

CONTENTS

| | |
|--|----|
| FOREWORD | 3 |
| 1. EXECUTIVE SUMMARY | 4 |
| 2. INTRODUCTION | 7 |
| 2.1 The South African Human Rights Commission (SAHRC) | 7 |
| 2.2 Purpose of the Enquiry | 7 |
| 2.3 The Prevailing Legal and Factual Position in Gauteng | 8 |
| 2.4 Security Access Restrictions | 8 |
| 3. HUMAN RIGHTS INVOLVED | 10 |
| 3.1 The Bill of Rights | 10 |
| 4. ANALYSING THE HUMAN RIGHTS | 11 |
| 4.1 The Rights to Life and Right to Freedom and Security of the Person | 11 |
| 4.1.1 The Contention that the Act is <i>ultra vires</i> | 13 |
| 4.2 The Freedom of Movement and Residence | 14 |
| 4.3 The Right to Human Dignity | 16 |
| 4.4 The Right to Equality | 17 |
| 4.5 The Right to Privacy | 19 |
| 4.6 Political Rights and Freedom of Trade, Occupation and Profession | 20 |
| 4.7 Limitation of Rights | 21 |
| 4.7.1 Application of the Limitations | 21 |
| 4.7.2 The Nature of the Right | 21 |
| 4.7.3 The Importance of the Purpose of the Limitation | 22 |
| 4.7.4 The Nature and Extent of the Limitation | 22 |
| 4.7.5 The Relationship Between the Limitation and its Purpose | 23 |
| 4.7.6 Less Restrictive Means to Achieve Purpose | 24 |
| 5. FINDINGS AND RECOMMENDATIONS | 26 |
| 6. ACKNOWLEDGMENTS | 27 |

ISBN: 0-620-33516-5

ABBREVIATIONS

| | |
|-------------------------------|--|
| SAPS | South African Police Service |
| ICVS | Unites Nations International Crime Victims Survey |
| JRA | Johannesburg Roads Agency |
| EMS | Johannesburg Emergency Medical Services |
| PEPUDA | Promotion of Equality and Prevention of Unfair Discrimination Act |
| SAHRC | South African Human Rights Commission |
| ISS | Institute for Security Studies |
| HSRC | Human Sciences Research Council |
| <u>Key Phrases</u> | |
| The Act | Gauteng Local Rationalisation of Government Affairs Act 10 of 1998 |
| The Commission | The South African Human Rights Commission |
| The Policy | The City of Johannesburg Security Access Restrictions Policy |

FOREWORD

The Constitution and the Bill of Rights provide the framework by which we are required to develop and build our society. While it is held in high esteem as being visionary and progressive, there have been and will continue to be many battles that must be fought around its provisions, how they are to be interpreted and given effect to, how they are to be balanced against each other and ultimately how we are to make choices in the matters that affect our lives – that perhaps is the nature of living in a constitutional democracy.

The balance we seek to strike is probably most difficult to find in matters that deal with the enforcement of law and crime and violence. The public debate around closed neighbourhoods and the erection of boom gates certainly demonstrated how passionate people felt about these matters and how all sought to find solutions and justify positions using the Constitution as a point of reference.

Having initially received complaints from members of the public concerning the erection of boom gates, the closure of roads and the practises at some enclosures, the Commission deemed it appropriate to hold a Public Hearing into the matter. The process which included invitations to make written and oral submissions was intended to give all interested the opportunity to address the Commission and participate in the process. We were extremely pleased with the public response – numerous written submissions we received and the 2-day hearing was well attended and widely covered in the media. The hearings were conducted in an environment where, notwithstanding the often vastly differing positions held, all were willing to listen and give proper consideration to the views of others.

Ultimately it is the role of the Commission to give proper consideration to the views and opinions expressed, locate them and interpret them within the legal and constitutional context, and present its conclusions on the matters raised. We have in this Report sought do to that and trust that the Conclusions, Findings and Recommendations will assist policy makers, legislators and the public.

I would like to take this opportunity to thank my fellow panellists, Commissioner Charlotte McClain-Nhlapo, Prof. Mark Oranje and all the staff of the Human Rights Commission who assisted in this inquiry.



Jody Kollapen
Chairperson
South African Human Rights Commission

Road Closures / Boom Gates

1. EXECUTIVE SUMMARY

The issue of road closures, security booms and such related measures are without doubt matters close to the heart of the many who came before the Commission. The matters raised however are also significant to many others who ordinarily use and have access to public roads and places.

In weighing up the various arguments we have to be mindful to locate them within the constitutional and legal framework created by the Constitution, which in brief requires that all conduct and action by both State and non-State actors conform to the requirements set out in the Constitution. In addition, we need to recognise that even after 10 years of democracy we still face considerable challenges in transforming our society from one predicated on race and exclusion, to one where the full dignity and worth of each person is recognised – and where we can live united in our diversity.

Human rights by their very nature, subject to some limited exceptions, are capable of limitation. The onus would be on the party seeking the limitation to make a proper case for limitation. It would have to be shown that the limitation was ‘reasonable and justifiable in an open and democratic society’.

It was agreed that boom gates were restrictive and even those who argued in favour of them saw them as a short-term intervention. However, the reality is that they have been with us for almost 10 years now. There are various types of access restrictions that could be utilised, including monitoring measures such as guards and guardhouses, traffic calming measures and of course boom gates and closures. The more severe the measure, the greater the likelihood of it resulting in the restriction or violation of other people’s rights.

As an institution responsible for the promotion, protection and observance of human rights, the Commission cannot condone conduct which resembles past discriminatory practices or denies people their fundamental human dignity. A key point for consideration is whether the existence and operation of boom gates and closures makes inroads into the rights of others, which are of such a nature that they are not capable of being constitutionally justified or sanctioned.

The operation of security access restriction points should not have the effect of denying or hindering public access to public spaces, including roads, nor should they require certain categories of persons to furnish private information (for example, destination, purpose of visit and identity document). Such conduct does indeed violate the rights of those affected. While such practices are not supported or encouraged by the legislation regulating these gated communities, in many instances however, evidence indicated that such practices were common at particular closures with little or no possibility of corrective measures being taken.

It was argued that the existence of booms and the closure of roads had a positive effect in bringing down crime while not prejudicing road users and other members of the community, yet the evidence presented at the hearings fundamentally challenged this proposition and accordingly presented the Commission with considerable difficulties.

Road Closures / Boom Gates

The first difficulty that presents itself is that there is a dispute and there is generally no reliable evidence to suggest conclusively that the erection of booms and the closure of roads enhance safety and security. Under such circumstances the approval of any closure on the general assumption that it enhances safety and security would be problematic in the Commission's view.

