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Affidavit

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I, the undersigned

**ABDURRAZACK "ZACKIE" ACHMAT**

do hereby affirm and state as follows:

1. I am an adult male residing at A536 St. Martini Gardens, Queen Victoria Street, Cape Town.
2. The facts contained herein are true and correct and within my knowledge unless the context indicate otherwise. Where I rely on information conveyed to me by others, I believe same to be true.
3. I confirm the statements of Mandla Majola, Phumeza Mlungwana, Gavin Silber, Joel Bregman, Amelia Mfiiki and Yoliswa Dwane to the extent that they mention my participation in the work of the complainant organisations in this matter.
4. I am currently employed as the Director of Ndifuna Ukwazi ("NU"). The organisation's mission is to 'promote understanding, engagement and collaboration on social justice issues in order to foster active citizenship and leadership in South Africa'. To this end, NU has a fellowship programme for young leaders. It has a local government research and education programme, focussing on the City of Cape Town, and a safety and justice programme. We also have an activist library and organise public seminars.
5. For the last 3 years my work has focused on research, education, advocacy and oversight and monitoring of police, nationally and provincially, as part of the NU Safety and Justice Task Team which includes Craig Oosthuizen and Phumzile Tyulu. Our work has included studying SAPS annual plans and reports, performance reviews, IPID reports, the Auditor General's reports and attending meetings of the Portfolio

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Committee on Police. I also work very closely with the Social Justice Coalition's (the "SJC") Criminal Justice Task Team. This team includes Phumeza Mlungwana, Joel Bregman, Welcome Makele, Khanyiswa Gxotani, and previously Mandla Majola and Lumkile Sizila. At NU the Safety and Justice Task Team includes Craig Oosthuizen and Phumzile Tyulu.

6. My affidavit is structured in the following way:

6.1. My personal background

6.2. The nature of crime in Khayelitsha

6.3. Command and discipline within SAPS

6.4. Community participation

6.5. Recommendations

6.6. Conclusion

### **Personal Background**

7. I was born on 21 March 1962 in Baragwanath Hospital near Soweto in Johannesburg. My parents and grandparents lived in Vrededorp (Fietas). At the age of 3 months I moved to Cape Town to live with my maternal grandparents and aunts. We lived in Salt River, an industrial working class suburb. My parents and grandparents on both sides grew up as child and adult workers in the clothing industry in Johannesburg and later Cape Town.
8. Until the age of 15 when I left home domestic discord, including violence particularly against children, was a part of daily life. These were largely the result of living at times in cramped quarters of up to twenty people in a one bedroom apartment without electricity. It was also based on barely scraping through on the low wages of my aunts, mother, father, and my family.

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9. My first encounter with a deep lack of security and safety was on an extended visit to Fietas in Johannesburg, where on a regular basis I witnessed the cruel and brutal searches, assaults, and arrests of men and women under the Pass Laws. My parents explained the Pass Laws to me. These raids by the police have been my defining understanding of policing and brutality in Apartheid South Africa.
10. In September 1969 I became aware of a more sinister side of the apartheid security police with the murder in detention without trial of the late Imam Abdullah Haroon who was a respected leader of the Muslim community in District Six and Claremont. Every member of my family, except my grandmother, attended the funeral. It was at this time that my aunts and grandfather related the stories of Nelson Mandela, Yusuf Dadoo, Robert Sobukwe, Bram Fischer, and Solly Sachs. I was in Sub B, which equates with Grade 2. They also told me of the mid-wife who helped in the birth of my sisters and who was banned in exile to Canada. At this time I also learnt that my father had been a Young Communist and my aunt who raised me was a shop steward in the Garment Workers Union led by Solly Sachs, and she had been beaten by police while demonstrating in 1950 against his banning order. From that time on, these stories were both tales of resilience and an expression of fear of the Apartheid state and the insecurity caused by its police service. As soon as I could read, I read the newspapers daily to my grandfather who could not read or write. I was made aware of international and national politics, including wars at that time in the Middle East, India and Pakistan, and Vietnam.
11. My school years were undertaken at Salt River Muslim Primary School, Wesley Methodist Primary School, and Salt River High School. At each of these schools we had progressive teachers and principals who resisted teaching any form of racial inferiority and white supremacy. Afrikaans was my home language, and one of the subjects at which I excelled in school. In 1970 the homes of my paternal grandmother and her children, my parents, and my extended maternal family in Fietas, Johannesburg, were demolished under the Group Areas Act to make way for a white working class suburb. At the same time the homes of my aunt and uncle, and other members of my extended family in District Six, were

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demolished by the Apartheid state. The enforcement of the Group Areas Act by the police influenced my later understanding of the South African Police as a force used to destroy family life, homes, and property rather than fight crime.


### **1976 Uprising**

12. In 1976 it became the object of shame and anger when I learnt, together with other high school students, at the age of 14 how children of my age had been brutally gunned down, beaten and had dogs set upon them by Apartheid police. It immediately caused restiveness among school pupils. On 3 September 1976 I joined the first mass march of high school pupils into the centre of Cape Town where once again we were brutally assaulted by what was commonly known as the riot police.
13. A few days later I read my first banned political classic, Nelson Mandela's speech from the dock at the Rivonia trial. This speech was part of a collection of speeches from the dock published as "The Sun Shall Rise" by the International Defence and Aid Fund. I was taught about the use of the police to enforce the banning of literature and other materials thought to be subversive, and to imprison people who possessed banned materials.
14. My high school political leaders Miriam Gafoor, Rashied Omar, Leon Bosch, Abdullah Semaar and others were arrested by the Security Police. They were tried and acquitted. In 1976 apart from police brutality and the deaths of high school children, more violent deaths occurred in Security Police custody of detainees and trade unionists including Luke "Storey" Mazwembe and Elijah Loza.
15. By 1977 Coloured high school students had returned to school. The class boycotts were a thing of the past. Together with a few other comrades I remained a "Bittereinder," refusing to accept the situation. I committed arson at two campuses of my high school with the hope that it would encourage my fellow pupils to return to action including the boycotting of classes. In the arson at the second campus of Salt River High I was joined by two comrades, Azam



Mohammed and Fa-eedah Abrahams. The class boycott did not materialise.

16. In May 1977 I was detained under the Internal Security Act along with Azam Mohammed. I was 15 years old, and Azam was 16. We were kept in solitary confinement and tortured by Major Lourens of the Security Police and Lieutenant Visser, head of detectives at Woodstock Police Station where we were held. They forced confessions from us. Lieutenant Visser was later promoted to Captain in the Security Police.
17. After fourteen days in solitary confinement we appeared in Cape Town Magistrates Court and were denied bail because it was claimed that we posed a danger to the State. We were remanded to Porter School Reformatory in Tokai. This was the most brutal experience of my life where, along with other inmates, Azam and I suffered daily beatings, sexual assault, and humiliation. Our heads were shaven and we were put in prison clothes without shoes and wearing shorts. At this time I met the legendary Dullah Omar, who later became the Minister of Justice. Six weeks later we were tried. Azam was acquitted.
18. Our confessions were not admitted as evidence because our lawyer, Mr Omar, demonstrated that, on the balance of probabilities, we were tortured because our separate evidence of torture not only coincided with the times in the occurrence book, during which we remembered being tortured, but we had made our statements to our lawyers while being kept completely separate in cells and in the reformatory. The police had failed to discharge the onus to prove that we were not tortured. My first political mentor, Jean Naidoo, a mother of six children, was sentenced to three months in prison for refusing to give evidence against me. I was sentenced to corporal punishment of six cuts.
19. By then I had joined a group of youth in Cape Town known as the Comrades and went underground. On 12 September 1977 Steve Biko was brutally killed in police custody. We prepared to attend Biko's funeral in King William's Town. I was arrested along with more than a hundred youth aged between 12 and 21. We were all held under section 6 of the Terrorism Act. Once again we were held in solitary confinement and tortured. We were tortured by Spyker and Andries



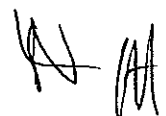
Van Wyk, as well as Major Swart and Captain Visser of the Security Police. I was released on 10 December 1977.

20. For most of 1978 I was involved in organising awareness campaigns against the Pass Laws. The late Jean Naidoo had introduced me to Mamlettie Malindi and Noel Robb of the Black Sash. Together with other comrades, I would visit schools and set up meetings for speakers from the Black Sash to speak about the Pass Laws. On occasion I would join people at Langa Pass Court. We also raised awareness of the destruction of homes and the arrest of African people in Modderdam Road and Crossroads. After organising a school boycott at Rylands High School I was again detained under the Internal Security Act along with a number of youth aged between 14 and 16, including Hashmet and Rustum Naidoo. This time I was forced to make a confession that I was planning to plant a bomb at Rylands High School, and had made a bomb threat to this effect. On remand I was sent to Pollsmoor Prison where I was held with adult prisoners. In December 1978, I was given a minimum sentence of six months on the basis of a forced confession under the Explosives Act. I spent six months in solitary confinement at Pollsmoor Prison.

### **Joining the ANC and the United Democratic Front**

21. While I was incarcerated at Victor Verster prison in 1980 I was recruited to the African National Congress (the "ANC") by the late Johnny Issel and Hennie Ferus. I was detained in Victor Verster prison under the Internal Security Act and its preventative detention provisions as a result of my having organised the 1980 school boycotts which occurred across the Western Cape. I was held with 69 other people but in the end there were two of us left. At this stage I was based in Johannesburg.

