

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 8631/2020

<b>SOUTH AFRICAN HUMAN RIGHTS COMMISSION</b>	First Applicant
<b>HOUSING ASSEMBLY</b>	Second Applicant
<b>BULELANI QOLANI</b>	Third Applicant
and	
<b>THE CITY OF CAPE TOWN</b>	First Respondent
<b>THE MINISTER OF HUMAN SETTLEMENTS</b>	Second Respondent
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	Third Respondent
<b>NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE</b>	Fourth Respondent
<b>MINISTER OF POLICE</b>	Fifth Respondent
<b>WESTERN CAPE PROVINCIAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE</b>	Sixth Respondent

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SUPPLEMENTARY AFFIDAVIT

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I, the undersigned

**ANDREW CHRISTOFFEL NISSEN**

do hereby make oath and state as follows:

1. I am a part-time Commissioner of the South African Human Rights Commission (*"the Commission"*). I deposed to the founding and replying affidavits filed on behalf of the Commission in these proceedings and I depose to this supplementary affidavit on the same basis.
2. The facts stated in this affidavit are true and correct and within my personal knowledge except where the contrary is apparent from the context. Where I make legal submissions I do so on the basis of legal advice provided by the Commission's legal representatives, which advice I believe to be correct.
3. This supplementary affidavit will address four issues.
4. Firstly, the City's failure to file a Rule 53 record and the reasons why this supports and supplements the grounds of review of the decisions impugned in part B of the Applicants' notice of motion.
5. Secondly, numerous instances of use of excessive force by the City's law enforcement personnel during the execution of eviction and demolition operations. I submit that this prima facie evidence of excessive force by City Law Enforcement further justifies the declaratory orders sought relating to the SAPS in part B of the notice of motion.
6. Thirdly, the issuing of media statements by the City shortly before the hearing of the interim interdict proceedings on 20 and 21 August 2020.



7. Fourthly, the continued prohibition of evictions and demolitions and their subjection to judicial supervision in the latest Alert Level 2 Regulations published in GG 662 GN 43260 published on 17 August 2020.

#### I THE CITY'S FAILURE TO FILE A RULE 53 RECORD

8. In part B of the Applicants notice of motion, the City of Cape Town (the first respondent) was called upon, in accordance with Uniform Rule 53, to provide the record of the decisions sought to be reviewed in part B of the Applicants notice of motion, together with reasons for those decisions.
9. The decisions sought to be reviewed and set aside in part B of the Applicants' notice of motion ("the impugned decisions") are the following:
- 9.1. the decision or decisions of the City to mandate its ALIU *and/or* its agents to demolish structures determined by City officials *and/or* the ALIU *and/or* its agents, to be unoccupied, without court orders<sup>1</sup>;
- 9.2. the conduct and procedure adopted by the City *and/or* its officials *and/or* the ALIU *and/or* its agents, to decide, based on a visual assessment, whether and when a structure or informal dwelling is "*occupied*" as a "*home*" and consequently whether and when persons are to be evicted from their structures and that those structures be demolished, without a court order, alternatively the decision of the City to approve or condone such conduct and procedure by its officials *and/or* agents, *and/or* ALIU<sup>2</sup>;

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<sup>1</sup> Notice of motion (Part B): prayer 3

<sup>2</sup> Notice of motion (Part B): prayer 4



- 9.3. the decision of the City to issue, adjudicate, and award, Tender 308S/2019/20 'Demolition of Illegal and formal and informal structures in the City of Cape Town.'<sup>3</sup>
10. In terms of paragraph 4 of the order granted on 24 July 2020, the City was required to deliver a copy of the Rule 53 record to the Registrar by Monday 3 August 2020.
11. On 5 August 2020, two days after the deadline for filing the Rule 53 record, the City's attorneys directed a letter to the Applicants attorneys stating the following:
- "Insofar as the review application in Part B of the relief is concerned, and the request for the filing of the record in relation to the following two decisions, i.e. The City's decision to instruct the ALIU to demolish structures without a court order if its officials deem they are unoccupied; the decision to issue or adjudicate or amend the tender. We confirm that there is no record in respect of the decisions." (emphasis added).*
12. A copy of this letter is annexed marked **CNS1**.
13. I am advised that the central purpose of a Rule 53 record is to enable the applicant in review proceedings to fully and properly to assess the lawfulness of the decision making process by interrogating the impugned decisions and, if necessary, amending its notice of motion and supplementing its grounds for review.

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<sup>3</sup> Notice of motion (Part B): prayer 6

14. The Rule 53 record is therefore required to obtain all information and documentation and indeed, every scrap of paper relevant to the impugned decision or proceedings, both procedurally and evidentially.
15. As is evident from the City's letter, the City's position in relation to the decisions sought to be reviewed in part B of the Applicants' notice of motion is in effect the following: the City has no records, reasons or documentation of whatever nature in its possession relating to the decisions sought to be reviewed in prayers 2, 3 and 5 of part B of the Applicant's notice of motion.
16. In what follows I shall demonstrate why, in relation to each of City's decisions and/or decision-making processes impugned in the notice of motion, the City's failure to file a Rule 53 record in fact supports and supplements the Applicant's grounds of review in the founding affidavit

**Prayers 2 and 3: Review of the City's decision(s) to mandate the ALIU to demolish structures deemed 'unoccupied' without court orders and review of the decisions, conduct and/or procedure of the ALIU to demolish without court orders structures deemed 'unoccupied' on the basis of a visual assessment**

17. The City's answering affidavit in the interim interdict proceedings states that the ALIU "...was established to respond to the ongoing risk faced by the City of its land being unlawfully occupied and in some instances large scale orchestrated and violent land invasions, The ALIU is a specialised unit within the City's law enforcement directorate consisting of specially trained officers mandated by the

City's Human Settlements Department to prevent unlawful occupation of City owned land. This is the primary function of the ALIU."<sup>4</sup> (emphasis added).

- 18. The City goes on to state that "... *The ALIU monitors and patrols vacant City land on a 24-hour basis, taking steps to prevent the erection of structures on such land, alternatively to remove unoccupied structures from such land.*"<sup>5</sup> (emphasis added).
- 19. It is clear from the above paragraphs that the ALIU has been established and mandated by the City to 'remove' unoccupied structures from City owned land. It is also clear from the City's answering affidavit that it is the ALIU which deems such structures to be 'unoccupied' for the purposes of removal and that the City's position is that the ALIU does not require a court order to remove or demolish structures on City owned land which the ALIU has deemed to be 'unoccupied'.
- 20. As is apparent from the City's letter dated 5 August 2020, the City contends that it has no records or documentation of whatever nature relating to its decision(s) to establish or mandate the ALIU to perform the function of removing ie demolishing unoccupied structures on City owned land without a court order.
- 21. If such records did exist, the City would no doubt have disclosed them in a Rule 53 record, which it has not done.

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<sup>4</sup> City's Answering Affidavit (Part A): para 15.  
<sup>5</sup> City's Answering Affidavit (Part A): para 16.

22. According to the City, ALIU officers ‘.....are trained as to which structures may be lawfully demolished and when an eviction order is required. They face dismissal from their employment and/or serious disciplinary consequences if they demolish an occupied structure which constitutes a home. They are therefore under strict instructions to take all necessary steps to check structures before they are identified for the purposes of demolition or removal, to ensure that those structures are not occupied and as a general rule ALIU officers err on the side of caution in circumstances where there is doubt.’<sup>6</sup> (emphasis added).
23. On the City’s version, there exists no documentation, records or a single scrap of paper reflecting the “strict instructions” given to the ALIU officers to check structures before they are identified for the purposes of demolition, particularly given that ALIU officers are trained on which structures may lawfully be demolished without a court order.
24. Notwithstanding this alleged absence of documentation recording the “strict instructions”, ALIU officers are apparently subject to disciplinary action if they do not comply with the “strict instructions”. Not only that, they have allegedly been “trained” on what structures may lawfully be demolished. Strangely, no documentation relating to this “training” has been disclosed as part of a Rule 53 record.
25. The City also claims that “...it has been and continues to be the City’s policy” that “...the ALIU only takes action to remove unlawfully erected structures when those structures are clearly unoccupied and/or vacant. Where there is a degree

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<sup>6</sup> City’s Answering Affidavit (Part A): para 19.



- of doubt as to whether the structures are in fact occupied or not, they are not removed by the ALIU.”<sup>7</sup>*
26. The City’s version however is effectively that there exists no documentation, records or a single scrap of paper reflecting the “*policy*” referred to above.
27. Again, if such records and documentation in fact existed, they would have been relevant to the decisions impugned in paragraphs 2 and 3 of the Applicants’ notice of motion and the City would no doubt have disclosed these records in its Rule 53 record, which it has not.
28. In relation to the Ocean View evictions, the City states in its answering affidavit in the interim interdict proceedings that “...*A report of an unlawful land occupation was received by the City on or about 3 February 2020 and ALIU responded with an investigation which led to a planned dismantling operation of 2 unlawfully erected unoccupied structures. The building material in respect of these structures was left on site and not removed. The investigation established that some of the structures were erected on SANParks’ property whereas others were erected on a property owned by the Ocean View Development Trust (the Trust). SANParks.*”<sup>8</sup>
29. The City further states that “...*Another complaint of an unlawful land occupation at this site was received on or about 13 May 2020. An investigation was conducted with Ocean View SAPS and officials conducted a foot patrol in the affected areas. The investigation revealed that a number of new unoccupied*

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<sup>7</sup> City’s Answering Affidavit (Part A): para 20 – 21.

<sup>8</sup> City’s Answering Affidavit (Part A): para 194 – 195.





*structures had been erected in the affected area and an operation was conducted on 15 May 2020 to remove these structures. A total of 10 unoccupied structures were taken down and most of the building materials were removed.”<sup>9</sup>*

30. The City has failed to provide any written record of the “*investigation*” by the ALIU referred to above and which resulted in the demolition of 10 allegedly unoccupied structures. If written records of such an “*investigation*” did exist, the City would have disclosed them in a Rule 53 record.
31. The decision by the ALIU to demolish these structures at Ocean View on 15 May 2020 plainly falls within the scope of the decisions sought to be reviewed in paragraphs 2 and 3 of part B of the Applicants notice of motion. There are however no records, documentation or a single scrap of paper disclosed recording the decision(s) of the ALIU to demolish unoccupied structures at Ocean View on 15 May 2020.
32. In addition, the City has failed to provide any reasons, as required by Rule 53, for its decision or decisions to mandate its ALIU and/or its agents to demolish structures determined by City officials and/or the ALIU and/or its agents, to be unoccupied, without a court order.
33. I am advised and submit that the City’s decision(s) to establish and mandate the ALIU to demolish or remove, without a court order, structures deemed by the ALIU to be ‘unoccupied’, is an administrative decision subject to review in terms of PAJA.

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<sup>9</sup> City’s Answering Affidavit (Part A): para 201



34. Alternatively they are decisions which constitute exercises of public power which are subject to the principle of legality and the principle of rationality which forms part thereof.
35. In relation to the City's duty to provide reasons for these decisions, the City is under a constitutional duty to exercise its powers in a way that is not irrational or arbitrary. Furthermore, the City is bound by 195 of the Constitution to the values of transparency and accountability. Providing reasons for decisions taken in the exercise of public powers is an integral component of the duty of municipalities to act transparently and in an accountable manner.
36. I submit that the City's failure to provide reasons for the impugned decisions and its failure to provide a record of these decisions further supports and supplements the grounds of review in the Applicants notice of motion and demonstrates that the impugned decisions and performance of the ALIU's functions:
- 36.1. were taken and conducted in an arbitrary and capricious manner and thus fall to be reviewed and set aside in terms of section 6(2)(e)(iv) of PAJA and the principle of legality;
- 36.2. were so unreasonable that no reasonable person could have so exercised the power or performed these function and thus fall to be reviewed in terms of section 6(2)(e)(h) of PAJA;
- 36.3. in the absence of written reasons being provided are presumed to have been taken without good reason and thus fall to be reviewed and set aside in terms of section 5(3) of PAJA;



- 36.4. were materially influenced by an error of law and fall to be reviewed and set aside in terms of section 6(2)(d) of PAJA; and
- 36.5. contravenes and is not authorised by the PIE Act and section 26(3) of the Constitution and thus falls to be reviewed and set aside in terms of the principle of legality and section 6(2)(f)(i) of PAJA.
37. I further submit that the absence of any records relating to the impugned decisions and in particular the mandate given by the City to the ALIU to prevent occupation of City owned land by inter-alia demolishing without a court order structures deemed by the ALIU, on the basis of a visual inspection, violates the rule of law and entrenches the ALIU as judges in their own cause. It gives rise to haphazard and arbitrary decision making and capricious exercise of public powers due to the absence of any form of written guidelines or documents regulating the discretion exercised by the ALIU when its officers decide which structures are "*occupied as a home*" and which are not and thus subject to summary demolition.
38. The Applicants on this basis, and in addition to the grounds set out at paragraphs 135 to 139 of my founding affidavit, support the relief sought by the EFF in which they seek orders declaring the establishment and operation of the ALIU to be unlawful and unconstitutional. An amended notice of motion to this effect is attached to this affidavit marked **CNS2**.

