(1), Item 17(a) and Transcript at 7236 – 7279 (13 May 2014).

262 Record Bundle 12(1), Item 17(a) at p 1. See also the discussion of their testimony in Chapter 9 at paras 81 – 93.

263 Record Bundle 12(1), Item 17(a) at p 1.

264 Id. at p 4.

a crime scene protocol signed by Lieutenant General Lamoer dated 29 May 2007.²⁶⁵ He said that the Protocol was “basically a good document”, but it needed to be implemented by SAPS members at crime scenes.²⁶⁶

- [92] He told the Commission that the starting point is the protection of the crime scene. According to Dr Klatzow, the basic procedures to protect a murder crime scene are the following: establish that the victim has died; establish that there is no imminent threat to life present (leaking gas, explosive devices, fire hazards, etc.); seal off the scene with barrier tape, and establish a sufficient police presence to prevent tampering with the scene; establish a joint operational centre (JOC); and open a crime scene log and record all essential information.²⁶⁷ Moreover no one should enter the crime scene except to save a life or make an arrest (or gather evidence); and no one should enter the crime scene to gather evidence unless wearing protective clothing.²⁶⁸
- [93] Thereafter a suitable person must be appointed to take charge of the crime scene during the investigation. Forensic personnel should be called to the scene as soon as possible. Dr Klatzow told the Commission that the role of the Forensic Pathology Officer (the FPO) is “to act as the eyes and ears of the pathologist”. Dr Klatzow said that it was desirable for the pathologist to attend the scene if it was possible.²⁶⁹
- [94] Dr Klatzow recommended that every SAPS response vehicle should be equipped with a response pack containing barrier tape, protective clothing, shoe covers and gloves. He said that the cost of such packs would be minimal.²⁷⁰ He acknowledged that protecting crime scenes was particularly challenging in informal neighbourhoods where there is inadequate lighting and where there is no adequate crowd control.²⁷¹ He suggested that SAPS vehicles should be equipped with a set of halogen lights and a small generator for lighting crime scenes in informal neighbourhoods.²⁷² He also acknowledged that rain is very harmful to the preservation of crime scenes, but that there is little that can be done about it.²⁷³

(bb) Forensic Science Laboratories

- [95] He also described the state of forensic science laboratories in South Africa, in particular, the health chemical laboratories managed by the national Department of Health, rather than SAPS forensic laboratories, pointing to the following issues –
- staffing and demographic policies with a diminished emphasis on skills and training;
 - diminished skills in scientific expertise at the diploma level; and
 - issues of discipline and security at the forensic laboratories.²⁷⁴
- [96] He said that the laboratories are in a dysfunctional state²⁷⁵ and drew the Commission’s attention to a 2009 report of the Auditor-General which noted that staff vacancies in the laboratories have climbed, and that backlogs have risen sharply.²⁷⁶ He told the Commission that reports

265 Transcript at 7245 – 7246 (13 May 2014). The protocol was attached to the affidavit of Colonel Swart. See Record Bundle 10(2), File 2.2, Item 21.

266 Transcript at 7246 (13 May 2014).

267 Record Bundle 12(1), Item 17(a) at p 3.

268 Id. at p 4.

269 Id. at p 5.

270 Id. at p 2. Transcript at 7240 (13 May 2014).

271 Id. at 7238 (13 May 2014).

272 Id. at 7239 (13 May 2014).

273 Id. at 7241.

274 Record Bundle 12(1), Item 17(a) at p 2.

275 Id. at p 5.

276 Id. Transcript at 7256 (13 May 2014).

of blood analyses could take up to two years.²⁷⁷ He said that the state of the laboratories was causing demoralisation amongst SAPS members, and also amongst employees of the laboratories, many of whom are leaving the laboratories.²⁷⁸ He told the Commission that turnaround times for blood alcohol reports should not exceed two months, and toxicology reports should not take longer than three months.²⁷⁹

- [97] He told the Commission that the staffing policy at the national forensic laboratories should require forensic scientists to have an honours degree in chemistry, with a sub-major in biochemistry. He also said that the equipment and accommodation at the laboratories needed urgent upgrading. He also said that a workable memorandum of agreement should be entered into between SAPS and the pathology services as a matter of urgency.²⁸⁰ He told the Commission that it would be possible for the province to set up its own forensic laboratory, which might improve the situation.²⁸¹

(d) Crime Intelligence

(i) *Dr Chris de Kock*

- [98] Dr De Kock worked as a researcher first in the field of crime and then in the field of conflict studies at the Human Sciences Research Council from 1974 until 1995, when he joined SAPS as head of the Crime Information Analysis Centre (CIAC). He retired from SAPS in 2013, at which time he held the rank of Major General. During his time at SAPS, he was responsible for the development of operational crime analysis capacity at police stations and cluster offices.
- [99] Dr De Kock prepared a report for the Commission at the request of the complainant organisations.²⁸² His report is divided into two parts. In the first, he addressed the question whether SAPS in Khayelitsha is effectively reducing or preventing “more policeable” forms of crime particularly between 2011 and 2013. He answers this question in the negative, and then turns in the second part of his report to consider whether the failure to do so, is as a result of a lack of crime intelligence or information, or a failure to put such intelligence to use in crime prevention operations.²⁸³
- [100] Dr De Kock asserted that crime intelligence or crime information should underlie all crime combating activities of the police.²⁸⁴ Crime intelligence should provide answers to the questions: what crime is occurring, where and when is it occurring, why was the crime committed at this place and time, how was the crime committed, and who is the perpetrator of the crime.²⁸⁵
- [101] Dr De Kock told the Commission that visible policing should be focussed on crime hotspots that have been identified by crime intelligence.²⁸⁶ He said that there are experienced police officers who remain sceptical about this proposition, because they think that the presence of

²⁷⁷ Record Bundle 12(1), Item 17(a), at p 6.

²⁷⁸ Transcript at 7241 – 7242 (13 May 2014).

²⁷⁹ Record Bundle 12(1), Item 17(a), p 8.

²⁸⁰ *Id.* at p 8.

²⁸¹ Transcript at 7259 – 7260 and at 7265 (13 May 2014).

²⁸² Record Bundle 12(1), Item 15. Transcript at 7130 – 7212 (13 May 2014). Dr De Kock had also prepared a report dated 3 August 2012, a summary of which was annexed to the High Court record Bundle 1(3), AL 30, 283 – 287. The full report was annexed to Lieutenant General Lamoer Statement Record Bundle 5(4), File 7 at pp 332 – 337.

²⁸³ Record Bundle 12(1), Item 15 at paras 1 and 2.

²⁸⁴ *Id.* at para 6.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at para 10.

police officers at hotspots will merely displace crime to another area. Dr De Kock agreed that it may at times displace crimes, but he argued that this can also be a tool used by police to cause crime to be displaced to a place where it may be easier to apprehend criminals.²⁸⁷

- [102] Dr De Kock explained that the Crime Information Office/Officer (CIO), formerly known as the CIAC, was established in SAPS in the late 1990s.²⁸⁸ At station level, the CIO's role is to analyse the crime situation of the station by undertaking docket analysis, crime mapping, case linkage analysis, as well as environmental assessments, statistical analysis and briefing and debriefing of shifts.²⁸⁹ According to Dr De Kock, every time a visible policing shift comes on duty, the shift should be briefed by the station CIO on hotspots, and possible explanations for the hotspots and also on the *modus operandi* that is being used.²⁹⁰
- [103] The station should also have a daily or weekly Station Crime Combating Forum (SCCF) meeting, attended by the SAPS operational managers. During these meetings, the CIO should provide a crime briefing.²⁹¹ Plans of action should be minuted, indicating who is responsible for action, and the dates for feedback. One of the consequences should be that the police station management will be able to identify problems that are creating opportunities for crime and report it to the relevant government department for attention, such as a need for bushy areas to be cleared, or streetlights to be repaired.²⁹²
- [104] Dr De Kock explained that there is a difference between more policeable and less policeable crime.²⁹³ Crimes that happen in private places, and where offenders are not repeat offenders are more difficult to predict and police. They include many contact crimes, but not all of them. On the other hand, crimes that happen in public spaces, where offenders are likely to be repeat offenders should be more policeable. Generally property-related crime is more policeable than contact crime.²⁹⁴ Crimes that are detected as a result of police action such as illegal possession of firearms and ammunition, drug-related crime and driving under the influence of alcohol and/or drugs should increase in number when police are actively conducting stop and search operations and roadblocks.²⁹⁵
- [105] Dr De Kock then provided a detailed analysis of crime in Khayelitsha over the last decade.²⁹⁶ He concluded that the crime situation in Khayelitsha has deteriorated, comparatively speaking, over the last decade,²⁹⁷ and that there has been a sharp escalation in the number of aggravated robberies over the past two years.²⁹⁸
- [106] Dr De Kock also provided the history surrounding the publication of crime statistics in South Africa since he joined SAPS in 1995.²⁹⁹ He told the Commission that initially, under Minister Mufamadi, crime statistics were released quarterly. Thereafter, there was a Commission led by Dr Mark Orkin and it was agreed that crime statistics would be released monthly. Thereafter, Minister Tshwete had announced a moratorium on crime statistics. Whereafter, Minister

287 *Id.* at para 11 – 12.

288 *Id.* at para 14.

289 *Id.* See also paras 130ff.

290 *Id.* at para 13.

291 *Id.* at para 15. Transcript at 7142 – 7144 (13 May 2014).

292 *Id.* at paras 17 – 20.

293 Transcript at 7132 – 7133 (13 May 2014).

294 Record Bundle 12(1), Item 15 at paras 57 – 58.

295 *Id.* at para 59.

296 *Id.* at paras 68 – 129. He produced Tables setting out his findings, see Tables 1 2 and 3, included in the Record in Record Bundle 12(1), Items 15a, 15b and 15c.

297 *Id.* at para 93.

298 *Id.* at para 116.

299 Transcript at 7161 – 7163 (13 May 2014).

Nqakula had introduced the annual publication of crime statistics. Dr De Kock recommended that crime statistics be released quarterly.

- [107] Dr De Kock also provided a comprehensive description of the tasks of crime mapping,³⁰⁰ case linkage analysis,³⁰¹ fieldwork to understand crime patterns,³⁰² briefing and debriefing of shifts,³⁰³ and statistical analysis of station crime statistics.³⁰⁴
- [108] Dr De Kock requested samples of the crime threat analyses and crime pattern analyses compiled by three CIOs at the Khayelitsha police stations to assess the quality of the analyses. He also requested copies of minutes the SCCF meetings.³⁰⁵ Crime threat analyses and crime pattern analyses were not provided in the format that Dr De Kock requested. The three police stations did provide SCCF minutes, to a greater or lesser extent.³⁰⁶ Dr De Kock explained that the SCCF minutes should capture the essence of the crime threat analyses and crime pattern analyses presented to the meeting by the CIO.³⁰⁷ In all, 58 sets of SCCF minutes were provided. There is no mention of a crime threat analysis or crime pattern analysis in any of the minutes provided.³⁰⁸ There is no mention in the 39 sets of minutes provided by the Harare and Khayelitsha Site B police stations of identified “hotspots” or of crime linkage analysis.³⁰⁹ The Lingeletu West minutes do refer to “hotspots” but they are not mapped. According to Dr De Kock, the information is so general as to be of no use at all.³¹⁰ They also refer to “linkages” but no discussion or detail is provided.³¹¹ Nor is there any mention in the 59 sets of minutes of crime intelligence briefings to shifts.
- [109] Dr De Kock told the Commission that one of the most negative findings that arose from his analysis of the SCCF minutes was that out of 46 crime statistics presentations, 13 referred to performance measurement and it was especially the crimes dependent on police action that were emphasised.³¹² According to Dr De Kock, SCCF meetings should not be about targets and performance measurement.³¹³ Two positive aspects of his investigation, he told the Commission, were that station commanders attended 40 of the 58 meetings, and that the minutes suggested that care was being taken to ensure that the number of charges in dockets is being carefully recorded on the CAS.³¹⁴
- [110] From his analysis, Dr De Kock concluded that either CIOs at the three Khayelitsha police stations are not compiling crime threat analyses and crime pattern analyses or, if they are compiled, they are not presented to the SCCF meetings.³¹⁵ He said that their failure to do so, could be as a result of a lack of training or a lack of application or both. He suggested that the station commanders should be held responsible for their failure.³¹⁶

300 Record Bundle 12(1), Item 15 at paras 132 – 136. Transcript at 7140 – 7142 (13 May 2014).

301 Id. at paras 133 – 141.

302 Id. at paras 142 – 143.

303 Id. at paras 144 – 145.

304 Id. at paras 146 – 151.

305 Record Bundle 13(1), File 1.4, File 8, Item 42.

306 Record Bundle 12(1), Item 15 at para 152. (Available at Record Bundle 8(4), File 4.2, File 9, Item 37 for the CCCF; Record Bundle 8(4), File 4.2, Items 9a, (Harare), 9b (Lingeletu West) 9c (Khayelitsha) for the SCCF.

307 Record Bundle 12(1), Item 15 at para 153.

308 Id. at para 154.1 and Transcript at 7145 (13 May 2014). See also Table 3 annexed to Dr De Kock’s report at Record Bundle 12(1), Item 15(c).

309 Record Bundle 12(1), Item 15 at para 154.2 and 154.4.

310 Id. at para 154.2.

311 Transcript at 7145 – 7146 (13 May 2014).

312 Id. at para 154.12.

313 Id. at para 154.13. Transcript at 7146 (13 May 2014).

314 Id. at para 154.14.

315 Id. at para 157.

316 Id.

- [111] He said that in the light of his investigation, policing at the three police stations “is policing by chance and luck” and not intelligence-led policing.³¹⁷ Dr De Kock was provided with a crime threat analysis compiled at cluster level, for the period April 2012 – March 2013 was provided.³¹⁸ Dr De Kock said this did not constitute a proper crime threat analysis as it was compiled six months after the period in question.³¹⁹
- [112] In the light of his report, Dr De Kock made the following recommendations, which are presented in summary form –
- the station management of the three Khayelitsha police stations should be convinced that although the conditions in Khayelitsha are not easy, it is especially important that the police make an effort to make Khayelitsha as “crime-free” as possible;
 - an in-depth investigation be undertaken to determine why proper crime threat analyses and crime pattern analyses are not being produced at the three police stations in Khayelitsha; and appropriate steps should be taken in the light of that investigation to address the matter, including, if necessary training of the station management at the three police stations on the value and methods of crime intelligence.³²⁰

C. MANAGEMENT ISSUES

(a) Human Resource Allocation

(i) *Ms Jean Redpath*

- [113] Ms Jean Redpath, who is an expert on criminal justice statistics and policing issues, was asked to consider the THRR system described by Brigadier Rabie in his evidence.³²¹ Ms Redpath produced a table showing police personnel per 100 000 residents, using the personnel figures provided by Lieutenant General Lamoer, and the Census 2011 population data. The Table is reproduced in Chapter 13.³²² The Table shows that Harare police station has the lowest number of police personnel to population in the Western Cape province. Her analysis showed that police stations in the Western Cape had an average of 283 police personnel per 100 000 residents, but Harare had 111.32 and Khayelitsha 190.46. The Table shows that the 15 police stations with the lowest police population ratios in the Western Cape (in reverse order) are Harare, Lwandle, Belhar, Nyanga, Ocean View, Delft, Cloetesville, Kraaifontein, Mfuleni, Strandfontein, Kleinvele, Gugulethu, De Doorns, Grassy Park, Table View and Khayelitsha. The 15 police stations with the highest police population ratios are Table Bay Harbour, Cape Town Central, Redelinghuys, Suurbraak, Elands Bay, Camps Bay, Wynberg, Doring Bay, Mossel Bay, Leeu Gamka, Struisbaai, Mowbray, Graafwater, Laingsburg and Nuwerus. Camps Bay has a police to population ratio of 959.51 per 100 000 and Wynberg has a ratio of 852.57

317 Id. at para 158. Transcript at 7148 (13 May 2014).

318 Record Bundle 12, File 3, Item 12.1.

319 Id. at para 159. Transcript at 7174 – 7175 (13 May 2014). The Commission requested copies of the Crime Threat Analysis reports of the 3 Khayelitsha police stations. After the conclusion of the hearings, the Commission was given the Khayelitsha Site B Crime Threat Analysis, January to March 2012, and the Lingeletu Crime Threat Analysis, October, November, December 2008. Record Bundle 13(2), Items 12.7 and 12.8. Dr De Kock submitted a supplementary report on 11 June 2014 regarding these CTAs Record Bundle 13 (9), Item 15d. The SAPS response to both Dr De Kock's report dated 10 May 2014 and his subsequent report dated 11 June 2014 is at Record Bundle 13(2), Items 12.10 and 12.11. See also the discussion at Chapter 13 below at paras 83 – 90.

320 Id. at para 162. See Transcript at 7166 – 7167 (13 May 2014).

321 Record Bundle 5(4), File 6, Item 13; Transcript at 5226 – 5401 (25 March 2014).

322 Table 1 in Chapter 13 (at para 157) is reproduced from Ms Redpath's Table 9. See Record Bundle 12(1), Item 1(a), pp 9 – 10.

Photo 16: SAPS vehicle patrolling in Khayelitsha



per 100 000. What is worrying about Ms Redpath's Table is that it suggests that poor areas where the majority of residents are African or Coloured have the lowest numbers of police per population. Many of these areas have very high levels of serious violent crime.

- [114] Ms Redpath explained that, in her view, any marked deviation from police to population ratios must be rationally explicable in the light of the differential burden of policing. In her view, the method employed by SAPS fails to provide a rational explanation for the marked difference in police to population ratios that exist across the Western Cape and is accordingly unfair.
- [115] In her report, she proposed an alternative mechanism, which is based on simple criteria, and which, according to Ms Redpath, produces a fair and rational allocation. In terms of Ms Redpath's proposed allocation, visible policing resources would be calculated primarily on the basis of total population, although this would be adjusted to take into account high number of transient commuters, the allocation of detectives and crime intelligence officers would be determined by reported crime (as the burden on detectives is determined by the extent of reported crime), with a particular focus on serious crime, and the allocation of support services would be based on population.³²³
- [116] Based on the current size of SAPS, including personnel employed in terms of the Public Service Act, 1994 she determined an appropriate visible policing ratio for the country at 201 police personnel per 100 000 of the population and detectives at the rate of 1.88 detectives for every 100 of the 20 most serious crimes reported in the SAPS annual crime statistics.³²⁴ On this basis, she concluded that Khayelitsha Site B should be allocated 424 personnel (as opposed to its current 294, and a direct per capita allocation of 437), Harare 444 (as opposed to its current 192, and a direct per capita allocation of 489) and Lingeletu West 178 (currently 177 and a direct per capita allocation of 182).³²⁵ She explained that the number of personnel on this proposed allocation was lower than a direct per capita allocation because of the relative

³²³ Record Bundle 12(1), Item 1(a) at p 3.

³²⁴ Id. at p 4.

³²⁵ Id. See Table 8, p 8.

under-reporting of crime in Khayelitsha compared to other areas in the province.³²⁶ Ms Redpath acknowledged that one further consideration needed to be taken into account and that is the minimum number of police required to operate a police station.

- [117] Ms Redpath suggested several reasons why the SAPS' THRR produced such marked, and apparently irrational, variations from an allocation based on a police-to-population ratio. These included the fact that the quality of data provided by individual police stations may not be accurate;³²⁷ the risk that the wide range of factors measured in the THRR inevitably produced "double counting";³²⁸ that some factors may weight against poor areas, such as the number of businesses;³²⁹ and the failure to provide adequately for additional challenges of policing informal neighbourhoods.
- [118] Ms Redpath was firm that in her view the THRR mechanism is not fair or rational and needs to be revised in order to ensure that the three Khayelitsha police stations, and especially Khayelitsha Site B police station and Harare Police, are provided with more personnel given the large populations that they serve and the high crime rates.

(ii) Ms Joy Fish and Mr Johan Schlebusch³³⁰

- [119] Ms Fish and Mr Schlebusch are human resource practitioners, who jointly have more than sixty years' experience in human resource management. They were provided with a range of human resource materials relating to the terms of reference of the Commission including the performance assessments conducted at the three police stations,³³¹ a station commander's performance agreement,³³² SAPS Disciplinary Regulations³³³ the Schooling and Leamy report,³³⁴ the Task Team report,³³⁵ as well as most of the transcripts of hearings in Phase One.

(aa) Management accountability to address identified problems

- [120] They note that there appear to be regular and frequent performance evaluations and audits of the three Khayelitsha police stations. However, they noted, corrective action does not appear to follow the process of evaluation and inspection. They stated that for –

“the audit process to be effective senior management must be held accountable for implementation and this should be built into their performance contracts. Audit recommendations should be prioritised (based on impact e.g. high, medium, low) and there should be a review process to ensure corrective action is taken. Continued failure to address audit action items, particularly those rated ‘high’, encourages a culture of non-compliance and should result in disciplinary action being taken at management level.”³³⁶

- [121] They suggested that the failure to address problems was a management issue, and that it would be advisable for the Khayelitsha Cluster to run a pilot change management process with managers at the three stations. Such a process would start with a facilitated strategy workshop where the strategic goals for a 3 – 5 year period for the three police stations would

326 Id. at p 8.

327 Transcript at 6750 (12 May 2014).

328 Id. at 6751.

329 Id. at 6754.

330 Record Bundle 12(1), Item 14; Transcript at 6835 – 6876 (12 May 2014).

331 Record Bundle 3(3.14) and (3.16).

332 Exhibits TR1 and TR2, Record Bundle 11(5).

333 Record Bundle 1(1c), File A, Items 7, 8, 17.

334 Record Bundle 9(1), File 1.1, Item 1.

335 Record Bundle 1(3), AL87.

336 Ms Fish and Mr Schlebusch report Record Bundle 12(1), Item 14 at para 2.

be identified. Thereafter clear and measurable priorities should be agreed (for example, a 33% improvement in community approval rating) and then an implementation plan needs to be developed to achieve the goals. The workshop should also identify the appropriate values and behaviours required to achieve the step change sought. Moreover, as far as possible, there should be continuity in the management team while the process is being implemented.³³⁷ Mr Schlebusch testified that it would be helpful to use external measures of police performance, such as levels of community perceptions of policing.³³⁸

(bb) The Performance Enhancement Process (PEP)

[122] Ms Fish suggested that the PEP system seemed “extremely complex”, and suggested that it should be simplified.³³⁹ In the report, they noted that 96% of all employees are rated “3” on the PEP scale.³⁴⁰ A normal scale would, according to them, produce 68% of employees in category “3”.³⁴¹ They suggested that the high number of employees rating “3” suggests “that the full range of the scale is being avoided”,³⁴² and indicates that the PEP system, as implemented, does not differentiate between very good people and poor performers.³⁴³ They reviewed the performance contract of one of the station managers and noted that it contained four key performance areas, broken down into 76 tasks. They considered this system made it difficult to focus on key initiatives.³⁴⁴

(cc) Investigation of complaints against police by members of the public

[123] They commented that the system of the investigation of complaints of police misconduct made by members of the public was “fraught with difficulties”. They noted the current system seemed beset by “bureaucratic delays” and that they found it difficult to assess the quality of the investigations.³⁴⁵ The high number of “unsubstantiated” findings seemed “questionable” to them.³⁴⁶ They commented that when investigating complaints against its employees, SAPS “needs to manage both the danger of real bias and the public perceptions of bias. There seems to be little acknowledgement of this.”³⁴⁷

(dd) Disciplinary proceedings

[124] They noted that there seems to be a large number of disciplinary proceedings against members, which indicates management is not ignoring misconduct or condoning it, but they commented that many of the sanctions appear “to be very lenient”.³⁴⁸ They thought it important that seniority be considered an aggravating factor, as well as the nature of the offence, such as being drunk on duty, where a police officer is carrying a firearm, or driving a vehicle, these should be seen as aggravating factors.³⁴⁹ Drug use on duty, they thought, should surely be grounds for dismissal. They noted that dismissal is a very rare consequence of disciplinary

337 Id. See paras 1 and 7.

338 See Transcript at 6860 (12 May 2014).

339 See Transcript at 6837 (12 May 2014).

340 For a discussion of the Performance Enhancement Process, see the testimony of Major General Burger, discussed in Chapter 11, at 132 – 142.

341 See Transcript at 6840 (12 May 2014).

342 Id.

343 Ms Fish and Mr Schlebusch report Record Bundle 12(1), Item 14, at para 3.

344 Id.

345 Id. at para 4.

346 Id.

347 Id.

348 Id.

349 Id.

proceedings. They also acknowledged that providing detectives with unmanageable burdens “undermines the disciplinary system”.³⁵⁰

(ee) Abuse of sick leave

- [125] Ms Fish and Mr Schlebusch told the Commission that the records suggest there may be a problem with the abuse of sick leave at the three stations. They noted that the station commanders seem to be aware of the problem and are keeping records, conducting random home visits and addressing the problem as best they can. They thought that it might be valuable to be able to refer members to an in-house SAPS doctor to verify claims of illness. They did comment, however, that the abuse of sick leave is a problem for all employers.³⁵¹

(ff) Recruitment and filling of vacancies

- [126] Ms Fish and Mr Schlebusch commented that it is undesirable, and should be unnecessary, for it to take months to fill vacancies, particularly senior positions.³⁵² In their view, vacancies in senior positions should be prioritised, and especially in areas like Khayelitsha, where it is important not to have “reduced resources”. They also commented that the idea of holding public meetings where candidates for recruitment are paraded for public comment is not a widely recognised recruitment practice, and might even give rise to corruption.³⁵³ Instead they proposed that prior to recruitment SAPS should identify the qualities of good members of SAPS – that they “be service-oriented and reliable and clever, not necessarily popular ... [with] strength of character to take very unpopular decisions”.³⁵⁴ They added that given the career trajectory of members of SAPS it was also important to recruit people who have the potential to become good leaders and specialists in SAPS.³⁵⁵ Mr Schlebusch also testified that it is unusual for an organisation to obtain all its employees from recruiting at the bottom level and said that it is desirable for an organisation to bring in people at a mature level, who have had other working experience, particularly for specialist functions such as human resources or finance, because “it is imperative for an organisation to nurture ongoing fresh thinking, creative thinking...”.³⁵⁶

(iii) 21st Century Pay Solutions Group

- [127] The 21st Century Pay Solutions Group prepared a report for the Commission,³⁵⁷ but did not testify. They were asked to review SAPS Performance Management Systems. They were provided with more or less the same documents provided to Ms Fish and Mr Schlebusch.³⁵⁸ They noted that it was difficult to compare the three police stations because much of the documentation was provided in different formats. They also noted that no individual performance assessments were provided for non-managerial staff, and only two performance agreements for senior management were provided.³⁵⁹
- [128] The report notes that the National Development Plan identifies twelve performance outcomes in 2010 that are relevant to all government departments. Outcome 3 performs the basis for the Justice, Crime Prevention and Security cluster (JCPS), and it provides “that all people in

³⁵⁰ Id.

³⁵¹ Id. at para 5.

³⁵² Transcript at 6850 (12 May 2014). Record Bundle 12(1), Item 14 at para 5.

³⁵³ Transcript at 6852 (12 May 2014).

³⁵⁴ Id. at 6853.

³⁵⁵ Id.

³⁵⁶ Id. at 6862.

³⁵⁷ Record Bundle 12(1), Item 4.

³⁵⁸ See above at para 119. See also list of documentation provided to 21st Century Solutions Group listed in their report at paras 7 and 8.

³⁵⁹ Record Bundle 12(1), Item 4 at paras 10.1 and 10.2.

South Africa are and feel safe”.³⁶⁰ The SAPS Strategic Plan for 2010 – 2014 identified Strategic Outcomes Oriented Goals 1 and 2 as “All people in South Africa are and feel safe”; and “ensuring adequate availability of and access to the SAPS service points”.³⁶¹

(aa) Station performance management system

[129] The report suggests that the station performance management system³⁶² is a sophisticated tool that could be used successfully if certain shortcomings are addressed.³⁶³ The shortcomings relate to the fact that SAPS has “no control over crime rates” or backlogs caused by partners, but SAPS can control how its members perform their daily duties. The efficiency of SAPS members in performing their duties should be incorporated in the performance chart, including the community oriented aspect of the work of SAPS members.³⁶⁴

(bb) PEP

[130] The report also contains a range of suggestions to improve performance evaluation.³⁶⁵ The recommendations include that the performance appraisal instrument be simple, that only direct supervisors should be involved in assessments, that an appropriate “atmosphere” be established for the appraisal process, that good performance must be identified as well as poor performance and both parties should prepare properly for review meetings.

(b) Station Performance Management (the EUPOLSA Index)

(i) Mr Andrew Faull

[131] Mr Faull is currently a D. Phil candidate at the University of Oxford. Previously, he was a researcher at the Institute for Security Studies, where he focussed on integrity management and oversight in SAPS. He prepared an expert report for the Commission in relation to the SAPS station performance chart.³⁶⁶ He was asked to consider a list of issues identified by the Commission relating to station performance, as well as any other issues he considered relevant to the Chart.³⁶⁷ Mr Faull was unable to testify in person, but his testimony was received by way of video conference call.³⁶⁸

[132] Mr Faull told the Commission that the SAPS EUPOLSA Index, described in Chapter 5, is “well-designed” and follows a trend introduced under the name “COMPSTAT” in New York City.³⁶⁹ The COMPSTAT model was introduced by Bill Bratton and Jack Maple in the early 1990s.³⁷⁰ Mr Faull explained that the COMPSTAT measurement system was based on four processes: (a) providing accurate timely information about performance to managers, (b) to allow managers to introduce strategic evidence-based responses to meet the identified challenges, (c) resulting in rapid, focussed response and deployment of human and other

³⁶⁰ Id. at para 16.

³⁶¹ Id.

³⁶² For a discussion of the station performance management system see Chapter 5 above, at paras 43 – 49.

³⁶³ Record Bundle 12(1), Item 4 at para 65.1.

³⁶⁴ Id. at 65.1.1.

³⁶⁵ See Annexure B to the Report.

³⁶⁶ Record Bundle 12(1), Item 22.

³⁶⁷ The issues are set out at Record Bundle 12(1), Item 22, p 3.

³⁶⁸ See Transcript at 7964 – 8021 (16 May 2014).

³⁶⁹ Executive Summary Record Bundle 12(1), Item 22, pp 1 and 5. The Chart was rated in this way by the RAND Centre on Quality Policing.

³⁷⁰ Id. at p 10.

resources followed by (d) systematic monitoring of the results to grow the evidence base about what works in policing.³⁷¹

- [133] He told the Commission that at least one influential think tank lists the SAPS Chart as an example of best practice in the field of police performance measurement charts.³⁷² He remarked, however, that he was uncertain as to the extent to which SAPS uses the Chart to assess problems and deploy resources rapidly, within a matter of days, rather than months. He also said that it was not clear that SAPS really uses the Chart to gather evidence to inform interventions.³⁷³ He told the Commission that unless the Chart is used to design rapid interventions, and to monitor the success of such interventions, “it loses much of its value.”³⁷⁴ According to a leading policing expert, Lawrence Sherman, the Director of the Institute of Criminology at the University of Cambridge, “the greatest value of measure police performance comes from leaders taking immediate correction action.”³⁷⁵ Mr Faull emphasised that many experienced police officers are resistant to evidence-based policing, preferring to rely on intuition, anecdote and opinion.³⁷⁶
- [134] In assessing the Performance Chart, Mr Faull emphasised that the Chart “is a huge symbolic weight on the minds of police managers in the SAPS.”³⁷⁷ Managers will always be thinking of the targets that they need to meet and so they will pressure their subordinates to meet the targets. Any revision of the Performance Chart needs to take the “symbolic weight” of the Chart into account.
- [135] He noted that the indicators used in the Chart are similar to those used employed in early forms of COMPSTAT, but he said that some researchers now consider those indicators to be unbalanced and counter-productive to the ethos of community policing.³⁷⁸ He told the Commission that recent research suggests that there should be an increased emphasis on the measurement of public confidence in police, which should be weighted at least as heavily as other more traditional targets.³⁷⁹ Indeed, some researchers consider that traditional crime reduction and arrest targets should be abolished altogether, and measures of public confidence and feelings of public safety be adopted as the most important indicators of police effectiveness. Mr Faull noted that SAPS has never introduced a measure of public confidence into its chart,³⁸⁰ despite the fact that the Chart notes the desirability of “customer satisfaction” with SAPS.³⁸¹
- [136] Mr Faull drew the Commission’s attention to a recent Canadian review that suggested that a “balanced framework” for performance measurement would include measurement of seven dimensions of police work –
- reducing criminal victimisation (reported crime rates);
 - calling adult and youth offenders to account in appropriate ways (which would include conviction rates, diversion rates, etc);
 - reducing fear of crime and enhancing the perception of security (using victim surveys);

371 Executive Summary Record Bundle 12(1), Item 22, pp 1, 5 and 11.

372 Id. at p 1.

373 Id. at pp 1, 12 and 23.

374 Id.

375 Id. at p 12.

376 Id. at p 26. Transcript at 7996 – 8000 (16 May 2014).

377 Transcript at 8012 (16 May 2014).

378 Record Bundle 12(1), Item 19, p 12.

379 Id.

380 Id.

381 Id. at p 21.

- increasing safety in public spaces;
- using financial resources fairly, efficiently and effectively,
- using force and authority legitimately, fairly and effectively; and
- satisfying citizen demands for prompt, effective and fair service (which would include response times as well as survey data on citizen satisfaction).³⁸²

[137] Other experts have endorsed similar dimensions for measurement.³⁸³ Mr Faull also referred to a recent important report on policing in Britain produced by an Independent Commission established by the Labour Party and headed by a former Commissioner of the London Metropolitan Police, Lord Stevens of Kirkwhelpington, *Policing for a Better Britain*, which suggested that we should conceive of the role of the role of police as extending beyond crime reduction –

“Policing should contribute to the creation of a safer, more cohesive and more just society Calls for police to be ‘crime fighters’ threaten a retreat into a discredited reactive police.”³⁸⁴

[138] The Independent Commission proposed that targets set for performance measurement should be revisited, particularly those that produce “perverse incentives that militate against procedurally fair policing”.³⁸⁵

[139] Mr Faull also noted that the SAPS Performance Chart measures “outputs” rather than “outcomes”. An output is defined in the Chart as “the direct result of the application of police resources”.³⁸⁶ Outputs are quantitative measure of internal police performance – such as the number of arrests, or searches. An outcome, on the other hand, is the societal benefit that may flow from outputs.³⁸⁷ An example of an outcome would be the feeling of safety in a community.³⁸⁸ Measuring outputs in a performance chart will tend to generate the possibility of “perverse incentives” more than measuring “outcomes” will.³⁸⁹ Mr Faull told the Commission that the measurement of “outputs” only, ignores the fact that the real measures of success are the less tangible outcomes, the effect of policing on societal attitudes and perceptions.³⁹⁰ Moreover, as Mr Faull reasoned, “targets are as likely to promote police actions that erode feelings of public confidence in the SAPS, as they are to improve them.”³⁹¹

[140] Mr Faull suggested that the focus on “crime prevention” as a key measurement may mean that SAPS is setting itself an “impossible mandate”, as SAPS cannot actually reduce crime, because the social causes of crime are beyond the reach of the police.³⁹² The SAPS Chart weights levels of reported crime as 45% of the total score,³⁹³ but Mr Faull said many station commanders will have little control over whether reported crime levels drop.³⁹⁴ He described the result of setting an impossible mandate in his report as follows –

382 Id. at p 14. See also Kiedrowski, J., Petrunik, M., MacDonald, T. and Melchers, R. (2013). *Canadian Police Board Views on the Use of Police Performance Metrics*. Compliance Strategy Group) at p 8.

383 Record Bundle 12(1), Item 19, p 15 and see also Moore, M., and Braga, A. (2003). “The ‘Bottom Line’ of Policing What Citizens should value (and Measure!!) In Police Performance. Police Executive Research Forum, at p 18.

384 Id. at p 8, and see Independent Police Commission. (2013). *Policing for a Better Britain*, at p 13. A full copy of the Report is at Record Bundle 12, Item 7.

385 Record Bundle 12(1), Item 19, p 9 and *Policing for a Better Britain*, p 54.

386 Record Bundle 12(1), Item 19 at p 16.

387 Id.

388 Id.

389 Id. at pp 16 – 17.

390 Id. at p 18.

391 Id.

392 Id. at p 7. Transcript at 8010 (16 May 2014).

393 Transcript at 8014 (16 May 2014).

394 Record Bundle 12(1), Item 19.

“Played out on the late night streets of South Africa’s townships a heavy-handed police presence that is suspicious of almost any male (as a would-be offender) and damning of any female (as would-be victim), such an approach likely causes as much harm to community cohesion and trust in the state as it does good.”³⁹⁵

- [141] Mr Faull suggested that there is growing evidence that chasing crime prevention targets can “actively erode, rather than build, community confidence”.³⁹⁶ It is also plain that community policing is often “invisible” to performance measurement systems, because community-policing practices are not generally measured.³⁹⁷ One of the ways in which police can serve communities, according to Mr Faull, is for police to act as “lever pullers” on behalf of communities. As the “eyes and ears” on the ground, they can inform other government departments of problems or issues that need to be addressed, such as lighting that is not functioning, or roads that are damaged.³⁹⁸ Such an approach sees police officers as “problem solvers” rather than “crime fighters”.³⁹⁹ In this respect, Mr Faull indicated that he supported the model of “buurtregisseurs” which is being piloted at present by the City, as discussed in the testimony of Dr Berg, Mr Lamb and Professor Cartwright.⁴⁰⁰
- [142] Mr Faull also emphasised that there is not a “one-size-fits-all” model of policing, that policing must be dependent on context. He referred to a working document prepared by former senior police officers identifying four effective policing strategies –
- place-based strategies which recognise that crime is often concentrated in small areas (“hot spots”);
 - offender-based strategies which recognise that small groups of offenders are often disproportionately responsible for certain serious crimes;
 - patrol strategies that recognise that fixed beats or patrols are ineffective – and that the deployment of visible police should be flexible and based on identified crime patterns, not random patrols;
 - legitimacy-based strategies that emphasise fairness and procedural justice.
- [143] Mr Faull suggested that he was not aware of VISPOL commanders monitoring the patrol routes of their sector police through the SAPS AVL system.⁴⁰¹ His own experience monitoring sectors over an eight-month period only produced one example of a patrol targeting a “hotspot”.⁴⁰² The result is that although at one level crime intelligence is being provided to sector policing teams, it is not necessarily being used effectively.
- [144] Mr Faull also suggested that the introduction of “body-worn video cameras” by SAPS members could improve managers’ ability to monitor police-civilian interactions.⁴⁰³ According to Mr Faull, scholars hope the use of this technology may improve more respectful interactions between police and civilians.⁴⁰⁴
- [145] Mr Faull also suggested that it might be useful to employ a Crime Harm Index as part of the SAPS measurement Chart. In such an index, each crime is given a particular weight

395 Record Bundle 12(1), Item 19 at p 1.

396 Id. at p 32.

397 Id. at p 33. Transcript at 8004 – 8005 (16 May 2014).

398 Id. at p 34.

399 Id.

400 Transcript at 8006 – 8007 (16 May 2014). See the discussion of their testimony, above at paras 52 – 61.

401 Record Bundle 12(1), Item 19 at p 24.

402 Id. at p 25.

403 Id.

404 Id.

representing how harmful it is to society.⁴⁰⁵ This can be done by utilising minimum sentences to inform the estimation of the seriousness of the crime.⁴⁰⁶ In each area, all the reported crimes are then valued and aggregated to produce a total crime harm, and then divided by the population of the area. This enables relative crime harm risks to be estimated across areas, in a more nuanced manner, and produces an overall assessment of the relative unsafety of a particular policing area.⁴⁰⁷

[146] In the light of the foregoing, Mr Faull suggested that the South African Chart should be revised in a range of respects, including –

- measuring reported crime as a ratio of the population, rather than in absolute numbers;
- measuring youth and adult engagement with SAPS under separate categories;
- measuring diversion;
- measuring levels of fear amongst civilians;
- measuring levels of satisfaction amongst members of SAPS;
- measuring safety in public spaces;
- integrating civilian complaints into the Performance Chart;
- recording or integrating police use of force into the Chart;
- measuring civilian levels of satisfaction with SAPS.⁴⁰⁸

[147] Accordingly, Mr Faull suggested that SAPS should include measuring the following issues in its Chart – a station-based measure of relative (un)safety (a Crime Harm index); levels of fear amongst civilians resident or working in the station area; levels of job satisfaction amongst police officials; the number and resolution of civilian complaints against SAPS members; incidents of police use of force; and levels of civilian satisfaction with the police.⁴⁰⁹ He acknowledged that this would require use of survey material as to civilian satisfaction with police performance, and perceived levels of safety.⁴¹⁰

[148] He told the Commission that the RAND group suggest that surveys to monitor police performance should include –

- surveys of police climate and culture to measure levels of police integrity;
- surveys of police officers to measure police staff morale;
- community surveys to gauge views of police effectiveness and police misconduct;
- surveys of the business community operating in a policing area, which would include spaza shops and taverns; and
- contact surveys of civilians who have recently had contact with SAPS members to determine their views of SAPS behaviour.⁴¹¹

[149] He acknowledged however that in the South African context resources might not be available to conduct all the surveys listed above. He said, however, that one type of survey was a “must-have” – the measurement of civilian confidence in SAPS, including perceptions of safety.⁴¹²

405 Id. at p 29.

406 Id.

407 Id. at pp 29 – 30. The Crime Harm Index derives from work of Lawrence Sherman, see Sherman, L. W. (Forthcoming 2014). “The Rise of Evidence-Based Policing: Targeting, Testing, and Tracking”, *Crime and Justice in America*, Vol 42 at pp 47 – 48. See <http://cebc.org/wp-content/evidence-based-policing/Sherman-TripleT.pdf>. Last accessed on 17 August 2014.

408 Id. at p 15.

409 Id. at p 2. Sherman, L. W. (Forthcoming 2014). “The Rise of Evidence-Based Policing: Targeting, Testing, and Tracking”, *Crime and Justice in America*, Vol 42.

410 Record Bundle 12(1), Item 19 at p 15.

411 Id. at p 19.

412 Id. at p 20.

- [150] He told the Commission that measures of civilian satisfaction with policing had become increasingly important in the light of research which suggests that where police behave in a manner that is perceived to be fair by civilians, their behaviour impacts not only on how civilians perceive SAPS, but also on civilians' attitudes to obeying the law.⁴¹³ He referred here to the recent UK report, *Policing for a Better Britain*, referred to above, which noted that –

“In a democracy it matters not only that the police control crime and maintain order, but also how they do so. Procedural fairness is an indispensable part of what it means to get the ‘how’ right. People’s belief in the legitimacy of the police, and motivation to obey the law depends greatly on how fairly they are treated during encounters with the police. People are generally more concerned with the perceived fairness of such encounters ... than with their outcomes.”⁴¹⁴

- [151] The UK Report continued –

“[e]very police-public interaction communicates a message about the police and what they stand for, and sends a signal to citizens about their membership of society and their place within it. These ‘signals’ have real (positive or negative) consequences for people’s future willingness to trust and co-operate with the police and for whether they think of the law as worthy of compliance because it represents moral values which they share. Treating people with fairness and dignity is thus a vital part of what effective and legitimate policing demands. It is a public good that can be supplied equally to all – at little cost. It is also a good whose benefits are experienced most intensely by individuals and groups whose sense of belonging is precarious and cannot be taken for granted. Procedural fairness should also inform the internal organisation of police forces – in terms of how officers and staff treat one another and are given a voice in decision affecting their working lives.”⁴¹⁵

- [152] Mr Faull acknowledged that all performance charts will produce some “perverse incentives” and encourage “gaming” of the system, and it is important to recognise this when designing a measurement system.⁴¹⁶ According to Mr Faull, both his research and the research of others suggests that such manipulation happens in South Africa in a variety of ways, such as the refusal of SAPS members in CSCs to record crimes reported to them on the CAS system (to ensure that crime reduction targets are met) or to seek to increase the number of arrests, or searches in order to meet targets, even where there is no genuine policing reason for the arrest or search.⁴¹⁷ Mr Faull also suggested that it is stations with high levels of crime that will be most tempted to seek to manipulate figures to achieve targets.⁴¹⁸
- [153] Given the high levels of crime in South Africa, and public anxiety about crime, Mr Faull suggested that SAPS should be particularly cautious in determining targets. He proposed that there be less focus on across-the-board targets set at national level, and more focus on station-specific categories that are amenable to police interventions.⁴¹⁹

⁴¹³ Id.

⁴¹⁴ Cited in Mr Faull’s report (Record Bundle 12(1), Item 19) at p 20. See Independent Police Commission, *Policing for a Better Britain* (2013), Record Bundle 12(7) at 32.

⁴¹⁵ Cited in Mr Faull’s report (Record Bundle 12(1), Item 19) at p 20. See also *Policing for a Better Britain* (Record Bundle 12(7)) at pp 32 – 33.

⁴¹⁶ Executive Summary Record Bundle 12(1), Item 19 at pp 1 – 2.

⁴¹⁷ Id. at p 8.

⁴¹⁸ Id.

⁴¹⁹ Executive Summary Record Bundle 12(1), Item 19 at pp 2.

- [154] Mr Faull also suggested that nationally set targets that are not tailored to each police station might be “particularly unhelpful”,⁴²⁰ because targets should be responsive to what a particular community wants rather than nationally set goals. Mr Faull also told the Commission that the current system ranking stations’ performance against one another “appears arbitrary and without any management value”.⁴²¹ He suggested that stations should be ranked only against similar stations.
- [155] He also told the Commission that it was important for SAPS to make its data available to the public where possible. He said that a transparent approach to SAPS crime statistics, and other data, “would forge stronger relations with police and help us to understand crime challenges better”,⁴²² but he also felt that it would not necessarily be productive to make the results of station performance evaluations public.⁴²³

(ii) *Mr Andrew McLean*

- [156] Mr McLean is an independent consultant on security and justice with 19 years’ experience in policing, governance, justice and security issues. He has worked as a consultant in the field of policing and security in a range of countries including Ethiopia, Iraq, Somalia and Jamaica. He provided an expert report to the Commission at its request on community policing and community-police relations.⁴²⁴

(aa) *The concept of “community policing”*

- [157] He told the Commission that community policing has been defined both as a philosophy and as an organisational strategy resting on the belief –

“that citizens understand their own security needs and issues in their locality, have a right to say in how they are policed, and have a responsibility to support efforts to improve community safety.”⁴²⁵

- [158] He added that the origins of the concept of community policing lay in the establishment of the Metropolitan Police in London in 1829 by Sir Robert Peel who described the role of the police force as to maintain a relationship with the public that gives reality to the concept that the police are the public, and the public are the police.⁴²⁶ However, Mr McLean also told the Commission that the concept of “community policing” is ambiguous and used in different ways.⁴²⁷ He said that in democratic societies, “the common understanding is that community policing involves the police working together *with* the community to improve safety ...”.⁴²⁸
- [159] He cited a passage from the Independent Commission on Policing for Northern Ireland as follows –

“The term [community policing] has many definitions and has become somewhat devalued by frequent and indiscriminate use. We have called this ... ‘Policing with the Community’ because we believe this encapsulates better what most people want to see – the police participating in the community and responding to the needs of that community, and the community participating

420 Id.

421 Id. and see Transcript at 7978 – 7979 (16 May 2014).

422 Id. at 7982.

423 Id. at 7990 – 7991.

424 Record Bundle 12(1), Item 25 and Transcript at 7665 – 7712 (15 May 2014).

425 Record Bundle 12(1), Item 25 at para 7.

426 Id. at para 8.

427 Transcript at 7667 (15 May 2014).

428 Id. at para 10.

is its own policing and supporting the police. What we emphatically do not mean by ‘community policing’ is vigilante groups policing neighbourhoods with baseball bats, or, at the other extreme what the Philadelphia police chief, John Timoney, has described as ‘sitting around the trees, holding hands and singing Kumbaya’.⁴²⁹

- [160] Mr McLean told the Commission that there are six principles that underlie community policing: accountability (of the police to the community), empowerment (giving communities a voice in determining policing priorities), human rights (ensuring that the police uphold the rule of law and protect fundamental rights and freedoms), partnership (between the police and the community, as well as between the police and other agencies), problem-solving (recognising that crime prevention means taking steps to address both symptoms and their underlying causes), and service delivery (an ethos of service needs to inform the way policing takes place).⁴³⁰ Mr McLean also told the Commission that some people understand community policing to be merely a tactic or strategy of policing, while others see it more broadly and deeply as an overarching policing philosophy.⁴³¹
- [161] Mr McLean told the Commission that it was his view, given his reading of the documents and testimonial record before the Commission, that community policing had not been effectively implemented in Khayelitsha, both in the broader and narrower sense.⁴³²

(bb) Community Scorecards

- [162] One of the key recommendations that Mr McLean proposed to the Commission was the use of Community Scorecards, a system he piloted in Jamaica.⁴³³ He explained that a Community Scorecard is a qualitative monitoring tool used to evaluate service delivery.⁴³⁴ Community Scorecards are based on panel focus groups, which makes them cheaper to administer than other forms of survey. Panel focus groups also have the additional advantage of fostering dialogue between the police and the community as to how to address safety issues in a neighbourhood. Mr McLean acknowledged that their results are “less robust” than surveys but suggested they could be supplemented by other data.
- [163] The pilot system in Jamaica, he told the Commission, measured both the quality of service delivery by the police and the extent to which the community were empowered in their dealings with the police.⁴³⁵ The service delivery measurement had five indicators: the level of trust the community have in the place, the extent of respect and courtesy displayed by the police, the perceived fairness of the police, the responsiveness of the police and the level of effort by the police to interact with the community.⁴³⁶ The community empowerment measurement had five indicators: the level of community access to information about police activities and services, community willingness to use police services, the ability of the community to complain about inappropriate police behaviour, the level of willingness of the community to complain about inappropriate police behaviour and the level of hope in the community that youth/police relations could improve.⁴³⁷

⁴²⁹ Id. at para 11.

⁴³⁰ Id. at paras 12 – 17. Transcript at 7667 – 7668 (15 May 2014).

⁴³¹ Id. at para 20.

⁴³² Id. at para 41.

⁴³³ Id. at paras 55 – 58 and Annex 1.

⁴³⁴ Id. at para 57.

⁴³⁵ Transcript at 7676 – 7681 (15 May 2014).

⁴³⁶ Record Bundle 12(1), Item 25, Annex 1.

⁴³⁷ Id.

- [164] The process involves regular panel focus meetings in each policing sector (six times yearly, was the model suggested by Mr McLean). He proposed two panels – one of community members (e.g. a CPF member, a school teacher, a religious leader, and a business person) and the other of young people, which should include school-goers, employed and unemployed youth. It is important that there is continuity in the focus groups. The groups should be facilitated by an independent third party who should assist the groups to rate the police's performance over the previous two or three months on the indicators outlined above. Ratings should be on a five-point basis with 1 being very poor and 5 being excellent. Reasons should be given for the ratings which should be noted by the facilitator.⁴³⁸
- [165] The facilitator should then organise a wider group meeting at the police station to be attended by the CPF members, by SAPS and by other members of the community to discuss the results. The benefit of the meeting is that it will provide a check to validate the scores, and provide anonymity to focus group members so that they are not victimised. Mr McLean emphasised that the meeting should not be a finger-pointing exercise but a forward-looking one. The facilitator must then help SAPS and the community to come up with proposed changes for implementation to address the issues that have been identified in the process. At the next meeting (two months later), the implementation of these changes can be reviewed.⁴³⁹
- [166] Mr McLean suggested that a community scorecard process “would provide SAPS high command and the DOCS with an up-to-date barometer of community-police relations in Khayelitsha.”⁴⁴⁰ He suggested that the following steps would need to be followed to implement the Community Scorecard system in Khayelitsha –
- agreement between DOCS, SAPS and the CPFs on a respected third-party facilitator who should have the trust and respect of both the community and SAPS;⁴⁴¹
 - a campaign to raise awareness within the SAPS units in Khayelitsha of the objectives, methods and benefits of the Community Scorecard process – it is important that SAPS members see the process as supportive, not threatening;⁴⁴²
 - notice to the community and SAPS by the way of leaflets;
 - preparatory meetings between the third party and leadership at the three police stations;
 - a small grant to ensure that community projects that are proposed can be implemented.⁴⁴³
- [167] Mr McLean told the Commission that the results of Community Scorecard processes should be fed into performance assessments, both of individual police officers, and of the station.⁴⁴⁴ Mr McLean also commented that if there was an increase in trust between SAPS and the community, reported crime rates would go up.⁴⁴⁵ He agreed that it is therefore perhaps inappropriate for crime rates to be the main item for measuring police performance as it can create a perverse incentive not to record crime.⁴⁴⁶

(cc) Other recommendations

- [168] In addition to the introduction of the Community Scorecard system, Mr McLean made the following recommendations –

⁴³⁸ Id.

⁴³⁹ Id.

⁴⁴⁰ Id.

⁴⁴¹ Transcript at 7683 (15 May 2014).

⁴⁴² Transcript at 7680 (15 May 2014).

⁴⁴³ McLean report Record Bundle 12(1), Item 25, Annex 1.

⁴⁴⁴ Transcript at 7681 – 7682 (15 May 2014).

⁴⁴⁵ Id. at 7693. See also the testimony of Jean Redpath at paras 113 – 118.

⁴⁴⁶ Id. at 7693 – 7694.

- increase capacity of CPFs by further training and ensure representation and involvement of key community members in CPFs;⁴⁴⁷
- consider appointing a neutral convenor to convene CPF meetings working in consultation with the chairperson, to draw up and circulate agendas, to take and circulate minutes, and to assist in co-ordinating CPF projects;⁴⁴⁸
- sustain community involvement – Mr McLean told the Commission that sustaining community involvement is a challenge in many jurisdictions, but he warned that financial rewards risks creating perverse incentives for involvement in the CPFs, so in-kind assistance may retain the spirit of voluntarism better. He also emphasised the important role of civil society organisations;⁴⁴⁹
- a reminder that community policing is more than CPFs – community policing requires an approach to policing which eschews, for example, abusing residents, refusing to take reports of domestic violence and kicking down doors when conducting search processes;⁴⁵⁰
- develop a multi-stakeholder community safety forum and plan engaging both government departments and civil society organisations in its development and implementation. Mr McLean suggested that Khayelitsha should be a test case for developing an effective inter-agency response, which would benefit from the active support of DOCS and the City (as Latin American experience had shown). The plan should impose clear roles on stakeholders and have a budget for implementation and might commence with a memorandum of understanding between the relevant government departments and SAPS as to their involvement and respective roles;⁴⁵¹
- focus on ‘procedural justice’ – like several experts, Mr McLean pointed to criminological evidence from the USA and elsewhere which suggests that civilian satisfaction with police performance is related more to the manner in which police officers treat civilians, than to the outcome of police investigation. The same research suggests that there is a positive correlation between respectful police behaviour and civilians obeying the law.⁴⁵² This research has led to the development of a “procedural justice” model of policing which Mr McLean suggested should be adopted by the SAPS in Khayelitsha.⁴⁵³
- Increase police oversight of Neighbourhood Watch patrols – Mr McLean suggested that the lack of SAPS support to Neighbourhood Watch patrols in Khayelitsha was not benefiting anyone. He proposed that police oversight be increased to limit the risk of human rights abuses by Neighbourhood Watch members and to maximise the efficiency of patrols. He suggested that there be pre-patrol and post-patrol briefings by SAPS members. He suggested there be a review of Neighbourhood Watch practices in South Africa to identify the best practice going forward;⁴⁵⁴
- Mr McLean indicated that it would be important to improve police communication with the community immediately—this should include prompt feedback on cases under investigation, and a public campaign for SAPS to commit to doing a better job, that campaign could include use of radio, and action such as involving members of the public in painting police stations, and perhaps initiating football matches between SAPS members and local youth teams.⁴⁵⁵

447 McLean report Record Bundle 12(1), Item 25 at paras 44 – 47.

448 Id. at paras 48 – 50.

449 Id. at paras 51 – 54. Transcript at 7672 – 7673 (15 May 2014).

450 Id. at para 59.

451 Id. at paras 60 – 61. Transcript at 7709 – 7711 (15 May 2014).

452 Transcript at 7704 (15 May 2014).

453 Record Bundle 12(1), Item 25 at paras 62 – 66. Transcript at 7685 – 7687 (15 May 2014).

454 Id. at para 67. Transcript at 7699 – 7700 (15 May 2014).

455 Id. at paras 68 – 69.

(c) Training

(i) *Dr Mulder van Eyk*⁴⁵⁶

[169] Dr Mulder Van Eyk provided the Commission with an expert report on training in SAPS. Dr Van Eyk had 44 years' service as a member of SAPS and retired in February 2013.⁴⁵⁷ He has had extensive experience in training SAPS members. He told the Commission that the Divisional Commissioner, Human Resource Development in the national office is responsible for the training of SAPS members.⁴⁵⁸ He provided the Commission with the SAPS Training Provisioning Plan for 2013/2014.⁴⁵⁹ He told the Commission that SAPS has ten basic training academies, where entry level recruits are trained, as well as eleven in-service police development academies where courses such as the Resolving of Crime detective course (the ROC) is presented, and finally the two senior management and leadership academies at Paarl and Thabong.⁴⁶⁰ The Paarl College has recently been proclaimed a university.⁴⁶¹

(aa) *Recruitment*

[170] He told the Commission about some of the problems with recruitment, particularly the fact that recruitment is often only approved late in the year, and is then done in a rush, which can impair the quality of candidates selected.⁴⁶² He said that in his experience the literacy and numeracy standards of new recruits are "below average", which is perhaps partly as a result of poor quality school education.⁴⁶³ He told the Commission that recommendations had been made to the National Commissioner that only candidates with good literacy and numeracy results in matriculation should be recruited, but that so far that proposal had not been implemented.⁴⁶⁴ He also said the fact that SAPS does not pay recruits immediately, but only provides them with a small stipend, means that SAPS often does not recruit the best candidates in a cohort.⁴⁶⁵ He also said that because SAPS is willing to let recruits re-take tests up to eight times, very few recruits are not accepted into SAPS.⁴⁶⁶ He said that if recruits were only given two or three opportunities to pass the examinations, it would improve the calibre of SAPS members.⁴⁶⁷ He told the Commission that research has been done amongst trainees at the SAPS training college which suggests that there are "alarming" levels of social problems amongst recruits, some of which arise because of the low stipend.⁴⁶⁸ He said that, in his view, SAPS should abandon the trainee stipend system, and employ young recruits and then train them.⁴⁶⁹

(bb) *Training*

[171] He described to the Commission the key aspects of the training programmes at SAPS, especially in relation to management training.⁴⁷⁰ Level 1 is a five-day management course, which provides basic management skills, then there is a Level 2 management course. The next

456 Record Bundle 12(1), Item 6 and Transcript at 7821 – 7881 (16 May 2014) and Record Bundle 12(1), Items 6 – 6kc.

457 Dr van Eyk report Record Bundle 12(1), Item 6 at para 4.

458 Id. at para 7. See also Transcript at 7869 (16 May 2014).

459 See Annexure B to his statement, Record Bundle 12(1), Item 6(b).

460 See Transcript at 7835 (16 May 2014).

461 See <http://www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=96888>. Last accessed on 17 August 2014.

462 Dr van Eyk report Record Bundle 12(1), Item 6 at para 7.3; Transcript at 7825 (16 May 2014).

463 Id. Transcript at 7838 (16 May 2014).

464 Transcript at 7839 (16 May 2014).

465 Id.

466 Id. at 7827.

467 Id. at 7866.

468 Id. at 7829.

469 Id.

470 Transcript at 7851 – 7852 (15 May 2014).

course, according to Dr Van Eyk, is the most important learning programme in SAPS, it is the Junior Management learning programme.⁴⁷¹ He explained that a problem had arisen some years previously and some SAPS members had been promoted to management positions without completing the course, which, in his view, was one of the reasons for problems such as those faced in Khayelitsha.⁴⁷²

- [172] He also told the Commission that one of the problems with the SAPS training systems is that many of the trainers have very little operational experience and therefore find it difficult to link theory to practice.⁴⁷³ He also said that because training courses are linked to qualifications such as the Basic Police Development Learning Programme or the Resolving of Crime Learning programme, the training materials are often voluminous and lead to “information overload”.⁴⁷⁴ He did however comment that the training materials were of a good quality, although for candidates with poor educational backgrounds, the materials could be challenging.⁴⁷⁵ He told the Commission that training manuals are revised regularly, approximately every three years.⁴⁷⁶ He also mentioned that the fact that all training is conducted in English can be a problem for non first-language English speakers.⁴⁷⁷

(cc) Consideration of Commission documentation relating to Khayelitsha police stations

- [173] Dr Van Eyk had the opportunity to consider some of the documentation placed before the Commission, including inspection reports. He commented that the optimal functioning of SAPS depends on command and control.⁴⁷⁸ He said that in the light of his consideration of the inspection reports, “there is a lack of supervision, command and control”, and that, in his view, “this shortcoming, rather than lack of adequate training, is the main reason for poor service delivery and dissatisfaction of the community.”⁴⁷⁹
- [174] Dr Van Eyk also mentioned that in his view some of the burdens could be removed from detectives by giving uniformed police the task of investigating minor offences and police-initiated offences.⁴⁸⁰ He said that his system had existed in the past and that it “was a very good system”, as not only does it remove a burden from the detective branch, but it also gives uniformed police exposure to detective work, and so helps identify recruits to the detective branch.⁴⁸¹

(d) Information Technology

(i) Mr Horatio Huxham

- [175] Mr Huxham is the Chief Science and Security Officer for a large listed financial institution, who testified in his personal capacity.⁴⁸² He has had more than twenty years’ experience in the design of information technology systems for a range of organisations, particularly in the financial sector. He was provided with a range of information relating to the information technology

471 Id. at 7852 – 7854.

472 Id. at 7853 – 7854.

473 Record Bundle 12(1), Item 6 at para 7.10.2. Transcript at 7840 (15 May 2014).

474 Record Bundle 12(1), Item 6 at para 7.10.3.

475 Transcript at 7842 – 7843 (15 May 2014).

476 Id. at 7873.

477 Id. at 7843.

478 Record Bundle 12(1), Item 6 at para 8.

479 Id. at para 7.

480 Transcript at 7847 (15 May 2014).

481 Id. at 7847 – 7848.

482 Record Bundle 12(1), Item 26; Transcript at 7922 – 7962 (16 May 2014).

systems of SAPS. He identified a further range of information that he would need from SAPS in order to be able to assess the SAPS IT infrastructure.⁴⁸³ In particular, Mr Huxham emphasised that to create a valuable IT solution, it was necessary to understand the whole “ecosystem”, not just the IT aspects of SAPS’ work.⁴⁸⁴ Unfortunately, despite the Commission’s forwarding of this request to SAPS, SAPS did not provide the information requested by Mr Huxham, which related, in the main, to the overall architecture of the SAPS IT system.⁴⁸⁵

- [176] Mr Huxham told the Commission that for any organisation, reliability of service is a precondition for building trust. Although it is a necessary condition for building trust, reliability of service is not a sufficient condition. It needs to be supplemented by other actions depending on the service provided.⁴⁸⁶ He suggested that there are similarities between large financial institutions, such as banks, and a police agency insofar as the need for confidentiality, reliability and trust of an information technology system are concerned.⁴⁸⁷ He told the Commission that, in such environments, an IT system needs to be confidential (confidential information must be protected and disclosed only to authorised users), authentic (information must be accurate), reliable and protected (to ensure integrity).⁴⁸⁸ He also said that an IT system will only be effective if the information that it captures is accurate. He said that there is a saying in the IT industry that reflects this – “garbage in, garbage out”.⁴⁸⁹
- [177] Mr Huxham emphasised to the Commission that any thorough investigation of SAPS’ IT system would take time.⁴⁹⁰ However, he told the Commission that the apparent inefficiencies in the current system would be likely to impact adversely both on efficiency and on the morale of SAPS members.⁴⁹¹ He suggested that if there is no roadmap in place for SAPS, something that could not be ascertained by the Commission, despite request on several occasions, such a roadmap should urgently be developed.⁴⁹²
- [178] Several problems that had been identified by the Commission were explained to Mr Huxham who proposed IT solutions to the problems. The first concerned the difficulty of tracking witnesses in Khayelitsha when they lost or replaced their cell phones. Mr Huxham told the Commission that it should be possible for SAPS to enter into agreements with the mobile network operators (MNOs) to provide SAPS with current mobile phone numbers where SAPS provides the MNOs with the South African identity number of the witness or accused person.⁴⁹³ Mr Huxham told the Commission that MNOs are required to keep key information of subscribers as provided for in RICA,⁴⁹⁴ which includes their identity numbers.
- [179] The second problem described to Mr Huxham was the problem of the loss or misplacement of dockets. Mr Huxham noted that it is undesirable for more than one record of any incident/event to be maintained because it is both time-consuming and introduces the risk of error (he referred to the DRY principle – don’t repeat yourself).⁴⁹⁵ He suggested that an electronic

483 Record Bundle 12(1), Item 26, Annexure A at pp 14 – 16.

484 Transcript at 7953 – 7954 (15 May 2014).

485 Transcript at 7924 (15 May 2014).

486 Record Bundle 12(1), Item 26 at p 6.

487 Transcript at 7926 (15 May 2014).

488 Id.

489 Id.

490 Record Bundle 12(1), Item 26 at p 13.

491 Id.

492 Id.

493 Id. at p 7. Transcript at 7927 – 7933 (15 May 2014).

494 Chapter 7 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 70 of 2002.

495 Record Bundle 12(1), Item 26 at p 8.

case management solution be implemented. Such a system would ensure that all access is authorised and logged, that all updates are recorded in an accessible audit trail, that the system should integrate workflow, document management, calendars and key external systems and support segregation for critical or sensitive information.⁴⁹⁶

- [180] One of the benefits of such a system according to Mr Huxham is that any member of the public who turned up at a police station with his or her Identity Document ought to be able to track the progress of any docket in which her or she was a complainant. If the information was accurately captured in a database, that database should be accessible at all police stations immediately, and a report should therefore be able to be made to a complainant who proves his or her identity by producing an identity document.⁴⁹⁷
- [181] The third problem related to the delays caused by communication difficulties. Mr Huxham suggested that email and mobile devices would significantly improve the ability of SAPS members to communicate with others.⁴⁹⁸ He also told the Commission that there are a variety of secure email platforms that could ensure that such communications remain confidential.⁴⁹⁹ In addition to email and mobile device-based communication, Mr Huxham said that the introduction of a workflow-based IT software system with an inbuilt notification system would reduce the need for communication on many issues related to docket management.⁵⁰⁰
- [182] Mr Huxham also suggested the development of modern annotated Google maps to enable SAPS members to find their way in informal neighbourhoods.⁵⁰¹ He told the Commission that GPS is a great tool for navigation and it should be possible to plot informal neighbourhoods using GPS tools.⁵⁰²

(e) Oversight of detainees in police cells

(i) *Ms Clare Ballard*

- [183] Ms Ballard is a researcher on arrest, detention and sentencing at the Community Law Centre at the University of the Western Cape. She prepared an expert report for the Commission on the issue of independent oversight of police stations particularly in relation to the protection of detainees' rights.⁵⁰³ She also testified.⁵⁰⁴ Her report explained the value of independent oversight, considered foreign and international best practice and looked at oversight structures operating in relation to the Khayelitsha police stations.
- [184] Ms Ballard told the Commission that as police cells operate outside of public view, detainees are at risk of abuse, neglect and poor conditions.⁵⁰⁵ She referred to the a report of the United Nations Special Rapporteur on Torture which stated that –

“experience shows that most acts of torture, especially the most cruel and egregious, happen in the first few hours or days after a person’s arrest, and while he/she is technically under preventive detention.”⁵⁰⁶

496 Id.

497 Transcript at 7937 – 7938 (15 May 2014).

498 Id. at p 11.

499 Id.

500 Id.

501 Transcript at 7952 – 7953 (15 May 2014).

502 Record Bundle 12(1), Item 26 at pp 11 – 12.

503 Record Bundle 12(1), Item 10.

504 Transcript at 7335 – 7383 (14 May 2014).

505 Record Bundle 12(1), Item 10 at para 4. Transcript at 7336 – 7337 (14 May 2014).

506 Id. at para 4. See also Report submitted to the Human Rights Commission by the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Juan A Mendez 2011 A/HRC/16/52/.