Secondly, the effect and impact of closures materially affects issues of urban mobility and functionality, and militates against the original idea of a city as a place where people could move around freely, engaging in business, social activity and recreation as part of a collective. Given our own history of exclusion and separation we should be extremely careful, even if our motives are otherwise commendable, in embarking on an urban design that works against the notion of a united society. There was considerable evidence that booms and closures do indeed exclude and separate in a manner inconsistent with the idea of an open city.

Thirdly, we should continue to encourage the efforts of communities to become proactive and act as concerned citizens, and in this regard explore measures that fit into the general functions of the city, encourage collective solutions and restrict other rights in the least restrictive manner possible.

On the information and the evidence made available to the Commission, it was not convinced that the least restrictive means were always considered. The Commission remains concerned with the spectre of a multitude of neighbourhoods becoming closed areas. In this regard the Commission takes seriously the concern of the JRA – that even the most stringent conditions that may apply to a closure are difficult to monitor and that the risk of closed, 'no go areas' is a real one.

Of course crime and violence remain an ongoing and visible threat to many of our people, and the challenge is how the State and communities can work together in fighting crime. There was evidence of this happening successfully in many communities. We need to encourage initiatives such as community policing, sector policing and greater police visibility.

After proper consideration of all the arguments and submissions, the Commission makes the following findings and recommendations.

Findings and Recommendations

The Commission accordingly makes the following findings and recommendations:

1. The Commission does not generally support the use of boom gates and gated communities. The Commission is of the view that based on the information it has, these measures cause social division, dysfunctional cities and lead to the further polarisation of our society. In addition, the proposed benefits they bring by way of enhanced safety and security are in doubt and the subject of considerable debate.
2. The Commission finds that the use of road closures/boom gates has the potential to and does indeed in practice violate a number of rights as indicated in the Report. While such infringement of rights in most instances occurs in violation of the policy of the local authority, there was little recourse for those whose rights had been violated. Evidence remains inconclusive that the use of alternative measures for safety and security had been sufficiently explored.
3. The Commission takes cognisance of the fact that legislation such as the *Gauteng Local Rationalisation of Government Affairs Act 10 of 1998* does indeed provide for access restrictions, including road closures. It also notes with concern that notwithstanding the existence of relatively strict conditions normally attached to an approved closure (eg. a commitment to free and

EXECUTIVE SUMMARY

unhindered access) there was considerable evidence of non-compliance with such conditions coupled with an inability, due mainly to capacity and practical difficulties, to effectively monitor compliance. The consequence accordingly was that a breach or non-compliance with such conditions was not visited with any sanction or adverse consequence.

4. Responding effectively to the phenomena of crime and violence does indeed require closer co-operation between the State and citizens, and therefore the Commission encourages continued community efforts in liaison with the authorities, to make communities safer. More resources for policing, greater police presence and visibility, effective community police forums and effective police response to the needs of the community will all contribute to making a difference.
5. The Commission, even though satisfied that a legal basis does exist for security access restrictions, including boom gates and road closures, urges local authorities and communities to consider and exhaust alternate access restrictions, including guards and guard houses, traffic calming measures and closed circuit television.

2. INTRODUCTION

2.1 The South African Human Rights Commission (SAHRC)

The South African Human Rights Commission¹ is a State institution established by Chapter 9 of the Constitution of the Republic of South Africa, Act 108 of 1996,² to support constitutional democracy.

The Commission is a national body, mandated in terms of Section 184 of the Constitution to promote respect for human rights, promote the protection, development and the attainment of human rights and furthermore to monitor and assess the observance of such rights within the Republic of South Africa.

In addition, the preamble of the Human Rights Commission Act 54 of 1994 states:

“The Constitution provides that the Human Rights Commission shall, *inter alia*, be competent and obliged to promote the observance of, respect for and the protection of fundamental rights; to develop an awareness of fundamental rights among all people of the Republic;

- 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;
- To undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions;
- To request any organ of State to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights; and
- To investigate any alleged violation of fundamental rights and to assist any person adversely affected thereby to secure redress.”

2.2 Purpose of the Enquiry

Complaints were lodged with the Commission regarding public road closures with the use of boom gates for crime prevention in certain city suburbs. Many complainants alleged that their human rights were violated by certain security measures used at the boom gates. They alleged that security personnel manning the boom gates insisted that they signed registers and divulged personal information before being granted access to enclosed suburbs. It was also allegedly that in certain cases individuals were being denied access solely on a racial basis. In response to these complaints, the Commission’s Legal Services Department conducted an investigation into the alleged personal encroachments and drafted an internal legal opinion on the matter.

However, given the contesting views on the subject and in response to the complainants, it appeared that the Commission needed to further investigate the matter. The Commission took a decision to

¹ Hereinafter referred to as the “Commission”

² Hereinafter referred to as the “Constitution”

INTRODUCTION

hold an Open Hearing into the human rights issues at stake in the use of road closures or boom gates. After taking into consideration the views and expertise from the submissions received, the Commission would determine the constitutional validity of security access restrictions as well as their broader utility and desirability from a human rights perspective.

The Commission initiated the process by calling for written submissions from the public and interested parties. Thereafter, key role-players were identified and invited to make oral submissions to a panel at the hearings held from 21 – 22 September 2004 at the Commission's office in Johannesburg. The hearings, which were open to the public, were well attended and received prominent media coverage.

2.3 The Prevailing Legal and Factual Position in Gauteng

The initial complaint lodged with the Commission originated in the Gauteng Province and the Commission's call for submissions was met with substantial interest from members of the public there. The response demonstrated that such security measures were more predominant in Gauteng and also that the effects on its residents more prevalent than in other provinces. Yet it should be noted that the findings and recommendations of the Report may be relevant to all South African provincial and local governments, residents and affected parties.

2.4 Security Access Restrictions

Public road closures and the increasing establishment of "gated communities" became a topic of intense debate in South African cities since the mid 1990's. Communities in Gauteng could apply to the local authorities to restrict access to a defined geographical area, as from 5 March 1999, if they could show that it was in the interest of safety and security to do so.

The *Gauteng Local Rationalisation of Government Affairs Act 10 of 1998*,³ provided for the "Restriction of Access to Public Places for Safety and Security Purposes", and regulated security access restrictions in the Gauteng Province. Chapter 7 of the Act governs the implementation of security access restrictions, and any Council procedures must comply with the provisions it contains.

The *City of Johannesburg Security Access Restrictions Policy* defines security access restrictions as: "... any means that discourages access to any other person and may include measures such as traffic calming measures, guards and guardhouses. A restriction of access does not necessarily mean the erection of gates, fences or booms. Restriction of access shall mean restriction is limited to access control, no denial of access and no discriminating actions nor infringements on the rights of individuals."

The purpose of the policy is:

- (a) To **state the policy** of the City of Johannesburg with regard to the restriction of access to public places for safety and security purposes;
- (b) To **provide guidelines to applicants** in terms of the required contents of applications, procedures to be followed and responsibilities in terms of costs; and
- (c) To **provide guidelines to officials** of the Johannesburg Roads Agency for the effective processing and evaluation of applications⁴ in accordance with the Act.

