

# OUR STRUGGLE FOR SAFETY AND JUSTICE IN KHAYELITSHA



The O'Regan-Pikoli Commission of Inquiry into policing in Khayelitsha



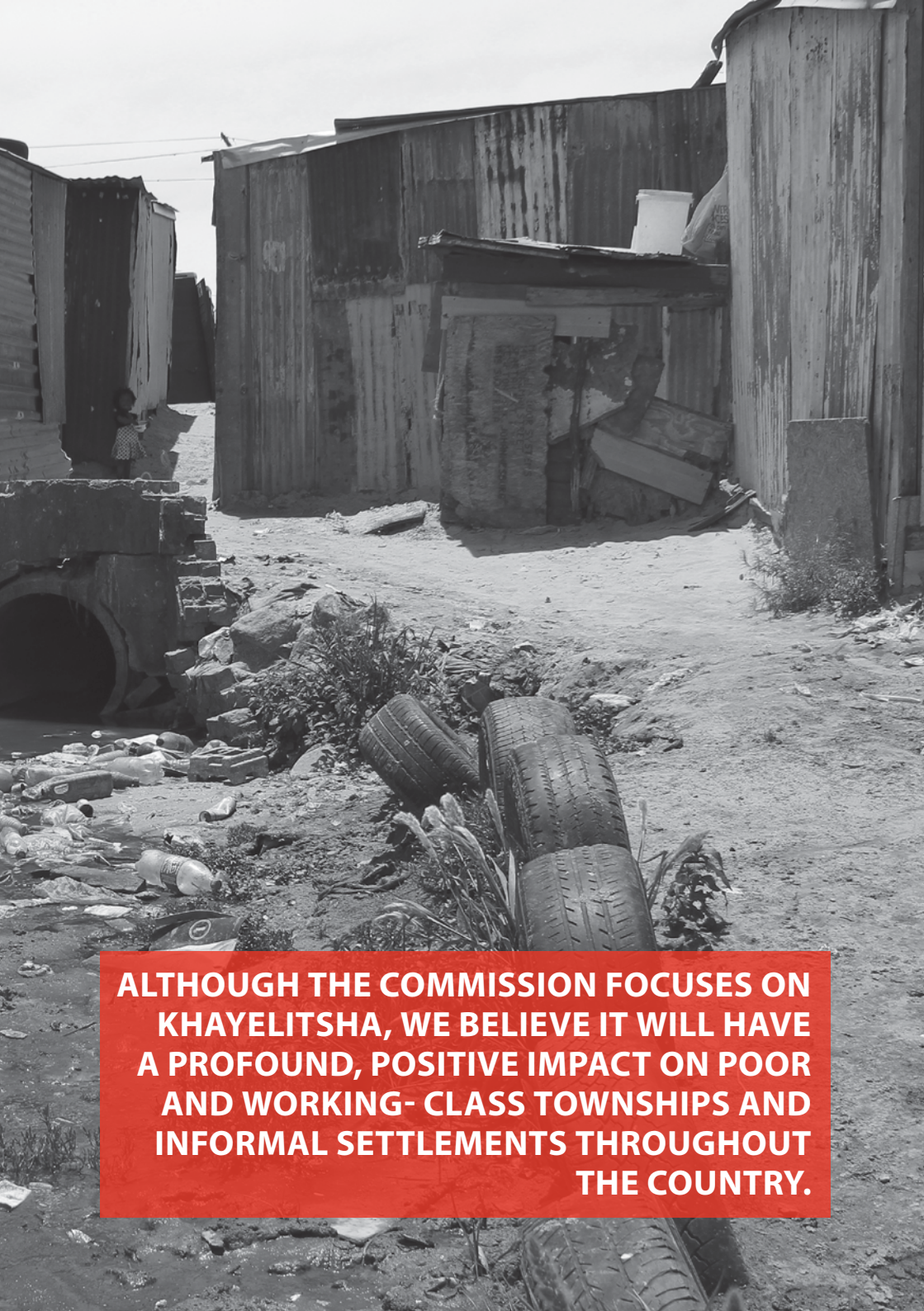
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## **WHAT IS THE O'REGAN-PIKOLI COMMISSION?**

The O'Regan-Pikoli Commission of Inquiry (the Commission) will investigate allegations of inefficiency at police stations in Khayelitsha, as well as the alleged breakdown in relations between the community and the police. Although the commission focuses on Khayelitsha, we believe it will have a profound, positive impact on poor and working-class townships and informal settlements throughout the country.

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**ALTHOUGH THE COMMISSION FOCUSES ON KHAYELITSHA, WE BELIEVE IT WILL HAVE A PROFOUND, POSITIVE IMPACT ON POOR AND WORKING- CLASS TOWNSHIPS AND INFORMAL SETTLEMENTS THROUGHOUT THE COUNTRY.**





# A TEN-YEAR STRUGGLE

The O'Regan-Pikoli Commission is the result of 10 years' continuous struggle for safety and justice by individuals and organisations in poor and working-class communities. The struggle for justice can be traced back to the work of the Treatment Action Campaign to access antiretrovirals for rape survivors and also a response to the lack of justice for the rape and murder of a number of activists. This includes Lorna Mlofana, a leading HIV positive single mother and 18-year-old Nandipha Makeke, as well as Zoliswa Nkonyana, a lesbian activist with Free Gender.

The xenophobic violence of 2008 led to the formation of the Social Justice Coalition. The SJC combined the struggle against gender-based violence, homophobia and xenophobia into a people's struggle for safe communities.

In early consultations in Khayelitsha, residents explained how dangerous it is for them to use toilets and so one of the key safety campaigns of the SJC was to ensure that communal toilets in informal settlements were made safe and clean, with privacy and dignity, particularly for women, children and the elderly.

In 2010 the SJC led the call for a Commission of Inquiry into criminal justice along with Equal Education, TAC, Triangle Project, Free Gender and the Women's Legal Centre. Initially this call was resisted by the Western Cape Provincial Government until further protest action in October 2011 put pressure on the Premier to reconsider establishing a Commission of Inquiry.

The Premier of the Western Cape, Helen Zille, instituted the Commission in August 2012 after SAPS refused to engage with the issues. The establishment is in line with the Constitution and addresses an urgent need to improve policing as part of the criminal justice system. The only part of the criminal justice system that the Premier has power over is the police.

The aim of the Commission is to investigate and improve the criminal justice system in Khayelitsha. So why did the Minister of Police work so hard to stop it? Why was Minister Mthethwa so opposed to the idea of a commission of inquiry that he was willing to spend time and money on a series of expensive, time-consuming court appeals?

In January 2013, Cape Town's High Court dismissed the Minister of Police's appeal for an urgent interdict to stop the Commission. The Minister then took the matter to the Constitutional Court, where it was heard in August 2013. Judgment was handed down on 01 October 2013. The Constitutional Court rejected the Minister's appeal and instructed the Commission to go ahead.

The Constitutional Court found that the Premier was within her rights to set up the Commission and that the Commission should have the powers to subpoena SAPS.

This booklet sketches the history of the Commission using affidavits, especially those Mandla Majola, Gavin Silber, Sifiso Zitwana, Phumeza Mlungwana, Amelia Mfiki, Thandokazi Njamela, Zackie Achmat, and Joel Bregman; extracts from court judgements, and excerpts from letters between the government, the police, and the community; and reports by SAPS and independent human rights groups.

It clearly demonstrates the urgent need for the Commission to address the issue of policing in Khayelitsha and for everyone involved, including SAPS and the Minister of Police, to give it their full cooperation. Despite a torrent of communication between the organisations and the government, and between national and provincial government, it also demonstrates how, after 10 years of activism, SAPS and the Minister of Justice have failed to engage with this issue and the organisations involved in the struggle.

