

**THE SOCIAL JUSTICE COALITION**

**THE TREATMENT ACTION CAMPAIGN**

**EQUAL EDUCATION**

**FREE GENDER**

**TRIANGLE PROJECT**

**NDIFUNA UKWAZI**

**LODGE THIS COMPLAINT IN TERMS OF SECTION 206 (5)(a) OF THE  
CONSTITUTION AND SECTION 66(2)(a) OF THE CONSTITUTION OF THE  
WESTERN CAPE, TO:**

**THE PREMIER OF THE WESTERN CAPE PROVINCE**

and

**THE MEC OF COMMUNITY SAFETY WESTERN CAPE**

**THE WESTERN CAPE PROVINCIAL COMMISSIONER OF POLICE**

**THE MAYOR OF CAPE TOWN**

**THE MAYORAL COMMITTEE FOR SAFETY AND SECURITY**

**THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

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## INTRODUCTION

1. The Social Justice Coalition, The Treatment Action Campaign, Equal Education, Free Gender, Triangle Project and Ndifuna Ukwazi (“the civil society organisations”) jointly lodge this complaint in respect of police inefficiency and a breakdown in relations between the police and the community of Khayelitsha. The complaint relates to both the South African Police Service (“SAPS”) and the Cape Town Municipal Police Department (“CTMPD”). The complaint is made in terms of section 206(5)(a) of the Constitution and section 66(2) of the Constitution of the Western Cape.
  
2. The complaint consists of four parts, made up as follows:
  - 2.1. A description of the civil society organisations lodging the complaint, their mandates and their work in Khayelitsha;
  
  - 2.2. An outline of the legal framework in terms of which the complaint is made;
  
  - 2.3. A summary of the evidence on which the complaint is based; and
  
  - 2.4. A proposal for a commission of inquiry to investigate the complaint.
  
3. Attached to the complaint are two annexures. The work done by the civil society organisations in Khayelitsha, their mandates and the constituencies they represent, are set out in annexure “A”. It is apparent from annexure “A” that the civil society organisations are representative of a broad cross-section of the Khayelitsha community and have operated in the area for a number of years. The Women’s Legal Centre are the attorneys of record of the civil society organisations in this complaint.

4. Annexure “B” to this complaint consists of eight case studies that have been monitored by the civil society organisations. The case studies provide concrete examples of the violations described below. They do not purport to be comprehensive and constitute only a small sample of the widespread inefficiencies, apathy, incompetence and systemic failures of policing routinely experienced by Khayelitsha residents. These eight examples, together with many other cases like them, explain why there has been such a complete breakdown in the relationship between the police and the community.
5. While this complaint is directed at the inefficiency of policing in Khayelitsha and the breakdown in relations between the police and the local community, it also relates to the manner in which policing functions interface with the broader administration of justice in Khayelitsha. Accordingly, the SAPS (National and Western Cape), the Department of Justice and Constitutional Development (“DoJCD”), the Department of Correctional Services (“DCS”) and the National Prosecuting Authority (“NPA”) are all implicated to the extent that their officials are involved in the prosecution or prevention of crime in Khayelitsha.
6. The intention of this complaint is not to single out a particular department or organ of state, to simply criticise or place blame, or to target those working in Khayelitsha or the Western Cape. By calling for a commission of inquiry to investigate the criminal justice system in Khayelitsha in its entirety, the expectation is that its findings will identify the nature and extent of the problems that are undermining the ability of these organs to function optimally.
7. It is further anticipated that the commission’s recommendations will have positive, tangible results for the community with respect to levels of safety and access to justice. The corollary of this is that such an environment will be one in which police, the DoJCD, the DCS and the NPA will be able to operate in a more efficient and effective manner.

## **THE CIVIL SOCIETY ORGANISATIONS**

8. The civil society organisations are non-governmental organisations working on a daily basis in Khayelitsha.<sup>1</sup> Whilst the organisations remain focused on different campaigns, they have been compelled to bring this complaint by their shared conviction, gained through their ongoing work with Khayelitsha residents, that the community does not have access to adequate policing or support for victims of crime.
  