22. From 1981 I worked in the youth movement in Mitchells Plain, Bellville and the Bo-Kaap mostly underground at first but thereafter in open politics until 1984. My work involved organising workers for the Cape Town Municipal Association and the Bellville Community Project. In November 1985 I joined the Marxist Workers Tendency (the "MWT") of the ANC led by Advocate Robbie Petersen SC, Paula



Ensor and Martin Legassick. Until March 1990 my activities involved working underground recruiting people for the ANC and the MWT, raising money for self-defence and coordinating the internal organisation of the MWT which was active in Johannesburg, Durban and Cape Town. In 1992 I was a founder member of the Cape Youth Congress. I was also a United Democratic Front ("UDF") activist.

### **The AIDS Law Project**

23. In 1990 I was diagnosed with HIV. I was open about my diagnosis with my friends and partners. In 1991 I attended the Cape Town Film School and in 1992 I was admitted to an honours program in English at the University of the Western Cape based on the recognition of my prior learning. In 1994 I joined the AIDS Law Project at the Centre for Applied Legal Studies as a paralegal officer. I worked under the direction of Justice Edwin Cameron and became director of the Aids Law Project at the end of 1994 when he was appointed as a Judge of the High Court. During the entire period I remained active from the late 80s until 2008 and I was an HIV activist. In 1994 I was one of the co-founders of the National Coalition for Gay & Lesbian Equality of which I eventually became a co-convenor with Phumi Mtetwa. During this period I worked at AIDS Law Project and helped develop the parliamentary strategy to retain the sexual orientation clause in the Constitution.

24. From 1996 I was involved in cases fighting against hate crimes directed by police and men at white working class lesbians by police in the mining town of Carletonville. I was also directly involved in a case to ensure that lesbians in the SAPS had access to medical aid for their partners. I was also involved in cases to decriminalise sexual relations between men and the rights of SA citizens and permanent residents who had foreign partners to have their partners live with them in South Africa. At the AIDS Law Project I was involved in cases and advocacy around the rights of prisoners living with HIV. One of the areas that stood out for me at the time was work against discrimination and discriminatory policies within the SAPS which excluded people living with HIV from working for SAPS. These efforts resulted in policy changes that guaranteed the removal of



these discriminatory practices.


### **Shell House**

25. In 1997 I worked at the law firm Nichols Cambanis & Associates in Johannesburg on what was known as the Shell House inquest. This related to a series of massacres during which the Inkatha Freedom Party (the "IFP") had staged an insurrection in Johannesburg central business district and had attacked the national and provincial headquarters of the ANC, armed with AK47s and so called traditional weapons. Our team was led by Advocate Karel Tip, Advocate George Bizos, Advocate Kgomotso Moroka and Advocate Danny Berger. My role was that of a researcher gathering video and photographic evidence, taking statements from witnesses, and document management. In this case I learnt of the direct collaboration of the SAPS with the IFP and the failure of the SAPS to institute crowd control measures, such as surrounding the ANC buildings with barbed wire when targeted by the IFP. I also learnt that the SAPS stationed one police officer who had never confronted a crowd outside the ANC headquarters. This led to a tragic shooting and loss of life there and elsewhere. The inquest presided over by Justice Robert Nugent apportioned blame on all parties.

### **The Treatment Action Campaign**

26. During this period I started to become ill with HIV and depression and at the end of 1998 I returned to Cape Town where my health took a turn for the worse. I was looked after by my comrade, first boyfriend and partner, Jack Lewis, with whom I stayed until September 2010.

27. During this period I was a co-founder of the Treatment Action Campaign (the "TAC") along with my colleagues Mazibuko Jara, Mark Heywood, Phumi Mtetwa, Deena Bosch, Morna Cornell, Mercy Makhalemele, Queenie Qiza, Sharon Ekambaram and others. The work of the TAC was focused in 3 areas: first, ensuring that government provided ARV therapy to prevent mother to child HIV transmission. Second, to ensure that standard treatment guidelines for opportunistic infections such as TB, oesophageal thrush and meningitis were




adopted and that these medicines were made available in all hospitals at an affordable price. Our third campaign was to stop drug companies profiteering from HIV medication and to reduce the price of ARV therapy, which was as high as R10 000 a month.

28. During this time we supported the efforts of President Mandela and Health Minister Nkosazana Dlamini-Zuma to make medicines affordable in South Africa by amending the Medicines Act. Thirty nine drug companies had approached the then Pretoria High Court to declare the amendments to the Medicines Act unconstitutional. The TAC joined the case as an *amicus curiae* bringing detailed evidence of excessive drug pricing and how it had led to thousands of deaths. The drug companies withdrew the case. Together with international allies we had also organised demonstrations in seventy cities across the world in support of the South African government.

29. Regrettably in October 1999 I learnt from members of the ANC that President Mbeki had adopted the pseudo-science of HIV denialism which claimed that HIV did not exist and ARV therapy killed people. For most of the next 10 years TAC was involved in a life and death struggle losing hundreds of its leaders to illness and death and had to turn to the courts to pursue 8 separate cases.

30. From 1999 I was involved through TAC with *Medicines Sans Frontiers* ("MSF" - Doctors without Borders) supporting the Western Cape government's mother to child HIV programme which started reducing HIV transmission in Khayelitsha. This was a pilot project. I worked together with my colleagues Mandla Majola, Tembeka Majali, Vuyiseka Dubula and Sipho Mthathi. Together we built an organisation that encompassed more than 50 branches throughout the Western Cape but mainly focused in Khayelitsha. Premier Ebrahim Rasool supported this initiative and the Director General in the Department of Health Dr Ayanda Ntsaluba granted permission to MSF to begin the first community based ARV treatment program for children and adults in 2001. In 2000 and 2001 TAC imported generic flucolazol to treat oesophageal thrush because the brand name holder Pfizer charged more than R3000 for a single course of this medicine, a



generic version of which was available in Thailand for less than R70 per course.

31. We also imported generic ARVs from Brazil to support the MSF program in Khayelitsha. In addition TAC, the AIDS Law Project and Cosatu brought a case to the Competition Commission of excessive pricing and the abusive monopoly against GlaxoSmithKline and Boehringer Ingelheim. Through that we managed to secure 5 voluntary licenses for generic ARVs which became part of the government's first regimen when it adopted an ARV program treatment plan in 2003.

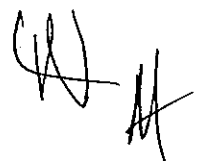
### **TAC Khayelitsha**

32. The work of the TAC in Khayelitsha comprised of community education, branch education, treatment literacy, organising marches, pickets and petitions and even civil disobedience as a last resort. Our main task was to ensure that anyone irrespective of educational level could understand complex law related to trade and intellectual property from the World Trade Organisation to the Patents Act and the Competition Act. We undertook this education in order to make this information accessible to everyone and to assist the government to counter the drug companies' monopoly and profiteering from ARV treatment and to ensure that medicines could become affordable in the public health care sector. It was vital that every person could support Parliament and the executive in fulfilling their constitutional mandate to provide healthcare access.
33. The second area of our work in Khayelitsha in which I was initially involved was scientific and treatment literacy relating to HIV. The programme organised by my colleagues Siphon Mthathi and later Vuyiseka Dubula was aimed at people living in informal settlements in Khayelitsha and other working class communities across the country. I remained intimately involved in the work in Khayelitsha. In December 2003 Lorna Mlofana was tragically murdered. I joined a march in Town Two to the shebeen where she was murdered and to the perpetrator's home. During this march I became seriously aware of community anger against the police. If I had not made a speech that helped calm people down violence would have occurred against the shebeen owner and the home of the family of



the perpetrator. It is normally in situations like this where the vigilantism of which my colleagues speak occurs.

34. Between 2003 and up to 2008 TAC became directly involved in cases of gender based violence against women and children across the country. Many of TAC's members such as Nandipha Makeke were raped, some were murdered and others suffered serious domestic violence. In Khayelitsha I attended many workshops explaining constitutional court cases such as that of *Metrorail, Carmichelle*, and later *S v Abrahams* and others. In the view of TAC it was vital that people understand how the law can protect women and children against gender based violence. At that time and still to this day there is a perception that the Constitution encourages crime by giving criminals rights such as the abolition of the death penalty and the right to a bail hearing. Rape and other forms of gender based violence are not caused by the police or the criminal justice system broadly. They are the result of extreme violence perpetrated against men and women in South Africa over centuries. It is also rooted in the patriarchal systems of all cultures in South Africa. However, when a crime is committed a victim and society have the right to justice. In achieving justice the police are indispensable in ensuring, together with prosecutors, that convictions result.
35. The cases of Lorna Mlofana and others painfully illustrated that SAPS is not equipped to address gender based violence. Its own patriarchal and violent history remained. The training received by police reflected Apartheid education and continued intellectual dispossession of African and coloured working class children. The police could not take statements, failed in basic courtesy, and had no decent investigative skills. Detectives and visible police were overburdened and under resourced and through the years I observed the phenomenon of police killing their families and themselves.
36. On 23 May 2008 I was one of the TAC leaders at a march of more than 5000 people against gender based violence to present to the police and the Departments of Justice and Health a set of demands related to all aspects of rape. These demands included: a plan to deal with rape and other forms of sexual assault. On that day xenophobic violence erupted in Cape Town.



37. I confirm what Mandla Majola, Gavin Silber and others have said in relation to the 2008 xenophobic violence which I recognised as primarily a failure of political will by the then Mayor of Cape Town Helen Zille, the national government and to a large extent the provincial government of Premier Ebrahim Rasool. Initial coordination with SAPS through then Commissioner Mzwandile Petros prevented worse violence but it very soon became clear that local police idly stood by and in fact encouraged acts of violence and robbery particularly against Somali traders and their families.

### **Founding of the SJC**

38. During this period I was a co-founder of the SJC as well as Equal Education ("EE"). Both these organisations have headquarters in Khayelitsha. The SJC realised that addressing criminal justice issues on a case by case basis such as that of Somali traders, gender based violence or ordinary social contact crime was not enough. The organisation committed itself to creating a safe South Africa for all.

