

From: The Social Justice Coalition, The Treatment Action Campaign, Free Gender, Triangle Project, Ndifuna Ukwazi, Women's Legal Centre, Equal Education

To: MEC Dan Plato
MEC for Community Safety, Western Cape

Cc: Minister Jeff Radebe
Minister, Department of Justice

Cc: Minister Nathi Mthetwa
Minister of Police

Cc: Councillor JP Smith
Mayco Member for Safety and Security

4 October 2011

MEMORANDUM:

KHAYELITSHA COMMUNITY ORGANISATIONS DEMAND INDEPENDENT INVESTIGATION INTO THE KHAYELITSHA CRIMINAL JUSTICE SYSTEM

1. Introduction

1.1. The Social Justice Coalition, The Treatment Action Campaign, Free Gender, Triangle Project and Equal Education are community-based organizations working in Khayelitsha, Cape Town. Our organizations seek to address wide-ranging problems faced by our communities – from inadequate sanitation and education, to HIV/TB and homophobia. While not based in Khayelitsha, Ndifuna Ukwazi and Women's Legal Centre address similar issues.

1.2. Today, as we have done in the past, we highlight the lack of safety and security that members of our communities live with on a daily basis. While our organizations are focused on different campaigns, it is our common experience that many victims of crime in Khayelitsha – and all working class and poor communities – do also not have adequate access to justice, a right guaranteed by the Constitution and the Victims Charter.

1.3. The South African Police Service (SAPS) is tasked with ensuring the safety and security of all people living in South Africa and is not fulfilling its responsibilities. Our experiences attempting to secure justice through the courts, and protection by the SAPS for members of our organizations and communities who have been victims of violent crime have been frustrating and often unsuccessful. The rights to life, to freedom and security of the person, and to access to courts, as enshrined in the Bill of Rights, are not being upheld.

1.4. While all those living in South Africa share the responsibility to respect and protect each other's dignity, person and life, it is ultimately the state's responsibility to provide effective, speedy relief, support, protection and justice when our rights are violated. The SAPS and courts in Khayelitsha do not fulfil this duty satisfactorily.

2. Case Example – Zoliswa Nkonyana

2.1. Our organisations are brought together by the case of Zoliswa Nkonyana, a 19-year-old lesbian who was brutally murdered on 6 February 2006 metres from her Khayelitsha home. Her case represents much of what is wrong with the Khayelitsha criminal justice system. Scheduled to be concluded on 7 October 2011, this is not the first time the court has made such an indication. Justice delayed is justice denied.

2.2. Nkonyana's case has been on-going for almost 6 years. During the case, there have been more than 40 postponements; the main state witness fled the province fearing for her life because she was not receiving protection and support from the police; and 4 of the accused escaped from their holding cells. They were later recaptured and a police sergeant was subsequently arrested for defeating the ends of justice, aiding prisoners in escaping from lawful custody and corruption. Recently, 2 of the accused were released due to lack of evidence, having spent the entire length of the case in prison awaiting trial. Certainly, this is not reflective of a functional and healthy criminal justice system.

2.3. Nkonyana's is not an isolated case. Our organisations have been following a variety of cases including drunk driving, assaults, murders, rape and xenophobic hate crimes. Many of these cases continue to be managed in a sub-standard manner – delaying justice and closure for victims and families.

2.4. Last year we brought 3 other cases to the attention of the previous MEC, Albert Fritz and asked for attention to be given to them because they were being dealt with poorly. Of the 3 cases, that of Makhosandile 'Scare' Qezo is still in the courts and has been characterised by further delays with little end in sight. The case of a 7 year old minor who was raped by a neighbour was dismissed. The young boy, who was the only witness, was unable to bear the trauma of having to testify. The last case of a five year old child who was raped was thrown out of court because the docket was never delivered to the court by the police.

3. Crime in Khayelitsha: The scope of the problem

3.1. The threat of crime is ever-present for all people who live in South Africa. However, it is a much more dangerous and pervasive threat for people living in South Africa's overcrowded, underserviced neighbourhoods and informal settlements. Crime – both violent and property related – in areas like Khayelitsha continues to affect residents more so than in any other part of the

Western Cape. People are assaulted, robbed, raped, and murdered daily, conducting tasks that many people living outside of informal settlements take for granted, such as using the toilet or accessing transport to work. Justice in areas such as these has become a privilege, not a right.

