

**COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE
INEFFICIENCY IN KHAYELITSHA AND A BREAKDOWN IN RELATIONS
BETWEEN THE COMMUNITY AND POLICE IN KHAYELITSHA**

**OPENING STATEMENT ON BEHALF OF THE COMPLAINANT
ORGANISATIONS**

INTRODUCTION

1. This Commission of Inquiry was established following complaints lodged with the Premier of the Western Cape by civil society organisations about police inefficiency in Khayelitsha, as well as a breakdown in relations between the police and members of that community. These civil society organisations are the Social Justice Coalition; Ndifuna Ukwazi; Equal Education; Treatment Action Campaign and the Triangle Project. All of these organisations except Ndifuna Ukwazi and Triangle Project (which, though not based in Khayelitsha, work closely with the other organisations) are based in Khayelitsha and have been doing work on a daily basis in Khayelitsha, some of them since 2001. Most of the members of these organisations, their office bearers and employees live and work in Khayelitsha. Many have experienced first-hand the inefficient policing and breakdown in trust between the community and SAPS which forms the subject matter of this Commission's investigations.
2. Since 2003 these 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 as well as the greater criminal justice system. The organisations have submitted numerous petitions and memoranda to various levels of government in this regard. These were invariably ignored. 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. Ultimately the civil society organisations were compelled to request the Premier to appoint a judicial commission of inquiry in terms of s 206(5) of the Constitution to investigate policing in Khayelitsha, driven by

their shared conviction, gained through ongoing work with the residents of Khayelitsha, that the community does not have access to adequate policing or support for victims of crime.

3. Given this background, the beginning of the public hearings of this Commission into the matters complained of has come not a moment too soon for the residents of Khayelitsha. For, to borrow a phrase from the judgement of the Deputy Judge President of the Constitutional Court, Justice Moseneke when dismissing the Minister of Police's attempt to, among other things, have the establishment of this Commission of Inquiry declared unconstitutional, *"the rights and interests of these [approximately 750 000] residents [of Khayelitsha] lie at the heart of this dispute."*
4. It is important therefore to remind ourselves throughout the workings of this Commission of Inquiry; lest we all forget as we perform our various roles towards its proper functioning; that this Commission is about the interests of real people who have names; families; aspirations; and are entitled to the same constitutional protections as you and I. The members of the Khayelitsha community who have been directly and indirectly affected by police inefficiency are too many to call out here by name. They include Zoliswa Nkonyana; Makhosandile Scare Qezo; Angy Peter; Nandipha Makeke; Lorna Mlofana and their families and friends. Some of these families are here today. They wish to tell this Commission that although it may be too late for Zoliswa and Nandipha to enjoy the most basic of human rights - the right to life; human dignity; equality; freedom and security of person - it is not too late for their families and fellow members of the Khayelitsha community. These families wish to address the SAPS members present here today; the officials from the City; DOC; the national

prosecuting authority and those responsible for the administration of the courts in Khayelitsha. These families wish to say that they have come to this Commission because their families have paid the ultimate price of the failure by state agencies to meet their constitutional obligations to them, and they believe that their families and their community deserve better.

5. We must not forget that the Commission seeks to look into testimonies borne of the daily experiences by members of this community of their relationship with SAPS and other functionaries in the criminal justice system. Those testimonies speak to repeated infringements of this community's 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.
6. And as the Commission begins to look into the issues complained of by this community, it is also important to acknowledge the historic nature of this moment and the process about to unfold. This is the first time in its history that civil society has used the Constitution of the Republic in such a manner in the advancement of core and central constitutional rights. This is no small victory for the women, men and children who make up the Khayelitsha community, for it is for the protection and vindication of the rights of ordinary individuals that our Constitution came into being.

THE COMPLAINTS ARE JUSTIFIED

7. During the course of these hearings we will set out to place evidence before this Commission which shows beyond any shadow of a doubt that the community's complaints are justified.

8. We have placed before this Commission evidence which shows that:
 - 8.1 Members of the Khayelitsha community routinely experience violations of their constitutional rights in their dealings with the police.
 - 8.2 Girls and women are often 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 women in their own homes.
 - 8.3 While the high levels of crime affect all community members, they particularly impact on children, girls, the elderly and groups vulnerable to hate crimes such as refugees, asylum seekers, immigrants, lesbian, gay, bisexual, transgender and intersex people. 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 service for rape victims.
 - 8.4 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.
 - 8.5 Trust and faith in the police, in their ability to protect residents from harm, to combat crime, to investigate once a crime has taken place has been eroded in Khayelitsha. The brutal acts of vigilantism that

have claimed dozens of lives in recent years are the shocking end result of this erosion.