³ Hereinafter referred to as the "Act"

⁴ Annexure A, Page 1- City of Johannesburg- Security Access Restrictions: Policy

The Act allows authorised access restrictions to public places or spaces by private persons or bodies, with municipal consent. It allows for suburbs to be closed off by limiting the number of entrances and exit points as a security measure.

This Report shall set out the relevant human rights framework, examine the various rights within which that framework is set and then proceed to examine the submissions and general arguments brought to the attention of the Commission. The Report concludes with the findings and recommendations of the Commission.

3. HUMAN RIGHTS INVOLVED

3.1 The Bill of Rights

“The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”⁵

The Bill of Rights is the cornerstone of South African democracy and grants all people in the country fundamental human rights. It underpins the democratic values of human dignity, equality and freedom and regulates relationships between the State and individuals and/or between individuals. Legislation must be interpreted to promote the spirit and objectives of the Bill of Rights. Subject to very limited exceptions, the rights in the Bill of Rights are not absolute. The Report shall now proceed to examine the rights set out in the Bill of Rights and then proceed to examine the general arguments brought to the attention of the Commission. Several sections of the Bill of Rights can be applied in this matter, including:

- The right to equality.⁶
- The right to human dignity.⁷
- The right to life.⁸
- The right to freedom and security of the person.⁹
- The right to privacy.¹⁰
- Political rights.¹¹
- Freedom of movement and residence.¹²
- Freedom of trade, occupation and profession.¹³
- Limitation of rights.¹⁴

⁵ Section 2 of the Constitution

⁶ Section 9 of the Bill of Rights

⁷ Section 10 of the Bill of Rights

⁸ Section 11 of the Bill of Rights

⁹ Section 12 of the Bill of Rights

¹⁰ Section 14 of the Bill of Rights

¹¹ Section 19 of the Bill of Rights

¹² Section 21 of the Bill of Rights

¹³ Section 22 of the Bill of Rights

¹⁴ Section 36 of the Bill of Rights

4. ANALYSING THE HUMAN RIGHTS

4.1 The Right to Life and the Right to Freedom and Security of the Person

The Right to Life states that:

“Everyone has the right to life.”

The Right to Freedom and Security of the Person states that:

- “ (1) Everyone has the right to freedom and security of the person, which includes the right -**
- (a) not to be deprived of freedom arbitrarily or without just cause;**
 - (b) not to be detained without trial;**
 - (c) to be free from all forms of violence from either public or private sources;**
 - (d) not to be tortured in any way; and**
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.**
- (2) Everyone has the right to bodily and psychological integrity, which includes the right-**
- (a) To make decisions concerning reproduction;**
 - (b) To security in and control over their body; and**
 - (c) Not to be subjected to medical or scientific experiments without their informed consent.”**

The constitutional provisions of the right to life and the right to freedom and security of the person will be analysed here jointly, as the submissions indicated a tendency to associate them both with security access restrictions.

The inclination to associate the right to life and that to freedom and security of the person by those in favour of security access restrictions was expressed aptly by their view that communities should not feel threatened when approaching their properties or “havens”.

It was expressed that fear of crime influences people’s behavioural patterns and restricts their movements, sometimes to the extent that they may move away from areas they regard as unsafe. “In the 1990’s fear of crime became a global concern...[which] can be described as a general concern, anxiety, worry or subjective assessment of one’s victimisation risk.”¹⁵

Those in favour of security access restrictions argued that there is a positive obligation on the State in that it is expected to protect individuals from violence in all forms. The State’s law enforcement is not considered as always being successful in protecting individuals from violence. Residents said

¹⁵ Prof. Beaty Naudé: “Can Public Road Closures Reduce Crime Effectively?” 2003, Page 1

they felt compelled to take their protection into their own hands by employing alternative methods to ensure their safety and security, such as the use of private security companies.

Parties opposing such security access restrictions also raised the right to freedom and security of the person. They pointed out incidents where various individuals were allegedly handcuffed to gates by security guards, had mini explosives thrown onto their property and were threatened with a shotgun because of their refusal to comply with the restrictions imposed at road closures/boom gates.

In *Ferreira v Levin NO and others*¹⁶ the Constitutional Court examined the right to freedom and security of the person. Justice Ackerman explained that the right to freedom must be given a broad and generous interpretation and “...must therefore not be thought to be premised on a concept of the individual as being in heroic and atomistic isolation from the rest of humanity, or the environment”.¹⁷

The Bill of Rights Handbook states: “Violence against an individual is a grave invasion of personal security. Section 12 (1) (c) requires the State to protect individuals, both by refraining from such invasions itself and by restraining or discouraging private individuals from such invasions.”¹⁸

Accordingly, road closures/boom gates are claimed to serve as deterrents to criminals and therefore enforces the rights of residents within enclosures to be free from violence. The City of Johannesburg, it was submitted, is tasked with promoting a safe and healthy environment under Section 152 (1) (d) of the Constitution and is fulfilling its obligation by acting in terms of the Act.¹⁹

However, there continues to be disputes over whether closures do in fact lead to a reduction in levels of crime.

Arguments opposing security access restrictions stated that enclosed neighbourhoods can compromise the freedom and security of the person, as they have the potential to prevent emergency vehicles from reaching persons in need if their route is compromised by road closures or gates. This is time-consuming, as the emergency personnel are forced to search for alternative entrances and exits.

In this regard the research conducted by Professor K.D. Boffard at the Johannesburg Hospital Trauma Unit has been extensively cited. The Trauma Unit has close working relationships with metropolitan emergency services and private emergency services. A study specific to response times for enclosed suburbs found that the emergency vehicles’ response times were delayed by 7 to 15 minutes. On this basis Boffard stated that although the rate of crime allegedly fell in those suburbs, the overall morbidity and mortality rate rose after the enclosure was erected. Furthermore, he said that the enclosed areas were usually comprised of middle to higher income groups and within these population groups the incidence of strokes, asthma attacks, seizures, heart attacks, falls and children falling into swimming pools were “very much higher”.

¹⁶ 1996 (1) SA 984 (CC); 1996 (1) BCLR 1

¹⁷ Ibid: Para [52]

¹⁸ The Bill of Rights Handbook, Third Edition 2000 by De Waal, Currie and Erasmus

¹⁹ Gauteng Local Rationalisation of Government Affairs Act 10 of 1998

Johannesburg's Emergency Management Services (EMS) raised the following concerns:

- The restriction of accesses may rise to the extent that accurate plotting becomes impossible for emergency service vehicles;
- The service does not possess the relevant tools for dispatching mechanisms to record the position of security access restrictions;
- The access restrictions impedes on the ability of emergency services to gain access to areas where such services are required;
- The access restrictions have caused delayed reaction and response times of emergency services, which includes fire, rescue and medical services;
- The emergency vehicles are not necessarily equipped to execute the required break-in to obtain access;
- The restrictions in general result in additional and longer routes to reach destinations;
- Emergency back-up is often used from remote areas that are not necessarily familiar with the characteristics of enclosures in the applicable areas; and
- Delayed attendance could result in liability to the Council if proven that such delays were a result of access routes closures.