3.2. The most recent SAPS crime stats have been welcomed by some as an indication that the fight against crime is being won, albeit slowly. Nationally, the murder rate has dropped as have other serious crimes. However, areas such as Khayelitsha and other poor and working class areas continue to have disproportionately high levels of violent crimes, and over the past year have experienced serious increases in murder rates. Khayelitsha experienced a 6.9% increase in the number of murders between 2010 and 2011.¹

3.3 In 2008, in the city of Cape Town, five out of 58 police districts accounted for over 44 per cent of murders – Nyanga (13,18 per cent), Harare Khayelitsha (8,67 per cent), Khayelitsha (8,47 per cent), Gugulethu (7,58 per cent), and Delft/Belhar (6,1 per cent).² The 2010/2011 SAPS crime stats indicate that these areas still account for a major portion of all murders in Cape Town.

3.4. Girls and women are particularly vulnerable in these circumstances. Between March 2003 and March 2010 there has been a 7.3% increase in the number of sexual crimes reported in Khayelitsha, and a significant proportion of cases are most likely never reported.³ Girls and women are frequently beaten and raped walking to the toilet or fetching water from taps not more than 50 metres from their homes, while domestic abuse poses a threat to the safety of many women within their own homes.

4. The Criminal Justice System in Khayelitsha

4.1. We have identified numerous problems hindering the realization of residents' rights to safety and justice in Khayelitsha. We have observed the following problems:

4.1.1. In the informal settlements of Khayelitsha there is a serious lack of effective policing. Due to the lack of accessible roads and thoroughfares and the absence of public lighting at night, police find it very difficult to protect residents or apprehend criminals. This places people in these settlements especially at risk.

4.1.2. When crimes are committed and then reported, victims are treated discourteously, often with contempt and many are discouraged from laying charges.

¹ SAPS Crime Statistics, 2010/2011.

² J Gie, *Crime in Cape Town: 2001-2008: A brief analysis of reported Violent, Property and Drug related Crime in Cape Town* (2009).

³ SAPS Crime Statistics 2003 – 2010, Khayelitsha, Lingeletu-West and Harare districts combined.

4.1.3. Investigations and securing of crime scenes, gathering forensic evidence, interviewing witnesses and other basic procedures to secure convictions are often ignored or performed incompetently. These lead to technical challenges that the police lose.

4.1.4. Suspects charged with schedule 6 crimes (murder, rape or aggravated robbery) should not be given bail except in exceptional circumstances. In a number of cases we have followed, bail has been incorrectly granted.

4.1.5. The criminal justice agencies fail to communicate clearly and regularly with victims, their families and other stakeholders.

4.1.6. The losing of dockets, often for serious crimes – whether intentional or accidental cause enormous delays.

4.1.7. The on-going postponements often lasting years sought by legal aid lawyers and the prosecution imposes punishment on the victims and their families rather than perpetrators.

4.1.8. Unnecessary delays are also unfair towards the accused and their families especially when they are not guilty.

5. Demands

5.1. Today, we demand sustained action be taken to create safer communities and ensure that access to justice is improved in Khayelitsha. A vital step in achieving such objectives is an independent investigation into the continued and systemic failures of the Khayelitsha criminal justice system. Without a proper understanding of the scope of the problem, it is impossible to adequately address it.

5.2 Therefore, we call on MEC for Community Safety, Dan Plato, with the support of Justice Jeff Radebe to initiate a one-person commission headed by a judge to compile a rapid assessment of systemic problems in Khayelitsha's courts to be completed within three months. This report should include what skills, competencies, qualifications and training must be provided to ensure justice and to prevent crime.

5.2. We note in the correspondence of MEC Plato to the Social Justice Coalition dated 29 September 2011 that the MEC is of the opinion that Community Safety does not have the mandate to initiate such an investigation. We disagree for the following reasons.

5.2.1. In September 2010, our organisations issued a similar memorandum to this to the previous Western Cape MEC for Community Safety, Albert Fritz. We requested an independent investigation into the Khayelitsha criminal justice system. MEC Fritz consented to our request. Despite the fact that there have been no

indications that this investigation has taken place, MEC Fritz agreed that it was a necessary and valuable undertaking. By agreeing to facilitate the investigation, there was an implicit understanding that such an action fell within the mandate of Community Safety.

5.2.2. Furthermore, Section 205(5) of the Constitution states that a province, 'may investigate or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and must make recommendations to the Cabinet member responsible for policing'.

5.2.3. We also take note of the forthcoming Safety Summit referred to by MEC Plato and welcome such an initiative. We welcome any meaningful engagement of communities with government on matters that are affecting them. However, we do not consider this to be an adequate substitution for an investigation.

5.3. In addition to the investigation, the following measures need to be introduced:

5.3.1. Increased visible policing in informal settlements and throughout our townships by SAPS and the Metro Police.

5.3.2. Improved communication between SAPS, courts and the victims and families. Victims and their families should be notified regularly about the details of their cases and should have reasonable access to the investigating officer.