9. Since 2003 the civil society organisations have held more than one hundred demonstrations, pickets, marches and other forms of protest against the continued failures of the Khayelitsha police and greater criminal justice system. The organisations have also submitted numerous petitions and memorandums to various levels of government in this regard. There have been sustained and coordinated efforts from various sectors of the Khayelitsha community for action to be taken by government agencies, including the police, to improve the situation.

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<sup>1</sup> Ndifuna Ukwazi is not based in Khayelitsha but works closely with the other organisations. Some of the organisations have a mandate that sees them operate both provincially and nationally.

## **THE LEGAL FRAMEWORK**

10. This complaint is made on the basis of the following legal framework:
  - 10.1 The Constitution of the Republic of South Africa, No. 108 of 1996 (as amended) (“the Constitution”)
  - 10.2 The South African Police Service Act, No. 68 of 1995 (as amended)
  - 10.3 The Criminal Procedures Act, No.51 of 1977 (as amended)
  - 10.4 The Children’s Act, No. 38 of 2005 (as amended)
  - 10.5 The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 (as amended) (“PIE”)
  - 10.6 The South African Services Charter for Victims of Crime, 2004
  - 10.7 The Constitution of the Western Cape, Act No. 1 of 1998 (as amended)
  - 10.8 The Western Cape Provincial Proclamation P.N. 347/2001 of 2 November 2011
  
11. The Republic of South Africa is a signatory to and has ratified a number of international treaties and declarations that have bearing on this complaint, such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA/RES/40/34). Due to time constraints these have not been canvassed in this complaint.

## FUNDAMENTAL RIGHTS

12. Section 1 of the Constitution of the Republic of South Africa states that the country is founded on the values of *'[h]uman dignity, the achievement of equality and the advancement of human rights and freedoms'*.<sup>2</sup> Section 1 of the Constitution also notes the *'[s]upremacy of the constitution and the rule of law'*.<sup>3</sup>
13. Section 7 of the Constitution states that it is the responsibility of the state to *'respect, protect, promote and fulfil the rights in the Bill of Rights'*.<sup>4</sup>
14. The rights contained in the Bill of Rights that are relevant to this complaint are the rights to: equality<sup>5</sup>, human dignity<sup>6</sup>, life<sup>7</sup>, freedom and security of the person<sup>8</sup>, privacy<sup>9</sup>, movement<sup>10</sup>, property<sup>11</sup>, housing<sup>12</sup>, access to courts<sup>13</sup> as well as the rights given to arrested, detained and accused persons.<sup>14</sup> All of these rights are to be construed within the context of section 36 of the Constitution,<sup>15</sup> which provides for the limitation of rights.
15. In addition to these rights special attention is given to children in section 28 of the Constitution which states that every child has the right *'to be protected*

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<sup>2</sup> S1(a) of the Constitution of the Republic of South Africa

<sup>3</sup> S1(c) of the Constitution of the Republic of South Africa.

<sup>4</sup> S7(2) of the Constitution of the Republic of South Africa.

<sup>5</sup> S9 of the Constitution of the Republic of South Africa. Our history has resulted in a society that is extremely unequal and South Africa is consistently ranked as one of *the* most unequal society in the world according to the Gini index. S9(2) states that *'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'*.

<sup>6</sup> S10 of the Constitution of the Republic of South Africa.

<sup>7</sup> S11 of the Constitution of the Republic of South Africa.

<sup>8</sup> S12(1)(c) which entrenches the right *'to be free from all forms of violence from either public or private sources'* and s12(1)(e) which establishes the right *'not to be treated or punished in a cruel, inhuman or degrading way'* are of particular importance.

<sup>9</sup> S14 of the Constitution of the Republic of South Africa.

<sup>10</sup> S21 of the Constitution of the Republic of South Africa.

<sup>11</sup> S25 of the Constitution of the Republic of South Africa.