In the history of the call for a commission of inquiry, three elements have remained constant:

- the need to create safer communities through improved infrastructure and education;
- the need to improve policing; and
- the issues affecting the broader criminal justice system.



## WHO IS INVOLVED?

A number of organisations have urged government to improve the delivery of justice, safety, and security in Khayelitsha. These include the Treatment Action Campaign (TAC), the Social Justice Coalition (SJC), Free Gender, Triangle Project, Equal Education, and Ndifuna Ukwazi, among others.

The SJC was founded in Khayelitsha in 2008, and struggles for improved safety through its Clean and Safe Sanitation and The Justice and Safety for All campaigns. The SJC works with other organisations and participates in broader campaigns to combat hate crimes (most notably homophobia and xenophobia), prevent corruption, and protect the supremacy of the Constitution and rule of law.

The TAC has actively campaigned since 1998 to ensure that every person living with HIV has access to quality comprehensive prevention and treatment services to live a healthy life. Although its focus is on HIV and related health rights, TAC made crime, safety, and security a priority after a series of its members and their families were affected by crime.

Equal Education campaigns for quality and equal education in South Africa. Its members include school learners, parents, teachers, and community members. About 1,500 EE members are high school learners. Although EE is a nationwide organisation, most of its members live in Khayelitsha. Through their interaction with school-going youth, they became more aware of how much performance at school is affected by learner's concerns about safety at home and in the community.

Triangle Project is an established LGBTI (lesbian, gay, bisexual, transgender, and intersex) organisation in South Africa. It educates and advocates against harmful stereotypes and behaviours towards LGBTI people. Triangle Project is not based solely in Khayelitsha, but it has supported and monitored a number of criminal cases in Khayelitsha where LGBTI people have been victims of hate-based attacks – and in many examples have struggled to receive justice.

Ndifuna Ukwazi (which loosely translates to “Dare to Know”) works closely with organisations in Khayelitsha such as the SJC. NU offers leadership training for young activists as well as legal and research support for its partner organisations. NU also facilitates and helps to promote awareness of, and engagement in, human rights issues by hosting public talks, seminars, and lectures.



# CRIME IN KHAYELITSHA

Despite some improvements over the last 10 years, South Africa's crime statistics remain high. According to Human Rights Watch, South Africa has among the highest rates of violence of all kinds in the world (HRW, pp. 14). A report published in 2012 states that:

*"Among the countries for which statistics are available, South Africa has among the highest rates of reported sexual violence against women in a country not at war. Some estimates predict that one woman in three in South Africa can expect to be raped at least once in her lifetime, and one in four will face physical assault by her domestic partner.... Children [under 18] ... are the targets in about half of the cases of sexual violence recorded by the police." (HRW, pp. 18)*

The problem is especially hard on people who live in poor, working-class, and informal communities. Phumeza Mlungwana, current Chairperson of the SJC, describes what it was like to grow up in a township (Khayelitsha) where crime was a daily occurrence:

*"I was exposed to crime from a young age. When I was still in primary school my lunch money would be stolen on my way to school, often at knife point. My father was also robbed many times, once at gunpoint. I would hear stories about women being raped. Gangs, such as the D12s and Nsinyoka, were also active in our neighbourhood: robbing, assaulting, and even murdering people." (Phumeza's affidavit, para. 25)*



Similarly, Sifiso Zitwana (also from the SJC) writes about his experiences with crime while he was still at school:

*"No one walked to school alone because there was a 100% chance the gangs would take you down. If we walked in groups sometimes they would not try to rob us, only harass us. If they came to rob us and we were in a group, we could run in different directions and the gangsters would not be able to catch all of us. I never saw either the Metro or SAPS police patrolling."* (Sifiso's affidavit, para. 12)

One of the problems with South Africa's crime statistics is that they are not specific enough, and often ignore important aspects of crime. For example, in their overview of the crime statistics for 2011/2012, SAPS claimed that, "All people in South Africa are and feel safe" (Crime Statistics Overview RSA 2011/2012).

They quoted statistics that showed South Africa's serious crime rate had gone down nationally and in each province. But if you break these figures down according to different types of crimes and the areas where they occur, a very different picture emerges.

The accuracy of the SAPS statistics are also frequently questioned. An article in The Times quoted University of SA criminologist Rudolph Zinn and Institute for Security Studies researcher Dr Johan Burger, who described the dramatic drops in crime as unexplained and worrying, and urged independent external audits of the statistics (quoted in News24, "Experts question validity of crime stats").

It should 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 much higher than the reported rate.

**"No one walked to school because there was a 100% chance the gangs would take you down."**

Khayelitsha is currently covered by three police sub-districts: Khayelitsha Site B, Harare, and Lingelethu-West.

When comparing crime statistics it is useful to observe rates per 100,000 people in order to get a fair comparison between districts. Khayelitsha's three stations reported 354 murders in 2012/2013. This is an increase of 25% over the last five years.

If we use the official population data from the City of Cape Town for Khayelitsha (391,749), this is a murder rate of 90 people for every 100,000. That is much higher than the national murder rate of 31 people for every 100,000.

617 sexual crimes were reported to Khayelitsha police stations in 2012/2013. These include rape and indecent assault. So, in Khayelitsha, 157 sexual crimes against mainly women and girls were reported for every 100,000 people. Again this is much higher than the national rate of 125 for every 100,000 people.

When we look at assault with intent to commit grievous bodily harm, the reported crimes in Khayelitsha climbed by 21% over the last 5 years, reaching 1,486 reported cases in 2012/2013. This equates to a crime rate of 379 for every 100,000 people compared to a national rate of 351 for every 100,000 people.

As experts point out, cases of gender-based violence are generally under-reported, and in South Africa the number of these crimes that are never reported to police is especially high (HRW, p. 18). Even property-related crimes are never reported, because many Khayelitsha residents believe there is almost no chance that police will be able to find their stolen property.

Even if people report crimes at the police station, there is no guarantee that they will be added to the statistics — often, because police fail to open a case, or discourage people from laying a charge. In 2012, Statistics South Africa compiled a report based on a national survey of households. It focused on “people’s perceptions and experiences of crime, as well as their views regarding their access to and effectiveness of the police and justice system” (Victims of Crime Survey, p. 1).

According to this survey, only “60% of households were satisfied with the way in which police and courts were doing their work” — much less than the 100% satisfaction rate claimed by SAPS (Stats SA, Victims of Crime Survey 2012, p. 3).

Thus the claim by SAPS that everyone in South Africa feels safe does not reflect the opinion of people living in poor and working-class townships and informal settlements.

As the SJC noted in its memorandum to MEC Albert Fritz (23 September 2010):

*“The threat of crime is ever-present for all people who live in South Africa. However, it is a much more dangerous and pervasive threat for people living in South Africa’s overcrowded, underserved neighbourhoods and informal settlements.... People are assaulted, robbed, raped, and murdered daily, conducting tasks that many people living outside of informal settlements take for granted, such as using the toilet or accessing transport to work. Justice in areas such as these has become a privilege, not a right.”*

The organisations pointed out in their original complaint to Premier Zille that people in these settlements are especially at risk because policing is made more difficult by continued failures in service delivery. For example, due to the lack of accessible roads and thoroughfares and the absence of public lighting at night, police find it very difficult to protect residents or apprehend criminals. This makes these areas far more dangerous than others (para. 54).

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## LESSONS LEARNED

Our communities experience a daily and persistent attack on their constitutional rights to life, dignity, freedom and security of the person and a severe limitation on their freedom of movement to access basic services through violent crime. In an area such as Khayelitsha more than 80% of people do not feel safe in their homes.