39. Khayelitsha members of the SJC such as Angy Peter and Wanda Bici helped hold community consultations together with Gavin Silber and others in which the issue of sanitation was raised. Despite having worked in Khayelitsha all this time I had never realised that the most dangerous thing a person can do in an informal settlement is to use a communal toilet or to relieve themselves in bushes.

40. The SJC's major campaign at this stage was to ensure safe sanitation. Very quickly because of our involvement in the TAC and our understanding of health it became clear that adequate safe clean private sanitation was indispensable to living a healthy life. Therefore its campaigns have and still do focus on access to clean water and dignified sanitation. Through the campaigns for a safe community, the SJC also campaigned for infrastructure to make the Khayelitsha community and all other informal settlement residents feel safe in their homes, schools and in public transport.



41. My involvement in EE and NU taught me how dangerous schools are for learners, even though I was aware of this in the 1980s when gangs called the "Jack Rollers" targeted mainly politically active school girls for gang rape in Soweto.
42. Almost everyone I have encountered and met in Khayelitsha has witnessed or been a victim of crime. Crimes committed against children men and women in Khayelitsha are often among the most brutal experiences I have had the misfortune of being exposed to, through the experience of my comrades and colleagues. My most vivid memory was visiting the family of Nandipha Makeke who joined TAC when she was 12 and became a branch leader at the age of 18. Her elderly parents could not understand what had happened to them. And they felt very let down by the manner which the SAPS was conducting the matter. I attended numerous press conferences with Mr Makeke and marches and their experience, like the experiences of Sifiso Zitwana, Amelia Mfiki and many others, reflects the horrors of crime in Khayelitsha. This boils over into anger when people confront criminals on the street and when they gather together after incidents have occurred. I have observed the same in Mannenberg where gang violence has claimed the lives of scores of people.
43. As stated above, since 2010 my work has focused on research, education and advocacy on safety and criminal justice with a specific focus on SAPS.

### **The Nature of Crime in Khayelitsha**

44. I have not included reports as annexures, such as Annual Reports and Department of Community Safety Reports, as I presume these are already to the Commission. However, if requested I can make these reports available.
45. For every 46 murders reported every day in South Africa, at least one of those is in Khayelitsha. At least two sexual crimes, primarily rape, are reported every day in Khayelitsha. The 2013 national crime statistics for the period ending April 2013 reveal that Khayelitsha has the highest number of reported crimes in the country for murder, sexual crimes, attempted murder, and assault with the intent to do



grievous bodily harm. Using 2011 census data, the City of Cape Town estimates the population of Khayelitsha at 391 749 (see annexure “ZA1”). However, this is generally accepted to be an underestimation of the actual population in Khayelitsha; the complainant organisations use an estimation of 500 000 people (see Phumeza Mlungwana’s affidavit). Using this revised population figure for Khayelitsha, there are 71 murders for every 100 000 people, more than twice the national average of 31 per 100 000 people.

46. The 2012/2013 crime statistics revealed that within the jurisdiction of Cape Town, 5 of 58<sup>1</sup> police districts accounted for 45% of murders: Nyanga (14.56%); Khayelitsha (9.34%); Harare in Khayelitsha (7.34%); Gugulethu (7.17%); and Kraaifontein (6.73%). These figures demonstrate that most murders within Cape Town occur in poorer, mostly informal communities. In these communities, SAPS is often the only protection people have against the very real danger of violent crime.

47. **Table 1** demonstrates that the stations in Khayelitsha, particularly the Harare and Khayelitsha stations, contribute disproportionately to reported violent crime within the City of Cape Town. If Lingeletu-West was added, the contribution of Khayelitsha is even greater.

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<sup>1</sup> The police districts are: Athlone, Atlantis, Belhar, Bellville, Bellville South, Bishop Lavis, Bothasig, Brackenfell, Camps Bay, Cape Town Central, Claremont, Delft, Dieprivier, Durbanville, Elsies River, Fish Hoek, Goodwood, Gordon’s Bay, Grassy Park, Gugulethu, Harare, Hout Bay, Kensington, Khayelitsha, Kirstenhof, Klapmuts, Kleinvlei, Kraaifontein, Kuilsrivier, Langa, Lansdowne, Lingeletu-West, Lwandle, Macassar, Maitland, Manenberg, Melkbosstrand, Mfuleni, Milnerton, Mitchells Plain, Mowbray, Muizenberg, Nyanga, Ocean View, Parow, Philadelphia, Pinelands, Ravensmead, Rondebosch, Sea Point, Simon’s Town, Somerset West, Strand, Strandfontein, Table Bay Harbour, Table View, Woodstock, Wynberg.

Table 1: Per-Station Contributions to Reported Crime In Cape Town (2012/2013)							
Murder		Attempted Murder		Sexual Crimes		Assault GBH	
Top 5 Stations	%	Top 5 Stations	%	Top 5 Stations	%	Top 5 Stations	%
1) Nyanga	14.56	1) Mitchells Plain	8.82	1) Mitchells Plain	8.83	1) Nyanga	8.22
<b>2) Khayelitsha</b>	<b>9.34</b>	2) Nyanga	8.57	2) Nyanga	8.73	2) Mitchells Plain	6.61
<b>3) Harare</b>	<b>7.34</b>	<b>3) Khayelitsha</b>	<b>8.49</b>	3) Gugulethu	5.60	<b>3) Khayelitsha</b>	<b>6.11</b>
4) Gugulethu	7.17	4) Bishop Lavis	7.10	<b>4) Harare</b>	<b>5.56</b>	4) Gugulethu	5.58
5) Kraaifontein	6.73	5) Elsies River	6.49	5) Delft	5.35	<b>5) Harare</b>	<b>5.48</b>

48. President Thabo Mbeki, recognising the unacceptably high levels of violent crime within the area, designated Khayelitsha Police Station a priority or 'presidential' station in 1999. Efforts to respond to rising population and crime rates resulted in two of the station's reporting points, Lingeletu-West and Harare, being developed into independent stations in 2004.

49. Many police stations experience severe resource shortages. When Khayelitsha is compared to other mostly informal suburbs within Cape Town, it is evident that there is insufficient police presence to efficiently and effectively prevent and respond to violent crime. Looking at some of the areas already referred to in Table 1 Nyanga police station is responsible for policing just over 3 square kilometres while Gugulethu police station is responsible for an area less than 6.5 square kilometres. On the other hand, Khayelitsha's three stations are responsible for policing an area of approximately 40 square kilometres which, if split evenly, means that each station is responsible for roughly 13 square kilometres. The problems of access to such a large area are compounded by a lack of proper roads, close proximity of homes, and poor street lighting. This

makes it nearly impossible to respond timeously to reports of crime, and to maintain effective visible policing.

50. It is also worth noting that the responsibility for ensuring a safe environment does not lie solely with the police. It must include local and national government, who jointly have a responsibility to ensure that communities like Khayelitsha are properly serviced with infrastructure, including proper streets and street lighting. Communities, social movements and NGOs also have a vital role to play to build safe communities. However, knowledge and evidence is indispensable in the contribution communities can make. This knowledge is severely lacking in working class communities.

### **Perceptions of Safety in Khayelitsha**

51. Many people in Khayelitsha do not feel safe in what is mostly informal housing, with almost no protection from the elements, let alone criminals. The 2011/2012 Community Safety Barometer (hereafter referred to as "the Barometer"), published by the Western Cape Government, details residents' confidence and perceptions regarding the safety and security provided by government and SAPS; it does so by measuring perceived safety levels and fear of crime. According to the Barometer, residents from the three police precincts in Khayelitsha express extraordinarily high levels of fear regarding crime and safety, especially at night.

51.1. 66% of respondents in the Harare precinct; 72% of respondents in the Khayelitsha precinct; and 68% of respondents in the Lingeletu-West precinct felt unsafe or very unsafe at home after dark or at night.

51.2. 30% of respondents in the Harare precinct; 44% of respondents in the Khayelitsha precinct; and 49% of respondents in the Lingeletu-West precinct felt unsafe or very unsafe on the street during the day.

51.3. 79% of respondents in the Harare precinct; 78% of respondents in the Khayelitsha precinct; and 71% of respondents in the Lingelethu-West precinct felt unsafe or very unsafe on the street at night.

52. People feel most safe when they perceive that the police service is effective and efficient in preventing crime. Police stations are not perceived to be running efficiently, with 56% of respondents in Harare; 48% of respondents in Khayelitsha; and 42% of respondents in Lingelethu-West rating service at the police stations as poor or very poor.

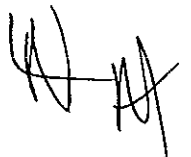
53. Similarly high numbers of Khayelitsha residents rated police response times to distress calls as poor or very poor: 53% in the Harare precinct; 63% in the Khayelitsha precinct; and 49% in the Lingelethu-West precinct.

54. In terms of visible policing, police in Khayelitsha were also rated poorly for their work on foot patrols. 68% of respondents in the Harare precinct; 69% of respondents in the Khayelitsha precinct; and 52% of respondents in Lingelethu-West rated police officers on foot patrols as poor or very poor.

55. The only areas of the survey where the police service were not rated as poorly were in the categories: police officers on vehicle patrols; special operations such as roadblocks; and crime sweeps. This speaks directly to the tactics the police use in Khayelitsha.

55.1. 29% of respondents in the Harare precinct; 25% of respondents in the Khayelitsha precinct; and 25% of respondents in the Lingelethu-West precinct rated police officers on vehicle patrols as neither poor nor good.

55.2. 27% of respondents in the Harare precinct; 25% of respondents in the Khayelitsha precinct; and 27% of respondents in the Lingelethu-West precinct rated special operations as neither poor nor good.



