

**“A Matter of Urgency” – Changing the Pattern of Inequality**  
**The O’Regan-Pikoli Commission of Inquiry into the South African Police Service (SAPS) in Khayelitsha**

**A joint learning brief of the Social Justice Coalition and Ndifuna Ukwazi**

**Background:**

The establishment and outcome of the O’Regan-Pikoli Commission of Inquiry into the South African Police Service in Khayelitsha (The Commission) was based on struggles waged over more than a decade by an alliance of organisations. Led by the Social Justice Coalition (SJC), social movements based in Khayelitsha such as Treatment Action Campaign (TAC), Equal Education (EE) and Free Gender, supported by Ndifuna Ukwazi and Triangle Project pressured the Western Cape government into establishing the Commission. Campaigns relating to individual cases of police inefficiency experienced by TAC, SJC, EE and Free Gender members and their families were drawn together into a united campaign that led to this outcome. These cases formed the basis of the complaint.

Commencing on these cases in its Report the Commission stated:

No-one could read the above cases without a profound sense of dismay. Three of the complaints concern the brutal murders of young women, two of the three also involving rape. Two of the cases concern community members who were shot by members of SAPS in Khayelitsha while going about their daily business and one relates to the alleged rape of a young child.

... it is noticeable that in several of the cases, court proceedings only came to fruition after the campaign waged by complainant organisation was well underway. ... the commission wishes to make plain that it should not be necessary for members of the community to have to launch protest campaigns to obtain justice.

This learning brief addresses how our organisations worked together to achieve an outcome that immediately impacts on 450 000 people’s lives and over the next five years can be used to change the face of policing in South Africa.

**Audience:**

Social movements, activist leaders, lawyers and researchers working on safety, policing and justice will be interested in this learning brief.

**Context:**

Khayelitsha in Cape Town is one the most unsafe communities in South Africa accounting for the highest number of reported murders, rapes, assaults with the intent to commit grievous bodily harm and attempted murders. Less than 1% of all crimes reported at the three police stations result in a conviction. Khayelitsha is also one of poorest townships with a median income of R20 000 per annum, mainly from extremely low-paying jobs in the service industries and social grants. More than 50% of households live in informal settlements.

**Intervention**

**After the xenophobic attacks in 2008, the SJC and its allies campaigned for a safety-plan and from 2010 specifically, demanded a commission of inquiry. Our aim was for social and economic drivers of crime in Khayelitsha to be addressed, as well as, an investigation of police and criminal justice inefficiencies. Our work was undertaken in the following way:**

1. **Democratic participation:** In 2010 the SJC undertook community dialogues to find out what were the most pressing safety issues for people in Khayelitsha's informal settlements. Almost unanimously people said using communal toilets was dangerous and needed to be addressed. A campaign for safe toilets became a campaign for a safety plan.

2. The **leadership** of SJC and NU directly guided the work of the campaign together with staff and branch leaders while TAC, EE and Triangle Project were represented by staff members. As the commission of inquiry work intensified, EE's leadership joined the decision-making process.

3. **Coordination** of the campaign was undertaken from NU, supported by SJC. Central to the coordination was the need to ensure that people living in Khayelitsha participated in decision-making. Most of the meetings and workshops took place at the SJC offices. A great difficulty was getting experts and middle-class organisations based in other areas to attend meetings in Khayelitsha.

4. **Cooperation** was based on an agreed division of labour. Safety, policing and justice formed a core mandate of the SJC and NU. Research including the legal framework was led by NU and supported by SJC. EE participated in research and campaign work on youth gangs and school violence. TAC and Free-Gender supported the campaign work. All organisations undertook to educate their members. NU worked mainly with the SJC to produce educational materials from posters, leaflets and fact-sheets to policy briefs. Media Engagement was driven by SJC, supported by NU.

5. **Campaign work** was led, financed and largely organised by the SJC. This included marches, pickets and mobilisation for court appearances. The public campaign won the right to have the Commission established by pressurising the Premier to use her powers. Great effort was taken to update the members of the complainant organisations and the greater Khayelitsha community in terms of the lodging of the original complaint, the legal action in both the High Court and Constitutional Court, and the proceedings of the Commission. This was accomplished through regular meetings, workshops and printed material.

6. **Engaging lawyers:** Learning to engage lawyers when trying to ensure government cooperation and fulfilment of its legal duties is one of the most difficult tasks that social movements undertake.

6.1. The experience of NU leadership assisted the SJC and other organisations to assert agency when dealing with lawyers, including attorneys and counsel. NU researched the legal framework for the initial complaint to the Premier and helped frame the context for a Commission of Inquiry. NU also guided SJC and EE in gathering more than seventy community affidavits and data on the levels of crime in

Khayelitsha, systemic problems with the police and the specific needs of vulnerable people particularly refugees, asylum-seekers and immigrants as well as the LGBTI community.