Unofficial statistics which showed a decline in crime in enclosed neighbourhoods were submitted to the Commission by various groups favouring road closures or boom gates. These statistics were pointed to as evidence to the contention that by effecting road closures, residents in enclosed neighbourhoods are able enforce their constitutional right to be free from all forms of violence.

4.1.1 The Contention that the Act is *ultra vires*

The Open City Forum, an organisation opposed to closures made a submission to the effect that Chapter 7 of the Gauteng Rationalisation Act was '*ultra vires*' in that:

- Issues of safety and security do not fall within the functional area of concurrent legislative competence of the Gauteng legislature;
- The Act is in conflict with the South African Police Services Act 68 of 1995;
- National security is a prerogative of Parliament and the national executive; and
- Road closures are in contravention of Section 199 (3) of the Constitution in that only national legislation can establish armed services or organisations.

Advocate Kairinos, who made submissions in support of enclosed neighbourhoods, responded to these arguments by explaining that:

- Section 104 (1) of the Constitution provides that the legislative authority of provinces is vested in the provincial legislature and confers upon it the powers to, amongst others, pass legislation with regard to any matter within the functional area listed in **Schedule 4**,²⁰ and **Schedule 5**²¹;
- **Schedule 4:** includes legislation relating to **(i)** Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislature competence and **(ii)** Road traffic regulations; and

²⁰ Schedule 4: Functional areas of concurrent national and provincial legislative competence; Part A

²¹ Schedule 5: Functional areas of exclusive provincial legislative competence; Parts A and B

- **Schedule 5**²² provides for legislation relating to **(i)** Provincial roads and traffic, **(ii)** Municipal roads and **(iii)** Traffic and parking.

Chapter 11 of the Constitution deals with the Police Service and Section 205 provides in subsections 4 and 7 that:

- (4) A provincial executive is responsible for policing functions-
 - (a) vested in it by this Chapter;
 - (b) assigned to it in terms of national legislation; and
 - (c) allocated to it in the national policing policy.
- (7) National legislation must provide a framework for the establishment of powers, functions and control of municipal police services.

It does appear to us that Chapter 7 of the Act, which restricts access, was not intended to have a policing function. It was aimed at the restriction or prohibition to use certain public roads and this therefore falls within the scope of **Schedule 4** - the functional area of concurrent national and provincial legislative competence. Also, **Schedule 5** (as discussed above) bestows exclusive provincial legislative competence for the regulation of provincial roads and traffic, municipal roads and traffic and parking.

In terms of the *National Road Traffic Act* the local authority has the power to legislate by-laws for the purpose of restricting or prohibiting any matter or thing in relation to that purpose either absolutely or conditionally.²³ The use of a boom as a traffic calming measure or a safety measure is not substantially a policing function even though done in the interest of safety and security.

Accordingly, the Commission is not of the view that the Act is unconstitutional for the reasons referred to above.

4.2 The Freedom of Movement and Residence

The Freedom of Movement and Residence states that:

- “ (1) Everyone has the right to freedom of movement.
(2) Everyone has the right to leave the Republic.
(3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
(4) Every citizen has the right to a passport.”

The majority of submissions opposing gated communities were based on the fact that such access restrictions infringed on an individual's right to freedom of movement on a public road.

²² Schedule 5: Functional areas of exclusive provincial legislative competence; Parts A and B

²³ See National Road Traffic Act, 93 of 1996: Section 80A (1) (a), (l) and (r), (2) and (3)

The right to freedom of movement has international recognition in such international instruments as the Universal Declaration of Human Rights²⁴, the International Covenant on Civil and Political Rights²⁵ and the African Charter on Human and People's Rights.²⁶

This right is of particular relevance to South Africa due to its past, where apartheid laws such as the *Black Land Act*,²⁷ the *Group Areas Act*,²⁸ the *Development Trust and Land Act*,²⁹ and the *Black Administration Act*³⁰ sought to rigidly control the movement of people purely on the basis of their race.

... guards at these enclosure points “wield tremendous powers in deciding whom to let in and on what basis”.

It is in this context that the present use of security access restrictions has sparked similar fears and concerns. The fear of forced segregation arises if communities are permitted to box themselves off from the rest of society and have the power to determine who can be granted or denied access to public places. In addition, it was suggested that guards at these enclosure points “wield tremendous powers in deciding whom to let in and on what basis”.

The Commission heard evidence that security access restrictions did not exist prior to 1994, despite the prevalence of crime. One submission described the situation as having gone from “fencing the masses in, to fencing the masses out”.

The right to the freedom of movement can be limited, and every citizen's constitutional right to movement, to enter, to remain in and to reside anywhere in the Republic, is subject to limitation. For example, in order to leave the Republic, the *Aliens Control Act*³¹ stipulates that citizens and non-citizens may not do so without being in possession of a valid passport.

It was argued in some submissions that access restrictions were used to deny black persons access to predominantly white suburbs. If this is indeed the case then the practice is in direct contradiction to the spirit, purpose and object of the Bill of Rights and constitutes a serious affront to the dignity of those affected.

Divided Communities

Supporters of access restrictions argued that they did not deny individuals the right to enter their enclosures, therefore road closures/boom gates did not infringe on the right to freedom of movement. Those opposed contended that the freedom of movement of people trying to access enclosed areas was being curtailed.

The Star featured an article titled “Boom policy infuriates residents” featured in the *Star*, dated 16 November 2002, in which it reported on residents who were forced to sign in and out each time they entered or exited their residential suburb. An anonymous resident is quoted as saying: “I am

²⁴ Article 13

²⁵ Article 12

²⁶ Article 12

²⁷ Act 27 of 1913 Section 1

²⁸ Act 36 of 1966

²⁹ Act 18 of 1936 Sections 25 and 26

³⁰ Act 38 of 1927 Section 5

³¹ Act 96 of 1991

being denied access to my own home. I believe the guards have absolutely no security value and, in fact, they constitute a risk for those being stopped at the booms.” The relevant chairperson for the enclosure justified the restriction with claims that the crime rate had dropped by 80% and the property values had increased dramatically, therefore making the suburb sought-after. Despite this, he admitted that support for the system had decreased. He added that those residents who refused to contribute towards maintaining the enclosure would be required to sign in and out, while paid-up residents would be given stickers showing they had done so, and therefore have unhindered access.

“I am being denied access to my own home. I believe the guards have absolutely no security value and, in fact, they constitute a risk for those being stopped at the booms.”