55.3. 23% of respondents in the Harare precinct; 28% of respondents in the Khayelitsha precinct; and 24% of respondents in the Lingeletu-West precinct rated crime sweeps as neither poor nor good.

### **Protection and support of vulnerable people**

56. In term of section 7(2) of the Constitution, SAPS has an obligation to protect the rights of all people, particularly the vulnerable. The safety of communities should be measured, as stated in Chapter 12 of the National Development Plan, by:

“...the extent to which the most vulnerable in society, women in particular, feel and are safe from crime and the conditions that breed it.”

57. The police cannot be held responsible for the victimisation of vulnerable people. However, the police have a duty to ensure sensitive and effective investigation, and to bring the perpetrators to trial.

58. Women and children are particularly vulnerable. In 2012/2013 SAPS reported that:

58.1. Of reported sexual crimes, 46% were committed against children younger than 18 and 54% were against women older than 18.

58.2. Of reported common assaults, 12% were committed against children younger than 18 and 88% were against women older than 18.

58.3. Of reported assaults with the intent to do grievous bodily harm, 15% were committed against children younger than 18 and 85% were against women.

59. According to the results of the Barometer, vulnerable people within Khayelitsha do not feel safe.

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- 59.1. 74% of respondents in the Harare precinct; 79% of respondents in the Khayelitsha precinct; and 38% of respondents in the Lingelethu-West precinct felt that women are not safe in their neighbourhoods.
- 59.2. 80% of respondents in the Harare precinct; 80% of respondents in the Khayelitsha precinct; and 50% of respondents in the Lingelethu-West precinct felt that children are not safe in their neighbourhoods.
- 59.3. 77% of respondents in the Harare precinct; 77% of respondents in the Khayelitsha precinct; and 39% of respondents in the Lingelethu-West precinct felt that the physically challenged are not safe in their neighbourhoods.
- 59.4. 75% of respondents in the Harare precinct; 69% of respondents in the Khayelitsha precinct; and 34% of respondents in the Lingelethu-West precinct felt that the elderly are not safe in their neighbourhoods.
- 59.5. 81% of respondents in the Harare precinct; 79% of respondents in the Khayelitsha precinct; and 58% of respondents in the Lingelethu-West precinct felt that learners are not safe in their neighbourhoods.
60. Insufficient support is provided to victims of violence, particularly sexual violence, at SAPS stations. Despite the stated aim of having one victim friendly room (VFRs) per station, 215 of the 1 134 police stations have no access to a VFR.<sup>2</sup> These rooms are meant to provide a friendly environment where victims can be dealt with in a dignified and professional manner. In fact, the number of VFRs has actually decreased from 925 in 2011/2012. According to SAPS, this was because of many such VFRs being located in temporary structures that have deteriorated beyond use.<sup>3</sup>

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<sup>2</sup> South African Police Service, *South African Police Service Annual Report 2012/2013*, 2013, p.97.

<sup>3</sup> *Ibid*, p.74.

61. A 2012 report by the SAPS National Inspectorate (hereafter referred to as the "Task Team Report")<sup>4</sup> found that the VFR at the Khayelitsha police station was located in a Wendy House that had deteriorated beyond use, and had in fact become a safety hazard. It was also found that SAPS had failed to respond to offers of assistance to upgrade the facility. Furthermore, registered volunteers willing to work at the facility were not receiving support from the station management.<sup>5</sup>

62. The VFR at Harare station was not staffed, as reservists running the facility had been redeployed to perform guard duty.

### **Command and Discipline within the Police**

63. Substantial improvements have taken place within the police service since the end of apartheid. The use of torture, brutality and extra-judicial killings are no longer generally accepted means of achieving results within the service. However, previous systems of officer control and discipline have seriously deteriorated over the past 20 years. Over the last few years, incidents such as the murder of Andries Tatane, the shooting of miners at Marikana, and the dragging behind a police van of Emidio Macia have demonstrated serious misconduct and abuse of power within the police service. While we cannot be certain about the extent of the problem, some indicators suggest it is widespread and a matter of serious concern.

64. A professional police service is essential for a robust and functional criminal justice system. In order for the service to be professional, its members must be knowledgeable about the law, competently perform their duties, and recognise their responsibility to protect and serve the people in line with section 205(3) of the Constitution. Achieving this standard of professionalism requires the enforcement of a code of ethics, proper training, and proper monitoring and assessment systems.

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<sup>4</sup> South African Police Service, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown in Police-Community Relations in Khayelitsha, Cape Town, 2012.*

<sup>5</sup> *Ibid*, pp.18-19.

### Political and operational leadership

65. Political leadership of SAPS is currently vested in the Minister of Police, Nathi Mthethwa, who derives his authority from section 206(1) of the Constitution which states:

“A member of Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.”

66. The Minister of Police, previously the Minister of Safety and Security, has a history of providing insufficient direction to the police. This is primarily due to a decision in 1999 to downgrade the national policing secretariat. This reflected a shift of government's focus away from accountability to “fighting crime.” Control of SAPS was primarily placed in the hands of the National Commissioner. At that time the National Commissioner was Commissioner Jackie Selebi, an active member of the ruling party. This resulted in the Minister of Police having very little capacity to set policy direction, and policy was primarily developed and led from within SAPS. Therefore, the ability of the Minister to play a serious and meaningful role in setting SAPS policy was severely compromised. Although the secretariat was not necessarily effective prior to 1999, political interference after 1999 substantially undermined the Minister's ability to play a constructive role in developing policy around crime and policing.<sup>6</sup>

67. The Civilian Secretariat of Police is constitutionally established to empower the Minister of Police to develop and implement policy on crime and policing. A feeble or under-resourced secretariat seriously hinders effective civilian oversight of the police. That is not to say that SAPS input into policy is not vital, but it is essential that policy be informed by inputs from other sources.

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<sup>6</sup> David Bruce et al, *In service of the people's democracy: An assessment of the South African Police Service*, 2007.

68. In terms of the Constitution the National Commissioner of Police is required to:

“...exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing.”

69. As the head of the department, the National Commissioner is also the Accounting Officer of SAPS. As such, the National Commissioner is responsible for “the efficient, effective, economical and transparent use of the resources of the department.”<sup>7</sup> Unfortunately, the post of National Commissioner has, since 2000, been characterised by criminal and political interference.

70. In January 2000, Jackie Selebi was appointed to replace Commissioner George Fivaz as National Commissioner. In 2008 Selebi was arrested and charged with corruption and defeating the ends of justice. He was accused of taking bribes from convicted drug dealer Glen Agliotti. In 2010, Selebi was convicted on one count of corruption and sentenced to 15 years imprisonment. A subsequent appeal against the conviction failed, although he was released on medical parole in July 2012.

71. In July 2009, Bheki Cele succeeded Selebi as National Commissioner. He was in the job for three years before being dismissed after being implicated in a corrupt lease deal. Cele had insisted that SAPS lease two of Roux Shabangu’s buildings at exorbitant rental fees; at the time, Mr Shabangu had yet to purchase one of these buildings. A board of inquiry found that Cele had acted in violation of the Public Finance Management Act.

72. In June 2012, Riah Phiyega was appointed to the post of National Commissioner, despite having no previous experience in policing. On 29 October 2013, IPID announced that it was investigating allegations against Commissioner Phiyega for defeating the ends of justice. It has been alleged that she leaked details of an investigation by the Hawks to the Provincial Commissioner of the Western Cape

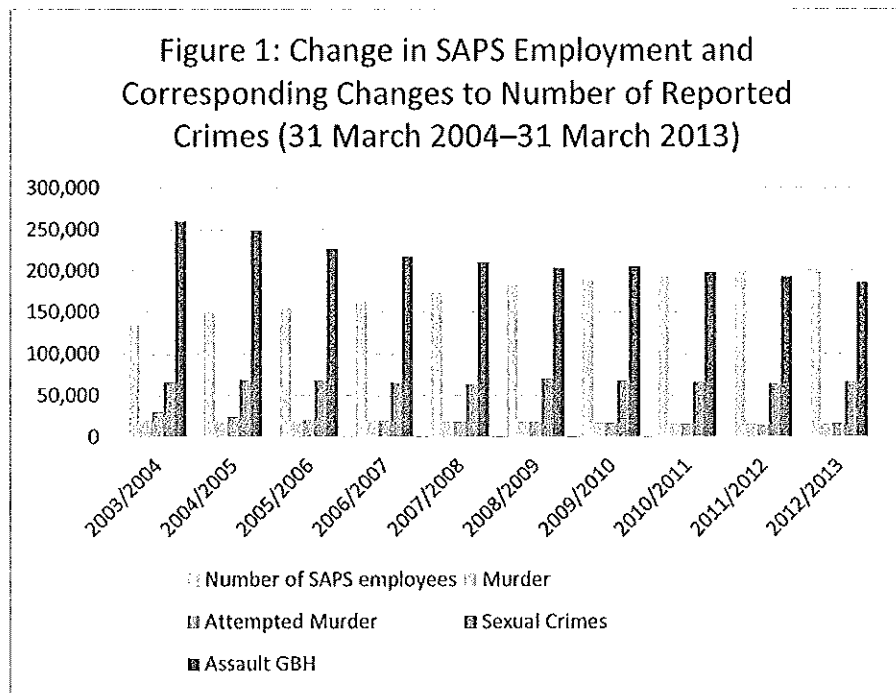
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<sup>7</sup> Public Finance Management Act 1 of 1999, s 38(b).

regarding his affiliation to a local drug dealer. These allegations, together with Marikana massacre and management crisis in SAPS, have further undermined public confidence in the Commissioner and the police service.

73. National Commissioners have to date failed to promote the “high standard of professional ethics” required by section 195(1)(a) of the Constitution. The behaviour of the top commanders sets a poor example for their subordinates, and threatens to erode morale and discipline throughout the service.

