

*Kantoor van die Premier*  
*Office of the Premier*  
*I-ofisi ye Nkulumbuso*



Reference  
Verwysing  
Isingqinisiso

**PM 1/4 [2011/4980]**

Date  
Datum  
Umhla

**28 August 2012**

The National Minister of Police

**Attention: Minister EN Mthethwa**

**Per Fax: 012 393 2819**

**And per email : [XubaN@saps.gov.za](mailto:XubaN@saps.gov.za)**

Dear Minister Mthethwa

**COMPLAINTS REGARDING ALLEGED POLICE INEFFICIENCY AND A BREAKDOWN  
IN POLICE-COMMUNITY RELATIONS IN KHAYELITSHA, CAPE TOWN:  
COMMISSION OF INQUIRY**

1. I refer to the above matter and your correspondence dated 27 August 2012.
2. Whilst I am happy to meet you in person to discuss the issues listed in your telefax, I cannot agree to accede to your request to postpone the Commission from commencing its work.
3. I say this because, for reasons set out below, I am of the opinion that our obligations to the SAPS and your office, with regard to co-operative governance have been fully complied with and the decision to proceed with the establishment of a commission of inquiry in this matter was only taken after a long and exhaustive process of intergovernmental correspondence from my office with *inter alia* your office, as detailed below.
4. Your office was included in each step of that process, in terms of which I repeatedly asked the SAPS (at every level) to communicate

with me on this matter. In addition, I have agreed to each request for a postponement of the decision in question, so as to allow the SAPS to engage with us on this matter prior to a decision being taken in this regard, despite increasing calls by the initial complainants and other members of the public for me to take action in this matter. The process I have followed over eight months, including repeated requests to the SAPS to provide me with comment, has been accompanied by an increase in the tragic phenomenon of vigilante murders in the area in question, allegedly as a result of the affected residents' lack of trust in *inter alia* the ability of the SAPS to do their jobs effectively.

5. In these circumstances, whilst I am indeed willing to consider any suitable alternative you may want to suggest as a means whereby the complaints in question can be investigated and, if true, addressed, I am of the opinion that the establishment of this Commission is now necessary and the Commission's work will assist both the SAPS and us in establishing whether there is merit in the allegations, and recommending potential solutions.
6. Given that you indicate in your fax that that you have now "briefed lawyers "to advise you on this matter, I believe it is important that your lawyers are made aware of the full facts pertaining to our communications both with the SAPS and your office in the time leading up to the establishment of this Commission and I accordingly set these out below.
7. During December 2011, I advised both Provincial Commissioner Lamoer and your office that I was in receipt of a series of complaints (hereinafter referred to as the initial complaint) delivered to my office by the Woman's Legal Centre (WLC) on behalf of a group of non – governmental organisations operating in *inter alia*, the Khayelitsha area of Cape Town, these being :
  - a. The Social Justice Coalition;
  - b. The Treatment Action Campaign;
  - c. Equal Education;
  - d. Free Gender (On 6 December this organisation withdrew itself as a party to the complaint);
  - e. Triangle Project; and
  - f. Ndifuna Ukwazi
8. The initial complaint consists of 4 parts, setting out a description of the complainants, the legal framework they allege applies, a summary of the evidence they rely upon as the basis of the complaint and various proposals regarding action that should be taken. A full copy of the initial complaint was attached to my correspondence in this regard, and which is accordingly already in your possession.

9. In that correspondence I advised that the nub of the initial complaint could be summarised as follows (quoted from the WLC complaint: Section 48 & 49):

*"Members of the Khayelitsha community routinely experience violations of the rights set out above in their dealings with the police. What is stated below will demonstrate that constitutional rights to: equality, human dignity, life, freedom and security of person, privacy, movement, property, housing, access to courts as well as the rights given to arrested, detained and accused persons, are violated by the police, including the CTMPD and other actors in the criminal justice system, on a daily basis. ... The systematic failure of the Khayelitsha police, including the CTMPD, to prevent, combat, and investigate crime, take statements, open cases, and apprehend criminals also violates the provisions of section 195 of the Constitution which requires all public administration to be conducted professionally, ethically, impartially, and with the effective, economic and efficient use of human, material and financial resources".*

10. Eight case studies are then presented in writing as the factual basis for the above assertions.

11. In this initial correspondence you and Commissioner Lamoer were accordingly also notified that:

- i. whilst the ambit of the complaint stretches beyond the SAPS (the conduct of the CTMPD, DoJCD, DCS and the NPA is also called into question with reference to the overall functioning of these organs of state in Khayelitsha), the powers of this Provincial Government to address and deal with complaints regarding other organs of state is prescribed by the Constitution.
- ii. With specific reference to the conduct and functioning of the SAPS, Section 206 (3) of our Constitution mandates each of the nine Provinces to monitor police conduct and also, *inter alia*, to oversee the effectiveness and efficiency of the police service, as well as to promote good relations between the police and the community.
- iii. Provincial governments have also been provided with various means by which to perform this oversight and monitoring function vis-à-vis the police service, ranging from the laying of a complaint to the Independent Police Investigative Directorate (IPID), to the establishment of a commission of enquiry.