A further written submission in support of road closures argued that motorists experienced only minor inconveniences while pedestrians were provided access at pedestrian gates which stayed open 24 hours a day.

Unlawfully operated road closures

In counterarguments, prima facie evidence was presented to the Commission indicating that the prescribed requirements in the City of Johannesburg’s Security Access Restrictions Policy on boom gates were not always complied with. It was brought to the Commission’s attention that not all road closures/boom gates are operated lawfully.³² This leads to the crucial question whether enclosed neighbourhoods are monitored and effectively regulated to ensure that they are functioning within the parameters of the Gauteng Local Rationalisation of Government Affairs Act, and not adversely affecting mobility. The managing director of the Johannesburg Roads Agency (JRA) indicated that adequate monitoring was not possible given the limited resources available, and that in practice once permission had been granted the local authority was not in a position to regularly and effectively monitor the structures.

The Johannesburg Roads Agency (JRA)

The JRA is appointed by the City of Johannesburg to manage and maintain the road network of the City’s roads and to improve mobility and road safety. The JRA is further responsible for managing the access restriction process to ensure that it remains in line with the City’s policy. The contradiction in the mandate of the JRA is that it is responsible for ensuring mobility and yet responsible for recommending or opposing applications that directly inhibit the public’s right to move around freely. The Managing Director of the JRA was concerned that closures impacted severely on urban mobility and worked against the essential features and character of a city.

4.3 The Right to Human Dignity

The Right to Human Dignity states that:

“Everyone has inherent dignity and the right to have their dignity respected and protected.”

³² That is in terms of the conditions attached to the approvals.

Road Closures / Boom Gates

In the landmark case of *S v Makwanyane*³³, in which the Constitutional Court abolished the death penalty, Chief Justice Chaskalson acknowledged that, "... the rights to life and dignity are the most important of all human rights, and the source of all other personal rights... By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others."³⁴

An example of the right to dignity, with respect to boom gates, is found in a *Sunday Times Metro* article³⁵ where it was reported that domestic workers employed inside enclosed suburbs were compelled – for improved security purposes – to produce their identity cards in order to gain access to the area. Such identity checks have strong associations with the pass laws of apartheid.

In a written submission, a woman alleged that she was often waved through at boom gates because she had a pale complexion. Even when compelled to disclose details into a register, she had never been asked to produce an identity document. She further alleged being witness to the degrading treatment of black males at these access points where they are stopped, questioned and instructed to fill in a register, and in some cases, had to produce identity documents.

4.4 The Right to Equality

The Right to Equality states that:

- “ (1) **Everyone is equal before the law and has the right to equal protection and benefit of the law.**
- (2) **Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons; or categories of persons, disadvantaged by unfair discrimination may be taken.**
- (3) **The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.**
- (4) **No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.**
- (5) **Discrimination on one or more grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”**

The equality provision was raised in the initial complaint to the Commission on the basis that people of different races were not treated similarly at security access points. Many submissions received from the public either directly alleged racial discrimination at security access points or alluded to it. It was alleged that many of the security guards at these booms were instructed to, or chose to routinely stop black people in order to enquire about their movements. Such treatment was not applied to white people.

³³ *S v Makwanyane* 1995 (3) SA 391 paragraph 104

³⁴ *Ibid* 26; Para [144]

³⁵ Dated March 16, 2003 by Futhi Ntshingila

Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)

Section 6 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) contains a general prohibition of unfair discrimination and Section 7 (b) specifically prohibits such discrimination on the basis of race, including “the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race”. Section 7 (c) furthermore prohibits racial discrimination if it is at “the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular race group”.

The Constitutional Court

The Constitutional Court formulated its equality jurisprudence over a number of years into a three-stage enquiry. According to that enquiry, one needs to determine that when people are treated differently if it is mere differentiation or discrimination. If the discrimination is not done in terms of Section 9(2)³⁶ of the Bill of Rights but instead on listed ground, found in Section 9(3) of the Bill of Rights³⁷ then the discrimination is presumed to be unfair discrimination (until otherwise proven) because it may potentially “impose burdens on people who have been victims of past patterns of discrimination or will impair the fundamental dignity of those affected.”³⁸

At the Pension Lawyers Conference in Cape Town in 1998,³⁹ Justice O’Regan noted that “...we have entrenched equality in our Constitution, not simply because we fear that individuals may be treated differentially, but because we recognise that group membership in our society has improperly become a determinant of advantage and disadvantage. The primary purpose of our equality legislation is to combat and prevent such patterns of disadvantage. It is whether differentiation is likely to or will lead to such patterns of disadvantage that should be the primary determinant of whether it is inappropriate or not.”⁴⁰

Applications for enclosures

According to a presentation made to the Commission, the City of Johannesburg policy on Security Access Restrictions⁴¹ has made provision for previously disadvantaged areas applying for security access restrictions, to request that their application fees be reduced or waived. The contention of those in favour of boom gates was therefore that applications for security access restrictions could not be deemed discriminatory to underprivileged areas.

Counterarguments suggested that although such a waiver may be possible, less affluent or underprivileged areas were not in a financial position to erect or maintain such enclosures. In addition, the geographical layouts of many townships simply do not make booms or road closures practical or possible. From a social perspective, poorer communities are less likely to apply for road closures. The evidence provided by the JRA indeed indicated that the overwhelming majority of applications originated from the northern suburbs of Johannesburg.

³⁶ Section 9(2) allows the State to take legislative measures to protect and advance persons or categories of persons

³⁷ “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

³⁸ “The Bill of Rights Handbook” By De Waal, Currie and Erasmus - Third Edition; Page 198

³⁹ “The Achievement of Equality: A New Challenge for Retirement Funds”

⁴⁰ See: http://www.pensionlawyers.co.za/downloads/files/13082003_hschooning_pres.ppt

⁴¹ “An applicant may petition reduction and waiver of specified fees, together with the submission for application. This will be accommodated in communities where it can be demonstrated that it is not affordable to pay such fees.”

Road Closures / Boom Gates

4.5 The Right to Privacy

The Right to Privacy states that:

”Everyone has the right to privacy, which includes the right not to have-

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.”

The right to privacy was used to justify both arguments for and against road closures. Infringements on the person’s right to privacy occurs when arbitrary searches are conducted at security access points, as well as having to divulge personal information to security guards. Differing arguments suggest that the right to privacy should be extended to cover the eventuality of criminal activities occurring in homes where enclosures are not allowed, and therefore may be construed as an infringement of the right. Privacy is not an absolute right and can be limited in terms of the limitation clause. A requirement to satisfy this provision is that the action infringing a human right is done in terms of a law of general application. At that point it is noteworthy that the private security industry does not confer upon its workforce the power or authority of search and seizures.