74. According to SAPS Annual Reports tabled before Parliament over the last decade, SAPS numbers have swelled by 50% from 132 310 employees in March 2003 to 197 946 in March 2013. (This number includes members employed in terms of the Public Service Act.) However, increasing the size of the police service has not necessarily corresponded with a marked decrease in reported crimes as is evident from **Figure 1** below.



75. Between 2003 and 2012 the combined granted personnel strength for Khayelitsha’s three police stations rose from 471 to 670, with 656 actually being

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employed by July 2012. Here too, the increase in the number of officers has not resulted in decreased crime.

76. In their 2012/2013 Annual Report, SAPS reported a vacancy rate of 0.5%. This figure is deceptive because the Administration Programme had in excess of 2 232 employees, while 3 289 posts elsewhere remained unfilled: 451 in visible policing; 786 in detective services; 1 804 in crime intelligence; and 284 in protection and security services.<sup>8</sup>

77. The Task Team Report found that in Khayelitsha many of the vacant posts within the command structure, and in the support service environment, remain vacant for long periods. At the Khayelitsha police station, 65% of warrant officer posts and 59% of sergeant posts remained vacant at the time of the report.<sup>9</sup>

78. Many of the members stationed in Khayelitsha have been seconded to other units in the province or to the Cluster Tactical Response Unit. This means that these members are not available to perform duties in Khayelitsha.

### Health

79. For the financial year 1 April 2012 to 31 March 2013, SAPS reported that 138 563 employees had taken a total of 1 108 684 sick days.<sup>10</sup> This, combined with the number of incapacity leave days (284 882), cost SAPS in excess of R800 million. This represented at least 1% of the entire allocated budget. In hearings before Parliament's Portfolio Committee on Police on 09 October 2013, Acting Commissioner for Human Resource Management Lt-Gen Mazibuko reported that primary causes of sick leave were the "general conditions of sickness, like flu"; work-related trauma; and psychiatric issues (see annexure "ZA2").

80. The high level of absenteeism at Khayelitsha's three stations further undermines the actual levels of police personnel. The Task Team Report found that police

<sup>8</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.168.

<sup>9</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town*, 2012, p. 21.

<sup>10</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.180.

stations in Khayelitsha are currently operating with the minimum number of personnel due to high levels of absenteeism as a result of sick leave, annual leave, and/or rest days. At the Lingeletu-West station, a shift of 13 members on average experiences a shortfall of 4 members (30.1%) per shift. At the Khayelitsha police station, an inspection was done of a relief shift of 36 members, of which 12 members (33.3%) were absent due to sick leave and vacation leave. High levels of absenteeism are generally accepted as indicators of low morale.<sup>11</sup>

81. While the Task Team Report found that the capturing of leave is well managed, it also found that SAPS members who were absent more than once in an eight-week period did not produce a medical certificate as required by national directives.

82. During the 2012/2013 financial year, 115 police officers committed suicide, providing further evidence of a lack of proper support for officers within the service.<sup>12</sup>

### Training

83. Many positions in SAPS, including in Khayelitsha, are currently being filled by people who are not trained or competent to fill the role. In answer to the Parliamentary Portfolio Committee on Police in April 2013, SAPS revealed that station commanders are currently being appointed to their posts without receiving the necessary training. Once being appointed, commanders are put on a training waiting list, and can wait many years before receiving the sort of training necessary to be competent in their role (see annexure "ZA3"). This would explain why the Task Team Report found that the police stations in Khayelitsha had up till then been unable to comply with departmental directives.<sup>13</sup>

84. At the Harare police station, the Task Team found that 40 officials (20.5% of actual personnel) were trainees and not yet competent to perform their

<sup>11</sup> Supra note 4; p.21-22.

<sup>12</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.15.

<sup>13</sup> Supra note 4; p.24.

operational duties. This included 16 detective student constables and 24 student constables.

85. **Table 2** is reproduced from the Task Team Report and depicts training interventions taken by SAPS in Khayelitsha. It is not clear during which period the interventions took place.

<b>Table 2: SAPS Training Interventions In Khayelitsha</b>			
<b>Training Intervention</b>	<b>Khayelitsha</b>	<b>Lingelethu West</b>	<b>Harare</b>
<b>Anger management</b>	6	0	10
<b>Domestic violence</b>	132	3	6
<b>Ethics and anti-corruption</b>	11	0	4
<b>Victim empowerment and sexual offences</b>	7	4	3
<b>Crime scene management and basic crime investigation</b>	20	10	12
<b>Other</b>	103	104	97
<b>Total</b>	<b>279</b>	<b>121</b>	<b>132</b>

86. The Task Team Report states that legal advisors were appointed at the three stations in Khayelitsha in an effort to amplify training interventions and assist officers.<sup>14</sup> These advisors were required to provide legal support on:

- 86.1. The application of legislation;
- 86.2. Crime investigations and operations; and
- 86.3. The effective management of resources.

<sup>14</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town, 2012*, p. 20.

87. However, it was found that these legal advisors did not have the necessary understanding of policing to make a positive impact.

88. It is evident that Khayelitsha is experiencing a serious shortfall in personnel because of high vacancy rates and because officers are unavailable to perform their duties, either due to being deployed elsewhere or high levels of absenteeism.

### Conduct

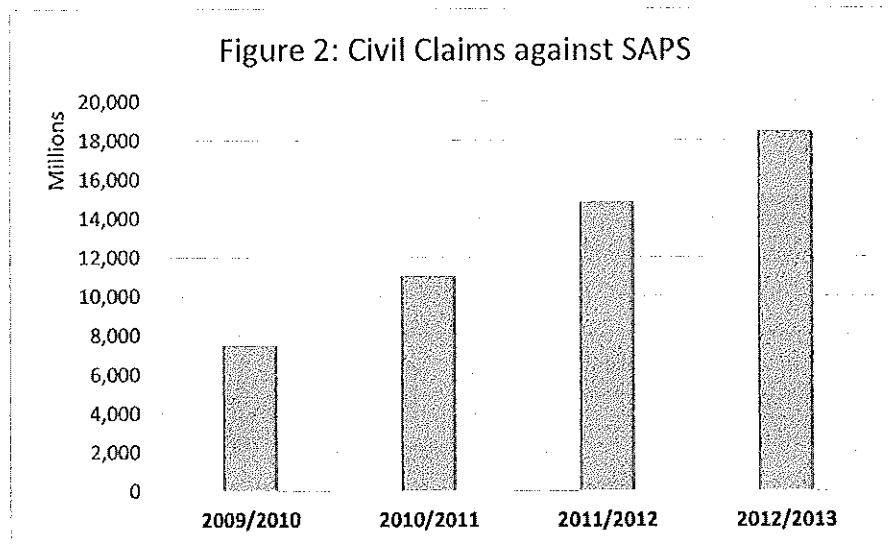
89. Section 195 of the Constitution recognises that public institutions, such as SAPS, need to be governed by democratic principles which include being held accountable. The key challenge is ensuring that, within limits, the police prevent crime, protect people, and promote the rule of law. Therefore, effective oversight is essential; this will ensure the independence of the police, while allowing them enough room to effectively tackle crime.

90. The numbers of civil claims opened against the police are an important indicator of police conduct. The Minister of Police has recognised that civil claims against the police often arise out of police abuses and therefore released a media statement on 12 March 2013, titled "Minister Mthethwa instructs police management to strengthen supervision of cops to avert lawsuits."<sup>15</sup>

91. SAPS Annual Reports, which were presented to and accepted by Parliament, reveal a steady increase in civil claims against the police over the last four years. Figure 2 shows the figures for civil claims against the police for the financial years 2009/2010 and 2012/2013. This table shows that as of 31 March 2010, SAPS was facing claims totalling R 7 486 919 000. As of 31 March 2013, SAPS was facing claims totalling R 18 447 358 000. Thus total claims have more than doubled in the past three years.

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<sup>15</sup> South African Police Service, *Minister Mthethwa instructs Police Management to strengthen supervision of cops to avert lawsuits*. Available at <http://www.saps.gov.za/dynamicModules/internetSite/newsBuild.asp?myURL=2970> (Accessed 24 November 2013).



92. IPID, the only oversight body empowered to investigate criminal abuses by the police, reported that nationally it received 6 728 cases of criminal and professional misconduct by the police in the 2012/2013 financial year.<sup>16</sup> If taken as a percentage of total police officers, it represents 4.3% of the service. Many of these cases involve more than one victim.

93. Of all the cases IPID opened in 2012/2013, 4 131 (61%) were for assault by a police officer. 1 236 of these cases (30%) involved assault with the intent to do grievous bodily harm, with 2 855 of these cases (68%) being for common assault. Changes to legislation introduced by the 2011 IPID Act required IPID, for the first time, to report on complaints of torture by police officers. IPID opened 50 cases of torture in 2012/2013. In 37 of these cases (74%), victims claim to have been tortured through beatings, with the rest of the cases involving torture through electrocution, suffocation with a bag, and suffocation with a tube. IPID also reported opening 147 cases of rape by a police officer. These high figures are indicative of an overly aggressive culture within the police service.

94. IPID also reported opening 22 cases of rape while in police custody, and 275 cases of death while in police custody. The largest contributor to deaths in police custody was suicides, comprising 94 of the cases (34%), with 72 of these

<sup>16</sup> Independent Police Investigative Directorate, *IPID Annual Report 2012/2013*, 2013, p.16.

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involving the use of prohibited items (such as belts or shoelaces). These figures indicate a lack of proper monitoring and custody management by the police.