The national statistics are only reported annually and by that time the data is 6 months out of date. We know that this is not useful for people and that they cannot easily access this information. Also, its very hard to get information about specific police districts.

We know now that we cannot win the struggle for safety and justice unless we get access to reliable real time crime statistics based on police districts. We also need to find creative solutions to make these statistics easily accessible and find ways to build community knowledge on how to use stats to reduce crime.

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**"...police fail to open a case or discourage people from laying a charge."**



## XENOPHOBIC VIOLENCE

In May 2008, xenophobic violence broke out across South Africa. As Mandla explains in his affidavit, this left many immigrants, asylum seekers, refugees, and other people across South Africa dead, injured, or displaced (para. 7).

“Between May and August 2008, more than 60 people were murdered, scores injured, property stolen or destroyed, and about 50,000 people fled to Mozambique and Zimbabwe while at least another 50,000 were displaced from communities in Gauteng, the Western Cape, the Eastern Cape, and KwaZulu-Natal” (Mandla’s affidavit, para. 109).

In response, Zackie Achmat, Gavin Silber, Mandla Majola, Angy Peter, Vuyiseka Dubula and others founded the SJC on 16 June 2008. Gavin, who started working at the TAC in 2008, had also spent much time in TAC’s campaigns to address gender-based violence, particularly in Khayelitsha. In his affidavit to the Commission, Gavin writes:

“On 23 May 2008 the TAC organized a march of more than 5,000 people to Parliament to demand improved policing and criminal justice interventions in Khayelitsha and across South Africa. As the march ended, we began to receive reports that the xenophobic violence that had originated in Johannesburg had spread to Cape Town, and that displaced migrants were arriving at the central train station and Caledon Square Police station. Upon inspection, we found more than 1,000 and 150 people at each location respectively” (Gavin’s affidavit, para. 28).

Mandla writes that TAC evacuated 3,000 people to six community halls, and that refugees, asylum-seekers, and immigrants (mainly from Somalia and Zimbabwe) did not trust the police:

“A lady approached and told me her Zimbabwean neighbours were hiding in their shack. It was very quiet, we knocked, and there was no reply. We called out for about ten minutes explaining that we were from TAC and eventually they opened the door. There were three pregnant women and their families hiding in that shack. We escorted them to safety in taxis. Two women gave birth the next day, Saturday 24th May 2008” (Mandla’s affidavit, para. 112, 114).

The joint action between SAPS leadership under Provincial Commissioner Mzwandile Petros and other organisations avoided the worst of the xenophobic violence experienced in other centres because of support at the highest

level. Unfortunately, the co-operation with SAPS did not last long, especially because of a breakdown between the provincial and local government.

It soon became clear that the different levels of government could not resolve their differences without pressure from the community, even if this meant that victims of xenophobic violence were left without assistance. Gavin writes:

*“The xenophobic attacks which eventually led to the displacement of more than 60,000 people in Cape Town served to illustrate severe problems with policing and safety more generally. The overwhelming majority of those displaced lived in poor and under-developed informal settlements. The police further failed to prevent the attacks, or stop them once they began to occur....We also received reports that some police officers were allowing the attacks to happen, and in some extreme cases were themselves involved in the looting of foreign-owned stores...In the absence of a response from the State, the TAC and other organisations provided relief in the form of legal and material support for a number of weeks following the violence. (Gavin’s affidavit, para. 29–31).*



# YOUTH AND CRIME

Children and youths are among the most vulnerable victims of violence in Khayelitsha, on the streets and in their own homes. They are mostly witnesses and victims, and at times the perpetrators of crime. Amelia Mfiki said, "I cannot take the risk of letting my child live with me [in Khayelitsha] because I fear that she will be raped because the majority of rape victims are children" (Amelia Mfiki's affidavit para 19).

## VICTIMS OF CRIME

*"The dangers children experience when going to and returning from school affect their ability to learn and this undermines their right to education. Similarly, fear and experience of violence shows that the local, provincial and national government fail to place the best interests of children first..."* (Amelia Mfiki's affidavit, para. 12)

Yoliswa Dwane is Chairperson of the National Council of Equal Education, where she also heads the Policy, Communication and Research Department. She says that in 2009 two equalisers were the victims of separate hit-and-run incidents (Yoliswa's affidavit, para. 49–50). One of them, Sthembile Sitcha, lived in Town Two, Khayelitsha and was killed while crossing Lansdowne Road near Chris Hani School. Two more learners died the next year:

*"In 2010 Muzikhayise Boto, a Grade 11 learner at Harry Gwala School, was killed in a fight with a supposed love rival who stabbed him. Soon after his killing, some community and family members went to the house of the rival and killed him."*(Yoliswa's affidavit, para. 47)

Yoliswa also describes how one EE member, Olwethu Mathasini, "was robbed and almost stabbed by a gang who mistook him for a rival gang member who had attacked their friend" (Affidavit, para. 44). She writes:

*"In the days after the attack, Olwethu was afraid to leave his house.*

*When Olwethu was asked if he had reported the incident to the police, he said that he did not believe the police would help him to either apprehend his attackers or to protect him.” (Affidavit, para. 44)*

## **SCHOOLS AND GANGSTERISM**

Yoliswa explains that a lot of violence in schools is related to the presence of gangs in the communities where the learners live:

*“When discussing violence that affects mainly the youth, the issue of gang violence in Khayelitsha cannot be ignored. Gangs exist and operate within the Khayelitsha community. From what I have gathered from the youth that I work with, various gangs operate within the Khayelitsha community and are territorial. The gang members vary in age from age 10 right up to 21 years old and older. The level of organisation, sophistication and violence depends on the gang; preferred weapons range from knives and pangas to guns. Gangs will engage in all sorts of violent crimes ranging from robbery, hijacking, assault, kidnapping, rape and murder.” (Affidavit, para. 40)*

Thandokazi Njamela, a member of SJC, was going to school in Khayelitsha in 2007. In an affidavit to the Commission, she explains how violence affected her and her friends as children and teenagers. She says that when she was in Grade Nine, there was serious violence at school:

*“Gangsters would enter the school through the fencing and attack learners. Many different people were stabbed. Eight learners in my school were killed in that year. Pumlani, one of my classmates, was stabbed to death in our class. We were locked in the class and the ambulance arrived too late. We were sent home for the day but received no trauma counselling. Teachers and learners lived in fear and panic that year. I cannot understand to this day how I passed that year because it was almost impossible to concentrate on my studies. I can say that this is true for most of my fellow-learners. Sadly, the police did very little to prevent the violence, combat gang fights when they happened inside or outside schools, investigate how the gangs were structured, who operated them, apprehend the culprits and bring them to book. The community could not understand why the gang violence was taking place on this scale and neither could learners who did not participate in gangs”(Thandokazi’s affidavit, para. 13–15).*



Three years later, in 2010, another of Thandokazi's friends was killed when gang members burst into a tavern in H Section, Khayelitsha, and shot people inside. Nwabisa Msthana died on the scene after being shot three times.

**Gangsters would enter the school through the fencing and attack learners**

Thandokazi herself was shot six times and spent four days in a coma at the GF Jooste Hospital in Manenberg. She says:

*“...Nwabisa need not have died on that day. When she was shot she bled out but the ambulance and police took too long to get there even though the police station is not far from where we were. During all these extremely violent crimes committed against my friends and me, I was campaigning for safety in our communities with the SJC. This reinforced my understanding that a systemic problem exists with the criminal justice system starting with the SAPS” (Thandokazi’s affidavit, para. 40–41).*

After his parents died and his older sister moved away in 2008, Sifiso took over as the head of their household and became the parent to his two younger brothers (affidavit, para. 16). Three years later, his brothers became involved in gangsterism.