Photo 17: Site C Taxi Rank, Khayelitsha



- [185] She pointed to the fact that the ICD Report for 2009/2010 disclosed that seven deaths either in police custody or as a result of police action had occurred at the three Khayelitsha police stations in that year.⁵⁰⁷ The report provided details of one particular death that had resulted from the brutal assault on a community member.⁵⁰⁸ The Commission has been unable to ascertain the number of deaths as a result of police action or in police custody that relate to the three Khayelitsha police stations for more recent years.
- [186] One of the key mechanisms to prevent police abuse of detainees is to ensure regular unannounced visits to police cells by independent agencies or individuals.⁵⁰⁹ Ms Ballard noted that the Office of the Inspecting Judge is mandated by legislation to inspect prisons regularly to report on the treatment of prisoners.⁵¹⁰ She remarked that it was unfortunate that there was no similar system in place in respect of police cells.⁵¹¹
- [187] Ms Ballard set out the key provisions of the United Nations Convention Against Torture that South Africa ratified on 10 December 1998. She told the Commission that Articles 2 and 16 of the Convention require states parties to take legislative, administrative, judicial and other measures to prevent torture and ill-treatment.⁵¹² An Optional Protocol to the Convention, signed but not yet ratified by South Africa, requires states to establish one or more National Preventive Mechanisms (NPM). This visiting body is entitled to conduct unannounced and

507 Record Bundle 12(1), Item 10 at para 5. See also the ICD Annual Report 2009/2010, at p 65.

508 Id. at para 5.

509 Id. at para 6.

510 Section 90(1) of the Correctional Services Act, 111 of 1998.

511 Record Bundle 12(1), Item 10 at para 8 and Transcript at 7342 – 7344 (14 May 2014). See also the definition of “correctional centre” and “remand detention facility” in section 1 of the Correctional Services Act, 111 of 1998, which does not appear to extend, at least for the purpose of the Judicial Inspectorate, to police cells.

512 Id. at para 11. Transcript at 7337 (14 May 2014).

unrestricted visits to all places where people are deprived of their liberty and to have private interviews with detainees.⁵¹³

- [188] Ms Ballard also told the Commission about the European Committee for the Prevention of Torture which was established in terms of the European Convention against Torture.⁵¹⁴ All states parties are required to permit routine inspections of places of detention. The Committee is permitted to make unannounced and unrestricted visits.⁵¹⁵ Ms Ballard emphasised the importance of unannounced visits as it reduces the opportunity for tampering, and provides a “snapshot” of conditions of detention at a particular time.⁵¹⁶ Ms Ballard also described the role of lay inspectors provided for in the Police Reform Act, 2002, in the United Kingdom.⁵¹⁷
- [189] Ms Ballard noted that the SAPS internal inspections under the Provincial Inspectorate, and internal audits by the national Audit Committee, did not meaningfully monitor the condition of detainees in police cells.⁵¹⁸ She also questioned the independence of CPFs, given their institutional reliance on SAPS and suggested that accordingly they would not be an appropriate independent institution for oversight of detainees.⁵¹⁹
- [190] In her view, the Civilian Secretariat is well-placed to perform important oversight functions,⁵²⁰ but she noticed that the Civilian Secretariat Act does not provide for regular inspections of police cells.⁵²¹ She proposed that the Act be amended to provide for regular inspections of police cells, as well as the adoption of a set of directives to provide for standards of detention based on international and constitutional norms. She said that reports of inspections of police cells should be tabled in both the national and provincial legislatures.⁵²² She also recommended the introduction of a system of lay visitors, where the lay visitors should be people with experience and knowledge of police and prisons.⁵²³
- [191] Ms Ballard also recommended that DOCS conduct regular and unannounced inspections of police cells and their reports be tabled in the provincial legislature quarterly.⁵²⁴ She recommended that DOCS inspection teams be accompanied by members of the community.⁵²⁵ She also recommended that the jurisdiction of the Ombudsman, provided for in section 16 of the Western Cape Community Safety Act, be extended to encompass those complaints not contemplated in section 28 of the IPID Act.⁵²⁶

513 See Record Bundle 12(1), Item 10, at para 14. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (2002), entered into force in 2006. South Africa signed the Optional Protocol in 2006 but has not ratified it yet.

514 Id. at paras 18 – 21.

515 Id. at para 19 – 20.

516 Transcript at 7339, 7347, 7348 – 7349 and 7363 (14 May 2014).

517 Record Bundle 12(1), Item 10 at paras 22 – 24.

518 Id. at paras 32 – 35.

519 Id. at paras 36 – 43. Transcript at 7340 – 7341 (14 May 2014).

520 Id. at para 45.

521 Id. at para 47. Transcript at 7345 and 7382 (14 May 2014).

522 Record Bundle 12(1), Item 10 at para 49.

523 Transcript at 7339 – 7341 (14 May 2014).

524 Record Bundle 12(1), Item 10 at para 53.

525 Id. at para 54.

526 Id. at para 57.

D. SPECIFIC CHALLENGES

(a) Domestic Violence and Sexual Offences

(i) *Ms Lisa Vetten*

[192] Ms Vetten testified in the First Phase of the Commission's proceedings on behalf of the Women's Legal Centre,⁵²⁷ as well as in the Second Phase.⁵²⁸ Ms Vetten stated that in her view there are inefficiencies in the manner in which domestic violence is dealt with at the three Khayelitsha police stations, as well as serious inefficiencies in the FCS Unit in Khayelitsha.⁵²⁹ She said that the reasons for the inefficiencies are "multiple, and inter-linked and act to buttress and consolidate one another."⁵³⁰ She stated that there are too few detectives in the FCS Unit to manage the number of sexual offences,⁵³¹ that there is insufficient oversight of criminal investigations,⁵³² insufficient training of SAPS members in the Domestic Violence Act,⁵³³ that there is a failure of external oversight,⁵³⁴ and that many of the FCS Unit detectives appear to be suffering from "burn-out" and vicarious trauma.⁵³⁵

[193] Ms Vetten made specific recommendations in relation to domestic violence, including –

- that the Domestic Violence Act audit tool designed by the CSP be adapted to check correlation between the SAPS 508(a) forms and the SAPS 508(b) register, to monitor the quality of inspection of the register, as well as the extent that the two do not correlate;⁵³⁶
- that oversight be strengthened by requiring the reporting of the number of disciplinary proceedings instituted at the individual stations to DOCS, which should DOCS should then check against the revised Domestic Violence Act audit tool, oversight should include unannounced visits;⁵³⁷
- SAPS and DOCS should explore the development of a policy to deal with non-compliance with the Domestic Violence Act;⁵³⁸
- DOCS should report on its police station oversight visits to the provincial legislature, which, in turn, should require the Provincial Commissioner to account for any recurring serious inefficiencies or problems.⁵³⁹
- Given that an avenue of complaint for members of the public was lost when the oversight of policing of the Domestic Violence Act was transferred from the ICD to the CSP, and she suggested that DOCS institute and advertise a Domestic Violence Act complaints mechanism at provincial level;⁵⁴⁰

527 See her reports in the Phase One, in Record Bundle 7(7), Item 5, and Record Bundle 8(6), Item 5(a), as well as her testimony in first phase, Transcript at 2471 – 2526 (11 February 2014).

528 Record Bundle 12(1), Item 5; Transcript at 7383 – 7434 (14 May 2014).

529 Record Bundle 12(1), Item 5 at para 2.2.

530 Id. at para 2.4.

531 Id. at para 2.5.

532 Id. at para 2.6

533 Id. at para 2.7.

534 Id. at para 2.8.

535 Id. at para 2.9.

536 Id. at para 3.2. Transcript at 7394 – 7396 (14 May 2014).

537 Id. at para 3.3 and see Transcript at 7397 – 7398 (14 May 2014).

538 Id. at para 3.4.

539 Id. at para 3.6.

540 Id. at para 3.7.

- That a skill audit of all three police stations be conducted in relation to Domestic Violence Act training and training programmes be put in place to the extent necessary,⁵⁴¹ which should also be attended by CPF members;⁵⁴²
- That SAPS, DOCS as well as the CPFs in Khayelitsha and civil society organisations in Khayelitsha develop a strategy for policing domestic violence in Khayelitsha that is respectful of the decisions of some partners to choose not to lay criminal charges;⁵⁴³
- That DOCS and SAPS develop a policy around the victim-friendly rooms at police stations that will identify the skills and experience necessary for those who work in the rooms, as well as criteria for selection and training, and possible reimbursement.⁵⁴⁴

[194] Ms Vetten made specific recommendations in respect of the policing of sexual violence, including –

- The FCS Unit needs to be allocated additional experienced detectives as a matter of priority;⁵⁴⁵
- All FCS Unit detectives should complete depression, trauma and burnout inventories, and detectives who are identified as suffering from depression, trauma or burnout should be provided with appropriate treatment and care;⁵⁴⁶
- Training for detectives on the self-identification and management of trauma and burnout;⁵⁴⁷
- Management of the FCS Unit needs to be closely monitored to ensure that it improves considerably;⁵⁴⁸
- Attendance by the Khayelitsha FCS Unit at the co-ordination meetings for sexual violence offences be monitored closely.⁵⁴⁹

[195] Ms Vetten suggested that any recommendation that is adopted should be monitored within a year of implementation to determine its success.⁵⁵⁰ She also testified about the problems relating to the service of protection orders.⁵⁵¹ According to Ms Vetten, although the legislation contemplates that where a woman cannot afford to pay for the sheriff to serve the protection order,⁵⁵² the costs will be covered by the state, a means test to determine when the costs will be borne by the state has never been developed. She told the Commission that some Magistrates' Courts had requested a budget to cover sheriffs' fees for service of protection orders, and accordingly SAPS is often tasked with service.⁵⁵³

[196] Ms Vetten agreed that the mandate of the FCS Unit includes some aspects of domestic violence, including the breaches of protection orders,⁵⁵⁴ but that it appears as if the FCS Unit does not accept its mandate in that respect.⁵⁵⁵ She said this may be a “self-preservation mechanism” given the burden borne by the Khayelitsha FCS Unit.⁵⁵⁶

541 Id. at para 3.8. Transcript at 7387 (14 May 2014).

542 Id. at para 3.9.

543 Id. at para 3.10. Transcript at 7416 – 7417 (14 May 2014).

544 Id. at para 3.12. Transcript at 7404 and 7425 (14 May 2014).

545 Id. at para 4.1.

546 Id. at para 4.2. Transcript at 7388, 7398 – 7399; and 7412 – 7413 (14 May 2014).

547 Id. at para 4.3.

548 Id. at para 4.4. Transcript at 7391 – 7392 (14 May 2014).

549 Id. at para 4.6.

550 Transcript at 7406 (14 May 2014). Record Bundle 12(1), Item 5 at para 4.7.

551 Transcript at 7418 – 7419 (14 May 2014).

552 Record Bundle 13(1.3), File A, Item 27.

553 Transcript at 7418 – 7419 (14 May 2014)

554 Id. at 7422.

555 Id. at 7421.

556 Id.

[197] One of the performance measurements for the heads of FCS Units is the reduction of domestic violence. However, given that domestic violence is widely considered to be unreported, Ms Vetten considered this to be a “perverse incentive”, one that is exacerbated by the fact that performance bonuses are attached to the reduction in reported domestic violence.⁵⁵⁷ She suggested that the approach that requires SAPS to achieve a 4 – 7 % reduction in rape and domestic violence annually should be abandoned, because it is inappropriate given what is known about under-reporting. A different approach to performance measurement should be introduced, that focuses on the quality of investigation and treatment of complainants.⁵⁵⁸

(ii) *Professor Lillian Artz*⁵⁵⁹

[198] Professor Artz referred to her evidence in the first phase of the Commission’s proceedings. She noted that research indicates that the SAPS is not complying with the following aspects of its own National Instruction 7/1999⁵⁶⁰ –

- Section 12(3) provides that SAPS members must “fully document their responses to every incident of domestic violence” on SAPS 508(a) forms “regardless of whether a criminal offence has been committed;”⁵⁶¹
- Section 12(3) also requires that a file with reference 39/4/2/3m (where m stands for the month and year, e.g. 39/4/2/3 (12/2012)) must be opened every month and all SAPS 508(a) forms must be filed in it;
- Section 12(6) provides that a file should be kept with a copy of every protection order and warrant of arrest, under reference 39/4/3/1;⁵⁶²
- Section 4(3) of the National Instruction states that whenever a call is received at a CSC of a domestic violence incident, a police vehicle must be dispatched “without unreasonable delay” to attend to the matter; and
- Section 10(1) provides that a complainant must be informed of her or his rights by SAPS members and “where reasonably possible to do so”, the SAPS member must provide complainant with a copy of the Notice provided in the Domestic Violence Act (Form 1 to the Regulations).⁵⁶³

[199] Professor Artz made a series of recommendations, including –

- That the Domestic Violence Act be amended to remove giving SAPS members unnecessary areas of discretion that have the effect of undermining the objects of the Act,⁵⁶⁴ and also to provide clarity as to the manner in which protection orders should be served;⁵⁶⁵
- That SAPS produce a checklist that should be attached to the National Instructions that should indicate what should be done in respect of every reported incident of domestic violence;⁵⁶⁶
- That Khayelitsha SAPS members should attend Domestic Violence Act training courses, which should include training on the Domestic Violence Act, the National Instruction,

557 Id. at 7423.

558 Id. at 7424.

559 Record Bundle 12(1), Item 16 and Transcript at 7434 – 7464 (14 May 2014). Professor Artz also testified in the Phase One of the Commission’s proceedings. Professor Artz report Record Bundle 1(5), File E, Item 40; and Transcript at 2120 – 2190 (7 February 2014).

560 National Instruction 7/1999 is at Record Bundle 13(1), File 1.3, Item 29.

561 Professor Artz report Record Bundle 12(1), Item 16, p 3.

562 Section 12(6) of National Instruction 7/1999, and Record Bundle 12(1), Item 16, p 3.

563 Regulations in terms of Government Gazette No: 20601 (5 November 1999).

564 Record Bundle 12(1), Item 16, p 5.

565 Id. at p 8.

566 Id. at p 5 and p 8.

investigation skills in respect of domestic violence, service of protection orders and the treatment of vulnerable complainants;⁵⁶⁷

- The accurate recording of all reported cases of domestic violence as part of our national crime statistics, and as part of crime statistics in Khayelitsha, and that in the meantime all dockets involving cases of domestic violence, be clearly marked on the cover as domestic violence cases;⁵⁶⁸
- That SAPS undertake a process of determining what budgets should be allocated to ensure that SAPS is fully resourced to deal properly with Domestic Violence cases;⁵⁶⁹
- The amendment of the provisions of the Firearms Control Act, to regulate more carefully the seizure of firearms from persons served with protection orders in Domestic Violence Act cases;⁵⁷⁰
- That SAPS introduce procedures to remove service firearms from its members who have been served with protection orders or been involved in incidents of domestic violence;⁵⁷¹
- That all criminal dockets contain information about any Domestic Violence Act or Child Care Act interventions, including copies of any 508(a) forms,⁵⁷² as well as any previous history of domestic violence incidents, which should be taken in the initial A1 statement, or by a supplementary statement if necessary;⁵⁷³
- That SAPS take steps to ensure that there is full compliance with the recording requirements of National Instruction 7/1999;⁵⁷⁴
- That SAPS should amend the SAPS 508(a) form to require it to be completed even where the complainant has already reported the incident to the Magistrates' Court,⁵⁷⁵ and to include a place for the signature of the complainant, as well as a section confirming the at the complainant has been informed of her or his rights; a section to indicate whether the accused in is in possession of a firearm and the complainant requests its removal; and whether the complainant is a person with a disability;⁵⁷⁶ and
- That SAPS introduce a practice whereby Form 1 to the Domestic Violence Act is annexed to the copy of the 508(a) form provided to the complainant.⁵⁷⁷

[200] Professor Artz also indicated that research on the policing of sexual violence would be greatly facilitated if researchers could be afforded access by SAPS to closed dockets.⁵⁷⁸ She said that she thought researchers could assist the police by providing research based on the tracking of cases, assessments of the quality of investigations and the monitoring of victim support services.⁵⁷⁹ She said that the intention of most researchers doing work on sexual violence is to improve the system.⁵⁸⁰ She also suggested that non-governmental organisations working in the area of domestic violence in Khayelitsha should receive budgetary support from the state, as they are often providing resources that should be provided by the state.⁵⁸¹

567 Id.

568 Id. at p 6 and p 11.

569 Id. at p 7.

570 Id. at p 10.

571 Id.

572 Id. at p 14.

573 Id. at p 11.

574 Id. at p 12.

575 Id. at p 13.

576 Id. at p 14.

577 Id.

578 Transcript at 7437 – 7438 (14 May 2014).

579 Id. at 7438.

580 Id.

581 Id. at 7457 – 7458.

- [201] Professor Artz agreed that a study on what is happening in relation to the policing of domestic violence in Khayelitsha could be of “tremendous value.”⁵⁸² The aim would be to have a five-year research project in terms of which indicators and methods would be agreed with SAPS, and performance would be monitored over the period. She thought it would be possible to develop agreement with SAPS on issues around confidentiality and access to information.⁵⁸³

(b) Gangs

(i) *Professor Catherine Ward*

- [202] Professor Ward is an Associate Professor in the Department of Psychology and the Child Guidance Clinic at the University of Cape Town. She provided a report to the Commission entitled “Evidence-based Approaches to dealing with Gangs.”⁵⁸⁴ She told the Commission that the word “gang” is used to describe a wide spectrum of social groups. From what Pinnock referred to as “corner kids”, groups of boys who “hang out” together on street corners, to groups of adults that have links to organised crime and the drug trade.⁵⁸⁵ Professor Ward told the Commission that gangs in South Africa “have been created in a particular crucible of economic disenfranchisement” and there is little hope that prevention will “tamper with their existence.”⁵⁸⁶
- [203] She testified that gangs are primarily a phenomenon of economically deprived areas, where gangs offer young men, in particular, “a space of belonging and protection.”⁵⁸⁷ She told the Commission that in her research she had conducted interviews with young people from Cape Town, including Khayelitsha, and that, without exception, they had told her that people join gangs because “we have nothing to do after school.”⁵⁸⁸ She added that sometimes young people join gangs simply for protection.⁵⁸⁹ In areas that are not economically deprived, schools, families and neighbourhoods offer young people opportunities that provide them with a sense of belonging.⁵⁹⁰ The implication of the research is that reducing the level of economic deprivation will reduce the prevalence of gangs, but there are other prevention mechanisms that can also be employed. Professor Ward agreed with Dr Harrison⁵⁹¹ that toxic stress has harmful effects on the developing brain.⁵⁹²
- [204] Professor Ward explained that there are four approaches to dealing with gangs: prevention (programmes to prevent people from becoming attached to gangs); disengagement (programmes to assist people to withdraw from gangs); suppression (programmes based on law enforcement mechanisms to keep gang activities to a minimum) and the fourth is a combination of all three types of programme.⁵⁹³ She described these four types of programme in some detail, and gave examples of each.

582 Id. at 7461.

583 Id. at 7462.

584 Record Bundle 12(1), Item 8. Transcript at 7213 – 7235 (13 May 2014).

585 Record Bundle 12(1), Item 8 at para 1, see also Pinnock, D. (1980). *The Brotherhoods: Street, Gangs and state control in Cape Town*. Cape Town: Maskew Miller.

586 Record Bundle 12(1), Item 8 at para 3.

587 Id. at para 2.1.

588 Transcript at 7226 (13 May 2014).

589 Id. at 7227.

590 Record Bundle 12(1), Item 8 at para 2.1.

591 Chapter 8 at para 18.

592 Record Bundle 12(1), Item 8 at para 2.1.

593 Id. at para 2.

- [205] She pointed to a range of preventive programmes that may have a positive impact on preventing gang membership, ranging from nurse home visitation programmes, to family social skills programmes and school-based programmes, all of which have been shown to have a positive impact on reducing the incidence of gang membership.⁵⁹⁴
- [206] She also described three types of disengagement programme: “detached worker” programmes which provide gang members with educational and recreational opportunities and assist them to find employment; criminal justice programmes which help young offenders to re-integrate; and opportunity provision programmes which often aim at transforming gangs in to community organisations.⁵⁹⁵
- [207] The third type of programme to address gangs does not work with individuals but simply seeks to suppress gang activity. They are typically based in the criminal justice system, and include policing anti-gang programmes, and even legislative programmes to impose punishment for gang membership.⁵⁹⁶
- [208] Mixed-model programmes emphasise tailoring a mix of interventions aimed at prevention, disengagement and suppression based on the specific circumstances of a particular community.⁵⁹⁷ Professor Ward told the Commission that mixed models –
- “... hold out hope, both for increasing community safety and for reducing young people’s involvement in gangs. Key to their successful implementation, however, is efficient co-operation between the agencies involved, implementing a co-ordinated community-wide plan that has grassroots involvement ... in obtaining genuine community participation. One of the key barriers to inter-agency co-operation is that individual agencies have their own budgets, goals and cultures. Future ‘mixed-model’ projects therefore need to find ways of dealing with the issues of co-operation and co-ordination.”⁵⁹⁸
- [209] In her testimony, Professor Ward emphasised that once SAPS has identified a young person as an active gang member, then it is unlikely that counselling interventions by parents or members of CPFs will be sufficient, professional assistance will almost certainly be required.⁵⁹⁹
- [210] Professor Ward testified that while there is a role for policing in relation to youth gangs, such as high visibility policing and hot spot policing, it is a limited role, and it is important that SAPS “are surrounded by an array of social services”.⁶⁰⁰ She also said it would be helpful to know from crime intelligence whether the youth gangs in Khayelitsha had links to the deeply rooted Cape Flats gangs.⁶⁰¹ Professor Ward agreed that a multi-disciplinary task team would be “absolutely crucial” in addressing the youth gang issues in Khayelitsha,⁶⁰² and that it would be important for members of the community and civil-society organisations to be involved in such task team.⁶⁰³

594 Id. at para 2.1.

595 Id. at para 2.2.

596 Id. at para 2.3.

597 Id. at para 2.4.

598 Id.

599 Id.

600 Transcript at 7217 and 7222 (13 May 2014).

601 Id. at 7224 – 7225.

602 Id. at 7223 – 7224.

603 Id. at 7229 – 7230.

(c) Vigilantism

(i) Professor Gobodo-Madikizela

- [211] Professor Gobodo-Madikizela is a clinical psychologist and a Senior Research Professor at the University of the Free State. She provided the Commission with an expert report at the request of the complainant organisations.⁶⁰⁴ Her doctoral thesis was based on the psychology that underpinned “necklace” murders during the struggle against apartheid.⁶⁰⁵
- [212] Her report sought to provide a deeper understanding of the psychological and institutional processes associated with vigilantism in Khayelitsha.⁶⁰⁶ In her view, failures of policing problems with policing cannot fully account for the culture of vigilantism that has developed in Khayelitsha.⁶⁰⁷ It is necessary to understand the broader social and political context.⁶⁰⁸ Professor Gobodo-Madikizela’s report was based on three sources of information: the “Bundu Court” report, referred to in Chapter 10,⁶⁰⁹ interviews she conducted at the Social Justice Coalition office in May 2014, as well as one telephonic interview, and selected transcripts from the Commission’s hearings.⁶¹⁰
- [213] Professor Gobodo-Madikizela provided the following excerpt from one of her interviews –
- “Let me give you an example of what happened in my neighbourhood just this morning at 5.00am! We heard a woman screaming “i-Bag yam? I-Bag yam? Na’isela” (My bag! My Bag! Here’s a thief!!) In no time, I mean, in *no* time, everybody was coming out, slamming doors behind them. I mean, it was like a *split second* – and they were all dressed in their clothes, not pyjamas. It was as if they were waiting, ready all night for exactly this kind of thing to happen. Then they descended upon this man – they came with all sorts of weapons to assault him. Rocks on the street were thrown at him. In no time, the man was gone – *in no time* – they had finished him. Think about it, in a matter of a few minutes, perhaps seconds, a man is dead, killed by a group of people in my community for snatching a woman’s handbag on her way to work. Glancing at his body lying on the side of the street as I went to work, I saw that a large concrete slab – you know those slabs used to divide freeway roads. A concrete slab had been thrown on the back of his head to finish him off.”⁶¹¹
- [214] Professor Gobodo-Madikizela said that this sort of incident shared features of other acts of crowd violence: the fact there is a trigger event that mobilises the crowd, the crowd acts spontaneously, not in a planned fashion, the violence seems irrational and disproportionate, there is no evidence of a leader, the harm is inflicted by a group of individuals, not by one or two, and very rarely does it happen that anyone tries to stop the escalating crowd action.⁶¹² She acknowledged that other forms of vigilante violence may also happen in Khayelitsha, with a more planned aspect.⁶¹³

604 Record Bundle 12(1), Item 24. Transcript at 7772 – 7820 (15 May 2014). See her PowerPoint presentation at Record Bundle 12(1), Item 104.

605 Record Bundle 12(1), Item 24, p 1.

606 Id. at p 2.

607 Id.

608 Id.

609 Id. see Chapter 10 at paras 67, 68 and 75 – 89. Record Bundle 8(4.1), Item 3.23.

610 Record Bundle 12(1), Item 24, p 3.

611 Id. at p 4. Transcript at 7775 – 7776 (15 May 2014).

612 Record Bundle 12(1), Item 24, p 4.

613 Transcript at 7777 (15 May 2014).

- [215] According to Professor Gobodo-Madikizela one of the aspects of vigilante action in Khayelitsha is its “highly charged” nature and the rapidity with which it takes place. There is not build-up.⁶¹⁴ Professor Gobodo-Madikizela asked the questions: how can we understand this form of crowd violence? Why does it persist?
- [216] Professor Gobodo-Madikizela told the Commission that these were questions she has asked Khayelitsha residents. Their responses included –
- “Everyone” in Khayelitsha has experienced crime – [and] police never take action, and criminals go free;
 - People take the law into their own hands ... to sleep better at night ...;
 - Although some people do not agree with the killings, ‘most people’ understand the frustration that leads to vigilante killings;
 - Police are useless. “Our faith in them is gone”.
 - People want things to change, and they are taking matters into their own hands because the police are not helping to control crime.⁶¹⁵
- [217] One of the young people interviewed by Professor Gobodo-Madikizela put it like this –
- “We struggle to find jobs, and when we do, we work so hard to own the little things that give us a sense of dignity, and then someone breaks into you house and steals it. It is like someone has stolen your dignity.”⁶¹⁶
- [218] Professor Gobodo-Madikizela told the Commission that the historian, Edward Thompson, argued that acts of crowd violence that is supported by the community should not be seen as ‘senseless’, underlying it, there will be a ‘legitimising notion’.⁶¹⁷ She told the Commission that there are two main psychological perspectives on crowd violence: the theory of de-individuation, and the social identity theory.⁶¹⁸ The former explains crowd violence as a process whereby the individuals who make up the crowd lose their sense of individuality, which diminishes their capacity for reflection and the impact of social controls.⁶¹⁹ The latter suggests that far from losing identity, crowds who act violently, gain a new identity that is provided by the crowd. The new identity is based on the purpose of the crowd action and violence emerges as a norm of the crowd.⁶²⁰
- [219] Professor Gobodo-Madikizela considered both theories to have some relevance to understanding vigilante violence in Khayelitsha.⁶²¹ She acknowledged that at first blush, the de-individuation theory appears to provide a particularly helpful theoretical explanation for vigilante violence, but she suggested that such an approach shifts the focus away from the legitimate grievances of a community. The social identity theory suggests that crowds act together for a shared social purpose, which may be “a deep need for social justice”.⁶²² On this approach, the acts of a crowd who commit vigilante violence are better understood as a political statement, rather than the actions of a senseless crowd.
- [220] Nevertheless, according to Professor Gobodo-Madikizela, the social identity theory does not answer some crucial questions concerning the individual dimensions of group behaviour. She

⁶¹⁴ Record Bundle 12(1), Item 24, p 4.

⁶¹⁵ Id. at para 6.

⁶¹⁶ Id.

⁶¹⁷ Id. at para 7. See Thompson, E. P. (2001). *The Essential EP Thompson*, New York, p 68.

⁶¹⁸ Record Bundle 12(1), Item 24, pp 7 – 8.

⁶¹⁹ Id. at p 7. Transcript at 7779 (15 May 2014).

⁶²⁰ Record Bundle 12(1), Item 24, p 8. Transcript at 7779 – 7780 (15 May 2014).

⁶²¹ Transcript at 7780 (15 May 2014).

⁶²² Record Bundle 12(1), Item 24, pp 8 – 9.

said that her research had made clear that even where a community has legitimate grievances that might lead to vigilante action, there are still individuals who choose not to participate in acts of vigilantism. The choice to participate or not is often related to personal circumstances not related to the shared social goals of the community.⁶²³

- [221] In her testimony, Professor Gobodo-Madikizela also referred to studies of humiliation, which she said are helpful as well to our understanding of vigilante violence in Khayelitsha.⁶²⁴ She said that we are learning that severe trauma disrupts the brain, and it disrupts the way in which people relate to others.⁶²⁵ She said that scholars who link humiliation to trauma suggest that the experience of trauma is humiliating, and that when it is shared by a group or community, the identity of the group is affected by the trauma.⁶²⁶ One of the consequences of shared trauma can be the “acting out” of trauma.⁶²⁷
- [222] Related to the effects of shared community trauma, according to Professor Gobodo-Madikizela, is the “trans-generational transmission of trauma and violence”.⁶²⁸ She quoted from one of her interviewees –

“I was brought up by my grandmother, she was gentle and she never beat me. As a young boy, she taught me strong values, respect and compassion for others. But moving here and growing up in Khayelitsha changed me. How could it not change me, death was no longer something in a coffin at a funeral. It was right here on my doorstep when I went to school, and later when I was an adult, the smell of death was everywhere, not so much because of dead bodies, but because you see people being killed in the most violent manner.”⁶²⁹

- [223] Professor Gobodo-Madikizela suggested that in Khayelitsha –

“the culture of violence has been transmitted from the past, and continues to transform identities and to play out both as cultural memory and collectively shared traumatic memory. ... [t]he feeling of exclusion, of being discarded members of society evokes the ‘memory’ of repression under *apartheid* – little or nothing has changed. The clarion call made whenever a thief is caught in action – *Nal’isela* (here is a thief!) – is reminiscent of the days when fingering a person as a police informer ... gave a community the mandate to ‘necklace’ the culprit...”⁶³⁰

- [224] Professor Gobodo-Madikizela told the Commission about how, during her doctoral research in the Eastern Cape, she encountered young children playing a game based on “necklacing”, despite the fact that they were too young (under 10 years old) to have witnessed a necklacing. The children said to one another in isiXhosa “let’s play the necklace game”.⁶³¹
- [225] Professor Gobodo-Madikizela also suggested that the victim of crowd violence is “stripped of all the qualities that make him human”.⁶³² She also suggested that the concept of “anomie” is

623 Id. at pp 9 – 10.

624 Transcript at 7781 – 7782 (15 May 2014).

625 Id. at 7782 – 7783.

626 Id. at 7785 – 7786 and at 7788 – 7789.

627 Id. at 7786.

628 Record Bundle 12(1), Item 24, p 10.

629 Id.

630 Id. at p 11.

631 Transcript at 7786 – 7787 (15 May 2014).

632 Record Bundle 12(1), Item 24 at p 12.

helpful in understanding the pattern of crowd behaviour in Khayelitsha.⁶³³ “Anomie” refers to a breakdown in social and cultural norms – “the erosion of moral codes that often support a society’s stability and moral framework means that no common principles or values govern behaviour.”⁶³⁴ A factor that fosters a sense of anomie is the failure to enforce rules.

[226] According to Professor Gobodo-Madikizela, the lack of enforcement of rules lay at the heart of much of the testimony before the Commission. In the light of the above, she identified the following factors as contribution to the phenomenon of vigilante violence in Khayelitsha –

- People take the law into their own hands because they feel they cannot rely on a weak and ineffective police service;
- Community members view vigilante action as self-defence;
- The security of Black people living in townships remains unprotected, unlike for people living in formerly white suburbs;
- Informal neighbourhoods are in a state of constant flux, with very few supportive social networks;
- The size and density of informal settlements creates a sense of anonymity;
- The failure to attend to people’s needs contributes to anonymity and dehumanisation;⁶³⁵ and
- Young and old become socialised into a culture of violence.

[227] Professor Gobodo-Madikizela stated that in South Africa politicians pay less attention to the plight of the poor, until elections, which contributes to the process of ‘dehumanising’ people.⁶³⁶ She suggested that opposition of the former national Minister of Police to this Commission exemplified the lack of recognition for and acknowledgement of the grievances of the poor.⁶³⁷

[228] Professor Gobodo-Madikizela recommended that the problem of crowd violence (and other forms of violence) in Khayelitsha be seen as a pandemic and a public health issue; that community policing should not be viewed as an inferior category of policing, but built into the training of all members of SAPS; that young people from Khayelitsha should be recruited and trained as members of SAPS; that there should be community dialogue programmes to foster a sense of community pride in Khayelitsha and political leaders should refrain “from approaching problems in Khayelitsha as a site for political point-scoring and consider that it is people’s lives and the younger generation’s future that is at stake.”⁶³⁸ She told the Commission that we should revive the idea that “a policeman is the safest person you can run to within the community”.⁶³⁹

(ii) *Dr Gail Super*

[229] Dr Super provided the Commission with an expert report on vigilantism on behalf of the complainant organisations.⁶⁴⁰ Dr Super has a Ph.D. from New York University and is a post-doctoral researcher in the Centre for Criminology at the University of Cape Town. She told the Commission that there are different explanations for vigilantism. One suggests that vigilantism occurs because of police inefficiency and a weak criminal justice system.⁶⁴¹ She

633 Id. at pp 13 – 14. Transcript at 7796 – 7797 (15 May 2014).

634 Record Bundle 12(1), Item 24, at p 13.

635 Transcript at 7794 – 7795 (15 May 2014).

636 Record Bundle 12(1), Item 24 at p 14 – 15.

637 Id. at p 14. Transcript at 7814 (15 May 2014).

638 Record Bundle 12(1), Item 24 at p 15.

639 Transcript at 7802 (15 May 2014).

640 Record Bundle 12(1), Item 18 and Transcript at 7885 – 7922 (16 May 2014).

641 Record Bundle 12(1), Item 18 at para 3.

stated, however, that this understanding of vigilantism was “partial” and “dangerous” in that it narrows a broader understanding of the factors that give rise to such practices.⁶⁴² She also said that she did not think that increased prosecution rates and higher rates of imprisonment would solve “crime problems”.⁶⁴³

- [230] Drawing on academic research, she suggested that it would be better to speak of “vigilante practices” rather than “vigilantism” because the range of “vigilante practices” stretched from very informal (spontaneous) to formal (an extra-legal system).⁶⁴⁴ She also told the Commission that there is a “blurring” between the notion of a “mob” and the action of individuals. She also suggested that the term “community” may sometimes be used to distance the actions of “others” from any individual.⁶⁴⁵
- [231] Dr Super also suggested that the police are often “complicit” in vigilante practices, or what she described as “community-based ordering processes”.⁶⁴⁶ In response to questions put to her, Dr Super agreed that SAPS, and other government agencies, had to respond to vigilante practices with the clear message, that such practices, to the extent that they involved criminal activity, were unlawful.⁶⁴⁷

(d) Corruption

(i) Dr Liza Grobler

- [232] Dr Grobler has a doctorate in criminology and prepared an expert report for the Commission on the topic of police corruption and criminality at the request of the complainant organisations.⁶⁴⁸ She has recently written a book on corruption in SAPS.⁶⁴⁹
- [233] Dr Grobler told the Commission that corruption and criminality are problems that are endemic to police agencies.⁶⁵⁰ She said that her research had shown that both corruption and criminality are “extensive” in SAPS.⁶⁵¹ She explained to the Commission that there are three inter-related forms of police deviance: misconduct, that is, the breaking of departmental rules and procedures; corruption, which by and large involves bribery, doing or not doing something in exchange for money or benefits; and police crime which includes the use of excessive violence, being involved in drug-dealing, theft, burglary and sexual harassment.⁶⁵² She also referred to a categorisation of corrupt police into grass-eaters (those corrupt officers who take advantage of situations that have the potential for crime, such as taking bribes from members of the public), meat-eaters (corrupt officers who seek out and initiate corrupt relationships) and birds (those officers who do not participate in crime or criminality, but “glide above” it).⁶⁵³ Dr Grobler added that there is a fourth type of corrupt police officer, “the lone ranger” who work alone and are difficult to detect.⁶⁵⁴

642 Id. at para 4.

643 Transcript at 7887 (16 May 2014).

644 Id. at para 7.

645 Id. at paras 10 – 13.

646 Id. at para 17.

647 Transcript at 7897 -7898 and 7920 – 7921 (16 May 2014).

648 Record Bundle 12(1), Item 11(a) and Transcript at 7280 – 7335 (14 May 2014).

649 See Grobler, L. (2013). *Crossing the Line: When Cops become Criminals*. Auckland Park: Jacana.

650 Record Bundle 12(1), Item 11a at para 2. Transcript at 7282 – 7283 (14 May 2014).

651 Record Bundle 12(1), Item 11a at para 4.

652 Id. at para 7. Transcript at 7285 – 7286 (14 May 2014).

653 Record Bundle 12(1), Item 11(a) at para 10. The typology is drawn from the evidence of a New York Police Department (NYPD) officer testifying at the Knapp Commission of Inquiry into corruption in the NYPD.

654 Id. at para 11.

- [234] Dr Grobler told the Commission that it is difficult to estimate the extent of corruption within SAPS, but she suggested that it was “a significant problem.”⁶⁵⁵ She pointed to the 2013 Global Corruption Barometer released by Transparency International which reported that 83% of South African respondents believed that SAPS members are corrupt; a further 36% of South African respondents admitted to paying bribes to the police.⁶⁵⁶ She also referred to the Western Cape SAPS Report 2012/2013 which reported that 33 members had been charged with corruption and 15 had been dismissed for corruption in that year.⁶⁵⁷
- [235] Dr Grobler agreed that the lack of transparency and accountability in SAPS contributed to creating an environment where corruption is possible.⁶⁵⁸ She said she had seen “no indication” amongst SAPS leadership that they really wanted to investigate the extent of corruption and deal with it.⁶⁵⁹ She also referred to the institutional culture of SAPS as an important challenge in addressing corruption. This culture is based on –
- “an us-versus-them mentality; its us police against society, the blue code of silence, don’t talk, don’t report your friends, and it can be dangerous, police have died reporting corrupt colleagues.”⁶⁶⁰
- [236] Dr Grobler outlined in her report the evidence before the Commission that identified cases of corruption at the three Khayelitsha police stations.⁶⁶¹ She suggested that an independent Commission of Inquiry should be appointed to uncover the extent of corruption within SAPS.⁶⁶²
- [237] She also recommended that SAPS managers be trained to spot ‘early warning systems’ of dishonesty. Such training would include behavioural profiling.⁶⁶³ She suggested that a system of lifestyle surveillance of SAPS members to identify those who appear to have more money than their SAPS salaries would make likely.⁶⁶⁴ She also suggested that SAPS introduce integrity testing of its members. She said these are mechanisms used widely by police agencies in democracies. Integrity tests can either be targeted where information has been received that a police officer is corrupt, or they can be random.⁶⁶⁵ Integrity tests involve SAPS members being tested by exposing them to a situation where they have the opportunity to steal something to see whether they succumb.
- [238] Dr Grobler also recommended that great care be taken when recruiting SAPS personnel to ensure that they will be suitable. They should undergo psychometric testing, and be thoroughly vetted. This process should include checking criminal records, financial records, and interviewing friends, family and neighbours, as well as requesting testimonials from schools attended.⁶⁶⁶
- [239] She recommended that basic training for SAPS members include training on ethics and integrity,⁶⁶⁷ She also suggested that Ethics Counsellors should be available to all members, and

655 Transcript at 7283 – 7284 (14 May 2014).

656 Record Bundle 12(1), Item 11a at para 23. Transparency International. (2013). *Global Corruption Barometer 2013*. Available on <http://www.transparency.org/gcb2013/report>. Last accessed on 29 July 2014.

657 Id. at para 25.

658 Transcript at 7309 – 7310 (14 May 2014).

659 Id. at 7311.

660 Id. at 7295. Record Bundle 12(1), Item 11a at para 127.

661 Record Bundle 12(1), Item 11(a) at paras 32 – 106. Transcript at 7287 – 7289 (14 May 2014).

662 Id. at para 133. Transcript at 7299 (14 May 2014).

663 Record Bundle 12(1), Item 11a at paras 138 – 139.

664 Id. at para 139

665 Id. at paras 140 – 141.

666 Id. at para 144.

667 Id. at para 147.

that a Police Professions Council, or Professional Standards Unit be established to monitor ethics in SAPS.⁶⁶⁸

(e) Liquor

(i) *Mr Thys Giliomee*

- [240] Mr Giliomee is the Chief Executive Officer of the Western Cape Liquor Authority, which is established in terms of the Western Cape Liquor Act, 4 of 2008, a position he has held since August 2012. He provided the Commission with an expert report and testified.⁶⁶⁹
- [241] Mr Giliomee told the Commission that the mandate of the Liquor Authority is to regulate the liquor industry in the Western Cape to promote economic growth and employment benefits, while preventing the harms of alcohol abuse.⁶⁷⁰ He told the Commission that the Authority has eight inspectors for the whole of the Western Cape,⁶⁷¹ while SAPS has a designated liquor officer (DLO) at each of its police stations.⁶⁷²
- [242] Mr Giliomee explained to the Commission the manner in which the Constitution allocates competency to manage liquor manufacturing, distribution and trading between the three spheres of government.⁶⁷³ He told the Commission that regulation of the retail sale of liquor is a provincial and local government competency, whereas the regulation of the “macro”-distribution and “macro”-manufacture of liquor is a competence of the national government.⁶⁷⁴ He said that the distribution of powers between the various spheres of government “requires close intergovernmental co-operation” and can cause confusion particularly to members of the public.⁶⁷⁵
- [243] He explained that the Liquor Authority is responsible for regulating “licensed” liquor outlets, but has no authority in respect of unlicensed outlets. He told the Commission that there are an estimated 25 000 unlicensed liquor outlets in the Western Cape and approximately 8000 licensed outlets.⁶⁷⁶ There are 35 licensed outlets in Khayelitsha.⁶⁷⁷ He did not disagree with the estimate of 1400 unlicensed outlets in Khayelitsha given by Major General Jacobs.⁶⁷⁸ He also explained that the liquor inspectors employed by the Liquor Authority may not enter an unlicensed liquor outlet without a search warrant.⁶⁷⁹ He also told the Commission that the Metro Police of the City of Cape Town had the authority to enforce trading hours, as well as trading licences.⁶⁸⁰
- [244] He told the Commission that the key method whereby SAPS manages unlicensed liquor outlets is through section 252A of the Criminal Procedure Act, 51 of 1977. This provision, which in effect, is the setting of a trap, requires pre-approval and briefing of SAPS members.

⁶⁶⁸ Id. at para 149.

⁶⁶⁹ Record Bundle 12(1), Item 13. Transcript at 6876 – 6909 (12 May 2014).

⁶⁷⁰ Record Bundle 12(1), Item 13, p 1.

⁶⁷¹ Id. at p 4.

⁶⁷² Id.

⁶⁷³ Id. at p 2 and Transcript at 6878 – 6879 (12 May 2014). See also schedules 4A, 4B, 5A and 5A to the Constitution, read with section 155(6) and (7) of the Constitution.

⁶⁷⁴ Record Bundle 12(1), Item 13, p 2.

⁶⁷⁵ Id. at p 3.

⁶⁷⁶ Transcript at 6884 (12 May 2014).

⁶⁷⁷ Id.

⁶⁷⁸ Id. and Transcript at 6172 (12 May 2014). See also Chapter 11 above at para 179.

⁶⁷⁹ Record Bundle 12(1), Item 13, p 3. Transcript at 6880 – 6881 (12 May 2014). See also section 73 – 75 of the Western Cape Liquor Act, 4 of 2008, as amended. Record Bundle 13(1), File 1.3, Item 31.

⁶⁸⁰ Transcript at 6881 (12 May 2014).

However, he told the Commission that what often happens is that prosecutors do not regard liquor matters as serious, and so they often deal with it by way of an ‘admission of guilt’ fine and order the return of the confiscated liquor to the unlicensed trader.⁶⁸¹ He added that when SAPS closes an unlicensed outlet, often other families in the area, will see it is an opportunity to open an unlicensed tavern, as the start-up costs are very low.⁶⁸²

- [245] He also told the Commission that one of the reasons why unlicensed outlets are not given a licence is based on their location.⁶⁸³ The Western Cape legislation requires that liquor outlets may not receive a licence unless their premises is situated in an area zoned for business.⁶⁸⁴ He said that in his opinion it was important to try to increase the number of licensed premises, but that this process was “crippled” by the zoning requirements.⁶⁸⁵ He explained that once outlets were licensed, proprietors could be invited to meetings and given training and they may join trading associations. The overall result, according to Mr Giliomee, is that it is easier to influence licensed proprietors to obey rules, such as trading hours and refusing to sell to minors.⁶⁸⁶ He suggested that zoning schemes needed to be reconsidered, to provide for nodes within areas in Khayelitsha to increase the number of licensed outlets, and remove outlets from the heart of residential neighbourhoods.⁶⁸⁷ He said that the Authority was in the process of facilitating an initiative in the Swartland municipality, which would encourage unlicensed outlets to move to suitable locations so that they could obtain a licence.⁶⁸⁸

681 Record Bundle 12(1), Item 13, p 4.

682 Id. at p 4. Transcript at 6893 (12 May 2014).

683 Transcript at 6886 (12 May 2014).

684 Record Bundle 12(1), Item 13 at p 5.

685 Record Bundle 12(1), Item 13 at pp 5 – 6.

686 Transcript at 6889 (12 May 2014).

687 Id. at 6886.

688 Id. at 6887.

Part Three



CHAPTER THIRTEEN

INEFFICIENCIES IN POLICING IN KHAYELITSHA AND THE REASONS FOR THEM

- [1] This chapter sets out the inefficiencies that the Commission has identified in policing in Khayelitsha and the reasons for them. The chapter looks first at three core operational functions of the three SAPS police stations in Khayelitsha: visible policing, detective work and crime intelligence. It then addresses two further issues, for which responsibility is shared between visible policing and detectives, crime scene management and the arrest, detention and release of suspects. The report identifies inefficiencies in relation to each of these five core areas. Thereafter, the question of inefficiencies in the FCS Unit in Khayelitsha is considered. The Report then turns to some specific challenges that arise in relation to policing in Khayelitsha: youth gangs; vengeance killings or vigilante murders and attacks; domestic violence and the policing of alcohol use. The Report identifies inefficiencies in the policing of most of these specific challenges in Khayelitsha as well. In each case, the report identifies the reasons for the inefficiencies. Finally, the chapter identifies three key issues which contribute to systemic inefficiencies in the three police stations and which must be addressed: the system of human resource allocation within SAPS, questions relating to the oversight of SAPS, and the long-term failure of SAPS management at station, cluster, provincial and national management to address problems identified at the three police stations and the Khayelitsha FCS Unit.
- [2] Although there are many small inefficiencies and issues that have arisen from the evidence received in the first phase, as we set out in Chapter 2, we intend to identify the key issues that are of such importance that they warrant the attention of both provincial and national government.¹
- [3] At this stage of the report, the Commission considers it important to emphasise, as several witnesses testified,² that policing in Khayelitsha is profoundly challenging. Deep levels of poverty, poor levels of infrastructure and very high crime rates mean that Khayelitsha is among the most difficult areas in the country to police. The Commission has identified serious, overlapping inefficiencies in policing at Khayelitsha. The fact that there are serious inefficiencies in the three Khayelitsha police stations and the Khayelitsha FCS Unit does not mean that there are not many committed and diligent members of SAPS posted in Khayelitsha who are seeking to perform their duties to the best of their ability with available resources.
- [4] The Commission requests those people who read this report, in the first place, the Premier and members of the provincial Cabinet and provincial legislature, as well as the national Minister of Police, members of the national Cabinet, and Parliament to remember, as they formulate their response to the report, that the most important consideration in assessing this report is

1 See Chapter 2 above at para 17.

2 See, for example, Colonel Nel, the former station commander of Harare, who told the Commission that Harare is a “very demanding police station” and described working in Khayelitsha as “like a police university”. Transcript 4623 – 4624 (17 March 2014). Also Brigadier Mlenga, former station commander at Khayelitsha Site B, as well as Cluster Commander, “Khayelitsha demands too much from a person that works in Khayelitsha; you don’t rest.” Transcript at 5123 – 5124 (24 March 2014).

the need to improve the safety of people who live and work in Khayelitsha. This is a strategic goal of both national and provincial government.³ It is unlikely that those strategic goals will be advanced if those who read and comment on this report, forget that its recommendations are aimed solely at improving the quality of life of the people of Khayelitsha, and instead comment on the report in a manner that engages in a transient dialogue focused on political point-scoring. As described briefly in Chapter 3, the work of the Commission was made more difficult by high levels of political contestation about its mandate, not only at the national and provincial level, but also within Khayelitsha itself. The Commission has nevertheless sought to carry out its mandate fairly, expeditiously and in the interests of enhancing the safety of the residents of Khayelitsha, a goal that both national and provincial government share. The Commission hopes that the shared object of enhancing the safety of Khayelitsha residents will be the only object that informs the response to this report both at national and provincial level and within SAPS itself.

- [5] The Commission also requests that those who read the report who are members of the media bear in mind when they report on and analyse its recommendations that the Commission has, as its mandate required, focussed on identifying the inefficiencies of policing in Khayelitsha. That there are such inefficiencies does not mean that there are no aspects of policing that are efficiently performed, nor that there are not members of SAPS, of every rank, who strive to provide a professional policing service in Khayelitsha. It is important, in fairness and in the interests of balanced reporting, to acknowledge that there are members of SAPS who perform their duties daily in difficult circumstances in Khayelitsha.

A. INEFFICIENCIES IN VISIBLE POLICING AT THE THREE KHAYELITSHA POLICE STATIONS

- [6] The key functions of Visible Policing (VISPOL) at a police station include –
- the Community Service Centre (CSC);
 - the management and control of police cells;
 - sector policing and patrols;
 - providing security at any court within the area of the police station;
 - the management of the police station's exhibit store and register;
 - the management of the firearm safe;
 - firearms, liquor and second-hand goods policing (FLASH);
 - the maintenance of a range of records and registers; and
 - crime prevention activities.
- [7] Of these, the key areas in which the Commission has received evidence indicating that there are inefficiencies that warrant the attention of provincial and national government are the following: sector policing, the CSC, and the maintenance of records and registers.

3 National Planning Commission, Strategic Outcome 3 (2010), "that all people in South Africa are and feel safe". Cited in 21st Century Pay Solutions expert report Record Bundle 12(1), Item 4, at para 16. Also see SAPS Strategic Plan 2010 – 2014, Outcomes Oriented Goal 1: "All people in South Africa are and feel safe." Cited in 21st Century Pay Solutions expert report Record Bundle 12(1), Item 4 at para 16. See also Strategic Objective 5 of the Western Cape provincial government "increasing safety to drive an objective of safety and security broadly with diverse stakeholders". Dr Lawrence's Statement Record Bundle 2(3), File 13, Item 6 at para 55.

(a) Sector policing

- [8] Dr Johan Burger, an expert witness who testified in Phase Two of the Commission's proceedings,⁴ told the Commission that SAPS adopted sector policing in the late 1990s in order to strengthen the system of community policing, by addressing identified weaknesses in the system of CPFs.⁵ According to Dr Burger, who prepared the original draft guidelines which regulated sector policing while he was still a member of SAPS, sector policing can be understood as "the division of areas into smaller managerial sectors and the assignment of police officers to those smaller areas on a full-time basis" and the initial guidelines were based on the British model of sector policing.⁶ The key purpose of sector policing is to ensure that sector commanders, who are police officers appointed to be responsible for the policing of each sector and to act as liaison between the community and the police, should gain deep knowledge about their sectors, in part, through establishing good relationships with key people in the community.
- [9] Sector policing was initially regulated by draft guidelines, then by draft National Instruction (2003), then by National Instruction 3/2009 and finally by National Instruction 3/2013.⁷ In the Western Cape, Provincial Guideline 3/1/5/1/342 seeks to ensure effective sector policing in the Province.⁸ The Guideline sets minimum standards for sector policing: one vehicle per sector with two members in the vehicle; one cell phone per sector vehicle; two radios per sector vehicle; one blue light and two bullet proof vests.⁹ National Instruction 3/2013 confirms, as Dr Burger testified, that sector policing seeks "to support the implementation of the philosophy of community and partnership policing, by dividing a policing area into smaller manageable sectors to improve community interaction."¹⁰
- [10] National Instruction 3/2013 provides that the objectives of sector police include the prevention of crime, the encouragement of "visible and accessible policing", improvement of response times, the establishment of informer networks, bringing "the police service closer to the community", establishing partnerships with the community, enabling "the police to understand local problems" by identifying them and their root causes, rendering a quality service and improving trust and confidence in the police.¹¹
- [11] The minimum standards for sector policing require the police station area to be demarcated into manageable sectors; that a member be designated as sector commander; that the sector commander compile a sector profile for the sector; a sector forum be established and operational members be deployed in the sectors in accordance with the crime pattern and threat analysis prepared at the police station.¹² A sector profile must be compiled by the sector commander, in consultation with the SAPS member responsible for gathering crime statistics at the station, with reference to the station profile. It must be reviewed quarterly and must include information relating to the infrastructure and population in the sector, the identified

4 See Chapter 12 above, at paras 62 – 78. Dr Burger report Record Bundle 12(1), Item 9; Transcript 6910 – 7015 (12 May 2014).

5 Record Bundle 12(1), Item 9, p 14. See also Chapter 12 above at paras 72 and 73.

6 See Chapter 12 above, at para 71; Dr Burger's Report, Record Bundle 12(1), Item 9 at p14.

7 Id. National Instruction 3/2009 Record Bundle 3(3.22), File 1, Item 12 and National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11.

8 Dated 6 June 2007. Record Bundle 13, File 2, Item 12.19.

9 Id. at para 3.2.2.

10 National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11 at para 1.

11 Id. at para 3.

12 Id. at para 5.

stakeholders in the sector, crime trends, social fabric indicators and existing partnership programmes and projects in the sector.¹³

(i) Deployment of operational personnel

- [12] It is clear that National Instruction 3/2013 does not insist that there be two vehicles allocated to each sector on each shift. According to Dr Burger the requirement of having “two shifts of two people each working in the sector was “never going to be possible” to achieve.¹⁴ His conclusion in this regard is borne out by the evidence before the Commission, for example, the Schooling and Leamy report, which establishes that on any given shift at any of the three Khayelitsha police stations, there were rarely two vehicles per sector on patrol and many instances one sector vehicle patrolling two sector and sometimes, apparently, with only one member in the vehicle.¹⁵ We note that the SAPS 15s provided to the Commission related to the period prior to August 2012, so that National Instruction 3/2013 would not yet have come into force. We also note that the Task Team report reached a similar conclusion to the Schooling and Leamy report that often there were not sufficient resources to ensure that sector policing is properly implemented. They concluded that there was not compliance with the Western Cape Guideline 3/1/5/1/342.¹⁶
- [13] We also note that Brigadier Dladla, the station commander at Khayelitsha Site B, told the Commission that he had obtained permission from provincial command to allow vehicles to be redeployed from the sectors so they could engage in crime prevention activities over peak periods, such as weekends.¹⁷ Accordingly there is a range of evidence before the Commission that shows that the provisions of National Instruction 3/2009 and the Provincial Guideline 3/1/5/1/342 were not being observed in the period before September 2012, which is consistent with Dr Burger’s testimony.
- [14] Today, however, the deployment of members amongst the sectors in a police station, according to National Instruction 3/2013, is to be determined by the crime threat analyses and crime pattern analyses prepared at each police station as well as the decisions taken at SCCF meetings.¹⁸ As will appear later in this chapter, the Commission finds on the record before it that none of the three Khayelitsha police stations produce regular or comprehensive crime pattern analyses or crime threat analyses, and accordingly such analyses are not discussed in SCCF meetings, and therefore the deployment of personnel cannot be taking place in terms of National Instruction 3/2013. In view of the Commission, this constitutes not only a major failure of compliance with a crucial National Instruction, but it also constitutes a major operational inefficiency at the three police stations for it means that the deployment of uniformed members on operational duties appears not to be done according to any strategic planning but on an unexplained and random basis.

(ii) Number of sectors per police station

- [15] Khayelitsha Site B has six sectors, and Harare and Lingeletu West have four sectors each.¹⁹ National Instruction 3/2013 regulates the number of sectors demarcated in a police station.²⁰ The relevant criteria, according to the Instruction, are the geographical size of

13 Id. at para 7.

14 Transcript at 6929 (12 May 2014).

15 Schooling and Leamy report, Record Bundle 9(1), File 1.1, Item 1 at paras 84 – 87; This was also indicated by the Provincial Inspectorate Record Bundle 3(3.30), File 2 (Lingeletu West), Item 3 at para 5.18.9.

16 Task Team report Record Bundle 1(3), AL87 at para 7.1.

17 Transcript at 3659 – 3668 (18 February 2014).

18 National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11 at paras 5(d) and 8(3).

19 Record Bundle 9(1), File 1.1, Item 1 at paras 83, 84 and 87.

20 National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11 at para 6.

the area, infrastructure, demographic features and community profile, as well as available SAPS resources.²¹ DOCS in its oversight report of Harare police station dated 30 October 2013 commented that Harare had too few sectors and suggested the number of sectors be increased to 12.²² When this was put to Colonel Raboliba, the station commander at Harare police station, during his appearance before the Commission, he did not agree that 12 sectors were required, but agreed that as his police station performs the work of two police stations, more sectors were required.²³ Given the size of its area of jurisdiction, its mix of formal and informal neighbourhoods, crime rate and the number of people who live in its area of jurisdiction, it seems plain that Harare police station has too few sectors given the size of its area, and that the result is that each sector is too large for one team to cover which hampers the effective implementation of sector policing in Harare.

- [16] The Commission notes, however, that a decision has been taken to establish a new police station at Makhaza that will reduce the area for which the Harare police station is responsible.²⁴ It may yet take some time for a police station at Makhaza to be constructed and become functional,²⁵ and in the meanwhile, the Commission recommends that at least two further sectors be established at Harare police station to implement sector policing there. The Commission understands that this will require the allocation of further staff to Harare. The Commission concludes below that there has been insufficient personnel allocated to Harare and Khayelitsha Site B police stations and recommends that this be rectified urgently. Some of the personnel allocated to both Harare and Khayelitsha Site B police stations may be allocated to sector policing shifts to improve the implementation of sector policing at both police stations.

(iii) *Sector profiles*²⁶

- [17] The Commission called for the sector profiles for the six sectors at Khayelitsha Site B, the four sectors at Lingeletu West and the four sectors at Harare to determine the quality of the sector profiles and whether they complied with National Instruction 3/2013. The Commission notes that given the design and object of sector policing, sector profiles are key documents that should contain all information relevant to policing a sector in partnership with the community resident or working in that sector. Redacted versions of the sector profiles were made available to Mr Sean Tait, an expert who testified before the Commission. His view was that the sector profiles provided to him were “superficial” that “reflected some attempt to provide the requested information”, but did not cover all the issues that should have been covered, and generally had insufficient detail. Lists of organisations contained in the profiles were “often inaccurate and incomplete”.²⁷
- [18] The Commission, having perused the sector profiles provided, agrees that they were of a poor quality, containing inaccurate demographic information, and incomplete information of the businesses, churches and schools in each sector, nor did they contain adequate information about street committees or other key organisations in each sector. Importantly they did not appear to have been compiled with any reference to the station profile. Moreover given the

21 Id.

22 Record Bundle 2(3), File 13, Item 2(b) at para 2.11.

23 Transcript at 4795 – 4798 (18 March 2014).

24 Annexure FS12 to FS 14 Record Bundle 12(4), Item 8.

25 Transcript 5542 – 5548 (26 March 2014); Transcript 6493 – 6498, 6646 – 6649 (1 April 2014).

26 A sector profile is defined in para 2(k) of the National Instruction as “a planning tool that is used to provide direction to the *sector commander* to identify the demographical and geographical information, the needs, concerns, perceptions and abilities of a community within a *sector* in respect of crime-related matters.” National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11 at para 6.

27 Record Bundle 12(1), Item 19 at para 15.

outdated nature of the contents of the sector plans, the Commission further concludes that they have not been updated quarterly as required by the National Instruction.²⁸

(iv) Patrolling of informal neighbourhoods

- [19] One of the repeated complaints of community members was that SAPS does not conduct regular patrols of informal neighbourhoods.²⁹ All three Khayelitsha police stations have areas of informal housing within their areas of jurisdiction, although Khayelitsha and Harare have the largest areas of informal neighbourhoods. It is clear from the record that sector teams ordinarily patrol their sectors in vehicles, not on foot or bicycle.³⁰ It is also clear that informal neighbourhoods are, for the most part, not amenable to vehicular patrols.³¹ The result is, as admitted by Colonel Nel, when speaking of his tenure as station commander at Harare police station, that policing of informal neighbourhoods is “neglected”.³²
- [20] Nevertheless, several witnesses with deep policing experience, testified that patrolling informal neighbourhoods on foot, or perhaps by bicycle³³ or in some circumstances quad bike,³⁴ would be possible though it would require more than two police members to be allocated to each patrol, and any patrol would require backup in the vicinity to assist in case trouble is encountered.³⁵ Colonel Nel estimated that a patrol of an informal neighbourhood might require as many as ten SAPS members.³⁶ Brigadier Dladla acknowledged that foot patrols of informal neighbourhoods would be a good way to improve visible policing.³⁷ The Commission concludes that given that the objectives of sector policing, as set out in National Instruction 3/2013, include bringing “the police closer to the community”, there should be regular patrols of informal neighbourhoods. The Commission concludes that the failure to patrol informal neighbourhoods on a regular basis results, in part, from the lack of personnel at the police station, as well as from the absence of a clear directive that sector policing should routinely include patrols of informal neighbourhoods, and operational guidelines as to how such patrols should be undertaken. The issue of the lack of personnel will be dealt with later in this chapter.
- [21] The Commission also notes that on the record before it, there is a suggestion that one of the most common forms of visible policing intervention in informal areas is by way of large-scale policing operation, in which groups of SAPS members, sometimes accompanied by other role-players such as Metro Police, close down illegal taverns or conduct other search and seizure operations.³⁸ Professor Steinberg suggested in his testimony that large-scale quasi-military operations by SAPS in informal neighbourhoods is probably very harmful to police-community relations.³⁹ This is a matter to which we return in Chapter 14, in relation

28 National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11 at para 3.

29 Ms Nduna Transcript at 579 (28 January 2014); Mr Busakwe Transcript at 2737 – 2738 (12 February 2014); Ms Mtwana Transcript at 2841 (12 February 2014).

30 Transcript at 4624 (17 March 2014). Record Bundle 4(8) Item 32.

31 Colonel Nel Transcript at 4624 (17 March 2014); Brigadier Dladla Transcript at 3505 – 3506 (17 February 2014).

32 Id. at 4625.

33 The Cluster Command informed the Commission that in 2010 the VPUU provided 60 bicycles to the three Khayelitsha police stations to be used in patrols with neighbourhood watches and community patrols. Record Bundle 4(8), Item 32.

34 Both Colonel Tobias and Colonel Raboliba testified that, in their view, quad bikes would not work in Harare. Colonel Tobias Transcript at 4564 (17 March 2014); Colonel Raboliba Transcript at 4788 (18 March 2014).

35 Mr Leamy Transcript 2267 – 2269 (10 February 2014); Mr Bosman Transcript at 2001 – 2002 (6 February 2014); Brigadier Dladla Transcript 3646 – 3647 (18 February 2014); Dr Burger Transcript at 6980 (12 May 2014); Colonel Raboliba Transcript at 4787 – 4788 (18 March 2014).

36 Transcript at 4624 (17 March 2014). Transcript at 4787 – 4788 (18 March 2014).

37 Transcript at 3646 (18 February 2014).

38 Transcript at 4625 (17 March 2014).

39 See Chapter 12, above, at paras 37 – 40. Professor Steinberg’s Expert Report, Record Bundle 12(1), Item 2 at paras 3.1 – 3.7; Transcript at 8036 – 8037 (16 May 2014).

to the question whether there has been a breakdown in relation between the SAPS and the community in Khayelitsha.

(b) Community Service Centres (CSCs)

- [22] In many senses, the CSC is the institutional space where SAPS meets the community. Accordingly, it is important that SAPS members who serve in CSCs should be courteous, respectful and efficient. The questions of courtesy and respect are returned to in Chapter 14, but here we deal with questions of efficiency. We identify three issues that need to be addressed by station, cluster, provincial and perhaps even national management: the opening of dockets, the answering of telephones and the issue of the attestation of documents for members of the community by SAPS.