95. The IPID Annual Report further breaks down the deaths in police custody according to those caused by injuries sustained in custody (118), those sustained prior to custody (80), and those from natural causes (77). It is interesting to note that 73 of the deaths caused by prior injuries (91%) were due to "assault by members of the community involved in vigilante activities".<sup>17</sup>

96. IPID reported 431 deaths as a result of police action during the 2012/2013 financial year. The largest contributor of civilian fatalities was deaths in the course of an arrest, resulting in 156 or 36% of all police action deaths. Nearly **10% of deaths (42) as a result of police action occurred during a domestic violence incident.** As the Task Team Report admonished SAPS, high levels of domestic violence by police officers is an indication that "that those entrusted with the policing of social crimes within the community are in fact, perpetrators themselves." The Task Team Report went on to say that this could also indicate "high levels of work stress experienced by members."<sup>18</sup> The Task Team Report stated that 16 domestic violence and assault GBH cases were registered in Khayelitsha station alone between January and June 2012.

97. IPID opened 120 cases of corruption in 2012/2013. Of these, 90 cases (75%) were for soliciting a bribe or extortion; 11 cases (9%) were for the sale or theft of exhibits; 10 cases (8%) were for the sale, theft, or destruction of police dockets; 6 cases (5%) were for aiding an escape from custody; and 3 cases (3%) were for issuing fraudulent documents. IPID also opened another six cases of systematic corruption, which the IPID Annual Report defines as "an institutionalised, endemic manipulation of a system by individuals or networks/organisations, taking advantage of weakness in the processes and systems for illicit gain, where there are leadership deficiencies, collusion and/or abuse of power."<sup>19</sup>

<sup>17</sup> *Ibid* p.24.

<sup>18</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town, 2012*, p. 16.

<sup>19</sup> IPID, *IPID Annual Report 2012/2013*, 2013, p.34.

98. IPID referred 1 088 cases to the National Prosecuting Authority (NPA) because they found *prima facie* evidence of criminal conduct on the part of police officials. This included 683 cases of assault; 5 cases of torture; 37 cases of rape by a police officer; 3 cases of rape in custody; 21 cases of death in police custody; 87 cases of death as a result of police action; and 6 corruption cases (excluding systematic corruption). This means 17% of all assault cases; 10% of all torture cases; 25% of all cases of rape by a police officer; 14% of rape in police custody cases; 8% of death in police custody cases; 20% of death as a result of police action cases; and 5% of corruption cases had enough evidence to be referred to the NPA to make a decision on whether to institute criminal proceedings.<sup>20</sup>

99. It is noteworthy that more criminal cases are opened against SAPS officials at police stations than with IPID. The SAPS Annual Performance Plan for 2013/2014 states that SAPS officials were facing a total of 8 846 criminal charges as of the end of the 2011/2012 financial year.<sup>21</sup> In their 2012/2013 Annual Report, SAPS reported that 892 members were charged with fraud and corruption during the period covered by the report. This includes: 319 for corruption; 153 for fraud; 349 for aiding an escapee; 149 for defeating the ends of justice; 46 for extortion; and 10 for bribery. Of those charged, only 22 were suspended; 8 with a salary and 14 without a salary.<sup>22</sup>

100. These figures should be viewed against the backdrop of a SAPS internal audit earlier this year, which revealed that 1 448 members of SAPS were currently serving with a criminal conviction. This includes: 1 Major General; 10 Brigadiers; 21 Colonels; 10 Majors; 43 Lt-Colonels; 163 Captains; 84 Lieutenants; 716 Warrant Officers; 267 Sergeants; 129 Constables; and 8 Personnel Officers (see annexure "ZA4"). These figures demonstrate an inability and unwillingness by SAPS to act strongly against misconduct and corruption, especially when it involves senior members of the service.

<sup>20</sup> IPID, *IPID Annual Report 2012/2013*, 2013, p.50.

<sup>21</sup> South African Police Service, *SAPS Annual Performance Plan 2013/2014*, 2013, p.45.

<sup>22</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.160.

101. These statistics highlight the fact that police abuses are more systemic and widespread than is often realised or admitted by police leadership. Typically, police leaders attempt to distance themselves from instances of police abuse by blaming such incidents on the individual officers involved and referring to them as “bad apples.”
102. For example, following the death of a Mozambican taxi driver at the hands of police officers, the Minister of Police released a statement on 7 March 2013 containing the following sentence: “With a staff compliment in excess of 200 000 personnel, on any given day, if three or eight of them are alleged to be involved in criminal acts and brutality, we would still remain extremely worried.”<sup>23</sup> This is consistent with previous statements from police leadership. For example, the Minister of Police had formerly stated that, “We shall never get tired of ridding the SAPS of rotten apples.”<sup>24</sup> Former SAPS National Commissioner Bheki Cele also referred to the challenge as one of individuals when, for example, he told a group of recruits that, “There is no place for ‘tsotsi’ cops in the SAPS and we are rooting the rotten elements out diligently.”<sup>25</sup>
103. The internal investigative ability of SAPS was severely hampered in 2001 when half of the provincial anti-corruption units were closed down. This was in line with an attempt to move skills from specialised groups to police stations, where most of the corruption occurs. This lack of independence creates difficulties of interference when colleagues at a station are required to investigate each other.

<sup>23</sup> South African Police Service, *The fight against crime is a collective effort. Not all SAPS Officers are brutal*. Available at <http://www.saps.gov.za/dynamicModules/internetSite/newsBuild.asp?myURL=2943> (Accessed 24 November 2013)

<sup>24</sup> South African Police Service, *SAPS Dismissed 119 for Fraud and Corruption in 2009/10 Fiscal ? Minister Mthethwa*. Available at <http://www.saps.gov.za/dynamicModules/internetSite/newsBuild.asp?myURL=1074> (Accessed 24 November 2013).

<sup>25</sup> South African Police Service, *Min Mthethwa & Gen Cele urge new police recruits to uphold discipline and fight crime without fear*. Available at <http://www.saps.gov.za/dynamicModules/internetSite/newsBuild.asp?myURL=1107> (Accessed 24 November 2013).

104. At the Khayelitsha police station, 291 personnel were disciplined in 2011, from a complement of 292 personnel. At the Harare station, there were 205 disciplinary actions although the station only has a personnel compliment of 195. At the Lingelethu-West station, 205 disciplinary actions were instituted, from a staff compliment of 169. By the time the Task Team Report was compiled in July 2012, there had already been 138 disciplinary actions at the Khayelitsha station, 76 disciplinary actions at the Harare station, and 107 disciplinary actions at Lingelethu-West. These disciplinary actions were for a variety of actions, including: holding suspects for more than 48 hours without charge; domestic violence; wrongful release of a suspect; failure to deliver dockets to court; and non-compliance with instructions in case dockets. The Task Team Report noted with alarm the rise of incidents of domestic violence by officers, particularly at the Khayelitsha station. The high levels of disciplinary actions indicate that some officers are being disciplined multiple times.<sup>26</sup>

105. The Task Team Report also cited a number of complaints by members of the public during the period January to June 2012. Of the 16 complaints against the Khayelitsha station officers: 50% were for police negligence or misconduct; 25% were for poor communication; and 25% were for poor investigation. Of the 21 complaints against Harare station officers: 43.48% were for police negligence or misconduct; 47.83% were for poor communication; and 4.35% were for poor investigation. Of the 18 complaints against Lingelethu-West station officers: 16.67% were for police negligence or misconduct; 25% were for poor communication; and 58.33% were for poor investigation. Of particular concern is the fact that poor investigation comprised only 25% of complaints against the Lingelethu-West station in 2011, but had risen to 58.33% of complaints by June 2012.

106. The number of disciplinary steps taken against members of SAPS can be seen as an indicator of the level of accountability and discipline within the service. According to the Task Team Report, disciplinary steps have been taken against numerous SAPS members, with some being subject to multiple disciplinary

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<sup>26</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town*, 2012, pp. 15-17.

actions. However, an analysis of specific complaints against SAPS in Khayelitsha and the resulting disciplinary action raises concerns.

107. In papers filed with their application to the High Court in *Minister of Police v Premier of the Western Cape and Others*,<sup>27</sup> SAPS provides a list of complaints against the three police stations in Khayelitsha. In many of the cases, there is no indication regarding the outcome of the case. Many of the complaints — such as one against Khayelitsha station SAPS where the complainant's daughter was shot by police and where the family received no feedback — has an outcome of “complainant pleased”, with no indication of any action being taken against officers involved.

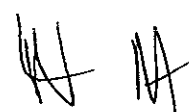
108. In another complaint against Harare SAPS, the complainant was wrongly arrested, despite paying the fine, and spent a night in prison. The outcome of that case was again “complainant pleased.” In another case at the same station, the complainant was pepper-sprayed and arrested without being informed of the reasons for the arrest. The outcome in that case was also “complainant pleased.” In many cases where discipline took place, there is no indication of the type of action taken against the officer in question.

109. The 2012/2013 IPID Annual Report sheds more light on discipline within SAPS. It reveals that in many cases where SAPS members have been charged with serious crimes like rape and murder, they receive little more than a written warning.<sup>28</sup> In parliamentary hearings before the Portfolio Committee on Police in August 2013, the fact that the some SAPS officials are often acquitted in internal disciplinary hearings while being convicted of criminal offences in a court of law was identified as a major contributing factor to the presence of criminality within the police service. It is little wonder that the Task Team Report notes that disciplinary action “does not seem to have a positive effect” on discipline, and that non-compliance with SAPS directives and procedures continues.

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<sup>27</sup> Case number: 21600/12 [2012].

<sup>28</sup> Independent Police Investigative Directorate, *IPID Annual Report 2012/2013*, 2013, pp. 56-59.



110. The document produced by the Portfolio Committee on Police on 16 October 2013 titled "Summary and Analysis of the 2012/13 Annual Report of the Independent Police Investigative Directorate (IPID)" provides further evidence of the fact that complaints aren't properly investigated.

