

HOW SAFE ARE OUR YOUTH?

Findings and recommendations from the O'Regan – Pikoli Commission of Inquiry into allegations of police inefficiency and a breakdown in relations between the South African Police Service and the community in Khayelitsha.





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"Gangsters would enter the school through the fencing and attack learners. Many different people were stabbed. Eight learners in my school were killed in that year [2007]. Pumlani, one of my classmates, was stabbed to death in our class. We were locked in the class and the ambulance arrived too late. We were sent home for the day but received no trauma counselling. Teachers and learners lived in fear and panic that year. I cannot understand to this day how I passed that year because it was almost impossible to concentrate on my studies. I can say that this is true for most of my fellow-learners" (Submission by Thandokazi Njamela to the O'Regan-Pikoli Commission of Inquiry, paras. 13-15).



INTRODUCTION

In 2014, a very important Commission of Inquiry was held in Khayelitsha. It is generally known as the O'Regan-Pikoli Commission, after its two commissioners: retired Constitutional Court Justice, Kate O'Regan, and former head of the National Prosecuting Authority, Advocate Vusi Pikoli. The Commission came after ten years of campaigning by social justice organisations and community members for improved safety and justice in Khayelitsha.

The Commission was established to look into allegations that the Khayelitsha police were inefficient and had lost the trust of the community. It focused specifically on Khayelitsha but its findings will have a profound and positive impact on poor and working class communities throughout the country.

Over a period of five months, the Commission listened to the testimony of 85 community members, police officers, academics, social workers and activists working in Khayelitsha. It also considered over 50 000 pages of evidence.



During the Commission, a number of issues were identified as being of serious concern to the community, including:



This series of booklets looks at evidence from the Commission, as well as other research and people's personal experiences. The booklets aim to increase understanding and awareness of these issues.

HERE ARE SOME QUESTIONS TO ASK YOURSELF WHILE YOU READ THIS BOOKLET



We hope that the information in this booklet will encourage you to participate actively in community structures, such as your local Community Police Forum or Sub-Forum.

WHERE DOES THE EVIDENCE COME FROM?

This booklet is based on evidence about school safety and youth gangs from the recent Commission of Inquiry into Policing in Khayelitsha. There are different kinds of evidence but it all comes from the Commission:

- During the Commission hearings, community members, the police and expert witnesses gave evidence, including evidence about school safety and youth gangs.
- Dr Debbie Kaminer from the University of Cape Town submitted a report on the “Prevalence and psychological impact of exposure to violence amongst children in Khayelitsha”.
- Dr Catherine Ward from the University of Cape Town submitted a report on “Evidence-Based Approaches to Dealing with Gangs”.

SCHOOL-BASED VIOLENCE

Gangs and gangsterism are the leading causes of violence against and between children and youth. The high level of gangsterism in and around schools is a very serious problem. If learners do not feel safe at school, it is difficult for them to concentrate and succeed in their studies.

NN (full name protected), a 39 year old woman living in Khayelitsha with her son, described how her son decided to quit school in order to avoid the gang violence:

“I have a 17 year old son who was a scholar at [a] Senior Secondary School in Harare, from January to June 2012. He experienced traumatic attacks on school children by gangster members at his school in the beginning of July 2012. I then decided to put him in another school ... In September 2012, the gangsters came to our street and attacked young boys who were walking together with my son and he witnessed the gangsters killing one of his friends ... My son decided to quit school as he was feeling unsafe to walk to and back from school”
(NN’s affidavit, paras. 1 & 4).



Sifiso Zitwana, who has been raising his two younger brothers since the death of his parents, was forced to make a similar decision when his brothers became involved in gangsterism:



"School gang violence happens from time-to-time in Khayelitsha. Around 2011, a new outbreak of school gang violence happened. At this stage my brothers were not involved in the gangs, and explained to me what was happening at school ... The gang youth had pangas, knives and stones and would mainly fight outside of school. My brothers and other friends feared going to school. Before 2011 my brothers joined the gangs and I lost control of them. When we met with X, I was very disappointed because my brothers had decided to go on the radio to say they would leave the gang and ask other young learners to also leave the gangs. But the police would not give protection to them, saying there was nothing they could do ... I then decided to send my brothers to the Eastern Cape to my mother's traditional home, even though there was no one to look after them. My brothers knew it was for their own protection even though they were very angry at me for sending them away. I miss them very much and I send them money" (Sifiso Zitwana's affidavit, paras. 21-28).