**PRAYER 6 : REVIEWING AND SETTING ASIDE THE TENDER**

39. Both the decision to issue a Request for Proposals and the award of a tender constitute administrative action for the purposes of PAJA.



40. In the founding affidavit, I set out the grounds upon which the tender for the demolition of structures is unlawful. The reasons are as follows:

40.1. The payment and penalty structure of the tender creates perverse incentives for the successful tenderer(s). The successful tenderer (a private contractor) will be paid per structure demolished and per ton of building materials removed. They will be penalised if they do not demolish structures within a few hours. (I set out the details of the relevant sections of the tender documents at paragraph 107 of the founding affidavit).

40.2. This incentivises the private contractor to demolish as many structures as possible, as quickly as possible, and to ask as few questions as possible. The private contractor is deterred from carefully investigating whether a structure is occupied.

40.3. In addition, the contractor is not afforded the time or the training to conduct such an investigation. The tender documents do not make provision for training of this kind. Nor do the tender documents contain or make reference to clear guidelines or protocols for determining whether or not a structure is occupied. The private contractor is given discretion to make this determination.

40.4. In its answering affidavit in Part A, the City asserted that the private contractors would act exclusively on the instructions of the ALIU. It claimed that such contractors had no authority to act on City land or to remove any structures unless specifically instructed by the ALIU. However, in the same breath, the City stated that "*the City does not have sufficient ALIU or law enforcement officers to attend at every unlawful land*



*occupation site or to remove every structure or peg.” This necessarily implies that the private contractors who attend the sites on behalf of the City will have discretion regarding which structures to demolish. The ALIU cannot perform a policing or supervisory role if it is not present on the site.*

40.5. Given the perverse incentives, the lack protocols and training, and the absence of judicial oversight, the scheme created by the tender will perpetuate the rights violations suffered by occupiers at the hands of the ALIU and the City. The tender appreciably increases the risk that occupiers will be evicted from their shelters and that occupied structures will be demolished. This constitutes a violation of those occupiers’ rights to dignity, safety and security of the person, housing and has a severe impact on their children. Unlawful evictions and demolitions bear an even greater risk during the coronavirus pandemic – destroying peoples’ shelter removes their ability to practice social distancing or to protect themselves against the weather.

41. As such, the City’s decision to issue, adjudicate and/or award the tender falls to be reviewed and set aside on the following grounds:

41.1. It is unconstitutional and contrary to section 6(2)(i) of PAJA, alternatively to the principle of legality; and

41.2. The decision was taken because relevant considerations were not taken into account and irrelevant considerations were considered. Therefore, it falls to be reviewed in terms of section 6(2)(e)(iii) of PAJA and the principle of legality.



42. The City was required to provide a Rule 53 record of the documents that were before the decision-maker and which informed the decision to issue the tender. The City has not provided such a record. In its letter dated 5 August 2020, the City confirmed that no such record exists. Therefore, on the City's own version, it failed to consider:

42.1. why the tender was necessary;

42.2. what the impact of the tender would be (including the impact on occupiers);  
and

42.3. whether there were adequate safeguards in place to protect the rights of occupiers.

43. Indeed, it appears that the City failed to apply its mind to the issuance of the RFP at all. It does not appear to have had any meetings to discuss the RFP. Nor is there any record of consultation between the City's departments and the ALIU.

44. In the circumstances, the City's decision to issue and/or adjudicate and/or award the tender is also reviewable on the following grounds:

44.1. The decision is arbitrary and capricious. It falls to be reviewed in terms of section 6(2)(e)(iv) of PAJA and the principle of legality;

44.2. The decision is not rationally connected to the information before the administrator or the reasons given by the administrator. It is reviewable in terms of sections 6(2)(f)(ii)(cc) and (dd) of PAJA and the principle of legality;  
and



44.3. The decision was unreasonable and falls to be set aside under section 6(2)(h) of PAJA.

## II USE OF EXCESSIVE FORCE BY CITY LAW ENFORCEMENT

45. Prayer 2 in part B of the Applicants notice of motion seeks an order declaring that *"...To the extent that any evictions and/or demolitions are effected by the first respondent in terms of a valid and lawful Court Order, that such evictions and/or demolitions take place in accordance with the law, and the Constitution, and in the presence of the South African Police Service who are directed to ensure that the dignity of the evictees is respected and protected."*
46. At paragraph 14 of my founding affidavit, I explained that the excessive force used by City Law Enforcement officers during Mr Qholani's eviction and the consequent violation of his basic rights to human dignity was not an isolated incident. Due to the urgency with which the founding papers in the interim interdict application were prepared, it was not possible at that time for the Applicants to provide additional details regarding use of excessive force by City Law Enforcement personnel during the execution of eviction and demolition operations.
47. In what follows I set out further factual information relating to the use of such excessive force and violations of evictees rights during demolition operations carried out by the ALIU and supported by City Law Enforcement. Affidavits by persons who have been subjected to this unlawful conduct are attached to this affidavit.



48. Before setting out the details of the incidents disclosed in the affidavits by individuals who have been victims of unlawful and excessive force by the City's Law Enforcement officers, I will draw the Court's attention to a memorandum prepared by the SAPS in which they raise serious concerns regarding the role of the ALIU and City Law Enforcement in evictions and land occupations. This memorandum was referred to in a newspaper article published in the Mail & Guardian newspaper on 5 August 2020. A copy of the newspaper article is annexed marked **CNS3**. According to the newspaper article, the SAPS memorandum "*...turned a spotlight on growing tensions and crossed wires between the South African Police Service (SAPS) and Cape Town's metro police over law enforcement in the city, including the response to land invasions.*"

49. The memorandum itself is annexed hereto marked **CNS4**. The SAPS memorandum in relevant part states the following:

49.1. "*Further, the South African Police Service implemented a Co-ordinating Meeting, chaired by the Commander, Cape Town Public Order Policing (POP), to co-ordinate land invasions and evictions with all role-players in order to ensure proper planning, the allocation of resources to operations with the view of minimizing public unrest. On a number of occasions operations were agreed to by the meeting whereafter the Anti-Land Invasion Unit, which formed part of Law Enforcement, reneged on the agreement reached and proceeded to conduct operations on their own, which led to public violence that demanded the redeployment of POP*





*Units, who were already assigned to other duties, to attend to the violence caused by the operation.”<sup>10</sup>*

49.2. ***“The involvement of Law Enforcement Officers in crowd management:*** *The South African Police Service, who has the mandate to deal with Public Order Police, has no legislative powers to exercise any control in respect of the conduct of members of Law Enforcement in this regard. However, the South African Police Service has substantial powers with regard to the conduct of Metro Police Officers in dealing with crowd management matters, as there are National Directives issued by the National Commissioner in this regard.”<sup>11</sup>*

49.3. *“The failure of Law Enforcement Units, such as the Anti-Land Invasion Unit, to honour agreements reached with regard to land invasion and eviction operations, which lead to unnecessary public violence and subsequent emergency redeployment of South African Police Service resources.”<sup>12</sup>*

49.4. ***“The lack of oversight in respect of the conduct of members of Law Enforcement:*** *Law Enforcement Officers perform primarily a policing function, however the South African Police Service as a responsible agent for policing, has no legislative mandate to oversee the conduct of members of Law Enforcement as Law Enforcement Officers being part of Local Government resort under the Municipality, the MEC for Local*

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<sup>10</sup> Annexure CNS4: para 1.2

<sup>11</sup> Annexure CNS4: para 5.1

<sup>12</sup> Annexure CNS4: para 5.4



*Government and ultimately the Minister for Co-operative Governance and Traditional Affairs.”<sup>13</sup>*

50. There are a number of aspects of the SAPS memorandum which warrant emphasis and which I submit are directly relevant to and which I submit further justify the need for the declaratory relief sought in prayer 2 in part B of the Applicants' notice of motion.
51. Firstly, the memorandum records that in the ALIU has *“on a number of occasions”* reneged on agreements reached with SAPS and *“proceeded to conduct operations on their own, which led to public violence that demanded the redeployment of POP Units, who were already assigned to other duties, to attend to the violence caused by the operation.”*
52. Secondly, it is apparent from the memorandum that SAPS has *“substantial powers with regard to the conduct of Metro Police Officers in dealing with crowd management matters, as there are National Directives issued by the National Commissioner in this regard.”*
53. I point out in this regard that one of the legislative instruments applicable to the conduct of City Law Enforcement officers when dealing with crowd control matters is the National Municipal Policing Standard for Crowd Management during Gatherings and Demonstrations, published in GG No. 30882 GN 307 of 20 March 2008 (“the Crowd Management National Municipal Policing Standard”).

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<sup>13</sup> Annexure CN4: para 5.5

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54. This document published by the National Commissioner of the SAPS in terms of section 64L (1) of the South African Police Service Act 68 of 1995 and is attached marked **CNS5**.
55. The Crowd Management National Municipal Policing Standard states in section 12 thereof that in the execution of operations "...*The use of force must be avoided as far as reasonably possible and members deployed for the operation must display the highest degree of tolerance. The use of force and dispersal of crowds must comply with the requirements of section 9 (1) and (2) of the Act. During any operation, ongoing negotiations must take place between officers and conveners or other leadership elements.*"
56. Paragraph 13 of the Crowd Management National Municipal Policing Standard states:
- "(3) If the use of force is unavoidable, it must meet the following requirements:*
- (a) the purpose of offensive actions are to de-escalate conflict with the minimum force to accomplish the goal and therefor the success of the actions will be measured by the results of the operation in terms of cost, damage to property, injury to people and loss of life;*
  - (b) the degree of force must be proportional to the seriousness of the situation and the threat posed in terms of situational appropriateness;*
  - (c) it must be reasonable in the circumstances;*
  - (d) the minimum force must be used to accomplish the goal; and*
  - (e) the use of force must be discontinued once the objective has been achieved.*
- (4) The use of the following are prohibited or restricted during crowd management operations:*



(a) 37 mm stoppers (prohibited);

(b) pepper spray are prohibited, unless the relevant commander has issued a specific instruction to do so; and

(c) *firearms and sharp ammunition, including birdshot and buckshot are prohibited, unless the relevant commander has issued a specific instruction to do so.*

(5) Rubber bullets (shotgun rubber balls) may only be used as offensive measures to disperse a crowd in extreme circumstances, if less forceful methods have proved to be ineffective." (emphasis added).

57. As the attached affidavits demonstrate, City Law Enforcement officers and members of the ALIU have on a number of occasions used excessive and unlawful force in the execution of eviction and demolition operations carried out by the City.
58. According to the affidavit of Ms Anathi Nongwana, on 1 July 2020 about four law enforcement officers entered her home and one of them pointed a gun at her and ordered her to vacate the house. She was violently handled and shoved out of her house. They proceeded to demolish her home and confiscated its constituent materials.
59. Ms Nomfuneko Konokono says in her affidavit that she and her neighbours were threatened by Law Enforcement, teargassed, shot at with rubber bullets and physically assaulted.

60. Mr Marshal Brews has deposed to an affidavit in which he states that on 28 July 2020 he was chased by about six law enforcement officers and shot at close range with rubber bullets. He was knocked unconscious and sustained injuries in his leg, neck, arm and his hand. The injury to his hand is severe. Doctors at Tygerberg Hospital have told him that he may lose the use of his hand due to the injuries sustained after being shot with rubber bullets by City Law Enforcement,
61. According to an Independent Online news report dated 7 August 2020, the SAPS has launched an investigation into complaints that City law enforcement officers were responsible for injuring people without provocation during the continuing land occupation clashes across the city. The report records that City Law Enforcement officers shot rubber bullets hitting Ms Nontuthezelo Thafeni in the eye.
62. Ms Thafeni stated that at the time she was visiting a friend and sitting in the yard watching the conflict between protestors and officials. Her damaged eye was removed on July 27 at the Tygerberg Hospital and she was discharged a few days later. She states in the report that she was still experiencing severe pain and that "*Medication is doing little to help. I'll have to live with eye one for the rest of my life now. We demand justice.*" The report records that common assault cases were being investigated by SAPS in Ms Thafeni's incident, as well in the case of another man allegedly shot in the eye while getting out of his car and that three cases of attempted murder were filed. A copy of the news report is annexed marked **CNS6**.



63. I respectfully submit that having regard to what at the very least is prima facie evidence of excessive and unlawful use of force by City officials during the conduct of demolition and land occupation prevention operations; SAPS's views as stated in the memorandum that renegade conduct by the ALIU has resulted public violence and most importantly, the lack of clarity and agreement between SAPS and the City regarding the extent of the powers which may lawfully be exercised by City Law Enforcement officers, the declaratory relief sought in prayer 2 of part B of the notice of motion is justified and warranted in the circumstances. I submit that there is no sustainable basis on which this relief can be opposed by either the City or the SAPS respondents and that neither of them will in any way be prejudiced by such relief. Further legal argument in this regard will be advanced at the hearing of this application.

