

**INQUIRY INTO  
RACISM IN THE SAPS  
VRYBURG DISTRICT**



**REPORT BY THE SOUTH AFRICAN  
HUMAN RIGHTS COMMISSION**

## CONTENTS

1.	<i>Preface</i>	2
2.	<i>Introduction</i>	4
3.	<i>Assessing the evidence</i>	8
4.	<i>Evidence led by independent institutions</i>	14
5.	<i>Evidence in response to the allegations made</i>	18
6.	<i>Evidence in response to the allegations of racism and racial discrimination</i>	22
7.	<i>Findings</i>	34
8.	<i>Recommendations</i>	41
9.	<i>Conclusion</i>	43

# 1. PREFACE

Since 1996, the South African Human Rights Commission has been engaged in seeking a solution to the persistent problems encountered at Hoerskool Vryburg. Early this year, however, reports were received of racial tension at the Vryburg police station. During a previous routine visit to the police station, the Commission addressed police officers and introduced the Commission and its work. Following one particular incident at Hoerskool Vryburg, there were newspaper reports of open conflict between black and white police officers. Prompted by that, together with the other reports received, we made initial visits to Vryburg to test the validity of the reports and to determine whether there was a role for the Commission.

As a result of the visit, complaints were received. A fully-fledged investigation was then undertaken. The investigation entailed interviews with police officers, taking statements and making provision for officers to make confidential statements to the Commission. The Commissioners addressed the police officers at the station in order to explain the process to them and to seek cooperation. For this we are grateful to Superintendent Theunissen, the Station Commissioner, who facilitated our visits.

Section 184 of the Constitution, 1996 gives the Commission power to

- Promote respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and assess the observance of human rights.

In order to carry out its mandate, the Commission has authority to investigate and to report on the observance of human rights and to “take steps to secure appropriate redress...”(s 184(2)). The Preamble to the Human Rights Commission Act, 1994, enjoins the Commission to “make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution.”

In order to address the problems fundamental to the complaints received, the Commission resolved to hold a public inquiry in Vryburg. We decided on the mechanism of an inquiry because we had a sense that these matters went well beyond the individual complaints received. We judged that what was fundamental to the complaints were structural and systemic problems inherent in the police station at Vryburg. The public hearing would provide a comprehensive means of addressing the systemic problems and would also serve as a tool for raising awareness about racism. Terms of Reference were formulated and appropriate notices sent to all those who were required to appear before the Commission. The first set of hearings was on 10-11 March 1999. These hearings were for the purpose of receiving evidence under oath. The allegations were then put to the Management of the SAPS and others implicated in the statements. Another series of hearings was held on 7-11 June 1999 for the purpose of hearing from management and from those alleged to be implicated in human rights violations.

## Terms of Reference

- To investigate incidents of racism or racial discrimination, if any, in the Vryburg district of SAPS;
- To examine how these manifest themselves;
- To establish the underlying causes;
- To assess how they impact on effective policing and the observance of fundamental rights;
- To note what steps were taken at all levels to address these problems; and
- To make findings and recommendations, as appropriate.

Mr M C Moodliar, head of the Legal Services Department at the Commission, led the evidence. Adv. S de la Harpe represented the SAPS.

The panel was made up as follows

Dr N B Pityana	Chairperson
Adv. F P Tlakula	Commissioner
Adv. L Wessels	Commissioner

In keeping with the Rules of Procedure of the Commission, the Commission invited two experts to assist and to advise. They were

Adv. M M Mabiletsa and  
Ms O Geldenhuys.

We are conscious of the fact that the matters under consideration in this report are not peculiar to Vryburg only. We have reason to believe that racism affects our societies everywhere. However, there is added significance when service providers like the police and the courts lose public confidence and fail to provide services effectively in the spirit of our Constitution. For that reason, we have endeavoured to prepare this report as comprehensively as possible. We have prepared our findings with care and we offer elaborate recommendations. We have done so because we believe that this report will have significance well beyond the borders of rural Vryburg. We intend that the report should be an essential tool for understanding how racism operates and how it may be analysed within the police service and the workplace. We would like to see this used in policy development with a view to advancing a society based on tolerance and mutual respect.

I wish to acknowledge the special assistance of my colleagues on the panel who sat through the Hearings and prepared the report. Of special mention must surely be our special advisers, Adv. Martin M Mabiletsa and Ms Odette Geldenhuys. Many thanks.

N Barney Pityana  
Chairperson: South African Human Rights Commission  
30 November 1999

## 2. INTRODUCTION

The South African Police Service occupies pride of place in South Africa's new democratic order. The police are the guarantors of our human and fundamental rights. They have to operate within the law and the Constitution, uphold law and order and protect and promote the values in our constitutional democracy.

In order to undertake these duties, the police have had to undergo a rapid, radical and fundamental transformation. One, the police had to operate at all times within the law and uphold our Constitution. Two, police had to operate under civilian, political control. Three, police had to be de-militarised; which means that the ethos, disciplines and structure of the SAPS had to reflect its civilian focus. That must also mean, we believe, that the police had to reflect the character of South African society, to recognise that effective policing functions best when it is policing with the consent and participation of the people and when management seeks to bring out what is best in every individual policeman and woman.

It must be remembered that police in South Africa never operated under these values or constraints. Police, black or white, were a part of the army of occupation that imposed the will of the ruling white minority elite. The police service was run to satisfy the needs not of the whole population but of a minority. Management was never democratic, the ethos and values of its operations never democratic or participatory. Too many within the police force were never valued as human beings. They were machines or automatons in the hands of those who wished to exercise power. In a changing South Africa this too had to change.

As we said, since 1994 changes have had to be rapid and radical. For a start, the many police forces of the apartheid era had to be amalgamated. That meant that a new police service was created, too large for the needs of an undivided South Africa, with different levels of training and, in many cases, with attitudes and mind-sets from the past which had no place in the new South Africa. This brought with it a duty to manage a police service where everybody was equal and where the colour of one's skin did not impose benefits, advantages or privileges. New values of service delivery had to be inculcated in every policeman or woman. Police had to construct a new relationship with the communities they served. In many cases, they had to win the trust of those communities. A new management structure was agreed upon and soon implemented. Training and re-training were essential if a new cadre of police was to develop. New values in management, collegiality, teamwork, labour relations and human rights had to be instilled in every member of the service.

It was to be expected, in our view, that such a mammoth programme would soon take its toll in many ways on the police service. Many members could not cope. There was too much pressure to change. Many felt guilty about their past and some sought to take advantage of the present dispensation for their own purposes. Operating under the law was a restraint many were never used to – the police were for all intents and purposes a law unto themselves. That much has emerged from the TRC Hearings. The extent of differences in training between the former homeland and South African police services has emerged as well as the pressures of integration. This meant that many "kits-konstabels" (self-defence units that were barely trained and under-qualified) were integrated into the police service. Many of these were simply untrainable. Many white policemen of the old order were equally untrainable in the values and ethos of the new SAPS. Their mind-sets were probably too fixed. The learning curve on the part of almost everybody was a very steep one indeed. At the same time the pressure for effective and results-oriented policing increased. Crime levels were

skyrocketing, corruption was uncovered within the police service and discipline was becoming a problem. There was a great deal of pressure from the government, who in turn was feeling the pressure from the electorate. Too many things, we understand, had to happen too quickly.

It was from such a perspective that we approached the task ahead of us. One, we sincerely understood the difficulties the police service has been through. Vryburg was simply a manifestation of deeper structural and systemic difficulties that different places within the police service had to encounter. These difficulties manifested themselves differently in different contexts. Second, nonetheless, we believe that racism is inexcusable and violation of the Constitution intolerable. Three, what needed to happen, though, was that the transformation project had to be understood and accepted by every member of the SAPS if the desired effect was to be realised. For that reason this inquiry was to be both a corrective and an educative exercise. The people of Vryburg are entitled to effective policing, the protection of their right to freedom and security of person and to the enjoyment of peace. In an environment where police are at odds with one another, where management has broken down, where ill discipline prevails, the police cannot deliver effective policing by any means.

The Bill of Rights states that everyone is equal before the law and is entitled to equal and unfettered protection and benefit of the law. Section 9 also sets out a number of prohibited grounds of discrimination; among them is race, colour, ethnicity and social origin – all ingredients that make up the racism cocktail. The Bill of Rights also states that everyone has inherent dignity and has the right to have their dignity respected and protected (s 10). Racism is a violation of human rights; especially the right to equality and the right to human dignity. Those who are victims of racism have their fundamental right to human dignity undermined. So central is this matter to our new democratic vision - indeed s 1 of the Constitution has elevated it to the level of founding principles or values of our Constitution - that parliament is set to legislate to promote and protect the right to equality and prohibit unfair discrimination. If passed, racism will become an aggravating circumstance in any criminal trial and victims of racism will be entitled to compensation.

South Africa has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination. Under this treaty, states are to take legislative and other measures to prohibit racism and racial discrimination and to punish the dissemination of all ideas based on racial superiority. Strangely enough, many people protest that they do not know what racism is. They claim that racism is often a fig leaf bandied about by those of a different colour who do not wish to be challenged. And yet the victims of racism know exactly what it means. They know because they experience it. Racism thrives in an environment of denial and secrecy. It is rooted in the unequal power relations between different colour groups. The Convention defines racial discrimination as

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights or fundamental freedoms....”

If the Promotion of Equality and Prohibition of Unfair Discrimination Bill is passed, this definition will be enshrined into law. It will also mean that racism will be an offence. It will impose a duty on police management to prepare equality plans for the workforce. Such is the gravity of the situation and the determination of government to deal with it.

Since the passage of the new Constitution, the Constitutional Court has had reason to pronounce on the right to equality. The courts have now affirmed the principle enshrined in our Constitution at s 9(5) that “discrimination... is unfair unless it is established that

discrimination is fair.” This places the onus on the respondent to prove that the discrimination, once established, is fair according to the law and the Constitution. The Court in *President of the Republic of South Africa v Hugo* stated the principle as follows:

The prohibition on unfair discrimination in the interim Constitution seeks to avoid discrimination against people who are members of disadvantaged groups. It seeks more than that. At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups. The achievement of such a society in the context of our deeply inegalitarian past will not be easy, but that that is the goal of the Constitution should not be forgotten or overlooked.<sup>1</sup>

Having established the basis for the prohibition of unfair discrimination in our constitution, the Constitutional Court has outlined a multi-stage enquiry into what constitutes unfair discrimination. In *Harksen v Lane NO & Others*<sup>2</sup> the court states this task as follows:

Firstly, does the differentiation amount to ‘discrimination’? If it is on a specified ground, then discrimination will have been established. If it is not on a specified ground, then whether or not there is discrimination will depend upon whether, objectively, the ground is based on attributes and characteristics which have the potential to impair the fundamental human dignity of persons as human beings or to affect them adversely in a comparably serious manner.

If the differentiation amounts to ‘discrimination’, does it amount to ‘unfair discrimination’? If it has been found to have been on a specified ground, unfairness will have to be established by the complainant. The test of unfairness focuses primarily on the impact of discrimination on the complainant and others in her or his situation.