These statements highlight the effects of gangsterism on Khayelitsha school learners and how this has impacted on their right to education.

"My concern is that our children have a right to education and as a result of lacking protection from government, they have quit school. I am pleading with the government to meet the Khayelitsha community halfway in resolving the problem of gangsterism in our areas. Our children are now denied their right to education because they are not being protected from the gangsters" (NN's affidavit, paras. 10-12).



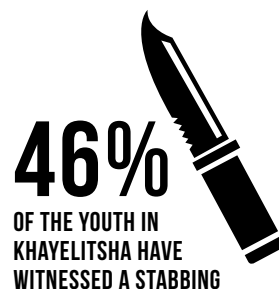
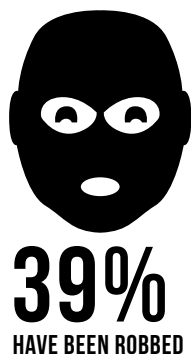
EXPOSURE TO VIOLENCE

The Commission showed that youths in Khayelitsha are exposed to unacceptably high levels of violence. Dr Debbie Kaminer is a psychologist whose research interests include the effects of trauma and violence. She reports that in Cape Town, especially in Khayelitsha, it is the norm for young people to be exposed to, or become the victims of violent crime.

YOUTH IN KHAYELITSHA **MURDER**

**1ST LEADING
CAUSE OF
DEATH IN CHILDREN
15–19 YEARS**

**2ND LEADING
CAUSE OF
DEATH IN CHILDREN
10–14 YEARS**



Dr Kaminer describes the impact of on-going violence on a child's psychological and emotional development. Children who are victims of violence often become perpetrators of violence, they commit violence against others. Youth often join gangs because they see them as the only protection against the on-going threat of violence.

"... within the Khayelitsha community, children are being exposed to violence across ... home and school and neighbourhood ... there are very few safe spaces that children can access ... Children in Khayelitsha experience violence as a condition of living, rather than as a single event that they experience and then have to recover from ... We have also seen that children are witnesses, they are victims and they are perpetrators of violence in this community" (Dr Kaminer's testimony before the Commission of Inquiry).



"When discussing violence that affects mainly the youth, the issue of gang violence in Khayelitsha cannot be ignored. Gangs exist and operate within the Khayelitsha community. From what I have gathered from the youth that I work with, various gangs operate within the Khayelitsha community and they are territorial. The gang members vary in age from age 10 right up to 21 years old and older. The level of organisation and sophistication and violence depends on the gang with preferred weapons ranging from knives and pangas to guns. Gangs will engage in all sorts of violent crimes ranging from robbery, hijacking, assault, kidnapping, rape and murder. Gangs that attract and attack school going youth appear to concentrate their activities in the following places around Khayelitsha: (1) Makhaya Park; (2) The area surrounding Esangweni High School; (3) Under the bridge in Site B near Masiyile High School, Megabro and the railway line; (4) The bridge near Kuyasa; (5) The open field near Thembelihle High School; (6) Opposite Sizimisele High School; and (7) Greenpoint Park" (Yoliswa Dwane's affidavit, para. 40-41).