*“Around 2011, a new outbreak of school gang violence happened. At this stage my brothers were not involved in the gangs, and explained to me what was happening at school. Before the end of 2011, my brothers joined the gangs and I lost control of them. The principal at Iqhayiya Senior Secondary School called me in because my brothers had gone from good students to bad students.” (Sifiso’s affidavit, para. 21–22)*

In 2012, he got a call from his brother, who told him that gang members had surrounded their house with three boys inside:

*“I went to my home where I saw about 50 young gang members from the Vura Gang outside our house. The community members called the police. A police patrol van eventually came and the gang dispersed. No one was arrested.” (Sifiso’s affidavit, para. 24–25)*

Afterwards, he approached a police officer from SAPS, who told him that there was nothing the police could do to protect them. To keep his brothers safe, Sifiso sent them into hiding in the Eastern Cape (affidavit, para. 28). As Yoliswa points out, gangs operate in areas that are well known in the community:

*“Like in most communities, gangs in Khayelitsha have names and members of the gangs are easily identified and identifiable. Despite this fact, policing is so poor in Khayelitsha. I am not sure whether it is because of the shortage of police offices or specially trained officers who are able to deal with gangs, but the reality is that on the ground the police themselves seems to be afraid of the gangs. The police do*



*nothing to try and arrest people when they are known to be responsible for various crimes” (Yoliswa’s affidavit, para. 52).*

This suggests that many people who live in Khayelitsha could conclude that the police are either too ineffective to stop gangsters, or that they have other reasons not to intervene. Thandokazi writes:

*“When I started high school, there was significant gang fighting between the Izinyoka and D12 gangs near my school and in our community. Both gangs controlled different territories. Therefore, when students walked through different territories to school they would have to walk in large groups or run to school and some people were attacked. No extra-curricular activity was available. The D12 gang were rumoured to have links with the police, and [with] Bambanani – a community organised neighbourhood watch.” (Affidavit, para. 12)*

Today she says:

*“Criminals are effective but the police and courts are not effective. They do not patrol visibly and mostly only chase gangsters without attempting to arrest or charge them.... It is as if we have no police services in Khayelitsha. I lost all hope in them a long time ago...” (Affidavit, para. 17 and 40).*

## **WITNESSING VIOLENT CRIME**

In response to what seems like a lack of action and effectiveness by the police, people in Khayelitsha often feel that nothing will be done to criminals. As a result, they increasingly resort to taking matters into their own hands. Children and youth often witness vigilante violence.

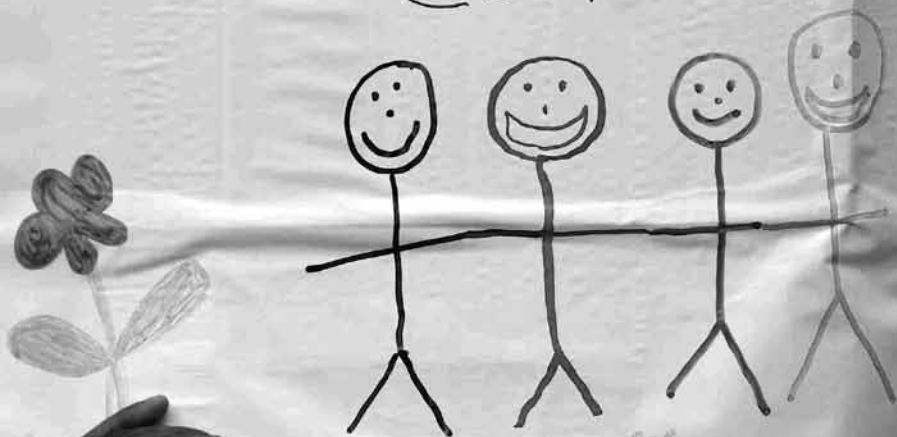
Phumeza writes that she first witnessed an act of vigilantism in the neighbourhood where she grew up when she was 10 years old.

*“A man was caught breaking into a house where members of a stokvel were attempting to split their money. People from the neighbourhood stripped and beat him in the street” (affidavit, para. 27)*

Sifiso says his first experience of serious crime was of vigilantism:

*“The first time I saw serious crime was during 2005-2007 when people in the community burnt criminals because of theft. On one occasion a man was burnt to death by pouring burnt plastic over him. If I can remember correctly the police just watched.” (Sifiso’s Affidavit, para. 11)*

SAFE Communities  
are HAPPY  
Communities



VIVA

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VIVA



# CRIME AND SANITATION

In Phumeza Mlungwana's affidavit, she explains why the SJC campaigns focus so seriously on access to clean and safe toilets. For people in informal settlements, a "toilet or using the bush is a place of danger where violence against the person in the form of assault, robbery and sometimes even rape and murder occur daily" (Phumeza's affidavit, para. 19):

*"In my experience, toilets in informal settlements are not private spaces where a granny, child or any other person can undertake one of the most basic human functions. The SJC's campaign for clean and safe toilets started because most of our members believe that the most dangerous thing to do is to try and relieve themselves."*

Amelia lives in Town Two, Khayelitsha and has worked for TAC since 2003. Town Two has a very high crime rate. When she was living with her mother and the rest of her siblings, she says:

*"No-one in our community would use toilets at night. At least 10 families shared our family toilet and there was only one key. Gangsters would rob and assault people if they went to the toilets or fetched water at night. There were no roads, and lighting of the area was almost non-existent. Making our way to taxis or stations is dangerous because almost everyone relies on public transport. Carrying shopping bags or going to the shop can attract criminals."* (Amelia's affidavit, para. 8)

Amelia also believes that "the failure to provide safe and secure toilets and pathways fundamentally violates our individual rights to freedom and security of the person" (Amelia's affidavit, para. 9).

*"Since I moved to an RDP-type flat in Khayelitsha, I still share toilets outside in the communal yard. My neighbours, landlord and I fear being robbed going to the toilet. Some neighbours have been robbed of DVDs, TVs and even pots of food. I worry every day about my 10 year-old niece who lives with HIV and stays at my home with her mother"*(Amelia's affidavit, para. 18).



# BRUTALITY, MISCONDUCT & CRIMINALITY

According to the Independent Complaints Directorate (ICD) (now the Independent Police Investigative Directorate or IPID) 2011/2012 Annual Report, they received 4,923 new complaints and 5,450 cases of police misconduct. The report notes that “In 2011/12, the ICD had a workload of 6026 cases, including 1,103 cases carried over from the previous year” (p. 26). During 2011/2012, they investigated 4,923 cases, which can be broken down as follows (ICD Annual Report 2011–2012, p. 22):

- 720 cases of deaths in custody
- 1,795 cases of police misconduct
- 88 cases of domestic violence
- 2,320 cases of police criminality

After the ICD investigates each complaint, it can recommend that the complaint be dismissed, treated as a disciplinary matter by SAPS, or referred to the National Prosecution Authority for trial. The ICD reported that it closed a total of 3,207 cases in 2011/12: 50% were cases of misconduct, 37% were criminal cases, and 11% were deaths in police custody and deaths as a result of police action.

Members of the police were accused of a range of crimes, including serious offenses, ranging from corruption and fraud to assault with intent to cause grievous bodily harm, rape, and murder. The ICD recommended SAPS act on 1,276 cases, including 444 for misconduct, 608 for criminal offences, and 168 for deaths (ICD Annual Report 2011–2012, p. 30). In addition, the ICD reports that it referred 545 cases to the Director of Public Prosecutions for prosecution “regarding criminal matters, including deaths” (p. 29). Of these, only 43 led to successful convictions. Eighteen convictions were for “deaths in police custody and deaths as a result of police action”, and 25 convictions were “related to other criminal offences” (ICD Annual Report 2011–2012, p. 30).



