

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

**SUBMISSION from : V. M. Igglesden
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Background to Submission:

The author of this submission is a freelance researcher and community advocacy worker specializing in refugee rights. She has worked with refugee communities in the Western Cape since 2002 and has conducted research and advocacy work for refugee rights for national and international institutions.¹ Since 2008 she has focused on working with Somali communities in the Western Cape.

The author is a founder member of the community based organization, Filanwaa Somali Women's Union, and a member of the Somali Retailers Association, both of which are based in the Cape Flats area. In conjunction with members of these organisations, the author has participated in numerous forums and meetings with SAPS personnel with regard to policing and security needs of the Somali communities – particularly Somali traders in township locations.

The author makes this submission in her own right, in view of her experience and knowledge of police interactions with refugees—particularly Somali refugees—in Khayelitsha and surrounding areas.

LEGAL FRAMEWORK:

This submission concurs with the original submission lodged by the Women's Legal Centre (hereinafter referred to as 'the Founding Complaint') in terms of the legal framework cited as a basis for the complaint. However, in addition to those instruments of law quoted in that submission, this submission draws the attention of the Commission to the Refugees Act (130 of 1998) wherein it is

¹ Including South African Human Rights Commission, Forced Migration Studies Program (University of Witwatersrand) and the Refugee Rights Project (University of Cape Town). Funders for research and community advocacy projects include United Nations High Commission for Refugees, Oxfam UK, and the European Union.

provided that a refugee is entitled to enjoy 'full legal protection which includes the rights set out in Chapter 2 of the Constitution'.²

In addition, the rights of refugees in South Africa are governed by the *1951 Convention Relating to the Status of Refugees*, to which South Africa is a signatory.. In particular, attention is drawn to Article 3 (Non-discrimination), Article 8 (Exemption from Exceptional Measures), Article 16 (Access to Courts), Article 26 (Freedom of Movement), and Article 29 (Fiscal Charges).

SUMMARY:

In common with the community at large, members of refugee communities in Khayelitsha are routinely subject to violations of a range of their rights by SAPS and Cape Town Metropolitan Police Department (CTMPD) personnel – namely their rights to equality, human dignity, life, work, freedom and security of the person, privacy, and constitutional rights to: movement, property, access to courts as well as the rights given to arrested, detained and accused persons.

As asserted in the Founding Complaint (para 49), Khayelitsha police and the CTMPD have shown systemic failure to prevent, combat and investigate crime, take statements, open cases and apprehend criminals in relation to refugee victims of crime, in violation the provisions of section 195 of the Constitution.

SITUATION IN KHAYELITSHA:

Concerns with regard to policing and protection of the Cape Town Somali community are diverse and widespread, as noted in recent research on these matters.³ Despite the fact that there are individual SAPS and CTMPD officers who do their best to meet their policing responsibilities vis-à-vis Somali members of the Khayelitsha communities in a professional manner, there is widespread abuse of power, discrimination and illegal and unprofessional conduct on the part of SAPS and CTMPD personnel in relation to this highly vulnerable minority group.⁴

This submission concurs with the Founding Complaint with regard to the situation in Khayelitsha—specifically the observations made regarding the pervasiveness of crime nationally (paragraphs 51, 54) and in Khayelitsha specifically (paras 57 and 59). Of particular relevance to this submission are the observations regarding property crime (para 56) and murder (58) and non-

² Refugees Act (130 of 1009) at 27(b).

³ See V. Igglesden et al, *Expanding the Protection Space for Refugees in South Africa - Criminal Case Watching Briefs for Access to Justice for Refugee Victims of Crime (2011)*; Aurelia Segatti, *Mobilisation Against Foreign Traders in South Africa (2011)*.

⁴ South African case law has, on a number of occasions, identified refugees as being members of a vulnerable group. See, for example, *Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another* (CCT2/97) [1997] ZACC 16; 1997 (12) BCLR 1655; 1998 (1) SA 745 (26 November 1997), wherein foreign nationals are recognised as a vulnerable group who lack 'political muscle' and are vulnerable to having their rights overlooked.

reporting of crimes by victims (para 60). In particular, the author draws the Commissions attention to para 61, in which it is stated:

'While the high levels of crime affect all community members, they particularly impact on children, girls, women, the elderly and groups vulnerable to hate crimes such as refugees, asylum seekers, immigrants, lesbian, gay, bisexual, transgender and intersex (LGBTI) people.'

THE BREAKDOWN IN POLICING AND COMMUNITY RELATIONS

This submission broadly concurs with the observations made by the Founding Complaint with regard to the non-performance of both SAPS and CTMPD in Khayelitsha (paras 63 and 64), absence of visible policing (65) and discourteous and inadequate communication on the part of police personnel (para 66).

TERMS of the COMMISSION:

Concurring with the Founding Complaint, this submission avers that the Commission should be empowered to investigate the performance of both the SAPS and the CTMPD (para 70) as refugee communities living and/or working in the Khayelitsha area have reported abuses by both parties.