Even if unfair discrimination is established, however, it still does not mean that the discrimination is unlawful and unconstitutional. A further inquiry is called for by the application of the limitations clause of the Constitution. The unfair discrimination, according to s 36 of the Constitution, is subject to the law of general application “to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom...”

The Constitutional Court has also had reason to pronounce on direct and indirect discrimination. In *City Council of Pretoria v Walker* the Constitutional Court said that discrimination that is indirect, based on a neutral category which has an impact upon a listed class, is not treated differently under the Constitution than direct discrimination. Chaskalson, President of the Constitutional Court, had this to say in *State vs Makwenyane and Another*<sup>3</sup> that “any law, which is discriminatory on its face, may be applied in such a way as to violate the equal protection clause of the Fourteenth Amendment”, quoting Justice Douglas in a United States case.<sup>4</sup>

The principles outlined above are not unknown to the police service. At the operational level, the South African Police Service, both at national and at provincial level, has been mindful of the changes necessitated by the new legal and constitutional environment. As far as policy development is concerned the Safety and Security Secretariat at national and provincial levels has articulated the fundamental values for a new police service for South Africa in unambiguous terms. At all levels, the police service and the civilian secretariat are to be commended for their efforts. The intention of our report is to point out where policy does not accord with practice; the consequences of a failure to ensure that management and practice at the local level is synchronised with national and provincial policy.

---

<sup>1</sup> SALJ 1997 (4) SA 1(CC).

<sup>2</sup> SALJ 1998 (1) SA 300 (CC).

<sup>3</sup> BCLR 1995 (6) 665 (CC) at 693B

<sup>4</sup> *Furmore vs Georgia* 408 US 238 290 (1972)

The Secretariat for Safety and Security in the North West Provincial Government has adopted an “Affirmative Action Policy for the SAPS”<sup>5</sup>. The Policy states that the SAPS is “committed to the eradication of all forms of discriminatory practices and behaviour.” The document commits the SAPS to equality of service, opportunity and outcomes. It seeks to ensure that at all times processes are fair and just. In this policy document discrimination is defined in a manner that is consistent with the current legal position. While doing so, the document analyses the current situation in the SAPS. It characterises the SAPS as broadly unrepresentative and says discrimination continues to exist. It notes that the ethos and management style of the SAPS remains centralised and non-participative.

The Office of the North West Provincial Commissioner has produced its own Strategic Plan 1999-2004. The document is evidence of the provincial commitment to deal urgently with the issue of transformation of the SAPS in the province. The policy seeks to ensure a fundamental shift in attitudes and practices, in consciousness, values and perceptions that become a barrier to effective policing in the new South Africa.

We note with appreciation the advances, at the conceptual and policy levels, that have been made. We record that these policies need to be put into effective practice at the operational level. We also note that none of the policies we have seen discuss or analyse in a direct way the nature and significance of racism and racial discrimination in order to raise the awareness of racism and to equip members with the tools to counter racist attitudes, to avoid and/or resist racism and racial discrimination or to be sensitive about the way others understand and experience racism in the workplace. We accept that many of the references (like cultural environment, social, cultural and psychological barriers to change, fear of change and allusions to racism, racial discrimination, entrenched racial hierarchies and to the bias towards Afrikaner males) point to problems of racism. It is our view, however, that racism will never be effectively addressed until it is named as such.

---

<sup>5</sup> This is among the documents presented in evidence to the Commission. It is undated but it appears from the evidence that it was adopted in 1996. Mr M J Rasegatla, Chief Director in the Provincial Secretariat, also tabled a document called “Ten Focus Areas”. This document has been considered by the Provincial Commissioner’s office and, we were informed, is being discussed by police at the station level. We were also advised that the principles in the document have been incorporated into the Provincial Strategic plan 1999-2004. The evidence of Mr Rasegatla is discussed later in this document

### **3. ASSESSING THE EVIDENCE**

#### **3.1 Management Practices**

Allegations of racism and racial discrimination were made against the white management of the police station. In this regard, the following specific allegations were made:

##### **3.1.1 Arrest of white farmer by black police officers**

The prevalence of racism at the police station makes it difficult for black officers to execute their policing duties in the white farming communities. In support of this allegation, Inspector Kati related three incidents that took place at different farms, on 21 October, 3 November 1998 and 22 February 1999, where white farmers prevented his black colleagues from effecting arrest. According to his evidence, he believes that white farms are no go areas for black officers. In his view, this kind of racist attitude on the part of the farmers adversely affected policing in Vryburg.

Inspector Kati alleges that he dealt with the first two incidents by reporting the conduct of the farmers to the Station Commissioner, Superintendent Theunissen, who promised to deal with these matters and give him feed back which, he alleges, never happened. According to him he never bothered to report the third incident to the Station Commissioner because "I have lost confidence in our management because there are so many cases which we have reported to them because these people are whites and they are also whites and that is why".

Inspector Kati conceded, however, that he did not open a case of obstruction of a policeman whilst carrying out his lawful duties even if it was within his competence to do so.

##### **3.1.2 Allocation of offices**

Captain Mongaile alleged that white officers were given preference over black officers in so far as the allocation of office space is concerned. According to his evidence, black officers are always removed from their offices. In support of this allegation, he gave an example of Sergeants Mogakola and Mongwegape who were removed from their office, which was later converted into a tearoom. They were initially accommodated in the mortuary, were later transferred from the mortuary to the lecture room, and from there relocated in the Charge Office.

##### **3.1.3 Transfers**

It was alleged that black officers are discriminated against in the way applications for transfer from one unit to the other are handled. In support of this allegation, Inspector Kati testified that, when black officers apply for transfer, their applications are not successful and the reason given is shortage of manpower. Inspector Kati alleged that white officers, on the other hand, get transferred quickly. He gave the examples of Sergeant Roux who was transferred from clearance to court, back to clearance etc and

of Sergeant Botha who was transferred from enquiry to Schweizer-Reneke, then to Vryburg, to enquiry to mortuary etc. According to Kati, people are interested in transfers in order to increase their knowledge in the Police Service. Black officers are denied this opportunity.

Captain Mongaile corroborated Inspector Kati's evidence regarding transfers. According to Mongaile, Sergeant du Toit (a coloured person) unsuccessfully applied for transfer to the explosive unit and he was given shortage of manpower as a reason, while Sergeant Botha's application for transfer to the same unit was successful.

### **3.1.4 Marginalisation of black members of management**

Captain Mongaile alleged that although he is part of management he is always discriminated against and marginalised by his white colleagues, in particular, Captain Herza, Superintendent Theunissen and Captain Dettmer; who often make decisions without consulting him although he is at the same rank as them. According to him, his efforts to speak to them about this have not borne any fruit because "they just go on." Although Captain Mongaile admitted that he is part of General Management and he attends management meetings, which are held every Monday, he testified that these meetings discuss general issues only because real decisions are taken elsewhere by Herza, Theunissen and Dettmer. He did not, however, know whether other black members of management have raised their concerns about this. According to his testimony, management did not consult him when they approved applications for the transfers of Sergeants du Toit and Botha, even though they both worked under him in the Community Service Centre and he had a shortage of manpower. These practices, Mongaile alleged, have led to low morale amongst black officers. He testified, however, that junior officers working under him do not defy his instructions even if they are white.

Inspector Kati blamed lack of transformation for the problems at the police station, which according to him, is evidenced by 9 white officers and 4 black officers in general management positions. According to Kati, this lack of adequate representivity in management results in black officers being denied training opportunities. This in return results in division and polarisation among black and white officers, who do not work as a team. If they co-operated, he opined, they would be able to achieve the objectives of good policing.

### **3.1.5 Acting position**

Captain Mongaile testified that the Area Commissioner discriminated against him by failing to appoint him to act as Station Commissioner in the absence of the Station Commissioner. According to Mongaile, the procedure for appointment is to appoint from senior members who work directly under the Station Commissioner. In principle, Heads of Specialised Units do not qualify for appointment since they fall under the Provincial Commissioner.

According to Captain Mongaile, this procedure has not been followed because the Area Commissioner has overlooked both him and Superintendent Naledi, who is the most senior black member in the whole of Vryburg, and appointed Superintendent Fourie to act as the Station Commissioner. In cases where Fourie was not able to act,

Captain Dettmer of the Stability Unit was appointed, even if his unit did not fall under the jurisdiction of the Area Commissioner. Mongaile and other black members of management are never consulted on these appointments.

### **3.1.6 Others**

Captain Combrink, who is a member of the general management team at Vryburg and has been in the police service for 27 years, also testified. He heads the Stock Theft Unit. His testimony related to preferential treatment given to black police officers who have committed criminal offences in comparison with their white counterparts. In support of this allegation, he gave examples of Inspector Viljoen, who was suspended following a charge of assault, and Captain David Ludick van du Plessis, who was also suspended following an incident at Vryburg High School. Combrink compared this to the treatment received by Constable Mogape, who was arrested for an alleged rape but was not suspended and another black constable, whom he did not name, who was arrested and detained for an attempted armed robbery but was also not suspended.

Captain Combrink testified that in his opinion 90% of Vryburg white people were not racist. On being asked for his opinion on the treatment meted out by white farmers to black police officers, he opined that it was hurtful to black members to be ill treated by white farmers whilst doing their work.

On this issue Combrink stated the following “I am not a personnel consultant. But when I look at the workable facts, then I say that the service must look at the situations of the community. I think we must look at the service and the area where it is provided. As in this case. To save black people the embarrassment such as that suffered by black officers, who were chased from the farms, we must look at the area and the people to be served. For instance in black neighbourhoods where there are black people, black policemen are happy because they work amongst their own people. He understands them better than I do. He knows their culture better than I do. And he is welcome there.” (Translation from Afrikaans).

On the question of the racial composition of his unit, Combrink testified that the unit is mainly white and includes one black and one coloured person. According to his testimony, white members hold all senior positions in his unit and black members who had applied for transfer to the unit not been successful. He also stated that a senior officer has criticized the unit as being too white. He, however, offered the following explanation to this, “I base my reply on the fact that my unit is not too white. Because it fits into a situation which mirrors it”. (Translation from Afrikaans).

## **3.2 Treatment of black officers**

Evidence was led regarding the undermining and outright abuse of Black officers by their White colleagues, which amounts to racism and unfair racial discrimination. According to the evidence that was led, this conduct takes the following forms: -

### 3.2.1 White officers undermining the authority of black officers

Constable Kgodumo, a police reservist, testified about the incident in which he and a colleague, Mr Maibi, recovered a cellphone belonging to an old white man from the youths who had stolen it from him. According to his testimony, as the police officers were handing over the cellphone to its owner, one Mr Bester, whom they assumed to be the son of the owner of the cellphone, arrived at the scene of the crime, pushed the officers and uttered the following words, "What are the fucking kaffirs doing to my father?" After a scuffle Kgodumo and his colleague left for the Vryburg Police Station and, upon their arrival, they found Mr Bester and his father there. Constable Kgodumo alleged that Mr Bester assaulted him in front of his colleagues who were watching through the windows. He laid a charge of assault with Sergeant Lisa against Mr Bester, who was continuing to use abusive language against him. Sergeant Lisa arrested Mr Bester and locked him up, at which point Mr Bester laid a charge, alleging Kgodumo had pointed a firearm at him.