- 8.6 The Khayelitsha community often suffers as a result of 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.
- 8.7 Investigating officers routinely do not secure the presence of witnesses at trials, resulting in lengthy postponements. Investigations and securing of crime scenes such as rape, gathering of evidence, interviewing of witnesses and other basic procedures are often ignored or performed incompletely.
- 8.8 There is insufficient visible policing in Khayelitsha in general. It is almost non-existent in its informal settlements. No attempt is made to provide appropriate 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 escape. The absence of visible policing means that children, particularly those of school-going age are vulnerable to criminals.

- 8.9 The failures of the Khayelitsha police to prevent, combat and investigate crime, take down statements, open cases, apprehend criminals are systemic in nature and they constitute a violation of 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.
9. To a large extent the breakdown in SAPS community relations as well as the inefficiencies complained of will be confirmed by SAPS' own evidence before this Commission. For instance in the report compiled by the Divisional Commissioner in its Inspectorate, the late Lt General Tshabalala as a result of the Inspectorate's own investigations of the complaints which led to the establishment of this Commission, the Inspectorate found after looking into the state of police-community relations that the constitutional structures established to enhance police-community relations are not functioning effectively and optimised in Khayelitsha.
10. The Inspectorate further found the following inefficiencies:
- 10.1 Resources allocated to sector policing at the Khayelitsha police station are on the decrease. As the demand for services increases more members allocated to sector policing are redeployed to perform other functions.
- 10.2 The fact that one member and one vehicle was at the time deployed in each of the sectors at the Khayelitsha police station created a

situation whereby sectors are jointly policed by 2 members from different sectors. This had a negative impact on both the visibility of SAPS in the sectors as well as on the reaction time to attend to complaints.

10.3 At the Harare and Lingeletu West police stations, the Provincial Guidelines in relation to sector policing were not being complied with.

10.4 At Harare and Lingeletu West police stations a shortage of resources is hampering the implementation of effective sector policing.

11. We will contend that in view of the importance of sector policing to SAPS as a strategy it employs in a geographical approach to prevent crime and to strengthen police-community relationships, the absence of effective sector policing in Khayelitsha is a major factor contributing to the inefficiency of SAPS in the area and the breakdown of relations between SAPS and the community of Khayelitsha.

12. The Commission will hear that in response to complaints from the community of Khayelitsha regarding the manner in which their complaints to SAPS are dealt with and handled, the Inspectorate investigated the

processes followed at all 3 police stations in Khayelitsha when attending to complaints, and found that the process followed in all 3 police stations is time consuming as complainants are sent from pillar to post; it also results in poor service delivery; and the procedure followed in all three stations in contrary to that stipulated in National Instruction 3 of 2011 which clearly defines the processes to be followed.

13. The Commission will hear from SAPS' own evidence that:

- 13.1 Not all complaints received from complainants are captured on the incident report system; complaints are not captured on the incident report system after the complaints have already been attended to.
- 13.2 Occurrence book entries are also not being made of all complaints received.
- 13.3 The data integrity of police reaction time is questionable owing to poor record keeping of complaints received.
- 13.4 A large number of suspects are detained, not charged and then later released, the general reason being that suspects often cannot be linked with the crimes committed.

- 13.5 SAPS members appear to be arresting and detaining suspects without the requisite reasonable suspicion. The arresting members do not make statements indicating the reasons for arrests made.
- 13.6 Suspects are generally not charged within 48 hours.
- 13.7 The investigation of case dockets by detectives does not result in much success. Very little impact is made on serious crimes such as robberies and housebreakings.
- 13.8 In most of these cases no facial identification profiles are compiled even where the complainants had described the suspects, witness statements are not always taken, the complainants / witnesses are not given the opportunity of viewing the photo albums of criminals available at SAPS Police Stations.
- 13.9 The crime information officers at the police stations do not assist the investigation officers by providing positive information. Although the same suspects are described in different case dockets, no information on these suspects is presented.
- 13.10 Crime scene experts are not always summoned to attend at crime scenes.