## TASK TEAM REPORT

The Task Team Report into the state of policing in Khayelitsha, commissioned by the National Commissioner of the SAPS, also reveals a list of basic ways in which the police fail to investigate crimes.

The report shows that police officers:

- seldom ask crime scene investigators to collect fingerprints or other evidence
- fail to take witness statements or to invite witnesses to look at mug shots
- fail to comply with domestic violence regulations
- fail to ensure that murder dockets were at court on a scheduled date
- fail to register, investigate, inspect/check, or present dockets for inspection
- fail to send charged suspects to court
- fail to comply with instructions in case dockets
- wrongfully release suspects or help them to escape custody

These problems are exacerbated by a lack of discipline, including:

- failure to report on duty/being absent from work without reason
- failure to carry out lawful orders
- refusal to assist a complainant
- shouting at a complainant

Even in cases where investigations were declared to have been “properly investigated”, convictions can still take years. In one case of assault, rape, and murder, it took five years to get a conviction. The two suspects received sentences of 10 years (3 years suspended) and 8 years (3 years suspended).

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## LESSONS LEARNED

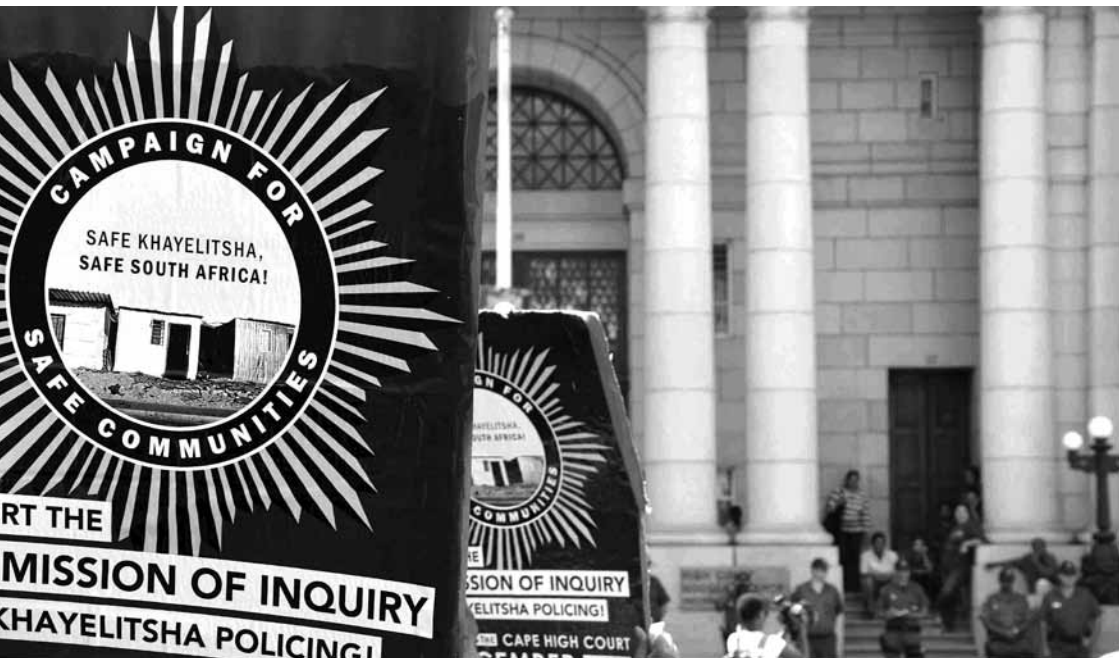
In recent years, top officials in SAPS and Crime Intelligence (such as General Bheki Cele and Richard Mdludli) have been convicted or accused of corruption. This perception of corruption at the top of SAPS sets a bad example for police officers working in the community. As the Campaign for Safe Communities wrote in our Submission on the Green Paper on Policing, a police service built on democratic values must be accountable and have professional ethics.

The conviction of a former National Commissioner in 2012 for corruption further entrenched the public's perception of the police as a service that is compromised and corrupt. That case strengthens the argument for the National Commissioner to be appointed according to their competency, as opposed to being a political appointment.

Following the shooting of Andries Tatane, Marikana and many other incidents of police brutality reported in the media over the last few years, public confidence and trust in the police has never been lower. According to Global Corruption Barometer 2013, a recent Transparency International survey, people in South Africa consider the police to be the most corrupt institution in the country.

The arrest and detention of suspects without just cause appears to be systemic, and exists on such a scale that station commanders must at least have knowledge of it.

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# GENDER-BASED VIOLENCE

*“Everyone in Khayelitsha and most other poor townships are very unsafe because of the actions of a minority, but women, especially young women and children of school-going age, are the real victims of crime.” — Amelia Mfiki (affidavit to the Commission, para. 21)*

A year after Lorna Mlofana was raped and murdered in Khayelitsha, nearly a thousand TAC activists protested at Cape Town’s High Court on 13 December 2004. At this march, TAC handed over a memorandum that drew attention to the effects of crime, particularly on people who had been targets of gender-based violence. TAC described this as a problem of enormous magnitude in Khayelitsha:

*“While we are determined to fight for justice in Lorna’s case, we are also aware that her case is unfortunately not isolated. Many women and children are continuously being sexually abused in Khayelitsha. We witness it constantly through our branches, support groups, and our community education work.” (TAC Newsletter)*

Four years later, despite the communities’ many attempts to engage provincial and national government and the criminal justice system, little had changed. By now, TAC had attended more than 35 court hearings in support of women who had been raped. They had also handed over more than eight memorandums to the different police stations to highlight their concerns around gender-based violence.

On 23 May 2008, TAC again marched in Cape Town to hand over a memorandum on gender-based violence:

*“These acts of violence include random criminal activities, the xenophobic attacks against refugees and immigrants, and hate crimes perpetrated against lesbians and gay men. Instead of places of learning, many of our schools in poor and working-class communities are sites of danger, especially for girls. The rights to dignity, life, health, and*

*bodily integrity are violated on a daily basis.” (“Memorandum on Gender Based Violence for march in Cape Town.”)*

TAC demanded that all other stakeholders take proper responsibility to address the crisis in the criminal justice system. It asked the provincial government to designate an additional acute rape crisis centre for rape survivors in Khayelitsha, encourage more people to use the services, and improve how they are coordinated (TAC, “Memorandum”).

By now, more social justice and community-based organisations were campaigning for better safety, security, and policing. The memorandum was signed by a range of organisations, including Equal Education, LoveLife, POPCRU, Triangle Project, and Rape Crisis, as well as 23 schools.

In 2011, Human Rights Watch published a report that highlighted violence and discrimination against black lesbians and transgender men (HRW, 'We'll Show You You're a Woman'). The report describes the protections provided for people in the Constitution, but notes:

*“Social attitudes lag: recent social surveys demonstrate a wide gap between the ideals of the constitution and public attitudes toward such individuals. Negative public attitudes towards homosexuality go hand in hand with a broader pattern of discrimination, violence, hatred, and extreme prejudice against people known or assumed to be lesbian, gay, and transgender, or those who violate gender and sexual norms in appearance or conduct (such as women playing soccer, dressing in a masculine manner, and refusing to date men). And constitutional protections are greatly weakened by the state’s failure to adequately enforce them.” (HRW, p. 1, emphasis added.)*

The people interviewed for the report describe horrific examples of sexual violence, threats, and intimidation. What often makes the situation worse is that the perpetrators of gender-based violence are not seen to be prosecuted.

**"Rape survivors face the trauma of seeing their attackers at large..."**



The report found that lesbians and transgender men do not have faith in the police, “from whom many fear secondary victimization rather than protection”; it notes that “Such concerns are not without justification; in several instances, police themselves have perpetrated abuse and violence” (HRW, p. 3).

