

Safety, Justice & People's Power

A Companion to the
O'Regan-Pikoli Commission of Inquiry
into Policing in Khayelitsha



In late 2013, after a decade of civil-society campaign work that culminated in a landmark victory at the Constitutional Court, the O'Regan-Pikoli Commission of Inquiry was finally established.

At Lookout Hill in Khayelitsha's Ilitha Park, its public hearings brought together community members, SAPS officers and a range of experts whose testimonies revealed many examples of police inefficiency and a breakdown in relations between SAPS and the people of Khayelitsha.

In its official report, entitled *Towards a Safer Khayelitsha*, the Commission presented the Minister of Police with valuable findings and recommendations, applicable to police work across all South African working-class communities and informal settlements.

And yet, more than a year after its publication, none of the Commission's recommendations have been implemented. The residents of Khayelitsha, like those in other deprived areas, are still as vulnerable to violent crime and inadequate policing as they were before the Commission was established.

Because all people are equally entitled to a safe and dignified existence, this book seeks to revive and reinforce the Commission's indispensable evidence, findings and recommendations.

ONWARDS TO A SAFER
KHAYELITSHA AND A
SAFER SOUTH AFRICA!







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By Richard Conyngham and
The Trantraal Brothers



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**This book is dedicated to
all victims and survivors of
violent crime in South Africa**



“ I would like to tell this Commission that none of my family members are okay. My family is still saying that if the law cannot take its course then they want to avenge my son’s death. ”

~ Beauty Thosholo
Domestic worker, Site B
30 January 2014

“ I felt very helpless and traumatised. I do not understand what happened to my case. My husband is back at home and I am very scared of him. I tried to protect myself with a protection order, but that has not worked. I do not understand how the police and the court have allowed the case to be dismissed, and for my husband to just move back into my house, just because of a lack of a signature on a form. They have my statement and my daughter’s statement. ”

~ Ms ND
Spaza shop owner, Khayelitsha
14 November 2013





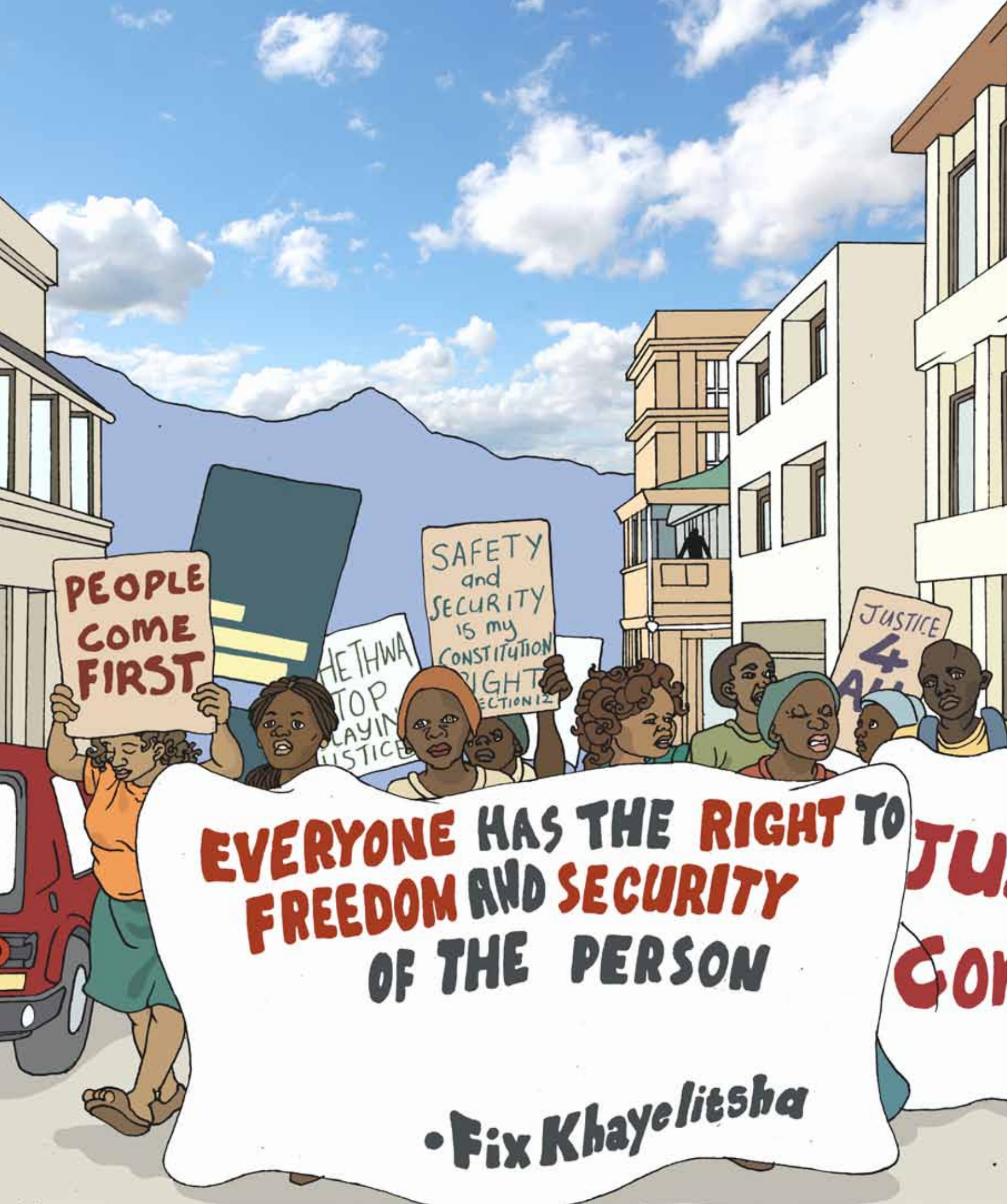
“ My management accepts and welcomes any intervention from anybody to better the service to the community and we really look forward to the outcome of this Commission so that we can see and evaluate how can we better the service to the various communities that we serve because we will not only use the outcome of this Commission for the three police stations but we will look broader in the Western Province itself to all 150 police stations. ”

~ Lieutenant General Arno Lamoer
SAPS Provincial Commissioner
Western Cape, 1 April 2014

“ I think all communities should acknowledge that SAPS cannot do this alone. ”

~ Phumeza Mlungwana
General Secretary, SJC
24 January 2014





PEOPLE
COME
FIRST

SAFETY
and
SECURITY
is my
CONSTITUTION
RIGHT

JUSTICE
4
ALL

HETHWA
STOP
PLAYING
JUSTICE

EVERYONE HAS THE RIGHT TO
FREEDOM AND SECURITY
OF THE PERSON

• Fix Khayelitsha

Introduction

The O'Regan-Pikoli Commission came about as the result of a ten-year struggle for safety and justice in poor and working-class communities

After more than two decades of democracy, the majority of people in Khayelitsha continue to live without the basic services taken for granted in South Africa's historically white suburbs. The poverty and indignity endured by this large community on a daily basis is alarming – most of its residents live in shacks, many have limited access to water, sanitation and electricity, and tens of thousands of its young people cannot find work.

Safety, too, is a huge priority. Crime is rampant in Khayelitsha and it manifests in the most brutal ways. Vulnerable residents are cruelly victimised, the young are exposed to extreme acts of violence, and sometimes mobs take justice into their own hands.

In late 2014, the O'Regan-Pikoli Commission published its 540-page report, entitled *Towards a Safer Khayelitsha*. This document – based on almost two years of meticulous investigation, 40 days of public hearings, 50,000 pages of police documents, 400 dockets, dozens of expert reports and approximately 200 affidavits – contained both the Commission's findings

and its recommendations as to how police inefficiency and a breakdown of relations between the South African Police Service (SAPS) and the community of Khayelitsha should be addressed.

The Commission came about as the result of a ten-year struggle for safety and justice in poor and working-class communities. This began with the work of the Treatment Action Campaign (TAC) in Khayelitsha, where, between 2003 and 2006, two of the organisation's members – Lorna Mlofana and Nandipha Makeke – became the victims of appalling gender-based violence.

In 2010, the Social Justice Coalition (SJC), an organisation established in response to the spate of xenophobic violence that broke out in May 2008, then led the call for a Commission of Inquiry as part of its Justice for All Campaign.

On 28 November 2011, together with five other civil-society organisations – TAC, Equal Education (EE), Free Gender, the Triangle Project and Ndifuna Ukwazi (NU) – the SJC lodged an official complaint with Western Cape Premier Helen Zille, SAPS, the National Prosecuting Authority (NPA), and other government stakeholders.

Even though, from the outset, the 'complainant organisations' made it clear that their aim was "not to single out a particular department or organ of state, to simply criticise or place blame", the Premier initially resisted the request.

But when the campaign gained momentum and took to the streets in protest, in August 2012 she and her cabinet came around to the idea, drawing up a mandate which regrettably excluded certain provincial and City-governed bodies – such as the Metro Police and Anti-Land Invasion Unit – that work closely with SAPS across Greater Cape Town.

To lead the Inquiry, two highly experienced Commissioners were appointed: former Constitutional Court Justice Kate O'Regan (as Chairperson)



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and former head of the NPA, Advocate Vusi Pikoli. They were supported by four additional staff members: Advocates Nazreen Bawa and Thembalihle Sidaki (Evidence Leaders); Amanda Dissel (Secretary); and Khangelani Rawuza (Office Administrator). The Commission began its work immediately by issuing provisional working methods, setting down dates for the public hearings, and sending letters to the National Commissioner of Police, the Western Cape Provincial Commissioner and the three Khayelitsha station commanders, requesting their cooperation, as well as documents and other information.

Almost two months later, SAPS had provided nothing but a single acknowledgment of receipt, leaving the Commission with little option but to issue subpoenas.

The Minister of Police, Nathi Mthethwa, then launched legal proceedings in the hope of nullifying the subpoenas and setting aside Premier Zille's earlier decision to appoint the Commission.

Although it was argued that the Premier had failed to engage with SAPS at national and provincial level in the build-up to the Commission's establishment, evidence suggested precisely the opposite: that, in failing to cooperate for over six months, the Minister himself had displayed a worrying disregard for the people of Khayelitsha.

In January 2013, after Judge James Yekiso of the Western Cape High Court had ruled in favour of the Commission going ahead, the Minister decided to challenge once more – this time at the Constitutional Court.

Handed down on 1 October 2013, the ConCourt's judgment was upheld by a unanimous bench and set a number of precedents. Chief among these was its affirmation of the provincial government's powers of oversight in relations to SAPS. It also reinforced the right of any South African community to demand effective, efficient and respectful policing. In the words of Deputy Chief Justice Dikgang Moseneke:

THE DETAILS OF INCESSANT CRIME EMERGING FROM THE COMPLAINT ARE UNSETTLING.

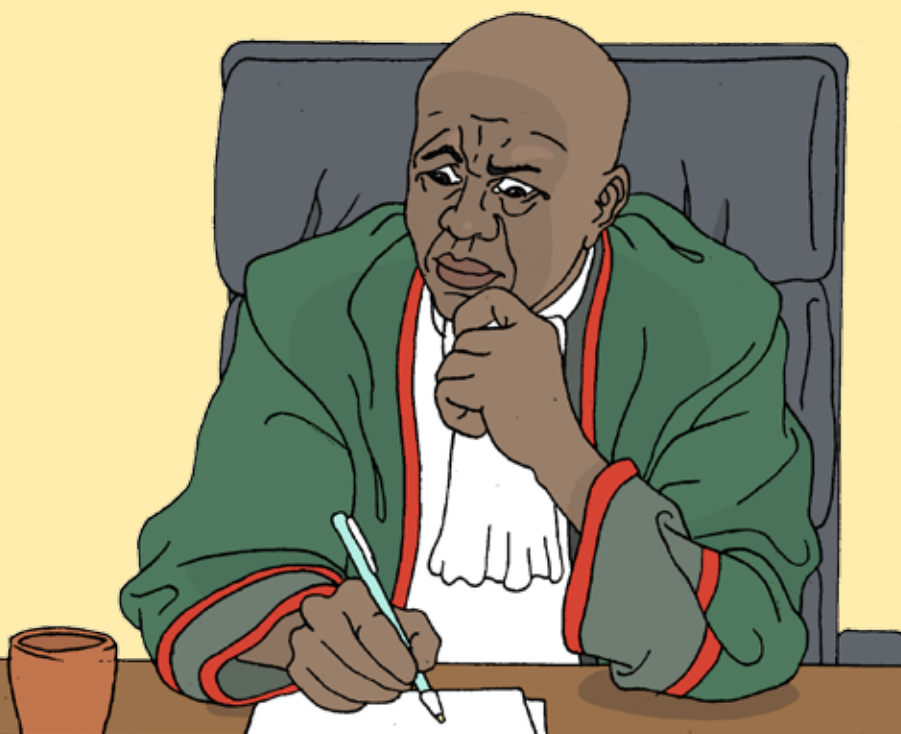
THERE IS MUCH TO WORRY ABOUT WHEN THE INSTITUTIONS THAT ARE MEANT TO PROTECT VULNERABLE RESIDENTS FAIL, OR ARE PERCEIVED TO BE FAILING.

THE POLICE SERVICE HAS BEEN ENTRUSTED WITH THE DUTY TO PROTECT THE INHABITANTS OF SOUTH AFRICA AND TO UPHOLD AND ENFORCE THE LAW.

THE CONSTITUTION REQUIRES ACCOUNTABILITY AND TRANSPARENCY IN GOVERNANCE. AND IT ESTABLISHES BOTH A GENERAL FRAMEWORK FOR OVERSIGHT AS WELL AS SPECIFIC MECHANISMS THROUGH WHICH A PROVINCE MAY EXACT ACCOUNTABILITY.

THE COMPLAINANTS 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.

~ Deputy Chief Justice
Dikgang Moseneke
Constitutional Court



Finally free to proceed, the Commission set up its office in Harare, Khayelitsha. Its staff began taking statements from community members, meeting with a range of government agencies and Khayelitsha-based organisations, journalists and radio DJs, issuing press statements, distributing posters and publicising the establishment and mandate of the Commission.

Between January and April 2014, two phases of public hearings were held in the hall at Lookout Hill in Khayelitsha's Ilitha Park. These were consistently well-attended by a large audience of mostly community members, as well as representatives of the complainant organisations, SAPS members and journalists. The back section of the hall was set aside for an exhibition on Khayelitsha's history with Kate Ncisana, one of the township's original residents, at hand to answer questions.

Over two days in late January, the Commission – together with legal counsel for the complainants, SAPS, the Department of Community Safety (DOCS) and the City of Cape Town – also conducted inspections in loco across Khayelitsha, visiting all three police stations, the cluster command office and several informal settlements.

Though painstaking and at times uneasy, the Commission's work was neither an elaborate witch hunt nor a costly exercise in public shaming.

On the contrary, its members understood their purpose to be purely investigative and forward-looking – to get to the bottom of the complainants' allegations and to propose empathetic recommendations to alleviate SAPS's failures and reconcile the residents of Khayelitsha with the men and women tasked with protecting them.

Given that this all came about as the result of a decade-long struggle which began with the community itself, it was a reminder of what can be achieved by even the most vulnerable citizens in the name of justice.



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Above: Community members welcome Judge Yekiso's decision outside the Western Cape High Court. **Below:** The Lookout Hill Tourism Centre in Ilitha Park, Khayelitsha, where the Commission's public hearings were held.

Opposite page, clockwise from top-left: The Commission, accompanied by community members, SAPS officers, lawyers and journalists, on Hlobo Street in Ilitha Park during the inspections in loco; Justice O'Regan and Advocate Pikoli peruse a docket at SAPS Lingeletu West; a packed hall at Lookout Hill on the opening day of proceedings; the Commissioners together with Evidence Leaders Thembalihle Sidaki and Nazreen Bawa at a preliminary press conference.





KHAYELITSHA





Khayelitsha

In the early 1980s, Khayelitsha was nothing more than a barren expanse of sand dunes and wind-hardened scrub. Today, its three SAPS precincts encompass one of South Africa's most neglected and troubled residential areas, with an impoverished community of some 425,000 residents, and a murder rate unmatched by any other nationwide.

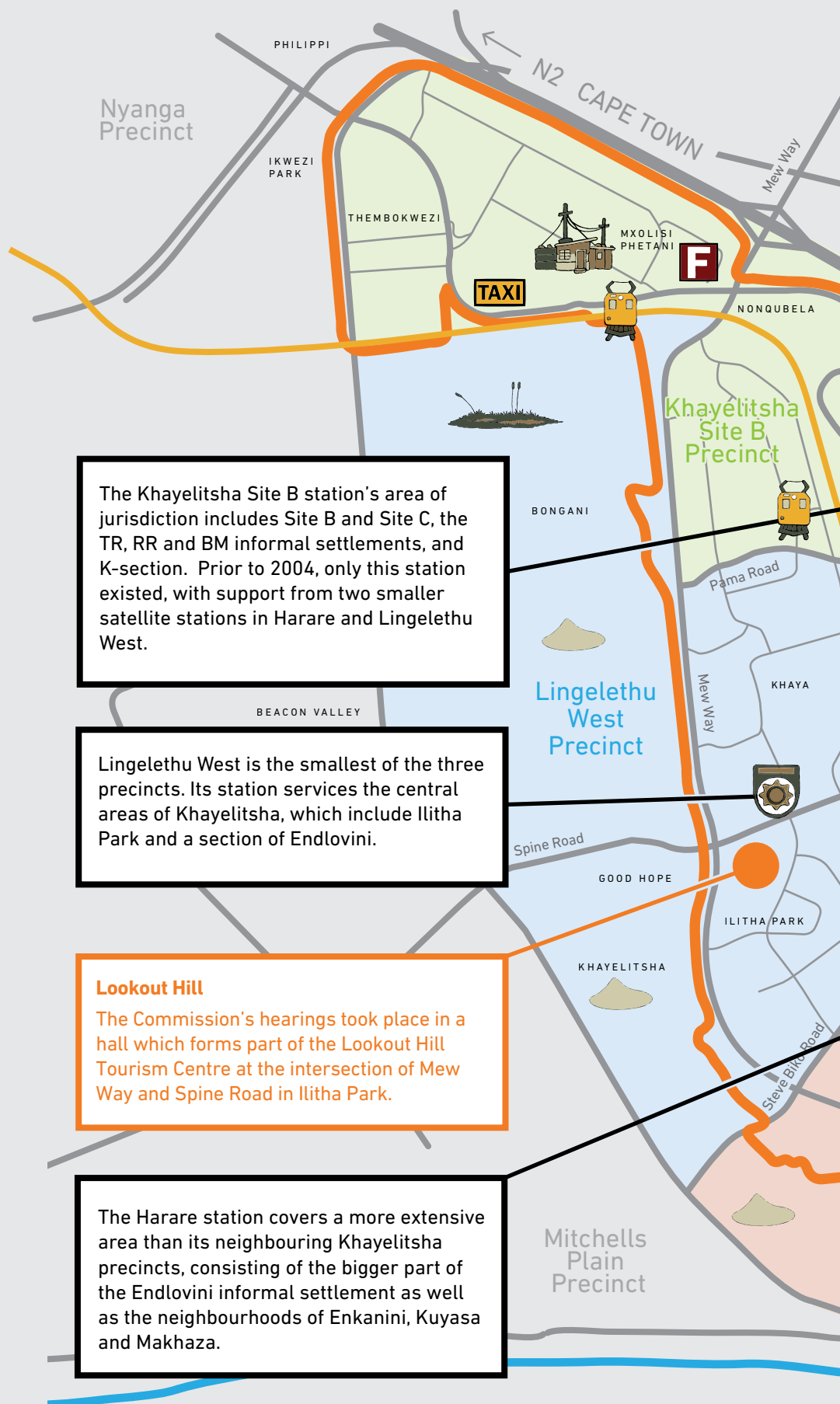
In anticipation of the testimonies to follow, this chapter focuses on Khayelitsha itself. Drawing on the evidence of expert witnesses – which helped the Commission to grasp the township's history, geography, demographics and socio-economic conditions – it highlights the many cruel and complex factors which, for decades, have conspired against the women, men and children who call Khayelitsha their home.

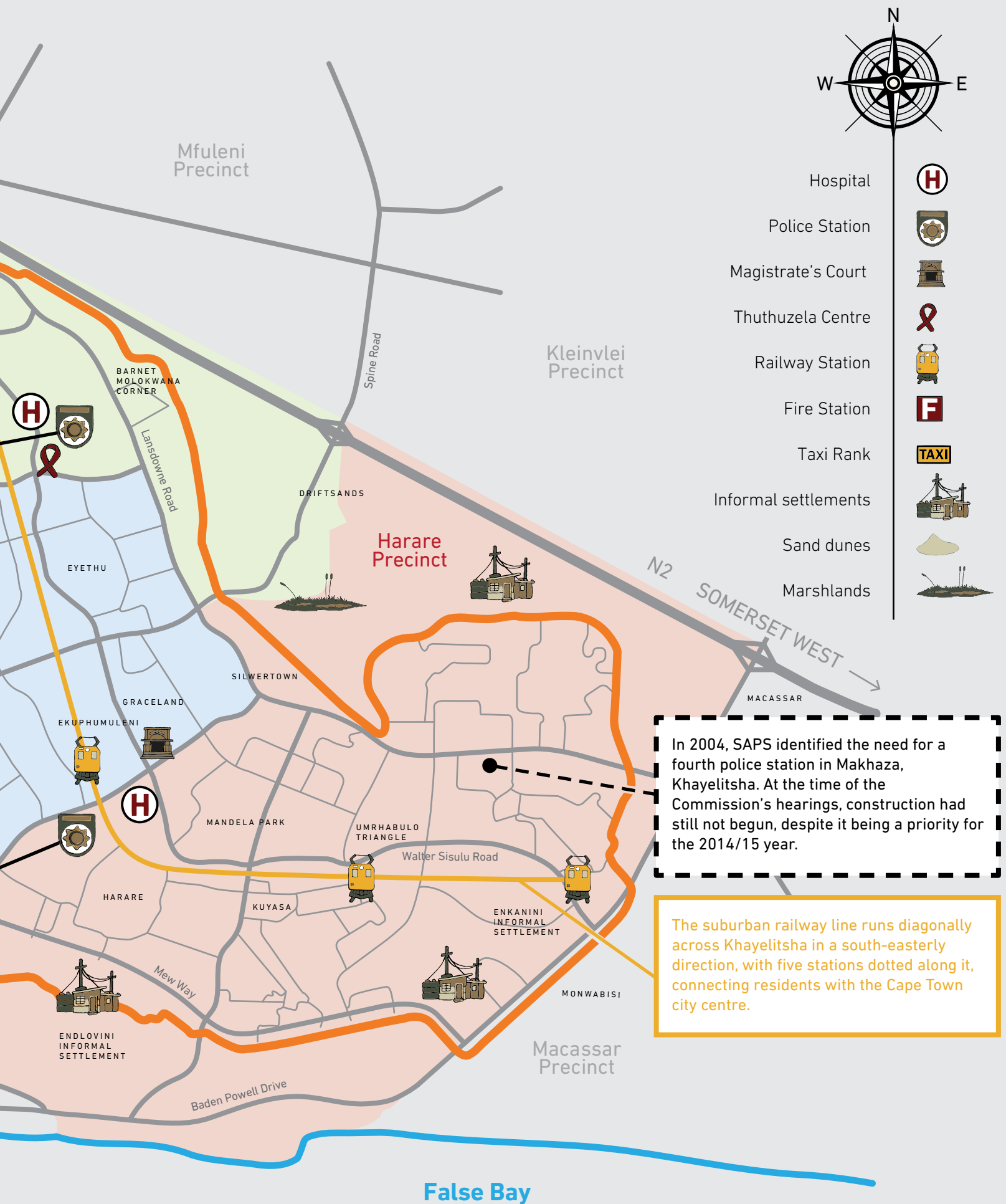
Map of Khayelitsha

Detached from most of its neighbouring residential areas by 'buffer zones' of uninhabited, inhospitable terrain – to the north, the N2 national highway; to the north-east, a wetland; and to the south and south-east, a swathe of sand dunes and the sea – Khayelitsha, much like townships born from the 1950 Group Areas Act, exists in a state of physical and socio-economic exclusion.

While its northern, western and southern perimeters are fringed by densely-packed informal settlements, its more established formal suburbs – largely situated in the centre – are either bounded or interspersed by clusters of informal dwellings.

Roughly triangular or boot-like in shape, and covering some 43 square kilometres of the Cape Flats, Khayelitsha is divided into three police precincts – namely, Khayelitsha Site B, Harare and Lingeletu West – each of which has its own police station.





Life on the Margins: The Origins of Khayelitsha

To understand Khayelitsha is to understand its history as an African township on the outermost fringe of an apartheid city

To understand Khayelitsha is to understand its history as an African township on the outermost fringe of an apartheid city. Its origins can be traced back as far as 1955, the year in which the Coloured Labour Preference Policy (CLPP) was introduced, curbing Africans – and particularly African women – from entering the major urban areas of the Cape Province.

The 'Eiselen line' (a demarcation imposed by then-Secretary of Natives Affairs, Dr W. Eiselen) split the region into two parts. To the north-east lay the rural poverty of the present-day Eastern Cape; to the south-west lay the commercial hub of Cape Town and its affluent surrounds where new stringent mechanisms favouring Whites and, to a lesser degree, Coloureds, left thousands of Africans with no choice but to seek their livelihoods elsewhere.

It was not until the economic boom of the 1960s and early 1970s that the flow of rural migrants into Cape Town again began to rise. This movement was initiated by a new generation of women, born beyond the Eiselen line, who re-settled in informal areas like Crossroads and Nyanga, nearer to the

city and to their partners (many of whom were migrant labourers living in single-sex hostels).

The ripple-effect of the 1976 Soweto Uprising added further impetus to the migration. But the Vorster government refused to yield, and, in 1977, turned its attention to regaining control over South Africa's unstable urban perimeters.