<sup>12</sup> S26 of the Constitution of the Republic of South Africa.

<sup>13</sup> S34 of the Constitution of the Republic of South Africa which reads *'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'*.

<sup>14</sup> S35 of the Constitution of the Republic of South Africa.

<sup>15</sup> S36 of the Constitution of the Republic of South Africa.

*from maltreatment, neglect, abuse or degradation*'.<sup>16</sup> Furthermore every child has the right to:

*'not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be*

(i) *kept separately from detained persons over the age of 18 years; and*

(ii) *treated in a manner, and kept in conditions that take account of the child's age.*<sup>17</sup>

16. Lastly, the following principle needs to be considered and upheld: *'A child's best interests are of paramount importance in every matter concerning the child'*.<sup>18</sup>

17. The state, of which SAPS and the CTMPD are both an integral part, is accordingly under a duty to respect, protect, promote and fulfil the above rights of all Khayelitsha residents, as part of its obligations to the people of South Africa.

## **CONSTITUTIONAL PROVISIONS**

18. The principles of co-operative government that regulate inter-governmental relations are set out in section 41 of the Constitution. In terms of sections 41(1)(a) and (b) all spheres of government and all organs of state must preserve the peace, national unity and the indivisibility of the Republic and secure the well-being of the people of the Republic.

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<sup>16</sup> S28(1)(d) of the Constitution of the Republic of South Africa.

<sup>17</sup> S28(1)(g) of the Constitution of the Republic of South Africa.

<sup>18</sup> S28(2) of the Constitution of the Republic of South Africa.

19. The above principles will inform the commission of inquiry which the civil society organisations seek to have established. In this regard the spheres of government and departments which fall outside the mandate of the Western Cape Provincial Government - such as the SAPS, the CTMPD, the DoJCD, the DCS and the NPA – will be required to co-operate with the commission in order to facilitate its investigations.
20. Section 195(1) of the Constitution sets out the basic values and principles governing public administration and notes that *‘Public administration must be governed by the democratic values and principles enshrined in the Constitution’*.<sup>19</sup> The principles include:
- “(a) *A high standard of professional ethics must be promoted and maintained.*
- (b) *Efficient, economic and effective use of resources must be promoted.*
- (d) *Services must be provided impartially, fairly, equitably and without bias;*
- (h) *Good human-resource management and career-development practices, to maximise human potential, must be cultivated.”*
21. All of the principles contained in this section apply to every sphere of government and every organ of state and therefore are applicable to the SAPS, the CTMPD, DoJCD, DCS and NPA.
22. Section 205(1) of the Constitution states that *‘The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government’*. (emphasis added)

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<sup>19</sup> S195(1)



23. Section 205(3) of the Constitution states that the objects of the police service are to *'prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law'*.

24. In terms of section 206(3) of the Constitution, each province is entitled:

*“(a) to monitor police conduct;*

*(b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;*

*(c) to promote good relations between the police and the community;*

*(d) to assess the effectiveness of visible policing; and*

*(d) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.”*

25. Section 206(5) of the Constitution states that in order to perform the functions set out in subsection (3), a province:

*“(a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and*

*(b) must make recommendations to the Cabinet member responsible for policing.”*

26. This complaint has been lodged in terms of section 206(5) of the Constitution, the Bill of Rights and the other provisions referred to above.

## THE SOUTH AFRICAN POLICE SERVICE ACT

27. In the preamble to the South African Police Service Act, No. 68 of 1995 (“the SAPS Act”) it is stated that:

*“there is a need to provide a police service throughout the national territory to –*

- (a) ensure the safety and security of all persons and property in the national territory;*
- (b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution,<sup>20</sup>*
- (c) ensure co-operation between the Service and the communities it serves in the combating of crime;*
- (d) reflect respect for victims of crime and an understanding of their needs . . .”*

28. Section 6(2) of the SAPS Act provides for the National Commissioner of SAPS to appoint a Provincial Commissioner for each province. Section 12(3) further states that ‘*A Provincial Commissioner shall determine the distribution of the strength of the Service under his or her jurisdiction in the province among the different areas, station areas, offices and units*’. This speaks to the very important issue of how resources are allocated.