111. The report states:

"Performance in terms of Case completion in Western Cape, Gauteng and Kwazulu-Natal was of a poor standard and this seems to be a recurrent trend in these provinces (they were the worst performers during the 2011/12 FY). What measures were taken to address the situation and what has been put in place in 2012/13 to improve performance in these offices? The Committee should ask for the explanatory or contributing factors to this trend. Is it because of the size of these two provinces? And if that is the case, is that taken into consideration during resource allocation period?"

The document continues with reference to the alignment with the 2012 Annual Performance Plan:

"The Committee should ask the Directorate why under this programme, tables in the APP and AR are not corresponding (for instance in the APP there is a Stakeholder Management Strategic Objective but it does not reflect in the AR, instead, completed investigation is stated as an Output in its place)"

### **Need for accurate crime statistics**

112. The National Crime Prevention Strategy adopted in 1996 prioritised the gathering of "reliable" crime statistics which could be used to "properly [inform] public opinion in the fight against crime."

113. Accurate and timeous reporting of crime statistics is essential in order to allow communities, businesses, civil society organisations, and government departments the opportunity to respond to emerging crime trends. Crime statistics are released annually in September for the previous financial year (1 April to 31 March), meaning that they are six months out of date by the time they are released.

114. The more regular release of crime statistics by SAPS should be seriously considered in Khayelitsha. In an effort to combat crime, some stations have been known to release more regular crime statistics to community police forums. This is demonstrated in annexure "ZA5" where the Table View police station provides a breakdown of house break-ins, robberies, and theft out of motor vehicles for June to August 2013. It is clear that the regular and timeous release of crime statistics must be instituted both for Khayelitsha and nationally.

### **The reporting of crime**

115. SAPS reports that in total its 20 SAPS 10111 call centres received 9 122 688 calls in 2012/2013. Of these, approximately 2.6 million were crime related.<sup>29</sup> During the same period, at least 1.8 million serious crimes were reported nationally. Contact crimes, which comprised 28% (617 239) of the total number of reported cases included: 16 259 murders; 66 387 sexual crimes; 16 363 attempted murders; 185 893 cases of assault with the intent to do grievous bodily harm; and 105 888 cases of aggravated robbery.

116. In Khayelitsha, all 10111 complaints are referred to the patrol vehicles allocated to the three police stations. At least 12 428 of these cases were for serious crimes. Contact crimes made up 6 979 (42.56%) of total reported crimes, which is a much higher proportion than the national average. Reported crimes included: 354 murders; 617 sexual crimes; 342 attempted murders; 1 486 cases of assault with the intent to do grievous bodily harm; and 1 932 cases of aggravated robbery. It is noteworthy that when combining Khayelitsha's three stations and comparing them to other police precincts in the country, Khayelitsha has the highest number of reported murders, sexual crimes, attempted murders, assaults with the intent to cause grievous bodily harm, and aggravated robberies in the country.<sup>30</sup>

117. All 10111 calls are supposed to be captured on the Incident Report System (IRS) at the relevant station, which is then supposed to generate an incident

<sup>29</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.78.

<sup>30</sup> Khayelitsha does not have the highest rate per 100 000 people of reported violent crimes.

number that is dispatched to a police vehicle. However, in 2012/2013 the Auditor-General reported that SAPS's reaction time to incidents cannot be verified because no systems are in place to confirm their reliability.<sup>31</sup> According to the Task Team Report, Community Service Centre commanders claim to check every 30 minutes to ensure that complaints are being attended to. However, the report found that this was not happening.<sup>32</sup>

118. There is no indication of the methodology SAPS uses to compile its data, or whether there are systems in place to check the validity of the data. In 2011/2012 the Auditor-General found that 58% of positive incident reports (10111 calls that should have resulted in a case docket) were not linked to dockets on the Case Administration System (CAS).<sup>33</sup> In 2012/2013 the Auditor-General again found that 15% of positive incident reports were not linked to dockets on the CAS system.<sup>34</sup>

119. Likewise in Khayelitsha, the Task Team Report found that data integrity is questionable due to poor record-keeping. It was found that not all complaints were captured on the IRS, and Occurrence Book entries were not being made of all complaints received.<sup>35</sup> This shows that, due to poor recording keeping at all three Khayelitsha police stations, it is impossible to determine timed responses to complaints received.

120. These finding suggest that SAPS data is highly questionable, and that reported crime statistics understate the true levels of crime in the community.

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<sup>31</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.203.

<sup>32</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town*, 2012, p. 8.

<sup>33</sup> South African Police Service, *South African Police Service Annual Report 2011/2012*, 2012, p.141.

<sup>34</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.203.

<sup>35</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town*, 2012, p. 8.



## Arrests

121. In their 2012/2013 Annual Report, SAPS indicates that there were 1.68 million arrests over the course of the year. Of these, 806 298 (48%) were for serious crimes. Maintaining the distinction between serious and other crimes, this indicates an arrest rate of 47% for serious crimes. Such a high number of arrests, accompanied by nearly three million stops and searches, begs the question: why are people being arrested, and what happens to them once they are arrested?<sup>36</sup>
122. The Task Team Report provides some insight into the arrest and detention of suspects in Khayelitsha. The report found that a large number of suspects are being detained and later released without being charged. Furthermore, the suspects are generally held for more than 48 hours, in violation of the Criminal Procedure Act. Analysis of the case dockets revealed that suspects are being arrested without any reasonable suspicion that they committed the crime in question.<sup>37</sup> This is a grave violation of the constitutional right to freedom and security.
123. As to the reasons for the arrests, the Task Team Report found that nearly 50% of all arrests in Khayelitsha are for the possession of pocket knives. These cases are often withdrawn by the prosecutor who finds that the accused hold no immediate danger to society. Most of the case dockets in court are "settled otherwise", with the accused being referred to a rehabilitation centre. According to the Task Team Report, this tactic is used to positively influence the performance chart.<sup>38</sup>

## Investigations

124. According to SAPS's own annual report, SAPS underperformed in the detection and investigation of crime in 2012/2013.<sup>39</sup> According to this report, the

<sup>36</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, pp. 76-77.

<sup>37</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town*, 2012, pp. 9-10.

<sup>38</sup> *Ibid*, p.14.

<sup>39</sup> SAPS, *South African Police Service Annual Report 2012/2013*, 2013, p.140.

detection rate refers to the total number of charges brought to court divided by the total number of charges investigated. It means that a crime has been reported, recorded on the CAS, and investigated with enough evidence to charge a suspect.<sup>40</sup> The detection rate for serious crimes was 54.19%, with a detection rate of 62.09% for contact crimes.<sup>41</sup>

125. The detection rate needs to be analysed against the court-ready docket rate. A court-ready docket is one where the investigation has been finalised, with no evidence outstanding. The court-ready docket rate is calculated by dividing the number of case dockets certified as finalised by the total number of outstanding charges.<sup>42</sup> The court-ready docket rate for serious crimes in 2012/2013 was 61.31%.<sup>43</sup> That means that of 1.8 million serious crimes, 993 722 resulted in a suspect being indicted for the crime, and 609 251 of those resulted in a court-ready docket. Police investigations resulted in a conviction rate of 88.24%. That means that only 29% of serious crimes, or 537 603 cases, resulted in a conviction. In the SAPS 2012/2013 Annual Report, the Auditor-General noted SAPS underperformance in convictions for serious crimes. This indicates that evidence is not being collected properly and/or that the wrong people are being brought to trial.

126. In Khayelitsha, the Task Team Report found that investigations by detectives have not achieved any marked result in terms of solving crime. It found that in most cases facial identification profiles are not compiled even when there is a witness who can describe the suspect; witness statements are not always taken; complainants/witnesses are not always given the opportunity to view photo albums of known criminals at police stations, even though these are available; SAPS often fail to send applications to cell phone companies to track stolen phones; crime scene experts are not always summoned to the scenes of crimes; the taking of fingerprints is not always completed; and case dockets are often closed without the Local Criminal Record Centre report being received. It was also found that Crime Information Officers do not assist investigating officers by

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<sup>40</sup> *Ibid* p.111.

<sup>41</sup> *Ibid* p.107.

<sup>42</sup> *Ibid* p.111.

<sup>43</sup> *Ibid* p.107.

providing information on suspects, even though information on the same suspects is presented in multiple dockets.<sup>44</sup>

127. As mentioned earlier, many of the detectives in Khayelitsha are still trainees, and not yet competent to handle cases. Considering that Khayelitsha has among the highest number of reported incidents of crime in the country, the burden on the detectives at Khayelitsha in terms of workload, coupled with poor training and inadequate resources, makes the effective investigation of crime extremely difficult.

128. In 2011 the Public Service Commission published a report on the state of detective services (see annexure "ZA6"). The Khayelitsha police station was one of the stations examined in the report. It made the following key findings:

128.1. Detectives were not "sufficiently trained to interrogate, gather, analyse evidence and present their cases in court."

128.2. In terms of docket allocation, the national norm according to the report is 15–20 dockets per detective. However, in Khayelitsha station the docket allocation ratio was found to be 132 dockets per detective.

128.3. Records of the number of detectives did not match up with the records at the National Head Office. This is important because the number of detectives at the station should inform budget and resource allocation.

128.4. The national norm for computers per detective is 1 for every 3 detectives. At the Khayelitsha station, there is only 1 computer for every 6 detectives.

128.5. Detectives are not adequately trained to use the computers.

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<sup>44</sup> SAPS, *Report on the Complaint Regarding Alleged Inefficiency and a Breakdown In Police-Community Relations in Khayelitsha, Cape Town*, 2012, pp. 9-10.