According to Constable Kgodumo, Inspector Viljoen arrived at the police station and instructed Sergeant Lisa to release Mr Bester. Inspector Viljoen was at that time accompanied by Superintendent Fourie. According to Constable Kgodumo, white officers have developed a negative attitude towards him since this incident.

Captain Mongaile corroborated Constable Kgodumo's evidence, testifying that, when Sergeant Lisa was locking up Mr Bester, Inspector Human tried to intervene. Mongaile informed Human that the law should take its course. According to Mongaile, he realised the following day that Mr Bester had been released by Inspector Viljoen on a J127 (a procedure in the Criminal Procedure Act, which allows an accused person to be released on "Free Bail under certain circumstances). Mongaile then received a report from Sergeant Lisa that Superintendent Fourie had instructed Inspector Viljoen to release Bester on a J127 without consulting Sergeant Lisa. According to Captain Mongaile, he found that Bester had not been charged in the docket and on the day of the trial the docket was not ready in the sense that statements, fingerprints and other formalities were not in the docket. According to Inspector Kati, black officers who have committed a crime are charged immediately after arrest and the matter is then taken straight to court. Kati gave the example of Sergeant Mokgatle, who was charged with attempted rape and his case was taken straight to court without following the necessary procedure.

Captain Mongaile supporting Sergeant Kati's evidence, gave the example of Sergeant Ntlhaeng, who was arrested on a charge of house breaking and was severely assaulted by Inspector Viljoen. Sergeant Ntlhaeng then opened a case of assault against Viljoen. Instead of arresting Viljoen, Superintendent Fourie allegedly sought permission from the Provincial Commissioner to do so. In addition to this, it was alleged, Fourie misinformed both the Provincial Commissioner and the Area Head Detective Branch about the whole case. According to Captain Mongaile, Viljoen was only arrested and suspended after the Provincial Commissioner's intervention. Captain Mongaile also gave the example of Sergeant Mokhoati, who was arrested for theft from the garage, and his case was handed over to the Anti-Corruption Unit for investigation. Mongaile distinguished this case from those of Constable Haasbroek and Inspector Badenhorst, who were also accused of theft but were treated differently in that their cases were not given to the Anti-Corruption Unit.

According to the evidence that was presented by some black officers, they did not know, on the date of the hearing, what ultimately happened to the case.

Sergeant Miller made a general allegation about the practice at the police station of releasing white offenders arrested for serious offence on a J127. In support of this allegation, he mentioned the case of a white man who was arrested for theft of ivory worth R300, 00.00 and was released on a J127.

### **3.2.2 Treatment of black officers accused of criminal conduct**

Inspector Kati testified about differential treatment of black officers who are suspects in crime in comparison with their white colleagues. According to his testimony black officers are normally “locked up” after arrest and proper procedures are usually followed from arrest until the matter goes to court. He distinguished this from the cases of white officers who are normally not locked up. Sergeant Miller supported this evidence, stating that the manner in which the white officers treated their black colleagues causes the white members of the community to underestimate their authority. This, according to him, explains why, when a white person comes to the charge office, he or she ignores a black officer and looks to a white officer for service. According to Captain Superintendent Mocumi, white officers treat black officers so badly that they even use offensive language. He alleged that Superintendent Rautenbach once called him a “kaffir”.

### **3.2.3 Treatment of black members of the public**

Evidence was given by black officers relating to the racist treatment received by the black members of the public at the hands of white officers. In support of this allegation, Captain Mongaile gave evidence of the behavior of Sergeant Engels, who uses derogatory and racially offensive expressions about black members of the public. According to his evidence, on one occasion, Engels had called two black complainants “Kaffirs” and on another occasion upon arrival at the scene of a crime, Engels allegedly accused the informer, who was black, of breaking into the vehicle, called him a “Kaffir” and also threatened to assault him. According to Captain Mongaile, Engels was restrained by the owner of the vehicle, who later rewarded the informant with R50.00. The prevalence of racism at the Vryburg Police Station makes black members of the public believe that their complaints are poorly investigated by white police officers, for example. Ms Lettie Kiet, who had not received feedback on the investigation of the death of her brother after he had been knocked down by a car driven by a white man, alleged that the reason why her case was not investigated was because the accused in this case was a white person. According to Ms Kiet, she approached Mr Modise of the Community Police Forum for assistance in respect of this case. Mr Modise alleged that an article appeared in the local newspaper, supposedly from the Vryburg Police Station, in which it was stated that the identity of the deceased was unknown. This, in his opinion, was published in order to protect the deceased.

Ms Beatrice Rose, a member of the Community Police Forum, also testified that white prisoners received preferential treatment relating to receiving visitors and food

while blacks were not allowed the same treatment. She gave the example of Willem Ratte, who was allowed food while in detention at the Vryburg Police Station.

In support of the allegation that white police officers of the Vryburg police station discriminated against black members of the public, Mr Mogale, the Co-ordinator of Field Work at the Vryburg Parliamentary Office, claimed that Captain Dettmer took sides with white people in a racial fight that took place in downtown Vryburg in December 1998. According to Mogale, Captain Dettmer sprayed tear gas on him and he reported the matter to Superintendent Fourie, who refused to investigate the matter.

### **3.3 Events at Vryburg High School**

Allegations of racism and racial discrimination were levelled against some white police officers for the way they handled the Vryburg High School matter. Inspector Mocumi testified that on 24 February 1998 he had gone to Vryburg High School as part of the Mass Democratic Movement. According to Mocumi, Captain Dettmer did not allow black parents to enter the school premises while permitting white parents to do so. This was confirmed by Ms Beatrice Rose, who testified that police were racist in that they removed black children from the scene in police vehicles instead of removing white parents, whom, she alleged, were unlawfully gathered at the school and were in possession of weapons. She alleged that she asked Superintendent van Niekerk what was going on at the school. According to her testimony van Niekerk said that a few children had been assaulted but he could not do anything because "his hand had been chopped off" (Translation from Afrikaans). She then said to van Niekerk "Can you see how racist you are? If it was us black people you would immediately have used teargas on us". (Translation from Afrikaans).

Mr Raditho Malebalo, an SABC correspondent, also gave evidence on the racist behaviour of white police officers during the Vryburg High School matter. He alleged that a white man, who was later identified as Mr O'Reilly, assaulted him during that incident. Captain Witman allegedly saw this and said to his assailant, "let go of the man. He is from the Flagstaff Newspaper". (Translation from Afrikaans.) According to Malebalo's testimony, his attempt to obtain the name of his assailant from Captain de Klerk and Superintendent Fourie drew a blank. He subsequently got the name from a black constable. He laid a charge of assault against his assailant and was informed by Fourie that the matter had been referred to Captain De Kock of Bloemhof. According to Malebalo, he had not heard anything about his case on the day of the hearing.

Ms Beatrice Rose and Mr Wilson Modise, both members of the Community Policing Forum, expressed concern about racial clashes at the police station because, according to them, these render policing ineffective in Vryburg.

## 4. EVIDENCE LED BY INDEPENDENT INSTITUTIONS

Two independent institutions, namely, the Mayor of Vryburg, Mr Galeng, and the office of the Secretariat for Safety and Security in the North West Province, represented by Mr Rasekgatla, also gave evidence of transformation in Vryburg generally and at the police station in particular.

### 4.1 *Mayor Galeng*

Mayor Galeng's testimony is that at the heart of problems at Vryburg Police Station is the lack of transformation, which matter he alleged he had raised with the Premier of the North West Province, Mr Popo Molefe. Galeng then handed to the Commission correspondence between him and the Premier in which he urged that the transformation of the management of the police be instituted as a matter of urgency. He also made specific proposals to the Premier in that regard.

Galeng further expressed concern about the following matters:-

Racial tension at Vryburg Police Station – according to him, racial tension at the Vryburg Police Station is tarnishing the image of Vryburg. People are discouraged from living there and from investing in Vryburg. Police are supposed to protect the public but they are ones that the public cannot run to.

In his opinion racism is so deep seated at the station that when a complainant is white everything is prepared professionally and yet not the same care is shown where black people are concerned. He believes that the incident at the Vryburg High School would not have taken place if the police did not have racism amongst themselves.

It is Galeng's observation that the MEC for Safety and Security is powerless

### 4.2 *Mr M J Rasegatla*

Mr Rasegatla is the Chief Director of the Secretariat for Safety and Security in the North West.

He presented the "Ten Focus Areas Document", which is a product of the Safety and Security Department on the transformation of the SAPS in the North West.

Rasegatla's evidence is that the Department of Safety and Security was prompted to produce this document by the observation that 80% of the SAPS members were unhappy with SAPS and were demoralised. There were allegations of racism and other complaints, which led to the emergence of structures such as the Black Officers' Forum. The Secretariat reached these conclusions by studying the Sedumede Document, Thuka Document and a document from Klipgat Station Commissioner and other evidence. Amongst the issues addressed in the "Ten Focus Areas Document" are:

- ***Representivity*** – *The Secretariat has been worried about a lack of representative in the SAPS management, especially at the top. This is*

*exacerbated by a lack of clear programmes and guidelines making management representative.*

- **Human resource development including service training** – *That is informed by the imbalances that were inherent and are still inherent in the SAPS.*
- **Integration and amalgamation** – *This part is addressing the need for diversity management training within the SAPS.*
- **Infrastructural development** – *Previously neglected areas still remain without any form of infrastructure.*
- **The quality of service** – *How to improve it. The Secretariat recommends budget control to monitor usage of state resources.*
- **Management ethos** – *This deals with problems such as racism within the service, nepotism with and without the service, corruption with and without the service, chauvinism (male and female), negligence of duty and deliberate efforts to sabotage or undermine the service. A specific focus on programmes to address these are recommended.*
- **Policing priorities** – *Every year the secretariat determines policing priorities.*

According to Mr Rasegatla, the document was presented to the SAPS at a Bosberaad in Klerksdorp during June 1997. As it had not been circulated before, the Provincial Commissioner directed that Director Dippenaar do the necessary. It had to be circulated to every police station so that management could study it and make their comments. These inputs would then be sent to Dippenaar who would then liaise with the Secretariat for Safety and Security,

He testified that whilst this process was going on the National Minister commissioned a five-person team commission of inquiry (**The Zulu Commission**) to investigate racism in the SAPS nationally.

Bathopele, which is a *White Paper on Transformation* within the public service, is being implemented nationally by the SAPS through a programme called **Service Delivery Improvement Programme (SDIP)**.

By transformation the public service means the need for all public servants and people of South Africa to behave and work in a manner acceptable to the SA Human Rights Commission.

Mr Rasegatla stated that in his personal opinion there is some resistance to change. The challenge is still to explain what transformation is and what it is not.