(i) *Opening of dockets*

- [23] National Instruction 3/2011 regulates the opening of dockets.⁴⁰ The Task Team noted that it was not being implemented at the three Khayelitsha police stations.⁴¹ Instead, a complainant who reports a crime first speaks to a SAPS member in the CSC, then he or she is referred to the DSC to speak to a detective who determines whether an offence has been committed, by checking for the elements of a crime, then the complainant is referred back to the CSC for a docket to be opened, and then the complainant is again sent back to the DSC to be interviewed by a detective. The Task Team described this procedure as a “pillar-to-post” procedure not consistent with good service delivery.⁴² Colonel Raboliba, the station commander at Harare police station accepted that this practice was in contravention of the National Instruction but did not accept that it was a regular occurrence at Harare police station.⁴³ This practice, if it takes place, is clearly both inefficient, and contrary to National Instructions.
- [24] One of the consequences of the SAPS station performance chart (EUPOLSA) is that stations are measured on whether crime levels have dropped. Mr Faull pointed out that such measurements might produce perverse incentives that would encourage members of SAPS to avoid recording crimes that are reported to them.⁴⁴ Mr Faull suggested that research in South Africa has shown that SAPS members do sometimes refuse to record crimes in order to ensure they meet crime-reduction targets.⁴⁵ In this regard, the Commission records that Mr Makele, an SJC activist, who told the Commission of an incident at Khayelitsha Site B when SAPS members on duty at the CSC had refused to record his report of being robbed of his cell phone and money at gunpoint, because he could not produce the IMEI (International Mobile Equipment Identity) number of his cell phone.⁴⁶ Brigadier Seimela told the Commission that SAPS has measures in place to check whether all crime reports recorded in the OB result in the opening of dockets,⁴⁷ but there is no measure, as he admitted, as to whether crimes that are reported to SAPS but not recorded in the OB or any other register have been recorded.⁴⁸ The Commission considers that placing unnecessary obstacles in the way of complainants

40 Record Bundle 12(1), Item 6j.

41 Task Team report Record Bundle 1(3), AL 87 at paras 8.1.3 – 8.1.4.

42 Id. Colonel Tobias Transcript at 4477 – 4479 (21 February 2014); Colonel Raboliba Transcript at 4693 – 4694 (17 March 2014).

43 Transcript at 4693 – 4694 (17 March 2014).

44 See Chapter 12, above, at para 152; Record Bundle 12(1), Item 22 at pp 1 – 2; Transcript at 7975 (16 May 2014).

45 Mr Faull report Record Bundle 12(1), Item 22 at p 8.

46 See Chapter 7, above, at paras 71 – 72. Mr Makele Statement Record Bundle 2(5), File 2, Item 9 at paras 4 – 8; Transcript at 2083 – 2086 (7 February 2014); Mr Siyazukisa Sifolo Statement Bundle 9(1), File 1.2, Item 88.

47 See Chapter 5, above, at paras 54 – 55; Transcript 4949 – 4960 (18 March 2014).

48 See Chapter 5, above, at para 55 and Transcript at 4974 – 4975 (18 March 2014).

who wish to report crimes, or refusing to record crimes when complainants make reports of them as happened in the case of Mr Makele, are both examples of serious inefficiencies in the management of police stations in Khayelitsha which need to be addressed urgently.

(ii) Answering of telephones and response times

- [25] It was a repeated complaint that SAPS failed to answer their telephones at the police stations, and in the sector vehicles.⁴⁹ The Commission records that during the inspections in loco, the telephone numbers of sector vehicles were called at each of the three police stations, and nearly all of them were answered promptly. Major General Jacobs testified that it was no longer policy to advertise the phone numbers on the sector vans as SAPS wants calls to go to the 10111 number in order that they are recorded.⁵⁰ However, there was also a repeated complaint that the response to calls made to 10111 was “very slow”.⁵¹
- [26] It is the view of the Commission that the prompt answering of telephones by SAPS and SAPS’ response times are important not only as a matter of efficiency, but also as a matter of public trust, as we shall mention in the next chapter. The extent of the complaints about SAPS’ failure to answer telephones promptly as well as their slow response times by witnesses who testified before the Commission from a wide range of backgrounds suggests that these are issues which need to be investigated and addressed by SAPS. In this regard, we note that Mr Papu of the EMS testified that the Western Cape ambulance services had improved their response times by tracking vehicles in real time using technology.⁵² SAPS has a vehicle tracking system in place but it does not seem as if SAPS station management has used the AVL tracking system to monitor response times to complaints.

(iii) Attestation of documents

- [27] Very large numbers of people visit the CSC to have documents attested. One of the most well known places to obtain documents attested is a police station. During the inspections in loco on 21 January 2014, members of the Commission saw long queues of people waiting for documents to be attested at the three police stations (particularly at Khayelitsha Site B). The problem was also identified by the August 2013 SAPS internal audit report that noted the long queues of people waiting for documents to be certified at the Khayelitsha Site B police station.⁵³ The report recommended that a specific area be set aside for people to wait for documents to be certified.⁵⁴ There can be no doubt that long queues at CSCs can result in inefficiencies and poor levels of service delivery. This issue was raised with Advocate Mohamed, the provincial head of the Department of Justice and Constitutional Development. He was asked for the list of Commissioners of Oaths in Khayelitsha so that it could be made known to members of the public or drawn upon by SAPS during critical periods so that police officers could be available for operational policing matters. Advocate Mahomed was also asked for his view as to whether it would be possible to make a Commissioner of Oaths

49 Bishop Mtsolo’s Statement, Record Bundle 1(1), File 1.a, Item 33 at paras 27 – 28; Mr Madoda Mahlutshana’s Statement, Record Bundle 1(1), File 1.a, Item 7 at para 5.2; Transcript at 499 – 500 (28 January 2014); Mr X Mjonondwana’s Statement, Record Bundle 1(1), File 1.a, Item 31 at para 7; and Ms Msongelwa’s Statement Record Bundle 2(5), File 2, Item 18, at para 12 (the police did not come until a senior police officer was called).

50 Major General Jacobs Transcript at 6233 (28 March 2014).

51 For example, Bishop Mtsolo Statement, Record Bundle 1(1), File 1.a, Item 33 at paras 27 – 28; Transcript at 116 – 7 (23 January 2014); Ms Mlungwana Transcript 264 (24 January 2014) saying that the response after calling 10111 is not reliably prompt.

52 Transcript at 2578 – 2579 (11 February 2014). This technology provides real-time location of vehicles and their travelling speed.

53 Record Bundle 11 (5), Item 87, Exhibit AL3, pp 21 – 22.

54 Id.

available at the Social Security Agency offices,⁵⁵ but Advocate Mohamed did not respond to the Commission's requests.

(c) Maintenance of records and registers

- [28] Each police station must keep a range of registers and records. These are generally maintained in the CSC.⁵⁶ Major General Jephta told the Commission that there are between 29 and 40 registers maintained in the CSC.⁵⁷ The most important is the Occurrence Book (the OB), which should contain an accurate and faithful record of all crime and other matters requiring investigation and attention by SAPS as well as of all duties performed by SAPS at the station.⁵⁸
- [29] Registers need to be checked for accuracy regularly and senior officers are tasked with checking them by way of first- and second-level inspections.⁵⁹ First-level inspections should be done daily, and second-level inspections weekly.⁶⁰ The relief commander or the CSC commander does the first-level inspection and will check that entries in records and registers have been accurately made and will crosscheck registers for accuracy. The CSC Commander or the Station Commander performs second-level inspections primarily to make sure that the first-level inspection process has been completed. Each time a first- or second-level inspection is done it has to be recorded in accordance with the applicable standing order.⁶¹ First- and second-level inspections are a key element of "command and control" in a police station, as they are the primary tool whereby managers monitor and oversee what has been done by members in the police station.⁶²
- [30] The Schooling and Leamy report concluded that the failure to conduct first- and second-level inspections constituted a "sweeping pattern" across all three police stations in Khayelitsha.⁶³ In their view, this was evidence of dysfunction at all three police stations⁶⁴ which had the consequence that SAPS station commanders did not have effective oversight of what was happening at their police stations and could therefore not identify problems nor address them.⁶⁵ Mr Schooling told the Commission that the Cluster Commander should also have identified this failure and taken steps to ensure that it was addressed.⁶⁶

55 Record Bundle 13(1), File 1.4, File 9, Item 3 at para 1.

56 See Chapter 5, above, at para 71.

57 Transcript at 6355 (31 March 2014). Standing Order (General) 301 sets out the basic principles with regards to the utilisation of registers, books and forms, as well the archiving and inspection thereof. Record Bundle 3(3.22), File 3(3), Item 246.

58 SAPS 10 register. Chapter 5, above, at para 76. Standing Order (General) 303, Record Bundle 3(3.22), Item 276 at para 3(1).

59 See Chapter 5, above, at para 79.

60 See Chapter 5, above, at para 79. Schooling and Leamy report, Record Bundle 9(1), File 1.1. Item 1 at paras 214 – 215.

61 Standing Order (General) 225 Inspections at Police stations and Premises Record Bundle 3(3.22), File 3(3), Item 215 at para 7; Standing Order (General) 28 Duties of a Station Commander Record Bundle 3(3.22), File 3(1), Item 100 at para 3(13) and (14).

62 Record Bundle 9(1), File 1.1. Item 1 at paras 284.

63 Id. at paras 223 – 225 and 284.

64 Id.

65 Transcript at 2308 – 2313 (10 February 2014).

66 Id.

B. DETECTIVE SERVICES

- [31] The key tasks of the detective service are to investigate and detect crime and to ensure that dockets are delivered to the prosecution service and the courts for prosecution. Overwhelming evidence placed before the Commission suggests that the detective branches at the three Khayelitsha police stations are not performing their tasks effectively or efficiently. The main sources of this evidence are inspection reports of the three Khayelitsha police stations conducted by the Provincial Inspectorate,⁶⁷ the Task Team report,⁶⁸ a survey of charge sheets undertaken by members of the Commission at the Khayelitsha Magistrates' Court,⁶⁹ a survey of a sample of the dockets received by the Commission that was undertaken by staff of the Commission,⁷⁰ and evidence received from a variety of witnesses including Colonel Wiese, the Khayelitsha cluster detective co-ordinator.⁷¹
- [32] It should be added that an investigation of the eight individual complaints contained in the complaint provided to the Premier by the complainant organisations⁷² showed "a pattern of weak investigation",⁷³ as well as a failure by SAPS to provide feedback to complainants and bereaved family members.⁷⁴ In the Commission's view the primary inefficiencies in the detective service are threefold: the failure to investigate crimes properly or at all in many cases; the failure to ensure that dockets are received at court; and the failure to communicate with complainants and family members. These three issues will be dealt with separately.

(a) Failure to investigate many crimes properly or at all

- [33] The Project 6 inspection reports of the three Khayelitsha police stations contained an incisive summary of the shortcomings of the detective services at the three police stations. The summary was compiled after an examination of 100 cases that had been struck from the roll in relation to each of the three police stations. The summary was identical for each of the three police stations. The summary identified the following ten shortcomings of detective work in Khayelitsha⁷⁵ –

- the instructions of prosecutors are not complied with, sometimes for several months;
- investigating officers do not comply with instructions of the officers who inspect their dockets;
- identification parades are not held;
- warrants of arrest are not executed and particulars of accused persons are not circulated on SAPS systems;

67 Record Bundle 3(3.30), File 1 (Khayelitsha Site B), Items 2 and 4 conducted from 29 August – 2 September 2011 and 13 – 17 August 2012; Record Bundle 3(3.30) File 3 (Harare), Items 1 and 3 conducted from 13 – 15 September 2011 and 13 – 17 August 2012; 3(3.30) File 2 (Lingeletu West), Item 3 conducted from 2 – 5 August 2011. See also Project 6 reports conducted in September and October 2013, and January 2014 Exhibits MR1 to MR 4 Record Bundle 10, File 3 (Lingeletu West), Items 24 – 27; Project 6 report conducted September 2013 and January 2014 Record Bundle 13, File (2) (Khayelitsha Site B), Item 12.12 and 12.13; Project 6 report conducted September 2013, October 2013 and January 2014 Record Bundle 13, File (2) (Harare), Items 12.15, 12.16 and 12.18.

68 Record Bundle 1(3), AL87 at paras 8.4.2 – 8.4.4.

69 See Chapter 9, above, paras 41 – 46, and Appendices D and E.

70 See Chapter 10, above, at paras 69 – 74.

71 Record Bundle 5, File 4, Item 1; Transcript at 5058 (24 March 2014).

72 Record Bundle 1(1.c), File A, Item 1.

73 See Chapter 6, above, at para 13(5).

74 See Chapter 6, above, at para 13(3).

75 The Project 6 reports are discussed above at Chapter 10 at para 48 – 61. Project 6 reports conducted in September and October 2013, and January 2014 Exhibits MR1 to MR 4 Record Bundle 10, File 3 (Lingeletu West), Items 24 – 27; Project 6 report conducted September 2013 and January 2014 Record Bundle 13, File (2) (Khayelitsha Site B), Item 12.12 and 12.13; Project 6 report conducted September 2013, October 2013 and January 2014 Record Bundle 13, File (2) (Harare), Items 12.15, 12.16 and 12.18.

- availability of complainants and witnesses is not confirmed in relation to hearing dates;
 - monthly inspections of dockets are not carried out by officers in the detective branches at the three police stations, and “carried-over certificates”⁷⁶ are not completed as prescribed;⁷⁷
 - “brought-forward dates”⁷⁸ are not adhered to and no attempt is made to address this failure;
 - investigative aids, such as identikits and informers, are not utilised properly;
 - proper guidance and inspection by senior officers is lacking;
 - cases are withdrawn due to incomplete investigations without valid reasons for the failure to complete investigations.⁷⁹
- [34] It bears noting that the majority (if not all) these shortcomings were also identified during the inspections conducted during 2010 – 2012 and recorded in the inspection reports.⁸⁰ The Commission notes that although recommendations were made by the Inspectorate on what needed to be complied with, the recommendations do not provide guidance on how compliance should be achieved.⁸¹
- [35] The Project 6 reports found that the reason for these shortcomings was improper command and control as a result of inadequate disciplinary measures taken against detectives who fail to comply with instruction, the failure of inspecting officers to comply with the “brought-forward” system and a “fire-fighting” approach adopted by the detective branch in only investigating new cases or cases where a complaint or inquiry has been received. The report also noted that prosecutors give more detailed instructions than inspecting officers, which reflected a lack of interest in the investigation on the part of detectives. In unusually strong language, the reports concluded that the failure to investigate cases resulted in their being struck from the court roll, which “borders on ‘defeating the ends of justice’”.⁸²
- [36] The Commission observes that the identification of shortcomings at the three detective branches has been identified by successive inspection reports prepared by the Provincial Inspectorate,⁸³ as well as the Task Team report.⁸⁴ Similar shortcomings were described by Colonel Wiese who, in her testimony, listed the most common problems she had noticed in her inspection of more than 2000 dockets from the Khayelitsha police stations. The list included poor statement-taking (where elements of a crime were not covered in the statements), a

76 See Chapter 5, at para 57 for an explanation of the manner in which dockets should be administered. The Station Commander or other immediate Commander of an investigation section, shall, at his monthly inspection, certify in the member’s case register that all case dockets, inquest dockets, enquiries, suspect dockets, warrants and process that have been entrusted to the member, have been entered in his case register and that all outstanding case dockets, etc, of the previous months have been/ carried forward to the month concerned. This is referred to as a “carried-over” certificate. Standing Order (General) 305 (Police activities, registers, books and forms) Record Bundle 3(3.22), File 3, File 4, Item 78 at para 305(4).

77 This was identified as a shortcoming in 2011 as well. Record Bundle 3(3.30), File 1 (Khayelitsha Site B), Item 2 at para 4.13.1.

78 See Chapter 5, at para 57 for an explanation of the manner in which dockets should be administered. A brought-forward date is the date an inspecting officer requests an investigating officer to produce the docket for inspection once more to ascertain whether actions that the instructing officer has told the investigating officer to perform have been completed.

79 Exhibit MR1 Record Bundle 10, File 3 (Lingeletu West), Item 24 at para 3.7; Record Bundle 13, File (2) (Khayelitsha Site B), Item 12.13 at para 3.4; Record Bundle 13, File 2 (Harare), Item 12.18 at para 3.4.

80 Record Bundle 3(3.30), File 1 (Khayelitsha), Item 2 at para 4.13; Record Bundle 3(3.30), File 1 (Khayelitsha Site B), Item 4 at para 16.

81 Record Bundle 3(3.30), File 1, Item 2 (Khayelitsha Site B) at para 4.15.1; Record Bundle 3(3.30), File 1, Item 4 (Khayelitsha Site B) at para 6.19.

82 Id.

83 Record Bundle 3(3.30), File 1 (Khayelitsha Site B), Item 2 at para 4.13; Record Bundle 3(3.30), File 1 (Khayelitsha Site B), Item 4 at para 16; Record Bundle 3(3.30) File 3 (Harare), Items 1 and 3 conducted from 13 – 15 September 2011 and 13 – 17 August 2012; Record Bundle 3(3.30), File 2 (Lingeletu West), Item 3 at para 7.

84 Record Bundle 1(3), AL87 at 8.4.2 – 8.4.4.

failure to obtain witness statements, a failure to use investigation aids, non-compliance with 'brought-forward' dates, and the failure to register exhibits.⁸⁵

- [37] The Commission was provided with copies of more than 400 dockets for it to peruse.⁸⁶ The dockets came from different sources, including, the complaints made to the Commission, the charge sheet survey undertaken by the Commission at the Magistrates Court, and the "Bundu Courts" report annexed to the Task Team report.⁸⁷ The sample of the charge sheet dockets produced similar weaknesses in crime investigation by detectives as that identified both by Colonel Wiese and by the Project 6 inspection reports.⁸⁸ Perhaps that is not surprising given that the Project 6 investigation also drew 100 dockets that related to cases that had been struck off the roll, so its source was similar to the source of the Commission's charge sheet dockets. The survey of the complaints' dockets also produced similar results.⁸⁹ Again, this is perhaps not surprising given that, by definition, the dockets related to complaints were selected on the basis that complainants or family members of victims were unhappy with the manner in which the investigation had proceeded. The Commission's examination of the vigilante or "Bundu Court" dockets,⁹⁰ however, was deeply disquieting. Here were 66 dockets that related, in the main, to the murder of community members, apparently because they had been perceived to be guilty of crimes in Khayelitsha, that took place between April 2011 and June 2012. They were not cases where complaints had been lodged with the Commission or the complainant organisations, so did not "self-select" as cases with problems. An examination of the dockets showed that there had been arrests in 31 of the cases (47% of the dockets). By January 2014, when the Commission received copies of the dockets, there had been convictions in only two cases. Twelve of the cases had been struck from the roll because the criminal investigation was incomplete, and a further seven had been withdrawn because of incomplete investigation. In addition, it appeared that many of the cases had never been brought to court as they had never been fully investigated. These are very serious cases, involving murder, in which the conviction rate was no better than 3% after eighteen months.⁹¹
- [38] It is clear that police managers are aware of the shortcomings in quality of crime investigations performed by the detectives at the three Khayelitsha police station. Yet, despite that this problem has been apparent for some time, the situation does not seem to have improved.
- [39] The Commission concludes on the evidence before it that there are substantial inefficiencies in the quality of investigations conducted by the detective services at all three police stations. These inefficiencies relate to the investigation of many, though not all, crimes reported to SAPS at the three police stations. The Commission acknowledges that some crimes are efficiently investigated and successfully prosecuted in Khayelitsha. However, the Commission also notes that in only a tiny proportion of the number of cases that are reported to SAPS is a successful conviction achieved. According to the 2011 inspection report of Harare Police station there were convictions in just over 0.5% of cases reported to the police station.⁹² Moreover, as we have seen, it is likely that only 60% of all crime that take place in Khayelitsha is actually reported to SAPS.⁹³

85 Transcript at 5058 (24 March 2014). See Colonel Wiese evidence in Chapter 11, above, at para 84. Exhibit AW2 Record Bundle 11(5), Item 53, para 7.

86 See Appendix F.

87 See Chapter 10 at paras 31 – 47.

88 Id. at paras 50 – 61.

89 Id. at paras 67 – 68.

90 Id. at paras 67 – 68.

91 Record Bundle 8(4), File 4.1, Item 3.23.

92 Colonel Tobias Transcript at 4430 – 4431; Record Bundle 3(3.30), File 3, Item 3 at para 4.6.

93 See the Mthente Survey, Chapter 8 above at paras 2 – 15.

- [40] One of the reasons for the poor quality of crime investigation, according to Colonel Wiese, is the extent of the backlog at each of the three police stations. She told the Commission that, “the backlog is the thing that is drowning everybody”.⁹⁴ There is no doubt that the backlog is considerable. At Harare there are 8805 cases that are pending and 847 incoming (a ratio of approximately 10:1), at Khayelitsha Site B, there are 5822 pending cases and 966 incoming cases (a ratio of approximately 6:1) and at Lingeletu West 4595 pending cases compared to 652 new or incoming cases (a ratio of approximately 7:1).
- [41] A related issue is the number of dockets carried by each detective: at Khayelitsha Site B, detectives carry on average between 145 and 160 dockets.⁹⁵ At Harare the average is 133⁹⁶ and at Lingeletu West 131.⁹⁷ Detectives are therefore carrying on average nearly double the number of dockets that witnesses suggested was manageable. Mr Swart, a former detective and FCS Unit commander, who testified in the second phase, suggested that more than 50 dockets was not manageable.⁹⁸ Brigadier Dladla described the problem graphically when he said that in Khayelitsha, instead of a team of detectives descending on a murder as happens in the movies, “you have a team of dockets descending on a detective”.⁹⁹ Colonel Marais, too, gave the Commission a memorable account of a weekend on duty at Khayelitsha Site B, which he concluded with the remark that, “the reality is there is not enough hours in a day, there is not enough days in a week, there is not enough investigators...”¹⁰⁰
- [42] That this is a long standing problem is affirmed by the statement provided by Mr van der Westhuizen, the Assistant Director of Forensic Pathology and facility manager at Tygerberg Hospital. He described his personal experience as a detective in 1998 as follows –
- “I commenced work on a Tuesday. The weekend following was my first standby weekend. During the first weekend I picked up approximately 47 dockets. By the end of the first year as a detective I had approximately 237 cases.”¹⁰¹
- [43] The Commission acknowledges that a portion of the dockets carried by detectives requires little further work from the detective as the matter is court ready as both Colonel Wiese and Major General Molo explained to the Commission.¹⁰²
- [44] The Commission also notes that the problem of too few detectives appears not to be limited to Khayelitsha, but is a nationwide problem. In 2011, the Public Service Commission undertook a series of inspections of detective services across the country and concluded that “there are not sufficient detective officers in the country to carry out detective duties at police station level”.¹⁰³ The 2013 Green Paper on Policing notes that detectives comprise 19% of the total SAPS staff complement and concludes that the detective component of SAPS is “understaffed”.¹⁰⁴
- [45] The Commission is of the view that the number of detectives allocated to the three Khayelitsha police stations in terms of the RAG is insufficient, given the heavy burden of dockets in the

94 Transcript at 5101 (24 March 2014).

95 Transcript at 3851 – 3852 (19 February 2014).

96 Transcript at 4428 (21 February 2014).

97 Transcript at 3305 (14 February 2014).

98 Record Bundle 12(1), Item 23, p 9.

99 Transcript at 3506 (17 February 2014).

100 Transcript at 3857 – 3859 (19 February 2014).

101 Record Bundle 2(1), File 1.2, Item 4 at para 15.

102 Transcript at 5050 – 5070 (24 March 2014).

103 Public Service Commission “Consolidated Report on Inspections of Detective Services” September 2011, Record Bundle 1(5), File B, Item 8 at para 12.3.2.

104 Record Bundle 1(11), Item 13 at p 35.

three police stations, as will be discussed more fully below. The Commission notes also that Harare police station has not had the full complement of detectives to which it is entitled in terms of the RAG for some time, which has further exacerbated the problem.¹⁰⁵ Moreover, at the time of the Phase One hearings, Harare had been without a permanent detective commander since Colonel Tobias left at the end of 2012.¹⁰⁶

- [46] The Commission also notes that one of the systemic problems that is caused by over-burdening detectives is that disciplinary systems become ineffective. Colonel Marais told the Commission that he was reluctant to discipline one of his good detectives when that detective failed to investigate one of his dockets, given that it would be impossible for the detective to attend to all of the dockets allocated to him with adequate care.¹⁰⁷
- [47] The Commission is also of the view that there are two more related reasons that in all probability underlie the inefficiencies in the detective work undertaken at the three Khayelitsha police stations. The first relates to the calibre of recruits to the detective service and the second to the question of training and mentoring of the detectives.
- [48] Regarding recruitment of detectives, Lieutenant Colonel Swart mentioned that it was difficult to attract SAPS members to join the detective service because the work done by detectives and the remuneration for it are not seen as “attractive”.¹⁰⁸ Dr Mulder Van Eyk, a former senior member of SAPS, also drew attention to the challenges that SAPS faces in recruiting suitable candidates, which arise partly from the manner in which SAPS treats recruits that has the consequence that SAPS is not the first choice for potential recruits, as well as the challenges created for the training of recruits that flow from the poor quality of the South African public education system.¹⁰⁹
- [49] The 2013 Green Paper also raises the need to improve the quality of the personnel within the detective service, and the need for the detective service to be “able to attract, retain and improve the quality of personnel within its ranks”.¹¹⁰ The Green Paper specifically mentions the importance of “effective recruitment”.
- [50] In this regard, the Commission notes the proposals contained in the National Development Plan 2030 (the NDP) which suggests a two-tier stream of recruitment into SAPS “to create a high calibre of officers and recruits who are capable of being trained for effective professional policing.” The basic tier would recruit non-commissioned officers, while the secondary tier would recruit for the officer’s stream based on set criteria, and followed by training and testing.¹¹¹ The NDP also proposes a “focus on strengthening the capacity and standing of detectives and investigators, particularly in the fields of forensics, ballistics and crime-scene investigations”.¹¹² The Commission agrees with both the 2013 Green Paper and the NDP that recruitment of detectives is a key driver of the quality of detective services, and that the process of recruiting and remunerating detectives for the three Khayelitsha police stations needs to be urgently reviewed.
- [51] A second and related issue is the question of training of detectives. In 2011, the Public Service Commission found that just under a fifth (4845 of 25 000) of all detectives had not

¹⁰⁵ Record Bundle 11(5), Item 45.

¹⁰⁶ Transcript at 4334 (21 February 2014).

¹⁰⁷ Transcript at 3791 (21 February 2014); Transcript at 3881 (9 February 2014).

¹⁰⁸ Dr van Eyk Record Bundle 10(2.2), Item 21 at para 34. Transcript at 3264 (14 February 2014).

¹⁰⁹ Record Bundle 12(1), Item 6 at para 7.3.1.

¹¹⁰ 2013 Green Paper on Policing Record Bundle 1(11), Item 13, at p 32.

¹¹¹ National Development Plan, Chapter 12, Record Bundle 1(7), Item 43, p 354.

¹¹² Id. at p 355.

been trained on the Detective Learning programme. Accordingly, it recommended that “training and continuous development of detective officers be introduced, particularly training on investigative skills, the legal administration governing investigations and the use of technology”.¹¹³ The system for training detectives was described to the Commission by several witnesses.¹¹⁴ There is a two-week basic course followed by a four-month course (the Resolving of Crime (ROC) course).¹¹⁵

- [52] Colonel Marais, the detective commander at Khayelitsha Site B, described the two-week course as “more of an induction”¹¹⁶ and told the Commission that all the detectives at his police station had completed the basic course.¹¹⁷ He said that the four-month course is more advanced and that, at the time he testified, 25 of his approximately 50 detectives had completed the four-month course, and five more were in the process of completing it.¹¹⁸ However, the training schedule provided in relation to Khayelitsha Site B indicates that only 13 members at that station have undergone the Detective Learning Programme Course.¹¹⁹ Lieutenant Colonel Swart, the detective commander at Lingeletu West told the Commission that all but two of his approximately 30 detectives had either completed the 4-month course or were currently on the course.¹²⁰ The training schedule provided in relation to Lingeletu West shows that 29 members at that station have undergone the Detective Learning Programme Course.¹²¹ The training schedule in relation to Harare reflects that 30 SAPS members have undergone the Detective Learning Programme Course.¹²² At Harare, there has been a shortage of detectives for some time. Colonel Tobias explained to the Commission that in 2012, 14 student constables had been allocated to the detective branch in Harare, apparently in an attempt to address the shortage, while they were still undergoing training.¹²³ They were “fresh” recruits.¹²⁴ Colonel Tobias said that –

“we mustn’t be ungrateful for receiving those 14 members, but it places a heavier burden on the existing detectives because he has to train and mentor that person in other words he has to work with that person and work with his own load ...”.¹²⁵

113 Public Service Commission report, Record Bundle 1(5), File B, Item 8 at para 12.4.

114 Lieutenant Colonel Swart Transcript at 3262 – 3263 (14 February 2014), Colonel Marais Transcript at 4008 (19 February 2014), Colonel Tobias Transcript at 4392 and 4501 (21 February 2014) and Dr van Eyk PowerPoint presentation made in Phase Two, Record Bundle 12(1), Item 6c, at slides 17 and 18.

115 See the PowerPoint presentation made in Phase Two by Dr Mulder Van Eyk, Record Bundle 12(1), Item 6c at slides 17 and 18.

116 Transcript at 4008 – 4010 (19 February 2014).

117 Id. at 4008 In September 2011 there had been 3 members that still had to complete the DLP. See Record Bundle 3(3.30). File 1, Item 2 at para 4.3.2.

118 Id. at 4008 – 4009. In September 2011 there had been 32 members that still had to complete what was then a three month detective course. Record Bundle 3(3.30). File 1, Item 2 at para 4.3.1

119 Record Bundle 13, File 2, Item 12.3 reflecting that one lieutenant, 5 warrant officers, 7 sergeants and 4 constables have undergone the course.

120 Transcript at 3262 – 3263 (14 February 2014).

121 Record Bundle 13, File 2, Item 12.4 reflecting that one lieutenant colonel, 3 captains, 1 lieutenant, 5 warrant officers, 9 sergeants and 10 constables have undergone the course.

122 Bundle 11, File 5, Item 45 being the Agreed statement of fact completed by the Harare Station Commander, Colonel Raboliba reflect that 2 captains, 2 warrant officers, 9 sergeants and 17 constables have undergone the course.

123 Transcript at 4500 – 4502 (21 February 2014).

124 Id. at 4501.

125 Id. at 4503.

- [53] He added that given the burden of crime in Harare, “the most experienced detectives that there can be” are needed at the police station¹²⁶ and agreed with the Schooling and Leamy report that Khayelitsha is not a place to train detective constables.¹²⁷
- [54] One of the recommendations contained in the Schooling and Leamy report is that a six-month moratorium be placed on all training in the Western Cape and during that period “all outstanding training requests for the detective services” be provided.¹²⁸ This was informed by the comment from the Khayelitsha Station Commander in response to the inspection report (September 2011) that “detective members are continuously nominated for training course” but that there are not enough courses to sufficiently accommodate all detectives timeously.¹²⁹
- [55] The Schooling and Leamy report also recommends that junior detectives be required to complete a mentoring period with a senior detective. They proposed, to avoid burdening senior detectives with this role, that mentors be recruited from amongst retired detectives who are “willing to volunteer their time as passionate, experienced and motivated coaches.”¹³⁰ Lieutenant General Lamoer told the Commission that the National Commissioner had already approved the recruitment of retired detectives on contract to assist with mentoring young detectives.¹³¹
- [56] The Commission concludes that the fact that, at least at Khayelitsha Site B and Harare, there are many detectives who have only completed a two-week “induction” course in detective work, and not the full four-month course may well have contributed to the inefficiencies of the detective service at these two police stations. The Commission also notes that the SAPS witnesses who testified before the Commission agreed that the conditions at the three Khayelitsha police stations make it unsuitable for inexperienced detectives. The Commission also endorses the proposal made that a mentoring programme be instituted for young detectives, as the National Commissioner apparently proposes.

(b) Failure to take dockets to court

- [57] Ms Harmse, the Senior Public Prosecutor at the Khayelitsha Magistrates’ Court, told the Commission that it is the responsibility of SAPS to bring dockets to court.¹³² Once a case is enrolled in the regional court, the docket is kept at the court in a strong room.¹³³ It is not possible to keep all the dockets relevant to prosecutions in the district court at the court. She told the Commission that on a daily basis there are dockets that are not delivered to court by SAPS.¹³⁴ When a docket is not at court, the case will ordinarily be struck from the roll by the magistrate.¹³⁵
- [58] Ms Harmse said that the problem of dockets not being brought to court was a long-standing problem that was addressed at the regular meeting of role-players chaired by the Chief Magistrate.¹³⁶ An agreement had been reached between the court, the prosecutors and SAPS

126 Id. at 4503 – 4504.

127 Id. at 4503

128 Record Bundle 9(1), File 1.1, Item 1 at para 286.

129 Bundle 3(3.30), File 1, Item 1 at para 4.3.

130 Id. at para 289.

131 Transcript at 6710 (1 April 2014).

132 See the overview of her evidence in Chapter 9, above, at paras 52 – 66. The issue of dockets not being brought to court is dealt with at paras 55 – 56. Transcript at 3451 (17 February 2014).

133 Record Bundle 8(1), File 1.3, Item 13 at para 27.

134 Id. at paras 28 and 51.

135 Id. at para 29.

136 Id. at para 28.

Photo 18: Holding cell, Khayelitsha Site B



that dockets would be brought to court three days' before the enrolled court date,¹³⁷ but that in her experience this did not ordinarily happen.¹³⁸ Ms Harmse previously served as Senior Public Prosecutor in Mitchell's Plain and she said that although there was also a problem with dockets not being brought to court in Mitchell's Plain, the problem was less pronounced than in Khayelitsha.¹³⁹

- [59] Ms Harmse said that SAPS had appointed two DCCOs at the Khayelitsha Magistrates Court, one allocated to the Regional Court and one to the District Courts. In addition, there are three SAPS liaison officers who are responsible for ensuring that dockets are brought to court.¹⁴⁰
- [60] Captain Pillay who served as the District Court DCCO at the Khayelitsha Magistrates' Court from January 2010 till March 2014 also testified.¹⁴¹ He told the Commission that he reports directly to Colonel Wiese, the cluster detective co-ordinator. When Captain Pillay was appointed the role of DCCO was new. It was established to ensure better docket quality and enhanced docket flow.¹⁴² Captain Pillay explained that each morning he is provided with a list of dockets that are missing from court and he then tries to trace them.¹⁴³
- [61] Captain Pillay was asked whether he kept a calendar of docket numbers and enrolment dates so that he would know which dockets should be at court each week, and he could take steps in good time to ensure that they were present. He said he did not.¹⁴⁴ He also said he did not

¹³⁷ Id. at para 32.

¹³⁸ Id. at para 33.

¹³⁹ Transcript at 1845 (6 February 2014).

¹⁴⁰ Record Bundle 8(1), File 1.3, Item 13 at para 36.

¹⁴¹ See the overview of his evidence in Chapter 11, above, at paras 72 – 79, Captain Pillay's Statement Record Bundle 10(2), File 2.2, Item 22; Transcript at 4047 – 4176 (20 February 2014).

¹⁴² Record Bundle 10(2), File 2.2, Item 22 at para 2; Transcript at 4051 (20 February 2014).

¹⁴³ Transcript at 4127 (20 February 2014).

¹⁴⁴ Transcript at 4155 – 4156 (20 February 2014.)

check on the CAS on a weekly basis to find out which dockets would be due at court.¹⁴⁵ One of the DCCO's duties is to provide the cluster detective co-ordinator with a weekly list of dockets that had not been brought to court on time.¹⁴⁶ Several of those weekly reports were made available to the Commission: in one, for the week of 31 January 2014, there had been 214 new cases in court, and 385 old cases, and 46 dockets had arrived late or not at all.¹⁴⁷ Generally, Captain Pillay told the Commission, there is not a problem getting new dockets to court.¹⁴⁸ The problem arises in relation to "old" dockets (dockets that have been brought to court on a previous occasion). Accordingly in the week of 31 January 2014, in excess of 10% of "old" dockets did not arrive at court.

- [62] The various branch commanders and Captain Pillay stressed the fact that on any given day there are many dockets that are at court, and it is only a small percentage that do not arrive.¹⁴⁹ Indeed, Captain Pillay seemed quite complacent about the problem, asserting that – "you are always going to have a problem with dockets not coming to court".¹⁵⁰
- [63] In assessing how serious the problem of dockets not being brought to court is, we consider that it is important to consider the broader picture of what happens when a docket is not brought to court. When a docket has been referred to court, it should mean that SAPS considers there to be a *prima facie* case against the accused, which has led to the arrest of the accused and the bringing of charges. Every time a case is struck off the roll because a docket has not been brought to court, a significant effort will have to be made by the relevant investigating officer to arrange for it to be re-enrolled. The effect of a striking off may also be that an accused who has been remanded in custody will be released, and may not easily be found again. These are burdensome and serious consequences for the investigating officer and for the pursuit of justice.
- [64] The consequences for complainants, witnesses and bereaved family members are equally grave. They might well have attended court and waited patiently all day, only to find at the end of the day that the matter is struck off the roll because SAPS has not brought the docket. Their confidence in SAPS' efficiency will inevitably be eroded.
- [65] The Commission concludes in the light of the evidence before it that there is a serious inefficiency at the three Khayelitsha police stations in relation to ensuring that dockets are brought to Court that requires urgent attention. Like some other inefficiencies identified at the three police stations, this inefficiency also harms the relationships between the community and SAPS.
- [66] The Commission is of the view that the reason for this inefficiency lies, in the first place, with inadequate systems having been put in place to ensure that dockets are brought to court. Secondly, it is also caused by the overburdening of detectives in Khayelitsha. Thirdly, in the view of the Commission SAPS' members tends to be too complacent about the harm caused by the failure to bring dockets to court, and takes too few steps to ensure that dockets are brought to court.

145 Transcript at 4154 (20 February 2014).

146 Screening Protocol, annexed to Major General Molo's Affidavit, Record Bundle 8(4), File 4.4, File 9, Item 20.8, Item 13, Annexure D at p 216.

147 Exhibit DP(2) Record Bundle 10(3), Item 40(a).

148 Transcript at 4058 (20 February 2014).

149 Colonel Reitz Transcript at 3059 (13 February 2014); Brigadier Dladla Transcript 3787 – 3791 (19 February 2014) and Colonel Pillay at 4067 (20 February 2014.)

150 Transcript at 4162 – 4163 (20 February 2014).

(c) Failure to provide regular feedback to complainants, witnesses and bereaved family members

- [67] A repeated complaint was that detectives failed to provide feedback to complainants, witnesses and bereaved family member.¹⁵¹ Of the approximately 200 individual complaints received by the Commission and the complainant organisations, nearly 44% raised the issue of inadequate feedback.¹⁵²
- [68] SAPS has a system of sending bundles of SMSs to complainants when a docket has been opened, providing complainants with the CAS number and the name of the investigating officer that has been allocated to the case. This is a commendable system, which provides crucial information to complainants. However, the Commission notes that problems can arise with the system where there is more than one complainant, as both Lieutenant Colonel Swart and Colonel Tobias acknowledged, because a SMS may only be sent to one of them, and The Commission proposes that SAPS take steps to address this issue.¹⁵³
- [69] Once an SMS has been sent, however, the real failure of feedback occurs, as the general practice seems to be that very little feedback is thereafter provided to complainants. There is also a failure to inform complainants when a new investigating officer takes over a matter. This is not an invariable rule as there are some investigating officers who provide feedback at least to some of complainants. This was evidenced by a few individuals who laid complaints and told the Commission that they had had one investigating officer who had provided them with regular feedback, but that when that officer was replaced by another the system of feedback dried up.¹⁵⁴ As will be mentioned again in Chapter 14, the failure to provide feedback to complainants, witnesses and bereaved family members is destructive of a good relationship between SAPS and the community.
- [70] Colonel Wiese admitted in her testimony that the failure to provide feedback was a significant problem. She accepted that in the report attached to her affidavit where she had inspected 86 dockets, she had not found once a docket in which there had been regular feedback to the complainant.¹⁵⁵
- [71] The Commission concludes that the evidence before it suggests that the failure to provide regular feedback to complainants, witnesses and bereaved family members is a material inefficiency in the detective service at the three Khayelitsha police stations. It is an inefficiency that has a particularly corrosive effect on the relationship between the community and SAPS and therefore demands urgent attention.

(d) Failure to use City's CCTV cameras effectively

- [72] The Commission was told that the City operates 16 CCTV cameras in various parts of Khayelitsha.¹⁵⁶ The cameras were installed approximately ten years ago with funding from national government.¹⁵⁷ No further cameras have been installed since. Because the cameras

151 Mr Mokoena Statement Record Bundle 1(1), File 1.a, Item 11; Ms Zembe Statement Record Bundle 1(1), File 1.a, Item 13 and 13A; Ms Sitaya Statement Record Bundle 1(1), File 1.a, Item 41; Ms Thosholo Statement 1(1), File 1.a, Items 49 and 49a; Ms Mpekweni 1(1), File 1.a, Item 47; Mr Tame 1(1), File 1.a, Item 64; Mr Makele Record Bundle 2, File 5, Item 66 at para 17.

152 Appendix D.

153 Lieutenant Colonel Swart Transcript at 3458 – 3459 (17 February 2014); Colonel Tobias Transcript at 4364 – 4365 (21 February 2014).

154 For example, Ms Thosholo's Statement, Record Bundle 1(1), File 1.a, Items 49 and 49a.

155 Transcript at 5097 – 5098 (24 March 2014). Colonel Wiese report Record Bundle 5(4), File 4, Item 50.

156 A map containing the location of the 16 CCTV cameras at Record Bundle 8(5), Item 71.

157 Mr Bosman Statement Record Bundle 4(2), File 8 at para 45.2.

were installed so long ago, there are no cameras in the areas of Khayelitsha that have been more recently established. According to Mr Bosman, the head of the City's Safety and Security Directorate, there are 330 cameras installed across the City for crime prevention and detection purposes, not including those used on the freeways.¹⁵⁸ There are plans to roll out more cameras, across the City over the next ten years, but, again according to Mr Bosman, there are currently no plans to provide more cameras in Khayelitsha.¹⁵⁹ At present, only three of the five railway stations in Khayelitsha are covered by CCTV cameras.¹⁶⁰

- [73] At the time of the first phase of hearings of the Commission, six of the 16 cameras in Khayelitsha were not functional at the time of the hearings, either because of optic fibre cable damage or power cable damage.¹⁶¹ Mr Bosman told the Commission that cable theft and illegal "tapping" of electricity from the power source are some of the causes of faults in the CCTV cameras.¹⁶² The City aims for a 90% level of operation of the cameras on a daily basis.¹⁶³ The Commission notes that with 6 out of 16 cameras out of order in Khayelitsha, the functioning rate of CCTV cameras in Khayelitsha at the time of the first phase of the hearings was considerably below that benchmark at 63%. The Commission considers that the City should consider what might be done to ensure better levels of functioning of CCTV cameras in Khayelitsha. One possibility would be installing the latest model of "wireless" camera in Khayelitsha which might reduce the risk of cable theft. The Commission also considers that the City should consider installing cameras at all the transport hubs in Khayelitsha, including the two newest railway stations, Chris Hani and Kuyasa. This would be consistent with the City's own criteria for installing CCTV cameras.¹⁶⁴
- [74] The cameras are monitored on a 24-hour basis at the City's Traffic Management Centre (the TMC) at Goodwood. The Commission conducted an inspection in loco at the TMC to observe the quality of the camera footage as well as to see how the system works. SAPS has a liaison officer permanently situated at the TMC who is responsible for ensuring that SAPS units respond to any crimes noticed by the camera monitors. It was clear to the Commission that the cameras produce good quality images during daylight, and the camera monitors are able to zoom in on the faces or vehicles within camera range. If faces are not obscured, identification of witnesses and perpetrators on the camera footage will often be possible. The Commission did not see the quality of night-time footage which will depend on ambient lighting at the time, and will not be as good as daytime footage.
- [75] Ms Harmse, the senior public prosecutor at Khayelitsha told the Commission that she was not aware of footage from the CCTV cameras ever having been used as evidence in a criminal case in the Khayelitsha Magistrates' Court.¹⁶⁵ This accorded with the evidence of Mr Cole, a superintendent in the Metro Police who manages the operations at the TMC, who told the Commission that he had never been called as a witness to authenticate footage of the Khayelitsha CCTV cameras, although he is called as a witness in other courts regularly.¹⁶⁶ Moreover, neither Colonel Reitz, a long-time station commander at Lingeletu West, nor Brigadier Dladla, had visited the TMC.¹⁶⁷ There are no CCTV cameras in Harare. On the

158 Id. at para 48. Mr Möller said there were 360 such cameras; Transcript at 2527 – 2564 (11 February 2014).

159 Id. at para 50. See Chapter 9, above, at paras 117 – 118.

160 Id. at para 45.5.

161 Transcript 2531 – 2532 (11 February 2014).

162 Mr Bosman's Statement Record Bundle 4(2), File 8 at para 54.

163 Mr Bosman Transcript 1953 – 1954 (6 February 2014).

164 Record Bundle 1(10), File 2, Item 15.

165 Transcript at 1865 (6 February 2014).

166 Transcript at 2539 (11 February 2014).

167 Transcript at 2881 (Colonel Reitz) and Transcript at 3349 – 3350 (Brigadier Dladla).

other hand, Lieutenant Colonel Swart, the detective commander at Lingeletu West told the Commission that on some occasions, the camera footage has been used to identify perpetrators.¹⁶⁸ The City was asked to provide the documentation which indicates that video footage has been released to SAPS members from Khayelitsha and how often they have come to view the footage.¹⁶⁹ The City identified five occasions when footage had been collected.¹⁷⁰

- [76] The Commission concludes that the detective branches at Khayelitsha Site B and Lingeletu West should be able to make better use of the CCTV cameras. It would be beneficial for both detective branch commanders and senior detectives to visit the TMC to observe the quality of the footage produced by the cameras. In the view of the Commission, the failure to use the CCTV footage is further evidence that the detectives in Khayelitsha generally make little use of investigative aids in carrying out their work of crime detection and investigation.

(e) Failure to recruit and use informers effectively

- [77] One of the issues that emerged during the proceedings was the fact that SAPS has recruited very few informers in Khayelitsha.¹⁷¹ This is a problem that has been identified by SAPS on many occasions and is regarded as a “weekly discussion point at detective meetings”¹⁷² as well as being regularly discussed at SCCF and CCCF meeting, apparent from the minutes and the inspection reports. Moreover, National Instruction 2/2001 requires each detective to recruit at least one new informer per month.¹⁷³ Indeed, Lieutenant Colonel Swart told the Commission that he would be unable to obtain a “4” on his PEP, because of the poor record that his detective unit had in recruiting informers.¹⁷⁴ He also told the Commission that the target had not been met in any police station where he had worked.¹⁷⁵
- [78] Senior police officers at all three police stations admitted that they had difficulties in recruiting informers, although they also tended to consider the recruitment of informers to be important.¹⁷⁶ Indeed, Major General Jacobs described the recruitment of informers as “a core part of our business” and admitted that “we could do better there”.¹⁷⁷
- [79] Colonel Wiese, the Khayelitsha cluster detective co-ordinator told the Commission that one of the reasons that it is difficult to recruit informers is because people are frightened that they will be exposed as informers and face retaliation from community members.¹⁷⁸ Colonel Tobias said that members of the community do not want to be recruited as informers because they will be seen as *impimpis*.¹⁷⁹ Brigadier Dladla in explaining why registered informers were not being recruited blamed both the stigma attached to being an *impimpi* and the registration

168 Transcript at 3468 (17 February 2014).

169 Record Bundle 12, File 4, Item 1.

170 Annexure FS 11, Record Bundle 12, File 4, Item 8.

171 Colonel Marais Transcript at 3966 (19 February 2014). In the September 2011 inspection report, Khayelitsha Site B had 6 registered informers and two claims had been submitted. Record Bundle 3(3.30), File 1, Item 2 at para 4.7.1. In August 2012 there was 9 registered informers and 19 claims submitted (9 by detectives) for the 2011/2012 year, however only 8 detectives used informers.

172 Record Bundle 3(3.30), File 1, Item 1 at para 4.7.1.

173 Schooling and Leamy report, Record Bundle 9(1), File 1.1., Item 1 at para 91. Lieutenant Colonel Swart Transcript at 3349 (17 February 2014). The Western Cape Detective Ten Point Plan stated that a detective must register one informer per quarter and submit one claim per quarter Record Bundle 3(3.30), File 1, Item 1 at para 4.7.1.2.

174 Transcript at 3383 (17 February 2014).

175 Id. at 3349.

176 Lieutenant Colonel Swart Transcript at 3349 (14 February 2014); Colonel Tobias Transcript at 4368 – 4369 (21 February 2014) and Brigadier Dladla Transcript at 3822 – 3823 (19 February 2014).

177 Transcript at 6084 (28 March 2014).

178 Transcript at 5078 – 5079 (24 March 2014). Brigadier Dladla Transcript at 3823.

179 Transcript at 4368 (21 February 2014).

process, testifying that he had a number of informal informers who did not want to register.

¹⁸⁰ Colonel Wiese told the Commission that –

“I attended various crime scenes, murder, rape, ... vigilante murder cases, ..., and as you stand on that crime scene, there’s a lot of people around you and you can speak to the people, you can ask them, even the next door neighbour, “What happened? It’s in front of your door?” They’re not prepared to speak to us because they really are scared. So even if you return to that address later in the week and you’re alone, people are still scared..... People are scared they’re going to be exposed as an informer and then they will be killed in the community.”¹⁸¹

- [80] The Commission is of the view that the failure to recruit and use informers effectively is a failure of SAPS in Khayelitsha. One of the reasons for the failure to recruit informers relates to the fact that members of the community fear that if they become informers they will face retaliation by other members of the community. In the view of the Commission, the failure to recruit informers is closely related to the low levels of trust between SAPS and the community, as well as to the historical legacy with which SAPS is burdened, relating to the role of informers and *impimpis* in the *apartheid* era.

C. CRIME INTELLIGENCE

- [81] Dr De Kock told the Commission that crime intelligence is vital to effective and efficient policing, and that policing should always be intelligence-based.¹⁸² He explained that 95% of crime intelligence is the information that is obtained from complainants.¹⁸³ A range of SAPS witnesses before the Commission acknowledged the importance of intelligence-led policing.¹⁸⁴ According to Dr De Kock, there are two vital structures in a police station: the Crime Intelligence Officer (CIO), and the Station Crime Combating Forum (the SCCF). The CIO has three key tasks: crime mapping, case linkage analysis and field work. Crime mapping is used “to determine the exact location of crime and specifically concentrations of crime, called crime hotspots”.¹⁸⁵ It relies on information stored on the CAS. A crime pattern correlates the time and places at which crimes are committed with relevant geographic features.¹⁸⁶ Case linkage analysis involves examining dockets to see if there are any commonalities in terms of victims, targets, perpetrators or modus operandi.¹⁸⁷ To do case linkage analysis, a CIO needs to develop and maintain a matrix which can be used to identify crime patterns. Thirdly CIOs should undertake fieldwork by visiting crime scenes, interviewing witnesses, members of the public and investigating officers.¹⁸⁸ The CIO should also brief each shift as to current crime patterns, and obtain crime information from members ending their shifts. Finally, Dr De Kock told the Commission that in his view the *least* important task of the CIO is to

¹⁸⁰ Transcript at 3676 – 3678 (18 February 2014)

¹⁸¹ Transcript at 5078 (24 March 2014).

¹⁸² Transcript at 7131 (13 May 2014).

¹⁸³ Id.

¹⁸⁴ For example, Colonel Tobias at Transcript 4606 (17 March 2014).

¹⁸⁵ Dr De Kock report Record Bundle 12(1), Item 15 at para 132.

¹⁸⁶ Id. at para 133.

¹⁸⁷ Id. at para 137.

¹⁸⁸ Id. at para 142.

analyse crime statistics. He said that focussing on an increase or decrease in crime rates, would prevent police from focussing on the core aspects of crime intelligence.¹⁸⁹

- [82] The information gathered by the CIO should lead all the police work at the police station. As we have noted at paras 12 – 16 above, National Instruction 3/2013 proposes that uniformed operational personnel should be deployed in sectors in the light of the crime threat analyses and crime pattern analyses produced by CIOs.¹⁹⁰
- [83] In order to use the information generated by the CIO, Dr De Kock said that police stations should hold weekly SCCF meetings, attended by all senior officers.¹⁹¹ At that meeting, the crime threat analysis should be discussed and “operationalised” by the station management, which requires understanding the specific crime challenges and determining how they should be addressed by SAPS members at the station. Dr De Kock emphasises that SCCF meetings should not focus on station management or logistics, because the issues of crime intelligence would become secondary. Dr De Kock referred to the Blueprint for SCCF at Station, Cluster, Provincial and National level, which makes this plain.¹⁹²
- [84] Dr De Kock conducted a detailed analysis of the 58 sets of SCCF minutes provided to the Commission.¹⁹³ Despite repeated requests, the Commission was not provided with the crime threat analyses relating to the three police station as requested. Dr De Kock concluded that there was no mention of crime threat analyses or crime pattern analyses at any of the three police stations, that in Harare and Khayelitsha Site B there was no discussion of hotspots or case linkage analysis, and that although hotspots were identified at Lingeletu West, they were not specifically mapped, and the relevant crimes were very general, such that Dr De Kock concluded that the analysis was “of no use at all”.¹⁹⁴ He noted that none of the meetings were purely about crime as the Blueprint required, and that some of them were titled SCCF and Station Management meeting.¹⁹⁵
- [85] Dr De Kock concluded that his analysis of the SCCF minutes suggested that “in all probability crime reductions and increases have nothing to do with policing in this area, but are a result of external factors”.¹⁹⁶ He described policing at the three stations as “policing by chance and luck and clearly not intelligence-led policing” which, he said, SAPS claim to be their approach.¹⁹⁷
- [86] The Commission received a comprehensive report from Dr De Kock dealing with crime intelligence on 6 May 2014 and he testified in relation thereto on 13 May 2014. In relation to the crime threat analysis report headed “Threat Analysis: Khayelitsha Cluster” which had been compiled by the Cluster Command for the period April 2012 to March 2013 in respect of crime trends at the end of the 2012/2013 financial year for the Khayelitsha Cluster,¹⁹⁸ Dr De Kock testified that it was not a proper crime threat analysis as it had been compiled six months after the period to which it relates.¹⁹⁹

189 Id. at para 146.

190 National Instruction 3/2013 Record Bundle 3(3.22), File 1, Item 11 at paras 5(d) and 8(3); and discussion in this chapter above at paras 12 – 15.

191 Transcript at 7143 (13 May 2014).

192 Exhibit CDK1 Record Bundle 12(2), Item 98 at para 3.5.

193 Record Bundle 8(4), File 4.2, Items 9a (Harare), 9b (Lingeletu West) and 9c (Khayelitsha).

194 Dr De Kock’s evidence, see Chapter 12, above, at paras 99 – 112. Dr De Kock’s analysis of the SCCF minutes at para 108. Dr De Kock’s Report, Record Bundle 12(1), Item 15 at para 154.2.

195 Record Bundle 12(1), Item 15 at para 154.11.

196 Id. at para 158.

197 Id.

198 Record Bundle 12, File 3, Item 12.1; see Chapter 12 above at para 111.

199 Record Bundle 12, File 1, Item 15 at para 159; Transcript at 7174 – 7175 (13 May 2014)

- [87] Once the Commission received Dr De Kock's report, it informed SAPS that the "Cluster analysis" was not the crime threat analyses sought by the Commission. At the same time, SAPS was informed that the Commission was not in possession of any information that suggested that crime threat analyses are being done on a regular basis at the 3 Khayelitsha stations.²⁰⁰ Thereafter on 26 May 2014 the Commission informed SAPS that in the absence of separate crime threat analyses for the respective stations having been provided to the Commission, it will be assumed for purposes of the Commission's report that no such reports exist for the three police stations over the relevant period.²⁰¹ On 30 May 2014 SAPS provided the Commission with documents labelled "Crime Threat Analyses" in respect of Khayelitsha Site B for the period January – March 2012 and Lingeletu West for the period 2007/2008²⁰² and explained that no further crime threat analyses could be provided in relation to Harare, as its computer hard drive had crashed.
- [88] The Commission provided these documents to Dr De Kock for his comment and Dr De Kock provided a brief supplementary report on 10 June 2014, which was provided to the parties on 13 June 2014.²⁰³ In that report, he noted that the Lingeletu West crime threat analyses related to a period nearly six years previously. He wondered whether this was the last set of crime threat analyses prepared at Lingeletu West.
- [89] In his supplementary report, Dr De Kock speculated that the only reason the crime threat analyses had not been provided earlier "was to try and avoid embarrassment". He told the Commission that the documents do not constitute crime threat analyses but merely tables of crime statistics. He noted there was no reference to specific crime hotspots for specific types of crime. He concluded after considering the analyses that the tasks of crime mapping, case linkage analysis and fieldwork are not performed at the police stations.²⁰⁴ In sum, he said that the documents were "extremely worrying" as they confirm the analysis of the SCCF minutes that policing at the three Khayelitsha police stations is policing by chance and not intelligence-led policing.²⁰⁵
- [90] On 20 June 2014 the Commission received a response from SAPS to both Mr De Kock's reports. No further documents were provided to the Commission but the letter asserted that the crime threat analyses performed at Khayelitsha Site B and Lingeletu West were "correct", though no reasoning was provided to support this statement.²⁰⁶ The letter also stated that crime threat analyses for Lingeletu West were not available because of a computer malfunction.²⁰⁷
- [91] Dr De Kock told the Commission that some experienced police officers are reluctant to adopt intelligence-led policing, preferring to rely on intuition and past practice. Mr Faull confirmed that he had experienced such resistance in his fieldwork experience of accompanying uniformed police on patrols.²⁰⁸
- [92] The Commission notes that the importance of the work of the CIO is emphasised by National Instruction 3/2013. All deployment of visible policing personnel in sectors is now to be based

200 Record Bundle 13(1), File 1.4, File 11, Item 73 at para 4. As indicated in this letter the crime threat analyses and crime pattern analyses had previously been sought on 15 March 2014 and 14 April 2014.

201 Record Bundle 13, File 2, Item 12.5.

202 Record Bundle 13(2), Item 12.7 (Khayelitsha Site B) and Item 12.8 (Lingeletu West).

203 Record Bundle 13(9) Item 15(d).

204 Id.

205 Id.

206 Record Bundle 13(2), Items 12.10 and 12.11

207 Id.

208 Mr Faull Transcript at 7999 – 8000 (16 May 2014).

on crime threat analyses and crime pattern analyses.²⁰⁹ The failings identified by Dr De Kock are therefore extremely worrying. They constitute grave inefficiencies in the way that crime intelligence information is compiled and used at all three stations.

- [93] It is not clear to the Commission why crime intelligence is so poorly handled at the three police stations. Dr De Kock suggested that it could be as a result of the fact that the Crime Intelligence Officer, as well as the senior management of the police station who attend SCCF meetings, do not fully understand the role of the CIO and the way in which crime intelligence should be used at the SCCF meetings to inform intelligence-led policing. The Commission considers this to be the likely explanation for the inefficiencies, and its recommendations will be drafted accordingly.

D. CRIME SCENE MANAGEMENT

- [94] Crime Scene Management is a task shared between Visible Policing and detectives. The Commission was provided with a letter dated 29 May 2007, signed by Lieutenant General Lamoer when he was the Divisional Commissioner: Visible Policing in the national office that provided a protocol for crime scene management.²¹⁰ The letter stated that it was compiled in accordance with Policy 2/2005 but the Commission was not provided with a copy of that policy, despite request.²¹¹ The Protocol of 29 May 2007 stipulated that SAPS members who encounter a crime scene must take control of it and then take steps to secure and preserve the scene, by cordoning it off with barrier tape if appropriate, and denying all unauthorised persons from access to the scene. All visible exhibits and evidence must be secured and protected.²¹²
- [95] The Commission received evidence from a number of community members that suggested crime scenes are not routinely secured and protected in Khayelitsha. One of these was Ms Msongelwa who told the Commission that her brother was found murdered near a bus stop in Khayelitsha. She called SAPS and when SAPS members finally arrived, they left her brother's body, and the crime scene, without protection, in order to pursue a suspect.²¹³
- [96] Mr Van der Westhuizen, the Assistant Director of Forensic Pathology at Tygerberg Forensic Pathology Laboratory told the Commission that it was the exception to find a properly protected crime scene in Khayelitsha (as well as in other areas).²¹⁴ Mr Jones, the Deputy Director: Metro District Manager in the Forensic Pathology Service of the provincial Department of Health, told the Commission that although it would be good practice for investigating officers to wait at crime scenes for the arrival of the Forensic Pathology Officer, this often does not happen.²¹⁵ He also told the Commission that the crime scene is often contaminated by the time the Forensic Pathology Officer arrives, particularly by the family having contaminated the clothing of the deceased.²¹⁶

209 Record Bundle 3 (3.22), File 1, Item 11 at para 5.d and 8.3.

210 Record Bundle 10(2), File 2.2, Item 21.

211 Id. at para 6.

212 Id. at para 3.3.

213 See Chapter 7, above, at para 61.

214 Mr van der Westhuizen Statement Record Bundle 2(1), File 1.2, Item 4 at paras 6 – 7.

215 See overview of Mr Jones' evidence in Chapter 9, above, at paras 86 – 100. Mr Jones Statement Record Bundle 4(1), File 2, Item 5; Transcript at 1085 (3 February 2014).

216 Transcript at 1086 (3 February 2104).

- [97] The Commission also records that the Task Team report also noted that the three Khayelitsha police stations tended not to summons crime scene experts to crime scenes.²¹⁷
- [98] Both Lieutenant Colonel Swart and Colonel Marais described the difficulty of cordoning off crime scenes in informal neighbourhoods.²¹⁸ Lieutenant Colonel Swart admitted that it is possible that crime scenes are not properly cordoned off.²¹⁹ Colonel Marais also pointed to the difficulties created where there is inadequate lighting of crime scenes at night in informal neighbourhoods, and said that a small generator together with halogen lamps would greatly assist.²²⁰ Other than these admissions, however, SAPS witnesses generally denied there were problems with crime scene management in Khayelitsha.²²¹
- [99] It is worth noting in this regard that Ms Harmse, the Senior Public Prosecutor at Khayelitsha Magistrates' Court told the Commission that very few prosecutions in Khayelitsha rely on evidence or exhibits recovered at crime scenes, instead most evidence is from witnesses who testify *viva voce*.²²² She told the Commission she could not explain whether this was because crime scenes were not properly investigated.²²³
- [100] The Commission finds on the record before it that crime scenes are not always secured in the manner that they should be in Khayelitsha. In part, this failure to secure crime scenes arises from the difficulty of policing in informal neighbourhoods, where houses are often closely packed together and cordoning off scenes is challenging. Another difficulty that arises in informal neighbourhoods arises from the fact that lighting is poor and vehicles cannot gain access so their headlamps cannot be used to light the scene. Another reason for the failure to manage crime scenes properly was explained by Colonel Marais in his evidence that given the pressure of work, particularly on weekend nights, when the on-duty detective team has to attend to many crimes, they are often called from one crime scene to another.²²⁴
- [101] Dr Klatzow, an independent forensic scientist who has had many years of experience, told the Commission that crime scene protection could be significantly enhanced by providing all patrol vehicles with low-cost crime scene equipment that would include barrier tape, protective garments and gloves.²²⁵ He also told the Commission that a set of halogen lights and a small generator would greatly assist forensic work at a crime scene.²²⁶
- [102] Dr Klatzow told the Commission that one of the reasons for the poor quality of crime scene management was the level of training of many SAPS members on crime scene management.²²⁷ Both Ms Thompson and Professor Wadee said the same thing in their evidence.²²⁸
- [103] The Commission concludes in the light of the evidence of Mr van der Westhuizen and Mr Thompson, as well as the statements made by members of the community that crime scenes in Khayelitsha are often not managed in accordance with the prescripts set out in the Protocol

217 Record Bundle 1(3), AL 87, at para 8.4.4.

218 Colonel Swart Transcript at 3272 – 3273 (14 February 2014) and Colonel Marais Transcript at 3861 (19 February 2014).

219 Transcript at 3271 (14 February 2014).

220 Transcript at 3867 – 3868 (19 February 2014).

221 See, for example Colonel Swart Transcript at 3428 – 3429 (17 February 2014) and Colonel Marais Transcript at 3861 (19 February 2014).

222 Record Bundle 8(1), File 1.3, Item 13 at paras 109 – 110.

223 *Id.*

224 Transcript at 3856 – 3858 (19 February 2014).

225 Dr Klatzow report Record Bundle 12(1), Item 17a at para 3. See also the overview of his evidence at Chapter 12, above, at paras 90 – 97.

226 Transcript at 7239 – 7240 (13 May 2014).

227 Record Bundle 12(1), Item 17a at p 2.

228 Transcript at 1127 – 1129, 3 February 2014 and see the overview of their evidence in Chapter 9, above, at paras 86 – 100.

of 29 May 2007. There are several reasons for this, in the view of the Commission. The most important is that, particularly in informal neighbourhoods, cordoning off crime scenes may be difficult, in that it may require people to be excluded from their homes or from using major thoroughfares. In addition to environmental challenges, however, the Commission notes that there are other reasons for the poor quality of crime scene management in Khayelitsha. First, SAPS members do not appear to be properly trained in crime scene management and in forensic science to enable them to understand the importance of protecting crimes scenes. Secondly, SAPS members are not equipped with basic crime scene kits to enable that crime scenes be cordoned off so that only authorised personnel are permitted to enter the scene wearing protective garments. Thirdly, the absence of adequate lighting is a particular challenge that can be resolved by providing a small generator and halogen lights to crime scene teams at each police station.

E. ARREST, DETENTION AND RELEASE OF SUSPECTS

- [104] Responsibility for the arrest, detention and release of suspects is shared between Visible Policing and the Detective Branch.²²⁹ Detectives bear the responsibility for charging a detainee. Members of Visible Policing who staff the police cells are responsible for ensuring that detainees are not held for longer than 48 hours without being charged. According to the Constitution,²³⁰ and the Criminal Procedure Act, 51 of 1977²³¹ people who are arrested on suspicion of having committed a crime must be brought before court within 48 hours of their arrest, unless the 48 hours expires on a day that is not a court day, or after court hours, in which case they must be brought before court on the next court day. The Schooling and Leamy report explained that detectives often delay charging detainees as long as possible, presumably in order to finalise their investigation. As a result, the report states that tension can arise between the Visible Policing unit and the Detective Branch in this regard.²³² A key document that records the detention and release of suspects from police cells are the SAPS 328s.
- [105] There are two issues relating to arrest and detention that have been drawn to the attention of the Commission: the practice of detaining suspects, but releasing them without charge and the practice of detaining people for longer than 48 hours.

(a) Detaining and releasing suspects without charge

- [106] The Task Team report noted that many suspects were arrested, detained and then released without charge.²³³ The Schooling and Leamy report also noticed that there are many arrests for minor offences, such as riotous behaviour, at the Lingeletu West station where detainees are locked up overnight and then released the following morning on a J534 (payment of an

229 Record Bundle 9(1), File 1.1, Item 1 at para 211.

230 Section 35(1)(d) of the Constitution provides that –
 “Everyone who is arrested for allegedly committing an offence has the right –
 (d) to be brought before a court as soon as is reasonably possible, but not later than –
 (i) 48 hours after the arrest; or
 (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day.”