In August of that year, tens of thousands of African men and women were left homeless when bulldozers demolished the informal settlements of Modderdam, Unibel and Werkgenot near Bellville, east of Cape Town. Steve Biko's death was soon to follow, coupled with the widespread banning and detention of Black Consciousness supporters.

Despite this heightened turmoil, Crossroads, although only established in 1975, had rapidly grown into a vibrant and dynamic community. Having been granted 'Emergency Camp' status by the government, it fell beyond the reach of the Bantu Administration Boards, allowing its dynamic Women's Committee to forge a strong network among faith-based and anti-apartheid organisations.





Above: At the height of apartheid, Minister of Cooperation and Development Dr Piet Koornof led the forced removal of thousands of Africans across the country.

But this breathing space was not to last for long. As Crossroads grew into a symbol of resistance against apartheid, so the debate over its future became more hotly contested. In 1979, the newly-appointed Minister of Cooperation and Development, Dr Piet Koornof, launched plans to establish 'New Crossroads' – a settlement situated slightly further away from Cape Town – with the promise of 2,575 new houses for African residents.

On the face of it, the proposal represented an encouraging departure from the CLPP. And yet many residents of 'Old Crossroads' remained ambivalent. Relocation was likely to involve documentation, which would inevitably put 'illegal' residents at an even greater risk of being exposed and evicted. The proposed plan thus seemed to be less a pragmatic solution than a veiled attempt to strengthen government control over Africans.

And indeed, over the next five years, the government did little to alleviate these concerns. If Koornof was not stalling for time or reneging on earlier commitments, the police and defence forces were launching wave upon wave of early-morning raids, arrests and mass-deportations to the Ciskei and Transkei. Living under the constant threat of forced removal, residents of Crossroads, Nyanga and other neighbouring Cape Flats settlements grew increasingly desperate.

In March 1982, 57 women and men from Nyanga Bush, accompanied by 14

children, entered St George's Cathedral and began praying and fasting for their right to live and work in the city. A stone's throw from Parliament and Newspaper House, the protest soon attracted media attention worldwide. After 23 days, on 1 April, the government finally relented to the mounting pressure and Koornof agreed to grant 850 people immunity from arrest during the subsequent weeks of negotiations.

Yet another year passed and still little had changed. While the government continued to oscillate between threats and concessions, right across the Cape Flats the residents defiantly stood their ground.

One night in February 1983, in the township of KTC, a short distance from Old Crossroads, hundreds of plastic shelters were erected by people who were 'legally' living in Cape Town but had nowhere to stay. Almost immediately, the dwellings were destroyed by a large cordon of police with dogs and armoured vehicles. Still, however, the people refused to leave.

As tensions heightened, Koornof's response finally came in the form of yet another unsatisfactory plan: to consolidate all "African squatters" into a new "high density township", situated on the remote eastern perimeter of Cape Town, flanked by Mitchells Plain, the N2 highway and the False Bay coastline.

Housing would consist of simple, ceilingless tin huts, valued at R1010 in 1983, each erected on a 170m² plot. Neither electricity nor cleaning facilities would be provided, only a bucket for each hut, and for every four huts a single communal tap. Construction began in May 1983.

And so, out of a fraught mix of racial exclusion, political pressure, violence and repression, Khayelitsha (isiXhosa for 'new home') was born. For a brief period, it appeared relatively clean and organised, especially compared with Crossroads where violence and poverty-related diseases had dramatically increased. Yet, as history was soon to show, Khayelitsha was no better equipped for longer-term prosperity.





Unlike slums or ghettos elsewhere in South Africa – and in particular those scattered across the northern mining regions – Khayelitsha had not in any way been conceived as a coherent residential community associated with a distinct employment site.

Situated some 35 km away from the city centre, and linked to it by a rudimentary transport system, it was destined to expand into a large-scale settlement of commuters whose daily lives consisted of leaving home early, getting home late, travelling under difficult if not dangerous conditions and, in doing so, incurring expenses well beyond their means. As Helen Suzman observed in 1985:

“There is no direct bus or train from Khayelitsha into Cape Town, and some blacks have to change buses twice to get into the city. It costs them about R3 a day for transport, and many of them are lucky if they earn R10 a day.”

Three months after its creation, Khayelitsha was home to 439 residents. Africans living in other, more established townships nearer to the city were still reluctant to move, however, fearful that if they did they would be sent back to the homelands. The government, meanwhile, although beginning to accept that its influx control policies were failing in the Western Cape, was not yet ready to loosen its grip on the African population.

In mid-1985, when P. W. Botha had declared a State of Emergency across two-thirds of the country and hundreds of United Democratic Front-aligned activists were detained, areas like Crossroads and KTC once again became the focus of a ruthless government clampdown.

The trauma of these countless upheavals was to leave an indelible mark on the township's collective psyche

Opposite page: A retail outlet (top) and a row of tin huts in Khayelitsha, c. 1983.



The result was one of the largest forced removals ever to take place in Cape Town. Reluctantly, Khayelitsha mushroomed. The government had initially predicted that the settlement's population would not exceed 120,000, but by late 1985 only 5,000 two-roomed huts had been constructed and over 150,000 people were already living in the area.

In many homes, the number of residents far exceeded the intended occupancy. And after the 'fires of 1986' ripped through Crossroads and KTC a year later, hundreds of homeless families turned up in Khayelitsha, clinging on to their few remaining belongings.

The trauma of these countless upheavals was to leave an indelible mark on the township's collective psyche.

In the years leading up to South Africa's democratic transition, fierce political rivalries flared up in Khayelitsha. The first municipal elections were bitterly contested, and in March 1990, eight of the township's 20

elected councillors and five residents appeared in court on the charges of murder and attempted murder.

Several months later, in response to a march organised by the Khayelitsha Civic Association, police fired on protestors, killing at least ten and injuring over 50. All too quickly, brutality – whether inflicted by the residents themselves or by the police – became part and parcel of everyday life.

The Commissioners Justice O'Regan and Advocate Pikoli thus found there to be an enduring relationship between Khayelitsha's troubled past and the present-day dysfunctional coexistence between the township's police and residents. What grew out of the role played by the security forces during the 1980s was a strong perception among civilians that SAPS was complicit in provoking and sustaining social and political turmoil.



Kate Ncisana and her daughter Nondumiso, pictured here in 1983, participated in the St George's Cathedral fast and were among Khayelitsha's earliest residents.



~ Justice Kate O'Regan and Advocate Vusi Pikoli



Top: African men and women left homeless near Nyanga after a pre-dawn raid in 1981.
Bottom: Khayelitsha residents queue for treatment outside the Town Two Clinic in December 2013.

Khayelitsha Today: Demographics and Socio-economic Conditions

Drawing on Census 2011 and other official data sources, Professor Jeremy Seekings of UCT's Centre for Social Science Research and leading demographer Professor Charles Simkins provided the Commission with facts and figures relating to Khayelitsha's demographics and socio-economic conditions.

Demographics

In 2011, Khayelitsha had between 370,000 and 426,000 residents, and, in 2014, between 400,000 and 450,000, reflecting an average growth rate of just under 2% per annum. 98.7% of Khayelitsha's population describe themselves as Black/African and 89.8% specify isiXhosa as their first language. Approximately 28.2% of Khayelitsha's residents are aged between 0 and 14 years, 68.8% are between 15 and 59 years, and 3% are over 60 years.

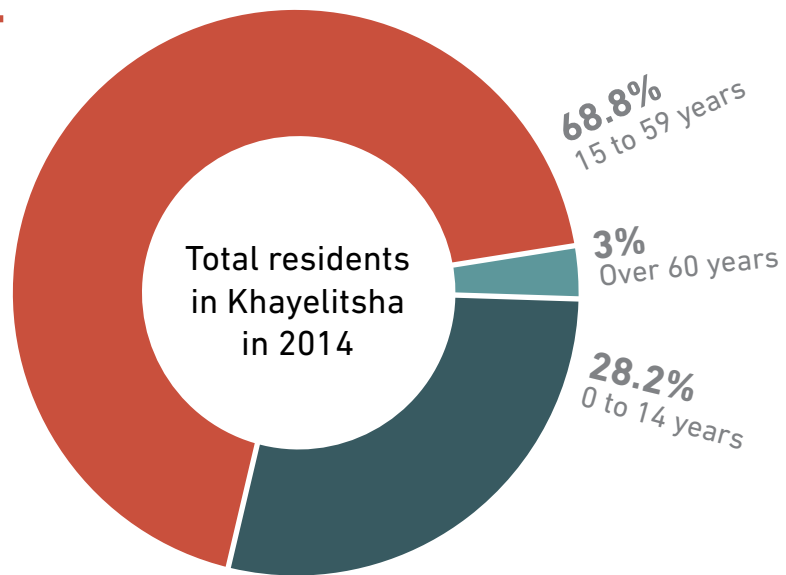
Schooling

56,362 Khayelitsha
Learners in 2014

5% Residents who have
a tertiary qualification

50% Residents who have
not completed Grade 12

In Khayelitsha there are 33 public primary schools, 19 public secondary schools and a small scattering of independent schools. Professor Simkins noted that approximately 20-22% of Khayelitsha's population should be enrolled in school. This implied that the township's total enrollment was about 8% below average.



± 425,000

Residents in Khayelitsha

[Approx. for 2014, showing a 2% annual increase since 2011]



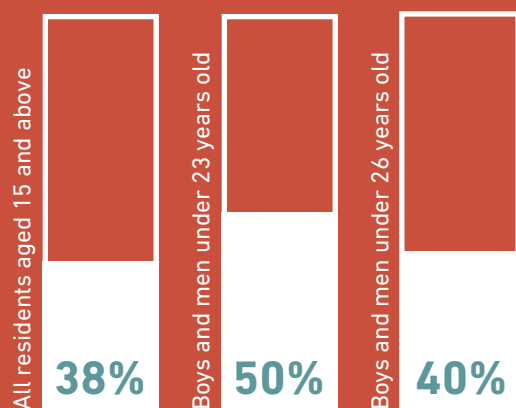
33

public primary schools

19

public secondary schools



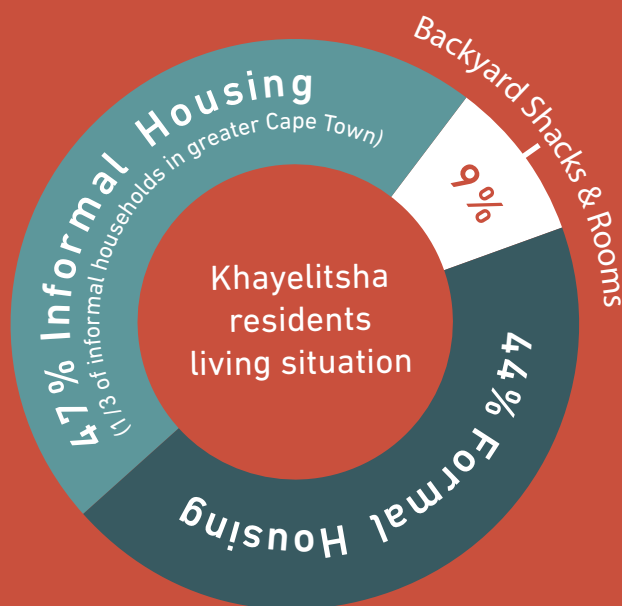


Unemployment in Khayelitsha

R20,000

Median household income per annum

[Half that of the median for Cape Town as a whole]



65.4%
of all Khayelitsha households

have no access
to piped water
inside their homes

28.3%

do not have access to flush
toilets connected to
the sewerage system

Employment and Income

In 2011, the official unemployment rate of people aged 15 and above in Khayelitsha was 38% (35% for males and 41% for females).

In 2011, Khayelitsha's median household income of R20,000 per annum was half that of Cape Town as a whole. With fewer resources to spare, security is thus an unaffordable luxury for most Khayelitsha families.

Housing and Infrastructure

Of approximately 119,000 households in Khayelitsha, 52,000 live in formal housing (made from brick or concrete), 55,000 live in shacks in the informal settlements, and 11,000 in backyard shacks and rooms. Khayelitsha accounts for almost one third of the informal households in Cape Town.

In 2011, 42% of households in Khayelitsha were headed by women. Over recent decades this percentage has arisen countrywide owing to the increased economic independence of women as well as changing marital and familial norms.

Within Khayelitsha's informal settlements, only 5% of households have access to water inside their dwellings. In 2011, 8,000 households in Khayelitsha reported using bucket toilets and 12,000 had no toilet at all





The Eight Original Complainants

When the complainant organisations first wrote to Premier Zille in late 2011, attached to their letter was an appendix which described eight incidents of crime and police inefficiency in Khayelitsha. Having provided the initial impetus which fuelled the years-long campaign for a safer Khayelitsha, the victims in question were later referred to by the Commission as the 'eight original complainants'.

Zoliswa Nkonyana

Zoliswa's case ended up being postponed an astonishing 45 times (43 of which were at the request of the accused and their lawyers)

In early 2006, Zoliswa Nkonyana, a young woman of 19 years and an activist working with the organisation Free Gender, was living openly as a lesbian in Khayelitsha.

On the night of 6 February, she and some friends went to Phela's Tavern, a popular drinking spot in E Section.

After some time, a quarrel broke out at the bar between Zoliswa, her friends, and some men and women, one of whom – according to Eric Ntabazalila of Cape Town's NPA – was the tavern's patroness. "The argument," Ntabazalila later explained, "was about Zoliswa and her friends wanting to use the ladies' toilet while pretending to be 'tom boys'."

As tensions rose and the threats levelled at the lesbian women became more menacing, Zoliswa and one of her friends decided to leave. A group of nine men between the ages of 17 and 20 followed them.

In a desperate attempt to flee, the women were separated, and soon after the mob caught up with Zoliswa outside a school on Zingisa Street. Witnesses later recalled that she was flung to the ground, kicked, stabbed repeatedly, and pelted with bricks.

Gladwell Madindi, Zoliswa's stepfather, was the first family member to reach the scene. He rushed Zoliswa to Site B Day Hospital but upon their arrival a doctor declared her dead.

Zoliswa's loved ones then began what should have been a swift and decisive process of criminal justice. But, tragically, it would take another six years before the murder trial was concluded.

Despite a campaign launched by five civil-society organisations – TAC, the SJC, Free Gender, the Triangle Project and Sonke Gender Justice – Zoliswa's case ended up being postponed an astonishing 45 times (43 of which were at the request of the accused and their lawyers).

In 2008, the state failed to ensure that witnesses were present at court. When a photograph of the main state witness appeared in the press, she was attacked, causing her to flee to the Eastern Cape.

In 2010, a SAPS sergeant was arrested for aiding the escape of four of the accused from their holding cells. Whether the officer ever faced charges has never been confirmed. Eventually, the Director of Public Prosecutions (DPP) attended the trial to ensure that the prosecution was finalised.

On 1 February 2012, four men were convicted, and each sentenced to 18 years' imprisonment, four of which were suspended for five years. As Zackie Achmat, Director of NU and a co-founding member of TAC, testified before the Commission, two other accused (who had been incarcerated until the trial ended) were released on the grounds that their initial statements were inadmissible. As minors, they should have been interviewed by SAPS in the presence of their guardians.



Nokuzolo Mantshantsha

“ People routinely complain about their property being damaged, excessive use of force, dozens of officers being present as a show of force and a complete lack of communication around what is happening and why. Children are often present during these demolitions and evictions, and the psychological effects of seeing people tear down one’s home is incredibly damaging. ”

~ Letter from the complainants to Premier Zille, 2011

Over recent years, the Cape Town Metro Police, often in collaboration with the City of Cape Town’s Anti-Land Invasion Unit and Law Enforcement Department, has been involved in a number of illegal evictions and demolitions of homes in Khayelitsha.

In January 2011, Ms Nokuzolo Mantshantsha noticed a large ‘X’ scrawled over her shack in Khayelitsha’s DT informal settlement. A few days later, Metro Police and Law Enforcement officers arrived and proceeded to dismantle her home while carelessly destroying many of her fragile possessions like glasses and crockery.

At no point did the officers explain to Nokuzolo why her home was being demolished. In breach of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, the City failed to provide her with a 14-day notice and alternative housing options.

The complainant organisations drew the Commission’s attention to the illegal, disproportionate and often callous manner in which evictions and demolitions have been carried out.

Unfortunately, however, despite the direct influence that both the City of Cape Town and the Western Cape Government have on safety and security in Khayelitsha, the Commission’s terms of reference precluded any further inquiry into these complaints.

In 2012, a group of senior SAPS members were appointed by the late Lieutenant General Sean Tshabalala (then Divisional Commissioner of the National Inspectorate) to investigate the complainants’ allegations. Referred to by the Commission as the ‘Task Team’, it noted that Nokuzolo’s case had never been referred to SAPS. The DPP also indicated that the Senior Public Prosecutor (SPP) had no knowledge of a complaint submitted on Nokuzolo’s behalf.





Makhosandile 'Scare' Qezo

Scare's case was postponed 29 times and concluded almost 3 years after he had been attacked

It was shortly after sunrise on 1 May 2010 when 'Scare' Qezo was relieving himself in the bushes beside the N2 highway due to the lack of sanitation in the nearby informal settlements. He was approached by two men who demanded his cell phone. Before he had time to respond, one of the thieves stabbed him in the face, and in the short scuffle that ensued, Scare's hand was cut.

Clutching the cell phone while attempting to flee, one of the assailants was immediately caught by community members who had witnessed the assault. The group proceeded to beat the man, before handing him over to SAPS.

Two days later, the alleged attacker, Lonwabo 'Lizo' Gwabeni, was charged with assault with the intention to cause grievous bodily harm. A week after this, after appearing in court, he was granted bail of R500. Gwabeni then failed to turn up at two consecutive court hearings.

After a warrant for his re-arrest was issued, Gwabeni was finally apprehended once more in late August, 2010.

However, neither Scare nor the SJC – who, during this time, had been trying to assist him – was notified, despite their repeated attempts to contact the investigating officer.

On 26 August, the accused appeared in court, where he was again released on bail of R500, having produced a medical certificate confirming that a head injury had prevented him from attending the previous hearings.

But because the investigating officer failed to turn up at court that day, the magistrate had no idea that Gwabeni was a flight risk. Thereafter – as the Commission learnt from the DPP – the matter was postponed an astonishing 29 times.

As part of its subsequent docket analysis, the Commission found that the criminal trial was finally concluded on 12 November 2012, more than two and a half years after the offence had been committed. Gwabeni was convicted and sentenced to five years in prison, fully suspended for five years.



A young boy from Taiwan, Site C

The family were told that the docket had been lost and that the case, as a result, had been withdrawn. The accused was free to go

On 8 April 2010, a seven-year-old boy (whose name was withheld to protect his identity) was allegedly raped by a neighbour in Taiwan Section, Site C. At first, his family was assured by the state that the accused would not be released on bail. However, on 28 May, when the case came before the Khayelitsha Magistrate's Court, bail was granted without any opposition from the state prosecutor.

According to the complainant organisations in their letter to the Premier, this decision was made despite the knowledge that, after committing the crime, the accused had allegedly threatened the boy with a knife.

Months later, when the accused returned to the neighbourhood, he threatened the victim and his family once more, shouting that he would kill them and set their house on fire. When the boy's father reported the incident at the local police station, the charge of intimidation – a breach of the accused's bail terms – was not added to the existing docket, meaning that he could not be re-arrested.

The state then brought an application for his bail to be revoked, which the magistrate upheld.

The complainant organisations then alleged that on 20 September the family were told that the docket had been lost and that the case, as a result, had been withdrawn. The accused was free to go.

Years later, it was revealed that a social worker had declared the boy unfit to testify, prompting the SPP to postpone the matter for reassessment in five years' time. The Commission perused the docket but declined to comment as the investigation was still ongoing.

The case was placed on the 'brought-forward' system for April 2016. In his testimony at Lookout Hill in February 2014, Joel Bregman of the SJC praised the investigating officer assigned to the boy's case, both for her "concern and compassion" and for her efforts to keep the victim and his family informed of each development.



Lorna Mlofana

Orphaned in her infancy, Lorna Mlofana moved to Cape Town from the Transkei in her late teens. Settling in Khayelitsha, she chose to live openly with HIV while teaching treatment literacy as a member of TAC.

On the night of 13 December 2003, Lorna and some friends were at a shebeen in Town 2 after TAC's end-of-year celebrations.

Witnesses later alleged that, in the early hours of the morning, she was raped by a group of men in the shebeen toilet. When she then revealed her status, one of the men, Ncedile Ntumbukana, was enraged by the revelation. Together with an accomplice, Vuyelwa Dlova, he began kicking and punching Lorna.

In an attempt to intervene, Lorna's friend Nomava Magisa was also injured by the assailants. By the time Lorna had reached a hospital, she was declared dead. Just over two years later, Ntumbukana and Dlova were

finally convicted of crimes relating to Lorna's rape and murder. Then, in 2009, Ntumbukana appealed against his sentence of life (for murder) plus an additional ten years (for rape). Neither the family of the deceased nor TAC was informed of these events – and shortly afterwards the accused was seen walking the streets as a free man.

Perusing the docket, the Commission found that Ntumbukana's bloodied shoes had never been taken for forensic examination. The assailant's successful appeal resulted in his sentence being reduced dramatically to eight years' imprisonment, three of which were suspended for five years. Despite the fact that no reference had been made to the shoes in the docket, as well as SAPS's failure to keep Lorna's family informed of any developments, the Task Team concluded that the matter had been properly investigated.

“ I remember Vuyiseka Dubula [Lorna's friend and fellow TAC activist] telling me that when the body was found at Tygerberg Hospital they did not think to do forensic tests as to whether she was sexually assaulted because it looked like a truck had run over her body. That is how badly she was assaulted, and there was anger in the community and there was anger in TAC, and I remember ... we marched from the shebeen where she was killed to the alleged perpetrator's house, and people in the community and our own members would have burnt that place down if it wasn't for the fact that we said we wanted justice – not vengeance – because we wanted the police to deal with it. People would have taken the law into their own hands, but what came afterwards was horror and travesty because ... time after time after time, the case was postponed. ”

~ Testimony of Zackie Achmat before the Commission
10 February, 2014





Nandipha Makeke

“I will never forget the pain demonstrated on [Nandipha's] elderly father's face every time he had to go to court or ... when we had to address press conferences to talk about the fact that they were not getting justice ... Nandipha did not simply die a horrible death but her comrades ... had to go in hiding when one of the perpetrators was released and if we hadn't used taxi drivers to help arrest him the police wouldn't have arrested him even though there was a High Court restraining order and a warrant of arrest for him.”

~ Testimony of Zackie Achmat
10 February, 2014

At the age of 14, Nandipha Makeke, a learner at Uxolo High School in Mandela Park, Khayelitsha, became a member of TAC. Four years later, in December 2005, she was brutally raped and murdered by a group of young men in one of Khayelitsha's communal toilets. When Mandla Nkunkuma, another TAC member, rushed to the scene, one of the assailants, a known gang leader named Yanga Janet, shot him in the back.

Soon after, TAC launched a campaign to ensure that justice was served against Nandipha's murderers. Marches and pickets were organised outside courts and police stations, money was raised to support Nandipha's grieving family, and on a daily basis TAC activists called SAPS for updates. Yet despite these efforts, the road ahead was long and fraught with obstacles.

Four men were arrested and charged with murder – Zukile Fumbata, Bonga Sibhozo, Them-binkosi Ntukani and Yanga Janet (who received the additional charge of attempted murder). But in March 2006, the docket relating to Janet's shooting of Nkunkuma went missing, resulting in his and Fumbata's acquittal.

At large once more, Janet wasted no time in threatening Nandipha's TAC comrades. After one activist was stabbed and the home of another was broken into, an interim protection order was obtained from the Cape High Court.

On 7 March 2008 in the Khayelitsha Magistrate's Court, Sibhozo and Ntukani were convicted of charges relating to Nandipha's rape and murder. They were both sentenced to 20 years in prison. Although the Task Team found the matter to have been properly investigated, the Commission expressed concern over the protracted three-year delay. On many occasions, the case had been postponed owing to the absence of dockets and witnesses.

Referring to the affidavit of the Provincial Commissioner, Zackie Achmat cautioned: “If General Lamoer says that [the case] was ‘properly investigated’ then I think there is a serious problem in accepting culpability and trying to give immunity to the police or the criminal justice system in general.” In his testimony, Achmat added that at no point did SAPS visit Nandipha's family to inform them of how the investigation and prosecution were progressing.



Adelaide Ngongwana

The Commission's analysis of the dockets revealed that the instructions of the supervising detective were ignored

While in pursuit of a stolen car on the morning of Sunday 3 October 2010, Khayelitsha SAPS members were shot at by the suspects they were pursuing. Returning fire in a crowded, public area, one of the police members mistakenly shot an elderly woman, Adelaide Ngongwana, in the leg.

Unassisted and in excruciating pain, she managed to walk to the car of a police officer who reluctantly agreed to drive her to the Site B Day Hospital. Once treated and discharged, she had no money for transport so had no choice but to limp home.

Afraid to lodge a complaint against the police with the Independent Complaints Directorate (ICD), Adelaide agreed that the SJC would open a case on her behalf. Over seven months later, a report was issued, concluding that the SAPS members had acted within their rights.

That they had discharged their weapons in a busy public space, putting the lives of innocent civilians at risk, and that they later behaved dismissively to an elderly woman whom they were guilty of injuring, were facts the report failed to

acknowledge. What's more, neither Adelaide nor the SJC was informed of the outcome of the investigation.

Adelaide died in April 2011. 14 months later, the Task Team found that two dockets had been opened in relation to the incident, both of which were poorly investigated – a verdict the Commission later corroborated. The Commission's analysis of the dockets revealed that the instructions of the supervising detective were ignored and that neither a hospital record nor statements from Adelaide and the relevant SAPS officers were ever noted.