### III. THE CITY'S MEDIA STATEMENT ON 15 AUGUST 2020

64. On 18 August 2020, three days before the interim interdict proceedings are due to be heard, the City issued a media release entitled "*City refers Law Enforcement Officers for Independent Disciplinary Proceedings.*" A copy of the media statement is annexed marked **CNS7**. In its media release the City inter-alia stated:

64.1. "*During an anti-land invasion operation in Khayelitsha on 1 July 2020, an altercation ensued involving Law Enforcement officials after a member of the public deliberately disrobed. This was an apparent attempt to thwart the operation aimed at protecting land on the direct pathway of a water pipeline construction project.*"



- 64.2. *“The City of Cape Town has since referred four Law Enforcement officials for disciplinary proceedings to be independently chaired and initiated. This is in line with the recommendation of an independent investigation, which considered what steps the City should take regarding the conduct of officers involved in the altercation.”*
- 64.3. *“The City further notes an affidavit submitted to the Western Cape High Court by Mr Bulelani Qolani in which he confirms that he went into a structure, undressed, and emerged naked without prompting, exposing himself to onlookers while the operation to dismantle illegal structures was taking place. Mr Qolani claims to have then immediately re-entered the structure in order to allegedly bathe. Video filmed by Law Enforcement during the operation further depicts Mr Qolani emerging from a structure naked and unprompted. This happened prior to the altercation with officials, which is the subject of an independent disciplinary process.”*
- 64.4. *“Deliberate disrobing is a tactic that officials indicate they have seen before. This week in Welbeloond, we had three incidents and we have now developed a new strategy for coping with it, which involves officers covering the disrobed person with a blanket and accompanying them out of the structure in order for the removal of the structure to proceed,” said Mayoral Committee Member for Safety and Security, JP Smith.”*



- 64.5. *"Note to Editors: Video filmed by ALIU on the day of the incident with Mr Qolani is available on request, but will however be edited only to the extent of ensuring that nudity is concealed."*
65. In my replying affidavit dated 23 July 2020, I pointed out at paragraphs 18 to 22 that on 6 July 2020 the City announced that it had appointed its current attorneys of record to conduct as so called "*independent*" investigation into "*the circumstances surrounding an Empolweni anti-land invasion operation.*" The City initially promised that the investigation would be complete by 6 July 2020 and by the time that the City's answering affidavit was filed on 13 July 2020, no indication was given as to when the investigation would be complete.
66. The City's media release indicates that the investigation has now been completed and that it made recommendations regarding *steps the City should take regarding the conduct of officers involved in what the City calls "the altercation"* with Mr Qolani. The City has however failed to provide Mr Qolani or the Court with the findings of this "independent investigation".
67. It is clear that the City has no objection to issuing public statements pre-judging the very issues pending before this Court, pre-judging matters in the disciplinary proceedings initiated against its own officials and attacking Mr Qolani's credibility. Worse, the City has offered to make publicly available to the media video footage filmed by the ALIU on the day of the incident but has failed to disclose that video footage in its answering affidavit.





68. I submit that this conduct by the City is inappropriate and warrants sanction by the Court. It is conduct which is inconsistent with the City's duty under section 165(4) of the Constitution to assist the Court by making a full disclosure of material and relevant evidence and to be candid with facts relevant to the determination of issues before the Court.

#### IV PROHIBITION OF DEMOLITIONS AND EVICTIONS IN THE LATEST ALERT LEVEL 2 LOCKDOWN REGULATIONS

69. Lastly, I draw the attention of the Court to the continued prohibition of evictions and demolitions and their subjection to judicial supervision in the latest Alert Level 2 Regulations published in GG 662 GN 43260 published on 17 August 2020.

70. The Alert Level 2 Lockdown Regulations come into effect at 00h01 on 18 August 2020 and repeal and replace the regulations issued under Alert Levels 3 and 4.

71. Regulation 53 of the Alert Level 2 Regulations states:

"53. (1) A person may not be evicted from his or her land or home or have his or her place of residence demolished for the duration of the national state of disaster unless a competent court has granted an order authorising the eviction or demolition.

(2) A competent court may suspend or stay any order for eviction or demolition contemplated in subregulation (1) until after the lapse or termination of the national state of disaster unless the court is of the opinion that it is not just or

*equitable to suspend or stay the order having regard, in addition to any other relevant consideration, to-*

*(a) the need, in the public interest for all persons to have access to a place of residence and basic services to protect their health and the health of others and to avoid unnecessary movement and gathering with other persons;*

*(b) any restrictions on movement or other relevant restrictions in place at the relevant time in terms of these regulations;*

*(c) the impact of the disaster on the parties;*

*(d) the prejudice to any party of a delay in executing the order and whether such prejudice outweighs the prejudice of the person who will be subject to the order;*

*(e) whether any affected person has been prejudiced in his or her ability to access legal services as a result of the disaster;*

*(f) whether affected persons will have immediate access to an alternative place of residence and basic services;*

*(g) whether adequate measures are in place to protect the health of any person in the process of a relocation;*

*(h) whether any occupier is causing harm to others or there is a threat to life; and*

*(i) whether the party applying for such an order has taken reasonable steps in good faith, to make alternative arrangements with all affected persons, including, but not limited to, payment arrangements that would preclude the need for any relocation during the national state of disaster.*


*(3) A court hearing any application to authorise an eviction or demolition may, where appropriate and in addition to any other report that is required by law, request a report from the responsible member of the executive regarding the*

availability of any emergency accommodation or quarantine or isolation facilities pursuant to these regulations.” (emphasis added).

V. CONDONATION AND CONCLUSION


72. In terms of the order granted on 24 July 2020, this affidavit was due to be filed on 17 August 2020. It is being filed two days late on 19 August 2020. The reason for the delay has been logistical difficulties experienced by the Applicants’ attorneys in obtaining instructions and information from all the deponents to the attached affidavits regarding instances of use of excessive force by City Law Enforcement officials. I submit that the delay is slight and that none of the parties will be prejudiced by the delay in filing this affidavit. I respectfully ask the Court to condone the late filing of this affidavit.

73. I further respectfully submit that the Applicants have made out a proper case for the relief sought in part B of the notice of motion.

  
\_\_\_\_\_

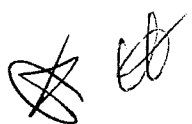
DEPONENT

The Deponent has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to or before me at Cape Town on this 17<sup>th</sup> day of August 2020 the regulations contained in Government Notice No. R1258 of 21 July 1972, having been complied with.

  
\_\_\_\_\_

COMMISSIONER OF OATHS

CLINTON ABRAHAM HAMMAN  
COMMISSIONER OF OATHS  
ADMITTED ATTORNEY OF THE HIGH COURT  
C & A FRIEDLANDER INC  
3RD FLOOR, 42 KEEROM STREET  
CAPE TOWN





Our ref: AP/aa/CIT125/0051

Your ref:

Date: 05 August 2020

Attention: Lelethu Mgedezi  
**LEGAL RESOURCES CENTRE**  
Email: lelethu@lrc.org.za

Attention: C van Tonder  
**THE STATE ATTORNEY**  
Email: CaVanTonder@justice.gov.za

Attention: A Charalambous  
**IVAN LEVITT ATTORNEYS**  
Email: angelike@ianlevitt.co.za

Dear all

**RE: SOUTH AFRICAN HUMAN RIGHTS COMMISSION & 2 OTHERS v THE CITY OF CAPE TOWN & 3 OTHERS, CASE NO: 8631/2020: INCORRECT AND DEFAMATORY PUBLIC COMMENTS BY OUR CLIENT**

Insofar as the review application in Part B of the relief is concerned, and the request for the filing of the record in relation to the following two decisions, i.e.

1. The City's decision to instruct the ALIU to demolish structures without a court order if its officials deem they are unoccupied;

Tel: +27 21 495 7300 • Fax: +27 21 419 5135 • Email: [enquiries@fairbridges.co.za](mailto:enquiries@fairbridges.co.za) • Website: [www.fairbridges.co.za](http://www.fairbridges.co.za)  
16th Floor, South Tower, The Towers, Heerengracht, Cape Town 8001 • PO Box 836, Cape Town 8000, South Africa • Dorex 2, Cape Town

**Directors:** Deirdré Olivier (Chairperson), Sheri Breslaw, Richard Cheeseman, Caroline Dichmont, Claire Gaul, Shivani Govender, Bob Groeneveld, Kevin Hacker, Jean Herbert, Graham Houston, Amish Kika, Melanie Kilian, Palesa Maseko, Gaby Meintjes, Karol Michalowski, Julia Penn, Greer Penzhorn, Adela Petersen, Jodi Poswellestski, Diane-Maree Rauch, Darryl Reece, David Short, Waheeda Shreef, Daniel Treves, Matthew van der Want, Jaco van der Westhuizen, Johann van Eeden, André van Rensburg. **Senior Associates:** Dhahini Naidu. **Associates:** Henrietta Botha, Philippa Campbell, Zamuxolo Gulwa, Felicia Hlophe, Garth Kallis, Keorapetse Matlala, Nosisa Matsebula, Errol Melamu, Tatenda Mudimu, Nicola Mullineux, Emlyn Williams. **Consultants:** Anne Boag, John Bromley, Solomon Gordon, Monty Hacker, Bernard Joffe, Steven Kapeluschnik, Louis Le Roux, Pieter Pretorius, Wickaum Smith, Cyril Ziman. **Practice Manager:** Robin Kirkby.

2. The decision to issue or adjudicate or amend the tender.

We confirm that there is no record in respect of the decisions.

Yours faithfully

**FAIRBRIDGES WERTHEIM BECKER**



**ADELA PETERSEN**

E-mail address: [apetersen@fairbridges.co.za](mailto:apetersen@fairbridges.co.za)

Direct line: 021 405-7337

Direct fax: 0866394266

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 8631/2020

<b>SOUTH AFRICAN HUMAN RIGHTS COMMISSION</b>	First Applicant
<b>HOUSING ASSEMBLY</b>	Second Applicant
<b>BULELANI QOLANI</b>	Third Applicant
and	
<b>THE CITY OF CAPE TOWN</b>	First Respondent
<b>THE MINISTER OF HUMAN SETTLEMENTS</b>	Second Respondent
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	Third Respondent
<b>NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE</b>	Fourth Respondent
<b>MINISTER OF POLICE</b>	Fifth Respondent
<b>WESTERN CAPE PROVINCIAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE</b>	Sixth Respondent

---

AMENDED NOTICE OF MOTION

---

PART B: REVIEW AND DECLARATORY RELIEF



**TAKE NOTICE THAT** the above-named applicants intend applying to this Court on **6 and 7 October 2020** at 10h00 or as soon thereafter as counsel may be heard for an order in the following terms:

1. The conduct of the first respondent in demolishing informal dwellings and/or structures erected on Erf 18332 Khayelitsha, Erf 5144 Ocean View, Erf 18322, Ethembeni in Khayelitsha, and Erf 5144, Kommetjie Township, Ocean View, and throughout the City Metropole, without a valid and lawful Court Order, is declared to be unlawful and invalid, and inconsistent with the Constitution.
2. To the extent that any evictions and/or demolitions are effected by the first respondent in terms of a valid and lawful Court Order, that such evictions and/or demolitions take place in accordance with the law, and the Constitution, and in the presence of the South African Police Service who are directed to ensure that the dignity of the evictees is respected and protected.
3. The decision or decisions of the City to mandate its Anti Land Invasion Unit ('ALIU') and/or its agents to demolish structures determined by City officials and/or the ALIU and/or its agents, to be unoccupied, without court orders, are declared to be unlawful and unconstitutional, and they are accordingly reviewed and set aside;



4. The conduct and procedure adopted by the City and/or its officials and/or the ALIU and/or its agents, to decide, based on a visual assessment, whether and when a structure or informal dwelling is “occupied” as a “home” and consequently whether and when persons are to be evicted from their structures and that those structures be demolished, without a court order, alternatively the decision of the City to approve or condone such conduct and procedure by its officials and/or agents, and/or ALIU, is declared to be unlawful and unconstitutional, and is reviewed and set aside;
5. The decision(s) and/or conduct of the City in establishing, mandating and operating the ALIU is declared to be unlawful, unconstitutional and is reviewed and set aside;
6. It is declared that the common law principle of counter-spoliation, insofar as it permits or authorises the eviction of persons from, and the demolition of, any informal dwelling, hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, whether occupied or unoccupied at the time of such eviction or demolition, is inconsistent with the Constitution, and invalid.
7. The decision of the first respondent to issue, adjudicate, and award, Tender 308S/2019/20 ‘Demolition of Illegal and formal and informal structures in the City of Cape Town’ is declared to be unlawful and unconstitutional and is reviewed and set aside.





8. The first respondent and/or any of the other respondents opposing this application, are ordered to pay the costs of this application, including the costs of two counsel on the attorney and client scale.
9. Further and/or alternative relief.

**TAKE NOTICE FURTHER THAT** the applicants have appointed the offices of their attorneys below as the address at which they will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER THAT** the first respondent is hereby called upon in terms of Uniform Rule 53, to dispatch, within 15 days after service of this notice of motion, to the Registrar of this Court, the record of the decisions set out in paragraph 2 and 5 of the notice of motion which are sought to be reviewed and set aside together with such reasons as the first respondent may desire to give and to notify the applicants' attorneys that it has done so.