**The Secretariat's Department's dealing with the Vryburg Police Station**  
Mr Rasegatla department visited Vryburg Police Station on a familiarisation

trip. They observed that most of the things contained in the “Ten Focus Areas” document were concerns that had to be addressed at Vryburg Police station. Their observations, including their observations on the whole of the Molopo Area, are the subject of a report that has not yet been submitted to the Area Commissioner.

Their specific observation regarding Vryburg is that people are not treated on the basis of being people. People of different races are not treated equally, even with regard to promotions. People do not receive fair promotions. Those that are black are not being promoted and those that are white are getting accelerated promotions. There is also a negative attitude towards change.

**The Secretariat for Safety and Security vis-à-vis-SAPS in North West –**  
On this issue Mr Rasegatle testified that the Secretariat only has advisory powers and this is often frustrating. He gave an example of appointments in which the Provincial Executive has no say. The MEC can send a representative to the interviewing panel. But thereafter the Provincial Commissioner sends the appointments to the National Commissioner, who takes the final decision. This results in people on the ground blaming the political leadership of the Province when black people are not appointed in senior positions. They don’t realise that, according to the National Constitution of the Republic of South Africa, the Provincial SAPS are under the authority of the National Minister for Safety and not the Provincial Government. Representations are being made to the National Secretariat for Safety and Security, which is under Mr Cachalia.

When asked about the North West Police Strategy Plan 1999-2004, Mr Rasegatla stated that he was not aware of it.

As regards the relationship of the Provincial Commissioner and the MEC, Mr Rasegatla agreed that: -

- *The Secretariat’s main task is in policy formation in the Province. The Commissioner’s role is operational i.e. to ensure implementation of the policies. The Secretariat also monitors implementation because the National Constitution obliges them to do so.*
- *The Secretariat has the power to recommend to the Commissioner the imposition of greater punishment where this is appropriate e.g. where an white officer calls people Kaffirs he should not get away with a mere warning. They would expect the Commissioner to carry that out. If he refuses then they can report to the MEC and he to the Executive who can take it up at National Level.*
- *He does not agree with the perception of the Vryburg Mayor that the MEC has no power. To him the MEC has “much more authority through the Provincial Executive than even the National Minister about Provincial Policy.” The Executive Committee has discussed the*

*Vryburg situation and taken some decisions. He does not know what decisions were taken.*

The relationship between Secretariat and SAPS – according to Mr Rasegatla there are no problems between the two bodies and they work well together. He has reliable communication with Director Dippenaar who has actually provided the Secretariat with an office at Potchefstroom Police Headquarters. But he cannot say they are an effective team. There are a number of areas where they differ. But once the “Ten Focus Areas” document has been adopted by the National Minister then the Secretariat will have the muscle to say to SAPS North West, “This is policy; please implement it.”

## 5. EVIDENCE IN RESPONSE TO THE ALLEGATIONS MADE

### 5.1 *Provincial Office - Management and Representivity*

The office of the Provincial Commissioner, represented by Senior Superintendent Mpedi, the Station Commissioner at the Mabopane Police Station, and Senior Superintendent le Grange, Commander of Equity Component in the Provincial Commissioner's Office, gave evidence on the initiatives taken by the Provincial Commissioner to address racism at the Vryburg Police Station.

According to their testimony, which was presented by Superintendent Mpedi, the occurrence of alleged racism in SAPS Vryburg came to the attention of the Provincial Commissioner during February 1998. As a result, he appointed a special investigating team. The team produced a report dated 6 March 1998.

The report focuses mainly on the incidents at the Vryburg High School, in particular, the following: -

- The alleged detention of the Principal and members of the Governing Body of Vryburg High School on 23 February 1998, as well as the assault of one of the members of the Governing Body by a pupil.
- An attack by white parents with sjamboks on black pupils at the school. Allegations by white parents that members of the police favour black pupils and black members of the community by during pickets and marches.
- Allegations by black members of the community that the police are favouring white people and intimidating black people.
- Investigation of unrest related violence in Huhudi, the causes thereof and alleged police involvement.

The investigation made the following findings: -

- That the root of the problem seems to be racial tension that exists within Vryburg as a whole and the High School in particular.
- A small but very influential percentage of White parents in the school is the source of the problem. This minority uses the volatile situation in the Vryburg High School to further their ulterior motives.
- Irresponsible statements made by people holding portfolios of responsibility within Vryburg contributed to the problem.
- Non-representivity of the Governing Body, as well as lack of trust in it, contributes enormously to the endemic problem.

- Lack of proper planning, briefings, insufficient intelligence and assessment of the situation on the part of the Vryburg SAPS Management led to a situation that could ultimately not be handled efficiently.
- The attitude of certain SAPS members.
- Lack of discipline on the part of certain students.
- Reluctance by the Department of Education and the Principal of the Vryburg High School to find a lasting solution.

The Police Commissioner's report also refers to the intervention of the "Psychological Services" which makes the following recommendations to the Vryburg SAPS.

- Open communication channels;
- Participation in management;
- Fairness in practice of discipline;
- Effective training and development;
- Professionalism;
- Transparency;
- Self-responsibility from each member and officer;
- **No discrimination;**
- Loyalty;
- Respect for each other and the community;
- Room for creativity of junior members;
- **Feedback to junior members from management;**
- Colleague sensitivity and tolerance;
- All officers and managers should also attend the workshop to become aware of the feelings and thoughts of the members; and
- Commitment to transformation.

The exercise found that the unrest situation at Vryburg High School caused racial tension within the SAPS at Vryburg and especially within the Public Order Policing Unit.

A workshop to improve relations was conducted in February 1999. Non-attendance of officers and management produced a negative effect although some positive results were attained.

In January 1999, there was an eruption of labour unrest at the Vryburg Police station. The Provincial Commissioner appointed a two-person commission to investigate this incident. The Commission produced a report dated 11 January 1999. According to this report, the incident that sparked off the labour unrest was the alleged assault of Sergeant Ntlhaeng on the 10 January 1999 by Inspector Viljoen whilst Viljoen was being detained as a suspect on housebreaking case.

Black members of POPCRU became disgruntled because Viljoen was not arrested. Fourteen members of the Detective Branch dropped their dockets in the corridor in front of the door of the office of Captain Fourie, Branch Commander, and refused to resume duties until the matter was attended to.

*Amongst the findings were the following:*

1. Reservist Constable Kgodumo was, while on duty and wearing uniform, allegedly assaulted by a white person. The accused was arrested but Inspector Viljoen released the person without charging him. Superintendent Fourie knew about it, but did not do anything.

On investigation no indication of the suspect being charged before being released per warning (J127) could be found in either the Occurrence Book or the Cell Register.

2. Poor leadership qualities and racism by Superintendent Fourie.

The following were found in Fourie's branch:

- No discipline;
- Absence without leave;
- Drunkenness at work;
- Misuse of vehicles;
- Poor investigation of dockets and lack of guidance from senior members of the Detective Branch. Success rate in solving crime therefore 2.4%.

No concrete evidence of alleged racist practices with regard to the detention of white and black SAPS members, by Superintendent Fourie could be found.

- The local SAPS management in Vryburg leaves much to be desired.

In a memorandum dated 22 February 1999 addressed to the Provincial Commissioner by the Provincial Head of the Detective Service, North West, the "Inspection Report: Vryburg Detective Service (CIS) from 25 to 29 January 1999", Senior Superintendent Myburg and the combined inspection team noted the following as worrying factors:

- Poor investigation and lack of discipline;
- Members being overloaded with dockets which they cannot handle without intervention from the Provincial Office;
- Total collapse of the command element;
- Unfair distribution of new dockets;
- Service area out of proportion;
- Lack of assistance from other Specialised Units concerning case dockets;
- CAS system and Case Control Register not functioning well; and
- Almost half of the total number of detectives have never undergone a basic detective course.

## 6. EVIDENCE IN RESPONSE TO THE ALLEGATIONS OF RACISM AND RACIAL DISCRIMINATION

The senior management of Vryburg Police Station and the office of the Provincial Commissioner gave evidence in response of the allegation of racism and racial discrimination at the police station. Different members addressed different aspects of these allegations.

The following members gave evidence:

### 6.1 *Superintendent Theunissen*

Superintendent Theunissen is the Acting Station Commissioner at the police station. Her evidence related mainly to the management structure of the police station and general management and procedural matters. In this regard, she gave detailed explanations of the following issues: En masse process (a process which involved an in-depth study which was conducted at all police stations in the country to determinate human resource needs), the management structure of the police station and the procedure for appointing an Acting Station Commissioner, which, according to her evidence, is according to seniority. She testified that appointments to this position are made by the Area Commissioner and commanders of Specialised Units are not eligible for appointment.

She also explained the procedure for dealing with applications for transfers of members which, according to her evidence, are handled by Mr Diegaardt, who is the personnel practitioner. The procedure, as she explained it, is that a member who applies for a transfer must obtain a recommendation from his or her commander. This is then forwarded to the Area Commissioner who may accept or reject the application. Internal transfers and exchanges do not, however, require the Area Commissioner's sanction.

She complained about serious shortage of human resources; at the moment they have 122 members instead of 254.

Superintendent Theunissen also gave evidence on the procedure for releasing arrested persons as a J127 procedure. According to her, the criteria for applying this procedure is the seriousness of the crime and whether or not the accused can be trusted to appear in court.

On the following specific allegations made against the police station by black members, Superintendent Theunissen responded as follows:

#### a) **Arrest of white farmers by black police officers:**

She admitted that this was a problem. According to her, the problem is due to the fact that some farmers are suspicious of strange black persons on their farms. They often become aggressive and chase these persons from the farms. She testified that she addressed this problem by raising it with the members of the Agricultural Union. A total of about 10 meetings were held. She

produced the minutes of the meetings, which indicated that Inspector Kati, the complainant in the matter, attended one of these meetings. She explained that Inspector Kati did not lay charges against the white farmers who had obstructed him in performing his duties and that, had he done so, the matter could have been investigated by the Detective Branch.

The Area Commissioner for the Molopo Region, Commissioner Pretorius, who stated that hostility of white complainants to black police officers was not a general problem, also addressed this matter, particularly because the matter is being discussed at meetings with farmers. He, like Superintendent Theunissen, said that Inspector Kati should have opened a docket against the farmer who obstructed him from carrying out his duties. The Commissioner, however, acknowledged that there was a very serious problem if Inspector Kati felt that it was useless to report cases of racism by white members of the public against black police officers to white management because they don't act if the culprit is white. According to Captain Herza, the Crime Officer at Vryburg, Inspector Kati should have reported the problem of white farmers to Captain Kochlin (whom he described as a coloured person), under whose authority he falls. Superintendent Fourie confirmed that the issue of white farmers was being addressed by Captain Herza with the farmers, and said that if black officers continue to experience problems, they should report to him and he will take up the matter with the farmers.

**b) Allocation of offices:**

Superintendent Theunissen testified about the serious problem of shortage of office space at the station, which has resulted in persons being moved from one office to the other. As a result of this problem, she stated she had moved offices four times. She denied that there was racism or racial discrimination in the allocation of offices, and stated that the only reason why people were moved into the lecture room, which now serves as an office, is because of its size. She submitted the floor plans to the Commission in support of the evidence.