6.2. NU & SJC led the team which gave instructions to our legal team. One of the key lessons is to choose the **best** lawyers who are also humble and prepared to learn from their clients. Our organisations were privileged to be served by one of the best legal teams during the Commission.

7. **Equal access to resources – a major achievement:** a key finding of the Commission related to the irrational and unfair allocation of human and material resources. Harare in Khayelitsha (164 murders in 2013-2014) has one police officer for 1702 people while Claremont (0 murders in 2013-2014) has one police officer for every 281 people.

One of the questions that has **most troubled** the Commission is how a system of human resource allocation that appears to be systematically biased against poor black communities could have survived twenty-years into our post-apartheid democracy. In the view of the Commission, the survival of this system is evidence of a failure of governance and oversight in every sphere of government. (p394)

The Commission's recommendations related to this inequality are radical and include interim and medium-term remedies. An immediate interim recommendation requires the permanent reallocation of 10 experienced detectives to Harare and Khayelitsha Site B Police stations; a team of experienced detectives to work on the backlog of cases including those of the Family Violence, Child Protection and Sexual Offences Unit; the immediate addition of SAPS officers from wealthier suburbs to undertake visible policing in Khayelitsha's informal settlements; and a national revision of the "Theoretical Human Resource Requirements" within six months.

The recommendation finds that this inequality is an "unconscionable state of affairs". The Commission insists that the systemic bias is a "pattern that needs to change as a matter of urgency" and states that a "significant reallocation of members may well be necessary in the Western Cape to bring about a fair and rational allocation." Significantly, the Commission sets a deadline for permanent change saying, it "accepts that this is a complex process that cannot be achieved overnight...". It recommends that once the new allocation method is determined, it should be phased in over a period of time **that should not exceed three years**". (p450) The realisation of this victory will mean that our organisations will have achieved radical change in less than five years in a process that has eluded government for more than two decades.

8. **Additional achievements** included overcoming the resistance of SAPS; a Constitutional Court precedent on the duties of a province to ensure the safety of its people and to exercise monitoring and oversight over SAPS; opening the vaults of secrecy by accessing more than 50 000 pages of SAPS Khayelitsha documents now contained in a public electronic database; findings that locate police inefficiency and community mistrust in the context of class and race inequality; exposing police and

management impunity and failure of oversight; a lengthy period during which the safety and policing challenges in Khayelitsha and other informal settlements received attention in local and national media; and finally, recommendations that can ensure justice and equality for hundreds of thousands, maybe millions of people in South Africa . The recommendations are both practical and system-changing with an ongoing monitoring and oversight team. The community of Khayelitsha and the members of our organisations were given a sense of their own power when SAPS officials from local Station Commanders to SAPS National Management and the Provincial Commissioner had to give evidence in public, account for their failures and face rigorous cross-examination. The recommendations also prompted the appointment of a new Cluster Commander. The new Cluster Commander has invited NU, SJC, EE and other community based organisations to play a key roles in a joint forum with SAPS to find solutions to issues around vigilantism, alcohol and drug abuse, road safety, youth gangs, business crime, and violence against women and children. To some small degree, the Commission has helped humanise members of SAPS as people struggling to work in a system that is seriously flawed.

**9. Weaknesses:** The City of Cape Town and the Provincial Government (except for the Department of Community Safety) was excluded from the terms of reference of the Commission because of political considerations. This meant that the Commission could not make findings against these spheres of government for failing to ensure that basic services are planned and implemented with the aim of creating safe communities. However, the Commissioners were acutely aware of class, race and gender inequalities and their recommendations on SAPS lay a solid foundation to ensure that a broader safety plan is developed and implemented.

**10. Road Forward:** Remedying more than 350 years of police inefficiency, mismanagement, brutality and incompetence will be the work of more than another decade. Now, the legal foundation has been created for working with government to address a police service that is largely the apartheid police with a minority of officers dedicated to changing police culture. For our organisations, the task is to build community power through deliberative and participatory democracy that will be in a tension with participatory government.

**11. Levers:** Democratic participation, leadership, coordination, cooperation based on a division of labour, mass education and building a body of knowledge and practice are the levers that can build a safe Khayelitsha and safe South Africa. A critical lever will be to share the revolutionary knowledge-base (that was established through the O'Regan-Pikoli Commission of Inquiry) with working-class communities, social movements, civil society organisations, legislatures and researchers to ensure lasting and systemic change.

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