Yoliswa Dwane, Chairperson of Equal Education, describes how gang members can be as young as 10 years old. Gangs will often gather in areas that attract other youth:





THE SCHOOL-TO-GANG PIPELINE

Youth in areas like Khayelitsha often turn to gangsterism when they feel that they lack other options. Dr Catherine Ward is a psychologist who specialises in youth violence. She explained to the Commission how gangsterism often results when a community lacks resources, proper education, and economic opportunities. Youth need adequate education, after-school programmes, and youth development programmes as alternatives to gangsterism:

"Gangs are primarily a phenomenon in economically deprived areas in which gang membership offers individuals (usually young men) a space of belonging and protection ... In non-deprived areas, schools, families, and neighbourhoods are able to offer young people opportunities for success in multiple arenas ... This is not the case in deprived areas such as Khayelitsha, where schools are often under-resourced and failing to achieve adequate standards of education, where there are few organised after-school activities, and where unemployment rates are high. In this context, gangs offer a sense of belonging and perhaps the possibility of a future"
(Report prepared by Dr Catherine Ward for the Commission of Inquiry).



Dr Ward describes the importance of well-resourced schools in reducing gang involvement. This is challenging for a community like Khayelitsha, where schools not only suffer from a lack of resources and funding, but also from high levels of vandalism and burglary.

Mr Madoda Mahlutshana, Principal of Chris Hani Senior Secondary School in Khayelitsha, spoke to the Commission about the strong gang culture that exists in the school. Learners are often found hiding knives, pangas and other weapons in their school uniforms. Many of them claim they need the weapons for protection from other gang members at the school. According to Mr Mahlutshana:

"... [gang culture] really affects the learning and teaching. So we would really want to have a clear strategy from the South African Police Service, also the community, on how schools are being supported to move forward and eliminate this because it just destabilises the schools." (Mr Mahlutshana's testimony before the Commission of Inquiry).



Mr Xolelwa Mjonondwana, Principal of Zola Secondary School in Khayelitsha, described that school burglaries are common because of poor supervision and unresponsive police units:

"The school was forced to employ three people from the community to act as security guards and to alert the police whenever someone entered the premises illegally during the course of the night. In one incident, which I believe was July/August 2012, a perpetrator broke into the school and was inside the school building between 01h00 and 02h00. The security guard on duty contacted the police immediately as the perpetrator was still inside the building and he thought that he could be apprehended if the police arrived speedily. The police at the Site B police station answered the telephone call for assistance as I called the police station directly, but failed to send a patrol van to the school in time. The perpetrator ended up stealing more equipment, and left the premises without being apprehended" (Mr Mjonondwana's affidavit, para. 5).



The burglaries not only cost the school money, they also make both learners and teachers feel unsafe. In his affidavit, Mr Mjonondwana described a series of burglaries that occurred between March and August 2012:

“14 March 2012 we reported a burglary case . . . In this incident the following items were stolen: (i) Seven Central Processing Units (CPU’s); (ii) Seven 15 inch computer monitors; (iii) Seven computer keyboards.”



“02 May 2012 we reported a burglary case . . . In this incident the following items were stolen: (i) Four Central Processing Units (CPU’s); (ii) Four 15 inch computer monitors; (iii) four computer keyboards; (iv) One Epson-Projector. Three of the CPU’s in this instance were recovered outside in the school yard but were damaged due to rain.”



“20 May 2012 we reported a burglary case . . . Our school records show 2 Epson Projectors were stolen on this occasion.”



“21 July 2012 we reported a burglary case . . . Our records show the following items were stolen on this occasion: (i) Ten Central Processing Units (CPU’s); (ii) Three 15 inch computer monitors; (iii) One Epson Projector.”



“26 July 2012 we reported a burglary case . . . Our records show the following items were stolen on this occasion: Eight 17 inch computer monitors.”

(Mr Mjonondwana’s affidavit, para. 1).



Learners are being robbed of the resources they need for a good education. The vandalism, along with regular violence, creates an environment that makes learning difficult. When schools are poorly resourced and unsafe, it encourages gang violence. The gang violence makes more students feel unsafe and makes it harder for them to receive a good education.



THE ROLE OF THE POLICE

If the police are not visible in the community, and people believe that the police will not respond to crime, it is easier for youth to commit crime. In his submission to the Commission, Mr Mjonondwana expressed concern that it takes, on average, too long for the police to arrive at the scene of a crime. In her submission, NN highlighted an incident where gang members threatened to assault her son and his friends:

“Yesterday the 7th November 2012 at about 14H00 in the afternoon, while I was with my son at home, my son’s friends came running into my house shouting and screaming that fully armed members of the Vato gangsters have come to attack our children in my street. I then hid all of them in my house and called the police. The police never came until each parent came to my house and took their children home” (NN’s affidavit, paras. 6-7).