29. Section 64A(1) is of relevance to this complaint as it provides that ‘*Any municipality may in the prescribed manner apply to the member of the Executive Council for the establishment of a municipal police service for its area of jurisdiction.*”

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<sup>20</sup> This is a reference to the interim Constitution of 1993 and refers to the Bill of Rights, chapter 2 in our current constitution.

30. Section 64L(1) confers on the National Commissioner the power to determine national standards for municipal police services and the training of their members.

31. The South African Police Service Amendment, Act No. 83 of 1998 further outlines in greater detail issues including the establishment, functions and powers of metropolitan police services.

32. Section 64(C)(2) states that the executive head of the municipal police service shall:

*“(a) be responsible for maintaining an impartial, accountable, transparent and efficient municipal police service;*

*(b) subject to the applicable laws, be responsible for the recruitment, appointment, promotion and transfer of members of the municipal police service;*

*. . .*

*(d) be responsible for the discipline of the municipal police service. . . .”*

33. The functions of a municipal police service are stated in section 64(E):

*“(a) traffic policing, subject to any legislation relating to road traffic;*

*(b) the policing of municipal by-laws and regulations which are the responsibility of the municipality in questions; and*

*(c) the prevention of crime.”*

## THE CRIMINAL PROCEDURE ACT

34. Section 49 of the Criminal Procedure Act, No. 51 of 1977 (as amended) deals with the use of force in effecting arrest. This is relevant to the manner in which police carry out their duties and plays a major role in relations between the police and communities. It is the experience of the civil society organisations that police in Khayelitsha do not always comply with this act in the spirit that is intended.

35. Section 49(2) of the Act states that:

*'If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing. Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believe on reasonable grounds-*

- (a) *that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;*
- (b) *that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or*
- (c) *that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm."*

## THE CHILDREN'S ACT

36. The Children's Act, No. 38 of 2005 (as amended) states in section 6(2) that any organ of state, in any matter concerning a child, must:

“(a) *respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests of the child standard set out in section 7 and the rights and principles set out in this Act, subject to any lawful limitation;*

(b) *respect the child's inherent dignity;*

(c) *treat the child fairly and equitably;*

(d) *protect the child from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or a family member of the child;*

(e) *recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age; and*

(f) *recognise a child's disability and create an enabling environment to respond to the special needs that the child has.”*

37. Section 9 states that *'In all matters concerning the care, protection and well-being of a child the standard that the child's best interests is of paramount importance, must be applied'*. In addition, section 14 states that *'Every child the right to bring, and to be assisted in bringing, a matter to a court, provided that matter falls within the jurisdiction of that court'*.

38. Section 42(8) provides guidance relating to a court environment that is suitable for children and states that:

*'The children's court hearings must as far as is practicable, be held in a room which:*

- (a) is furnished and designed in a manner aimed at putting children at ease;*
- (b) is conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings without compromising the prestige of the court;*
- (c) is not ordinarily used for the adjudication of criminal trials; and*
- (d) is accessible to disabled persons and persons with special needs."*

## **THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT ("PIE")**

39. In order to protect people from being illegally evicted, as well as to protect landowners from illegal occupation of land, the PIE Act was passed in 1998. This Act states that if an organ of state wants to evict an unlawful occupier it has to give him or her 14 days notice and the availability of alternative accommodation must be considered before an eviction order is granted.

PIE gives effect to section 26(3) of the Constitution which states that:

*"No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."*

## **THE SOUTH AFRICAN SERVICES CHARTER FOR VICTIMS OF CRIME**

40. In 2004 the National Cabinet approved the South African Service Charter for

Victims of Crime in South Africa (“The Victims’ Charter”), an instrument which consolidates the legal framework relating to the rights of, and services provided to, victims of crime. The Victims Charter aims to ensure that victims of crime remain central to the criminal justice process in South Africa, to eliminate “*secondary victimisation*” in this process, to clarify the standards of service to be accorded to victims by the criminal justice system and to provide recourse when the required standards are not met.