5.3.3. Expeditious access to justice, through the courts, for victims of violent crime and their families and the full realization of the rights to safety and justice guaranteed in the Constitution for all residents of South Africa.

5.3.4. A plan to prevent crime that will include streets and lights, safe, secure, private, clean toilets in informal settlements as well as after school and holiday care for all children.

5.3.5. Education on hate-crimes such as homophobia and xenophobia.

5.3.6. A meeting with MEC Plato and the justice officials in the province to engage in a meaningful way on our demands.

[ENDS]

Contact:

The Social Justice Coalition
021 361 8160

Statement by Dan Plato Minister of Community Safety in the Western Cape: Criminal Justice System in Khayelitsha must be strengthened

5 Oct 2011

A memorandum received by my office yesterday highlights the need to urgently address the failures of the Criminal Justice System in Khayelitsha and for increasing safety in the township.

It is clear that the Criminal Justice System, the responsibility of the national government, needs to be strengthened and I will this week write to the provincial heads of the national government departments entrusted with the Criminal Justice System to urgently address the Khayelitsha community's grievances of inadequate access to justice.

Furthermore, the Provincial Police Commissioner, the Regional Commissioner of Correctional Services, the Director of Public Prosecutions in the Western Cape and the Western Cape Regional Head of the Department of Justice and Constitutional Development will be invited to participate in my Department's Safety Summit in Khayelitsha which is scheduled for later this month.

I share the concerns and needs raised by the community and believe that the justice system and South African Police Service (SAPS) have a Constitutional responsibility to address these.

Facilitation to strengthen partnerships and find solutions is an important part of my oversight role and the focus of the Safety Summit will be on increasing safety in the township in a holistic manner, across government and across society.

Role-players from national, provincial and local government departments, as well as civil society organisations will be invited to participate. This will provide an opportunity for the community of Khayelitsha to raise concerns identified directly with the departments involved and provide an important platform for these issues to be addressed.

Since taking office I have engaged with various community entities in Khayelitsha and Cape Town and there have been resounding calls for the better delivery of justice by the courts as well as improved and increased policing.

Improved detective training, for instance, is vital in securing convictions and improving conviction rates. Court backlogs remain a constraint to delivering justice and the lack of properly managed sentencing plans and poor quality rehabilitation programmes for inmates often means that offenders fall back into a life of crime.

Conducting an independent investigation into the Criminal Justice System, however, falls outside of the mandate of the Department of Community Safety.

The Constitution allows for provinces, therefore my department in the Western Cape, to

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oversee the conduct and the performance of the police. Professional and efficient service delivery by the SAPS to the community is a priority.

Whilst operational control of the police remains a national competency, I believe we can hold the police to account through effective oversight. Complaints from the community relating to police misconduct, police brutality and poor service and/or investigation can be lodged with my office for investigation. The number for our 24-hour complaints line on police conduct is 021 483 4332.

The Constitution also allows for police resources to be in line with the needs of the communities. If communities therefore request increased policing or specialised police units to deal with issues like gangs and drugs then the national government should be responsive to these needs.

My department has conducted an extensive review of the policing needs and priorities in the province and we have engaged with the Community Police Forum (CPFs) in Harare, Lingeletu West and Khayelitsha in this regard. The community through the CPF identified sexual offences, domestic violence, burglaries, assault and armed robbery as priority crimes in the area. This report on the needs of the community in terms of policing was sent to the national police to incorporate into their policing plan.

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TO: The Western Cape Provincial Executive
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5 December 2011

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Dear Madam and Sirs

**RE : COMPLAINT IN TERMS OF SECTION 206 (5)(a) OF THE CONSTITUTION AND
SECTION 66(2)(a) OF THE CONSTITUTION OF THE WESTERN CAPE
POLICE INEFFICIENCY AND A BREAKDOWN IN POLICE-COMMUNITY RELATIONS
IN KHAYELITSHA, CAPE TOWN**

Our clients' complaint in terms of Section 206(5)(a) of the Constitution, lodged with yourselves on 29 November 2011, refers.

We write to inform you that Free Gender, one of the complainant organisations, has decided to withdraw itself as party to the complaint.

Consequently, the five remaining complainants represented by the Women's Legal Centre are:

1. THE SOCIAL JUSTICE COALITION
2. THE TREATMENT ACTION CAMPAIGN
3. EQUAL EDUCATION
4. TRIANGLE PROJECT
5. NDIFUNA UKWAZI

Yours faithfully

WOMEN'S LEGAL CENTRE

Jennifer Williams

Director