When the police didn't respond, NN asked the taxi associations for help:

"As parents in my area we have approached the taxi associations for help but they refused saying that the community had decided that they should not be involved. I have exhausted every remedy available to me including reporting the problem to the police but I never got any help hence I am here to report to this Commission" (NN's affidavit, paras. 8-9).



Yoliswa Dwane had a similar experience with the police:



"Sadly, the police did very little to prevent the violence, combat gang fights when they happened inside or outside our schools, investigate how the gangs were structured, who operated them, apprehend the culprits and bring them to book. The community could not understand why the gang violence was taking place on this scale and neither could the learners who did not participate in gangs" (Yoliswa Dwane's affidavit, para. 35).

Some of the leaders of the police stations in Khayelitsha have shown that they do not understand youth gangs in Khayelitsha and the violence perpetrated by these gangs. For example the station commander of Lingeletu-West Police Station, Colonel Reitz, testified before the Commission that when youths are involved in gang-related activities, *"most of the time there is no crime that is committed"*. This shows that he does not fully understand youth gang violence and how common it is.

Yoliswa Dwane pointed out that gangs in Khayelitsha often provide youth with a sense of "identity" and a "sense of belonging":

"We saw that this phenomenon of gangsterism is actually quite different from what we have seen in the Cape Flats. Many people would know that gangs in Manenberg for example and in Mitchell's Plain and Bonteheuwel they are organised around drugs or organised crime whereas [Khayelitsha's] ones are really about identity, a sense of belonging and dressing up" (Yoliswa Dwane's testimony before the Commission of Inquiry).



Dr Ward described the problems that can happen when police do not respond to crime:

"So if the police see something happening, they should immediately act on it, otherwise, you know, if you drive a van down the road and past crimes that are happening, you give criminals a very clear message that it's okay for them to do that" (Dr Ward's testimony before the Commission of Inquiry).





LEGAL RIGHTS AND OBLIGATIONS

Gangs and violence in and around our schools and other public places seriously impacts on people's constitutional rights, such as:



When violence erupts, some learners cannot get to school. Those who do attend school are afraid of being caught in the crossfire.

How should police deal with violence and youth gangs in terms of the law?

Sonja Basson works for an organisation that helps young boys and street children reintegrate with their community and family. In her submission to the Commission, she said that the *“police’s lack of action in respect of child offenders has led to the escalation of gangsterism”* (Sonja Basson’s affidavit, para. 12). Even when police do arrest youths involved in gangsterism and other criminal activities, they often do not use the law properly:

“The one thing the police are using to hide their lack of responsibility is the new Child Justice Act ... alleging that they cannot arrest children in terms of the Act. In situations they quote provisions of the Act which suit them, but neglect to apply other appropriate provisions when a criminal case should be opened against a youth ... [T]he police are too lazy to implement the provisions [of the Child Justice Act] and it has led to the youth being completely out of control” (Sonja Basson’s affidavit para. 11-16).



The law Basson refers to is the *Child Justice Act of 2008*, which creates a separate criminal justice system for children who are accused of crimes. This Act sets out the proper procedure that police must follow when dealing with child offenders. The Act applies differently depending on the age of the child at the time of committing an offence:

1 How the Child Justice Act deals with children under 10 years old:

A police officer is not allowed to arrest a child under the age of 10. The police officer must immediately hand the child over to his or her parent, appropriate adult, guardian or a suitable youth care centre. After handing the child over, the officer must notify a probation officer. The probation officer must assess the child and then:

- take the child to a children's court, counselling or therapy;
- refer the child to an accredited programme;
- arrange support services for the child;
- arrange a meeting with the child, the child's parents, an appropriate adult or guardian; or
- take no action at all.