12. In this letter I also stated that the initial complaint regarding alleged police inefficiency and the breakdown in relations between the SAPS and the community of Khayelitsha is extremely worrying and that I intended to deal with it seriously and expeditiously. I accordingly advised that in my opinion both the SAPS and the Western Cape

Government have obligations to apply the principles of good public administration set out in section 195 (1) of the Constitution, which include embodying a high standard of professional ethics and providing services that are impartial, fair, equitable and without bias. It was with these values in mind that I intended to deal with this complaint.

13. My correspondence informed Commissioner Lamoer and your office that the first step in dealing with the complaint was to call for the comment of the SAPS regarding the complaint so as to ensure that these responses could be taken into account in deciding on what action, if any, would be appropriate to take in dealing with the complaint.
14. Accordingly and given that the substance of this complaint is directed at the conduct of the SAPS in Khayelitsha, I requested SAPS to provide me with comment as to :
  - a. The substance of the complaint; and
  - b. The method you propose to be the most appropriate to deal it.A similar request was forwarded to the City of Cape Town given that the initial complaint also made an allegation regarding the conduct of the City of Cape Town's Metro Police Service.
15. Given that the end of year holiday season was by then almost upon us, I requested the SAPS to provide me with comments by no later than 30 January 2012 so as to enable you to consider and /or investigate the allegations, while giving the initial complainants the urgent attention the complaint warranted.
16. On the 12<sup>th</sup> of December 2011 your office (Mr Simon Chabangu) acknowledged receipt of my letter and informed me that **"The matter is receiving our utmost attention and further correspondence will be directed to you in due course"**. See annexure A hereto.
17. Nothing further was received from your office in this regard or the office of Commissioner Lamoer prior to 30 January 2012.
18. On the 14<sup>th</sup> of February I accordingly again wrote both to Commissioner Lamoer and yourself, advising you that notwithstanding your silence on the matter, I believed it was still prudent for me to urge you to respond to my initial request for comment on the complaint before I took any final decision on the matter. I accordingly asked for your comments again with the request that these be sent to me before 28 February 2012.
19. On the 27<sup>th</sup> February 2012 General Lamoer wrote to me and informed me that he had referred this matter to: *"South Africa Police Service (SAPS) Head Office for instructions."* No response to this fax was received from your office.

20. In my consideration of the complaints, I thereafter arranged to meet personally with the various complainants represented by the WLC on 8 March 2012, along with representatives of the City's Metro Police who had advised me that they wished to co-operate fully in this matter and would like to meet the complainants personally in order to deal with the alleged complaint against the Metro police.
21. Subsequent to this meeting the complainants submitted a second set of supplementary complaints to me and, in the process of considering these complaints, I again wrote to your office and that of Commissioner Lamoer (and copied to the then acting National Commissioner of Police, Lt General Nhlanhla Mkhwanazi ) on 22 May 2012 in which I pointed out that :
- a. I had heard nothing further on this matter from any office of SAPS to date, and in the circumstances was forced to conclude that the SAPS, both provincially and locally, refused to engage with us on the initial complaint that I have received with respect to the SAPS in Khayelitsha.
  - b. Given the on-going acts of vigilantism in that area, which appeared to give credence to the alleged breakdown of trust as contained in the initial complaint, I was compelled to consider the establishment of a commission of enquiry in this matter, without the benefit of the SAPS's prior input in relation to the allegations complaint or the process to be followed with respect to investigating them.
  - c. I found the attitude which had been displayed by SAPS to be most disappointing as it lent credence to the perception that the residents of Khayelitsha are not getting the attention that they deserve from the SAPS, both locally and at head office.
22. In my letter I expressly advised both you and Commissioner Lamoer that in those circumstances I intended to proceed to make a decision on the complaints and the request to establish a commission, within 10 days of that letter.
23. However I did extend this deadline for the following reasons. I had received the second set of additional complaints from the WLC (referred to above), as well as other requests, including an email from a resident of Khayelitsha asserting *inter alia* that an atmosphere of helplessness existed in the area because of the on-going acts of vigilantism that had, by then, become a frequent occurrence. Despite the manifest urgency, and notwithstanding the non-response to my three previous submissions to the SAPS, I decided to try once more to elicit a response from the SAPS in accordance with our obligations of co-operative governance. I therefore submitted the additional complaints to the SAPS as well, and ask for a response before making any final decision.