- 13.11 Witness statements are not obtained before case dockets are sent to court which leads to cases being withdrawn.
- 13.12 Case dockets are closed without stolen property with serial numbers being circulated.
- 13.13 Case dockets are withdrawn in court because statements by the arresting officers are not filed in the case dockets.
14. The Commission will hear that after its investigations of the complaints, the Inspectorate concluded that *'the South African Police Service cannot claim that the services that are rendered to the community in the Khayelitsha area are of such a standard that the community does not have any reason for complaining.'*
15. The Inspectorate's conclusion, though demure, was correct. What the evidence before this Commission shows is that in the three police stations in Khayelitsha the basic building blocks required for a functional police service are either broken, dysfunctional or missing altogether.

CONCLUSION

16. We are here to find solutions.
17. We acknowledge there is no panacea to magically fix decades of deep-rooted, ingrained systemic issues. Creating safe communities goes far beyond having an effective and efficient criminal justice system. However,

the fact is that this system – in Khayelitsha and elsewhere – is broken and is failing the people it is meant to serve.

18. This is not an attack on the police. It is not about pointing fingers at specific officers and calling for them to lose their jobs. The issues we are dealing with are systemic in nature. Our purpose, from the start, has always been to improve safety and access to justice, but also to improve the conditions that police work under – in doing so improving the standards of policing they can provide to communities.
19. The hope is that this process will root out some of the practices in the SAPS that go against the very notion of safety and justice – corruption, brutality, abuse of power, mismanagement, poor record keeping, inadequate monitoring and insufficient internal procedures to deal with offences. At the same time the Commission will be able to strengthen efforts to assist those honest, hard-working police, who are under-resourced, overburdened, who work in highly stressful, thankless, unenviable conditions without sufficient support – be it in the form of working vehicles, computers or counselling. In Khayelitsha many detectives routinely have more than 100 case dockets at any one time. We cannot expect an investigator to work such case loads and do each and every one justice.
20. We acknowledge that the conditions that lead to crime, violence, lack of safety and so on are far beyond the mandate of the police. To truly address the range of problems requires coordination between different spheres of government and a whole host of departments, communities, civil society and other actors and needs to be an ongoing process.

21. We thus maintain that it is not only SAPS that should be a part of this investigation, but the City's Metro Police and other law enforcement agencies including the Anti-Land Invasion Unit.
22. However, it is undeniable that the situation as it stands in Khayelitsha requires serious intervention to begin addressing problems within SAPS – problems that when dealt with will have noticeably positive effects for communities and police. It is clear that internal interventions and systems have been insufficient. To shy away from understanding and dealing with serious challenges because they are complicated and because their root causes are multiple, would be to shirk our responsibilities. What can be improved now must be and what will take many years must begin now.
23. Finally, detractors of the Khayelitsha community's efforts to have this Commission of Inquiry established have argued that there is no need for this process because the issues about which this community complains are not unique to it. It is a sad and graphic truth of life in South Africa that there are too many communities forced to live in the same inhuman conditions as Khayelitsha; who experience the same helplessness about crime and court processes and must rely on a police service and criminal justice system they perceive as unable or unwilling to help them. But to say that the reasons for some of these realities do not warrant the attention of such an inquiry is perhaps a sign that we have grown accustomed to witnessing the suffering of others and to think nothing of it.
24. Tragically Lorna Mlofana, Zoliswa Nkonyana and Nandipha Makeke are not here today to give their own testimonies. Their families are here. The faces of their families ought to remind not just the state parties complained

about in this Commission but all of us that to be part of the solution is a powerful way to rid ourselves of our complacency.

25. For years people have felt that their cries are not heard, they have felt forgotten, let down, ignored, that their voices don't count, that their rights are not important – this process has the potential to bring some form of healing and catharsis, a new hope for a better dispensation. But this is not enough. We know that police and communities have to work in concert if we are ever to achieve safety – and it is the hope that this Commission will contribute to mending this relationship, and emerge with practical recommendations to improve safety, justice and the conditions under which police work.
26. The success of the fight against crime in Khayelitsha and elsewhere in our country depends on the existence of a working partnership and on-going joint cooperation between the community and members of the SAPS. The community of Khayelitsha and the complainant organisations are committed to the success of this partnership.

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22 January 2014