41. The Victims’ Charter states that victims of crime have, amongst other things, the following rights under the Constitution and the appropriate legislation:

41.1 The right to be treated with fairness and respect for dignity and privacy;

41.2 The right to offer information during criminal investigations and trials. This entails that the authorities must ensure that any contributions that victims wish to make to a criminal investigation, prosecution, or parole hearing are heard and considered in the course of the relevant proceedings;

41.3 The right to receive information. This includes information regarding the status of a case, whether or not the offender has been arrested, charged, granted bail, indicted, convicted or sentenced;

41.4 The right to protection. A victim of crime has the right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse. It also encompasses, where appropriate, the right to be placed in a witness protection programme.

## THE CONSTITUTION OF THE WESTERN CAPE

42. In 1998 the Western Cape adopted its own Constitution (Act 1 of 1998). Section 52(2) states that:

*‘The Western Cape government, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions’.*

Furthermore, section 54(1) states that the Western Cape government must, by legislative and other measures:

*“(a) provide for the monitoring and support of local government in the Western Cape; and*

*(b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.”*

43. Section 66(1) of the Western Cape Constitution deals with the policing functions of the province and entitles the Western Cape government:

*“(a) to monitor police conduct;*

*(b) to assess the effectiveness of visible policing;*

*(c) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;*

*(d) to promote good relations between the police and the community; and*



(e) *to liaise with the national Cabinet member responsible for policing with respect to crime and policing in the Western Cape.*”

44. In order to give effect to performing the functions as laid out in section 66(1), section 66(2) states that the Western Cape government:

“(a) *may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and the community; and*

(b) *must make recommendations to the national Cabinet member responsible for policing.*”

45. Section 68(1) states that the Provincial Cabinet is responsible for policing functions:

“(a) *vested in it by this Constitution or provincial legislation;*

(b) *assigned to it in terms of national legislation; and*

(c) *allocated to it in the national policing policy.*”

46. Section 68(2) states that the Provincial Cabinet:

“(a) *must determine, and convey to the member of the national Cabinet responsible for policing, the policing needs and priorities of the Western Cape;*

(b) *may lodge a complaint about any misconduct of, or any offence committed by, a member of the police service in the Western Cape, with the national independent police complaints body established by national legislation; and*

- (c) *must participate in the committee composed of the national Cabinet member and the Provincial Ministers responsible for policing established by the national Constitution to ensure effective co-ordination of the police service and effective co-operation between the national and provincial spheres of government.”*

#### **THE WESTERN CAPE PROVINCIAL PROCLAMATION P.N. 347/2001**

47. The Western Cape Provincial Proclamation P.N. 347/2001 of 2 November 2001 established the Cape Town City Police today known as the CTMPD.

## **SUMMARY**

48. Members of the Khayelitsha community routinely experience violations of the rights set out above in their dealings with the police. What is stated below will demonstrate that the constitutional rights to: equality, human dignity, life, freedom and security of the person, privacy, movement, property, housing, access to courts as well as the rights given to arrested, detained and accused persons, are violated by the police, including the CTMPD and other actors in the criminal justice system, on a daily basis. The police also violate laws founded upon these fundamental rights such as the Children's Act and PIE.
49. The systemic failure of the Khayelitsha police, including the CTMPD, to prevent, combat and investigate crime, take statements, open cases and apprehend criminals also violates the provisions of section 195 of the Constitution which requires that all public administration be conducted professionally, ethically, impartially and with the effective, economic and efficient use of human, material and financial resources.
50. The Premier and the MEC of Community Safety have the constitutional power to appoint a commission of inquiry into policing in Khayelitsha, and to develop a plan to eliminate the problems identified, based on its recommendations.

