

**SUBMISSION TO THE COMMISSION OF INQUIRY REGARDING
ALLEGATIONS OF POLICE INEFFICIENCY IN KHAYELITSHA**

Prepared and submitted by the Scalabrini Centre of Cape Town

The Scalabrini Centre of Cape Town (SCCT) is a registered NPO that perceives migration as an opportunity and is committed to alleviating poverty and promoting development in the Western Cape while fostering integration between migrants, refugees, and South Africans. In providing our assistance, we advocate respect for human rights and use a holistic approach that considers all basic needs. The SCCT was founded in 2002 and roughly 2,000 clients use its services each month.

The SCCT has gained insight into policing and protection issues in Khayelitsha through its advocacy work done on the behalf of individual foreign nationals who have reported their experiences with SAPS to our offices and through the administration of two workshop sessions on migrant rights to Khayelitsha South African Police Service (SAPS) members and Khayelitsha Community Policing Forum (CPF) members. These workshops were held in collaboration with the International Organization for Migration (IOM) and occurred on 10-11 May and 29-30 August 2012.

This submission is based upon these experiences and offers recommendations to improve policing in Khayelitsha which will benefit all members of the community, both South Africans and foreign nationals. It further recognises that effective policing and community integration involves more than just SAPS and CPF members; it includes other national government departments, municipal government officials, and the community members themselves.

This submission first details our experiences with SAPS and CPF members during the workshop sessions and then presents the experience of one foreign national's experience with policing in Khayelitsha. Lastly, we offer some recommendations to the Commission. The recommendations necessarily go beyond SAPS alone and it is our hope that the Commission's findings will be taken seriously and used to improve policing nationally.



I. Workshop information sessions

1. The SCCT participated in the administration of two migrant rights workshop sessions with SAPS members and CPF members on two occasions in 2012: 10-11 May and 29-30 August. These sessions were administered with IOM under the project 'Support to the South African Government to strengthen communities of peace and diversity' with the aim to empower participants to deal with migrant-related issues in their community more effectively.
2. The focus of these workshops were on the rights and responsibilities of migrants in South Africa including:
 - the definitions of basic migration terms and reasons for migration;
 - an overview of national legislation and international law relating to migration;
 - constitutional rights and obligations of foreign nationals in South Africa;
 - an overview of the relevant documentation issued to foreign nationals;
 - the particular vulnerabilities of migrant groups;
 - an introduction to important issues relating to separated and unaccompanied foreign children; and
 - human trafficking and smuggling.
3. At the beginning of each workshop, participants discussed their expectations of the workshop sessions and from these discussions it was apparent that many were unfamiliar with working with migrants. It was clear to the facilitators that the participants clearly appreciated the workshop and wanted to learn more about migrant issues.
4. A major concern regarding the CPF was the composition of its members – the CPF is entirely composed of South African nationals. The reason for this omission was unclear and CPF members indicated that they would welcome foreign nationals into the CPF structure.

5. The other major concern related to both SAPS and CPF members being largely unfamiliar with the documentation issued by the Department of Home Affairs (DHA) to foreign nationals. In particular, many participants had never received any training with the documentation issued to asylum seekers and refugees and the conditions associated with those permits. Moreover, they were unfamiliar with any of the inherent access issues with the asylum system¹ as well as the particulars of the Zimbabwean Documentation Project² which may result in foreigners being unable to renew or receive their documentation in a timely manner, leaving them vulnerable to possible arrest and detention.
6. After the conclusion of the workshops, it was clear that both SAPS and CPF members in Khayelitsha face many challenges in effectively address protection concerns of migrants. Some major challenges include:
 - a lack of knowledge about permits given to foreign nationals and the process foreigners must go through to attain these permits;
 - a lack of foreign nationals being included in CPF structures in Khayelitsha;
 - a lack of awareness regarding the asylum system and the rights and responsibilities that apply to different types of migrants, particularly refugees and economic migrants; and
 - a lack of cooperation and/or communication between the various government departments responsible for assisting migrant populations.

These challenges present major obstacles to the provision of protection by SAPS and CPF members to foreign nationals which further marginalises those foreign nationals living in the community. This marginalisation may exacerbate any pockets of xenophobia from within the community and can spark major violent incidents.