Under cross-examination during the hearings at Lookout Hill, Thabo Lehlo, the Western Cape Provincial Director of Investigations at the Independent Police Investigative Directorate (IPID), undertook to investigate the matter personally. His response, which the Commission received on 4 April 2014, simply stated that the Provincial Commissioner had dealt with the matter in terms of section 53(2)(a) of the SAPS Act, concluding that "... the suspect first shot at the police and the police returned fire."



Angy Peter

Policemen were firing live ammunition at the taxi, even though it was carrying at least one passenger

At about midday on 3 October 2010, at the same time Adelaide Ngongwana was being treated at the Site B Day Hospital, Angy Peter, another Khayelitsha resident, was travelling with others in a taxi headed for the Site C taxi rank. Suddenly, another taxi sped past theirs, followed by two police cars in flat-footed pursuit.

Angy later recalled that, from the SAPS vehicles' open windows, policemen were firing live ammunition at the taxi, even though it was carrying at least one passenger. One of the bullets smashed into the taxi's back window as it was nearing the taxi rank. All around, hundreds of panicked commuters ran for their lives.

When all of the vehicles, including Angy's taxi, came to a halt, she watched as a crowd gathered around a young man, seemingly in his thirties, who had been shot in the back. The police refused to let anyone go near him. Then another young man approached the SAPS officers to say that he too had been shot.

Half an hour later, an ambulance arrived to take the first of these men to hospital. Angy was then told that a third person had been shot at a nearby garage, and also required serious medical attention.

Outraged by these events, later that afternoon Angy and a colleague from the SJC sought further information from the Lingeletu West police station. At first, the SAPS members insisted that they were none the wiser as the incident had involved policemen from another station – Khayelitsha Site B. Angy, however, recognised one of the policemen whom earlier that day she had seen outside the taxi rank.

They then decided to visit SAPS in Site B, only to be told by a constable that the incident was not open for discussion. On their way out, the activists passed family members of the taxi driver who had been arrested after the car chase. They told Angy that the suspect had just called them from the Site B station. Back inside, they enquired once more, but this time a SAPS member replied that the taxi driver was not in the station.

A moment later, however, he appeared. "Where are you going?" a family member asked. "I'm just going outside," he replied, but did not return. Despite this strange turn of events, the same constable maintained that the suspect had been arrested and imprisoned in the station's holding cells. When a family member requested to see him, the group was asked to leave.

The SJC responded as it had done in the case of Ms Ngongwana – by lodging a complaint with the ICD. The two complaints both fell under the same reference number and, as previously mentioned, were dismissed seven months later on the basis that the SAPS members had been justified in using their firearms.

Analysing the docket in June 2014, the Commission corroborated the Task Team's finding that a SAPS member had initially been charged with attempted murder but that these charges were soon dropped owing to an incomplete investigation.

In July 2011, the docket was returned to SAPS by the SPP with queries. The Commission expressed concern that the last entry on the docket – stating that further investigation was required – had been recorded in October 2012.



Khayelitsha Crime Statistics

In working towards a safer Khayelitsha, it was important for the Commission to grasp, in quantitative terms, the threats affecting the community.

In 2014/15, statistics showed that Khayelitsha as a whole (or what statisticians term 'Greater Khayelitsha') had more serious crimes committed than any SAPS precinct in the country. 'Serious crimes' include murder and attempted murder, sexual offences, assault with the intent to cause grievous bodily harm, and aggravated robbery.

Jean Redpath of the University of the Western Cape's Community Law Centre and crime intelligence analyst Dr Chris de Kock testified that the murder rate is usually accepted as the most accurate measure of a precinct's serious crime levels.

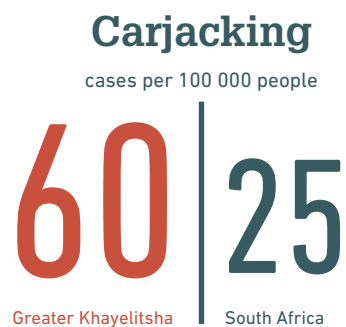
Other crimes – and especially domestic, homophobic and gender-based violence, common assault and crimes perpetrated by gangs – are notoriously under-reported owing to many factors such as intimidation and fear of reprisal.

The Mthente survey, for instance, which was conducted for the purposes of the Commission to gauge community attitudes, estimated that only 60% of crimes are reported in Khayelitsha.

The reality, then, is that even though SAPS detectives in Khayelitsha are already over-buried by their caseloads, the actual incidence of crime is far worse.

“The sheer volume of work simply chased me away.”

~ Former SAPS detective James van der Westhuizen



In 2014/15 Khayelitsha as a whole had more serious crimes committed than any SAPS precinct in the country

	Population (2011)*	Reported Murders	Reported Attempted Murders	Sexual Offences	Reported Assault GBH	Reported Aggravated Robbery	Murder Ratio (per 100,000)	Attempted Murder Ratio (per 100,000)	Sexual Offences Ratio (per 100,000)	Assault GBH Ratio (per 100,000)	Aggravated Robbery Ratio (per 100,000)
Harare	173 342	141	120	235	610	867	81	69	136	352	500
Khayelitsha Site B	154 042	146	170	229	640	1 421	95	110	149	415	922
Lingeletu West	64 357	39	38	79	116	450	61	59	123	180	699
Greater Khayelitsha	391 741	326	328	543	1 366	2 738	79	80	136	316	707

Western Cape	5 822 734	3 186	3 727	7 369	26 200	23 116	55	64	127	450	397
South Africa	51 770 560	17 805	17 537	53 617	182 556	129 045	34	34	104	353	249

	Population (2011)*	Arson	Burglary at residential premises	Driving under the influence of alcohol or drugs	Carjacking	Arson Ratio (per 100,000)	Burglary at residential premises Ratio (per 100,000)	Driving under the influence of alcohol or drugs Ratio (per 100,000)	Carjacking Ratio (per 100,000)
Harare	173 342	23	600	375	86	13	346	216	50
Khayelitsha Site B	154 042	25	474	279	73	16	308	181	47
Lingeletu West	64 357	17	328	515	54	26	510	800	84
Greater Khayelitsha	391 741	65	1 402	1 169	213	19	388	399	60
Western Cape	5 822 734	782	47 783	13 224	1 530	13	821	227	26
South Africa	51 770 560	5 127	253 716	68 561	12 773	10	490	132	25

* Population statistics for the Western Cape and South Africa have not been updated to include post-2011 mid-year estimates. This is to ensure that they are consistent with the estimated Khayelitsha precinct data from 2011





Testimonies: The Community

17 members of the Khayelitsha community spoke publicly at Lookout Hill. Their testimonies, often fraught with grief, despair and anger, described the criminal acts that they and their loved ones had suffered over recent years, while detailing the sometimes callous misconduct of SAPS members during the course of the investigations. These personal accounts – supplemented by almost 200 written statements from other community members – added an important human dimension to the Commission's inquiry.

Based on community evidence, this chapter focuses on seven major challenges identified by the Commission – vigilantism, children and youth gangs, domestic violence, violence against LGBTI people, foreign nationals and xenophobia, alcohol and shebeens, and Community Police Forums – all of which shed light on the complainants' allegations of police inefficiency and the breakdown in relations between SAPS and the community in Khayelitsha.

A RECURRING THEME AT LOOK-OUT HILL WAS THE UNFORGIVABLE NUMBER OF REPORTED CRIMES WHICH HAD EITHER BEEN POORLY INVESTIGATED OR SIMPLY SET ASIDE.

WITH DOCKETS INCOMPLETE OR NOWHERE TO BE FOUND MANY CASES HAD BEEN STRUCK FROM THE ROLL IN THE KHAYELITSHA MAGISTRATE'S COURT, ALLOWING THE ACCUSED TO WALK FREE.

HERE WE TURN TO ONE OF THE MOST SHOCKING STORIES OF ALL, TOLD BY MS VUYISWA MPEKWE, A 52-YEAR-OLD DOMESTIC WORKER FROM MAKHAZA, ON 30 JANUARY 2014.



MS MPEKWE, AN INCIDENT TOOK PLACE IN OCTOBER 2007 INVOLVING YOUR RELATIVES, WOULD YOU PLEASE RELAY THAT INCIDENT TO THE COMMISSION?

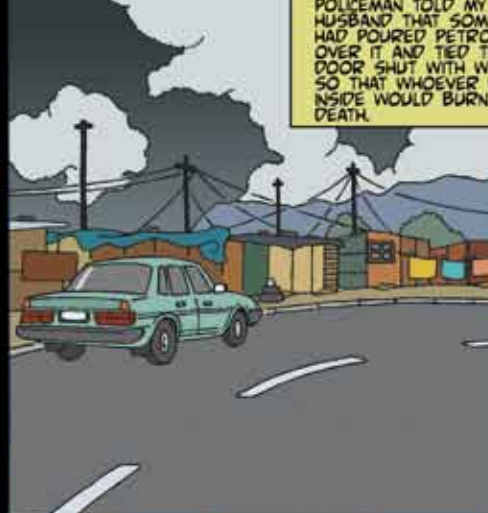
YES, COMMISSIONERS.

Advocate Themballhle Sidaki
Evidence Leader

IT WAS PAST MIDNIGHT ON SUNDAY 28TH OCTOBER, 2007. MY LATE HUSBAND AND I WERE WOKEN UP BY WOMEN WHO CAME TO OUR HOUSE.

THEY DROVE US TO MY NIECE'S HOME IN 36 SECTION, MAKHAZA.

WHEN WE ARRIVED THE FIRE BRIGADE AND THE POLICE WERE THERE. MY NIECE'S SHACK HAD BEEN BURNT DOWN. A POLICEMAN TOLD MY HUSBAND THAT SOMEONE HAD POURED PETROL OVER IT AND TIED THE DOOR SHUT WITH WIRE, SO THAT WHOEVER WAS INSIDE WOULD BURN TO DEATH.



AND WHO HAD BEEN INSIDE THE SHACK, MA'AM?

THERE WERE FOUR PEOPLE INSIDE, COMMISSIONERS ...





...THEY WERE:
NTOMBOMZI
NGGONO, MY NEECE,
WHO WAS 35;
HER SON, THULANI,
WHO WAS 17; HER
DAUGHTER, ALUDE
NGGONO, WHO
WAS JUST NINE
YEARS OLD; AND
SIPHOSETHO
MAGADLA,
ANOTHER
NINE-YEAR-OLD
GIRL.



THE NEXT MORNING I FOUND
OUT THAT THE MAN WHO DID
IT WAS MPUMZI NANGENA,
NTOMBOMZI'S EX-BOYFRIEND
AND ALUDE'S FATHER.
HE HANDED HIMSELF OVER
TO THE POLICE AT HARARE
STATION.

HE HAD BEEN JEALOUS
AND ANGRY AFTER HIS
BREAK-UP WITH MY NEECE.
HE HAD GONE TO HER
NEW SHOP AND DEMANDED
BEER, BUT SHE REFUSED
SAYING THAT HE COULDN'T
EVEN AFFORD TO PAY
CHILD SUPPORT.

WHEN MPUMZI THEN
APPEARED IN COURT, THE
MAGISTRATE SAID THAT THE
DOCKET HAD BEEN LOST,
SO HE WAS RELEASED BUT
TOLD THAT HE SHOULD NOT
GO FAR BECAUSE THEY
WOULD FIND THE DOCKET
SOON. BUT AFTER THIS I
HEARD THAT MPUMZI HAD
TAKEN A TRAIN TO
JOHANNESBURG TO LIVE
WITH HIS AUNT.



THE COMMUNITY WAS
VERY ANGRY. THERE
WAS A TOYI-TOYI AND
PEOPLE MARCHED TO
MPUMZI'S HOME.
WHEN NOBODY CAME
OUT, THEY STARTED
THROWING STONES.



THAT EVENING, THE POLICE
ARRESTED SIX OF MY FAMILY
MEMBERS INCLUDING A
TWO-MONTH OLD BABY FOR
DAMAGING PROPERTY. THEY
STAYED IN JAIL ALL WEEKEND
AND ON MONDAY THE COURT
RELEASED THEM ON FREE
BAIL.

ON THE SAME DAY MY COUSIN
AND I WENT TO SEE THE
INVESTIGATING OFFICER AT HARARE
POLICE STATION. WE ASKED HIM
ABOUT THE MISSING CASE DOCKET.
HE WENT WITH US TO THE
KHAYELITSHA COURT AND THERE
WE FOUND THE DOCKET ON THE
SAPS COURT CASE OFFICER'S
DESK.



LATER, IN 2008, I WENT
BACK TO THE STATION
FOR AN UPDATE. I WAS
TOLD THAT THE
INVESTIGATING OFFICER HAD
LEFT SO THE CASE HAD
BEEN ALLOCATED TO A
DIFFERENT INVESTIGATOR.
I GAVE THIS MAN A
PHOTO OF MPUMZI AND
ASKED IF HE COULD LOAD
IT ON TO THE WANTED
PERSONS POLICE FILE.



WHERE IS HE?
IN JOHANNESBURG.

YOU SHOULD TRY TO INVESTIGATE EXACTLY WHERE HE IS. JOBURG IS TOO BIG. WE CAN'T FIND HIM THERE.

CAN YOU PUT THE PICTURE ON TV TO FIND HIM?

HOW ABOUT YOU CHECK FOR HIM YOURSELF.

THEY NEVER GOT BACK TO ME SINCE 2008. TILL TODAY. I HAVE NEVER GONE BACK. I LOST TRUST IN THE POLICE AND TOLD MYSELF THAT I WAS LEAVING IT BUT I HAD NOT GIVEN UP BECAUSE SOMETIMES I WOULD FEEL THE PAIN AND REMEMBER THESE KIDS.



Justice Kate O'Regan
Commissioner

MS. MPEKWENI, WE ARE VERY SORRY TO HEAR THIS STORY YOU HAVE TOLD US. IT IS A TRULY TERRIBLE THING THAT HAPPENED TO YOU AND YOUR FAMILY.

AS THIS COMMISSION WE CANNOT PROMISE YOU JUSTICE, BUT WE WILL FOLLOW UP WITH THE POLICE.

THANK YOU VERY MUCH FOR HAVING COME TODAY. WE HOPE THAT THIS KIND OF STORY WILL NEVER HAPPEN AGAIN.

THEN, SIX WEEKS LATER AT THE HEARINGS, ADVOCATE SIDAKI RETURNED TO MS. MPEKWENI'S STORY WHILE QUESTIONING A SENIOR SAPS MEMBER.



COLONEL TOBIAS, THE ISSUE OF DOCKETS NOT MAKING IT TO COURT ALSO AROSE IN THE TESTIMONY OF MS. VUYISWA MPEKWENI.

WOULD YOU AGREE THAT IT IS UNACCEPTABLE THAT THE DOCKET SHOULD GO MISSING?

AND THAT THE CASE WAS NOT RE-ENROLLED IMMEDIATELY ONCE THE DOCKET WAS FOUND?

AND THAT NO FEEDBACK WAS GIVEN TO THE COMPLAINANT?

AND THAT THE SECOND INVESTIGATING OFFICER TOLD HER TO GO TO JOHANNESBURG AND LOOK FOR THE SUSPECT?



YES, COMMISSIONERS, THAT IS UNACCEPTABLE; YOU CANNOT WORK LIKE THAT.

Colonel Andrew Tobias
Former Detective Commander, Harare

ON HEARING MS. MPEKWENI'S STORY, THE COMMISSION RELAYED THE CASE NUMBER TO SAPS AND ASKED FOR INFORMATION ABOUT THE MURDER. THANKS TO THIS INTERVENTION, IN MID-2014, NANGENA WAS ARRESTED IN JOHANNESBURG - SEVEN YEARS AFTER HE HAD COMMITTED THE CRIME. IN MARCH 2015, HIS CASE WAS HEARD AT THE WESTERN CAPE HIGH COURT.



THE ACCUSED ADMITS HE IS GUILTY OF ARSON AND FOUR COUNTS OF MURDER. THE AGREED SENTENCE: THIRTY YEARS DIRECT IMPRISONMENT.



MY SEARCH FOR JUSTICE IS FINALLY OVER. I WANT TO SAY TO THE PEOPLE, IF IT WASN'T FOR THIS COMMISSION, HE WOULD STILL BE FREE.



In memory of:
Alude Ngqono
Ntombomzi Ngqono
Thulani Ngqono
Siphosetho Magadla

Testimonies: The Community

Vigilantism

When a community takes the law into its own hands in order to assault or kill an alleged criminal without any intervention from the police, it is known as *vigilantism*, a *vengeance attack* or an act of *mob justice*.

Before the Commission, residents, police members and expert witnesses all drew attention to this widespread problem, leaving little doubt that it remains one for which SAPS has no clear strategy.

An enduring culture of violence

Dr Kelly Gillespie, a social anthropology lecturer at Wits University, pointed out that in South Africa about 70 years ago the term *vigilantism* carried more positive connotations – referring to a form of ‘informal policing’.

By the early 1980s, however, at a time when the basic security of South African township residents was hardly ever guaranteed by the government, the word’s meaning had evolved to denote “violent, organised and conservative groupings operating within black communities, often understood to be acting to ‘neutralise’ groups opposed to the apartheid state.”

These past traumas, which live on in the minds of those who experienced them first-hand, have since been transmitted from one generation to the next, continuing to transform identities and influence Khayelitsha’s culture of violence.

According to the
Commission’s Mthente
survey, 73.3% of respondents
in Khayelitsha said that
vigilantism was not justified

Many complex motives

Several witnesses suggested that vigilantism is seen by certain members of the community as a more effective means to reclaiming stolen property or seeking revenge for a more serious crime.

And yet, as Dr Gillespie and clinical psychologist Professor Pumla Gobodo-Madikizela explained, the failures of the Khayelitsha police – and the community’s lack of trust in SAPS – only account for a fraction of the problem.

Other contributing factors, they argued, include the community’s shared anger towards its extreme levels of crime and poverty, and the feelings of anonymity, insecurity, exclusion and dehumanisation that characterise township life.

Crimes “committed by ghosts”

Despite strong evidence that many of SAPS’s investigations have been poorly conducted, it is important to note that crimes of this nature do present both the police and the prosecuting authorities with unique challenges.

Cases of vigilantism tend to involve numerous defendants and, as Rochelle Harmse, SPP at the Khayelitsha Magistrate’s Court, confirmed, witnesses rarely testify, usually owing to fear of – or solidarity with – the accused.

Several police witnesses explained that as soon as SAPS vehicles arrive at the scene of such an attack, the mob immediately disperses, vanishing into the densely-packed informal settlements. As Colonel Gert Nel (formerly of SAPS Harare) described, “It’s like it’s being committed by ghosts ... no one wants to step forward to say, ‘I can identify [the perpetrators].’ There are just no witnesses. No one saw anything.”

“ Let me give you an example of what happened in my neighbourhood just this morning at 5.00am! We heard a woman screaming “i-Bag yam! i-Bag yam! Nal’isela!!” (My bag! My Bag! Here’s a thief!!). In no time, I mean, no time, everybody was coming out, slamming doors behind them. I mean, it was like a split second – and they were all dressed in their clothes, not pyjamas. It was as if they were waiting, ready all night for exactly this kind of thing to happen. Then they descended upon this man – they came with all sorts of weapons to assault him. Rocks on the street were thrown at him. In no time, the man was gone – in no time they had finished him. Think about it, in a matter of a few minutes, perhaps seconds, a man is dead, killed by a group of people in my community for snatching a woman’s handbag on her way to work. Glancing at his body lying on the side of the street as I went to work, I saw a large concrete slab – you know those slabs used to divide freeway roads. A concrete slab had been thrown on the back of his head to finish him off. ”

~ Khayelitsha resident (Interview conducted by Professor Gobodo-Madikizela, May 2014)



WHEN YOU SEE
PEOPLE GET ROBBED AND
PEOPLE GET RAPED, WHEN YOU
KNOW THE CRIME HAPPENED
TO PEOPLE THAT YOU KNOW
AND YOU SEE THAT PERSON
ACTUALLY GETTING BEATEN
UP YOU DON'T REALLY FEEL
SORRY FOR THEM.

EVEN THOUGH
YOU WISH THEY DON'T
BEAT HIM TO DEATH
BUT YOU HOPE, YOU
FEEL LIKE, YOU'RE
ALSO SO ANGRY.

I WAS
ROBBED, MY
SISTER WAS
RAPED.

WHEN YOU ARE
SQUASHED INTO A
TIGHT CORNER YOU
FIND FAULT WITH AN
EASY TARGET.

VIGILANTISM IS THE
EASIEST, SHORTEST
OPTION BY PEOPLE
THAT ARE IN
DESPERATION.



Nomamerika Simelela: Robbery leads to death by stabbing

Vigilantism, the Commission found, takes many forms. While most witnesses described the impulsive and even irrational nature of some attacks, others indicated a greater degree of premeditation.

Khayelitsha resident Ms Nomamerika Simelela, together with her uncle, Mr Mayedwa Simelela, testified to having witnessed the vigilante killing of two boys who had robbed them of R2700, a cell phone and a jacket. The perpetrators were a large group of boys who pulled the thieves out from the Simelelas' car in 21 Section, Khayelitsha, then stabbed them to death.

Ms Simelela, her uncle and her brother were later arrested in June 2013 and charged with the murder of the two boys. After several remands, on 22 November 2013 the case was withdrawn. SAPS told the Commission that the investigation was still pending.

Andile Ntsholo: Burnt to death in a field

On 18 May 2012, Ms Nomakhuma Bontshi, and a handful of other relatives, were asked to attend a meeting at a house in B Section, Khayelitsha. There, a group of people from Khayelitsha told them that Andile Ntsholo, an orphan from Philippi and Nomakhuma's nephew, was stealing cell phones and dealing drugs in their neighbourhood. As it was clear that he posed a threat to children in the local community, Nomakhuma and her relatives agreed to organise Andile's removal from Khayelitsha.

In the early hours of the following morning, she was then called and told that her nephew's body had been found in a field in B Section. He had been burnt to death.

At the scene of the crime, she recognised people whom she had seen at the previous day's meeting. The police visited her home the following day, but after that she heard nothing about a criminal prosecution.

When the Commission called for and examined the case docket, it was revealed that the investigating officer responded appropriately to the call, but after conducting a series of interviews and failing to find a single eye-witness, the investigation was abandoned.

I WAS
HEARTBROKEN ...
I WAS ASKING MYSELF
THE QUESTION: WHY
WOULD PEOPLE BE SO
CRUEL?



~ Nomakhuma Bontshi
Resident, Philippi

**Mzoxolo's Tame:
"Moered" in Ilitha Park**

Other stories painted SAPS's incomplete investigations in a far less forgiving light. Mzoxolo Tame of Ilitha Park testified that, on the evening of Sunday 20 January 2013, he was informed that his cousin might have been killed in Harare the previous night.

He rushed to make an enquiry at the Harare police station but was told to come back the following day. When he did, the detective investigating the crime said, "that lightie was caught with his body halfway through a window of a house breaking in and was 'moered'." The three residents of the house had been accused of the crime but, according to the officer, the "whole community" had participated.

Mzoxolo was also told that it would be a waste of money to go to court because his cousin had been caught red-handed.

After all three accused were granted bail, Mzoxolo heard nothing more from the police, despite reassurances from the detective's supervisor.

According to counsel for SAPS, the investigating officer who was originally allocated to the case had been removed in April 2013 and replaced with another officer described as "probably the best and most successful investigating detective at Harare" – but he was inundated with 382 pending dockets.

The Commission was informed that the matter had been scheduled for a disciplinary hearing, but by early 2014 no action had been taken. Although Mzoxolo's contact details had been recorded on the docket, more than two years had elapsed since the murder, and the investigation was still pending.

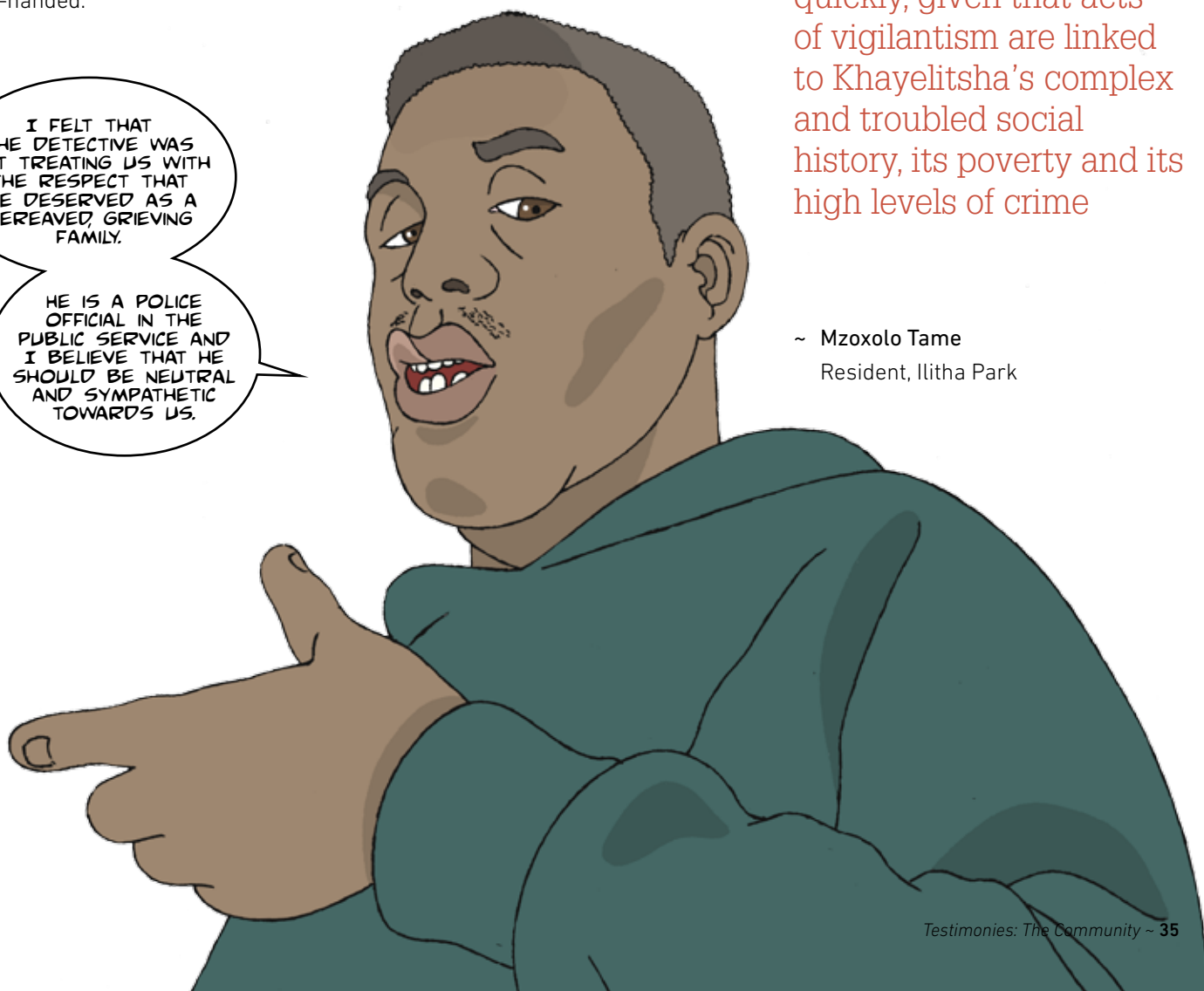
After having been remanded four times by July 2013, in March 2014 Mzoxolo managed to make contact with the investigating officer in charge of the case. The officer informed him that blood samples had been sent for forensic analysis and that it would take another four months. Since then he has heard nothing.