**TAKE NOTICE FURTHER THAT** should any respondent wish to oppose the relief sought in this application they are required to:

- (a) notify the applicants' attorneys in writing of its intention to do so within 15 days of service after service of this notice of motion and appoint in such notification an address referred to in Uniform Rule 6(5)(b) at which they will accept notice and service of all documents in these proceedings; and



- (b) within 30 days after the expiry of the time period referred to in Uniform Rule 53(4), deliver affidavits, if any, in answer to the allegations made by the applicants.

DATED at CAPE TOWN on this the <sup>19<sup>TH</sup></sup> day of AUGUST 2020.



---

Per: **L MGEDEZI**  
**LEGAL RESOURCES**  
**CENTRE**  
Block D  
Aintree Office Park  
Ground Floor  
Cnr Doncaster & Loch Road  
Kenilworth  
Cape Town  
Tel: 021 879 2398  
Fax: 021 423 0935  
E: [lelethu@lrc.org.za](mailto:lelethu@lrc.org.za)

**TO: THE REGISTRAR**  
High Court  
CAPE TOWN

**AND TO: CITY OF CAPE TOWN**  
**C/o FAIRBRIDGES WERTHEIM**  
**BECKER**  
16<sup>th</sup> Floor, South Tower  
The Towers  
Heerengracht  
CAPE TOWN  
REF: MS A PETERSEN  
TEL: (021) 405-7300  
E-MAIL: [apetersen@fairbridges.co.za](mailto:apetersen@fairbridges.co.za)

**AND TO: THE MINISTER OF HUMAN**  
**SETTLEMENTS**  
**C/o THE STATE ATTORNEY**  
22 Long Street



CAPE TOWN

**AND TO: THE MINISTER OF CO-OPERATIVE  
GOVERNANCE AND TRADITIONAL AFFAIRS  
C/o THE STATE ATTORNEY  
22 Long Street  
CAPE TOWN**

**AND TO: THE NATIONAL COMMISSIONER: SAPS  
C/o THE STATE ATTORNEY  
22 Long Street  
CAPE TOWN**

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NATIONAL

# Metro cops, SAPS clash over control

Lester Kiewit 5 Aug 2020



SAPS, Metro Police and City Police respond to a land invasion in Tafelsig.

READ ALL OUR CORONAVIRUS COVERAGE

**A** leaked internal memorandum has turned a spotlight on growing tensions and crossed wires between the South African Police Service (SAPS) and Cape Town's metro police over law enforcement in the city, including the response to land invasions.

The memo by the SAPS Western Cape legal services, which the *Mail & Guardian* has seen, strongly suggests underlying political conflicts between the national government, which controls the police, and the Democratic Alliance government in Cape Town.

It complains that local law enforcement is overstepping its mandate. The city responded that moves to expand its policing role were sparked by the SAPS's "serious shortcomings" and failure to serve the city adequately.

Among other issues, the SAPS memo questions why city law enforcement and officers of the newly-established provincial law enforcement arm are assuming crime investigating powers.

In February, the Western Cape government introduced several hundred provincial law enforcement officers, as per the 2019 election promises of Premier Alan Winde.

The memo also challenges proposed Cape Town by-laws that would give law enforcement officials the power of search and seizure, which national police argue is not their mandate.

"The South African Police Service ultimately remains responsible for policing functions, such as crime prevention and the investigation of crime," the memo says. "Nowhere in any legislation are these functions delegated or assigned to any other institution, department or body."

The document also questions the involvement of non-police officers, including the city's mayoral committee member for safety JP Smith, in search and seizure operations.

"The involvement of non-police members ... renders such an operation invalid and evidence obtained during such an operation is considered to be unconstitutionally obtained," it says.

The relationship was further strained when an undercover police officer was shot dead by a Cape Town law enforcement official in January.

According to the police, the officer was searching two robbery suspects when law enforcement officers arrived. Before he could identify himself, shots were fired.

Mounting protests and illegal land occupations, resulting in the deployment of public order police, have also given rise to mutual recriminations.

The SAPS memo said the city's law enforcement and anti-land invasion unit had reneged on an agreement on when and how to conduct evictions, which it said had resulted in violent public protest.

The DA hit back at the police complaints, with the mayoral committee member for human settlements, Malusi Booi, arguing that the SAPS is not helping the city deal with illegal land occupations and the erection of shacks on vacant land,

Commenting on recent anti-land invasion operations in Kraaifontein in the northern parts of the city, Booi said the police "are not servicing us as the city of Cape Town".

"The mayor has written to the president, I've had a meeting with the minister of human settlements, Lindiwe Sisulu, where we said the police are not assisting us," Booi said. "It's a political issue because they source their mandate from the national government."

Asked to comment on the memo, Western Cape SAPS said the document was an "internal, draft correspondence that was compiled for a specific purpose at a determined time".

"In the course of executing the mandate of the SAPS such discussions are imperative, especially when we interface with other role-players within the law enforcement space," said police spokesperson Novella Potelwa.

Reacting, the city disputed the memorandum, saying the matters it raised had come up in previous discussions with the SAPS.

"The truth is that none of the extraordinary measures the city is engaging in to expand its policing capacity would have been necessary if not for the serious shortcomings, which remain unaddressed, in the SAPS and which we have raised through appropriate channels over several years," the city's media communications department said.

The city said it would not comment further. "Instead of perpetuating the show of bad faith, the city will do the responsible thing and engage the SAPS through the appropriate internal

channels.”

During the announcement of the national crime statistics last week, the SAPS said violent crime in the province had “stabilised”.

Only one more murder had been reported during the 2018-2019 financial year, bringing the total to 3 975 homicides.

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### Lester Kiewit

Lester Kiewit is a Reporter, Journalist, and Broadcaster.



More on

City Of Cape Town

Democratic Alliance

Jp Smith

Malusi Booi

Metro Police

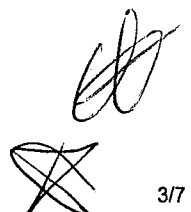
Openaccess

SAPS

South Africa (Country)

South African Police Service

### RELATED STORIES



1/1/4/1

**INFORMATION NOTE**

To: The Provincial Commissioner: South African Police Service: Western Cape

**CO-OPERATION BETWEEN THE SOUTH AFRICAN POLICE SERVICE AND THE CITY OF CAPE TOWN LAW ENFORCEMENT****1. BACKGROUND:**

- 1.1 The relationship between the City of Cape Town Law Enforcement and the South African Police Service has not always been amicable. This relationship was further strained pursuant to the killing of a member of the South African Police Service by a member of the City of Cape Town Law Enforcement. The South African Police Service in no way disregards the role that Law Enforcement plays in addressing crime and grime.
  - 1.2 Further, the South African Police Service implemented a Co-ordinating Meeting, chaired by the Commander, Cape Town Public Order Policing (POP), to co-ordinate land invasions and evictions with all role-players in order to ensure proper planning, the allocation of resources to operations with the view of minimizing public unrest. On a number of occasions operations were agreed to by the meeting whereafter the Anti-Land Invasion Unit, which formed part of Law Enforcement, reneged on the agreement reached and proceeded to conduct operations on their own, which led to public violence that demanded the redeployment of POP Units, who were already assigned to other duties, to attend to the violence caused by the operation.
  - 1.3 Another issue that places strain on this relationship is the involvement of Law Enforcement in crowd management.
  - 1.4 Recently the City of Cape Town also published proposed amendments to the By-Law for Streets and Public Places in terms of which they intended to extend the powers of Law Enforcement Officers substantially, specifically with regard to search and seizure. Comprehensive comments were made in respect of these By-Laws by this office with the assistance of the Divisional Commissioner: Legal and Policy Services.
2. At the outset it is important to note the powers and functions of the South African Police Service as set out in the Constitution. The powers and functions of the South African Police Service are not only contained in Section 205(3), which reads as follows:



1/1/4/1:

CO-OPERATION BETWEEN THE SOUTH AFRICAN POLICE SERVICE AND THE CITY OF CAPE TOWN  
LAW ENFORCEMENT

*“(3) The objects of the police service 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.”*

Having regard to these provisions, the South African Police Service ultimately remains responsible for policing functions, such as crime prevention and the investigation of crime. Nowhere in any Legislation are these functions delegated or assigned to any other Institution, Department or Body.

3. With regard to the employment of Law Enforcement Officers by the Province and the City of Cape Town not only to conduct crime prevention, but also the investigation of crime, this office is of the view that there are a number of challenges which face the Province and the City of Cape Town in this regard; such as:

Having regard to the powers and functions of Municipalities as set out in Section 156(2), Municipalities may make and administer By-Laws. Law Enforcement Officers employed by Municipalities are primarily responsible for enforcement of By-Laws. This is the primary reason for their appointment.

Law Enforcement Officers are appointed as Peace Officers in terms of Section 334 of the Criminal Procedure Act, No. 51 of 1977 (the Act). It deems mentioning that Law Enforcement Officers have limited powers to execute their duties in terms of Government Notice No. 1114 as published in Government Gazette No. 41982 of 19 October 2018.

In particular, their powers are limited to Column 4 which is listed, in the Annexure hereto. In terms of this Schedule, the Law Enforcement Officers have no powers to in terms of Sections 20 to 22 of the Act, relating to search and seizure for evidence. Their powers are limited to searches after arrest in terms of Section 23 of the Act. In the absence of search and seizure powers, a Law Enforcement Officer would be very ineffective in assisting in the prevention of crime, such as drug offences, possession of dangerous weapons, firearms and liquor, which are some of the primary generators of violent crime.

At this stage it must also be mentioned that Law Enforcement Officers have no powers to enforce the Domestic Violence Act, No. 116 of 1998. In dealing with violent crime as set out in the Plan, the data contained therein indicate that violent crime is also domestic-related, therefore they would not be in a position to assist in this regard.





1/14/1:

CO-OPERATION BETWEEN THE SOUTH AFRICAN POLICE SERVICE AND THE CITY OF CAPE TOWN  
LAW ENFORCEMENT

and evidence obtained during such an operation is considered to be unconstitutionally obtained. There is substantial Case Law reported in this regard where persons other than members of the South African Police Service were involved in search and seizure operations.

- 5.4 The failure of Law Enforcement Units, such as the Anti-Land Invasion Unit, to honour agreements reached with regard to land invasion and eviction operations, which lead to unnecessary public violence and subsequent emergency redeployment of South African Police Service resources.
- 5.5 **The lack of oversight in respect of the conduct of members of Law Enforcement:** Law Enforcement Officers perform primarily a policing function, however the South African Police Service as a responsible agent for policing, has no legislative mandate to oversee the conduct of members of Law Enforcement as Law Enforcement Officers being part of Local Government resort under the Municipality, the MEC for Local Government and ultimately the Minister for Co-operative Governance and Traditional Affairs.

6. **RECOMMENDATIONS:**

- 6.1 It is recommended that the above-mentioned concerns and possible solutions/the way forward be addressed by the South African Police Service Provincial Management, the Mayor of the City of Cape Town, Alderman JP Smith, who is responsible for Safety and Security, and the Executive Director responsible for Safety and Security, Mr Richard Bosman.
- 6.2 It is also recommended that the above-mentioned meeting be convened as a matter of urgency as the above-mentioned concerns have a negative effect in co-ordinating police operations in the Metropole.
- 6.3 It would be important to attempt to reach some agreement on co-operation with Law Enforcement of the City of Cape Town, as the proposed legislative proposals made to the Minister of Police in this regard will only be addressed in the future.

COLONEL  
PROVINCIAL COMMANDER: SPECIALISED INVESTIGATION:  
LEGAL AND POLICY SERVICES: WESTERN CAPE  
M CLOETE



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1/1/4/1:  
CO-OPERATION BETWEEN THE SOUTH AFRICAN POLICE SERVICE AND THE CITY OF CAPE TOWN  
LAW ENFORCEMENT

Date:

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CO-OPERATION BETWEEN THE SOUTH AFRICAN POLICE SERVICE AND THE CITY OF CAPE TOWN  
LAW ENFORCEMENT

Comments:

MAJOR GENERAL  
PROVINCIAL HEAD: LEGAL AND POLICY SERVICES:  
WESTERN CAPE  
FM MBEKI

Date:

Comments:

MAJOR GENERAL A LINCOLN

Date:



1/1/4/1:  
CO-OPERATION BETWEEN THE SOUTH AFRICAN POLICE SERVICE AND THE CITY OF CAPE TOWN  
LAW ENFORCEMENT

**Instruction:**

PROVINCIAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE: WESTERN CAPE  
Y MATAKATA

LIEUTENANT GENERAL

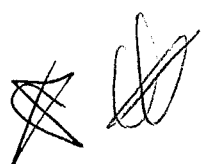
**Date:**

Information note compiled by:  
Telephone number:  
Date:

Colonel M Cloete  
021 4177369  
2020-07-17

Information note verified and approved by:  
Telephone number:  
Date:

Major General FM Mbeki  
021 4177145  
2020-07-17

Two handwritten signatures in black ink, one on the left and one on the right, located in the bottom right corner of the page.