24. I accordingly forwarded these additional complaints to both your office and that of Commissioner Lamoer on 13 June 2012, in which correspondence I confirmed to you:

- a. In the face of these complaints and given that yet another person was killed by an act of vigilantism the previous weekend in the Makhaza area of Khayelitsha, in order to exercise the monitoring and oversight role provided for in the Constitution responsibly and with reference to the SAPS, I felt compelled to consider the establishment of a commission of enquiry to investigate the veracity of these complaints.
- b. In light of the total lack of response that I had received from either the office of the Provincial Commissioner or that of the National Minister to date with respect thereto, I was being forced to consider this without the benefit of a prior input by SAPS in relation thereto.
- c. Given that I had been provided with no explanation as to why neither the Provincial Commissioner's office nor your office had responded to my correspondence during the six months since the initial complaint was submitted requesting comment, it was my opinion that any further delays by me in taking appropriate action with respect to dealing with these complaints effectively would only reinforce the perception that the residents of Khayelitsha are indeed not getting the attention they deserve from Government as a whole.

25. The above notwithstanding, in the spirit of co-operative governance by which we are all bound, and mindful of our respective roles in the oversight and functioning of the SAPS, I accordingly once again asked that SAPS let me have comments **by no later than close of business on Wednesday 20 June 2012** on all the written complaints that I had received, both with respect to the factual content thereof as well as the merit of the request for a commission of enquiry, failing which I confirmed that we would proceed accordingly.

26. The complaints that I had received regarding the Metro police were similarly sent to the City of Cape Town for comment and I received a detailed response with respect thereto from the City on 6 June 2012.

27. On 14 June 2012 I received a further fax from the Social Justice Coalition, urging me to proceed with the establishment of a commission of inquiry as per the original complaint laid by them on behalf of their clients in November 2011 and motivated the request by stating inter alia:

*"Since we lodged our complaint, crime has continued to plague our communities. Each day our friends and neighbors (sic) are robbed, beaten, raped and murdered. We cannot walk to communal toilets or public transport to get to and from work without fear of falling*

*victim to crime. When we try to report crimes to seek justice we are turned away from police stations or treated very poorly by officers. When crimes occur and we report them, police often don't arrive at the scene at all. If a case makes it into the courtroom, it can drag on for years or be thrown out due to bungled investigation or corruption..."*

28. On the 21 June 2012 your office acknowledged receipt of my letter and the additional complaints and again advised me:

*"This matter is receiving our utmost attention and further correspondence will be directed to you in due course."*

A copy of this letter is attached hereto for your convenience marked Annexure "B". Commissioner Lamoer's office responded to me on 18 June by advising me once again that this matter had been referred to SAPS's head office "for handling."

29. On 21 June 2012 (the same day) Lieutenant General Molefe, the Executive Legal Officer in the office of the recently appointed new National Commissioner of Police, wrote to me and asked for an extension to 29 June 2012 in order to provide the comments in question. This extension was granted.

30. On 29 June 2012 the National Police Commissioner requested a further extension to 20 July 2012 on the basis that she required time to consult with the Provincial management and other role players so as to conduct an investigation which she described as:

*"...a qualitative exercise the outcome of which need be resolution of the issues without necessarily resorting to the process of a commission of enquiry. "*

31. This extension too was granted.

32. On 13 July 2012 the Women's Legal Centre wrote to General Phiyega and copied the letter to my office and advised that they had met an "investigative team " set up by the General, presumably so as to conduct the investigation referred to above, and advised that this team had undertaken: *"... not simply to intervene in individual cases, but to view the emerging problems in the proper systemic light, and to keep an open mind to the establishment of a commission of enquiry, where all role-players can be brought together under one objective, as solution to the systemic problems."*

33. The WLC accordingly requested that I postpone a decision until the 31<sup>st</sup> of July 2012. In light of the content of this fax and notwithstanding that no formal request for such an extension was received by me from the SAPS, I agreed to postpone a decision in this regard until after 31 July 2012.