231 Section 50(1) of the Criminal Procedure Act, 51 of 1977.

232 Record Bundle 9(1), File 1.1, Item 1 at para 211.

233 Record Bundle 1(3), AL87 at para 8.3.2.

admission of guilt fine). They note that where people are arrested without cause, this puts SAPS at risk of a civil claim for damages.²³⁴

- [107] Colonel Tobias, the former Detective branch commander at Harare, pointed to the effect that the Performance Chart arrest targets in relation to police-initiated reports of crime can have on this practice during his testimony.²³⁵ He explained a reference in the Harare SCCF minutes to the fact that non-governmental organisations should be encouraged to assist with arrests for illegal possession of firearms and drunken driving,²³⁶ as relating to the target set for each police station to make arrests for police-initiated crime, such as drunken driving, possession of illegal firearms, or drug-related offences. He explained that if the target is not met, the station will receive an adverse score on that aspect of the performance chart.²³⁷

(b) Keeping detainees for longer than 48 hours

- [108] The Schooling and Leamy report concludes, after perusing the SAPS 328s provided to the Commission that the 48-hour rule “has been subject to abuse” at the three police stations.²³⁸ They observe that in many instances both the time of detention and the time of release are not recorded. They suggest that this could either be an error or “a deliberate ploy” to ensure that the SAPS 328s do not provide a record of detainees being held for longer than 48 hours.²³⁹ They also note that the SAPS 328s from Harare make clear that there are instances where detainees have been held for longer than the law allows.²⁴⁰ The Task Team Report also found that suspects are not generally charged within 48 hours.²⁴¹ Captain Pillay, one of the DCCOs at the Khayelitsha police station also noted that “once or twice” a month a case would be brought to court where a suspect had been detained for longer than 48 hours.²⁴² In such cases, he told the Commission, the matter would not be enrolled and the suspect would be released.²⁴³
- [109] The August 2013 internal audit of the Khayelitsha Site B police station discussed above at Chapter 10,²⁴⁴ also identified that high number of civil claims relating to unlawful arrests lodged against the police station for the period 1 January – 30 June 2013.
- [110] In the light of the evidence described above, the Commission concludes that there is a problem at the three police stations relating to the arrest and detention of people on minor offences, or where no offence has been committed at all, as well as the detention of suspects for longer than 48 hours. It considers that the main reason for these failures or inefficiencies arises, in the first place, from the lack of oversight of the SAPS 328s by senior management in the station. It also arises from the lack of consequences for individual SAPS members who act in this unlawful manner. Although the complainant organisations suggested to the Commission that these unlawful detentions may arise from lack of training of SAPS members,²⁴⁵ the Commission can find no evidence on the record before it that suggests SAPS members are unaware of the

234 Record Bundle 9(1), File 1.1, Item 1 at para 213. Transcript at 2266 (10 February 2014).

235 Transcript at 4526 – 4528 (17 March 2014).

236 Record Bundle 8(4), File 4.2, Item 9, at pp 2 -3.

237 Id.

238 Record Bundle 9(1), File 1.1 Item 1 at para 212.

239 Id.

240 Id.

241 See Task Team Report Record Bundle 1(3), AL 87, at para 8.33.

242 Transcript at 4058 – 4060 (20 February 2014).

243 Id.

244 See Chapter 10, above, at paras 62 – 65. Audit Report, Annexure AL3 Record Bundle 11(5), Item 87 at pp 19 – 20.

245 Record Bundle 13(4), Item 2 at para 290.4.

legal principles governing arrest, or the 48-hour rule. Indeed, Module 3 of the Basic Training Manual (BPDLP) includes a section dealing with “Managing the Detention of persons in Custody” that refers to the legal principles and sets out all the forms and registers that need to be completed, including the requirement to fill in the date and time of detention. These are obviously important issues that every member of SAPS should fully understand.

F. THE KHAYELITSHA FCS UNIT

- [111] The Khayelitsha FCS Unit, like other FCS Units, operates at cluster level. It is based at the Khayelitsha Site B police station. Its mandate is to investigate crimes, other than murder, where the victim is a child, inter-familial crimes including assault and attempted murder, and sexual offences, including rape and incest.²⁴⁶ All FCS Units fall under the command of Colonel Harri who is the Provincial Commander: FCS Unit, who reports to Major General Molo, the Provincial Head: Detective Services.²⁴⁷
- [112] The Khayelitsha FCS Unit operates on a 24-hour basis. Although its fixed establishment is 25 members,²⁴⁸ its current personnel according to Colonel Harri is only 17, comprising three officers and 14 members.²⁴⁹ The Unit is therefore significantly under-staffed but Colonel Harri told the Commission that she has found it difficult to recruit new members to the Khayelitsha FCS Unit, a problem she does not encounter in relation to other units.²⁵⁰ However, she said that six new members had been identified, and were waiting placement in the Unit.²⁵¹ Colonel Harri also told the Commission that the Unit has lacked a permanent commander for several years. However, at the end of 2013 a permanent commander, with the rank of Lieutenant Colonel, was appointed.²⁵² According to Colonel Harri, the Unit would still be under-staffed even if it had the full complement allocated to it.²⁵³
- [113] Colonel Harri described the procedure followed when a complainant reports a crime that falls within the mandate of the FCS Unit at a police station. She said that the police station will immediately contact the FCS Unit and then take the complainant to the victim-friendly room at the police station to wait for the FCS Unit investigating officer who will take a statement from the complainant.²⁵⁴
- [114] The Commission was provided with one inspection report in relation to the Khayelitsha FCS Unit.²⁵⁵ The inspection took place in June 2013, but the report was only forwarded to the FCS Unit for comment in December 2013. The report is extremely critical of the Khayelitsha FCS Unit, saying that the FCS Unit “is the worst performing unit and is bringing the whole FCS Unit component down”²⁵⁶ and that “the unit need ‘new blood’ ... willing to work”²⁵⁷

246 Investigation Mandate of FCS Unit 26 July 2010 Record Bundle 12(1), Item 23(a).

247 Transcript at 5773 (27 March 2014).

248 Khayelitsha FCS Unit inspection report Exhibit SH 1 Record Bundle 11(5), Item 72 at p 3.

249 Colonel Harri, Transcript 5777 (27 March 2014). The Inspection Report, cited in the previous note, indicates that there were 19 members attached to the Unit in June 2013.

250 Transcript at 5836 (27 March 2014).

251 Colonel Harri Statement Record Bundle 5(4), File 3, Item 8 at para 3.

252 Transcript at 5846 – 5848 (27 March 2014).

253 *Id.* at 5854.

254 Transcript at 5774 – 5 (27 March 2014).

255 See Chapter 10, above, at para 66. See Record Bundle 11(5), Item 72.

256 *Id.* at para 6.5.

257 *Id.* at para 10.

- [115] Colonel Harri who testified before the Commission confirmed the contents of the report, and said that the Khayelitsha FCS Unit was significantly under-performing. She identified the following challenges facing the Khayelitsha FCS Unit –
- low morale, arising from the nature of the cases they handle;
 - a reluctance to admit experiencing trauma and to seek help from the EHW, because of the SAPS culture of ‘cowboys don’t cry’;
 - repeated build-up of backlogs in the Unit, which have to be addressed by seconding teams from other Units; and
 - poor quality investigations.
- [116] Colonel Harri told the Commission that the members at the Khayelitsha FCS Unit appear to be “going through the motions” and lack the commitment found in other FCS Units.²⁵⁸ She suggested that although National Instruction 3/2008 requires members of the FCS Unit to go for counselling every six months, this rarely happens.²⁵⁹
- [117] Dr Josias, the principal medical officer at the Khayelitsha Thuthuzela Centre, gave evidence that confirmed the problems with the Khayelitsha FCS Unit.²⁶⁰ Dr Josias told the Commission that in her view the Khayelitsha FCS Unit was “poorly managed”,²⁶¹ “under-staffed”,²⁶² and that members of the Unit are provided with insufficient counselling.²⁶³ Dr Josias told that the FCS Unit very often did not attend the stakeholder meetings organised by the NPA at the Thuthuzela Centre.²⁶⁴ Eventually, in May 2013, the site co-ordinator of the NPA at the Thuthuzela Forensic Centre, Mrs Mogale, had written to Major-General Molo to complain about the work of the FCS Unit. In that letter, Mrs Mogale said that the FCS Unit was the “weakest link” in the group of stakeholders who work with rape survivors in Khayelitsha. She said that complaints directed to the FCS Unit had not been taken seriously so the group had decided to raise the problem collectively with Major General Molo.²⁶⁵ Dr Josias told the Commission that there had been no marked improvement after this letter was sent to Major General Molo. Dr Josias’ response on being told that SAPS struggled to recruit members to the Khayelitsha FCS Unit was that it was SAPS management’s task to ensure that the FCS Unit ran well, “That is what you expect management to do ... That is their job.”²⁶⁶
- [118] Ms Harmse, the Senior Public Prosecutor at Khayelitsha Magistrates’ Court, told the Commission that there was a particular problem with the Khayelitsha FCS Unit. She said that the investigating officers appeared overburdened²⁶⁷ and that many of their cases are withdrawn or struck off the roll.²⁶⁸ She said that the problems at the Khayelitsha FCS Unit were, in her experience, far worse than the Mitchell’s Plain FCS Unit.²⁶⁹
- [119] The Commission concludes that the FCS Unit in Khayelitsha is performing very poorly. There are inefficiencies in the manner in which it investigates cases, in the way in which it liaises with other stakeholders such as the Thuthuzela Centre, and the prosecutors at the Khayelitsha

258 Transcript at 5856 (27 March 2014).

259 Id. at 5795 and at 5857 – 5858.

260 See overview of Dr Josias’ testimony at Chapter 9, above, paras 67 – 80; Dr Josias’ Statement Record Bundle 1(1), File 1.a, Item 53. Transcript at 582 – 753 (29 January 2014).

261 Record Bundle 1(1), File 1.a, Item 53 at para 7.

262 Id. at para 8.

263 Id.

264 Transcript at 610 (29 January 2014).

265 Transcript at 645 – 648 (29 January 2014).

266 Id. at 721.

267 Transcript at 1836 – 1838 (6 February 2014).

268 Id. at 1837.

269 Id. at 1838.

Magistrates' Court. The Commission considers that there are a range of reasons for the poor performance of the FCS Unit – poor quality management; under-staffing of the Unit; low morale amongst members; and quite possibly burn-out of some members. All of these issues need to be addressed as a matter of urgency.

G. YOUTH GANGS

[120] The evidence that emerged during the Commission made it plain that there is an emergent youth gang culture in Khayelitsha that requires an immediate response. The gangs are different to the gangs that operate in other areas on the Cape Flats, which appear to be closely related to prison gangs, and to the illegal drug trade.²⁷⁰ Witnesses told the Commission that the names of the youth gangs in Khayelitsha are Vatos, Vuras, Russians and Italians, and that the gangs operate territorially. According to Ms Dwane, the Vuras operate in Site C, the Vatos in Kuyasa, the Italians in Site B and C and the Russians in Khayelitsha Central.²⁷¹ Gang members carry weapons, often knives and other sharp instruments, and the gangs engage in vicious battles with one another, often on Friday afternoons.²⁷² Several witnesses told the Commission that the places and times when gangs will fight are well-known.²⁷³ It is clear that each week children are injured, and die, in these battles. Children as young as ten years old join the gangs and find it hard to withdraw.²⁷⁴

[121] Mr Zitwana, an SJC member, described his younger brothers' explanation as to why they joined the Vatos, as follows –

“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 member 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 ... 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.”²⁷⁵

[122] Mr Zitwana told the Commission that his brothers had then decided to leave the gang, but that it had been very difficult to do. They had approached SAPS for assistance who had said they could not help, that this was a matter for the parents of the children, and “good luck.”²⁷⁶ They had also made a broadcast on the local radio station, Radio Zibonele, saying they were leaving the gang, hoping it might provide them with protection. Eventually Mr Zitwana decided that his brothers should be sent to their mother's traditional home in the Eastern Cape for their safety.²⁷⁷

[123] Mr Mahlutshana, the principal of Chris Hani Senior Secondary School, told the Commission that fighting between the gangs takes place both inside his school and in the surrounding

270 Ms Dwane Transcript at 770 (30 January 2014).

271 Transcript at 763 (30 January 2014).

272 Id. at 493.

273 For example, Ms Mlungwana Transcript at 252 (24 January 2014).

274 Ms Basson, former head of the Homestead Place of Safety in Site B, Statement Record Bundle 1(1), File 1.a, Item 5 at para 14.

275 Transcript at 2036 (7 February 2014). See also overview of his testimony at Chapter 7, at paras 85 – 92 above.

276 Mr Zitwana Statement Record Bundle 2(5), Item 72 at paras 23 – 27.

277 Id. at para 28.

area.²⁷⁸ Mr Mahlutshana told the Commission that the school had worked hard to try to deal with the problem. He said the schools had “a mini-museum” that contained all the knives confiscated from learners.²⁷⁹ SAPS was not assisting as much as he would like with the school gang problem but that members of the Harare CPF were providing assistance.²⁸⁰ Mr Mahlutshana also told the Commission that the gang situation “really affects learning and teaching” and that there was a need for a clear strategy to address the problem.²⁸¹ Many other schools principals made statements to the Commission expressing their concern at the problem of youth gangs.²⁸² Mr Jafta, the chairperson of the CPF in Lingeletu West, also expressed his concern about youth gangs, and mentioned that two schools, in particular, have a problem with gangs in his area: Bulumko High School and Iqhayiya Secondary School.²⁸³

- [124] There was evidence before the Commission that the effect of gangs is keeping some young men out of school because they are frightened of being attacked. Ms Ncaphacapha described the problems she had experienced in trying to arrange for her son to attend a school where gangs would not target him.²⁸⁴ When she approached the Western Cape Education Department for assistance because her son was anxious about travelling to and from school, they told her there was nothing they could do, it was a matter for SAPS.²⁸⁵ Ms Ncaphacapha also told the Commission that she had approached the chairperson of the Harare CPF for assistance, but he told her that things were not well at the Harare police station and suggested she go to SANCO to get a letter to ask the Taxi Association to assist her.²⁸⁶ Ms Mlungwana also told the Commission that her younger brother had had to stay away from school to avoid being attacked by one of the youth gangs.²⁸⁷
- [125] Ms Sonja Basson, the head of the Homestead Project for Street Children in Site B between 2004 and 2013 also spoke of the youth gangs. She said that the problem had started with small groups of rival youths, but that it had escalated, so that there were now “huge gangs”.²⁸⁸
- [126] SAPS appeared to have no clear strategy as to how to address the problem of youth gangs in Khayelitsha.²⁸⁹ Indeed, the SCCF minutes of the three Khayelitsha stations suggest there is no plan in place to deal with youth gangs.²⁹⁰ The Commission notes that Brigadier Mlenga, the former Cluster Commander, considered the youth gangs to be “just a loose group of youngsters that are mischievous” and suggested that the problem should be addressed by calling in parents to deal with the problem.²⁹¹ Several witnesses told the Commission that when a SAPS vehicle draws up when a fight is taking place, the children will stop fighting and disperse, but once the police leave, they start fighting again.²⁹² Colonel Reitz also

278 Transcript at 594 (28 January 2014).

279 Id. at 496.

280 Id. at 500 – 501.

281 Id. at 509.

282 Ms Mbava (School principal of Iqhayiya Secondary School) Statement Record Bundle 1(1), File 1.a, Item 27; Ms Malgas (principal of Manyano Secondary School) Statement Record Bundle 1(1), File 1.a, Item 40; Mr Magadla (principal of Siphamandla Secondary School) Statement Record Bundle 1(1), File 1.a, Item 52 and Mr Hlongwane (principal of Bulumko High School) Statement Record Bundle 1(1), File 1.a, Item 72.

283 Transcript 2785 (12 February 2014).

284 See overview of her testimony in Chapter 7, above, at paras 35 – 37; Ms Ncaphacapha statement in Record Bundle 1(1), File 1.a, Item 55; Transcript at 1015 – 1058 (31 January 2014).

285 Transcript at 1018 (31 January 2014).

286 Id. at 1023 – 1024.

287 See the overview of her evidence at Chapter 7, above, at paras 64 – 70. Ms Mlungwana Statement Record Bundle 1(5), File E, Item 30 at paras 31 – 33 and Transcript at 252 – 253 (24 January 2014).

288 Ms Mlungwana Statement Record Bundle 1(1), File 1.a, Item 5 at para 12.

289 Transcript at 6221 – 6228 (28 March 2014).

290 Record Bundle 8(4), File 4.2, Item 9a at p 3; Record Bundle 8(4), File 4.2, Item 9b at p 157, 173, 184, 187 and 208.

291 Transcript at 5144 (24 March 2014).

292 Ms Mlungwana Transcript at 253 (24 January 2014); Ms Dwane Transcript at 770 (30 January 2014).

Photo 19: Pedestrian pathway through open area



acknowledged that he was aware of the gangs, but said that most of the time, they do not commit crimes.²⁹³

- [127] Both Professor Kaminer and Professor Ward testified on the harmful impact violent youth gangs have on young people. They both considered that issue of youth gangs in Khayelitsha required an urgent response, that would require a partnership between SAPS, the Western Cape Department of Education and the Western Cape Department of Social Welfare.
- [128] The Commission concludes that the issue of youth gangs in Khayelitsha requires urgent attention. SAPS has so far failed to adopt a clear strategy as to how to deal with the problem of gangs. One of the reasons for this arises from the intractable nature of the problem. SAPS does not want to arrest young people unnecessarily but lacks the tools to make other forms of intervention that will be effective. In the view of the Commission, as will be explained more fully in Chapter 15, the problem of school gangs requires a multi-sectoral response, in which a partnership needs to be set up between SAPS, and a range of provincial departments, as well as key non-governmental organisations who work with young people in Khayelitsha.

H. VENGEANCE ATTACKS OR VIGILANTE ATTACKS

- [129] One of the issues that led to the establishment of the Commission as explained in Chapter 1 was an outbreak of “vigilante” attacks in Khayelitsha. The Commission has had difficulty in deciding what the correct term is for these attacks. Some people refer to them as “mob justice”,²⁹⁴ SAPS calls them “Bundu Court” killings,²⁹⁵ and yet others call them vigilante killings. All these names refer to the same phenomenon: actions of the community to punish

²⁹³ Transcript at 2961 (13 February 2014).

²⁹⁴ Dr Gillespie’s Report, Record Bundle 6(1), File 3, Item 8.

²⁹⁵ Record Bundle 1(3), AL87.

people perceived as offenders. Sometimes the punishment involves only an assault; but, often, at least in Khayelitsha, the perceived offender is murdered. It is clear that there is an element of vengeance to all these incidents, which is why the Commission has chosen to refer to them as vengeance attacks. Often such attacks are spontaneous: a woman's handbag is snatched, and the call of "iSela" will go up, and suddenly a crowd will gather and the perpetrator will be attacked.²⁹⁶ SAPS members who testified before the Commission generally insisted that all such incidents in Khayelitsha are spontaneous²⁹⁷ and most of the evidence before the Commission suggested that such attacks are mostly spontaneous, but there is evidence that suggests this is not invariably so.²⁹⁸

- [130] It is difficult to be certain as to how many vengeance attacks occur in Khayelitsha as SAPS told the Commission that it keeps no separate record of such offences.²⁹⁹ In its request for information from the three Khayelitsha stations, the Cluster Commander and the Provincial Commissioner, the Commission requested that it be provided with "all books, documents and/or objects containing information concerning incidents of vigilante and/or mob killings in Khayelitsha in the period 1 January 2010 – 31 August 2013 including any docket numbers relating to any criminal investigations arising from such events." The Commission was provided with four finalised case dockets relating to vigilante cases and informed that dockets that related to pending investigations would not be copied for the Commission but the Evidence Leaders would be permitted to inspect these dockets at the SAPS nodal point.³⁰⁰ It was later agreed that these dockets would be provided to the Commission but would not be part of the Commission's public record. No other information relating to vigilantism was provided, save for the "Bundu Court" report. Moreover, the Commission was informed that inasmuch as there was no crime classified as vigilantism or "Bundu Court killings" the information sought was not readily ascertainable.³⁰¹
- [131] It is apparent that SAPS does not have accurate reliable data or crime intelligence as to the extent of vengeance or vigilante attacks in Khayelitsha. The record makes clear, however that vengeance attacks are common. For example, during the inspection in loco in Enkanini, the Commission was shown a football field where, we were told, vengeance attacks take place regularly. The dockets relating to vigilante killings provided to the Commission fall into two categories. The "Bundu Courts" report that was annexed to the Task Team report and which identified 78 incidents in a fifteen-month period between April 2011 and June 2012. Secondly, an additional 21 case dockets relating to vigilante cases that the Commission requested that arose between 13 August 2011 and October 2013.³⁰² These were identified by the Commission from media reports,³⁰³ as cross-referenced to information provided to the Commission by the Tygerberg Mortuary. Suspects had been apprehended in nine of these 21 cases. There had been one conviction, two have been struck off the roll, two withdrawn, two postponed for further investigation and two pending for reasons not evident from the docket.

296 Dr Gillespie's Report, Record Bundle 6(1), File 3, Item 8, at p 13. Dr Gobodo-Madikizela report, Record Bundle 12(1), Item 24 at p 4; Transcript at 7775 – 7776 (15 May 2014).

297 Colonel Tobias at 4371 and 4383 (21 February 2014); Colonel Marais Transcript at 3955 (19 February 2014); Brigadier Dladla Transcript at 3521 – 3522 (17 February 2014); Colonel Marais Transcript at 3869 (19 February 2014); Colonel Nel Transcript at 4632; Colonel Raboliba Transcript at 4651.

298 Record Bundle 1(1), File 1.a, Items 66(a), 66(b) and 66(c), as well as overview of testimony at Chapter 7, above, at paras 15 – 16. Ms N Simelela, Record Bundle 2(4), Item 1, Transcript 297 – 329 (27 January 2014).

299 Colonel Reitz Transcript at 3177 (14 February 2104).

300 Transcript at 142 (25 November 2014).

301 Transcript at 73 – 75 (13 November 2014).

302 Record Bundle 8(1), File 1.5, Items 1 and 2

303 Record Bundle 1(2).

- [132] The dockets included in this report concerned murders, not assaults. It is likely that there are as many, if not more, vengeance attacks that do not result in the death of the victim. Several young people who testified told the Commission of their encountering vigilante attacks as children, which they did not suggest were unusual experiences.³⁰⁴ We note as well that DOCS in a report dated February 2013, identified seven vigilante hotspots in the Western Cape in 2012, three of which are in Khayelitsha.³⁰⁵ The Commission concludes, on the evidence, before it that vengeance attacks happen frequently in all areas of Khayelitsha.
- [133] Many observers conclude that vengeance attacks can be seen as one of the consequences of a failing system of policing. Yet, although Dr Gobodo-Madikizela accepted that poor policing is one of the causes of vengeance attacks, she suggested that there are other contributing factors as well.³⁰⁶ In identifying these factors, she said that the broader social, historical and political context of Khayelitsha should be examined. She suggested that a shared sense of grievance and anger amongst the community at the high levels of crime in Khayelitsha is one of the factors that makes vengeance attacks more likely. She also suggested that the violence of the *apartheid* era has echoes today, and that there has been a “trans-generational transmission of trauma and violence” which is a factor that contributes to crowd violence.³⁰⁷
- [134] Dr Gillespie told the Commission that vengeance attacks have a long history in South Africa and elsewhere.³⁰⁸ She said that during *apartheid*, safety and security was not provided by the state, but through anti-state community structures, such as street committees, that were often aligned to the liberation movements. She said that the legacy of non-state security provision persisted in contemporary Khayelitsha, through institutions such as street committees.³⁰⁹ She told the Commission that her research suggests that many Khayelitsha residents see the increase in crime in Khayelitsha to have occurred as a result of the decline in community structures that previously maintained order in Khayelitsha.³¹⁰ She identified a range of structures in Khayelitsha which provide alternative systems of justice, to the criminal justice system. These structures included taxi operators, street patrols, local justice committees in specific areas of Khayelitsha and SANCO.³¹¹
- [135] It is clear that there is often a fine line between a community system aimed at promoting safety and security, and forms of vengeance attacks. Several witnesses mentioned that some community patrols in Khayelitsha have assaulted people perceived to be criminals.³¹² Witnesses told the Commission of residents who resort to taxi associations to deal with a range of problems, including youth gangs, and that one of the actions taken by such associations involved the use of sjamboks.³¹³
- [136] From the “Bundu Court” report³¹⁴ it appears that in most cases the victim of the vengeance attack is suspected to have committed a crime such as theft, or house-breaking, or perhaps robbery. Most victims are young African men. Even if the victims of the vengeance attached have committed theft, the Commission note that there is no proportionality between the offence and the punishment. Moreover, several witnesses suggested that at times the victim

304 Ms Mlungwana Transcript at 228 – 271 (24 February 2014); Mr Zitwana Transcript 2022 – 2080 (7 February 2014)

305 Record Bundle 2(3), File 12, Item 13, pp 7 – 8.

306 Record Bundle 12(1), Item 24 at p 2.

307 *Id.* at p 10.

308 Dr Gillespie report Record Bundle 6(1), Item 8 at p 3.

309 *Id.* at p 6.

310 *Id.* at p 7.

311 *Id.* at pp 8 – 13.

312 Ms Mtwana Transcript at 2841 – 2841 (12 February 2014).

313 Ms Ncaphancapha talks about taxi men assaulting ‘criminals’ Transcript at 1054 – 1055, 31 Jan 2014.

314 See Chapter 10, above, at paras 75 – 89.

of the vengeance attack was not the person who had actually committed the crime that had triggered the attack.³¹⁵ Dr Gillespie quoted one young resident of Khayelitsha –

“I became involved in the campaign to stop vigilantism because people will be cheering when young black people were killed, and no one seems to mind because they were so-called ‘criminal’. People cheering like their favourite soccer team had scored a goal. Children were ululating. This is a clear sign of black self-hatred. When you are squashed into a tight corner you find fault with an easy target. Vigilantism is the easiest, shorted option by people that are in desperation.”³¹⁶

- [137] The Mthente survey indicated that three quarters of the residents of Khayelitsha do not approve of vengeance attacks.³¹⁷ This result is very similar to a similar study undertaken and reported on by Professor Seekings.³¹⁸ In the view of the Commission, these results are important, as they suggest that there is a significant majority view that vengeance attacks are not legitimate, even when the police service is not perceived to be efficient or effective. It is important that SAPS publically oppose the illegitimate use of violence and refuse to be complicit in unlawful practices.
- [138] A 2002 article was annexed to the affidavit of Lieutenant General Lamoer in the High Court that refers to a 2002 SAPS Vigilantism Prevention Strategy.³¹⁹ The article notes that prior to April 2002 no record was kept of incidents of vigilantism in Khayelitsha because, according to the author, vigilantism was sporadic. It describes the killing of three people in January 2002 which led to SAPS in Khayelitsha implementing a register to record incidents of vigilante attacks. The article notes that during 2002, SAPS drafted a Western Cape Vigilantism Prevention Strategy. According to the report, the Khayelitsha Police Crime Intelligence Analysis Centre (CIAC) then started recording vigilante attacks. It recorded 78 vigilante attacks between April 2003 and December 2003. It is not clear when this practice ceased, but it appears to the Commission that such records are no longer being kept.
- [139] SAPS could point to no specific strategy now in place to address the problem of vengeance attacks. Indeed, SAPS’ attitude to such attacks appears somewhat ambivalent. One witness provided a graphic account of a vengeance attack that took place in January 2014 at the Site C taxi rank.³²⁰ He noted that while the attack was happening there were several police officers having lunch in a nearby restaurant, who failed to take any steps to halt the attack. Sometime later, a group of uniformed police arrived and intervened. Yes SAPS is aware that they take place as the problem of vengeance killings is mentioned in several of the sets of SCCF minutes provided to the Commission.³²¹
- [140] The Commission considers that the problem of vengeance attacks in Khayelitsha is a serious issue that needs to be addressed by SAPS in a principled manner. The Commission concludes that SAPS currently has no strategy to address vigilantism or vengeance attacks in Khayelitsha. The Commission accepts that bringing an end to such attacks is not something that SAPS will be able to do quickly or on its own. Nevertheless, in the view of the Commission, SAPS’ failure to develop a strategy to address the worrying number of such attacks in Khayelitsha constitutes an inefficiency in policing in Khayelitsha.

315 Dr Gillespie report Record Bundle 6(1), File 3, Item 8, p 13.

316 Id. at p 14.

317 Record Bundle 10(1), File 1.1, Item 13.

318 Transcript at 421 (27 January 2014).

319 Benjamin Häfele “Vigilantism in the Western Cape” 2006. High Court Record Bundle 1(3), AL88, pp 711 – 731.

320 Mr Persson statement Bundle 7, File 11, Item 78, Transcript at 2648 – 2666 (11 February 2014).

321 Record Bundle 8(4), File 4.2, Item 9.

I. DOMESTIC VIOLENCE

- [141] As Professor Artz explained to the Commission, section 2 of the Domestic Violence Act imposes duties on SAPS members in relation to domestic violence complaints.³²² Those duties firstly, require SAPS to provide certain policing services to domestic violence complainants and secondly to record the steps they have taken in relation to the complaint. In order to ensure compliance with section 2, SAPS issued National Instruction 7/1999 to prescribe the manner in which members of SAPS would handle domestic violence matters.³²³
- [142] Section 12 of the National Instruction sets out the duties relating to the maintenance of records of domestic violence complaints. All domestic violence reports must be recorded in the Domestic Violence Register (SAPS 508(b)). In addition, the SAPS member to whom a report is made must complete a form, (SAPS 508(a)) which records that a domestic violence has been made. According to Professor Artz, the purpose of the SAPS 508(a) form is to ensure that SAPS fully document their response to every incident of domestic violence, whether or not a criminal offence has been committed.³²⁴ A copy of the SAPS 508(a) must be provided to the complainant. All the SAPS 508(a) forms must be filed together at the police station. Once a Magistrate issues a protection order or a warrant of arrest in relation to a domestic violence matter, the clerk of the court will forward a copy of the protection order or warrant of arrest to the CSC of the complainant's choice. At each police station, particulars of protection orders received must be entered into the appropriate columns of the Domestic Violence Register (SAPS 508(b)). The copies of the protection orders and warrants of arrest must also be kept on a file in the CSC.
- [143] Ms Lisa Vetten, an expert in domestic violence legislation, was provided with copies of registers and records relating to domestic violence provided by the three police stations. She concluded that the samples of the Domestic Violence Register (SAPS 508(b)) provided by Khayelitsha Site B and Lingeletu West "could not be considered as they did not provide sufficient information on which to base reliable and valid conclusions".³²⁵ In the case of Harare, she noted that nearly all the entries in the Register corresponded with the opening of a docket, which suggests that not all domestic violence incidents that are reported are entered in the Register, contrary to the National Instruction.³²⁶ She also noted that of the 416 incidents recorded in the OB, only 19 had been recorded in the register, in breach of the National Instruction. She also concluded that the entries in the Register were not being made contemporaneously, as incidents were not always in chronological order.³²⁷
- [144] Ms Vetten therefore concluded that the provisions of the Domestic Violence Act, as well as the prescripts of National Instruction 7/1999 are not being observed at the three Khayelitsha police stations. She noted that the ICD reports on compliance with the Domestic Violence Act compiled between 2006 and 2009 indicated that a majority of police stations are not fully compliant with the Act.³²⁸ However, she also noted that there are stations that are fully compliant with the Act. When asked what made the difference between compliant and non-compliant stations, she responded –

322 See overview of Professor Artz's evidence in Chapter 8, above, at paras 34 – 45. The text of section 2 is set out in Chapter 8, above, at para 37, footnote 78.

323 Record Bundle 2(3), File 10, Item 22.

324 Transcript at 2135 (7 February 2014).

325 See overview of her testimony in Chapter 8, above, at paras 46 – 53. Ms Vetten report (First Phase) Record Bundle 7(7), Item 5 at para 1.4.

326 Id. at para 6.9.

327 Id. at para 6.11.

328 Id. at para 5.2, Table 2.

“It has a lot to do with station culture and who is in charge. If you have a commander and senior managers who take the Act seriously, who are checking, who are making consequences follow, who are ensuring training is happening, who are liaising with community organisations, then this is not difficult ...”³²⁹

- [145] The tragic situation of domestic violence was illustrated vividly to the Commission by the statement of one of the witnesses, Ms NN,³³⁰ who told the Commission that she had obtained a protection order in terms of the Domestic Violence Act against her husband. He assaulted her once again, and he was convicted of breaching the protection order. The Court ordered that he attend anger management classes and alcoholics anonymous. Sometime later, he once again assaulted Ms NN, and broke her knee-cap. Ms NN told the Commission that she had –

“a great fear that my husband is going to increase his drunkenness ... 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.”³³¹

- [146] The Commission concludes on the record before it that the three Khayelitsha police stations are not fully compliant with the provisions of the Domestic Violence Act or National Instruction 7/2009. The Commission considers this to be a material inefficiency.
- [147] It is not clear on the record what the causes of this inefficiency are, although the Commission considers it may be related both to the training of individual SAPS members, and also the failure of management at the three police stations to insist that the provisions of the Act and National Instruction are fully observed.

J. ALCOHOL

- [148] There are apparently 1400 illegal taverns (or shebeens) in Khayelitsha³³² and 35 licensed outlets.³³³ There is also evidence on the record that there is a close correlation between abuse of alcohol and contact crime. The record also shows that most serious contact crimes take place on weekends, and generally at night.
- [149] Mr Giliomee, the Chief Executive Officer of the Western Cape Provincial Liquor Authority, told the Commission that it is generally easier to ensure that licensed liquor outlets comply with the terms of the law, in terms of trading hours and the prohibition on selling to children.³³⁴ He therefore felt that it would be helpful if more of the liquor traders in Khayelitsha could be licensed, but he said that the zoning laws, which prohibited licensed premises in residential areas, restricted the licensing of many taverns.³³⁵
- [150] The SAPS units in Khayelitsha do conduct “operations” to close illegal taverns from time to time. These operations are often undertaken with partners, such as the Liquor Authority, the City, and also other units of SAPS. However, as several witnesses testified, one of the difficulties with closing an illegal tavern, is that others spring up almost immediately, as

329 Transcript at 2516 (11 February 2014).

330 Record Bundle 1(1), File 1.a, Item 54.

331 Id. at para 3.

332 General Jacobs Transcript at 6172 (28 March 2014).

333 Mr Giliomee, Chief Executive Officer of the Western Cape Liquor Authority Transcript at 6884 (12 May 2014).

334 Transcript at 6889 (12 May 2014).

335 Id. at 6886.

it is one of the ways in which people can make a living.³³⁶ Major General Jacobs told the Commission that SAPS was considering a range of strategies to seek to address the problem, but that it was a very difficult issue.³³⁷

- [151] Another difficulty with large-scale operations to close taverns, according to Professor Steinberg, is that they undermine the relationship between the community and SAPS.³³⁸ Professor Steinberg acknowledged the challenges that SAPS face in dealing with liquor and illegal taverns.
- [152] The Commission concludes that the abuse of alcohol is a key driver of violent crime. The Commission also acknowledges that the development of an appropriate strategy to deal with the licensing of taverns and the regulation of alcohol is a matter that falls outside the mandate of SAPS. Nevertheless, given the close relationship between crime and alcohol in Khayelitsha, the Commission urges the provincial government to consider whether there is a strategy that could be developed to alleviate the harm caused by the abuse of liquor in Khayelitsha. The Commission does not conclude that there are inefficiencies in the operation of the SAPS units in Khayelitsha in this regard.

K. HUMAN RESOURCE ALLOCATION

- [153] One of the key reasons for the inefficiencies in the three Khayelitsha police stations and the FCS Unit identified earlier in this chapter is the question whether adequate human resources are allocated to the three police stations and the FCS Unit. All the station commanders told the Commission that they had too few SAPS members at their police stations. Brigadier Dladla, the station commander at Khayelitsha Site B, told the Commission that he did not agree with the RAG and that he thought his police station had insufficient personnel.³³⁹ Colonel Nel, the former commander of the Harare police station, told the Commission that he had spent many evenings on Google Earth counting the number of informal dwellings so as to justify an increase in the allocation of human resources to his police station.³⁴⁰ Colonel Reitz, the commander of the Lingeletu West police station, told the Commission that in every station he had worked in there had been a shortage of members, but in his view the shortage was more serious in Khayelitsha than elsewhere.³⁴¹ Colonel Harri also told the Commission that there were too few members allocated to the Khayelitsha FCS Unit.³⁴²
- [154] The Commission accepts the testimony of these senior SAPS members that they have insufficient personnel to provide an efficient and effective service in Khayelitsha.
- [155] Brigadier Rabie explained to the Commission the system whereby the “theoretical human resource requirement” (THRR) of police stations is calculated.³⁴³ The calculation is based on data provided by each police station relating to the number of tasks that are performed at each police station recording each function and the time required to perform those tasks. The requirement is then calculated taking contingency factors into account as well as external

336 For example Colonel Reitz Transcript at 3246 – 3247 (14 February 2014).

337 Transcript at 6179 – 6180 (28 March 2014).

338 Professor Steinberg report Record Bundle 12(1), Item 2 at paras 3.7 – 3.9.

339 Transcript at 3596 (18 February 2014).

340 Transcript at 4732 – 4733 (18 March 2014).

341 Transcript at 3203 (14 February 2014).

342 Transcript at 5854 (27 March 2014).

343 See overview of his evidence at Chapter 11, above, at paras 97 – 110. Brigadier Rabie Statement Record Bundle 5(4), File 6, Item 1, Transcript at 5226 – 5401 (25 March 2014).

environmental factors. Once the THRR has been calculated for each police station, the national requirement for police stations is calculated. Brigadier Rabie told the Commission that SAPS can only provide 68% of the THRR given its available resources.

- [156] Brigadier Rabie explained that in 2013/2014 police station personnel account for 59% of the fixed establishment of SAPS, a total of 117 524 posts. Brigadier Rabie told the Commission that once the fixed establishment has been approved, then a distribution per police station is issued, which contains the number of posts allocated to the police stations, and the rank of those posts. This budgeted distribution of the fixed establishment is referred to in SAPS as the RAG.
- [157] Ms Redpath produced a table of police to population ratios based on the fixed establishment allocated to Western Cape police stations.³⁴⁴ That table is reproduced as Table 1. The Table shows that Harare has the lowest ratio of police to population in the Western Cape, with only 111.32 police members per 100 000 residents. The fifteen police stations with the lowest police population ratios are all socially disadvantaged and many of them have high levels of violent crime. Ms Redpath told the Commission that she accepted that there are other considerations relevant to the allocation of personnel to police stations other than population figures. Nevertheless, she said, any marked deviation from a simple police to population ratio should be explicable on the basis such relevant factors. In her view, no reason had been provided as to why Harare and Khayelitsha Site B, whose police to population ratios were particularly low, should have such low ratios, given that they have very high crime rates, as well as challenging environmental factors that make policing more difficult. Brigadier Rabie provided no explanation as to why the THRR seemed to disfavour Black previously disadvantaged communities in the Western Cape in this way, nor did any other SAPS member who testified before the Commission provide any reason to explain the low levels of police to population in Harare and Khayelitsha Site B. Indeed, when the issue was raised with the Provincial Commissioner, Lieutenant General Lamoer, he agreed that the human resources allocation was “irrational”.³⁴⁵
- [158] In addition to the low human resource allocations provided to the police stations in Khayelitsha, it also became clear from evidence provided to the Commission that SAPS in the Western Cape has been under-resourced in comparison to SAPS in other provinces.³⁴⁶ According to Brigadier Rabie, only 94% of established posts are filled in the Western Cape while the national average is 106%. At least one province is staffed at 125% of established posts.³⁴⁷ SAPS is apparently trying to take steps to correct this, but it will take a long time to address the under-staffing in the Western Cape.³⁴⁸ The Commission also notes that of the 668 posts allocated in 2013 to the Fixed Fund Establishment for the Western Cape, only 5 posts were allocated to Khayelitsha.³⁴⁹
- [159] The Commission concludes that the three SAPS police stations, and especially Harare and Khayelitsha Site B, are significantly under-staffed. The Commission also concludes that the system for the allocation of human resources within SAPS, the THRR, while a sophisticated system that appears to have been developed in good faith, appears to produce an in-built bias against poor areas in the Western Cape, such as Khayelitsha Site B and Harare. In the view of the Commission, the structural under-staffing of the Khayelitsha police stations which

³⁴⁴ See the overview of her evidence in Chapter 12, above, at paras 113 – 118.

³⁴⁵ Transcript at 6603 – 6604 (1 April 2014).

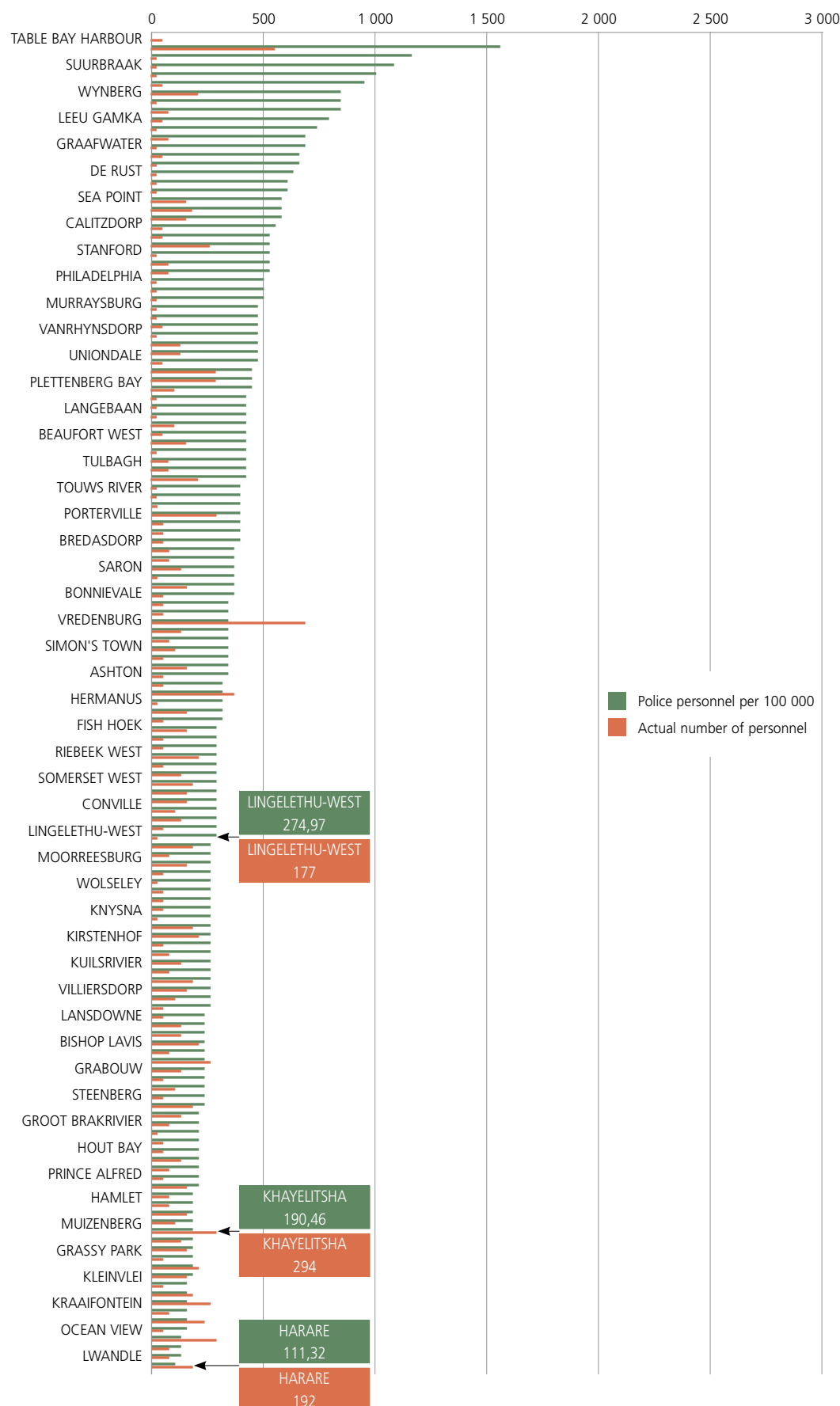
³⁴⁶ Brigadier Rabie Transcript at 5318 and 5319 (25 March 2014).

³⁴⁷ Id. at 5325.

³⁴⁸ Id. at 5318.

³⁴⁹ Record Bundle 13(2), Item 12.9.

Table 1: Police to Population Ratios



resulted from the application of the biased THRR, is one of the reasons for many of the inefficiencies identified above. The Commission emphasises, however, that although staffing levels are important, there is not a direct correlation between appropriate staffing levels and effective and efficient policing. Appropriate staffing levels may be a necessary condition for effective and efficient policing, but they are not a sufficient condition for it.

- [160] One of the questions that has most troubled the Commission is how a system of human resource allocation that appears to be systematically biased against poor black communities could have survived twenty years into our post-apartheid democracy. In the view of the Commission, the survival of this system is evidence of a failure of governance and oversight of SAPS in every sphere of government. It is to the question of oversight we now turn.

L. MECHANISMS OF OVERSIGHT OF SAPS

- [161] The Constitution provides for a range of mechanisms of oversight of SAPS: the first mechanism is Parliament to whom both the National Commissioner and the Minister of Police report. Parliament has established a Portfolio Committee responsible for policing which plays a key role in oversight of SAPS. Given the importance of this mandate, the Commission records with dismay that while the Commission was conducting its hearings in the first phase, the former Chairperson of the Portfolio Committee of Parliament concerned with policing issues wrote an opinion article in a national newspaper asserting that criticisms of SAPS' human resource allocations were unfounded, and that the Western Cape received a fair allocation.³⁵⁰ Given that this was an important issue being investigated by the Commission, the Secretary of the Commission wrote a letter to the Chairperson of the Portfolio Committee to ask for the facts on which her opinion was based. The chairperson, despite repeated requests, provided no response to the Commission. Given the evidence that was subsequently placed before the Commission, it is perhaps not surprising that no response was provided as the evidence placed before the Commission by senior managers of SAPS who are responsible for allocation of human resources, Brigadier Rabie and Lieutenant General Lamoer, acknowledged that not only was the Western Cape not receiving a fair allocation of human resources within SAPS, but that it was under-resourced, an issue which SAPS is now seeking to address. It is unfortunate that the Chairperson of the parliamentary Portfolio Committee should have published an inaccurate statement on such a crucial issue.
- [162] A second key institution of oversight is the Civilian Secretariat. The Commission notes that the Secretariat legislation was only enacted in 2011, and that it became a self-standing department only in April 2014. As mentioned in Chapter 5, the Commission considers the Secretariat to have a key role to play in oversight of SAPS.
- [163] A third key mechanism of oversight of SAPS is provincial government. Section 206 of the Constitution makes clear, as we describe in Chapter 2 above,³⁵¹ that although the national Minister of Police is responsible for policing, provinces are entitled to monitor police conduct, and oversee the effectiveness and efficiency of the police service. What has emerged on the record before the Commissions is that the ambit of this oversight role is a matter of dispute between DOCS and the office of the Provincial Commissioner in the Western Cape. There can be little doubt that the result of this dispute has been to limit DOCS' capacity to perform its constitutional mandate of oversight and monitoring of SAPS in the Western Cape. Both

³⁵⁰ Record Bundle 10, File 4, Item 174.

³⁵¹ See Chapters 2, above, at paras 2 – 12.

Major General Jephta and Lieutenant General Lamoer agreed that it would be constructive for DOCS and SAPS to enter into a memorandum of understanding to regulate DOCS' oversight role of SAPS in the province.³⁵²

[164] The Commission agrees that such a memorandum of understanding would be helpful, but notes that a memorandum of understanding needs to be based on the principle that DOCS' constitutional mandate must enable DOCS to obtain key information relating to SAPS' processes and systems. Accordingly, DOCS should have been able to ask for and be given the information obtained by the Commission explaining how human resource allocation decisions are made. If DOCS is concerned with the basis upon which those decisions are made insofar as the Western Cape is concerned, it should be able to inform the Minister of Police of its concerns, and propose revisions. As important is that SAPS needs to acknowledge the benefits it gains from the mechanisms of oversight and accountability provided by our constitutional framework. The Constitution does not provide oversight of state agencies to make difficulties for those state agencies. Rather it provides oversight in order to strengthen and improve the state agencies by identifying problems and failings within the state agencies that have not been noticed or addressed.

[165] In this regard, it is important that both SAPS and DOCS, as well the Minister of Police and the Civilian Secretariat, should take care to avoid involving SAPS by embroiling it in appropriate and unnecessary party-political contestation. Section 199(7) of the Constitution provides that members of all security services must, in the performance of their duties, not prejudice the legitimate interest of any political party, nor further the interests of a political party in a partisan manner. As the British organisation Liberty stated in its submission to the Independent Commission on Policing (2013) –

“... the political independence of the police is as important in a democracy as the political independence of the courts. Political parties come in and out of power but those responsible for delivering public services, like the police, remain in post regardless of the ebb and flow of political opinion. This is what allows every individual in a community to feel protected by the police regardless of their race, religion or political affiliation. It is therefore vital that the police maintain their political independence. If the police become too closely associated with any one political party it is inevitable that faith in the police will be damaged.”³⁵³

M. FAILURE OF SAPS MANAGEMENT SYSTEMS AT STATION, CLUSTER, PROVINCIAL AND NATIONAL LEVEL TO ADDRESS PROBLEMS IN KHAYELITSHA STATIONS

[166] It is striking as this Report will have made plain that the problems at the three Khayelitsha police stations and the Khayelitsha FCS Unit have been accurately and repeatedly identified by SAPS inspections over several years. The reports identifying the problems at these three

352 Lieutenant General Lamoer Transcript at 6614 (1 April 2014); Major General Jephta Transcript at 6441 (31 March 2014).

353 Cited in Record Bundle 12(7). *Policing for a Better Britain* Report of the Independent Police Commission at p 74.

stations were discussed in Chapter 10.³⁵⁴ Yet despite the fact that a range of inefficiencies, including many of those identified in this report, were pinpointed in the inspection reports, there has been a failure to address the problems.

- [167] In the view of the Commission, there are a range of systemic and overlapping reasons why the inefficiencies in policing at the three Khayelitsha police stations and the Khayelitsha FSC Unit identified by SAPS inspection reports have not been addressed. But the most important reason, in our view, is poor management in SAPS at station level, cluster level and provincial level. In reaching this decision, the Commission is aware of the very challenging conditions that SAPS faces in Khayelitsha. It is also aware that many of the SAPS managers at the Khayelitsha stations, in the cluster and at provincial level, are committed and hard-working policemen and policewomen who want policing to succeed. Yet, as Dr Josias, stated in her testimony, at the end of the day, “that is what you expect management to do. That is why management gets paid more than people at the coalface. That is their job.”³⁵⁵
- [168] There are four specific aspects of management in Khayelitsha that we think are of particular concern: the role of the cluster office, the absence of a strategic approach to management to address the inefficiencies, worrying aspects of human resources practices at the three police stations and the failure to make optimal use of information technology.

(a) The role of the cluster office

- [169] As described in Chapter 5, the cluster office is a relatively new structure within SAPS³⁵⁶ and the precise role of cluster offices is still under review.³⁵⁷ The Khayelitsha cluster was established in 2009³⁵⁸ and includes eight police stations: the three Khayelitsha police stations and five others in the Helderberg basin – Macassar, Lwandle, Somerset West, Gordon’s Bay and Strand. The cluster commander reports to the Provincial Commissioner. The number of personnel attached to the Cluster office comprises six senior officers (the cluster commander who is a major general), two colonels and three lieutenant colonels), two captains and two support staff.³⁵⁹ It is accordingly a very small office. Moreover, it appears that the Cluster Command is already short of two captains.³⁶⁰ Colonel Wiese, the cluster detective co-ordinator, told the Commission that there is very little administrative support for the senior officers at the cluster. For example, there is only one email address for the cluster which is shared by all the senior officers. Emails are printed out and distributed to the relevant officer.³⁶¹ Moreover, if she is away from her office, her telephone is not answered.³⁶²
- [170] According to an email response provided to an acting Cluster Commander at Khayelitsha in December 2013,³⁶³ the role of the cluster is primarily seen as having a co-ordinating and oversight function, but not an operational function.³⁶⁴ According to the same document, the functions of the cluster commander include effective co-ordination of visible policing

354 See Chapter 10, above, at paras 32 – 66.

355 Transcript at 721 (29 January 2014).

356 See Chapter 5, above, at para 55.

357 Id. Lieutenant General Lamoer Transcript at 6703 – 6704 (1 April 2014).

358 Major General Jacobs Statement Record Bundle 5(4), File 3, Item 1 at para 8.1.

359 Record Bundle 4(8), Item 1.

360 Id.

361 Transcript at 5043 – 5045 (24 March 2014).

362 Transcript at 4990 (24 March 2014).

363 Record Bundle 4(8), Item 29.

364 Colonel Wiese Transcript at 4991 (24 March 2014), Colonel Wiese Statement Record Bundle 5(4), File 4, Item 40 at para 3.

and detective services in the cluster, ensuring the effectiveness of the support services in the cluster, ensuring that operational plans are attended to and chairing the CCCF.³⁶⁵ The Cluster Commander is also responsible for inspecting registers, the management of exhibits and police prison cells. Colonel Nel and Colonel Raboliba described the cluster command as “an extension of the Provincial Commissioner’s Office”.³⁶⁶ Lieutenant General Lamoer told the Commission that the role of cluster offices was “under review”³⁶⁷ and that it was proposed that cluster commanders would be given responsibility for managing discipline in relation to the police stations within their cluster.³⁶⁸ This proposal would result in cluster offices being provided with more personnel.³⁶⁹

- [171] The Schooling and Leamy report notes that the information provided by the Khayelitsha cluster indicates high levels of absenteeism in the cluster, partly caused by the ill-health of the former cluster commander.³⁷⁰ It also notes that senior officers in the cluster office took leave in the December 2012 period despite the December holiday period being a peak policing period, when police officers are not ordinarily permitted to take leave.³⁷¹
- [172] It is clear also that there has not been stable leadership in the Khayelitsha cluster for some years. There have been a series of acting appointments, and the one permanent appointment was ill for many months. The absence of stable leadership of the cluster has clearly impaired its ability to function effectively.³⁷²
- [173] The Schooling and Leamy report also notes that the Commission requested copies of reports prepared by the Cluster office in Khayelitsha relating to the performance of its functions. Save in relation to the work of the detective co-ordinator, however, the only reports provided related to absenteeism. The Schooling and Leamy report therefore concluded that there “thus appears to be no reporting to the Provincial Commissioner from the cluster commander” which suggests that the functions of the cluster command are not being properly performed.³⁷³ The only evidence placed before the Commission in relation to the work of the cluster command related to the work of the cluster detective co-ordinator, Colonel Wiese.³⁷⁴ Colonel Wiese told the Commission that there were not clear guidelines as to the responsibilities of cluster offices,³⁷⁵ telling the Commission that when she was appointed in 2011, she had to identify key performance areas for her post.³⁷⁶ Colonel Wiese told the Commission that the lack of operational authority in the cluster hampered the work of cluster offices.³⁷⁷ Colonel Wiese said that she receives weekly reports from detective commanders at the eight police stations in the cluster, providing information including the number of dockets opened, the number of cases taken to court and the number of bail applications and autopsies attended.³⁷⁸

³⁶⁵ Id.

³⁶⁶ Transcript at 4733 (18 March 2014).

³⁶⁷ Transcript at 6703 – 6704 (1 April 2014).

³⁶⁸ Id.

³⁶⁹ Id.

³⁷⁰ Record Bundle 9(1), File 1.1, Item 1, at paras 253 and 256.

³⁷¹ Id. at para 254.

³⁷² Id. at para 258.

³⁷³ Id. at para 220.

³⁷⁴ See discussion of her evidence in Chapter 11, above, at paras 74 – 84.

³⁷⁵ Transcript at 4990 (24 March 2014).

³⁷⁶ Record Bundle 5(4), File 4, Item 1 at para 3.

³⁷⁷ Transcript at 4991 (24 March 2014).

³⁷⁸ Id. at 4995. Annexures to Colonel Wiese statement containing information on the weekly reports. Record Bundle 5(4), File 4, Item 40 at pp 96 – 195.

- [174] In the view of the Commission, the Khayelitsha cluster office has not been effective in addressing the inefficiencies at the three police stations Khayelitsha police stations, identified in this report despite its oversight role. The Commission concludes that the cluster office has not able to perform an effective oversight role for a range of reasons. These include the absence of clear guidelines as to how such oversight should be undertaken, the absence of any authority to give operational direction, the absence of stable leadership in the Khayelitsha cluster, coupled with high levels of absenteeism, the poor quality of administrative infrastructure within the cluster and the top-heavy staff establishment.
- [175] The Commission considers that the cluster offices could play an important role in ensuring that identified inefficiencies are addressed. It therefore welcomes the review of the role of cluster offices mentioned by Lieutenant General Lamoer. It also welcomes the proposal to afford cluster command responsibility for discipline at the police stations within its area. The Commission also considers that it may well be appropriate for cluster offices to investigate Standing Order 101 complaints as well, a matter to which we return in chapters 14 and 15.

(b) The absence of a strategic management approach to address the inefficiencies identified at the three police stations

- [176] Ms Fish and Mr Schlebusch, two experts in human resources who testified before the Commission, observed that SAPS inspection reports identify many of the problems at the police stations but that those problems are not addressed. They told the Commission that the failure to address identified shortcomings must “lie squarely with senior management”.³⁷⁹ The Commission agrees. Yet, we note that the station commanders who testified before the Commission did not seem to have a strategic plan for addressing the inefficiencies identified at their police station, even though the inefficiencies had been repeatedly drawn to their attention by the Provincial Inspectorate. Nor did the senior managers from the province have any clear strategy as to how the problems identified should be addressed.
- [177] Ms Fish and Mr Schlebusch suggested that management needed to identify a strategy to address the inefficiencies and suggested that doing so would require management of the three police stations embarking upon a facilitated process involving the leadership teams at the three police stations as well as the cluster. The process, they suggested, should identify strategic goals for the Khayelitsha police stations over the next 3 – 5 years.³⁸⁰ Those goals should include measurable goals relating to crime detection, community relationships and crime prevention and the leadership team should draw on their experience and judgment to identify clear and measurable priorities based on outputs, for example, a 33% improvement in community approval ratings. The workshop should also identify values and behaviours required to achieve the step change.
- [178] The Commission is of the view that the failure of management at station, cluster and provincial level to develop a strategic plan to address the inefficiencies at the three Khayelitsha police stations is a major reason that the inefficiencies have not been addressed.

³⁷⁹ Record Bundle 12(1), Item 14 at para 7.

³⁸⁰ Id.

(c) Worrying aspects of human resource practices

- [179] There are several aspects of the manner in which human resources are managed at the three police stations which give cause for concern. The first relates to the performance enhancement process (PEP) and the second to discipline. As to the PEP, Ms Fish and Mr Schlebusch noted in their report that approximately 96% of members evaluated on this system are rated “3”.³⁸¹ They concluded that the very high proportion of members rated “3” suggests “the system does not really differentiate between the very good people and the poor performers”.³⁸² Their assessment is in accord with the testimony of Lieutenant Colonel Swart, the detective commander at the Lingeletu West police station, who told the Commission that most of his detectives obtain a “3” on the PEP and that he also obtains a “3”. He told the Commission that a “3” is enough for him, and that his score was in large part determined by the score awarded to the detectives who work under him.³⁸³
- [180] The 21st Century Pay Solutions Group also identified shortcomings in the PEP system and made certain recommendations to address those weaknesses. They proposed that the performance appraisal instrument be simple, that only direct supervisors should be involved in assessments, that an appropriate “atmosphere” be established for the appraisal process, that good performance must be identified as well as poor performance and both parties should prepare properly for review meetings.³⁸⁴
- [181] As to discipline, it appears clear that there are a large number of disciplinary procedures at the three police stations, which means that senior managers are not ignoring disciplinary infringements. However, the Task Team Report, after observing the large number of members who are subjected to discipline, commented that it “does not seem to be having a positive effect” as non-compliance with rules persists.³⁸⁵ Ms Fish and Mr Schlebusch noted that many of the disciplinary sanctions appear to be very lenient which suggested, they said “that there are no real consequences for misconduct”.³⁸⁶ In particular, Ms Fish and Mr Schlebusch queried whether aggravating considerations are given sufficient weight. They noted that members of SAPS who are found to have broken the law should be seen as an aggravating circumstance.³⁸⁷ Ms Fish and Mr Schlebusch also noted that the effect of requiring detectives to carry impossible workloads would “undermine the disciplinary system”.³⁸⁸

(d) The failure to make effective use of information technology

- [182] Several of the inefficiencies identified related to the failure of SAPS members to communicate either with complainants or witnesses, or with other partner organisations, such as the Thuthuzela Centre or prosecutors. Many witnesses complained of the difficulty of contacting members of SAPS. It became clear during the proceedings that very few SAPS members are provided with email addresses or the equipment which would enable them to use email as a method of communication.

³⁸¹ Id. at para 3.

³⁸² Id.

³⁸³ Transcript at 3409 – 3410 (17 February 2014). See also the testimony of Colonel Marais, Transcript at 3897 (19 February 2014)

³⁸⁴ Record Bundle 12(1), Item 4.

³⁸⁵ Task Team report Record Bundle 1(3), AL87 at para 9.2.

³⁸⁶ Record Bundle 12(1) Item 14 at para 4.

³⁸⁷ Id.

³⁸⁸ Id.

- [183] The Commission was told by Colonel Wiese, for example, that the cluster office only has one email address and that messages sent to that address are printed out and delivered to the relevant officer.³⁸⁹ Lieutenant Colonel Swart told the Commission that detectives had been issued with notebooks, but that they had no 3G cards and that there is no wireless network in the police station, so the notebooks cannot be used for email.³⁹⁰ Major General Fick told the Commission that SAPS does not have a policy that every SAPS member will have an email address, although this is not perceived to be a budgetary issue.³⁹¹ It should be added that Mr Huxham, an information technology expert with extensive experience in the banking industry who testified in the second phase of the Commission's proceedings reminded the Commission that some person-to-person communication via email could be avoided if a notification system was in place to identify key events that needed a response (such as post mortems, court dates, meetings with key stakeholders).³⁹²
- [184] The Commission also notes that one of the inefficiencies it has identified relates to the failure to deliver dockets to the magistrates' court. An overall electronic document management system accessible to SAPS, the NPA, IPID and Forensic Pathology Services both provincially and nationally, would relieve the inefficiencies caused not only by the failure to deliver dockets to court, but also remove the risk of dockets being lost, mislaid or misfiled. It would also enable supervising officers to instruct investigating officers to attend to matters electronically and provide for an automatic system of reminders to check that work is being done on dockets. Mr Huxham, explained to the Commission that the development of such a solution would require careful analysis of the way in which SAPS and its partners worked.³⁹³ He suggested that an electronic docket system should ensure that all access is authorised and logged, that all updates are recorded in an accessible audit trail, that the design should provide for integrated workflow, document management, calendars and key external users, such as prosecutors, forensic laboratories, to gain authorised access, and should support the segregation of duties for sensitive or critical information.³⁹⁴
- [185] Several witnesses complained of the slow page-load time of the CAS system. Mr Huxham told the Commission that the root causes of this problem should be investigated and determined to identify an appropriate solution.
- [186] Mr Huxham also suggested that the challenges that SAPS face in contacting witnesses, who change their mobile telephone numbers, could perhaps be resolved by an agreement with mobile network operators to provide cell phone numbers to SAPS in cases where SAPS can furnish an identity number of a witness or complainant.³⁹⁵ A similar agreement is in existence in relation to financial institutions which permit them to verify mobile numbers before releasing financial information.
- [187] Mr Huxham told the Commission that identifying the full range of information technology solutions that would be of value to SAPS would require "a thorough investigation into a complex ecosystem" that a multi-disciplinary team would take several months to complete.³⁹⁶ He concluded on the information that was made available to him that there appeared to be "significant inefficiency in the design and operation of current systems and processes", which

389 Transcript at 5043 – 5045 (24 March 2014).

390 Id. Colonel Swart Transcript at 3364 (17 February 2014).

391 Transcript at 5538 – 5539 (26 March 2014).

392 Mr Huxham report Record Bundle 12(1), Item 26 at p 11.

393 Record Bundle 12(1), Item 26.

394 Id. at p 8 – 9.

395 Id. at p 8.

396 Id. at p 13.

he thought would have an adverse impact both on efficiency and on the morale of SAPS members.³⁹⁷ Accordingly, he strongly recommended that a full analysis of SAPS systems be undertaken.

- [188] The Commission notes that it appears from SAPS Annual Reports that it spent approximately R2 billion per annum on information technology in 2011/2012 and 2012/2013.³⁹⁸ The Commission notes that this is a very significant amount spent on information technology that does not appear to have produced any information technology tools to address the inefficiencies identified in this report.

³⁹⁷ Id.

³⁹⁸ SAPS Annual Report 2012 – 2013 at p 231.

CHAPTER FOURTEEN

HAS THERE BEEN A BREAKDOWN IN RELATIONS BETWEEN THE COMMUNITY AND SAPS IN KHAYELITSHA?