Constitutional Argument

Constitutional arguments presented to the Commission cited *Mistry v Interim Medical & Dental Council of SA*⁴² in which the Constitutional Court considered the following when finding whether the right to privacy had been violated:

- whether the information was obtained in an intrusive manner;
- whether it was about intimate aspects of a person’s life;
- whether it involved information provided by the person which was then used for another purpose; and
- whether it was disseminated to the press or general public or to persons from whom the person could reasonably expect such private information would be withheld.

It was argued that personal details such as name, identity number and vehicle registration number could not be considered as private information. Furthermore, the information requested at security access points were not obtained in an intrusive manner and was not used for ulterior purposes. Contrary arguments suggested that disclosing such information to strangers (security guards) was indeed an infringement on people’s right to privacy. A further concern was whether such information could be used for ill gain outside the scope of its apparent purpose.

⁴² 1998 (4) SA 1127 (CC)

4.6 Political Rights and Freedom of Trade, Occupation and Profession

Political Rights states that:

- “ (1) Every citizen is free to make political choices, which includes the right-
- (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right-
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - (b) to stand for public office and, if elected, to hold office.”

Freedom of Trade, Occupation and Profession states that:

“Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.”

The constitutional provisions for political rights and freedom of trade, occupation and profession were raised to a lesser extent in submissions received.

The concern was raised that if members of political parties were denied access to certain suburbs, it would amount to a prima facie violation of their right to participate in the activities of, or recruit members for a political party, as provided for by the Bill of Rights.

The right to choose a trade, occupation or profession could be infringed upon when persons are denied access to seeking employment at residences in enclosed suburbs, or when hawkers are not allowed to sell their goods there. Access restriction would also negatively affect businesses located within enclosures, even if business owners did not support these security initiatives. Customers would avoid these businesses because they would not be easily accessible.

The following arguments were presented to the Commission to justify enclosures in relation to Political Rights and Freedom of Trade, Occupation and Profession:

- If residents needed gardeners, for example, they could leave the tools required for the job at the entrance to the enclosure and the security guard could direct the job seeker accordingly – this apparently would prevent persons from wondering these areas unnecessarily.
- Hawkers or door-to-door sales persons should not be allowed to ply their trade anywhere and at any time, and by ringing doorbells they were invading the privacy of residents.
- Businesses within such enclosures were intended for the benefit of the residents in the respective enclosures.
- Business owners in enclosures do not have a constitutional right to economic activity, as it is not specifically provided for in the final Constitution.

The Commission feels that these arguments neglected to address critical issues such as social integration, poverty alleviation and the attainment of equality.

Road Closures / Boom Gates

4.7 Limitation of Rights

Limitation of Rights states that:

“The rights in the Bill of Rights may be limited only in terms of 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, taking into account all relevant factors, including-(a) the nature of the right;(b) the importance of the purpose of the limitation;(c) the nature and extent of the limitation;(d) the relation between the limitation and its purpose; and(e) less restrictive means to achieve the purpose. Except as provided in subsection (1) or in any provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

The Constitution is the supreme law of the land and bestows upon everyone fundamental rights and freedoms, which are enforceable but not absolute. Rights and freedoms are not exercised in isolation but within a context. This means that they have the potential to affect or restrict other persons from exercising their constitutional rights. Limitations of such rights are therefore necessary to ensure that a balance of interests is achieved.

4.7.1 Application of the Limitations

A ‘law of general application’ means that the law must be applied equally, and must not be arbitrary or aimed at specific individuals. For the purpose of examining the limitation of rights, this Report will assume that the Act allows for all persons or group of persons to make such an application in the interest of safety and security, provided certain criteria are met. To satisfy the second part of the enquiry, it must be shown that the law of general application is reasonable in an open, democratic society based on human dignity, equality and freedom. In *S v Makwanyane* the Constitutional Court developed its jurisprudence through identifying whether a limitation is legitimate or not. We will now deal with the factors to be considered using this methodology.

4.7.2 The Nature of the Right⁴³

“The proportionality enquiry required by Section 36 [Limitation of Rights] involves the weighing up the harm done by a law – the infringement of the fundamental right – against the benefits that the law seeks to achieve – the reasons for the law, or the purpose of the law.”⁴⁴

The Act, which allows roads to be closed by private individuals, infringes predominantly in practice, on the rights to freedom of movement, equality and human dignity.

It is evident that the Constitution as well as the Constitutional Court places great value on the rights to equality and human dignity. Therefore any law that limits these rights should meet the limitation criteria set out in the Constitution.

⁴³ Section 36 (1)(a) of the Bill of Rights

⁴⁴ The Bill of Rights Handbook, Third Edition 2000 by De Waal, Currie and Erasmus, Page 144

4.7.3 The Importance of the Purpose of the Limitation⁴⁵

“...Reasonableness requires the limitation of a right to serve some purpose. Justifiability requires that purpose to be one that is worthwhile and important in a constitutional democracy.”⁴⁶

A JRA representative explained at the hearings that the City’s policy is in response to the said Act, as it provides that all applications for security access restrictions will be considered. If one has to consider an application, there must be an avenue to approve or disapprove the application, therefore a policy was necessary. The City by admission would have preferred not to have the policy at all, and does not encourage such measures for security purposes.

The rights that the limitation purports to protect are those to freedom and security of person and life. This argument presupposes that road closures/boom gates do in fact protect individuals within such enclosures from violent crime, which threaten their lives and physical integrity. From the submissions received and presentations made in support of such security measures, no conclusive evidence exists as to the effect of closures on crime levels.

Concerns have been raised that people residing within enclosed neighbourhoods might become complacent and run the risk of being less observant of their surroundings. It is worth mentioning that submissions were made to the Commission indicating that many enclosures have opted to use community policing forums in conjunction with road closures.

Parties submitted that if the purpose of boom gates is to monitor the activities of people entering and exiting the enclosure, and the purpose of road closures is to limit the amount of escape routes for criminals, the efficiency of the security method was still dubious given the nature of organised crime in South Africa. Furthermore it has been submitted by parties opposing road closures/boom gates that such enclosures only displaced crime to other areas outside the enclosures and therefore were not addressing the core of crime as a local, provincial or national problem.

4.7.4 The Nature and Extent of the Limitation⁴⁷

Proportionality requires a weighing up of the harm done by depriving people of their rights to freedom of movement (given South Africa’s historical context), equality and human dignity, against affording other people the rights to freedom and security of the person and life.