**c) Transfers:**

In response to the allegation of racism and racial discrimination in the way applications for transfers are handled, Superintendent Theunissen submitted to the Commission a document containing a summary of transfers that took place in 1998. Out of the 40 applications, 18 were turned down due to shortage of members. 6 of these were from white members and 12 were from black members. She testified that Captain Mongaile, one of the complainants in this matter, had turned down 10 of his members' applications due to shortage of manpower. On the question of the transfers of Sergeants Morris and Botha, she testified that the former was transferred on the recommendation of a social worker due to medical reasons, whilst the latter was an exchange transfer,

Regarding the allegation that Inspector Kati's application for transfer was rejected, Superintendent Theunissen explained that she had recommended that Kati should do a course in a Service Delivery Improvement Programme, and a

special post was created for this. Kati agreed, but for reasons unknown to her, he changed his mind. She stated that she was shocked when she later learnt from POPCRU, a police union, that one of their grievances was an alleged refusal to transfer Kati to the garage.

Commissioner Smalman, the Adjunct Provincial Commissioner of the North West Province, also testified on the issue of transfers. He denied that there was racial discrimination in the way transfers were considered. According to his evidence, between 1<sup>st</sup> January 1997 and 27<sup>th</sup> May 1999, 124 blacks, 29 coloureds and 73 whites were transferred in the North West.

Area Commissioner Pretorius also gave evidence on the procedure for transfers, which supported Superintendent Theunissen's evidence.

**d) Acting position:**

Superintendent Theunissen admitted that not a single senior black officer has ever been appointed to act as the Station Commissioner. According to her evidence, when she went on sick leave, Captain Dettman was appointed to act. At that time, both Superintendent Fourie and Captain Herza were on leave. She had expected Captain van Niekerk who, according to hierarchy, was the next in seniority, to have been appointed to act, but this did not happen.

On the question of transformation at the station, Superintendent Theunissen admitted that nothing has been done to transform the all-white management structure to make it representative. This, according to her, applies equally to the Stock Theft Unit, which is almost all white. She however pointed out that this Unit does not fall under her jurisdiction.

She further expressed concern about the apparent breakdown in interpersonal relations at the station, which she attributed to the demilitarisation of the SAPS, or the new rank structure or the absence of a permanent Station Commissioner. She however admitted that there was a perception amongst black members that the breakdown in interpersonal relations was due to racism. In an attempt to address this problem, she stated that Superintendent Naledi was appointed as Chairperson of the "Concerned Group" so that he should be the focal person to whom racial complaints are referred. To her knowledge, he has not received any reports.

Commissioner Smalman also testified about the lack of transformation at the station. According to his testimony, his attempts to integrate the station were frustrated by the unwillingness of both black and white officers to be transferred to traditionally white stations and vice-versa. The other problem, he stated, is that the Provincial Commissioner overruled several of his recommendations on the appointment of black officers. He gave the example of Superintendent Naladi, whom he placed in the Crime Information Centre. When white heads of the Internal Security objected, the Provincial Commissioner overruled him. According to Smalman, he then defied the Provincial Commissioner who reprimanded him in the presence of the MEC for Safety and Security.

Commissioner Smalman further testified that after the Station Commissioner, Senior Superintendent Kotze, fell ill, the Provincial Commissioner liaised with the Council of Commissioners in Pretoria to appoint a black person. White officers objected and lodged a grievance on the basis that they were qualified for the position and yet were overlooked. Superintendent Theunissen was then appointed.

Commissioner Smalman also stated that although he was not responsible for the appointment of the Acting Station Commissioner, he was unhappy when Dettman was appointed at the time when Theunissen was sick.

Area Commissioner Pretorius also testified about the problem of lack of transformation at the station management level. He agreed that transferring black officers from other regions to Vryburg could address this – however, problems such as schools for children, housing, family are obstacles.

## **6.2 Commissioner Smalman**

Apart from the specific issues mentioned above, Commissioner Smalman gave evidence on a number of initiatives the office of the Provincial Commissioner had taken to address the problems at the Vryburg Police Station, and in the SAPS generally.

These initiatives include:

### **a) Training in Vryburg:**

A project called “Effective Detective” was introduced after the incident in the Viljoen case. Another programme known as “Ubunye” has also been implemented. This programme involves teaching people of different races to work together.

There is a “Diversity Programme” to teach different racial groups to accommodate each other. There is a “Service Delivery Programme” to train Project Leaders; also to ensure that a better service is delivered to the public.

All these are producing results.

### **b) Vryburg High School racial incident:**

To deal with the racial incident at the school, he sent a team to investigate. The matter is *sub judice* at this stage.

### **c) Vacancies at senior level:**

These posts (i.e. Senior Officer, Senior Superintendent or higher) have been advertised through police circulars, Internet and newspapers. Interviews will take place shortly.

**d) Affirmative action since 1996**

Commissioner Smalman admitted that to date whites occupy senior positions. He gave the racial spread of senior positions in the North West, which is as follows:

Assistant Commissioners	:	1 black	2 white
Directors	:	2 black	11 white
Senior Superintendents	:	11 black	39 white
Superintendents	:	26 black	86 white
Captains	:	268 black	279 white

The totals in the Province are 308 black and 418 white officials.

Inspectors	:	1529 black	532 white
Sergeants	:	460 black	681 white
Constables	:	463 black	80 white

The new intakes for 1999 are as follows: - 37 blacks and 6 whites. The total of black members in the SAPS in the North West is 7522 against 2130 whites. The human resources need for the Province is 9659. All promotions are held back as per instructions of the National Commissioner.

**e) Sedumede document relating to alleged racial discrimination:**

Commissioner Smalman stated that he and Commissioner Mokama examined the document and did a tour of the Province. They found that the alleged racism emanated from perceptions. The ex-Bop police, they found, were ill equipped, with no fax machines, telephones, transport etc. in some places. Most of these police stations have no infrastructure.

He stated that complaints of racism have to be dealt with according to prescribed procedure, which includes collective grievances. He stated that no complaints of racism were reported to him or Mokama; that is why he is surprised that these complaints have been made to the South African Human Rights Commission. The only complaint that was made to him was that, during a training course in Cape Town, white officers were transported by plane and black officers by bus. He alleged that he only became aware of the problem of racism at the station when a white officer assaulted a black officer as well as during the Vryburg High School incident.

**f) Training:**

On the question of training, the Commissioner testified that the programme has been finalised for the end of 2000 for both black and white officers and he was optimistic that they will reach the goals they

have set for themselves for the year 2000. He did not, however, know who attended these courses from Vryburg.

**g) Racism at Vryburg Police Station:**

On this issue, Smalman stated that after the assault of a black member by a white officer, he sent a team of two officers, namely Mpende and le Grange, to investigate. Their report is referred to above. He further testified that the matter was reported to him as common assault and that he ordered a suspension and arrest only after he found out the truth. He denounced the statement by Captain Combrink that blacks are best suited to police blacks as not representing the policy of the SAPS. He accepted that there is a perception of racial polarisation in Vryburg, which has affected the police station and the Vryburg High School.

**6.3 Captain Herza:**

Captain Herza, the Crime Officer at the station, outlined the organogram of the command structure at the station. He also explained the Constitution and functioning of the Community Police Forum, and explained the roles of “Nokok” (Nasionale Operasionele Koördinerings Komitee). “Gokok” is the provincial body and “Alkok” is the area level counterpart. These fora consist of various stakeholders. Their functions include, amongst others, the resolution of problems such as the harassment of black policemen by farmers when they carry out their duties on farms. The Chairperson of the “Boere Unie” sits on the Alkok. He also explained the function of the Anti-Corruption Unit and the procedure for releasing an accused person on a J127.

Captain Herza then responded to specific allegations of racism and racial discrimination. His response was as follows:

**a) Treatment of black members of the public:**

On the allegations made by Ms Kiet and Mr Modise relating to the incident involving Ms Kiet’s brother, who was knocked down by a truck, and a subsequent false statement that was released by the station in which it was stated that the identity of the deceased was unknown, Captain Herza explained that the matter was unfortunate. The Investigating Officer who had issued the statement was summoned and reprimanded and after this the matter was rectified. According to Herza, the docket was submitted to the Senior Prosecutor for a decision.

Superintendent Fourie also addressed this matter in his testimony, denying the allegation by Ms Kiet that the reason why her brother’s case was not investigated was to protect the accused, who is a white person. Superintendent Fourie testified that the Investigating Officer in the case was a black man called Sergeant Nnagedi. He explained that the person who had released incorrect information to the media was Inspector Kruger. Mr Modise contacted Fourie, after which Fourie and Herza were summoned to the Station

Commissioner's Office. Thereafter, Fourie stated, the Media Report was corrected. According to him, Ms Kiet was given the name of the Investigating Officer, and she was entitled to seek information from him on the status of her late brother's case.

Regarding the allegation by Ms Rose that white prisoners received preferential treatment at the station, in particular Mr Willem Ratte, who was allowed food while in detention at the station, Captain Herza's response was that his investigation of the matter did not yield results because the black prisoners who allegedly witnessed this had left the station.

Superintendent Fourie joined Captain Herza in denying the allegation that black members of the public were discriminated against at the station. In particular, Superintendent Fourie denied knowledge of the incident, which was referred to by Mr Mogale, one of the complainants who testified at the Hearing, namely that he (Fourie) did not investigate the complaint of assault and tear-gassing that Mogale had made against Dettmer.

On the issue of the white officers using derogatory and racially offensive language regarding black people, Sergeant Engels admitted saying to a group of black youths who were milling around while he was investigating a crime, "You kaffirs must leave town." He testified that he was disciplined for this and was given a warning. He stated that he also apologised for this. His Commander, Inspector Vos, confirmed Sergeant Engels' testimony.

**b) Treatment of black officers accused of crimes:**

Captain Herza denied the allegation that black officers accused of crime received differential treatment in comparison with their white colleagues, especially when it comes to being released on a J127. He explained that any Investigating Officer holding the rank of Sergeant and above can release a suspect on a J127 in terms of the criteria stipulated in the Criminal Procedures Act.

Captain Herza's evidence in this regard was corroborated by Area Commissioner Pretorius, who denied that race is a factor in making decisions about a police officer who has committed an offence. According to him, the Station Commissioner always informs him when an officer has committed an offence. Then, depending on the seriousness of the offence, Pretorius makes a recommendation to the Legal Department at the Provincial Commissioner's Office as to whether or not the officer concerned should be suspended.

**c) White officers undermining the authority of black officers:**

Captain Herza also responded to the allegation that white police officers undermine black officers by releasing white offenders arrested for serious offences on a J127. In particular, he testified on the alleged different treatment received by black and white suspects accused of the possession of ivory. His explanation in this regard was that the white suspect, Andries Jacob, who was found in possession of ivory worth R250000 or R300000, was released on a J127 whilst the black suspect, Jacob Nthebe, also suspected of being in possession of ivory, was released on a SAP328 procedure. This is a procedure invoked when no charges are preferred.