*“All too often ... rape survivors face the trauma of seeing their attackers at large after the attack; this also serves to intimidate the survivors and erode their already fragile confidence in the police and the criminal justice system. This problem is a common one, not limited to the rape of lesbians” (HRW, p. 37).*

Describing the attitudes and behaviour by members of the police, the report suggests that homophobia is still rife within the police and that little has changed:

*“Of those interviewees who approached the police, most spoke of police verbally abusing and demeaning them and their friends and family. Several people said that police seemed more preoccupied with how lesbians have sex than with securing justice. Their testimonies — spanning more than a decade — suggest that there has been little improvement over time.” (HRW, p. 46.)*

As the HRW report points out, these negative experiences of lesbians and transgender men, added to the range of other systemic failings on the part of SAPS and the judicial system, have led to “an overwhelming lack of faith in law enforcement and in the criminal justice system as a whole” (p. 54).

“At the age of 21 Lorna Mlofana, a single-mother living openly with HIV, was raped and murdered on 13th December 2003 in Town Two Khayelitsha. She was murdered because she lived openly with HIV. She was a TAC educator and activist. TAC and its partner organisations in the Khayelitsha community rallied to campaign for justice for Lorna and her family. The case was to take almost six years to come to some form of completion.” (Mandla’s affidavit, para. 80.)

TAC’s campaign to achieve justice for Lorna and her family became a major struggle and consumed significant human and financial resources. “TAC and community members struggled for about three years, following up with the police station and investigators and demonstrating at the Magistrates Court about the lack of progress on the case. It was eventually transferred to the Cape High Court...” (Mandla’s affidavit, para. 83.8).

Mandla, Zackie, Amelia Mfiki, and Vuyiseka Dubula were among the many people campaigning for justice for Lorna. Mandla organised the campaign in relation to Lorna’s murder. In order to keep up with progress on the case, he liaised with the Khayelitsha SAPS, including the detective on the case, as well as the prosecutor. As Zackie Achmat wrote in his affidavit to the High Court, “This tragedy played out in the criminal justice system, including SAPS, over almost six years (December 2003 – September 2009).”

In 2004 TAC campaigned around Lorna’s murder in e-news letters, statements and memoranda. First, they provided support to Lorna Mlofana’s family and liaised between SAPS and her family. SAPS provided no victim support for the family, and the police and the prosecutors failed to communicate with Lorna’s family.

The case was postponed ±15 times. TAC attended every hearing at the Khayelitsha Magistrates’ Court where they picketed and observed the proceedings, and often handed a memorandum to SAPS or the provincial government. SAPS lost evidence and failed to conduct proper forensic investigations (for example, taking crime scene photos). There were so many delays and postponements that one of the victims and the State’s main witness died before the case ended.

In his affidavit opposing the Commission, Western Cape Provincial Commissioner Anton Lamoer refers to an internal police review that concluded Lorna's case had been properly investigated (The Task Team Report). However, Mandla explains that the community felt differently:

*"The shortcomings in the investigation and prosecution in this case alone demonstrate the systemic inadequacies in the police services and the broader criminal justice system" (Mandla's affidavit, para. 84–85).*

Eventually, on 27 November 2009, TAC learnt that one of the people convicted of Lorna's murder had successfully appealed against his conviction. TAC only discovered this by accident, when someone from TAC saw the accused in the community. As Mandla explains:

*"The failure of the SAPS or the prosecution to inform the victim's family of the appeal and its outcome caused great consternation and contributed to a loss of faith in the criminal justice system and particularly, the police. Personally, I was shattered and came to believe from the experience of Lorna Mlofana's case that the system is broken. Every postponement led to disappointment for [Lorna's] family, friends, and comrades ... and added to the tension of the family and friends of the accused" (Mandla's affidavit, para. 84–85).*

When the accused were sentenced on 16th of February 2006, TAC issued a statement which said:

*"Justice in this case was achieved because of the persistent activism from TAC who attended over a dozen court appearances in the last two years. Many of these were postponed causing much frustration...Most women who experience violence in South Africa, as well as their families and loved ones, are let down by the criminal justice system. As long as it took to achieve justice for Lorna Mlofana's family, it takes much longer for most other cases of this nature. Many murders and rapes are never solved or investigated properly because of the criminal justice system's lack of resources." (Mandla's affidavit, para. 85.)*









# LGBTI VIOLENCE

Zoliswa Nkonyana lived openly as a black lesbian in Khayelitsha. She was brutally murdered because of this by a group of men on 4 February 2006. Nine men, mostly under 18, were arrested for her murder, although about 20 men had taken part in the hate crime.

05 February 2008: The magistrate makes a point of criticising the State for gross negligence for failing to ensure the presence of witnesses at the court.

20 May 2008: TAC members demonstrate outside the magistrate court. They demand witness protection; access to information about the case and investigation of hate crimes.

23 May 2008: TAC marches in Cape Town against gender-based violence (attended by 5,000 people) and hand over a memorandum to the Ministers of Police, Justice, Health, and Social Development.

06 August 2008: An inter-faith service is held at St George's Cathedral for hate crimes.

16 November 2009: TAC and its allies again mobilise a presence inside and outside the court. The defence tells the court that the police took statements from two of the defendants when they were still minors, without their parents or lawyers present.

07 September 2010: These two minors are acquitted because their confessions had been obtained unlawfully.

15 September 2010: Four of the accused escape from custody with the help of a police sergeant, causing enormous anger in the community. The SJC and its partners mobilise to protest against the negligence involved in the escape.

19 September 2010: The four escaped suspects are rearrested. More than 600 people from the SJC, TAC, Free Gender, Equal Education, and Triangle Project picket Parliament. They hand over a memorandum to the MEC for Community Safety (Albert Fritz), the City of Cape Town Mayoral Committee Member for Safety and Security, Alderman JP Smith, the Minister of Police (Nathi Mthethwa), and the Minister of Justice (Jeff Radebe).

06 October 2010: After a child in the area is raped and a group of TAC members are attacked by a gang of armed men, the SJC asks for an urgent meeting with the MEC for Community Safety and the Mayoral Committee Member for Safety and Security to discuss the safety of people in Khayelitsha.

25 October 2010: The organisations who filed the initial complaint with Premier Zille hold a meeting where they agree to have a series of discussions with the authorities responsible for the criminal justice system in Khayelitsha.

26 November 2010: The SJC again writes to the MEC for Community Safety, the Provincial Commissioner, and others. The letter complains of inadequate communication between the various departments responsible for safety and criminal justice in Khayelitsha. It notes that there was agreement in principle to establish an investigation into safety in Khayelitsha and the working of the criminal justice system in the area, to be headed by a former judge.

18 February 2011: In a letter, MEC Fritz indicates that the University of the Western Cape law faculty has agreed to set up an independent investigation team into the criminal justice system in Khayelitsha.

10 March 2011: Zoliswa's case is postponed for another month. Police had failed to verify the handwriting for one of the accused before the court date.

14 March 2011: Minister of Justice and Constitutional Development, Jeff Radebe, meets representatives from Free Gender and Triangle Project, and other LGBTI people from across the country regarding "corrective rape" and violence against black working-class lesbians. He promises to set up a Task Team to deal with LGBTI hate crimes but in April the case is postponed yet again.

03 October 2011: SJC, TAC, Free Gender, Triangle Project, and Ndifuna Ukwazi issue another press statement calling for a commission of inquiry.

04 October 2011 More than 500 activists from SJC, TAC, Free Gender, Triangle Project, and Ndifuna Ukwazi march outside the Provincial Legislature, calling on MEC Dan Plato to institute a commission of inquiry.

11 October 2011: Four of the accused are found guilty of Zoliswa's murder.

01 February 2012: Almost six years after Zoliswa's murder, the four men are sentenced to 18 years in prison, of which four years were suspended.