“This assessment is a necessary part of the proportionality enquiry because proportionality means that the infringement of rights should not be more extensive than is warranted by the purpose that the limitation seeks to achieve.”⁴⁸

The limitation imposed by the *Gauteng Local Rationalisation of Government Affairs Act* has far-reaching consequences on urban functionality, traffic, road maintenance and socio-economics. It was argued that movement in the entire City could be impacted if large areas were closed and blocked off. Enclosures restrict access to public facilities such as schools, parks and shopping centres. It has adverse effects on traffic flows, especially when traffic is diverted to arterial roads. Roads within enclosures are under utilised, and this leads to road surface deterioration. As previously mentioned,

⁴⁵ Section 36(1)(b) of the Bill of Rights

⁴⁶ Ibid: Page 145

⁴⁷ Section 36 (1)(c) of The Bill of Rights

⁴⁸ The Bill of Rights Handbook, Third Edition 2000 by De Waal, Currie and Erasmus, Page 147

emergency services as well as other services such as water, electricity, Telkom SA and refuse trucks amongst others, find it problematic to enter and exit such enclosures. Longer distances are travelled and detours are necessary as a result of the limited access points. Minibus taxis are especially prohibited from entering the enclosed suburbs yet they transport 72% of public transport users – some people have admitted that they view minibus taxis as potentially threatening to their safety and security and as responsible for criminal activities in the area. Socio-economic issues should be considered, for example property values within enclosures usually increase but have an adverse effect on property prices of houses in surrounding residential areas without enclosures.

4.7.5 The Relation between the Limitation and its Purpose⁴⁸

“...There must be proportionality between the harm done by the infringement and the beneficial purpose that the law is meant to achieve.”⁴⁹

In terms of the constitutional provision everyone has the right to be free of all forms of violence. This right places a positive obligation on the State and requires that it protect individuals from all forms of violence either by restraint or discouragement. Unfortunately the State’s law enforcement has not been successful in protecting individuals from violence and as a last resort municipalities have conceded to approving applications to enclose neighbourhoods.

The effect on crime levels

According to criminologist Carina Coetzer⁵⁰ six crime trends have increased between 1994 and 2000 in enclosed suburbs. Examples include housebreaking at residential premises (increased by 3.4%), robbery (up by 18.5%) and robbery with aggravating circumstances (up by 11.06%).

The United Nations International Crime Victims Survey (ICVS) conducted surveys in 11 Sub-Saharan African countries using the same methodology each time. These surveys show that South Africa’s crime rates are not much different from its counterparts, yet South Africans and Lesotho’s citizens have the highest fear of crime.

A 2003 Institute for Security Studies (ISS) national victim survey revealed that 58% of South Africans felt very unsafe at night, while 10% said they felt very safe at night. The Human Sciences Research Council (HSRC) found that in 1994 about 75% of South Africans felt safe, but this number decreased to 44% in 2000.

Fear of crime, according to the ISS 2003 survey, is more prevalent among minority groups such as Indians and whites. This fear of crime apparently stems from the fact that our Constitution has many provisions in the Bill of Rights for the protection of arrested, detained and sentenced persons. Yet the law does not seemingly equally protect ordinary citizens, and this contributes to feelings of insecurity and fear.⁵¹

⁴⁸ Section 36(1)(d) of the Bill of Rights

⁴⁹ The Bill of Rights Handbook, Third Edition 2000 by De Waal, Currie and Erasmus, Page 148

⁵⁰ Carina Coetzer (MA Criminology) - Crime Information Analysis Centre, South African Police Service in “Crime Prevention in Neighbourhoods” 2004: Page 2 at No. 3. “The development of enclosed neighbourhoods and security villages”. Page 1

⁵¹ Prof. Beaty Naudé in “Can Public Road Closures Reduce Crime Effectively?” 2003, Pages 1 to 4.

Are road closures and boom gates effective in preventing crime?

No statistics could be found to prove or disprove the effect road closures and boom gates have on the crime rate.

- Individuals residing in gated communities are generally of the opinion that the access controls are serving their purpose and have provided the Commission with extensive statistics showing the decrease in criminal activity in established and long standing enclosures.
- A submission from the Tshwane Metropolitan Police indicated that such access restrictions only prevented petty or opportunistic crimes and were not effective in combating violent or serious crimes.
- Submissions made on behalf of the City of Johannesburg recognised the fact that in some instances in restricted areas, factual information from the South African Police Services (SAPS) indicated an increase in crime levels.
- The SAPS do not keep crime statistics for specific enclosures although it was pointed out that recent statistics released by the SAPS indicated a decline in violent crimes (except rape), but did not address whether road closures are effective.

4.7.6 Less Restrictive Means to Achieve the Purpose⁵²

“The limitation will not be proportionate if other means could be employed to achieve the same ends that will either not restrict rights at all, or will not restrict them to the same extent.”⁵³

Alternative measures

The Act makes provision for applications for enclosures to be approved only as a last resort to curb crime in a specific area. It has been submitted that these measures have not been motivated for the purpose of safety and security alone. Factors such as increased property values, quieter suburbs and less traffic have also motivated applications for enclosures. Some have submitted that property prices increased by more than 20% once the enclosure was in place. Furthermore, short term insurance companies offered residents within particular types of enclosures between 25% and 30% reduction in their premiums.

The Act does provide for less restrictive measures in terms of the policy but according to the JRA no applications have been received for such measures.

The policy states that security restrictions, in accordance with the Act (Chapter 7) are supported only as a short-term solution to combating crime. The policy proposes long-term solutions, such as encouraging the public to take reasonable measures to protect itself, and by discouraging crime in various ways.

According to the City of Johannesburg’s Development Unit, areas where the community supports the police are much less likely to request closures. The community works with the police in so-called ‘sector policing’, which they say has proven to work effectively. This also allows communities to be pro-active in crime prevention. The unit has developed a safety strategy for the city as a medium to long-term solution to crime.

⁵² Section 36 (1)(e) of the Bill of Rights

⁵³ The Bill of Rights Handbook, Third Edition 2000 by De Waal, Currie and Erasmus, Page 149

Regulating road closures

A shortcoming of the regulatory policy for road closures is that it has no monitoring or enforcement provisions for non-compliance with the Act. There are no prescribed penalties for non-compliance, which could then be argued as a result that non-compliance to the statutory terms is not unlawful. The JRA conceded that monitoring the enclosures could be problematic because resources would have to be relocated from roads in less urbanised areas to more affluent areas, where they have to police proper management of closed roads.

The use of closed circuit television (CCTV) was examined briefly in the hearing. Some conceded that this option was less intrusive and not very expensive to implement (more than that of the enclosure) but raised concerns as to who would be employed to do the monitoring. A chairperson for a particular closure explained that to get such a system working effectively would be quite a challenge but he was willing to investigate the possibility.

eThekweni Municipality

The eThekweni Municipality in Durban operates in terms of Section 209 of the *Local Authorities Ordinance 25 of 1974* which allows the local authority to act in the best interests of the public, provided that its actions do not result in the “deprivation or substantial deprivation of the public of the enjoyment of its right in, or to any public street or public place”. This municipality submitted that less restrictive measures do exist, and can be effective in addressing crime. eThekweni drew up a management plan in relation to its Safer City strategy that does not allow for the erection of any device which obstructs the public roadway completely or partially in the area of jurisdiction. Applications for security measures in residential areas will only be considered on Class 5 roads.⁵⁴ The management plan allows for a guard that may be occupied by one person who will then monitor access, but may not stop or search any person and vehicle or request or collect names and/or vehicle registration numbers. Any other additional traffic calming measures, whether temporary or permanent will not be permitted.⁵⁵ Service providers and essential services may not be restricted from entering such areas and the guardhouses must be erected in accordance with the national building regulations. Furthermore, a set of forms have been designed in order to assist the council in making an informed decision about such applications, which are only valid for six months if approved. Any complaints received must be addressed immediately and failure to remedy the problem within the designated time will render the application null and void.