34. On 6 August 2012, I met representatives of the WLC and the various organisations which they represent in this matter. At that meeting the aforesaid organisations personally confirmed to me their request for

the establishment of a commission of inquiry into alleged police inefficiencies and a breakdown in trust between the residents of Khayelitsha and the SAPS. In so doing the representatives confirmed that they had heard nothing further from SAPS on this matter subsequent to the correspondence they had addressed to SAPS and advised that they believe it is imperative that a commission be established so that the root causes of the ongoing acts of vigilantism in the area can be addressed.

35. On 7 August 2012 the National Commissioner addressed my office in writing in which correspondence she informed me inter alia that her office was, through the nationwide "Dumelang Sessions" *"....gathering keen understanding of the wide scope of challenges as well as noting the pockets of excellence in SAPS"*. Unfortunately General Phiyega's letter to me provided no comment at all regarding the content of the complaints in question, nor indeed did she refer at all to the merits of the request for a commission to be instituted, and I accordingly was forced to regard her letter as a courtesy update on her general actions in the country as a whole, and which took the complaints and calls for a commission of enquiry no further. In this regard whilst I noted that the fax indicated that her office was "arranging to meet with the complainants so as to discuss the "issues they raise", this appeared to me to be incorrect as my office had enquired of the complainants as to whether such meeting had been arranged, to which we had been advised that nothing further had been heard by these complainants from SAPS in this regard, subsequent to their meeting in early July 2012.
36. I did however welcome the fact that in her fax General Phiyega committed SAPS to its "continued support and compliance" with regard to, inter alia partnering and collaborating with other stakeholders.
37. For the sake of completeness I confirm that the complaints regarding alleged actions of the City of Cape Town's Metro Police service in Khayelitsha were also sent to the leadership of the City of Cape Town's Metro Police Service, calling for its comment pertaining thereto and which comment was forthcoming and detailed in response. The City of Cape Town's full co-operation in this regard to date, as well as the actual content of the City's responses on the merits of the complaints which were forwarded to it, led to a decision being made that these complaints will be best dealt with by way of a referral to Provincial Minister Plato to deal with further as he deems fit, in accordance with his powers under the South African Police Services Act. Given the extensive investigative powers which vest in Provincial Minister Plato vis-a-vis the Metro Police in terms of this section of the Act, and the willingness to co-operate and deal with any complaints that has been displayed by the leadership of the City's Metro Police to date, this referral to MEC Plato was deemed to be a prudent, cost-effective, and rational method by which these complaints can be dealt with at this stage.



38. In contrast to this, no response has been received to date (either on the substance of any of the complaints or the merits of a request for a Commission) from any SAPS office at provincial or national level, despite two assurances from your office that the matter was receiving your utmost attention.
39. We know that at least 13 people have died in Khayelitsha over the period we have been seeking to address this matter, allegedly as a result of acts of vigilantism meted out by mobs to persons perceived as having engaged in criminal activity in the area. In each case we know that no charge was laid with SAPS with respect to the alleged criminal activity, prior to the mob action in question.
40. Used in the anti-apartheid struggle as a method to kill suspected police informers, what became known colloquially as "necklacing" has now re-emerged as one method of implementing this mob justice and photographs of three men with tyres around their necks facing imminent execution by necklacing, taken at Khayelitsha Enkanini informal settlement on 19 March 2012, have been published around the world.
41. At the same time, pressure continued to grow and I received a further complaints about the alleged inefficiency and breakdown in relations between the community and the SAPS as being one of the main reasons for the vigilante action that is taking place in Khayelitsha. (See, for example, the fax sent to my office from persons allegedly representing the Community of Makhaza in this regard, which is attached hereto as Annexure C).
42. Section 206 of the Constitution read with section 127 of the Constitution, empowers the Premier of a Province to appoint a commission of inquiry into complaints of police inefficiency or a breakdown in relations between the police and any community.
43. I am of the opinion that the complaints in question merit investigation especially given that we know of at least 13 people who have lost their lives as a result of mob justice, actions alleged to be a result of the inefficiencies and loss of trust referred to above.
44. Despite repeated requests, the SAPS has failed to respond to me on this matter at all to date, not only refusing to provide comment on the facts or merits of the complaints, but also in respect of the process that has been followed to date.
45. As a result, the powers bestowed on the Province and the Premier in terms of the aforesaid legislation were exercised on Wednesday 22 August 2012 without the benefit of any insight the SAPS may have had to offer in this regard. On 15 August 2012 I, together with my cabinet, resolved to institute a Commission of inquiry into alleged police inefficiency and a breakdown in police-community relations in accordance with the draft proclamation submitted to cabinet in this

regard, a copy of which is annexed hereto for your convenience and which I am informed will be promulgated in the Provincial gazette tomorrow.