The Commission found SAPS's ambivalent and inadequate policing to be a contributing factor to vigilantism in Khayelitsha. Nevertheless, it was also acknowledged that SAPS cannot address this issue alone or even quickly, given that acts of vigilantism are linked to Khayelitsha's complex and troubled social history, its poverty and its high levels of crime

I FELT THAT THE DETECTIVE WAS NOT TREATING US WITH THE RESPECT THAT WE DESERVED AS A BEREAVED, GRIEVING FAMILY.

HE IS A POLICE OFFICIAL IN THE PUBLIC SERVICE AND I BELIEVE THAT HE SHOULD BE NEUTRAL AND SYMPATHETIC TOWARDS US.

~ Mzoxolo Tame
Resident, Ilitha Park



Children and Youth Gangs

For young people, exposure to violent crime of the kind that terrorises Khayelitsha can be profoundly harmful. Of all the township's residents, children are the most vulnerable – not only as the victims and witnesses of violence, but also, in some cases, as perpetrators. Children and youths who take part in criminal activity often do so as members of a youth gang.

Protection and power

Expert witness Professor Catherine Ward from UCT's Psychology Department explained that such gangs tend to operate in deprived areas, offering boys and young men a sense of belonging. Many feel they have nothing better to do after school, she said; others join out of a need to defend themselves.

Mr Madoda Mahlutshana, the principal of the Chris Hani Senior Secondary School in Makhaza confirmed this, testifying that his school "had a mini-museum" of weapons, frequently confiscated from learners who carry them for protection.

Yoliswa Dwane, the National Chairperson of Equal Education and a resident of Site B, spoke of the four main youth gangs operating in Khayelitsha – the Vatos, the Vuras, the Italians and the Russians. Each has its own territory within the township, but their activities tend to be concentrated in specific locations, such as Makhaya Park and a bridge in Site B near Masiyile High. They engage in robbery, assault, kidnapping, rape and murder, and carry a variety of weapons from knives and pangas to firearms.

Unlike the gangs in Manenberg and Mitchells Plain, Yoliswa added, those in Khayelitsha tend not to be connected to organised crime and drug syndicates. Instead, their battles are waged over territory, power and pride.

Psychological scars

While low levels of visible policing, half-hearted investigations and the rise of drug and alcohol abuse all contribute to the prevalence of youth gang activity, another key factor is the culture of violence to which virtually every community member is exposed. For young people, such experiences can be damaging physically, psychologically and developmentally.

Professor Debra Kaminer, also of UCT's Psychology Department, explained to the Commission that some children internalise their response to violence, resulting in post-traumatic stress disorder as well as feelings of fear, anxiety and depression. Others externalise their response by projecting their trauma via aggressive behaviour or substance abuse.

David Harrison, the former CEO of youth development organisation loveLife, added that without good-quality health care during infancy, the nurturing of a sense of worth among teenagers, and a sound, efficient criminal justice system which prevents violence from becoming normalised in a community, youth development can be severely restricted.

Phumeza Mlungwana: The vulnerability of learners


Although only a small proportion of the community are directly involved, across the Cape Flats thousands of children of a school-going age are continually affected. Phumeza Mlungwana, the General Secretary of the SJC and a lifelong resident of Khayelitsha, recalled that, as a child, while walking to and from school, she often had her lunch money taken from her at knife-point.

The Commission also received statements from a number of Khayelitsha principals, all of whom expressed concern about youth gangs at their schools. Their testimonies were corroborated by those of Khayelitsha parents whose children, they said, were reluctant to go to school owing to the violence and intimidation they were exposed to there.



In a survey conducted by Patrick Burton of the Centre for Justice and Crime Prevention, it was shown that most crimes experienced by young people are not reported to the police. One consequence is that the areas that the youth regard as dangerous do not correspond with those which the police regard as crime hotspots





THE EDUCATION
DEPARTMENT CANNOT DO
ANYTHING OUTSIDE A
SCHOOL'S PREMISES. THEIR
RESPONSIBILITY IS THE
SAFETY INSIDE. SO ON
THE WAY TO AND FROM
SCHOOL, IT'S IN THE
POLICE'S HANDS.

IF THE
POLICE DON'T
INTERVENE THEN
'SAD LUCK'.

~ Nokuzola
Ncaphancapha
Resident, Harare

Nokuzola Ncaphancapha:
'I lost hope'

In June 2012, Ms Nokuzola Ncaphancapha went as far as enlisting her 17-year-old son at another school. There, however, the same problems soon arose, leading her to contact the school principal, the Western Cape Department of Education and the then-station commander at Harare police station, Colonel Abels. Nokuzola was told by the Department that the problem was beyond its jurisdiction.

After July 2012, the boy and his friends left their school. The following year, he found a place at a safer school in Makhaza but many of his friends did not. Nokuzola had also spoken to the chairperson of the Harare CPF who had told her that, with a letter from the South African National Civic Organisation (SANCO), she could seek help from the Taxi Association. She was also told that the Harare police station was in disarray – and that only 7 out of 19 members had been at work. When asked if she had faith in SAPS, Nokuzola replied frankly: "No, I don't."

Sifiso Zitwana:
Fleeing for their lives

Other Khayelitsha residents have gone to even greater lengths to protect their loved ones. In 2011, when Sifiso Zitwana became head of his family household at the age of 17, his younger brothers were becoming deeply embroiled in local youth gangsterism.

He tried to intervene, first via a social worker, then by pleading with his brothers, but the boys explained that they feared reprisals.

The police, when consulted, said that they would be unable to assist. The local Neighbourhood Watch had fallen out of favour with the community after physically abusing people. Fearing for his brothers' safety, Sifiso sent them to their mother's ancestral home in the Eastern Cape.

Sonja Basson:
Child stabbed outside care centre

Sonja Basson, a social worker and former manager of The Bridge at Elukhuselweni Child and Youth Care Centre near Khayelitsha's Pama Road, testified that some of the young boys living at The Bridge also had to be relocated for safety purposes.

On one occasion, a gang fight broke out near the building, and one of boys climbed out the window to get nearer to the commotion. He was stabbed to death by a gang member outside.

A day later, when the police had still made no arrests, members of the Taxi Association arrived with sjamboks. Ms Basson recalled: "I had to physically run and hold onto the taxi to get them to stop because they wanted to attack any male youth who could possibly be a gangster and they were threatening boys under my care as well. The taxi driver and the three men with him were so worked up they looked crazy."

THAT IS
WHERE
I LOST
HOPE.

While the Commission found that SAPS has no clear strategy to address the growing problem of youth gangs in Khayelitsha, it acknowledged that the issue can only be helped by forming multi-sectoral partnerships between SAPS, educational institutions and youth-orientated NGOs

Domestic Violence

Crime statistics show that domestic violence is the third most common cause of murder in South Africa. It usually occurs behind closed doors – within the confines of a domestic setting – and in the vast majority of cases it involves a male intimate partner or family member behaving abusively or threateningly towards a female.

Physical, psychological and pervasive

Violence can be inflicted physically (for instance, in the form of assault, rape or murder) or psychologically (through verbal abuse, harassment, humiliation, forced isolation or the destruction of property).

Decades of research have shown that domestic violence usually arises out of complex gender-based power relations, often exacerbated by unbridled anger, aggression, substance abuse and the perpetrator's socio-economic circumstances.

Professor Lillian Artz of UCT's Gender, Health and Justice Research Unit told the Commission that although domestic violence is pervasive across South Africa, it remains difficult to quantify.

In South African law, it is still not categorised as a criminal offence, but instead as either an assault or an assault with the intention to cause grievous bodily harm. Many cases also go unreported – owing to a wide range of factors from stigma and intimidation to a tendency among the police to refer cases directly to the Magistrate's Court without recording them.

Professor Lisa Vetten, an expert in domestic violence legislation, quoted statistics from a 2007 SAPS report to Parliament which revealed that of the 45,454 domestic violence incidents that were reported in South Africa between January and June of that year, only 17,633 resulted in a criminal charge.

Ms ND: 'Helpless and traumatised'

The Commission heard that the husband of one community member, Ms ND, had beaten and raped her repeatedly, until she finally secured a protection order against him. This proved of little use, however, because whenever Ms ND called the Harare police, they would only arrive the following day.

Eventually she resorted to calling '112' instead. Her husband then retaliated by locking Ms ND and her children in the house, then going to the police station himself. The police later intervened, rescuing the captive family, taking Ms ND to Khayelitsha's Thuthuzela Care Centre and arresting her husband. Soon after, however, he was released on R500 bail.

When the matter went to court, Ms ND was given no information. After one of her husband's court appearances he visited Ms ND to thank her for dropping the case against him. She tried to contact the investigating officer but he was always either on leave or too busy to call back.

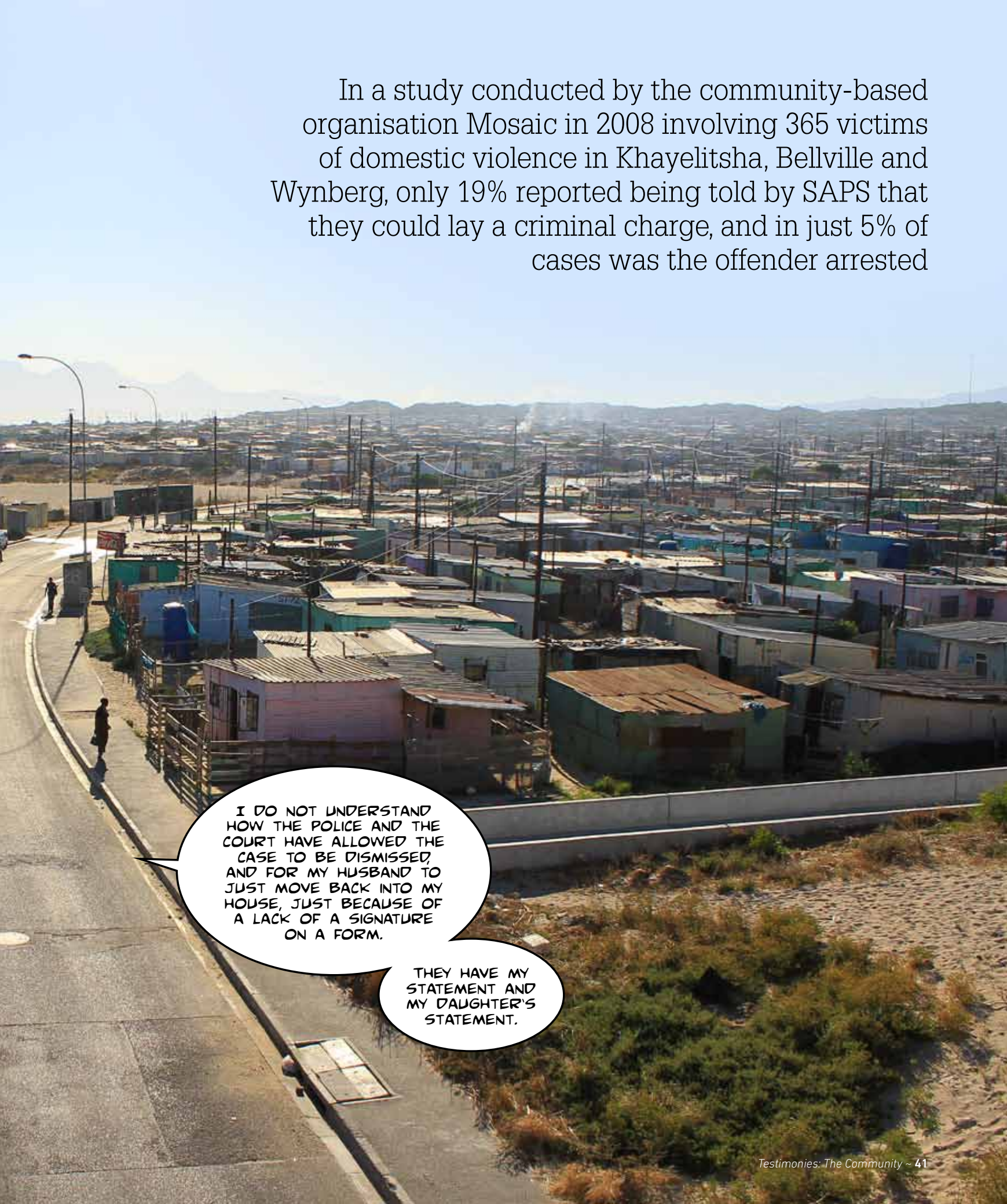
Ms ND then turned to the Rape Crisis Centre whose staff later discovered that the police officer who had arrested her husband had signed the wrong forms, leading to the matter being withdrawn.

I FELT VERY HELPLESS AND TRAUMATISED. I DO NOT UNDERSTAND WHAT HAPPENED TO MY CASE.

MY HUSBAND IS BACK AT HOME AND I AM VERY SCARED OF HIM. I TRIED TO PROTECT MYSELF WITH A PROTECTION ORDER, BUT THAT HAS NOT WORKED.

~ Ms ND
Resident, Harare

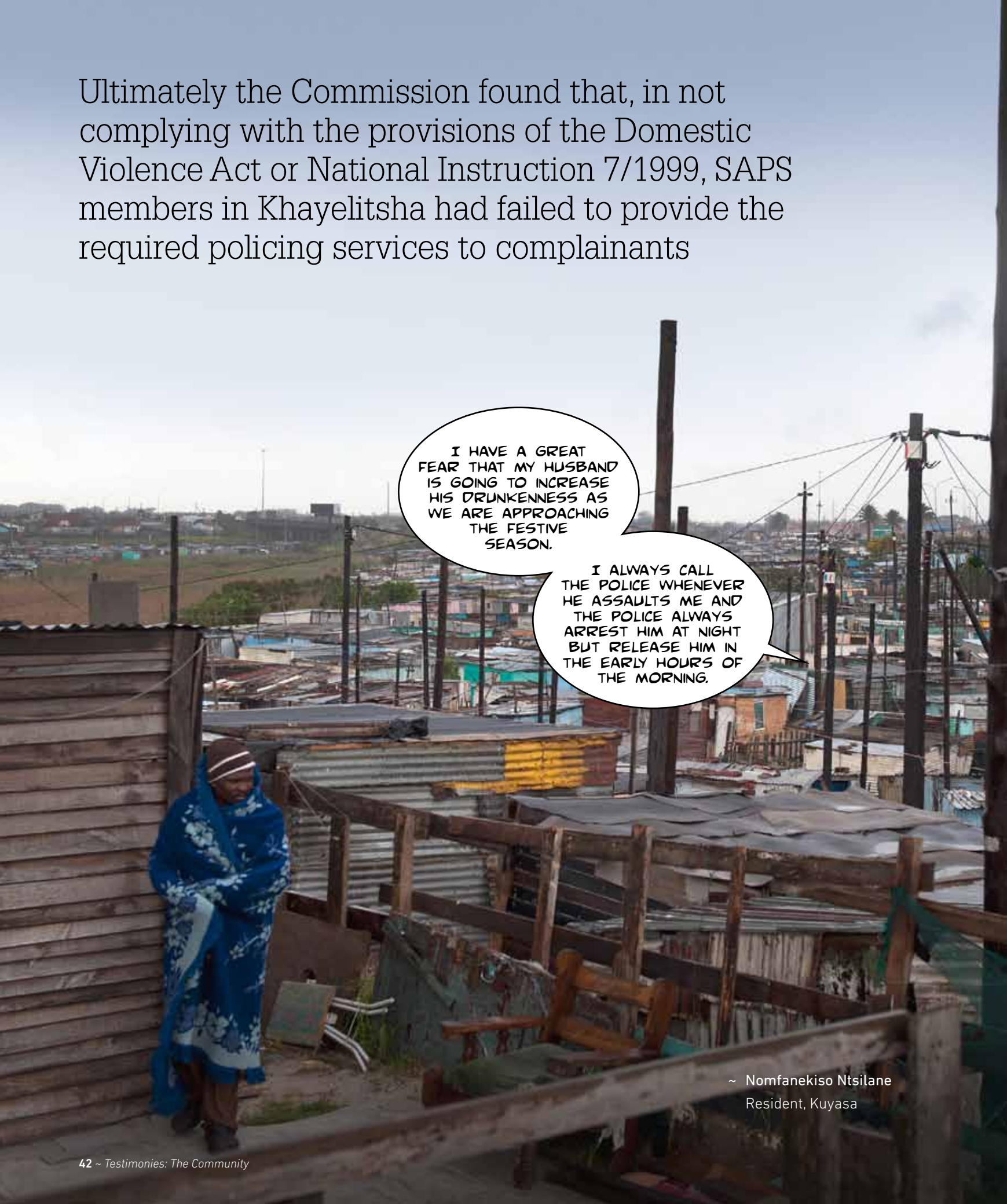
In a study conducted by the community-based organisation Mosaic in 2008 involving 365 victims of domestic violence in Khayelitsha, Bellville and Wynberg, only 19% reported being told by SAPS that they could lay a criminal charge, and in just 5% of cases was the offender arrested



I DO NOT UNDERSTAND HOW THE POLICE AND THE COURT HAVE ALLOWED THE CASE TO BE DISMISSED, AND FOR MY HUSBAND TO JUST MOVE BACK INTO MY HOUSE, JUST BECAUSE OF A LACK OF A SIGNATURE ON A FORM.

THEY HAVE MY STATEMENT AND MY DAUGHTER'S STATEMENT.

Ultimately the Commission found that, in not complying with the provisions of the Domestic Violence Act or National Instruction 7/1999, SAPS members in Khayelitsha had failed to provide the required policing services to complainants



I HAVE A GREAT FEAR THAT MY HUSBAND IS GOING TO INCREASE HIS DRUNKENNESS AS WE ARE APPROACHING THE FESTIVE SEASON.

I ALWAYS CALL THE POLICE WHENEVER HE ASSAULTS ME AND THE POLICE ALWAYS ARREST HIM AT NIGHT BUT RELEASE HIM IN THE EARLY HOURS OF THE MORNING.

~ Nomfanekiso Ntsilane
Resident, Kuyasa

Nomfanekiso Ntsilane:

Living in fear

On the day Nomfanekiso Ntsilane testified before the Commission, she was still in pain from a recent attack by her husband. Although previously charged and arrested, he had been released a month later. On the day of his trial in November 2012, the court told Nomfanekiso that the docket was missing, and that the case was therefore postponed until January 2013. When she testified over a year later, he was still at large.

Welcome Makele:

Perpetrators on bail

In 2010, some young women who had been raped approached the SJC asking for help. Having been arrested, the alleged perpetrators had been released on bail and were now threatening the women who had laid the rape charges.

Welcome Makele, one of the SJC's community support officers, called a detective on their behalf but initially nothing was done about it. His persistence led to the case reaching the Magistrate's Court, where their bail conditions were withdrawn.

At a second hearing, the men failed to attend. When they then threatened the victims once more, Makele took it upon

himself to pursue them. Finding one of them at a tavern in Gugulethu he called the police and the man was arrested. When the case appeared in court, however, the docket was missing and he was released.

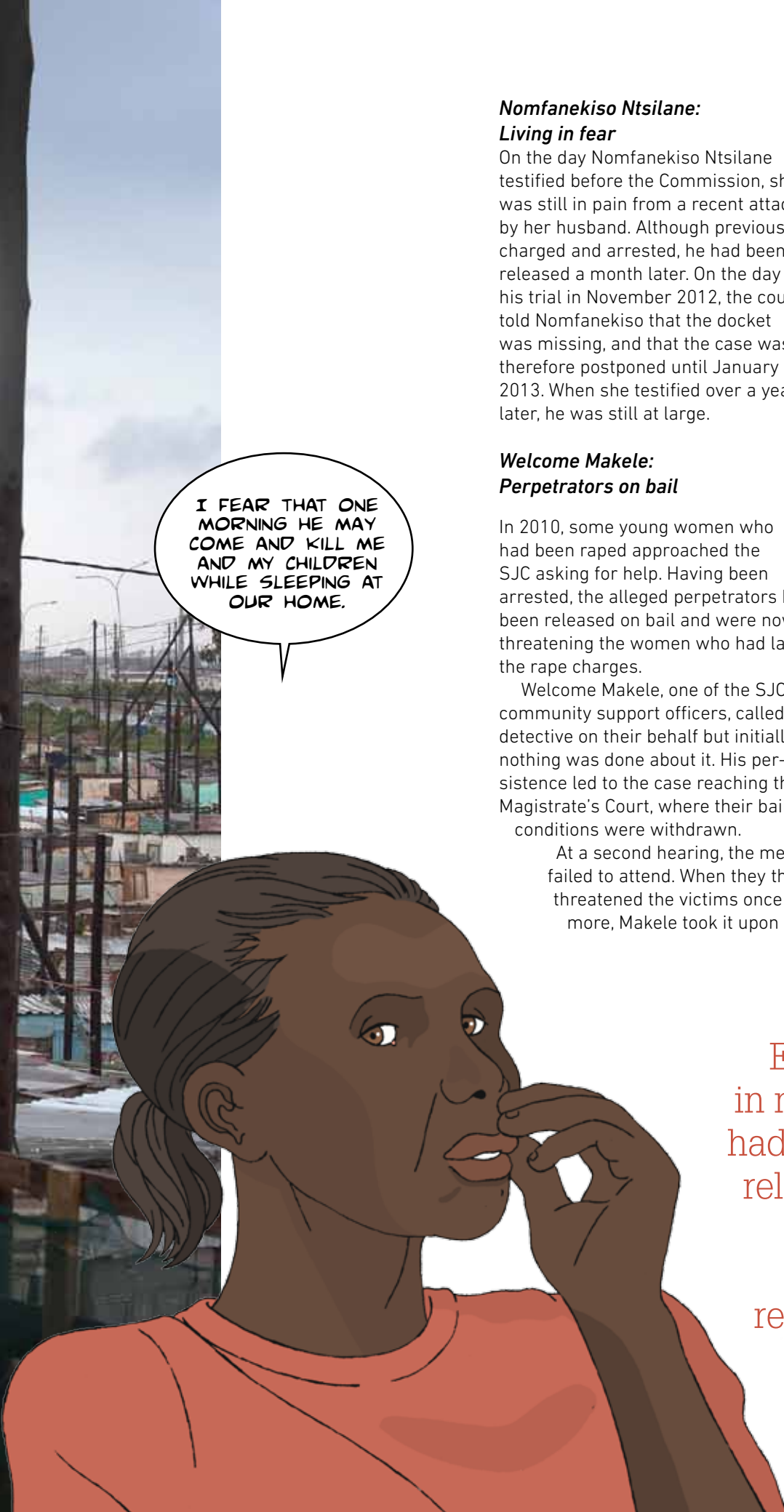
At the time of the Commission's hearings, four years on, the matter remained unresolved.

Callous non-compliance

Section 2 of the Domestic Violence Act imposes specific duties on the police. SAPS's failure to comply with this legislation leaves victims vulnerable to further acts of violence.

Once a complainant has reported a crime, SAPS is obliged to shelter her from any threat, help her to obtain medical treatment, provide her with written information relating to her rights, send a court notice to her abuser, confiscate any weapons in his possession, administer a protection order against him, arrest him if he violates it, and accompany the complainant to her home so she can safely collect her personal items.

But, in reality, these obligations are rarely carried out. In Professor Vetten's experience, many SAPS officers regard reports of domestic violence as "a nuisance" and "not a proper crime", preventing them from "getting on with the real crimes of murder and cash-in-transit heists."



I FEAR THAT ONE MORNING HE MAY COME AND KILL ME AND MY CHILDREN WHILE SLEEPING AT OUR HOME.

Evidence suggested that in many cases perpetrators had been arrested and then released the following day, while court orders were ignored, which put the relevant victims at further risk of violence

Foreign Nationals and Xenophobia

"This is my South Africa. This is not your country."

~ SAPS officer (to a foreign national), Khayelitsha

As two brutal outbreaks of xenophobic violence have shown, first in 2008 then again in early 2015, foreign nationals are a vulnerable minority in South Africa. Often trying to build new lives on the fringes of our society, refugees, asylum-seekers and immigrants present an easy target, both for criminals and wayward police members.

Foreign nationals in Khayelitsha

Some 20 years ago, Khayelitsha's population of foreign nationals consisted mainly of Angolan and Congolese refugees. Today, the majority are Somalis and Ethiopians who work as traders in small spaza shops across Cape Town. Although the precise number of foreign nationals living in Khayelitsha is unknown, a 2011 census estimated that as many as 2,477 were residing in the area, constituting at least 0.6% of the population.

