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KHAYELITSHA COMMUNITY ORGANISATIONS DEMAND SAFETY, SECURITY AND EQUAL ACCESS TO JUSTICE FOR ALL

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Today, we protest the incompetence, inefficiency and injustice of the agencies charged with ensuring the safety and security of all people in South Africa. We demand real and sustained action to build safe communities and ensure justice for victims of crime.

We are brought together by the case of Zoliswa Nkonyana, a 19-year-old, openly lesbian who was murdered on 6 February 2006. The escape of four of the suspects last week from the Khayelitsha Magistrate?s court is only the most recent incident in the on-going struggle to hold her attackers to account, and find justice for the deceased and her family. Nkonyana?s case, and the others outlined below, reveals a series of chronic problems with the justice system that demand to be addressed by both provincial and national government.

From: The Social Justice Coalition, The Treatment Action Campaign, Equal Education, AIDS Legal Network, Free Gender, Triangle Project and Luleka Lisizwe

To: MEC Albert Fritz
MEC for Community Safety, Western Cape

To: Minister. Jeff Radebe
Minister, Department of Justice

To: Minister Nathi Mthetwa
Minister of Police

To Councillor JP Smith
Mayco Member for Safety and Security

MEMORANDUM:

KHAYELITSHA COMMUNITY ORGANISATIONS DEMAND SAFETY, SECURITY AND EQUAL ACCESS TO JUSTICE FOR ALL

1. Introduction

1.1. Today, we protest the incompetence, inefficiency and injustice of the agencies charged with ensuring the safety and security of all people in South Africa. We demand real and sustained action to build safe communities and ensure justice for victims of crime.

1.2. The Social Justice Coalition (SJC), Treatment Action Campaign (TAC), Equal Education (EE), Free Gender, AIDS Legal Network, Triangle Project and Luleka Lisizwe are community-based organizations located 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.

1.3. While our organizations remain focused on different campaigns, we are compelled by circumstance to express our common conviction that many victims of crime (both violent and property related) in Khayelitsha ? and all working class and poor communities ? do not have adequate access to justice, a right guaranteed by the Constitution and the Victims Charter. We have arrived at this conclusion after years of frustrating and disheartening experiences attempting to secure justice through the courts, and protection by the Police for members of our organizations and communities who have been victims of violent crime.

1.4. We are brought together by the case of Zoliswa Nkonyana, a 19-year-old, openly lesbian who was murdered on 6 February 2006. The escape of four of the suspects last week from the Khayelitsha Magistrate?s court is only the most recent incident in the on-going struggle to hold her attackers to account, and find justice for the deceased and her family. Nkonyana?s case, and the others outlined below, reveals a series of chronic problems with the justice system that demand to be addressed by both provincial and national government.

1.5. While all those living in South Africa share the responsibility to respect and protect each other?s dignity, person and life, it is 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 fulfill this duty satisfactorily.

1.6. Below we outline four examples to demand immediate action that will address the failing system. We could provide many more incidents of crime including hit and run car accidents, drunk driving, assaults, murders, rape, xenophobic hate crimes and we are prepared to so.

2. Case Examples

2.1. Case #1: Zoliswa Nkonyana

2.1.1. On 6 February 2006 Zoliswa Nkonyana was murdered, allegedly because she was openly lesbian. After refusing to use a men?s toilet at a Khayelitsha shebeen a group of men pursued her and stabbed her to death. Nine men ? eight of them teenagers at the time ? were charged with her murder and the attempted murder of her friend and a passerby.

2.1.2. The trial has been delayed over 27 times in the 4 years and 7 months since the murder occurred. Five ?trials within trials? have moreover taken place during this period.

2.1.3. The main state witness was attacked on the day of Zoliswa?s murder and later threatened by the accused during the trial, causing her to flee the province. She has not been afforded the necessary protection and support by the prosecuting authority or the Courts. The unacceptably long trial has disrupted her life and continues to impact negatively on her and her family.

2.1.4. On 5 February 2008 gross negligence was pronounced by the court on the State for failing to ensure the presence of witnesses in court. On Wednesday 15 September 2010, the day before the State was supposed to close its case, four of the accused were among nine suspects (in unrelated cases) who escaped from the holding cell in Khayelitsha Regional Magistrate?s Court. A police sergeant, Fundile Salela, was subsequently arrested for defeating the ends of justice, aiding prisoners in escaping from lawful custody and corruption.

2.1.5. The four suspects that escaped were rearrested on Sunday 19 September and appeared in court the following day, along with Fundile Salela. The specific sub-case pertaining to the Police sergeant was remanded. The sub-case pertaining to the four escapees case was remanded until 6 October. The overall murder trial was remanded until 14 October and thereby will continue into its 57th month without resolution in sight.

2.2. Case #2: Makhosandile ?Scare? Qezo

2.2.1. At approximately 7h00 on 1 May 2010, two men approached RR Section resident Makhosandile ?Scare? Qezo while he was relieving himself in the bushes by the N2 highway. One of the men demanded his cell phone. Before Scare could respond the man stabbed him in the face. Scare struggled with the attacker, cutting his hand in the process. The attacker took Scare?s cell phone and attempted to flee, but was apprehended and beaten by witnesses on the scene. The police arrived and took the suspect to hospital.