This submission further endorses the claim made in the Founding Complaint that many of the terms of the complaints raised against SAPS and CTMPD operations in Khayelitsha are relevant to other areas of the city and the province (para 73). However, in contrast, it is submitted that the non-provision of policing and security protection in line with legislated requirements for refugees is not limited to poor and working class areas of the city and province.

SPECIFIC NATURE OF COMPLAINTS with regard to SOMALI REFUGEES in KHAYELITSHA

Many of the claims outlined below are substantiated in the Report entitled: *Expanding the Protection Space for Refugees in South Africa - Criminal Case Watching Briefs for Access to Justice for Refugee Victims of Crime (2011)*

1: Failure to respond appropriately to Somali victims of crime:

SAPS and/or CTMPD officials have repeatedly:

- refused to open cases for Somali victims of crimes;
- shown reluctance to communicate case numbers to complainants;
- neglected to provide follow up reports on progress of cases, often with the excuse that Somali nationals frequently move location (despite the

- fact that Somali community leaders have repeatedly offered to liaise with police personnel in locating complainants);
- failed to investigate cases reported by Somali complainants, including murder, robbery, hijacking, theft, arson and impersonation as police officers for criminal purposes
 - been reported to subject Somali refugees to extortion, robbery, assault and other misdemeanors , including uttering discriminatory statements (hate speech).
 - refused to protect the property of Somali nationals under attack from local community members

2: Harrassment of Somali victims of crime by SAPS officers:

When responding to Somali victims of crime, SAPS officers have been reported to focus on searching for illegal firearms and contraband goods at the victim's premises as their priority intervention.. Somali victims of crime have reported that matters of protection and investigation of the scene of the crime with a view to attending to identifying the perpetrator appear often to be of subsidiary importance.

3: Illegal and spurious charges against Somali nationals:

Individual police stations across the Cape Flats conducted an apparently coordinated campaign in late 2011/early 2012 where police officers were issuing non-compliance fines for business licences to Somali traders. Despite the fact that police were told that there was no existing regulatory basis for the fines that they were issuing (including representations to Commissioner Lamoer from lawyers acting for groups of Somali traders) the practice continued for several months.

In many instances police managed to make the Somali traders pay the fine direct to the charging officer or at the relevant police station. For those traders that were able to go to court the fine notice was merely cancelled by the prosecutor as there was no basis for the charge.

This kind of illegal and very public harassment of a targeted population group by state appointed officials is blatant encouragement to the broader community to consider themselves at liberty to attack Somali traders with impunity.

4: Invitations to leaders of the Somali community to collaborate with police made in bad faith

A range of public meetings have been arranged by senior SAPS personnel, ostensibly to address security and compliance issues of Somali and other refugee

traders. However, in many instances these events have served merely to increase the vulnerability of Somali traders.

- Senior police officers have issued derogatory and discriminatory statements about what they believe Somalis to be and do from the platform at public community meetings
- At public community mediation meetings organized by teams of senior SAPS personnel South African community members have been allowed to commit hate speech, make xenophobic statements and issue violent threats against Somali community residents. In most instances Police officers have not made any intervention in respect of such statements.
- At certain points in time and with certain police senior personnel in the Khayelitsha and surrounding areas efforts have been made to acknowledge the poor response to the particular policing and security needs of Somali members of the community. However, in the longer term these have served more to undermine the fostering of relations between Somali leaders and the police as the interaction has not been sustained and undertakings made by police personnel have not been met. In the long run, Somali participants in such enterprises have been left with the impression that the interventions are primarily intelligence gathering exercises initiated by the Police to compensate for their minimal understanding of the dynamics of the Somali community rather than genuine attempt to build bridges with that community.

5: Failure to address gangster activities targeting Somali nationals running Spaza shops .

The Somali community across the Cape Flats has been terrorized since 2010 by one particular gang that targets Somali spaza operators by robbing them at gunpoint. Although arrested in December 2010, the bail hearings were so appallingly managed that the four accused were released in the closing months of 2011. It was clear from proceedings that the SAPS investigating officer (based at Phillippi East station) had failed in his duties to investigate the case appropriately. In the course of the bail hearings a number of different Prosecutors were engaged in the case and it was clear that they were extremely frustrated at the repeated errors and omissions of the investigating officer. The impression gained from the proceedings was that there was collusion between SAPS and at least some of the accused (or their sponsors).

A series of cases have been opened by Somali victims of the same gang in Khayelitsha, Harare, Nyanga, Mufeleni and Phillippi East police stations from as far back as March 2010. Despite this, and engagement with senior police personnel to request a coordinated response to the matter, the gang is still active in Khayelitsha and other areas on the Cape Flats. Moreover, the gang has reportedly increased in the number of associates who have become known to Somali victims.

CONCLUSION:

In the light of the above comments, the Commission is requested to consider, in their inquiry and the related recommendations, the experiences of refugees in Khayelitsha and surrounding areas. Rather than a breakdown in relations, it is submitted that police personnel have failed, in the first place, to make the necessary interventions to establish relationships of trust with refugees. This is particularly so in respect of Somali refugees, who are particularly vulnerable to being victims of crime—both as an expression of xenophobia and as a consequence of their relative commercial success.

Signed:

V. M. Igglesden

Dated: 7 November 2012