- [1] This chapter considers the question whether there has been a breakdown in the relations between the community and SAPS in Khayelitsha. As set out in Chapter 2 above,¹ the Commission considers that the question whether there has been a breakdown requires it to assess whether the relations between the community and SAPS in Khayelitsha are damaged or characterised by high levels of distrust, such that it would be appropriate for provincial and national government agencies responsible for oversight of policing to be aware that the relations are damaged so that appropriate steps can be taken to repair them. It is not necessary for the Commission to decide that the relations between the community and SAPS have “irretrievably broken down.”
- [2] In this chapter, the Commission first considers the evidence that it has received relating to the level of trust the community has in SAPS in Khayelitsha. The Commission considers the testimony of individual witnesses, evidence provided by the DOCS Barometer Surveys as analysed by Ms Redpath in her first statement to the Commission,² as well as the Mthente survey and the report prepared by the Centre for Justice and Crime Prevention (CJCP).³ The Commission concludes that the evidence before it shows there to be a breakdown in the relations between the community in Khayelitsha and SAPS in that there are worryingly low levels of trust in SAPS, and its ability to perform its duties in Khayelitsha.
- [3] We then turn to consider what the reasons for this breakdown may be. The Commission notes that many of the inefficiencies identified in Chapter 13 are likely to have impaired the relationship between the community and SAPS in Khayelitsha, but we do not repeat them here. The issues considered in this Chapter are therefore additional, in a sense, to the issues identified in Chapter 13. Accordingly, we first consider the role of CPFs in Khayelitsha, whether they are functioning well and contributing to a good relationship between SAPS and the community. Secondly, we assess the manner in which complaints made by the community against SAPS members in Khayelitsha are handled, and whether that system fosters good relations between SAPS and the Khayelitsha community. Thirdly, we consider some aspects of the institutional culture of SAPS, including the manner in which SAPS members treat members of the community in Khayelitsha, as well as the manner in which they treat particularly vulnerable communities, such as members of the LGBTI community, and non-South African nationals who live or work in Khayelitsha. Fourthly, we consider the question of perceptions of corruption within SAPS in Khayelitsha and the effect that perceptions of

1 See Chapter 2, paras 18 – 21.

2 Ms Redpath report Record Bundle 7(1), File H, Item 10 at paras 52 – 71.

3 See discussion of the Mthente survey, at Chapter 8 at paras 2 – 15. Mthente survey Record Bundle 10(1), File 1.1, Item 11, at p 1; CJCP Record Bundle 6(1), File 3, Item 7 at pp 16 – 22.

corruption have on the relations between SAPS and the community in Khayelitsha. Fifthly, we consider the evidence on the record concerning the improper use of force by SAPS members in Khayelitsha. Sixthly, we consider the publication of crime statistics, both nationally, and at station-level in Khayelitsha, and the effect that the manner in which crime statistics are published has on the relations between SAPS and the Khayelitsha community. Seventhly, we discuss the system of station performance evaluation, and the issues that are measured on that chart, and consider its impact on the relationship with the community in Khayelitsha. The Commission concludes that, in some respects, all these seven factors are related to the breakdown in the relations between the Khayelitsha community and SAPS.

A. LEVEL OF COMMUNITY TRUST IN SAPS IN KHAYELITSHA

- [4] The Mthente survey was conducted in Khayelitsha in December 2013 and January 2014. Just over 1800 residents of Khayelitsha were sampled. The results of the survey are statistically reliable. One of the key issues measured was the level of trust in SAPS in Khayelitsha. The survey reported that, on average, only 6 out of 10 crimes are reported to SAPS in Khayelitsha.⁴ The main reasons for not reporting crime were fear of retaliation by perpetrators, and distrust of SAPS.⁵ 61% of residents who had reported crimes in Khayelitsha evaluated SAPS' response as poor or very poor.⁶ More than half the respondents thought that the members of SAPS in Khayelitsha did not treat people with respect⁷ and that the community of Khayelitsha did not have confidence in SAPS.⁸ 62.6% of respondents thought that SAPS in Khayelitsha are not trained and able to fulfil their tasks.⁹ The post-survey groups conducted as part of the survey suggested that respondents considered SAPS to be "very unprofessional and disrespectful", "never on time" and "apathetic".¹⁰ The Mthente survey suggests that a majority of residents in Khayelitsha have lost confidence in SAPS, thinking that SAPS are not trained and able to perform their tasks efficiently.
- [5] The results of the Mthente report are consistent with the results of the 2011 and 2012 Barometer Surveys commissioned by DOCS, which were analysed for the Commission by Ms Redpath in her testimony in Phase One.¹¹ In the 2011 survey (which was conducted in late 2010), 69.2% of respondents in Khayelitsha Site B and 66.2% of respondents in Harare said that it was difficult or very difficult to access the police.¹² Of the 11 precincts covered in the Survey (the other areas covered included Philippi, Gugulethu, Kuils River and Manenberg), Khayelitsha Site B and Harare found the police the most difficult to access. Another worrying figure was that 90% of respondents surveyed in Khayelitsha said they would not feel safe reporting to the police that they had witnessed a crime.¹³ Ms Redpath told the Commission

4 Id. at p 33.

5 Id. at pp 37 – 38. See also Figure 1 in Chapter 8 above at para 5.

6 Record Bundle 10(1), File 1.1, Item 1 at p 36.

7 Id. at p 44.

8 Id.

9 Id.

10 Id.

11 Record Bundle 7(1), File H, Item 10 at paras 52 – 70.

12 Id. at paras 59 and 60.

13 Id. at para 66.

that this figure “is indicative of an extremely high level of fear of engaging with the criminal justice system as a witness.”¹⁴

- [6] The 2012 Barometer Surveys measured respondents’ ratings of police actions. The survey was conducted in 2011. 68% of respondents in both Harare and Khayelitsha reported that they viewed police “foot patrols” as being poor or very poor.¹⁵ The Commission does not find this surprising given that it has concluded that there are foot patrols do not appear to be conducted as a matter of routine by SAPS in Khayelitsha. Similarly, 62.5% of respondents in Khayelitsha and 53.3% in Harare rated police responses to distress calls as poor or very poor; and 55.6% of Khayelitsha respondents and 48% of Harare respondents rated service at the police station as poor or very poor. Ms Redpath concluded that the 2011 and 2012 Barometer reports “are highly suggestive of lack of confidence in policing in the Khayelitsha areas.”¹⁶
- [7] The Commission also records that the results of the focus group survey conducted by the Centre for Justice and Crime Prevention amongst young people and school marshalls in Khayelitsha rated SAPS response to distress calls and their foot patrols as “very bad”.¹⁷ Learners also rated as “bad”, SAPS relationship with the community and SAPS’ services to victims of crime.¹⁸ This study thus also supports a conclusion that the relationship between SAPS and the community in Khayelitsha has broken down. For the sake of completeness, the Commission notes that Professor Seekings provided the results of the Cape Area Studies in relation to trust in the police that were conducted in the years 2005 and 2007,¹⁹ but the Commission is of the view that these studies are probably too long ago to be relied on now.
- [8] The individual witnesses who testified before the Commission confirmed the results of the Mthente Survey, the DOCS Barometer Surveys and the Centre for Justice and Crime Prevention report. Those individual witnesses included members of the complainant organisations, witnesses who had made statements to the complainant organisations and witnesses who had approached the Commission directly to make statements. In this regard, the Commission refers to the overview of the evidence of individual witnesses contained in Chapter 7.²⁰ Many of those witnesses recounted heart-rending stories of their experiences of crime in Khayelitsha and a failure by SAPS to provide them with effective, efficient and courteous service. Perhaps that evidence is best summed up by a quotation. One of the individual witnesses was Ms Mpekweni, whose niece and children were murdered in a shack fire by the former boyfriend of her niece, who confessed to the crime, but then left Cape Town. When she reported to SAPS that the perpetrator had gone to Johannesburg, she was asked for his address, which she did not have, and the investigating officer told her she should try to investigate exactly where the perpetrator was. She said that she left the police station –
- “just like that, but my heart was broken because at this time [the investigating officer] was making me do the work of the police”.²¹
- [9] The Commission concludes on the evidence before it that a majority of residents of Khayelitsha do not have confidence in SAPS, do not think that they are able to do their work effectively,

14 Id. at para 66.

15 Id. at para 69, Table 15.

16 Id. at para 71.

17 See Record Bundle 7(1), File H, Item 7.2 at p 19.

18 Id.

19 Record Bundle 5(1), Item 5, pp 23 – 26.

20 See in particular the overview of the evidence of the following witnesses in Chapter 7: Mr Tame at paras 17 – 21; Ms Mpekweni at paras 28 – 30; Ms Thosholo at paras 31 – 32; Ms Ncaphancapha at paras 33 – 35; Ms Mlungwana at paras 42 – 48; Ms Dwane at paras 54 – 60; Ms Msongelwa at para 61; Mr Zitwana at paras 62 – 69; Mr Makele at paras 70 – 75; Bishop Mtsolo at para 86; Mr Mahlutshana at paras 87 – 88; and Mr Mjonondwana at paras 89 – 91.

21 Transcript at 855 (30 January 2014).

and do not treat people with respect. In the view of the Commission, the relations between the Khayelitsha community and SAPS have broken down. The Commission does not think that this breakdown is irretrievable, but does consider that the attention of both provincial government and national government should be drawn to the issue. The Commission now turns to consider the causes of the breakdown.

B. REASONS FOR BREAKDOWN IN RELATIONS BETWEEN THE KHAYELITSHA COMMUNITY AND SAPS

(a) The history of Khayelitsha and the burden of poverty

- [10] In considering the reasons, or causes, of the breakdown of the relation between SAPS and the Khayelitsha community, we must start by acknowledging the legacy of *apartheid* history, and, in particular, the history of Khayelitsha. As set out in Chapter 4, the history of Khayelitsha is central to understanding Khayelitsha today.²² Khayelitsha was conceived in the last years of *apartheid*, and its establishment was marred by political contestation and violence. Most importantly, the predecessor of SAPS was implicated in the violence that marked the early years of Khayelitsha in a manner that prevented a relationship of trust being established between the community and SAPS. SAPS still bears the burden of that legacy, despite the twenty years that have passed since the advent of constitutional democracy. Building good relations with the community of Khayelitsha will take time and effort on the part of SAPS. The Commission acknowledges that many of the leaders within SAPS understand and accept the burden that the legacy of *apartheid* imposed upon SAPS, but considers that every member of SAPS needs to understand this burden. In the view of the Commission, the legacy will best be addressed if all members of SAPS in Khayelitsha treat all residents of Khayelitsha fairly and with respect. This is a matter to which we return when we discuss institutional culture below.
- [11] The Commission also notes that the testimony of both Professor Simkins and Professor Seekings established indisputably that many of the residents of Khayelitsha are poor.²³ Professor Seekings told the Commission that the median household income in Khayelitsha is half that of the median household income for the City of Cape Town,²⁴ and Professor Simkins told the Commission that 75% of households in Khayelitsha live below the top poverty line set by the Presidency.²⁵ One of the consequences of the hard socio-economic circumstances of Khayelitsha is that the residents of Khayelitsha do not have resources to spare to provide for their own security. Brigadier Dladla, the station commander at Khayelitsha Site B, gave a compelling account of the differences between policing in Wynberg, one of Cape Town's middle class suburbs, where he served prior to being posted to Khayelitsha, and policing in Khayelitsha. One of the most notable differences, according to Brigadier Dladla, lay in the private security that middle-class residents can afford, which not only removes a burden from SAPS, but assists SAPS in performing its tasks.²⁶ Policing in Khayelitsha is therefore more

22 Chapter 4 at paras 5 – 18 and paras 6 – 21.

23 See the overview of their testimony in Chapter 4 above.

24 Record Bundle 5(1), Item, p 14.

25 Record Bundle 4(1), File 1, Item 2. p 35.

26 Transcript at 3592 – 3593 (18 February 2014).

challenging than policing in a middle-class neighbourhood. The challenge is also exacerbated by the very high crime rates in Khayelitsha that were outlined in Chapter 4 above.

- [12] The Commission concludes that the history of Khayelitsha, its poor socio-economic circumstances and its very high levels of crime all create challenges for SAPS in building a good relationship with the community of Khayelitsha.

(b) The role of Community Police Forums (CPFs) in fostering a good relationship between SAPS and the community in Khayelitsha

(i) The role of CPFs

- [13] Community Police Forums were established throughout South Africa in the period of democratic transition in order to promote the concept of community policing. The 2013 Green Paper on Policing states that CPFs “have a critical role to play in building relations between the police and the communities they serve”.²⁷ Mr Hanif Loonat, former chairperson of the Western Cape Community Policing Board, testified that it was hoped that CPFs “would provide an avenue for representatives of community organisations and the police to work together without mistrust and antagonism”.²⁸

(ii) Sector policing

- [14] Dr Johan Burger testified that by the late 1990s, the leadership of SAPS realised that the establishment of CPFs was not sufficient on its own to build a close relationship with communities so as to foster community policing. This realisation led to the development of the sector-policing model, which provides that the geographical area of each police station is divided into sectors, with police officers being assigned to those sectors.²⁹ The sector-policing model was discussed in Chapter 5 and Chapter 13 above.

(iii) 2013 Green Paper

- [15] The 2013 Green Paper asserts that there is a need for new policy guidelines to define the establishment of CPFs and their role which should include, building co-operative relations between the police and communities, ensuring effective communication between the police and communities, sharing information about crime to assist the police and educate communities and ensuring that the police are accountable to local communities.³⁰ The Green Paper also makes plain that members of CPFs should not perform policing functions or serve as reservists. The Green Paper also states that SAPS must participate in CPF meetings, that the establishment of CPFs should be managed by provincial secretariats, that a national budget framework should be developed for CPFs, which should be channelled through provincial secretariats, and that there should be adequate training of CPF members.³¹

(iv) The testimony of Mr Loonat and Mr Abrahams

- [16] Mr Loonat and Mr Abrahams, former members of the Provincial Community Police Board explained to the Commission that CPF structures should be built from the “bottom-up”,

27 Record Bundle 1(11), Item 13 at p 40.

28 Mr Loonat Statement Record Bundle 2(2), File 1.2, Item 2 at para 10.

29 See the overview of his evidence in Chapter 12 at paras 66 – 76.

30 Green Paper Record Bundle 1(11), Item 13.

31 Id. at pp 40 – 41.

starting with street committees, then sector forums, and finally the CPF.³² They told the Commission that, in terms of the regulations governing CPFs, one of the tasks of a CPF is to adopt a community safety plan for their police station in consultation with the station commander.³³ Mr Loonat and Mr Abrahams also told the Commission that for CPFs to function effectively, they need basic resources, including an office, a telephone or cell phone, and a computer.³⁴

(v) *Brief summary of evidence regarding CPFs in Khayelitsha*

[17] It is clear from the evidence before the Commission that CPFs have not been a comprehensive success nation-wide.³⁵ On balance, the same can be said of the CPFs in Khayelitsha. Although the Lingeletu West CPF seems to have been functioning reasonably well for some time, the same cannot be said of the CPFs in both Harare and Khayelitsha Site B. The Task Team report, written in mid-2012, concluded that the “contribution that the CPFs are making to improve police-community relations in the Khayelitsha area is questionable”.³⁶ It noted that there was a poor relationship between the management of the Khayelitsha Site B police station and the Khayelitsha CPF and no minutes were produced of CPF meetings.³⁷ It also concluded that the Harare CPF was not functioning well.³⁸

[18] Several of the witnesses told the Commission that they thought the CPFs were not effective in Khayelitsha. Bishop Mtsolo, whom the Commission assessed to be a balanced witness who had had extensive experience of addressing crime and security issues in Khayelitsha, told the Commission that the CPFS were “ineffective” and unable to fulfil their mandate.³⁹ Ms Mlungwana also told the Commission that her experience of CPF meetings were that they were “fruitless” and so the SJC stopped attending.⁴⁰ Ms Mtwana told the Commission that one of the problems with CPFs in Khayelitsha is that they are “dominated” by political parties.⁴¹ She explained that, in her view, there are benefits for CPFs if they remain politically unaffiliated, as the focus of the CPF remains “improving safety and security within the community and direct political considerations tend not to influence their decisions.” She also said that there was a perception that –

“issues aired in politically dominated CPFs will be quickly reported to the dominant party and its allies. This makes police hesitant to act contrary to the CPFs political will, despite what might be required, because of the risk that political action might be taken against them.”⁴²

[19] Her evidence in this regard echoed that of Mr Loonat who told the Commission that he had been dismayed to find at a recent safety imbizo in Khayelitsha that people who confronted the

32 See the overview of their testimony in Chapter 7 at paras 124 – 129, Mr Loonat’s Statement, Record Bundle 2(1), File 1.2, Item 2; Mr Abrahams Statement Record Bundle 2(1), File 1.2, Item 1; Transcript at 1393 – 1147 (4 February 2014).

33 Transcript at 1402 (4 February 2014). For the regulations, see Record Bundle 2(3), File 10, Item 25.

34 Transcript at 1422 (4 February 2014).

35 Bruce, D., Newham, G. and Masuku, T. (2007). *In service of the people’s democracy: An assessment of the South African Police Service*. Johannesburg: The Centre for the Study of Violence and Reconciliation Record Bundle 1(7), Item 9; cited in expert report of Sean Tait, Bundle 12(1), Item 19. Transcript 7016 – 7083 (13 May 2014) pp 61 – 63.

36 High Court Record Bundle 1(3), AL87 at para 6.2.

37 Id. at para 6.4.

38 Id. at para 6.5.

39 Transcript at 111 (23 January 2014).

40 Transcript at 925 (31 January 2014).

41 Record Bundle 8(3), Item 43 at pp 2 – 3.

42 Id. at para 9.

police, were accused of “playing politics”.⁴³ Mr Loonat told the Commission that in his view “community interests should not be ... sacrificed to political agendas”.⁴⁴

- [20] In a somewhat similar vein, Mr Bregman told the Commission that he had attended several CPF meetings, and had been surprised at one of them when it was suggested that the KDE, rather than the CPF, should address the problem of violent service delivery protests. Mr Bregman said he thought this view was incorrect, as the KDE, unlike the CPF, has no statutory mandate to address safety and security issues.⁴⁵ It seemed to him, he said, as if the CPF did not consider it was the relevant body to consider policing issues, which he found disheartening. He added that the SJC formed the view “that the CPFs had both been co-opted ... by the SAPS, that they lacked independence, but also that the police didn’t respect the structures and didn’t provide them with the support that they required to carry out their jobs”.⁴⁶ Nevertheless, Mr Bregman told the Commission that the SJC accepted some responsibility for not working more energetically with the Khayelitsha CPFs and had decided that it should “restart its relationship” with the CPFs and would be registering with them soon.⁴⁷
- [21] Lieutenant General Lamoer also mentioned the difficulties caused for SAPS by high levels of political contestation over the work of SAPS. He said it was difficult for SAPS to build relationships with the community “because every ... political person wants to push ... his or her own agenda and we are not in that. We are there in service delivery for the community.”⁴⁸
- [22] The Mthente survey found that just under half the respondents were aware of the CPFs.⁴⁹ Of those who were aware of CPFs, fewer than 20% had had any involvement. However, of the respondents who had dealt with CPFs, 90% had found the CPFs to be helpful, although this group of respondents comprised fewer than 10% of those surveyed.⁵⁰ There were other positive reports of the role of CPFs. Mr Mahlutshana, for example, the principle of Chris Hani Senior Secondary School told the Commission that the CPF had been a great assistance to the school safety committee.⁵¹

(vi) *Lingeletu West CPF*

- [23] The chairpersons of the three CPFs in Khayelitsha testified before the Commission. Mr Jafta, who has served as the chairperson of the Lingeletu West CPF since 2010, made a statement to the Commission’s Evidence Leaders. He told the Commission that, although there had been initial difficulties, the CPF now had a good relationship with the SAPS.⁵² He said that the CPF receives complaints from the community which include complaints that the police station phone is not answered, that police response times are too slow, that the police treat members of the community with disrespect, and that the police display a lack of passion for their work.⁵³ Colonel Reitz told the Commission that he thinks that he has a good relationship

43 Record Bundle 2(2), File 1.2, Item 2 at p 48.

44 Id. at p 47.

45 See the overview of his testimony in Chapter 7 at paras 79 – 84. Transcript at 2415 – 2418 (11 February 2014).

46 Transcript at 2417 – 2418 (11 February 2014).

47 Mr Bregman’s Statement, Record Bundle 9(2), Item 41A at para 33. Transcript at 2436 – 2437, and 2453 (11 February 2014).

48 Transcript at 6691 (1 April 2014).

49 Record Bundle 10(1), File 1, Item 11 at para 4.3.7.

50 Id. See also Table 15.

51 Transcript at 503 (28 January 2014).

52 Mr Jafta Statement, Record Bundle 9(1), File 1.2, Item 91 at para 9.

53 Id. at para 13. Transcript at 2788 – 2789 (12 February 2014).

with the CPF.⁵⁴ He acknowledged that there is not always good attendance at meetings, but said that was a widespread problem.⁵⁵

(vii) Harare CPF

- [24] Mr Busakwe, who is chairperson of the Harare CPF, provided two statements to the Commission, one to the Evidence Leaders of the Commission and one to SAPS.⁵⁶ In the statement submitted to the Evidence Leaders of the Commission, he told the Commission that he was appointed in April 2013 and had had no previous involvement with the CPF.⁵⁷ He told the Commission that members of the community complain to him about the failure of SAPS to answer their telephones.⁵⁸ In the statement provided to the Commission by SAPS, Mr Busakwe told the Commission that he thought the main reason that CPFs did not function optimally in Khayelitsha was because they lack resources.⁵⁹ Mr Chumile Sali, who served as a member of the Harare CPF for a brief period during 2011, provided a statement to the Commission's Evidence Leaders. He told the Commission that the Harare CPF had been dysfunctional before he was appointed in April 2011, and that he did not serve long as he moved to Gauteng for work.⁶⁰ Like Mr Busakwe, he told the Commission that the absence of resources was a problem and that it demoralised CPF members.⁶¹ He also mentioned the fact that Harare police station did not have a permanent station commander was a "bad experience" for the CPF.⁶² Colonel Nel, the former station commander at Harare, told the Commission that the CPF had functioned well in Harare until 2010, when the chairperson of the CPF, Mr Andile Lili, had been suspended as chairperson.⁶³ Thereafter, there had been unsuccessful attempts to re-establish the CPF and when he left the police station in September 2011, the CPF was dysfunctional.⁶⁴ Colonel Raboliba, who took over as station commander a year later in September 2012, told the Commission that when he took office the CPF only had two members, so elections were held for a new CPF at the end of February 2013, and he said that his relationship with the new CPF was good.⁶⁵

(viii) Khayelitsha Site B CPF

- [25] Mr Siko who is the chairperson of the Khayelitsha Site B police station also provided a statement to SAPS to be lodged with the Commission. He also testified. Like Mr Busakwe, he told the Commission (in almost identical words) that the main reason that CPFs do not operate optimally in Khayelitsha is the lack of resources available to the CPF.⁶⁶ Mr Siko provided minutes of CPF meetings to illustrate the issues discussed by their CPFs. A perusal of the minutes of the Khayelitsha CPF shows that there are problems both with attendance at CPF meetings by members and with meetings being held irregularly, both issues

54 Transcript at 3156 (14 February 2014).

55 Id. at 3154.

56 Mr Busakwe's Statement to the Commission, Record Bundle 9(1), File 1.2, Item 90; Mr Busakwe Statement to SAPS Record Bundle 5(4), File 8.

57 Record Bundle 9(1), File 1.2, Item 90 at paras 5 – 7. See also Transcript at 2668 (12 February 2014).

58 Record Bundle 9(1), File 1.2, Item 90 at paras 9 – 11.

59 Record Bundle 5(4), File 8 at para 10.

60 See overview of his testimony in Chapter 7 at paras 114 – 115. Ms Sali's Statement, Record Bundle 7(1), File G, Item 11 at para 3.

61 Transcript 1341 – 2 and 1351 (4 February 2014).

62 Transcript at 1343 (4 February 2014).

63 Id. at 4653 (17 March 2104). Annexure GL 2 Record Bundle 9, File 6, Item 8.

64 Id. at 4654.

65 Id. at 4664 – 4665 (17 March 2014).

66 Record Bundle 5, File 4, Item 8 at para 10.

regularly mentioned in the minutes.⁶⁷ Brigadier Dladla told the Commission that when he was appointed as station commander at Khayelitsha Site B in April 2011, the CPF was dysfunctional, particularly because the chairperson failed to attend meetings.⁶⁸ He said that things had improved since Mr Siko had taken over as chairperson, but that he still felt that the CPF was not fully representative of the community.⁶⁹

(ix) Khayelitsha Cluster CPF

- [26] The chairperson of the Khayelitsha Cluster CPF, Mr Mgxaji, also provided a statement to SAPS that was lodged with the Commission. Mr Mgxaji testified that he has been involved with CPFs in Khayelitsha for many years. He told the Commission that, in his view, there is a strong partnership between the community and SAPS.⁷⁰ In his testimony, Mr Mgxaji also asserted that one of the problems for CPFs is the issue of funding.⁷¹

(x) Annual safety plans

- [27] The Commission asked for copies of the annual safety plans that CPFs should draw up, according to the interim regulations. However, no such plans were provided, although at each police station, the station commander drafts an annual plan, which forms the basis of his performance assessment.

(xi) Resourcing of CPFs – the Extended Partnership Programme (EPP)

- [28] It is clear that resourcing of CPFs is a problem. CPFs struggle to find office space and to find funds to manage their administrative costs. The Commission considers that this is a weakness in the current national legislative framework that has been identified in the Green Paper.⁷² DOCS has established a system of funding for CPFs in the province, called the EPP.⁷³ According to Dr Lawrence, the head of DOCS, one of the purposes of the EPP is to set minimum standards for delivery by CPFs.⁷⁴ The EPP provides for DOCS to allocate provide funds to each CPF based on that CPF's performance in terms of prescribed benchmarks. He told the Commission that funding for individual CPFs has increased from a donation of R1000 – R2000 per annum, to as much as R30 000 per annum per CPF, depending on what projects a CPF undertakes.⁷⁵ One of the indications that the Lingeletu West CPF is functioning well is that it has received more funds from the Province's EPP budget for projects it has conducted than the other two stations.⁷⁶ Mr Loonat and Mr Abrahams expressed reservations about the EPP, particularly the questions whether it could provide sufficient resources for CPFs to function properly,⁷⁷ whether there was adequate consultation with CPFs before targets for CPFs were set,⁷⁸ and whether some of the tasks set for CPFs would require them to be "the police of the police", which Mr Loonat thinks is not an appropriate role for CPFs.⁷⁹

67 See, for example, minutes of meeting of 12 April 2012 at para 2; 19 June 2012 at para 5.1; 17 July 2012 at para 5.1; 23 April 2013, para 5.1; and 25 September 2013 at para 5.1, all annexed to Mr Siko's statement. Record Bundle 5, File 4, Item 8.

68 Transcript at 3486 – 3488 (17 February 2014).

69 Id. at 3492 – 3494.

70 See overview of his testimony at Chapter 7 at para 123. Mr Mgxaji's Statement, Record Bundle 5(4), File 8; Transcript at 5993 – 6004 (27 March 2014).

71 Transcript at 5995 – 5996 (27 March 2014).

72 Record Bundle 1(11), Item 13 at pp 40 – 41.

73 See overview of testimony of Dr Lawrence in Chapter 9 at paras 12 – 13. Record Bundle 2(3), File 10, Item 37.

74 Record Bundle 2(3), File 13, Item 6 at para 102.

75 Id. at para 103.

76 Annexure E Bundle 10, File 3, Item 17 shows that in 2011/2012 Lingeletu West received R1 593.36 and in 2012/2013 an amount of R13 311.39.

77 Transcript at 1431 – 1433 (4 February 2014).

78 Record Bundle 2(1), File 1.2, Item 2 at pp 44 – 45.

79 Id.

(xii) Conclusions

- [29] The Commission concludes that the CPFs in Khayelitsha remain unknown to many residents in Khayelitsha. Of those that know of them, only a small proportion of people have had dealings with them. Of those community members that have had dealings with CPFs, an overwhelming majority is positive of that experience. There can be no doubt that CPFs are an important institution in building community partnerships. It is a concern then that it appears as if the CPFs in Harare and Khayelitsha Site B in particular have had a patchy record insofar as meetings and attendance is concerned over recent years. The Commission did not get the sense from the individual station commanders that they found their relationship with CPFs to be deeply valuable for the project of community policing.
- [30] The Commission accordingly concludes that CPFs in Khayelitsha have not played a significant role in building good relations between SAPS and the community in Khayelitsha. There are several reasons for this. First, the Commission finds that the Khayelitsha CPFs have been under-resourced, a matter that the EPP seeks, at least in part, to address. Given that it has only recently been implemented, whether it will achieve that purposes remains to be seen. It also seeks to ensure that CPFs undertake key tasks. Although there were different views on the desirability of the EPP, the Commission is of the view that it is a relatively new programme that should be given time before its success is finally assessed. The Commission considers that the EPP should be monitored to ascertain whether it enables CPFs to play an active and constructive role in building good relationships between SAPS and the community. The Commission concludes that there may well be a need to provide a basic pack of resources to CPFs in very poor communities, which should include stationery and a computer, and proposes that DOCS consider this issue carefully. In this regard, it notes that Brigadier Dladla, station commander at Khayelitsha Site B, told the Commission that many of the members of CPFs are unemployed, and that it would be a good idea to provide more funds to CPFs in poor areas.⁸⁰
- [31] A second reason for the fact that good relations between SAPS and the community in Khayelitsha have not been fostered by the CPFs, may arise from the high levels of political contestation in Khayelitsha which appear to have infected the manner in which the CPFs, especially in Harare and Khayelitsha Site B, function. While the Commission acknowledges that political association is a fundamental freedom that must be protected, it also considers that it would be unfortunate if the goal of community safety in Khayelitsha were to be threatened by political contestation. The Commission records that the political contestation around CPFs appears to be of at least two types: inter-organisational rivalries and 'gatekeeper' politics. In the first, members of one or more allied organisations seek to exclude others perceived to be members of, or allied to, other 'rival' organisations. Under the second, a group or groups seek to control a range of activities in Khayelitsha, including who may be members of civic organisations such as CPFs. In the view of the Commission, both these types of contestation may harm the effective functioning of CPFs. The Commission accepts that political contestation is legitimate, but considers that political contestation should not lead to membership of CPFs being exclusive or restricted. Accordingly, the Commission recommends that SAPS and DOCS should jointly take steps to prevent the work of CPFs being adversely affected by political contestation, and should ensure that CPFs are broadly representative of the communities they serve.
- [32] Finally, the Commission notes that it may be that expectations of the role that CPFs can play in fostering good relations between the community and SAPS in Khayelitsha may be unrealistic.

80 Transcript at 3595 (18 February 2014).

Mr Tait told the Commission that research has identified problems with CPFs in South Africa for some time.⁸¹ In particular, he told the Commission that where “communities are highly politicised, divided, hostile and fragmented” and the police service are under-skilled, the role of CPFs will be limited.⁸²

- [33] CPFs are organisations of community volunteers who, by definition, have limited time to spend on policing matters. Although the Commission affirms that the civic-minded engagement of volunteers will provide SAPS with a useful source of information about the community it is policing, as SAPS recognised, more than fifteen years ago, CPFs cannot be the only strategy to promote community policing. In the view of the Commission, the role of sector policing in fostering good community relations is also important, as are some of the issues to which we now turn.

(c) The handling of complaints made by members of the public against SAPS in Khayelitsha

(i) *Standing Order (General) 101*

- [34] Standing Order (General) 101 regulates the management of complaints against members of SAPS by members of the public.⁸³ The Standing Order provides that an electronic database must be kept of all complaints lodged against members of SAPS, which must include the date when the complaint was received, the name and contact details of the complainant, the classification of the complaint, the name and contact details of the investigator and the outcome of the investigation.⁸⁴ The Standing Order provides that ordinarily complaints will be investigated by the police station (or unit) where the complaint originated, that is where the conduct to which the complaint refers took place.⁸⁵ The commanding officer at the relevant police station or unit will designate an investigator to investigate the complaint and the investigator must interview the complainant, verify the complaint and determine relevant measures to redress the complaint.⁸⁶ The Standing Order provides for strict timeframes for the handling of complaints. An investigator is given 19 days to complete the investigation.⁸⁷

(ii) *Compliance with Standing Order (General) 101 at the three Khayelitsha police stations*

- [35] The Task Team report recorded that there had been 15 complaints lodged against members at the Khayelitsha Site B police station in 2011, 18 at Lingeletu West and 21 at Harare. According to the documents provided by the police stations⁸⁸ relating to Standing Order 101 complaints, there were 32 such complaints at Khayelitsha Site B, 23 at Lingeletu West and 39 at Harare in 2012.⁸⁹ There was therefore a significant increase in the number of complaints at all three police stations between 2011 and 2012. The Commission received copies of the files of most of these complaints.⁹⁰ A perusal of the files showed that in Harare, in particular,

81 Record Bundle 12(1), Item 19 at paras 19 – 21.

82 Id. at para 21.

83 See Chapter 5 above at paras 53 – 54. Standing Order (General) 101, Record Bundle 3(3.22), File 3, Folder 1, Item 138. Provincial memorandum on Standing Order 101 annexed to the Affidavit of Major General Jephta Record Bundle 5(4), File 3, at pp 25 – 30.

84 Standing Order 101 at para 3.

85 See definition of “place of origin” in para 2 of Standing Order 101.

86 Id. at para 5(3).

87 Id. at para 6.

88 Record Bundle 3, Files 3.8, 3.9 and 3.10.

89 High Court Record Bundle 1(3), AL87 at para 9.3.1.

90 The Commission received all the files in respect of Khayelitsha Site B, all but 4 in respect of Lingeletu West and 42 out of 60 files from Harare.

the time frames for investigations stipulated in the reports were not followed and some of the files contained correspondence from the Provincial Inspectorate in relation to the lack of adherence to time frames. Moreover, in many of the files at all three police stations, no formal acknowledgement of satisfaction was obtained from the complainant as required by the Standing Order. Instead, the complainant's satisfaction was simply asserted by the investigator. In fact evidence before the Commission indicated that complainants were not always satisfied.⁹¹ In addition, very few of the reports at all three police stations complied with the prescripts of Standing Order 101 in relation to their content. The Schooling and Leamy report also concluded that Standing Order (General) 101 was not being complied with at the three Khayelitsha police stations.⁹²

- [36] None of the three police stations keep an electronic database of complaints as required by paragraph 3 of the Standing Order. Major General Jephta explained in her evidence that the national office of SAPS is still in the process of developing the capacity for such databases, so police stations are still using registers.⁹³

(iii) Provincial Nodal point

- [37] In her statement to the Commission, General Jephta explained that a nodal point has been established at the Provincial Inspectorate for all complaints. Complaints are received at the nodal point from the National Commissioner's office the Presidential Hot-line, the Minister of Police, the MEC for Community Safety, the SA Human Rights Commission and DOCS. The complaints are all then entered into an electronic database. The Commission endorses the principle that all complaints should be properly recorded.

(aa) DOCS' constitutional responsibility for investigating complaints and the nodal point

- [38] A less encouraging consequence of the establishment of the nodal point, however, seems to have been SAPS' decision to prevent DOCS from investigating complaints of police inefficiency. Dr Lawrence, the head of DOCS, told the Commission that he had received a letter from the Provincial Commissioner (then General Petros) dated 15 March 2010 stating that all complaints received by DOCS must in future be forwarded to a nodal point established at the Provincial Inspectorate.⁹⁴ Dr Lawrence told the Commission that he understood this letter to mean that SAPS would not permit DOCS to investigate complaints, and that DOCS had accordingly thereafter stopped investigating complaints but had simply forwarded complaints it received to the SAPS nodal point.⁹⁵ He told the Commission that the new system caused delays because DOCS would forward complaints to SAPS and then have to keep sending reminder letters to SAPS to investigate the complaint.⁹⁶ Mr Njozela, the head of the Policing Complaints Centre in DOCS, confirmed Dr Lawrence's testimony and said that after March 2012 the Police Complaints Centre was no longer able to investigate complaints against SAPS but operated like a "post office".⁹⁷
- [39] The Commission notes that in his letter of 15 March 2010, the Provincial Commissioner stated that he "was aware of and respects your Constitutional Civilian oversight responsibilities and functions" but continued that the Provincial Commissioner was "ultimately responsible"

91 Transcript at 1255 – 1261 (3 February 2014).

92 Record Bundle 9(1), File 1, Item 1 at para 7.5.2.

93 Transcript at 6414 (31 March 2014).

94 Exhibit GL1 Record Bundle 9, File 6), Item 7. See also overview of testimony on this issue at Chapter 9 above at paras 15 – 16.

95 Transcript at 1597 – 1598 (3 February 2014).

96 Id. at 1598.

97 Transcript at 1240 (3 February 2014).

for policing in the Western Cape and therefore “also responsible for investigation of any complaint” against the SAPS.⁹⁸

- [40] The Commission notes that section 206(5) of the Constitution states that in order to carry out its oversight functions “a province may ... investigate any complaints of police inefficiency...”. Given the express language of section 206(5), the Commission is of the view that SAPS may not prevent the province from investigating complaints of police inefficiency. The Commission acknowledges that the manner in which such investigations take place needs to be regulated by agreement between DOCS and SAPS to avoid administrative dislocation and unnecessary duplication. The starting point of the agreement must be DOCS’ constitutional responsibility to investigate complaints of police inefficiency. That responsibility, as we set out in Chapter 2, constitutes an important constitutional mechanism of accountability that cannot simply be ignored. In the view of the Commission, this should be an issue addressed in the memorandum of understanding to be entered into between SAPS and DOCS, as mentioned in Chapter 13 above.⁹⁹

(bb) Complaints against the three Khayelitsha police stations recorded at the Nodal Point 2010 – 2012

- [41] According to Major General Jephta, there were the following complaints against the three Khayelitsha police stations registered at the provincial nodal point. These complaints do not include the complaints registered directly at the police stations.¹⁰⁰

Table 1: Complaints Received from 2010 to 2012¹⁰¹

Period	Total per Province	Khayelitsha	Harare	Lingeletu West
2010	1928	34	19	16
2011	1844	22	31	19
2012	2501	29	39	24

- [42] The nature of the complaints raised is set out in the following table.

Table 2: Standing Order Complaints Catagorised in Terms of Standing Order G 101¹⁰²

	2010			2011			2012		
	Khayelitsha	Harare	Lingeletu West	Khayelitsha	Harare	Lingeletu West	Khayelitsha	Harare	Lingeletu West
Police negligence	21	7	10	12	19	10	14	20	11
Poor communication	6	7	3	4	3	4	5	10	7
Poor Investigation	2	3	2	4	7	4	6	2	5
Poor response	3	1	1	2	1	0	3	4	1
Service Delivery	0	0	0	0	0	0	0	2	0
Complaint against Management	2	1	0	0	1	1	1	1	0
Total	34	19	16	22	31	19	29	39	24

⁹⁸ Record Bundle 9, File 6, Item 7 at para 3.

⁹⁹ See Chapter 13, above, at paras 81 – 82.

¹⁰⁰ Transcript at 6430 (31 March 2014).

¹⁰¹ Major General Jephta Statement Record Bundle 8(4), File (4.4)(1), Item 4, p 356C.

¹⁰² Id. at p 35C.

- [43] The following table indicates the number of complaints that, after investigation, were held to be unfounded.

*Table 3: Number of Complaints Received and the Outcome*¹⁰³

Period	Station	Service Delivery Complaints Total interactions	Founded	Unfounded
2010	Khayelitsha	34	4	30
	Lingeletu West	16	1	15
	Harare	19	4	15
2011	Khayelitsha	22	6	16
	Lingeletu West	19	3	16
	Harare	31	10	21
2012	Khayelitsha	29	3	26
	Lingeletu West	24	4	20
	Harare	39	3	36
Total		233	38	195 (74%)

- [44] General Jephta suggested in her evidence that the number of complaints received in respect of the three police stations is very low, compared to the number of interactions members of SAPS at the three police stations have with members of the public, which SAPS' measuring tools suggest are between 20 000 and 30 000 per annum for each police station. It is not clear how this data is collected. We note that the information suggests that Khayelitsha Site B and Harare police stations had a similar number of interactions in 2012 which, given the marked differences in the size of the stations, is surprising. She also testified that the system is "effective".¹⁰⁴
- [45] The Commission is less certain that the system is effective. The Commission agrees that the numbers of complaints registered at both the police station and at the nodal point is not high, but the Commission notes that the vast majority of all complaints whether lodged at the police station or the nodal point are held, after investigation, to be "unfounded". In the view of the Commission the two facts may be connected: there may a low number of complaints because the perception is that SAPS does not address complaints. Major General Jephta was questioned on this score, but dismissed the concern, saying that SAPS trusts that its station commanders will address any such perception.¹⁰⁵ The Commission is less sanguine. In our view, there is a real prospect on the record before the Commission, that there may be a perception, that lodging a complaint does not produce any worthwhile results and that therefore it is not worth the effort, then this will be very harmful to the relationship between SAPS and the community.
- [46] Another worrying aspect of the Standing Order (General) 101 complaint process is the fact that very often the determination of the outcome of the complaint comes down to a conflict of fact between the member of the public who laid the complaint and the SAPS member. In such cases, it appears to the Commission from the documents it has perused, that the ordinary practice is that the word of the SAPS member is accepted and that of the complainant rejected. The Commission has two difficulties with this approach.
- [47] First, although the Commission accepts that at times a member of the public may lodge a groundless or even vexatious complaint at a police station, the Commission thinks it is unlikely that most complaints are groundless or vexatious. The Commission makes this assessment on

¹⁰³ Id. at p 36C.

¹⁰⁴ Id. at 6433 (31 March 2014).

¹⁰⁵ Id. at 6434 (31 March 2015). Brigadier Dladla responded to a similar question Transcript at 3704 (18 February 2014).

the basis that a member of the public gains no benefit from lodging a complaint, but faces certain administrative inconvenience and, possibly, a risk of retaliation. On the other hand, a SAPS member has a real interest in denying the content of the complaint, when he or she realises it is his word against that of the complainant. Given the fact that members of the public gain no benefit from complaining, but SAPS members do from denying complaints, the Commission thinks SAPS needs to reconsider how it approaches a conflict of facts in assessing complaints by members of the public. In particular, SAPS needs to consider in designing its processes that it is unlikely that there are many members of the public who will, despite the administrative inconvenience, and a perceived risk of retaliation, lay complaints against SAPS members. On the other hand, SAPS needs to acknowledge that there is an incentive for its members to be untruthful. In this regard, SAPS should bear in mind the fact that there is a strong institutional culture in SAPS that dictates that one SAPS member is unlikely to testify against another member, so that even where two or more SAPS members dispute the complaint, SAPS should not immediately accept that the complaint is untrue. The issue of institutional culture is considered in the next part of this Chapter.

- [48] But there is a second reason why the Commission thinks that SAPS needs to rethink its approach to complaints, where there is a conflict of act between the complainant and one or more SAPS members. Given the fact that SAPS is providing a public service, it should start the process of investigating complaints with an appreciation of the fact that most complainants lay complaints because they feel aggrieved, and a primary purpose of the complaints process should be for SAPS to assuage that sense of grievance. Every grievance that is not assuaged, and not dealt with in a manner perceived to be fair by complainants, will harm the relationship between SAPS and the community. Many people who are aggrieved by the conduct of SAPS will not lay a complaint, either because the process will be perceived as troublesome, or because a complainant may risk retaliation. In a sense, every complaint that is not laid is an opportunity lost for SAPS to build a good relationship with the public. Complaints that are laid should be seen by SAPS as an opportunity to foster its relationship with the community, by treating the complaint seriously and fairly and fostering confidence rather than destroying it.

(iv) ICD and IPID

- [49] As described in Chapter 5 above,¹⁰⁶ IPID replaced ICD from 1 April 2012 as the independent body with the mandate to investigate complaints against SAPS. ICD had been established in terms of Chapter 10 of the SAPS Act. The Preamble to the IPID Act refers to section 206(6) of the Constitution, which provides that on receipt of a complaint lodged by a provincial executive, an independent police complaints body must investigate any alleged misconduct or offence committed by a member of SAPS in the province. The IPID must investigate a limited range of cases as set out in section 28 of the Act. The list includes deaths in police custody, deaths as a result of police action, complaints relating to the discharge of a firearm by a police officer, complaints of torture or assault. Station commanders must refer deaths in police custody and complaints of torture or assault to the IPID immediately.¹⁰⁷ The Executive Director of IPID must refer criminal offences revealed by IPID investigations to the NPA for criminal prosecution,¹⁰⁸ and must ensure that disciplinary matters are referred to the National Commissioner and the appropriate Provincial Commissioner.¹⁰⁹ SAPS must initiate

¹⁰⁶ See Chapter 5 at paras 16 – 20. See also the overview of the testimony of Mr Leholo, the acting head of IPID in the Western Cape in Chapter 9 at paras 27 – 37.

¹⁰⁷ Section 29(1) of the IPID Act.

¹⁰⁸ Section 7(4) of the IPID Act.

¹⁰⁹ Sections 7(6) of the IPID Act.

disciplinary proceedings within 30 days of the receipt of a recommendation from IPID¹¹⁰ and must provide quarterly reports on the progress of disciplinary proceedings to the Minister and the Executive Director of IPID.¹¹¹

- [50] There are several material differences between the ICD and IPID. Chapter 10 of the SAPS Act provided that the ICD could on its mandate or upon receipt of a complaint investigate any misconduct or offence alleged to have been committed by a SAPS member, including any criminal offence, or any conduct of a SAPS member in breach of SAPS Standing Orders or regulations.¹¹² The ICD could also refer matters to SAPS for investigation.¹¹³ IPID may not refer section 28 matters to SAPS for investigation. Moreover, SAPS was not obliged to implement the outcome of ICD investigations, while it is obliged to comply with disciplinary recommendations made by IPID.
- [51] Mr Lehlo who testified before the Commission is the current acting head of the IPID in the Western Cape, and previously the Provincial Head of the ICD in the Western Cape. He told the Commission that every complaint referred to the ICD or IPID is given its own unique reference number.¹¹⁴ The Commission was provided with four box files of finalised complaints relating to the three Khayelitsha police stations for the period 1 April 2010 – 31 August 2013. In all, there were 87 closed cases relating to the period.¹¹⁵ 61 of the 87 cases had been closed by the ICD or IPID as unsubstantiated, and referred back to SAPS.¹¹⁶ Mr Lehlo told the Commission that when the ICD referred a matter to the police station for investigation, it marked the file “unsubstantiated”¹¹⁷ and that it did not always request a report from SAPS as to the outcome of SAPS’ investigation.¹¹⁸ The letter sent to a complainant in such circumstances simply stated that the complaint has been referred to the Station Commander, Provincial Inspectorate or Provincial Commissioner and that ICD has closed the docket.¹¹⁹ Mr Lehlo also provided the Commission with the list of 40 cases (16 relating to Khayelitsha Site B, 10 to Lingeletu West and 14 to Harare) pending as at January 2014.¹²⁰
- [52] The Commission has not been in a position to investigate the 67 complaints closed as unsubstantiated, but a perusal of the nature of the complaints which were closed “unsubstantiated” included many complaints of alleged attempted murder, assault with intent to do grievous bodily harm, common assault and discharge of a firearm. These are extremely serious matters, which, in view of the Commission, need to be thoroughly investigated, and a full report needs to be made both to the complainant and to SAPS. The Commission is not persuaded that these matters are being treated with sufficient care and concern. In this regard, the Commission refers to paras 47 – 48 above, where the Commission notes that complaints by members of the public should be treated very seriously by SAPS, both because it is unlikely that the majority of complaints are lodged by vexatious civilians, whereas there are substantial incentives for SAPS members implicated in complaints to deny them, and because every complaint is an opportunity for SAPS to restore its reputation, that has been

110 Section 30(a) of the IPID Act.

111 Section 30(b) of the IPID Act.

112 Section 53(2)(a) of the SAPS Act, now repealed.

113 *Id.*

114 Record Bundle 7(8), Item 4 at para 46. The reference number is a “CCN” number.

115 Annexures TH4, TH5, TH6 (which related to the three police stations), and TH7 (a consolidated list) to Mr Lehlo’s Statement Record Bundle 7(8), Item 4 at para 48.

116 Annexure TH7 to Mr Lehlo’s Statement Record Bundle 7(8), Item 4.

117 Record Bundle 7(8), Item 4, at paras 56 – 57. Transcript at 1492 – 1493 (5 February 2014).

118 *Id.* at paras 60 – 61.

119 Transcript at 1494 (5 February 2014).

120 Annexures TH8, TH9, TH10 to Mr Lehlo’s Statement, Record Bundle 7(8), Item 4 and para 49 thereof.

Photo 20: Community member at Commission's public hearing



harmed in the eyes of the complainant, and by so doing seek to foster a good relationship with the community.

- [53] The Commission accordingly concludes that the manner in which complaints relating to SAPS members at the three Khayelitsha police stations, and other issues of alleged misconduct, have been addressed in the past by the ICD, and are currently being addressed by IPID is a factor that has in all probability contributed to the breakdown in relations between the Khayelitsha community and SAPS. The Commission finds it completely improbable that 61 of the 87 matters referred to the ICD and/or IPID could properly, on the ordinary meaning of the word, be described as “unsubstantiated”, even though that is what was communicated to the individual complainants. Every complainant who has gone to the trouble of laying a complaint will feel aggrieved by a bald letter containing no serious consideration of the facts which simply states that it has been found that their complaint has been found to be unsubstantiated. The more serious and genuine the complaint, the greater the sense of grievance that will have been generated by such letters, and the greater the harm will have been caused to the relations between SAPS and the Khayelitsha community.
- [54] One of the reasons for both the ICD and IPID’s failure to conduct independent investigations may be caused by under-staffing. Mr Leholo told the Commission that IPID has posts for 20 investigators in its Bellville office in the Western Cape, of which three were being advertised on 5 February 2014 when he testified.¹²¹ There is a satellite office in George with three investigators.¹²² He told the Commission that the ICD had 15 investigators in the Western Cape.¹²³ According to Mr Leholo most of the investigators are former members of SAPS.

¹²¹ Transcript at 1501 (5 February 2014).

¹²² Mr Leholo Statement Record Bundle 7(8), Item 4 at para 68.

¹²³ Transcript at 1500 (5 February 2014).

Mr Leholo also told the Commission that the scope of the work of the IPID is considerably greater than that of the ICD.¹²⁴

- [55] A consideration of the 2012/2013 IPID Annual Report shows that IPID received 1640 cases in the Western Cape office, being 24% of the national total of cases of 6724.¹²⁵ This figure means that 23 investigators will each be investigating 71 cases per annum, assuming an even spread between the George and Bellville offices. The 2012/2013 report showed that of the total workload (including carried over cases) in the Western Cape of 1701 cases, only 35% were completed. This completion rate is the lowest of all 9 provinces. Only 4 provinces had completion rates of below 50%. The other three are KwaZulu Natal, which has a 36% completion rate, Gauteng with a 42% completion rate and the Eastern Cape, which has a 48% completion rate.¹²⁶ The Report also shows that IPID in the Western Cape has the highest workload at 1701 cases. Gauteng is the next highest at 1417.¹²⁷ The Report also shows that in 2012/2013, 169 cases were closed in the Western Cape, all of them unsubstantiated.¹²⁸
- [56] In conclusion, the Commission raises three concerns from its perusal of the work of IPID: the very high number of cases closed “unsubstantiated”, the manner in which such decisions are communicated to complainants, and the workload of IPID in the Western Cape which suggests that it is chronically understaffed, given that it has the highest workload of all provinces, and the lowest completion rate. The Commission also notes that it might be appropriate to ensure that some of the investigators employed by IPID come from backgrounds other than SAPS. This suggestion arises, in part, because of the conclusions the Commission reaches on the institutional culture of SAPS.

(v) *Conclusions on SAPS and IPID complaints mechanisms*

- [57] In the view of the Commission, the trust of members of the community can only be fostered if, when a civilian makes a complaint, that complaint is expeditiously, transparently and fairly handled. Responsiveness to complaints is especially important to SAPS, given the extensive and invasive powers afforded to SAPS, and its members, which, amongst other things, allow members of SAPS to arrest people and to search people and their property. These powers are necessary, but create the risk of abuse. Accordingly, complaints of abuse or misconduct by SAPS members must be taken very seriously and be properly handled. There are currently three main agencies that investigate complaints made against the three Khayelitsha police stations: the police stations, the Provincial Inspectorate and IPID.
- [58] The Commission is deeply concerned by the proportion of complaints arising from Khayelitsha that, after investigation by one of these three agencies, have been held to be “unfounded” or “unsubstantiated” by all these three agencies. In the view of the Commission, given the evidence that it has had placed before it, it is highly improbable that upwards of 80% of all complaints received by police stations, the Provincial Inspectorate and IPID concerning the conduct of SAPS members in Khayelitsha are groundless or vexatious. The Commission accepts that some complaints may be vexatious or groundless, but it is unlikely that 80% of complaints are. Yet that is what the documents the Commission has received indicate has been found by these various complaints bodies to be the case.

124 Id. at 1502.

125 See figures extracted from the Annual Report at TH11 annexed to Mr Leholo’s Statement, Record Bundle 7(8), Item 4.

126 Annual Report 2012/2013 Record Bundle 1(8), File 2, Item 4, p 41.

127 Id.

128 Id. at p 75.

- [59] The Commission considers that SAPS needs to adopt an approach that recognises that every complaint is an opportunity to repair or foster the relationship of trust that needs to exist between SAPS and the community. Recognising this means that SAPS needs to reconsider the manner in which it deals with conflicts of fact between SAPS members and members of the public. SAPS also needs to take care that investigators communicate with complainants in a respectful manner, which should start with an acknowledgement of the fact that the complainant feels aggrieved. The Commission considers that the Cluster may be a better location for the investigation of complaints than the police station, for a variety of reasons. Firstly, it will remove the perception of unfairness that arises when a member at a police station investigates his or her colleague. Secondly, it will enable the Cluster office to be properly informed of complaints and facilitate their performance of an oversight function over the police station. Thirdly, it would enable the creation of specialist teams of investigators at Clusters who investigate complaints across police stations.
- [60] The Commission also concludes that DOCS' constitutional responsibility to investigate complaints needs to be acknowledged by SAPS and the process whereby those investigations take place needs to be regulated by agreement between SAPS and DOCS.
- [61] The Commission accordingly concludes that the manner in which complaints are dealt with at the level of police station, province and at IPID have contributed to the breakdown in relations between the SAPS and the community in Khayelitsha.

(d) SAPS' institutional culture in Khayelitsha

- [62] SAPS is a very large and complex institution. It employs nearly 200 000 people, and like most large organisations it has its own organisational or institutional culture. Accordingly it was not surprising to the Commission that many witnesses spoke of the institutional culture of SAPS.¹²⁹ It is not only SAPS' size that contributes to its institutional culture; its specific functions and context are also important drivers of institutional culture. There is an extensive literature on policing culture globally, which suggests that elements of policing culture are reproduced in different policing agencies in the world.¹³⁰ Jerome Skolnick argued that –
- “... the constant risk of danger that officers face, their designated authority and capacity to use force against citizens and the pressure to perform their duties effectively and efficiently generates ‘a working personality’ characterised by suspiciousness, internal solidarity, social isolation and conservatism.”¹³¹
- [63] According to Matthew Bacon, police culture –
- “... is learnt, expressed and sustained in the context of social interaction, the everyday conversations ... about the job and how to do it, the imparted words of wisdom, the narratives recounting past events and the glorified folklore.”¹³²
- [64] Research suggests that police institutional culture is often resistant to institutional reform, and that resistance is often deeply rooted in the operational ranks of the police.¹³³ Reforms are particularly difficult where they conflict with the beliefs and assumptions of rank and file

129 For example Dr Holtmann Transcript at 7753 (15 May 2014).

130 Bacon, M. (2014). “Policing Culture and the New Policing Context” in Jennifer Brown (ed.) *The Future of Policing*. London: Routledge, at pp 103 – 119 contains extensive references.

131 Id. at p 111.

132 Id. at p 109.

133 Id. at 111.

members of a policing agency. Managers of change need to acknowledge this and take steps to ensure that all members of the policing agency understand and accept reforms.

- [65] According to Bacon, changing policing culture itself is difficult, but not impossible.¹³⁴ Indeed SAPS has been through a process of deep institutional reform over the last twenty years that has included changes to aspects of its institutional culture. Bacon also states that changing the culture of an institution needs to start at the top, with leaders and managers accepting the need for change in institutional culture and then adopting a variety of strategies to implement the desired change.¹³⁵
- [66] There are four aspects of SAPS' institutional culture relevant to the building of a good relationship between the people of Khayelitsha and SAPS that we identify in this report. The first is what can be called the principle of internal solidarity which results in SAPS members being unwilling to admit that SAPS members have acted wrongly; the second is what was referred to by several witnesses as "the cowboys don't cry" culture; the third is the manner in which SAPS treats all people, including members of the LGBTI community, as well as foreign nationals who live or work in Khayelitsha; and the fourth is the question of understanding police as a service, as opposed to crime fighting.

(i) *The commitment to internal solidarity*

- [67] The commitment to internal solidarity is widely recognised to be an aspect of policing culture around the world.¹³⁶ Internal solidarity arises in part from policing "on the beat", where colleagues need to trust one another and co-operate closely. Scholars have shown that the commitment to internal solidarity has various harmful consequences including the pressure on individual members overlooking misconduct of their peers. Mr Newham told the Commission that this phenomenon is sometimes referred to as "the blue curtain" or the "code of silence"¹³⁷ and that it is not seen in a negative light by SAPS members, but as a sign of "group solidarity, empathy and support for colleagues in difficult circumstances."¹³⁸ A recognition that "internal solidarity" may well lead SAPS members to "cover" for their colleagues needs to be taken into account in designing complaints systems.
- [68] Another aspect of the commitment to internal solidarity is the tendency to secrecy: a resistance to disclosing information to those external to the policing agency. In a constitutional democracy such as ours, all public power is obliged to promote the values of transparency, accountability and responsiveness, so the principle that information and decision-making with SAPS should be opaque and not subject to oversight and monitoring is not congruent with our constitutional framework.
- [69] A third harmful aspect of the commitment to internal solidarity mentioned in the international literature is the distrust of the involvement of anybody who is not a permanent member of the policing service in the process of determining the scope of policing, analysing its problems or assessing its performance.¹³⁹ The commitment to internal solidarity suggests that the only knowledge that is valid is the knowledge generated within the organisation itself. This closed attitude is prevalent in many policing agencies. It is of course self-serving because it enables those in the policing agency to discount external criticism. More worrying is the fact that it limits the range of expertise that the policing agency can call upon to address its problems.

¹³⁴ Id. at 115.

¹³⁵ Id.

¹³⁶ Id. at 111.

¹³⁷ Mr Newham's Report, Record Bundle 12(1), Item 7 at pp 22 – 23.

¹³⁸ Id. at p 23.

¹³⁹ Id. at 114.

- [70] It is noteworthy that quite a contrary attitude to the work of the Commission was expressed by, amongst others, Major General Jephta and Lieutenant General Lamoer in their testimony to the Commission. Lieutenant General Lamoer said –

“My management accepts and welcomes any intervention from anybody to better the service to the community and we really look forward to the outcome of this Commission so that we can see and evaluate how can we better the service to the various communities that we serve, because we will not only use the outcome of this Commission for the three police stations but we will look broader in the Western Cape itself to all 150 police stations.”¹⁴⁰

- [71] This approach, together with the apology tendered by Lieutenant General Lamoer to the people of Khayelitsha for the lack of services rendered to address crime problems in Khayelitsha, suggests that SAPS management in the Western Cape are keen to address the problems identified in Khayelitsha, and to draw on a range of expertise to assist them to improve service delivery.

(ii) *“Cowboys don’t cry”*

- [72] One of the issues that became clear from the evidence before the Commission is the fact that many members of SAPS in Khayelitsha are suffering from stress and burn-out. Dr Josias told the Commission that the members of the FCS Unit she deals with are very stressed and that –

“You know I have to sit with them in the middle of the night and then they see, you know, Genine, I cannot take another rape of a child. I’ve got a daughter who is five. You know it affects them also personally with what they have to deal with.”¹⁴¹

- [73] She told the Commission that the investigating officers of the Khayelitsha FCS Unit –

“... are irritable, they’re irritable. You know when they come to us I’ll say first come into my room, sit down, can I make you a cup of coffee, have you had lunch today, you know, how is it going at home, how is your wife, how are your kids, school’s started, is your child now in Grade 7, did they go to another school? You know you talk, you just want to calm them down because you know what they have to see now that five-year old has been raped by two perpetrators. I know that his daughter is five, I know how he feels about child rapes, you know, so you get him in to office ... now that’s what you have to do with them because we know now they’re going to have to sit down and focus with this patient and they should not take out their irritability and their being burnt-out on that survivor.”¹⁴²

- [74] Ms Vetten also told the Commission that she was worried that many of the members of the FCS Unit may be suffering from stress and burnout, which would severely impact their performance.¹⁴³ She suggested that all members of the FCS Unit be assessed in terms of one of the “standardised inventories” for burnout, depression and vicarious trauma, by an outside agency to reassure the members that there will be no harmful consequences for them.¹⁴⁴
- [75] Major General Burger, the Deputy Provincial Commissioner with responsibility for human resource management, explained to the Commission that the SAPS Employee Health and

¹⁴⁰ Id. at 6569 – 6570 (1 April 2014).

¹⁴¹ Transcript at 620 (29 January 2014).

¹⁴² Id. at 621 – 622 (29 January 2014).

¹⁴³ Transcript at 7388 (14 May 2014).

¹⁴⁴ Transcript at 7398 – 7399 (14 May 2014).

Wellness (EHW) programme is governed by two National Instructions, National Instruction 18/1998, which provides for the debriefing of personnel who have experienced trauma, and National Instruction 3/2003 dealing with the Employee assistance programme.¹⁴⁵ National Instruction 18/1998 states in its introductory paragraph that SAPS employees –

“... are often exposed to traumatic incidents in the performance of policing functions. If such employees do not receive timeous debriefing, a real danger exists that the employees may develop post-traumatic stress symptoms, it is thus imperative that provision is made for the effective and timeous debriefing of traumatised employees.”¹⁴⁶

- [76] The National Instruction requires that duty officers report the names of SAPS members who were present at “traumatic incidents” to their commanding officers, who in turn must report the incident to a person designated as a “debriefing officer”, who must be a trained professional or a person who has completed a course in debriefing.¹⁴⁷ “Traumatic incidents” are defined to include “a gruesome scene such as a murder, serious collision or disaster”.¹⁴⁸ Debriefing must then take place within 12 hours.
- [77] Major General Burger told the Commission that SAPS would never hold the use of EHW or counselling against a member of SAPS in relation to issues of promotion.¹⁴⁹ He added “that there’s no way that anybody can fear that the mere partaking in programmes of EHW will negatively affect their progress within the organisation.”¹⁵⁰
- [78] Despite Major General Burger’s firm assertion that resort to the EHW would not prejudice SAPS employees, several witnesses testified that there is a perception that if the programme is used, they will prejudice their chances for promotion. Dr Josias told the Commission that SAPS members think that if they use the programme, they will be seen as “weak” and “unable to handle” the job, so they will not be promoted.¹⁵¹ Colonel Harri, the provincial head of the FCS Unit, told the Commission that although National Instruction 3/2008 requires members of the FCS Unit to go for counselling biannually, she noted –
- “... you must remember that there is the mentality in the police that cowboys don’t cry. And a lot of them don’t like to be referred to EHW for counselling: they feel that ... there is a file against me, If I feel stressed that a file is being opened and it will be kept against them.”¹⁵²
- [79] The Commission notes that the very words used to describe this aspect of SAPS institutional culture by Colonel Harri, “cowboys don’t cry,” has distinct overtones of what is described in the policing literature as a culture of “machismo”,¹⁵³ which reinforce a specifically gendered conception of policing, but which accords with the notion that SAPS members must be strong and not show weakness.
- [80] This conception was echoed by Brigadier Dladla, the station commander at Khayelitsha Site B police station, who told the Commission that –

145 Major General Burger Statement Record Bundle 5(4), File 2, Item 2 at para 11.

146 National Instruction 18/1998 is annexed to Major General Burger’s Statement Record Bundle 5(4), File 2, Item 2.

147 National Instruction 18/1998 para 5 read with para 2.

148 *Id.* at para 2.

149 Transcript at 5418 – 5419 (25 March 2014).

150 *Id.* at 5419.

151 *Id.* at 622 (29 January 2014).

152 *Id.* at 5795 (27 March 2014).

153 See Bacon, M. (2014). “Policing Culture and the New Policing Context” in Jennifer Brown (ed.) *The Future of Policing*. London: Routledge, at p 112 contains extensive references to research on the gendered nature of policing.

“... in the police, we want to be brave, including myself. We don’t want to be seen as weak. I can tell you, I’ve worked all these areas where there is – I’ve been dealing with blood, blood, blood, but I’ve never attended any session, I’ve been offered, but I don’t see the need. Fortunately, the provincial office has now said now we must force people to go.”¹⁵⁴

- [81] He added that the systems are in place, “but we are not making use of them”. This is borne out by how few members utilise the EWP. According to SAPS Employee Health Service registers for 2013 only 15 members at Khayelitsha Site B, 15 at Harare and eight at Lingeletu West have been referred to EHW for psychological services.¹⁵⁵ Colonel Raboliba, the station commander at Harare, also admitted that the perception that the use of EHW would be detrimental to career prospects existed. He said: “that perception is there. It’s existing. One can’t deny it.”¹⁵⁶ He also described some steps he had taken to improve the use of counselling by members and acknowledged that if senior SAPS members use EHW, it would help to undo the stigma attached to its use within SAPS.¹⁵⁷
- [82] Colonel Marais, the detective commander at Khayelitsha Site B, agreed that there was a need for counselling, and suggested that there should be counsellors available at the big police stations.¹⁵⁸ He said that “in the areas where we are on a daily basis the people are exposed to sometimes horrific crime scenes ...”.¹⁵⁹ He said that he would like members to be “debriefed after a crime scene, “there and then”.¹⁶⁰ The problem seems to be particularly acute in the FCS Unit. The rules require members of the FCS Unit to have counselling twice a year, but again Colonel Harri told the Commission that very few members do attend counselling sessions.
- [83] The Commission concludes that the institutional culture of SAPS in Khayelitsha, as expressed pithily in the aphorism, “cowboys don’t cry”, is having the effect of undermining the health and wellness systems SAPS has set in place to address the trauma that SAPS members face regularly. The consequence, given the high rates of very violent contact crime that take place in Khayelitsha, is that many SAPS members in Khayelitsha, both in the three police stations and in the FCS Unit, may well be suffering from stress-related conditions, which will impact adversely both on the effectiveness of SAPS, the high rates of absenteeism and on the relations between SAPS and the community. In the view of the Commission, this is a matter that should be attended to urgently.

(iii) Treating every person with dignity and consistently with the principle of ubuntu

- [84] Human dignity is one of the founding values of our Constitution,¹⁶¹ and section 10 of the Constitution stipulates that everyone “has inherent dignity and the right to have their dignity respected and protected”. SAPS bears obligations in terms of the Constitution to “respect, promote, protect and fulfil” the rights in the Constitution, including section 10. The Constitution thus requires that all people, regardless of (amongst other things) their race, gender, sexual orientation, age and ethnic or social origin should be treated with equal

¹⁵⁴ Transcript at 3679 – 3680 (18 February 2014).

¹⁵⁵ Record Bundle 11, File 3, Item 11.5.

¹⁵⁶ Transcript at 4779 (18 March 2014).

¹⁵⁷ Id. at 4779 – 4780.

¹⁵⁸ Transcript at 4012 – 4013 ((19 February 2014).

¹⁵⁹ Id. at 4012.

¹⁶⁰ Id. at 4013.

¹⁶¹ Section 1(a) of the Constitution.

respect.¹⁶² Treating people with respect acknowledges our common humanity, that people are people through other people, ubuntu ngumuntu ngabantu. The Commission heard evidence that SAPS members in Khayelitsha do not treat all people they encounter with courtesy; and, in particular, they do not treat LGBTI people with equal respect and concern, nor do they treat foreign nationals with equal respect and concern.