Although precise statistics are difficult to determine, it is clear that, in Khayelitsha, spaza shops owned by foreign nationals are overwhelmingly targeted by criminals. Crime intelligence officers at the Khayelitsha Site B police station have calculated that 96.5% of the community's reported business robberies affect foreign traders – 40% of which also involve charges of murder or attempted murder – even though they constitute only half of the precinct's storeowners.

Vicki Igglesden: Victims of their protectors

The Commission was only able to interview foreign nationals 'off record' owing to their fear of victimisation. A survey presented by Ms Vicki Igglesden, a social anthropologist who

The Commission found compelling evidence to suggest that there are SAPS members who lack an ethic of courtesy and respect towards the community – particularly in their interactions with foreign nationals living and working in Khayelitsha

specialises in refugee rights, showed that there are high levels of dissatisfaction towards the police among Somalis, Burundians and Eritreans in Khayelitsha.

Many complained of secondary victimisation – including the theft of their goods – by SAPS members. One trader recalled being threatened by a police officer: "If you don't give me a cool drink the shop will be closed."

Shop owners under threat

Several witnesses verified these claims. Yoliswa Dwane testified that she had seen SAPS members casually seizing food and drinks from spaza shops owned by foreign nationals.

Phumeza Mlungwana recalled an incident in 2012, when a Somali-owned spaza shop was raided by police without a search warrant. Under the pretext of a weapons search, and using gloves to avoid fingerprint detection, they destroyed property, stole R5000 in cash and R2800 in airtime vouchers, and physically assaulted the shop owner.

Although the victims were intimidated by the threat of further assaults, a case was later opened at the Harare Police Station. The SJC followed up on the investigation with the Cluster Commander for the area, Major General Ndlovu, but to date no one has been charged.

IT SHOCKED ME WHEN I SAW IT ONCE, BUT THEN I SAW IT AGAIN AND AGAIN AND AGAIN, WHERE THE POLICE JUST COME INTO A SHOP, A SOMALI SHOP,

THEY DON'T DO THAT WITH XHOSA OWNERS BUT THEY DO THAT WITH SOMALIS.

~ Yoliswa Dwane
National Chairperson,
Equal Education



Violence against LGBTI People

The tragic story of Zoliswa Nkonyana, as described on page 14, is a powerful reminder that lesbian women living in working-class areas are extremely vulnerable to violent hate crimes. This is also true for homosexual men, as well as bisexual, transgender and intersex people.

Phumeza Mlungwana of the SJC drew the Commission's attention to a study, conducted by Human Rights Watch, in which black lesbians and transgender men living in informal areas are shown to be among the most marginalised and vulnerable of South Africa's LGBTI community.

"They call us 'girl-man'"

It should come as no surprise to SAPS members – who already have a constitutional responsibility to protect and uphold the dignity of all citizens, regardless of sex, gender or sexual orientation – that the LGBTI community may call upon them for protection. And yet, the same report by Human Rights Watch also noted that, while reporting crimes, LGBTI people have been subjected to 'secondary victimisation' by police officers. As a black lesbian from Khayelitsha explained:

YOU DON'T WANT TO GO TO THE POLICE IF SOMETHING HAPPENS TO YOU, ESPECIALLY WHEN YOU'RE A LESBIAN, ESPECIALLY IF YOU USE THE NAME 'LESBIAN'.

THEY LOOK AT YOUR CHEST. YOU SEE IN THEIR FACE, THERE'S SOMETHING ON THEIR FACE THAT SAYS 'FREAK'.

The Commission came to the same conclusion, finding that such discriminatory behaviour by the police towards LGBTI people and foreign nationals indicated deeply-held homophobic and xenophobic attitudes that prevail within SAPS. Clearly, the police have a special responsibility to protect and respect these members of the community, particularly given their acute vulnerability

Funeka Soldaat: **Culture of fear and silence**

Free Gender is an organisation operating in Khayelitsha that seeks to promote and defend the rights of the lesbian and bisexual community. Funeka Soldaat, one of its founding

members, described to the Commission how members of the LGBTI community have not been treated with the same degree of concern and respect as heterosexual complainants.

In 2012, one of her colleagues attempted to lodge a complaint of rape, only to be mocked by the SAPS members she consulted. Funeka added that certain SAPS members "exhibit extreme aversion to the LGBTI people who report crimes or visit police stations ... This has the effect of discouraging LGBTI people from reporting crimes to the police." In an affidavit submitted to the Commission, another woman wrote:

"I do not feel safe in Khayelitsha, but my life is in Khayelitsha and there is nothing I can do about the crimes against us and the way in which the police treat our cases. I am more worried about the younger generation of lesbians, who have had things – violent things – happen to them, but keep quiet, because they know the police will not help them."

Free Gender complimented the attitude of those officers in SAPS who are in "the higher ranks" – a comment validated by SAPS's commitment to protect vulnerable citizens, which it entered into after engaging with Free Gender. Ms Soldaat also noted, however, that despite this progress, the attitudes of many other SAPS members remain unashamedly abusive towards LGBTI people.

THEY CALL US 'GIRL-MAN', 'WOMAN MAN', THEY DON'T KNOW WHAT A LESBIAN IS



Alcohol and Shebeens

"I think for us at the Khayelitsha Court we dread when public holidays come because invariably you will find more assaults, you will find on a Monday morning you have more murders than you have on any other day during the week and even looking at those matters there's a very large percentage where it is altercations that occur whilst people were drinking together or there's an altercation at a shebeen and people are not, you know, within their full senses and reactions lead to people assaulting each other and assaulting each other in a violent manner."

~ Testimony of Rochelle Harmse
SPP, Khayelitsha Magistrate's Court
6 February 2014

Statistics have shown a high correlation between alcohol abuse and the prevalence of contact crimes like domestic violence, rape and murder. During the Commission's hearings, when Khayelitsha's community and police members described serious criminal activity, alcohol featured prominently as an exacerbating factor.

Beauty Thosholo: "None of my family members are okay"

Ms Beauty Thosholo, a resident of Site B, testified that on the night of 9 November 2010 she had been at home with her 14-year-old daughter, Thandi, and 22-year-old son, Lethabo, when six or seven people carrying glasses filled with alcohol forced their way into her house, produced a firearm, then dragged Lethabo to their car and left.

Beauty ran to her brother's house for help. She later discovered that the kidnappers had also stolen her

television, DVD player and cell phones. When called, a large contingent of police arrived at her home. During their investigation it was found that Lethabo had been murdered, his body dumped near Monwabisi Beach, by a group of men who were friends of his new girlfriend's ex-boyfriend.

At first, as Beauty recalled, the case had been handled efficiently – SAPS had the names and addresses of the murderers, and five suspects were promptly charged. But when the first detective handed over the case to another, the investigation ground to a halt. By the time Beauty testified at the Commission, she had still heard nothing.

After counsel for SAPS agreed to make enquiries on Beauty's behalf, the Commission was informed that the case had been enrolled at the Western Cape High Court and would be heard on 14 February 2014.

Beauty subsequently phoned the Commission to say that although the matter had been postponed she was aware of the next court date.

~ Beauty Thosholo
Resident, Site B

MY FAMILY IS STILL SAYING THAT IF THE LAW CANNOT TAKE ITS COURSE THEN THEY WANT TO AVENGE MY SON'S DEATH.

I HAVE TOLD THEM THAT THEY MUST CALM DOWN BECAUSE I HAVE HEARD OF ANOTHER PLACE WHICH IS CALLED THE COMMISSION.

FOR NOW I AM STILL IN THAT COMMISSION AND I AM JUST WAITING TO HEAR WHAT IS GOING TO HAPPEN.



Given that the City of Cape Town's Metro Police has the authority to enforce trading hours as well as trading licenses, the Commissioners also acknowledged that the responsibility of developing an appropriate strategy to deal with licensing and alcohol regulations falls beyond the mandate of SAPS, thus urging the provincial government to address the matter urgently



Paramilitary 'swoops'

A major challenge that SAPS faces in combating alcohol-related crime is the abundance of illegal shebeens which are scattered across Khayelitsha and other working-class areas.

Major General Peter Jacobs, the Western Cape's Deputy Provincial Commissioner responsible for Operational Services, estimated that Khayelitsha has about 1,400 unlicensed shebeens.

Thys Giliomee, the Chief Executive Officer of the Western Cape Liquor Authority, explained that the police manage unlicensed liquor outlets in accordance with Section 252A of the Criminal Procedure Act.

To fulfill these obligations, they often conduct paramilitary operations (known as 'swoops'), allowing them to catch illegal traders and their customers in the act. Giliomee added that prosecutors have a tendency not to take liquor-related matters seriously; and because start-up costs for these enterprises are very low, replacements usually spring up as soon as existing outlets are closed down.

While agreeing that alcohol is a key driver of violent crime, the Commission concluded that SAPS's swoop operations only serve to strain relations further between the police and the community

~ Phumeza Mlungwana
General Secretary, SJC



Community Police Forums

To earn the trust of South Africa's Black population after 1994, it was essential for SAPS to renounce the harsh authoritarian style of policing it had adopted during apartheid, while finding new ways to forge a stronger, more collaborative relationship with the general public.

Integral to this process were CPFs, designed by legislators to facilitate the constructive engagement of SAPS members with community representatives. In Khayelitsha almost 20 years later, however, the Commission was alarmed to find that these institutions are barely operating.

CPF's in Khayelitsha

At Lookout Hill, some Khayelitsha community members praised CPFs for responding to crimes quicker than SAPS, while others were more critical.

Bishop Mtsolo, a Khayelitsha resident since 1990 and the National Presiding Bishop of the Litha Methodist Church of South Africa, complained that the local CPFs are "ineffective".

Ms Nontuthuzelo Mtwana, a Safety Coordinator with Violence Prevention through Urban Upgrading (VPUU) said they were "politically dominated".

And SJC staff member Joel Bregman, who engaged extensively with CPFs in the build-up to the Commission, recalled feeling "a sense that the CPFs had been co-opted ... that they lacked independence but also that the police didn't respect the structures and didn't provide them with the support that they required to carry out their jobs."

Promising on paper

Although CPFs have not generally been a comprehensive success in South Africa, the Commission found that they remain essential to achieving safer working-class communities.

Hanif Loonat and Faisel Abrahams, two experienced CPF members who have served on the Provincial Board, explained that the Western Cape has been more successful than other provinces in establishing CPFs.

Mr Loonat spoke of the need for CPFs to be supported by Street Committees, Neighbourhood Watch teams and Sector Forums. Demonstrating their potential, he and Mr Abrahams recalled an initiative held in Khayelitsha during the 2012 Easter weekend. In an attempt to reduce crime, a gathering of Neighbourhood Watch teams organised patrols to support SAPS. The exercise, they said, was a success: during the 2011 Easter weekend, there had been 23 murders in Khayelitsha; in 2012, only one.

WHEN CPFs ARE SUPPOSED TO HAVE MEETINGS THEY'RE IRREGULAR OR THEY NEVER TAKE PLACE ...

AND WHEN THEY DO HAPPEN PEOPLE WASTE TIME DEFENDING THEMSELVES INSTEAD OF TACKLING AND DISCUSSING POSITIVE WAYS FORWARD.

The Commission found that CPFs were being undermined by political contestation (among and between CPF and SAPS members); poor leadership, planning and attendance; as well as a lack of monitoring, funding and resources.





SAPS: Structures and Functions

SAPS is a huge organisation. Its total staff contingent – some 200,000 in number – is large enough to populate a small city. Given the complex nature of their work, all members of SAPS must adhere to a detailed system of compliance and oversight, based on principles that are enshrined in our Constitution.

Before dealing with the testimonies of the police, it is first important to understand the structures, functions, ranks and codes that exist within their organisation. This section begins with SAPS's organisational structure before turning to its functions at different levels of management, and finally to the ranks of its personnel and its code of conduct.

SAPS: Organisational Structure

When South Africa's interim Constitution came into effect in 1994, a single national police service was established, amalgamating the 11 apartheid-era policing agencies which were formerly dotted across the self-governed territories and homelands (each with its own uniform, ranking system and conditions of service). A year later, with the passing of the 'SAPS Act' (Act 68 of 1995), the South African Police Service – as it is known today – came into being.

Right: 'Wachthuis', the SAPS national head office at 231 Pretorius Street, Pretoria Central.



National Headquarters

The national head office of SAPS—or 'Wachthuis', as it is known among police—is a wide, nondescript building easily overlooked in the heart of Pretoria. Behind its narrow, tinted windows, some 2,000 public servants are at work, administering and instructing almost 198,000 SAPS personnel nationwide.

From Wachthuis to the provincial offices to the cluster offices and finally to the individual police stations, commands issued in the name of the Minister of Police or the National Commissioner are passed down the ranks in the form of regulations, national instructions, standing orders and policy guidelines. The head office is also where country-wide audits are conducted, resources are allocated, crime statistics are consolidated, and the performance of each and every station is assessed.



Provincial offices

All of South Africa's nine provinces have their own SAPS provincial office. In each of these, the highest-ranking official is the Provincial Commissioner, who reports directly to the National Commissioner and works closely with five Deputy Provincial Commissioners who specialise in areas such as operations, resources, crime intelligence and detectives.

In the Western Cape, the provincial office oversees more than 21,000 SAPS members.

Related institutions

Civilian Secretariat

In 2011, legislation was enacted to introduce the Civilian Secretariat for Police, a national advisory body primarily tasked with providing the Minister of Police with research relating to policy, strategy and police performance.

Given the importance of the Civilian Secretariat in the context of the Commission's mandate, every effort was made from as early as September 2012 to secure its participation in the proceedings. Initially, however, the Secretariat joined the Minister of Police in his bid to set aside the Commission's establishment – only later agreeing to cooperate once the Constitutional Court's verdict had been handed down in late 2013.

Independent Police Investigative Directorate

The Independent Police Investigative Directorate (IPID), formerly known as the Independent Complaints Directorate (ICD), was established as a national entity (with provincial offices) in April 2012.

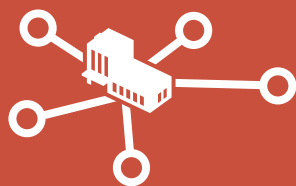
Its function is to investigate complaints lodged by the provincial executive in connection with alleged police misconduct or any offences committed by SAPS members.

These include: the mistreatment of suspects in custody; the unlawful discharge of firearms; systemic corruption; and the rape, assault or murder of any person by a police officer, whether on or off duty.

In the course of its investigations, IPID has the power to enter, search, seize and arrest.

Community Police Forums

In 1994, legislators were presented with the formidable task of transforming the South African police from oppressors to protectors in the public mind. CPFs, introduced via section 19 of the SAPS Act, were a key component of this approach. They were created under the auspices of the Provincial Commissioners and made up of elected voluntary community representatives as well as the local station commander (whose responsibility it is to schedule regular meetings). Each CPF provides a platform on which residents and SAPS members can engage and collaborate.



Cluster offices

Every SAPS station falls within a 'cluster' of neighbouring precincts. The Western Cape's 150 stations are divided into 25 clusters, each managed by a cluster commander, a cluster detective commander and a cluster visible policing commander, who together are responsible for overseeing the day-to-day operations of the stations within their cluster.

Established in 2009, the Khayelitsha cluster office has eight stations under its jurisdiction: Harare, Lingeletu West, Khayelitsha Site B, Macassar, Lwandle, Somerset West, Gordon's Bay and Strand.

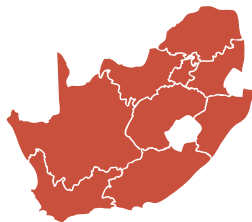


Stations

For a victim of crime, the first port of call is a SAPS station. Here, under the management of a station commander, dockets are opened, registers and records are kept, investigations and patrols are launched, and suspects are questioned. It represents the frontline of SAPS service delivery, both in terms of policing and community relations.

At the time of writing, there were 1,137 SAPS stations in South Africa. Each station's precinct is further divided up into 'sectors' – smaller geographical areas which allow for a more focussed approach to crime prevention and community engagement.

SAPS: Functions



The failure to combat serious crime in informal areas implicates not just the visible police and detectives who confront it on a daily basis, but officers at every level of SAPS

National level

Performance Evaluation

Gauging organisational performance is an important function of the national office. Since the 1990s, SAPS has utilised a sophisticated performance chart system known as the EUPOLSA Index to determine whether its stations and units are adhering to their constitutional mandates.

The Commission was concerned that the performance chart is based on data drawn on a monthly basis from a number of SAPS databases, none of which ultimately has any guarantee of accuracy.

Another mechanism with a similar objective to the performance chart is the Performance Enhancement Process (PEP) which, also administered by the national head office, evaluates the performance of individual SAPS members.

Conducted three times a year and based on written appraisals and supervision, the PEP rating system consists of a five-point scale, where 1 is the lowest rating and 5 is the highest. The Commission found the PEP to be largely inadequate at differentiating between good and bad performers (because 96% of those who take part tend to score 3 out of 5).

Crime Statistics

In September every year, SAPS publishes crime statistics for each of its police stations covering the period 1 April–31 March of the preceding year.

This means that by the time crime statistics are released to the public they contain data that is between six and eighteen months out of date. While the Commission found that this

practice cannot be blamed for the breakdown in the relationship between the community and SAPS, it recommended that the “regular and timely release of crime statistics can foster good relations” between SAPS and the broader community.

Crime Administration System (CAS)

When crimes are reported to SAPS, data capturers enter all the relevant information using a national electronic system for crime administration. For each case, a ‘CAS number’ is generated for reference purposes. It includes the name of the police station at which the crime was reported, a number allocated consecutively on a monthly basis, and the month and year in which the crime was reported.

Human Resources

When the national office allocates human resources to stations across the country, the process begins with the Theoretical Human Resource Requirement (THRR), an estimate based on each station’s reported crime rates and the environmental factors that either facilitate or impede its members’ performance.

The THRR, however, hardly ever matches the number of fixed posts allocated to each station – a number known as the Resource Allocation Guide (RAG) – which varies according to the station’s performance-based classification. The practical consequences of the RAG are dealt with in more detail on page 66.



Provincial level

Two crucial functions of SAPS at provincial level are on-site inspections and the handling of complaints.

Provincial Inspectorate

Of particular importance to the Commission's mandate was the Western Cape's Provincial Inspectorate – the department responsible for regular inspections of all the province's police stations. The officers tasked with conducting an inspection are not legally obliged to notify the relevant station commander of their visits – but in most cases they do.

Provincial 'Nodal Point'

According to Standing Order 101, every police station, unit or component of SAPS should have an electronic database for all complaints lodged against its members. Officers assigned to each case are expected to complete their investigation within 19 days.

In order to counter what she described as a "void" in the management of complaints, in 2010 Major General Sharon Jephta, the Western Cape's Deputy Provincial Commissioner for Operations, developed a centralised system by which all complaints are captured and monitored at one provincial 'nodal point'.

Station level

Every station's staff complement serves three main functions: visible policing (VISPOL), crime investigation (at the Detective Branch) and Support Services. Each of these is controlled by a commander who in turn reports to the Station Commander.

Visible Policing

VISPOL members wear police uniforms and work 12-hour rotating shifts, usually for four days per week. They manage police cells, conduct sector patrols and provide security to courts situated within their station's precinct.

They also staff the Community Service Centre (CSC): a room near the station's entrance in which community members can engage with SAPS members – either in person or by phone call – in order to report a crime or have their documents certified.

In the CSC, VISPOL members open dockets and manage a range of registers and records, the most important of which is the Occurrence Book (or OB) in which all crimes, and other matters requiring investigation, are supposed to be recorded.

All registers must be checked daily as part of a "first-level inspection" by either the CSC commander or the relief commander. They should also be checked weekly in a "second-level inspection" conducted by either the station commander or the VISPOL commander.

Detective Branches

Detectives, who usually wear plain clothes, do not work according to a shift system. Based in the police station's crime office or Detective Service Centre (DSC), they are responsible for investigating and detecting crime.

This includes screening dockets, interviewing complainants, attending to reported crimes, conducting crime scene management and the subsequent investigations, recording evidence in the case docket, and ensuring that dockets are delivered to the prosecution service and courts.

Support Services

Support services are responsible for human resource management, finance, physical resource management and supply chain management. Most large police stations will also have a Crime Intelligence Officer (CIO) whose functions include: analysing dockets, statistics and case linkages; mapping crime trends; assessing fieldwork; and briefing or debriefing the VISPOL staff.

Reservists

Until 2010, SAPS stations supplemented their personnel by recruiting, training and paying 'reservists' – all of whom were volunteers from the local community. Later the same year, however, a moratorium was imposed, introducing a certification process and terminating all forms of remuneration.

SAPS: Ranks

In March 2010, SAPS reverted to its original, apartheid-era military ranking system. These titles are as follows:

The **National Commissioner** is responsible for many of the rules that govern SAPS, in addition to overseeing the processes of performance evaluation, crime statistics, the internal audit, information technology, human resources and financial planning.

Provincial Commissioners report directly to the National Commissioner. They are supported by a team of Deputy Provincial Commissioners. Within their provinces they have the power to establish and maintain police stations and units, determine resource allocations and jurisdictions, and issue orders and instructions consistent with the SAPS Act and all National Orders and Instructions.

Although the position remains under review, **Cluster Commanders** are currently tasked with ensuring the effective coordination of visible policing and detective functions at all of the stations within a respective cluster, as well as facilitating support services to its stations, overseeing operational plans and acting as the chairperson of the Cluster Crime Combating Forum (CCCF).

A **Station Commander** is responsible for all operations within a SAPS station, working closely with the respective commanders of detectives and visible police, as well as the CIO.

Commissioned Officers

Senior Management

- General**
National Commissioner
- Lieutenant General**
Deputy National Commissioner
Divisional Commissioner
Provincial Commissioner
- Major General**
- Brigadier**

Commissioned Officers

- Colonel**
- Lieutenant Colonel**
- Major**
- Captain**
- Lieutenant**

Non- commissioned officers

- Warrant Officer**
- Sergeant**
- Constable**
- Student Constable**

SAPS: Code of Conduct

The members of the South African Police Service commit themselves to the creation of a safe and secure environment for all South Africans. In order to achieve a safe and secure environment we undertake to...

“[South Africa’s security services] must act, and must teach and require their members to act, in accordance with the Constitution and the law ...”

~ Section 199(5) of the Constitution

- *with integrity, render a responsible and effective service of high quality which is accessible to every person and continuously strive towards improving this service*
- *utilise all the available resources responsibly, efficiently and cost-effectively to maximise their use*
- *develop our own skills and participate in the development of our fellow members to ensure equal opportunities for all*
- *contribute to the reconstruction and development of, and reconciliation in, our country*
- *uphold and protect the fundamental rights of every person*
- *act impartially, courteously, honestly, respectfully, transparently and in an accountable manner*
- *work actively towards preventing any form of corruption and bringing those guilty of corruption to justice*





Testimonies: The Police

Every day, shortages of personnel, physical resources and patrols, and failures of oversight and management, all affect SAPS's ability to prevent crime. From the crime scene to the court house, negligence and inefficiency on the part of visible police, detectives and their support staff hopelessly obstruct the path to justice.

While the evidence of Khayelitsha residents made it clear that SAPS members have been guilty of callousness, inefficiency and gross misconduct, it is equally important to remember that there are still many other police officers, in Khayelitsha and across South Africa, who are striving to perform their duties to the best of their ability.

In this chapter, we hear from SAPS witnesses at station, cluster, provincial and national level. Their testimonies provide crucial insight into the challenging work of policing in informal areas, as well as the many wider systemic failures that compound the poor performance of police forces on the ground.

Testimonies: The Police

Environment vs Crime Scene Management

Unlike Cape Town's historically white suburbs where virtually every building has road access and a street address, almost every home has a private security system, and the vast majority of reported crimes are hijackings and house break-ins, Khayelitsha (like other deprived working-class areas across South Africa) presents SAPS with many unique challenges.

"Crime-friendly" informal settlements

Speaking from experience, Colonel Michael Reitz (below), the Station Commander at Lingeletu West, drew the Commission's attention to the impenetrable and even disorientating nature of Khayelitsha's informal settlements. Densely packed and poorly lit, they are "crime-friendly", he said – that is, they make communities more vulnerable to crime and they complicate efficient police work.

