



Campaign for Safe Communities

Memorandum to Parliament

11 March 2013

Att: Portfolio Committee on Police

Today, we turn to the Parliament of South Africa, representatives of all our people to address the crisis in the South African Police Service (SAPS) including deaths in detention, arbitrary detention without trial, routine torture, abuse of power, xenophobia and powerlessness of the Independent Police Investigative Directorate (IPID) and the failure of political, civilian and managerial oversight.

The Campaign for Safe Communities (CSC) presenting this memorandum for your urgent consideration is an alliance of community-based social movements and organisations, provincial and national civil society, academic institutions and religious leaders.

The Campaign for Safe Communities was convened by the Social Justice Coalition, Treatment Action Campaign, Equal Education and Ndifuna Ukwazi after a decade long campaign for safety and justice in Khayelitsha.

In our experience, police brutality and abuse of power in our communities is systemic.

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Deaths in detention and rape by SAPS officers

1. Mido Macia, a Mozambican taxi driver, died a brutal death at the hands of the SAPS –responsible for and required by the Constitution to protect and secure every person in our country. Macia leaves behind a widow and an orphan. The cruel public torture and abuse of power, the reported torture at Daveyton police station, and ultimately the avoidable and predictable death of Macia has shocked the conscience of people locally and globally.
2. The horrific visuals of the Macia being handcuffed to a police vehicle and dragged through the streets of Daveyton also epitomises the ingrained xenophobia in SAPS.
3. Two cases of rape by SAPS officers have reached our Constitutional Court and the Minister of Police was required to pay damages. The rape of K. was a brutal assault by three policemen while the rape of F., a minor raped by a detective, shows a patriarchal disregard for women and girls.
4. In 2011/12, there were 720 deaths in police custody. The IPID completed investigations into more than 800 such matters in the same year. Only 13 convictions and approximately 23 acquittals were secured.
5. We have no data on cases of rape that police are implicated in or the number of convictions.
6. The fact that many of these were referred for internal investigation is a travesty of justice. The families of the dead have the right to a public trial or hearing. Lawyers for Human Rights points out that civil claims against SAPS last year for deaths in custody, rape, assault and destruction of property amounted to R14 billion and resulted in the pay out of hundreds of millions of rands.
7. We urgently request that the Portfolio Committee on Police:
 - 7.1. Requests IPID to appear before it with all the case dockets of deaths in detention or as a result of police action for 2011/2012. We also ask

Parliament to make these case dockets available to the Campaign for Safe Communities.

7.2. Requests IPID to make available the case dockets for rape and other sexual offences committed by SAPS officers over the same period.

7.3. Must take action to recover damages from those SAPS officers found guilty of deaths in custody, rape, assault and destruction of property.

Xenophobia in the police force

8. Mido Macia's death again signifies the willingness of the police to use brutal violence against immigrants, refugees and asylum seekers.
9. Since 2008, the Treatment Action Campaign and the Social Justice Coalition have witnessed and monitored unlawful xenophobic actions by SAPS officers. Deaths and assaults of Somali refugees as well as robberies are routinely not investigated. SAPS officers are also directly involved in extortion and aggravated robberies of Somali traders. PASSOP and other organisations supporting refugees, immigrants and asylum-seekers have identified similar patterns in relation to people from Zimbabwe, Democratic Republic of the Congo and elsewhere in Africa.
10. Since 2008, Somali traders in Khayelitsha have continued to suffer violent attacks, robbery and blackmail. Members of this vulnerable community constitute the primary victims of business crime in the area. In their study "**Elusive Justice: Somali Traders' Access to Formal and Informal Justice in the Western Cape**" ("Elusive Justice"), Vanya Gastrow and Roni Amit made the following findings:

"In an address to Parliament in February 2012, the Western Cape Provincial Commissioner of Police stated that nearly 70 percent of business robbery victims in the province were foreign national spaza shopkeepers.

Police intelligence officers at the Khayelitsha police station reported that foreign traders—most of whom were Somali—made up 96.5 percent of business robbery victims in the station’s jurisdiction, despite owning only 50 percent of shops in the area. South African nationals, by contrast, owned the other 50 percent of shops but made up only 3.5 percent of victims. Forty percent of business robberies involved attempted murder or murder.”

11. The study shows greater community sympathy in Khayelitsha towards Somali traders following the xenophobic violence. However, the study is a severe indictment of the role of SAPS.