**GN 307 of 20 March 2008: National Municipal Policing Standard for Crowd Management during Gatherings and Demonstrations**  
**(Government Gazette No. 30882)**

567

DEPARTMENT OF SAFETY AND SECURITY

The National Commissioner of the South African Police Service, has, by virtue of the powers vested in him by section 64L (1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), determined the National Municipal Policing Standard for Crowd Management during Gatherings and Demonstrations, as set out in the Schedule:

**SCHEDULE**

## ARRANGEMENT OF REGULATIONS

- |            |   |
|------------|---|
| <u>1.</u>  | Background  |
| <u>2.</u>  | Definitions   |
| <u>3.</u>  | Pro-active conflict resolution  |
| <u>4.</u>  | Designation and responsibilities of responsible officers              |
| <u>5.</u>  | Designation of authorized members                                     |
| <u>6.</u>  | Duties and responsibilities of an authorized members                  |
| <u>7.</u>  | Receiving notice or information of a gathering                        |
| <u>8.</u>  | Threat assessment after information has been received                 |
| <u>9.</u>  | Appointment of the CJOC   |
| <u>10.</u> | Pre-planning of operations  |
| <u>11.</u> | Briefing of members   |
| <u>12.</u> | Execution   |
| <u>13.</u> | Reporting and record keeping  |
| <u>14.</u> | Debriefing  |
| <u>15.</u> | First member(s) at the scene of an unforeseen (spontaneous) gathering |

## NATIONAL MUNICIPAL POLICING STANDARD FOR CROWD MANAGEMENT DURING GATHERINGS AND DEMONSTRATIONS

**1. Background.**-(1) The Regulation of Gatherings Act, 1993 (Act No. 205 of 1993), shifted the focus away from obtaining permission to hold a gathering, to giving notice of an intended gathering. The said Act prescribes the procedures that must be followed when the Constitutional rights to protest, petition and freedom of speech are exercised.

(2) The purpose of this National Standard is to regulate crowd management by members of municipal police services during gatherings and demonstrations in accordance with the democratic principles of the Constitution and acceptable international standards.

**2. Definitions.**-In this National Standard, unless the content otherwise indicates,-

- (a) *"authorized member"* means a member of the Service designated in terms of section 2 (2) (a) of the Act, to help with the arrangements relating to a gathering or demonstration;
- (b) *"convener"* means any person who, of his or her own accord, convenes a gathering and, in relation to any organization or branch of any organization, any person appointed by such organization or branch as contemplated in section 2 (1) of the Act;
- (Editorial Note: Wording as per *Government Gazette*.)
- (c) *"crowd management"* means the policing of assemblies, demonstrations and all gatherings, as defined in the Act, whether recreational, peaceful or of whatever nature;
- (d) *"CJOC"* means the commander of the joint operational centre that is designated by the National Commissioner, a Divisional or Provincial Commissioner to take command of the JOC;
- (e) *"defensive measures"* refer to pro-active tactical measures such as static barriers which are used to protect and safeguard people or property, by cordoning off, blocking, isolating, patrolling, escorting and channelling people;
- (f) *"demonstration"* means any demonstration by one or more persons, but not more than 15 persons, for or against any person, cause, action or failure to take action;
- (g) *"executive head"* means the executive head of a municipal police service (Chief of Municipal Police) appointed in terms of section 64C of the South African Police Service Act, 1995 (Act No. 68 of 1995) by the relevant municipal council;
- (h) *"gathering"* means any assembly, concourse or procession of more than 15 persons in or on any

"public road" as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996), or any other public place or premises wholly or partly in open air-

- (aa) at which the principles, policy, actions or failure to act of any government, political party or political organization, whether or not that party or organization is registered in terms of any applicable law, are discussed, attacked, criticized, promoted or propagated; or
- (bb) held to form pressure groups, to hand over petitions to any person, or to mobilize or demonstrate support for or opposition to the views, principles, policy, actions or omissions of any person or body of persons or institution, including any government, administration or governmental institution;
- (i) "*information manager*" means the member designated to take responsibility for the collection and supply of all pro-active information of all crowd management events to the operational commander to ensure that all crowd management events are policed professionally. The information manager also liaises with all information based role-players and is never involved in covert or undercover information gathering;
- (j) "*JOC*" means the joint operational centre that is activated at the scene of an incident or event;
- (k) "*JOCCOM*" means the Joint Operational Coordinating Committee that is an integrated operational body involving the Service as well as external role-players such as the SANDF, Municipal Police Services, etc. The consultation process regarding the threat assessment is carried out by the *JOCCOM*, and involves all information role-players. The threat determination, mandate and tasking for the event will come from this meeting. The *JOCCOM* meets weekly and only deals with planned activities, such as an expected march. Furthermore the *JOCCOM* will activate the *JOC*, appoint the Operational Commander and identify all the required role-players involved.
- (l) "*member*" means a *member* of a municipal police service;
- (m) "*operational commander*" means an operational officer who is responsible for the operational coordination of an operation;
- (n) "*Provincial Commissioner*" means the Provincial Commissioner of the Service or his or her delegate;
- (o) "*Public Order Policing Unit*" means a unit which has been established by the Provincial Commissioner to maintain public order which is the managing and policing of events and incidents of public collective action and behaviour. This includes managing pre-planned and spontaneous assemblies, gatherings and demonstrations whether of a peaceful or unrest nature;
- (p) "*responsible officer*" means a person defined in section 1 of the Act as a "responsible officer", appointed by a local authority as a suitable person, including a deputy to such person, to perform the functions, exercise the powers and discharge the duties of a responsible officer in terms of *the Act*: Provided that, if a local authority has not made such an appointment, the Municipal Manager (City Manager) of the local authority or, in his or her absence, his or her immediate junior, is deemed to be the responsible officer;
- (q) "*the Service*" means the South African Police Service;
- (r) "*the Act*" means the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993); and
- (s) "*VISPOL*" means Visible Policing: South African Police Service.

**3. Pro-active conflict resolution.**-(1) If information concerning potential violent disorder is brought to the attention of the *Executive Head*, such information must be reported to the relevant *Public Order Policing Unit* and the *Provincial Commissioner* to initiate a facilitation process to peacefully resolve the factors that underlie the potential disorder.

- (2) *Executive Heads* must support the commitment to the partnership with the community by-
  - (a) building positive and constructive relationships with event organizers, community leaders and non-governmental organizations; and
  - (b) exploring the potential for establishing formal liaison panels, to prevent and defuse community disorder in conjunction with institutions such as local authorities, civic associations, community policing forums and non-governmental organizations.

**4. Designation and responsibilities of responsible officers.**-(1) The local authority may designate a *member* as the *responsible officer* and submit, in writing, the name and contact details of the *responsible officer* to the provincial commissioner as well as to all station commissioners within the area of jurisdiction of the municipal police service.

- (2) The *responsible officer* must-
  - (a) maintain a good relationship with the *authorised member of the Service*;

- (b) receive written notice of an intended *gathering* in accordance with the provisions of *the Act*;
- (c) receive and report information regarding an intended gathering to the *authorized member*;
- (d) take such steps as he or she may deem necessary, including obtaining assistance from *the Service* to establish the identity of the *convener* of the intended *gathering*, and requesting the convener to comply with the provisions of *the Act*;
- (e) consult with the *authorized member* regarding the necessity for negotiations on any aspect of the conduct of, or any condition with regard to, the *gathering*; and
- (f) if, after the consultations referred to in subparagraph (e) above, he or she is of the opinion that negotiations are-
  - (i) not necessary and that the gathering may take place, notify the *convener* and the *authorized member* in writing accordingly; or
  - (ii) necessary-
    - (aa) set up a meeting between himself or herself, the *convener*, the *authorized member*, any other *responsible officers* concerned, if any, and representatives of such other public bodies or other persons, as are, in the opinion of such *responsible officer*, necessary to discuss the contents of the notice, amendments or additions thereto and the conditions, if any, to be imposed in respect of the holding of the gathering so as to meet the objects of *the Act*;
    - (bb) act as chairperson of the meeting and ensure that discussions take place in good faith;
    - (cc) impose conditions, if any, with regard to the holding of the gathering as envisaged in section 4 (4) (b) of the Act and give written reasons therefor; and
    - (dd) ensure that written minutes are kept of the meeting and that the approval, conditions or refusal are communicated, in writing, to the applicant;
- (g) ensure that a written copy of the notice, including any amendment thereof and any condition imposed and reasons therefor, is handed to the convener, the authorized member and every party who attended the meeting referred to in subparagraph (f) above;
- (h) prohibit the intended gathering subject to the conditions referred to in section 5 of the Act and notify the convener, authorized member and every other person with whom he has met or consulted and provide reasons therefor; and
- (i) receive notification from the convener regarding any postponement, delay, cancellation or call-off of an intended gathering and notify the authorized member accordingly.

(3) If a local authority designated a person who is not a *member* to perform the functions, exercise the powers and discharge the duties of a *responsible officer* in terms of *the Act*, the *executive head* must ensure that the necessary support is provided to such person to enable him or her to comply with his or her responsibilities in terms of the Act and to ensure the maintenance of good relationship and proper communication channels with all the relevant role players, including the municipal police service, the *authorized member of the Service* and other relevant members of *the Service*.

**5. Designation of authorized members.**-(1) Once the Provincial Commissioner has designated *authorized members*, the Provincial Commissioner will ensure that the particulars of the *authorized members* are submitted, in writing, to every municipality and executive head, if any, within the province.

(2) An *executive head* must ensure that a notice containing the name and contact particulars of the designated *authorized member(s)* for his or her area of jurisdiction is displayed in all offices of the municipal police service to which members of the public have access.

**6. Duties and responsibilities of an authorized member.**-The duties and responsibilities of an *authorized member* are to-

- (a) represent the Service and liaise with the *responsible officer* and *conveners* concerning all negotiations and consultations as prescribed by *the Act*;
- (b) maintain a good relationship with the *responsible officer* and *conveners*;
- (c) arrange and negotiate the extent of security forces to be deployed for an operation;
- (d) inform the *responsible officer* of any unforeseen (spontaneous) *gathering*;
- (e) keep all records of operational plans and reports on the execution of operations and debriefing reports, for three years;
- (f) take part in the overall debriefing of events by attending the debriefing;
- (g) in writing, request the responsible officer to impose conditions or prohibitions, if any; and

- (h) brief all members performing duties at a *gathering* or *demonstration* regarding the content of a notice, conditions and amendments thereto, issued in accordance with *the Act*.

**7. Receiving notice or information of a gathering.**-(1) When an *authorized member* receives a notice or information regarding a *gathering*, the following action must be taken:

<i>If . . .</i>	<i>Then . . .</i>
the <i>authorized member</i> received a notice from a <i>convener</i> of a <i>gathering</i> ,	he or she will inform the <i>convener</i> that such notice is to be handed to the <i>responsible officer</i> and indicate how the <i>convener</i> is to contact the <i>responsible officer</i> . The <i>authorized member</i> will consult with the <i>responsible officer</i> and ensure that such notice has been received.
the <i>authorized member</i> received information from other internal police sources that a <i>gathering</i> is to take place,	he or she will consult with the <i>responsible officer</i> and enquire whether notice has been given to him or her. If notice has not been given to the <i>responsible officer</i> , the <i>authorized member</i> will contact the <i>convener</i> and inform him or her that notice is to be given and inform them of the provisions of <i>the Act</i> . The <i>authorized member</i> will consult with the <i>responsible officer</i> in this regard.
the <i>authorized member</i> is contacted by the <i>responsible officer</i> to inform him or her that a <i>gathering</i> is to take place,	the <i>authorized member</i> will make an attempt to gather further information pertaining to the intended <i>gathering</i> by using the relevant <i>Public Order Policing Unit</i> information network and requesting a meeting in terms of <u>section 4</u> of <i>the Act</i> .

(2) During consultations referred to in subparagraph (1)-

- (a) all the arrangements for the proposed event must be finalized; and
- (b) the necessity for negotiations with the *convener* concerning any aspect of, or any condition about the intended *gathering*, must be decided.

(3) The *authorized member* will inform the Provincial Commissioner of the arrangements made in accordance with subparagraph (2).

**8. Threat assessment after information has been received.**-(1) Immediately after notification or information has been received by the Provincial Commissioner or member designated by him or her of an intended *gathering*, he or she will, in consultation with the Provincial Head: Operational Response Services or relevant *Public Order Policing Unit* commander, determine at the *JOCCOM* the threat level involved, in order to identify the most suitable component to manage the proposed event.

(2) The assessment of the threat level will be based on available tactical information in terms of level of risk, discussions and arrangements with the *convener*, history of peaceful or violent protests by the parties involved, past experiences with the party, suitability of vicinity or venue in terms of alleviating or aggravating risk, etc.