46. Given all of the above you will appreciate that I am somewhat perplexed at your comments that I did not notify you of my "intended actions" in the establishment of this commission. Not only have all the written complaints upon which the decision was founded been sent your offices, along with my request for comment thereon, but indeed your office has confirmed receipt of these documents in writing.
47. As regards the specific allegations made in your fax I point out that given that we have received no communication from the SAPS regarding any initiatives of any sort which will address **these complaints**, I am unable to comment on your assertions that this Commission's work may impact on such initiatives. However in so far as you assert that the establishment of this Commission is premature, I respectfully disagree, for reasons set out above.
48. it is my honest opinion that the report which is due to be tabled by the Chairperson in this regard in due course can but only assist SAPS in meeting any challenges that they face in that area, and as such any impact it will have will be positive.
49. In light of the aforesaid facts, and the limited purpose of this commission as set out above, I trust that you are convinced that not only has this Commission of Enquiry been lawfully established, but that its work should be encouraged and supported by all organs of state , including the SAPS.

Yours sincerely

  
**PREMIER**  
**(HELEN ZILLE)**

**1. The National Police Commissioner Phiyega**

Fax number (012) 393 2616



**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

**REFERENCE: 3/2/1/1(187/2011)**

Ms Hellen Zille  
Premier: Western Cape  
Private Bag x 9043  
**CAPE TOWN**  
8000

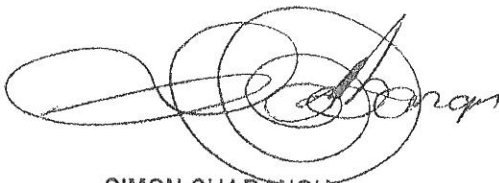
Dear Premier

**COMPLAINT REGARDING ALLEGED POLICE INEFFICIENCY AND A BREAKDOWN IN POLICE-  
COMMUNITY RELATIONS IN KHAYELITSHA, CAPE TOWN**

On behalf of the Minister of Police, Mr E N Mthethwa, MP, we hereby acknowledge receipt of your correspondence dated 09<sup>th</sup> December 2011.

The matter is receiving our outmost attention and further correspondence will be directed to you in due course.

With kind regards.



**SIMON CHABANGU  
ADMINISTRATIVE SECRETARY**

**DATE: 2011-12-12**



**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

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**REFERENCE: 3/2/1/1(119/2012)**

Mr Donnae Strydom  
Office of the Premier  
Private Bag x 9043  
**CAPE TOWN**  
8000

**Fax: 021- 483 3826**

Dear Mr Strydom

**COMPLAINT REGARDING ALLEGED POLICE INEFFICIENCY AND A BREAKDOWN IN POLICE-  
COMMUNITY RELATIONS AS WELL AS VIGILANTISM IN KHAYELITHSA, CAPE TOWN**

On behalf of the Minister of Police, Mr E N Mthethwa, MP, we hereby acknowledge receipt of your correspondence dated 13<sup>th</sup> June 2012.

The matter is receiving our outmost attention and further correspondence will be directed to you in due course.

With kind regards.

**SIMON CHABANGU  
ADMINISTRATIVE SECRETARY**

**DATE: 2012-06-21**

# Makaza Community

No. 0064

P. 1/2

C<sup>11</sup>

PREMIER  
CAPE TOWN  
DATE RECEIVED

25 JUN 2006

202/2947

SAKUMONTVANG  
KAMPSTAD  
PREMIER

We as Makaza Community have the following grievances against the Harare police station.

- ① We informed the police about a house that sell drugs and tik.
- ② From 2003 telling them they never find it.
- ③ Harare are friends to that house.
- ④ The Station Commandor confirmed to us about the Corrupted Police.
- ⑤ At last the metro-police find tik or drugs in that house
- ⑥ Now Harare police are targeting certain Commuters or people.
- ⑦ They never arrest the drug dealer or tik girl even though they find it instead they arresting the Community they protect them.



(8.) They sell these drugs to the school children and taxi drivers and we also reported this to the taxi owners.

(9) Lastly the Community too the law into their own hands by burning the drug dealers into ashes

(10) The person who is selling these drugs is coming with police around 12AM or Midnight to arrest the Community and the beat them and arrest them

(11) We are kindly requesting for help from the Minister of Safety and Security and also Premier of Western Cape. (Helen Zille) from Community Members  
Makaza 42 and 41 section.

*[Signature]*