The case demonstrated problems at every level of the criminal justice system. There were significant failures at the stages of investigation, prosecution, and correctional services. Amelia Mfiki notes that the case was postponed about 50 times between 2006 and 2012. She also recalls that the magistrate hearing the case called the state "grossly negligent" for failing to secure the presence of witnesses in the court.

Despite these failures, the SAPS Task Team assessing the case concluded that it had been properly investigated. This finding is patently insupportable.

**...the magistrate hearing  
the case called the state  
"grossly negligent" for failing  
to secure the presence of  
witnesses in the court.**



# THE OFFICIAL COMPLAINT NOVEMBER 2011

TAC, the SJC, Equal Education, Free Gender, Triangle Project, and Ndifuna Ukwazi lodged an official complaint with Premier Zille on 28 November 2011. The complaint was also sent to the National and Provincial SAPS, the Department of Justice and Constitutional Development, the Department of Correctional Services, and the National Prosecuting Authority.

The organisations called for Premier Zille to launch a Commission of Inquiry to investigate their allegations of police inefficiency and a breakdown in relations between the police and the community of Khayelitsha.

The organisations also pointed to “a plague of what appears to have been vigilante killings in which at least 13 alleged suspects were killed during the first half of the year 2012” (*Minister of Police and Others v Premier of the Western Cape and Others* (2012), para. 2).

This spate of vigilante killings brought a new urgency to the need for an inquiry. Although the organisations asked that Metro Police be included in the scope of the Commission, Premier Zille specifically excluded the Metro Police from the terms of the Commission.

This represents a failed opportunity to engage within a larger context, and to address the concerns of other marginalised communities, because similar situations also exist in poorer sections of the Cape Metropolitan Area.

The initial complaint listed eight cases that these organisations described as “only a small sample of the widespread inefficiencies, apathy, incompetence, and systemic failures of policing routinely experienced by Khayelitsha residents”.

The organisations made it clear that their intention was “not to single out a particular department or organ of state, to simply criticise or place blame” but

to identify “the nature and extent of the problems” that affect all the parts of the criminal justice system. They hoped the commission of inquiry would “have positive, tangible results for the community with respect to levels of safety and access to justice”.

By the time the Campaign for Safe Communities was officially launched at the University of Cape Town on 27 March 2013, more than 1,300 people from a variety of organisations and communities attended.

On 15 August 2012 Premier Zille and her Cabinet resolved to institute the Commission into Khayelitsha policing, after the Premier issued a press statement on 2 July 2012 announcing her intentions. The Commission was formally proclaimed in the Government Gazette of 24 August 2012.

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## **LESSONS LEARNED**

National Commissioners need to be held accountable. Officers should receive training before being appointed or promoted.

The police should publish service data more regularly and ensure that this data is independently verified. Performance indicators, other than just statistics, must be developed and used.

Statistics on the prevalence of hate crimes should be published regularly. SAPS should reinforce the importance of spaces in which victims can be dealt with in a dignified and professional manner.

At least one, functional, victim-friendly space with properly trained personnel should be made available at every police station. Properly trained personnel should be allocated to these spaces; if no properly qualified person can be found from within the service, they should be sourced from elsewhere such as civil society.

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## ADELAIDE NGOGWANA

Among other cases of police brutality, misconduct, and criminality that the organisations reported, the case of Adelaide Ngogwana (70) is particularly relevant. The facts of the case are summarised below (Mandla's affidavit, para. 139.1–4).

On the 3rd of October 2010 the police in Khayelitsha's RR Section open fire in a crowded area while pursuing criminals. Mam'u Adelaide Ngogwana, who was in her 70s, is shot in the leg.

The SJC lodges a complaint on Adelaide's behalf with the ICD, now IPID. It asks Mandla to follow this case and asks Joel to follow up with the ICD.

At some point the investigation is transferred to the investigative body known as the Provincial Inspectorate (PI).

In April 2011, seven months after the incident at Adelaide's home, the SJC receives a two-page report from the PI. The report states that the police had been returning fire, had accidentally injured Ms Ngogwana, and that the matter should be regarded as closed. As Mandla explains:

"The report offers no explanation of the Applicants' decision to shoot and it further ignores the insensitive manner in which the police treated Ms Ngogwana following the shooting. Ms Ngogwana, now deceased, was not contacted by the PI to inform her of the outcome of the investigation. There was not even an apology or an attempt to ensure that Ms Ngogwana was receiving treatment or recovering. Nor was medical assistance offered." (Mandla's affidavit, para. 140–41.)



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**LOCAL COMMUNITIES ANYWHERE IN THE  
COUNTRY CAN DEMAND THAT PROVINCES  
TAKE THE RESPONSIBILITY TO ENSURE  
EFFECTIVE, EFFICIENT AND HONEST  
POLICING.**



# MINISTER OF POLICE V PEOPLE OF KHAYELITSHA

However, the work of the Commission was stopped after the Minister of Police and other representatives of the police issued a notice of their motion to halt the Commission on 5 November 2012.

In their motion, the Minister and his fellow applicants asked the court to stop the Commission from issuing subpoenas on members of the police, to put the subpoenas already issued on hold, and to stop the Premier and the Commission from conducting the Commission “in any form whatsoever” (*Minister of Police and others v Premier of the Western Cape and Others* (2012), para. 32).

The applicants included the Minister of Police, the National Commissioner for SAPS, the Provincial Commissioner of SAPS for the Western Cape, the Civilian Secretariat for SAPS, and the heads of the three police stations serving the Khayelitsha area (Khayelitsha, Lingelethu-West, and Harare).

The Minister claimed that Premier Zille’s decision to establish the commission of inquiry was irrational, inconsistent with the Constitution, and unlawful, and asked the court to set aside her decision to establish the commission because it failed “to give effect to the principles of co-operative government and inter-governmental relations”.

In particular, the Minister claimed that allowing the Commission to issue subpoenas against senior members of SAPS “is demeaning, undignified, and is designed to impugn the integrity of the individual members, and the South African Police Service as a whole” (Nathi Mthethwa’s affidavit, p. 15).

The complainant organisations filed papers supporting the Commission. Whereas the Minister of Police argued that the Premier failed in her duties towards co-operative government, Mandla Majola’s affidavit demonstrates that the Premier’s decision to appoint a commission of inquiry was preceded

by a long series of communication and engagement between the complainant organisations, the Premier, and various organs of state.

## FAILED COMMUNICATION

As Mandla wrote in his affidavit:

*“The record of the engagement between the Premier and the Applicants clearly reflects that the Applicants have set their faces against the establishment of the Commission from the outset and (with the exception of the National Commissioner) have failed to engage, or cooperate, at any stage in the process leading to the establishment of the Commission or with the Commission itself.” (Para. 27).*

Premier Zille repeatedly requested the Minister of Police, the National Commissioner of SAPS, and the Western Cape Provincial Commissioners of SAPS to provide input with regard to the complaint. However, despite being granted several extensions within which to respond, the Minister and Commissioners failed to provide the comment requested, either on the complaints or the procedure to be followed.

Almost seven months after the community lodged their official complaint with Premier Zille, the ANC government appointed a new National Commissioner for Police, Mangwashi Riah Phiyega, on the 13th of June 2012.

Although she began to address the issues raised in the complaint, this opportunity was wasted — again because of poor communication and ineffective engagement with the people of Khayelitsha and our organisations. Although the SJC described Commissioner Phiyega as “the first person to attempt to deal with the issues”, she “basically failed to report on progress of her internal investigation” (Campaign for Safe Communities, “Minister of Police and SAPS appeal to Constitutional Court to stop O’Regan/Pikoli Inquiry”).