## **THE SITUATION IN KHAYELITSHA**

51. In making this complaint the civil society organisations acknowledge that the issues raised in this complaint are not limited to Khayelitsha and that many hundreds of thousands of people across the country are victims of crime every year. It is also accepted that many efforts have been made by various state organs to reduce and combat crime. However, what sets Khayelitsha apart is the disproportionately high level of crime to which its residents are subjected compared to other areas, combined with the failure of the police to prevent, combat and investigate crime effectively, resulting in a breakdown in the relationship between the police and the community.
  
52. Khayelitsha is made up of predominantly black working-class and poor communities situated approximately thirty five kilometres from the central business district of Cape Town. Located on the Cape Flats, the area is prone to heavy flooding in the winter months. Whilst the exact population is not known to the civil society organisations, it is estimated that Khayelitsha is home to approximately seven hundred and fifty thousand inhabitants. Established in 1985 Khayelitsha has experienced rapid population growth.<sup>21</sup> It is Cape Town's largest township, and is one of the most densely populated regions in the province and the country.
  
53. The area suffers from extremely high levels of poverty and unemployment. Many of its inhabitants are unemployed and the majority of the unemployed are young men and women of working age. Khayelitsha is a combination of formal and informal settlements. People in formal areas live in brick homes that are connected to the electricity grid, have water and sanitation services and regular refuse removal. Many residents, however, continue to live in informal structures, commonly referred to as "shacks" or as backyarders. People who live in informal settlements and as backyarders do not have adequate housing, access to electricity, clean and safe water and sanitation

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<sup>21</sup> The BOP Learning Lab at the University of Stellenbosch estimates the population of Khayelitsha to be between 750,000 and 800,000 as of August 2011. Accessed at [http://www.bop.org.za/BOP\\_Lab/Publications\\_files/Khayelitsha11.pdf](http://www.bop.org.za/BOP_Lab/Publications_files/Khayelitsha11.pdf)

services, and consistent refuse removal. As a result of living in such unhealthy an environment, there are high levels of illness, especially affecting children and the elderly.

54. Crime is a much more dangerous and pervasive threat for people living in over-crowded, under-serviced neighbourhoods and informal settlements than in middle-class suburbs. People living in these areas are often assaulted, robbed, raped and murdered while engaged in activities that others take for granted, such as using the toilet or accessing transport to work.<sup>22</sup> A lack of infrastructure such as street lights and roads makes these areas far more dangerous than those that enjoy such amenities.
55. Community members report that girls and women are frequently beaten and raped whilst walking to and from communal toilets or fetching water from communal taps close to their homes, while domestic abuse poses a threat to the safety of many women within their own homes. Between March 2003 and March 2011 there has been a 9.36% increase in the number of reported sexual crimes reported in Khayelitsha.
56. Property crimes such as burglaries, theft and robbery are rife and are often not reported to the police because they do not receive the necessary attention.
57. Until relatively recently Khayelitsha had one police station to serve the entire area. In 2004 two new police stations were built – Harare and Lingeletu-West. The two additional police stations and the increased number of officers constituted a positive initiative, but one that has not been sustained and in recent years increased rates of murder, sexual assault and attempted murder have been experienced.

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<sup>22</sup> Silber, G. and Geffen, N. *Race, Class & Violent Crime: Dispelling the Huntley Thesis* (2010). Accessed at <http://writingrights.org/2010/01/12/race-class-violent-crime-in-south-africa-dispelling-the-huntley-thesis/>. Also see Bruce, D. *Adding Injury to Insult: how exclusion and inequality drive South Africa's problem of violence* (2008). Accessed at [http://www.csvr.org.za/index.php?option=com\\_content&view=article&id=2454%3Aadding-injury-to-insult-how-exclusion-and-inequality-drive-south-africas-problem-of-violence&Itemid=2](http://www.csvr.org.za/index.php?option=com_content&view=article&id=2454%3Aadding-injury-to-insult-how-exclusion-and-inequality-drive-south-africas-problem-of-violence&Itemid=2)