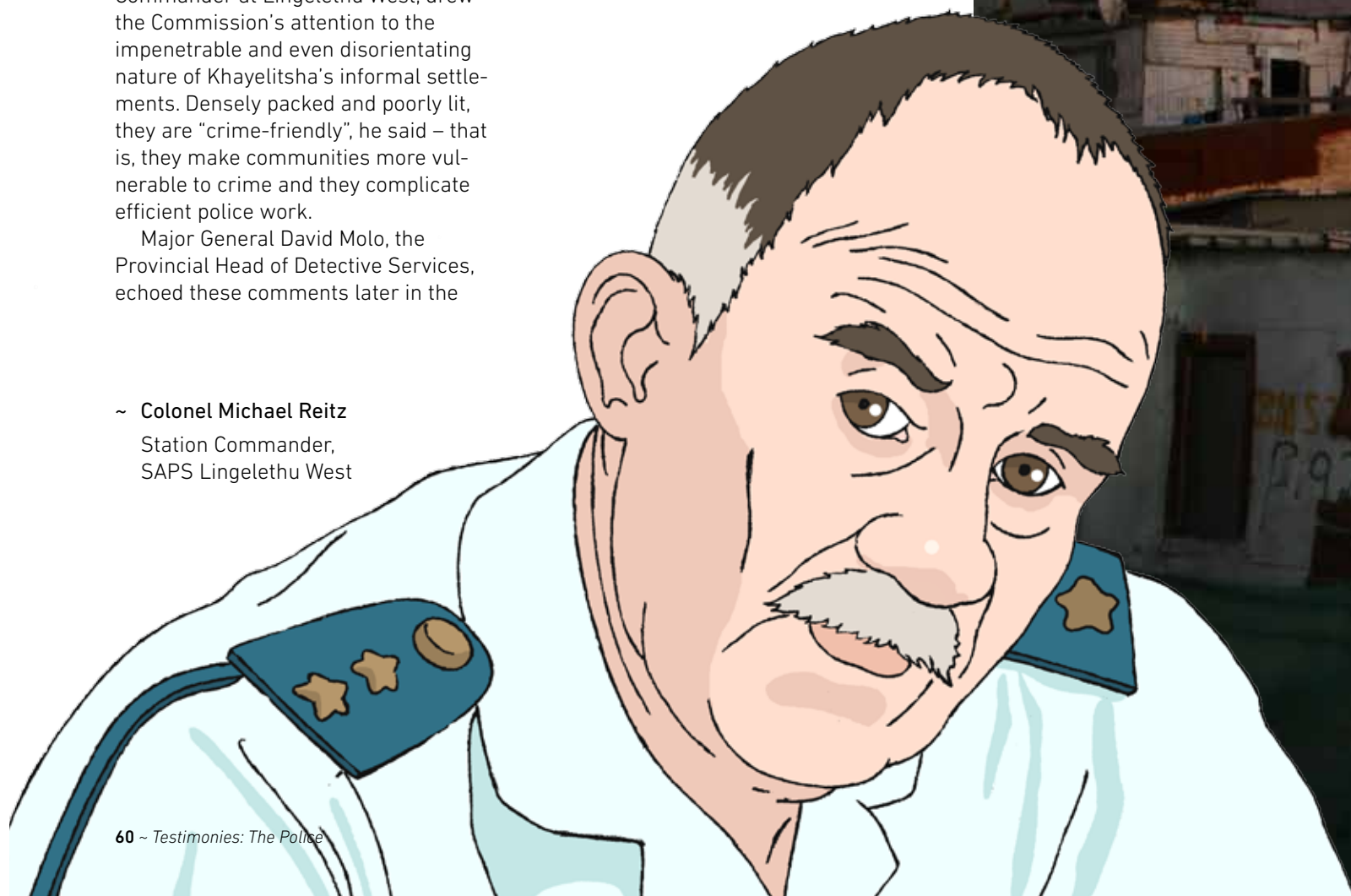
Major General David Molo, the Provincial Head of Detective Services, echoed these comments later in the

hearings (see page 65). He added that when there are no roads leading to a crime scene situated deep within an informal area, a third detective is often needed to guard the abandoned vehicle.


At night, Molo said, crime scenes are more difficult to manage without street lighting or the use of a car's headlights. And with shacks crammed so close to one another, an area cordoned off for a crime scene often incorporates more than one home, which in turn requires SAPS to evacuate the inhabitants, sometimes for hours at a time and in the dead of night.

Owing to these factors, Molo refused to accept "a generalised statement that the police in Khayelitsha are inefficient". He argued that SAPS's specific guidelines for crime scene management do not apply to certain parts of Khayelitsha owing to environmental constraints.

~ Colonel Michael Reitz
Station Commander,
SAPS Lingeletu West



SAPS's failures, in part, stem from the difficulties which characterise policing in Khayelitsha's informal areas, such as poor lighting and inaccessibility. They also often go hand-in-hand with insufficient resources, a fundamental problem dealt with in the following section



YOU NEED TO WALK
IN THERE, YOU NEED
TO PARK YOUR VEHICLE
OUTSIDE IN THE STREET
AND THEN ANOTHER THING
THAT IS REALLY DIFFICULT IS
THE NUMBERING OF HOUSES
IN THE AREAS.

IT IS DIFFICULT
BECAUSE IF YOU DON'T
KNOW THE AREA
VERY WELL, IT'S VERY
HARD TO FIND THE
SPECIFIC ADDRESS
IN A SHORT TIME.

BEFORE THE COMMISSION, COLONEL JOHAN MARAIS, DETECTIVE COMMANDER AT KHAYELITSHA SITE B, ALSO SPOKE REVEALINGLY ABOUT THESE CHALLENGES:

COLONEL MARAIS, WOULD YOU SAY THERE ARE ENOUGH DETECTIVES AT YOUR STATION?

Justice Kate O'Regan
Commissioner

UGH ... YOU KNOW COMMISSIONERS, EVERY NIGHT WHEN I GET HOME I POUR MYSELF A GLASS OF RED WINE. AND THEN I PONDER...

Colonel Johan Marais
SAPS Detective Commander

HA!

THEY SAY IT'S GOOD FOR YOU

HAHA!

Advocate Thabani Masuku
Counsel for SAPS

EVEN IF WE DOUBLED OUR STAFF IT WOULDN'T BE ENOUGH.

I KNOW WE'VE GOT TIME CONSTRAINTS HERE BUT I WISH I COULD GIVE YOU A DAY IN THE LIFE OF A NORMAL DETECTIVE.

NO, NO PLEASE GO AHEAD, COLONEL ...

Advocate Vusi Pikoli
Commissioner

Bullet hole

OKAY I'M GOING TO SKETCH YOU A REAL-LIFE SCENARIO HERE, FROM ONE WEEKEND A FEW YEARS AGO ...

IT WAS A FRIDAY AND AT 7 O'CLOCK THE FIRST CALL COMES IN THAT THERE IS A MURDER IN SITE C ...

I GO WITH ONE OF MY DETECTIVES AND WE CORDON OFF THE SCENE.



IT WAS WINTER SO IT HAD ALREADY GOT DARK BY THAT STAGE.

**BANG!
BANG!**

THEN WHILE WE'RE STANDING THERE WE HEAR GUN SHOTS GOING OFF AND NOW THERE IS ANOTHER CRIME SCENE IN THE STREET BEHIND US SO WE FINISH THE FIRST SCENE QUICKLY AND MOVE ON TO THE NEXT ONE.

WHEN WE GET THERE WE HEAR SHOTS AGAIN.



**BANG!
BANG!
BANG!**

SO IT'S THREE SCENES IN THE PROXIMITY OF FIVE BLOCKS BUT YOU CAN'T DRIVE THERE. IT'S DARK NOW AND THERE ARE NO ROADS.

ONE SCENE WAS ON THE STREET AND TWO WERE IN THE INFORMAL SETTLEMENTS SO WE STOPPED THE CAR AND WALKED.



IT TAKES AT LEAST 3 TO 4 HOURS TO INVESTIGATE A SCENE PROPERLY.



AND YOU CAN'T JUST LEAVE AND COME BACK BECAUSE SOMEONE COULD TAMPER WITH THE EVIDENCE WHILE YOU'RE GONE.

THAT NIGHT, AFTER THREE CRIME SCENES, WE LEFT AT ABOUT 2 O'CLOCK IN THE MORNING AND WE STILL MANAGED TO MAKE ONE ARREST.



THE NEXT NIGHT WAS SATURDAY AND WE WERE ON DUTY AGAIN. THIS TIME WE RECEIVED FOUR MURDERS. THAT'S SEVEN FOR THE WEEKEND.

THAT WHOLE WEEKEND TWO INVESTIGATING OFFICERS WERE BUSY RUNNING FROM CRIME SCENE TO CRIME SCENE FOLLOWING UP LEADS.

THEN, ON THE MONDAY, IT WASN'T EVEN 6 O'CLOCK AND I RECEIVED A CALL FROM A VERY SENIOR OFFICER. I AM NOT AT LIBERTY TO MENTION HIS NAME OR ELSE I MAY NOT HAVE A JOB AFTER THIS. BUT HE PHONES ME AND SAYS:

WHY ARE THOSE SEVEN DOCKETS NOT PROPERLY WRITTEN UP?

COMMISSIONER'S, I NEARLY FLIPPED!

DURING THAT WEEKEND WE MANAGED TO MAKE TWO ARRESTS OUT OF THE SEVEN. SO ON THE MONDAY MORNING I SENT THE INVESTIGATING OFFICER TO THE POST-MORTEMS.

THESE WERE ALREADY SCHEDULED FROM THE FRIDAY. BUT NOW THE POST-MORTEMS WERE AT DIFFERENT PLACES AT THE SAME TIME SO WE COULD NOT ATTEND ALL OF THEM.

FROM THERE I WENT TO CYCLOPS TO CHECK THE VIDEO FOOTAGE TO SEE IF SOMETHING WAS PICKED UP. WHEN I CAME BACK IT WAS NEARLY 2 OR 3 O'CLOCK IN THE AFTERNOON.

THE NEXT DAY THE PEOPLE WHO HAD BEEN ARRESTED HAD TO BE TAKEN TO COURT. WE WERE ALREADY AT THE FOURTH DAY OR ACTUALLY THE FIFTH DAY NOW, FOR THESE SEVEN CASES.

THEN WE HAVE TO GET PROFILES FROM THE CRIME INTELLIGENCE OFFICERS.

WE HAVE TO LINK UP WITH COMMUNITY MEMBER'S IN SITE C WHO WE HAVE A GOOD RELATIONSHIP WITH. AND AT THE END OF THE DAY IT BECOMES WEDNESDAY, THURSDAY, AND MY DETECTIVES HAVE DONE NOTHING ELSE.

THERE IS NOT ENOUGH HOURS IN A DAY, COMMISSIONER'S. THERE IS NOT ENOUGH DAYS IN A WEEK.

WE HAVE TO LINK UP WITH THE SECTOR MANAGERS TO ASK THEM TO PLEASE ASSIST US.

AND THAT'S JUST MURDERS - NOT ROBBERIES OR ANYTHING. ARE YOU SURE THAT IN THESE REFLECTIVE MOMENTS AT HOME YOU ONLY HAVE ONE GLASS OF RED WINE?

SOMETIMES I MIGHT REFLECT LONGER.

Gloves and cordons: Protecting a crime scene

Expert witness Dr David Klatzow, an experienced forensic scientist, detailed the process that goes into protecting a crime scene. The first priority is to determine the status of any victims. Next, officers should establish whether there is any ongoing threat to life – such as leaking gas, explosives or fire hazards.

Barrier tape should then be used to seal off the area (crucially, every SAPS response vehicle should be equipped with tape, protective clothing, shoe covers and gloves). Dr Klatzow also recommended halogen lights and a small generator for managing crime scenes in informal areas at night.

To ensure that the evidence is not tampered with, a sufficient complement of police officers is essential. Those responsible for handling the evidence should only do so wearing protective clothing. Nobody should enter the crime scene unless it is to

save a life or arrest a suspect. A joint operational centre should be established, as well as a crime scene log – in order to record all of the crucial information.

Once all of these measures are in place, an officer should be appointed to take charge of the crime scene for the remainder of the investigation. Either a Forensic Pathologist or a Forensic Pathology Officer (FPO) should then be called for. In theory, every crime scene should be managed according to these guidelines.

However, as a number of SAPS witnesses testified, the reality is that there are occasions when rain damages the evidence, when bystanders cross the police cordon and interfere with the investigation. As the case had been for Colonel Marais, there are even scenarios in which multiple crimes take place within a short period of time, all within the same precinct, leaving detectives with no option but to rush through their crime-scene investigations.

The Commission found that crime scenes in Khayelitsha are not routinely secured or protected, and that officers tend not to summon crime experts. When the FPO does arrive, the scene has often already been tampered with, usually by family members of the victim



THERE ARE NO STREETLIGHTS IN SOME AREAS, NO PROPER ROADS, OVERCROWDING OF INFORMAL SETTLEMENTS AND PEOPLE. INFORMAL SETTLEMENTS OFTEN BURN IN SUMMERS AND IN WINTER THEY GET FLOODED.

THESE FACTORS DO NOT STOP CRIME. OFTEN THEY ENCOURAGE IT.

~ Major General David Molo
Provincial Head of
Detectives

Resources and Facilities

Three obvious requirements for any police station operating in informal areas are sufficient personnel, equipment and facilities. And yet, as Jean Redpath revealed to the Commission, the 15 police stations with the lowest police-to-population ratios in the Western Cape are all socially disadvantaged and many of them have high levels of violent crime.

“Gagged by the RAG”

Of these beleaguered stations, the worst-off is Harare, its members operating within an area that in fact requires two police stations. Harare’s Station Commander Colonel Tshotleho Raboliba indicated that, for over a decade, plans have been in the pipeline to build a new station in Makhaza, an area several kilometres away from the Harare station but within its jurisdiction (see map on pages 2-3).

These shortages are also experienced in other parts of Khayelitsha. Brigadier Zithulele Dladla, the Station Commander of Khayelitsha Site B, described the problem as “being gagged by the RAG” (the RAG, as mentioned on page 54, being Pretoria’s budgeted allocation of resources – both human and physical – to each station).

Colonel Reitz mentioned that at the time of his testimony there were a total of 167 officers at the Lingeletu West station – a staff complement which he described as insufficient for the task at hand.

Brigadier Leon Rabie, the national head of Performance Management and Organisational Development, could offer no justification as to why, for two decades, the THRR (also introduced on page 54) seemed to neglect black, previously disadvantaged communities in the Western Cape.



And even Lieutenant General
Arno Lamoer, the Western Cape's
Provincial Commissioner, conceded
that the national office's system
of human resource allocation was
“fundamentally irrational”

I'M IN
AGREEMENT.

~ Lieutenant General
Arno Lamoer
Western Cape Provincial
Commissioner
1 April 2014



Powers of redeployment

Crucially, the Commission noted a tension between two sub-sections of the SAPS Act. The first, 12(3), provides the Provincial Commissioners with the power to determine the distribution of SAPS resources “under his or her jurisdiction ... among the different areas, station areas, offices and units”; the second, 11(2)(b), empowers the National Commissioners to adjust the number and grading of posts, as well as the fixed establishment of SAPS nationwide.

Asked about his authority as Provincial Commissioner to re-deploy members between stations or units, Lieutenant General Lamoer testified that he did not have the power to permanently place a member at another station unless a “funded post” was available.

However, when Evidence Leader Advocate Nazreen Bawa pointed out that section 12(3) of the SAPS Act provides for exactly that – in other words, allowing a Provincial Commissioner to allocate personnel, not merely move them temporarily – Lieutenant General Lamoer had no choice but to agree.

Cramped and lacking

The issue of resource shortages in Khayelitsha, however, only begins with the number of personnel. Major General René Fick, the Deputy Provincial Commissioner for Physical Resource Management, described SAPS’s inadequate physical infrastructure throughout the Western Cape as a “huge problem”. Colonel Reitz not only complained about his insufficient staff, but also that his station’s office space was far too cramped.

The Commission was alerted to a correspondence between the City of Cape Town and the Department of Public Works dating back to 2012. In it a plan to expand the Lingeletu

West police station building was cancelled by the City on the basis that it had been deemed unnecessary. Colonel Reitz denied any knowledge of this, but admitted that his station had been under intense pressure in terms of its physical capacity. One reason for this is a moratorium, put in place shortly after 1994, which prohibited dockets from being destroyed.

All three Khayelitsha stations – as well as the FCS Unit (see page 73) – are under-staffed, the Commission found. The THRR, although a sophisticated mechanism “that appears to have been developed in good faith”, has in effect prejudiced black previously disadvantaged communities by undervaluing certain inputs like the environmental challenges which characterise informal settlements. There are many other factors, beyond staffing levels, which determine an efficient and effective police service, but the Commission found it astonishing that for two decades an almost apartheid-style bias could have prevailed.

I PUT IT TO YOU, GENERAL, THAT THIS WHOLE NOTION OF NOT BEING ABLE TO SHIFT FUNDED POSTS ACTUALLY INTERFERES WITH THE SAPS ACT.

WOULD YOU HAVE ANY COMMENT ON THAT?

THAT'S CORRECT, CHAIR.


~ Advocate
Nazreen Bawa
Evidence Leader

~ Lieutenant General
Arno Lamoer
Western Cape
Provincial
Commissioner

One of the questions that has most troubled the Commission is how a system of human resource allocation that appears to be systematically biased against poor black communities could have survived twenty years into our post-apartheid democracy. In the view of the Commission, the survival of this system is evidence of a failure of governance and oversight of SAPS in every sphere of government.

~ The Commission
Towards a Safer Khayelitsha





“ The work that they [Khayelitsha detectives] are getting is so far removed from the ideal. It’s not 30% removed from the ideal; it’s in the region of 70% removed from the ideal. And I can’t see how one can expect detectives to try and do that if, on a reasonable assessment, they ought to be having four dockets. Well, sorry, you’ve got 120, and all sorts of knock-on things happen – they don’t contact witnesses, they don’t feed back to people, they don’t take the dockets to court, the matter then gets struck off, so that doubles their work. They’ve now got to try and get the matter re-enrolled but actually they haven’t got time to get it re-enrolled because they’ve got another 119 dockets. ”

~ Justice Kate O'Regan
25 March 2014

YOU KNOW IN THE
MOVIES, WHEN YOU SEE
A TEAM DESCENDING
ON A CRIME SCENE,
ATTENDING TO A
DOCKET?

WELL, HERE YOU
HAVE A TEAM
OF DOCKETS
DESCENDING ON A
DETECTIVE.



Detectives and Dockets

SAPS witnesses expressed conflicting opinions over how many dockets are manageable for one detective. Colonel Reitz testified that each of his station's 30 detectives was carrying between 120 and 130 dockets – a caseload he thought they could handle. Brigadier Dladla was more conservative, suggesting that between 60 and 80 was manageable – and yet expert witness and former senior SAPS officer Mr Jan Swart described this assertion as "contentious".

Drowning in dockets

In her testimony, Colonel Alma Wiese, the Detective Coordinator for the Khayelitsha Cluster, noted that, from one month to the next, Harare's 66 detectives often carry more than 2,300 unresolved case dockets between them – of which hundreds relate to serious crimes – in addition to taking on 1,000 new dockets.

Despite the branch's disproportionately high contact-crime levels, in 2013, its detective-to-citizen ratio was 1:2626, in striking contrast to affluent suburbs like Sea Point, Claremont and Stellenbosch, with minimal contact crime and detective-to-citizen ratios of 1:435, 1:474 and 1:571, respectively.

Colonel Marais estimated that, at any given time, investigating officers at Khayelitsha Site B each carry between 145 and 160 dockets. Some, he said, carry far more, such as one officer who had between 130 and 160 murder dockets, in addition to many more involving lesser crimes.

Referring to the RAG, Marais explained that the context of each station's needs is not being fully taken into account by the Pretoria head office – only the population and crime rates within each precinct. "I don't believe in the RAG," he stated, "I don't believe it is right."

Triage and knock-on effects

The reality, however, is that SAPS detectives, especially in areas with disproportionately high levels of crime like Khayelitsha, have no choice but to assign degrees of urgency to the most pressing cases.

The result is a string of knock-on effects – exacerbated by inefficiency and negligence – which leads to dockets being lost, cases being struck off the court roll, justice rarely being served, a heightening of the community's anger and distrust towards the police, and ultimately a rise in vigilantism.

~ **Brigadier Zithulele Dladla**

Station Commander,
Khayelitsha Site B

Dockets missing in court

In their testimonies, residents described the consequences of a docket failing to arrive at court. But who is to blame for this? And how frequently do these failures occur? Colonel Marais contended there are times when dockets are locked in the filing cabinet of a detective who is away on sick leave.

Some, he added, are misplaced through “plain negligence”, but only a small proportion. Other SAPS witnesses were less willing to accept that their stations had been performing poorly, ineffectively or inefficiently, instead arguing that a scant allocation of resources left them ill-equipped for the mammoth task of policing in Khayelitsha.

In responding to the question of lost dockets, Lieutenant Colonel Barend Swart of Lingeletu West shifted the blame on to the prosecuting authorities. He recalled having once retrieved a handful of dockets, written off a year earlier, from a prosecutor’s office. Swart also claimed that during his nine years of service at Lingeletu West there had never been a lost docket at his station.

And yet, Captain Dhanabalan Pillay, the Detective Court Case Officer (DCCO) at the Khayelitsha Magistrate’s Court, estimated that, each day, there is an average of three missing dockets among those received from the three Khayelitsha stations, some of which often relate to serious crimes, such as rape or murder.

Lightening the load

To cope with growing backlogs, expert witness Jan Swart suggested that the most experienced detectives should be allocated to high-volume detective branches like those in Khayelitsha.

He also recommended a previous system, in which uniformed personnel undertook the investigation of offences – such as reckless and negligent driving, shoplifting and trespassing – as opposed to detectives whose time was better spent on serious crimes.

Below: Khayelitsha’s three station commanders during a break at the hearings.

The Commission concluded that there was overwhelming evidence – beginning with the stories of the eight original complainants – to suggest that the detective branches at each of the three Khayelitsha stations had been performing their tasks inefficiently or ineffectively. From failed investigations to lost dockets and backlogs, slow response times and a general shortage in personnel, the problem had become nothing short of systemic



FCS Unit

In 2010, Family Violence, Child Protection and Sexual Offences (FCS) Units were re-launched across South Africa, having been absorbed into the greater police service in 2006.

Currently, there are some 176 units nationwide, operated by about 2,500 members. Their mandate is broad and challenging: to police sexual offences against children, person-directed crimes (involving family), the illegal removal of children under the age of 12, and electronic media-related crime.

FCS Unit, Khayelitsha

The Commission was tasked with investigating the three Khayelitsha stations as well as “any other units of SAPS operating in Khayelitsha”. Of these, the one with by far the most distressing reputation for inefficiency was the FCS Unit. Despite receiving fewer cases than other SAPS units in Khayelitsha, it was described in a 2013 inspection report as “the worst performing unit [in the province] ... bringing the whole FCS component down”.

Colonel Harri: Systemic shortages

Colonel Sonja Harri, head of the Western Cape's provincial FCS Unit, told the Commission that, some years ago, efforts were made to improve the Khayelitsha unit's performance. Some officers were redeployed – but, owing to a lack of interest from candidates elsewhere, they were not immediately replaced; others, meanwhile, were caught up in disciplinary matters.

At the time of the Commission's hearings, the Khayelitsha FCS Unit had just three officers and 14 members – a staff far too few in number to cope with the task at hand. For several years prior to 2013, the Unit had also been without a permanent commander. Blaming the RAG, Colonel Harri insisted that there should be six additional members and another officer.

With virtually no crime intelligence to work from, a history of inadequate investigations, low morale, trauma and burnout among the staff, a lack of oversight, poor record-keeping, and a mounting backlog of unsolved cases, the obvious result – as Ms Harmse of the Khayelitsha Magistrate's Court confirmed – is that many FCS cases have been struck from the court roll.

The price of stigma

Employee Health and Wellness (EHW) Psychological Services are available to all police members in need of counselling, especially after experiencing trauma. However, largely owing to the strong institutional culture within SAPS and the misguided fear that to seek counselling is to risk missing out on a promotion, few make use of it.

The result was that most investigations were poorly conducted, if at all, with many cases withdrawn or struck from the roll. It also strained relations with partner institutions like the Thuthuzela Care Centre and the prosecutors at the Khayelitsha Magistrate's Court.

The Commission concluded that Khayelitsha's FCS Unit was under-staffed, over-burdened and poorly managed without consistent long-term leadership. Its members were suffering from low morale, a reluctance to seek trauma counselling, and an impossible build-up of cases which could only be addressed by teams brought in from other units

~ Colonel Sonja Harri
Head of FCS,
Western Cape



Institutional Culture, Morale and Absenteeism

Aside from being a very large organisation, SAPS also has specific functions and a unique context. Many of its members are exposed to life-threatening situations on a regular basis, they are authorised to use force against citizens, and they are put under pressure to perform efficiently as an organ of the state.

All of these conditions give the organisation a particular character, or 'institutional culture'. In analysing this, the Commission identified four troubling aspects. This section summarizes these and one other.

Internal solidarity

The first is 'the principle of internal solidarity' by which SAPS members are unwilling to admit that their colleagues have acted wrongly, or that their organisation has underperformed.

The Commission found this tendency to have compromised complaints systems, reduced the community's levels of trust in SAPS, and violated South Africa's constitutional values of transparency, accountability and responsiveness.

It is, nevertheless, worth noting that, during the hearings, the Provincial Commissioner apologised publicly to the people of Khayelitsha and welcomed the Commission's intervention.

Cowboys and strafstasies

The second aspect of SAPS's institutional culture is best captured by Colonel Harri's comment that "cowboys don't cry".

The testimonies of numerous witnesses suggested that SAPS members, suffering from stress, trauma and depression, are reluctant to use the EHW programme in case it reduces their chances of being promoted.

The daily life of a police officer in South Africa's deprived, informal areas bears little resemblance to that of SAPS members working in more affluent suburbs.

'Strafstasie' is the word several Khayelitsha police members used to describe their place of work: a station – or "dropping zone", as Colonel Swart put it – to which officers from other clusters are redeployed as a form of punishment for their misconduct.

Working in an environment with a reputation such as this, without recourse to psychological therapy, it is no wonder that SAPS members in Khayelitsha are prone to low morale and absenteeism.

Callous and unequal

The third aspect, dealt with in greater detail in the community section, is the disrespectful and even abusive ways in which certain police members treat civilians – and especially foreign nationals and members of the LGBTI community.

The Commission advocated that, instead, every person should be treated equally, with dignity and an ethic of courtesy, and in accordance with the principle of *ubuntu*.



“ Sometimes you would get to the police station
... and you would realise that there is a new
person and you will see a little bit of eagerness
on their side to do their job correctly and when
you get to the police station in three or four
months and you meet that person again then
you realise, okay, that guy's already just as
demoralised as the rest of the group. ”

~ Testimony of Sonja Basson
Social Worker, Khayelitsha Homestead
Projects for School Children
31 January 2014



Public servants, not just crime fighters

Closely related to this, the fourth aspect identified by the Commission was the apparent lack of understanding among certain SAPS members that they are providing a service to the people of South Africa, rather than fighting crime for their benefit.

"... people vent their anger against the police because the police are a symbol of the State. They come to the police for everything because the police have to be a teacher, a pastor, a doctor, a lawyer, a social worker. The problem is that the people of Khayelitsha mostly live like animals ..."