(aa) An ethic of courtesy

- [85] There is a range of evidence before the Commission that suggests that SAPS members in Khayelitsha do not treat people with respect. The Mthente survey found that 55.3% of the respondents thought that the police in Khayelitsha were not polite and 55.4% thought that the police did not treat people with respect.¹⁶³ Many of the complaints received by the Commission and the complainant organisations indicated that members of SAPS are discourteous to members of the public.¹⁶⁴ The Commission concludes that the evidence before it suggests that there is not an ethic of courtesy and respect present in the three Khayelitsha police stations, particularly amongst less senior members of SAPS. In the view of the Commission, rudeness and discourtesy are destructive of good relations between the community and the SAPS units operating in Khayelitsha.
- [86] The Commission has received evidence from several experts which points to international research that suggests that the manner in which police treat members of the public is as important for building trust as the success the police have in the prevention and investigation of crime.¹⁶⁵

(bb) LGBTI people

- [87] Human Rights Watch has recently prepared a report that suggests that black lesbians and transgendered men living in townships are among the most marginalised and vulnerable members of South Africa's LGBTI population.¹⁶⁶ The report was based on interviews with more than 100 lesbian and trans-gendered men living in townships in South Africa. One chapter of the report considers the role of the police in their lives. It suggests that some members of the police subject members of the LGBTI community to 'secondary victimisation' when they report crimes at police stations.¹⁶⁷ They quoted the words of a Black lesbian woman from Khayelitsha whom they had interviewed as saying –

“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 in their face, there's something on their face that says 'freak'. They call us 'girl-man', 'woman-man', they don't know what a lesbian is.”¹⁶⁸

162 These grounds are listed as grounds of prohibited discrimination in section 9(3) of the Constitution. The list is not complete, nor is the constitutional list exhaustive.

163 Record Bundle 10(1), File 1.1, Item 11, p 44.

164 See, for example, the testimony of Mr Jaftha, chairperson of the Lingeletu West CPF, Transcript at 2788 – 2789 (12 February 2014); Mr Tame, Transcript at 177 (24 January 2014); Mr Gqeku, Transcript at 2072 (7 February 2014), and Ms Soldaat, Record Bundle 2(1), File (1.1.), Item 84 at para 18; Ms Basson, Transcript at 977 (31 January 2014); the results of the Mthente Survey, Record Bundle 10(1), File 10.1, Item 11 at p 44 and the focus group research of the Centre for Justice and Crime Prevention, Record Bundle 7(1), File H, Item 7.2.

165 See, for example, Sunshine, J., and Tyler, T. (2003). “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing,” 37 *Law and Society Review* 513 – 548; Hough, M., Jackson, J. et al. (2010). “Procedural Justice, Trust and Institutional Legitimacy”, *Policing* 203 – 210; Bradford, B., Jackson, J. and Hough, M. (2014). “Police Futures and Legitimacy: Redefining good policing” in Brown, J M. *The Future of Policing*. London and New York: Routledge, at 79 – 99; and Loader, I. (2014). “Why do the police matter”? Beyond the myth of crime fighting” in Brown, J M. *The Future of Policing*. London and New York: Routledge, 40 – 51 at 45 – 46.

166 Human Rights Watch. (2011). “We'll Show You You're a Woman”: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa. Human Rights Watch. Record Bundle 1(7), Item 10. Record Bundle 1(5), File E, Item 39.

167 Id. at pp 46 – 48.

168 Id. at p 59.

Ms Phumeza Mlungwana, General Secretary of the SJC, drew the attention of the Commission to the report in her statement.¹⁶⁹

- [88] This account squared with the testimony of Ms Funeka Soldaat, a founder member of Free Gender, an organisation that seeks to promote and defend the rights of the lesbian and bisexual community, specifically in Khayelitsha.¹⁷⁰ Ms Soldaat told the Commission that in her experience many police officers in Khayelitsha are homophobic. She said police “exhibit extreme aversion to the LGBT persons who report crimes or visit police stations ... This has the effect of discouraging LGBT persons from reporting crimes to the police.”¹⁷¹ She told the Commission that the priority of Free Gender was “to see gays and lesbians going to the police station, going to report or open cases, without being violated or being scared.”¹⁷²
- [89] According to Ms Soldaat, many “masculine lesbians” have been violated and killed in Khayelitsha and that this is a serious concern for Free Gender.¹⁷³ In this regard, the Commission notes that one of the original eight individual complaints raised by the complainant organisations related to the murder of Ms Zoliswa Nkonyana, an openly lesbian woman, who was murdered, the Commission was told, after she had refused to use a men’s toilet in a shebeen.¹⁷⁴ Ms Nkonyana was brutally stabbed and stoned to death by a group of young men. The investigation of her murder, and the consequent trial, took more than five years. The Commission accepts from the evidence placed before it by Ms Soldaat, as well as the Human Rights Watch Report, mentioned above, that there is a grave problem of homophobic violence in Khayelitsha.
- [90] Free Gender originally joined with the complainant organisations in asking the Premier to appoint a Commission of inquiry, but shortly after the letter of complaint was written to the Premier in November 2011, Free Gender withdrew from the complaint. According to Ms Soldaat this was for two reasons: first, because “our organisation is very small and we didn’t want to get into a lot of trouble”,¹⁷⁵ and secondly, and “most importantly” because SAPS and Free Gender had signed a pledge that the two organisations would work together. According to Ms Soldaat, “it was the first time in our history ... that we could move to the next level.”¹⁷⁶ She said that despite the relationship that had been established with SAPS in Khayelitsha, Free Gender still encountered problems with the response of SAPS to their members, citing an example in 2012, when one of Free Gender’s members had laid a complaint of rape and SAPS members “had started ... mocking her because she was with her partner”.¹⁷⁷ She also said that many of the members of Free Gender are “still scared, they don’t trust reporting their cases to SAPS.”¹⁷⁸ Ms Soldaat told the Commission that Free Gender was happy with the attitude of those officers in SAPS who are in “the higher ranks”, but that it was necessary to get “the police on the ground ... to the same level as senior management.”¹⁷⁹ She also told the Commission that given the vulnerability of LGBTI people in Khayelitsha, SAPS are “the most important people in our lives”.¹⁸⁰

169 Ms Mlungwana Record Bundle 1(5), File 3, Item 30 at paras 71 – 78.

170 Record Bundle 1(1.1), Item 84 at para 1. See the overview of her testimony in Chapter 7 at paras 71 – 75.

171 Id. at para 19.

172 Id. at 483.

173 Id. at 482 (28 January 2014).

174 Annexure B to the original complaint, Record Bundle 7(1), File A, Item 2(a), at para 3.7.11.

175 Transcript at 460 and 471 (28 January 2014).

176 Id.

177 Id. at 461.

178 Id. at 467 – 8.

179 Id. at 481.

180 Id. at 489.

- [91] Ms Soldaat also told the Commission that during 2013 a poster had been designed concerning the rights of LGBTI persons to be hung in the CSCs at the three Khayelitsha police stations, but that it was still awaiting Lieutenant General Lamoer's approval before it could be put up.¹⁸¹
- [92] The Commission concludes that LGBTI people living and working in Khayelitsha are particularly vulnerable to violent crime, including rape and other sexual offences, assault with intent to do grievous bodily harm and murder. This vulnerability stems from homophobic attitudes that some members of the Khayelitsha community hold. SAPS has a special responsibility to protect and respect the members of the LGBTI community, in the light of their particular vulnerability, and given the constitutional commitment to the equal dignity of all people regardless of their sex, gender or sexual orientation.
- [93] The Commission welcomes the relationship SAPS has entered into with Free Gender as an example of a commitment to protect vulnerable civilians. It is clear, however, from Ms Soldaat's testimony that despite the partnership with Free Gender, the attitudes of some SAPS members are still openly homophobic and abusive of LGBTI people. It is important that SAPS takes all steps that it can to eradicate such attitudes. Such steps should include both training of SAPS members, but also the imposition of discipline on SAPS members who act in discriminatory ways towards LGBTI people.

(cc) Foreign nationals

- [94] Foreign nationals are another group of people who live and work in Khayelitsha whose views on policing in Khayelitsha the Commission thought it appropriate to canvass, particularly given the outbreak of xenophobic violence in 2008.¹⁸² Despite a series of attempts, the Commission was unable to find foreign nationals living or working in Khayelitsha who were willing to relate their experience of policing in Khayelitsha. Whilst they were prepared to meet and speak to the Commission "off the record" they indicated that for fear of reprisals they were not prepared to give evidence in public or even in camera. Accordingly, the Commission requested Ms Vicki Igglesden, a social anthropologist who researches in the field of refugee rights, to conduct a study of foreign nationals to obtain an understanding of their experience of policing in Khayelitsha.¹⁸³ The report Ms Igglesden provided to the Commission was based on her interviews with 20 foreign nationals who had experiences with the police in Khayelitsha.¹⁸⁴
- [95] Ms Igglesden told the Commission that the foreign nationals she interviewed requested anonymity because they feared "repercussions" if their names became known.¹⁸⁵ Ms Igglesden told the Commission that foreign nationals have been living and trading in Khayelitsha since the mid-1990s. She also said that in the early years the refugee population consisted predominantly of Angolan and Congolese people, now the foreign national population in Khayelitsha is largely of Somali or Ethiopian origin, most of whom are traders, running small spaza shops.¹⁸⁶ The precise number of foreign nationals living in Khayelitsha is uncertain. Census 2011 suggests that 2477 foreign nationals reside in Khayelitsha, which would constitute 0.6% of the population, but Professor Simkins told the Commission that this

¹⁸¹ Id. at 468 – 469.

¹⁸² See for example Von Holdt, K., Langa, M., Molapo, S., Mogapi, N., Ngubeni, K., Dlamini, J., Kirsten, A. (2011). *The smoke that calls: Insurgent citizenship, collective violence and the struggle for a place in the new South Africa*. Johannesburg: the Centre for the Study of Violence and Reconciliation and the Society, Work and Development Institute. Record Bundle 1(7), Item 41.

¹⁸³ Record Bundle 6(1), File 3, Item 6. See also the overview of her testimony at Chapter 8 above at paras 23 – 27.

¹⁸⁴ Id. at p 1 and p 7.

¹⁸⁵ Transcript at 1321 (4 February 2014).

¹⁸⁶ Record Bundle 6(1), File 3, Item 6, pp 7 – 8.

estimate is probably an under-count for several reasons.¹⁸⁷ Ms Igglesden, too, thought it was not possible to be certain how many foreign nationals live and/or work in Khayelitsha.¹⁸⁸

- [96] It is clear from the record that spaza shops run by foreign nationals are often robbed. According to a research report, crime intelligence officers at the Khayelitsha police station stated that 96.5% of business robberies reported to the police station related to robberies of spaza stores owned by foreign traders, although they only made up 50% of storeowners. South African spaza shop traders accounted for only 3.5% of robberies.¹⁸⁹ Moreover 40% of business robberies also involved charges of murder or attempted murder. Lieutenant Colonel Swart, the detective commander at Lingeletu West, confirmed this. He told the Commission that most business robberies in his area were robberies of Somali spaza shops.¹⁹⁰
- [97] According to Ms Igglesden, the interviewees had high levels of dissatisfaction with the police. The dissatisfaction related both to the perceived inefficiency with which SAPS performed their work,¹⁹¹ but also to the pattern of secondary victimisation, which they told her they experienced.¹⁹² The interviewees reported that when they called SAPS to a crime scene, members of SAPS would take a long time to arrive or not arrive at all.¹⁹³ One interviewee told Ms Igglesden that he had had a shop in Khayelitsha that was robbed. He went to the police to report the crime and told them that he knew who the perpetrators were. SAPS told him that they would come the following day, but they did not. He went back to SAPS on several occasions to report the crime and on the last occasions he got angry and he asked the police –
- “ ‘Will you not help me? Am I not worth helping? Those men who have my stock they are eating it all.’ [The SAPS member replied] ‘This is not Somalia. Either you do what we say or you go back to your Somalia.’ ”¹⁹⁴
- [98] Several interviewees told Ms Igglesden that SAPS members had refused to provide a service to them because they were not South African. One recalled being told by a SAPS member: “This is my South Africa. This is not your country.”¹⁹⁵ And another told of being stopped on the road by police and a SAPS member saying: “This is not your country. Why don’t you go back to your country?”¹⁹⁶
- [99] Interviewees also complained of secondary victimisation by SAPS, including the theft of their goods by members of SAPS,¹⁹⁷ malicious damage to their property by SAPS members,¹⁹⁸ and extortion.¹⁹⁹ An example of extortion was a SAPS member telling a trader, “if you don’t give me a cool drink the shop will be closed.”²⁰⁰

187 Transcript at 338 (27 January 2014).

188 Record Bundle 6(1), File 3, Item 6, p 8.

189 Gastrow, V., with Amit, R. (2012). *Elusive Justice: Somali Traders Access to Formal and Informal Justice Mechanisms in the Western Cape*. Johannesburg: African Centre for Migration and Society, at pp 34 – 35 in Record Bundle 1(5), File E, Item 35, part 1.

190 Transcript at 3270 (14 February 2014).

191 Record Bundle 6(1), File 3, Item 6 at p 1.

192 Id. at p 2. Transcript at 1309 (4 February 2014).

193 Record Bundle 6(1), File 3, Item 6 at p 9.

194 Id. at p 10.

195 Id. at p 16.

196 Id. at p 17.

197 Id. at p 17 – 18.

198 Id. at p 18.

199 Id. at pp 18 – 21.

200 Id. at p 19.

- [100] Ms Yoliswa Dwane, the Head of the Policy, Research and Communication Department of Equal Education, also told the Commission that she had seen some SAPS members seizing food and cool drinks from spaza shops owned by foreign nationals. She said –
- “It shocked me when I saw it once, but then I saw it again and again and again, where the police just come into a shop, a Somali shop, they don’t do that with Xhosa owners but they do that with Somalis.”²⁰¹
- [101] Ms Mlungwana of the Social Justice Coalition also told the Commission that foreign nationals are a “marginalised group” in Khayelitsha who are an easy target for criminals and corrupt SAPS members.²⁰² She described the search of a Somali store on 3 February 2013 by members of SAPS, in which the SAPS members had stolen cash and airtime vouchers from a Somali trader.²⁰³
- [102] Ms Iggesden said that nearly all the interviewees told her that they did not think the police would help them. Comments included: “The police do not protect me, no man”; “the police – they are not reliable”; and “the police are helpless. They do not come when we are in trouble. We call them and they never show up.”²⁰⁴
- [103] Colonel Marais, detective commander at Khayelitsha Site B police station, told the Commission that he had had meetings with Somali traders to try to make them aware of the need to install burglar bars or other forms of security at their shops.²⁰⁵ He also told the Commission of the difficulties of securing crime scenes in situations where Somali nationals have been crime victims.²⁰⁶ That language was a difficulty, as few of the Somali traders spoke South African languages fluently, and SAPS does not have members who speak Somali.²⁰⁷ The need to develop the capacity to communicate with Somali traders was also identified in the report of the African Centre for Migration and Society, referred to above.²⁰⁸
- [104] The Commission concludes on the evidence before it that there is a problem with the service provided by SAPS in Khayelitsha to foreign nationals who live or work in Khayelitsha, particularly small traders. Not only are the services provided by SAPS not provided efficiently, an issue we dealt with in Chapter 13 in relation to all those who live or work in Khayelitsha, but, in addition, some members of SAPS discriminate against foreign nationals, and some target them and their businesses for extortion. In the view of the Commission, such behaviour is not only harmful to the relationship between SAPS and foreign nationals in Khayelitsha, as Ms Iggesden’s testimony indicated, but also harmful to the relationship between SAPS and South Africans who are living in Khayelitsha, such as Ms Dwane, who observe SAPS’ discriminatory behaviour.
- [105] In the view of the Commission, the discriminatory behaviour towards both LGBTI people and foreign nationals should not simply be dismissed as the misconduct of “bad apples” within SAPS. The Commission considers that the evidence that has been led suggests that discriminatory behaviour is widespread amongst members of SAPS in Khayelitsha. The

201 Transcript at 781 (30 January 2014).

202 Record Bundle 1(5), File E, Item 30 at para 70.

203 Id. at paras 65 – 68.

204 Ms Iggesden’s expert report Record Bundle 6(1), File 3, Item 6 at p 23.

205 Transcript at 3950 (19 February 2014).

206 Transcript at 3862 – 3863 and 3949 – 3950 (19 February 2014).

207 Id.

208 Gastrow, V., with Amit, R. (2012). *Elusive Justice: Somali Traders Access to Formal and Informal Justice Mechanisms in the Western Cape*. Johannesburg: African Centre for Migration and Society, at p 101, in Record Bundle 1(5), File E, Item 35, part 2.

Commission considers that it may be that such behaviours are rooted in an institutional culture within SAPS, not consistent with our constitutional values, and not supported by at least some senior managers in SAPS. Accordingly, the Commission suggests that SAPS needs to take urgent steps to eradicate these attitudes.

(e) Perceptions of corruption amongst SAPS members operating in Khayelitsha

- [106] Given the clandestine nature of corruption, its extent is always hard to estimate. Transparency International's 2013 Global Corruption Barometer reported that South Africans scored perceived levels of corruption in the police at 4.4, on a scale of 1 – 5 (where 1 is not at all corrupt, and 5 is extremely corrupt). This was the highest score of perceived corruption of any public agency in South Africa. The military ranked lowest at 2.0. The three other institutions whose scores were over 4.0 were political parties (4.2), Parliament and legislatures (4.0), and the civil service (4.1).²⁰⁹
- [107] Several instances of corruption relating to SAPS members in Khayelitsha have been drawn to the Commission's attention. Brigadier Dladla, the station commander of Khayelitsha Site B, told the Commission that one of the SAPS members from his police station was convicted of corruption in 2013 and sentenced to 4 years' imprisonment.²¹⁰ According to the Schooling and Leamy report, two members from Lingeletu West were convicted of corruption in 2010, as well as one member and one reservist from Khayelitsha Site B.²¹¹
- [108] The Mthente survey produced somewhat contradictory results. On the one hand, it reported that of those they surveyed in Khayelitsha who had not reported a criminal offence to SAPS, 10% said they had not reported the offence to SAPS because they perceived SAPS to be corrupt.²¹² On the other hand, a similar question to a larger group elicited a smaller proportion of respondents asserting that corruption was a reason for their non-reporting.²¹³ It is not clear why there was this disparity.
- [109] The focus-group research amongst young people, undertaken by the Centre for Justice and Crime Prevention for the Commission, concluded that, "a sufficient number of first-hand experience 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."²¹⁴ The Report noted that across all the focus groups, individuals cited examples of corruption and bribery, "primarily between police and taxi drivers, and police and shebeen owners, but pervasive to the general community as well."²¹⁵ Perhaps one of the most worrying aspects of this study was the statement that one of the focus groups was asked if they would like to become a police officer.

209 See Transparency International *Global Corruption Barometer 2013* at p 37. Available at <http://www.wingia.com/web/files/news/61/file/61.pdf> at p 37 (last accessed on 2 August 2014).

210 Transcript at 3550 – 3551 (17 February 2014).

211 Record Bundle 9(1), File 1.1, Item 1 at para 193 and para 205.

212 Record Bundle 10(1), File 1.1, Item 11, Table 12 at p 38. The Commission notes some conflict between Tables 11 and 12 in this regard. The Commission cannot ascertain the reasons for this disparity.

213 Id. See Table 11 at p 38. Table 11 states that on average 2,8% of respondents reported that they did not report crime because of corruption.

214 Record Bundle 6(1), File 3, Item 7, p 16.

215 Id. at p 28.

“All of the learners expressed their reluctance to ever become, or no aspirations to become, a police officer, influenced most often by the negative physical image of the police, as well as the perceptions of corruption.”²¹⁶

- [110] What is worrying about this statement is the perception amongst young people that becoming a police officer is not a desirable career path. This is a perception that SAPS needs to change. Indeed the Commission suggests that one of the strongest indications that the relationship between SAPS and the Khayelitsha community has been restored, will be when young people from Khayelitsha consider that joining SAPS is a good career choice.
- [111] The Commission concludes on the record before it that there is evidence of corruption amongst SAPS members in Khayelitsha. It is not possible for the Commission to determine the extent of the problem. The evidence suggests that the level of corruption is sufficient to be causing harm to the relations between the community and SAPS. The Commission considers that this is an issue that should be urgently addressed at cluster level.
- [112] Both Mr Newham and Ms Grobler stressed that corruption in a police service should not be seen as simply a problem of “bad apples”.²¹⁷ Mr Newham told the Commission that international research suggests that corruption in policing agencies should be seen as “endemic”,²¹⁸ because of the powers given to police officials to interfere with the rights of civilians, coupled with a wide discretion to determine when to do so, and low levels of oversight of the exercise of that discretion.²¹⁹
- [113] Mr Newham told the Commission that given the endemic nature of corruption in police agencies, it is important to focus on the systems and culture of the police to take steps to minimise the possibility of corruption occurring.²²⁰ Crucial to the project of minimising police corruption, according to Mr Newham, is the need to develop systems that will hold members of SAPS to account for corruption.²²¹
- [114] The Commission has concluded earlier in this chapter that the systems established for dealing with complaints made by members of the public against SAPS are not sufficient to hold SAPS members to account. Similarly, in Chapter 13, we concluded that the human resources systems for disciplining members are not working optimally. In the view of the Commission, therefore, SAPS has not implemented systems that are likely to be effective in deterring corruption. Accordingly, the Commission concludes that the absence of effective systems to limit corruption within the ranks of SAPS is one of the contributing factors to the breakdown in the relations between SAPS and the community of Khayelitsha.

(f) Improper use of force

- [115] The Commission notes with concern that eight percent of the complaints lodged by individuals with the Commission or the complainant organisations raised allegations of assault or abuse of force by the police.²²² Allegations of improper use of force included two complaints about the

216 *Id.* at p 27.

217 Ms Grobler’s report Record Bundle 12(1), Item 11(a) at paras 18 – 20; and Mr Newham’s report. Record Bundle 12(1), Item 7, pp 15 – 16.

218 Record Bundle 12(1), Item 7 at p 16.

219 *Id.* at p 16.

220 *Id.* at p 21.

221 *Id.* at p 28.

222 See Chapter 7, Table 1 at para 62.

improper use of pepper spray,²²³ allegations of assault by SAPS members,²²⁴ and allegations that civilians had been caught in cross-fire between SAPS and criminals.²²⁵

- [116] The Commission also records that two of the original eight complaints raised by the complainant organisations related to civilians being caught and injured in cross-fire between SAPS and alleged criminals. It has not been possible for the Commission to investigate these complaints fully. However, the Commission notes that in most of the cases, complainants indicated that they were not aware of criminal prosecutions that had been brought and concluded in relation to the alleged assaults or of any disciplinary proceedings taken against the responsible SAPS members.
- [117] Any incident in which a member of the public alleges that he or she has been injured by a member of SAPS should be taken extremely seriously by SAPS. Not only should the matter be fully investigated, but the complainant should be informed of the progress and outcome of that investigation. The actual or perceived improper use of force by SAPS members will both be deeply damaging to attempts to improve SAPS' relationship with the community, as well as often being invasive of the rights of civilians. The evidence before the Commission does not suggest that incidents where civilians are alleged to have been harmed by SAPS members are treated with appropriate gravity by SAPS. Complainants do not appear to be informed of the outcome of complaint processes against SAPS members or of the outcome of criminal prosecutions. Moreover, it is essential that SAPS leadership ensure that SAPS members are properly trained as to the use of force. SAPS leaders must ensure that force is never to be used inappropriately.

(g) Publication of crime statistics

(i) *National crime statistics*

- [118] Crime statistics in South Africa are published annually at the end of September each year, in respect of the previous 1 April – 31 March. So in September 2013, the crime statistics for the period 1 April 2012 – 31 March 2013 were published. Crime statistics have not always been published in this way in South Africa. In his testimony, Dr Chris De Kock, the former head of the Crime Information Analysis Centre (CIAC) at SAPS, recounted the historical developments relating to the publication of crime statistics.²²⁶ The decision to report annual crime statistics as they are currently published is a Cabinet decision.²²⁷
- [119] Several witnesses told the Commission that the belated reporting of crime statistics may have harmful effects. In his expert report, Mr Newham said that the infrequent and belated publication of crime statistics has negative consequences, including, preventing communities from identifying and responding to merging crime challenges.²²⁸ Dr De Kock supported a system in which national and provincial statistics would be reported quarterly with analysis, following an earlier release to analysts. He emphasised the importance of ensuring that when national crime statistics are released, they are accompanied by credible analysis.²²⁹

223 Statement of Ms TM, Record Bundle 1(1a), Item 4; and Statement of SW, Record Bundle 1(1a), Item 26.

224 See Statement of KM, Record Bundle 1(1a), Item 48; also Record Bundle 1(1a), Item 96; and also Record Bundle 2(5), Item 2.

225 See Statement of Mr MM, Record Bundle 1(1a), Item 38; Statement of KG, Record Bundle 2(5), Item 4.

226 See overview of his evidence in Chapter 12 above at paras 107 and Transcript at 7161 – 7162 (13 May 2014). Mr Newham report, Record Bundle 12(1), Item 7 at pp 33 – 38.

227 See report of Ms Jean Redpath in Phase One, Record Bundle 7(1), File H, Item 10.

228 Mr Newham report Record Bundle 12(1), Item 7 at p 35.

229 Dr De Kock Transcript at 7163 (13 May 2014).

- [120] The Commission does not conclude on the evidence before it that the annual publication of crime statistics has contributed to the breakdown in relations between the community and SAPS in Khayelitsha. We do conclude, however, as Mr Newham and Mr Faull pointed out, that the regular and timely release of crime statistics can foster good relations between SAPS and the broader community as regular publication of crime statistics appears to increase levels of trust in policing.²³⁰

(ii) Station-level crime statistics

- [121] Mr Newham also emphasised that the regular release of crime statistics at station-level to the communities served by the police station enables members of the community to take steps to respond to crime levels.²³¹ He described the experience of Bogotá, Colombia, which suggests that regular release of crime information results in heightened levels of trust between the community and the police, and a significant reduction in crime.²³²
- [122] Dr De Kock also pointed to the benefits of the regular release of local crime statistics.²³³ He explained that if community members are aware of hotspots, it enables them to be prepared and take action to avoid crime.²³⁴ Mr Faull also suggested that the regular release of crime statistics would foster good relations between SAPS and the community.²³⁵
- [123] At present, local crime statistics are presented to CPF meetings when they are held. The Commission's examination of the CPF minutes does not suggest that SAPS provides any analysis of the crime figures that they provide to the CPFs. Secondly, there is no indication that the figures are communicated more broadly to the public.
- [124] The Commission concludes that the relations between SAPS and the Khayelitsha community would be improved if station-level crime information were to be made more readily available to members of the Khayelitsha community. There is a range of ways in which this could be achieved.

(h) Station Performance Evaluation (the EUPOLSA Index)

- [125] As described in Chapter 5 above, one of SAPS' key tools for performance measurement is the Station Performance Chart (or EUPOLSA index).²³⁶ The training materials on the Performance Chart state that the purpose of the Chart is to assist SAPS combat crime and to provide a holistic perspective on a police station's crime combating operations.²³⁷ Key areas measured by the Chart are crime prevention, crime reaction, crime investigation, human resource management, vehicle management and data integrity.²³⁸ Crime reaction and prevention, including complaints, is weighted heavily at 50%, detective services are weighted 35%, crime information is weighted 5% and the use of resources is weighted at 10%.²³⁹ Overall, therefore, operational performance has an 85% weighting in the Index. There

230 Mr Newham report at pp 35 – 36, and Mr Newham's testimony at Transcript 7982 – 7983 (16 May 2014).

231 Record Bundle 12(1), Item 7, pp 35 – 36.

232 Id.

233 Transcript at 7531 – 7532 (14 May 2014).

234 Id.

235 See Transcript at 7982 – 7983 (16 May 2014).

236 Chapter 6 at paras 33 – 39.

237 "Performance Chart Learning Programme: Division Human Resource Development: Performance Chart 2012/2013" annexed to Colonel Vermeulen Statement Record Bundle 5(4), File 3, Item 13 at para 21, p 68.

238 Colonel Vermeulen Statement Record Bundle 5(4), File 6, Item 13 at para 4, p 53.

239 "Performance Chart Learning Programme: Division Human Resource Development: Performance Chart 2012/2013" annexed to Colonel Vermeulen statement at Record Bundle 5(4), File 3, Item 2 at para 8.1.1.1. See also Brigadier Heilbron the Statement Record Bundle 11(3), File 3.1, Item 26 at para 5.5 who groups the measurement areas differently, but concurs with this allocation.

is no external measurement of civilian satisfaction with SAPS' service, although the training manual states that effectiveness is defined as the extent to which SAPS meets the demands of its customers.²⁴⁰ Within crime prevention, contact crime is weighted more heavily than property crime, which is weighted more heavily than crimes dependent on police action for detection.²⁴¹

- [126] Performance on the station performance chart is an important component in the assessment of station commanders, and so there is a natural incentive for station commanders to seek to perform well on the chart. The chart is therefore an important management tool for incentivising performance. Moreover, it needs to be recognised that the Chart captures, in a sense, what it is SAPS managers should do. It is therefore of central importance in achieving SAPS objects.
- [127] Mr Faull provided an expert report on the performance chart.²⁴² He acknowledged that the performance chart is a complex and sophisticated tool for managing station performance.²⁴³ He was uncertain, however, as to how effectively the Chart is used to design rapid interventions, which, he suggested, are the most valuable use to which a Chart can be put.²⁴⁴ He also told the Commission that given the use of the Chart in individual performance management of SAPS managers, the Chart has a "huge, symbolic weight" in the minds of SAPS managers.²⁴⁵
- [128] Mr Faull told the Commission that the focus on crime prevention, largely measured by achieved reduction in reported crime rates, constitutes an "impossible mandate" for SAPS, as SAPS cannot, by itself, ensure that crime rates fall.²⁴⁶ He said that there is increasing evidence that "chasing crime prevention targets" erodes rather than builds public confidence in policing agencies.²⁴⁷ Moreover, as the Chart measures outcomes, rather than outputs, it can produce perverse incentives. If the Performance Chart targets the reduction in recorded crime, it creates an incentive for SAPS members not to record crimes that are reported to them.²⁴⁸ Mr Faull told the Commission that the Chart as currently designed does create such perverse incentives.²⁴⁹
- [129] Mr Faull told the Commission that a further flaw in the Chart was its failure to measure public confidence in police, which, he said, should be weighted as heavily as more traditional policing targets.²⁵⁰ He told the Commission, as did several of the other expert witnesses that the manner in which people are treated by the police is as important as the success police have in achieving the goal of crime prevention.²⁵¹ He told the Commission that this realisation has led many policing agencies to introduce a model of "procedural justice" policing which emphasises the importance of the manner in which members of the public are treated by the police.²⁵²

240 "Performance Chart Learning Programme: Division Human Resource Development: Performance Chart 2012/2013" annexed to Colonel Vermeulen statement at Record Bundle 5(4), File 3, Item 2 at para 3.3 (iv).

241 Id. at para 8.1.1.2.

242 See overview of his evidence at Chapter 12, above, at paras 131 – 155.

243 Record Bundle 12(1), Item 22, p 5.

244 Id. at p 23.

245 Transcript at 8012 (16 May 2014).

246 Record Bundle 12(1), Item 22, p 7. Transcript at 8010 (16 May 2014).

247 Record Bundle 12(1), Item 22, p 32.

248 Id. at p 17.

249 Id. at p 18.

250 Id. at p 12.

251 Id. at p 20.

252 Id.

Figure 21a: The Evidence Leaders, counsel for SAPS, the complainant organisations and the City



[130] In the light of his research of performance chart systems in police agencies in other democracies, Mr Faull recommended that the SAPS Performance Chart should be revised so that it –

- Measure reported crime as a ratio of the population, rather than in absolute numbers;
- Measure youth and adult engagement with SAPS under separate categories;
- Measure the use of diversionary measures;
- Measure levels of fear amongst citizens;
- Measure levels of job satisfaction amongst SAPS members;
- Measure safety in public spaces;
- Integrate civilian complaints, and their handling;
- Record police use of force;
- Measure civilian satisfaction with SAPS.²⁵³

[131] One of the difficulties with this proposal, Mr Faull acknowledged was the costs that would be involved in conducting citizen surveys. The Commission notes however that DOCS has a practice of conducting Barometer Surveys to determine civilian satisfaction with the performance of SAPS. Going forward, SAPS and DOCS should work together to ensure that appropriate surveys are conducted to generate appropriate data for the SAPS performance charter.

[132] However, another witness, Mr Andrew McLean, told the Commission of an expeditious and cost-effective research tool, the Community Scorecard, which could perhaps be used by SAPS in Khayelitsha to monitor levels of community trust.²⁵⁴ Mr McLean explained that the Community Scorecard is a qualitative monitoring tool which has been used to evaluate service delivery in a range of contexts.²⁵⁵ The tool is based on panel focus groups, which makes it cheaper to administer than other forms of survey, although its results are also less “robust” than more extensive surveys. It would have the advantage of fostering dialogue between the police and the community as to how to address policing issues in a neighbourhood. A pilot

²⁵³ Id. at p 48.

²⁵⁴ See the overview of Mr McLean’s evidence in Chapter 12 above at paras 162 – 167.

²⁵⁵ Record Bundle 12(1), Item 25 at para 57.

project in Jamaica that used the Community Scorecard system is described in greater detail in Chapter 12.²⁵⁶

- [133] Mr McLean told the Commission that the implementation of a Community Scorecard system would provide SAPS management with “an up-to-date barometer of community-police relations in Khayelitsha” at relatively little cost.²⁵⁷ Mr McLean suggested that the results of the Community Scorecard should be fed into performance appraisal processes of individual members of SAPS as well as to the station performance chart.²⁵⁸
- [134] Mr McLean also warned that as the relations between SAPS and the community of Khayelitsha improved, there would be an increase in reported crime rates, which should not be seen as a failure by SAPS.²⁵⁹ Ms Redpath made the same point in her testimony.²⁶⁰
- [135] The Commission accepts that the SAPS Performance Chart is a sophisticated tool, which is valuable for the management of managers in SAPS. However, the Commission considers that there are material flaws in the Chart, in that it tends to provide perverse incentives in some areas, and it fails to contain any external measures of civilian satisfaction with the performance of SAPS. The consequence of not using measures of civilian satisfaction is that SAPS managers are systemically encouraged not to pay serious attention to addressing issues relating to civilian satisfaction.
- [136] Accordingly, the Commission concludes that the manner in which the Performance Chart is designed has failed to foster community confidence in SAPS. We find that the Performance Chart system, though sophisticated and valuable in many ways, is wrongly calibrated and needs to be revisited to ensure that it includes external measurements that measure civilian satisfaction with SAPS’ conduct and performance. The Commission also considers that it would be important to include a measure of the job satisfaction of SAPS members, particularly lower ranks, in the Performance Chart.

²⁵⁶ See Chapter 12 above at paras 163 – 165.

²⁵⁷ Annex 2 to Record Bundle 12(1), Item 25.

²⁵⁸ Transcript at 7681 – 7682 (15 May 2014).

²⁵⁹ Id. at 7693 – 7694 (15 May 2014).

²⁶⁰ Transcript at 1229 – 1232 (3 February 2014).

Part Four



CHAPTER FIFTEEN

RECOMMENDATIONS

- [1] This chapter contains the recommendations made by the Commission. Each recommendation is set out in bold type, followed by an explanation of the recommendation as well as brief reasons for the recommendation.
 - [2] The founding values of our Constitution require that all public power be exercised responsively, accountably, openly and in a manner respectful of the human rights of all. These founding values have guided the Commission in identifying appropriate recommendations to address the inefficiencies that it has found in the operation of SAPS units in Khayelitsha, as well as the breakdown in relations between the Khayelitsha community and SAPS. The Commission notes that although it is clear that policing in Khayelitsha is particularly challenging, SAPS must approach its task on the basis that those who live and work in Khayelitsha are, like all inhabitants of our country, entitled to a police service that is respectful of their fundamental rights, and that seeks diligently and professionally to protect them consistently with the principle of *ubuntu*.
 - [3] As in an earlier chapter, the Commission urges those who read this report to remember, as they formulate their response to the report, that the most important consideration in assessing this report is the need to improve the safety of people who live and work in Khayelitsha. The Commission urges readers to debate its recommendations in the light of what will promote the safety of the residents of Khayelitsha rather than on the basis of unrelated and irrelevant concerns. The work of the Commission was made more difficult by high levels of political contestation regarding its mandate, not only at the national and provincial level, but also within Khayelitsha itself. The Commission hopes that its recommendations will be debated with a firm focus on the goal of improving policing to promote a safer Khayelitsha and not on unrelated issues. The Commission also asks again that commentators not overstate the conclusions of the report. The report has found that there are inefficiencies in policing in Khayelitsha and high levels of distrust between the community of Khayelitsha and SAPS but that does not mean that there are not some fine members of SAPS working in Khayelitsha. The Commission repeats that it is important, in the interest of fair and balanced reporting, to acknowledge the members of SAPS who diligently perform their duties daily in difficult circumstances in Khayelitsha.
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RECOMMENDATION ONE

EACH POLICE STATION IN KHAYELITSHA SHOULD ADOPT A COMMUNITY POLICING COMMITMENT IN CONSULTATION WITH LOCAL RESIDENTS

- [4] The Commission has found that there is a breakdown in relations between the people who live and work in Khayelitsha and the SAPS units operating in Khayelitsha. The Commission

considers that the trust of members of the community would be promoted by requiring each police station to undertake a commitment to its local community.¹ The undertakings made in the commitment should be the subject of consultation between each station commander and the CPF, as well as other interested parties, such as community organisations, businesses and schools in the area. Particular care should be taken to consult representatives of vulnerable groups such as LGBTI people and foreign nationals. The idea of a community policing commitment is consistent with the idea of a “pledge” proposed in the Schooling and Leamy report.² The community policing commitment should be placed in a prominent position in each CSC. Posters of the commitment should be displayed in public spaces, clinics, schools, non-governmental organisations, transport hubs, post offices and shopping malls that fall within the police station’s area.

- [5] The community policing commitment should include at least the following –
- an undertaking that all SAPS members will act in a respectful and fair manner in dealing with members of the public at all times in accordance with the principle of *ubuntu*;
 - a specific undertaking to treat members of vulnerable groups, such as LGBTI people and foreign nationals, with respect and concern;
 - provide target response times in relation to calls for assistance;
 - the hours of the day that telephones in the CSC will be answered and provide those telephone numbers;
 - an undertaking that investigating officers will provide regular feedback to complainants in relation to dockets, perhaps on a monthly basis;
 - an undertaking that SAPS members from the police station will attend all meetings, including CPF Meetings, imbizos, Thuthuzela Care Centre meetings, and other partnership meetings, and that they will arrive at the meeting on time, prepared and mandated to participate fully;
 - an undertaking to provide visible policing patrols of both formal and informal neighbourhoods;
 - an undertaking to provide support to Neighbourhood Watch patrols, including providing them with briefings and de-briefings, providing prompt back-up where necessary, and, where possible, accompanying them;
 - a clear statement that SAPS will treat any form of vengeance attack or killings, whether spontaneous or as a result of an extra-judicial process, as a criminal offence and will respond accordingly;
 - an undertaking to publish station-level crime statistics regularly, and at least monthly, by placing posters on notice boards in the CSC; and
 - an undertaking to process all complaints made against SAPS members transparently, efficiently, thoroughly and fairly, which will include providing full and regular feedback to complainants.
- [6] The adoption of the Community Policing Commitment should be announced publicly, and advertised on local radio stations and in the print media. Failure to adhere to the Commitment should be taken seriously, and where appropriate, should result in disciplinary steps.

1 The concept of a community policing commitment is drawn from the Report of the Independent Police Commission *Policing for a Better Britain* (2013) at p 55. See Record Bundle 12(7).

2 Record Bundle 9(1), File 1.1, Item 1 at para 294.

RECOMMENDATION TWO

ADOPT A PROCEDURAL JUSTICE MODEL OF POLICING FOR KHAYELITSHA

- [7] Every interaction between a member of SAPS and a person in Khayelitsha contains a message about SAPS as an organisation, as well as a message about how SAPS perceives that person.³ One former SAPS member, a retired station commander with a distinguished record, endorsed this insight. He told the Commission that he would always remind the SAPS members that fell under his command of the “daffodil principle” – that a beautiful field of daffodils in bloom, he said, has been planted one bulb at a time.⁴ The “daffodil principle” reminds us that each interaction between a SAPS member and a civilian has the capacity to foster or undermine the relations between SAPS and the community. Each interaction communicates to the civilian how SAPS values him or her – as a person worthy of equal respect, or not. At the heart of building a better relationship with the community, then, is getting each interaction to tell the same story: that SAPS recognises that every person is worthy of equal respect and concern and that, as an organisation, SAPS seeks to endorse constitutional values of accountability, openness and responsiveness. It is not good enough for only senior SAPS managers in Khayelitsha to embrace these values. All members of SAPS in Khayelitsha must embrace them and act consistently with them at all times.
- [8] The Commission has read research reports and heard evidence on the procedural justice model of policing. This research suggests that *the manner* in which policing is performed is at least as important as the successful achievement of crime prevention targets in building relationships of trust between a community and a policing agency.⁵ The research suggests that not only does treating members of a community fairly and with respect foster a good relationship between police and a community, as one would expect, but it also fosters respect for the rule of law itself. Most of the research on the procedural justice model of policing has been conducted in developed countries with long traditions of policing and the question arises whether this research has predictive force in South Africa. The Commission has been referred to a recent research article that examined the question whether procedurally fair policing would foster police legitimacy in South Africa.⁶ It suggests that there is a direct connection between the perceived fairness of police conduct and police legitimacy, although perhaps not to the same extent as in developed countries.⁷ The research also suggests that police effectiveness is also a predictor of police legitimacy in South Africa more than it is in

3 See the similar views expressed in *Policing for a better Britain: Report of the independent police Commission* at p 48.

4 Botanically this may not be correct, but the metaphor is powerful. Mr Pieter Myburgh, former station commander at Galeshewe police station in the Northern Cape, explained the principle in an interview with Commission staff. He also made an expert statement, see Record Bundle 12(1), Item 21.

5 There is a growing literature on this subject. It was referred to by several expert witnesses, including Gareth Newham, Jonathan Steinberg, Andrew McLean and Sean Tait. Most of the empirical work has been done in the USA and UK. See, for example, Sunshine, J. and Tyler, T. (2003). “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing”. 37 *Law and Society Review*, 513 – 548; Hough, M., Jackson, J. and others. (2010). “Procedural Justice, Trust and Institutional Legitimacy”, *Policing* 203 – 210; Bradford, B., Jackson, J., and Hough, M. (2014). “Police Futures and Legitimacy: Redefining Good Policing”, in Brown, J.M., *The Future of Policing*. London and New York: Routledge, at 79 – 99; Loader, I. (2014). “Why do the Police Matter? Beyond the Myth of Crime Fighting”, in Brown, J. M., *The Future of Policing*. London and New York: Routledge, at 40 – 51 at 45 – 46.

6 Bradford, B., Huq, A., Jackson, J., and Roberts, B. (2013). “What Price Fairness when Security is at Stake? Police legitimacy in South Africa”. *Regulation and Governance* 1 – 24. See Record Bundle 13(7), Item 62.

7 Id. at 15.

developed countries. The authors suggest that this may be because there is less doubt about the effectiveness of police in developed countries.⁸

- [9] Professor Steinberg also referred to another important and interesting debate amongst international policing experts. The question addressed in that debate is whether policing can and should be conducted in unstable environments.⁹ The debate arose following the occupation of Afghanistan and Iraq by allied forces in the aftermath of war. Professor Steinberg told the Commission that the conclusion to the debate has been “unusually decisive”,¹⁰ and that there is a consensus that in “extremely unstable situations, the police’s order-maintenance functions not only remain possible but become increasingly vital”.¹¹ Professor Steinberg acknowledged that Khayelitsha was “a far cry from a state of war”, and concluded that if order-maintenance policing was desirable and possible in deeply unstable environments, it should be possible and desirable in Khayelitsha.¹²
- [10] In the light of this research, as well as the evidence on the record before the Commission which suggests that many interactions between SAPS personnel and civilians in Khayelitsha cannot be characterised as “procedurally fair” or respectful, the Commission recommends that SAPS leadership explicitly adopt a model of policing based on procedural justice in Khayelitsha. The adoption of a procedural justice model of policing would, the Commission notes, also accord with the constitutional obligations of SAPS to treat every person as being worthy of equal respect in accordance with the principle of *ubuntu*.
- [11] It is also worth noting that the research suggests that an important component of a procedural justice model of policing is the need to ensure that SAPS treats its own personnel in a fair and respectful manner as well –
- “An important part of this communication process lies in ensuring that internal management actually commands legitimacy in the eyes of the workforce. Recent research has suggested that procedural justice could be just as important *within* policing organisation as it is in the *relationship* between public and police.”¹³
- [12] A procedural justice model of policing thus has the potential to create a virtuous circle. If police treat people fairly and respectfully, and consistently with constitutional values and ubuntu, the police themselves will be respected, and this cycle of respect will promote a sense of social inclusivity and respect for the law. The Commission understood the evidence of many of the community witnesses to be calling out for such a virtuous circle to be established. The Commission acknowledges that the adoption of a procedural justice model of policing will, of course, not undo the burden of poverty. SAPS is right to say that this is not something SAPS can do. SAPS is also right to say that while the burden of poverty persists, policing will always be more difficult in Khayelitsha. But the existence of the burden of poverty should not lead us to abandon any attempt to foster a practice of good policing while waiting for the burden of poverty to lift.
- [13] The key elements of a procedural justice model of policing thus include –

8 Id. at 16.

9 Record Bundle 12(1), Item 1 at para 5.

10 Id. at para 5.3

11 Id.

12 Id. at para 5.4.

13 Bradford, B., Jackson, J., and Hough, M. (2014). “Police Futures and Legitimacy: Redefining Good Policing”, in Brown, J.M., *The Future of Policing*. London and New York: Routledge, at 94.

- Taking steps to ensure that in every engagement between a member of SAPS and a civilian, the rights of the civilian are respected and protected in accordance with the principle of *ubuntu*, regardless of whether that civilian is a suspect, complainant, victim or witness;
- The design and implementation of all policing strategies should include an assessment of how the strategy will ensure that the rights of civilians are respected;
- A recognition by SAPS that although crime prevention is an important task of policing, it should not be performed in a manner that is in conflict with the respect owed to civilians; and
- Ensuring that SAPS treats its own members fairly and with respect.

Implementing a procedural justice model of policing

- [14] Implementing a procedural justice model of policing in Khayelitsha will require, first, strong leadership at all three police stations, the FCS Unit, and in the province. Bradford, Jackson and Hough comment that –

“Changes in styles of policing are achieved more through positive leadership that through training or the re-engineering of formal procedures. Police leaders need to communicate clearly that procedural fairness is a core aspect of police work.”¹⁴

- [15] In addition to a strong and public commitment by SAPS managers in Khayelitsha to a procedural justice model of policing that will be focussed both on SAPS’ relations with the community, and on SAPS’ internal systems, the Commission recommends that the following steps be implemented –

- training of all SAPS members stationed in Khayelitsha in the principles of procedural justice policing, which should include training on the history of SAPS in Khayelitsha to illustrate the special challenges created for SAPS in Khayelitsha, as well as explaining to SAPS members why a procedural justice model of policing will make a difference to their relationship with the community;
- a revision of the station performance chart as it applies to the three Khayelitsha police stations to measure compliance with a procedural justice model of policing at the three police stations;
- a revision of performance agreements entered into with station commanders, managers at the cluster office, and the head of the FCS Unit in Khayelitsha to include measurement of whether a procedural justice model of policing is being effectively implemented; and
- the adoption of a tool such as the Community Scorecard system¹⁵ to provide police managers in Khayelitsha with regular feedback on the levels of trust in the community towards SAPS.

¹⁴ Id. at p 94.

¹⁵ See Expert Report of Mr Andrew McLean, Record Bundle 12(1), Item 26 at paras 56 – 58.

RECOMMENDATION THREE

MONITORING AND OVERSIGHT TEAM TO ENSURE INEFFICIENCIES AT THE THREE KHAYELITSHA POLICE STATIONS AND THE KHAYELITSHA FCS UNIT ARE ERADICATED

- [16] The Commission has found that one of the causes of inefficiencies at the three Khayelitsha police stations and the FCS Unit is the failure of management at the police stations and the unit to ensure that problems identified are addressed. The Commission is of the view that a process needs to be put in place to ensure that inefficiencies are addressed.
- [17] Accordingly, the Commission recommends that the Provincial Commissioner should immediately establish an oversight and monitoring team to ensure that the inefficiencies identified in this Report are urgently addressed. Members of the monitoring team should include –
- The Provincial Commissioner or a Deputy Provincial Commissioner;
 - The head of the Provincial Inspectorate;
 - The Khayelitsha Cluster Commander;
 - The Khayelitsha Cluster Detective Co-ordinator;
 - The Khayelitsha Cluster Visible Policing Co-ordinator;
 - The Station Commanders of each of the three Khayelitsha police stations;
 - The head of the Khayelitsha FCS Unit;
 - A senior member of DOCS nominated by the head of DOCS; and
 - A civilian policing expert nominated jointly by the Provincial Secretariat and the Civilian Secretariat.
- [18] The monitoring team should meet monthly and prepare quarterly reports. In particular, the monitoring team must –
- ensure that proper first- and second-level inspections are done regularly;
 - ensure that docket inspections are done routinely and thoroughly, and monitor the brought-forward system to ensure that it works effectively;
 - require reports of dockets not brought to court from the Cluster detective co-ordinator and ensure that such failures have been investigated and addressed, including ensuring that where matters are struck off the roll, arrangements have been made for them to be re-enrolled when investigations have been completed, and that appropriate disciplinary steps are taken against those responsible for any such failure;
 - monitor the performance of the three detective branches and FCS Unit in relation to the number of dockets opened, the number of dockets detected and court ready, as well as the ratio of new dockets each month to carried over dockets, and monitor that members who fail to comply with brought forward dates or do not comply with instructions of supervising officers or prosecutors without good reason are disciplined;
 - monitor the functioning of CPFs and Neighbourhood watches;
 - monitor the answering of station telephones;
 - monitor the implementation of National Instruction 3/2013 in respect of sector policing, including ensuring that personnel are deployed in the sectors in accordance with crime threat analyses and crime pattern analyses prepared by the CIO;

- consider whether further sectors should be added to the Harare police station in the light of the progress on the building of the Makhaza police station;
- require that sector profiles be revised to be in compliance with National Instruction 3/2013;
- ensure that a skills audit of the members at the three Khayelitsha police stations and the FCS Unit is performed immediately and thereafter at regular intervals, and ensure that all members are provided with the necessary training, mentoring and/or support to perform their duties as a matter of urgency;
- in particular, in light of Recommendation Five, ensure that all members of the Detective Branch at the three Khayelitsha police stations, and the FCS Unit, complete the 16-week Resolving of Crime detective training course;
- in particular, in light of Recommendation Twelve, ensure that all members of VISPOL and the Detective branch at the the three Khayelitsha police stations receive training on all aspects of the policing of domestic violence;
- ensure that an audit of leave and attendance registers is performed, including checking for abuse of sick leave;
- ensure that National Instruction 3/2011 is followed when dockets are opened;
- monitor SAPS 328s and station detention registers carefully and ensure that disciplinary steps are instituted promptly against any member who arrests a person without a reasonable suspicion that the person has committed a crime; and against any member who is responsible for any person being held in contravention of the 48-hour rule. Where a person is released from custody, the monitoring team shall check that the investigation of any pending charge against that person continues, if there are reasonable grounds to do so;
- ensure that compulsory depression/mental health evaluations are undertaken by all FCS detectives, as well as all members at the three stations determined to be at risk by their commanders, with appropriate interventions to ensure the good health and well-being of all members;
- ensure that regular patrols, whether on foot, bicycle, quad bike or horseback take place in informal settlements, including, where possible, in the company of community-based Neighbourhood Watch patrols;
- investigate the reasons for the apparent absence of intelligence-led policing at the three Khayelitsha Police stations and the Khayelitsha FCS Unit and take steps to ensure that the situation is remedied. In particular, the Team must ensure that the three key crime intelligence functions are performed: crime mapping, linkage analysis and on the ground intelligence gathering and that proper crime threat analyses are discussed at each SCCF and CCCF meeting;
- monitor crime scene management at all three Khayelitsha police stations, and ensure that the three police stations are equipped with a small generator and halogen lamps for lighting crime scenes at night; and that each patrol vehicle is equipped with a basic crime scene kit, including barrier tape, protective clothing, shoe covers and gloves; that investigating officers remain on the scene wherever possible until the forensic pathologist officer arrives; that all VISPOL members and detectives are trained on crime scene management; and ensure a reliable chain of evidence management in respect of forensic samples and other physical evidence;
- monitor the practices relating to domestic violence and ensure compliance with the Domestic Violence Act;
- ensure that members at the three police stations are provided with training on corruption, homophobia and xenophobia;

- ensure that annual life style audits are carried out in relation to all members to identify risks of corruption;
- collect and monitor crime statistics in respect of the three Khayelitsha police stations, and the FCS Unit, not only in relation to the twenty most serious crimes, but also in relation to crimes related to domestic violence, youth gangs, vigilantism, homophobic violence and xenophobic violence to enable adequate intelligence-led policing strategies to be developed to address these particular forms of crime (this will require a system of docket-marking to be developed to indicate whether the docket involves one of these types of crime);
- monitor the recruitment and use of informers at all three police stations;
- monitor the institution of disciplinary proceedings against members of SAPS at the three police stations and the FCS Unit for failure to comply with instructions of senior officers or rules or regulations; and
- monitor the construction and equipping of the new Makhaza police station.

[19] The monitoring team must meet monthly and prepare quarterly reports. The monitoring team should also contact key partners of SAPS in Khayelitsha, including the Senior Public Prosecutor at the Magistrates' Court and the Thuthuzela Care Centre, to ensure that SAPS members are providing such support and assistance to partner organisations as required. The reports should provide detailed information relating to the issues listed in the previous paragraph. The quarterly reports must be provided to –

- The National Commissioner;
- The Provincial Secretariat for Police; and
- The MEC for Community Safety in the Western Cape.

[20] The MEC must table progress reports providing a summary of the progress of the monitoring team in the provincial legislature at least twice a year.

RECOMMENDATION FOUR

URGENT CHANGE MANAGEMENT PROCESS BY LEADERSHIP OF KHAYELITSHA CLUSTER, KHAYELITSHA FCS UNIT AND THREE KHAYELITSHA POLICE STATIONS

- [21] It is clear that SAPS has identified inefficiencies at the three Khayelitsha police stations and the Khayelitsha FCS Unit for some years. Yet, the inefficiencies have not been eradicated. It is the view of the Commission that the responsibility to address the inefficiencies identified in this report, as well as the breakdown in trust between SAPS and the people of Khayelitsha, must rest with leadership, and, in particular with the leadership of the three police stations, the FCS Unit and the Cluster. Given the provincial responsibility for fostering good relations between the community and SAPS, it is also partly a matter for the province.
- [22] Accordingly, the Commission recommends that, as a matter of urgency, a change management process should be initiated to address the inefficiencies and the breakdown in trust. The Commission suggest that the process would commence with a facilitated strategy workshop where the strategic goals for a 3 – 5 year period would be identified. Thereafter, clear and measurable priorities should be identified, (such as a 33% improvement in the level of trust

of SAPS in Khayelitsha) and an implementation plan needs to be developed to achieve the strategic goals.

- [23] The Commission recommends that the participants in this process should include the leadership of all three police stations, the FCS Unit, the Cluster, and a representative from the provincial secretariat and DOCS. The Commission also recommends that SAPS ensures stability in the management team in Khayelitsha during the 3 – 5 year period. The Commission also recommends that external measures of police performance be used, particularly measures which indicate levels of community trust in SAPS.

RECOMMENDATION FIVE

URGENT STRATEGIC REVIEW OF DETECTIVE SERVICES AT ALL THREE KHAYELITSHA POLICE STATIONS AND THE FCS UNIT

- [24] Overwhelming evidence has been placed before the Commission that establishes that the three detective branches at the three Khayelitsha police stations and the FCS Unit are not functioning well. The Commission notes that the Public Service Commission issued a report in 2011 raising the worrying levels of inefficiency in detective branches around the country.¹⁶
- [25] The Commission considers that the failure to investigate crimes effectively, or at all, at the three Khayelitsha police stations and the FCS Unit is a serious problem approaching a crisis that needs to be urgently addressed. The Commission recognises that this is a deep systemic problem that is not capable of rapid resolution. There are four short-term recommendations, which the Commission recommends the Provincial Commissioner institute immediately, within one month of this report being published, to alleviate the situation –
- Require all cases arising in respect of crimes that are reported as a result of police operations at the three Khayelitsha police stations be investigated by VISPOL members and also require VISPOL members to ensure that dockets, witnesses and forensic evidence are provided to the NPA in respect of these crimes;¹⁷
 - Increase the number of detectives, particularly at Harare and Khayelitsha Site B, by allocating an additional at least five experienced detectives to each of these two stations to alleviate current work pressure under section 12(3) of the SAPS Act;
 - Appoint mentors for detectives with fewer than five years' experience at all three Khayelitsha police stations and the Khayelitsha FCS Unit; and
 - Establish, in addition, “backlog teams”, comprising experienced and competent detectives from elsewhere in the province, to be deployed at the three Khayelitsha police stations and the Khayelitsha FCS Unit to address the backlogs that have built up.
- [26] In addition, the Commission recommends that the following systems be put in place to improve the quality of service delivery by the detective branches at the three Khayelitsha police stations and at the Khayelitsha FCS Unit –

¹⁶ Record Bundle 1(5), File B, Item 8.

¹⁷ In this regard see testimony of Mr Van Eyk at Transcript 7847 – 7849 (16 May 2014).

- Ensure that all detectives at the three Khayelitsha police stations and the FCS Unit have completed both the 2-day basic detective training course and the 16-week Resolving of Crime course as a matter of priority;
- Review the systems utilised by the DCCOs at the Khayelitsha Magistrates' Court to seek to avoid the recurrent problem of cases being withdrawn or struck off the roll because dockets are not brought to court; in particular, the Commission suggests (a) that a diary system be instituted by the DCCO in terms of which the DCCO records the dockets that have to be brought to court on each future date, and makes arrangements a week in advance to ensure that the dockets are brought to court, and (b) that consideration be given to give the DCCO access to the ECMS at the Court to enable the DCCO to identify cases on the roll far in advance;
- Establish a rule that feedback must be provided once a month by investigating officers to complainants or bereaved family members, and require all feedback to be recorded in the investigation diary, as well as pocket books, and monitored by supervising officers (including random spot-checks to determine whether feedback has actually taken place) and discipline detectives who fail to provide feedback; and
- Actively take steps to recruit informers, and train detectives on the recruitment and utilisation of informers – the Commission notes that it is of the view that SAPS is unlikely to improve the number of informers it recruits until levels of trust in SAPS increase.

[27] The Commission records that several members of SAPS indicated that SAPS finds it difficult to recruit members to the detective branch.¹⁸ This problem appears to be acute in Khayelitsha, especially at the FCS Unit, but there are suggestions on the record that the problem may be more widespread. Given that good detective work is a core activity of SAPS, a thorough investigation needs to be undertaken as a matter of urgency to examine the problem and propose solutions. The Commission suggests that the Civilian Secretariat would be well placed to conduct such research. The Commission suggests that the research should commence with a survey of SAPS members to ascertain their views on the problem. The conditions of service and systems for recruitment of detectives also need to be considered, particularly, but not only, the question of payment for overtime. The Commission also recommends that the proposal contained in Chapter 12 of the National Development Plan 2013 that a two-tier stream of recruitment be considered, especially in relation to detectives. It recommends that the province draw this proposal to the attention of both the Minister of Police and the Civilian Secretariat.

RECOMMENDATION SIX

PROVINCIAL COMMISSIONER TO ISSUE GUIDELINES FOR VISIBLE POLICING IN INFORMAL NEIGHBOURHOODS

[28] One of the recurrent complaints of community members was that SAPS do not conduct regular visible policing patrols of informal neighbourhoods in Khayelitsha. It is clear that routine visible policing patrols are in vehicles on paved roads and most informal neighbourhoods are not accessible by vehicle. The result is as one station commander admitted, that the policing

¹⁸ See the testimony of Lieutenant Colonel Swart in this respect, his Statement is at Record Bundle 10(2.2), Item 21 at para 34 and Transcript at 3264 (14 February 2014). See also the testimony of Dr Van Eyk, Record Bundle 12(1), Item 6 at para 7.3.1.

of informal neighbourhoods is “neglected”.¹⁹ The Commission considers it completely unacceptable that neighbourhoods where residents are particularly vulnerable are being largely overlooked by SAPS.

- [29] The Commission recommends that the Provincial Commissioner publish guidelines within six months of the date of this report to regulate visible policing patrols in informal neighbourhoods. The guidelines need to identify the manner in which patrols of informal neighbourhoods should take place and ensure that they are undertaken routinely. The guidelines should include the manner in which local Neighbourhood Watch patrols of both formal and informal areas should be supported by SAPS which should include the requirement of briefing and debriefing by SAPS members of Neighbourhood Watch patrols, the provision of back-up support and a firm rule that the Neighbourhood Watches will not engage in unlawful conduct.
- [30] The human resource implications of routine SAPS patrols of informal neighbourhoods should be taken into account in the review of the Theoretical Human Resource Requirement proposed in Recommendation Seven.

RECOMMENDATION SEVEN

REVISION OF SAPS’ SYSTEM FOR DETERMINING THE THEORETICAL HUMAN RESOURCE REQUIREMENT OF POLICE STATIONS, AND THE URGENT REALLOCATION OF HUMAN RESOURCES TO THE THREE KHAYELITSHA POLICE STATIONS

- [31] The Commission has concluded that the system of human resource allocation used by the South African Police Service has resulted in two of the Khayelitsha police stations (Harare and Khayelitsha Site B) being significantly understaffed. An examination of the allocations to all police stations in the Western Cape, calculating police personnel per capita and in the light of reported crime rates, suggest that the ten most understaffed police stations are Nyanga, Kraaifontein, Gugulethu, Mfuleni, Grassy Park, Kleinvele, Delft, Lwandle and these two Khayelitsha police stations.²⁰ This research suggests that the residents of the poorest areas of Cape Town that bore the brunt of *apartheid* are still woefully under-policed twenty years into our new democracy and are often the police stations with the highest levels of serious contact crime. This pattern needs to change as a matter of urgency.
- [32] The reasons that this “unconscionable” state of affairs, as Ms Redpath described it,²¹ has persisted seem to be fivefold –
- the system for determining the theoretical human resource requirement (the THRR) is highly complex;
 - the THRR is not publicly available nor debated, even within SAPS or by the key oversight bodies, such as the national Parliament and the provincial legislature;
 - the data provided by police stations used to calculate the THRR is not necessarily accurate;

19 See the testimony of Colonel Nel, Transcript at 4624 (17 March 2014).

20 See Chapter 12 above at para 157, Table 1, Chapter 13.

21 Transcript at 6794 (12 February 2014).

- the weightings attached to different environmental factors may result in over- or under-estimation of the policing implications of those factors; and
- there appears to be no practice of checking the system against a simple per capita calculation to check for anomalies.

- [33] The Commission notes that the THRR system does not appear to be fully understood or accepted even within SAPS. So, at least some senior members of SAPS disagree with it. Lieutenant General Lamoer agreed that he considered the RAG to be irrational²² and Brigadier Dladla described the problem as “being gagged by the RAG”.²³
- [34] The Commission recommends that the system be overhauled as a matter of urgency. Accordingly, the Commission recommends that the Minister of Police request the National Commissioner of SAPS to appoint a task team to investigate the system of human resource allocation within SAPS as a matter of urgency. The Commission recommends that the task team consider Ms Redpath’s expert report which contains what appears to be a workable and rational method for the allocation of police personnel. The Commission does not suggest that it is the only workable and rational mechanism. In addition, the Commission notes that no SAPS member who testified before the Commission provided any reason why the system of human resource allocation should be kept secret. Indeed, Brigadier Rabie said –
- “it’s not supposed to be a secret, the allocation it’s made available to the different station commanders ... I mean everybody has got access to that information, if it is requested we will provide access to that information. I do not understand why it should be a secret ...”²⁴
- [35] The Commission accordingly recommends that whatever mechanism is adopted by SAPS, that it be subject to oversight by the key oversight agencies, notably the Civilian Secretariat and, in relation to provincial resource allocations, the provincial governments. The Commission also recommends that the system for human resource allocation within SAPS be disclosed in the SAPS annual report to Parliament as well as to provincial legislatures, and any significant departure from an allocation based on population figures and reported crimes rates should be explained.
- [36] In the meantime, the Commission recommends that the Provincial Commissioner allocate additional uniformed police to the three Khayelitsha police stations, in terms of section 12(3) of the SAPS Act, to perform VISPOL functions, particularly to enable regular patrolling of informal settlements, in partnership with Neighbourhood Watches. The Commission also recommends that until the human resource allocations at the three Khayelitsha police stations have been corrected in line with the recommendations in this report, the Provincial Commissioner does not draw from those three police stations for the purposes of “duty arrangements”, and instructs any SAPS members attached to the fixed establishment of the three police stations and the FCS Unit currently deployed elsewhere to return to Khayelitsha, or to provide a replacement for them. The Commission acknowledges that significant reallocation of members may well be necessary in the Western Cape to bring about a fair and rational allocation. It accepts that this is a complex process that cannot be achieved overnight, particularly as it may have implications for police station infrastructure. It recommends that once the new allocation method is determined, it should be phased in over a period of time that should not exceed three years.

22 Transcript at 6603 – 6604 (1 April 2014).

23 Transcript at 3508 (17 February 2014).

24 Transcript at 5353 (25 March 2014).

Figure 22: Community Service Centre, Khayelitsha Site B



- [37] The Commission also recommends that the Provincial Commissioner must ensure that the new Makhaza police station must result in an increase in policing capacity in Khayelitsha, and not simply a reallocation of existing police members stationed in Khayelitsha.

RECOMMENDATION EIGHT

OTHER STEPS TO IMPROVE RELATIONS BETWEEN SAPS AND PEOPLE OF KHAYELITSHA

(a) Community Police Forums

- [38] The Commission has found that CPFs in Khayelitsha have not played a valuable role in promoting good relations between the community and SAPS. The Commission considers that there are a range of reasons why this is so. There is research, much of it now quite dated, which suggests that CPFs have not been a success. Given the importance of community policing in South Africa, in recognition both of our history and constitutional values, the Commission recommends that the Civilian Secretariat commission research into the efficacy of CPFs. In particular, the Commission suggests that the research investigate the attitudes of members of the public, as well as the attitudes of SAPS members, to CPFs. The research should also investigate what the appropriate role of CPFs could be, and what constraints there may be on CPFs efficiently performing such role, including resource constraints.
- [39] One of the issues raised by all the members of Khayelitsha CPFs who appeared before the Commission was the question of the resourcing of CPFs. The province has recently introduced a programme (the EPP) that provides resources to CPFs in return for the CPFs performing

certain functions. The EPP is new and its effectiveness needs to be monitored carefully. The Commission recommends that the monitoring team referred to in Recommendation Three monitor the performance of the CPFs in Khayelitsha, and report to both DOCS and the provincial secretariat on the perceived benefits and shortcomings of the EPP programme as it operates in Khayelitsha. In particular, the Commission recommends that DOCS consider the needs of CPFs in socially and economically disadvantaged areas for additional start-up grants to provide basic facilities.