58. A comprehensive report released in 2008 by the City of Cape Town found that within the jurisdiction of the City, five of the 58 police districts accounted for over 44 per cent of murders – in Nyanga (13,18 per cent), Harare (Khayelitsha) (8,67 per cent), Khayelitsha (8,47 per cent), Gugulethu (7,58 per cent), and Delft/Belhar (6,1 per cent).<sup>23</sup> These statistics indicate that it is the Cape Flats – of which Khayelitsha makes up a majority in terms of population numbers – that bears the brunt of murders in the City.
59. While the total number of crimes reported in Khayelitsha decreased by 23.9% in the six years between March 2003 and March 2009, the most recent crime statistics reveal a distressing reversal of this trend. In March 2010, the total number of crimes reported increased by 8.76% over the preceding year, including a 13.2% increase in assaults, a 2.5% increase in homicides and a 13.7% increase in sexual crimes. In the period from 2008/09 - 2010/11 there was a 9.5% increase in homicides, a 15.9% increase in sexual assaults and a 32.4% increase in attempted murders in Khayelitsha.<sup>24</sup> These recent crime statistics confirm the accounts of members of the civil society organizations concerning the breakdown of policing in Khayelitsha.
60. It should also be noted that the statistics account only for *reported* crimes and therefore may not reflect the true crime rates. For certain crimes, such as rape, the actual crime rate is likely to be an order of magnitude greater than the reported rate.<sup>25</sup> Many people in Khayelitsha do not report property-related crimes, such as theft of a cellphone, because there is almost no chance of being compensated or having their property retrieved. Most people are uninsured and the theft of a cellphone is not a crime to which police attach importance and consequently many of these crimes are not resolved successfully.

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<sup>23</sup> Gie, J. *Crime in Cape Town: 2001 – 200*

8, *A Brief analysis of reported Violent, Property and Drug-related crime in Cape Town* (2009).

<sup>24</sup> South African Police Service Crime Statistics, 2003/2004 – 2010/11. Accessed at [http://www.saps.gov.za/statistics/reports/crimestats/2011/crime\\_stats.htm](http://www.saps.gov.za/statistics/reports/crimestats/2011/crime_stats.htm)

<sup>25</sup> Jewkes, R. and Abrahams, N. ‘The epidemiology of rape and sexual coercion in South Africa: an overview’ in *Social Science & Medicine* Vol. 55, No. 7 (2002). This study found only 1 in 9 women reported being raped to the police.

61. While the high levels of crime affect all community members, they particularly impact on children, girls, women, the elderly and groups vulnerable to hate crimes such as refugees, asylum seekers, immigrants, lesbian, gay, bisexual, transgender and intersex (LGBTI) people.
  
62. Khayelitsha was the scene of the sexual assault and murder in December 2003 of 22 year old Lorna Mlofana by a group of young men who learnt that she was HIV positive. Lorna was a leader of the Treatment Action Campaign in her area. At that stage the community and civil society organisations began calling upon the state to provide improved policing and services for rape victims.

## **THE BREAKDOWN IN POLICING AND COMMUNITY RELATIONS**

63. The SAPS and CTMPD in Khayelitsha are overburdened and under-resourced. This is exacerbated by the fact that the community often suffers as a result of a lack of co-ordination between the police and the prosecuting services. Dockets are often lost, resulting in cases being struck-off the court rolls. Investigating officers and prosecutors appear not to cooperate effectively where they interface regarding what investigations are necessary for successful prosecutions. Investigating officers often do not communicate with victims of crime regarding the progress of investigations or prosecutions, including information about court dates and bail hearings.
  