2.2.2. Scare?s alleged attacker, Lonwabo ?Lizo? Gubeni, was charged with assault with the intention to cause grievous bodily harm on 3 May. On 10 May he was granted bail.

2.2.3. Once bailed Gubeni failed to attend the two subsequent court dates. The Court issued a warrant of arrest and Gubeni?s bail money was forfeited to the state. He was eventually rearrested on 25 August. The police failed to notify Qezo and the SJC of this despite the fact that the SJC and his family had repeatedly contacted the investigating officer and requested to be notified of any developments in the case. This prevented Scare, his family and the SJC from appearing at the bail hearing that occurred the following day.

2.2.4. On 26 August, Gubeni appeared in court. The investigating officer did not appear at the hearing and thus could not attest that there was a risk of flight with Gubeni. Gubeni was granted bail again despite the fact that he had just violated the terms of his previous bail. Fortunately, Gubeni did not have the R500 to meet bail and is currently in custody. On 21 September the investigating officer indicated that there is another warrant of arrest for Gubeni, pertaining to a different case, and that if Gubeni was charged on this other case the conditions of his current bail would be contravened. However, the investigating officer did not have any information on this other case and there was no record of it on the police database.

2.3. Case #3 Minor in Taiwan, Khayelitsha

2.3.1. On 8 April 2010 a seven year old boy ? who cannot be named for legal reasons ? was raped in Taiwan Section, Khayelitsha.

2.3.2. The State originally displayed an intention to oppose bail. At the hearing on 22 May the accused was pronounced as a flight risk and the State indicated that it had a strong case. The mother of the boy also reports that at the second court hearing the Magistrate told her that the accused would not be released on bail. At the bail hearing on 28 May, however, the State did not oppose bail, citing - among other things ? that the victim was safe. The accused was subsequently released on bail back into the community. Bail was granted despite the fact that the accused had allegedly threatened the victim with a knife at the time of the crime to dissuade him from telling anyone about the incident. The release of the accused has exacerbated the trauma of the victim and his family.

2.3.3. At the hearing on 20 September it was announced that the docket has been lost. The case has been remanded until 9 October. The suspect, while out on bail, returns periodically to the area where the rape occurred and continues to live in Khayelitsha. SJC has learned that the accused has since harassed the victim?s family, but an official affidavit is yet to be filed.

2.4. Case #4 Minor in Harare, Khayelitsha

2.4.1. A five year old child was allegedly raped and a docket opened on 13 February, 2010 in the Harare section of Khayelitsha.

2.4.2. The case was delayed four times, and eventually thrown out of Khayelitsha Magistrate court because the docket containing affidavits and evidence was never delivered to the court by the Harare 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 neighborhoods 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. 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). While the number of crimes reported in Khayelitsha have decreased 23.9% in the five years between March 2003 and March 2009, the most recent crime statistics released reveal a distressing deviation from this trend. In the most recent year, March 2009 to March 2010, the number of total crimes reported increased 8.76%, including a 13.2% increase of reported assaults, a 2.5% increase in homicide and a 13.7% increase in sexual crimes. It should be noted that these statistics account only for reported crimes and therefore may not reflect the true crime rates. For certain crimes, such as rape, the reported figure may be an order of magnitude below the actual crime rate. The chronic problem of crime forces many to make use of the overburdened and under-resourced Khayelitsha police Services and courts.

3.3. Girls and women are particularly vulnerable in these circumstances. Between March 2003 and March 2010 there has been a 7.31% increase in the number of sexual crimes reported in Khayelitsha, and a significant proportion of cases are most likely never reported. 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, from day-to-day police presence to securing convictions. In the four cases ? and may others - we have been following 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.

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. In the above cases and others there are a number of suspicious examples and unorthodox procedures for bail hearings. Suspects charged with schedule 6 crimes (murder, rape or aggravated robbery) should not be given bail, except in exceptional circumstances. Furthermore the State prosecutor and the Court are required to investigate any contextual information about the case which might be relevant to the safety and well-being of the victim before bail can be granted. In the Scare case, the accused should clearly not have been granted bail

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 ongoing 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. We demand

5.1. Visible policing in informal settlements and throughout our townships by SAPS and the Metro Police.

5.2. 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. An investigation into the above cases and others. In particular regarding the granting of bail to suspects charged with schedule 5 and/or schedule 6 crimes, and regarding the granting of bail to a suspect who had recently violated the terms of a previous bail release as in Case #2; the ?loss? of dockets as seen in Cases #3 and #4, and the ongoing postponements and the competence of investigations seen in Nkonyana?s case.

5.4. That the Western Cape MEC for Community Safety, Albert Fritz, with the support of Minister of Justice Jeff Radebe, initiate a one-person commission headed by a judge to compile a rapid assessment of systemic problems in Khayelitsha magistrate court 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.

5.5. 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.

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

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

[ENDS]

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