(b) Publication of station-level crime statistics

- [40] The Commission also notes that the publication of station-level crime statistics both to CPFs and to members of the community, at least by publishing them on a monthly basis on notice boards in CSCs could improve the relations between SAPS and the local community.

(c) Introduction of community-based mediation initiative to resolve disputes

- [41] The Commission proposes that attention should be given to introducing a system of community-based mediation to resolve neighbourhood disputes, which appear to be the underlying cause of some contact crime in Khayelitsha. This programme could be modelled on the Community Peace Programme, which was described by a group of expert witnesses.²⁵ The introduction of a community-based mediation initiative will need to be supported by a government agency to provide support, which will include making adequate resources available to the programme. In the view of the Commission, DOCS may be the appropriate agency, but so may be the national or provincial Department of Social Welfare and Development, or even the national Department of Justice and Correctional Services. The Commission recommends that the province take steps to explore this possibility.

(d) Reservists

- [42] The Commission also notes the important role that reservists can play, not only in building relations between the community and SAPS, but also in assisting SAPS with their work. The Commission recommends that suitable reservists be recruited in Khayelitsha as soon as possible.

RECOMMENDATION NINE

REVIEW OF HUMAN RESOURCE PRACTICES

- [43] The Commission considers that there are certain human resource practices which need to be considered.

25 See the Expert Report and testimony of Ms Julie Berg, Professor Cartwright and Mr Guy Lamb, Record Bundle 12(1), Item 3; and Transcript 7622 – 7665 (15 May 2014).

(a) Ensuring that SAPS members in Khayelitsha are able to speak isiXhosa

- [44] The Commission notes that the Census 2011 makes plain that more than 90% of the residents of Khayelitsha speak isiXhosa as their mother tongue. In the circumstances, the Commission considers that it would be desirable for members of SAPS who work in Khayelitsha to be able to speak isiXhosa. The Commission was told that there is a shortage of detectives and senior officers at the three police stations who can speak isiXhosa. In the view of the Commission, this can be addressed in two ways: first, by providing all SAPS members who do not speak isiXhosa with language training, and secondly, by actively seeking to ensure that new members placed in Khayelitsha are able to speak isiXhosa.

(b) PEP

- [45] Ms Fish and Mr Schlebusch concluded after considering the PEP documents provided to the Commission that approximately 96% of all members are evaluated as a “3” on this system. They noted that this suggests that there is no real differentiation between good and poor performers.²⁶ The Commission also notes that several of the witnesses indicated that SAPS members are satisfied if they achieve a “3” on the PEP, as this means that both increments and promotion opportunities are available.²⁷ It seems to the Commission in the light of this evidence as if the practice at the three Khayelitsha police stations is that the default position is a “3”, even though the evidence before the Commission suggests that there are some members of SAPS who perform poorly at the three police stations. The evidence thus suggests that the PEP is not being properly implemented at the three police stations. The Commission accordingly recommends that the Cluster Commander undertake a training programme of both supervising officers, and members at the three police stations, in relation to the PEP to explain the reasons for the PEP, and the manner in which it should be implemented.

(c) Discipline of SAPS members

- [46] The Commission has found that there are a large number of disciplinary proceedings instituted at the three Khayelitsha police stations. However, it also notes that the Task Team Report concluded that the extent of disciplinary proceedings did “not seem to be having a positive effect”.²⁸ Also Ms Fish and Mr Schlebusch commented that many of the disciplinary proceedings appeared to result in lenient sanctions, with the consequence that there are no real consequences for misconduct.²⁹ The Commission is of the view that the failure to use the system of discipline fairly, constructively and consistently may undermine the process of eradicating inefficiencies at the three police stations. The Commission also notes that the existence of an effective and consistent system of discipline is an important institutional bulwark against corruption. The absence of such a system may provide opportunities for corruption to flourish. The absence of such a system may well also adversely affect morale amongst members of SAPS. The Commission endorses the proposal mentioned by Lieutenant General Lamoer that the Cluster be responsible for discipline at the three Khayelitsha

²⁶ Record Bundle 12(1), Item 14 at para 3.

²⁷ See testimony, for example, of Colonel Swart, detective commander at the Lingeletu West, Transcript 3409 – 3410 (17 February 2014), and Lieutenant Colonel Marais, detective commander at Khayelitsha Site B, Transcript 3897 (19 February 2014).

²⁸ Report Record Bundle 1(3), AL87 at para 9.2.

²⁹ Record Bundle 12(1), Item 14 at para 4.

police stations to ensure that it is being fairly, constructively and consistently applied.³⁰ The process of discipline at the three police stations, and the FCS Unit, should also be the subject of monitoring and oversight by the Oversight and Monitoring Team referred to in Recommendation Three.

(d) Accelerated processes for leadership appointment in Khayelitsha

- [47] The Commission has noted that in the period under review, 2010 – 2013, there have been many occasions when senior leadership positions at the three Khayelitsha police stations, the FCS Unit and the Khayelitsha cluster have been filled by acting appointments. In particular, the Commission notes that the post of station commander and detective commander at Harare police station as well as the post of Cluster Commander were not filled with permanent appointments for over a year. Given the importance of leadership for the effective and efficient operation of a SAPS unit, these inordinate delays give rise to a serious concern, and the Commission concludes that they almost certainly have contributed to the worrying inefficiencies identified in this Report. When Major General Burger was asked about this, he said delays were often caused by the time taken for national office to approve the advertisement of a vacant post. It is not clear to the Commission why national office should have to approve the advertisement for a vacancy in an established and funded senior-level post. The Commission recommends that either the requirement of national office approval of the advertisement should be scrapped, or a turnaround time for approval of no longer than two weeks should be imposed. The Commission recommends that the Provincial Commissioner issues an instruction to human management in the province that all senior posts in Khayelitsha will be filled within three months of their falling vacant.

(e) Access to the Employee Health and Wellness Programme (EHW)

- [48] It is clear from the evidence that there is a perception amongst many SAPS employees that if they have recourse to the EHW for counselling purposes, their careers in SAPS will be prejudiced. Although Major General Burger says this is not so,³¹ the perception seems to be deeply rooted and forms part of SAPS institutional culture.³² The Commission recommends that SAPS takes steps to reassure members of SAPS in Khayelitsha that use of EHW is not harmful to their careers. It should do so by requiring all members to undergo periodic counselling. Senior members should serve as role models in this regard.

(f) Recruitment

- [49] It is clear to the Commission that recruitment is crucially important. Major General Burger told the Commission that the retention rate of SAPS personnel, especially amongst lower ranks, is very high and that for many people SAPS is a lifelong career.³³ Mr Bosman, the head of the Safety and Security Directorate in the City of Cape Town described how important recruitment decisions are. He said that for the Metro Police, he considered it important that

30 See Transcript at 6704 (1 April 2014).

31 Transcript at 5418 – 5419 (25 March 2014).

32 See discussion in Chapter 14 in relation to SAPS' institutional culture, under the sub-heading "Cowboys don't cry".

33 See Transcript at 5409 (25 March 2014).

recruits are able to manage conflict, and have a sense “that there’s a right and wrong”.³⁴ The Commission agrees that recruitment constitutes an enormous investment decision for SAPS and that recruits should be carefully selected.

- [50] Major General Burger told the Commission that SAPS had decided that recruits would be put on “parade” in front of the community at meetings before appointment decisions were made.³⁵ Ms Fish was asked whether this was a widely recognised recruitment practice and she responded it was not, “and that it was potentially open to corruption”.³⁶ Instead, she suggested that SAPS should identify the qualities required in a member of SAPS and focus its recruitment processes on determining whether candidates have those qualities.³⁷
- [51] The Commission endorses the reservations expressed by Ms Fish, and suggests that SAPS reconsider its decision to hold a “parade” of candidates for appointment as members of SAPS before the community. Instead, SAPS should identify key qualities that make for good SAPS members and seek to ensure that candidates have those qualities. One of the ways this can be done, in addition to interviews and psychometric testing, is to contact referees such as school principals to provide guidance on a candidate’s suitability for appointment.

RECOMMENDATION TEN

REVISION OF THE STATION PERFORMANCE CHART

- [52] The Commission has concluded that the Station Performance Chart and EUPOLSA index is a sophisticated management tool,³⁸ but it has concluded that the Chart has not assisted with building trusting relationships between SAPS and the community in Khayelitsha, because it contains no external measures of civilian satisfaction with the Chart.³⁹ The Commission has recommended that a procedural justice model of policing should be adopted in Khayelitsha (see Recommendation Two above) and that Community Policing Commitments should be adopted at each of the three police stations (see Recommendation One above).
- [53] The Commission is of the view that the Station Performance Chart should be revised, at least in relation to the three Khayelitsha police stations, to include measurement of civilian satisfaction with SAPS in Khayelitsha. The Commission accepts that there is a range of ways in which civilian satisfaction can be measured, such as through the Mthente Survey that was undertaken at the Commission’s instance,⁴⁰ or the Barometer Surveys conducted by DOCS.⁴¹ Surveys of this sort are expensive, and the Commission recommends that SAPS consider using the method of Community Scorecards mentioned by Mr McLean in his testimony.⁴²

34 See Transcript at 1976 – 1977 (6 February 2014).

35 See Transcript at 5410 (25 March 2010).

36 See Transcript at 6852 (12 May 2014).

37 Id.

38 See Chapter 14 at para 132.

39 Id.

40 See Chapter 8 above, and see the Mthente Report at Record Bundle 10(1), File 1.1, Item 11.

41 See, for example, the Barometer Surveys conducted in 2011/2012 in respect of the three Khayelitsha police stations at Record Bundle 2(3), File 4, Items 32, 33 and 34.

42 Record Bundle 12(1), Item 26 at paras 56 – 58.

- [54] The Commission also considers that consideration should be given to reducing the weight given on the Station Performance Index to the reduction in crime, especially given the fact that SAPS cannot on its own reduce crime, which means that the Performance Chart is setting “an impossible mandate” for SAPS police stations, as several expert witnesses mentioned.⁴³

RECOMMENDATION ELEVEN

VENGEANCE KILLINGS AND ATTACKS (VIGILANTISM)

- [55] The Commission recommends that the Provincial Commissioner instructs that all instances of vengeance attacks and killings in Khayelitsha be recorded and reported at CCCF meetings and that the Cluster Commander report to the Provincial Commissioner and to the Monitoring Team referred to in Recommendation Three. Reports of vengeance attacks and killings must be made in the quarterly reports of the monitoring team.
- [56] The Commission recommends that the Cluster Detective Co-ordinator institute an intelligence-led approach to vengeance attacks and killings in Khayelitsha as a matter of urgency to determine whether there are groups engaged in vengeance killings or attacks on a regular basis.
- [57] The Commission recommends that the Cluster VISPOL Commander should, together with the VISPOL commanders at each of the three Khayelitsha police stations, develop a policing strategy to deal with vengeance attacks. This strategy should provide for emergency responses when SAPS is notified that a vengeance attack is in progress. In addition, it should provide for seeking to rescue victims, and arrest perpetrators, as well as the securing of crime scenes. The strategy should be reviewed quarterly, and monthly reports of the implementation of the strategy must be made to the monitoring team established in terms of Recommendation Three.
- [58] The Commission recommends that the Provincial Commissioner requisition a study to consider the feasibility of the instant return of stolen goods to complainants rather than keeping them as exhibits.
- [59] The Commission recommends that DOCS should convene a forum of school principals, churches and religious institutions, CPFs, non-governmental organisations, and community-based organisations, including taxi associations, SANCO and Neighbourhood Watches, in Khayelitsha, SAPS managers from the three Khayelitsha police stations, as well as researchers to develop an integrated public education programme aimed at preventing vengeance attacks and killings.

⁴³ See, for example, expert report of Dr Johan Burger at Record Bundle 12(1), Item 9, p 11; and expert report of Mr Andrew Faull, Record Bundle 12(1), Item 9 at p 7. See also Transcript at 8014 (16 May 2014).

RECOMMENDATION TWELVE

A MULTI-SECTORAL TASK TEAM ON YOUTH GANGS TO BE ESTABLISHED BY DOCS

- [60] The problem of youth gangs was repeatedly referred to in the evidence. The Commission considers the emergence of youth gangs in Khayelitsha to be a grave concern that requires immediate attention from a range of institutions. The Commission accordingly recommends that DOCS establish a task team bringing together key institutions who work with youth issues in Khayelitsha. The Team should include, in addition to DOCS –
- SAPS;
 - The NPA;
 - The provincial Department of Education;
 - The provincial Department of Social Welfare;
 - The department of Justice and Correctional Services;
 - The provincial Department of Health;
 - The City of Cape Town;
 - School principals and representatives of School-Governing Bodies in Khayelitsha;
 - Non-governmental organisations that work with children and youth; and
 - Experts on childhood development and human rights.
- [61] The Task Team needs to draw up a strategic plan to address the issue of youth gangs. The plan should be drawn up and implemented within six months of the date of this report. The strategic plan should address the following issues –
- Safety in schools, including the prohibition of weapons and sharp implements in schools (as well as a procedure for disposing of confiscated weaponry);
 - Plans to seek to protect children travelling to and from school in Khayelitsha from being targeted by gang members and/or criminals;
 - The provision of after-school care and extra mural activities for learners in Khayelitsha;
 - Ensuring that schools monitor absenteeism patterns to identify learners at risk who may be staying away from school for fear of gang violence;
 - The development and extension of diversionary programmes for youth at risk, such as the existing Chrysalis Academy, as well as independent research to assess the success of such programmes;
 - Visible policing support for the programmes listed above;
 - A consistent approach to the arrest and prosecution of young people suspected of committing crimes; and
 - Crime intelligence work to assist to eradicate violent gang practices.
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RECOMMENDATION THIRTEEN

PROVINCIAL TASK TEAM TO SURVEY COMMUNITY ATTITUDES TO UNLICENSED LIQUOR OUTLETS IN ORDER TO ASSIST POLICY FORMULATION

- [62] The record before the Commission suggests there are 1400 illegal liquor outlets in Khayelitsha. There is a strong correlation between alcohol abuse and violent contact crime. A key policy question is how to manage the illegal liquor outlets. Mr Giliomee of the Western Cape Liquor Authority told the Commission that licensed outlets are more likely to comply with the rules and regulations governing the liquor trade, and he thought it would be desirable to seek to ensure that all liquor is traded through licensed outlets. He also told the Commission that one of the reasons that unlicensed liquor outlets do not obtain licences is because they are located in residential neighbourhoods, and may not be granted liquor licences in terms of the zoning laws.
- [63] The Commission recommends that DOCS establish a provincial task team to investigate policy options relating to unlicensed liquor outlets in Khayelitsha. The task team should commence by conducting research in Khayelitsha to determine the views of residents of Khayelitsha as to their views of unlicensed liquor outlets. The Commission suggests that the provincial task team should include the Provincial Commissioner or Deputy Provincial Commissioner, as well as the head of Metro Police, and the Western Cape Liquor Board. The Commission suggests that this research be completed within nine months of the Commission publishing its report.

RECOMMENDATION FOURTEEN

DOMESTIC VIOLENCE: VARIOUS MEASURES PROPOSED

- [64] The evidence before the Commission makes plain that there are problems at the three Khayelitsha police stations in respect of their compliance with the obligations imposed upon SAPS by the Domestic Violence Act.⁴⁴ It is not clear to the Commission what proportion of the SAPS members at the three police stations have undergone training on domestic violence.
- [65] In the light of the evidence before it, the Commission recommends that –
- All SAPS members at the three police stations engaged in Visible Policing or detective work attend a Domestic Violence training course which should include training on the Domestic Violence Act, the National Instruction, investigation skills in relation to offences involving domestic violence, the service of protection orders and the treatment of vulnerable complainants;
 - That CPF members should also be provided with basic training on domestic violence legislation and procedures;

⁴⁴ See the overview in Chapter 8 above of the testimony of Professor Lillian Artz and Ms Lisa Vetten, as well as the overview of their expert reports in the Second Phase in Chapter 12.

- That management at both the three Khayelitsha police stations, and the Cluster, take steps to ensure that there is full compliance with the recording requirements of National Instruction 7/1999 at three police stations;
 - Accurate recording of all reported cases of domestic violence as part of crime statistics in Khayelitsha, to be achieved by clearly marking all dockets involving cases of domestic violence on the cover;
 - That all criminal dockets contain information about any Domestic Violence Act or Child Care Act interventions, including copies of any 508(a) forms,⁴⁵ as well as any previous history of domestic violence incidents, which should be taken in the initial A1 statement, or by a supplementary statement if necessary;
 - That SAPS, in consultation with DOCS and the provincial secretariat, develop a policy around the victim-friendly rooms at police stations that will identify the skills and experience necessary for those who work in the rooms, as well as criteria for selection and training, and possible reimbursement; and
 - That SAPS introduce procedures to remove service firearms from its members who have been served with protection orders or been involved in incidents of domestic violence.
- [66] The Commission makes two further recommendations. The first relates to the establishment of an avenue for complaints by members of the public. The Commission notes that when the oversight of policing of the Domestic Violence Act was transferred from the ICD to the Civilian Secretariat, an avenue for complaint was lost, we recommend that DOCS as part of its constitutional mandate institute and advertise a Domestic Violence Act complaints mechanism at provincial level.
- [67] Secondly, the Commission recommends that SAPS in Khayelitsha establish a relationship with a team of researchers to enable a five-year research project on domestic violence to be undertaken in Khayelitsha, as suggested by Professor Artz.⁴⁶ The purpose of the research would be to track the manner in which domestic violence is policed, as well as the effectiveness of the mechanisms provided by the Domestic Violence Act. The research methodology, including the research indicators and methods should be agreed with SAPS, including issues relating to confidentiality and access to information. The agreement could also provide for on-going training of SAPS members by researchers at the three Khayelitsha police stations, including the development of self-learning training tools.

RECOMMENDATION FIFTEEN

STRATEGIC TASK TEAM ON USE OF INFORMATION TECHNOLOGY AND RELATED MATTERS

- [68] The Commission has concluded that the use of information technology by the SAPS units operating in Khayelitsha is not optimal and that much could be done to design information technology solutions to assist SAPS members. Accordingly the Commission recommends that the Provincial Commissioner and the provincial secretariat should jointly establish a task team, to report to the Provincial Commissioner and the provincial secretariat within six

⁴⁵ Id. at p 14.

⁴⁶ Transcript at 7461 – 7462 (14 May 2014).

months of the date of this report, to develop a policy approach to information technology and related matters addressing the following issues –

- a system to ensure that members of the public can reliably contact SAPS units in Khayelitsha, either on telephones at the three police stations, or on the 10111 number;
- attestation of documents at police stations in Khayelitsha– possibly creating mobile units at SASSA offices, and the Department of Home Affairs to assist people approaching those agencies;
- the development of a map of the informal neighbourhoods of Khayelitsha, possibly in collaboration with an internet mapping service provider and the City, which identifies the location of numbered houses using global positioning technology;
- investigating the possibility of establishing a relationship with Mobile Network Operators for the provision of information concerning cell phone numbers of witnesses, complainants and alleged perpetrators in Khayelitsha (and perhaps more broadly);
- investigate and report on the feasibility of establishing an integrated case flow management system in the Western Cape whereby SAPS, the NPA, the National Forensic Laboratories, the National Chemical Laboratories and the National Science Laboratory can exchange reports and information electronically, with the use of electronic signatures.

RECOMMENDATION SIXTEEN

HANDLING OF COMPLAINTS BY POLICE STATIONS IN KHAYELITSHA, NODAL POINT AND IPID

- [69] The Commission has concluded that the manner in which complaints made against members of SAPS operating in Khayelitsha have been handled by the three police stations has not contributed to building a relationship of trust between SAPS and the community of Khayelitsha. In particular, the Commission has noted with dismay that a very high proportion of complaints are found to be unsubstantiated. The Commission considers that it is unlikely that 75% of complaints lodged are without foundation. The Commission notes however that this is a perennial problem experienced by law enforcement agencies around the world.⁴⁷
- [70] The Commission considers that complaints need to be dealt with in a manner that is fair, thorough and objective and is also perceived to be fair, thorough and objective. The Commission notes that, just as the existence of an effective and consistent system of discipline is an important institutional bulwark against corruption,⁴⁸ so is the existence of a fair, thorough and objective complaints system. Perceptions of fairness and objectivity will not be enhanced by the fact that Standing Order (General) 101 provides that members in the very unit of SAPS against which the complaint is brought ordinarily investigate complaints. The Commission recommends that consideration be given to the revision of Standing Order 101 (General) to provide that complaints be investigated at cluster level, rather than station or unit level.
- [71] Moreover, the Commission considers that the manner in which complainants are dealt with by investigators is very important. The Commission acknowledges that one of the

⁴⁷ See Johansen, A. (2014) "The rise and rise of independent police complaints bodies" in J Brown *The future of policing* (Routledge) pp 446 – 462.

⁴⁸ See Recommendation Eight above.

most difficult issues in dealing with complaints arises when there is a conflict of fact that arises between a complainant and a member of SAPS. The Commission recommends that in dealing with such complainants investigators bear in mind that it is unlikely that most complaints are groundless given the administrative inconvenience, and a real or perceived risk of retaliation, that face complainants. Investigators should not automatically conclude that the version of a SAPS member is the truth, but should investigate whether there are other witnesses who could corroborate the version of either the SAPS member or the complainant. Supervising managers in complaints agencies should insist that where possible statements should be obtained from third parties, especially where the issue raised in the complaint involves physical injury to a member of the public. All correspondence with the complainant should provide a full and candid account of the investigation.

- [72] The Commission recommends that the outcome of all complaints against SAPS members operating in Khayelitsha be referred to the monitoring team referred to in Recommendation Three, and that the monitoring team should call for further information relating to complaints if they consider it appropriate.
- [73] The Commission endorses the principle that an electronic register of all complaints be kept at the SAPS nodal point and that the register should include a brief description of the nature of the complaint. However, as set out more fully in Recommendation Fifteen below, the Commission repeats that SAPS may not prevent or inhibit DOCS from carrying out its constitutional responsibilities.
- [74] The Commission has concluded that the manner in which IPID deals with complaints gives rise to concern. In this regard, the Commission notes the evidence of Mr Leholo, the acting provincial head of IPID, that IPID is under-staffed in the province.⁴⁹ The Commission notes that the IPID in the Western Cape receives the highest number of complaints nationally, and that it has the lowest completion rate of any province.⁵⁰ The Commission recommends that the attention of the Civilian Secretariat and the Executive Director of IPID be drawn to this and they be requested to investigate this matter and report on it to the Minister of Police. The Commission also notes that a very high proportion of IPID investigators are drawn from SAPS. Although this means that the investigators understand how SAPS works, the Commission recommends that it would be appropriate, given the SAPS culture of commitment to internal solidarity, described in Chapter 14, to ensure that at least some of the IPID investigators in the Western Cape be drawn from forensic investigators who do not have a SAPS background.

RECOMMENDATION SEVENTEEN

GOVERNANCE AND OVERSIGHT

(a) Role of Civilian Secretariat for Police Service

- [75] The Commission notes the importance of the role of the Civilian Secretariat as a key agency having oversight over SAPS. It also notes that the Secretariat, in its present form, only came into existence on 1 April 2012, and that it only became a fully-fledged department on 1 April 2014.

⁴⁹ Transcript at 1502 (5 February 2014).

⁵⁰ See IPID Annual Report 2012/2013, Record Bundle 1(8), File 2, Item 4, p 41.

- [76] The Commission recommends that the Civilian Secretariat, both at national level, and at provincial level, takes an active role in monitoring the work of the three Khayelitsha police stations and the FCS Unit.
- [77] The Commission recommends that the Minister of Police takes care to ensure that the Civilian Secretariat is resourced adequately to enable it to perform its functions.

(b) Role of DOCS

- [78] The Commission notes that witnesses from both DOCS and SAPS acknowledged that there had been disagreement between them over the constitutional role of DOCS as provided for in s 206 of the Constitution.⁵¹ The Commission notes that sections 206(3)(a) and 206(5) of the Constitution provide that a province may –
- “monitor” police conduct;
 - “oversee the effectiveness and efficiency of the police service”;
 - “promote good relations between the police and the community”;
 - “assess the effectiveness of visible policing”; and
 - “investigate ... any complaints of police inefficiency”.
- [79] The responsibilities conferred upon the province by these provisions are rooted in the province’s duty to respect, protect and promote the fundamental rights of its citizens, as the Constitutional Court noted.⁵² They are also part of the Constitution’s scheme to ensure the accountability of public power.⁵³ Accordingly, the province’s power to monitor police conduct and oversee the efficiency and effectiveness of the police are important responsibilities both from the perspective of the protection of fundamental rights and from the perspective of democratic accountability.
- [80] SAPS indicated during the proceedings of the Commission that they thought that SAPS and DOCS should enter into a memorandum of agreement to regulate their relationship.⁵⁴ In closing argument, the legal representatives for DOCS said that DOCS would not be “averse” to such a memorandum, but suggested that the matter could be regulated by regulations under the Community Safety Act, 3 of 2013 (Western Cape).⁵⁵ The Commission expresses no view on whether this matter may be regulated by regulations under the Community Safety Act. It does consider, however, that it would be desirable for DOCS and SAPS to reach a common understanding of their respective responsibilities. It would also be consistent with their obligation to “co-operate with one another in mutual trust and good faith” as provided for in section 41(1)(h) of the Constitution. The Commission recommends that SAPS and DOCS enter into a memorandum of agreement as a matter of urgency and preferably by no later than 15 October 2014. The agreement should include regulation of the following issues, amongst other things –
- visits by DOCS to police stations, including unannounced visits, particularly to holding cells at police stations, and to CSCs;
 - arrangements for DOCS to inspect closed dockets to monitor the quality of the investigation of dockets;

51 See, for example, the testimony of Dr Lawrence, Transcript at 1597 – 1602 (5 February 2014), testimony of Major General Jephtha, Transcript at 6388 (31 March 2014).

52 Id. at para 37.

53 Id. at para 41.

54 See testimony of Major General Jephtha, Transcript at 6379 (31 March 2014) and Lieutenant General Lamoer, Transcript at 6614 (1 April 2014).

55 See DOCS closing arguments, Record Bundle 13(4), Item 3 at para 8.

- the manner in which DOCS may investigate complaints against members of SAPS;
 - the role of DOCS in relation to CPFs and Neighbourhood Watches; and
 - collaboration between DOCS and SAPS on specific challenges for safety and security, such as youth gangs, alcohol abuse and school safety.
- [81] In reaching the memorandum of agreement, the following considerations should be taken into account. First, the language of the Constitution makes plain that the province is entitled to monitor police conduct. A process of monitoring must include visits to police stations. There is a disagreement between DOCS and SAPS as to whether those visits may be unannounced. The Commission acknowledges that unannounced visits may, on the one hand, be somewhat disruptive for police stations, but also notes, on the other, that unannounced visits allow visitors to see a police station that has not been groomed for a visit.
- [82] In this regard, the Commission notes that the United Nations Optional Protocol to the International Convention on Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment (OPCAT) contemplates that each member state should establish a National Preventive Mechanism that should have the right to make unannounced visits to places where people are being held in deprivation of their liberty, and should include the right to conduct private interviews with those deprived of their liberty.⁵⁶ The Commission notes that South Africa has signed the Optional Protocol, although it has not yet ratified it, and also notes that section 12(1)(d) of the Constitution entrenches the right “not to be tortured in any way”. The Commission also notes the provisions of the “Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa”, recently adopted by the African Commission on Human and Peoples’ Rights.⁵⁷ Article 6 notes that detention in police custody should be an “exceptional measure” and that states should establish measures to promote transparency with regard to police custody including inspections by a range of authorities.
- [83] In the view of the Commission, unannounced visits to police cells by DOCS would be an appropriate manner both “to monitor police conduct” and to “protect” the right not to be tortured and to ensure that people detained in police cells are not treated in a cruel or degrading manner.
- [84] In addition to unannounced visits to police holding cells, the Commission also notes that unannounced visits to CSCs would enable DOCS to monitor the manner in which police services are being provided to the community and would be unlikely to be unduly disruptive. The memorandum of agreement should therefore provide for unannounced visits to police holding cells and to CSCs.
- [85] Secondly, the Commission also notes that the Constitution expressly states that provinces may investigate complaints of police inefficiency. It has been clear to the Commission that there needs to be a mechanism that will respond to and investigate complaints by members of the public about police inefficiency. The Commission has investigated the complaints of many members of the public who have approached it by asking SAPS for information that includes redacted copies of the relevant dockets, to be able to inform members of the public as to the progress of investigations and prosecutions.⁵⁸ The Commission acknowledges the great assistance it received from the Provincial Inspectorate in attending to these complaints.

56 See Articles 4 and 29 of the Optional Protocol. See also the Guidelines on the National Preventive Mechanisms published by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, 12th Session, 15 – 19 November 2010 (CAT/OP/12/5). See <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx> (last viewed on 16 August 2014).

57 Record Bundle 12(1), Item 19a. The Guidelines were adopted on 8 May 2014.

58 The letters providing feedback to members of the public written by the Commission may be found at Record Bundle 13(1), File 1.5.

- [86] The Commission considers that undertaking such investigations when members of the public make complaints to the province is what section 206(5) of the Constitution contemplates. The Commission also notes that investigating complaints in this manner both protects the rights of individuals, and holds SAPS accountable. In this regard, the Commission again notes that there is a dispute between SAPS and DOCS as to whether DOCS may see copies of dockets in relation to specific cases. It is the view of the Commission that there is no other way to attend to many of the complaints received, other than to look at the docket. The investigation diary is a particularly useful source for identifying what has been done on a docket. If SAPS is concerned that there is information in a docket that may be sensitive, the docket may be redacted (by removing witnesses' names and addresses and any other sensitive information). Indeed most of the dockets provided to the Commission were redacted in this way, which did not impair the ability of the Commission to identify what had been done and to provide feedback to complainants. Moreover, it may be that the DOCS officials who undertake the investigation should be senior officials with either legal qualifications or previous experience of criminal investigation who have been subjected to a security clearance process. The Commission recommends that these issues be regulated by the memorandum of understanding. Moreover, the Commission stresses that complaints must always be dealt with in a manifestly politically neutral manner.

RECOMMENDATION EIGHTEEN

USE OF CCTV CAMERAS

- [87] A meeting should immediately be convened between the City, Metro Police and the Station Commanders and Branch Commanders of the three Khayelitsha police stations to discuss the best way of using the CCTV cameras placed in Khayelitsha. Consideration should also be given to re-locating the cameras for maximum effect; replacing the cameras with ones that will not be disabled by cable theft; and increasing the number of cameras, particularly in transport hubs and near schools.

RECOMMENDATION NINETEEN

PHYSICAL INFRASTRUCTURE AT POLICE STATIONS AND PROPOSED NEW MAKHAZA POLICE STATION

- [88] The Commission records that the physical infrastructure of Lingeletu West needs to be addressed: it has poor parking facilities, no holding cells, no exhibit store, inadequate space for detectives, a temporary "park home" for the victim friendly room, and no space for holding "parades". The Commission recommends that SAPS takes steps to improve the physical infrastructure of the Lingeletu West police station as a matter of urgency.
- [89] The Commission also notes that both Khayelitsha Site B and Harare police stations are short of office space, as well as short of appropriate space for storing dockets. The Commission recommends that SAPS prioritise providing additional buildings to these two police stations.

- [90] The Commission welcomes SAPS' proposal to build a new police station at Makhaza, but records that the human resources allocation to Makhaza should take into account the chronic under-staffing of Harare police station. The Commission recommends that when human resources are allocated to the new police station to be built at Makhaza, there should be a significant increase in human resources to the Greater Khayelitsha area, and not simply a reallocation between Harare police station and the new Makhaza police station, given that it is clear, as set out above, that Harare police station has the lowest police to population ratio in the province, and appears to be significantly under-staffed. The Commission also recommends that the physical design of the police station take into account estimates of population growth in the area over the next ten years, and not be designed on the basis of existing population figures. Finally, the Commission recommends that SAPS provide regular public statements about the development of the police station, so that the community are aware as to the date when the police station will be completed.

RECOMMENDATION TWENTY

URGENT NEED TO ADDRESS BACKLOGS IN NATIONAL CHEMICAL LABORATORIES IN CAPE TOWN

- [91] The record before the Commission indicates that there are substantial backlogs in the analysis of forensic samples, particularly at the National Chemical Laboratories in Cape Town. This problem has existed for some time. The consequence of the delays at the laboratories is that cases that require evidence based on the results of laboratory analysis are frequently struck off the roll and withdrawn at the Khayelitsha Magistrates' Court.⁵⁹ The Commission recognises that responsibility for the Laboratory rests with the national Department of Health, but considers that this problem is clearly undermining the capacity of SAPS to finalise its investigations in a significant number of dockets in Khayelitsha, and considers the problem should be drawn to the attention of the Premier, for her to take such steps as she considers appropriate.

59 See Chapter 9 at para 45.

Appendices



Appendix A

Public submissions made to the Commission of Inquiry

No	Organisation/Author	Location
1	Civil Society Prison Reform Initiative (Community Law Centre). 12 October 2012. This report focused on arrest and detention of suspects by the police, as well as on the need for independent oversight over places of detention, and independent investigation of complaints against the police.	Record Bundle 1(1)(b)
2	V M Igglesden, Independent Researcher and Community Advocacy Worker. 7 November 2012. This submission focuses on the experiences of Somali refugees and nationals and their treatment by the South African Police Service and the CTMPD in Khayelitsha.	Record Bundle 1(1)(b)
3	Khulumani Support Group. 5 October 2012. This submission highlights the problem of vigilante violence and police brutality.	Record Bundle 1(1)(b)
4	NICRO. 2 May 2013. This submission reflects on the experience that NICRO clients have had in regard to crime, vigilantism and the police, and on the interaction between NICRO and the SAPS.	Record Bundle 1(1)(b)
5	Scalabrini Centre of Cape Town. Undated. This report deals with the experience of foreign nationals and policing in Khayelitsha and puts forward some recommendations to improve policing.	Record Bundle 1(1)(b)
6	South African Human Rights Commission. 15 November 2013. This report draws attention to the intersection between socio economic conditions and violence in a community. It calls for the observance of human rights norms and standards and greater interdepartmental cooperation.	Record Bundle 1(1)(b)
7	Submission from the Law Society of the Cape of Good Hope, 11 April 2014. The submission outlines some concerns faced by criminal law practitioners with the police in Khayelitsha.	Record Bundle 12(5)

Appendix B

Index to transcripts

Phase One

Date	Name and statement location	Evidence	Page
Thursday 23 January 2014	Opening statements <ul style="list-style-type: none"> Commissioners Evidence leaders (Sidaki) LRC (Mayosi) DOCS (Osborne) City of Cape Town (Katz) Motsohi SAPS (Arendse) Discussion on rules Opening Statement Women's Legal Centre (De la Hunt)		4 – 11 12 – 17 17 – 28 28 – 33 33 – 38 38 – 41 41 – 57 57 – 73 73 – 75
Thursday 23 January 2014	1. Mr Bhekithemba Simelane, <i>Statement No 8</i> [Department of Community Safety] Exhibits: 'Khayelitsha Areas known by Different Local Names, Bundle 8(8), Item 1.	Evid in chief (Bawa) Cross (Arendse) Re-exam (Bawa) Discussion on evidentiary rules	75 – 84 84 – 95 96 – 107
	2. Mr Derrick Mtsolo, <i>No. 33 [Bundle 1: 1a][Community member]</i>	Evid in chief (Sidaki) Cross (Arendse) Cross (Osborne)	107 – 118 119 – 132 132 – 138
Friday 24 January 2014	3. Ms Nomakhuma Bontshi, (PB) 66a [Bundle 1: 1a] [Community member]	Evid in chief (Sidaki) Cross (Arendse) (Commissioner)	140 – 156 156 – 162 162 – 164
	4. Mr Mbulelo Nteza, (MN), 66b [Bundle 1: 1a] [Community member]		
	5. Ms Nandipha Ntsholo, (NN), 66 [Bundle 1: 1a] [Community member]		
	6. Mr Mzoxolo Tame (MT), 64 [Bundle 1: 1a] [Community member]	Chief (Sidaki) Cross (Arendse) Commissioner Re-exam	166 – 177 178 – 179 179 – 180 180
	7. Ms Josette Cole (Report 9 a and 9b, Bundle 7(1), File H) [Expert on the history of Khayelitsha] Exhibits: JC 1 – 'The Making and Reimagining of Khayelitsha', Bundle 8(8), Item 2.	Chief (Bawa) Cross (Arendse) Re-exam	184 – 207 207 – 225 225 – 228
	8. Ms Phumeza Mlungwana, <i>Statement No 30 (plus annexures) (Bundle 1: 5 File E)</i> [Part heard] [Community member and staff member of Social Justice Coalition]	Chief (Mayosi) Cross (Sidaki) Re-exam	228 – 262 263 – 271 271
Monday 27 January	9. Nomamerika Simelela (NS), <i>Statement No 2 (Bundle 2 :4)</i> [Community member]	Discussion on evidence Evid in Chief (Motshohi)	273 – 296 296 – 315
	10. Mayedwa Simelela (MS), <i>Statement No 1 (Bundle 2 :4)</i> [Community member]	Cross (Masuku) Cross (Sidaki) Re-exam	315 – 323 323 – 326 326 – 329
	11. Zolani Magadla (ZM), <i>Statement No 3 (Bundle 2 :4)</i> [Community member]	In chief (Motshohi) Examination cont. (Motshohi) Cross (Arendse) Cross (Sidaki)	329 – 332 427 – 437 438 – 449 449 – 451
	12. Professor Charles Simkins, <i>Statement No 2 (Bundle 4:1(Expert Reports))</i> [Expert – demographics]	In chief (Bawa) Commissioners	332 – 349 350 – 357
	13. <i>Professor Jeremy Seekings Report No 5 (Expert Reports) Bundle 5(1); item 5a and 5 b, Bundle 8(1).</i> [Expert – Socio Economics] Exhibit: JS 1, JS2, JS3, JS4 – 'Presentation to the Khayelitsha Commission of Inquiry', Bundle 8(8), Item 3, 3a, 3b and 3c.	In chief (Bawa) Cross (Arendse) Re-exam Commissioner	358 – 388 388 – 419 420 – 424 422 – 424
Tuesday 28 January	14. Funeka Soldaat (FS), <i>Statement No 84 (Bundle 2:1.1)</i> [Community member and founder of Free Gender]	In chief (Bawa) Cross (Arendse) Commissioner	452 – 469 469 – 486 486 – 490
	15. Madoda Mahlutshana (MM), <i>Statement No.7, (Bundle 1:1a)</i> [Community member]	Chief (Sidaki) Cross (Masuku) Re-exam	490 – 504 504 – 508 508 – 509

Date	Name and statement location	Evidence	Page
	16. Xolela Mjonondwana (XM), <i>Statement No 31, (Bundle 1:1a)</i> [Community member]	Chief (Sidaki) Cross (Masuku) Commissioner	509 – 524 524 – 532 532 – 533
	17. Malwande Msongelwa (MM), <i>Statement No 18 (Bundle 2.5)</i> [Community member]	Chief (Mayosi) Arendse comments Cross (Bawa)	534 – 551 551 – 552 553
	18. Nontembeko Nduna (NN), <i>Statement No 22 (Bundle 2(5))</i> [Community member]	Chief (Mayosi) Arendse comments Cross (Bawa)	554 – 577 577 – 578 578 – 581
Wednesday 29 January	19. Dr Genine Josias, <i>Statement No 53, (Bundle 1:1a)</i> [Medical doctor from Thuthuzela Care Centre dealing with victims of sexual and family violence] Exhibits: GJ1 – Bundle 8(8), Item 6	Evidentiary issues Chief (Sidaki) Cross (Arendse) Cross (Hathorn) Commissioner Re-exam	582 – 593 593 – 707 707 – 735 736 – 742 742 – 746 746 – 755
Thursday 30 January	20. Yoliswa Dwane, <i>Statement No 38 Bundle 1:5 (File E)</i> [Staff member of Social Justice Coalition]	Chief (Mayosi) Cross (Arendse) Commissioner	756 – 784 784 – 793 793 – 794
	21. Dr Debbie Kaminer, <i>Statement No 3 (Bundle 4:1(Expert Reports))</i> [Expert on impact of violence on children] Exhibit: DK 1 – bundle 8(8), item 4.	Chief (Sidaki) Cross (Masuku) Re-exam (Sidaki) Commissioner	796 – 819 819 – 824 824 824 – 826
	22. Dr David Harrison, <i>Statement No 1 (Bundle 4:1 (Expert Reports))</i>	Chief (Sidaki) Cross (Masuku) Commissioner	828 – 843 843 – 844 844 – 845
	23. Vuyiswa Mpekweni, VSM, <i>Statement No 47 (Bundle 1:1a)</i> [Community member]	Chief (Sidaki)	845 – 858
	24. Beauty Thosholo, BT, <i>Statement No 49 (Bundle 1:1a) and 49a (Bundle 2:1.1)</i> [Community member]	Chief (Sidaki) Arendse (no questions)	859 – 888 888
	25. Nomfanekiso Ntsilane (NN), <i>Statement No 54 (Bundle 1:1a)</i> [Community member]	Chief (Sidaki)	891 – 897
Friday 31 January 2014	■ Cross examination of Phumeza Mlungwana, <i>Statement No 30 (plus annexures) (Bundle 1: 5 File E)</i>	Cross (Arendse) Re-exam (Mayosi) Commissioners	902 – 922 922 – 923 923 – 927
	26. Patrick Burton, CJCP, Report No. 7 (Bundle 6(1)), and Reports 7.1, 7.2, and 7.3 (Bundle 7(1)) [Expert reporting on focus group study on experience of police in Khayelitsha] Exhibits: PB1 – Bundle 8(8), Item 5.	Chief (Sidaki) Cross (Masuku) Re-exam Commissioners	928 – 949 949 – 959 959 – 961 961 – 966
	27. Sonja Basson (SB), <i>Statement No 5 (Bundle 1:1a)</i> [Staff member at Homestead place of safety for children]	Chief (Sidaki) Cross (Masuku) Commissioners	967 – 999 999 – 1012 1012 – 1014
	28. Nokuzola Ncaphancapha (NN), <i>Statement No 55 (Bundle 1:1a)</i> [Community member]	Chief (Sidaki) Cross (Masuku) Re-exam Commissioners	1015 – 1033 1034 – 1048 1048 – 1050 1050 – 1058
	29. Pule Hendricks (PH), <i>Statement No 1.(Bundle 7(6))</i> [Person associated with vigilante violence]	Chief (Sidaki) Cross (Arendse)	1061 – 1072 1073
Monday 3 February	30. Kevin Richard Jones, <i>[Bundle 4(1), Specialists affidavit No 5]</i> [Deputy Director: Metro District Manager, FPS in the Western Cape Department of Health]	Discussion on evidence Chief (Bawa) Cross (Arendse) Commissioners	1076 – 1081 1082 – 1093 1093 – 1099 1099 – 1104
	31. Ms Vonita Thompson COI, <i>[Specialist Affidavits, Item 3, Bundle 2(1.2)]</i> [Director, Forensic Pathology Services]	Chief – Thompson (Bawa) Chief- Wadee (Bawa) Cross (Mayosi) Cross (Arendse)	1104 – 1122 1122 – 1136 1137 – 1150 1150 – 1161
	32. Dr Shabbir Wadee, [COI, <i>Specialist Affidavits, Item 7: Bundle 4(1)</i>] [Forensic Pathologist and Head of the Division of Forensic Medicine, Department of Pathology, Faculty of Medicine, University of Stellenbosch]	Cross (Masuku) Bawa Commissioners	1161 – 1164 1165 – 1166 1166 – 1173

Date	Name and statement location	Evidence	Page
	33. Ms Jean Redpath, [COI, <i>Expert Affidavit 10, Bundle 7(1); 10a and 10b of Bundle 8(1.2)</i>] [Expert on crime statistics and resource allocation]	Chief (Sidaki) Cross (Arendse) Commissioners Bawa Commissioners Arendse	1173 – 1209 1209 – 1226 1226 – 1228 1228 – 1229 1229 – 1233 1232 – 1234
	34. Patrick Njozela, Statement No 6 (<i>Bundle 4:1 (specialist statements)</i>) (part heard) [Head of the Policing Complaints Directorate, DOCS]	Chief (Bawa)	1236 – 1266
Tuesday 4 February 2014	■ Patrick Njozela, Statement No 6 (<i>Bundle 4:1 (specialist statements)</i>) (cross examination) Exhibits: N 3a, Bundle 9(6), Item 12	Cross (Mayosi) Cross (Masuku) Commissioners	1269 – 1276 1277 – 1301 1302 – 1303
	35. Ms Vicki Igglesden, [<i>Expert Report 6, Bundle 6(1)</i>] [Expert on experiences of foreigners in Khayelitsha]	Chief (Sidaki) Cross (Hathorn) Cross (Masuku) Commissioners	1304 – 1322 1322 – 1323 1323 – 1331 1331 – 1333
	36. Mr Chumile Sali, [<i>Specialist Affidavit 11, Bundle 7(1)</i>] [Former CPF member] Exhibit: CS1, Bundle 9(6), item 16	Chief (Sidaki) Cross (Hathorn) Cross (Masuku) Cross (Adhikari) Masuku Commissioners	1334 – 1363 1363 – 1367 1367 – 1375 1376 – 1378 1379 1380 – 1386
	37. Mr Hanif Loonat, [<i>Specialist Affidavit 2, Bundle 2(1.2)</i>] [Former chair of provincial CPB] Exhibit: HL1, Bundle 10(3), Item 17.	Chief (Bawa) Cross (Adhikari) Cross (Arendse) Re-exam Commissioners	1393 – 1435 1436 – 1446 1446 – 1468 1469 – 1470 1470 – 1472
	38. Mr Faisal Abrahms [<i>Specialist Affidavit 1, Bundle 2 (1.2)</i>] [Former member of the provincial CPB]		
Wednesday 5 February 2014	39. Mr Thabo Leholo, [<i>IPID Documents, File 11, Item 4, Bundle 7(8)</i>] [Acting Head of IPID in Western Cape]	Chief (Bawa) Cross (Hathorn) Cross (Masuku) Bawa Hathorn Commissioners	1477 – 1530 1531 – 1565 1565 – 1574 1574 – 1579 1580 – 1588 1588 – 1590
	40. Dr Gilbert Lawrence, [<i>DOCS documents, File 13, Location: Bundle 2(3)</i>] (part heard) [Head of the Department of Community Safety] Exhibits: GL 1, GL2, GL3, Bundle 9(6), items 7, 8, 9.	Chief (Osborne) Cross (Hathorn) Cross (Arendse) Cross (Bawa)	1591 – 1650 1650 – 1668 1668 – 1717 1718 – 1741
Thursday 6 February 2014	■ Dr Gilbert Lawrence, [<i>DOCS documents, File 13, Location: Bundle 2(3)</i>] (continued) Exhibits: GL 1, GL2, GL3, Bundle 9(6), items 7, 8, 9.	Cross (Bawa) Commissioners Re-exam	1742 – 1788 1788 – 1791 1792 – 1804
	Interlocutory discussion		1806 – 1812
	41. Ms Rochelle Harmse, (<i>Report 13, Bundle 8(1.3)</i>) [Senior Public Prosecutor, Khayelitsha Magistrates Court] Exhibits: RH1, Bundle 9(6), items 10a – 10h	Chief (Sidaki) Commissioners Cross (Hathorn) Cross (Arendse) Commissioners	1813 – 1869 1871 – 1873 1873 – 1889 1889 – 1899 1900
	42. Mr Richard Bosman, [<i>City of Cape Town Documents, File 8, Item 1, Bundle 4(2)</i>] [Head of the Directorate of Safety and Security (metro police)] Exhibits: RB1, RB2, RB3 Bundle 9(6), items, 13, 14 and 15.	Chief (Katz) Cross (Bawa) Cross (Hathorn) Cross (Masuku) Commissioners Bawa Katz	1901 – 1941 1941 – 1984 1984 – 1997 1997 – 2000 2000 – 2008 2008 – 2011 2011 – 2013
Friday 7 February 2014	43. Sifiso Zitwana (SZ) (72) <i>LRC File H, Redacted Community affidavits, Item 72, Bundle 2(5)</i> [Community member and organisational member]	Chief (Mayosi) Cross (Masuku) Re-exam	2022 – 2049 2049 – 2059 2059 – 2080
	44. Themani Gqeku TG (No. 5 (<i>Bundle 2(5)</i>)) [Community member]	Chief (Mayosi)	2061 – 2077
	Interlocutory discussion		2078 – 2080
	45. Welcome Makele (WPM) <i>LRC File H, Redacted Community affidavits, Item 66, Bundle 2(5); also WPM [(No 9) Bundle 2(5)]</i> [Community member and organisational member]	Chief (Mayosi) Cross (Masuku) Cross (Sidaki)	2081 – 2101 2102 – 2107 2108 – 2119
	46. Professor Lillian Artz (<i>LRC File E, Organisational statements, Item 40, Bundle 1(5)</i>) [Expert on implementation of domestic violence protocols] Exhibits: LA1, Bundle 9(6), Item 11.	Chief (Mayosi) Cross (Arendse) Cross (Bawa) Commissioners Arendse	2120 – 2161 2161 – 2170 2171 – 2184 2184 – 2187 2187 – 2190

Date	Name and statement location	Evidence	Page
Monday 10 February 2014	47. Mr Glenn Schooling and Mr Martin Leamy [<i>Report 1, Bundle 9(1.1)</i>] [Analysis of SAPS documentation] Exhibits: GS1, Bundle 10(3), item 38.	Chief (Bawa) Commissioners Cross (Hathorn) Cross (Arendse) Re-Exam(Bawa)	2198 – 2288 2288 – 2290 2290 – 2314 2314 – 2343 2343 – 2351
	48. Mr Zackie Achmat, [<i>Statement 45, Bundle 8(3)</i>] [Staff member of Ndifuna Ukwazi]	Chief (Hathorn) Cross (Bawa) Cross (Arendse)	2351 – 2389 2389 – 2392 2393 – 2407
Tuesday 11 February 2014	49. Mr Joel Bregman [<i>Statement 2, File D, Bundle 1(5); Statement 41, File F, Bundle 2(5); Statement 41A, Bundle 9(2)</i>] [Staff member of Social Justice Coalition] Exhibits: JB1 – JB 6, Bundle 10(3), Items 18 – 23.	Chief (Hathorn) Cross (Bawa) Cross (Arendse) Commissioners Re-exam (Hathorn)	2411 – 2439 2439 – 2446 3447 – 2463 2464 – 2465 2465 – 2470
	50. Ms Lisa Vetten, [<i>Statement 5 (Bundle 7(7), and Statement 5a (Bundle 8(6))</i>] [Expert on gender based violence and the criminal justice process]	Chief (De La Hunt) Cross (Bawa) Cross (Arendse)	2471 – 2516 2517 – 2521 2521 – 2526
	51. Mr Kevin Cole, (<i>Statement No 2, File 8, Bundle 8(5)</i>), sitting with Mr Möller [City CCTV cameras]	Chief (Mr Katz) Cross (Bawa) Commissioners Cross (Mayosi) Cross (Arendse) Re-exam (Katz) Commissioners	2527 – 2539 2539 – 2545 2545 – 2547 2547 – 2548 2548 – 2554 2554 – 2559 2560 – 2564
	52. Mr Phumzile Papu, (Report 10, Bundle 7(1(G)) Specialist Statements), sitting with Mr Dexter Timm (report No 14, Bundle 9(1.3) Specialist Statements); item 14a, Bundle 13(1)(1.6)). [Emergency medical services]	Chief (Bawa) Cross (Arendse) Commissioners	2564 – 2588 2588 – 2596
	53. Dr Kelly Gillespie (Report No 8, Bundle 6(1) Expert Reports) [Expert on vigilante violence]	Chief (Sidaki) Cross (Mayosi) Cross (Arendse) Commissioners	2597 – 2631 2631 – 2638 2638 – 2645 2645 – 2648
	54. Mr Magnus Persson (Statement No 76, Bundle 7(11)) [Intern at Social Justice Coalition]	Chief (Mayosi) House Keeping	2648 – 2659 2660 – 2666
	55. Mr Bonisile Busakwe (Statement 90, Bundle 9(1.2)) [CPF chair and community member]	Chief (Bawa) Cross (Masuku) Cross (Mayosi) Commissioners	2668 – 2682 2683 – 2702 2702 – 2717 2717 – 2723
Wednesday 12 February 2014	56. Mr Chris Giles, (Statement No 44, Bundle 8(3)) [Violence Prevention through Urban Upgrading (VPUU)] Exhibits: CG1, Bundle 10(3), item 37.	Chief (Mayosi) Cross (Bawa) Cross (Arendse) Commissioners Cross (Bawa)	2724 – 2745 2745 – 2749 2749 – 2753 2753 – 2759 2759 – 2763
	57. Mr Sipho Jafta (Statement 91, Bundle 9 (1.2)) [CPF chairperson]	Chief (Sidaki) Cross (Mayosi) Cross (Arendse) Commissioners	2764 – 2794 2794 – 2800 2801 – 2814 2814 – 2821
	58. Ms Nontutuzelo Thersia Mtwana, (Statement 43, Bundle 8(3))(part heard) [Violence Prevention through Urban Upgrading (VPUU)]	Chief (Mayosi) Cross (Sidaki) Commissioners – House keeping	2822 – 2855 2855 – 2862 2863 – 2866
Thursday 13 February	59. Colonel Reitz, Station Commissioner, Lingeletu West, (Statement 1, File 1 (SAPS Statements, Bundle 5(4)) (part heard) Exhibits: MR1-MR8, Bundle 10(3), items 24 – 30a.	Chief (Arendse) Commissioners Cross (Bawa)	2867 – 3019 3019 – 3020 3020 – 3085
Friday 14 February	■ Colonel Reitz, Station Commissioner, Lingeletu West, (Statement 1, File 1 (SAPS Statements, Bundle 5(4)) (continued) Exhibits: MR1-MR8, Bundle 10(3), items 24 – 30a.	Cross (Bawa) Cross (Hathorn) Commissioners Re exam (Arendse)	3086 – 3175 3176 – 3223 3224 – 3235 3235 – 3249
	60. Lieutenant Colonel Swart, Head of Detectives, Lingeletu West [<i>Statement 22, Bundle 10(2.2)</i>](part heard) Exhibits: BAS3, BAS4, Bundle 10(3), items 31 and 32.	Chief (Masuku)	3249 – 3325

Date	Name and statement location	Evidence	Page
Monday 17 February 2014	<ul style="list-style-type: none"> ■ Lieutenant Colonel Swart, Head of Detectives, Lingeletu West [Statement 21, Bundle 10(2.2)] (continued) 	House Keeping Chief(Masuku) Cross (Arendse) Cross (Sidaki) Cross (Mayosi) Re exam (Arendse) Commissioners	3326 – 3328 3328 – 3347 3347 – 3371 3371 – 3429 3429 – 3457 3458 – 3468 3468 – 3471
	61. Brigadier Zithulele Moses Dladla, Site B Commander, Khayelitsha, (Statement 9, File 3 (SAPS Statements, Bundle 5(4)))	Chief (Arendse)	3472 – 3554
Tuesday 18 February 2014	<ul style="list-style-type: none"> ■ Brigadier Zithulele Moses Dladla, Site B Commander, Khayelitsha, (Statement 9, File 3 (SAPS Statements, Bundle 5(4)) (continued) 	Chief (Arendse) Cross (Bawa) Commissioners Cross (Mayosi)	3556 – 3576 3576 – 3720 3720 – 3724 3724 – 3772
Wednesday 19 February 2014	<ul style="list-style-type: none"> ■ Brigadier Zithulele Moses Dladla, Site B Commander, Khayelitsha, (Statement 9, File 3 (SAPS Statements, Bundle 5(4)) (continued) 	Cross (Mayosi) Re exam (Arendse) Commissioners Housekeeping	3773 – 3805 3806 – 3819 3819 – 3824 3824 – 3828
	62. Col Marais, SAPS, Head of Detectives, Khayelitsha Police station Exhibits: JM1 – JM4, Bundle 10(3), items 33 – 36. JM5, Bundle 12(2), Item 36A.	Chief (Masuku) Cross (Sidaki) Cross (Mayosi) Re exam (Masuku)	3829 – 3935 3935 – 3996 3997 – 4028 4028 – 4030
Thursday 20 February 2014	<ul style="list-style-type: none"> ■ Ms Nontutuzelo Thersia Mtwana, (Statement 43, Bundle 8(3))(continued) 	Cross (Masuku) Re-exam (Mayosi)	4032 – 4045 4045 – 4047
	63. Captain Dhanabalan Pillay [Statement No 22, Bundle 10(2.2)] [Court liaison officer, Khayelitsha Magistrates Court] Exhibits: DP1, D2a, b, c, DP 3a, DP3b, DP4, Bundle 10(3), items 39 – 43.	Exam in chief (Arendse) Cross (Sidaki) Cross (Gerber) Cross (Mayosi) Commissioners Re-exam	4048 – 4095 4095 – 4140 4140 – 4163 4163 – 4165 4165 – 4169 4169 – 4176
	64. Mr Bubele kaBeja ((Statement 17, File 8, Bundle 5(4) (unsigned); Statement 89 (Bundle 9(1.2))), sitting with Mr Ndithini Tyhido [Khayelitsha Development Forum (KDF)]	Exam in chief (Masuku) Cross (Sidaki) Cross (Hathorn) Re-exam Commissioners	4177 – 4221 4221 – 4243 4243 – 4251 4251 – 4258 4258 – 4262
	65. Mr Bongani Siko, (Statement 19, File 8, Bundle 5(4)) [CPF Chairperson]	Exam in Chief (Masuku)	4265 – 4298
Friday 21 February 2014	66. Mr Justin Du Toit, Mthenhe Research and Consultancy Services [Report No 11, Bundle 10(1.1)], sitting with Ms Kate Lefko-Everett [Reporting on community survey commissioned by the Commission on experience of crime and policing in Khayelitsha]	Exam in chief (Sidaki) Cross (Arendse) Re –exam (Sidaki) Commissioner	4299 – 4313 4313 – 4328 4328 – 4329 4329 – 4331
	67. Col Andrew Tobias [Statement handed to Commission on 21 February 2014, Statement 23 (SAPS statements, Bundle 11)] (part heard) [Head of Detectives, Harare police station]	Evid in chief (Arendse) Cross (Hathorn)	4332 – 4416 4416 – 4509
Monday 17 March 2014	<ul style="list-style-type: none"> ■ Continuation of cross examination of Col Andrew Tobias [Statement handed to Commission on 21 February 2014, Statement 23 (SAPS statements, Bundle 11)] (part heard) Exhibits: AT1, AT2, Bundle 12(2), items 96 and 97. 	Cross (Sidaki) Re-exam (Arendse)	4516 – 4590 4592 – 4611
	68. Col Gert Petrus Nel (former Station Commander of Harare)(Statement 24(SAPS statements, Bundle 11), sitting with Col Tshotleho Joseph Raboliba (current Station Commander of Harare police station) (Statement 3, File 1, Bundle 5(4)) Exhibits: TR1, TR2, TR2a, TR3, TR4, TR5, Bundle 11(5), Items 45 – 50. GN1, Bundle 11(5), item 51.	Exam in chief (Arendse)	4612 – 4727
Tuesday 18 March 2014	<ul style="list-style-type: none"> ■ Continuation of cross examination of Col Gert Petrus Nel (Former Station Commander of Harare) (Statement 24(SAPS statements, Bundle 11), sitting with Col Tshotleho Joseph Raboliba (Current Station Commander of Harare police station) (statement 3, File 1, Bundle 5(4)) 	Cross (Bawa) Cross (Hathorn) Further Cross (Bawa) Re-exam	4730 – 4809 4809 – 4843 4844 4845 – 4859

Date	Name and statement location	Evidence	Page
	69. Brigadier Hermias van Zyl, Head of Inspections, Inspectorate, South African Police Service (<i>Statement No. 24, Bundle 11</i>)	Exam in chief (Masuku) Cross (Bawa) Cross (Hathorn) Further questions by Bawa Re-exam	4859 – 4894 4894 – 4915 4915 – 4936 4936 – 4940 4940 – 4947
	70. Brigadier Nkoshilo Hosiah Seimela, Crime Research and Statistics component, SAPS (<i>Statement 12, File 5, Bundle 5(4)</i>)	Exam in chief (Arendse) Cross (Mayosi) Cross (Sidaki) Re-exam	4948 – 4967 4967 – 4977 4977 – 4982 4982 – 4986
Monday 24 March 2014	71. Colonel Alma Wiese, Cluster Detective Coordinator (<i>Statement 40, File 4, Bundle 5(4)</i>) Exhibits: Aw1, AW2, Bundle 11(5), items 52 – 53.	Exam in chief (Arendse) Cross (Sidaki) Cross (Mayosi) Re-exam	4988 – 5039 5039 – 5069 5070 – 5098 5098 – 5102
	■ Continuation Cross examination of Bongani Siko, (<i>Statement 19, File 8, Bundle 5(4)</i>) [Chairperson of the Khayelitsha Community Police Forum]	Cross (Hathorn) Cross (Sidaki)	5103 – 5109 5110 – 5115
	72. Brigadier Aaron Mlenga, former station commissioner at Khayelitsha Police station (<i>Statement 27, Bundle 11 (3.1)</i>), sitting with Major General Goss, former Cluster Commander at Khayelitsha. Exhibits: AM1, AM2, Bundle 11(5), Items 54 – 55.	Exam in chief (Masuku) Cross (Hathorn) Cross (Bawa) Re-exam	5116 – 5157 5157 – 5185 5186 – 5218 5218 – 5224
Tuesday 25 March 2014	73. Brigadier Leon Rabie, Section Head, Performance Measurement, Organisational Development, SAPS Head Office (<i>Statement 13, File 6, Bundle 5(4)</i>) Exhibits: LR1A, LR1B, LR2, LR3, LR4, LR, 5, LR6, LR7, LR8(1)(2)(3), Bundle 11(5), items 56 – 66.	Exam in chief (Arendse) Cross (Bawa) Cross (Bishop) Re-exam	5226 – 5299 5299 – 5359 5360 – 5391 5391 – 5401
	74. Major General Burger, Deputy Provincial Commissioner of SAPS, Human Resource Management (<i>Statement 4, File 2, Bundle 5(4)</i>)	Exam in chief (Arendse) Cross (Bawa) Cross (Mayosi) Commissioners Re-exam	5401 – 5432 5432 – 5471 5472 – 5498 5498 – 5501 5501 – 5503
Wednesday 26 March 2014	75. Major General Reneé Fick, Deputy Provincial Commissioner Physical Resource Management (<i>Statement No 11, File 5, Bundle 5(4)</i>). Exhibits: RF1, Bundle 11(5), Item 67.	Evidence in chief (Masuku) Commissioners Cross exam (Bawa) Cross (Bishop) Commissioners Re-exam	5505 – 5537 5537 – 5540 5540 – 5565 5565 – 5585 5585 – 5593 5593 – 5594
	76. Brigadier Hyram Heilbron, Provincial Head: Organisational Development and Strategic Management. (<i>Statement 26, Bundle 11(3.1)</i>).	Examination in chief (Arendse) Cross exam (Bawa) Cross exam (Bishop)	5594 – 5653 5653 – 5708 5708 – 5743
	77. Colonel Gideon Francois Vermeulen, Provincial Office, responsible for performance management (<i>Statement 6, File 3, Bundle 5(4)</i>). Exhibits: GV1 – 4, Bundle 11(5), items 68 – 71. GV5, Bundle 12(2), Item 71A.	Commissioners Re-exam	5743 – 5749 5750 – 5763
Thursday 27 March 2014	78. Colonel Sonja Harri, Provincial Commander Family Violence, Child Protection and Sexual Offences Unit (FCS) (<i>Statement No 8, File 3, Bundle 5(4)</i>). Exhibits: SH1, Bundle 11(5), item 72.	Evidence in chief (Arendse) Cross (Sidaki) commissioners Cross (Mayosi) Commissioners Re-exam Commissioners	5765 – 5815 5815 – 5850 5850 – 5852 5852 – 5871 5871 – 5872 5873 – 5876 5876 – 5878
	79. Major General Molo, from the Provincial Office, responsible for detectives in the Province (<i>Statement No 20, File 9, Bundle 8(4.4)</i>).	Evidence in chief (Masuku) Cross (Sidaki) Cross (Hathorn) Re-exam	5880 – 5908 5908 – 5947 5948 – 5987 5988 – 5992
	80. Mr Mhleli Mgxaji, (<i>Statement No 16, File 8, Bundle 5(4)</i>). [Khayelitsha Cluster Chairperson]	Questions (Bawa)	5993 – 6005

Date	Name and statement location	Evidence	Page
Friday 28 March 2014	81. Major General Peter Anthony Jacobs, Deputy Provincial Commissioner responsible for Crime Intelligence. Formerly responsible for Operations. (<i>Statement 5, File 3, Bundle 5(4)</i>)	Evidence in chief (Masuku) Cross (Hathorn) Cross (Osborne) Cross (Bawa) Commissioners Re-exam (Masuku)	6007 – 6086 6086 – 6134 6134 – 6160 6161 – 6241 6241 – 6245 6245 – 6255
Monday 31 March 2014	82. Major General Jephta, Deputy Provincial Commissioner, Operations Officer (<i>File 3, Bundle 5(4)</i>). Exhibits: SJ1 – 12, Bundle 11(5), Items 73 – 84.	Evid in chief (Arendse) Cross (Mayosi) Cross (Osborne) Cross (Bawa) Commissioners Re-exam	6256 – 6339 6339 – 6373 6373 – 6401 6402 – 6470 6470 – 6476 6476 – 6484
Tuesday 1 April 2014	83. Lieutenant General Arno Lamoer, Provincial Commissioner, SAPS Western Cape (Statement Bundle 8(4)(4.4)(3), Item 15, and Bundle 5(4)(7), Item 15.) Exhibits: AL 1 – 11, Bundle 11(2), Items 85 – 95. Item 88 is to be found at Bundle 13(8).	Evid in chief (Arendse) Cross (Hathorn) Cross (Osborne) Cross (Katz) Cross (Bawa) Re-exam	6485 – 6570 6570 – 6633 6612 – 6633 6634 – 6638 6638 – 6714 6714 – 6737