- 128.6. There is a shortage of scanners. This makes it difficult to capture docket information electronically. Therefore, if a docket is lost it cannot be retrieved.
- 128.7. It was found that all three stations examined in the Western Cape had a sufficient vehicle allocation ratio of 2 vehicles for every detective. However, these vehicles are often unsuitable for the terrain in which they are meant to operate.
- 128.8. Lack of expertise among detectives sometimes results in evidence being destroyed at the crime scene.
- 128.9. Due to their workload, detectives do not have the time to attend Employment Assistance Services. These services would help detectives cope with the pressures and stress associated with their work, thus helping to prevent psychological problems.
- 128.10. In 2009, 5 594 charges were reported, with 3 353 being taken to court. Only 281 charges were withdrawn before they were referred to court, and 3 095 charges were closed as undetected/false. The high number of charges closed as "undetected" undermines people's confidence in the police service.
- 128.11. In comparison, Cape Town Central station had a docket allocation ratio of only 68 dockets per detective and 4 computers per detective. This seems to indicate that the allocation of resources, particularly for detective services, is not based on the needs of the station.

### **Community Participation**

129. It is clear that community participation as laid out in the SAPS Act is a legal imperative and the Community Police Forums (CPFs) are a primary platform for



this. CPFs emerged shortly after the democratic elections as one of the key philosophies driving policing reform in South Africa.

130. According to the SAPS Act, the function of CPFs is to:

“establish and maintain a partnership between the community and the Service; promote communication between the Service and the community; promote co-operation between the Service and the community in fulfilling the needs of the community regarding policing; improving the rendering of police services to the community at national, provincial, area and local levels; improving transparency in the Service and accountability of the Service to the community; and promoting joint problem identification and problem-solving by the Service and the community.”<sup>45</sup>

131. All CPFs should be aware of the minimum standards of conduct and competency they should expect from police officials and why it is in their interest to ensure that these standards are adhered to. CPFs should be able to access formal police channels to ensure that complaints are dealt with adequately. If they are dissatisfied, they should be able to approach other oversight structures with their concerns.

132. According to the SAPS 2011/2012 Annual Report, 1 122 of the country's CPFs were functioning effectively, including all 149 CPFs in the Western Cape. However, the Task Team Report found that police–community relations are not “functioning effectively and optimized in the Khayelitsha area.”

133. The report found that two of the three CPFs in Khayelitsha are dysfunctional. The chair of the Khayelitsha CPF and the local station commander do not have a good working relationship, and the CPF does not hold regular meetings or a constitution. Harare CPF states that they meet regularly but cannot claim to have made an objective impact.

134. In general, the station commanders do not use the CPF as an asset and do not work together with the CPF structures to solve problems, and the CPFs do not have the capacity to play their role in holding the police accountable.

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<sup>45</sup> Supra note 6; s 18.

Furthermore, the role of the CPF is not advertised widely, most people are not familiar with its role and mandate, and so it is not valued within the community.

135. This is consistent with CPFs in other poorer communities where resources are limited. Often, the police see the CPFs as nothing more than a complaints forum against them. Furthermore, given the complex nature of most communities, not all groups are represented on CPFs. In some instances CPFs have been found to represent vested interests (business owners, traditional authorities, or political parties) rather than community-wide interests.
136. Where CPFs have been successful, this has been attributed to partnerships between the police and community in carrying out anti-crime initiatives or in campaigning for increased resources and capacity for police stations. But the extent to which CPFs hold the police accountable is limited because there is an absence of regulations to guide this and there is a tension between the objective of partnerships and oversight. Where CPFs expose corruption, this leads to a deterioration of community-police relationships.
137. There is a legal obligation for CPFs to exist and to be effective. However, the current situation means that the police in Khayelitsha do not value or prioritise the CPF and the role it can play.

### **Recommendations**

138. A five-year safety, policing and justice plan should be developed for Khayelitsha. This plan should take into account the economic profile, types of dwellings, proximity of dwellings, unemployment, and other contributing factors.
139. Infrastructure development within Khayelitsha must be sustained and further developed in order to make residents feel safe, and to help police maintain a visible presence and respond timeously to reports of crime. This includes the provision of street lighting, proper roads, safe public transport, safe public spaces, and clean toilets within a short walking distance from people's homes.

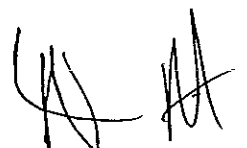


140. One of the most important things that will reduce crime is the provision of early childhood development facilities and after school care for all learners from grade 1 to grade 12 which would include homework supervision cultural and sport activities.
141. A review of the City of Cape Town's Metro Police's anti land invasion strategy and Law Enforcement and the City's duty to protect pedestrians through better management of traffic lights provision of speed bumps and enforcing traffic rules.
142. Given the current terrain in Khayelitsha, three stations are insufficient to cover such a large area. The development of a fourth station within Khayelitsha must be fast-tracked to ensure that the police are accessible to residents, can maintain a visible presence, and can respond promptly to reported crimes.
143. Given the difficulties associated with accessing many areas in Khayelitsha (due to the proximity of dwellings and the lack of proper access routes), SAPS should investigate other alternatives to the use of patrol vans and similar vehicles when trying to maintain a visible presence. For example, the use of horses may enable officers to respond more quickly to crime scenes, and would increase visibility.
144. The Task Team Report states that in many instances SAPS has ignored offers by civil society organisations, such as Free Gender, to help sensitise police officers in how to handle victims of violence. SAPS should aim to build strong relationships with civil society groups within Khayelitsha, to assist them in ensuring the sensitive investigation of violent crimes, especially those involving gender-based violence and the victimisation of vulnerable people.
145. A skills audit of all three stations in Khayelitsha is vital in order to determine the level of skills among officers and commanders, and to identify where training interventions are required.
146. The training of officers, particularly station commanders and detectives, needs to be fast-tracked and prioritised. The current system, whereby members of



SAPS are appointed to a position before being trained to fulfil that role, is unsustainable. Competent station commanders, in particular, are the key to running an effective and functional police station. In that light SAPS should provide a plan within a reasonable period following the release of the Commission's report detailing how they will address the skills shortage in Khayelitsha to facilitate the training of detectives and commanders.

147. SAPS needs to send a strong message that it will not tolerate misconduct and brutality from its members. Members of SAPS charged with a crime must be suspended pending the outcome of the trial. Station Commanders must be held accountable for the conduct of the officers under their supervision, especially when clear violations of regulations or statutes have occurred without disciplinary action being taken.
148. Crime statistics need to be made available at both police stations and on the internet on a monthly basis. This will inform the community's crime prevention strategy, and help the police to rebuild their relationship with the community.
149. Resources need to be allocated to police stations according to their needs, in order to ensure that detectives in Khayelitsha have adequate access to computers, vehicles, scanners, and other essential resources.
150. Charges closed as undetected should be investigated. If the cause is found to be poor performance by the responsible detective, action should be taken against them. This will improve the detection rate in Khayelitsha.
151. Action needs to be taken to build the knowledge base within the CPFs so that they know how to tackle crime within the boundaries of the law.
152. Efforts need to be made to bring civil society organisations, street committees, and other community structures into the CPFs. CPFs need to be more structured and politically independent, assisting the police in their fight against crime. This would also divert vigilante actions into more positive crime prevention strategies.



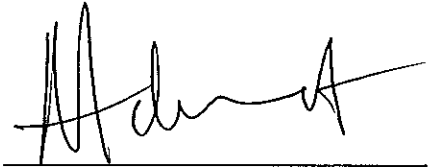
## Conclusion

153. In 20 years of activism in democratic South Africa I have participated in and led countless demonstrations and some civil disobedience actions. These have included marches for gay and lesbian equality, locally and internationally; HIV treatment access; safe communities; gender based violence; equal education for all children; freedom for Palestinian people; and against the invasion of Iraq. In most cases the Public Order Police were uncomfortable but always professional. There were only two incidents of police brutality which occurred against TAC members. The first incident occurred in Durban Central Police Station where scores of people living with HIV, who had gone to lay charges against the Ministers of Health and Trade and Industry, were brutally assaulted. The following week, TAC organized a march of more than 5000 people into the police station grounds to demand an apology. The second incident occurred in Queenstown in the Eastern Cape where police brutally assaulted and shot rubber bullets at TAC activists who had peacefully occupied the hospital administration building because of a delay in providing treatment which had led to 53 deaths. Again, TAC organized a demonstration of nearly 5000 people to the police station to demand an apology and action to be taken against those who assaulted and shot protesters without a warning to disperse.

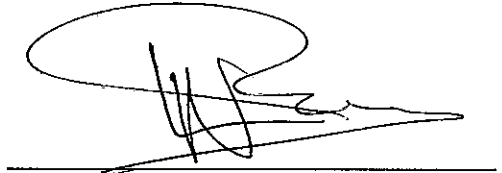
154. I have also personally experience really excellent service from police at Cape Town Central Police Station when my computer was stolen from the offices of Ndifuna Ukwazi in late August 2012. This has not been the experience of most of my comrades and colleagues in townships across the country.

155. I believe this Commission has the opportunity to contribute positively and decisively to building safe communities, improving infrastructure, and ensuring that people in Khayelitsha and elsewhere have a democratic, accountable, effective police service under professional and ethical command.

A handwritten signature in black ink, appearing to be 'RS AA', located in the bottom right corner of the page.

**ABDURRAZACK "ZACKIE" ACHMAT**

THUS SIGNED AND SWORN TO at CAPE TOWN on this 22<sup>nd</sup> day of January 2014 the deponent having acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed affirmation, that the affirmation which the deponent has taken is binding on his conscience, and that the contents of this affidavit are both true and correct.

**COMMISSIONER OF OATHS****EX OFFICIO**

LUZUKO NIYABO  
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