Superintendent Fourie also denied the allegation that white officers undermined the authority of black officers. He addressed in this regard the allegations that were made against Constable Kgodumo regarding the release of Mr Bester, who was arrested for assaulting Kgodumo. Fourie testified that at the time of this incident he (Fourie) was the Acting Station Commissioner. According to his testimony, he received a telephone report of the incident and went to the police station to investigate. Upon his arrival, he found Bester in a wild state. He looked in vain for the Investigating Officer in Bester's case, Sergeant Lisa. According to him, the mood at the police station was ugly. He then instructed Inspector Viljoen to release Bester on a J127. He did this, he explained, because he knew where he could find Bester and believed that Bester would appear in court the following day. He testified that the thought of race, gender or skin colour did not occur to him at that time until he was accused at a meeting that preference was given to white prisoners at the police station. On the complaint that he failed to give Kgodumo a progress report on his cases, Fourie stated that Kgodumo was a reservist and could easily get information from his office.

Inspector Human, an Inspector in the Uniform Branch of Visible Policing at Vryburg, denied that there were any divisions between black and white officers. On the Bester matter, his testimony was that he telephoned Captain Mongaile to inform him of the incident. He however explained that he allowed Bester to telephone his wife, Mrs Bester, who had been a Captain in the SAPS. According to him, Mrs Bester suggested that her husband should be released on a J127. He indicated to her that he could not, and the Investigating Officer would not do it. She then advised him that she would phone Superintendent Fourie. Human was then contacted by Fourie who told him that he (Fourie) would send Inspector Viljoen to attend to the matter. Viljoen subsequently arrived at the station. Human stated under cross-examination that this incident had taken place on 21<sup>st</sup> December 1998, and that he only wrote a statement in May 1999 without any reference to notes. He admitted that he did not make a note of the incident in the Incident Book, although he was the Relief Commander at that time. His explanation about this omission was that he was posted in the Control Room at the time. He further stated that he did not make notes in the Incident Book because he did not consider the incident to be important. Upon being asked whether he did not regard the incident as important because a black policeman had been

assaulted, he said "Yes, Mr Chairperson, and also due to the fact that I had contacted Captain Mongaile and informed him about the incident because he was the Duty Officer on that occasion." (Translation from Afrikaans.)

Inspector Human denied that he and Venter had observed Bester assaulting Kgodumo through the window. He also denied that he advised Bester to lay a charge of pointing a firearm against Kgodumo.

Inspector Viljoen also testified on the Bester/Kgodumo incident. According to his testimony, he was at home when he received an instruction from Superintendent Fourie to release Bester on a J127. Fourie told him to release Bester because he (Fourie) could not find the Investigating Officer. Viljoen stated that he was unable to explain why Fourie instructed him to release Bester when Captain Mongaile was the Duty Officer. He denied that white colleagues always interfered when a white person was under arrest. In his opinion, he handles everyone equally, and no one has made an allegation of racial discrimination against him. Sergeant Venter denied that he heard Bester call Mr Kgodumo a "kaffir".

On the case involving the assault of Sergeant Ntlhaeng by Inspector Viljoen, Superintendent Fourie denied that he had treated Viljoen preferentially by seeking permission from the Provincial Commissioner for his arrest. According to his evidence, immediately after the incident, he informed his Area Commander about it, who in turn informed the Provincial Commissioner. Fourie further stated that he also requested that an independent officer should be sent to investigate the matter, and the docket was taken over by the Independent Complaints Directorate. According to Fourie, he did not arrest Viljoen because he was not the Investigating Officer. Inspector Mokotla was the one who was on standby for police dockets and was supposed to have acted.

Evidence was led in denial of the allegation made by Captain Mongaile regarding differential treatment received by Sergeant Mokhoati (who was arrested for theft and his case handed over to the Anti-Corruption Unit for investigation) in comparison with the cases of Constable Haasbroek and Inspector Badenhorst (who were also accused of theft, but their cases were not given to the Anti-Corruption Unit). Mr Steyn, an officer with the Anti-Corruption Unit in the North West, explained that the reason why Sergeant Mokhoati's case was handed to his Unit was because he had committed a series of crimes over a considerable period of time – whereas Haasbroek's and Badenhorst's cases were single occurrences. He further stated that he was aware of the allegation that the SAPS refers only cases involving black officers to the Anti-corruption Unit, but opined that this is due to the fact that black members constitute 78% of the SAPS, while white members constitute only 22%.

Inspector Olivier, who was the Investigating Officer in the Haasbroek and Badenhorst matters, also testified. He testified that he did not arrest Haasbroek because he was waiting for the Director of Public Prosecution's decision whether or not to prosecute and also because he considered the fact

that Haasbrook was a member of the SAPS. The value of the goods he had stolen was only R336.70, and this was not a matter for the Anti-Corruption Unit. On the Badenhorst matter, Olivier testified that Captains Mongaile and Manyaneng were involved in the matter and went to search Badenhorst's premises for exhibits, which they did not find. The two Captains are the ones who could have arrested Badenhorst. In his opinion, there was no reason why the matter should have been referred to the Anti-Corruption Unit.

**d) Events at Vryburg High School:**

On the allegation of racism and racial discrimination in the manner the police handled and treated black parents and learners of the school during the unrest, a number of officers testified. On the allegation that only white parents were allowed into the school premises to attend a meeting which was addressed by the Provincial Commissioner, Captain Dettmer admitted that black parents were not allowed into the school premises, but explained that this was due to a racial conflict. He further explained that Superintendent Matangwane of the Public Order Policing in Mmabatho explained to the black parents that the Provincial Commissioner would address them separately.

He denied that the black learners were removed to the Police Station and opined that those who were at the police station could have fled from the school. According to him, the arrangement was that black children were to be taken to the Huhudi Police Station where they were to be released to go home.

Captain Herza testified that all cases, including that of Mr Malebalo, involving Vryburg High School, were being investigated in Bloemhof because it was felt that someone neutral should investigate them.

**e) Evidence in response to Rasegatla:**

Mr Marius de Wet Dippenaar, the Director of Management Services of the SAPS in the North West Province responsible for transformation, explained that it was during 1997 in Klerksdorp, where at a Bosberaad between the Secretariat of Safety and Security and the management of SAPS, the Rasegatla document (The Ten Focus Areas) was presented by Mr Rasegatla, Chief Director of Safety and Security. According to his testimony, Commissioner Meiring stopped him because the document had not been circulated before. It was decided that Dippenaar should circulate it to all the Police Stations for comment. The comments ensuing from that exercise would then be forwarded to Mr Rasegatla. That process is still going on and the reactions forwarded to Mr Rasegatla on the "Ten Focus Areas" in the document had already been dealt with in the "SAPS Strategic Plan".

According to Mr Dippenaar, the SAPS and the Safety and Security Secretariat have a good co-operative relationship. For instance, there is a Cabinet Committee on transformation whose Chairperson is the MEC for Safety and Security. Mr Rasegatla sits on this committee. So does the SAPS through a Superintendent who is the Manager of Strategic and Transformation Management (Steve Naude), who has been delegated by him. Until the June

national elections, they had been meeting on a fortnightly basis on Wednesday mornings to discuss transformation in the SAPS. The SAPS Management and the Secretariat in the North West have a “very good, very healthy and no problems” relationship.

Mr Dippenaar further testified on the Batho Pele White Paper on Transformation. Through this White Paper on Public Service Delivery, all the Provincial Departments and the SAPS were made a project of transformation. The Service Delivery Improvement Programme (SDIP) is a programme which is rolled out from ground level to the top. The facilitator at each Police Station is in charge of implementation, through a Transformation Unit. This Change Team consists of the Facilitator, Station Commissioner and Station Management, other members and members of the Police Forum. He described it as “An open participative management type of committee which deals with all matters on transformation.”

National policy is determined by the National Commissioner and sanctioned by the National Minister for Safety and Security. It is then implemented at Provincial Level.

Mr Dippenaar informed the hearing about the meeting that was held with the Hon. Premier, Mr Popo Molefe, on 9<sup>th</sup> April 1998. This meeting was called as a result of certain allegations made by a Police Union. Present at this meeting were Police Management, the Unions and Safety and Security. Questions that were raised were in relation for affirmative action and transformation. As a result, a document was prepared. It indicates Statistics on Promotions and Transfers.

**Promotions: 1994-01-01 to 1998-04-01**

<b>Rank/Posts</b>	<b>Whites</b>	<b>Asian</b>	<b>Coloured</b>	<b>Black</b>
Officers	454	0	3	282
Non-Comm. Officers	1437	2	97	5996
Civilian Alt Personnel	990	0	71	1735
<b>TOTAL</b>	<b>2881</b>	<b>0</b>	<b>171</b>	<b>8018</b>

**Transfers during 1994 – North West Province:**

<b>Event</b>	<b>White</b>		<b>Asian</b>		<b>Coloured</b>		<b>Black</b>		<b>Total</b>	
	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>
To NW	557	390	0	0	33	15	366	50	956	456
From NW	85	60	0	0	5	1	41	3	131	64
Within NW	915	246	0	0	60	7	1221	80	2196	333
<b>TOTAL</b>	<b>1557</b>	<b>696</b>	<b>0</b>	<b>0</b>	<b>98</b>	<b>23</b>	<b>1628</b>	<b>133</b>	<b>3283</b>	<b>853</b>

**Transfers during 1995 – North West Province:**

<b>Event</b>	<b>White</b>		<b>Asian</b>		<b>Coloured</b>		<b>Black</b>		<b>Total</b>	
	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>
	679	486	0	0	0	0	0	0	679	486

**Transfers during 1996:**

<b>Event</b>	<b>White</b>		<b>Asian</b>		<b>Coloured</b>		<b>Black</b>		<b>Total</b>	
	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>
	3218	1643	0	0	0	0	15304	3041	18691	4736

**Transfers during 1997:**

<b>Event</b>	<b>White</b>		<b>Asian</b>		<b>Coloured</b>		<b>Black</b>		<b>Total</b>	
	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>	<b>M</b>	<b>F</b>
	424	266	0	0	0	0	2063	195	2496	482
	428	291	0	0	0	0	1432	320	1885	622

Total of transfers is affected by rationalisation of Pops Units.

Mr Dippenaar could not explain why these transformation initiatives had not reached Vryburg despite the racial problem at the Police Station in the past two years.

## 7. FINDINGS

The small rural town of Vryburg has developed the unfortunate reputation of being the seedbed of racism at the heart of the North West Province. We cannot say whether that notoriety is well deserved or not. What we do know as the South African Human Rights Commission is that, since 1996, national attention has been focused on this town because of well-publicised racial tension in the community. These have erupted at the Hoerskool Vryburg, which appears to have sucked in the SAPS in the town. It may well be that the changes brought about by the constitutional developments in 1994 have heightened sensitivity among communities that have previously suffered racism in silence. Alternatively, these changes have released energies in all societies to be assertive about their rights and intolerant about injustice. We have found during our interactions with all the communities of Vryburg that there have been many expectations about the new dispensation and some fears. Expectations that the doors of learning would be opened without regard to race and that all would enjoy a better life in the new South Africa. Commendably, many in the white community are anxious to carry on with their lives and do not wish to deny anyone what is due to them. They are embarrassed by the profile of their town and would like to promote better race relations in the community.