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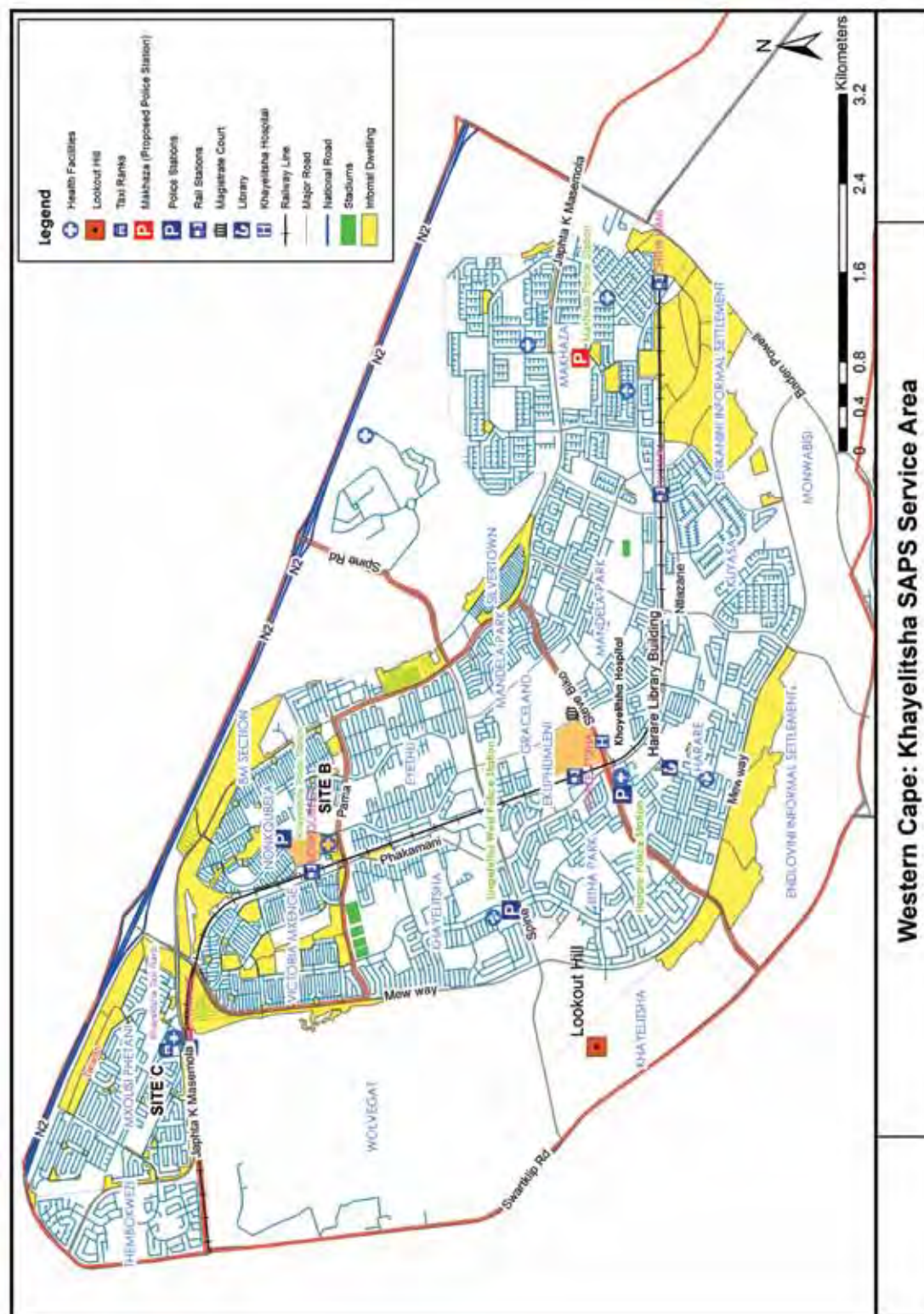
Date	Name and statement location	Evidence	Page
Monday 12 May 2013	84. Ms Jean Redpath (Bundle 12(1), statement 1a)	In Chief (Bawa) Cross (Bishop) Cross (Arendse) Re-exam	6744 – 6773 6774 – 6787 6787 – 6822 6822 – 6834
	85. Joy Fish and Johan Schlebusch (Bundle 12(1), statement 14, 14a)	In chief (Bawa) Cross (Bishop) Cross (Arendse) Re-exam	6835 – 6854 6854 – 6866 6866 – 6874 6874 – 6876
	86. Mr Thys Giliomee (Bundle 12(1), statement 13, 13a, 13b)	In Chief (Sidaki) Cross (Bishop) Cross (Masuku) Commissioner	6876 – 6888 6888 – 6894 6894 – 6905 6905 – 6909
	87. Dr Johan Burger (Bundle 12(1), Statement 9. Exhibits: JB1, Bundle 12(2), item 99)	In chief (Bawa) Cross (Hathorn) Cross (Masuku) Adv Pikoli Re-exam (Bawa) Commissioner	6910 – 6973 6973 – 6983 6984 – 7004 7004 – 7008 7008 – 7010 7011 – 7015
Tuesday 13 May 2014	88. Sean Tait (Bundle 12(1), Statement 19, 19a.)	In chief (Bishop) Cross (Bawa) Cross (Arendse) Re-exam (Bishop) Pikoli and Commissioner	7016 – 7046 7046 – 7059 7059 – 7079 7079 7082 – 7083
	89. Jan Swart (Bundle 12(1). Statement 23, 23a, 23b, 23c)	IN chief (Sidaki) Cross (Hathorn) Gerber (in explanation) Cross (Masuku) Commissioners	7083 – 7103 7103 – 7115 7116 7117 – 7127 7127 – 7129
	90. Dr Chris De Kock (Bundle 12(1). Statement 15, 15a, 15b, 15c. Supplementary Statement 15d (Bundle 13(9)). Exhibits: CDK1, Bundle 12(2), item 98.	In chief (Bishop) Cross (Bawa) Cross (Masuku) Re-exam (Bishop)	7130 – 7163 7164 – 7179 7179 – 7208 7208 – 7212
	91. Professor Cathy Ward (Bundle 12(1), Statement 8)	In Chief (Sidaki) Cross (Mayosi) Cross (Masuku)	7213 – 7224 7224 – 7232 7233 – 7235
	92. Dr Klatzow (Bundle 12(1), Statement 17, 17a, 17b, 17c)	In chief (Hathorn) Cross (Bawa) Cross (Arendse) Pikoli	7236 – 7262 7262 – 7267 7267 – 7275 7277 – 7279
Wednesday 14 May 2014	93. Dr Lisa Grobler (Bundle 12(1). Statement 11a (revised version with references)	In Chief (Bishop) Cross (Sidaki) Cross (Masuku) Re-exam (Bishop) Pikoli	7280 – 7308 7308 – 7315 7316 – 7328 7328 – 7333 7333 – 7335

Date	Name and statement location	Evidence	Page
	94. Clare Ballard (Bundle 12(1). Statement 10)	In Chief (Bawa) Cross (Hathorn) Cross (Masuku) Re-exam (Bawa) Pikoli	7335 – 7356 7357 – 7369 7369 – 7378 7378 – 7381 7381 – 7383
	95. Lisa Vetten (Bundle 12(1), Statement 5.)	In Chief (Bornman) Cross (Mayosi) Cross (Sidaki) Cross (Arendse) Re-exam Pikoli	7383 – 7406 7406 – 7420 7420 – 7426 7426 – 7432 7433 7433 – 7434
	96. Professor Lillian Artz (Bundle 12(1), Statement No 16. Exhibits: LA1, Bundle 12(2), Item 100.	In chief (Mayosi) Cross (Sidaki) (no questions) Cross (Arendse) Re-exam (Mayosi) Pikoli & Commissioner	7434 – 7454 7454 – 7454 – 7457 7457 – 7458 7458 – 7464
	97. Gareth Newham (Bundle 12(1), Statement 7) Exhibits: GN1, Bundle 12(2), Item 101	In Chief (Bawa) Cross (Bishop) Cross (Arendse) Re-exam (Bawa)	7464 – 7535 7535 – 7559 7559 – 7571 7571 – 7572
Thursday 15 May 2014	98. Nontutuzelo Mtwana (Bundle 12(1), Statement 20)	In Chief (Mayosi) Pikoli Cross (Sidaki) Cross (Arendse)	7575 – 7598 7599 – 7601 7601 – 7606 7607 – 7621
	99. Ms Julie Berg, Professor Cartwright, Mr Guy Lamb (Bundle 12(1), Statement 3)	In chief (Hathorn) Cross (Sidaki) Cross (Arendse) Commissioners	7622 – 7650 7650 – 7658 7658 – 7663 7664 – 7665
	100. Andy McLean (Bundle 12(1), Statement 25) Exhibits: AM1, Bundle 12(2), item 102.	In chief (Bawa) Cross (Mayosi) Cross (Arendse)	7665 – 7698 7698 – 7703 7703 – 7712
	101. Dr Barbara Holtmann (Bundle 12(1), Statement 12, 12a) Exhibits: BH1, Bundle 12(2), item, 103	In chief (Arendse) Cross (Hathorn) Cross (Bawa) Re-exam (Arendse)	7713 – 7754 7754 – 7760 7760 – 7770 7770 – 7772
	102. Professor Pumla Gobodo-Madikizela (Bundle 12(1), Statement 24) Exhibit: PGM1, Bundle 12(2), item 104.	In chief (Mayosi) Cross (Bawa) Cross (Arendse) Re-exam (Mayosi) Pikoli	7773 – 7800 7800 – 7808 7808 – 7816 7816 – 7817 7817 – 7820
Friday 16 May 2014	103. Dr Mulder van Eyk (Bundle 12(1), Statement 6, 6a-6k)	In Chief (Bawa) Cross (Bishop) Cross (Arendse) Re-exam (Bawa) Pikoli	7821 – 7861 7861 – 7872 7872 – 7879 7879 – 7881 7882 – 7884
	104. Dr Gail Super (Bundle 12(1), Statement 18)	In chief (Mayosi) Cross (Sidaki) Cross (Arendse) Pikoli	7885 – 7905 7906 – 7912 7912 – 7919 7920 – 7922
	105. Mr Horatio Huxham (Bundle 12(1), Statement 26)	In chief (Bawa) Cross (Mayosi) Cross (Arendse) Pikoli	7922 – 7954 7954 – 7959 7959 – 7961 7961 – 7962
	106. Andrew Faull (Bundle 12 (1), Statement 22)	In chief (Bawa) Commissioner Cross (Bishop) Commissioner Cross (Arendse) Commissioner	7964 – 7986 7986 – 7989 7989 – 8006 8006 – 8008 8008 – 8017 8018 – 8021
	107. Dr Jonny Steinberg (Bundle 12(1), Statement 2)	In chief (Hathorn) Cross (Bawa) Cross (Arendse) Pikoli Re-exam (Hathorn)	8021 – 8037 8037 – 8045 8046 – 8053 8054 – 8056 8057 – 8059

Appendix C

Maps of Khayelitsha

Appendix C1



APPENDIX D

Complaints submitted to Commission of Inquiry

Part A

The 'Original Complaints' submitted by the Complainant Organisations to the Premier of the Western Cape

No.	Name of complainant	Date of incident	Docket number	Location
Complaints contained in letter by the Women's Legal Centre on behalf of the complainant organisations to the Western Cape Provincial Executive, 28 November 2011				
1	Zoliswa Nkonyana	4 February 2006	(Task Team Report cites this as Khayelitsha CAS 216/ 2/2006; and Lingeletu West CAS 56/02/2006 Case No RCB 216/06; CAS No 56/02/06. <i>S v Lubabalo Ntlabati and Others</i> (the Zoliswa Nkonyana case) Judgment handed down in the matter of <i>S v Ntlabati and others</i> , Case RCB 216/06 (Zoliswa Nkonyana Matter)	Bundle 7(1) File A, Item 2a. Bundle 6(8), File 5, Item 2. Bundle 6(8), File 5, Item 2.
2.	Makhosandile "Scare" Qezo	1 May 2010	Khayelitsha CAS 8/5/2010	
3.	Minor in Taiwan, Khayelitsha	8 April 2010	Khayelitsha CAS 126/04/2010	Bundle 7(4.2), Khayelitsha dockets, Item 9, pp 291 – 388
4.	Adelaide Ngongwana	3 October 2010	Khayelitsha CAS 115/10/2010 116/10/2010	Bundle 7(4.2), Khayelitsha dockets, item 12, pp 439 – 449 item 13, pp 450 – 462)
5.	Angy Peter	3 October 2013	Khayelitsha CAS 117/10/2010	
6.	Nandipha Makeke	2005	Harare CAS 692/12/2005	Bundle 7(4.2), Lingeletu West docket, item 33, pp 462 – 628
7.	Lorna Mlofana	13 December 2003	Khayelitsha CAS 1587/12/2003	Bundle 7(4.2), Khayelitsha dockets, item 56, pp 1499 – 1776
8	Nokuzola Mantshantsha	11 January 2011		
Additional complaints referred to in subsequent memoranda of the complainants				
9.	Minor in Harare, Khayelitsha	Docket opened 13 February 2010, Harare		
10.	Madam Xholi:		Lingeletu West CAS 594/05/2012	
11	Thandokaze Njamela (shooting at a tavern)		Khayelitsha CAS: 830/12/2009	Bundle 7(4.2), Khayelitsha dockets, item 6, pp 140 – 181
12	Malwande Msongwela		Khayelitsha CAS 45/12/2011	
13	Mandisa Inkonde		Khayelitsha CAS 177/06/2008	
14	Anonymous (46) raped by husband	5 April 2012	Khayelitsha CAS 279/04/2012	Bundle 7(4.2), Khayelitsha dockets, item 28, pp 802 – 823
15	Shooting in the tavern where two people were fatally injured		Lingeletu West CAS 02/11/2010	
16	Nomonde Nakile		Khayelitsha CAS 825/07/2002	
17	Rape of 7 year old girl		Khayelitsha CAS 630/11/2010	
18	Anonymous assault	24 November 2009	Lingeletu west CAS 269/11/2009	

*Part B**Complaints – affidavits gathered by Commission of Inquiry*

No.	Initial	Date of statement	Ref No	Statement No	Location
1	RV	17.09.2012	12/09/01	1	Bundle 1:1(a)
2	FLM	20.09.2012	12/09/02	2A	Bundle 1:1(a)
3	FLM	02.11.2012	12/09/02B	2B	Bundle 1:1(a)
4	FLM	09.11.2012	12/09/02B	2C	Bundle 1:1(a)
5	SvL	21.09.2012	12/09/03	3	Bundle 1:1(a)
6	TFM	25.09.2012	12/09/04	4	Bundle 1:1(a)
7	PM	25.09.2012	12/09/04A (related to 12/09/04)	4A	Bundle 1:1(a)
8	SB	26.09.2012	12/09/05	5	Bundle 1:1(a)
9	SN	27.09.2012	12/09/06	6	Bundle 1:1(a)
10	MM	28.09.2012	12/09/07	7	Bundle 1:1(a)
11	NT	28.09.2012	12/09/08	8	Bundle 1:1(a)
12	NM	28.09.2012	12/09/09	9	Bundle 1:1(a)
13	LN	28.09.2012	12/09/10	10	Bundle 1:1(a)
14	MTM	29.09.2012	12/09/11	11	Bundle 1:1(a)
15	MN	02.10.2012	12/10/13A	13A	Bundle 1:1(a)
16	NGZ	01.10.2012	12/10/13	13	Bundle 1:1(a)
17	TD	04.10.2012	12/10/14	14	Bundle 1:1(a)
18	NB	04.10.2012	12/10/15	15	Bundle 1:1(a)
19	FD	04.10.2012	12/10/16	16	Bundle 1:1(a)
20	SM	05.10.2012	12/10/17	17	Bundle 1:1(a)
21	LM	05.10.2012	12/10/18	18	Bundle 1:1(a)
22	JN	08.10.2012	12/10/19	19	Bundle 1:1(a)
23	CK	08.10.2012	12/10/20	20	Bundle 1:1(a)
24	NSM	09.10.2012	12/10/21	21	Bundle 1:1(a)
25	BG	9 October 2012	12/10/22	22	Bundle 6(1)
26	RT	09.10.2012	12/10/23	23	Bundle 1:1(a)
27	SW	09.10.2012	12/10/26	26	Bundle 1:1(a)
28	AM	10.10.2012.	12/10/27	27	Bundle 1:1(a)
29	BN	10.10.2012	12/10/28	28	Bundle 1:1(a)
30	EM	15.10.2012	12/10/29	29	Bundle 1:1(a)
31	KGN	12 Feb 2013	12/10/29A	29A	Bundle 1:1(a)
32	SM	16.10.2012	12/10/30	30	Bundle 1:1(a)
33	XM	17.10.2012	12/10/31	31	Bundle 1:1(a)
34	DN	17.10.2012	12/10/32	32	Bundle 1:1(a)
35	DM	18.10.2012	12/10/33	33	Bundle 1:1(a)
36	MP	18.10.2012	12/10/34	34	Bundle 1:1(a)
37	LM	18.10.2012	12/10/35	35	Bundle 1:1(a)
38	MG	18.10.2012	12/10/36	36	Bundle 1:1(a)
39	SC	19.10.2012	12/10/37	37	Bundle 1:1(a)
40	MN	23.10.2012	12/10/38	38	Bundle 1:1(a)
41	LV	23.10.2012	12/10/39	39	Bundle 1:1(a)
42	NM	23.10.2012	12/10/40	40	Bundle 1:1(a)
43	BS	25/10/2012	12/10/41 Relates to statement No. 12/10/43	41	Bundle 1:1(a)
44	BD	25/10/2012	12/10/42	42	Bundle 1:1(a)
45	MTH	26/10/2012	12/10/43	43	Bundle 1:1(a)
46	ZL	26/10/2012	12/10/44	44	Bundle 1:1(a)
47	PC	29/10/2012	12/10/45	45	Bundle 1:1(a)
48	VSM	02/11/2012	12/10/47	47	Bundle 1:1(a)
49	KM	03/11/2012	12/10/48	48	Bundle 1:1(a)

No.	Initial	Date of statement	Ref No	Statement No	Location
50	BT	03/11/2012	12/10/49	49	Bundle 1:1(a)
51	BT, Supplementary Affidavit	03/12/2013	12/11/49	49a	Bundle 2(1.1)
52	XP	06/11/2012	12/11/50	50	Bundle 1:1(a)
53	AG	06/11/2012	12/11/51	51	Bundle 1:1(a)
54	AM	06/11/2012	12/11/52	52	Bundle 1:1(a)
55	NN	08/11/2012	12/11/54	54	Bundle 1:1(a)
56	NN	08/11/2012	12/11/55	55	Bundle 1:1(a)
57	BC	11/11/2012	12/11/56	56	Bundle 1:1(a)
58	LN	21/11/2012	12/11/57	57	Bundle 1:1(a)
59	MJ	12/02/2013	13/02/58	58	Bundle 1:1(a)
60	CM	12/02/2013	13/02/59	59	Bundle 1:1(a)
61	CS	12/02/2013	12/02/60	60	Bundle 1:1(a)
62	BS	16/2/2013	13/2/61	61	Bundle 1:1(a)
63	TK	23/02/2013	13/02/62	62	Bundle 1:1(a)
64	VG	23/02/2013	13/02/63	63	Bundle 1:1(a)
65	MT	22/02/2013	13/02/64	64	Bundle 1:1(a)
66	NJ	27/02/2013	13/02/65	65	Bundle 1:1(a)
67	NN	27/02/2013	13/02/66	66	Bundle 1:1(a)
68	PN	23/11/2013	13/02/66A	66A	Bundle 1:1(a)
69	MN	23/11/2013	13/02/66B	66B	Bundle 1:1(a)
70	KB	06/03/2013	13/03/68	68	Bundle 1:1(a)
71	SM	06/03/2013	13/03/69	69	Bundle 1:1(a)
72	MN	26/04/2013	13/4/70	70	Bundle 1:1(a)
73	NB	14/08/2013	13/8/71	71	Bundle 1:1(a)
74	BH	22/08/2013	13/8/72	72	Bundle 1:1(a)
75	SM	31/08/2013	13/8/73	73	Bundle 1:1(a)
76	MS	24/10/2013	13/10/74	74	Bundle 1:1(a)
77	MZI	11/11/2013	13/11/76	76	Bundle 1:1(a)
78	NS	21/11/2013	13/11/79	79	Bundle 2(1.1)
79	SJ	23/11/2013	13/11/80	80	Bundle 1:1(a)
80	MKN	23/11/2013	13/11/81	81	Bundle 1:1(a)
81	MN	23/11/2013	13/11/82	82	Bundle 1:1(a)
82	SB	23/11/2013	13/11/83	83	Bundle 1:1(a)
83	FS	11/12/2013	13/12/84	84	Bundle 2(1.1)
84	TN	28/01/2014	14/1/85	85	Bundle 8(1.1)
85	SP	29/01/2014	14/1/86	86	Bundle 8(1.1)
86	SN	31/01/2014	14 – 1 – 87	87	Bundle 8(1.1)
87	SS	21/01/2014	88/1/14	88	Bundle 9(1.2)
88	BB	07/02/2014	89/1/14	89	Bundle 9(1.2)
89	RBB	08/02/2014	90/2/2014	90	Bundle 9(1.2)
90	S J	08/02/2014	91/2/14	91	Bundle 9(1.2)
91	LS	11/02/2014	92/2/14	92	Bundle 10(1.2)
92	BEG	11/02/2014	94/2/14	93	Bundle 10(1.2)
93	PH	14/02/2014	94/2/14	94	Bundle 10(1.2)
94	ZV	16/02/2014	95/2/14	95	Bundle 10(1.2)
95	ZC	20/02/2014	96/4/14	96	Bundle 10(1.2)

Part C

Complaints submitted by the complainant organisations

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1.	NCB	Undated	1 – 7	Bundle 2(5)
2.	MMD	10/10/2012	8 – 18	Bundle 2(5)
3.	TF	Undated	19 – 23	Bundle 2(5)
4.	KG isiXhosa	09/10/2012	24 – 26	Bundle 2(5)
4.1.	KG translated			Bundle 2(5)
5.	TG	08/10/2012	27 – 31	Bundle 2(5)
6.	JG	11/10/2012	32 – 33	Bundle 2(5)
7.	IH	10/10/2012	34 – 37	Bundle 2(5)
8.	NM isiXhosa	08/10/2012	38 – 39	Bundle 2(5)
8.1	MN translated			Bundle 2(5)
9.	WPM	27/09/2012	40 – 42	Bundle 2(5)
10.	SM isiXhosa	Undated	43 – 44	Bundle 2(5)
10.1	SM translated			Bundle 2(5)
11.	NCM	27/09/2012	45 – 47	Bundle 2(5)
12.	PKM a), b) & c)	08/10/2012	48 – 54	Bundle 2(5)
12.1	PKM a) translated			Bundle 2(5)
13.	MM	10/10/2012	55 – 56	Bundle 2(5)
13.1.	MM translated			Bundle 2(5)
14.	HM a) & b)	11/10/2012	57 – 61	Bundle 2(5)
14.1	HM a) and b) translated			Bundle 2(5)
15	PM isiXhosa	17/10/2012	62 – 63	Bundle 2(5)
15.1.	PM translated			Bundle 2(5)
16.	LM isiXhosa	11/10/2012	64 – 66	Bundle 2(5)
16.1	Lm translated			Bundle 2(5)
17.	LM	17/10/2012	67 – 70	Bundle 2(5)
18.	MM	08/10/2012	71 – 75	Bundle 2(5)
19.	NJ isiXhosa	Undated	76 – 77	Bundle 2(5)
19.1	NJ translated			Bundle 2(5)
20.	NVM	18/10/2012	78 – 80	Bundle 2(5)
21.	NN	27/09/2012	81 – 84	Bundle 2(5)
22.	NN	09/10/2012	85 – 89	Bundle 2(5)
23.	NEN isiXhosa	08/10/2012	90 – 91	Bundle 2(5)
23.1.	NEN translation			Bundle 2(5)
24.	TN(a), (b)	18/10/2012	92 – 99	Bundle 2(5)
25.	MN	17/10/2012	100 – 104	Bundle 2(5)
26.	SM	10/10/2012	105 – 107	Bundle 2(5)
27.	BN isiXhosa	09/10/2012	108 – 109	Bundle 2(5)
27.1.	BN translated			Bundle 2(5)
28.	BN & AP	Undated	110 – 115	Bundle 2(5)
29.	YN	10/10/2012	116 – 120	Bundle 2(5)
30.	SG	11/10/2012	121 – 123	Bundle 2(5)
31.	BR isiXhosa	11/10/2012	124 – 125	Bundle 2(5)
31.1.	BR translated			Bundle 2(5)
32.	NS isiXhosa	18/10/2012	126 – 127	Bundle 2(5)
32.1.	NS translated			Bundle 2(5)
33.	NS isiXhosa	10/10/2012	128 – 129	Bundle 2(5)
33.1.	NS translated			Bundle 2(5)
34.	SK	27/09/2012	130 – 131	Bundle 2(5)
35.	NS	09/10/2012	132 – 135	Bundle 2(5)
36.	NS isiXhosa	08/10/2012	136 – 137	Bundle 2(5)

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36.1.	NS translated			Bundle 2(5)
37.	ZS isiXhosa	Undated	138 – 139	Bundle 2(5)
37.1	ZS translated			Bundle 2(5)
38.	AT & DN	09/10/2012	140 – 145	Bundle 2(5)
39.	OT	09/10/2012	146 – 152	Bundle 2(5)
40.	NST isiXhosa	10/10/2012	153 – 154	Bundle 2(5)
40.1	NST translated			Bundle 2(5)
41.	NT isiXhosa	17/10/2012	155 – 156	Bundle 2(5)
41.1.	NT Translated			Bundle 2(5)
42.	FT isiXhosa	08/10/2012	157 – 158	Bundle 2(5)
42.1.	FT Translated			Bundle 2(5)
43.	US	27/09/2012	159 – 161	Bundle 2(5)
44.	NV	08/10/2012	162 – 164	Bundle 2(5)
45.	NX	09/10/2012	165 – 170	Bundle 2(5)
46.	UZ	24/10/2012	171 – 174	Bundle 2(5)
47.	SZ	18/10/2012	175 – 185	Bundle 2(5)
48	NB	25/10/2012	181 – 184	Bundle 2(5)
49	FJ	30/10/2012	185 – 191	Bundle 2(5)
50	PM	25/10/2012	192 – 195	Bundle 2(5)
51	LM	25/10/2012	196 – 197	Bundle 2(5)
52	EN	25/10/2012	198 – 203	Bundle 2(5)
53	NS	24/10/2012	204 – 205	Bundle 2(5)
54	AS	Undated	206 – 208	Bundle 2(5)
55	ZS	25/10/2012	209 – 215	Bundle 2(5)
56	BT	24/10/2012	216 – 218	Bundle 2(5)
57	VM	30/10/2012	219 – 221	Bundle 2(5)
58	BV	25/10/2012	222 – 223	Bundle 2(5)
59	SPZ	25/10/2012	224 – 226	Bundle 2(5)
60	AN	24/10/2012	227 – 230	Bundle 2(5)
61	SF	13/11/2013	231 – 238	Bundle 2(5 Bundle 2(5))
62	SF	11/11/2013	239 – 244	Bundle 2(5)
63	AP	13/11/2013	245 – 249	Bundle 2(5)
64	UP	07/11/2013	250 – 253	Bundle 2(5)
65	LM	14/11/2013	245 – 260	Bundle 2(5)
66	PWM	14/11/2013	261 – 267	Bundle 2(5 Bundle 2(5))
67	TD	14/11/2013	268 – 272	Bundle 2(5)
68	ZM	07/11/2013	273 – 280	Bundle 2(5)
69	BM	14/11/2013	281 – 282	Bundle 2(5)
70	TB	08/10/2013	283 – 287	Bundle 2(5)
71	ML	15/11/2013	288 – 292	Bundle 2(5)
72	SZ	November 2012		Bundle 2(5)
72	SZ	November 2012	287 – 295	Bundle 2(5)
73	ZM	13/12/2013	296 – 298	Bundle 4(4)
74	VM	19/12/2013	299 – 301	Bundle 4(4)
75	SD	19/12/2013	302 – 304	Bundle 4(4)
76	MP	20/01/2014		Bundle 7(12)

*Part D**Complaints submitted by Women's Legal Centre*

Item	Description	Date	Page No.	Location
1	Affidavit – ET	13/11/2013	1 – 6	Bundle 1(9)
2	Affidavit – ND	14/11/2013	7 – 15	Bundle 1(9)
3	Affidavit – NQ	14/11/2013	16 – 19	Bundle 1(9)
4	Affidavit – DG	20/11/2013	20 – 23	Bundle 1(9)

Appendix E

Itinerary: Inspections in loco

Day 1

DATE		FIRST SITE	SECOND SITE	THIRD SITE	FOURTH SITE
Tuesday 21/01/2014	09h30 – 9h45	10h00 – 11h30	12h00 – 13h00	14h00 – 15h00	15h15 – 17h00
	Assemble at Lookout Hill and proceed to inspection.	Khayelitsha Police station Address: Bonga Drive, Site B Responsible police officer: Brigadier Dladla & Colonel J.W Marais	Lingeletu West police station Address: Makabeni Street, Lingeletu West Responsible police officer: Colonel MF Reitz	Harare police station Address: Steve Biko Drive, Harare Responsible police officer: Colonel T Raboliba	Inspection-walkabout at TR Section; walk to Nolongile Train Station; walk over pedestrian bridge to Site C Taxi Rank

Afternoon and Night Inspection

Tuesday 21/01/2014	18h30 – 20h00
	Inspection- walkabout from PJS section towards Japhta K Masemola Drive and through to Green Point

Day 2

	10h00 – 11h00	11h15 – 12h00	12h15 – 13h00	14h00 – 14h30
Wednesday 22/01/2014	Nkanini and Makhaza 1) Ezimfeneni (place where informal courts are convened) 2) open football field (place where many necklacings took place)	Harare Park (Peace Park & path to transport route) Football for Hope Centre	Hlobo Street, Ilitha Park (open field)	Abandoned building, Thandazo Road (off Pama Drive)

Appendix F

Dockets received by the Commission

A: Discovered Police Dockets (delivered on 17 January 2014)

Item	Station	Cas number	page	Location	Source
Harare					
1	Harare	607/07/2012	1 – 10	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 23, Statement of NEM
2	Harare	123/07/2012	11 – 21	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 23, Statement of NEM
3	Harare	604/03/2012	22 – 56	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 1, Statement of RV
4	Harare	143/03/2007	57 – 73	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 11, Statement of MTM
5	Harare	291/06/2012	74 – 79	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 3, Statement of SVL
6	Harare	500/07/2012	80 – 93	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 3, Statement of SVL
7	Harare	454/03/2008	94 – 135	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 4, statement of TFM
8	Harare	05/08/2012	136 – 142	Bundle 7(4)(4.2)	
9	Harare	08/08/2012	143 – 152	Bundle 7(4)(4.2)	
10	Harare	740/07/2009	153 – 162	Bundle 7(4)(4.2)	
11	Harare	473/08/2009	163 – 173	Bundle 7(4)(4.2)	
12	Harare	988/07/2010	174 – 189	Bundle 7(4)(4.2)	
13	Harare	830/08/2010	190 – 235	Bundle 7(4)(4.2)	
14	Harare	06/04/2009	236 – 256	Bundle 7(4)(4.2)	
15	Harare	547/11/2010	257 – 281	Bundle 7(4)(4.2)	
16	Harare	245/06/2010	282 – 311	Bundle 7(4)(4.2)	
17	Harare	353/04/2012	312 – 320	Bundle 7(4)(4.2)	
18	Harare	399/04/2012	321 – 332	Bundle 7(4)(4.2)	
19	Harare	292/04/2012	333 – 341	Bundle 7(4)(4.2)	
20	Harare	56/03/2012	342 – 350	Bundle 7(4)(4.2)	
21	Harare	384/03/2012	351 – 358	Bundle 7(4)(4.2)	
22	Harare	76/03/2012	359 – 366	Bundle 7(4)(4.2)	
23	Harare	138/03/2012	367 – 373	Bundle 7(4)(4.2)	
24	Harare	365/04/2012	374 – 381	Bundle 7(4)(4.2)	
25	Harare	102/03/2012	382 – 388	Bundle 7(4)(4.2)	
26	Harare	139/03/2012	389 – 397	Bundle 7(4)(4.2)	
27	Harare	150/03/2012	398 – 412	Bundle 7(4)(4.2)	
28	Harare	515/03/2012	413 – 423	Bundle 7(4)(4.2)	
29	Harare	389/04/2012	424 – 432	Bundle 7(4)(4.2)	
30	Harare	520/04/2012	433 – 442	Bundle 7(4)(4.2)	
31	Harare	525/04/2012	443 – 451	Bundle 7(4)(4.2)	
32	Harare	314/04/2012	452 – 461	Bundle 7(4)(4.2)	
33	Harare	692/12/2005	462 – 628	Bundle 7(4)(4.2)	Original complaint: Nandipha Makeke, Record Bundle 7(1), File A, item 2a.
34	Harare	263/03/2013	629 – 637	Bundle 7(4)(4.2)	
35	Harare	88/10/2013	638 – 646	Bundle 7(4)(4.2)	
36	Harare (FCS)	183/10/2012	647 – 667	Bundle 7(4)(4.2)	
Lingeletu West					
1	Lingeletu West	360/03/2012	1 – 240	Bundle 7(4)(4.2)	Vigilante table: Bundle 8(1.5), File J, item 1. Also S v Mvabaza BC No. 46

Item	Station	Cas number	page	Location	Source
2	Lingeletu West	215/01/2011	241 – 249a	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 66. para 14.14, statement of WPM; Record Bundle (4)(4), File H, item 73, statement of Z M.
3	Lingeletu West	171/01/2013	250 – 260	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 66 statement of WPM, para 14.14; Record Bundle (4)(4), File H, item 73, statement of Z M.
4	Lingeletu West	269/11/2009	261 – 318	Bundle 7(4)(4.2)	
5	Lingeletu West	242/04/2010	319 – 337	Bundle 7(4)(4.2)	
6	Lingeletu West	301/04/2010	338 – 369	Bundle 7(4)(4.2)	
7	Lingeletu West	284/09/2008	370 – 433	Bundle 7(4)(4.2)	
8	Lingeletu West	119/08/2010	434 – 488	Bundle 7(4)(4.2)	
9	Lingeletu West	284/02/2010	489 – 510	Bundle 7(4)(4.2)	
10	Lingeletu West	374/03/2011	511 – 526	Bundle 7(4)(4.2)	
11	Lingeletu West	226/10/2010	527 – 547	Bundle 7(4)(4.2)	
12	Lingeletu West	293/10/2012	548 – 560	Bundle 7(4)(4.2)	Record Bundle 1(1.a), File E, Item 40, Statement of NM
13	Lingeletu West	462/03/2012	561 – 598	Bundle 7(4)(4.2)	Record Bundle 1(1.a), File E, Item 36, Statement of MG
14	Lingeletu West	308/03/2009	599 – 633	Bundle 7(4)(4.2)	
15	Lingeletu West	309/03/2007	634 – 655	Bundle 7(4)(4.2)	
16	Lingeletu West	524/07/2012	656 – 671	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 1, statement of NCB

Documents delivered 20 January 2014

Item	Station	Cas number	page	Location	Source
Khayelitsha [These dockets have been scanned separately]					
1	Khayelitsha	1433/12/2001	1 – 28	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 32, statement of NS
2	Khayelitsha	216/02/2006	29 – 42	Bundle 7(4)(4.2)	Zoliswa Nkonyana (original complaint) Record Bundle 7(1), File A, item 2a.
3	Khayelitsha	845/03/2007	43 – 126	Bundle 7(4)(4.2)	
4	Khayelitsha	217/03/2009	52 – 126	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 22, Statement of NN
5	Khayelitsha	183/08/2009	127 – 139	Bundle 7(4)(4.2)	
6	Khayelitsha	830/12/2009	140 – 181	Bundle 7(4)(4.2)	Original complaint (Thandokazi Mjamela (shooting at a tavern), Record Bundle 7(1), File A, item 2a.
7	Khayelitsha	607/03/2010	182 – 197	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 56, statement of BT
8	Khayelitsha	807/03/2010	198 – 290	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 47, Statement of SZ
9	Khayelitsha	126/04/2010	291 – 388	Bundle 7(4)(4.2)	Original complaint (Minor in Taiwan), Record Bundle 7(1), File A, item 2a.
10	Khayelitsha	98/05/2010	389 – 406	Bundle 7(4)(4.2)	
11	Khayelitsha	520/09/2010	407 – 438	Bundle 7(4)(4.2)	
12	Khayelitsha	115/10/2010	439 – 449	Bundle 7(4)(4.2)	Original complaints: Adelaide Ngongwana, Record Bundle 7(1), File A, item 2a.
13	Khayelitsha	116/10/2010	450 – 462	Bundle 7(4)(4.2)	Original complaints: Adelaide Ngongwana, Record Bundle 7(1), File A, item 2a.
14	Khayelitsha	372/11/2010	463 – 533	Bundle 7(4)(4.2)	
15	Khayelitsha	58/05/2011	534 – 542	Bundle 7(4)(4.2)	
16	Khayelitsha	156/07/2011	543 – 567	Bundle 7(4)(4.2)	
17	Khayelitsha	563/10/2011	568 – 605	Bundle 7(4)(4.2)	
18	Khayelitsha	569/10/2011	568 – 605	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 17, Statement of LM
19	Khayelitsha	948/11/2011	420 – 650	Bundle 7(4)(4.2)	Record Bundle 1(1.a), File E, Item 23, Statement of RT
20	Khayelitsha	358/01/2012	651 – 667	Bundle 7(4)(4.2)	

Item	Station	Cas number	page	Location	Source
21	Khayelitsha	374/01/2012	668 – 682	Bundle 7(4)(4.2)	
22	Khayelitsha	152/02/2013 (should be 2013)	683 – 713	Bundle 7(4)(4.2)	
23	Khayelitsha	417/03/2012	714 – 734	Bundle 7(4)(4.2)	
24	Khayelitsha	424/03/2012	735 – 748	Bundle 7(4)(4.2)	
25	Khayelitsha	830/03/2012	745 – 774	Bundle 7(4)(4.2)	
26	Khayelitsha	211/04/2012	775 – 785	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item No 34, Statement of SK
27	Khayelitsha	213/04/2012	786 – 801	Bundle 7(4)(4.2)	
28	Khayelitsha	279/04/2012	802 – 823	Bundle 7(4)(4.2)	
29	Khayelitsha	505/04/2012	824 – 854	Bundle 7(4)(4.2)	
30	Khayelitsha	784/04/2012	842 – 854	Bundle 7(4)(4.2)	
31	Khayelitsha	57/05/2012	855 – 866	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 31, Statement of XM
32	Khayelitsha	504/05/2012	867 – 900	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 31, Statement of XM
33	Khayelitsha	617/03/2012	901 – 911	Bundle 7(4)(4.2)	
34	Khayelitsha	637/05/2012	912 – 934	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 2, Statement of MMD
35	Khayelitsha	187/06/2012	952 – 997	Bundle 7(4)(4.2)	
36	Khayelitsha	205/06/2012	952 – 997	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 38, Statement of AT and DN
37	Khayelitsha	228/06/2012	998 – 1011	Bundle 7(4)(4.2)	
38	Khayelitsha	240/06/2012	1012 – 1025	Bundle 7(4)(4.2)	
39	Khayelitsha	638/06/2012	1029 – 1039	Bundle 7(4)(4.2)	
40	Khayelitsha	283/07/2012	1020 – 1061	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 30, Statement of SM
41	Khayelitsha	506/07/2012	1061 – 1094	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 10, Statement of SM
42	Khayelitsha	635/07/2012	1095 – 1112	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 31, Statement of XM
43	Khayelitsha	237/08/2012	1113 – 1140	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 22, Statement of BG
44	Khayelitsha	507/08/2012	1141 – 1162	Bundle 7(4)(4.2)	
45	Khayelitsha	518/08/2012	1163 – 1222	Bundle 7(4)(4.2)	
46	Khayelitsha	783/08/2012	1223 – 1241	Bundle 7(4)(4.2)	Record Bundle 1(1)(a), File E, Item 31, Statement of XM
47	Khayelitsha	842/08/2012	1242 – 1250 (plus 5)	Bundle 7(4)(4.2)	
48	Khayelitsha	953/08/2012	1251 – 1261	Bundle 7(4)(4.2)	
49	Khayelitsha	70/09/2012	1262 – 1307	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 16, Statement of LM
50	Khayelitsha	184/09/2012	1276 – 1307	Bundle 7(4)(4.2)	Record Bundle 2(5), File H, Item 30, Statement of SG
51	Khayelitsha	158/10/2012	1303 – 1316	Bundle 7(4)(4.2)	
52	Khayelitsha	160/10/2012	1317 – 1331	Bundle 7(4)(4.2)	
53	Khayelitsha	09/11/2012	1332 – 1393	Bundle 7(4)(4.2)	
54	Khayelitsha	758/11/2012	1394 – 1444	Bundle 7(4)(4.2)	
55	Khayelitsha	171/01/2012 (or 2013?)	1445 – 1495	Bundle 7(4)(4.2)	

Item	Station	Cas number	page	Location	Source
56	Khayelitsha	1587/12/2003	1499 – 1776	Bundle 7(4)(4.2)	Original complaint: Lorna Mlofana, Record Bundle 7(1), File A, item 2a.
57	Khayelitsha	539/01/2010 (1)	1777 – 2138	Bundle 7(4)(4.2)	
57a	Khayelitsha	539/01/2010 (2)	2139 – 2486	Bundle 7(4)(4.2)	
58b	Khayelitsha	539/01/2010 (3)	2572 – 2986	Bundle 7(4)(4.2)	

B: Undiscovered Dockets

Khayelitsha undiscovered dockets

[Location: Docket Summaries/Khayelitsha]

No	Police station	CAS	CASE NO	Nature of case	Source
1	Khayelitsha	769/03/2012	1/258/12	(Vigilante case)	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 34
2	Khayelitsha	534/03/2012		(Killed during protect action)	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 33
3	Khayelitsha	608/05/2012		Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 35
4	Khayelitsha	749/06/2012		Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 38
5	Khayelitsha	654/06/2012	1/914/13	Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 37
6	Khayelitsha	732/05/2012		Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 36
7	Khayelitsha	467/01/2012		(Circumstances of death unknown)	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 26
8	Khayelitsha	353/12/2011		Double murder, vigilante	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 24 & 25
9	Khayelitsha	147/12/2011		Vigilante attack	Requested by COI from charge sheet summary; Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 23
10	Khayelitsha	531/11/2011		Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 22
11	Khayelitsha	235/03/2012		Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 33
12	Khayelitsha	805/02/2012		Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 31
13	Khayelitsha	506/2/2012		Possible vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 30.
14	Khayelitsha	218/02/2012		Possible vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 28
15	Khayelitsha	10/12/2010	1/1092/10	Rape of a child	Requested by COI from charge sheets summary
16	Khayelitsha	107/12/2010 [was requested by COI from charge sheet summary]	1/1093/10	Rape of a child	
17	Khayelitsha	640/11/2011	1/1002/11 Struck off the roll–nolle prosequi	Rape	Requested by COI from charge sheet summary
18	Khayelitsha	53/07/2011	1/2006/11	Culpable homicide and drunk driving	Requested by COI from charge sheet summary
19	Khayelitsha	686/11/2011	1/1007/11	Attempted robbery and shooting	Requested by COI from charge sheet summary
20	Khayelitsha	76/12/2011	1/1042/11	Rape and sexual assault	Requested by COI from charge sheet summary
21	Khayelitsha	112/12/2011	1/1046/11	Attempted rape	Requested by COI from charge sheet summary

No	Police station	CAS	CASE NO	Nature of case	Source
22	Khayelitsha	375/12/2011	1/1069/11	Possession of unlicensed firearm/ stolen goods	Requested by COI from charge sheet summary
23	Khayelitsha	828/11/2011	1/1024	Vigilante attack	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 20
24	Khayelitsha	497/8/2007	1/885/07	Armed robbery of a store	
25	Khayelitsha	387/04/2009		Shot, Assault GBH – missing docket	Record Bundle 2(5), File H, Item 4, Statement of GC
26	Khayelitsha	318/10/2001		Rape. Missing docket	
27	Khayelitsha	129/01/2012		Theft. Missing docket	
28	Khayelitsha (duplicate)	205/06/2012		Rape and attempted murder	
29	Khayelitsha	873/3/2012		Robbery with a weapon – missing docket	
30	Khayelitsha	774/09/2011		Driving without a licence – missing docket	Record Bundle 2(5), File H, Item 66, statement of PWM
31	Khayelitsha	05/06/2012		Shooting	
32	Khayelitsha	899/08/2012		Shack fire	
33	Khayelitsha	675/08/2010	3/594/12	Assault by SAPS	
34	Khayelitsha	91/07/2010		Motor vehicle accident where someone died	
35	Khayelitsha	511/07/2012	1/556/12	Intimidation	
36	Khayelitsha	603/04/2011		Inquest – shot	
37	Khayelitsha	556/03/2012		Murder	
38	Khayelitsha	545/08/2011		Attempted murder	
39	Khayelitsha	02/11/2010		Murder and attempted murder	
40	Khayelitsha (duplicate)	511/07/2012		Intimidation	
41	Khayelitsha	28/08/2012		Culpable homicide	
42	Khayelitsha	648/07/2012		House robbery	Record Bundle 2(5), File H, Item 59, Statement of SPZ
43	Khayelitsha (should be Harare)	720/07/2009		Malicious damage to property (witness)	Record Bundle 2(5), File H, Statement of GT
44	Khayelitsha (duplicate)	185/06/2012			Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No 76
45	Khayelitsha	527/05/2012			
46	Khayelitsha	410/03/2012		Murder	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No 69
47	Khayelitsha	04/04/2010		Theft	
48	Khayelitsha	92/04/2012		Assault GBH	
49	Khayelitsha	453/10/2010		Inquest	
50	Khayelitsha	603/04/2011		Inquest	
51	Khayelitsha	297/02/2012		Murder	
52	Khayelitsha (duplicate)	181/01/2012			
53	Khayelitsha	250/06/2009		Murder	
54	Khayelitsha	320/05/2012		Murder/vigilante killing	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 47
55	Khayelitsha (Should be Lingeletu West)	102/01/2012		Robbery aggravated	
56	Khayelitsha	444/09/2011		Murder (vigilante)	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 18
57	Khayelitsha	367/07/2011		Murder and kidnapping	
58	Khayelitsha	491/07/2011		Murder	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 15

No	Police station	CAS	CASE NO	Nature of case	Source
59	Khayelitsha	465/08/2011 (3 parts)		Murder	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 17
60	Khayelitsha	654/07/2011		Murder	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No 16
61	Khayelitsha	610/09/2011		Murder	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 19
62	Khayelitsha	08/05/2010	3/623/12	Robbery and Assault: Accused convicted	Record Bundle 2(5), File H, Item 66, Statement of PWM
63	Khayelitsha	280/03/2011	1/201/2011	Attempted murder and Assault Common: Pending	
64	Khayelitsha	266/07/2011	1/540/11	Alleged Vigilante Murder: Matter was struck off the roll	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 12
65	Khayelitsha	993/01/2012		Suspected Vigilante Murder Vigilante violence: Docket booked out to inquest court on 05 April 2013. No further indication.	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 27
66	Khayelitsha	291/02/2012		Suspected Vigilante Murder: No suspects apprehended	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No 29.
67	Khayelitsha	88/09/2013		Murder: Outcome: Not specified in docket	
68	Khayelitsha	252/04/2011	1/300/11	Murder: Matter was removed from the roll (10 October 2011)	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 2
69	Khayelitsha	561/04/2011	5/183/11	Murder: Matter was struck off the roll (14 December 2011)	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 3
70	Khayelitsha	07/04/2011	1/271/11	Suspected Vigilante Murder: Matter struck off the roll	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 1
71	Khayelitsha	258/11/2012		Murder: The matter was withdrawn	
72	Khayelitsha	862/09/2012	1/769....	Kidnapping of minor of 4 years old: No indication	Record Bundle 2(5), File H, Item 51, Statement of LM
73	Khayelitsha	791/06/2013		Murder: Provisionally withdrawn, no further indication	
74	Khayelitsha	105/06/2011		Suspected "Bundu Court" Murder: Outcome: no indication	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 7
75	Khayelitsha	55/06/2011		Murder (Community Assault): No indication of outcome	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 5
76	Khayelitsha	526/05/2011		Murder: Outcome unknown	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 4
77	Khayelitsha	632/07/2011		Murder: Withdrawn due to incomplete investigations	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 10
78	Khayelitsha	633/07/2011	1671/11	Murder (Assault: Blunt force trauma) Withdrawn due to incomplete investigations	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 9

Lingeletu West

[Location: Docket Summaries/Lingeletu West]

No	Police station	CAS	CASE NO	Summary Status	Source
	File 1				
1	Lingeletu West	319/01/2011	2/97/11	Summarised	Record Bundle 2(5), File H, Item 1, Statement of NCB. She also refers to docket no 524/07/2012
2	Lingeletu West	439/10/2009	3/1412/09	Summarised	Record Bundle 1(1)(a), File E, Item 34, Statement of MP

No	Police station	CAS	CASE NO	Summary Status	Source
3	Lingeletu West	250/06/2009	1/580/09	Summarised	
4	Lingeletu West (duplicate)	320/05/2012	-	Summarised	Record Bundle 1(1)(a), File E, Item 66, 66A and 66B, Statements of NN, PN and MN. See also Transcript at 140 – 164 (24 January 2014). BC No. 47
5	Lingeletu West	102/01/2012	1/38/12	Summarised	Record Bundle 1(1)(a), File E, Item 36, Statement of MG
6	Lingeletu West	453/10/2010	-	Summarised	
7	Lingeletu West	92/04/2012	3/155/13	Summarised	
8	Lingeletu West	181/01/2012	-	Summarised	
9	Lingeletu West	545/08/2011	-	Summarised	
10	Lingeletu West	297/02/2012	-	Summarised	Record Bundle 1(1)(a), File E, Item 16, Statement of FD
11	Lingeletu West (duplicate)	2/11/2010		Summarised	
File 2 (undiscovered)					
12	Lingeletu West (Duplicate)	CAS 360/3/2012	1/252/12	Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 46
13	Lingeletu West	CAS 10/01/2012		Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 43
14	Lingeletu West	CAS 556/9/2012		Summarised	Record Bundle 1(1)(a), File E, Item 36, Statement of MG
15	Lingeletu West	CAS 336/05/2013		Summarised	
16	Lingeletu West	CAS 310/01/2012	1/85/12	Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 44
File 3 (undiscovered)					
17	Lingeletu West	251/06/2011		Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 39
18	Lingeletu West	464/07/2011	5/240/11	Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 40
19	Lingeletu West	458/03/2012		Summarised	
20	Lingeletu West	133/11/2011		Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 42
21	Lingeletu West	138/11/2011	1/961/11	Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 41
22	Lingeletu West	321/03/2012	1/231/12	Summarised	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No 45

Harare

[Location: Docket Summaries/Harare]

No	Police station	CAS	CASE NO	Summary Status	File	Source
File 1						
1	Harare	52/06/2012	-	Summarised	1	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 75
2	Harare	556/03/2012 (duplicate)	1/542/12	Summarised	1	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 72
File 2 (undiscovered)						
1	Harare	604/09/2012	1/809/12	No summary found:	2	Vigilante table: Bundle 8(1.5) File J, Item 1.
2	Harare	483/10/2013	1/989/13	No summary	2	Vigilante table: Bundle 8(1.5) File J, Item 2

No	Police station	CAS	CASE NO	Summary Status	File	Source
3	Harare	379/01/2013	1/68/13	Summary	2	Vigilante table: Bundle 8(1.5) File J, Item 2
4	Harare	41/08/2011		Summary	2	Bundu Courts Document:, Bundle 8(4)(4:1), Item 23, No. 53
5	Harare (duplicate)	187/06/2012	-	Summarised	2	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 77
6	Harare	51/06/2012	-	Summarised	2	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No.74
7	Harare	410/03/2012	-	Summarised	2	Vigilante table: Bundle 8(1.5) File J, Item1; "Bundu Courts" document, item 69, 70 & 71. This docket also in File 3 with summary...
Harare File 3 (undiscovered)						
8	Harare	527/05/2012		Summarised (murder – shooting)	3	Vigilante table: Bundle 8(1.5) File J, Item1: Harare Dockets File 3
9	Harare	185/06/2012	-	summarised (murder – possible vigilante murder)	3	Vigilante table: Bundle 8(1.5) File J, Item1. BC No. 76
10	Harare	648/07/2012		Summarised	3	Record Bundle 2(5), File H, Item 59, Statement of SPZ
11	Harare	659/02/2012		Summarised (vigilante or informal resolution of crime)	3	
12	Harare (duplicate)	556/03/2012		Summary	3 Harare, File 1, Item 2	
13	Harare	4/04/2010		Summary (reconstructed file – theft)	3	
14	Harare	720/07/2009		Summary	3	Record Bundle 2(5), File H, Item 5, Statement of TG. See also transcript at 2061 – 2977 (7 February 2014).
15	Harare	410/03/2010		Summary Vigilante murder of 3 men.	3	Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 69.
16	Harare	678/03/2010		Summarised	3	Record Bundle 1(1.a), File E, Item 52, Statement of AM
17	Harare	401/01/2012		Summarised	3	Record Bundle 1(1.a), File E, Item 1, Statement of RV
18	Harare	184/10/2012		Summary (possible vigilante killing)	3	Vigilante table: Bundle 8(1.5) File J, Item 1
19	Harare	545/04/2013	1/376/12	Summary (vigilante killing)	3	Vigilante table: Bundle 8(1.5) File J, Item 2
Harare – File 4 (undiscovered)						
20	Harare	367/09/2013		Vigilante killing Source:		Vigilante table: Bundle 8(1.5) File J, Item 2
21	Harare	597/10/2013		Revenge killing		Welcome Makhele statement No 66, para 20
22	Harare	36/11/2013		Apparent vigilante killing		Vigilante table: Bundle 8(1.5) File J, Item 2
23	Harare	441/08/2013		Vigilante killing		Vigilante table: Bundle 8(1.5) File J, Item 2
24	Harare	46/08/2013		Reckless and negligent driving and assault		
25	Harare	191/09/2013		Vigilante murder.		Vigilante table: Bundle 8(1.5) File J, Item 2
26	Harare	586/03/2013		Vigilante murder. Source: media reports as set out in vigilante table 2013		

No	Police station	CAS	CASE NO	Summary Status	File	Source
27	Harare	591/09/2012		Vigilante murder		Vigilante table: Bundle 8(1.5) File J, Item 1
28	Harare	28/08/2012		Possible murder or culpable homicide. Deceased pushed in front of train.		Record Bundle 1(1.a), File E, Item No 13 and 13 A, Statement of NM and NGZ
File 5 (undiscovered)						
1	Harare	379/06/2012		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 78
2	Harare	306/10/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 57
3	Harare	98/09/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23,, No. 56
4	Harare	66/05/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23,, No. 48
5	Harare	509/05/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 49
6	Harare	60/06/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, NO. 50
7	Harare	211/03/2012		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 64
8	Harare	405/03/2012		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 68
File 6 (undiscovered)						
1	Harare	120/06/2011	1/646/11	Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 51
2	Harare	462/10/2011	1/911/11	Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 58
3	Harare	551/05/2012	5/305/12	Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 73
File 7 (undiscovered)						
1	Harare	313/03/2012	1/215/2012 Went to the High Court	Summarised		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 65, 66 & 67
File 8 (undiscovered)						
1	Harare	540/10/2011	1/943/11	Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 59
2	Harare	347/11/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 61
3	Harare	32/11/2011		Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 60
4	Harare	431/01/2012	1/100/12	Summary		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 62
File 9 (undiscovered)						
1	Harare	672/01/2012		Summary (vigilante case)		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 63
2	Harare	643/09/2011		Summary (Vigilante case)		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 54
3	Harare	468/07/2011	5/299/11	Summary (vigilante case)		Bundu Courts Document, Bundle 8(4)(4:1), Item 23, No. 52
4	Harare	1131/10/2007	1/656/2014	Shack Fire		Record Bundle 1(1.a), File E, Item 47, Statement of VZ

C: Dockets requested 6 June 2014

[Location: Docket Summaries/Dockets requested 6 June 2014]

No.	Police station	CAS NO.	Summary Overview	Page	Source
1	Lingeletu West	Cas No 2/11/2010	Hijacking, Robbery and Murder, committed on the 31 October 2010.	1 – 423A	Tavern murder (original complaint), Record Bundle 7(1), File A, item 2a.

No.	Police station	CAS NO.	Summary Overview	Page	Source
2	Khayelitsha	Cas No 99/09/2011	House robbery committed on 03 September 2011. Two of the suspects were arrested and charged on 16 September 2011.	682 – 749A	Record Bundle 2(5), File H, Item 18, Statement of MM. See also transcript 534 – 553 (28 February 2014)
3	Khayelitsha	Cas No 825/07/02	Stabbing, assault by hitting victim in face with tupperware, malicious damage to property by stoning windows of property. There were 5 suspects. Incidents occurred on or around 18 July 2002.	424 – 681B	Nomonde Nakile (original complaint, Task Team report), Record Bundle 7(1), File A, item 2a.
4	Khayelitsha	Cas No 216/02/2006	Victim was stabbed with a knife on the left cheek and ear by his friend, the Accused, on 5 February 2006.	750 – 766A	Murder of Zoliswa Nkonyana: this docket number is given in Task Team Report as Khayelitsha CAS 216/2/2006. We asked for and received this docket but it does not relate to Ms Nkonyana's murder. See Record Bundle 7(4.2) item 2, pp 29 – 47. (from original complaints, Record Bundle 7(1), File A, item 2a.
5	Khayelitsha	Cas No 177/06/2008	On 03 June 2008, the victim was taken by force by her boyfriend to his room on campus residence, raped, and detained by him.	767 – 908A	Mandisa Inkanele (original complaint), Record Bundle 7(1), File A, item 2a.
6	Khayelitsha	Cas No 45/12/2011	Victim was robbed of his cellphone (value: R500,00). Offence was committed on the 01 December 2011.	909 – 996(6)	Cellphone robbery Malwande Msongelwa (original complaint), Record Bundle 7(1), File A, item 2a.
7	Khayelitsha	Cas No 117/10/2010	2 members of the public shot while the police were chasing down suspects on 03 October 2010.	– 1050A	Angy Peter (3 October 2010) (Task Team report), Record Bundle 7(1), File A, item 2a.
8	Khayelitsha	Cas No 08/05/2010		1051 – 1106	Makhosandile Scare Qezo (Original complaint), Record Bundle 7(1), File A, item 2a.

D: Additional Dockets

1	Case No RIB 06/10, CAS 619/12/05. S v Yanga Jenet	1 – 12	Bundle 6(8) File 5
2	Case No RCB 216/06; CAS No 56/02/06. S v Lubabalo Ntlabati and Others (the Zoliswa Nkonyana case)	13 – 101	Bundle 6(8) File 5

E: Dockets obtained from the Charge sheets

Station	CAS Number
Khayelitsha	51/11/2010
Khayelitsha	183/11/2010
Khayelitsha	205/11/2010
Khayelitsha	73/11/2010
Khayelitsha	365/11/2010
Khayelitsha	553/11/2010
Khayelitsha	638/11/2010
Khayelitsha	433/11/2010
Khayelitsha	629/11/2010
Khayelitsha	659/11/2010
Khayelitsha	10/12/2010
Khayelitsha	107/12/2010
Khayelitsha	640/11/2011
Khayelitsha	53/07/2011
Khayelitsha	686/11/2011
Khayelitsha	76/12/2011
Khayelitsha	04/12/2011
Khayelitsha	112/12/2011

Station	CAS Number
Khayelitsha	147/12/2011
Khayelitsha	375/12/2011
Khayelitsha	497/08/2007
Khayelitsha	598/12/2011
Khayelitsha	497/08/2007
Khayelitsha	13/11/2012
Khayelitsha	229/12/2011
Khayelitsha	1032/11/2012
Khayelitsha	264/12/2012
Khayelitsha	334/12/2012
Khayelitsha	422/12/2012
Khayelitsha	517/12/2012
Khayelitsha	1014/09/2012
Khayelitsha	521/12/2012
Khayelitsha	584/12/2012
Khayelitsha	906/12/2012
Khayelitsha	1100/12/2012
Khayelitsha	114/12/2012
Khayelitsha	755/12/2012
Khayelitsha	1023/12/2012
Khayelitsha	636/12/2012
Khayelitsha	618/12/2012
Khayelitsha	566/12/2011
Khayelitsha	687/12/2011
Khayelitsha	884/12/2011
Khayelitsha	779/12/2011
Khayelitsha	1016/12/2011
Khayelitsha	12/01/2011
Khayelitsha	566/12/2010
Khayelitsha	176/01/2011
Khayelitsha	415/12/2010
Khayelitsha	451/01/11
Khayelitsha	419/01/2011
Khayelitsha	531/12/2011
Khayelitsha	08/01/2012
Khayelitsha	82/01/2012
Khayelitsha	212/01/2012
Khayelitsha	431/01/2012
Khayelitsha	555/01/2012
Khayelitsha	705/01/2012
Khayelitsha	682/01/2012
Khayelitsha	1936/01/2012
Khayelitsha	607/01/2012
Khayelitsha	304/01/2013
Khayelitsha	65/01/2013
Khayelitsha	03/01/2013
Khayelitsha	02/01/2013
Khayelitsha	08/01/2013
Khayelitsha	1177/12/2012
Khayelitsha	1139/12/2012
Khayelitsha	809/12/2012
Khayelitsha	256/01/2013
Khayelitsha	714/01/2013

Station	CAS Number
Khayelitsha	441/01/2013
Khayelitsha	533/01/2013
Khayelitsha	187/01/2013
Khayelitsha	687/01/2013
Khayelitsha	729/01/2013
Khayelitsha	735/01/2013
Khayelitsha	480/11/2010
Khayelitsha	170/01/2011
Khayelitsha	211/01/2011
Khayelitsha	07/01/2011
Khayelitsha	207/02/2011
Khayelitsha	21/01/2011
Khayelitsha	43/01/2011
Khayelitsha	19/01/2011
Khayelitsha	50/09/2011
Khayelitsha	679/12/2011
Khayelitsha	87/01/2012
Khayelitsha	217/01/2012
Khayelitsha	19/01/2012
Khayelitsha	30/01/2012
Khayelitsha	876/09/2011
Khayelitsha	616/07/2011
Khayelitsha	64/06/2010
Khayelitsha	611/09/2011
Khayelitsha	534/01/2012
Khayelitsha	142/01/2013
Khayelitsha	168/01/2013
Khayelitsha	340/01/2013
Khayelitsha	255/01/2013
Khayelitsha	342/01/2013
Khayelitsha	613/08/2012
Khayelitsha	635/08/2012
Khayelitsha	651/10/2012
Lingeletu West	458/10/2010
Lingeletu West	60/11/2010
Lingeletu West	100/11/2010
Lingeletu West	293/10/2009
Lingeletu West	107/09/2006
Lingeletu West	288/11/2010
Lingeletu West	308/11/2010
Lingeletu West	634/12/2011
Lingeletu West	305/12/2009
Lingeletu West	07/12/2011
Lingeletu West	68/12/2011
Lingeletu West	229/12/2011
Lingeletu West	05/12/2011
Lingeletu West	456/12/2011
Lingeletu West	457/12/2011
Lingeletu West	573/08/2012
Lingeletu West	258/12/2012
Lingeletu West	154/08/2012
Lingeletu West	377/12/2012
Lingeletu West	642/12/2011

Station	CAS Number
Lingelethu West	79/01/2011
Lingelethu West	247/01/2011
Lingelethu West	403/12/2011
Lingelethu West	82/01/2012
Lingelethu West	102/01/2012
Lingelethu West	298/01/2012
Lingelethu West	604/01/2012
Lingelethu West	107/01/2013
Lingelethu West	110/01/2013
Lingelethu West	568/12/2012
Lingelethu West	567/12/2012
Lingelethu West	319/01/11
Lingelethu West	98/08/2010
Lingelethu West	262/01/2011
Lingelethu West	368/06/2010
Lingelethu West	279/09/2010
Lingelethu West	617/07/2011
Lingelethu West	16/01/2013
Lingelethu West	133/01/2013
Lingelethu West	404/12/2010
Lingelethu West	482/10/2012
Harare	782/09/2010
Harare	353/11/2010
Harare	368/11/2010
Harare	452/11/2010
Harare	455/11/2010
Harare	381/12/2009
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Harare	688/11/2010
Harare	685/11/2010
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Harare	68/06/2011
Harare	338/12/2011
Harare	473/12/11
Harare	424/12/2011
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Harare	87/12/2012
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Harare	263/12/2012
Harare	282/12/2012
Harare	398/12/2012
Harare	141/12/2013
Harare	369/12/2012
Harare	369/12/2012
Harare	107/11/2012
Harare	658/12/2012
Harare	609/12/2012
Harare	424/12/2012
Harare	406/12/2012

Station	CAS Number
Harare	708/12/2012
Harare	482/12/2012
Harare	569/12/2011
Harare	665/12/2011
Harare	735/12/2011
Harare	729/12/2011
Harare	21/01/2011
Harare	27/01/2011
Harare	269/11/2010
Harare	440/11/2010
Harare	379/01/2011
Harare	495/01/2011
Harare	608/01/2011
Harare	655/01/2011
Harare	625/01/2011
Harare	14/01/2012
Harare	827/12/2011
Harare	179/01/2012
Harare	187/01/2012
Harare	195/01/2012
Harare	303/01/2012
Harare	48/01/2012
Harare	339/01/2012
Harare	375/01/2012
Harare	407/01/2012
Harare	427/01/2012
Harare	648/01/2012
Harare	855/09/2009
Harare	187/01/2013
Harare	216/01/2013
Harare	35/01/2013
Harare	159/01/2013
Harare	90/01/2013
Harare	105/01/2013
Harare	28/01/2013
Harare	19/01/2013
Harare	04/01/2013
Harare	98/01/2013
Harare	417/01/2013
Harare	538/01/2013
Harare	505/01/13
Harare	281/01/2013
Harare	592/01/11
Harare	523/01/2011
Harare	763/09/2010
Harare	766/09/2010
Harare	762/09/2010
Harare	295/01/2011
Harare	208/01/2011
Harare	176/01/2011
Harare	152/01/2011
Harare	803/12/2010

Station	CAS Number
Harare	09/01/2011
Harare	501/08/2011
Harare	494/08/2011
Harare	495/08/2011
Harare	490/08/2011
Harare	535/06/2010
Harare	294/01/2010
Harare	324/01/2012
Harare	322/01/2012
Harare	330/01/2012
Harare	306/01/2012
Harare	771/12/2012
Harare	208/01/2013
Harare	178/01/2013
Harare	259/12/2012

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