The purpose of the meeting with the parent, the child and the probation officer is to write a plan for the child. This includes the child's obligations and what the child must do. If the child fails to do what he or she is supposed to do, the probation officer will refer him or her to the children's court. It is important to note that a child under 10 years old cannot be prosecuted.

2 How the Child Justice Act deals with children aged 10–14 years old:

Although children in this age group can be arrested and prosecuted, the Act presumes that children over the age of 10 but under the age of 14 cannot tell right from wrong. But, if the prosecutor can prove beyond reasonable doubt that the child is able to tell right from wrong, the child can be prosecuted and may be diverted away from formal criminal system for less serious offences. When deciding whether to prosecute a child in this age group, the prosecutor must take some important factors into consideration, including:

- the child's educational level, environmental circumstances, age and maturity;
- the seriousness of the offence;
- the impact of the offence on the victim; and
- the interests of the community.



3 How the Child Justice Act deals with children aged 14–18 years old:

According to the Act children in this age group know the difference between right and wrong and they can be convicted.

Evidence before the Commission showed that police are not properly trained on how to use the Child Justice Act when dealing with youths who have committed crimes. The police sometimes "hide" behind the Child Justice Act and do not properly apply the Act. In some cases, the police simply give the young offenders a verbal warning and let them go.

The Child Justice Act discourages police from holding youths in detention for minor offences (schedule 1 offences), such as:

- theft where the amount is less than R2 500;
- damage to property where the amount is less than R1 500; and
- common assault.

But the Child Justice Act is clear that young offenders over the age of 10, who can tell right from wrong, may be held in detention or released on bail where they have committed more serious offences (schedule 2 or 3 offences), such as murder or sexual assault.

The Child Justice Act recognises that sending young offenders

to prison is not always the right thing to do and that the punishment must fit the crime. Young offenders will often leave prison as hardened criminals and are at a greater risk of becoming repeat offenders. The Act creates more suitable options to deal with child offenders who take responsibility for their crimes. These options include "compulsory school attendance orders," "family time orders" and "peer association orders."

Youths must be dealt with in a way that maintains their dignity but also gets the approval of both the community and victim. This is very important because youth gang activity is a social issue that affects the community at large. The police should not be "hiding" behind the Child Justice Act, particularly when dealing with youth gang members who have committed more serious offences.





WHAT CAN BE DONE?


What did the Commission find?

The Commission found that high levels of violent crime had made people in Khayelitsha feel *“unsafe in their homes, schools and public spaces”*. Children are often the victims of violent crime. As a result, they do not feel safe going to school or walking anywhere alone, especially at night. The Commission also found that the South African Police Service (SAPS) did not have a proper strategy to deal with youth gang violence. The experience of most of the Commission’s witnesses showed that SAPS did not respond quickly enough when crimes were reported, and did not thoroughly investigate reported crimes.

What did the Commission recommend?

The Commission recommended that a task team be created to look for solutions to the youth gang problem in Khayelitsha. The task team should include representatives from:





The task team must put together a strategic plan to deal with youth gangs. The plan should be ready by 25 February 2015, six months after the Commission released its findings. The plan should include steps to:

1. **Keep children safe in school;**
2. **Keep children safe while walking to and from school;**
3. **Provide after-school activities for children;**
4. **Make sure schools track who is not attending school;**
5. **Develop programmes to help youth who are at risk of joining gangs;**
6. **Make sure police are visible and patrolling around gang hotspots and schools;**
7. **Make sure a standard approach is followed when arresting or prosecuting young people; and**
8. **Improve crime intelligence on gang practices so that police can effectively reduce gang violence.**

The Commission's recommendations showed that the police, local government and community based organisations need to work together to keep people safe from gang violence.

QUESTIONS FOR DISCUSSION

1. Have you, or someone close to you, personally experienced gang violence?
2. How safe do you feel in:
 - a. your school?
 - b. your home?
 - c. on the street?
3. What can the police do to make our schools safe and reduce gang violence?
4. What can government (local, provincial and national) do to make our schools safe and reduce gang violence?
5. What can the community (schools, parents, learners and others) do to make our schools safe and reduce gang violence?

[illegible]