~ From the affidavit of Brigadier Aaron Mlenga, former Station Commander at Khayelitsha Site B

The Commission found that these aspects of SAPS's institutional culture are in serious conflict with its code of conduct as well as South Africa's constitutional values – and in many cases contribute to low morale and absenteeism among police members

Marginalising women

And a final characteristic, not mentioned explicitly in the Commission's report, is the culture of chauvinism that prevails in SAPS. Colonel Alma Wiese, the Khayelitsha cluster's Detective Coordinator, described the institutional challenges she has faced as a policewoman operating within a male-dominated system.

In part owing to the limitations imposed upon her by a narrow mandate, her personal performance has been heavily dependent on the cooperation of Colonel Wiese's detective branch commanders, most of whom are men:

"I've been dealing with this my whole career, especially for a lady in SAPS to be in command over a lot of senior officers, males, it's quite a challenge ... I think as a woman you need to ... produce twice as much success as my male colleague to get recognised and to be taken seriously."

Arrest, Detention and Release

Detectives are responsible for charging suspects imprisoned in a station's holding cells. Along with visible police, they also share the responsibility of arresting, detaining and releasing suspects. According to the Constitution, people who are arrested on suspicion of having committed a crime must come before a judge or magistrate within 48 hours of their arrest.

Detained without charge

In its report, the Commission raised two serious concerns relating to arrest, detention and release. The first, that a high number of suspects were being detained and released without charge in Khayelitsha.

The Schooling and Leamy Report (conducted for the Commission by two retired high-ranking SAPS officers) showed that at Lingeletu West a disproportionately high number of suspects had been arrested overnight, for minor offences, then released the following morning after paying an admission-of-guilt fine.

The Commission found there to be a strong likelihood of perverse incentives, given that the performance of each SAPS station is measured, in part, according to the number of arrests its members make.

A costly oversight

The second concern was that SAPS officers in Khayelitsha had been abusing the 48-hour rule, by not recording the times of detention and release.

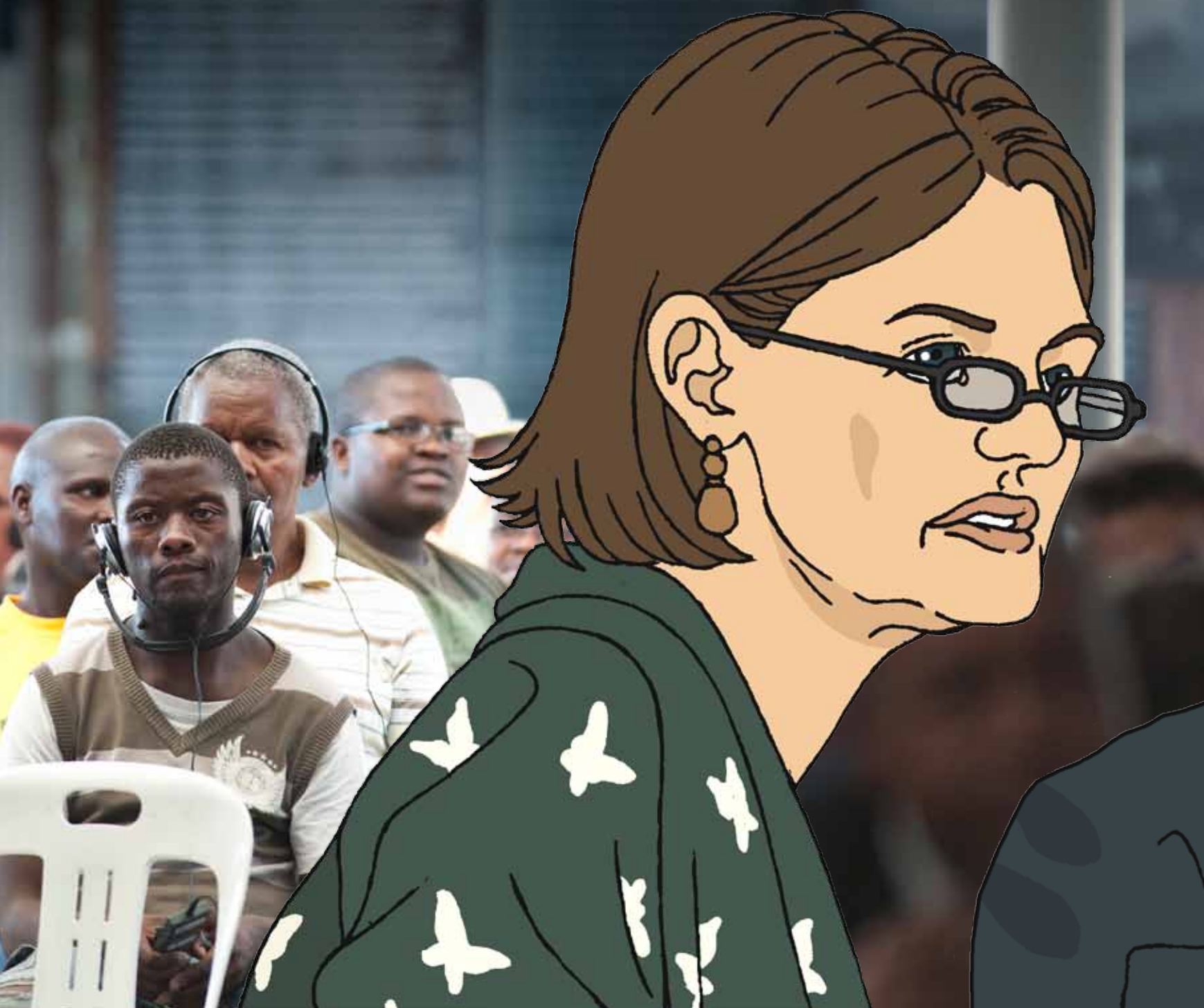
This omission, the Schooling and Leamy Report suggested, was either an error or "a deliberate ploy" by the officers concerned. Either way, it exposed a lack of oversight from management at station level.

Right: A sergeant from SAPS Khayelitsha Site B unlocks a holding cell during the inspections in loco.

The Commission learned of many civil claims that had been lodged against SAPS in relation to wrongful arrest and the holding of detainees for longer than 48 hours. Lieutenant General Lamoer also admitted that the amount of money paid out in these civil suits was increasing annually



The Commission found that the inadequate standard of inspections and disciplinary action in Khayelitsha SAPS stations pointed to a failure of management at every level



Internal Inspections and Disciplinary Action

By the letter of the law, if a warrant officer does not report back to a complainant, or if a detective fails to deliver a docket to court on time, or if a station commander ignores the recommendations of the provincial inspector, then he or she should be disciplined.

But when the fulfilment of these duties goes beyond what is humanly possible, the case can be made that disciplinary action itself is a misuse of time.

This was the predicament that faced the Commission as they worked through the ranks of SAPS management. Justice O'Regan, putting herself in the shoes of a station commander – whose duty it is to monitor these disciplinary procedures – summed up the problem (below):

Lenient discipline

And yet, the evidence before the Commission suggested that disciplinary processes were being regularly conducted in all three Khayelitsha stations.

The Task Team indicated that during the period January-December 2011, a total number of 291 employees were disciplined at SAPS Khayelitsha Site B, in addition to 138 during the period January-June 2012.

The authors described these rates as “extremely high”. The most likely explanation for this was provided by human resource practitioners Joy Fish and Johan Schlebusch – that although a large number of disciplinary proceedings are being conducted against members, many are “very lenient” and dismissals are extremely rare.

Better monitoring

Sean Tait, the Coordinator of the African Policing Civilian Oversight Forum, suggested that police station managers should closely monitor disciplinary processes at their stations. He recommended that complaints agencies, such as IPID, the South African Human Rights Commission, DOCS and the Civilian Secretariat, should establish a mechanism to share information concerning complaints.

However, in the light of SAPS's lenient disciplinary measures in Khayelitsha, it is clear that internal inspections may yield similar results. Since 2009, the Commission found, each and every Khayelitsha SAPS report has indicated that despite the three levels of inspection that do occur (at station, cluster and provincial level), there never seems to be any action taken to improve performance.

Unannounced visits

In many countries across the developed world, it is standard practice that independent committees and lay inspectors make unannounced visits to all detention sites. Researcher Clare Ballard noted that although the Office of the Inspecting Judge is required by legislation to inspect all South African prisons regularly, this responsibility does not extend to police cells.

Ms Ballard contended that internal SAPS inspections, carried out under the auspices of the Provincial Inspectorate, do not adequately monitor the condition of detained suspects. She warned that, because South African police cells function beyond the reach of public scrutiny, detainees are at risk of abuse and neglect.

The ICD Report for 2009/2010, for instance, revealed that, in Khayelitsha during that year, seven deaths took place either in police custody or as a result of police action. One of these resulted from a brutal assault on a community member.



Recruitment & Training

Criminal investigation is a craft, and like many human crafts it is one that improves with practice, training and guidance. There is evidence on these dockets that not all criminal investigators in Khayelitsha are skilled in, and attentive to, their craft.

~ The Commission
Towards a Safer Khayelitsha

Any organisation is bound to be inefficient unless its members, however many, are carefully recruited and trained. Masked behind the low numbers of SAPS personnel in Khayelitsha are additional deficiencies – such as a shortage of qualified, higher-ranked officers next to an excess of poorly-trained lower-ranked members.

Low standard of applicants

Dr Mulder van Eyk, formerly a SAPS officer for 44 years, told the Commission that SAPS has ten basic training academies where entry-level recruits are trained, as well as 11 in-service police development academies. The educational standard of applicants is generally “below average”, made worse by the fact that SAPS does not pay its recruits immediately.

Dr Van Eyk revealed that there are “alarming” levels of social problems among new trainees – and yet very few candidates fail to be accepted because SAPS is willing to let recruits re-take entrance tests up to eight times.

Skills and experience

Joy Fish and Johan Schlebusch testified that it is unusual for any organisation, let alone the biggest in the country, to recruit all of its employees at the lowest level. They suggested that more experienced employees should be brought in, and especially

those with specialist roles in human resources and finance.

Another pressing issue is that of language. Though Khayelitsha is almost entirely isiXhosa-speaking, many of its police members – including commanders – can only speak English and Afrikaans.

Colonel Swart admitted that his inability to speak isiXhosa was a serious hindrance, especially when questioning suspects and witnesses.

Several witnesses mentioned the need for a language programme and Professor Gobodo-Madikizela proposed that young people from Khayelitsha, familiar with the territory and capable of speaking the language, should be recruited and trained.

The Commission found there to be many aspects of recruitment and training that need to be addressed. Without a promising intake of personnel, all of whom are taught the necessary skills required of any SAPS member, there can be little hope of ever fully overcoming the deficiencies highlighted by the complainants

Crime Intelligence

Crime intelligence underpins all forms of crime prevention. In every SAPS station, the Crime Intelligence Officer (CIO) is responsible for correlating the times and places at which crimes are committed, analysing case linkages in terms of the victims, targets, perpetrators and modus operandi, and conducting fieldwork by visiting crime scenes, interviewing witnesses and members of the public.

Dr Chris de Kock: CIOs are pivotal

The former head of SAPS’s Crime Information Analysis Centre Dr Chris de Kock estimated that 95% of the information at a CIO’s disposal derives directly from complainants.

Ideally, every time a station’s visible police members begin their shift, they should be briefed by the station CIO on ‘crime hotspots’ – specific locations where crime is concentrated – and the likely activity of criminals.

Either daily or weekly, a Station Crime Combating Forum (SCCF) meeting should also be convened, in order for the operational managers to be briefed by the CIO. It is during these meetings that station management should identify infrastructural problems (such as faulty street lighting and bushy areas) that create opportunities for crime, and report these to the relevant government department.

Policing by chance and luck

Dr De Kock’s analysis of the minutes from 58 SCCF meetings in Khayelitsha showed the Commission that there was almost no evidence of a crime-threat or pattern analysis, as required by National Instruction 2/2013.

When this information later surfaced, it was shown to contain “merely crime tables and statistics”. This meant that SAPS had no strategy for its deployment of uniformed officers, instead assigning them to sectors on what appeared to be a random basis.

In response to Dr De Kock's findings, the Commission assumed that officers were neglecting intelligence-based strategies, or that CIOs had misunderstood their role.

It also found that the current failure of the Khayelitsha visible police to rely more heavily on crime hotspots was, in effect, displacing crime rather than reducing it



Feedback and Internal Communications

A recurring complaint that emerged from the Khayelitsha community was the failure of SAPS detectives to provide feedback to complainants, witnesses and bereaved family members. Of the 200 individual complaints received by the Commission and the complainant organisations, nearly 44% mentioned the issue of inadequate communication.

Feedback SMSes

SAPS adopts a system of sending bundles of SMSes to complainants when their dockets have been opened. These display the CAS number and the name of the investigating officer allocated to the case.

In theory, the Commission found, this is an adequate system. However, in practice, problems arise when there is more than one complainant, or when cells phones are lost or stolen.

Jan Swart told the Commission that, ideally, investigating officers should contact complainants at least every fortnight – until the investigation has been completed – and that this feedback should be recorded in the investigation diary.

But Khayelitsha residents testified that, once the first SMS has been sent, feedback rarely occurs thereafter. Some reported that SAPS had not contacted them after a new investigating officer had taken over their cases. Others received no information whatsoever as their court dates approached.

“So many papers”

Another cause for concern was SAPS’s shortage, and ineffective use, of information technology (IT). Major General Molo remarked that stations across the Western Cape do not have enough laptops and cell phones. Major General Jephta told the Commission that some of SAPS’s burdens could be alleviated by more advanced IT.

Although a detective branch commander, Colonel Barend Swart admitted to having no knowledge of computers, and argued that detectives – and not computers – solve crimes.

Despite these glaring shortages, the Commission noted that every year SAPS spends some R2 billion on IT; and yet at station-level there is very little evidence of it.

Opposite page: Advocate Ncumisa Mayosi questions Brigadier Dladla outside a container full of old dockets at SAPS Khayelitsha Site B during the inspections in loco.

WE’VE GOT TO SEE HOW WE CAN BE SMARTER, COMMISSIONER’S.

WE’RE IN A TECHNOLOGY AGE, WHY MUST WE HAVE SO MANY PAPERS?

~ Major General Sharon Jephta
Deputy Provincial Commissioner (Operations)





The work of the Commission was made more difficult by high levels of political contestation regarding its mandate not only at the national and provincial level, but also within Khayelitsha itself.

~ The Commission
Towards a Safer Khayelitsha







Testimonies: The Government

The Commission heard the testimonies of 15 witnesses from government departments and units with responsibilities in Khayelitsha. Although their roles fell beyond the scope of the Commission's mandate, they remained profoundly relevant to all aspects of the Inquiry.

This chapter is divided into four sections. It begins with the two institutions tasked with overseeing SAPS: DOCS and IPID. The second section deals with the fiercely contested issue of infrastructure in the Western Cape. The third draws on the evidence of the government's health and forensics practitioners working in Khayelitsha. And the final section briefly covers two organs of criminal justice that work alongside SAPS: the NPA and the Khayelitsha Magistrate's Court.

Testimonies: The Government

"They were complaining about all government departments that are in Khayelitsha – your Metro Police, your law enforcement, your Health Department, your Justice Department, SAPS. But unfortunately we chose the wrong job, we are only the whipping boys as the SAPS; we were isolated as SAPS."

~ Brigadier Zithulele Dladla
Station Commander
Khayelitsha Site B
18 February 2014

Complaints and Oversight

The Western Cape's Department of Community Safety (DOCS) has a constitutional mandate to monitor SAPS's operations within the province, as well as to investigate complaints lodged against police officers by members of the public. If required, its members can exercise the right to visit police stations unannounced.

DOCS spends a portion of its R380-million annual budget on mobilising communities against crime – via the Extended Partnership Programme (an initiative which funds CPFs), recruiting police reservists and Neighbourhood Watch volunteers (who patrol their residential areas at night or on weekends), and establishing new forums to promote community safety.

As explained on page 53, the Independent Police Investigative Directorate (IPID) is similarly responsible for investigating allegations of serious misconduct lodged against SAPS members.

However, unlike DOCS, which is a provincial department, IPID is a national structure with nine provincial offices. When IPID recommends that disciplinary action should be instituted against a SAPS member, the National or relevant Provincial Commissioner is legally obligated to carry out these proceedings within 30 days.

DOCS and SAPS

The Commission learned that relations between DOCS and SAPS have been strained for many years, to the extent that a number of witnesses noted the institutions' "divergent views" and "bad working relationship".

In March 2010, a 'Nodal Point' (see page 55) was established by the Provincial Commissioner as a means to centralising the investigation of all complaints against SAPS and, in effect, excluding DOCS from the process.

Speaking before the Commission, the head of DOCS, Dr Gilbert Lawrence, explained that since this new system has been in place DOCS has encountered many frustrating delays in the investigation of complaints.

Whereas Lieutenant General Lamoer testified that unannounced visits by DOCS members at police stations were useful in identifying SAPS's shortcomings, Major General Jephta argued that such intrusions put unwarranted pressure on the police, and therefore are neither desirable nor necessary.

She added that an agreement had been reached between DOCS and SAPS over DOCS's handling of complaints against SAPS members, but Dr Lawrence denied this and the Commission could find no documented evidence to support her claim.

IPID and SAPS

IPID's Provincial Director of Investigations Thabo Leholo described a series of complaints lodged by the NGO Embrace Dignity – and investigated by IPID's predecessor, the ICD – in which SAPS members had repeatedly forced sex workers to "show them their private parts" on Baden Powell Drive in southern Khayelitsha.

The ICD referred the matter back to SAPS for investigation, concluding that the sex workers "[were] being victimised by the police members and that the conduct of the police towards them [was] improper and unacceptable".

The Commission was disturbed to find that there was no information on file confirming whether a report was ever received from SAPS, in response to which Mr Leholo had no explanation.

Right: Counsel for the Complainants, Advocates Peter Hathorn and Ncumisa Mayosi

“It got to the point where we were sending Excel sheets of complaints that had not yet been responded to, so that meant certainly from the public’s perception (who were making these complaints) we were no more than a post box and in a sense were not able to quickly and rapidly reply in terms of what was happening to their complaint.”

~ Dr Gilbert Lawrence
DOCS, Western Cape
5 February 2014



Khayelitsha's degrading socio-economic conditions ranked high among the grievances of both SAPS and the complainants. The Western Cape Government and City of Cape Town's failure to provide basic services in Khayelitsha – and especially sanitation and high-mast street lighting – remains not only a source of bitter contestation between government and civil-society organisations but also a serious threat to community safety

Below: A row of hired toilets on a plot of polluted land in Site C, Khayelitsha.



Infrastructure

Lights, cameras, action!

Brigadier Dladla drew attention to faulty street lights as an example of a factor that falls outside of the police mandate but has a direct impact on the proliferation of crime. He mentioned that while driving home from work he often counts the faulty lights en route to the southern suburbs:

"It's pathetic what you see from Khayelitsha to Wynberg," he said. "If I'm driving on Lansdowne Road from work we find that the lights are not working in Khayelitsha but the lights are working on the R300 and the off-ramp from the N2."

Another complaint was that high-mast lights (which have a light radius of 175m–200m) were often out of order, and sometimes took several months to fix.

The response of Mr Richard Bosman, the Executive Director of the City's Safety and Security Directorate, was that the City experiences problems of vandalism and theft in relation to the lights, as well as resistance from the community to workers from other parts of the City.

To help SAPS tackle crime, the City operates 350 CCTV cameras across Greater Cape Town. 16 were installed in Khayelitsha at the time of the hearings, but of these only ten were said to be functional.

Although the location of every camera in Greater Cape Town is determined by the City in consultation with SAPS, it was noted by the Commission that there are none in Harare, despite the precinct's extremely high levels of crime.

Sanitation in Khayelitsha: Dangerous and dehumanising

Perhaps the most hotly contested infrastructural issue of all was that of water and sanitation. The comic on page 93 is a reminder that informal settlements like Endlovini, surrounded by dense bush and lacking in sanitation facilities, are extremely hazardous, particularly for women and girls.

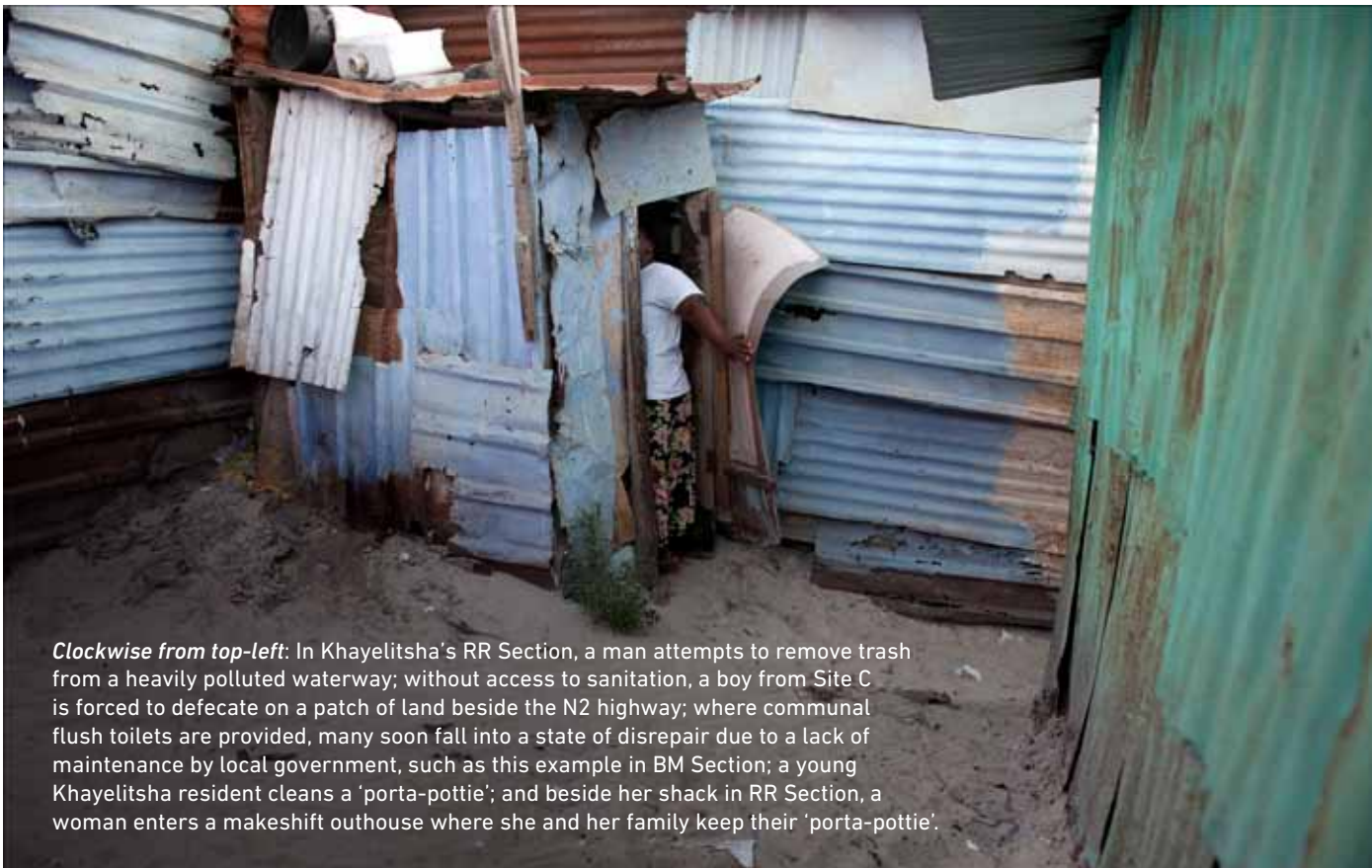
In BM Section, during the Commission's inspections in loco, it became evident that among the rows of government-provided flush toilets many were unusable, often with little or no sign of maintenance. During the hearings, community members also described the daily ordeal of relieving themselves in Khayelitsha's bushy areas.

In Mr Bosman's testimony, he made the unsubstantiated claim that 100% of informal households in the City have access to adequate sanitation.

According to statistics provided by Professor Jeremy Seekings, out of a total of 119,000 Khayelitsha households in 2011, 74,000 (62%) had access to water on site, 96,000 (81%) used electricity for lighting, and 85,000 (71%) used flush toilets.

While the Commission acknowledged that the unplanned nature of most informal settlements in Khayelitsha does pose challenges to the government's service delivery, it was clear that far more could be done to upgrade the current degrading conditions





Clockwise from top-left: In Khayelitsha's RR Section, a man attempts to remove trash from a heavily polluted waterway; without access to sanitation, a boy from Site C is forced to defecate on a patch of land beside the N2 highway; where communal flush toilets are provided, many soon fall into a state of disrepair due to a lack of maintenance by local government, such as this example in BM Section; a young Khayelitsha resident cleans a 'porta-pottie'; and beside her shack in RR Section, a woman enters a makeshift outhouse where she and her family keep their 'porta-pottie'.



Health Care and Forensics

The Thuthuzela Centre, situated at the Khayelitsha Hospital in Harare, provides a much-needed safe haven for the survivors of sexual assault. Under the leadership of principal medical officer Dr Genine Josias, the Centre works closely with the Provincial Departments of Health and Social Development, the City of Cape Town Health Department, SAPS and Khayelitsha-based non-governmental organisations like Rape Crisis, TAC, Nonceba Family Counselling and Mosaic.

In Khayelitsha, most victims who die from unnatural causes are taken to the Tygerberg Mortuary. Ordinarily, according to Vonita Thompson, the Director of Forensic Pathology Services in the Western Cape Department of Health, forensic pathologists should complete a post-mortem report within seven days of the body's admission.

Owing to huge backlogs, however, there are often extreme delays in obtaining toxicology results and blood analyses from the National Forensic Chemistry Laboratories in Woodstock.

Dumped rape kits

Dr Josias recalled two shocking stories involving SAPS from recent years.

The first of these concerned the Sexual Assault Evidence Collection boxes (or 'rape kits') into which forensic samples are placed by Thuthuzela practitioners during their medical examinations.