It was with that background that we approached the complaints we investigated and the matters which have become the subject of this inquiry. Our approach was i) to give opportunity to everyone to share their experiences and to express their feelings; ii) listen without being judgmental; and iii) to ask only those questions that would clarify the story that is being told. The findings below are only those that arise from the statements read, evidence heard and the arguments of the legal teams that assisted us. We have endeavoured to take direct account of any extraneous matters that we were aware of for the purpose of this report. The Findings and Recommendations, however, seek to achieve an additional purpose. We are drawing from international and comparative systems of human rights law in order to inform our findings and to use these as a tool for raising awareness about racism in society.

Vryburg Police Station has changed since the changes in the country were effected following the 1994 elections. For one thing, the station has incorporated police from the former Bophuthatswana, Western Transvaal and the Cape services, who now form part of the North West. The resultant consolidation meant that the personnel brought together had not worked together before and had different levels of education and training. They all had to learn to operate within a new cultural and linguistic environment. Vryburg is under the Molopo Area Commissioner, who then reports to the Provincial Commissioner based in Potchefstroom. The influx of police officers meant that problems of accommodation were experienced; hence the office accommodation for the various units of SAPS are situated in different locations in Vryburg. This definitely makes for difficult management arrangements and affects team building and the coherence of the Vryburg SAPS.

It must be readily conceded, therefore, that faced with such odds, any organisation in similar circumstances would have encountered problems and tensions, breakdown in human relations and difficult personnel problems. Our first finding, therefore, must be that:

### **RACIAL DISCRIMINATION, RACIAL ATTITUDES AND RACISM PREVAIL AT VRYBURG SAPS.**

We found, however, that there was a denial of racism among the management. We also found levels of ignorance about what entails racism in particular circumstances. Compared to that, we found that there was sensitivity about racial prejudice among the black officers. What complicated matters was the fact that there was no free and easy communication among the black and white officers and between management and black officers, in particular. This may be due to the lack of trust among some officers, rivalry for preferment to senior positions or promotions or just a culture of ill discipline that had set in among some officers.

Racial discrimination is defined in the International Convention on the Elimination of All Forms of Racial Discrimination, to which South Africa is a party. The convention refers discrimination as “any distinction, exclusion, restriction or preference which is based on race or colour”, among others. By its nature, racism does not simply refer to what the perpetrator believes about himself or his actions as they apply to another. It is essentially about the experience of the other and what that person believes to be the basis or cause of the discrimination experienced by that person. It is the act of another naming his or her experience. It therefore places an obligation on the perpetrator to explain his actions in a way that will not lend itself to racist interpretation. In this enquiry we have proceeded on the basis of that two-stage process: naming and explanation. The explanation must also indicate whether the discrimination was fair, failing which the discrimination becomes a violation of the Constitution. Section 9(5) of the Constitution states that

Discrimination on one or more of the grounds listed in subsection (3) (which includes race, ethnicity, colour or social origin,...) is unfair unless it is established that the discrimination is fair.

The onus is on the person against whom an allegation is made to prove that the action that in itself is discriminatory, is not unfair. It is in the evaluation of the explanation that we can come to the conclusion that racism has been experienced. In other words, from a subjective experience the inquiry arrives at an objective conclusion.

Reference has often been made to direct and indirect discrimination and to overt and subtle racism. Whatever may be the manifestations, at the end of the day we are talking about racism. For any act of discrimination or distinction to amount to racism, it has to have either the purpose or effect of nullifying or impairing the recognition, enjoyment or full exercise on an equal footing, of human rights, human dignity and fundamental freedoms. Our Constitution states that “Equality includes the full and equal enjoyment of all rights and freedoms...”(s 9(2)).

### ***Management practices***

It must be noted that a number of the incidents referred to may have been, on the face of it, due to bad or inept management or a genuine effort to resolve matters by other means. In that regard one can refer to the fact that Superintendent Theunissen preferred to discuss the fact that farmers obstructed black police officers in the execution of their duty with the Farmers’ Union rather than by arresting the farmers concerned. That may be a legitimate explanation. She did not discuss her approach with Inspector Kati, the complainant. This complaint is less about the racism of Superintendent Theunissen than it is about the fact that black police officers are not able to execute their duties because of racism. Inspector Kati may even be alleging that failure by management to support and defend black officers is due to racism.

Likewise, the allocation of offices may well be innocent. Certainly the explanation of the management seems plausible. Policy regarding transfers and the decisions of the management team were fully explained. We cannot find in these matters, on the face of it, that there was

intentional racism. What must be noted, though, is that these matters that appear to be innocent, when considered cumulatively, with other practices in Vryburg, provide justification for the accusations of racism leveled against management. For example, the fact that four out of nine officers in General Management are black might mean that the voice of the black members is not fairly represented. Captain Mongaile, for example, mentions that his colleagues do not take his views into account. "They just go on", he says. Although he is part of the general management, he believes that the real decisions are taken outside of the formal meetings of management. It is difficult, on the face of it, to tell whether this practice is due to the weak leadership of Superintendent Theunissen, bad management style or racism. It appears that though Captain Mongaile is a member of management, by his own account, only three officers make real decisions, outside of the formal meetings. The allegation is that they consult among themselves and the meetings are mere formalities. If that is the case, it stands to reason that among the other members excluded are some white officers. They have not complained of this treatment.

A comment also needs to be made about the appointment of officers to act as Station Commissioners. Theoretically, the policy seems to be clear: the Area Commissioner appoints someone to act, generally the next most senior officer. On that basis, Captain Mongaile has never been offered an acting appointment. The other principle is that heads of Specialist Units are not usually appointed to act but this principle has not been consistently observed. A senior black officer was Superintendent Naledi. Captain Dettmer, however, was appointed to act even though he is junior to Naledi. It is inconsistencies in the application of policy like these that give rise to accusations of racial discrimination. We believe that management was not sensitive enough to the charge of racial discrimination in their appointment of officers to acting positions. If, as was generally well known, they were aware of racial tensions at the station, they would have found some means of expressing confidence in black leadership by appointing blacks to acting positions. They failed to do so. The explanations are not convincing and we are left with no alternative but to state that this is evidence of racial discrimination.

A comment on the opinions of Captain J T Combrink is called for. Captain Combrink is head of the Stock Theft Unit. He has been in the police service for 27 years, for nine of which he was based at Vryburg. He is a member of the General Management team at Vryburg. He has given examples of how blacks are receiving preferential treatment under the new dispensation. We doubt that, on the evidence before us, we can agree that situation is pervasive. Otherwise we would not be dealing with the complaints which are the subject of this inquiry. More sinister are his views that it is appropriate and to be expected that blacks prefer to be policed by blacks. By saying so, he gives credence to the actions of the farmers who refused to admit black officers to their premises for the purpose of an investigation. There is a sense in which Captain Combrink reflects a view widely held among the white police at Vryburg. He may even be entitled to his opinions. What he is not entitled to, is to use his authority to keep blacks out of his unit as appears to be the case. He should not be allowed to do so. We are heartened by the assurance of Deputy Commissioner Smalman that Combrink's views do not reflect the policy of the SAPS North West. It does surprise us though that somebody with views so much at variance with policy should still hold a senior position in SAPS.

### ***Treatment of black officers***

The allegation is that black officers at Vryburg receive differential treatment and outright abuse which amounts to unfair racial discrimination.

#### **White officers undermining the authority of black officers**

Inspector Viljoen released Bester on a J127 without reference to the investigating officer, Sergeant Lisa, who was black. Viljoen claimed to have been acting on the instructions of Superintendent Fourie. It turned out that Bester had not been properly charged and other formalities were not in place. As a result, successful prosecution was unlikely. Adv. S de la Harpe has helpfully indicated that a lot went wrong regarding this matter. We support his suggestion that a proper departmental inquiry regarding this incident must be undertaken. Adv. de la Harpe seeks to persuade us that this was an isolated incident. Nonetheless, this incident must be examined on its merits. It seems correct to say that this kind of interference by officers in the tasks of another in a manner detrimental to the investigation of an offence is serious. Besides, it shows evidence of racist behaviour.

Other incidents relating to the use of J127 may not be sufficient to come to a decision about racism. Clearly, however, the pattern is a cause for concern and at best shows a degree of racial insensitivity and unprofessional conduct.

#### **Treatment of black officers**

Evidence was given of differential treatment of black offending officers in comparison to white officers who are accused of criminal conduct. Evidence was that Sergeant Ntlhaeng was arrested for housebreaking. He was severely assaulted by Inspector Viljoen. Viljoen, however, was not arrested. This, claims Captain Mongaile, was because the Provincial Commissioner was misled as to the circumstances of the attack on Ntlhaeng. This led to protest by black members. We cannot infer from the evidence before us that any racial discrimination was evident in the different ways in which Viljoen was treated in relation to Ntlhaeng. Sergeant Mokhoati was also arrested for theft but Constable Haasbroek and Inspector Badenhorst were not arrested. Evidence around these cases is complex and contradictory. It appears that Sergeant Mokhoati had been involved in similar misdemeanours before; hence the differential treatment. Regarding Badenhorst, Captain Mongaile was the investigating officer and he could have exercised his right to arrest him. There is no evidence that he was prevented from doing so. Black officers complain that, largely because of the manner in which their colleagues treat them, white members of the public do not look to them as people who exercise authority. When a white person comes to the Charge Office, he/she looks to a white officer for service. Generally, white officers respond to this. Black officers, however, find this disempowering. Given that senior members like Captain Combrink sincerely believe that the white community can best be served by their own people and blacks likewise, one can understand that this is a prevalent attitude among white officers in Vryburg. The police reflect the racial attitudes that prevail in society. The station is a mirror of that society.

#### **Treatment of black members of the public**

Sergeant Els admitted that he called one Seopasengwe a "kaffir". He knew that the expression was derogatory and he apologised. It appears that this was not an isolated incident. Captain Mongaile had warned Sergeant Els before for the use of this derogatory and racially offensive expression. It appears that Sergeant Mocumi had complained that Superintendent

Rautenbach had called him a “kaffir”. Rautenbach denies the charge and asserts that he dealt with Mocumi for misconduct. He had good relations with POPCRU. Superintendent Theunissen did not deny that she received the report but says that she was working at Logistics at the time and was not Station Commissioner. From what Rautenbach says, it appears that the use of offensive expressions by white officers is not uncommon at the station. Captain Dettmer admits that there have been individual cases of racist behaviour at the station but that that was not a general problem. Superintendent Theunissen for her part tells us that the problem was so serious that at one stage that Superintendent Naledi was nominated to head a Concerned Group to receive complaints about racism. We are told that no complaints were received. Captain Dettmer confesses that there is racism because it is very difficult for some officers to change. We commend him for his honesty.