(3) The threat assessment must classify the threat posed by the *gathering* as being at one of the following levels:

- (a) **Level One:** A peaceful *gathering* or a less significant sport or entertainment event that can be policed by the municipal police service or *VISPOL* with the relevant *Public Order Policing Unit* on standby: Provided that the *Public Order Policing Unit* may take over control of the management of the crowd, if the commander of the *Public Order Policing Unit* deems it necessary;
- (b) **Level Two:** Unconfirmed information regarding a possibility of a threat against lives and property-*VISPOL* and the *municipal police service* are the primary role-players, with the relevant *Public Order Policing Unit* in reserve at the scene: Provided that the *Public Order Policing Unit* may take over control of the management of the crowd, if the commander of the *Public Order Policing Unit* deems it necessary; and
- (c) **Level Three:** Confirmed information regarding a likely threat against lives and property-the relevant *Public Order Policing Unit* takes operational command and *VISPOL* and the *municipal police service* assist in the policing of the event.

**9. Appointment of the CJOC.**-(1) The Divisional or Provincial Commissioner will ensure that the *CJOC* is designated, and that he or she is conversant with Standing Order (G) 262, this National Standard and relevant legislation and is well trained to take responsibility for the operation.



(2) The *CJOC* is in overall command of the specific operation for which he or she is designated and is responsible for all actions taken.

**10. Pre-planning of operations.**-(1) The appointed *CJOC* is responsible for well-planned and co-ordinated actions for the duration of an operation.

(2) For purposes of pre-planning, the *CJOC* must follow the following procedure:

Step	Action
1	Develop a comprehensive written plan for the crowd management operation (see the guidelines contained in Module 2 of the Operational Commanders Training for SAPS Management).
2	Submit the written plan for approval to the Provincial Commissioner or, if applicable, to the <i>executive head</i> .
3	Submit the written plan to the relevant station commissioners and to the <i>executive head</i> for information purposes.
4	Activate a <i>JOC</i> and appoint an <i>operations officer</i> , taking into account the circumstances and the results of the threat assessment. In the event of a level 2 threat, a <i>Public Order Policing Unit operational commander</i> must be appointed after consultation with the municipal police service. In the event of a level 3 threat, a relevant <i>Public Order Policing Unit operational commander</i> must be appointed in consultation with the relevant <i>Public Order Policing Unit</i> commander.
5	Implement an effective information <i>gathering</i> system for the operation to pro-actively gather up-to-the-minute, relevant and accurate information, enlisting the assistance of <i>VISPOL</i> members, having discussions with the public or the use of the information network of the relevant <i>Public Order Policing Unit</i> .
6	Collect the following information: (a) the actual route the participants plan to follow; (b) the likelihood of an outbreak of violence; (c) whether the participants are aggravated; (d) whether any firearms are or will be present; (e) the intention of the participants; (f) the actual number of participants that will take part; and (g) any other information which is of importance for the operation (see the Procedural Manual on Crowd Management for SAPS Management).
7	Use this information to apply the available resources or means effectively. In all instances where the relevant <i>Public Order Policing Unit</i> is actively involved in any operation (level 3) they must continually approach their information managers to gather information before and during an operation.

(3) All information that is gathered prior and during an operation must continually be reported to the *CJOC* so that he or she is always aware of the actions of the participants. The *members* must report all information to their commanders who must then report it to the *CJOC*. This information must be reported either telephonically or by radio using the designated channel for upward reporting to the *CJOC*.

**11. Briefing of members.**-(1) *Members* must be properly briefed before they are deployed to perform *crowd management* duties.

(2) The *operational commander* must-

- (a) personally brief all *members* in the command structure;
- (b) ensure that all members in the command structure communicate the objectives of the operation clearly to all members deployed for the event; and
- (c) instruct all commanders or section leaders to furnish detailed written plans on their specific tasks prior to the start of the operation.

(3) During the briefing, the tasks of all role players involved in the operation must be defined in detail. The communication channel (chain of command) must also be thoroughly explained to all members prior to the operation.

(4) A name list is to be compiled of all *members* present when a briefing is given. Commanders must be identified and briefed in accordance with the operational plan on what is to be done. *Members* must be questioned to ensure that they understand what is expected of them.

**12. Execution.**-(1) The use of force must be avoided as far as reasonably possible and *members* deployed for

the operation must display the highest degree of tolerance. The use of force and dispersal of crowds must comply with the requirements of section 9 (1) and (2) of *the Act*. During any operation, ongoing negotiations must take place between officers and *conveners* or other leadership elements.

(2) If negotiations fail and life or property is in danger, the following procedure must be followed:

Step	Action
1	Put defensive measures in place as a priority.
2	Warn participants according to <i>the Act</i> , of the action that will be taken against them, should defensive measures fail.
3	Bring forward the reserve or reaction section or platoon, that will be responsible for offensive measures, as a deterrent to further violence, should the above-mentioned measures not achieve the desired result.
4	Give a second warning before the commencement of the offensive measures, giving innocent bystanders the opportunity to leave the area.
5	Plan all offensive actions well and execute them under strict command after approval by the <i>CJOC</i> .

(3) If the use of force is unavoidable, it must meet the following requirements:

- (a) the purpose of offensive actions are to de-escalate conflict with the minimum force to accomplish the goal and therefor the success of the actions will be measured by the results of the operation in terms of cost, damage to property, injury to people and loss of life;
- (b) the degree of force must be proportional to the seriousness of the situation and the threat posed in terms of situational appropriateness;
- (c) it must be reasonable in the circumstances;
- (d) the minimum force must be used to accomplish the goal; and
- (e) the use of force must be discontinued once the objective has been achieved.

(4) The use of the following are prohibited or restricted during *crowd management* operations:

- (a) 37 mm stoppers (prohibited);
- (b) pepper spray are prohibited, unless the relevant commander has issued a specific instruction to do so; and
- (c) firearms and sharp ammunition, including birdshot and buckshot are prohibited, unless the relevant commander has issued a specific instruction to do so.

(5) Rubber bullets (shotgun rubber balls) may only be used as offensive measures to disperse a crowd in extreme circumstances, if less forceful methods have proved to be ineffective.

(6) Force may only be used on the command or instruction of the *CJOC* or *operational commander* (if appointed). *Members* may never act individually without receiving a command from their commander.

(7) All *members* involved in the operation must form part of a unified command structure, consisting of sections, platoons or companies. *Members* not working in sections may not be deployed. All visible policing members deployed for such purposes must be trained in the management of crowds.

(8) Common law principles of self defence or private defence are not affected by this National Standard.

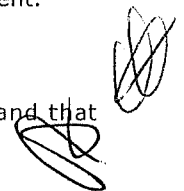
**13. Reporting and record keeping.**-(1) *Members* involved in an operation must keep the *JOC* up to date on actions and developments during the operation.

(2) The *CJOC* must ensure that a detailed record is kept of all activities during the operation. All vehicles must have an operational diary which is completed by a member on that specific vehicle. The operational diary must contain all postings and instructions issued and all activities of participants during the event. An Occurrence Book entry must be made of the action taken and measures instituted by all functional role players involved in the operation.

(3) Records of operational plans, all reports on the execution of operations, and debriefing reports must be filed together and kept according to the Record Classification System applicable to the said municipal police service. In the case of an operation dealt with as posing a Level 3 threat, the *CJOC* must ensure that copies of the operational diaries and the attendance list of all members who were deployed during such operations, are submitted to the *authorized member* and to the relevant *Public Order Policing Unit*.

(4) The representatives of all main role-players must be present at the *JOC* for the duration of the event.

**14. Debriefing.**-(1) The *CJOC* must ensure that debriefing takes place after each event or *gathering* and that record is kept thereof.



(2) Every level of command must debrief the levels below it individually, followed by an in-depth debriefing by the commanders of the operation. Afterwards a debriefing must be held with all role-players to determine whether the operation was effective and whether communication with the role-players was adequate.

(3) A thorough evaluation must be conducted and, if possible, video coverage must be shown.

(4) All good practices, as well as shortcomings, must be recorded as part of a learning process to enhance good practices and address or prevent recurrences of identified mistakes.

(5) Trainers and instructors must attend the debriefings, to review actions taken by members, and to rectify improper conduct by means of in-service training in *crowd management* techniques.

**15. First member(s) at the scene of an unforeseen (spontaneous) gathering.**-(1) The first *member* who arrives at the scene or venue of an unforeseen (spontaneous) *gathering* must seek to preserve the peace and to protect and help the community.

(2) The first *member* who arrives at the scene or venue must follow the following procedure:


<i>Step</i>	<i>Action</i>
1	Contact the operational centre of the municipal police service concerned and request back-up by personnel trained in crowd management.
2	Set up a mobile <i>JOC</i> and notify the relevant <i>Public Order Policing Unit</i> . The <i>Public Order Policing Unit</i> will assess the situation and will take operational command of the policing of the <i>gathering</i> with the assistance of <i>VISPOL</i> and members available to render such assistance if it is of the opinion that this will be appropriate or else will inform the most senior <i>member</i> of the municipal police service at the scene to continue to exercise operational command over the policing of the <i>gathering</i> .
3	Attempt to create an atmosphere which is conducive to negotiations by refraining from the display of aggression, such as for instance, the brandishing of firearms and special equipment.
4	Identify the leadership element in order to establish communication and to start negotiations.
5	Set the highest standards of tolerance and, do not use any firearms against the demonstrators except in the case of private defence should lives be in serious danger.
6	Consult with the local authorities and <i>authorized member</i> concerning the <i>gathering</i> and the purpose of the <i>gathering</i> .
7	Bring the contents of section 9 (1) (c) of <i>the Act</i> to the attention of the leadership element.



CAPE TIMES / NEWS

File picture: Itumeleng English/African News Agency (ANA)

# Probe into law enforcement officers 'firing at Kalkfontein residents without provocation'

By Okuhle Hlati  Aug 7, 2020



Cape Town – Police have launched an investigation into complaints that law enforcement officers were responsible for injuring people during the continuing land invasion clashes across the city.

Some Kalkfontein residents left wounded in a July 25 incident have accused law enforcement officers of firing at them without provocation, while other victims alleged they were not part of the protest action.

The area is among many areas in the province where violent clashes between illegal land invaders, City law enforcement officers, and police have taken place.

Resident Nontuthuzelo Thafeni, who was hit in the eye, is among five people who lodged a formal complaint at the Kuilsriver police station.

"I had visited a friend of mine and we were sitting inside the yard watching the conflict between the protesters and officials.

"The last thing I remember is seeing one of the officials pointing a firearm towards us and I was tapping my friend who was looking the other way, to look at what I was seeing.

"He just fired and the rubber bullet hit my face. I don't know if he thought we were part of the protest or what was happening," Thafeni said.

Her damaged eye was removed on July 27 at the Tygerberg Hospital and she was discharged a few days later.

"I am still experiencing severe pain. My ear and the side of my face where I was hit are sore. Medication is doing little to help. I'll have to live with eye one for the rest of my life now. We demand justice," she said.

Police spokesperson Noloyiso Rwexana said common assault cases were being investigated in Thafeni's incident, as well in the case of another man allegedly shot in the eye while getting out of his car.

Rwexana said three cases of attempted murder were filed.

"According to the complainant, he was coming from work at 2pm and saw people protesting. As he entered his yard he was shot and wounded in his leg. In the same incident (another) man was shot. Another complainant said he was at his home on July 27 when he saw people throwing stones at the police, who chased them.

"The victim later discovered he was wounded by a rubber bullet," Rwexana said.

The City's acting executive director for safety and security, Wayne le Roux, said they were not aware of charges levelled against their staff.

"The Law Enforcement and Metro Police Departments act in support of SAPS, which is the primary agency responsible for public order policing.

"Where complaints are lodged against staff members, we co-operate with any investigations that are launched as they relate to the conduct of our staff.

"The City also has numerous internal oversight mechanisms (dealing with) the conduct of staff, including Internal Affairs (SSIU)" Le Roux said.