12. We bring the following case to your attention:

12.1. On 3 February SAPS officers arrived at a Somali-owned spaza shop in Makhaza, Khayelitsha. They identified themselves as police and said they were searching for guns. They had no search warrant but the owner and his employee let them inside, not wanting to argue with police.

12.2. Once inside the back of the shop, the officers proceeded to destroy property in the search for money - eventually stealing R5000 in cash and R2800 in airtime vouchers. When the owner of the shop tried to stop the police from robbing him, police punched him in the head – leaving him with a swollen and bruised face. The officers wore gloves so as not to leave fingerprints.

12.3. A member of the public took down the number plates of the SAPS vehicles used in this case of aggravated robbery - BRT744B and BRX023B.

12.4. A case was opened at Harare police station (CAS152/02/2013) but the victims are justifiably scared that the police who robbed them will now further victimise them. This is a clear case of xenophobic violence perpetrated by police who know that Somalis are a marginalised group in Khayelitsha, with little recourse to justice and an easy target for corrupt SAPS officers.

12.5. The SJC followed-up with Major-General Ndlovu, the Cluster Commander for the area. To the best of our knowledge no-one has been charged for this crime to date.

13. We urge the Portfolio Committee on Police to take action in this case to ensure justice without retribution by SAPS.

Pre-trial detention and arbitrary arrests

14. The National Commissioner's Task Team Report into Khayelitsha SAPS (August 2012) found that people routinely spend more than 48 hours in detention and are then released without charge.

15. People routinely spend weeks and months in prison waiting for their bail applications to be finalised.

16. A paper published by the Open Society Foundation in June 2011 showed that people awaiting trial are at a greater risk to have their rights violated than those who have been sentenced.

17. Pre-trial detainees are entirely in the power of detaining authorities who often perceive torture and other forms of ill-treatment as the easiest and fastest way to obtain information or extract a confession.

18. The Task Team Report also demonstrated that to improve conviction rates and demonstrate improved performance, most arrests in Khayelitsha and more than 50% of convictions and diversion to community programmes are for the possession of pocket knives. Prosecutors insist that the vast majority of people arrested for possessing pocket knives pose no threat to communities.

Torture, cruel, inhuman and degrading punishment

19. Torture, cruel, inhuman and degrading punishment are all constitutionally and statutorily prohibited.

20. South Africa has signed and ratified the United Nations Convention Against Torture but has been slow to pass legislation to its effect. A particular shortcoming that South Africa currently faces is that torture is not legally defined in South Africa. Although the Prevention and Combating of Torture of Persons Bill is currently being considered by Parliament it has some shortcomings particularly with regard to the definition of torture.
21. SAPS reports more than 2000 cases of assault by its officers every year. It fails to report the extent of injury and when deaths in custody occur to what extent that is a result of torture. Wits Law Clinic has records covering more than three decades indicating systemic torture and coerced confessions by SAPS.

Therefore:

21.1. We urge the Portfolio Committee on Police to urgently pass the Prevention and Combating of Torture of Persons Bill.

21.2. We also ask that the Prevention and Combating of Torture of Persons Bill's definition of torture be brought in line with the Constitution.

A crisis of Lawlessness and Leadership

22. Two decades after democracy and with government's commitment to transform SAPS, it remains an institution where the inherited culture of colonial and apartheid violence is systemic.
23. Three Commissioners: Fivaz, Selebi and Cele were removed for failing to uphold ethical and legal standards. The public execution of activist Andries Tatane, the Marikana Massacre and the shooting of demonstrators all indicate that the culture of violence is systemic. People fear the police; they are angry with the police; they have lost faith in its capacity to deal with violence and crime.

Parliamentary, civilian and community oversight

24. The Campaign for Safe Communities wants to help government build a democratic and accountable police service under ethical and professional command. We want safe and effective police stations in every community.
25. Parliamentary oversight is indispensable to this task. IPID is weak and largely ineffective. Independent investigation and oversight must be strengthened in law.
26. The Civilian Secretariat must be separated from SAPS. Community Policing and Safety Forums in working-class and poor communities have little or no capacity. Parliament has to assist in remedying this weakness.

Therefore :

27. We urge the Portfolio Committee on Police to urgently hold public hearings with the purpose of beginning the process of a reconstruction of the SAPS.
28. On 27th March 2013, the Campaign for Safe Communities will be launched at the University of Cape Town. We will forward an official invitation in due course and hereby invite you to address the launch.

Yours faithfully,

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(Social Justice Coalition)

Dimitri Holtzman
(Equal Education)

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