⁵⁴ Class 5 roads are residential access roads

⁵⁵ According to the eThekweni Municipality representative speed humps was not supported by traffic engineers because the council has been sued for the damage they were causing cars

5. FINDINGS AND RECOMMENDATIONS

1. The Commission does not generally support the use of boom gates and gated communities. The Commission is of the view that based on the information it has, these measures cause social division, dysfunctional cities and lead to the further polarisation of our society. In addition, the proposed benefits they bring by way of enhanced safety and security are in doubt and the subject of considerable debate. It has been demonstrated that such enhanced safety and security is possible through the use of alternate means.
2. The Commission finds that the use of road closures/boom gates has the potential to and does indeed in practice violate a number of rights as indicated in the Report. While such infringement of rights in most instances occurs in violation of the policy of the local authority, there was no indication that the use of road closures/boom gates was widely supported. Evidence remains inconclusive that the use of alternative measures for safety and security reasons has been sufficiently explored.
3. The Commission takes cognisance of the fact that legislation such as the *Gauteng Local Rationalisation of Government Affairs Act 10 of 1998* does indeed provide for access restrictions, including road closures. It also notes with concern that notwithstanding the existence of relatively strict conditions normally attached to an approved closure (eg. a commitment to free and unhindered access) there was considerable evidence of non-compliance with such conditions coupled with an inability (due mainly to capacity and practical difficulties) to effectively monitor compliance. The consequence accordingly was that a breach or non-compliance with such conditions (meant to act as safeguards) was not visited with any sanction or adverse consequence.
4. Responding effectively to the phenomena of crime and violence does indeed require closer co-operation between the State and citizens, and therefore the Commission encourages continued community efforts in liaison with the authorities, to make communities safer. More resources for policing, greater police presence and visibility, effective community police forums and effective police response to the needs of the community will all contribute to making a difference.
5. The Commission, even though satisfied that a legal basis does exist for security access restrictions, including boom gates and road closures, urges local authorities and communities to consider and exhaust alternate access restrictions, including guards and guard houses, traffic calming measures and closed circuit television.

6. ACKNOWLEDGEMENTS

The Commission wishes to extend its thanks to the public for responding so enthusiastically to our announcement of this project and to those who were able to contribute and participate in the hearings. The following persons should be acknowledged for their contributions to our Inquiry:

1. Mr. Bob Stanway, Clr. Gail Daus, Ms. Nazira Cachalia from City of Johannesburg
2. Mr. Mavela Dlamini, Mr. Frikkie Smit, Mr. Liam Clarke, Mr. Kobus Oberholzer, Adv. Thulani Makhubela from Johannesburg Roads Agency
3. Mrs. Pat Redford, Mr. James Morgan from Combined Chairpersons Committee for Road Closures
4. Mrs. Lekha Alopi, Ms. Soobs Moonsammy, Ms. Vaneshree Munsami, Ms. Nokhana Moeranel from eThekweni Municipality
5. Mr. Nick Karvelas from Open City Forum
6. Mr. Boyane Tshehla from Institute for Security Studies
7. Mr. R. Meisel from Dowerglen 3 Residents Association
8. Mr. Stefan Badenhorst from Private Security Regulatory Authority
9. Mr. S. Anderson from Emergency Management Services
10. Dr. J.P du Plessis from Wilgers Security Village
11. Mr. Jaco Lubbe from Montanapark Crime Prevention Forum
12. Ms. Laurie Vogt from Marion Place Closure
13. Dr. I.C Potgieter from Waterkloof Heights Estate
14. Dr. R.D Bigalke from Committee for Establishment of Brooklyn Circle Enclosed Village
15. Prof. Michael Hough from University of Pretoria (Institute for Strategic Studies)
16. Mr. Fred Bisschoff, Mr. Bart Zaayman from Dalpark Homeowners Association
17. Mr. Maddocks from Hurlingham Manor
18. Dr. D.G Catton from Rivonia Valley Residents Association
19. Mrs. S MacFarlane from Brits Close Residents Association
20. Mr. Bill Crichton from Robin Road Security Association
21. Mr. Colin McDonald from Edenvale Community Police Forum
22. Ms. Renee Rabie from Hyde Park Residents Association
23. Mr. Anesh Singh from Dunvegan Security Village
24. Ms. L. Scheepers from Midville Enclosure Committee
25. Mr. Roy Leahy from Cecil Bagley Residents Association
26. Ms. Janine Carstensen
27. Mr. Roger Day
28. Mr. Hanif Manjoo
29. Ms. Caroline Howes
30. Ms. Erica Tattersall
31. Adv. George Kairinos
32. Mr. Peter Elliott
33. Mr. Alistair Meyer
34. Ms. Fiona Keys
35. Mr. Dieter Stalman
36. Ms. Christina de Klerk
37. Ms. Lesley East

ACKNOWLEDGEMENTS

38. Mr. Frederick Ehlers
39. Mr. Louis de Villiers Roodt
40. Mr. Alex Bhiman
41. Mr. Jan Malan, Mr. Nick Pascoe from Street Safe
42. Mr. Kobus Gouws
43. Mr. Jan Linde
44. Mr. & Mrs. Johnson
45. Ms. Trish Armstrong
46. Mr. Booyens
47. Mr. Chalom
48. Mr. Allan Chennick
49. Mr. Bezuidenhout
50. Mr. Rodger Chadwick
51. Mr. Raymond Naidoo
52. Mr. Humphrey Mphatlehela
53. Ms. Tessa Elliott
54. Mr. Joshua Kruger
55. Mr. Willie van den Bergh
56. Mr. & Mrs. Mangelsdorf
57. Mr. Gideon van der Walt
58. Mr. R.P.J Verheijen
59. Mr. Peter Watermeyer
60. Dr. M.A. O'Neil
61. Mrs. B. Bullen-Smith
62. Mrs. W.A Schutte

Special thanks to our Legal Services Department, headed by Mr. G.J van Zyl, for overseeing this project, engaging the public and handling all the necessary administrative tasks. Thanks to Ms Monique Davis who assisted in ensuring that the hearings were properly co-ordinated and assisted considerably in the preparation of this Report.

Finally, we wish to thank our in-house Media and Communications staff for their support throughout this project.