Once completed, these are handed over to an investigating officer from SAPS who ensures that the box is delivered to the Forensic Science Laboratory for analysis.

In 2011, Dr Josias was informed that several Thuthuzela rape kits had been dumped in a field in Delft. She explained that "all the work that had been put into collecting that forensic evidence, the meticulous methods used, the resources and skills employed to do so, and precious time spent by all concerned, went to waste". It also meant that the relevant prosecutions could not proceed. Although it was never determined why the kits had been dumped, and by whom, Dr Josias maintained that it demonstrated "a serious weakness in the system where no tracking was done with regards to the chain of evidence of clients."

“...all the work that had been put into collecting that forensic evidence, the meticulous methods used, the resources and skills employed to do so, and precious time spent by all concerned, went to waste.”

~ Dr Genine Josias

Thuthuzela Care Centre
29 January 2014

Serial rapist

Dr Josias's second story (right) came as an appalling reminder of the irreparable harm caused by police inefficiency and the unwillingness of SAPS members to cooperate with experienced medical practitioners.

Ms NZ: The long wait for DNA results

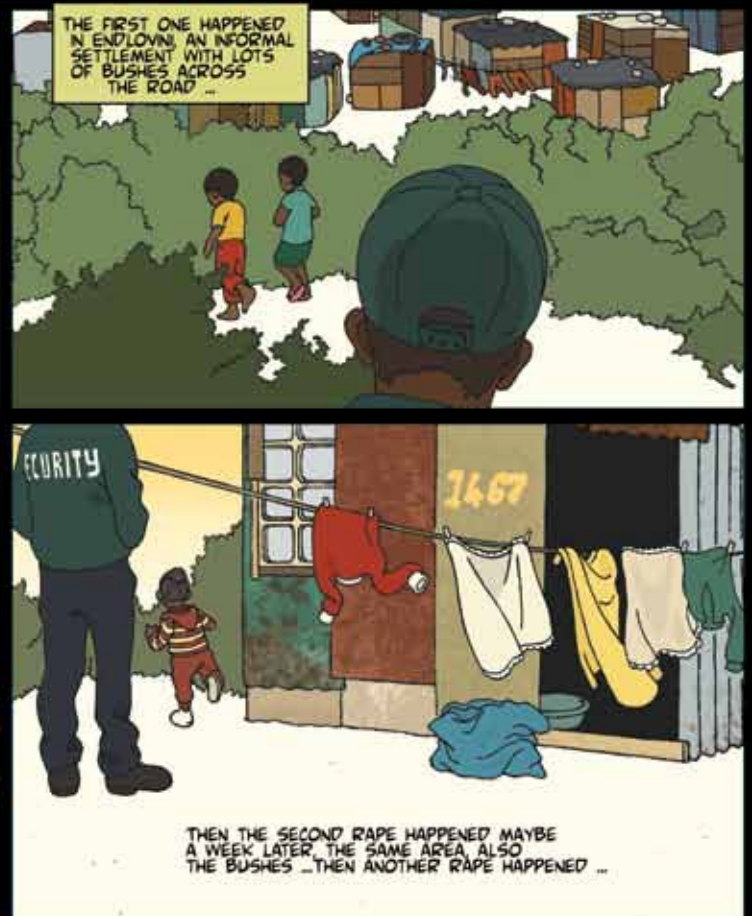
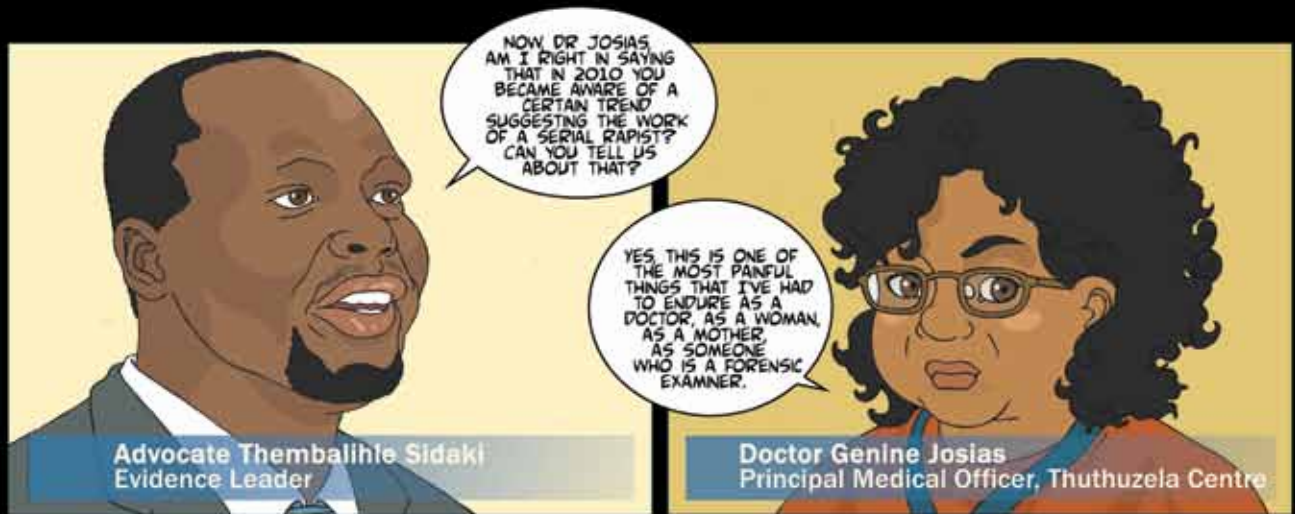
On 2 August 2012, Khayelitsha resident Ms NZ was informed by the police that her brother's body had been found under a local railway bridge.

At the Tygerberg Mortuary, she was told that the deceased had been hit by a train, leaving his body unrecognisable, and that therefore a DNA test was necessary. The investigating officer assigned to the case then told Ms NZ that the test results would take between three and four months unless she paid R1300 to reduce the waiting period to two weeks.

Via her ward counsellor, Ms NZ then spoke to the investigating officer and station commander, to whom she finally gave a statement. When she later enquired about the DNA test, the call was cut off. Anxious to confirm funeral arrangements yet still unable to confirm the corpse's identity, she finally resorted to contacting the Commission.

Thanks to the Commission's intervention, it then came to light that the results had neither been collected from the laboratory nor communicated to Ms NZ. The investigation diary also revealed that almost no detection had been carried out between 17 October 2012 and 27 November 2013.

After following up on the matter with the SAPS Provincial Inspectorate, the Commission was informed that a new detective had been assigned to the case, that he had added a charge of murder to the earlier charge of culpable homicide, and that he had acquired statements from a witness, crime scene photographs and the post-mortem report. The Commission was also told that the DNA results would be confirmed within a week.





THEN ANOTHER RAPE HAPPENED...
AND THEN TWO SISTERS CAME
N - THE SAME KIND OF VIOLENT
RAPE, WITH CUTS.



THEY ALL HAD TO GO TO
RED CROSS HOSPITAL
AND WE HAD TO SIT
THERE WITH THE FAMILIES.



AND THEN I THOUGHT:
WE'VE SEEN THIS
BEFORE, WE WATCH TV.
WHO WAS THAT GUY -
PIET BEYLEVELD? -
THE FAMOUS
SERIAL RAPIST?

WE WATCH CSI, AND
ALL THOSE THINGS.
IT SUDDENLY STRUCK
ME: ISN'T THE SAME
PERSON DOING THIS?



I SPOKE TO THE POLICE BUT
THEY SAID THEY DIDN'T
SEE A PATTERN, SO I TOOK OUT
THE FOLDER'S AGAIN
AND I TYPED UP ALL THE NAMES,
ALL THE AGE GROUPS, ALL THE
DATES AND TIMES, WHETHER IT
WAS A WEEKEND OR A WEEKDAY,
WHERE THE RAPE
TOOK PLACE, AND WHAT HAPPENED
TO THE CHILD. THEN I CALLED A
MEETING WITH THE PARTNERS
AND I PHONED UP
THE SUPERINTENDENT
OF THE FCS UNIT:

"CAN YOU PLEASE
COME TO THE
MEETING BECAUSE
WE THINK WE'VE
GOT A SERIAL
RAPIST HERE."

"GENINE ARE
YOU SURE?"

"LISTEN, I AM NOT AN
INVESTIGATING OFFICER
BUT I HAVE BEEN
WORKING WITH YOU
PEOPLE FOR FIVE
YEARS.

BY NOW WE
KNOW ENOUGH
ABOUT HIV PREVENTION,
WE KNOW ENOUGH
ABOUT RAPE,

AND WE KNOW
THAT OUR WORK
OVERLAPS. CAN
YOU PLEASE JUST
COME TO THE
MEETING?"

I ALSO INVITED RAPE
CRISIS AND NONCEBA,
THE T.A.C. AND
SIMELELA - ALL THE
PARTNERS - AND
I MADE COPIES OF
WHAT I'D TYPED UP...

YOU KNOW I WAS
SO UPSET BECAUSE
THE SUPERINTENDENT
DIDN'T COME TO
THAT MEETING.
HE JUST SENT
ONE OF HIS
WEAKEST CAPTAINS.

I PHONED THE SUPT
THE NEXT DAY.
THAT CAPTAIN HAD
NOT SAID A WORD
TO HIM. YOU KNOW
THIS BOTHERED
ME SO MUCH THAT
I PICKED UP
THE PHONE AND I
CALLED THE
PROVINCIAL
COMMISSIONER ...

...IT WAS PC PETROS, BECAUSE I REMEMBER WE USED TO HAVE MEETINGS AND HE WOULD SAY: "IF THERE IS EVER ANY ISSUE, PHONE ME DIRECTLY. WE ARE HERE FOR THE PEOPLE." DA-DA-DA...

SO I PHONED THE PC AND I SAID TO HIM: YOU KNOW WHAT PETROS, IF THESE WERE WHITE LITTLE GIRLS, I AM TELLING YOU YOU WOULD HAVE PULLED RESOURCES LIKE ANYTHING.

"IF YOU DON'T DO SOMETHING I AM GOING TO GO TO THE NEWSPAPERS ..."

"... I AM NOT GOING TO GO TO THE SON. I AM GOING TO GO TO THE MAIL & GUARDIAN AND I DON'T CARE IF I LOSE MY JOB - BUT IF YOU DON'T DO SOMETHING ABOUT THIS I AM GOING TO THEN I JUST... THEN I'VE JUST HAD IT WITH YOU!"

ANYWAY THE NEXT DAY HE SENT THREE HIGH-LEVEL PEOPLE TO MY HOUSE. I GAVE THEM THE SAME COPIES FROM THE MEETING.

I TOLD THEM EXACTLY THE SAME STORY AND THEY TOOK DOWN ALL THE DETAILS.

COMMISSIONER'S, DO YOU KNOW THAT IT ENDED UP BEING 21 RAPES, INCLUDING THE FIVE - THERE WAS ONE LITTLE GIRL THAT DIED - BEFORE THEY FINALLY APPREHENDED THE SUSPECT?

THAT WAS AUGUST. IN SEPTEMBER THEY FORMED A SPECIAL TASK TEAM WHICH I KNEW NOTHING ABOUT.

THEY FORMED THE TASK TEAM IN SEPTEMBER 2010. THE SUSPECT WAS CAUGHT IN SEPTEMBER 2011, SO MANY MORE GIRLS WERE RAPED.

AND I JUST THINK THAT THEY COULD HAVE DONE SOMETHING EARLIER, YOU KNOW, TO PREVENT THAT.

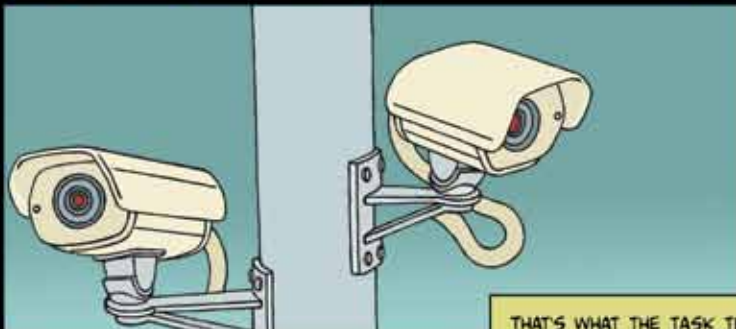
YES AND IN THE END THAT PERSON THAT WAS THE SERIAL RAPIST PLEADED GUILTY IN THE HIGH COURT.

YOU KNOW WHAT - THEY HAD ELEVEN DNA SAMPLES THAT POSITIVELY LINKED TO HIM. HE HAD NO CHOICE BUT TO PLEAD GUILTY. THIS THING DIDN'T EVEN HIT THE PAPERS BECAUSE THE EVIDENCE WAS SO OVERWHELMINGLY AGAINST HIM THAT HE DIDN'T EVEN GET TO THE OPEN COURT.

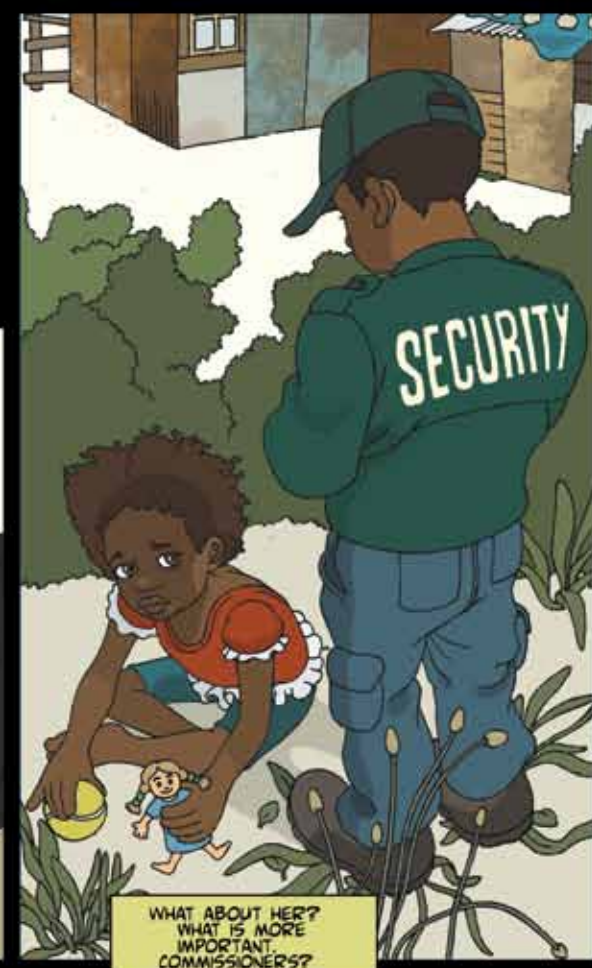
THEY ONLY LINKED ELEVEN OF THESE CHILDREN TO HIM BUT, YOU KNOW WHAT, THINKING BACK I AM SURE THERE WERE RAPES BEFORE APRIL 2010 THAT WE DID NOT PICK UP ON. THERE COULD HAVE BEEN RAPES IN NYANGA, WHICH HE FREQUENTED. THERE COULD HAVE BEEN RAPES IN PHILIPPI TOO.

DR JOSIAS, DO YOU THINK THE GIRLS COULD HAVE IDENTIFIED THIS PERSON?

Advocate Vusi Pikoli
Commissioner



THAT'S WHAT THE TASK TEAM ASKED THE CITY OF CAPE TOWN FOR. IN FACT, WE EVEN ASKED THEM WHY CAN'T THEY PUT UP THOSE HUGE, LONG POLES THAT THEY PUT UP IN BONTEHEUWEL AND CONSTANTIA OR WHEREVER. I HAVE SEEN THEM - YOU KNOW, WITH THOSE CAMERAS - WHY COULDN'T THEY DO THAT?



SO THEY WOULD TALK ABOUT THE BUSHES... THEY SAID IT'S ENVIRONMENTAL. JA, LOOK, I UNDERSTAND ALL THAT STUFF ABOUT FYNBOS, BUT AT THE END OF THE DAY, WHAT ABOUT SAFETY?

WHAT ABOUT PEOPLE'S LIVES? WHAT ABOUT THAT LITTLE GIRL WHO HAS TO LIVE WITH THIS FOR THE REST OF HER LIFE? SHE MIGHT NOT BE ABLE TO HAVE CHILDREN ONE DAY.



WHAT ABOUT HER? WHAT IS MORE IMPORTANT, COMMISSIONERS?

Criminal Justice

The Commission asked the Regional Head of the Department of Justice and Constitutional Development to provide information, and make relevant submissions, but no response was ever received.

Khayelitsha Magistrate's Court

The Regional Manager, however, allowed the Commission to access records at the Khayelitsha Magistrate's Court. Accordingly, samples of finalised charge sheets (linked to about 800 cases) were drawn from Courts 1 and 2, which deal with first appearances (including serious contact crimes) and cases of drunken driving, respectively.

Analysing these documents made for alarming reading. Among the batches drawn from Court 1, between 16% and 36% of cases had been withdrawn by prosecutors or struck off the roll because either the investigations were incomplete or the relevant dockets had not been brought to court.

Among those from Court 2, a similarly high number had been withdrawn owing to the unavailability of laboratory results in relation to blood samples. The Commission later backed up these findings by checking them against the associated dockets.

Prosecutions

According to the Western Cape's DPP, who is the provincial head of the NPA, the problem of delayed, mislaid and lost dockets is caused by a number of factors. These include the mismanagement, misconduct and incompetence of SAPS members, investigators being absent, and a lack of vehicles for transporting dockets to and from the courts.


In an attempt to combat this issue, arrangements have been made to provide both SAPS and the DCCO at the Khayelitsha Magistrate's Court with court rolls a week in advance.

The DPP also said that "securing the attendance of witnesses at court proves a serious challenge", given that many of Khayelitsha's shacks are temporary and unnumbered.

SAPS is also rarely informed when witnesses move residence, cell phones are sometimes lost or stolen, and some witnesses (especially foreign nationals) are reluctant to come forward or utilise the Witness Protection Programme.

Evidence from the courts and prosecuting authorities reinforced the Commission's findings that an alarming number of cases in Khayelitsha are being withdrawn or struck from the roll owing to inadequate investigations and the absence of dockets and witnesses





WHILE READING
OUR RECOMMENDATIONS,
IT IS IMPORTANT TO
REMEMBER THAT, ABOVE
ALL ELSE, THE SAFETY
OF THE MEN, WOMEN AND
CHILDREN WHO LIVE AND
WORK IN KHAYELITSHA
IS OF THE UTMOST
IMPORTANCE TO THE
COMMISSION'S
WORK.

AND EVEN THOUGH
WE HAVE MADE MANY
DAMNING FINDINGS, IT IS
ALSO IMPORTANT TO
ACKNOWLEDGE THOSE
MEMBERS OF SAPS WHO,
DESPITE THE IMMENSE
CHALLENGES BEFORE THEM,
CARRY OUT THEIR DUTIES
PROFESSIONALLY AND
RESPECTFULLY.



Recommendations

After the hearings were concluded on 16 May 2014, the Commission spent three months digesting the vast, complex and sometimes conflicting ream of evidence.

Once SAPS's inefficiencies and the breakdown in relations between Khayelitsha's police and community had been analysed exhaustively, the Commission then proceeded to make 20 recommendations to alleviate these problems.

It is now up to the provincial and national governments to act upon them.

Recommendations

“It is our fervent hope that the findings and recommendations contained in this report may assist in enhancing the safety of the people of Khayelitsha.”

~ The Commission's letter to Premier Helen Zille, 18 August 2014

1



Community Policing Commitment

Each police station in Khayelitsha should adopt a Community Policing Commitment (CPC) in consultation with local residents

2



Procedural Justice Model of Policing

The police in Khayelitsha should adopt a procedural justice model of policing, in keeping with the 'daffodil principle'

6



Visible Policing

The Provincial Commissioner should issue guidelines for visible policing in informal neighbourhoods

7



Human Resources

The SAPS system for determining the THRR should be revised and the human resources at each of Khayelitsha's three police stations should be urgently reallocated

11



Vengeance Killings & Attacks

Vigilantism should be dealt with by SAPS in a more systematic manner

12



Youth Gangs

A multi-sectoral task team on youth gangs should be established by DOCS

16



Complaints

The system by which complaints are lodged against SAPS should be revised to allow for greater fairness and objectivity

17



Government & Oversight

DOCS and the Civilian Secretariat for Police should assume more active roles in monitoring the three Khayelitsha stations and the FCS Unit

3



Monitoring & Oversight

A monitoring and oversight team should be established to ensure that the inefficiencies at Khayelitsha's police stations and FCS unit are eradicated

4



Change-Management Process

An urgent change-management process should be implemented by the leadership of the Khayelitsha cluster, FCS Unit and three police stations

5



Detective Services

Four immediate measures and a longer-term strategic review should be implemented

8



SAPS-Civilian Relations

Additional steps should be taken to improve relations between SAPS and the people of Khayelitsha

9



Human Resource Practices

Human resource practices should be reviewed

10



Station Performance Charts

The station performance chart should be revised to improve relations between SAPS and the community

13



Shebeens

A provincial task team should be set up to survey community attitudes to unlicensed liquor outlets in order to assist policy formulation

14



Domestic Violence

A number of measures, including training courses and research programmes, should be adopted to address domestic violence

15



Information Technology

A strategic task team should be set up by the Provincial Commissioner and Secretariat to develop a policy approach to IT

18



CCTV Cameras

The system of CCTV surveillance in Khayelitsha should be improved through a collaborative effort between senior SAPS members and City officials

19



Infrastructure

The physical infrastructure of the Khayelitsha police stations should be upgraded and the new Makhaza police station should be established

20



Laboratory Backlogs

The backlogs in Cape Town's national chemical laboratories should be urgently addressed by the Premier



Afterword

"The South African Police Service holds a view that the Commission of Inquiry was not necessary ... [and] that the findings and recommendations of the Commission are biased and misdirected."

~ General Ria Phiyega
SAPS National Commissioner
5 June 2015

The report published by the O'Regan-Pikoli Commission has exposed a long track-record of inefficiency, callousness, brutality and injustice on the part of SAPS in Khayelitsha, as well as mismanagement at provincial and national levels.

In doing so, and in presenting government with 20 detailed recommendations to address these problems, the Commission has initiated a new phase in the struggle for safety and justice, one which extends far beyond Khayelitsha to all of South Africa's deprived working-class areas.

What does this new phase hold? Such a question is best answered by looking back at what the campaign for safety and justice in Khayelitsha has shown us. For almost two years, the Commission's six-member team performed their duties with extraordinary integrity, efficiency and determination.

The achievement of their work, however, was also in no small part due to the decade-long struggle that made the Commission possible – a struggle for which the people of Khayelitsha (who campaigned for years under the banners of the SJC, TAC, EE, Free Gender, the Triangle Project and NU) should be acknowledged. Their victory has kept alight a glimmer of hope for South Africa's most vulnerable citizens, and it has taught our country something very profound about people's power.

Our Constitution tells us that every citizen has the right to participate meaningfully in government. Legislation like the SAPS Act and the Western Cape Safety Act place an obligation upon national and provincial governments to facilitate public participation via official forums – such as CPFs and ward committees.

These create useful and necessary democratic channels through which citizens can play a meaningful part in political and legislative decision-making. But why should participatory government end there, especially where accountability is concerned?

The grassroots Campaign for Safety and Justice in Khayelitsha, like Equal Education's National Campaign for Minimum Norms and Standards, proves that a social movement can bring about real change. And yet, in both cases – when channels for public participation were found wanting – it took a court battle to persuade the government to cooperate.

From the outset of its inquiry, the O'Regan-Pikoli Commission was acutely aware of the need for public involvement. For this reason, its recommendations included a legal foundation upon which members of the community can engage over issues such as school safety, street lighting and gang prevention.

More recently, another positive outcome has been SAPS's decision to set up a Joint Forum – among the first of its kind – in which police members in Khayelitsha continue to engage with the complainant organisations as well as representatives from the provincial and city governments.

It has been more than a year since the report was presented to Premier Zille and still the struggle for safety and justice in Khayelitsha has barely begun. Comprehensive solutions have been proposed on paper but until they are implemented they will remain as ineffectual as a misplaced docket.

In early August 2015, the Commission's work was dealt a blow when Premier Zille announced that the National Commissioner of SAPS, General Ria Phiyega, had "denied, disputed or redirected to [the Western Cape Provincial Government and the City of Cape Town]" every single recommendation.

Looking ahead, it is therefore up to us as citizens to ensure that the Commission's recommendations are vindicated by implementation, and that another 20 years of democracy do not pass before Khayelitsha – and every other working-class community in South Africa – is transformed into a safe and secure living environment for its residents.

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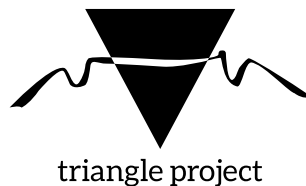
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I AM PREPARED
TO APOLOGISE FOR THE
LACK OF SERVICES
RENDERED TO ADDRESS
THE CRIME PROBLEMS
IN THE KHAYELITSHA
AREA



Safety, Justice & People's Power

A Companion to the
O'Regan-Pikoli Commission of Inquiry
into Policing in Khayelitsha

Khayelitsha is Cape Town's largest township. More than half of its households live in neglected informal settlements where severe shortages of infrastructure and police personnel leave residents vulnerable to high levels of crime.

The South African Police Service is entrusted with protecting all civilians, and yet after more than two decades of reform and democracy it still has no clear strategy for policing the country's poorest residential areas. Even as crime levels rise, resource allocations remain disproportionately low, suggesting a systematic bias against working-class black communities.

In 2014, the O'Regan-Pikoli Commission of Inquiry into Policing in Khayelitsha brought us closer than ever to understanding the complex nature of these problems, as well as why they persist.

Based on the principle that every person is equally entitled to a safe and dignified existence, this book seeks to revive and reinforce the Commission's findings and recommendations.

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.

~ From the opening statement to the Commission
(read by Advocate Ncumisa Mayosi for the
complainant organisations)
23 January 2014