The Community Police Forum is a very important mechanism for cooperation between the police and the public in order to ensure effective and participatory policing. And yet members of the CPF complained about racism at the station. It appears that they saw themselves as the bridge between the community and the police. Very often, however, their services were not welcome. Beatrice Rose, a member of CPF alleges that white prisoners receive preferential treatment like receiving visitors and food while blacks are not allowed the same privileges. Mr Wilson Modise, also a past Chairman of the CPF, expressed concern about the racial clashes at the police station because these render policing ineffective in Vryburg.

### ***Events at Hoerskool Vryburg***

Matters relating to events at Vryburg Hoerskool were *sub judice*. Our report will not deal with those matters that are the subject of further investigation. What is evident, though, is that Vryburg Hoerskool had a profound effect on black-white relations at the police station. Black officers believed that the police in charge of policing at the school allowed white parents to attack black pupils and parents and did not intervene; nor did they make arrests. Mrs B Rose, a black parent and member of the CPF, also shares this view. She charged that the police were racist because they removed the black children whereas they should have arrested the white parents who attacked black pupils at the school. There is sufficient evidence that the handling of the disturbances at Hoerskool Vryburg was discriminatory (Sections 9(2) and (3) of the Constitution).

We believe that court cases are pending against some individuals with regard to events at Hoerskool Vryburg. We also believe that an internal inquiry is taking place regarding the behaviour of police officers during this episode. What we do not know at this stage is whether any disciplinary action is pending against any police officers for the manner in which they executed their duties that day.

### ***Management and Representivity***

This is most probably at the root of the problems encountered at Vryburg. On its own the question of the structure and demographics of membership of the police service may not be evidence of racism. Looked at collectively, however, it does give rise at least to perceptions of racial discrimination. Four out of nine members of the General Management at Vryburg are black. There are few blacks at officer rank and even fewer who are in charge of units. The

visible effect of this is that the management of the police station in Vryburg is unrepresentative of the people who serve in the station and the community of Vryburg at large.

There are nine white and four black officers who serve on the General Management of the station. To be in management one has to be captain or above or be in charge of a unit. The situation is that appointments are made at provincial level and heads of Special Units report to the Provincial Commissioner's office in Potchefstroom. Area Commissioner H H Pretorius outlined for us the policy on promotions and transfers. He gave us a clinical picture of how the system operates. At no stage, however, did he show sensitivity to the need to fast track blacks suitably qualified for promotions or to make transfers in order to change the race balance at Vryburg. As a result, Chief Director Rasegatla observes that white officers receive accelerated promotion at Vryburg in comparison with black officers. That explains the tensions and resentment felt by black officers.

The Provincial Commissioner's office has developed extensive strategic plans for transformation and to effect affirmative action (North West Strategic Plan 1999-2004). Courses have been devised to help members understand the changing character of policing in the North West. Director Marius Dippenaar outlined the Transformation Plan in the province. It appears that every station should have a Change Team under the Station Commissioner assisted by a facilitator. This project has not begun at Vryburg. We express consternation at this and Director Dippenaar tells us that this is due to financial constraints! We note that 287 black commissioned officers were promoted since 1994 compared to 454 whites, and 5996 black non-commissioned officers compared to 1437 whites. We trust that this means that the underlying trend is that black promotions are on the increase.

Deputy Provincial Commissioner stated that there is a policy of affirmative action in the SAPS. He was charged with the task of implementing this policy. This policy has been frustrated in part by the reluctance of officers to accept transfers. Both black and white officers wanted to be transferred to either traditionally white or black areas respectively. In addition, there was resistance by white officers in Vryburg to his decision to place a black officer in the Crime Information Centre. Because of this resistance, the Provincial Commissioner sought to overrule him. When a black officer was being considered for the post of Station Commissioner at Vryburg, that also was resisted by white officers who felt that they too qualified for appointment. He also states that he was unhappy about the appointment of Captain Dettmer to act as Station Commissioner when both Theunissen and Fourie were unavailable.

Deputy Commissioner Smalman admits that the solution to the problems experienced at Vryburg is for officers to undertake intensive training. The courses available relate to policing, *Ubunye*, Diversity and colleague sensitivity. Unfortunately, he cannot say what the uptake of these courses is by Vryburg personnel. Superintendent Theunissen informs us that since 1998 some 80% of members at Vryburg have attended courses offered by Director Dippenaar. And yet in spite of two years of persistent problems at Vryburg, the provincial management does not appear to have targeted Vryburg for special focus.

### ***Effects on Policing in Vryburg***

The Provincial Commissioner has expressed grave concern about the quality of policing at Vryburg. Staff are demoralised, discipline and authority have diminished to a dangerous level and the station is polarised along racial lines. The effect of all this is that the rate at which crime is solved in Vryburg is as low as 2.4% and case management and investigations are poor. There are problems of leadership as well. Leadership is weak and ineffective. It has been stated that this is due in part to the fact that the SAPS has become demilitarised. With unionisation, authority is no longer strictly observed. Absenteeism, drunkenness on duty and unauthorised use of vehicles have been noted. In the light of this it seems to us that a radical overhaul of the top management at Vryburg is called for. This is necessary in order to restore public confidence in the police and ensure effective policing in the town. In the light of this police at Vryburg are not equipped to ensure enjoyment of the right to freedom and security of person for the people of Vryburg (Section 12).

## 8. RECOMMENDATIONS

For time changes the nature of the whole world and all things must pass on from one condition to another, and nothing continues like to itself; all things quit their bounds, all things nature changes and compels to alter.

- Lucretius.

In the light of our Findings, we make the following Recommendations:

### ***Provincial Safety & Security Secretariat***

Ensure a more integrated policy process with the Provincial Commissioner. The Provincial Cabinet Committee on Transformation could be a vehicle for improved communication and strategy development between the Provincial government and the Provincial Commissioner.

### ***Provincial Commissioner***

- That the Provincial Commissioner lifts the moratorium on the filling of vacant posts at Vryburg SAPS;
- Improve facilities at Vryburg by providing premises adequate to accommodate all the units of the station so that better management and supervision can be effected. Better recreational facilities should be effected in order to ensure better communication and team building among members.
- Select Vryburg police station as a strategic focus for transformation and change management. This means that Vryburg should be on the priority list for courses, transfers, and promotions. In that way Vryburg could be a case study for transformation and, therefore, effective policing.
- Change the top management at Vryburg SAPS. There is an opportunity to appoint a Station Commissioner with the departure of Superintendent Theunissen. It is proposed that the new Station Commissioner should be carefully vetted in order to ensure a commitment to provincial policy and someone with strong leadership and management capabilities and yet with good human relations skills. The person should definitely not be drawn from the present membership of Vryburg SAPS. New heads of units should be appointed from outside Vryburg. The purpose being that a new General Management team should be put in place. The new Management team should be more representative and highly skilled.
- The heads of Specialist Units should be accountable to the Station Commissioner in order to ensure better management and better coordinated policing for Vryburg. The heads of the units can continue to be accountable to Potchefstroom but they must also be better integrated into the station management.
- There must be a vigorous application of the North West Police Strategy 1999-2004. In particular, there should be better and more consistent application of the policy, clearer accountability especially for the Area Commissioner and targets set which must be monitored.
- That racism and racially derogatory and insensitive terms like “kaffir” should be considered serious misconduct.
- The Provincial Commissioner should appoint a focal point in his office to liaise with the South African Human Rights Commission to monitor the implementation of these

Recommendations and to assist wherever necessary. The focal point should report periodically to the Commission on steps taken to implement these Recommendations.

### ***Area and Station Commissioner***

- Both the Area and Station Commissioner should demonstrate active commitment to transformation and the policy put in place by the Provincial Commissioner. Their performance and targets should be closely monitored.
- There should be better coordination between the Area Commissioner and the Vryburg Station Commissioner. In particular, the Area Commissioner should be accessible to staff at Vryburg and put in place grievance procedures which staff can trust.
- Acting appointments and promotions and transfers should be undertaken in a more transparent manner. Of special importance is that there should be consultation and participation of structures other than management, especially where management is unrepresentative.
- A vigorous programme of training for both management and staff should be undertaken.
- Communication should be improved.

### ***South African Human Rights Commission***

- The Commission should liaise with management to offer courses in human rights and labour relations along the lines of work already undertaken in consultation with the Human Rights Unit of SAPS Headquarters, Pretoria.
- In particular, the Commission should offer training courses on racism and racism awareness to senior management and staff at Vryburg SAPS. The course should assist with understanding racism, sensitivity to racism and equip participants with tools to resist, manage and overcome racism.
- Monitor the implementation of these Recommendations and report to the Minister of Safety and Security.

## 9. CONCLUSION

The Commission wishes to thank the management at the Provincial Commissioner's Office in Potchefstroom for the assistance they rendered to the Commission during this investigation. We particularly welcome the assistance and understanding shown by Director Human of Legal Services and his team. The SAPS made available to us a large number of documents and information, which greatly assisted in our investigation. We hereby express our profound gratitude for that partnership.

The professional assistance of Adv. S de la Harpe, counsel for the SAPS was invaluable. We thank Adv. de la Harpe especially for his integrity and willingness to be of assistance, his openness and lack of defensiveness. In particular we noted his understanding of the work of the Commission and the objectives we sought to accomplish. We are grateful for the spirit in which this inquiry was conducted at all times. That is due in no small measure to his attitude to the probe.

Vryburg, as we have noted has been in the news. The community is polarised and racial conflict is endemic. The goings on at Hoerskool Vryburg did not help the situation and the relationships at the police station. It brought to the open underlying tensions that were suppressed and needed to be openly expressed. Our concern is that no advantage was taken of this circumstance to build teams and examine prevailing attitudes within the SAPS. Instead there was a lot of anger and finger pointing. Maybe this inquiry and the report will provide the SAPS management at Vryburg with an opportunity that might otherwise get lost.

The police station is clearly affected by the attitudes that prevail in the community at large. That is not surprising. Reports of members of the community refusing to accept the authority of black police, or being insulting and violent towards fellow police officers should not be aided and abetted by other officers. Police officers should not take sides against their own colleagues whether they are in uniform or not, whether they are on duty or off duty. Instead, police should at all times seek to uphold the law without fear or favour. By so doing police officers at Vryburg could provide for the community a place where order prevails, discipline and authority are valued and where tolerance is practiced. In that way the police station could be an example for racial tolerance.

It now remains for us to thank the staff at the Legal Services Department in the Commission. The department headed by Mr M C Moodliar not only received and investigated the complaints; they also made preparations for the hearings. Mr Moodliar led the evidence before us and prepared some helpful arguments. We wish to acknowledge with thanks his professional expertise.

The Town Council of Vryburg assisted us with the logistics. They provided the venue and helped with the catering. As if that was not enough, the Mayor, Mr Harvey Galeng, took a keen interest in the proceedings and gave us valuable insight into the community of Vryburg and the concerns felt about the police station and the school. We are very grateful.

Dr N Barney Pitjana	Chairperson of the Panel
Adv. F Pansy Tlakula	Commissioner
Adv. Leon Wessels	Commissioner
Adv. Martin M Mabiletsa	Adviser
Ms Odette Geldenhuys	Adviser

*Johannesburg  
25 November 1999.*