As the organisations explained later, they only learnt of the Task Team’s report and the Commissioner’s plan to deal with the Khayelitsha SAPS when these were submitted to the Court as part of the Minister’s appeal for the urgent interdict against the Commission.

As the Campaign for Safe Communities would later note in their “Open Letter” to the Premier:

*“In deciding whether to appoint the commission, in early December 2011 Premier Zille asked SAPS to respond to the organisations’ formal legal complaint by January 2012. By August 2012, after numerous extensions, Premier Zille had still not received a substantive response from SAPS to the complaint, giving her no choice but to appoint the commission — which she did on 24 August 2012. SAPS’s failure in this regard, in particular the failure of Minister Nathi Mthethwa, to engage the Premier or the social movements until more than six months after the formal complaint was lodged demonstrates contempt for the people of Khayelitsha in a manner unbecoming of an organ of state.”*

# WESTERN CAPE HIGH COURT

Judge Yekiso, in the majority judgement delivered on 14 January 2013, explained that the Court had a duty to promote “the objects, spirit, and purport of the Constitution”. The Court noted that the SJC, TAC, Equal Education, Triangle Project, and many other partners campaigned for “ten years against the ever deteriorating and despairing conditions of criminal activity and impunity in the greater Khayelitsha area”.

Judge Yekiso noted that, despite numerous attempts to engage with SAPS through the Provincial Commissioner, “Ultimately, the Commission was established without any input from the office of the Provincial Commissioner” (para. 58).

The first time Premier Zille received a substantive response from the National Commissioner, “it had almost been a period of nine months since the Premier first made contact with the Provincial Commissioner, the National Commissioner, as well as the office of the Minister” (para. 62).

Judge Yekiso also noted, however:

*“Apart from raising the fact that the issues raised in the complaint were intricate and complex, the National Commissioner did not state what her plan of action was with regards to dealing with the matter nor the fact that she had, in the interim, established a task team with a view to advising her on the most appropriate method to deal with the complaints. Also, with regards to the National Commissioner, the Premier ultimately established the Commission without any benefit of an input from that office.” (para. 63)*

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# CONSTITUTIONAL COURT

The Minister of Police moved to challenge the ruling in the Constitutional Court. The case was heard in August 2013 and the Constitutional Court passed judgment on 01 October 2013. The Court judgment delivered a small measure of justice for the countless victims of violent crime in Khayelitsha and elsewhere in South Africa.

The Constitutional Court upheld the complaint by the Social Justice Coalition (SJC), Treatment Action Campaign (TAC), Equal Education (EE), Triangle Project (TP) and Ndifuna Ukwazi (NU) saying:

*“The details of incessant crime emerging from the complaint are unsettling. There is much to worry about when the institutions meant to protect vulnerable residents fail or are perceived to be failing” (Constitutional Court judgment).*

This judgment set the first precedent on the powers and duties of the police; the right of communities to complain and hold police accountable; and the duty and right of a province to protect its residents from violent crime and hold the police to account.

This means that local communities anywhere in the country can demand that provinces take the responsibility to ensure effective, efficient and honest policing.

Deputy Chief Justice Dikgang Moseneke, writing on behalf of a unanimous court, held that the O’Regan-Pikoli commission of inquiry into SAPS in Khayelitsha had to continue and reiterated its right to call the police to testify. He said:

*“The police service has been entrusted with a duty to protect the inhabitants of South Africa and to uphold and enforce the law. The Constitution requires accountability and transparency in governance. It establishes a general framework for oversight as well as specific mechanisms through which a province may exact accountability. The complainants [SJC, TAC, EE, TP and NU] sought to invoke these oversight mechanisms which will be best served by a commission entrusted with powers of subpoena over members of the police service” (Constitutional Court judgment).*

The judgment dismissed SAPS's argument that the subpoena amounts to "control over the police service" as an "unwarranted overstatement that has no merit." The Constitutional Court further held that:

*"A Premier and the province bear the duty to respect, protect and promote the fundamental rights of people within the province. In the case, the Premier is obliged to take reasonable steps to shield the residents of Khayelitsha from an unrelenting invasion of their fundamental rights" (Constitutional Court judgment).*





# SUPPORT THE COMMISSION

We welcome the decision of the Constitutional Court and call on the police, and all spheres of government to cooperate fully with the O'Regan–Pikoli Commission in the interests of the people of Khayelitsha, who deserve to be heard.

It is a disgrace that the Minister of Police and the SAPS have wasted taxpayers' money by fighting the Commission in the courts. Rather, they need to embrace and cooperate with the Commission — a process aimed solely at improving levels of safety and access to justice for Khayelitsha and beyond.

In December 2012 the complainant organisations wrote an open letter to President Zuma, Minister of Police Nathi Mthethwa, Premier Zille, and Cape Town's mayor Patricia de Lille.

In their letter, they declared that “Delaying or not fully cooperating with the Commission serves to worsen a spiralling crisis.” The organisations expressed their disappointment with the Minister and SAPS's decision to oppose the work of the Commission, urging them to cooperate with the Commission and to help it investigate a complex and urgent issue:

*“The organisations understand that addressing crime is not easy and that the police cannot do it alone. There can be no doubt that safety is also about infrastructure such as water and sanitation access, street and area lighting, and housing and employment — which is why the City of Cape Town must participate. However, the Minister and SAPS cannot hide behind this development imperative. Their constitutional duty is to protect the lives and property of every person in South Africa. They have a duty to prevent, combat, and investigate crime as well as to apprehend criminals. Instead of addressing the issues raised by the complaint substantively, the Minister has initiated a political and legal war against the Premier while people in Khayelitsha continue*

*to experience extremely violent crime. Minister Mthethwa's resistance and failure to cooperate with the Commission is morally untenable, legally unsustainable, and factually flawed."*

It is hoped that recommendations made by the Commission will be developed into a 5-year plan to increase safety; and to ensure proper detection, investigation and conviction of crimes. Specifically, murder, gender-based violence, hate crimes and assault. Safety means creating safe schools, streets, homes, transport, and public spaces.

## **JUSTICE MUST BE DONE AND SEEN TO BE DONE**

The state has a duty to respect, protect, promote, and fulfil the rights of all the people living in South Africa — including people in poorer communities. This duty belongs equally to both the South African Police Service (SAPS) and the Cape Town Municipal Police Department (Metro Police).

The Constitution and the Bill of Rights give people in South Africa several rights. This includes the rights to equality, human dignity, life, freedom and security of the person, privacy, movement, property, housing, access to courts, the right to be free from all forms of violence from either public or private sources, and the right not to be treated or punished in a cruel, inhuman or degrading way.

It also gives specific rights to people who have been arrested, detained, and accused of a crime in a court (The Constitution of the Republic of South Africa, sections 9–12, 14, 21, 25–26, 34–35). Other legislation extends specific rights to victims of crime, children, and people in informal and in illegal settlements (The Children's Act, No. 38 of 2005 (as amended); The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 (as amended); The South African Services Charter for Victims of Crime, 2004; and the Domestic Violence Act, No. 116 of 1998.).

The Constitution also sets out the basic values and principles governing public administration, including all elements of the criminal justice system, which must align with the democratic values and principles enshrined in the Constitution (The Constitution, section 195(1)).

As a result, these government departments should promote and maintain a high standard of professional ethics, promote efficient, economic and effective use of resources, provide services impartially, fairly, equitably and

without bias, and cultivate good human-resource management and career-development practices. However, in the experience of the organisations, their members, and other residents of Khayelitsha, these rights are regularly and widely ignored or violated.

The systemic failure of the police (including Metro Police) includes the failure to prevent, combat and investigate crime, take statements, open cases and apprehend criminals. This also violates the requirements for professional, ethical, impartial, effective, and efficient public administration.

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