**Cape Times**

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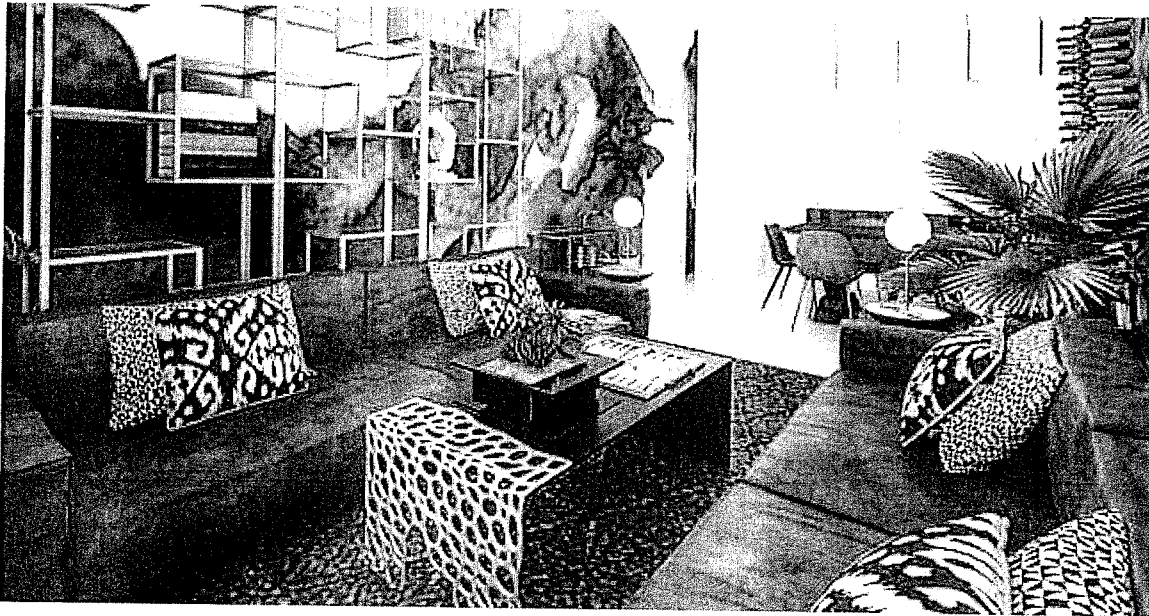
Probe into law enforcement officers 'firing at Kalkfontein residents without provocation'

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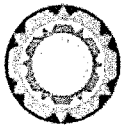


**Subject:** FW: MEDIA RELEASE: City refers Law Enforcement Officers for independent Disciplinary proceedings  
**Date:** Sunday, 16 August 2020 at 10:46:36 South Africa Standard Time  
**From:** Thabo Ramphobole  
**To:** 'Sherylle Dass', 'Lelethu Mgedezi'  
**Attachments:** image001.jpg

FYI

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**From:** Media Account <Media.Account@capetown.gov.za>  
**Sent:** Saturday, August 15, 2020 3:39 PM  
**Subject:** MEDIA RELEASE: City refers Law Enforcement Officers for independent Disciplinary proceedings



CITY OF CAPE TOWN  
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## CITY OF CAPE TOWN

15 AUGUST 2020

### MEDIA RELEASE

## City refers Law Enforcement Officers for independent Disciplinary proceedings

*During an anti-land invasion operation in Khayelitsha on 1 July 2020, an altercation ensued involving Law Enforcement officials after a member of the public deliberately disrobed. This was an apparent attempt to thwart the operation aimed at protecting land on the direct pathway of a water pipeline construction project. Read more below:*

The City of Cape Town has since referred four Law Enforcement officials for disciplinary proceedings to be independently chaired and initiated.

This is in line with the recommendation of an independent investigation, which considered what steps the City should take regarding the conduct of officers involved in the altercation.

'All City employees are bound by the Municipal Code of Conduct for staff. Independent disciplinary proceedings will ensure fair and impartial consideration of the matter,' said Executive Mayor Alderman Dan Plato.

The City further notes an affidavit submitted to the Western Cape High Court by Mr Bulelani Qolani in which he confirms that he went into a structure, undressed, and emerged naked without prompting, exposing himself to onlookers while the operation to dismantle illegal structures was taking place.

Mr Qolani claims to have then immediately re-entered the structure in order to allegedly bathe. Video filmed by Law Enforcement during the operation further depicts Mr Qolani emerging from a structure naked and unprompted. This happened prior to the altercation with officials, which is the subject of an independent disciplinary process.

'Deliberate disrobing is a tactic that officials indicate they have seen before. This week in Welbeloond, we had three incidents and we have now developed a new strategy for coping with it, which involves officers covering the disrobed person with a blanket and accompanying them out of the structure in order for the removal of the structure to proceed,' said Mayoral Committee Member for Safety and Security, JP Smith.

### **Structure was not a dwelling**

The City disputes media reports that the structure depicted in the initial viral video was Mr Qolani's dwelling. Aerial photographs taken by the South African National Space Agency refute Mr Qolani's version of taking illegal occupation on 16 March, as quoted by *News24*.

In the *Sunday Times*, Mr Qolani is quoted as saying he was there two weeks prior to the altercation with officials. However, ALIU officials first noted the particular structure on the day of the incident, 1 July 2020, having conducted an operation to remove an illegal structure at the same site the previous day.

Near daily anti-land invasion operations are conducted to prevent further invasion of the site, which is on the direct pathway of a R162 million water pipeline from Faure to Khayelitsha, which is currently under construction. Over R50 million has already been spent on this ongoing project. The City has a court order permitting the removal of illegally erected structures, which are placing this major infrastructure project in jeopardy. The pipeline is intended to provide the bulk water and sanitation infrastructure needed for growing human settlements development in Khayelitsha as a whole. To date, no evictions have been conducted on the site, only anti-land invasion operations.

**End**

**Issued by: Media Office, City of Cape Town**

**Note to Editors:** Video filmed by ALIU on the day of the incident with Mr Qolani is available on request, but will however be edited only to the extent of ensuring that nudity is concealed.

**Media enquiries: Greg Wagner, Spokesperson to the Executive Mayor, Tel: 021 400 9459, Cell: 072 623 4499, Email: [Greg.wagner@capetown.gov.za](mailto:Greg.wagner@capetown.gov.za) (please always**

copy [media.account@cc](mailto:media.account@cc)

Media enquiries: Aldermc  
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021 400 1311 or Cell: \_\_\_\_\_

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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 8631/2020

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION** First Applicant

**HOUSING ASSEMBLY** Second Applicant

**BULELANI QOLANI** Third Applicant

and

**THE CITY OF CAPE TOWN** First Respondent

**THE MINISTER OF HUMAN SETTLEMENTS** Second Respondent

**THE MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Third Respondent

**NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE** Fourth Respondent

**MINISTER OF POLICE** Fifth Respondent

**WESTERN CAPE PROVINCIAL COMMISSIONER:  
SOUTH AFRICAN POLICE SERVICE** Sixth Respondent

and

**ECONOMIC FREEDOM FIGHTERS  
THE PERSONS WHO CURRENTLY OCCUPY** First Applicant for Intervention

**ERF 544, PORTION 1, MFULENI** Second Applicant for Intervention

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**AFFIDAVIT**

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N.N      C.M

I, the undersigned,

**NOMFUNeko KONOKONO**

do hereby make oath and state the following:

1. I am an adult female resident and committee member of Ethembeni Informal Settlement in Khayelitsha.
2. The facts deposed to in this affidavit are within my personal knowledge unless the context indicated otherwise and to the best of my knowledge are true and correct.
3. I reside in the area with Bulelani Qolani, Wanda Magingxa, Anathi Nongwana and Vuyo Madikane and other people. We have been residing as neighbours at Ethembeni and we have all experienced the brutality of the Law Enforcement officers and Anti-Land Invasion Unit officers.
4. I have been residing between the areas of Empolweni and Ethembeni since February 2020. My structure was demolished by Law Enforcement officers and the Anti-Land Invasion Unit on 22 April 2020. By this time I had already moved to Ethembeni as my name was excluded from the list of people who were allowed to regain their material and rebuild their structures as ordered by the honourable court in the Empolweni matter.
5. After my home was demolished I was homeless and slept out on the site without a structure until we received tents donated by the Gift of Givers.

N.N L.M

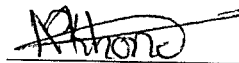
6. From 22 April 2020 until early July 2020, the law enforcement officers would occasionally arrive at Ethembeni community and harass us, verbally and physically assault us without giving us or anyone a chance to engage with them amicably.
7. At first, their timing would always catch us off guard however when we were lucky to spot them from afar we would all run and hide in the nearby community called Makhaza. They would then cause whatever havoc, break whatever piece of furniture they see and leave.
8. We then noticed a trend by them where they would come every day of the week. Sometimes they would come early in the morning around 06h00 while we were sleeping, enter the tents and start to beat everyone inside with a sjambok. At times they would come in the evening. In some instances, they would come twice in a day.
9. When we questioned their actions, they would threaten us that we have ten minutes to move from the tents or face the consequences. These consequences were them throwing teargas at us, shooting at us with rubber bullets, physically assaulting or manhandling us.
10. The Anti-Land Invasions Unit together with the Law Enforcement officers would sometimes come and harass us verbally and rattle whatever order we have set-up for ourselves. At one point we built one small "hokkie" that had no roof where

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we kept any food we received through donations. They came and demolished it and started shooting at us with rubber bullets, we dispersed into the open field and bushes nearby.

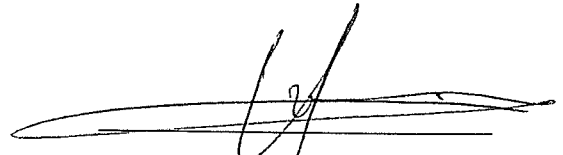
11. As we were homeless and cold, we would at times start a fire to keep warm and sit around it as a community; we used our bed mattress to create some sort of shelter to keep warmer around the fire. While we were sitting around the fire, the officers came and harassed us physically and violently handled us as females, two of the officers pissed on our mattresses and threw them on that fire and left. We were left cold and without mattresses to sleep on for that evening.

12. We have consistently suffered cruel, inhumane and degrading treatment from the Anti-Land Invasion Unit and the Law Enforcement officers. As a result, when I see their cars, I start panicking and I get anxious thinking they are in the area to harass, violate and verbally assault us.



**NOMFUNEKO KONOKONO**

THUS SIGNED AND SWORN TO at Khaya Litshe on this 18 day of August 2020 the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, that the oath which he/she has taken in respect thereof is binding on his/her conscience, and that the contents of this affidavit are both true and correct.



COMMISSIONER OF OATHS

**L. MHLONGO**

Commissioner of Oaths  
Practising Attorney

No. 1 Joe Modise Street,  
Mandela Park, Khayelitsha, 7708

Tel: 021-557-5016

Cell: 076-576-1233



IN THE HIGH COURT OF SOUTH AFRICA  
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**THE CITY OF CAPE TOWN** First Respondent

**THE MINISTER OF HUMAN SETTLEMENTS** Second Respondent

**THE MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS** Third Respondent

**NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE** Fourth Respondent

**MINISTER OF POLICE** Fifth Respondent

**WESTERN CAPE PROVINCIAL COMMISSIONER:  
SOUTH AFRICAN POLICE SERVICE** Sixth Respondent

and

**ECONOMIC FREEDOM FIGHTERS** First Applicant for Intervention  
**THE PERSONS WHO CURRENTLY OCCUPY**

**ERF 544, PORTION 1, MFULENI** Second Applicant for Intervention

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**AFFIDAVIT**

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V.M

I, the undersigned,

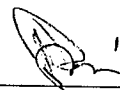
**VUYANI MADIKANE**

do hereby make oath and state the following:

1. I am an adult male residing at Ethembeni informal settlement, Khayelitsha.
2. The facts deposed to in this affidavit are within my personal knowledge unless the context indicated otherwise and to the best of my knowledge are true and correct.
3. I have read the affidavit of **NOMFUNENKO KONOKONO** and confirm its correctness in so far it relates to me.
4. My home was initially demolished on 24 April 2020 and I have been subjected to harassment, torment and verbal and physical assault by law enforcement. Law enforcement acted in the same way towards others that they found at the site we have been occupying since April 2020.
5. In May 2020, the City of Cape Town Metropolitan police officers together with the officers of the Anti-land invasions unit (ALIU) came to the site where we had been staying. We were staying in the tents which had been donated by Gift of the Givers.

V.M. d

6. The Metro police officers and ALIU officers arrived one evening. We had set up a fire as a community to warm ourselves and cook. They came in and verbally harassed us and swore at us. We asked what the reason of their visit was. They told us that they didn't have to answer us. One of them verbally assaulted me by saying "*voetsek, I must fokof as this is the City's land*". He told me that he will not speak to me and that we must remove the tents and vacate the land we occupied.
7. After that, they threw teargas at us and we dispersed into the open field and nearby houses. Where I was hiding I could see two officers vandalising our property. They threw my bar fridge and microwave onto the fire. They left after doing that.
8. They continued coming during the week. They would visit at least three days in a week. They would beat us, especially when we were sleeping. Once, around 1 or 2 July, I was sleeping in my shack as I wasn't feeling well. I suffer from stomach ulcers. One officer barged into my shack and forcefully ordered me to vacate my property. I told him I am sick and not feeling well. He informed me that he does not have any choice but to remove me by force. He shoved me and physically assaulted me until community members came and assisted me to get up from the bed and laid me on the ground in front of my shack.



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**VUYANI MADIKANE**

7/

THUS SIGNED AND SWORN TO at HARARE JAFI on this 18<sup>th</sup> day of AUGUST 2020 the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, that the oath which he/she has taken in respect thereof is binding on his/her conscience, and that the contents of this affidavit are both true and correct.