¹ For more information on access issues in the asylum system, see Roni Amit, 'NO WAY IN: Barriers to access in the South African asylum system', African Centre for Migration Studies Report (June 2012). Available at: <http://www.migration.org.za/publication/report/2012/no-way-barriers-access-service-and-administrative-justice-south-africa-s-ref>

² At the time of writing, the SCCT is still assisting many Zimbabweans who have yet to receive their ZDP permits despite applying over 2 years ago. These individuals' only means to prove their legal status in South Africa is their application receipt issued by the DHA. For more information on Zimbabwean Documentation Project problems, see 'The Zimbabwean Documentation Process: Lessons Learned', African Centre for Migration Studies Research Report (January 2011). Available at: <http://www.migration.org.za/report/amt-r-2011-zimbabwean-documentation-process-lessons-learned-acms-research-report-january-2011>



II. Experience with foreign nationals affected by policing issues in Khayelitsha

7. Since its establishment in 2010, the SCCT's Advocacy Programme has assisted many foreign nationals who have experienced torture, inhumane and cruel treatment, and discrimination at the hands of SAPS members throughout the Western Cape. Accordingly, we must emphasize that in our experience many foreign nationals, in both rural and urban settings, are not receiving protection from SAPS and are in fact being victimised and targeted due to their nationality.
8. The case below represents one individual's experience with policing in Khayelitsha. In our experience, this story is representative of the other rights violations reported to our offices from other police jurisdictions in the Western Cape. The individual affected remains extremely concerned for his safety and as such we have omitted some details to protect his identity. The basic facts of the Khayelitsha case are as follows:
9. The individual was informed by a community member that his wife was being detained for questioning by SAPS officials in Khayelitsha. He went to the location and asked the SAPS officials present for information on the situation and was told that 'you're not in [his country] now, go away'. He enquired further, asking why they were treating him in this way, and was taken to a room where his wife was detained with their daughter. He was then handcuffed and beaten in front of his family for roughly 20 minutes.
10. The family was then taken to an area police station and put into separate cells. He was interviewed further while his paperwork was being completed and beaten again. His condition was so poor that one of the police officers involved held him upright so he could be beaten further. The handcuffs were twisted to put extreme pressure on his wrists and were used to hold him upright, bearing all his weight.
11. He was subsequently charged with an unrelated offence and his wife and daughter, who were previously being questioned, were released. He remained in detention until his court date several days later. On his court date, the charges were dropped and he was released without explanation.
12. After the incident, he had his injuries documented by an area physician who noted the damage to his wrists, jaw, ribs/abdomen, and head as consistent with the assault described above.

13. The family declined to pursue the matter further due to their continued interactions with the offending officers in the area and any potential repercussions that may result from the reporting of the events.

III. Recommendations to improve policing in Khayelitsha

14. In light of the above experiences, the SCCT requests that the Commission consider including and expanding on the following recommendations in its report:

- Increased training for SAPS members on migrant rights and vulnerabilities; such trainings and awareness raising sessions should not be once-off events but should be held at least annually to update officers on current conditions and to ensure all members have basic training in migrant rights and documentation.
- Consider ways to engage with DHA to find methods to increase cooperation between DHA and SAP; such coordination and cooperation is critical given SAPS' duties as laid out in the Immigration Act relating to foreigner identification, detention, and deportation. From the SCCT's experience in Khayelitsha, it was apparent that there had been no concerted effort taken by DHA to inform SAPS on immigration-related issues and procedures. SAPS members also expressed frustration at the lack of cooperation from DHA to assist them with immigration matters. We note further that many SAPS members across the Western Cape have not been kept up-to-date by DHA on migration issues, such as the progress of the special Zimbabwean Dispensation Project nor the recent closure of the Maitland Refugee Reception Office and subsequent decision to close the Cape Town Refugee Office for new asylum applications. Both of these issues have major implications for the types of documentation issued to foreign nationals and SAPS members must understand the current contextual issues to effectively carry out their duties.
- Consider means to continue to refine and strengthen the operations of the Independent Police Investigative Directorate (ICID) complaints process to strengthen oversight, accountability, and transparency of SAPS operations.



Scalabrini
Centre of Cape Town

Scalabrini Centre

47 Commercial Street

Cape Town, 8001

Tel: +27 (0) 21 465 6433

Fax: +27 (0) 21 465 6317

www.scalabrini.org.za

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- Implement a plan that would allow serious participation by foreign nationals in the CPF forums, whether through direct membership or through other representative means. The exclusion of foreign nationals only exacerbates divisions within the community and will fail to fulfil its mandate should all members of the community not have a voice in the CPF forum.
- Urge Parliament to ratify the Optional Protocol to the Convention against Torture (OPCAT). The OPCAT treaty was signed in 2006 but it has yet to be ratified. OPCAT is a critical piece of legislation which promotes accountability and transparency for persons deprived of liberty by government officials, including those detained by SAPS. OPCAT requires state parties to monitor and report on places of confinement through special 'National Preventive Mechanisms' as well as to receive the Sub-Committee on Torture to investigate conditions in places of detention. The ratification of this treaty would improve the ability to monitor SAPS conduct nationally and critically includes in all places of detention, such as detention centres for migrants declared to be illegal foreigners such as the Lindela Repatriation Facility.

End.