64. In addition, investigating officers routinely do not secure the presence of witnesses at trials, resulting in lengthy postponements. A further problem is that witnesses to serious crimes are not given the protection they need in order to testify without fear of retribution. Often, crucial witnesses “*disappear*” because of intimidation and threats from offenders. Victims of crime, in particular young victims, are also not given trauma counselling and the support that they need in order to assist them to recover from their ordeals. It often happens that bail is incorrectly granted for Schedule 6 crimes such as rape and murder. Investigations and securing of crime scenes, gathering of forensic evidence, interviewing of witnesses and other basic procedures are often ignored or performed incompetently.
  
65. There is insufficient visible policing in Khayelitsha in general, and it is almost non-existent in informal settlements. Whilst it is often said that the absence of proper roads in informal settlements leads to them being inaccessible to patrol vehicles, no attempt is made to provide alternative forms of visible policing, such as foot or bicycle patrols backed up by vehicles. In addition, the absence of other services, such as proper street lighting and roads, makes it easy for criminals to hide and to escape. The absence of visible policing means that children, particularly those of school-going age, are vulnerable to criminals.



66. When crimes are reported, victims are often treated discourteously, sometimes with contempt. The community has lost confidence in the ability of the police to protect them from crime, and to investigate crimes once they have occurred. Many crimes simply go unreported, as members of the community see little point in reporting them. The police also fail to communicate clearly and regularly with victims, their families and other stakeholders.
  
67. The lack of policing and patrols around shebeens, both legal and illegal, fuels crime. Alcoholism is one of the most serious health problems and causes of crime in Khayelitsha and elsewhere in the country.

## THE COMMISSION OF INQUIRY

68. Section 127(2)(e) of the Constitution and section 37(2)(e) of the Constitution of the Western Cape grant the Premier of the Western Cape (“the Premier”) the power to appoint commissions of inquiry. These provisions should be read in conjunction with section 66(2) of the Constitution of the Western Cape, referred to above, and section 1 of the Western Cape Provincial Commissions Act, 10 of 1998 (“the Provincial Commissions Act”), which deals with the procedure to be followed by the Premier in appointing a commission of inquiry.
69. The civil society organisations request the Premier to appoint a five person commission of inquiry to investigate and report on the issues raised by this complaint. The commission should be headed by a retired judge and include, as commissioners, a lawyer, a member of the Khayelitsha community and an expert in policing and/or the criminal justice system. The commission would need to have the coercive powers provided for in section 3(1) of the Provincial Commissions Act.
70. The CTMPD is a fundamental part of the policing problems being experienced by Khayelitsha residents. The general demeanour of its members and their many acts of unlawful evictions and destruction of property in informal settlements are a violation of the constitutional and other legal obligations. They are a source of terror to people living in informal settlements rather than a force for good. It is accordingly imperative that the commission’s terms of reference be broad enough to allow it to investigate the effectiveness of both the SAPS and the municipal police.
71. The terms of reference of the commission of inquiry should provide for an investigation into at least the following aspects of policing (on the part of both SAPS and the CTMPD) in Khayelitsha:
- 71.1 an evaluation of its effectiveness;

- 71.2 an assessment of the suitability of the priorities, personnel, training, resources, systems, policies and community engagement practices employed;
- 71.3 the causes of the breakdown in relations between the Khayelitsha community and the police;
- 71.4 the establishment of the reasons for the inefficiencies at the interface between policing and the broader administration of justice;
- 71.5 the measures necessary to redress the inefficiencies and other problems identified, including a social crime prevention strategy; and
- 71.6 the time-frames for the implementation of its recommendations.

72. The findings of the commission of inquiry will then provide the basis for recommendations to be made, in terms of section 206(5)(b) of the Constitution and section 66(2)(b) of the Constitution of the Western Cape, by the province to the Cabinet member responsible for policing.

73. It is submitted that although this complaint relates to Khayelitsha specifically, many of the issues are relevant to other poor and working class areas in the city and the province. The civil society organisations thus urge the provincial executive to consider instituting a similar enquiry into an area that also experience disproportionately high levels of crime and where access justice is inadequate, such as Hanover Park, Mitchell's Plain or Manenberg. This will allow the Commission of Inquiry to generalise experiences from both formal and informal settlements.