SUID-AFRIKAANSE POLISIEDIENS
HARARE
18 AUG 2020
VISPOL ADMIN OFFICER
AMAPOLISA OMZANTSHI AFRICA

*[Signature]*  
 MINISTER  
**COMMISSIONER OF OATHS**

V.M

IN THE HIGH COURT OF SOUTH AFRICA  
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and

**ECONOMIC FREEDOM FIGHTERS** First Applicant for Intervention  
**THE PERSONS WHO CURRENTLY OCCUPY**

**ERF 544, PORTION 1, MFULENI** Second Applicant for Intervention

A.N

Lra

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**AFFIDAVIT**

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I, the undersigned,

**ANATHI NONGWANA**

do hereby make oath and state as follows:

1. I am unemployed adult female currently residing at Ethembeni informal settlement.
2. The facts deposed to in this affidavit are within my personal knowledge unless the context indicated otherwise and to the best of my knowledge are true and correct.
3. I have read the affidavit of **NOMFUNeko KONOKONO** and confirm its correctness in so far as it relates to me.
4. I have been residing between the areas of Empolweni and Ethembeni since March 2020. My structure was demolished by Law Enforcement officers and the Anti-Land Invasion Unit on 22 April 2020. By this time I had already moved to Ethembeni as my name was excluded from the list of people who were allowed to regain their material and rebuild their structures as ordered by the honourable court in the Empolweni matter.
5. In March 2020 my partner, Mongezi Simelani and I moved to the area. Previously we resided at Delft but due to the national state of disaster we both lost our jobs

A.N

L.m

and could not afford paying rental at a place where we were backyard dwellers. We were allocated a site in Empolweni and erected a structure with material we have bought from our savings and with the help of community members. We stayed in Empolweni until our homes were demolished on 22 April 2020. After my structure was demolished on 22 April 2020, I resided with the other residents in the tents that were donated by the Gift of the Givers. Due to cold weather conditions over time, I then erected a structure for dwelling with some material I had.

6. On 1 July 2020 around 10h00 or 11h00, I was inside my shack sweeping the floor. About four City of Cape Town Metropolitan police officers got inside my house. One pointed a gun at me and ordered me to vacate the house. I asked the officer where must I go?, but he didn't respond. He violently handled and shoved me out of my house. Out of fear, I vacated my house and watched them throw out my furniture. They proceeded to demolish the structure and confiscate the material.

A. Nongwana

**ANATHI NONGWANA**

**THUS SIGNED AND SWORN TO** at Khayelitsha on this 18 day of August 2020 the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, that the oath which he/she has taken in respect thereof is binding on his/her conscience, and that the contents of this affidavit are both true and correct.



**COMMISSIONER OF OATHS**

**L. MHLONGO**  
Commissioner of Oaths  
Practising Attorney  
No. 1 Joe Modise Street,  
Mandela Park, Khayelitsha, 7801  
Tel: 021-357-5016  
Cell: 078-576-1233



8IN THE HIGH COURT OF SOUTH AFRICA  
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**MINISTER OF POLICE** Fifth Respondent

**WESTERN CAPE PROVINCIAL COMMISSIONER:  
SOUTH AFRICAN POLICE SERVICE** Sixth Respondent

and

**ECONOMIC FREEDOM FIGHTERS  
THE PERSONS WHO CURRENTLY OCCUPY** First Applicant for Intervention

**ERF 544, PORTION 1, MFULENI** Second Applicant for Intervention

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AFFIDAVIT

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M.B

SM

I, the undersigned,

**MARSHELL BREWERS**

do hereby make oath and state as follows:

1. I am an adult male residing at Happy Valley, Bluedowns.
2. The facts deposed to in this affidavit are within my personal knowledge unless the context indicated otherwise and to the best of my knowledge are true and correct.
3. On 28 July 2020, around 2pm I was playing dominos with a couple of friend by Congo Street in Happyvale, and saw huge smoke coming from the area where there were informal settlements.
4. I went to observe what was happening at the site. When I arrived at the site, structures in the informal settlement were being demolished and Law Enforcement officers had big guns. They were shooting at and chasing people who were retaliating against the demolitions and evictions.
5. I ran amongst the crowd that was running away from law enforcement officers and that is when I was targeted. I was chased by about six law enforcement officers who started shooting at me. They shot me in my right leg and I ran into a house that was closest to me at the time, where the gate was opened. In the yard there was a woman with a child, I shouted that they must get inside the house as there were officers with guns. This was an unknown house to me. I only ran to that yard to find a hiding place and be safe.

M.B.


SM

6. The officers ran after me into the house and kept shooting even after I raised my hands to show that I was not armed. They threw a teargas can inside where I had hid and all six of them came together in the yard and cornered me. They proceeded to shoot at a close range; they shot me about five times with rubber bullets. I fell on the ground as I couldn't breathe due to the gas and feeling the pain from the injuries. I sustained injuries in my leg, my neck, my arm and my hand. I kept shouting at the officers that they get me an ambulance or help and they left me there laying on the ground
  
7. As I lay on the ground, severely injured, and unable to see and breathe I was woken up by community members who gathered into the yard shouting my name and that I must get up. I was then assisted by my friends and some community members who took me to Tygerberg Hospital. At the hospital I was examined and advised that my hand was severely injured and that there was no option but to cut off my thumb or to insert wiring to try and mend the joints and bones together. I was also told by the doctor that I would lose use of my hand. If I am fortunate, the doctor advised that I may regain the use of my hand after some few years. I annex hereto the pictures depicting my injuries, marked "MB1" to "MB2".
  
8. I have laid criminal charges with the South African Police Services and the case number is 125~~6~~8/2020.
  
9. Prior to my injury and hospitalization, I was employed at a brick manufacturing company as a machine operator. My job involves the full use of both my hands. The brutal treatment of the officers has left me without any future employment opportunities of this kind.

M. Brewers

**MARSHELL BREWERS**

THUS SIGNED AND SWORN TO at Mfuleni on this 19 day of August 2020 the deponent having acknowledged that he/she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath, that the oath which he/she has taken in respect thereof is binding on his/her conscience, and that the contents of this affidavit are both true and correct.

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**COMMISSIONER OF OATHS**

<b>SOUTH AFRICAN POLICE SER VICE</b>
<p><b>SAPS MFULENI</b></p> <p>2020 -08- 19</p> <p><b>ADMINISTRATION</b> <b>ADMINISTRASIE</b></p>
<b>SUID AFRIKAANSE POLISIEDIENS</b>

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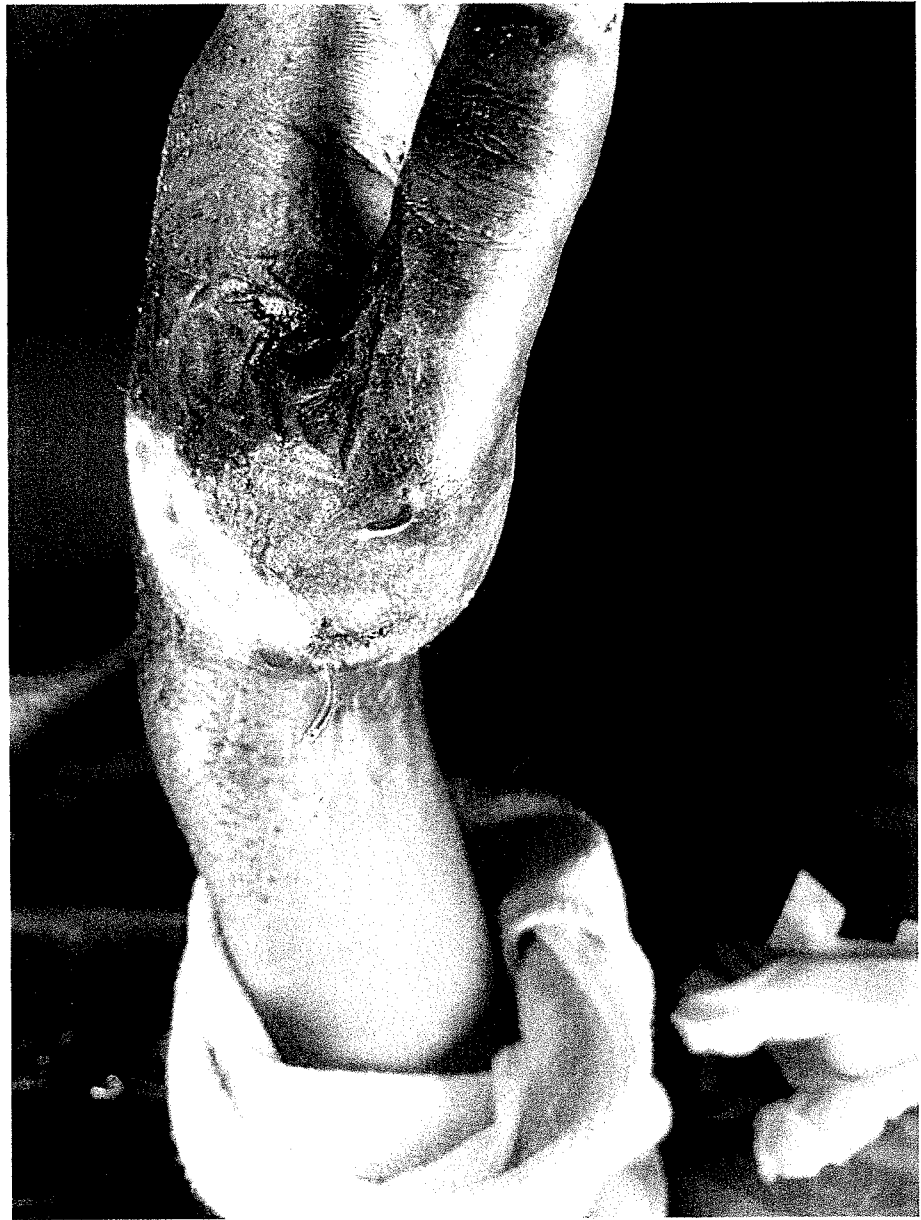


M.B  
SM

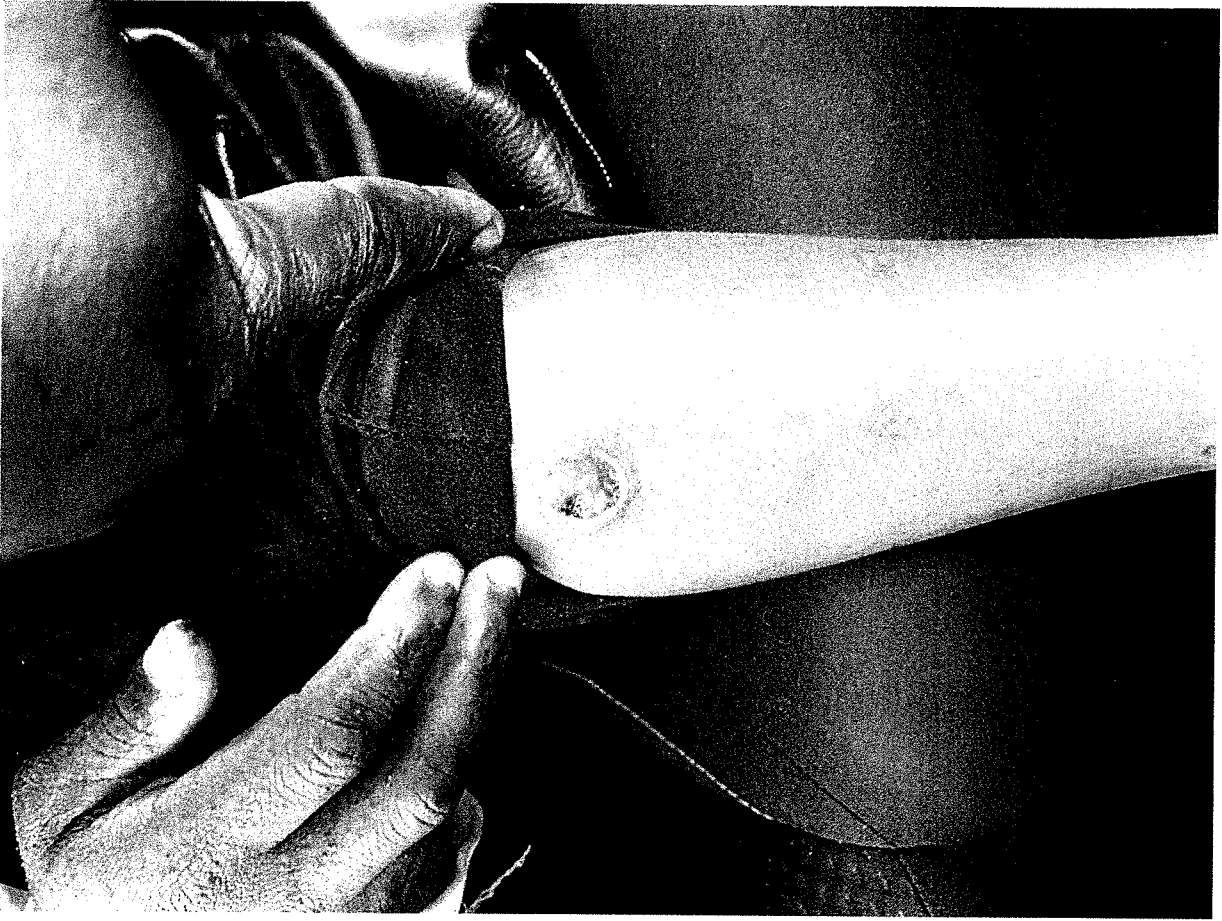




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M.B  
5/27



'MB2' 606



M. B  
5/11